

38617
DO

SERVICE DATE – LATE RELEASE DECEMBER 5, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-156 (Sub-No. 26X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC., D/B/A CANADIAN PACIFIC RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN ALBANY COUNTY, NY

Decided: December 5, 2007

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company (D&H) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 1.98 +/- miles of rail line between mileposts A 6.95 +/- (in Colonie) and A 7.13 +/- and mileposts T 0.0 +/- and T 1.81 +/- (in Green Island), in Albany County, NY. Notice of the exemption was served and published in the Federal Register on June 1, 2007 (72 FR 30665-66).

The exemption was scheduled to become effective on July 3, 2007, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by June 11, 2007. On May 17, 2007, R. Freedman & Son, Inc. (Freedman), filed a formal expression of intent to file an OFA to acquire the line. This filing automatically stayed the effective date of the exemption for 10 days, until July 13, 2007.¹ Freedman simultaneously requested that D&H provide Freedman with the financial data and information prescribed in 49 CFR 1152.27(a) (requested information). By decision served on June 15, 2007, the 30-day time period for filing an OFA was tolled until August 20, 2007, and the effective date of the exemption was extended until August 30, 2007. By decision served on August 6, 2007, the deadline for OFAs to be filed was tolled until 30 days after D&H notified the Board that it had provided the requested information to Freedman, and the effective date of the abandonment exemption was postponed until 10 days after the new due date for OFAs.

In a letter filed on August 31, 2007, D&H indicated that it provided Freedman with the requested information, but explained that Freedman requested additional information. Accordingly, D&H requested additional time to comply with Freedman's additional request. In a decision served on September 27, 2007, the deadline for OFAs to be filed was tolled for an additional 30 days after D&H notifies the Board that it had provided Freedman with additional information requested by Freedman, and the effective date was further postponed until 10 days after the due date for OFA. On November 1, 2007, D&H provided the additional requested information to Freedman. D&H has indicated a purchase price for the entire line of \$512,020.

¹ See 49 CFR 1152.27(c)(2)(i).

On November 30, 2007, Freedman filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase a portion of D&H's line proposed for abandonment from milepost A 6.95+/- in Colonie (at a connection with the D&H main line) to approximately milepost T 1.52 (adjacent to Freedman's facilities in Green Island, NY), a total distance of approximately 1.05 miles. However, Freedman proposes to acquire less than the full width of the existing D&H right-of-way from approximately milepost T 1.42 to milepost T 1.52 (roughly one tenth of a mile). Freedman contends that its valuation differs from that of D&H primarily in the value for real estate and for track and material. Freedman indicates that it has determined the net liquidation value of the portion of the line it proposes to acquire is \$241,850 for land underlying the right-of-way and \$17,472.60 for the net salvage value of the rail physical property. Thus, Freedman's offer to purchase the indicated portion of the line is \$259,322.60.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

Freedman states that it has secured financial commitments up to \$536,000 from Citizens Bank of New York that would cover 75% of the fair market value of the property to be acquired, improvements to the property, and related expenses. Freedman also has placed \$65,000 of its own funds in escrow to cover the remaining 25%. In addition, Freedman and its corporate affiliate, R. Kelly Freedman Holding Group, have a revolving line of credit with Citizens Bank which provides for funds up to \$1,500,000, which can be used for purposes of restoration and operation of the line. Freedman has demonstrated its financial responsibility.

Because Freedman is financially responsible and has offered financial assistance, the effective date of the exemption authorizing the abandonment will be postponed.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$19,300. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of the proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If D&H and Freedman cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before December 31, 2007. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary