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SERVICE DATE – AUGUST 29, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1261

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
—ADVERSE ABANDONMENT—
SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, N.Y.

Decided: August 28, 2019

On September 10, 2018, the New York State Department of Environmental Conservation (the Department) filed an application under 49 U.S.C. § 10903 requesting a third-party, or “adverse,” abandonment by the Saratoga and North Creek Railway (SNCR) of approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine (the Line). Notice of the exemption was served and published in the Federal Register on September 28, 2018 (83 Fed. Reg. 49,151).

On October 16, 2018, the Department requested that the proceeding be held in abeyance for 90 days because OmniTRAX, Inc. (OmniTRAX) was negotiating with SNCR for the purchase of the Line and with the Department regarding storage of rail cars. In a decision served October 23, 2018, the request was granted and the comment deadlines on the application and the environmental assessment (EA) postponed pending further order of the Board. In a series of decisions, the abeyance period was extended, most recently until July 19, 2019.

By letter dated June 14, 2019, OmniTRAX informed the Board that it had discontinued its negotiations with SNCR and the Department. Shortly thereafter, on July 11, 2019, United Rail, Inc. (United Rail), submitted a letter stating that it had initiated preliminary discussions with SNCR regarding the purchase of the Line and requesting the Board continue to hold the proceeding in abeyance so that discussions regarding purchase of the Line could continue.

On July 12, 2019, the Department filed a letter requesting that the Board set a briefing schedule, and on July 31, 2019, the Department filed a letter opposing United Rail’s request to continue to hold the proceeding in abeyance. On August 19, 2019, the Adirondack Council filed a letter supporting the Department’s position opposing United Rail’s request and asks the Board to allow the adverse abandonment application to move forward.

Because the negotiations involving OmniTRAX have terminated and the Department, the applicant here, opposes United Rail’s request to continue to hold the proceeding in abeyance, the proceeding will be removed from abeyance and a procedural schedule set.

Any interested person may file written comments concerning the proposed adverse abandonment or protests (including protestant's entire opposition case) by September 30, 2019. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 C.F.R. § 1152.25. The Department's reply will be due by October 18, 2019.

All filings in response to this notice must refer to Docket No. AB 1261 and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Joshua M. Tallent, New York State Office of the Attorney General, Environmental Protection Bureau, The Capitol, Albany, NY 12224-0341.

Any request for an interim trail use/railbanking condition under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 must be filed by September 30, 2019, and should address whether the issuance of a certificate of interim trail use in this case would be consistent with the grant of an adverse abandonment application.¹ Each trail use request must be accompanied by the appropriate filing fee. See 49 C.F.R. § 1002.2(f)(27).²

Comments on the EA will be due by September 30, 2019.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment regulations at 49 C.F.R. pt. 1152.

¹ In a letter submitted on July 18, 2019, the Town of Newcomb asserted, among other things, that the time to file a request for interim trail use had expired. Although the Board's notice served on September 28, 2018, stated that any request for an interim trail use/railbanking condition would be due by October 25, 2018, the proceeding was held in abeyance on October 23, 2018, before the deadline for such requests.

² The Board recently updated its user fees, which will become effective on September 6, 2019. Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2019 Update, EP 542 (Sub-No. 27) (STB served July 31, 2019).

It is ordered:

1. The proceeding is removed from abeyance.
2. Protests (including protestant's entire opposition case) or comments concerning the proposed adverse abandonment are due by September 30, 2019.
3. The Department's reply is due by October 18, 2019.
4. Any requests for an interim trail use/railbanking condition under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 must be filed by September 30, 2019.
5. Comments on the EA will be due by September 30, 2019.
6. This decision will be published in the Federal Register.
7. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.