

SERVICE DATE – MARCH 25, 2008

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: March 24, 2008

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 had requested additional information. D&H indicated that it would need 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 following notice by D&H that it had provided Freedman with additional information Freedman had requested, and the effective date of the exemption was further postponed until 10 days after the due date for OFAs. On November 1, 2007, D&H provided the additional requested information to Freedman, making the OFA due on November 30, 2007.

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. In a decision served on December 5, 2007, Freedman was found to be financially responsible and the effective date of the exemption authorizing abandonment was postponed to permit the OFA process to proceed. In the same decision, the Board made any request to establish the terms and conditions of the purchase price due on or before December 31, 2007 (December 31 deadline).

By decision served on December 28, 2007, the Board, at the parties' request, extended the December 31 deadline, until March 31, 2008, for either party to request the Board to establish terms and conditions of a purchase (OFA negotiating period).

On March 7, 2008, Freedman and D&H jointly filed a petition asking the Board to further extend the OFA negotiating period and to hold the proceeding in abeyance until June 30, 2008. Petitioners state that the additional time will allow the resolution of issues relating to utilization of the involved line² and will afford the parties time to formalize and close on their agreement in principle.

The request to hold this proceeding in abeyance is reasonable and will be granted. Accordingly, this proceeding will be held in abeyance until June 30, 2008. The parties are directed to submit a status report to the Board on or before June 20, 2008. Because this proceeding will be held in abeyance, the Board need not consider the request to extend the OFA negotiating period at this time. If, at the time of filing the report, the parties have not completed their negotiations and require a further extension of either the abeyance period or the OFA negotiating period, they should include the appropriate request in the report. The merits of any such request would be addressed in a subsequent decision.

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

It is ordered:

1. This proceeding will be held in abeyance until June 30, 2008.
2. Petitioners are directed to submit a status report to the Board on or before June 20, 2008.

² Petitioners state that, on February 22, 2008, the Village of Green Island (the Village) secured an order to show cause asking a New York court to adjudicate certain issues regarding a settlement stipulation entered into between the Village and Freedman 4 years ago. Petitioners state that a preliminary conference was held on March 4, 2008, and that the matter is scheduled to be fully submitted to the court on March 24, 2008. These issues are similar to those raised in the Village's comment filed with the Board on January 22, 2008, in this proceeding.

3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary