



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL



Office of
Proceedings
GENERAL

DECISION ID NO.: 46673
DECIDED DATE: 10-22-18
SERVICE DATE: 10/23/2018
APPROVED: [Signature]
SNCR/OmniTrax shall
☒ file status rept. by 1-22-19
Comment deadline on application
and EA stayed until further Board or-
DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

BARBARA D. UNDERWOOD
ATTORNEY GENERAL

October 16, 2018 246500

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
October 16, 2018
Part of
Public Record

Re: *New York State Department of Environmental Conservation – Adverse
Abandonment – Saratoga and North Creek Railway in Town of
Johnsburg, NY*
STB Docket No. AB 1261

Dear Ms. Brown:

Currently pending before the Board is an application by the New York State Department of Environmental Conservation (DEC or the Department) for authorization to adversely abandon a thirty-mile stretch of railroad known as the Tahawus Line, located in Warren, Hamilton, and Essex Counties in northern New York State.

It has come to the Department's attention that a short line holding company, OmniTRAX, Inc., has entered into negotiations with the Tahawus Line's owner, Saratoga and North Creek Railway, LLC, for the purchase of the Line. As outlined in the attached letter to DEC from counsel for OmniTRAX, OmniTRAX has represented to the Department that, should it proceed with the contemplated purchase, it would enter into a binding and enforceable agreement with DEC barring OmniTRAX from using the Line for the long-term storage of rail cars. In exchange, DEC would agree to withdraw the pending application for abandonment of the Line. The precise terms of the potential agreement are the subject of ongoing negotiations between OmniTRAX and DEC.

In the interest of pursuing negotiations with OmniTRAX, DEC respectfully requests that the Board hold the pending abandonment proceeding in abeyance for a period of 90 days.

Respectfully submitted,

s/ Joshua M. Tallent

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encl.

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October 15, 2018

Mr. Joshua M. Tallent, Esq.
Assistant Attorney General
Office of the Attorney General of the State of New York
The Capitol
Albany, NY 12224-0341

Re: *New York State Department of Environmental Conservation – Adverse
Abandonment – Saratoga and North Creek Railway in Town of
Johnsburg, N.Y.,
Docket No. AB-1261*

Dear Mr. Tallent:

OmniTRAX, Inc. (“OmniTRAX”) writes in connection with the above-referenced abandonment proceeding initiated by the New York State Department of Environmental Conservation (“NYSDEC”). In particular, due its ongoing efforts to acquire the line segment that is the subject of this proceeding (the “Line”) and its willingness to reach an accord with NYSDEC on long-term freight car storage (as discussed herein), OmniTRAX tenders this letter on the understanding that, in turn, NYSDEC will request that the Surface Transportation Board (the “Board”) hold this proceeding in abeyance. Such an abeyance, if granted, would – (a) postpone the due date for comments responsive to the application; (b) facilitate the negotiation of a binding long-term car storage agreement under which NYSDEC would agree to withdraw its pending abandonment application, and support the OmniTRAX plan to install a new short line operator on the Line; and (c) moot objections to the abandonment.

As expressed to you previously and now confirmed in writing, OmniTRAX is in negotiations with Iowa Pacific Holdings, LLC, and Saratoga and North Creek Railway, LLC (“SNCR”) for the acquisition of the SNCR-owned railroad Line extending roughly 30 miles from milepost NC 0.0 at North Creek to the line’s terminus at milepost NC 29.71 near the Tahawus Mine. OmniTRAX intends to establish a new subsidiary company (referred to herein generically as “Short Line”) to own the Line and to conduct railroad common carrier service over it. And, as OmniTRAX has explained in earlier discussions, the principal objective behind the proposed transaction is to restore the Line to service for the purposes of moving freight traffic to and from customers located along the route.

In view of the OmniTRAX plan, and in recognition of NYSDEC’s underlying motivation in seeking the adverse abandonment of the Line, OmniTRAX also hereby reaffirms

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its intent to negotiate with NYSDEC a mutually acceptable and binding agreement, which, when successfully completed, would govern the long-term storage of freight cars not used in the service of on-Line customers, permit the withdrawal of NYSDEC's adverse abandonment application, and secure NYSDEC support for the proposed Short Line operation.

OmniTRAX believes that ongoing progress toward the purchase of the Line and its desire to pursue an agreement with NYSDEC as generally outlined above warrant a suspension of the applicable Board procedures to permit sufficient time to negotiate a mutually amicable arrangement accounting for the prospective Short Line's common carrier obligations, the logistical needs of on-Line customers, and the interests of NYSDEC. To that end, OmniTRAX understands that, in response to this letter, NYSDEC will request that this proceeding be held in abeyance for a period of at least 90 days. OmniTRAX would enthusiastically support such an abeyance.

Respectfully,

A handwritten signature in black ink, appearing to read "R. A. Wimbish", written in a cursive style.

Robert A. Wimbish
Counsel for OmniTRAX, Inc.

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