

204766

LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION

February 12, 2002

Diane P. Gerth

612-335-1463

dpg1463@leonard.com

ENTERED
Office of the Secretary

FEB 14 2002

Part of
Public Record

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423-0001



**Re: Delaware & Hudson Railroad Company - Notice of Exemption
STB Docket Number AB-156, Sub No. 21X**

Dear Secretary Williams:

Please find enclosed for filing the original and 10 copies of the Delaware & Hudson's Verified Notice of Exemption for the above-referenced trackage rights discontinuance. We have enclosed a check in the amount of \$2,600 pursuant to 49 C.F.R. Part 1002.2 as the filing fee, along with an IBM compatible floppy disc with the Notice of Exemption on it. I have enclosed a duplicate copy of this letter and a self-addressed, stamped envelope to be stamped with the filing date and returned to the undersigned.

By copy of this letter, the parties on the attached service list are being served via U.S. Mail.

If you have any questions regarding the above-referenced matter, please feel free to contact me.

Very truly yours,

LEONARD, STREET AND DEINARD

Diane P. Gerth
DPG:km

FEE RECEIVED
0101888001
FEB 13 2002

SURFACE
TRANSPORTATION BOARD

FILED

FEB 13 2002

SURFACE
TRANSPORTATION BOARD

cc: Bill Tuttle
Mike Franczak
Judy Mitchell

150 SOUTH FIFTH STREET SUITE 2300 MINNEAPOLIS, MINNESOTA 55402 TEL 612-335-1500 FAX 612-335-1657
2182043v1

LAW OFFICES IN MINNEAPOLIS, SAINT PAUL AND MANKATO

SERVICE LIST

For Notice of Exemption
STB Docket No. AB-156 (Sub. No. 21X)

NEW YORK PUBLIC SERVICE COMMISSION (OR EQUIVALENT AGENCY)

Maureen O'Donnell Helmer
Chairman
New York State Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

U.S. DEPARTMENT OF DEFENSE

- (A) MILITARY TRAFFIC MANAGEMENT COMMAND
- (B) TRANSPORTATION ENGINEERING AGENCY

(A) Military Traffic Management Company
Attention: Commander
200 Stovall Street
Alexandria, VA 22332

(B) Transportation Engineering Agency
Attn: MTTE-SA
720 Thimble Shoals Blvd., Suite 130
Newport News, VA 23606-2574

U.S. DEPARTMENT OF AGRICULTURE, CHIEF OF THE FOREST SERVICE

Forest Service
U.S. Department of Agriculture
Attention: Dale Bosworth, Chief
Sidney R. Yates Federal Building
201 14th Street, SW at Independence Avenue, SW
Washington, DC 20250

NATIONAL PARK SERVICE, RECREATION RESOURCES ASSISTANCE DIVISION

National Center for Recreation and Conservation
U.S. Department of the Interior
National Park Service
1849 C Street, NW
Washington, DC 20240

NEW YORK DEPARTMENT OF TRANSPORTATION:

Joseph H. Boardman, Commissioner
New York State Department of Transportation
5-504 Harriman State Office Campus
1220 Washington Avenue
Albany, New York 12232

ERIE COUNTY

Joel A. Giambra, County Executive
Edward A. Ruth County Office Building
95 Franklin Street
Buffalo, NY 14202

NIAGARA COUNTY

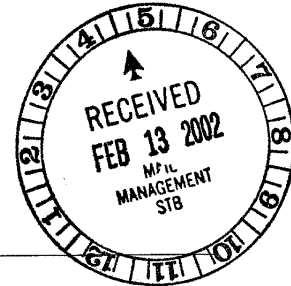
Clyde L. Burmaster
Chairman
Niagara County Courthouse, First Floor
175 Hawley Street
Lockport, NY 14094

ENTERED
Office of the Secretary

FEB 14 2002

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



DELAWARE & HUDSON RAILWAY)
COMPANY-- DISCONTINUANCE OF)
TRACKAGE RIGHTS -- IN NIAGARA)
AND ERIE COUNTIES, NEW YORK)

DOCKET NO. AB-156
(SUB-NO. 21X)

DISCONTINUANCE OF TRACKAGE RIGHTS LOCATED
BETWEEN THE INTERNATIONAL BRIDGE AT NIAGARA FALLS, NEW YORK, AND
BUFFALO, NEW YORK, WHICH TRAVERSES THROUGH UNITED STATES POSTAL
ZIP CODES 14304, 14305, 14120, 14150, 14206, 14207, 14211, 14212, 14214, 14216, AND
14217, NIAGARA AND ERIE COUNTIES, STATE OF NEW YORK

NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. SECTION 10502 AND 49 C.F.R. PART 1152.50

CLASS EXEMPTION FROM THE REQUIREMENTS
OF 49 U.S.C. SECTIONS 10903

FILED

FEB 13 2002

SURFACE
TRANSPORTATION BOARD

DELAWARE & HUDSON
RAILWAY COMPANY

Diane P. Gerth, Esq.
LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
Tel: (612) 335-1463
Fax: (612) 335-1657

Date of Filing: February 13, 2002

FEE RECEIVED
0101 888001
FEB 13 2002

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

DELAWARE & HUDSON RAILWAY)
COMPANY-- DISCONTINUANCE OF)
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14217, NIAGARA AND ERIE COUNTIES, STATE OF NEW YORK

NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. SECTION 10502 AND 49 C.F.R. PART 1152.50

CLASS EXEMPTION FROM THE REQUIREMENTS
OF 49 U.S.C. SECTIONS 10903

The Delaware & Hudson Railway Company, ("D&H") files this Notice of Exemption pursuant to 49 U.S.C. § 10502 and the Commission's regulations at 49 C.F.R. Part 1152.50. This Notice of Exemption is for D&H Line's proposed discontinuance of trackage rights over a 26.7 mile of a portion of CSX Transportation's line between the international bridge at Niagara Falls, New York and Buffalo, New York, in Niagara and Erie Counties, New York. The line traverses through United States Postal Zip Codes 14304, 14305, 14120, 14150, 14206, 14207, 14211, 14212, 14214, 14216, and 14217.

The trackage rights sought to be discontinued are overhead rights over trackage owned by CSXT. No local shippers will be affected, and CSXT will continue to serve the line. A map showing the trackage rights to be discontinued is attached as Exhibit No. 1.

In accordance with the requirements of 49 C.F.R. Part 1152.50, D&H submits the following:

1. WRITTEN NOTIFICATION OF FILING FOR DISCONTINUANCE EXEMPTION - 49 C.F.R. PART 1152.50(d)(i) and (d)(2).

Said notification was served on the appropriate parties on February 1, 2002, at least ten (10) days prior to the filing date of this exemption. See Exhibit No. 2.

2. PROPOSED CONSUMMATION DATE - 49 C.F.R. PART 1152.50(d)(2).

D&H intends to consummate the proposed abandonment of its trackage on or after April 5, 2002.

3. CARRIER CERTIFICATION REGARDING LOCAL AND OVERHEAD TRAFFIC AND STATUS OF NO COMPLAINTS - BY 49 C.F.R. PART 1152.50(b) and (d)(2).

The required Certification is annexed hereto as Exhibit No. 3.

4. INFORMATION REQUIRED BY 49 C.F.R. PARTS 1152.22(a)(1)-(4), (7) and (8) and (e)(4) (INCORPORATED BY REFERENCE IN 49 C.F.R. PART 1152.50(d)(2)):

- (a) PART 1152.22(a)(1) EXACT NAME OF APPLICANT.

Delaware & Hudson Railway Company, d/b/a Canadian Pacific Railway.

- (b) PART 1152.22(a)(2) WHETHER THE APPLICANT IS A COMMON CARRIER BY RAILROAD SUBJECT TO THE INTERSTATE COMMERCE ACT.

D&H is a common carrier by railroad subject to the Interstate Commerce Act and the Interstate Commerce Commission Termination Act of 1995 (Title 49 U.S.C.).

- (c) PART 1152.22(a)(3) RELIEF SOUGHT (ABANDONMENT OF LINE OR DISCONTINUANCE OF SERVICE).

D&H Line seeks authority to discontinue Trackage Rights granted in a 1990 amendment to a 1979 Trackage Rights Agreement over a 26.7+/- mile portion of trackage owned by CSXT from a point near the base of the international railway bridge at Niagara Falls, New York to Buffalo, New York, describes as the following track segments:

- (i) Lockport Branch: Mile Post 75.8+/- to Mile Post 70.4+/-
- (ii) Niagara Branch: Mile Post 19.7+/- to Mile Post 5.6+/-
- (iii) Belt Line Branch: Mile Post 7.2+/- to Mile Post 0.0+/-

(d) PART 1152.22(a)(4) DETAILED MAP

See Exhibit No. 1.

(e) PART 1152.22(a)(7) NAME, TITLE AND ADDRESS OF REPRESENTATIVE OF APPLICANT TO WHOM CORRESPONDENCE SHOULD BE SENT.

Diane P. Gerth, Esq.

LEONARD, STREET AND DEINARD PROFESSIONAL ASSOCIATION

150 South Fifth Street, Suite 2300

Minneapolis, MN 55402

Tel: (612) 335-1463

Fax: (612) 335-1657

(f) PART 1152.22(a)(8) LIST OF ALL UNITED STATES POSTAL ZIP CODES THAT THE LINE PROPOSED FOR ABANDONMENT TRAVERSES:

United States Postal Zip codes 14304, 14305, 14120, 14150, 14206, 14207, 14211, 14212, 14214, 14216, and 14217.

(g) PART 1152.22(e)(4) STATEMENT OF WHETHER THE PROPERTIES PROPOSED TO BE ABANDONED ARE SUITABLE FOR USE FOR OTHER PUBLIC PURPOSES, INCLUDING ROADS OR HIGHWAYS, OTHER

FORMS OF MASS TRANSPORTATION, CONSERVATION, ENERGY PRODUCTION OR TRANSMISSION, OR RECREATION. IF THE APPLICANT IS AWARE OF ANY RESTRICTION ON TITLE TO THE PROPERTY, INCLUDING ANY REVERSIONARY INTEREST, WHICH WOULD AFFECT THE TRANSFER OF TITLE OR THE USE OF THE PROPERTY FOR OTHER THAN RAIL PURPOSES, THIS SHALL BE DISCLOSED.

The subject trackage will continue to be used in common carrier service by its owner, CSXT.

5. PART 1152.50(d)(2) THE LEVEL OF LABOR PROTECTION.

D&H Line understands that in granting an exemption for the proposed abandonment, the Board does not relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, while D&H anticipates that no adverse effect to its employees will occur as the result of this abandonment, it understands that the Board will likely impose the conditions set forth in Oregon Short Line Railroad Company - Abandonment - Goshen - 360 I.C.C. 91 (1979), for the benefit of any carrier employee who may be adversely affected by the proposed abandonment.

6. PART 1152.50(d)(2) CERTIFICATE OF COMPLIANCE WITH THE NOTICE REQUIREMENTS OF 49 C.F.R. PART 1105.11 - TRANSMITTAL LETTER FOR ENVIRONMENTAL AND HISTORICAL REPORTS.

Because this Notice concerns the discontinuance of trackage rights where the affected line will continue to be operated, it is excepted from the requirements of 49 C.F.R. § 1105.11 by 49 C.F.R. § 1105.6(b)(3).

7. PART 1105.7(c) CERTIFICATE OF SERVICE OF ENVIRONMENTAL REPORT AND HISTORIC REPORT.

Because this Notice concerns the discontinuance of trackage rights where the affected line will continue to be operated, it is excepted from the requirements of 49 C.F.R. § 1105.11 by 49 C.F.R. § 1105.6(b)(3) and § 1105.8(b).

8. PART 1105.12 PUBLICATION OF NEWSPAPER NOTICE.

A Notice in accordance with Part 1105.12 has been published in a newspaper of general circulation in Niagara and Erie Counties, New York. Copies of said notices are attached hereto with the requisite Certification. See Exhibit No. 4.

9. VERIFICATION.

The required Verification is attached and made a part of this Notice of Exemption.

Date of Filing: February 13, 2002



Diane P. Gerth, Esq. (Lic. #180786)
LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
Tel: (612) 335-1463
Fax: (612) 335-1657

Counsel for the Delaware & Hudson
Railroad Company

EXHIBIT NO. 1

**Detailed Exhibit Maps for Notice of Exemption
(49 C.F.R. Parts 1152.50(d)(2) and 1152.22 (a)(5))**

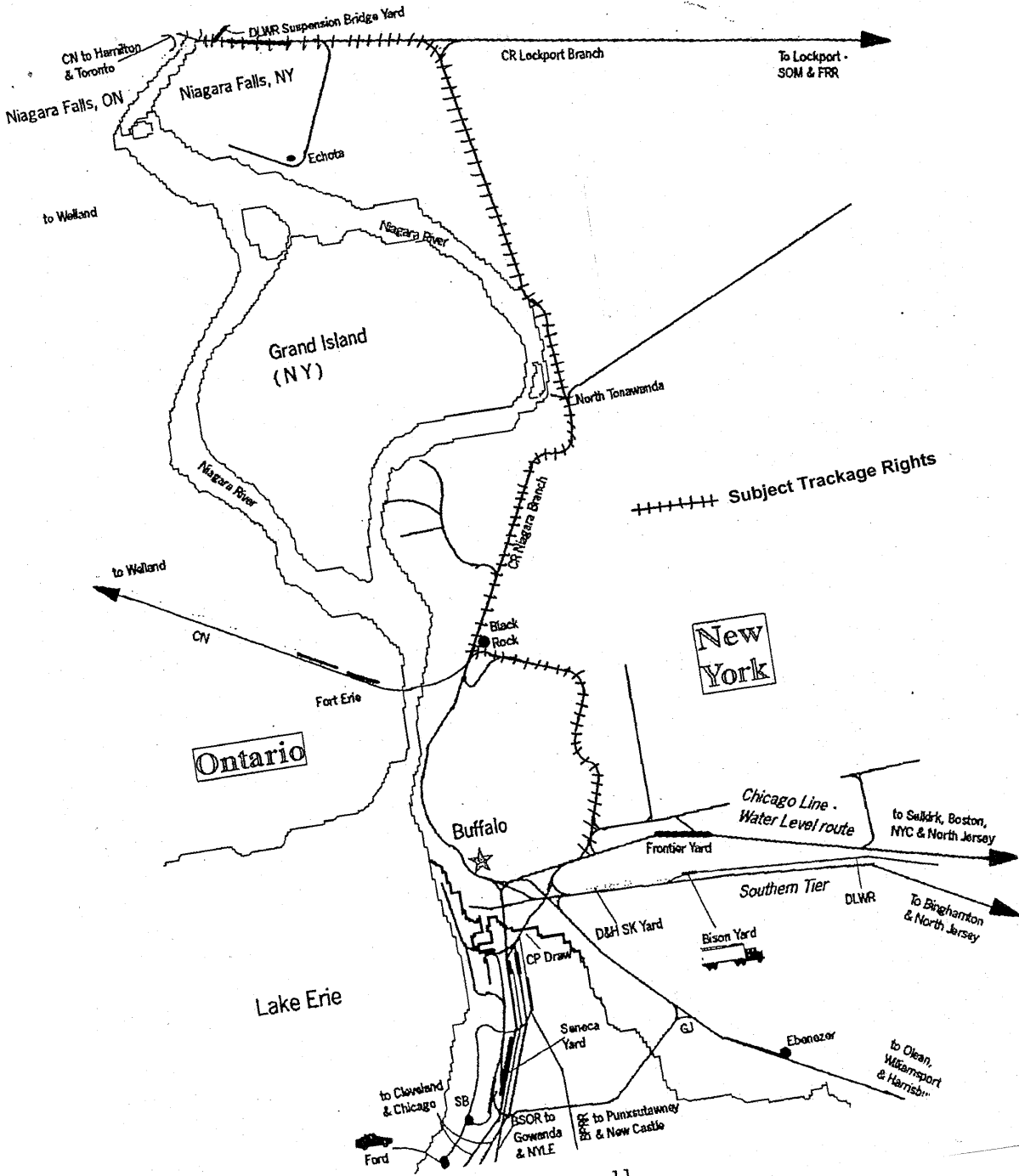


EXHIBIT NO. 2

Certification of Proper Service of Written
Notice of Intent to Abandon under the Exemption Process
(49 C.F.R. Part 1152.50(d)(1))

CERTIFICATE OF COMPLIANCE WITH SERVICE REQUIREMENT FOR
NOTIFICATION OF INTENT TO FILE EXEMPTION ABANDONMENT

The undersigned hereby certifies that she served the Notice of Intent to File Notice of Exemption for the proposed abandonment in Docket No. AB-156 (Sub. No. 21X) via first class U.S. Mail, on February 1, 2002 as required by 49 C.F.R. Section 1152.50(d)(1), to the parties listed on the attached Service List. (See attached Notice of Intent and Service List).

Dated: February 12, 2002



Diane P. Gerth, Esq. (Lic. #180786)

**LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION**

150 South Fifth Street, Suite 2300

Minneapolis, Minnesota 55402

Tel: (612) 335-1463

Fax: (612) 335-1657

LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION

February 1, 2002

Diane P. Gerth

612-335-1463

diane.gerth@leonard.com

PERSONS ON THE ATTACHED SERVICE LIST:

**Re: Delaware & Hudson Railroad Company – Discontinuance of Trackage Rights
In Niagara and Erie Counties, New York (U.S. Postal Zip Codes 14304, 14305, 14120,
14150, 14206, 14207, 14211, 14212, 14214, 14216, and 14217.)
STB Docket No. AB-156 (Sub. No. 21X)**

Dear Sir/Madam:

Delaware & Hudson Railroad Company hereby serves you with a copy of the above-referenced notice expected to be filed with the Surface Transportation Board on or about February 13, 2002 for a certificate permitting the discontinuance of trackage rights over a 26.7 +/- mile portion of trackage owned by CSX Transportation Company.

This discontinuance of trackage rights involves overhead rights granted to the Delaware & Hudson in 1990 as an amendment to a 1979 Trackage Rights Agreement. CSXT will continue to operate the underlying line or railroad. Based on information in our possession, the line does not contain federally granted rights of way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

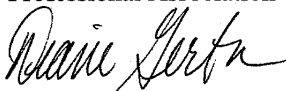
This notice of exemption is being filed in accordance with requirements of 49 C.F.R. part 1152.50(d)(1), a copy of which is enclosed for your reference. A map of the subject trackage is included in the notice as Exhibit 1 to the notice.

If you have any questions or need additional information, please feel free to contact the undersigned.

Very truly yours,

LEONARD, STREET AND DEINARD

Professional Association



Diane P. Gerth

DPG:km

150 SOUTH FIFTH STREET SUITE 2300 MINNEAPOLIS, MINNESOTA 55402 TEL 612-335-1500 FAX 612-335-1657

2176922v1

LAW OFFICES IN MINNEAPOLIS, SAINT PAUL AND MANKATO

SERVICE LIST

Maureen O'Donnell Helmer
Chairman
New York State Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Military Traffic Management Company
Attention: Commander
200 Stovall Street
Alexandria, VA 22332

Forest Service
U.S. Department of Agriculture
Attention: Dale Bosworth, Chief
Sidney R. Yates Federal Building
201 14th Street, SW at Independence Avenue, SW
Washington, DC 20250

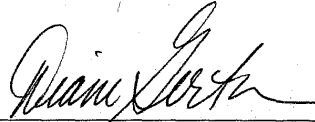
National Center for Recreation and Conservation
U.S. Department of the Interior
National Park Service
1849 C Street, NW
Washington, DC 20240

EXHIBIT NO. 3.
Certificate of Publication of
Newspaper Notice

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that Notice of the Proposed abandonment in Docket No. AB-156 (Sub No. 21X) (copy of Notice appended) was advertised prior to the filing of this Notice in newspapers of general circulation in all Counties through which the Line which is the subject of this Notice runs, as required by 49 C.F.R. Section 1105.12.

Dated: February 12, 2002



Diane P. Gerth, Esq.

**LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION**

150 South Fifth Street, Suite 2300

Minneapolis, MN 55402

Tel.: (612) 335-1463

Fax: (612) 335-1657

385832 -Black 2/7/02 1:11 0:08

NOTICE

Delaware & Hudson Railway Company gives notice that on or about February 13, 2002, it intends to file with the Surface Transportation Board, Washington, DC 20423, a Notice of Exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting the discontinuance of trackage rights over a 26.7 mile line of railroad, described as the following track segments: Lockport Branch: Mile Post 75.8+/- to Mile Post 70.4+/-; Niagara Branch: Mile Post 19.7+/- to Mile Post 5.6+/-; Belt Line Branch: Mile Post 7.2+/- to Mile Post 0.0+/-, which traverse through United States Postal Service Zip codes 14304, 14305, 14120, 14150, 14206, 14207, 14211, 14212, 14214, 14216, AND 14217 in Niagara and Erie Counties, New York. The proceeding will be docketed as No. AB-156 (Sub No. 21X).

Although the Board's Section of Environmental Analysis (SEA) generally prepares an Environmental Assessment (EA), because this Notice concerns the discontinuance of trackage rights where the affected line will continue to be operated, it is excepted from the requirements of 49 C.F.R. § 1105.11 by 49 C.F.R. § 1105.6(b)(3). Interested persons may make inquiries regarding environmental matters by writing to the SEA, Surface Transportation Board, 1925 K Street, NW, Washington, DC, 20423-0001, or by calling SEE at 202-927-6211.

Because this Notice concerns the discontinuance of trackage rights where the affected line will continue to be operated, offers of financial assistance to continue rail service are generally unnecessary. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street NW, Washington, DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at 202-927-7597. Copies of any comments or requests for conditions should be served on the applicant's representative, Diane P. Gerth at Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, 612-335-1500.

**Delaware & Hudson Railway
Company**

#385832P, Feb 8, 2002

Published in the Niagara Gazette, February 8, 2002

NOTICE

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Delaware & Hudson
Railway Company

Published in the Buffalo News, February 8, 2002

EXHIBIT NO. 4

Carrier Certification That

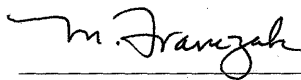
Rail Line Meets Criteria of 49 C.F.R. Section 1152.50(b)

CERTIFICATION THAT RAIL LINE MEETS
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)

I, Michael Franczak, General Manager Intercarrier Agreements, Delaware & Hudson Railway Company, hereby certify that with respect to the trackage which is the subject of this Notice of Exemption in Docket AB-156 (Sub-No. 21X), no local traffic has been handled to or from any customer for at least two (2) years prior to the date hereof and any overhead traffic routed over this line can be and has been rerouted over other lines. Further, I certify that no formal complaint has been filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line segment and that no such complaint is either pending with the Commission or any U.S. District Court or has been decided in favor of a complainant within the two-year period immediately preceding the filing of this Notice.

I also certify under penalty of perjury under the laws of the United States of America that I have been authorized by Delaware & Hudson Railway Company to certify and file with the Surface Transportation Board the foregoing Notice of Exemption; that I know the contents thereof and the facts asserted therein; that I declare that that the foregoing is true and correct.

Dated: FEBRUARY 5, 2002



Michael Franczak