

LEONARD, STREET AND DEINARD **FEE RECEIVED**

PROFESSIONAL ASSOCIATION

OCT 21 2002

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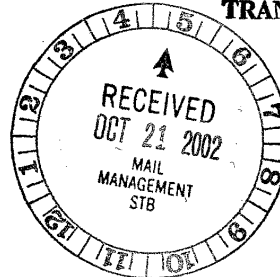
October 18, 2002

**SURFACE
TRANSPORTATION BOARD**

Diane P. Gerth

612-335-1463

diane.gerth@leonard.com



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

206 470

**Re: Delaware & Hudson Railroad Company – Discontinuance of Trackage Rights
In Niagara County, New York (U.S. Postal Zip Code 14305)
STB Docket No. AB-156 (Sub. No. 22X)**

Dear Secretary Williams:

Please find enclosed for filing the original and 10 copies of the Delaware & Hudson Railroad Company's Notice of Class Exemption from the Requirements of 49 U.S.C. Sections 10903 for the above-referenced trackage rights discontinuance. We have enclosed a check in the amount of \$2,700 pursuant to 49 C.F.R. Part 1002.2 as the filing fee, along with an IBM compatible floppy disc. 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.

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

Very truly yours,

LEONARD, STREET AND DEINARD

Diane Gerth

Diane P. Gerth
DPG:km

ENTERED
Office of Proceedings

OCT 21 2002

Part of
Public Record

FILED

OCT 21 2002

**SURFACE
TRANSPORTATION BOARD**

cc: Ann Dragicevic
Paul Clegg
Judy Mitchell
Bill Tuttle
Heather Piercy

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

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LAW OFFICES IN MINNEAPOLIS, SAINT PAUL, MANKATO, SAINT CLOUD AND WASHINGTON, D.C.

WWW.LEONARD.COM

FILED
OCT 21 2002
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



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

DOCKET NO. AB-156
(SUB-NO. 22X)

DISCONTINUANCE OF TRACKAGE RIGHTS LOCATED
BETWEEN MILE POST 0.0 AND MILE POST 0.15 IN NIAGARA FALLS, NEW YORK,
WHICH TRAVERSES THROUGH UNITED STATES POSTAL ZIP CODE 14305, NIAGARA
COUNTY, STATE OF NEW YORK

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

ENTERED
Office of Proceedings

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

OCT 21 2002

Part of
Public Record

FILED
OCT 21
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: October 18, 2002

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SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



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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 Board'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 0.15 mile of a portion of Canada Southern Railway Company's line at the international bridge at Niagara Falls, New York, in Niagara County, New York. The line traverses through United States Postal Zip Code 14305.

The trackage rights sought to be discontinued are overhead rights over trackage owned by Canada Southern Railway Company. No local shippers will be affected, and Canada Southern is seeking authority to abandon the line in a related Board proceeding, Canada Southern Railway Company – Abandonment of Trackage located in Niagara County, New York, docketed as No.

AB-584 (Sub-No. 1X). 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 October 7, 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 December 15, 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

Trackage Rights Agreement over a 0.15 mile portion of trackage owned by

Canada Southern Railway Company from a point on the international railway bridge at Niagara Falls, New York (Milepost 0.15) to the point where the trackage joins the CSXT trackage (Milepost 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 code 14305.

(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.

Canada Southern Railway Company is seeking authority from the Board to

abandon the subject trackage in Canada Southern Railway Company –

Abandonment of Trackage located in Niagara County, New York, docketed as

No. AB-584 (Sub-No. 1X). Determinations as to the suitability of the line for public use are more appropriately addressed in that proceeding.

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, it is excepted from the requirements of 49 C.F.R. § 1105.11 by 49 C.F.R. § 1105.6(b)(3). Compliance with the notice requirements is being carried out in Canada Southern Railway Company - Abandonment of Trackage located in Niagara County, New York, docketed as No. AB-584 (Sub-No. 1X), and an Environmental and Historical Report has been prepared and served in that proceeding.

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

Because this Notice concerns the discontinuance of trackage rights, 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 County, New York. A copy of said notices is attached hereto with the requisite Certification. See Exhibit No. 4.

9. CERTIFICATION.

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

Date of Filing: October 18, 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))

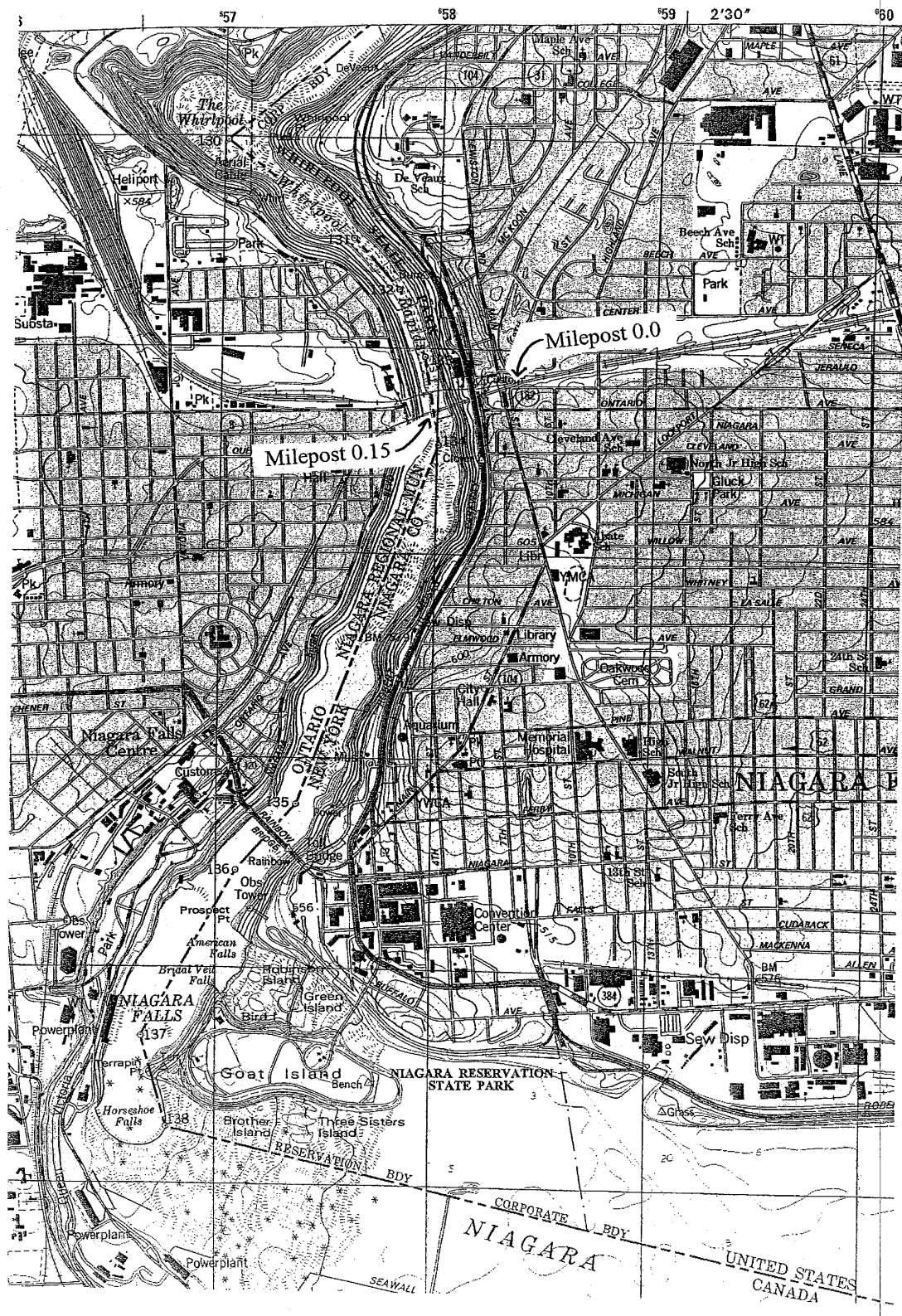


EXHIBIT NO. 2

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 October 7, 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: October 18, 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

EXHIBIT NO. 3
Certificate of Publication of
Newspaper Notice

2258094v1

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that Notice of the Proposed abandonment in Docket No. AB-156 (Sub No. 22X) (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: October 18, 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

STATE OF NEW YORK

NIAGARA COUNTY, SS. _____

Sandra Skryp, of said county, being duly sworn, deposes and says that
she is now and during the whole time hereinafter mentioned was the Legal
Clerk of

The Niagara Gazette

A newspaper published in the County and State aforesaid, and that the annexed
printed legal # 424526P was printed and published in said paper at least
once a week for 1 successive weeks, commencing on the 17
day of Sep, and ending on the 17 day of Sep, 20 02.

Sandra A. Skryp
Principal Clerk

Subscribed and sworn to me before this 2 day of Oct, 20 02.

Teresa L. McCarthy
Notary Public

Expiration Date

Teresa L. McCarthy
Notary Public, State of New York
No. 01MC4962698
Qualified in Niagara County
Commission Expires Feb. 26, 2006

NOTICE

Delaware & Hudson Railway Company gives notice that on or about October 1, 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 0.15 mile line of railroad between milepost 0.0 and milepost 0.15, which traverses through United States Postal Service Zip Code 14305, in the City of Niagara Falls, Niagara County, New York. The proceeding will be docketed as No. AB-156 (Sub No. 22X).

The Board's Section of Environmental Analysis (SEA) generally prepares an Environmental Assessment (EA), and is doing so under a related transaction, Canada Southern Railway Company - Abandonment of Trackage located in Niagara County, New York, docketed as No. AB-584 (Sub-No. 1X). 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.

Appropriate offers of financial assistance to continue rail service can be filed with the Board in the related transaction, Canada Southern Railway Company - Abandonment of Trackage located in Niagara County, New York, docketed as No. AB-584 (Sub-No. 1X). 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

#424526P, September 17, 2002

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**Delaware & Hudson Railway
Company**

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, Marcella M. Szel, Vice President Law, Delaware & Hudson Railway Company d/b/a Canadian Pacific Railway, hereby certify that with respect to the trackage which is the subject of this Notice of Exemption in Docket AB-156 (Sub-No. 22X), 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:

4 OCTOBER, 2002

