

February 24, 2023

***Submitted via e-filing***

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

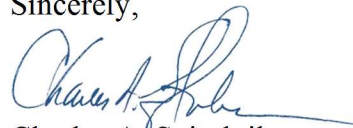
Re: STB Docket No. AB 733 (Sub No. 1X), *Housatonic Railroad Company—  
Discontinuance of Service—Dutchess and Putnam Counties, New York*

Dear Ms. Brown:

I am attaching for e-filing Metro-North Commuter Railroad Company's Petition for Notice of Interim Trail Use 49 C.F.R. § 1152.29 in the above-captioned proceeding.

Please do not hesitate to contact me with any questions.

Sincerely,

  
Charles A. Spitulnik

FILED  
February 27, 2023  
SURFACE  
TRANSPORTATION BOARD  
Enclosure

FEE RECEIVED  
February 27, 2023  
SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Docket No. AB 733 (Sub No. 1X)**

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**HOUSATONIC RAILROAD COMPANY, INC.—DISCONTINUANCE OF SERVICE -  
DUTCHESS AND PUTNAM COUNTIES, NEW YORK**

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**PETITION FOR NOTICE OF INTERIM TRAIL USE  
49 C.F.R. § 1152.29**

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*Counsel for The Metro-North Commuter  
Railroad Company*

February 24, 2023

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Docket No. AB 733 (Sub No. 1X)**

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**HOUSATONIC RAILROAD COMPANY, INC.—DISCONTINUANCE OF SERVICE  
DUTCHESS AND PUTNAM COUNTIES, NEW YORK**

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**PETITION FOR NOTICE OF INTERIM TRAIL USE  
49 C.F.R. § 1152.29**

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On January 30, 2023, the Housatonic Railroad Company (“HRRC”) filed a Notice of Exemption with the Surface Transportation Board (“Board”) to discontinue its trackage rights for approximately 41.1 miles of a rail line known as the “Beacon Line” that runs between Milepost 0.0 and Milepost 71.2 in Dutchess and Putnam Counties, New York (“Line”), a map of which is attached hereto as **Exhibit A**. The Notice was published in the Federal Register on February 17, 2023. Metro-North Commuter Railroad Company (“MNR”) owns the Line and respectfully petitions the Board to issue a Notice of Interim Trail Use for the Line.

MNR acknowledges the use of the Line is subject to MNR, as owner and sponsor of the proposed trail, continuing to meet its responsibilities to manage the right-of-way, assume any legal liability arising out of the transfer or use of the right-of-way, and the payment of any and all taxes that may be levied or assessed against the right-of-way. HRRC has agreed to transfer to MNR the rights to possible future reactivation of the Line for rail service.<sup>1</sup> MNR acknowledges that the public trail will be subject to the potential future restoration of rail service over the Line.

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<sup>1</sup> MNR will file a Notice of Exemption in Finance Docket No. 36674 seeking authority for transfer of the reactivation right from HRRC to MNR.

**I. A NOTICE OF INTERIM TRAIL USE IS APPROPRIATE IN A DISCONTINUANCE PROCEEDING WHERE THE DISCONTINUANCE WILL RESULT IN THE TERMINATION OF ALL COMMON CARRIER FREIGHT SERVICE ON THE LINE**

The Surface Transportation Board (“STB”) and the Interstate Commerce Commission (“ICC”) have found that trail use is available under the Trails Act, 16 U.S.C. § 1247(d) (“Trails Act”) and 49 C.F.R. § 1152.29, in the context of discontinuance proceedings when there is no authority required other than the authority granted to the sole freight operator to extinguish all freight common carrier service obligations on a line. *See Chillicothe-Brunswick Rail Maintenance Authority – Discontinuance Exemption – In Livingston, Linn, and Chariton Counties, Mo.*, STB Docket No. AB 1001X; *Motive Rail, Inc. d/b/a Missouri North Central Railroad – Discontinuance Exemption – In Livingston, Linn, and Chariton Counties, Mo.*, STBDocket No. AB 993X (decided Jan. 15, 2008) (“*Chillicothe-Brunswick*”).<sup>2</sup> *See also State of Vermont and Vermont Railway, Inc. – Discontinuance of Service Exemption – in Chittenden County, Vt.*, Docket No. AB 265 (Sub No. 1X) (ICC served Feb. 7, 1986).<sup>3</sup>

The factual circumstances in this proceeding fall squarely within the parameters of the *Chillicothe-Brunswick* precedent. *Id.* HRRC submitted a Verified Notice of Exemption to discontinue rail service on the Line on January 30, 2023. With that Notice and this Petition for Notice of Interim Trail Use (“NITU”), Metro-North has complied with the applicable

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<sup>2</sup> The STB decided to issue one decision on these proceedings for administrative convenience because the identical NITU was filed in both proceedings.

<sup>3</sup> As described more fully below in Section I.B.2, MNR submits that the fact pattern in this proceeding is more similar to that in *Chillicothe-Brunswick* than to the facts presented by the case identified in fn. 6 of the Board’s notice in this proceeding issued on February 17, 2023 (*i.e.*, *Caldwell Railroad Commission—Exemption from 49 U.S.C. Subtitle IV*, FD 32659 (Sub No. 2) (STB served Sept. 8, 2015)). However, if the Board prefers that MNR follow the procedure outlined in *Caldwell*, then MNR respectfully requests the Board to grant partial revocation of the exemption granted to MNR in the 1995 *Decision* approving MNR’s acquisition of the Line and permit the abandonment and trail use to proceed as described in that fn. 6.

requirements of 49 C.F.R. § 1152.29 and, therefore, MNR's Petition for a NITU should be granted.

**A. Factual Background**

When MNR acquired the Line in 1995, the ICC granted a petition by MNR to acquire the Beacon Line (referred to as the "Maybrook Line" in that proceeding) in Putnam and Dutchess Counties, New York, and to exempt MNR from the provisions of 49 U.S.C. Subtitle IV. *Metro-North Commuter R.R. Co.—Acquisition Exemption—The Maybrook Line*, ICC Finance Docket No. 32639 (Sub-No. 1) (Service Date Jan. 13, 1995) ("*1995 Decision*"). In the *1995 Decision*, the ICC exempted MNR from acquiring a residual common carrier obligation and permitted it to abandon the Line subject only to Danbury Terminal Railroad Company ("DTRC") (now HRRC) seeking authority to discontinue freight service. *See 1995 Decision*, slip op. at 3-4.

The *1995 decision* set forth MNR's interest in the Line as follows:

By purchasing the Maybrook Line, Metro-North will assure its continued ability to conduct . . . non-revenue repositioning moves and could provide cross-state commuter rail service in the future. . . .

[Metro-North] also seeks an exemption from 49 U.S.C. Subtitle IV because it does not desire and is not equipped to conduct rail freight common carrier service.

Slip op. at 2.

In the associated Trackage Rights Agreement with DTRC (now HRRC), MNR granted exclusive freight operating rights for the Beacon Line to DTRC. Under the terms of the Trackage Rights Agreement and the ICC's decision, MNR is permitted to abandon the Beacon Line without seeking STB approval, is only required to give HRRC 120 days' notice of its intent to abandon the Line, and HRRC agreed not to oppose MNR's actions to abandon the Line. After

providing HRRC with the required 120-day notice of its intent to abandon the line in February of 2020, and HRRC refusing to provide the STB with a notice of discontinuance, MNR filed an Application for Adverse Discontinuance on April 30, 2021 (“Application”). *Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company*, Docket No. AB 1311 (Filed April 30, 2021).

The Parties have now resolved the issues raised in that Adverse Abandonment proceeding. As stated above, HRRC filed a Verified Notice of Exemption to discontinue its common carrier rights and operations on the Line. Metro-North is authorized to represent that HRRC supports MNR’s Petition for NITU on the Beacon Line (see **Exhibit B**), and has agreed to transfer its reactivation right related to the proposed trail use to MNR. MNR and HRRC are filing a joint motion for withdrawal of the Adverse Abandonment proceeding in Docket No. AB 1311. *See Metro-North Commuter R.R. Co.- Adverse Discontinuance of Trackage Rights-Housatonic R.R. Co.*, Docket No. AB 1311 (filed Feb. 24, 2023).

MNR is also filing simultaneously with this Petition for Notice of Interim Trail Use the notice required by the *1995 Decision* that it is abandoning the Line, and will be filing as well a Verified Petition for Exemption from 49 U.S.C. § 10901 to acquire the reactivation right associated with the Line following implementation of the proposed railbanking.

## **B. Argument**

### **1. MNR can file a Petition for NITU as part of the discontinuance of service proceeding initiated by HRRC**

The STB has determined that the Trails Act is available to a non-common carrier owner of a rail line when the “only authority necessary . . . to abandon the line is the authority” of the sole operator of rail service to discontinue operations.” *Chillicothe-Brunswick* slip op. at 2 (citing *Presault v. ICC*, 494 U.S. 1 at 9-10 (1986)).

Like in the *Chillicothe-Brunswick* case, a NITU is appropriate under the Trails Act in this proceeding. MNR was granted ownership of the Line by the ICC in 1995 as a non-common carrier. The sole freight operator on the Line since that time has been HRRC, which had exclusive freight rights. HRRC has agreed to discontinue its operations on the Line and to assign its rights to restart service to MNR. On January 30, 2023, HRRC filed a Verified Notice of Exemption under 49 C.F.R. § 1152.50 in this proceeding to discontinue its service over the Beacon Line. MNR is filing an appropriate Petition for NITU, pursuant to the requirements of 49 C.F.R. § 1152.29 and the Trails Act, within the designated time period. Therefore, the only proceeding where a NITU can be accepted is in this discontinuance proceeding, as was the case in *Chillicothe-Brunswick*. MNR respectfully requests that its Petition be granted.

**2. The discontinuance proceeding is ongoing, therefore MNR can submit a request for NITU per *Chillicothe-Brunswick***

MNR submits that its request for a NITU is governed by the principles articulated in *Chillicothe-Brunswick*, rather than the case identified in the Board's February 17, 2023 publication of the Notice of Exemption. In fn.6 of that Notice, the Board referenced the procedure required in *Caldwell Railroad Commission—Exemption from 49 U.S.C. Subtitle IV*, FD 32659 (Sub No. 2) (STB served Sept. 8, 2015) for a request for trail use/railbanking of the line when the owner of the line has been exempted from Subpart IV of Title 49. In that February 17 Notice, the STB included the following footnote:

[Fn 6] Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate in this docket. However, the Board has granted in the past a petition for partial revocation of a 49 U.S.C. Subtitle IV exemption to permit the owner of a line to seek abandonment authority in order to pursue interim trail use/rail banking. *See Caldwell R.R. Comm'n—Exemption from 49 U.S.C. Subtitle IV*, FD 32659 (Sub-No. 2) (STB served Sept. 8, 2015).

The *Caldwell* procedure presents a materially different procedural posture than the instant proceeding. In the *Caldwell* case, the ICC had granted Caldwell Railroad Commission (“CRC”) an exemption from the regulatory requirements of 49 U.S.C. Subtitle IV in 1995 when it acquired the line in question. Similar to the instant case, there was only a single common carrier freight railroad with authority to provide freight service on the line, Caldwell County Railroad Company (“CCRC”).

However, in the *Caldwell* proceeding, the common carrier freight railroad company, CCRC, discontinued its service *seven years* before CRC attempted to railbank the line. *See Caldwell* slip op. at 2. CRC was unable to pursue the process set forth in the *Chillicothe-Brunswick* proceeding because there was no available discontinuance proceeding for filing a NITU Petition. Therefore, the only option available to CRC was to petition for partial revocation of its Subtitle IV exemption in order to permit CRC to seek abandonment authority in order to pursue interim trail use/rail banking.

In contrast, MNR is filing this Petition within the allotted time frame after the STB published the Verified Notice of Exemption filed by HRRC pursuant to 49 C.F.R. § 1152.29(b). Therefore, consistent with the procedure in *Chillicothe-Brunswick*, MNR submits that seeking a partial revocation of its exemption from 49 U.S.C. Subtitle IV in order to request a NITU, as was the case in *Caldwell*, would unduly complicate the proceedings where, as here, there is a discontinuance proceeding available in which to file a Petition for NITU.<sup>4</sup> *Chillicothe-Brunswick* and 49 C.F.R. § 1152.29(b), taken together, specifically allow for a Petition for NITU to be filed in a discontinuance proceeding under circumstances in which the only authority

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<sup>4</sup> If the STB finds that the method for requesting trail use/railbanking allowed in *Chillicothe-Brunswick* does not apply in the current proceeding, MNR will follow the method used in *Caldwell*.



required to terminate the sole freight common carrier obligation on the line is the discontinuance. See *Chillicothe-Brunswick* slip op. at 2 (citing *Presault*, 494 U.S. at 9-10). MNR can follow the more efficient process and precedent set forth in *Chillicothe-Brunswick*.

### **C. Conclusion**

MNR respectfully submits that the Board should determine that a NITU is available in this case due to the fact that the sole freight operator on the Line has agreed to discontinue service and filed a Verified Notice of Exemption with the STB to discontinue service, and that the Board should grant the Petition. Both parties have also agreed that HRRC shall assign its right to reactivate the Line to MNR.

## **II. STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY**

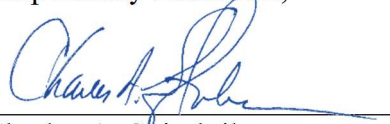
In order to establish interim trail use and railbanking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, MNR is willing to assume full responsibility for: (1) managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way. The Line extends from railroad milepost 0.0 to railroad milepost 71.2, a distance of 41.1 miles in Dutchess and Putnam Counties, New York. The right-of-way is part of a line of railroad proposed for discontinuance of trackage rights in STB Docket No. AB 733. A map of the property depicting the right-of-way is attached to this Petition as **Exhibit A**.

MNR acknowledges that use of the right-of-way is subject to MNR (the sponsor) continuing to meet its responsibilities described above. MNR is petitioning the Board to acquire the rights to possible future reconstruction and reactivation of the Line for rail service from the

HRRC, the sole freight operator on the Line, and acknowledges that the public trails will be subject to the potential future restoration of rail service over the Line.

A copy of this statement is being served on HRRC on the same date it is being served on the Board.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik  
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[dorlaskey@kaplankirsch.com](mailto:dorlaskey@kaplankirsch.com)

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of February 2023, I caused the foregoing Petition for Notice of Interim Trail Use to be served on the following parties by email:

Edward J. Rodriguez  
Vice President and General Counsel  
Housatonic Railroad Company  
4 Huntley Road  
P.O. Box 687  
Old Lyme, Connecticut 06371-1448  
e.rodriguez@hrrc.com

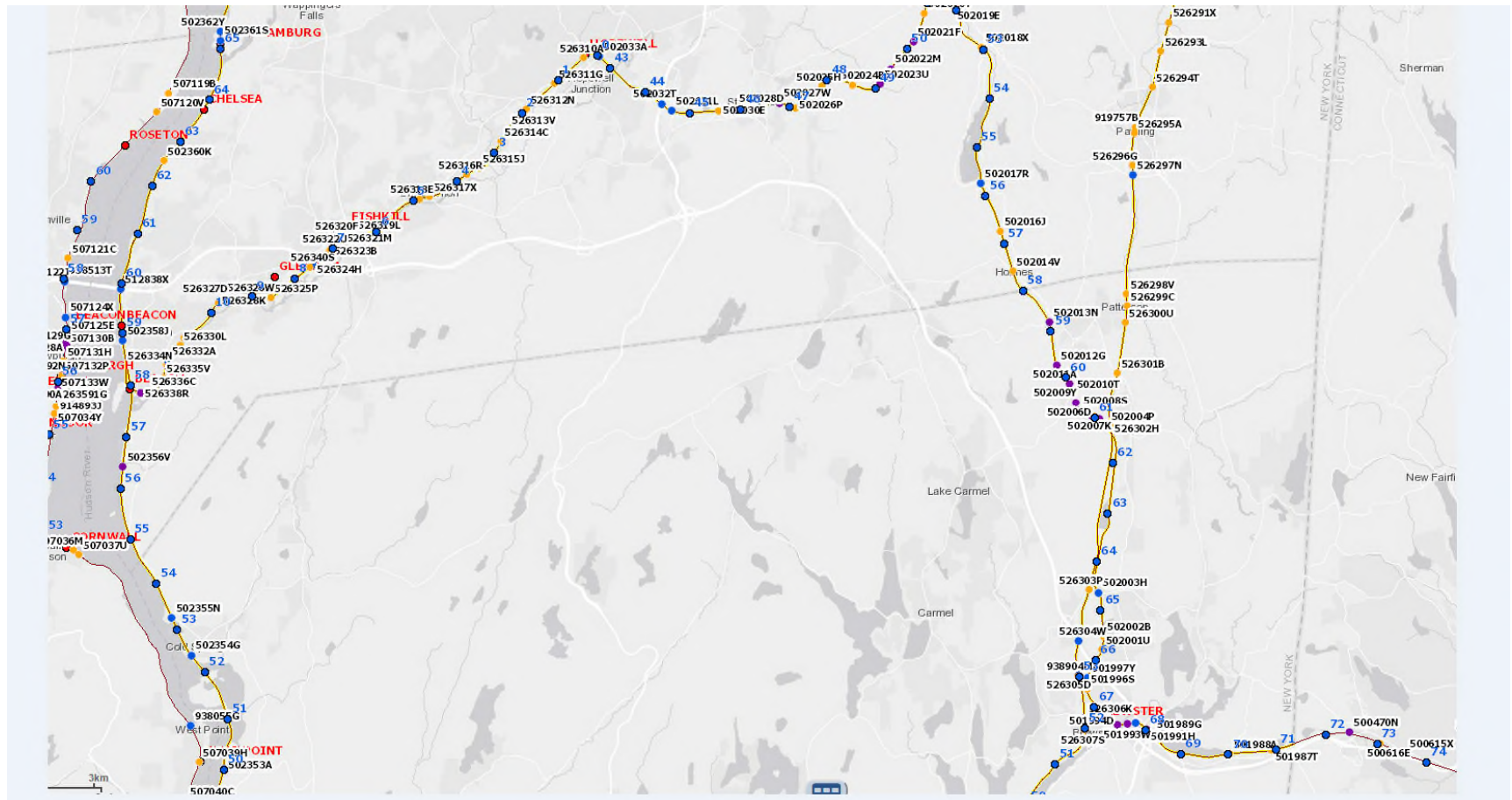


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Charles A. Spitulnik

## **Exhibit A – Map of the Beacon Line**

## FRA Rail Map Displaying the Beacon Line in New York



**Exhibit B –**  
**Statement of Support from Housatonic Railroad Company**



4 HUNTLEY ROAD  
P.O. Box 687  
OLD LYME, CONNECTICUT 06371  
860-434-4303  
FAX: 860-434-4306

February 24, 2023

**VIA E-FILE**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E. Street, S.W.  
Washington, DC 20423-0001

RE: STB Docket No. AB 733 (Sub No. 1X), *Housatonic Railroad Company- Exempt Discontinuance of Service- In Dutchess and Putnam Counties, New York*

Dear Ms. Brown:

By Notice of Exemption served in the above-referenced proceeding on January 30, 2023, Housatonic Railroad Company ("HRRC") sought authorization to discontinue its common carrier obligations over a segment of rail line that runs from milepost 71.2 on the Connecticut/New York State line to milepost 0.0 at Beacon, NY ("the Beacon Line").

This is to advise the Board that HRRC has no objection to and supports any present or future request or application by Metro North Commuter Railroad Company ("MNR") for: (a) MNR's abandonment of any residual obligations on the Beacon Line; (b) MNR's request for authority to railbank the line in accordance with 49 C.F.R. § 1152.29; and (c) MNR's petition to the STB for transfer of HRRC's reactivation rights related to the railbanking of the Beacon Line from HRRC to MNR.

Respectfully,

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Counsel for Housatonic Railroad Company

Cc: All Parties of Record  
Susan Sarch, Esq.  
Charles A. Spitulnik, Esq.