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February 8, 2020

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

Submitted via e-filing

Re: STB Docket No. AB 1311, *Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company*

Dear Ms. Brown:

I have attached a corrected, signed copy of Metro-North Commuter Railroad Company's Petition for Partial Waivers in the above-captioned matter. The filing fee of \$2,300 has been paid via pay.gov.

Thank you very much for your attention to this matter.

Yours very truly,



Charles A. Spitulnik
Counsel for Metro-North Commuter Railroad Company

Enclosure

FILED
February 8, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 8, 2021
SURFACE
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

**METRO-NORTH COMMUTER RAILROAD COMPANY—ADVERSE
DISCONTINUANCE OF TRACKAGE RIGHTS—HOUSATONIC RAILROAD
COMPANY**

**PETITION FOR PARTIAL WAIVERS OF DISCONTINUANCE REGULATIONS
AND FOR EXEMPTION**

Charles A. Spitulnik
Katherine C. Bourdon
Kaplan Kirsch & Rockwell
1634 I (Eye) Street, NW
Suite 300
Washington, DC 20006
cspitulnik@kaplankirsch.com
kbourdon@kaplankirsch.com

*Counsel for Metro-North Commuter Railroad
Company*

Date: February 8, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

**METRO-NORTH COMMUTER RAILROAD COMPANY—ADVERSE
DISCONTINUANCE OF TRACKAGE RIGHTS—HOUSATONIC RAILROAD
COMPANY**

**PETITION FOR PARTIAL WAIVER OF DISCONTINUANCE REGULATIONS
AND FOR EXEMPTION**

Pursuant to 49 C.F.R. § 1152(e)(5) and 49 U.S.C. § 10502(a), Metro-North Commuter Railroad Company (“Metro-North”) hereby seeks partial waiver of the Surface Transportation Board (“STB” or “Board”) regulations governing railroad discontinuances at 49 U.S.C. § 10903 and § 10904. The waivers and exemption are sought in conjunction with an adverse discontinuance of Housatonic Railroad Company’s (“HRRC”) trackage rights over a line known as the Beacon Line (“Beacon Line” or “the Line”) between milepost 0.0 at Beacon, New York and milepost 71.2 at the Connecticut/New York state line, a distance of 41.1 miles from Beacon, New York to Brewster, New York, in Dutchess and Putnam Counties. Metro-North owns the line. HRRC is the freight operator of the line pursuant to a Trackage Rights Agreement. HRRC’s trackage rights were established in an agreement between HRRC’s predecessor¹ railroad and Metro-North, which acquired the Line in 1995.

When Metro-North acquired the Line, the Interstate Commerce Commission exempted Metro-North from most of the provisions of 49 U.S.C. Subtitle IV and permitted Metro-North to

¹ The Trackage Rights Agreement granted exclusive freight operating rights to the Danbury Terminal Railroad Company (“DTRC”). In 1996, DTRC and HRRC merged and the HRRC assumed DTRC’s operating rights. *Housatonic R.R. Co.—Corporate Family Transaction Exemption—Danbury Terminal R.R. Co.*, STB Docket No. 33310 (Service Date Dec. 27, 1996).

abandon the Line subject only to the serving carrier's discontinuance of freight service. *Metro-North Commuter Railroad Company--Acquisition Exemption--The Maybrook Line*, ICC Finance Docket No. 32639, slip op. at 3-4 (Service Date Jan 13, 1995). Accordingly, Metro-North is not required to seek authority from the Surface Transportation Board ("STB") in order to abandon the Beacon Line. Metro-North and intends to file its adverse discontinuance application on or about March 29, 2021.

I. STATEMENT OF FACTS

Metro-North is a New York State public benefit corporation and subsidiary of the Metropolitan Transportation Authority ("MTA"), a New York State public authority. Metro-North was established in 1982 to assume the common carrier commuter rail service formerly provided by Consolidated Rail Corporation on the Hudson, Harlem and New Haven lines, to and from Grand Central Terminal in New York City. HRRC is a Class III common carrier subject to 49 U.S.C. Subtitle IV, chapter 105.

The Beacon Line runs from the Connecticut/New York State line to Beacon, New York. Specifically, the Line runs from milepost 71.2 at the Connecticut border to milepost 0.0 at Beacon. The connecting branches that form the line also retain their original milepost designations used by the former New York Central and New York, New Haven & Harford, which are milepost 12.8 and milepost 42.9.

No traffic has moved over the Beacon Line in at least two years. Given the lack of need for rail service on the Line, Metro-North seeks a discontinuance in this proceeding in order to utilize a portion of the existing right of way of the Beacon Line as a section of the Empire State

trail² which is known as the “Maybrook Trailway.” The trail connects to the existing Dutchess Rail Trail at Hopewell Junction, New York and the existing Putnam Trailway at Brewster, New York. Trail use will benefit the public and the environment, creating more green space and recreational activities in Dutchess and Putnam Counties. Metro-North will provide further support for the proposed discontinuance of the Beacon Line in the Application for Discontinuance.

II. WAIVERS REQUESTED

“In appropriate circumstances . . . such as the filing of a third-party, or adverse, discontinuance application, the Board may waive inapplicable and unneeded regulations and grant exemptions from statutory provisions.” *Port of Benton, Wash.—Adverse Discontinuance of Rail Service—Tri-City R.R. Co., LLC*, STB Docket No. AB 1270, slip op. at 2 (Service Date October 31, 2018); *see also Boston and Maine Corp. and Springfield Terminal Ry. Co.—Adverse Discontinuance—New England Southern R.R. Co. Inc.*, STB Docket No. 32 (Sub-No. 100), slip op. at 2 (Service Date Feb. 12, 2008). Accordingly, Metro-North requests waivers from the following provisions:

a. System Diagram Map (49 C.F.R. § 1152.10 to § 1152.14 and § 1152.24(e)(1):

Metro-North seeks a waiver of all requirements in 49 C.F.R. § 1152.10 through §1152.14. These regulations require the carrier to maintain, file and publish a system diagram map as well as require a line to appear on the system diagram map for at least 60 days before a discontinuance application is filed. Metro-North seeks a waiver of this requirement because Metro-North is not a freight railroad owner or

² In 2017, New York Governor Andrew Cuomo announced the creation of the Empire State Trail, a continuous 750-mile route which will span the state of New York from New York City to Canada and Buffalo to Albany and will be the longest multi-use state trail in the Nation.

operator and as such, does not publish or retain a System Diagram Map. Waiver of the system diagram map requirement is consistent with the Board's precedent in adverse discontinuance cases in which these requirements are "customarily waived."

Boston and Maine Corp. and Springfield Terminal Ry. Co.—Adverse

Discontinuance—New England Southern R.R. Co. Inc., STB Docket No. 32 (Sub-No. 100), slip op. at 3 (Service Date Feb. 12, 2008).

- b. Notice of Intent (49 C.F.R. § 1152.20):** Metro-North intends to file and publish a Notice of the proposed Adverse Discontinuance as required by 49 C.F.R. § 1152.20. Metro-North requests a waiver of several of the service and posting requirements for the Notice that are not applicable, instead Metro-North proposes the form of notice set forth in Appendix A.
- i. **Significant Users of the Line:** Metro-North requests a waiver for 49 C.F.R. § 1152.20(a)(2)(i), which requires service of the notice on all significant users of the Line. As there are no users of the Line, this provision is inapplicable.
 - ii. **Labor Organizations:** Metro-North requests a waiver from the requirements of 49 C.F.R. § 1152.20(a)(2)(xii), which requires notice to duly certified labor organizations that represent employees on the affected rail line. As there is currently no service provided over the Line, there are no railroad employees that would be affected by the adverse discontinuance.
 - iii. **Stations and Terminals:** Metro-North requests a waiver of 49 C.F.R. § 1152.20(a)(3), which requires Notice to be posted at each station and terminal along the lines. As there is no service provided on the Line and no stations or terminals, there is no need to post notice at each station on the Line.

- c. Form of Notice of Intent (49 C.F.R. § 1152.21):** Metro-North requests a waiver from the form of the Notice of Intent set forth in 49 C.F.R. § 1152.21 and proposes use of the Alternate Form of Notice of Intent submitted as Appendix A. The Board has approved form changes in the notice of intent requirement in adverse discontinuance cases when the substitute notice is in substantial compliance with the requirements of 49 C.F.R. § 1152.21. *State of South Dakota Acting By and Through its Dep't of Transp.—Adverse Discontinuance of Operating Auth.—Napa-Platte Regional R.R. Auth.*, STB Docket No. AB 1253, slip op. at 3-4 (Service Date May 31, 2017).
- d. Physical Condition of Line (49 C.F.R. § 1152.22(b)):** Metro-North seeks a waiver of the requirements for a description of the present physical condition of the Line. The Board has waived the requirement for a physical description of the line in cases when such information is not “particularly relevant.” *Id.*
- e. Service Provided (49 C.F.R. § 1152.22(c)):** As there is no service provided over the Line at this time, Metro-North requests a waiver of the requirement to submit information pertaining to the service provided on the Beacon Line.
- f. Revenue and Cost Data (49 C.F.R. § 1152.22(d)):** Metro-North requests a waiver of the requirement for revenue and cost data for the Line. As there is currently no service operated on the Line, there is no relevant revenue or cost data applicable.
- g. Rural and Community Impact (49 C.F.R. § 1152.22(e)):** Metro-North requests a waiver of the requirement for rural and community impact-related information. As there is currently no service provided on this Line, there will be no rural or community impacts resulting from the proposed discontinuance.

h. One Year Authorization Limit for Notice of Consummation (49 CFR §

1152.29(e)(2). Metro-North requests a waiver for the one-year limit for Notice of Consummation as the Board has noted that § 1152.29(e)(2) does not apply to discontinuances. *Port of Benton, Wash.—Adverse Discontinuance of Rail Service—Tri-City R.R. Co., LLC*, STB Docket No. AB 1270, slip op. at 6 (Service Date Oct. 31, 2018).

i. Public Use and Trail Use (49 CFR § 1152.29): Metro-North seeks an exemption from the requirements of 49 U.S.C. § 10905 and a waiver of 49 C.F.R. § 1152.29 as such requirements are unnecessary in discontinuance cases. *Indiana Business R.R., Inc.—Adverse Discontinuance of Rail Service—Portion of Norfolk Southern Ry. Co.’s Rockport Branch*, STB Docket No. Ab 1044, slip op. at 4 (Service Date Nov. 30, 2009).

j. Offers of Financial Assistance (49 C.F.R. § 1152.27): Metro-North seeks an exemption from the requirements of 49 U.S.C. § 10904 and a related waiver for the provisions for offers of financial assistances (“OFA”). The Board has found that “an OFA to subsidize a current operator would be irreconcilable with a Board decision granting adverse discontinuance.” *Port of Benton, Wash.—Adverse Discontinuance of Rail Service—Tri-City R.R. Co., LLC*, STB Docket No. AB 1270, slip op. at 6 (Service Date Oct. 31, 2018).

Respectfully Submitted,



Charles A. Spitulnik
Katherine C. Bourdon
Kaplan Kirsch and Rockwell LLP
1634 I (Eye) Street, NW, Suite 300
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com
kbourdon@kaplankirsch.com

APPENDIX A
DRAFT NOTICE OF INTENT
BEFORE THE
SURFACE TRANSPORTATION BOARD
Docket No. AB 1311

**METRO NORTH COMMUTER RAILROAD COMPANY—ADVERSE
DISCONTINUANCE OF TRACKAGE RIGHTS—HOUSATONIC RAILROAD
COMPANY**

Metro-North Commuter Railroad Company (“Metro-North” or “Applicant”) gives notice that on or about March 29, 2021, it intends to file with the Surface Transportation Board, Washington, DC 20423, an application seeking adverse discontinuance of the authority of Housatonic Railroad Company (“HRRC”) to operate over a line of railroad known as the Beacon Line (the “Line”) extending from railroad milepost 0.0 in Beacon, New York to milepost 71.2 at the Connecticut/New York state line, which traverses through United States Postal Service Zip Codes 12508, 12524, 12533, 12582, 12570, 12531, 12563, 10509, and 06811, a distance of approximately 41 miles in Putnam and Dutchess Counties, New York.

The reason for the proposed discontinuance is the lack of need for rail service on the Line and the potential for other, non-rail use of the property. There are no documents in Applicant’s possession that indicate that the Line contains federally granted rights-of-way. If the Applicant becomes aware of the existence of any such documentation, it will be made available to those requesting it.

The application for adverse discontinuance can be viewed following its filing on the Surface Transportation Board’s website at www.stb.gov, or a copy can be obtained from

Applicant's counsel whose name and address appear below. The application will include Applicant's entire case for discontinuance. Any interested person, after the application is filed on or about March 29, 2021, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any discontinuance of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments.

Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including their use of the Line or the public interest represented, if the protestant's interest is limited to the retention of service over a portion of the Line, a description of the portion of the Line subject to the protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the Line profitably, including an appropriate return on its investment for those operations; (3) specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)]; and (4) any rebuttal of material submitted by applicant. In addition, a commenting party or protestant may provide a statement of position and evidence regarding (i) environmental impact; (ii) impact on rural and community development;

(iii) recommended provisions for the protection of the interests of employees; (iv) suitability of the properties for other public purposes pursuant to 49 U.S.C. § 10905; and (vi) prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.59. If an oral hearing is desired the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary.

Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Written comments and protests, including all request for public use and trail use conditions, should indicate the proceeding designation STB No. AB 1311 and must be filed with the Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than April 15, 2021.

Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon Applicant's counsel in this matter, Charles A. Spitulnik, Kaplan, Kirsch and Rockwell, 1634 I (Eye) Street, NW, Suite 300, Washington, DC 20006, phone (202) 955-5600; email cspitulnik@kaplankirsch.com. The original and 10 copies of all comments and protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of

Environmental Analysis. EAs in this discontinuance proceeding normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

DRAFT FEDERAL REGISTER NOTICE

**BEFORE THE
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**METRO-NORTH COMMUTER RAILROAD COMPANY—ADVERSE
DISCONTINUANCE OF TRACKAGE RIGHTS—HOUSATONIC RAILROAD
COMPANY**

Metro-North Commuter Railroad Company (“Applicant”) gives notice that on February 8, 2021, it filed with the Surface Transportation Board (“the Board”), Washington, DC 20423, an application seeking discontinuance of the authority of Housatonic Railroad Company (“HRRC”) to operate over a line of railroad known as the Beacon Line (the “Line”) extending from railroad milepost 0.0 in Beacon, New York to milepost 71.2, a distance of 41 miles at the Connecticut/New York state line, which traverses through United States Postal Service Zip Codes 12508, 12524, 12533, 12582, 12570, 12531, 12563, 10509, and 06811, a distance of approximately 41 miles in Putnam and Dutchess Counties, New York.

Applicant is not aware of any document that indicates the Line contains federally granted rights of way. Any documentation in the railroad’s possession will be made available promptly to those requesting it. The applicant’s entire case for discontinuance (case in chief) was filed with the application.

Any interested person may file with the Board written comments concerning the proposed discontinuance or protests (including protestant’s entire opposition case), within 45 days after the application is filed. All interested persons should be aware that following any discontinuance of rail service and salvage of the Line, the Line may be suitable for other public

use, including interim trail use. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide: (i) recommended provisions for protection of the interests of employees; (ii) a statement pertaining to prospective use of the right-of-way for interim trial use and rail banking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB AB 1311 and should be filed with the Office of Proceedings, Surface Transportation Board (Board), Washington, Dc 20423-0001, no later than April 15, 2021. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon the Applicant's representative, Charles A. Spitulnik, Kaplan, Kirsch and Rockwell, 1634 I (Eye) Street, NW, Suite 300, Washington, DC 20006. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the discontinuance proceeding. 49 C.F.R. § 1104.12.

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full discontinuance regulations at 49 C.F.R. part

1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these discontinuance proceedings normally will be made available 33 days after the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

CERTIFICATE OF SERVICE

I, Charles A. Spitulnik, certify that I have this day, February 8, 2021, served a true and correct copy of the foregoing document and letter upon Housatonic Railroad Company's counsel of record, as listed below, by email and first class U.S. Mail.

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

Dated: February 8, 2021



Charles A. Spitulnik
Kaplan Kirsch and Rockwell
1634 I ("Eye") Street, NW
Suite 3000
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com

*Counsel for Metro-North Commuter
Railroad Company*