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February 12, 2021
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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**

**REPLY OF HOUSATONIC RAILROAD COMPANY TO
PETITION FOR PARTIAL WAIVERS OF DISCONTINUANCE REGULATIONS
AND FOR EXEMPTION**

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By Petition dated February 8, 2021, Metro-North Commuter Railroad Company (“Metro-North”) seeks to invoke the exemption authority of the Board pursuant to 49 C.F.R. § 1152(e)(5) and 49 U.S.C. § 10502(a), to obtain a 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 a proposed application for adverse discontinuance of Housatonic Railroad Company’s (“HRRC”) operating rights over a line known as the Beacon 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.

Unless Housatonic Railroad and Metro-North reach agreement to the contrary, Housatonic Railroad expects to both oppose and object to the adverse abandonment application after it is filed. However, the Board has made clear that objections to an application for adverse abandonment are not appropriate until the application has been filed. In *Port of Benton, Wash.—Adverse Discontinuance of Rail Service—Tri-City R.R. Co., LLC*, STB Docket No. AB 1270, slip op. at 3 (Service Date October 31, 2018) the Board held that

The appropriate time to consider an argument to stay or dismiss such an application is after an application is actually filed, and not in the context of a pre-application request for waivers and exemptions. See City of Chi., Ill.—Adverse Aban.—Chi. Terminal R.R. in Chi., Ill., AB 1036, slip op. at 2-3 (STB served July 10, 2009).

Accordingly, Housatonic Railroad will confine its Reply to Metro-Norths' current requests for waivers and exemptions.

Housatonic Railroad has no comments with respect to most of the requested waivers.¹ However, HRRC does object strongly to the request for a waiver of the requirements of 49 C.F.R. § 1152.22(b) which section requires a description of the "Condition of the Properties". Metro-North has been in complete control of the property since its acquisition in 1995. Since Metro-North acquired the property, maintenance of the property has been exclusively the responsibility of Metro-North. The Condition of the Property is an important factor for the Board to consider in reviewing the Application when it is filed and it is particularly relevant to HRRC's likely opposition to the application.

¹ No inference that HRRC agrees with the other requests should be drawn by HRRC's failure to specifically comment on them.

A waiver of the requirements of 49 C.F.R. § 1152.22(b) is sometimes granted in connection with applications for adverse abandonments because the applicant frequently has limited knowledge about the condition of the properties. However, that concern does not apply in this case and waiver is unnecessary and inappropriate since, as indicated *supra*, the applicant has had complete control of and responsibility for the condition of the property. See, *Port of Benton, Wash.—Adverse Discontinuance of Rail Service—Tri-City R.R. Co., LLC*, STB Docket No. AB 1270, slip op. at 4 (Service Date October 31, 2018).

DRAFT NOTICE OF INTENT

Respondent, Housatonic Railroad Company does not comment upon the legal sufficiency of the Draft Notice of Intent, but requests that the Notice of Intent direct that all filings required to be served upon counsel for Applicant also be required to be served upon Respondent's counsel in this matter, Edward J. Rodriguez, 4 Huntley Road, PO Box 687, Old Lyme, Connecticut 06371, telephone (860) 434-4301, email e.rodriguez@hrrc.com.

DRAFT FEDERAL REGISTER NOTICE

Respondent, Housatonic Railroad Company does not comment upon the legal sufficiency of the Draft Federal Register Notice, but requests that the Federal Register Notice direct that all filings required to be served upon counsel for Applicant also be required to be served upon Respondent's counsel in this matter, Edward J. Rodriguez, 4 Huntley Road, PO Box 687, Old Lyme, Connecticut 06371, telephone (860) 434-4301, email e.rodriguez@hrrc.com.

In addition, said Draft Notice erroneously recites that an application seeking discontinuance was filed February 8, 2021.

RESERVATION OF RIGHTS

By filing this Reply, Housatonic Railroad Company does not waive and hereby reserves all of its rights to oppose, on any appropriate basis, any application for adverse discontinuance which may be filed by Metro-North, including issues of Metro-North's standing and eligibility to obtain the remedy which it seeks and the applicability of the adverse discontinuance process to the circumstances of this case.

Respectfully Submitted,

/s/ Edward J. Rodriguez

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CERTIFICATE OF SERVICE

I, Edward J. Rodriguez, certify that I have this day, February 11, 2021, served a true and correct copy of the foregoing document upon Metro-North Commuter Railroad Company's counsel of record, as listed below, by email and first-class U.S. Mail.

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/s/ Edward J. Rodriguez

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Dated: February 12, 2021