

ENTERED
Office of Proceedings
July 8, 2021
Part of
Public Record

July 8, 2021

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

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

Dear Ms. Brown:

On July 6, 2021, Housatonic Railroad Company (“HRRC”) filed a Motion for Continuance (“Motion”) in the above captioned matter for its Reply to Metro-North Commuter Railroad Company’s (“Metro-North”) Application for Adverse Discontinuance. HRRC’s Motion for Continuance is a waste of the time and resources of STB and Metro-North, a public benefit corporation, and thereby a waste of the time and resources of the citizens of New York State. Metro-North respectfully requests the STB deny HRRC’s Motion for Continuance.

In its Motion for Continuance, HRRC requests “the [STB] issue an order granting a continuance for HRRC’s filing of its Reply to Metro-North’s Application for Adverse Abandonment until 20 days following the [STB]’s decision on the Motion for Protective conditions and the reply thereto and, if the [STB] Orders compliance with any of the disputed interrogatories or such other measures as are requested to HRRC’s reply, for a further period of 20 days following compliance therewith by Metro North.” Motion, 1. HRRC states that “it cannot effectively complete the Reply to the Application for Adverse Abandonment prior to completing discovery.” *Id.*

Contrary to HRRC’s plaintive assertions, it has all the information necessary to respond to Metro-North’s Application. Metro-North’s April 30, 2021 Application and supplemental filings provide all of the information the STB has required pursuant to its regulations and its decision on Metro-North’s February 8, 2021 Petition for Partial Waivers. *Metro-North Commuter R.R. Co.—Adverse Discontinuance of Trackage Rights—Housatonic R.R. Co., STB Docket No. AB 1311* (Service Date April 20, 2021).

In addition to the breadth of information set forth in Metro-North’s Application, Metro-North submitted responses to Parts I and II of HRRC’s Interrogatories regarding the Beacon Line. The information HRRC seeks in Part III of those Interrogatories, as Metro-North explained in its request for Protective Conditions, does not address the fundamental question at issue here. The

Board should remember – no freight traffic has moved over the Beacon Line since at least 1995. The agreement in which HRRC reserved the right to operate freight service when it sold the line to Metro-North also explicitly permits Metro-North to abandon the freight service at its discretion, and obligates HRRC to discontinue its right to provide freight service when Metro-North seeks authority to abandon the subject trackage. *See* Metro-North Application, at 4. No shippers will be harmed by the discontinuance and abandonment because there are none. Because Metro-North proposes to railbank the line, HRRC will be free in the future to propose reinstitution of freight service if it presents a *bona fide* request based on a firm commitment of a shipper to move traffic over the line.

HRRC has more than enough information regarding the status of the Beacon Line and Metro-North's plan for the corridor to prepare comments on the Application for Adverse Discontinuance of Trackage Rights. The additional information that HRRC seeks, including in Part III of the interrogatories and an unwarranted deposition of a Metro-North employee, is irrelevant and unduly burdensome, as addressed at length in Metro-North's Motion for Protective Conditions. *See Metro-North Commuter R.R. Co.—Adverse Discontinuance of Trackage Rights—Housatonic R.R. Co., Motion for Protective Conditions*, 8-11, filed June 9, 2021.

HRRC's quest for irrelevant and unnecessary information, and additional time to respond to Metro-North's Application based on this quest, is an attempt to subvert the STB's process and delay the proceedings for reasons that remain unclear. Metro-North respectfully requests that the STB deny HRRC's Motion for Continuance.

If you have any questions, please do not hesitate to contact me at (202) 955-5600 or cspitulnik@kaplankirsch.com.

Yours Truly,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", with a stylized flourish at the end.

Charles A. Spitulnik

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of July 2021, I caused the foregoing Response to Housatonic Railroad Company's Motion for Continuance 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

Dick Welsh
National Association of Reversionary
Property Owners
1100 Bellevue Way NE Ste.8A PMB 719
Bellevue, Washington 98004
dick156@earthlink.net



Charles A. Spitulnik