

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1311

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

Decided: July 16, 2021

On June 7, 2021, Metro-North Commuter Railroad Company (Metro-North) filed an application under 49 U.S.C. § 10903 requesting that the Surface Transportation Board (Board) authorize the third-party, or “adverse,” discontinuance of operating authority held by Housatonic Railroad Company (Housatonic) over a 41.1-mile rail line owned by Metro-North, extending between milepost 0.0 at Beacon, N.Y., and milepost 71.2 at the Connecticut/New York state line, in Dutchess and Putnam Counties, N.Y. (the Line).¹ Notice of the application was served and published in the Federal Register (86 Fed. Reg. 33,806) on June 25, 2021. The notice provided that interested parties could file comments and protests by July 22, 2021, that Metro-North’s reply would be due by August 6, 2021, and that the Board’s Office of Environmental Analysis would conduct an environmental review.

On June 9, 2021, Metro-North filed a motion for protective conditions pursuant to 49 C.F.R. § 1114.21(c) to request that the Board excuse Metro-North from responding to certain interrogatories it received from Housatonic on May 13, 2021. (Metro-N. Mot. 2, 4, June 9, 2021.) Specifically, Metro-North objects to Part III of the request, which pertains to the general characteristics, condition, and maintenance of the Line. (Id. at 2, Ex. A.) Metro-North claims that the information Housatonic seeks in Part III is overly burdensome and has no relevance to the issues presented in this proceeding, and that the interrogatories in Part III are not likely to lead to the discovery of relevant evidence. (Id. at 2.)

On June 29, 2021, Housatonic filed a reply to Metro-North’s motion, asserting that the information sought is relevant to the argument it plans to present in this proceeding. (Housatonic Reply 6, June 29, 2021.) However, noting Metro-North’s concerns about Part III being overly burdensome, Housatonic states that it agrees that certain of the information requested need not be provided, and attaches revised interrogatories to its reply. (Id. at 7, Ex. A.) In addition,

¹ Metro-North initially submitted its application on April 30, 2021. By letter filed on May 14, 2021, Metro-North stated that it had provided notice of an incorrect list of Zip Codes and requested that the proceeding be held in abeyance until June 7, 2021, to allow Metro-North to provide the required 15-day notice and permit newspaper publication of the corrected information. That request was granted, and Metro-North submitted its supplemental information on June 7, 2021, which therefore is considered the filing date.

Housatonic requests that it be permitted to depose Metro-North's vice president of engineering and to conduct a hi-rail inspection of the Line. (Id. at 8.) Housatonic also notes that the deadline for comments and protests in response to Metro-North's application are due by July 22, 2021, and requests that the deadline be tolled until 20 days after completion of discovery, including the requested inspection and deposition. (Id. at 9.) Housatonic reiterates its tolling request in a July 6, 2021 motion. On July 8, 2021, Metro-North filed in opposition to Housatonic's July 6, 2021 motion.

To permit consideration of the discovery issues described above, this proceeding, including the environmental review, will be held in abeyance until further order of the Board.

It is ordered:

1. This proceeding is held in abeyance until further order of the Board.
2. This decision is effective on its service date.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.