

SERVICE DATE – AUGUST 12, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1311

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

Digest:¹ This decision removes the proceeding from abeyance for the limited purpose of resolving discovery disputes and assigns and authorizes an administrative law judge to address discovery matters.

Decided: August 12, 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).² 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

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² 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 of the application.

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 replied to Metro-North's motion, asserting that the information sought is relevant to the argument it plans to present. (Housatonic Reply 6, June 29, 2021.) However, noting Metro-North's concerns about Part III being overly burdensome, Housatonic 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, Housatonic requests that it be permitted to depose Metro-North's vice president of engineering and to conduct an inspection of the Line. (Id. at 8.) In light of the discovery dispute, this proceeding was held in abeyance by decision served on July 16, 2021.

The Board has signed a Memorandum of Understanding with the Federal Mine Safety and Health Review Commission to employ the services of administrative law judges on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes in pending Board cases. The Board will remove this proceeding from abeyance for the limited purpose of resolving discovery disputes and hereby assigns and authorizes Administrative Law Judge Thomas McCarthy to entertain and rule upon discovery matters and to resolve initially all disputes concerning discovery. Metro-North and Housatonic are directed to send copies of all their filings and documents in this proceeding to Judge McCarthy, at 1331 Pennsylvania Avenue, N.W., Washington, DC 20004-1710, and at ctolbert@fmshrc.gov and zbyers@fmshrc.gov.

It is ordered:

1. This proceeding is removed from abeyance for the limited purpose of addressing discovery matters.
2. This proceeding is assigned to Administrative Law Judge Thomas McCarthy for the handling of all discovery matters and initial resolution of all discovery disputes.
3. In addition to filing pleadings with the Board and serving copies on parties' representatives, parties must send a copy of all filings and documents to Judge McCarthy at 1331 Pennsylvania Avenue, N.W., Washington, DC 20004-1710, and at ctolbert@fmshrc.gov and zbyers@fmshrc.gov.
4. Judge McCarthy will be added to the service list in this proceeding and a copy of this decision will be served upon him.

5. A copy of this decision will be served on the U.S. Office of Personnel Management (OPM), at Human Resource Solutions, ALJ Program Office, 1900 E Street N.W., Suite 2469, Washington, DC 20415-9400 and electronically at karyn.lusby@opm.gov. Judge McCarthy shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.

6. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.