

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

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

**OBJECTION TO REQUEST BY METRO-NORTH COMMUTER RAILROAD
COMPANY FOR PRODUCTION OF DOCUMENTS
MOTION FOR PROTECTIVE CONDITIONS**

NOVEMBER 11, 2011

Housatonic Railroad Company (“Housatonic Railroad”), through counsel, hereby objects, in part, to Metro-North Commuter Railroad Company’s (“Metro-North”) Request for the Production of Documents dated October 22, 2021 and Requests that Housatonic Railroad either be excused from complying with one of the Requests or that a protective order be issued limiting the scope of the Request as more particularly set forth herein. The Requests for Production of Metro North are attached hereto as Exhibit A.

Metro-North advanced four separate requests for the production of documents. Housatonic Railroad has complied, to the extent that it is able, with Requests numbered 2, 3, and 4 which seeks correspondence between Metro-North and Housatonic Railroad related to service on the Beacon Line and documents related to actual service on the Beacon Line since January 9, 1995.

Housatonic Railroad objects to and seeks a protective order with respect to Request 1. That request is as follows:

1. *Produce all Documents related to any request you received from any person for you to provide service on, over, or in any way using the railroad line subject to adverse abandonment in these proceedings after January 9, 1995.*

The Request for the Production of Documents contains three pertinent definitions which are set forth below:

1. “All” or “any” shall mean “any and all” and shall be inclusive.
2. “Document(s)” means all written, electronic, or printed matter of any kind, including the originals and all nonidentical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, emails, text messages, notes, diaries, statistics, letters, telegraphs, minutes, agenda, contracts, reports, studies, checks, statements, receipts, returns, summaries, transcripts, pamphlets, books, prospectuses, inter-office and intra-office communications, offers, notations of any type of conversation (including, without limitation, telephone conversations or meetings), bulletins, computer printouts, teletypes, data compilations, statistical analyses, telefaxes, invoices, work sheets, graphic or manual records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, records and motion pictures), and electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, records and computerized data stored in any manner), and all drafts, alterations, modifications, changes and amendments of any of the foregoing.
3. “Related” means referring, relating, reflecting, containing, pertaining, indicating, showing, evidencing, describing, discussing, mentioning, computing, constituting, defining, embodying, stating, explaining, providing any information on, detailing, discussing or in any way dealing with.

The request is all encompassing, over-broad, unduly burdensome, in large part bears no relevance to any issues in this matter, is unlikely to lead to the discovery of relevant evidence and calls for the disclosure of irrelevant, sensitive, confidential and proprietary business information relating to both Housatonic Railroad and its customers and prospective customers, including but not limited to, information about freight rates, financial information, and competitive factors relating to the business of Housatonic Railroad and its customers and potential customers.

The past, current and future existence of interest by shippers in receiving rail service to, from or over the Beacon Line and the probability of future rail service is arguably relevant to this proceeding, but the extraordinary amount of information requested by Metro-North grossly exceeds any possible relevance to this proceeding.

Pursuant to 49 C.F.R. § 1114.21(a), discovery in abandonment proceedings is limited to matters “relevant to the subject matter involved in a proceeding. . . .” “In particular, ‘the nature of abandonment cases and the need to decide them promptly have led us to require that discovery requests be sharply focused and clearly justified.’ *Cent. R.R. of Ind.-- Aban. Exemption--in Dearborn, Decatur, Franklin, Ripley, & Shelby Cntys., Ind.*, AB 459 (Sub. No. 2X), slip op. at 4 (STB served Apr. 1, 1998)). Under the Board’s rules, a party may seek protective conditions “... .to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding.” 49 C.F.R. § 1114.21(c).

Housatonic Railroad requests that a protective order be issued pursuant to 49 C.F.R. § 1114.21(c)(5) and 1114.21(c)(8) limiting the scope of the requested production to documents disclosing information about the general nature of the service requested. Such information should be limited to the commodities to be transported, the origin, destination, route, projected

volume, and frequency of service, if known, and should permit the redacting of any documents produced to remove confidential, trade secret or commercial information.

Respectfully Submitted,

/s/ Edward J. Rodriguez

Edward J. Rodriguez
General Counsel
Housatonic Railroad Company, Inc.
4 Huntley Road
PO Box 687
Old Lyme, Connecticut 06371
e.rodiguez@hrrc.com

860-434-4303

CERTIFICATE OF SERVICE

I, Edward J. Rodriguez, certify that I have this 12th day of November, 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 to:

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

and by email to:

Judge Thomas McCarthy
1331 Pennsylvania Avenue N.W.
Washington, DC 20004-1710
ctolbert@fmshrc.gov, Zbyers@fmshrc.gov.

and by email to the attached additional parties of record:

/s/ Edward J. Rodriguez

Edward J Rodriguez
General Counsel
Housatonic Railroad Company, Inc.
4 Huntley Road
P.O. Box 687
Old Lyme, Connecticut 06371
e.rodriguez@hrrc.com

Dated: November 12, 2021

SERVICE LIST ADDITIONAL PARTIES OF RECORD

Mr. Dick Walsh
National Association of Reversionary Property Owners
1100 Bellevue Way NE Ste 8A PMB 719
Bellevue, Washington 98004
Dick156@earthlink.net

[Hon. Michelle L. Phillips](#)
[Secretary @dps.ny.gov](mailto:Secretary@dps.ny.gov)

Mr. Christopher White
cwhite@beaconny.gov

Jeffrey Anzevino
janzevino@scenichudson.org

Mr. Andy Beers
andy.beers@hudsongreenway.ny.gov

Scott Keller
Scott.Keller@hudsongreenway.ny.gov

Robin Dropkin
ptny@ptny.org

Kathy Moser
Chief Conservation Officer
kmoser@osiny.org

Docket Number AB 1311

November 12, 2021

EXHIBIT A
BEFORE THE
SURFACE TRANSPORTATION BOARD
Docket No. AB 1311

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

**REQUEST BY METRO-NORTH COMMUTER RAILROAD COMPANY FOR
PRODUCTION OF DOCUMENTS**

Pursuant to the Surface Transportation Board’s (“STB”) rules governing discovery, *see* 49 C.F.R. Part 1114, and in accordance with the definitions and instructions set forth herein, the Metro-North Commuter Railroad Company (“Metro-North”), by its undersigned counsel, propounds the following Request for Production of Documents to be produced by the Housatonic Railroad Company (“Housatonic”). Pursuant to 49 C.F.R. § 1114.30(b), Metro-North requests that these documents be produced within 15 days after the date of service hereof to undersigned counsel for Metro-North.

DEFINITIONS

As used herein, the terms listed below have the following meanings ascribed to them:

4. “All” or “any” shall mean “any and all” and shall be inclusive.
5. “Document(s)” means all written, electronic, or printed matter of any kind, including the originals and all nonidentical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, emails, text messages, notes, diaries, statistics, letters, telegraphs, minutes, agenda,

contracts, reports, studies, checks, statements, receipts, returns, summaries, transcripts, pamphlets, books, prospectuses, inter-office and intra-office communications, offers, notations of any type of conversation (including, without limitation, telephone conversations or meetings), bulletins, computer printouts, teletypes, data compilations, statistical analyses, telefaxes, invoices, work sheets, graphic or manual records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, records and motion pictures), and electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, records and computerized data stored in any manner), and all drafts, alterations, modifications, changes and amendments of any of the foregoing.

6. “Metro-North” means the Metro-North Commuter Railroad Company, and its present and former parents, subsidiaries, and affiliates, predecessors and successors, and present and former officers, directors, employees, partners, agents, representatives and other persons acting or purporting to act on its behalf.

7. “Person” means the plural as well as the singular, and shall include, without limitation, any individual, firm, corporation, joint venture, company, association, partnership, business, public agency, department, bureau, board or any other form of public, private or legal entity.

8. “Railroad line subject to adverse abandonment in these proceedings” means the railroad line identified by Metro-North for abandonment in STB Docket No. AB 1311.

9. “Related” means referring, relating, reflecting, containing, pertaining, indicating, showing, evidencing, describing, discussing, mentioning, computing, constituting, defining, embodying, stating, explaining, providing any information on, detailing, discussing or in any way dealing with.

10. “Service” means either or both of common carrier rail service provided as part of the interstate rail network or contract rail service, either or both to be provided or operated on the railroad line subject to adverse abandonment in these proceedings.

11. “You” means the Housatonic Railroad Company, the Maybrook Railroad Company, the Housatonic Transportation Company and their present and former parents, subsidiaries, and affiliates, predecessors and successors, and present and former officers, directors, employees, partners, agents, representatives and other persons acting or purporting to act on its behalf.

INSTRUCTIONS

1. If any Request for Production herein cannot be responded to or complied with in full, it shall be responded to or complied with to the extent possible with an explanation as to why full compliance is not possible.

2. Each paragraph and subparagraph of a Request for Production shall be construed independently and no other paragraph or subparagraph shall be referred to or relied on for the purpose of limiting its scope.

3. In answering these Requests for Production, you are required to furnish under oath all information in your possession, custody or control, even if the information is in the possession of third parties.

4. If in answering these Requests for Production, you claim any ambiguity in interpreting the Request for Production, or a definition or instruction applicable thereto, such claim shall not be a basis for refusing to respond, but there shall be set forth as part of the response the language deemed to be ambiguous and the interpretation chosen or used in responding to the Request for Production.

5. Estimates or approximations should be given when precise data cannot be supplied. Any estimates or approximations should be designated as such and a statement made as to why precise data cannot be supplied.

6. These Requests for Production are continuing in nature. Any information obtained subsequent to the service of answers to these Requests for Production that would have been included in the answers had the information had been known shall promptly be supplied by supplemental answers whenever you find, locate, acquire or become aware of such information. Supplemental answers are to be served as soon as reasonably possible after receipt of such information.

7. If a claim of privilege (including, but not limited to, the work-product privilege) is asserted in objecting to any means of discovery or disclosure, you shall comply with the requirements of 49 C.F.R. Part 1114, and identify with respect to the information: (i) the general nature of the information withheld; and (ii) the specific privilege claimed.

REQUESTS FOR PRODUCTION OF DOCUMENTS

2. Produce all Documents related to any request you received from any person for you to provide service on, over, or in any way using the railroad line subject to adverse abandonment in these proceedings after January 9, 1995.
3. Produce all Documents you sent to Metro-North related to offers you made or requests you received for you to provide service using the railroad line subject to adverse abandonment in these proceedings.
4. Produce all Documents you received from Metro-North related to offers you made or requests you received for you to provide service using the railroad line subject to adverse abandonment in these proceedings.
5. Produce all Documents relating to, describing or otherwise providing confirmation of the movement of any trains on, over or across the Railroad line subject to adverse abandonment in these proceedings after January 9, 1995.

Respectfully Submitted,

METRO-NORTH COMMUTER
RAILROAD COMPANY
By Counsel



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