

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1311

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

Decided: March 25, 2022

On June 7, 2021, Metro-North Commuter Railroad Company (Metro-North) filed an application under 49 U.S.C. § 10903 requesting that the 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.

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.) 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, Housatonic agreed that certain of the information requested need not be provided and attached revised interrogatories to its reply. (Id. at 7, Ex. A.) Housatonic also requested that it be permitted to depose Metro-North’s vice president of engineering. (Id. at 8.)

In light of the discovery dispute, the proceeding was held in abeyance by decision served on July 16, 2021. Later, in a decision served on August 12, 2021, the Board removed the proceeding from abeyance for the limited purpose of resolving discovery disputes and assigning and authorizing Administrative Law Judge Thomas McCarthy to address all discovery matters and initially resolve all discovery disputes.

In a February 9, 2022 filing, Metro-North asserts that the discovery process is complete and that both parties have responded to the other’s discovery requests. Accordingly, Metro-North requests that the Board remove the proceeding from abeyance and proposes a procedural schedule.

¹ Metro-North initially submitted its application on April 30, 2021, but provided supplemental information to correct its initial submission on June 7, 2021, which therefore is considered the filing date of the application.

Housatonic replied on February 14, 2022, claiming that discovery is not yet complete because the transcript of a deposition has not been finalized and arguing that it would be inappropriate to change the status of the case until either the parties agree or Judge McCarthy determines that discovery is complete.

Because the parties do not agree about whether discovery is complete and there is not yet agreement on a proposed procedural schedule, the parties will be directed to meet to address any remaining issues related to discovery and to confer and propose a procedural schedule to the Board. The parties shall file a joint motion for a procedural schedule by April 14, 2022. Should the parties be unable to agree on a proposed procedural schedule, each party shall propose a procedural schedule by April 14, 2022.

It is ordered:

1. The parties are directed to meet and confer, as discussed above.
2. The parties are directed to file a proposed procedural schedule, either jointly, if possible, or separately, by April 14, 2022, as discussed above.
3. This decision is effective on its service date.

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