

August 24, 2023

307009

Submitted via e-filing

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

ENTERED
Office of Proceedings
August 24, 2023
Part of
Public Record

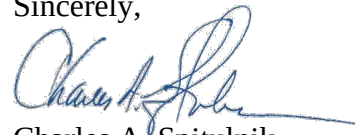
Re: STB Finance Docket No. 32639 (Sub-No. 1), *Metro-North Commuter Railroad Company—Acquisition Exemption—The Maybrook Line*

Dear Ms. Brown:

I have attached for e-filing in the above-captioned proceeding the Petition of Metro-North Commuter Railroad Company for Partial Revocation of Exemption. In addition, please note that pursuant to 49 C.F.R. 1002.2(61) the filing fee of \$350 has been paid via pay.gov.

Please do not hesitate to contact me with any questions.

Sincerely,


Charles A. Spitulnik

Enclosure

FILED
August 24, 2023
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
August 24, 2023
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 32639 (Sub-No. 1)

**METRO-NORTH COMMUTER RAILROAD COMPANY—ACQUISITION
EXEMPTION -- THE MAYBROOK LINE**

PETITION FOR PARTIAL REVOCATION OF EXEMPTION

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*Counsel for Metro-North Commuter
Railroad Company*

August 24, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 32639 (Sub-No. 1)

**METRO-NORTH COMMUTER RAILROAD COMPANY—ACQUISITION
EXEMPTION—THE MAYBROOK LINE**

PETITION FOR PARTIAL REVOCATION OF EXEMPTION

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. Part 1121, Metro-North Commuter Railroad Company (“MNR”), a passenger railroad and a New York State public benefit corporation and subsidiary of the Metropolitan Transportation Authority (“MTA”), a New York State public authority, hereby seeks partial revocation of the exemption granted by the Interstate Commerce Commission (“ICC”), the predecessor to the Surface Transportation Board (“Board”), in this proceeding in 1995 for the Beacon Line (referred to as the Maybrook Line in this proceeding). Specifically, MNR requests that the Board revoke the exemption from the Board’s regulations only to the extent required to permit MNR to seek authority to abandon and then railbank the Beacon rail line that is described more fully below, preserving it for future reactivation as a rail corridor as may become necessary, but allowing preservation of the corridor for use as a recreational trail in the interim.

With this partial revocation, MNR will be able to preserve the railroad right-of-way that is the subject of this proceeding, the 41.1 miles of a rail line known as the “Beacon Line” (originally referred to as the “Maybrook Line” in this proceeding) that runs between Milepost 0.0 and Milepost 71.2 in Dutchess and Putnam Counties, New York (the “Line”), by seeking authority to railbank the Line pending reactivation for freight rail service in the future. A map of the Line is attached hereto as **Exhibit A**.

MNR acquired the Line in 1995. Housatonic Railroad Company (“HRRC”), which has been the sole entity with the right to provide common carrier freight service on the Line, has secured authorization from this Board to discontinue its freight operations on the Line in *Housatonic Railroad Company, Inc. – Discontinuance of Service – Dutchess and Putnam Counties, N.Y.*, STB Docket No. AB 733 (Sub-No. 1X) (served February 17, 2023). Since no freight service has operated over the Beacon Line for at least eight (8) years and the sole freight carrier has discontinued its freight rights over the Line, the partial revocation requested here will permit MNR to seek authority to abandon and railbank the Line. Approval of MNR’s request is consistent with this Board’s precedent and with the Rail Transportation Policy (“RTP”) set forth in 49 U.S.C. § 10101.¹ As described more fully below, partial revocation of the blanket exemption from Subpart IV of Title 49 that was granted to MNR in 1995 will permit railbanking of the Line and thus preserve the Line for possible future reactivation for freight rail service and allow for easier entry into or exit from the rail transportation system. *See* 49 U.S.C. §§ 10101(4), (7).

BACKGROUND

In 1995 the ICC granted a petition by MNR to acquire the Beacon Line (referred to as the “Maybrook Line” in the petition and the resulting decision) in Putnam and Dutchess Counties, New York, and to exempt MNR from the provisions of 49 U.S.C. Subtitle IV for the Line. *Metro-North Commuter R.R. Co.—Acquisition Exemption—The Maybrook Line*, ICC Finance Docket No. 32639 (Sub-No. 1) (Service Date Jan. 13, 1995) (“1995 Decision”). In the 1995 Decision, the ICC approved MNR’s exemption from Subtitle IV for the Line, exempted MNR

¹ The Rail Transportation Policy, codified at 49 U.S.C. 10101, is a set of fifteen United States government policy goals pertaining to the railroad industry. The STB refers to the RTP to determine if a revocation of exemption, or other action requiring the STB’s approval, is consistent with this policy. *See* 49 U.S.C. § 10502(a)(1), (d).

from acquiring a residual common carrier obligation for the Line and permitted it to abandon the Line subject only to Danbury Terminal Railroad Company (“DTRC”) (predecessor to HRRC) seeking authority to discontinue freight service. *See 1995 Decision*, slip op. at 3-4.

Following the MNR acquisition of the Line, HRRC had the exclusive right to provide freight service on it pursuant to a Trackage Rights Agreement between HRRC’s predecessor in interest and MNR. In view of the absence of freight traffic on the Line for at least the past eight (8) years, HRRC has now received authorization to discontinue its freight common carrier obligation on the Line.² The Board published the Notice of Exemption on February 17, 2023, with an effective date of March 19, 2023. *See Housatonic Railroad Company, Inc. – Discontinuance of Service – Dutchess and Putnam Counties, N.Y.*, STB Docket No. AB 733 (Sub-No. 1X) (served Feb. 17, 2023).

HRRC has agreed to recreational trail use of the Line (see **Exhibit B**). Pursuant to that agreement, MNR asked the Board, in HRRC’s discontinuance proceeding, for a Notice of Interim Trail Use (“NITU”). In a decision issued on July 13, 2023, the Board denied MNR’s request for a NITU, explaining that the Trails Act, 16 U.S.C. § 1247(d), is not available in a discontinuance case, even one where the discontinuance results in the total extinguishment of any freight common carrier obligation on the Line. *See Housatonic Railroad Company, Inc. – Discontinuance of Service – Dutchess and Putnam Counties, N.Y.*, STB Docket No. AB 733 (Sub-No. 1X) (served July 13, 2023) and *Metro-North Commuter Railroad Company – Acquisition Exemption – Housatonic Railroad Company*, STB Docket No. FD 36681 (served July 13, 2023) (the “July 13 Decision”). In the *July 13 Decision*, the Board directed MNR to

² As HRRC stated in its Notice of Exemption, “the Line has had no freight traffic for more than eight years.” *Housatonic R.R. Co., Inc. – Discontinuance of Service – Dutchess and Putnam Counties, New York, Verified Notice of Exemption* 49 C.F.R. § 1152.50, STB Docket No. AB 733 (Sub-No. 1X), slip op. at 2 (filed Jan. 30, 2023).

follow the procedure outlined in *Caldwell R.R. Commission—Exemption From -49 U.S.C.*

Subtitle IV, STB Finance Docket No. 32659 (Sub-No. 1) (served Nov. 26, 2014) (“*Caldwell*”) to secure trail use authorization for the Line. This Petition follows the *Caldwell* procedure.

By this Petition, and consistent with the requirements of the *July 13 Decision* and *Caldwell*, MNR is requesting the Board to partially revoke the exemption from Title 49, Subpart IV that the Board granted in the *1995 Decision* to the extent required to permit MNR to secure authority to abandon the Line. This will permit MNR to commence an abandonment proceeding before the Board and then request a NITU to railbank the Line, consistent with the Trails Act and the RTP. See 16 U.S.C. § 1247(d); see also 49 U.S.C. §§ 10101(4), (7).

DISCUSSION

The statutory standard for partial revocation of an exemption is set forth at 49 U.S.C. § 10502(d), which states that “[t]he Board may revoke an exemption . . . when it finds that the application in whole or in part of a provision of this part . . . is necessary to carry out the [RTP].” The instant proceeding satisfies that standard by furthering the goals of the RTP, and MNR’s Petition for Partial Revocation should be granted.

A. **A partial revocation of MNR’s exemption for the Beacon Line to the extent required to allow MNR to railbank the Line will further the policy goals articulated in the RTP.**

Pursuant to 49 U.S.C. § 10502(d), the Board will revoke an exemption if a petitioner has demonstrated that continuing the exemption would frustrate the goals of the RTP and the Board determines that the reinstated regulatory provisions could ameliorate the alleged harms. See *Caldwell*, slip op. at 2. Here, MNR is seeking revocation of the exemption to the extent required to allow it to abandon and then railbank the Line.

One of the goals enumerated in the RTP is to ensure the “development and continuation of a sound rail transportation system . . . to meet the needs of the public.” 49 U.S.C. § 10101(4). Railbanking furthers this goal by preserving railroad rights-of-way for future railroad use. Abandoned railroad rights-of-way can be subject to reversionary property interests held by adjacent landowners.³ Railbanking does not constitute abandonment, 16 U.S.C. § 1247(d), and therefore does not allow for adjacent landowners to convert railroad right-of-way for private uses. This furthers the goal of the RTP to preserve rail corridors for future use.

Another policy enumerated in the RTP that railbanking promotes is “to reduce regulatory barriers to entry into and exit from the industry.” 49 U.S.C. § 10101(7). Allowing MNR to become subject to the Board’s jurisdiction for the limited purpose of seeking abandonment authority followed by railbanking the Line is fully consistent with protecting railroad rights-of-way because it allows MNR to effectively enter and then readily exit from the regulated environment as may be required. Here, there is no present need for rail service along the Line but, consistent with the RTP and the railbanking legislation, the Line will remain available for re-establishment of rail services in the future when a *bona fide* need arises.

Granting the partial revocation that MNR requests in this petition, and the subsequent railbanking of the Line that the partial revocation would allow, will further the policies stated in the RTP.

³ Claims made by adjacent property owners are adjudicated pursuant to state property law. See H.R. Rep. No. 98-28, at 8-9 (1983) (“The concept of attempting to establish trails only after the formal abandonment of a railroad right-of-way is self-defeating; once a right-of-way is abandoned for railroad purposes there may be nothing left for trail use.”). S. Rep. No. 98-1, at 9 (1983).

B. A partial revocation of MNR's 1995 exemption regarding the Line is necessary to allow MNR to request a NITU for the Line.

The RTP and the Trails Act confirm that public policy favors preservation of a railroad right-of-way in anticipation of a time when there might be a demand for freight service on a railbanked line. The Trails Act, 16 U.S.C. § 1247(d), states that

[c]onsistent with the purposes of [the Railroad Revitalization and Regulatory Reform Act of 1976], and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.

A partial revocation of the exemption granted to MNR for the Beacon Line in the 1995 *Decision* is necessary to permit MNR to file a Verified Notice of Exempt Abandonment and then fulfill the public policy objectives of the federal railbanking statute. The Board has already acknowledged, by authorizing HRRC's discontinuance, that the Line currently is not required for freight transportation purposes. Therefore, taking the necessary measures to allow the Line to be railbanked, and therefore preserved for future railroad use, is warranted because it is consistent with the policy objectives stated in the RTP.

Pursuant to 49 C.F.R. § 1152.29(a):

If any state, political subdivision, or qualified private organization is interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and railbanking pursuant to 16 U.S.C. 1247(d), it must file a comment or otherwise include a request in its filing (in a regulated abandonment proceeding) or a petition (in an exemption proceeding) indicating that it would like to do so.

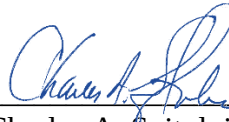
A NITU must be filed by a prospective trail sponsor within the 45-day protest and comment period for an abandonment proceeding, or within 10 days after publication in the Federal Register for an exempt abandonment proceeding. 49 U.S.C. § 1152.29(b). Therefore, in

order for a railroad right-of-way to be railbanked, there must be an abandonment proceeding before the Board in which a NITU can be filed. *See Caldwell*. Partial revocation of the exemption would allow MNR to utilize the Board's abandonment authority to fulfill the policy objectives stated in the RTP and the railbanking statute.

CONCLUSION

For the foregoing reasons, MNR respectfully requests that the Board partially revoke the exemption from Title 49, Subtitle IV granted to MNR for the Beacon Line in the *1995 Decision* so that MNR can proceed to file a Verified Notice of Exempt Abandonment and Request for NITU for the Line.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik
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August 24, 2023

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August 2023, I caused the foregoing Petition of Metro-North Commuter Railroad Company for Partial Revocation of the Exemption to be served on the following parties:

EMAIL:

Edward J. Rodriguez
Vice President and General Counsel
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August 24, 2023

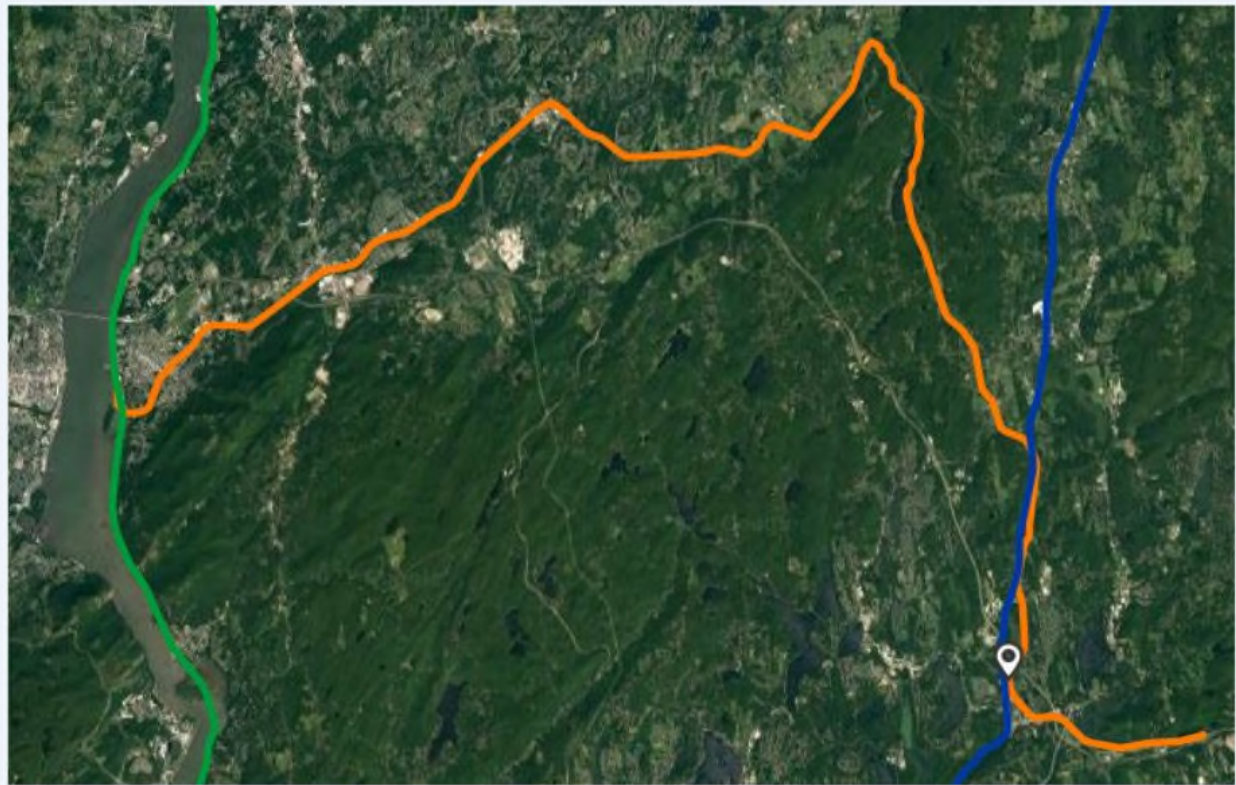
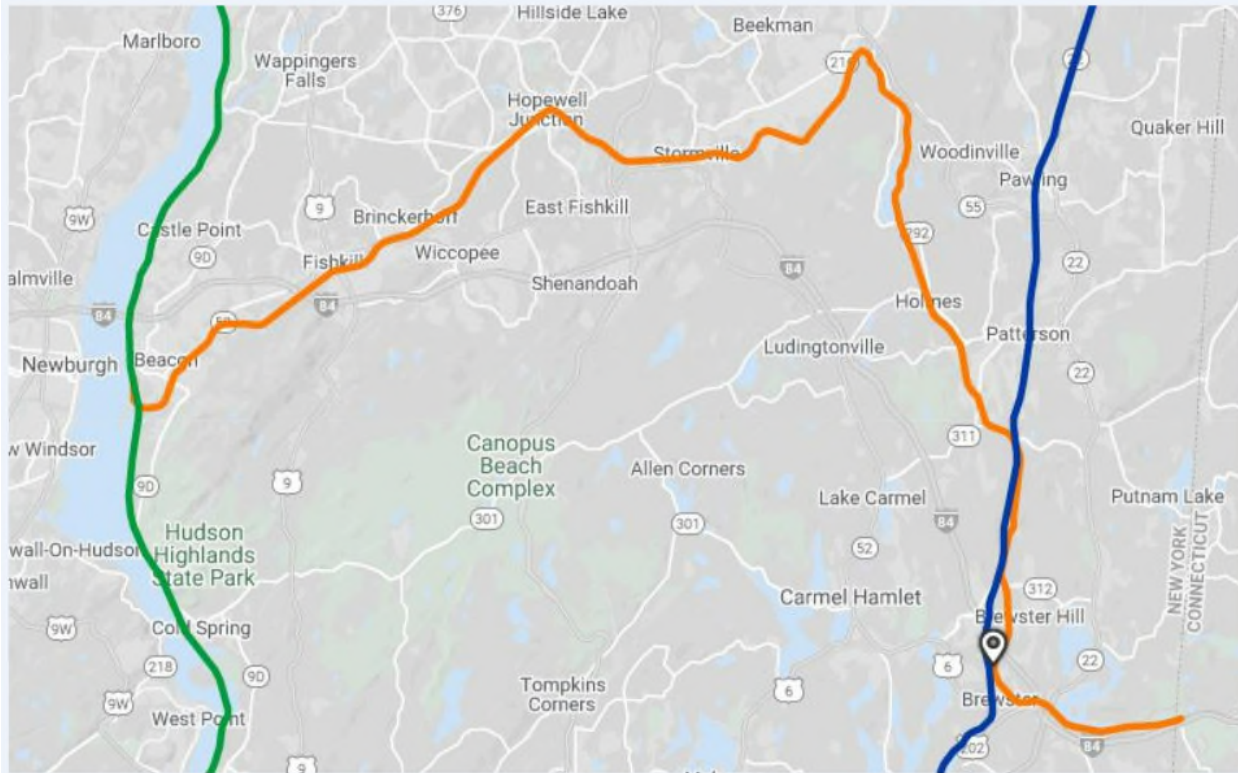


Charles A. Spitulnik

EXHIBIT A

Beacon Line Map

Maps of the Beacon Rail Line (Beacon Line Highlighted in Orange)



FRA Rail Map Displaying the Beacon Line in New York

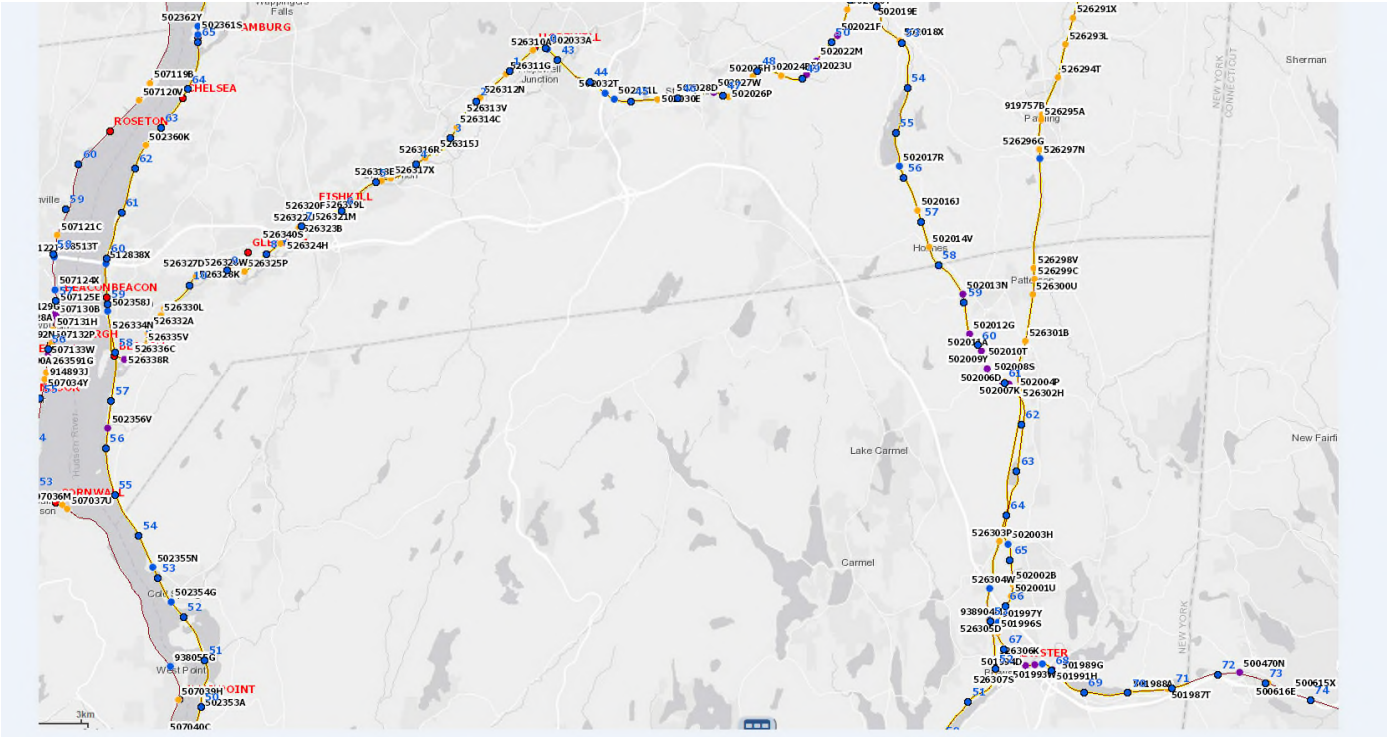


EXHIBIT B

Letter from Edward Rodriguez, Counsel to Housatonic Railroad Company



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FAX: 860-434-4306

August 22, 2023

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W.
Washington, DC 20423-0001

Re: STB Docket No. FD 32639 (Sub-No. 1), *Metro-North Commuter Railroad Company*
–*Acquisition Exemption – The Maybrook Line*

Dear Ms. Brown:

This is to advise the Board that Housatonic Railroad Company has no objection to and supports any request or application by Metro-North Commuter Railroad Company that may be required to effect abandonment and subsequent trail use or railbanking of the Beacon Line in accordance with 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.

Respectfully,

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Cc: All Parties of Record
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