

SERVICE DATE – NOVEMBER 22, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 32639 (Sub-No. 1)

METRO-NORTH COMMUTER RAILROAD COMPANY—EXEMPTION—FROM 49 U.S.C.
SUBTITLE IV

Digest:¹ The Board grants a request to partially revoke a 49 U.S.C. Subtitle IV exemption previously granted to Metro-North Commuter Railroad Company.

Decided: November 21, 2023

On August 24, 2023, Metro-North Commuter Railroad Company (Metro-North) filed a petition seeking partial revocation of the Subtitle IV exemption it received in 1995, to permit Metro-North to file for abandonment authority and ultimately pursue interim trail use/railbanking of a rail line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. The relevant line is located between milepost 0.0 at Beacon, N.Y., and milepost 71.2 at the Connecticut/New York state border, a total distance of 41.1 miles, in Dutchess and Putnam Counties, N.Y. (the Line). For the reasons discussed below, the Board will grant the petition.

BACKGROUND

Metro-North states in its petition that when the Interstate Commerce Commission, the Board's predecessor, authorized Metro-North to acquire the Line in 1995, it exempted Metro-North from most of the provisions of Subtitle IV of Title 49 of the U.S. Code and authorized Metro-North to abandon the Line subject to the future discontinuance of trackage rights then held by Danbury Terminal Railroad Company (DTRC). (See Pet. 3-4); see also Metro-N. Commuter R.R.—Acquis. Exemption—the Maybrook Line, FD 32639 et al., slip op. at 3-4 (ICC served Jan. 13, 1995). On January 30, 2023, Housatonic Railroad Company, Inc. (Housatonic), DTRC's successor, filed in Docket No. AB 733 (Sub-No. 1X) a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to discontinue trackage rights over the Line. Notice of the exemption was served and published in the Federal Register on February 17, 2023 (88 Fed. Reg. 10,425), and the exemption became effective on March 19, 2023.²

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 Policy Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² On April 30, 2021, and as supplemented on June 7, 2021, in Docket No. AB 1311, Metro-North filed an application under 49 U.S.C. § 10903 requesting that the Board authorize

On February 27, 2023, in Docket No. AB 733 (Sub-No. 1X), Metro-North filed a request for issuance of a notice of interim trail use or abandonment (NITU) for the Line. In addition, on March 28, 2023, in Docket No. FD 36681, Metro-North filed a petition under 49 U.S.C. § 10502 for exemption from the requirements of 49 U.S.C. § 10901 to acquire from Housatonic the residual common carrier rights and obligations for the Line, including the right to reactivate rail service in the future. By decision served July 13, 2023, the Board denied Metro-North's request for issuance of a NITU and the related petition to acquire the residual common carrier rights and obligations for the Line. See Housatonic R.R.—Discontinuance of Serv. Exemption—Dutchess & Putnam Cntys., N.Y., AB 733 (Sub-No. 1X) et al., slip op. at 2 (STB served July 13, 2023). The Board explained that Metro-North could pursue interim trail use/railbanking of the Line under the Trails Act by following the procedure outlined in Caldwell Railroad Commission—Exemption from 49 U.S.C. Subtitle IV, FD 32659 (Sub-No. 2) (STB served Sept. 8, 2015), which would entail Metro-North seeking partial revocation of its Subtitle IV exemption to permit it to seek abandonment authority. See Housatonic R.R., AB 733 (Sub-No. 1X) et al., slip op. at 6.

Thereafter, in Docket No. FD 32639 (Sub-No. 1), Metro-North filed its petition, arguing that the rail transportation policy (RTP) of 49 U.S.C. § 10101 warrants partial revocation of its Subtitle IV exemption to allow interim trail use/railbanking of the Line and thereby preserve the right-of-way for potential future rail use. (Pet. 5-6.)

DISCUSSION AND CONCLUSIONS

The Board has discretion to revoke an exemption pursuant to 49 U.S.C. § 10502(d), in whole or in part, if it finds that regulation is necessary to carry out the RTP. See 49 U.S.C. § 10502(d). The party seeking revocation has the burden of proof, see 49 C.F.R. § 1121.4(f), and petitions to revoke must be based on reasonable, specific concerns, I&M Rail Link, LLC—Acquis. & Operation Exemption—Certain Lines of Soo Line R.R., FD 33326 et al., slip op. at 7 (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998).

In addressing the RTP and the need for partial revocation of the Subtitle IV exemption, Metro-North relies on its desire to seek abandonment authority for the Line to pursue interim trail use/railbanking of the Line under the Trails Act. (See Pet. 5.) Metro-North states that granting partial revocation would further the RTP because interim trail use/railbanking would preserve the right-of-way for future railroad use, thus ensuring the continuation of a sound rail

the third-party, or “adverse,” discontinuance of operating authority held by Housatonic over the Line. In the verified notice filed by Housatonic in Docket No. AB 733 (Sub-No. 1X), Housatonic explained that it and Metro-North had settled the issues raised in the adverse discontinuance proceeding. According to Housatonic, under the parties' settlement agreement, Housatonic agreed to discontinue its common carrier rights and operations on the Line, to support Metro-North's request for interim trail use/railbanking of the Line under the Trails Act, and to transfer its reactivation right related to the proposed trail use to Metro-North. Verified Notice 4, Housatonic R.R.—Discontinuance of Serv.—Dutchess & Putnam Cntys., N.Y., AB 733 (Sub-No. 1X).

transportation system and reducing industry entry and exit barriers. (See *id.* at 5-6 (citing 49 U.S.C. § 10101(4), (7)).) Metro-North explains that railbanking would further the continuation of a sound rail transportation system because it prevents the possible reversion of railroad rights-of-way to private uses and thereby preserves rail corridors for possible future railroad use. (*Id.* at 6 (citing 49 U.S.C. § 10101(4)).) In addition, Metro-North explains that railbanking would reduce industry entry and exit barriers because it keeps the line available for re-establishment of rail services in the future if the need arises. (*Id.* (citing 49 U.S.C. § 10101(7)).)

This case is different from most exemption-revocation cases, because here, the party seeking to revoke is the railroad that sought and obtained the exemption. Consequently, there is no tension here between the interests of a railroad that does not want to be regulated and those of some other party that asserts that regulation of the railroad is “needed to protect shippers from the abuse of market power.” 49 U.S.C. § 10502(a)(2)(B). Moreover, the revocation in this unusual case reduces Metro-North’s own barriers to entry, one of the initial justifications for the exemption in the first place. § 10101(7); see also *Metro-N. Commuter R.R.*, FD 32639 et al., slip op. at 3. This case is simply about a railroad that obtained an exemption now needing to engage the regulatory process to achieve an otherwise permissible regulatory objective. In order for that to happen, revocation is necessary.

In light of the fact that Metro-North now seeks to pursue abandonment authority and interim trail use/railbanking to preserve the right-of-way for future railroad use, the Board finds that partially revoking the Subtitle IV exemption to allow Metro-North to seek abandonment authority—and, thus, the possibility of interim trail use/railbanking under the Trails Act—is necessary to carry out the RTP. Specifically, it would preserve the rail corridor for potential future rail use if an interim trail use/railbanking agreement is reached and, as noted, would reduce barriers to entry in furtherance of the RTP. See 49 U.S.C. § 10101(4), (7); see also *Caldwell*, FD 32659 (Sub-No. 2), slip op. at 2-3 (concluding that a partial revocation of a Subtitle IV exemption under similar circumstances would further the same provisions of the RTP). Accordingly, the Board will grant Metro-North’s petition for partial revocation of its Subtitle IV exemption over the Line.

It is ordered:

1. Metro-North’s petition for partial revocation of its Subtitle IV exemption is granted, as discussed above.
2. This decision is effective on its service date.

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