

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1311 (Sub-No. 1X)

METRO NORTH COMMUTER RAILROAD COMPANY—  
ABANDONMENT EXEMPTION—IN DUTCHESS AND PUTNAM COUNTIES, N.Y.

Decided: February 7, 2024

Metro-North Commuter Railroad Company (MNR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 41.1-mile rail line that runs between milepost 0.0 and milepost 71.2, in Dutchess and Putnam Counties, N.Y. (the Line).<sup>1</sup> Notice of the exemption was served and published in the Federal Register on January 10, 2024 (89 Fed. Reg. 1622).<sup>2</sup> The exemption is scheduled to become effective on February 9, 2024.

On January 23, 2024, MNR late-filed a request for a notice of interim trail use or abandonment (NITU) to establish interim trail use/rail banking on the Line under the Trails Act.<sup>3</sup>

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<sup>1</sup> When the Interstate Commerce Commission, the Board's predecessor, authorized MNR to acquire the Line in 1995, it exempted MNR from most of the provisions of Subtitle IV of Title 49 of the U.S. Code and authorized MNR to abandon the Line subject to the future discontinuance of trackage rights then held by Danbury Terminal Railroad Company. Metro-N. Commuter R.R.—Exemption—from 49 U.S.C. Subtitle IV, FD 36239 (Sub-No. 1), slip op. at 1 (STB served Nov. 22, 2023). 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). MNR filed a petition seeking partial revocation of the Subtitle IV exemption it received in 1995 to permit MNR 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. Metro-N. Commuter R.R., FD 36239 (Sub-No. 1), slip op. at 1 (STB served Nov. 22, 2023). The Board granted that petition on November 22, 2023. Id.

<sup>2</sup> A finding of no significant impact under 49 C.F.R. § 1105.10(g) was made in the notice of exemption pursuant to 49 C.F.R. § 1011.7(a)(2)(ix). See Housatonic R.R.—Discontinuance of Serv.—in Dutchess & Putnam Cnty., N.Y., AB 733 (Sub-No. 1X) et al., slip op. at 4 n.10 (STB served July 13, 2023).

<sup>3</sup> On the same day, MNR filed a motion for leave to late-file its NITU request. On January 24, 2024, Housatonic Railroad Company, Inc., filed a reply stating it is not prejudiced by the late filing of MNR's request. MNR's motion for leave to late-file will be granted. See 49 C.F.R. § 1152.29(e)(1); Ala. & Fla. Ry.—Aban. Exemption—in Geneva, Coffee, & Covington Cntys., Ala., AB 1073 (Sub-No. 1X), slip op. at 2 n.2 (STB served Mar. 24, 2022)

MNR's request complies with the requirements of 49 C.F.R. § 1152.29, and, therefore, a NITU will be issued.<sup>4</sup> Here, because MNR is both the owner of the Line and the trail sponsor, the negotiations that normally take place to reach a trail use agreement as contemplated under 49 C.F.R. § 1152.29 may not be needed. However, to fulfill the purpose of "ensur[ing] that the agency and the public have accurate information on the status of property where a [NITU] has been issued," Nat'l Trails Sys. Act & R.R. Rts.-of-Way, EP 702, slip op. at 9 (STB served Feb. 16, 2011), MNR will be required, prior to the expiration of the NITU period prescribed below, to file with the Board a notice confirming that it is implementing interim trail use/rail banking on the Line (or a portion thereof) and including all the other information otherwise required under 49 C.F.R. § 1152.29(h). If MNR does not implement interim trail use/rail banking within one year, MNR may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. MNR's motion for leave to late-file its NITU request is granted.
3. Upon reconsideration, the notice served and published in the Federal Register on January 10, 2024, exempting the abandonment of the Line described above is modified to the extent necessary to permit the issuance of a NITU to MNR to implement interim trail use/rail banking as set forth below.
4. If MNR implements interim trail use/rail banking, it must assume, for the term of the trail use, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

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("The Board routinely grants late-filed requests for the issuance of a notice of interim trail use if the abandonment has not been consummated and the railroad indicates a willingness to negotiate.").

<sup>4</sup> A railroad is permitted to rail bank its own line where the railroad represents that the property is suitable for interim trail use and that it will assume financial responsibility for the line. City of Yelm—Aban. Exemption—in Thurston & Pierce Cntys., Wash., AB 1295X, slip op. at 2 n.3 (STB served July 9, 2020); Boot Hill & W. Ry.—Aban. Exemption—in Ford Cnty., Kan., AB 927X, slip op. at 1 n.1 (STB served Feb. 13, 2006); Roaring Fork R.R. Holding Auth.—Aban. Exemption—in Garfield, Eagle & Pitkin Cntys., Colo., AB 547X, slip op. at 4 & n.11 (STB served Oct. 16, 1998); see also City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137 et al. (STB served Dec. 21, 2018) (issuing NITUs to three joint owners of the subject line).

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to MNR's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If MNR decides to implement trail use, MNR shall notify the Board within 10 days that it has done so. See 49 C.F.R. § 1152.29(d)(2), (h).

7. If interim trail use is implemented, and subsequently MNR intends to terminate trail use on all or any portion of the right-of-way that is designated for trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If MNR files the notice described in paragraph 6 by January 22, 2024, interim trail use may be implemented. If it does not, MNR may fully abandon the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.