

National Association of Reversionary

Property Owners (NARPO)

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Comment on AB 873X, AB 55-625X and AB 565-17X: Abandonments and Discontinuances in Dutchess County, New York

On August 1, 2019 NARPO filed a comment letter to the STB concerning the above three abandonments and discontinuances which was preceded by a July 30, 2019 letter from Dutchess County, New York government to the STB asking for a NITU. Today, October 17, 2019 NARPO received a copy of the reply letter from Dutchess County and another letter from CSX's attorney, Lou Gitomer, concerning NARPO's previous comment letter dated October 10, 2019. In these letters Dutchess County and CSX claim that Metro-North Commuter Railroad (Metro-North) is somehow a common carrier subject to STB jurisdiction which would allow Dutchess County to be granted a NITU from the STB on the above mentioned abandonments.

As NARPO has said in previous comments to these abandonments, Metro-North is not a common carrier subject to STB jurisdiction and as such there is no rail line connected to the rail line in these abandonments that is part of the National Rail System.

Attached you will find a copy of a March 5, 2003 letter from Metro-North Commuter Railroad to the STB requesting that Metro-North not be considered a carrier subject to STB jurisdiction and the request was eventually granted by the STB May 9, 2003; see

.On February 21, 2003, Metro-North Commuter Railroad Company (Metro-North), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire through a sublease from Norfolk Southern Railway Company (NSR) and operate a rail line owned by Pennsylvania Lines LLC (PRR) and leased and operated by

NSR: (1) between approximately milepost JS-31.3 at Suffern, NY, and approximately milepost JS-76.6 at CP-Howells, NY; and (2) between approximately milepost SR-68.7 (equals JS-76.6) at CP-Howells, NY, and approximately milepost SR-89.9 at Port Jervis, NY. 🗨️ Subsequently, on March 5, 2003, Metro-North filed a motion to dismiss the notice, asserting that the transaction should not be subject to Board jurisdiction because **Metro-North will not become a common carrier as a result of the transaction.** There is no opposition to the motion. We will grant the motion to dismiss. (Emphasis added)

Also a search on Google maps does not show any connection between the rail line in these abandonments and Metro-North. At best it appears Metro-North has an overhead passage of the subject rail line; but no connection is possible **even if** Metro-North was subject to STB jurisdiction.

Also in the October 16 letter from CSX, Mr. Gittomer claims a 1997 U.S. Supreme Court decision **Metro-North Commuter R. Co. v. Buckley** 521 U.S. 424 stands for the proposition that the U.S. Supreme Court has declared Metro-North a common carrier subject to STB jurisdiction. Either Mr. Gittomer doesn't know how to read court decisions or he is grasping at any straw that blows in the wind to make a case for STB jurisdiction. The Buckley case was about an employee seeking compensation from asbestos exposure. The word "Railroad" in the case title can't even be considered dicta much less precedence.

Just because a court case has a railroad name in it does not automatically infer STB jurisdiction as Mr. Gittomer claims. There are over 40 tourist railroads that have "railroad" in their name, but none of them have STB jurisdiction. There are numerous commuter lines in America that have "railroad" in their names but are not subject to STB jurisdiction. As can be seen in the March 9, 2003 STB decision in FD 34293, Metro-North wants nothing to do with common carrier requirements. In fact Mr. Gittomer represents CSX in a few abandonments that have the Georgetown Highline Railroad asking for a NITU, but Georgetown Highline Railroad is not a railroad and is surely not under STB jurisdiction. The truth be known, Georgetown Highline Railroad is a scam corporation CSX has put together for the purposes of obfuscating CSX's true intentions for the future of abandonments so as to keep the reversionary rights to the right of way out of the real landowner's possession.

Mr. Gittomer also asserts that NARPO does not dispute that the westernmost portion of the rail line at QC 74.08 connects to Metro-North. That is another fabrication, and as

stated above, NARPO does not believe that the subject rail line connects to Metro-North.

Mr. Gitomer makes a case that because of a verified statement by a Mr. Turra that the line is subject to STB jurisdiction. All Mr. Turra said was that freight traveled on the Metro-North line, but that does not put the line under STB jurisdiction. In fact Metro-North has already petitioned the STB not to be under their jurisdiction; see the March 9, 2003 STB decision on this issue.

Mr. Gitomer made a statement at the bottom of page 4 and the top of page 5 of his October 16, 2019 letter about NARPO's previous request to clarify the consummation of the discontinuance on January 11, 2005, but Mr. Gitomer mistyped January 11, 2015.

Finally, NARPO requests the Board to deny the NITU request by Dutchess County as the rail line in question is not connected to the National Rail System as Metro-North is not a carrier, see STB decision May 9, 2003 in FD 34293, under STB jurisdiction and no other rail lines connect to the abandoned rail line.

Sincerely yours

Richard Welsh

NARPO has served all parties of record via email on October 17, 2019.
Richard Welsh--Executive Director NARPO