

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35857**

**HOUSATONIC RAILROAD COMPANY, INC.  
AND  
HOUSATONIC TRACK COMPANY, INC.**

236714  
ENTERED  
Office of Proceedings  
September 19, 2014  
Part of  
Public Record

**INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION**

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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Edward J. Rodriguez  
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Old Lyme, Connecticut 06371  
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ATTORNEY FOR HOUSATONIC RAILROAD  
COMPANY, INC., AND HOUSATONIC TRACK  
COMPANY, INC.

Date submitted: September 19, 2014

**FILED  
September 19, 2014  
SURFACE  
TRANSPORTATION BOARD**

**FEE RECEIVED  
September 19, 2014  
SURFACE  
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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Housatonic Railroad Company, Inc. (“HRRC”), a Class III common carrier by rail, and Housatonic Track Company, Inc. (“TRACK”), a Massachusetts corporation owning a rail line and previously deemed by the Interstate Commerce Commission (“ICC”) not to be a rail common carrier for purposes of the control provisions of former 49 U.S.C. § 11343,<sup>1</sup> hereby file this verified notice of exemption under 49 C.F.R. § 1180.2 (d)(3) for a previously consummated intra-corporate family transaction. TRACK and HRRC are wholly owned subsidiaries of Housatonic Transportation Company (“HTC”), a non-carrier holding company. Pursuant to this exemption, TRACK will merge into HRRC. As more particularly set forth below, this filing seeks retroactive exemption, to the extent that it may be necessary, for a merger that occurred in 2000.

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<sup>1</sup> The pertinent provisions of section 11343 were subsequently re-codified pursuant to the ICC Termination Act of 1995 as 49 U.S.C. § 11323.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), HRRC and TRACK submit the following information.

**Historical Background of the Transaction**

The transaction that is the subject of this Notice involves a rail line in Massachusetts that was acquired by Track from The Boston and Maine Railroad Corporation (“B&M”) in 1990. Track acquired ownership of the property and HRRC became the operator of the lines. Initially, HTC, HRRC and TRACK filed a petition for exemption from the common control requirements of 49 USC §11343. The 1990 Decision, issued by Office of Proceedings Director Konschnik, found that TRACK was not and, as a result of that transaction, would not become a carrier for purposes of §11343 and thereby dismissed as unnecessary the element of the petition related to HTC’s control of TRACK.<sup>2</sup> The acquisition and operation transactions were authorized by Notices of Exemption under 49 USC §10901 and 49 CFR §1150.31.<sup>3</sup>

In 1993, the ICC upheld the Director’s 1990 determination that HTC did not need agency authority to continue in control of TRACK, concurring in the Director’s finding that TRACK was not a carrier for purposes of section 11343.<sup>4</sup>

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<sup>2</sup> Housatonic Railroad Company, Inc. – Operation Exemption – Lines of the Connecticut Department of Transportation and the Housatonic Track Company, Inc., Finance Docket No. 31780, (Dec. 28, 1990)

<sup>3</sup> Housatonic Railroad Company, Inc. – Operation Exemption – Lines of the Connecticut Department of Transportation and the Housatonic Track Company, Inc., Finance Docket No. 31780, and Housatonic Track Company, Inc. – Acquisition Exemption – Line of Boston and Maine Corporation, Finance Docket No. 31780 (Sub-No. 2) (jointly ICC served Dec. 28, 1990) (collectively, the “1990 Decision”).

<sup>4</sup> Housatonic Transportation Company – Continuance in Control Exemption – Danbury Terminal Railroad Company and Housatonic Railroad Company, Inc., et al., Finance Docket No. 32163, et al., slip op. at 7 (“1993 Decision”) (ICC served Oct. 5, 1993) (“Track acquired a line segment [subject to ICC approval], but [HRRC] operates it . . . We conclude that . . . Track is [not] a carrier within the meaning of the control provisions of section 11343”).

In 2000, HRRC and TRACK merged, with HRRC being the surviving corporation. Relying upon the 1990 and 1993 Decisions holding that TRACK was not a carrier for purposes of 49 USC §11343, the parties believed in good faith that the filing of an intra-corporate family transaction class exemption notice was unnecessary. The HRRC-TRACK merger was duly consummated under applicable state law without advance STB authorization.

Although the Parties have very little reason to believe that they could not rely upon the 1990 and 1993 Decisions to proceed with the 2000 merger without prior STB approval, it has been suggested that the Board might have a different view of the matter in light of modern STB practice concerning continuance in control transactions. This issue has arisen in connection with preparatory efforts toward HRRC's sale of its interest in the subject rail assets to the Commonwealth of Massachusetts Department of Transportation ("MassDOT") under an anticipated MassDOT "State of Maine" proceeding, pursuant to which MassDOT intends to acquire the subject railroad assets without triggering the need for advance Board authority. As part of the due diligence related to the proposed transaction, the parties to the asset sale have identified the regulatory element of the 2000 HRRC-TRACK merger transaction as an issue that could prove a distraction in the upcoming Board proceeding and cause administrative delay – although the Parties believe that it should not.

Accordingly, out of an abundance of caution, and notwithstanding the fact that the original ICC decisions holding TRACK to be a non-carrier have not been reopened and presumably remain effective with respect to the parties thereto, and despite the fact that TRACK took no action between its acquisition of the rail line and the merger in 2000 which would have made it a carrier, HRRC and TRACK hereby file this Notice of Exemption to remove any doubt as to whether or not the subject merger transaction required invocation of the class exemption

procedures for intra-corporate family transactions. If, as the Parties believe should be the case, the Board concurs with the Parties' 2000 decision to forego invocation of the class exemption, then the subject filing should be dismissed as superfluous. And, if not, then the Parties respectfully request that the Board – (1) recognize that the Parties' decision not to obtain an exemption at the time was made in good faith and in reasonable reliance on the 1990 and 1993 Decisions, and (2) grant the requested exemption retroactive to the 2000 merger.

HRRC requests that the Board either publish the exemption or dismiss it as unnecessary.

Because HRRC wishes to remove all doubt as to the whether the proper procedure was followed with respect to the merger transaction and to perfect the record thereof prior to concluding a pending transaction with MassDOT, HRRC requests that the Board process this filing expeditiously.<sup>5</sup>

### Argument

Applicants HRRC and TRACK undertook the merger of TRACK into HRRC in 2000 without seeking Board authorization in good faith reliance on rulings issued by Director Konschnik in 1990 and the full Commission<sup>6</sup> in 1993. Citing *Northwestern Pacific Acquiring Corporation and Eureka Southern Railroad Company, Exemption et al*, FD 30555, ICC served Oct. 25, 1984, the agency reasoned that the relationship between a non-operating rail line owner and its affiliated operating carrier was not the type of transaction requiring the “parent” company to obtain authority to continue in control of the line owner.

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<sup>5</sup> Massachusetts DOT plans to acquire the rail line formerly owned by TRACK and now owned by HRRC. A *State of Maine* filing is expected very shortly.

<sup>6</sup> Vice Chairman Simmons dissenting in part.

The Board and the Interstate Commerce Commission before it have long followed a practice of approving previously unauthorized transactions where an applicant acting in good faith sought after-the-fact approval after learning of the need for such authority. *Cf.*, *The New Brunswick Railway Company—Continuance in Control Exemption—Maine Northern Railway Company*, FD 35520, STB served Sept. 26, 2011 (where the Board exempted a previously unauthorized railroad control transaction and the applicant acted in good faith in seeking after-the-fact authorization upon learning of the need for authority) and *David W. Wulfson—Control Exemption—Clarendon & Pittsford R.R.*, FD 33607 (STB served Aug. 20, 1998)(also approving a previously unauthorized control transaction where the petitioners acted in good faith). Such is the case here.

The applicants here consummated the 2000 merger believing that no agency authority was required in view of the prior decisions. However, in a spirit of good faith and desiring to abide by all Board regulations, applicants are filing this exemption notice out of an abundance of caution.

Except as expressly indicated, the following information is submitted as it existed immediately prior to the merger.

**Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)**

HRRC is a class III common carrier by rail that operates lines in the states of Connecticut and Massachusetts. HRRC operates in Connecticut over lines owned by Maybrook Railroad Company (“MRC”) and over a line owned by the Connecticut Department of Transportation (“Conn.DOT”), respectively, and operates over a line in Massachusetts owned by Housatonic

Track Company, Inc. and another line in Massachusetts owned by Coltsville Terminal, Inc. (“CTC”), another HTC subsidiary.<sup>7</sup>

TRACK is a Massachusetts corporation that owns a line of railroad in Massachusetts that it acquired from B&M in 1990.

As noted above, HRRC operates the Berkshire Line between Danbury, Connecticut and Pittsfield, Massachusetts. Portions of the Berkshire Line in Connecticut are owned by MRC and Conn. DOT, respectively, and that portion of the line in Massachusetts, consisting of approximately 36.3 miles, is owned by TRACK.<sup>8</sup> The purpose of this filing is to permit the

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<sup>7</sup> HRRC operates the so-called Maybrook Line owned by MRC between Derby Jct., Connecticut and the New York State Line at Danbury, CT/Southeast, NY, and a distance of approximately 33.5 miles. HRRC also operates the so-called Berkshire Line between Berkshire Jct. in Danbury, CT and Pittsfield, MA, where it interconnects with CSX’s main line between Boston and Albany, a distance of approximately 86.3 miles. The Berkshire Line consists of three ownership segment: (1) the segment between Berkshire Jct. and a point in New Milford called Boardman’s Bridge, a distance of 13.65 miles is owned by MRC; (2) the segment between Boardman’s Bridge and the Massachusetts state line at North Canaan, CT/Sheffield, MA, a distance of approximately 36.35 miles, is owned by Conn. DOT and the segment between the state line and Pittsfield, MA, a distance of approximately 36.3 miles., is owned by TRACK. HRRC also operates the so-called Coltsville Branch in Pittsfield, MA, owned by CTC, a distance of 1.91 miles. The Coltsville Branch is not contiguous with other rail lines within the Housatonic corporate family. HRRC also has freight operating rights over the so-called Beacon Line owned by Metro North Railroad between its connection with the Maybrook Line at the New York/Connecticut state line and its connection with the Hudson Line in Beacon, New York, a distance of approximately 41.1 miles and over the Harlem Line owned or leased by the New York Metropolitan Transportation Authority between MP 22.0 in North White Plains, NY and MP 81.6 in Wassaic, New York. HRRC has not operated over either of the New York lines in several years because there are no freight rail customers. HRRC discontinued its common carrier obligation over the Harlem Line pursuant to a Board granted exemption.

The lines acquired from Conrail in 1992 consist of the Maybrook Line and the portion of the Berkshire Line owned by MRC. MRC also acquired the Beacon Line referred but transferred that line to Metro North Railroad in 1995. In 1992, when MRC acquired the lines from Conrail, the name of the corporation was Maybrook Properties, Inc. In 2009, the company was reincorporated in Connecticut and changed its name to Maybrook Railroad Company.

<sup>8</sup> The portion of the Berkshire Line owned by Track extends from the Connecticut/Massachusetts state line at MP 50 at Sheffield, Massachusetts and proceeds in a northerly direction to MP 86.3 to the end of the Line in Pittsfield, Massachusetts where it

merger of TRACK into HRRC, with HRRC to be the surviving corporation, for various administrative and financial reasons. The merger of TRACK into HRRC will not result in adverse changes in service levels, will not result in any significant operational changes, and will not result in a change in the competitive balance with carriers outside the Housatonic corporate family. This transaction within a corporate family is accordingly exempt as a class under 49 C.F.R. § 1180.2(d)(3). The Board has on numerous occasions exempted similar transfers of rail lines, rail properties, and common carrier obligations from one corporate entity to an affiliated entity pursuant to the corporate family transaction exemption. *See, e.g., Central Midland Railway Company and Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption*, FD 35616, STB served May 4, 2012; *Eric Temple — Control Exemption — Portland Vancouver Junction Railroad, LLC*, FD 35594, STB served Feb. 22, 2012; and *New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp.—Corporate Family Transaction Exemption*, FD 34813, STB served July 27, 2006.

**The full name and address of the applicants herein are as follows:**

Housatonic Railroad Company, Inc.  
8 Davis Road West  
P.O. Box 687  
Old Lyme, Connecticut 06371

Housatonic Track Company, Inc.  
8 Davis Road West  
P.O. Box 687  
Old Lyme, Connecticut 06371

Any questions concerning this Notice should be sent to the representative for the applicants at the following address:

Edward J. Rodriguez  
Attorney at Law  
8 Davis Road West  
P.O. Box 687  
Old Lyme, Connecticut 06371  
860-434.4303

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connects with the Conrail (now CSX) Boston and Albany main line. Ownership of the Berkshire Line is set forth in more detail in footnote 7, *supra*,

**Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)**

HRRC and TRACK consummated the proposed the merger by filing Articles of Merger with the Secretary of the Commonwealth of Massachusetts on May 22, 2000 and the filing of a Certificate of Merger with the Secretary of the State of the State of Connecticut on May 25, 2000. A copy of the Certificate of Merger which includes the Plan of Merger is attached as Exhibit A.

**Purpose Sought to be Accomplished: 49 C.F.R. § 1180.6(A)(1)(iii)**

The purpose of the intra family corporate merger is to streamline administration and enhance the financial condition of HRRC by consolidating ownership and operation of the Massachusetts portion of the Berkshire Line, by relieving HRRC of the burden of the payment and filing separate tax returns for HRRC and TRACK, maintaining separate corporate records and, in general, by reducing administration expenses.

**States in Which Applicants' Property is Located: 49 C.F.R. § 1180.6(a)(5)**

HRRC owns property in Connecticut and Massachusetts and has operating rights over property owned or operated by Metro North Railroad in New York. TRACK owns property in Massachusetts.

**Maps: 49 C.F.R. § 1180.6(a)(6)**

Maps of the lines owned, operated or controlled by the Applicants are attached hereto and incorporated herein as Exhibit A.

**Agreement: 49 C.F.R. § 1180.6(a)(7)(ii)**

A copy of the Certificate of Merger which includes the Plan of Merger and filing acknowledgements is attached as Exhibit B.

**Labor Protective Conditions: 49 C.F.R. § 1180(g)(1)(i)**

Because the proposed transaction involves only Class III carriers or non-operating entities, employee protective conditions may not be imposed as a condition of this exemption. See 49 U.S.C. § 11326(c).

**Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)**

Under 49 C.F.R. § 1105.6(c)(2), the proposed intra-family corporate reorganization is exempt from environmental reporting requirements. The proposed transaction will not result in changes in carrier operations.

Under 49 C.F.R. § 1105.8(b)(1) and (b)(2), the proposed transaction is exempt from historic preservation reporting requirements.

Respectfully submitted,

By:   
Edward J. Rodriguez  
Attorney at Law  
8 Davis Road West  
P.O. Box 687  
Old Lyme, Connecticut 06371  
(860) 434-4303

ATTORNEY FOR HOUSATONIC RAILROAD  
COMPANY, INC. AND HOUSATONIC TRACK  
COMPANY, INC.

Date Submitted: September 19, 2014

VERIFICATION

State of Connecticut            )  
  ) ss: Old Lyme  
County of New London         )

Edward J. Rodriguez, being duly sworn, on behalf of Housatonic Railroad Company, Inc., and Housatonic Track Company, Inc., deposes and says that he is duly authorized to sign this verification, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated to the best of his knowledge and belief.

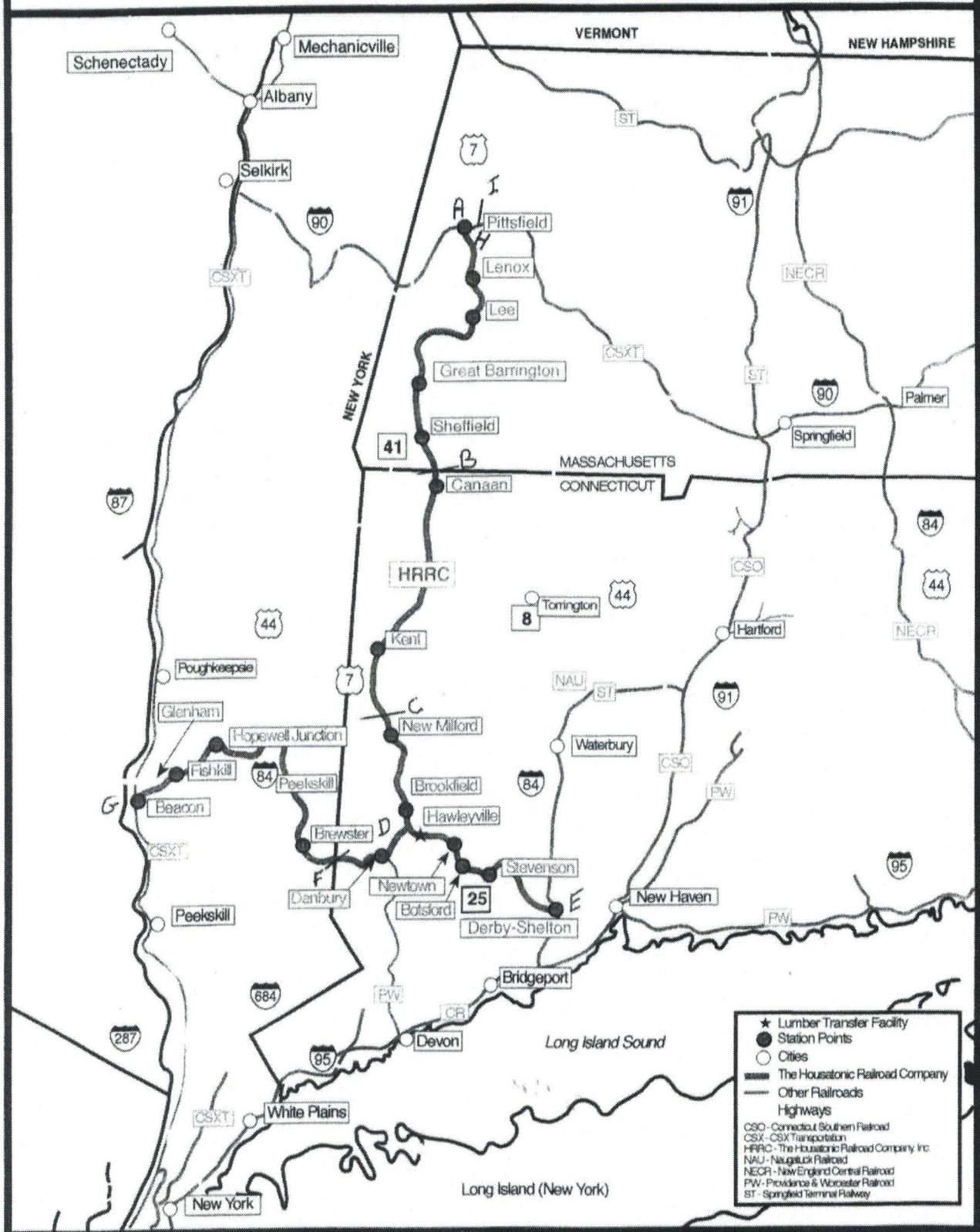
  
\_\_\_\_\_  
Edward J. Rodriguez  
Vice President

Subscribed and sworn to before me this 15th day of September, 2014.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 7/31/16

# THE HOUSATONIC RAILROAD COMPANY, INC.



- ★ Lumber Transfer Facility
  - Station Points
  - Cities
  - The Housatonic Railroad Company
  - Other Railroads
  - Highways
- CSO - Connecticut Southern Railroad  
 CSX - CSX Transportation  
 HRRC - The Housatonic Railroad Company, Inc.  
 NAU - Naugatuck Railroad  
 NECR - New England Central Railroad  
 PW - Providence & Worcester Railroad  
 ST - Springfield Terminal Railway

See system map legend

Exhibit A (page 2 of 2)

Housatonic Railroad Company, Inc.  
System Map  
Legend

- A PITTSFIELD, MA (Jct. with CSXT)
- B CT/MA STATE LINE
- C BOARDMANS BRIDGE, NEW MILFORD, CT
- D BERKSHIRE JUNCTION, CT (end of Berkshire Line at junction with Maybrook Line)
- E DERBY, CT (End of Line)
- F CT/NY STATE LINE (end of Maybrook Line and beginning of Beacon Line)
- G BEACON, NY (end of Beacon Line at junction with Hudson Line)
- H PITTSFIELD, MA (Merrill Road crossing end of CSXT - beginning of Coltsville Line)
- I PITTSFIELD, MA (End of Line, 1.91 mi north of beginning)

A - D Berkshire Line

A - B Owned by Housatonic ~~Railroad~~ <sup>TRACK</sup> Company

B - C Owned by Connecticut Department of Transportation

C - D Owned by Maybrook Railroad Company

E - F Maybrook Line - Owned by Maybrook Railroad Company

F - G Beacon Line - Owned by Metro North Railroad, Freight Service Trackage Rights by Housatonic Railroad Company

H - I Coltsville Line - Owned By Coltsville Terminal Company, Inc.

**CERTIFICATE OF MERGER**

**HOUSATONIC TRACK COMPANY, INC.**

**AND**

**HOUSATONIC RAILROAD COMPANY, INC.**

1. The name of the surviving corporation in the merger is Housatonic Railroad Company, Inc.

2. The plan and agreement of merger is as follows:

(a) The merging corporations are **Housatonic Track Company, Inc.**, a Massachusetts corporation incorporated and organized under the general corporation laws of the Commonwealth of Massachusetts and **Housatonic Railroad Company, Inc.**, a specially chartered Connecticut railroad corporation.

(b) **Housatonic Railroad Company, Inc.** is the surviving corporation.

(c) The name which the surviving corporation is to have is **Housatonic Railroad Company, Inc.**

(d) All issued and outstanding shares of Housatonic Railroad Company, Inc., and all issued and outstanding shares of Housatonic Track Company, Inc. are owned by Housatonic Transportation Company, a stock corporation organized and incorporated by that name under the laws of the State of Delaware.

(e) No stock of the surviving corporation will be issued nor assets of the surviving corporation paid or distributed in connection with the merger.

(f) No changes to the charter or certificate of incorporation of the surviving corporation shall be effected by the merger.

✓ (g) The effective date of the merger shall be May 31, 2000 at the close of business.

3. The plan of merger was adopted by the merging corporation in the following manner:

(a) The plan was approved and recommended to share-holders for approval by Resolution adopted by the Board of Directors of each merging corporation.

(b) The plan of merger was approved by resolution of the shareholders of Housatonic Track Company, Inc. At the time of the resolution, there were 500 shares outstanding and entitled to vote, 334 shares were required to approve the plan of merger and 500 shares voted in favor of the resolution adopting the plan of merger.

(c) The plan of merger was approved by resolution of the shareholders of Housatonic Railroad Company, Inc. At the time of the resolution, there were 5500 shares outstanding and entitled to vote, 3667 shares were required to approve the plan of merger, and 5500 shares voted in favor of the resolution adopting the plan of merger.

Dated at Canaan, Connecticut this 18 th day of May, 2000.

We hereby declare under the penalties of false statements, that the statements made in the foregoing Certificate, in so far as they pertain to Housatonic Railroad Company, Inc., are true.

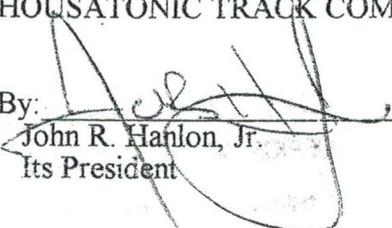
HOUSATONIC RAILROAD COMPANY, INC.

By:   
John R. Hanlon, Jr.  
Its President

By:   
Edward J. Rodriguez  
Its Secretary

We hereby declare under the penalties of false statements, that the statements made in the foregoing Certificate, in so far as they pertain to Housatonic Track Company, Inc. are true.

HOUSATONIC TRACK COMPANY, INC.

By:   
John R. Hanlon, Jr.  
Its President

By:   
Richard Apell  
Its Assistant Clerk



# The Commonwealth of Massachusetts

Secretary of the Commonwealth

State House, Boston, Massachusetts 02133

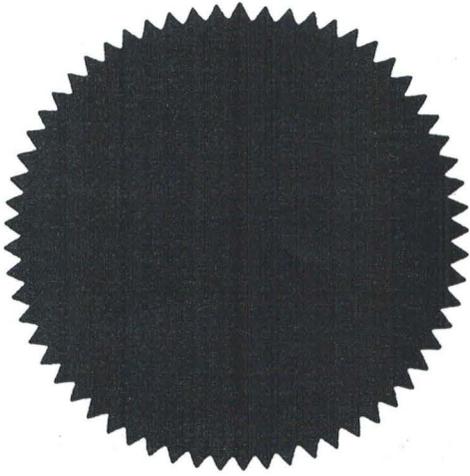
**William Francis Galvin**  
Secretary of the  
Commonwealth

May 30, 2000

TO WHOM IT MAY CONCERN:

I hereby certify that according to records in this office, Articles of Merger were filed here May 22, 2000, pursuant to Massachusetts General Laws, Chapter 156B, Section 79, whereby HOUSATONIC TRACK COMPANY, INC., a Massachusetts corporation, merged into HOUSATONIC RAILROAD COMPANY, INC. a Connecticut corporation and the surviving corporation.

This certificate is issued in accordance with the provisions of Chapter 156B, Section 84.



In testimony of which,  
I have hereunto affixed the  
Great Seal of the Commonwealth  
on the date first above written.

Secretary of the Commonwealth

MGL Chapter 156B Section 83A provides that certain consolidations and mergers may be filed with the Division within thirty days after the effective date of the merger or consolidation.

