

Metro-North Commuter Railroad Company–Acquisition and Operation Exemption–Line of
Norfolk Southern Railway and Pennsylvania Lines LLC

Statement of Ernestine Hedgepeth, Paralegal Specialist, Office of Proceedings

Good morning Chairman Nober and Commissioner Morgan.

The draft decision submitted for your consideration involves a notice of exemption filed under 49 CFR 1150.31, in which Metro-North Commuter Railroad Company (Metro-North), a noncarrier, is seeking to acquire through a sublease from Norfolk Southern Railway Company (NSR) and to operate 66.5 miles of rail line in New York State. The exemption became effective on February 28, 2003. Notice was served and published in the Federal Register on March 31, 2003. 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 would not become a common carrier as a result of the transaction.

Metro-North is a public benefit corporation of the State of New York and a provider of commuter mass transportation in New York and Connecticut. Since 1983, it has been providing rail passenger service over the subject line pursuant to a trackage rights agreement. That agreement has now been replaced by the sublease with NSR.

The record shows that NSR is not transferring common carrier rights or obligations and that Metro-North will not hold itself out as a common carrier performing rail freight service. According to the agreements between Metro-North and NSR, Metro-North will only provide passenger service over the line, NSR will retain all common carrier rights and obligations with respect to freight operations, and Metro-North will not have sufficient rights to materially interfere with NSR's freight operations.

For these reasons, the draft concludes that Metro-North will not become a rail carrier subject to the Board's jurisdiction as a result of this transaction and, as such, that there is no need for the Board to exercise its jurisdiction in the circumstances. Accordingly, the draft decision before you grants Metro-North's motion to dismiss.

We would be happy to address any questions you might have.

Thank you.