

237288

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
December 19, 2014
Part of
Public Record

STB Docket No. FD 35892

**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.**

**VERIFIED NOTICE OF EXEMPTION PURSUANT TO
49 C.F.R. § 1150.31, *ET SEQ.***

**Robert A. Wimbish
Audrey L. Brodrick
FLETCHER & SIPPEL LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Phone: (312) 252-1500
Facsimile: (312) 252-2400**

**ATTORNEYS FOR THE MASSACHUSETTS
DEPARTMENT OF TRANSPORTATION**

Dated: December 19, 2014

**FILED
December 19, 2014
Surface Transportation Board**

**FEE RECEIVED
December 19, 2014
Surface Transportation Board**

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MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. § 1150.31, *ET SEQ.*

Pursuant to 49 C.F.R. § 1150.31, *et seq.*, the Massachusetts Department of Transportation (“MassDOT”), a non-carrier, hereby files this verified notice of exemption to acquire from CSX Transportation, Inc. (“CSXT”) certain railroad assets and associated right-of-way known generally as the Framingham Secondary extending from milepost QBF 0.0 at Mansfield, MA, to milepost QBF 21.2 at Framingham, MA (near CP-21). The above-described track segment, roughly 21.2 route miles in length, and, in particular, the railroad physical assets (i.e., track and right-of-way) that MassDOT proposes to acquire in connection with this proceeding (and excluding the rights to conduct common carrier operations, which CSXT will retain under a freight easement arrangement) shall be referred to herein as the “Railroad Assets.”

MassDOT’s acquisition of the Railroad Assets will facilitate commuter service by MassDOT’s designee, the Massachusetts Bay Transportation Authority (“MBTA”). In the interest of facilitating MBTA-provided commuter rail service, MassDOT will delegate maintenance, and dispatching of all train activity on the Railroad Assets to MBTA.

As indicated above, MassDOT will acquire the Railroad Assets subject to CSXT’s retention of a permanent, exclusive freight operating easement. MassDOT will not acquire

the right, nor will it have the ability, to provide rail common carrier service over the Railroad Assets. The agreements governing the subject asset sale and post-transaction railroad operations preclude MassDOT from interfering materially with the provision of railroad common carrier service over the Railroad Assets. Accordingly, MassDOT is concurrently filing in this docket a motion to dismiss this notice of exemption in keeping with the legal construct first enunciated in Maine DOT – Acq. Exmpt. – ME Central R. Co., 8 I.C.C.2d 835 (1991) (“State of Maine”) and later applied and clarified in numerous subsequent agency decisions involving other rail asset transactions, including Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc., Docket No. FD 35312 (served May 3, 2010), aff’d Brotherhood of R. Signalmen v. Surface Transp. Bd. 638 F.3d 807 (D.C. Cir. 2011). The exemption-notice-and-motion-to-dismiss process that MassDOT has invoked here will allow the Board to determine in advance of closing that MassDOT’s acquisition of the Railroad Assets, as structured under the governing agreements, does not trigger the licensing provisions at 49 U.S.C § 10901, or, as is the case here, the related class exemption.

In accordance with the requirements of 49 C.F.R. § 1150.33, MassDOT submits the following information:

Advance Notice (Posting): 49 C.F.R. § 1150.32(e)

MassDOT asserts that it will not become a carrier subject to the jurisdiction of the Board as a result of the proposed transaction, as more fully explained in the motion to dismiss the present exemption notice. Therefore, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable here. Nevertheless, the appropriate certification is provided in Exhibit A.

Full name and address of applicant: 49 C.F.R. § 1150.33(a)

Massachusetts Department of Transportation
Ten Park Plaza
Boston, MA 02116-3974

Applicant's Representative: 49 C.F.R. § 1150.33(b)

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Ste. 920
Chicago, IL 60606-2832
(312) 252-1504

Statement that an agreement has been reached or details about when an agreement will be reached: 49 C.F.R. § 1150.33(c)

Pursuant to a "Definitive Agreement" setting forth the terms and conditions for the purchase and sale of the Framingham Secondary, MassDOT will obtain the right to purchase CSXT's right, title and interest in the right-of-way, trackage and other physical assets associated with the Line, subject to CSXT's retained exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight railroad operating easement.

Operator of the property: 49 C.F.R. § 1150.33(d)

MassDOT will permit another state agency, the MBTA (through its designated contractor) to provide commuter rail service over the Railroad Assets. The parties have no plans to initiate intercity passenger rail service over the Railroad Assets. MassDOT would not acquire any freight operating rights.

CSXT will retain a permanent freight easement over the Railroad Assets permitting it to continue to provide common carrier freight service.

Summary of the proposed transaction: 49 C.F.R. § 1150.33(e)

(1) The name and address of the railroad transferring the subject property:

CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

(2) The proposed time schedule for consummation of the transaction:

Consummation shall occur as soon as is reasonably practical after the Board determines that the proposed transaction does not require Board authorization and grants the concurrently filed motion to dismiss, but no sooner than January 18, 2015, which is 30 days after the filing of this notice. In the motion to dismiss, MassDOT has requested expedited Board action by March 20, 2015.

(3) The mile-posts of the subject property, including any branch lines:

MassDOT will acquire the approximately 21.2-mile Framingham Secondary between Mansfield, milepost (“MP”) QBF 0.0, and Framingham (CP-21), milepost, QBF 21.2.

(4) The total route miles being acquired:

MassDOT is acquiring 21.2 miles of route miles, but is not acquiring the common carrier obligation or the right to provide common carrier freight service. CSXT is retaining a permanent exclusive easement to provide common carrier freight service.

Map: 49 C.F.R. § 1150.33(f)

A map showing the main line track component of the Railroad Assets and the surrounding area is attached as Exhibit B.

Certificate of compliance: 49 CFR 1150.33(g)

A Certificate of Compliance with the provisions of 49 CFR 1150.33(g) is attached as Exhibit A to this notice.

Transactions imposing interchange commitments: 49 C.F.R. § 1150.33(h)

The proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. In any event, the agreements governing the subject transaction have been included with the accompanying motion to dismiss.

Environmental and Historic Prescription Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), MassDOT's proposed acquisition of the Railroad Assets is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in freight carrier operations. *i.e.*, changes that exceed the thresholds established in 49 C.F.R. §§ 1105.7(e)(4) or (5). The freight operator, CSXT will not change and CSXT does not expect any changes in operations that will exceed the thresholds established in 49 C.F.R. §§ 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), MassDOT's proposed acquisition of the Railroad Assets, which will promote continued rail operations, also is exempt from historic preservation reporting requirements. Advance Board approval would be required if CSXT were to choose to discontinue or abandon any service, and MassDOT has no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.34

A caption summary in appropriate form is attached hereto as Exhibit C.

Respectfully submitted,



Robert A. Wimbish
Audrey L. Brodrick
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Phone: (312) 252-1500
Facsimile: (312) 252-2400

Attorneys for the Massachusetts
Department of Transportation

Dated: December 19, 2014

COMPLIANCE WITH MASSACHUSETTS ENVIRONMENTAL POLICY

The Commonwealth of Massachusetts has established a strong policy of minimizing the environmental impacts associated with the preparation and filing of documents prepared by the Commonwealth or on its behalf. Specifically, the Commonwealth encourages greater use of recycled and environmentally preferable products to minimize waste and to promote further recycling. To the extent practicable in light of STB filing requirements, the foregoing verified notice of exemption filing adheres to the Commonwealth's policies by using recycled paper with a minimum post-consumer content of 30%, recyclable and/or re-usable binding materials, and other products that contain recycled content.

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that I am authorized to make this verification on behalf of the Massachusetts Department of Transportation, and that the foregoing notice of exemption is true and correct to the best of my knowledge and belief.



Frank DePaola

Acting Secretary and Chief Executive Officer
Massachusetts Department of Transportation

December 17, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35892

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
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EXHIBIT A

CERTIFICATION

CERTIFICATION

I, Frank DePaola, hereby certify on behalf of the Massachusetts Department of Transportation ("MassDOT") that MassDOT's projected annual revenues subject to the jurisdiction of the Surface Transportation Board resulting from the consummation of the proposed railroad asset acquisition transaction would not exceed \$5 million annually, and would not result in MassDOT becoming a Class I or Class II carrier under the provisions of 49 C.F.R. § 1201(1-1).



Frank DePaola
Acting Secretary and Chief Executive Officer
Massachusetts Department of Transportation

December 17, 2014

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EXHIBIT B

MAP

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EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 35892

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
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MassDOT’s acquisition of the Railroad Assets will facilitate commuter service by MassDOT’s designee, the Massachusetts Bay Transportation Authority (“MBTA”). In the interest of facilitating MBTA-provided commuter rail service, MassDOT will delegate maintenance, and dispatching of all train activity on the Railroad Assets to MBTA.

MassDOT also states that it will not acquire the right, nor will it have the ability, to provide rail freight common carrier service over the Line.¹ According to MassDOT, the agreements governing the subject asset sale and post-transaction railroad operations preclude MassDOT from interfering materially with the provision of railroad common carrier service over the Line. MassDOT states that the proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

¹ A motion to dismiss the notice of exemption on the grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

MassDOT certifies that, because it will conduct no freight operations on the line segment being acquired, its revenues from freight operations will not exceed \$5 million or result in the creation of a Class I or Class II carrier.

MassDOT also states that the parties expect to consummate the transaction on or about March 20, 2015, which is after the effective date of January 18, 2015.

The notice is filed under 49 C.F.R. § 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by _____.

An original and 10 copies of all pleadings, referring to STB Docket No. FD 35892, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, SW, Washington, DC 20523-0001. In addition, a copy of each pleading must be served on MassDOT's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606, (312) 252-1504.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January __, 2015

By the Board, Rachel D. Campbell, Director, Office of Proceedings.