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SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36043

**BOSTON SURFACE RAILROAD COMPANY, INC.
PETITION FOR PARTIAL EXEMPTION FROM 49 U.S.C. SUBTITLE IV**

FEE RECEIVED
June 22, 2016
SURFACE
TRANSPORTATION BOARD

FILED
June 22, 2016
SURFACE
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Dated: June 17, 2016

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**BOSTON SURFACE RAILROAD COMPANY, INC.
PETITION FOR PARTIAL EXEMPTION FROM 49 U.S.C. SUBTITLE IV**

**I.
INTRODUCTION**

Pursuant to 49 U.S.C. §10502, Boston Surface Railroad Company Inc., a Massachusetts corporation ("BSRC" or "Petitioner") files this Petition for Exemption seeking a partial exemption from certain provisions of Subtitle IV of Title 49 of the United States Code ("Subtitle IV").

This Petition by BSRC seeks authorization to commence operation of a passenger rail service on an existing interstate/intercity route between Worcester, Massachusetts and Providence, Rhode Island. Pending final agreement, the Providence and Worcester Railroad ("PWRR") will host and operate BSRC trains on this 44 mile route. PWRR owns 90% of the route trackage with access rights to the remainder. BSRC accordingly: (i) seeks blanket authority under Subtitle IV to give it the flexibility to provide passenger service on the proposed Worcester-Providence route subject to market demand, and (ii) requests that the Board exempt its operations from all common carrier obligations imposed under the Subtitle IV, effective upon service of the decision. BSRC requests that the Board retain exclusive jurisdiction under 49 U.S.C. §10501(b)(2) with respect to its operations and preempt remedies provided under the laws of the States of Massachusetts and Rhode Island because it will operate across state lines, and will offer "through-ticketing" for passengers of the National Railroad Passenger Corporation ("AMTRAK").

For the Board's information, Petitioner attaches to this filing as Exhibit A, a redacted version of an Executive Overview of BSRC; as Exhibit B, a document describing its service and schedule; as Exhibit C, a map of the route; and as Exhibit D, a redacted copy of Petitioner's agreements with AMTRAK and PWRR for engineering,

survey and operation of this service. A separate Motion for Protective Order is being filed herewith with respect to the materials described in Exhibits A and D.

In order to provide the public with sufficient information about its service offering, Petitioner includes as Section V of its Petition the same information that an applicant would typically include with a class exemption notice filed under 49 CFR §1150.33.

II. STATEMENT OF FACTS

BSRC is a privately-funded and closely-held company, established to address the growing demand for quality alternatives to driving for commuters between tightly coupled metropolitan markets. BSRC has selected Worcester, Massachusetts, and Providence, Rhode Island, as the first city pair for its pilot passenger rail program, with plans to initiate scheduled service between the two cities in late 2017-early 2018.

BSRC is in the process of acquiring equipment, including locomotives and passenger cars suitable for an intercity (and interstate) railroad passenger service and which meet the operating requirements of AMTRAK.

Negotiations are underway with PWRR to host BSRC's proposed service. PWRR is a publicly traded Class III freight railroad that also operates seasonal passenger excursions including "the Polar Express." Pending negotiation of a definitive operating agreement, the PWRR will host and operate BSRC equipment on a 44-mile route from Worcester, Massachusetts to Providence, Rhode Island, the majority of which is on the PWRR main line. The route begins in Worcester (MP 43.38 from Providence), following along parts of the Blackstone River into Woonsocket (MP 16.1) for a single stop. The route continues to Providence via the "Boston Switch" (MP 4.9), where it enters a non-corridor track (known as AMTRAK – Track 7) for the remaining 4.9 mi to Providence Station (PVD - MP 0.0). It is noted that (AMTRAK-Track#7) is not a corridor track, nor will this proposed service interfere with Northeast Corridor traffic. BSRC will subcontract maintenance/repairs of its equipment with the PWRR and/or third-party equipment maintainers.

BSRC plans to operate 4 trains per day; starting with 2 morning trips from Worcester to Providence, and 2 return trips to Worcester from Providence in the evening. All trains will make one intermediate stop in Woonsocket, Rhode Island during each trip. BSRC will provide ticketing services via internet and on-site kiosk.

Passenger amenities will include assigned seating, quality Wi-Fi internet access and onboard café/bar. Fares per trip will range from \$10.00 to \$16.00 with discounts for advance purchase of 20 or more trips. BSRC will offer transfer discounts for certain AMTRAK and MBTA ticket holders. BSRC will (via global distribution system) also provide ticketing for passenger connections to AMTRAK trains, leaving out of Providence to facilitate passenger connections onto New Haven, New York, and other points on the Northeast Corridor.

Worcester-Providence is the first city pair BSRC has selected for this pilot program, and the target market includes commuters, students, and occasional professional or leisure travelers. Based on the performance of this pilot program, BSRC will seek to both expand service on this route and connect other tightly coupled metropolitan markets in the New England region based on feasibility and market demand.

III. ARGUMENT

BSRC concedes the Board's jurisdiction over intercity/interstate rail passenger service. Accordingly, BSRC files this Petition seeking Board authorization to commence operation as a common carrier of passenger rail service on PWRR's main line between Worcester, Mass. and Providence, Rhode Island (via Woonsocket, Rhode Island) and for such services as it may add at some later date. BSRC did not initially seek Board operating authority before being contacted by the Board, as it had not yet finalized agreements with its host railroad or other entities regarding acquisition of equipment.

BSRC feels its intended service will constitute common carrier rail service. Acting in good faith, BSRC seeks authorization to commence such service subject to the Board determination of jurisdiction, and retention of jurisdiction under 49 U.S.C. §10501(b)(2). BSRC would embrace jurisdiction under the STB, which would provide one set of clearly defined requirements for BSRC to operate interstate service. Such jurisdiction would be preferred to the purview of the respective regulatory bodies of Massachusetts and Rhode Island collectively, creating a constellation of requirements from two jurisdictions that would be duplicative and potentially contradictory, unduly burdensome, and would inhibit BSRC's entry into the market.

BSRC does not believe this Petition will be opposed or that any party will be adversely affected or prejudiced by this filing seeking Board authorization. The

proposed service by BSRC has garnered much support by local and state governments and is viewed as compatible and complementary to ongoing infrastructure development by the two cities. BSRC seeks an exemption from the provisions of Subtitle IV (other than 49 U.S.C. §10501(b)(2) and those provisions specifically excluded from exemption by statute (*see* 49 U.S.C. §10502(e) and (g)), rather than just the provisions of 49 U.S.C. §10901, because it does not desire and is not equipped to be a rail freight common carrier. It lacks the personnel and equipment to provide common carrier rail freight service. A grant of an exemption from the aforementioned provisions of Subtitle IV will relieve BSRC from the rate and service provisions of Subtitle IV that are appropriate for a carrier that hauls freight but not appropriate for a passenger carrier. Moreover, a grant of a partial exemption as contemplated hereby would relieve BSRC from any regulatory constraints that might be associated with changing service frequencies or schedules, allowing BSRC to respond more flexibly to market demands. Such relief could permit BSRC to add or modify service once it commences operation and BSRC can better establish ridership demand.

The Board has authority to exempt a person such as BSRC and a service, such as that proposed by BSRC, from the application in whole or in part of a provision of Subtitle IV if it finds that:

- “(1) it is not necessary to carry out the transportation policy of section 10101 of [Title 49 of the United States Code]; and
- (2) either—
 - (A) the transaction or service is of limited scope; or
 - (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.”¹

Exemption for BSRC’s proposed service between Worcester, Massachusetts and Providence, Rhode Island is appropriate because regulation of such service by the Board is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101 (“RTP”). Such policy includes among its principles the following:

- “(2) to minimize the need for Federal regulatory control over the rail transportation system; (. . .)
- “(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes; (. . .)
- “(7) to reduce regulatory barriers to entry into and exit from the industry; (. . .)
- “(14) to encourage and promote energy conservation.”²

¹ 49 U.S.C. §10502(a).

² 49 U.S.C. §10101.

An exemption for BSRC's proposed service from the provisions of Subtitle IV described herein would be consistent with 49 U.S.C. §10101(2) because it would represent a reduction in unnecessary regulatory control over transportation. Such an exemption would further be consistent with 49 U.S.C. §10101(5) because it would offer an option to existing modes of transportation between Worcester and Providence, namely, travel by air, bus or personal vehicle. At present there are no direct flights between the two cities, and round trip fares range from \$546 to \$1,021. Because such flights are not direct, they require travel time of from 7 hours to 19½ hours.³ Bus travel between the two cities is inexpensive, but the estimated time for a one-way trip by bus is three hours and forty-five minutes.⁴ Intercity rail service between the two cities is currently available, but the service is not direct; a first leg from Worcester to Boston takes an hour and a half, and the second leg from Boston takes an additional hour and twenty minutes.

Such an exemption would be consistent with 49 U.S.C. §10101(7) because it would reduce barriers to BSRC's entry into the rail industry. Because BSRC may adopt new routes in the future that are comparable to its proposed Worcester-Providence line as part of its business plan to replicate such service in comparable paired cities, an exemption from the requirement to seek Board authority in each instance would allow it more flexibility in meeting demand for such service as it is identified. *See, e.g., The Pullman Sleeping Car Company, LLC*, FD 35738 (February 3, 2015), and requiring BSRC to come to the Board for authority each time it proposes a new route would be an unnecessary burden on entry, *American Orient Express Railway*, FD 34502 (June 23, 2004). Finally, such an exemption would be consistent with 49 U.S.C. §10101(14) because it would encourage those who currently travel by car between Worcester and Providence to use BSRC's service instead, thus promoting energy conservation.

Because Board jurisdiction over BSRC's proposed service is not necessary to carry out the RTP, the Board may exempt it from regulation under Subtitle IV if either: "(A) the transportation or service is of limited scope; or (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power."⁵ Since BSRC does not propose to include carriage of freight in its service between Worcester and Providence, the Board may exempt it under 49 U.S.C. §10502(a)(2)(B). BSRC's proposed service also qualifies for exemption under 49 U.S.C. §10502(a)(2)(A) because it is limited in scope to two daily trips each way between Worcester and Providence and, at most, six additional trips between Woonsocket and Providence.

³ Source: jetBlue website showing flights from ORH Worcester to PVD Providence airports.

⁴ Source: Greyhound website.

⁵ 49 U.S.C. §10502(a)(2).

Where the Board properly finds the conditions under which its exemption authority may be exercised to be satisfied, it must grant exemption from regulation, *Coal Exporters Association of U.S., Inc. v. United States*, 745 F.2d 76, 240 U.S. App. D.C. 256 (1984), *cert. den.* 471 U.S. 1072. *See also* West Federal Procedure, Lawyers Edition, §67.20 (2010). Accordingly, BSRC's request for partial exemption under 49 U.S.C. §10502 should be granted.

IV.
SCHEDULE PROPOSED

BSRC does not anticipate any public opposition to the proposed service. BSRC has received strong support from politicians at the local, State and Federal levels. BSRC is also receiving support from the Rhode Island Department of Transportation. The Massachusetts Department of Transportation and the MBTA have been advised by BSRC of its plans and neither have any objections. However, BSRC proposes the following procedural schedule to ensure that all affected parties are heard expeditiously.

| Day | Event |
|-----|---|
| 0 | Petition filed |
| 16 | Notice of Petition published and posted on Board website |
| 31 | Public comments due |
| 45 | Decision effective in absence of any comments |
| 60 | Decision issued if comments are filed, effective on Service |

V.
INFORMATION ABOUT PROPOSAL

INFORMATION REQUIRED BY 49 CFR §1150.31

Full Name and Address of Applicant

49 CFR §1150.33(a)

Boston Surface Railroad Company Inc.
1 Depot Square
Woonsocket, RI 02895
(401) 216-8800

Applicant's Representative

49 CFR §1150.33(b)

Cornelius J. Chapman
Erica Mastrangelo
Burns & Levinson LLP
125 Summer Street
Boston MA 02110
cchapman@burnslev.com
(617) 345-3000

Statement of Agreement

49 CFR §1150.33(c)

Not applicable. No transfer or change in control over property or trackage will occur as a result of this transaction. Pending final agreements, the BSRC seeks to commence passenger service between Worcester, MA and Providence, RI to be hosted and operated by PWRR (a Class III freight carrier).

Operator of the Property

49 CFR §1150.33(d)

PWRR will host and operate BSRC equipment, and BSRC will provide all common carrier passenger rail operations and insurance.

Brief Summary of Transaction

49 CFR §1150.33(e)

BSRC seeks to provide scheduled passenger rail service between Worcester, Massachusetts and Providence, Rhode Island, with an intermediate stop in Woonsocket, Rhode Island. Service will be hosted by freight railroad PWRR and is planned to commence in late 2017 or early 2018. BSRC requests that the Board grant it an exemption from the provisions of 49 U.S.C. Subtitle IV other than those which are non-exemptible, but retain exclusive jurisdiction under 49 U.S.C. §10501(b)(2) with respect to its operations and preempt remedies provided under the laws of the States of Massachusetts and Rhode Island. BSRC also seeks authority to add or change service as market forces dictate and feasibility permits such changes.

Other information required:

- (1) The name and address of the party transferring the subject property:
N.A. There is no transfer of property or trackage/rights as a result of this filing and no operating rights will be granted.
- (2) The proposed time schedule for consummation of the transaction:

Pending authority and final agreements, BSRC plans to commence passenger service with host railroad PWRR late 2017-early 2018.

- (3) The mileposts of the subject property, including any branch lines: PWRR will host and operate the BSRC service on the proposed 44 mile route. Thirty-nine of these route miles are on the PWRR mainline from Worcester, MA (MP 43.38) to Boston Switch (MP 4.9). The remaining 4.9 mile segment from Boston Switch to Providence is via AMTRAK Track #7, a non-Corridor track on which PWRR has operating rights. Trains will make one stop in Woonsocket RI (MP 16.1) during each trip.
- (4) The total route miles to be operated:
44 miles (46 mi counting initial move).

Map

49 CFR §1150.33(f)

A map depicting the railroad trackage the BSRC will be operated on (as part of PWRR mainline) is attached as Exhibit C.

Certificate of Carrier Classification

49 CFR §1150.33(g)

BSRC hereby certifies that this transaction will not result in BSRC or PWRR becoming a new Class I or Class II rail carrier. See certificate attached as Exhibit E.

Transactions Imposing Interchange Commitments

49 CFR §1150.33(h)

N.A. There are no agreements applicable to the service imposing any interchange commitments.

Labor Protection

49 CFR §1150.32(e)

N.A. BSRC's projected annual operating revenues are less than \$5 million.

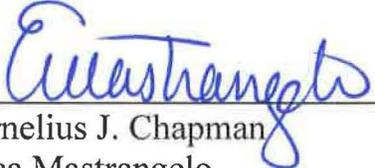
Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(6)(c)(2)(i) because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e)(4) and (5).

Applicant confirms that it will preserve intact all sites and structures along the proposed line more than 50 years old until compliance, if necessary, with Section 106 of the National Historic Preservation Act, 16 U.S.C. §470.

VI.
CONCLUSION

For the foregoing reasons, BSRC requests that the Board exempt its proposed service between Worcester, Mass. and Providence, Rhode Island from certain provisions of Subtitle IV of Title 49 of the United States Code pursuant to 49 U.S.C. §10502(a) as described herein, but retain jurisdiction over its operations pursuant to 49 U.S.C. §10501(b)(2).

Respectfully submitted,
Attorneys for Boston Surface
Railroad Company, Inc.,
BURNS & LEVINSON, LLP

By 

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Boston MA 02110

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Dated: June 17, 2016

EXHIBIT A

REDACTED SUMMARY OF EXECUTIVE OVERVIEW

The Executive Overview identifies the personnel and business plan of Boston Surface Railroad Company, Inc. ("BSRC"); the phases of the project, including the initial market targeted and performance enhancements to the route's infrastructure; and other potential opportunities that BSRC will pursue.

The Executive Summary describes the current status of the project, and includes market surveys, financial projections and detailed project plans for potential investors.

EXHIBIT B

PROPOSED SERVICE SCHEUDLE

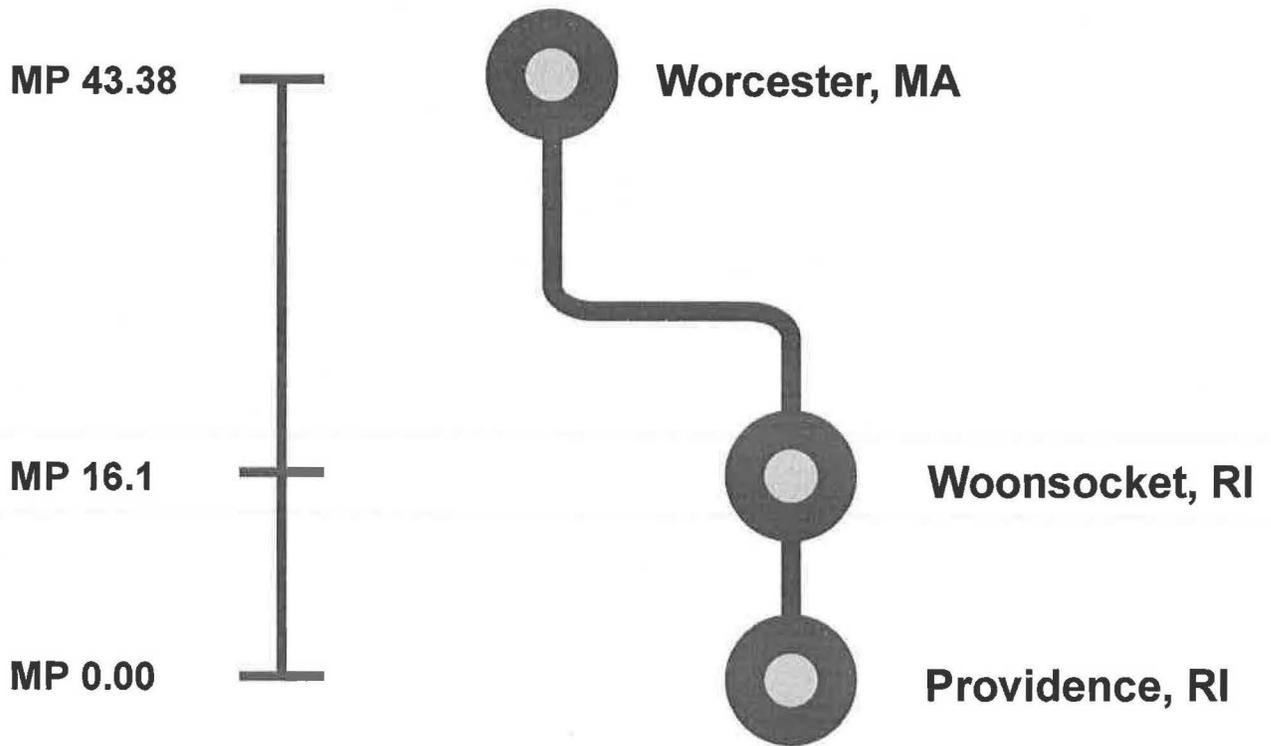
NOTE: WEEKDAY SERVICE ONLY

| Southbound | | | |
|-----------------------------|------------------------------|---------------|------------------------------|
| Depart Worcester | Arrive Woonsocket | Depart | Arrive Providence |
| | | | |
| 5:45 AM | 6:25 AM | 6:30 AM | 7:05 AM |
| 7:05 AM | 7:45 AM | 7:50 AM | 8:25 AM |
| | | 9:10 AM | 9:45 AM |
| | | | |
| | | 11:45 AM | 12:20 PM |
| | | 1:05 PM | 1:40 PM |
| | | | |
| | | 4:55 PM | 5:30 PM |
| | | 6:15 PM | 6:50 PM |
| | | 7:35 PM | 8:10 PM |
| | | | |

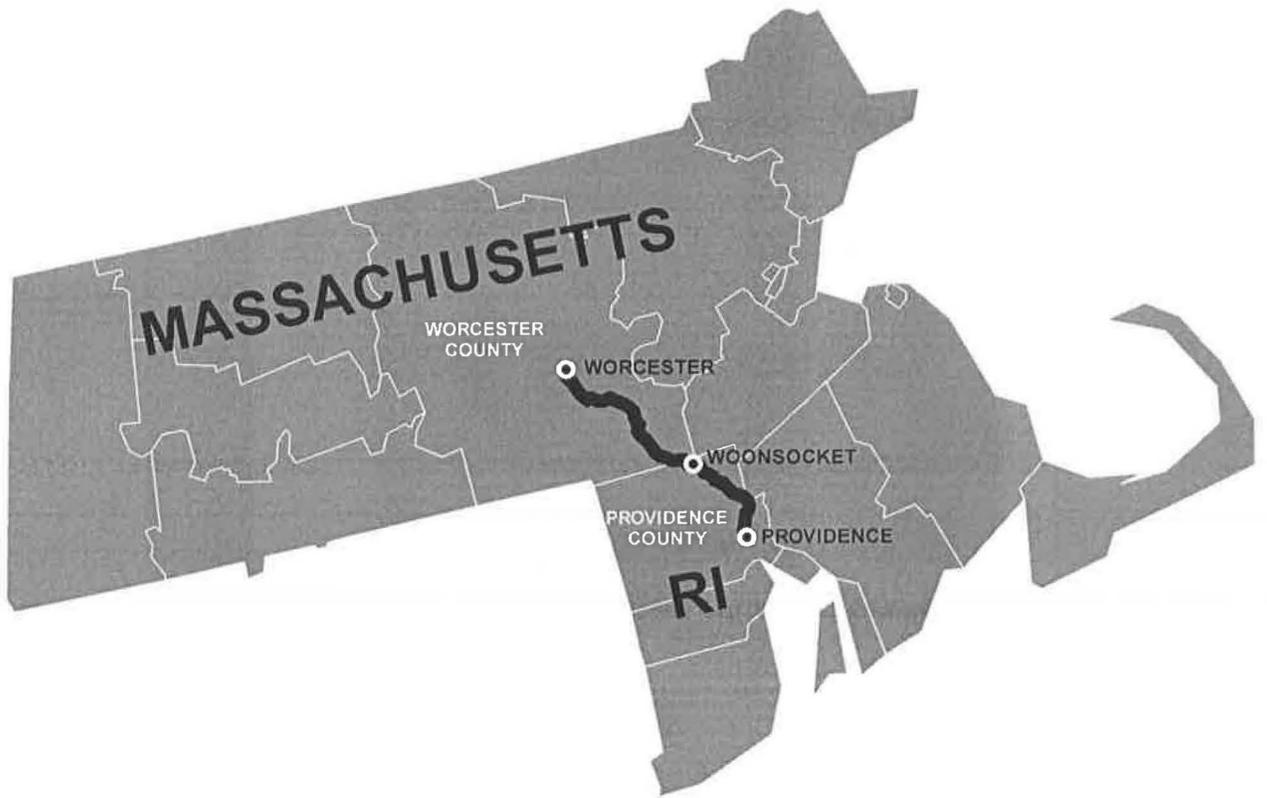
| Northbound | | | |
|------------------------------|------------------------------|---------------|-----------------------------|
| Depart Providence | Arrive Woonsocket | Depart | Arrive Worcester |
| | | | |
| 7:10 AM | 7:45 AM | | |
| 8:30 AM | 9:05 AM | | |
| 9:50 AM | 10:25 AM | | |
| | | | |
| 12:25 PM | 1:00 PM | | |
| 1:45 PM | 2:20 PM | | |
| | | | |
| 5:35 PM | 6:10 PM | 6:15 PM | 6:55 PM |
| 6:55 PM | 7:30 PM | 7:35 PM | 8:15 PM |
| 8:15 PM | 8:50 PM | | |
| | | | |

EXHIBIT C
BSRC PROPOSED ROUTE

Overall Router with Mileposts



Geographic Route by County



Geographic Route Satellite View



EXHIBIT D

REDACTED SUMMARY OF PWRR & AMTRAK AGREEMENTS

EXHIBIT D-1, PWRR AGREEMENT

The Agreement dated as of May 26, 2016 between BSRC and Providence and Worcester Railroad Company ("PWRC") is a preliminary agreement that contemplates the parties will exchange information leading to a definitive agreement as to the operation by BSRC of intercity passenger services over PWRC's right-of-way between Worcester, Massachusetts and Providence, Rhode Island. It sets forth preliminary expectations and understandings of the parties, and is non-binding. It contemplates that BSRC will complete its due diligence on or before December 31, 2016, unless such deadline is extended by mutual agreement. The Agreement grants BSRC a license to enter upon property of PWRC for purposes of performing such due diligence. The Agreement contains provisions restricting the disclosure of confidential information obtained during such due diligence.

EXHIBIT D-2, AMTRAK AGREEMENT

The Memorandum of Understanding dated as of January 23, 2015 (“MOU”) between BSRC and National Railroad Passenger Corporation (“Amtrak”) is a preliminary agreement providing for BSRC and Amtrak to work together to develop sufficiently detailed business plans to allow each party to determine whether to proceed with a business arrangement whereby BSRC would operate passenger rail service between Worcester, Massachusetts, and Providence, Rhode Island, that would require: (i) travel on and use of Amtrak-owned infrastructure, including trackage, signal systems, and stations; (ii) possible augmentation of existing Amtrak infrastructure, such as the installation of new switches; and (iii) the use of Amtrak services such as dispatching and police protection. The MOU includes a confirmation that Amtrak is under no statutory or contractual obligation to accommodate BSRC in order for BSRC to provide such service.

The MOU provides that it is not legally binding and that the parties contemplate entering into a definitive agreement if they are able to reach agreement on Amtrak’s accommodation of the proposed service by BSRC, but that they are not obligated to enter into any such definitive agreement.

Simultaneously with the execution of the MOU, BSRC and Amtrak entered into a Non-Disclosure Agreement.

EXHIBIT E

CERTIFICATE OF VINCENT J. BONO

I, Vincent J. Bono, hereby depose and state that I have reviewed the foregoing Petition for Exemption and that the statements of fact set forth therein are truthful and accurate to the best of my knowledge, information, and belief as President of Boston Surface Railroad Company Inc., a Massachusetts corporation.

Singed under the pains and penalties of perjury this 8th day of June, 2016.



Vincent J. Bono

COMMONWEALTH OF MASSACHUSETTS

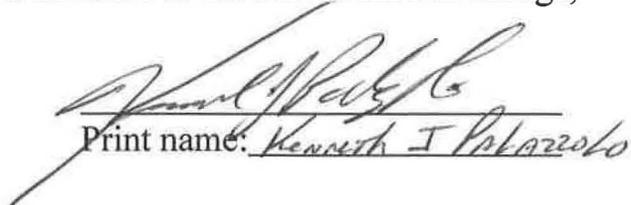
Norfolk, ss.

On this 8th day of June, 2016, before me, the undersigned notary public, personally appeared Vincent J. Bono, proved to me through satisfactory evidence of identification, which was:

X personal knowledge X Massachusetts drivers license
____ other (describe) _____

to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as President of Boston Surface Railroad Company Inc., a Massachusetts corporation, and swore or affirmed that the contents of such document are truthful and accurate to the best of his knowledge, information and belief.

 **KENNETH JOSEPH PALAZZOLO**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 21, 2017



Print name: Kenneth J Palazzolo

My commission expires:

SURFACE TRANSPORTATION BOARD

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**BOSTON SURFACE RAILROAD COMPANY, INC.
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CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. §1104.12, I certify that I have this day served a copy of Boston Surface Railroad Company, Inc.'s (1) Motion for Protective Order with Exhibits 1, 2, 3-A and 3-B [Exhibits 2, 3-A and 3-B are confidential sensitive documents filed under Seal], and (2) Petition for Partial Exemption from 49 U.S.C. Subtitle IV with Exhibits A through E, upon the Board through the e-filing service. There are no parties to serve at this time.

Date: June 17, 2016



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Railroad Company, Inc.