



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

239032

**STB DOCKET NO. FD 35943**

**ENTERED**  
Office of Proceedings  
August 14, 2015  
Part of  
Public Record

**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
- ACQUISITION EXEMPTION -  
CERTAIN ASSETS OF PAN AM SOUTHERN LLC**

**VERIFIED NOTICE OF EXEMPTION PURSUANT TO  
49 C.F.R. § 1150.41, ET SEQ.**

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

**ATTORNEYS FOR MASSACHUSETTS  
DEPARTMENT OF TRANSPORTATION**

**Dated: August 14, 2015**

**FEE RECEIVED  
August 14, 2015  
SURFACE  
TRANSPORTATION BOARD**

**FILED  
AUGUST 14, 2015  
SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. FD 35943

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF PAN AM SOUTHERN LLC

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. § 1150.41, *ET SEQ.*

Pursuant to 49 C.F.R. § 1150.41, *et seq.*, the Massachusetts Department of Transportation (“MassDOT”), considered by the Board to be a non-operating passenger rail common carrier by virtue of its possession of as-yet-unexercised interstate passenger service rights on an unrelated rail line in western Massachusetts,<sup>1</sup> hereby files this verified notice of exemption to acquire from Pan Am Southern (“PAS”) certain railroad assets comprising the so-called “Adams Branch” extending from Engineering Station 739+20 in Adams, MA, and Engineering Station 981+45 in North Adams, MA. The rail line segment, a distance of approximately 4.6 route miles, is referred to herein as the “Line,” and the assets (track, right-of-way, and related personal property) along the Line that MassDOT proposes to acquire shall be referred to herein as the “Railroad Assets.”

MassDOT will acquire the Railroad Assets subject to PAS’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

<sup>1</sup> See Massachusetts Department of Transportation – Acquisition and Operation Exemption – Certain Assets of Housatonic Railroad Company, Inc., Docket No. 35866 (STB served May 22, 2015) (“MassDOT-Housatonic”).

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. Exempt. – 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. The exemption-notice-and-motion-to-dismiss process that MassDOT has invoked here will allow the Board to determine in advance of MassDOT’s acquisition of the Railroad Assets that the transaction, as structured under the governing agreements, does not require Board authorization pursuant 49 U.S.C § 10902, or, as is the case here, the related class exemption.

In accordance with the requirements of 49 C.F.R. § 1150.43, MassDOT submits the following information:

**Advance Notice (Posting): 49 C.F.R. § 1150.42(e)**

The proposed transaction is not expected to result in the transfer or acquisition of common carrier rights and obligations. In any event, MassDOT would not conduct freight operations over the Railroad Assets and conducts no common carrier operations of any sort elsewhere, and, therefore, MassDOT’s prospective annual common carrier revenues would not exceed \$5 million. Accordingly, the advance notice requirements of 49 C.F.R. § 1150.42(e) are inapplicable here. See Certification attached as Exhibit A.

**Full name and address of applicant: 49 C.F.R. § 1150.43(a)**

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

**Applicant's Representative: 49 C.F.R. § 1150.43(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. § 1150.43(c)**

Pursuant to a Purchase and Sale Contract executed as of June 26, 2015, MassDOT has secured the right to purchase PAS's rights, title and interest in the right-of-way, trackage and related assets associated with the Line, subject to PAS's retained exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight railroad operating easement.

**Operator of the property: 49 C.F.R. § 1150.43(d)**

PAS will retain a permanent freight easement over the Railroad Assets permitting it to continue to provide common carrier freight service over the Line. MassDOT will not acquire any freight operating rights. However, under the terms of the governing agreements, MassDOT will be entitled to conduct entirely intrastate passenger rail excursion service over the Railroad Assets, which excursion operations are outside of the scope of the Board's jurisdiction.<sup>2</sup>

**Summary of the proposed transaction: 49 C.F.R. § 1150.43(e)**

The name and address of the railroad transferring its ownership interest in the Railroad Assets:

Pan Am Southern LLC  
ATTN: General Manager  
1700 Iron Horse Park  
North Billerica, MA 08162

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<sup>2</sup> See, e.g., Denver & Rio Grande Railway Historical Foundation – Petition for Declaratory Order, Docket No. FD 35496 (STB served August 18, 2014), slip op. at 10 (and cases cited therein).

MassDOT, an instrumentality of the Commonwealth of Massachusetts, will acquire the Railroad Assets, consisting generally of PAS's right, title and interest in the underlying right-of-way and related land interests; the trackage and other railroad physical plant located upon or along the right-of-way (subject to PAS's retaining an exclusive and perpetual right to provide freight common carrier service); and other, related assets associated with the Line. The trackage component of the Railroad Assets extends from Engineering Station 739+20 in Adams, MA, and Engineering Station 981+45 in North Adams, MA, a distance of approximately 4.6 route miles. PAS will retain an exclusive freight rail common carrier service easement over the Railroad Assets at the time that those assets are conveyed to MassDOT.

Although the subject transaction could be consummated at the parties' discretion as of September 13, 2015, thirty days after the filing of this notice, MassDOT and PAS have agreed as part of this transaction to an escrow arrangement which will hold the purchase price for the assets and the Deed and other documents related to the conveyance of the Railroad Assets, pending a Board decision on the simultaneously-filed motion to dismiss. This "closing in escrow" arrangement will accomplish the commitment of state funds authorized to be expended before the end of MassDOT's fiscal year, which ended prior to the date that the Board may be expected to act on MassDOT's motion to dismiss.<sup>3</sup> Actual transfer of ownership of the subject Railroad Assets would not occur until a later date, after the Board has ruled on MassDOT's motion to dismiss.

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<sup>3</sup> MassDOT's simultaneously-filed motion to dismiss discusses this escrow arrangement in greater detail, and includes the specific terms of the escrow arrangement.

**Map: 49 C.F.R. § 1150.43(f)**

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

**Certification of Class III status: 49 C.F.R. § 1150.43(g)**

Pursuant to the terms of the proposed transaction, MassDOT would be precluded from conducting freight rail operations over the subject Railroad Assets. Therefore, MassDOT will earn no freight service revenues, and would not in any event earn revenues from freight operations that would exceed those of a Class III railroad. Although found to be, nominally, a non-operating passenger rail common carrier with respect to a recently-concluded railroad assets transaction pursuant to MassDOT-Housatonic, MassDOT earns no common carrier passenger revenues. In keeping with the Board's regulations, MassDOT has supplied herewith certification (attached as Exhibit A) that, because MassDOT performs no rail services, its rail common carrier revenues would not exceed those that would qualify it as a Class III carrier.

**Transactions imposing interchange commitments: 49 C.F.R. § 1150.43(h)**

The proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

**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).

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 PAS 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. § 1150.44**

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

Respectfully submitted,



Robert A. Wimbish

Thomas J. Litwiler

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 920

Chicago, IL 60606-2832

Phone: (312) 252-1504

Facsimile: (312) 252-2400

**ATTORNEYS FOR MASSACHUSETTS  
DEPARTMENT OF TRANSPORTATION**

Dated: August 14, 2015

## **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.

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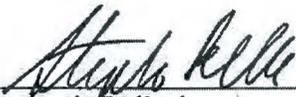
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**EXHIBIT A**

**CERTIFICATION**

CERTIFICATION

I, <sup>Stephanie</sup>~~Pollack~~, hereby certify on behalf of the Massachusetts Department of Transportation ("MassDOT") that MassDOT's projected annual revenues 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).

  
\_\_\_\_\_  
Stephanie Pollack  
Secretary and Chief Executive Officer  
Massachusetts Department of Transportation

August 11, 2015

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**EXHIBIT B**

**MAP**



Map data ©2015 Google 1 mi

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**EXHIBIT C**

**CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 35943

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MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
– ACQUISITION EXEMPTION –  
CERTAIN ASSETS OF PAN AM SOUTHERN LLC

The Massachusetts Department of Transportation (“MassDOT”), a non-operating passenger rail common carrier by virtue of its possession of as-yet-unexercised passenger rail service rights on an unrelated rail line in western Massachusetts,<sup>1</sup> has filed a verified notice of exemption under 49 C.F.R. § 1150.41, to acquire from Pan Am Southern LLC (“PAS”) certain railroad assets and associated right-of-way (collectively, the “Railroad Assets”) known generally as the Adams Branch extending from Engineering Station 739+20 in Adams, MA, and Engineering Station 981+45 in North Adams, MA, an approximate distance of 4.6 route miles.

MassDOT states that its acquisition of the Railroad Assets will promote continued use (and potential growth) of freight traffic due in part to physical plant improvements that MassDOT is already undertaking, and will facilitate use of the property for railroad passenger excursion operations.

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, and that PAS will retain the exclusive right, under the terms of an easement, to provide freight service to existing and future

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<sup>1</sup> Massachusetts Department of Transportation – Acquisition and Operation Exemption – Certain Assets of Housatonic Railroad Company, Inc., Docket No. 35866 (STB served May 22, 2015).

customers.<sup>2</sup> According to MassDOT, the agreements governing the subject asset sale and post-transaction railroad operations preclude MassDOT from interfering materially with PAS's 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.

MassDOT certifies that, because it will conduct no freight operations on the line segment being acquired and because it has no other common carrier operations or revenues, its revenues derived from common carriage 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 after September 28, 2015, which is after the subject exemption's effective date of September 13, 2015.

The notice is filed under 49 C.F.R. § 1150.41. 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 35943, 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.

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<sup>2</sup> 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.

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

Decided: \_\_\_\_\_, 2015

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

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.



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Stephanie Pollack  
Secretary and Chief Executive Officer  
Massachusetts Department of Transportation

August 11, 2015