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January 23, 2015
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35866

**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.**

**SUPPLEMENTAL INFORMATION IN SUPPORT OF
MOTION TO DISMISS**

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DEPARTMENT OF TRANSPORTATION**

Dated: January 23, 2015

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BACKGROUND

On October 16, 2014, the Commonwealth of Massachusetts (the “Commonwealth”), acting by and through its Department of Transportation (“MassDOT”), invoked the Board’s class exemption procedures at 49 C.F.R. part 1150, subpart D, to acquire certain railroad-related assets of Housatonic Railroad Company, Inc. (“HRRC”) and Maybrook Railroad Company (“MRC”), and it simultaneously submitted a motion to dismiss the class exemption filing as involving a transaction that does not require Board authorization.¹ MassDOT’s class exemption filing (the “October 16 NOE”) was specifically limited to MassDOT’s acquisition of certain physical and real property comprising the “Railroad Assets,”² subject, of course, to HRRC’s reservation of a permanent, exclusive, freight operating easement. See October 16 NOE at 4-6, “Summary of the proposed transaction.” The October 16 NOE indicated, as information, that Mass DOT would be “entitled in

¹ MassDOT explained in the motion to dismiss why it believed that MRC is not a rail carrier, and, accordingly, why it was not listed in the proceeding caption.

² See October 16 NOE at 2; motion to dismiss at 4 (general description of the term “Railroad Assets”) and 12-13 (further discussion of the scope of the “Railroad Assets”).

the future to initiate (itself, or through a designated third party) intercity passenger service . . . over the Railroad Assets.” October 16 NOE at 4, “Operator of the property.”

The Board graciously accommodated the parties’ request for expedited consideration of the motion to dismiss in a decision served on December 24, 2014 (the “December 24 Decision”) in the course of what many Board observers regarded as an unprecedented flurry of Entire Board decisions in the twilight of 2014. The December 24 Decision purported to grant “in part” the motion to dismiss as it pertained to MassDOT’s acquisition of the Railroad Assets (i.e., the physical assets and right-of-way described in the notice of exemption filing). It appears that the Board inferred that MassDOT also sought authority to exercise its contractual right to conduct rail passenger service over the Railroad Assets, and so the Board stated that it would withhold a decision on whether to dismiss this perceived additional element of the October 16 NOE pending information on the nature of the passenger operations that MassDOT might someday exercise to determine whether the entry provisions of 49 U.S.C. § 10901 would apply.

On a related note, the Board concluded that it lacked sufficient information to determine whether or not MRC should be a party to this proceeding. Specifically, the Board directed MassDOT to supply additional information concerning whether or not MRC had acquired passenger service rights from HRRC as a consequence of the 2013 asset transfer transaction under Housatonic Railroad Company, Inc., Maybrook Railroad Company, and Housatonic Transportation Company – Intra-Corporate Family Transaction Exemption, Docket No. FD 35723 (STB served Mar. 22, 2013).

SUPPLEMENTAL INFORMATION AND CLARIFICATION

MassDOT hereby supplements the record as requested. As set forth herein, MassDOT concedes that the passenger operating rights provisions included in the 2014 Operating Agreement would entitle MassDOT to provide interstate passenger service that the Board likely would conclude – (1) is common carrier in nature in keeping with agency precedent; and, therefore, (2) that such service would be subject to the Board’s licensing authority under section 10901.

But as is also explained herein, MassDOT believes that the Board dismissed the October 16 NOE in its entirety, because that filing purposely excluded from its scope MassDOT’s exercise of its right at some future date to provide passenger service over the Railroad Assets. To eliminate any confusion as to MassDOT’s ongoing legal status as a noncarrier, MassDOT clarifies that it purposely did not seek, and does not seek, to include within the scope of its October 16 NOE the authority under federal law to provide interstate, common carrier passenger service. Thus, to the extent that Board’s December 24 Decision may have construed the October 16 NOE as signaling MassDOT’s intent at this time to obtain Board authority to conduct common carrier passenger operations, MassDOT respectfully requests that the Board reconsider and construe the relevant provisions of the 2014 Operating Agreement as contemplating a downstream transaction intended to occur in the indeterminate future – a transaction for which MassDOT (or its assignee) will obtain advance Board authority at an appropriate later date.

Alternatively, to avoid the possibility that MassDOT might be construed as a rail passenger common carrier by possessing an unexercised right to initiate common carrier passenger service over the Railroad Assets, MassDOT requests that the Board allow it to “withdraw” from the scope of the October 16 NOE (as presently construed by the Board) MassDOT’s acquisition of passenger

service rights. If the Board grants this alternative relief, MassDOT again would acknowledge that it or its assignee would be required in advance of the commencement of common carrier passenger service to obtain the requisite Board authority under section 10901.

Finally, although arguably moot if the Board accepts MassDOT's clarification or grants MassDOT's request to withdraw the passenger service rights from the scope of the October 16 NOE, MassDOT nevertheless supplements the record to affirm MRC's noncarrier status in Massachusetts, demonstrating that MRC did not acquire and does not possess any passenger service rights over the HRRC-operated lines in Massachusetts (HRRC holds such rights, and will continue to hold such rights unless or until at some undetermined future point MassDOT elects to assume those rights), and, thus, that MRC has no passenger service rights to convey to MassDOT.

I. PASSENGER SERVICE IS A PART OF MASSDOT'S LONG-TERM GOALS

In its motion to dismiss the October 16 NOE, MassDOT expressed a strong public interest in acquiring the subject Railroad Assets to preserve the corridor for the future initiation of Commonwealth-sponsored passenger rail service.³ MassDOT had good reason to incorporate into its Railroad Assets transaction agreements certain provisions enabling MassDOT (or its assignee) at some point that is as yet "years away"⁴ to become a passenger rail service provider if it so chooses, rather than to leave the passenger service rights negotiations for another day. As it explained in its motion to dismiss, MassDOT does not wish to be considered a rail common carrier for any purposes.⁵ MassDOT intends to serve as the owner of the land and railroad assets, and as a conduit through which, in the future, now-dormant and unexercised passenger rail service rights can pass

³ See, e.g., motion to dismiss at 25-26.

⁴ Id., 27.

⁵ Id., 28.

(via assignment) to a third-party operator (whether MBTA, HRRC, or some other entity) that would take on the actual task of providing interstate passenger service.⁶

In securing a right to provide passenger service, MassDOT agreed that HRRC would be entitled to provide passenger service in its own name if it wanted to (and in accordance with HRRC's long-established common carrier rights and obligations), provided that HRRC's provision of such passenger service does not unreasonably interfere with or impede MassDOT's ability to initiate Commonwealth-sponsored passenger service later on.⁷ Accordingly, HRRC is free in the interim to provide common carrier passenger service if it chooses to do so. And, to be clear, the passenger service arrangements negotiated between MassDOT and HRRC are not intended, and do not serve, to undercut or impede the independent statutory rights of the National Railroad Passenger Corporation ("Amtrak") to use the route as part of Amtrak's provision of intercity service (subject, of course, to the establishment of an appropriate compensation arrangement).

II. THE PASSENGER RIGHTS PERMIT FOR COMMON CARRIER SERVICE

The Board noted that MassDOT has negotiated for the purchase of the Railroad Assets as part of a multi-step plan to see passenger service restored to Massachusetts' Berkshire region. Board-served notice of October 31, 2014 at 1-2. Such passenger service might simply constitute

⁶ Id., 30, n.50 (discussing MassDOT's assignment rights under the 2014 Operating Agreement).

⁷ Id., 17 ("During this indefinite period during which the parties anticipate that the Railroad Assets will fall under the 2014 Operating Agreement's 'HRRC Only Rail Property' designation, HRRC will have nearly unlimited latitude to schedule its services and operate its trains as it sees fit (including the provision of non-Commonwealth-subsidized, HRRC-supplied rail passenger service, should HRRC elect to undertake such service in the future), subject only to a protective restriction that HRRC train scheduling and operations do not preclude the future initiation of regularly-scheduled, Commonwealth-sponsored passenger train service and MassDOT's right of 'Occasional Use'") (footnotes omitted).

“mass transportation” (i.e., non-jurisdictional commuter rail service). But MassDOT acknowledges that the future service it contemplates is likely to be interstate and non-commuter in nature.

In its December 24 Decision, the Board also observed that MassDOT, HRRC and MRC had reached an agreement governing the transfer of passenger operating rights in Connecticut to MassDOT.⁸ As with the arrangements in Massachusetts, the subject agreement – the “Passenger Operating Rights Grant: Housatonic Railroad Company, Inc. to Massachusetts Department of Transportation” (the “Connecticut Agreement”) – contemplates MassDOT’s future exercise of those rights in Connecticut, permitting HRRC to provide passenger service until such time as MassDOT were to invoke the Connecticut Agreement and initiate rail passenger service itself or by way of an assignee. As with the Railroad Assets in Massachusetts, neither MassDOT nor its assignee would seek to commence common carrier passenger service under the terms of the Connecticut Agreement absent advance Board authority. And, as with the Railroad Assets, MassDOT has elected (for good reason, it believes) not to seek Board authority for the Connecticut Agreement passenger rights at this time in light of the distant time horizon for the initiation of passenger service.

MassDOT hereby clarifies for purposes of this record that the contractual rights MassDOT has secured via the 2014 Operating Agreement and the Connecticut Agreement contractually entitle – but do not authorize – the Commonwealth to establish a common carrier passenger service over the rail routes identified in those agreements. As discussed below, MassDOT envisioned the exercise of passenger rights as the final step in a series of future arrangements paving the way for intercity passenger service to Pittsfield. MassDOT considers it premature at best to seek Board

⁸ See *id.*, 5, n.6.

authority for the passenger service rights at this time, but agrees that its rights must remain dormant unless or until MassDOT or its assignee invokes the entry provisions of section 10901.

Finally, in footnote 4 on page 5 of the December 24 Decision, the Board stated that it was not clear whether the rights that MassDOT is acquiring that would entitle it to provide occasional passenger service “in connection with civil, sports, or other events” was “purely intrastate or would include events located outside of Massachusetts.” The Board did not indicate whether it expected MassDOT to supply additional information on this issue, also. Nevertheless, MassDOT explains that the 2014 Operating Agreement governing MassDOT’s occasional use arrangement entitles the Commonwealth to offer non-regularly-scheduled service (through another operator) as mass transportation provided by a state government entity, not interstate common carrier passenger service. The Commonwealth envisions that the occasional service it would be able to offer via HRRC or a third party, which is not expected to cross state lines, would be mass transportation in nature (as is, for example, MBTA’s occasional provision of seasonal/special occasion passenger train service for events such as New England Patriots games at Foxboro, Massachusetts, operating today over lines owned by CSX Transportation, Inc.). MassDOT understands, however, that it would not matter for purposes of Board jurisdiction if the occasional mass transportation passenger service happened to cross the Massachusetts-Connecticut state line.

III. MASSDOT PURPOSELY HAS NOT SOUGHT BOARD AUTHORIZATION TO PROVIDE COMMON CARRIER PASSENGER SERVICE AT THIS TIME

For a noncarrier such as MassDOT to engage in a transaction that would cause it to become a federally-regulated carrier, the noncarrier must possess both the state law contractual right to engage in the subject transaction as well as the requisite advance authority from the Board pursuant to the applicable regulatory procedures. See, e.g., R.J. Corman Railroad Property, LLC –

Acquisition Exemption – NC Railroad, Inc., FD 35363, slip op. at 4 (STB Served Jun. 29, 2011) (the lawful acquisition and operation of a line or railroad requires Board approval and possession of the necessary contractual rights to engage in the transaction); cf. Chicago, Lakeshore and South Bend Railway Company – Acquisition and Operation Exemption – Norfolk Southern Railway Company, FD 34960, slip op. at 4 (STB served Feb. 14, 2008) (Board authorization for the acquisition of a line of railroad does not make ownership mandatory; the proponent of the transaction must also have the contractual rights to effectuate its proposal); General Railway Corporation, D/B/A Iowa Northwestern Railroad – Exemption for Acquisition of Railroad Line – In Osceola and Dickinson Counties, Iowa, FD 34867, slip op. at 4 (STB served Jun. 15, 2007) (same).

Mere possession of a contract right to acquire and/or operate as a common carrier over a railroad line, absent the prerequisite Board authority to exercise that right, is insufficient for the contract right holder legally to “consummate” the transaction and to become a common carrier. See, e.g., Horsehead Corporation – Petition for Acquisition and Operation Exemption – Chestnut Ridge Railway Company, FD 34481, at p. 2 (STB Served March 12, 2004) (the Board granted retroactive regulatory authority to a previously-executed transaction for which the proponent realized that it had failed to obtain advance Board authorization to conduct common carrier operations). Put differently, the exercise of a contractual right for which a Board “license” is required but which has not been obtained constitutes an unauthorized transaction as a matter of law. Parksierra Corporation (successor in interest to California Northern Railroad Company Limited Partnership) – Lease and Operation Exemption – Southern Pacific Transportation Company, FD 34126, at p. 5 (STB Served December 26, 2011) (failure to obtain the necessary Board approval

prior to providing service over a railroad line under a trackage rights agreement constituted an “unauthorized” transaction).

Here, MassDOT is acquiring a contract right regarding passenger service, and it has determined to keep that right dormant for the foreseeable future. Accordingly, MassDOT is not seeking Board authority in connection with the passenger service operations at this time, and so MassDOT purposely avoided the possibility that it would be considered a rail common carrier in connection with its dormant passenger rights by excluding them from the scope of this proceeding.

In the opening paragraph of the December 24 Decision, the Board states that MassDOT filed in this proceeding a notice of exemption “to acquire the physical assets and passenger rights” currently belonging to HRRC and MRC. MassDOT respectfully submits that the Board’s description of the scope of the October 16 NOE filing is incorrect in part. MassDOT did invoke the class exemption procedures to acquire the railroad physical property comprising the Railroad Assets. But MassDOT specifically excluded from the scope of its October 16 NOE the passenger rights over the Railroad Assets. For example, the introductory section and “Summary of the proposed transaction” section of MassDOT’s October 16 NOE filing make no mention of passenger rights or passenger operations.⁹ The draft caption summary appended to the October 16 NOE as Exhibit C also makes no mention of passenger rights or operations.

⁹ The section of the October 16 NOE entitled “Operator of the property” (page 4) includes the following passage: “However, MassDOT will be entitled in the future to initiate (itself or through a designated third party) intercity passenger service and (potentially) regional commuter rail service over the Railroad Assets.” That passage was included in the interest of fully disclosing a downstream event that MassDOT anticipated would ultimately flow from the Railroad Assets transaction, but it was not meant to signify that the subject passenger operating rights should be considered as among the components of the Railroad Assets.

In an effort to contextualize the passenger operating rights as beyond the scope of the current Board proceeding but potentially the subject to a future STB proceeding, MassDOT explained in its motion to dismiss that its “vision for the future establishment of rail passenger service over all or certain portions of the Railroad Assets at some as-yet-undetermined future date contemplates either regional, intercity passenger train service, commuter train service or both. Clearly, if MassDOT were to elect to initiate passenger train service itself (it is more likely to delegate the task and responsibilities to a third-party service provider or to HRRC), MassDOT acknowledges that it would have to obtain appropriate STB authorization in advance.”¹⁰

Drawing from MassDOT’s filings, the Board stated in the notice of exemption served and published in the Federal Register on October 31, 2014, that, “MassDOT states that the acquisition of the Line is one step in what MassDOT anticipates will be an involved, multi-step process that ultimately will lead to the establishment of a new railroad passenger service route in the Northeast. MassDOT states that, pursuant to a draft Purchase and Sale Contract, MassDOT has secured the right to purchase MRC’s and HRRC’s respective rights, title, and interest in the right-of-way, trackage, and other physical assets (such as signboard and fiber optics unrelated to the provision of common carrier freight service) associated with the Line, subject to HRRC’s retained exclusive, irrevocable, perpetual, assignable, divisible, licensable, and transferable freight railroad operating easement.” Both sentences, which were not included in MassDOT’s draft caption summary, are

¹⁰ Motion to dismiss at 28. This language intentionally tracks the standard language in class exemption filings submitted under 49 C.F.R. § 1150.31, et seq., regarding the Board’s historic preservation requirements and future events not covered by the notice of exemption. See October 16 NOE at 7 (“Under 49 C.F.R. § 1105.8(b)(1), MassDOT’s proposed acquisition of the Railroad Assets . . . also is exempt from historic preservation reporting requirements. Advance Board approval would be required if HRRC were to choose to discontinue or abandon any service.”)

entirely accurate. In fact, the second sentence in the quoted passage correctly describes the initial “step” of the “multi-step process” that was the intended scope of the October 16 NOE.

As it hopes the foregoing discussion makes clear, MassDOT provided information in its October 16 NOE concerning the passenger service rights in the interest of disclosing to the Board, and distinguishing, the Commonwealth’s near-term and long-term objectives manifested in its agreements with HRRC and MRC. This supplemental filing should provide necessary clarity concerning the October 16 NOE’s appropriate scope.

IV. THE BOARD SHOULD, IN THE ALTERNATIVE, ALLOW MASSDOT TO WITHDRAW THE PASSENGER RIGHTS FROM THE SCOPE OF ITS EXEMPTION FILING

MassDOT submits that because the October 16 NOE covered MassDOT’s acquisition of the Railroad Assets and did not cover MassDOT’s acquisition of a right to initiate passenger service over the Railroad Assets, the Board’s December 24 Decision actually dismissed the October 16 NOE in full, not in part. Should the Board conclude, despite MassDOT’s assertions to the contrary, that the October 16 NOE covers the transfer of passenger rights over the Railroad Assets, then MassDOT requests that the Board permit MassDOT leave to withdraw as premature its unintended invocation of the class exemption procedures for the subject passenger service rights or, if appropriate, to modify the scope of the class exemption. Such a partial withdrawal or a modification, if necessary, would be in keeping with Board precedent,¹¹ and would be consistent

¹¹ See, e.g., American Surface Lines, LLC – Acquisition and Operation Exemption – Mikrut Properties, LLLP, FD 35741 (STB served Nov. 26, 2013) (allowing the exemption notice filer to withdraw the portion of its exemption filing with respect to a specific track segment identified in the original exemption notice over which the filer later determined it did not intend to “consummate the exemption”); CSX Transportation, Inc. – Abandonment in Vermillion County, OH, Docket No. AB-55 (Sub-No. 193) (granting CSXT’s request to withdraw its request for authority to abandon a portion of a longer line segment that was the subject of CSXT’s original abandonment application);

with the regulatory status of MassDOT's rights under the Connecticut Agreement, which clearly were excluded from the October 16 NOE.

MassDOT requests this relief, in the alternative out of an abundance of caution to avoid any confusion about whether the acquisition of a right to conduct common carrier passenger operations (albeit a right that MassDOT does not intend to exercise for several years, if ever) combined with advance Board authority to conduct such passenger operations automatically confers upon MassDOT a rail common carrier status. MassDOT believes, however, that it would become a rail common carrier for purposes of passenger service only at such time as it actually exercises its passenger service rights pursuant to Board authority, or, much more likely, that MassDOT will never become a passenger common carrier because it will assign its contract rights to another prior to the commencement of common carrier passenger operations, subject, of course, to that third party obtaining the requisite Board authority at that time to initiate such operations.

V. MRC HAS NO PASSENGER RIGHTS IN MASSACHUSETTS AND, THUS, HAS NO SUCH RIGHTS TO CONVEY TO MASSDOT

In response to the Board's request for additional information to clarify MRC's legal status in connection with the Railroad Assets and the passenger service contract rights that MassDOT is acquiring, MassDOT turned to MRC and HRRC. In preparing its October 16, 2014 filings in this proceeding, MassDOT understood that MRC was the holder of certain property interests and that it had no rights to conduct common carrier operations of any sort (freight or passenger) over the Railroad Assets. The attached letter from HRRC's and MRC's legal counsel confirms MassDOT's

The Alabama Great Southern Railroad Company – Discontinuance Exemption – In Saint Bernard Parish, LA, Docket No. AB-290 (Sub-No. 323X) (STB served Dec. 13, 2013) (granting railroad's request to alter, by modification, the scope of its exemption request from rail abandonment to the more limited relief of discontinuance of service).

understanding of the facts – MRC did not acquire any passenger operating rights in connection with the 2013 transaction covered by the FD 35723 exemption filing, and, thus, MRC has no passenger rights over the Railroad Assets to grant to MassDOT.

The attached letter clarifies MRC's limited role in the Railroad Assets transaction, and also should allow the Board to find that MRC is not a common carrier for any purpose in connection with the Railroad Assets and that MRC need not be a named party in the caption of this proceeding.

CONCLUSION

The supplemental information supplied above clarifies that the passenger rights that MassDOT has negotiated for in connection with the Railroad Assets transaction are sufficiently broad that MassDOT (or its assignee) could invoke them to provide common carrier passenger service at such time in the future as the Commonwealth is in the position to sponsor such service.

But MassDOT respectfully submits that the Board's focus on the subject passenger rights, while entirely understandable, is premature. The exercise of such rights is a downstream step in what the Board has recognized is a complex "multi-step" process geared toward restoring passenger service to the Berkshire region of Massachusetts. MassDOT's acquisition of passenger service rights was not part of the Railroad Assets that were the subject of the October 16 NOE. MassDOT expects (and understands) that its passenger rights would remain dormant for the time being, and, its decision not to invoke Board authorization for the acquisition of those rights was designed to avoid any confusion as to whether MassDOT already is assuming the mantle of a passenger common carrier at this time. MassDOT acknowledges that it (or its assignee) would need to obtain Board authorization to exercise its now-dormant passenger rights to provide common carrier service once the circumstances are in place to allow for such passenger service. Accordingly, MassDOT

respectfully requests that the Board find that the transaction encompassed by the October 16 NOE did not include MassDOT's acquisition of passenger operating rights over the Railroad Assets, and, consistent with such a finding, clarify that the October 16 NOE is dismissed in full, not in part.

In the alternative, if the Board disagrees with MassDOT's position that it did not seek Board authority at this time to conduct common carrier passenger service over the Railroad Assets (a downstream event), MassDOT requests that the Board allow MassDOT to withdraw the acquisition of passenger rights from the perceived scope of the October 16 NOE for the reasons supplied above.

Finally, the supplemental evidence supplied herein should clarify MRC's regulatory status as it bears on the subject Railroad Assets transaction, and, specifically, that MRC did not obtain in 2013 and has no passenger service rights over the Railroad Assets to convey to MassDOT.

Respectfully Submitted,



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Dated: January 23, 2015

COMPLIANCE WITH MASSACHUSETTS ENVIRONMENTAL POLICY

The Commonwealth of Massachusetts has established a strong policy of minimizing the environmental impacts associated with documents prepared by or on behalf of the Commonwealth. 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, this supplemental 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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January 20, 2015

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20324

Re: Docket Number FD 35866
Massachusetts Department of Transportation – Acquisition Exemption – Certain
Assets of Housatonic Railroad Company, Inc.

Dear Ms. Brown:

In the its decision dated December 24, 2014, the Board directed Massachusetts Department of Transportation (“MassDOT”) to obtain from Housatonic Railroad Company, Inc. (“HRRC”) information concerning whether Maybrook Railroad Company (“MRC”) obtained passenger operating rights from HRRC in the 2013 transaction which was the subject of the Notice of Exemption filed under Docket Number FD 35723, and to supply that information to the Board by way of a supplemental filing in the above-referenced proceeding. MassDOT has requested that additional information, and following is HRRC’s and MRC’s collective response.

The 2013 transaction between HRRC and MRC was intended to be a real estate transaction, by the terms of which MRC obtained ownership of the right of way property, excluding the rail, ties, anchors, tie plates, switch timbers, turnouts and signals affixed to the property. No railroad operating rights of any sort were transferred or intended to be transferred to MRC. The parties to the 2013 transaction did not intend for MRC to assume any common carrier status as a consequence of the transaction, and they endeavored to structure the terms of the transaction accordingly.

Had the 2013 transaction parties intended for MRC to acquire passenger operating rights, MRC would have communicated that in the Notice of Exemption. To emphasize the fact that no operating rights were being transferred, MRC referred to itself as a “non-operating carrier.” It appears that such description was incorrect, and that MRC is in fact a non-carrier with respect to its property interests in Massachusetts. In any event, it is clear that MRC did not seek authority to hold itself out as a freight or passenger rail carrier, and it did not acquire, and thus does not possess, passenger operating rights over the rail lines in Massachusetts that are the subject of the above-referenced MassDOT-HRRC proceeding. Although not explicit in the materials supplied earlier in this proceeding, such passenger operating rights in Massachusetts were, and remain, with HRRC, and they are exclusively HRRC’s rights to grant.

While MRC’s Notice of Exemption filing did not specifically mention passenger service (and common carrier passenger service rights are typically not discussed in rail line acquisition notices of exemption), MRC and HRRC believe that the intent of the filing was clear. In the first paragraph, the Notice states “HRRC will transfer ownership of a rail line in Massachusetts to MRC which HRRC would continue to operate.” The Notice thereafter discusses that HRRC operates over other lines owned by MRC and that the transfer of ownership was proposed for financial reasons. In any event, HRRC’s stated intent to continue in possession of the exclusive right to “operate” intended to exclude from the scope of the 2013 rail property transaction with MRC all operating rights, not just freight operating rights.

In sum, no passenger operating rights were transferred by HRRC to MRC. Please feel free to contact me if you require further information.

Housatonic Railroad Company, Inc.
Maybrook Railroad Company

A handwritten signature in black ink, appearing to read "Edward J. Rodriguez", with a long horizontal flourish extending to the right.

By Edward J Rodriguez
General Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2015, copies of the foregoing Supplemental Information In Support of Motion to Dismiss are being served by U.S. Postal Service first class mail upon the following parties appearing on the Surface Transportation Board's service list (available from the agency's website):

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