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SERVICE DATE – LATE RELEASE DECEMBER 21, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35314

MASSACHUSETTS COASTAL RAILROAD, LLC—ACQUISITION—
CSXT TRANSPORTATION, INC.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2 in STB Finance Docket No. 35314; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application seeking Board approval of the acquisition by Massachusetts Coastal Railroad, LLC (Mass Coastal) of a permanent rail freight easement on about 33 miles of the rail lines of CSX Transportation, Inc. (CSXT) in Massachusetts. Collectively, Mass Coastal and CSXT will be referred to as “Applicants.” If the application is approved, Mass Coastal would replace CSXT as the only railroad providing freight service on these rail lines.

In the proposed transaction (the Acquisition), which is governed by 49 U.S.C. 11323-26, Mass Coastal would acquire a rail freight easement in CSXT’s “South Coast Lines” consisting of: (1) the New Bedford Subdivision, which is 18.40 miles between milepost QN 13.40 at Cotley Junction and milepost QN 31.80 at New Bedford; (2) the Fall River Subdivision, which is 14.20 miles between milepost QNF 0.00 at Myricks and milepost QNF 14.20 at the Fall River, Massachusetts – Rhode Island state line; and (3) 0.08 miles of the North Dartmouth Industrial Track between milepost QND 0.00 and milepost QND 0.08, a total distance of approximately 32.68 miles.

The Board finds that the Acquisition is a “minor transaction” under 49 CFR 1180.2(c) and adopts a procedural schedule for consideration of the application, providing for the Board’s final decision to be issued on March 29, 2010, and to become effective on April 28, 2010.

In related matters, CSXT has agreed to sell the real estate, track, and materials in the South Coast Lines, among other property interests in other rail lines, to the Massachusetts Department of Transportation (MassDOT) and to retain a permanent freight easement over the South Coast Lines (the MassDOT Transaction). Consequently, MassDOT also filed on November 24, 2009, a notice of exemption under 49 CFR 1150.31 and a concurrent motion to dismiss the notice, in STB Finance Docket No. 35312, Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of CSX Transportation, Inc., which was served and published in the Federal Register (74 FR 65589) on December 10, 2009, to

become effective December 24, 2009. If approved, the Acquisition would occur concurrently with the MassDOT Transaction.

In a second transaction, CSXT has agreed to grant Mass Coastal certain overhead trackage rights¹ so that Mass Coastal can connect the South Coast Lines to its existing lines (the Trackage Rights Transaction). This agreement led to the concurrent filing of a notice of exemption under 49 C.F.R. 1180.2(d)(7) in STB Finance Docket No. 35314 (Sub-No. 1X), Massachusetts Coastal Railroad, LLC—Trackage Rights Exemption—CSX Transportation, Inc., which also was served and published in the Federal Register (74 FR 65592-93) on December 10, 2009, to become effective December 24, 2009.²

DATES: The effective date of this decision is December 23, 2009. Any person who wishes to participate in this proceeding as a party of record (POR) must file a notice of intent to participate no later than January 6, 2010. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by January 25, 2010. Any responses to such filings and rebuttal in support of the application must be filed by February 12, 2010. If a public hearing or oral argument is held, it will be on a date to be determined by the Board. The Board expects to issue a final decision on March 29, 2010. For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at "www.stb.dot.gov" at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John H. Broadley (representing Mass Coastal), John H. Broadley & Associates, PC, 1054 Thirty-First Street, N.W., Suite 200, Washington, DC 20007;

¹ These trackage rights are on CSXT's Middleboro Subdivision (1) between Mass Coastal's interchange tracks at Taunton, MA, at approximately milepost QN 11.6, and milepost QN 13.4, a distance of approximately 1.8 miles; and (2) between milepost QNB 13.3 and Mass Coastal's interchange tracks at Middleboro, MA, at approximately milepost QNB 20.4, a distance of about 7.1 miles, for a total distance of approximately 8.9 miles.

² The related exemptions are permissive and do not require the parties to consummate those transactions.

and (4) any other person designated as a POR on the service-list notice (to be issued as soon after January 6, 2010, as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245-0359. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Mass Coastal is a Class III rail carrier operating approximately 58.5 miles of freight lines at Taunton and between Middleboro and points on Cape Cod, all within Massachusetts. CSXT is a Class I rail carrier that owns and operates about 21,000 miles of railroad in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the Canadian Provinces of Ontario and Quebec.

Mass Coastal and CSXT have entered into a Purchase and Sale Agreement of Permanent Freight Easement (the Agreement), to be effective on May 14, 2010, by which Mass Coastal will purchase a permanent rail freight easement in the South Coast Lines. Through this sale, CSXT seeks to reduce its capital needs, rationalize its rail system, and restructure its business. In turn, Mass Coastal would replace CSXT as the carrier providing freight rail service to local customers on these lines. Applicants believe that Mass Coastal can provide more effective and personalized service to shippers on the South Coast Lines.

In the related MassDOT Transaction, MassDOT proposes to acquire certain CSXT property in two stages. The first stage—proposed to close on May 14, 2010—pertains to this application. In this closing, MassDOT would acquire from CSXT the rail assets and real estate in the South Coast Lines, among other property interests in other rail lines, and CSXT would retain a permanent freight rail easement to serve shippers on all the acquired lines.³ CSXT has agreed, with the consent of MassDOT, to sell the permanent freight easement over the South Coast Lines to Mass Coastal. CSXT will continue to interchange with Mass Coastal at Middleboro pursuant to the Trackage Rights Transaction and will consolidate its Taunton interchange (at Cotley Junction) to include traffic for the South Coast Lines.

Passenger Service Impacts. There is no passenger or commuter service over the South Coast Lines today. Applicants expect the Massachusetts Bay Transportation Authority (MBTA),

³ In a letter dated December 16, 2009, submitted in the related MassDOT Transaction proceeding (STB Finance Docket No. 35312), counsel for MassDOT informed the Board that CSXT has sent to the shippers that CSXT serves on the lines whose assets MassDOT would acquire copies of the Notice of Exemption and Motion to Dismiss that had been filed in that proceeding on November 24, 2009.

in the future, to expand its commuter system to provide service on the South Coast Lines. Applicants state that after MassDOT acquires the track, materials, and real estate of the South Coast Lines pursuant to the MassDOT Transaction, MBTA would be able to upgrade the South Coast Lines to the condition necessary for commuter service.

Discontinuances/Abandonments. Mass Coastal does not anticipate discontinuing service or abandoning any portion of the South Coast Lines.

Financial Arrangements. According to Applicants, Mass Coastal does not plan to enter into any new financial arrangements for the Acquisition and will make any payments to CSXT from cash on hand. Mass Coastal does not expect any fixed charges as a result of the Acquisition.

Time Schedule for Consummation. The Acquisition is scheduled to be consummated on May 14, 2010, concurrent with the transfer of the physical assets in the South Coast Lines to MassDOT and the reservation of a permanent freight easement by CSXT.

Public Interest Considerations. Mass Coastal believes that the Acquisition will improve the adequacy of transportation to the shipping public because, as a short line, it expects to respond more quickly and devote more attention to the local and smaller shippers on the South Coast Lines than can a large rail carrier. Mass Coastal will continue to provide the same frequency of service on these lines as CSXT currently provides⁴ and will provide more frequent service if traffic growth justifies expanded service.

As a result of the Acquisition, according to Applicants, there is not likely to be any lessening of competition, or creation of a monopoly or restraint of trade, in freight surface transportation in any region of the United States. Applicants state that the South Coast Lines are a self-contained, light density railroad line in southeastern Massachusetts currently rail-served only by CSXT and that there is truck and barge competition for the lines' traffic today. Upon consummation of the Acquisition, Mass Coastal would replace CSXT as the sole rail operator of the south Coast Lines. There are no interchange commitments in the agreements between CSXT and Mass Coastal. If the application is approved, Mass Coastal would interchange traffic with CSXT at Cotley Junction (near Taunton) and at Middleboro and with the Bay Colony Railroad, at a point north of New Bedford.⁵

⁴ CSXT currently provides service 3 days per week between Cotley Junction and New Bedford and 2 days per week between Cotley Junction and Fall River.

⁵ The Providence & Worcester Railroad Company (P&W) previously was granted trackage rights over the South Coast Line between Cotley Junction and the southern end at Fall River. P&W is not using the trackage rights because its connecting line at the southern end is out of service. Applicants state that, if P&W reopens its line, Mass Coastal will be required to allow P&W to use its trackage rights over the South Coast Line.

Environmental Impacts. Applicants state that no environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5) for requiring environmental review and there will be no action that would normally require environmental documentation. Applicants further indicate that an historic report is not required because they will operate the lines and would require further Board approval to discontinue or abandon any service. They state that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 or more years old.

Labor Impacts. CSXT anticipates that, as a result of the Acquisition and the related Trackage Rights Transaction, the 2 train crews who work out of Middleboro would experience somewhat reduced overtime opportunities. Mass Coastal expects to hire about 4 or 5 new employees to operate the South Coast Lines, including 1 locomotive engineer, 1 conductor, and 2 to 3 maintenance-of-way employees. Applicants acknowledge that the Acquisition would be subject to employee protective conditions in New York Dock Ry.—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc., 6 I.C.C.2d 799, 814-826 (1990), aff'd sub nom. Railway Labor Excs. Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

APPLICATION ACCEPTED. The Board finds that the Acquisition would be a “minor transaction” under 49 CFR 1180.2(c), and the Board accepts the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 CFR part 1180; 49 U.S.C. 11321-26. The Board reserves the right to require the filing of further information as necessary to complete the record.

The statute and Board regulations treat a transaction that does not involve two or more Class I railroads differently depending upon whether the transaction would have “regional or national transportation significance.” 49 U.S.C. 11325. Under our regulations, at 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as “minor”—and thus not having regional or national transportation significance—if a determination can be made either: (1) that the transaction clearly will not have any anticompetitive effects; or (2) that any anticompetitive effects will clearly be outweighed by the anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is “significant” if neither of these determinations can clearly be made.

The Board finds the Acquisition to be a “minor transaction” because it appears on the face of the application that there would not be any anticompetitive effects from the transaction. The Board’s findings regarding the anticompetitive impact are preliminary. The Board will give careful consideration to any claims that the Acquisition will have anticompetitive effects that are not apparent from the application itself.

PUBLIC INSPECTION. The application and filings in the related matters are available for inspection in the library (Room 131) at the Surface Transportation Board, 395 E Street, S.W.,

in Washington, DC. In addition, the application and filings in the related matters may be obtained from Mr. Broadley (representing Mass Coastal) at the address indicated above.

PROCEDURAL SCHEDULE. The Board has considered Applicants' suggestion of an expedited procedural schedule, under which the Board would issue its final decision before the statutory deadline of 180 days after the filing of the application. Applicants seek to consummate the Acquisition, if approved, at the same time as the consummation of the related sale of the physical assets in the South Coast Lines to MassDOT. With some internal adjustments to the suggested filing dates, we will adopt the requested procedural schedule, and we anticipate issuing a final decision by the requested date.

Under the procedural schedule adopted by the Board: any person who wishes to participate in this proceeding as a POR must file a notice of intent to participate no later than January 6, 2010; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by January 25, 2010; and responses to comments, protests, requests for conditions, and other opposition and rebuttal in support of the application must be filed by February 12, 2010. A public hearing or oral argument may be held on a date to be determined by the Board. The Board plans to issue its final decision by March 29, 2010, and make any such approval effective by April 28, 2010. For further information respecting dates, see Appendix A (Procedural Schedule).

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than January 6, 2010, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Mr. Broadley (representing Mass Coastal).

If a request is made in the notice of intent to participate to have more than one name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a "Non-Party." The list will reflect the Board's policy of allowing only one official representative per party to be placed on the service list. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4, and any other requirements set forth in this decision.

SERVICE-LIST NOTICE. The Board will serve, as soon after January 6, 2010, as practicable, a notice containing the official service list (the service-list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service-list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service-list notice, a certificate of service

indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service-list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any MOC or GOV has requested to be, and is designated as, a POR.

COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT, INCLUDING FILINGS BY DOJ AND DOT. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by January 25, 2010.

Because the Acquisition proposed in the application is a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the application or the imposition of conditions upon any approval, they must present substantial evidence in support of their positions. See Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company, STB Finance Docket No. 35087 (STB served Dec. 24, 2008).

RESPONSES TO COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION; REBUTTAL IN SUPPORT OF THE APPLICATION. Responses to comments, protests, requests for conditions, and other opposition submissions, and any rebuttal in support of the application must be filed by February 12, 2010.

PUBLIC HEARING/ORAL ARGUMENT. The Board may hold a public hearing or an oral argument in this proceeding on a date to be determined by the Board.

DISCOVERY. Discovery may begin immediately. Requests for discovery from Applicants are due on January 11, 2010. Applicants' responses are due on January 18, 2010. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

ENVIRONMENTAL MATTERS. The National Environmental Policy Act (NEPA) requires that the Board take environmental considerations into account in its decisionmaking. Under both the regulations of the President's Council on Environmental Quality implementing NEPA and the Board's own environmental rules, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an Environmental Impact Statement (EIS).⁶ Actions that may or may not have a significant environmental impact

⁶ See 49 CFR 1105.4(f), 1105.10(a).

ordinarily require the Board to prepare a more limited Environmental Assessment (EA).⁷ Finally, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review.

As pertinent here, an acquisition transaction normally requires the preparation of an EA or EIS where certain thresholds would be exceeded.⁸ Applicants indicate that the thresholds for environmental review would not be exceeded here because Applicants expect to provide the same frequency of freight service that CSXT has been providing. Based on this information, it appears that environmental documentation and review are not required in this proceeding.

Historic Review. In accordance with section 106 of the National Historic Preservation Act (NHPA), the Board is required to determine the effects of its licensing actions on cultural resources.⁹ The Board's environmental rules establish exceptions to the need for historic review in certain cases, including the sale of a rail line for the purpose of continued rail operations where further Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.¹⁰ Applicants state that the proposed transaction fits within this exception. They assert that they have no plans to alter or dispose of properties 50 or more years old, and that any future line abandonment or construction activities by Applicants would be subject to the Board's jurisdiction. Based on this information, it appears that historic review under the NHPA is not required in this case.

FILING/SERVICE REQUIREMENTS. Persons participating in this proceeding may file with the Board and serve on other parties: a notice of intent to participate (due by January 6, 2010); a certificate of service indicating service of prior pleadings on persons designated as PORs on the service-list notice (due by the 10th day after the service date of the service-list notice); any comments, protests, requests for conditions, and any other evidence and argument in opposition to the application (due by January 25, 2010); and any responses to comments, etc., and any rebuttal in support of the application (due by February 12, 2010).

Filing Requirements. Any document filed in this proceeding must be filed either via the Board's e-filing format or in the traditional paper format as provided for in the Board's rules. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at "www.stb.dot.gov" at the "E-FILING" link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the

⁷ See 49 CFR 1105.4(d), 1105.10(b).

⁸ See 49 CFR 1105.6(b)(4), 1105.7(e)(4) and (5).

⁹ See 49 CFR 1105.8.

¹⁰ See 49 CFR 1105.8(b)(1).

document (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any copy may be sent by e-mail only if service by e-mail is acceptable to the recipient): (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John H. Broadley, (representing Mass Coastal), John H. Broadley & Associates, PC, 1054 Thirty-First Street, N.W., Suite 200, Washington, DC 20007; and (4) any other person designated as a POR on the service-list notice.

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Decisions & Notices."

ACCESS TO FILINGS. An interested person does not need to be on the service list to obtain a copy of the application or any other filing made in this proceeding. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). In Decision No. 1 in this proceeding, served December 8, 2009, the Board issued a Protective Order to establish appropriate procedures for the submission of evidence containing confidential or proprietary information. The public version of the application and other filings in this proceeding will also be available on the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Filings."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application is accepted for consideration.
2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in Appendix A.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on December 23, 2009.

Decided: December 18, 2009.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

APPENDIX A: PROCEDURAL SCHEDULE

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|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| November 24, 2009 | Application, Motion for Protective Order, and Petition Suggesting Procedural Schedule filed. |
| December 8, 2009 | Protective Order Issued. |
| December 23, 2009 | Board notice of acceptance of application published in the <u>Federal Register</u> . |
| January 6, 2010 | Notices of intent to participate in this proceeding due. |
| January 11, 2010 | Discovery requests due to Applicants. |
| January 18, 2010 | Responses to discovery due. |
| January 25, 2010 | All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due. |
| March 13, 2010 | Responses to comments, protests, requests for conditions, and other opposition due. Applicants' rebuttal in support of the application due. |
| TBD | A public hearing or oral argument may be held. |
| March 29, 2010 | Final decision to be served. ¹¹ |
| April 28, 2010 | Final decision to become effective. |

¹¹ Under 49 U.S.C. 11325(d)(2), a final decision would have to be issued by May 23, 2010. As previously discussed, we have shortened the time for issuing a final decision in this case to accommodate the Applicants' desire that this sale and the sale of assets in these and other rail lines to Mass Coastal can be consummated simultaneously.