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SEC

SERVICE DATE – NOVEMBER 4, 2005

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 29963

BAY COLONY RAILROAD CORPORATION–
MODIFIED RAIL CERTIFICATE

STB Finance Docket No. 34698

BAY COLONY RAILROAD CORPORATION–
PETITION FOR DECLARATORY ORDER

Decided: November 3, 2005

On April 13, 2005, the Massachusetts Bay Transportation Authority (MBTA) filed a Notice of Termination of Operating Authority of the Bay Colony Railroad Corporation (Bay Colony). Bay Colony has been operating the 3.4-mile Millis Industrial Track between Medfield Junction (milepost 0.0) and the end of the line in Millis (milepost 3.4) in Norfolk County, MA, under a modified certificate of public convenience and necessity that was issued on September 24, 1987, pursuant to 49 CFR 1150.23. Bay Colony has been operating the line under a lease and operating agreement with MBTA, the owner of the line.

On May 2, 2005, Bay Colony filed a petition in Finance Docket No. 29963 to dismiss MBTA's notice. Bay Colony concurrently filed a petition for declaratory order in STB Finance Docket No. 34698, asking the Board to determine that: (1) MBTA's notice is invalid and ineffective to terminate its authority to operate the line; (2) Bay Colony has a regular certificate of public convenience and necessity, not a modified certificate, to operate the line; (3) MBTA can terminate Bay Colony's operating rights only by an adverse abandonment proceeding; and (4) Bay Colony is the successor in interest to, and the current holder of, an easement affording Bay Colony the right to provide freight service on the line.

A decision served on May 25, 2005, granted MBTA an extension until May 31, 2005, to file its responses to Bay Colony's petition to dismiss. Decisions served on June 1, July 11, and September 7, 2005, granted requests by the parties to hold the proceedings in abeyance to enable them to explore settlement of the issues raised in Bay Colony's petition. The most recent decision directed the parties to report on the status of their negotiations by November 1, 2005.

On November 1, 2005, MBTA and Bay Colony reported that an assignment of easement rights with respect to freight service on the Millis Industrial Track has been executed and delivered to Bay Colony, and, when the assignment is put on record, they contemplate that MBTA will seek to dismiss with prejudice its notice of termination of Bay Colony's operating authority. The parties state further that they have not as yet finalized a trackage rights agreement governing Bay Colony's operation over the Millis Industrial Track, although they indicate that substantial progress has been made and expect that negotiations will be completed in the near future. They request that these proceedings continue to be held in abeyance to enable them to complete their negotiations.

Good cause exists for granting the request to continue to hold these related proceedings in abeyance. The parties are directed to report on the status of their negotiations by January 3, 2006.

It is ordered:

1. MBTA and Bay Colony's request to continue to hold these proceedings in abeyance is granted. The parties are directed to report on the status of their negotiations by January 3, 2006.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary