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SERVICE DATE - MARCH 25, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34276

MASSACHUSETTS PORT AUTHORITY–ACQUISITION EXEMPTION–
CERTAIN ASSETS OF BOSTON AND MAINE CORPORATION

STB Docket No. AB-32 (Sub-No. 92)¹

BOSTON AND MAINE CORPORATION–ABANDONMENT–
IN SUFFOLK COUNTY, MA

Decided: March 21, 2003

On November 5, 2002, the Massachusetts Port Authority (Massport),² a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31, *et seq.*, to acquire from the Boston and Maine Corporation (B&M) the right-of-way and related improvements on the 1.45-mile Mystic Wharf Branch line, between milepost 0.00 and milepost 1.45 in Charlestown, Suffolk County, MA.³ Concurrently, Massport filed a motion to dismiss the notice, asserting that the transaction should not be subject to Board jurisdiction because it will not become a common carrier as a result of the transaction. We will grant the motion to dismiss.

We will also grant B&M's separate motion to withdraw its previously approved application for authority to abandon the Mystic Wharf Branch.

¹ These proceedings are not consolidated. They are being considered together for administrative convenience.

² Massport is a state agency that owns, among other things, the Port of Boston, including four maritime properties that abut the Mystic Wharf Branch: (1) the Moran Terminal, a 60-acre former container terminal that is currently used by Boston Autoport (Autoport) for importing and processing automobiles; (2) Mystic Pier 1, a 5-acre site and covered storage shed that is also used by Autoport; (3) Mystic Piers 48/49/50, a 3-acre bulk cargo terminal used to import, store, and distribute road salt; and (4) the Medford Street Terminal, a 14-acre multi-use marine terminal currently used to import and stockpile construction materials.

³ Notice was served and published in the Federal Register on November 26, 2002 (67 FR 70808), indicating that the parties intended to consummate the transaction on November 13, 2002.

BACKGROUND

We authorized B&M to abandon the Mystic Wharf Branch in December 2001.⁴ Rather than consummate the abandonment when a Board-imposed period for negotiating acquisitions for public use expired, however, B&M continued to negotiate with Massport to convey the underlying real estate and trackage to the State agency. B&M and Massport have now reached an agreement. Although Massport would acquire B&M's right, title, and interest in the right-of-way, track, and related structures that are part of the Mystic Wharf Branch, B&M would continue to have the rights and obligations of a common carrier by retaining an exclusive permanent easement to provide rail service on the line.⁵

Massport indicates that it will enter into an operating agreement with B&M and its affiliate, Springfield Terminal Railway Company (ST), for ST to conduct rail operations on the line.⁶ The operating agreement states that, although Massport will acquire the right-of-way and related rail assets, it will not provide any common carrier service or assume any residual common carrier obligations on the line. The operating agreement specifies that B&M will retain a rail service easement, and that ST will continue to provide freight rail service and maintain the rail facilities. The agreement gives B&M and ST exclusive management and control for operating and maintaining the line. The operating agreement also enables Massport to permit others to use portions of the involved properties for nonrail purposes, provided such use does not interfere with safe and efficient rail operations by B&M and ST.

Massport maintains that the Board need not exercise its jurisdiction over this acquisition of the Mystic Wharf right-of-way, citing State of Wisconsin Department of Transportation–Petition for Declaratory Order, STB Finance Docket No. 34181 (STB served Aug. 1, 2002); Utah Transit Authority–Acquisition Exemption–Certain Assets of Union Pacific Railroad Company, STB Finance Docket No. 34170 (STB served May 17, 2002); New Jersey Transit Corporation–Acquisition–Certain Assets of Consolidated Rail Corporation, STB Finance Docket No. 33786 (STB served Feb. 11, 2000); and Maine, DOT–Acq. Exemption, ME. Central R. Co., 8 I.C.C.2d 835 (1991). Massport states that it is acquiring the right-of-way and related assets primarily to preserve the rail corridor, ensuring that rail service to the port will not be abandoned. Although none of its tenants

⁴ That application was approved in Boston and Maine Corporation–Abandonment–In Suffolk County, MA, STB Docket No. AB-32 (Sub-No. 92) (STB served Dec. 21, 2001).

⁵ Massport submitted a copy of the proposed Deed and Easement conveying the right-of-way and related improvements to Massport and creating a permanent easement for B&M.

⁶ Massport submitted a copy of the proposed operating agreement with B&M and ST.

currently use rail service, Massport believes that having rail service available would be important to one tenant, Autoport, in developing its automobile export business. In addition, Massport indicates that available rail service would greatly enhance maritime redevelopment opportunities for all tenants, and enable it to compete effectively with other east coast ports. Massport states further that it may want to develop a haul road on the same property to facilitate further development at the port, but the road allegedly will not interfere with safety or rail service on the line. Finally, Massport says that it will not conduct rail freight operations on the line and will not hold itself out as willing or able to do so.

DISCUSSION AND CONCLUSIONS

The question here is whether our regulatory approval is required for Massport to acquire the right-of-way and related improvements in the Mystic Wharf Branch. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. 10901, if the acquiring entity is a noncarrier, including a state. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). In the typical sale of a non-abandoned rail line, the new owner is presumed to succeed the former owner in assuming the obligation to ensure that freight rail service continues over the line. Our authorization is not required, however, when only the physical assets will be conveyed and the common carrier rights and obligations that attach to the line will not be transferred. See State of Maine, 8 I.C.C.2d at 836-37.

The record shows that B&M is not transferring common carrier rights or obligations and that Massport will not hold itself out as a common carrier performing rail freight service. The agreements between Massport and B&M show that Massport will acquire only the railroad right-of-way and related improvements to preserve the line for rail service. Massport will not become a rail carrier subject to our jurisdiction as a result of the transaction. Rather, B&M and ST will retain all common carrier rights and obligations. Under these circumstances, this transaction does not require Board action, and we will not exercise jurisdiction over it.

As mentioned above, by motion filed on November 8, 2002, B&M seeks to withdraw its abandonment application in STB Docket No. AB-32 (Sub-No. 92). B&M notes that it has not consummated the abandonment and that, under its agreement with Massport, it retains a perpetual

easement to perform common carrier operations over and maintain the Mystic Wharf Branch.⁷ In light of the above, we will grant B&M's motion to withdraw.

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

It is ordered:

1. In STB Finance Docket No. 34276, Massport's motion to dismiss its notice of exemption is granted, and the proceeding is discontinued.
2. In STB Docket No. AB-32 (Sub-No. 92), B&M's motion to withdraw its abandonment application is granted, and the proceeding is discontinued.
3. This decision is effective on its service date.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary

⁷ B&M notes that, on September 18, 2002, ST gave notice (assigned STB Docket No. AB-355 (Sub-No. 25X)) under 49 CFR 1152.20(a) that it intended to file an application on or about October 9, 2002, for authority to abandon and discontinue service on the Mystic Wharf Branch. B&M also notes that, due to the ongoing negotiations with Massport, ST did not file an application or exemption petition within the period required by section 1152.20(b)(1), and that ST does not intend to refile its notice of intent.