

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34332

MASSACHUSETTS BAY COMMUTER RAILROAD COMPANY, LLC—
PETITION FOR DECLARATORY ORDER

Decided: June 4, 2003

The Massachusetts Bay Commuter Railroad Company, LLC (MBCR or petitioner) has asked the Board to issue a declaratory order stating that: (1) MBCR will be a rail common carrier providing transportation for the Massachusetts Bay Transit Authority (MBTA)¹ that, but for the exception for mass transportation at 49 U.S.C. 10501(c)(2), would be subject to the Board's jurisdiction; (2) the statutory exception for mass transportation does apply to the commuter rail service MBCR will provide, and thus the Board does not have jurisdiction over MBCR's operations; and (3) MBCR will be subject to applicable laws regarding safety, collective bargaining, and other employee relations, as provided for by 49 U.S.C. 10501(c)(3) .

According to the pleadings, MBTA's commuter rail system consists of 13 lines, totaling approximately 350 route miles, in the Boston, MA area. The system includes a line that is used to provide commuter rail service between Boston and Providence, RI. In addition, Amtrak uses MBTA's lines between Boston and Providence and between Boston and Haverhill, MA, for intercity rail passenger service. The 13 MBTA lines are also used for freight service by several railroads, including the Boston and Maine Corporation, Springfield Terminal Railway Company, CSX Transportation, Inc., and the Bay Colony Railroad Corp. and are therefore allegedly part of the interstate rail network.

Amtrak has operated the MBTA's commuter system since 1987 under an agreement with MBTA. On February 19, 2003, MBTA and MBCR signed an agreement for MBCR to start operating MBTA's system on July 1, 2003. According to petitioner, the agreement requires that MBCR operate 470 commuter trains per day and occasional special commuter trains. Petitioner is obligated to hire a sufficient workforce to provide all services required by the operating agreement, including operating trains and maintaining track and equipment. MBCR will use operating equipment provided primarily by MBTA, and will not provide freight service.

¹ In a statement filed on May 9, 2003 supporting MBCR's request, MBTA indicates that it was established, under chapter 161A of the General Laws of Massachusetts, as "a body politic and corporate and political subdivision of the Commonwealth of Massachusetts."

MBCR states that it was formed as a Delaware limited liability company in 2002 to provide commuter rail service for MBTA. MBCR is owned by Connex North America, Inc., Bombardier Transit Corporation and Alternate Concepts, Inc. There is nothing in the record showing that MBCR is currently a rail carrier or an affiliate of a rail carrier.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. A declaratory order is not necessary here. As discussed below, it is clear from the information provided in the pleadings that MBCR meets the definition of a common carrier railroad as set out by 49 U.S.C. 10102(5).² MBCR, however, will not be subject to the Board's jurisdiction due to the exception for mass transportation service set forth in 49 U.S.C. 10501(c)(2).³

MBCR proposes to hold itself out to the public to provide common carrier railroad service to passengers for compensation. The rail service would be provided across a state line between Boston and Providence.⁴ MBCR thus satisfies the definition of a rail carrier set forth in 49 U.S.C. 10102(5) and would provide interstate transportation as specified in 49 U.S.C. 10501(a).

² Section 10102(5) defines a rail carrier as “a person providing common carrier railroad transportation for compensation.”

³ Section 10501(c) provides in relevant part as follows:

(c)(1) In this subsection—

(A) the term ‘local governmental authority’—

(i) has the same meaning given that term by section 5302(a) of this title; and

(ii) includes a person or entity that contracts with the local

governmental authority to provide transportation services; and

(B) the term ‘mass transportation’ means transportation services described in section 5302(a) of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

⁴ MBTA has passenger terminal facilities in Boston and Providence.

In this instance, however, the commuter rail service that MBCR intends to operate under contract with MBTA would not be subject to Board jurisdiction because, under 49 U.S.C. 10501(c)(2), the Board does not have jurisdiction over mass transportation provided by a local government authority. As required by that subsection, MBTA is a “local government authority” as defined by 49 U.S.C. 5302(a).⁵ MBCR, in turn, would also be considered to be a local government authority because it will be operating the commuter service under contract with MBTA, as provided in 49 U.S.C. 10501(c)(1)(A)(ii). Finally, the commuter rail service MBCR will provide satisfies the definition of mass transportation contained in 49 U.S.C. 5302(a).⁶ Thus, MBCR’s operations as a rail carrier are excepted from Board jurisdiction. MBCR will be subject to laws referred to in 49 U.S.C. 10501(c)(3)(A), including the rail safety laws administered by the Federal Railroad Administration as well as laws regarding collective bargaining and other employee matters.⁷

In light of the above, there is no need for a declaratory order to eliminate a controversy or remove uncertainty, and MBCR’s petition is denied.

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

It is ordered:

1. The petition for declaratory order is denied.

⁵ Under 49 U.S.C. 5302(a)(6) “local government authority” includes “a political subdivision of a State . . . and . . . a public corporation, board, or commission established under the laws of a State.”

⁶ Under 49 U.S.C. 5302(a)(7), “mass transportation” means “transportation by a conveyance that provides regular and continuing general or special transportation to the public.”

⁷ MBCR states that the Railroad Retirement Board has determined that MBCR is an employer covered by the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

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

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary