

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35312

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION—ACQUISITION
EXEMPTION—CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

Decided: January 12, 2010

On December 10, 2009, the Board served and published (74 FR 65589) a verified notice of exemption under 49 CFR 1150.31 for Massachusetts Department of Transportation (MassDOT), a noncarrier, to acquire from CSX Transportation, Inc. (CSXT) certain physical assets of railroad lines and associated rights-of-way in Massachusetts (the Railroad Assets.)¹ MassDOT concurrently filed a motion to dismiss the notice of exemption on the ground that its acquisition of the Railroad Assets would not be within the Board's jurisdiction because MassDOT would not acquire the common carrier obligation on the rail lines comprising the Railroad Assets.

MassDOT requested expedited handling of its motion to dismiss and suggested a procedural schedule. On January 5, 2010, The Brotherhood of Railroad Signalmen and Brotherhood of Maintenance of Way Employees Division/IBT jointly filed a notice of intent to participate in this proceeding, including a pledge to respond to the filings in this proceeding pursuant to any forthcoming schedule issued by the Board. On January 6, 2010, American Train Dispatchers Association and the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters, also jointly filed a notice of intent to participate.

The procedural schedule suggested by MassDOT calls for issuance of a decision on the motion to dismiss by March 25, 2010, to become effective on April 24, 2010.² MassDOT states that it seeks expedited consideration of the motion so as to consummate MassDOT's acquisition of the Railroad Assets on or before May 14, 2010. According to MassDOT, failure to consummate a portion of the planned acquisition by that date could complicate the execution of the transaction and would be detrimental to the transportation planning and funding initiatives of the Commonwealth of Massachusetts.³

¹ CSXT states that it will not transfer to MassDOT the right or obligation to conduct common carrier freight operations. According to CSXT, pursuant to its retained easements, it will have the exclusive right and ability to provide rail freight service on the Railroad Assets.

² Motion to Dismiss at 5, 41.

³ Id. at 5.

Having received no objection to the suggested procedural schedule, it will be adopted with certain modifications. The suggested due date for discovery requests is January 11, 2010, and BRS and BMWED indicate that they would meet that deadline for propounding any discovery. In light of the date of issuance of this decision, an additional 4 days has been added to that due date, and adjustments have also been made to the suggested due dates for responses to discovery, comments/petitions concerning the motion to dismiss, and replies to any comments/petitions. In addition, the suggested schedule included a date certain for the decision to be issued and effective. This schedule does not propose a date certain for issuing the decision. Instead, the Board anticipates that a final decision will be served and effective sufficiently in advance of the May 14, 2010 proposed closing date. Accordingly, the following dates apply to this proceeding:

December 24, 2009	Notice of exemption became effective
January 15, 2010	Discovery requests due
January 25, 2010	Responses to discovery due
February 3, 2010	Comments on motion to dismiss and petitions to revoke notice of exemption due
February 17, 2010	Replies to comments on motion to dismiss and petitions to revoke notice of exemption due
TBD	Final decision served/effective

It is ordered:

1. The procedural schedule set forth above is adopted.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director of Office of Proceedings.