

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35863

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION—ACQUISITION
EXEMPTION—CERTAIN ASSETS OF PAN AM SOUTHERN LLC

Digest:¹ Because no passenger rights would be transferred to the Massachusetts Department of Transportation in its transaction with Pan Am Southern LLC, the Board grants MassDOT's motion to dismiss its October 2014 notice of exemption, as modified to excise the proposed sale of passenger rights.

Decided: March 25, 2015

The Board is granting the February 4, 2015 motion filed by the Massachusetts Department of Transportation (MassDOT) to excise the proposed acquisition of passenger rights from the notice of exemption that MassDOT filed in this proceeding. With the passenger rights excised from the transaction, the Board will also grant MassDOT's request to dismiss its notice of exemption, as modified.²

On October 10, 2014, MassDOT filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Pan Am Southern LLC (PAS) certain railroad assets and associated rail line right-of-way, known generally as a portion of the Connecticut River Main Line (also known as the "Knowledge Corridor"), approximately 49.67 route miles in length, from Springfield, Mass., to the Massachusetts-Vermont border at East Northfield, Mass. MassDOT stated that it would also acquire any right, title, or interest that PAS might currently possess to operate passenger trains between Springfield and the Massachusetts-Connecticut border. Simultaneously, MassDOT filed a motion to dismiss the notice, asserting that the transaction does not require Board authorization because MassDOT would not become a common carrier as a result of the transaction.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² MassDOT also notes in its February 4, 2015 filing that it misidentified in its previous filings the southern terminus at Springfield as Station 2+25. The correct southern terminus is Station -2+25. The northern terminus at East Northfield has consistently been identified as 2613+66.85.

Notice of the exemption was served and published in the Federal Register on October 24, 2014 (79 Fed. Reg. 63,668). On December 24, 2014, the Board granted in part and denied in part MassDOT's motion to dismiss its notice of exemption, finding that 49 U.S.C. § 10901 would not apply to the sale of the physical assets contemplated by the notice of exemption, but that § 10901 would apply to the proposed sale of passenger rights. Mass. Dep't of Transp.—Acquis. Exemption—Certain Assets of Pan Am S. LLC (December 2014 Decision), FD 35863, slip op. at 3-4 (STB served Dec. 24, 2014). The Board noted that MassDOT could avoid becoming a common carrier by excising the passenger rights from the transaction. Id. at 4-5.

By motion filed February 4, 2015, MassDOT requests leave to excise from the scope of the notice of exemption the proposed acquisition of rights from PAS to operate passenger trains between Springfield, Mass., and the Massachusetts-Connecticut border. MassDOT notes in its motion that the parties have ascertained that PAS possesses no such passenger service rights.

Because no passenger rights would be transferred to MassDOT as part of the transaction, MassDOT's motion to excise the proposed sale of passenger rights from its notice of exemption will be granted. The Board will also grant MassDOT's request to dismiss the modified notice of exemption because the transaction now comports with the State of Maine line of precedent discussed in the December 2014 Decision, slip op at 1-2 (citing Maine Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad, 8 I.C.C. 2d 835, 836-37 (1991), and its progeny).

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

It is ordered:

1. MassDOT's request for leave to excise the proposed acquisition of passenger rights from the scope of its notice of exemption is granted.
2. The motion to dismiss MassDOT's notice of exemption, as modified, is granted.
3. This decision is effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begman.