

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33381

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORP. UNDER  
49 U.S.C. 24308(a)--SPRINGFIELD TERMINAL RAILWAY COMPANY, BOSTON AND  
MAINE CORPORATION, AND PORTLAND TERMINAL COMPANY

Decided: May 13, 1997

By decision served May 6, 1997, we established an evidentiary schedule as requested by the National Railroad Passenger Corporation (Amtrak) for a proceeding under 49 U.S.C. 24308(a) to: (1) require Boston and Maine Corporation, Springfield Terminal Railway Company, and Portland Terminal Company, railroads under common control of Guilford Rail System,<sup>1</sup> to make available to Amtrak B&M's 78-mile rail line between the Massachusetts/New Hampshire State line and Portland, ME; and (2) determine reasonable terms and compensation for Amtrak's use of B&M's rail line. In our May 6 decision, we also denied a number of B&M's discovery-related requests, as well as B&M's motions for summary judgment. This decision addresses additional procedural requests by B&M not resolved in our May 6 decision.

In separate requests filed on May 1 and 2, 1997, B&M asks us to issue *subpoenas duces tecum* to compel certain third parties to respond to its discovery requests. Specifically, B&M asks us to order individuals employed by the State of Maine and by the U. S. Department of Transportation (DOT)<sup>2</sup> to answer B&M's interrogatories and produce documents B&M believes to be relevant in this proceeding. B&M seeks documents from Maine that the railroad believes may reveal that Amtrak and the state "intentionally structured" their relationship to subject B&M to liability that should otherwise be borne by the state. In its other subpoena request, B&M seeks non-public DOT documents or analyses related to Amtrak's financial viability, and related to Amtrak's alleged possible collusion with Maine against the interests of B&M. Both DOT and the State of Maine oppose B&M's discovery requests.

B&M's subpoena requests will be denied. As we stated in our May 6 decision, information on Amtrak's financial health is available in the public domain or from Amtrak. DOT's internal, non-public opinion on that subject is not an issue in this proceeding. We also agree with DOT that, even if such material existed, it would not be discoverable. As a rule, the staff memoranda, analyses, and internal opinions of a government agency are privileged information under the Freedom of Information Act, 5 U.S.C. 552(b)(5). See *United States v. Berrigan*, 482 F.2d 171 (3d Cir. 1973); *Viacom International, Inc. v. F.C.C.*, 672 F.2d 1034 (2d Cir. 1982).

With respect to Amtrak's relationship with Maine, B&M has not shown that the information sought is reasonably calculated to lead to the discovery of any material relevant to our decision in this proceeding.

*It is ordered:*

1. B&M's requests for *subpoenas duces tecum* are denied.
2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

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<sup>1</sup> Respondent railroads will be collectively referred to as B&M.

<sup>2</sup> B&M's discovery request is directed to employees or officials in DOT's Office of the Secretary, Federal Railroad Administration, and Federal Transit Administration.

Vernon A. Williams  
Secretary