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SEC

SERVICE DATE – MAY 11, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34698

BAY COLONY RAILROAD CORPORATION–
PETITION FOR DECLARATORY ORDER

Decided: May 9, 2006

On April 13, 2005, the Massachusetts Bay Transportation Authority (MBTA) filed a Notice of Termination of Operating Authority of the Bay Colony Railroad Corporation (Bay Colony). Bay Colony has been operating the 3.4-mile Millis Industrial Track between Medfield Junction (milepost 0.0) and the end of the line in Millis (milepost 3.4) in Norfolk County, MA, under a modified certificate of public convenience and necessity, issued in Finance Docket No. 29963, Bay Colony Railroad Corporation–Modified Rail Certificate on September 24, 1987, pursuant to 49 CFR 1150.23. Bay Colony has been operating the line under a lease and operating agreement with MBTA, the owner of the line.

On May 2, 2005, Bay Colony filed a petition in Finance Docket No. 29963 to dismiss MBTA's notice. Bay Colony concurrently filed a petition for declaratory order in STB Finance Docket No. 34698, asking the Board to determine that: (1) MBTA's notice is invalid and ineffective to terminate Bay Colony's authority to operate the line; (2) Bay Colony has a regular certificate of public convenience and necessity, not a modified certificate, to operate the line; (3) MBTA can terminate Bay Colony's operating rights only by an adverse abandonment proceeding; and (4) Bay Colony is the successor in interest to, and the current holder of, an easement affording Bay Colony the right to provide freight service on the line.

Previous decisions have granted requests by the parties to hold the proceedings in abeyance to enable them to explore settlement of the issues that were raised in Bay Colony's petition. A decision served on January 5, 2006, noted that MBTA and Bay Colony had executed an assignment of easement rights with respect to freight service on the Millis Industrial Track and granted MBTA's request to dismiss with prejudice its notice of termination of Bay Colony's operating authority filed in Finance Docket No. 29963. The January 5, 2006 decision also noted that the parties were continuing to negotiate a trackage rights agreement governing Bay Colony's operations over the Millis Industrial Track and granted the parties' request to continue to hold STB Finance Docket No. 34698 in abeyance. A decision served on March 8, 2006, directed the parties to report on the status of their negotiations by May 5, 2006.

By pleading dated May 4, 2006, MBTA and Bay Colony report that they have continued negotiating a trackage rights agreement governing Bay Colony's operations on the Millis Industrial Track. They indicate that agreement on the final form of the trackage rights agreement has been reached, and that MBTA's Board of Directors will consider approving the trackage rights agreement at its meeting scheduled for May 5, 2006. If the MBTA Board approves the trackage rights agreement, the parties indicate that they will seek the dismissal of Bay Colony's petition for declaratory order and will file appropriate notices of exemption for Bay Colony's operation on the Millis Industrial Track. They request that the Board continue to hold the petition for declaratory order proceeding in abeyance,

Good cause exists for granting the parties' request to continue to hold the petition for declaratory order in STB Finance Docket No. 34698 in abeyance. The parties are directed to report on the status of their negotiations by July 7, 2006.

It is ordered:

1. MBTA and Bay Colony's request to continue to hold STB Finance Docket No. 34698 in abeyance is granted. The parties are directed to report on the status of their negotiations by July 7, 2006.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary