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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35866

**ENTERED
Office of Proceedings
October 16, 2014
Part of
Public Record**

**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.**

**VERIFIED NOTICE OF EXEMPTION PURSUANT TO
49 C.F.R. § 1150.31, *ET SEQ.***

**Robert A. Wimbish
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**ATTORNEYS FOR MASSACHUSETTS
DEPARTMENT OF TRANSPORTATION**

Dated: October 16, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35866

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
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VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. § 1150.31, *ET SEQ.*

Pursuant to 49 C.F.R. § 1150.31, *et seq.*, the Massachusetts Department of Transportation (“MassDOT”), a non-carrier, hereby files this verified notice of exemption to acquire from Housatonic Railroad Company, Inc. (“HRRC”) and Maybrook Railroad Company (“MRC”)¹ certain railroad assets comprising a section of the “Berkshire Line” extending from approximately milepost 50.0 at the Massachusetts-Connecticut border at Sheffield, MA, to a connection with CSX Transportation, Inc., at about milepost 86.3 at Pittsfield, MA. The rail line segment, roughly 36.3 route miles, is referred to herein as the “Line,” and the assets (track and right-of-way) along the Line that MassDOT proposes to acquire shall be referred to herein as the “Railroad Assets.”

MassDOT will acquire the Railroad Assets subject to HRRC’s retention of a permanent, exclusive freight operating easement, as described below. MassDOT will not acquire the right, nor will it have the ability, to provide rail common carrier service over the Railroad Assets. The agreements governing the subject asset sale and post-transaction railroad operations preclude MassDOT from interfering materially with the provision of

¹ MassDOT has concluded that MRC is not a rail carrier for purposes of the present transaction. Accordingly, MRC is not listed in the proceeding caption.

railroad common carrier service over the Railroad Assets. Accordingly, MassDOT is concurrently filing in this docket a motion to dismiss this notice of exemption in keeping with the legal construct first enunciated in Maine DOT – Acq. Exmpt. – ME Central R. Co., 8 I.C.C.2d 835 (1991) (“State of Maine”) and later applied and clarified in numerous subsequent agency decisions involving other rail asset transactions. The exemption-notice-and-motion-to-dismiss process that MassDOT has invoked here will allow the Board to determine in advance of closing that MassDOT’s acquisition of the Railroad Assets, as structured under the governing agreements, does not require Board authorization pursuant 49 U.S.C § 10901, or, as is the case here, the related class exemption.

In accordance with the requirements of 49 C.F.R. § 1150.33, MassDOT submits the following information:

Advance Notice (Posting): 49 C.F.R. § 1150.32(e)

The proposed transaction is not expected to result in the creation of a carrier. In any event, MassDOT would not conduct freight operations over the Railroad Assets, and, therefore, MassDOT’s prospective annual common carrier revenues would not exceed \$5 million. Accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable here. See Certification attached as Exhibit A.

Full name and address of applicant: 49 C.F.R. § 1150.33(a)

Massachusetts Department of Transportation
Ten Park Plaza
Boston, MA 02116-3974

Applicant’s Representative: 49 C.F.R. § 1150.33(b)

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Ste. 920
Chicago, IL 60606-2832
(312) 252-1504

Statement that an agreement has been reached or details about when an agreement will be reached: 49 C.F.R. § 1150.33(c)

Pursuant to a draft Purchase and Sale Contract, MassDOT has secured the right to purchase MRC's and HRRC's respective rights, title and interest in the right-of-way, trackage and other physical assets (such as signboard and fiber optics unrelated to the provision of common carrier freight service) associated with the Line, subject to HRRC's retained exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight railroad operating easement.

Operator of the property: 49 C.F.R. § 1150.33(d)

HRRC will retain a permanent freight easement over the Railroad Assets permitting it to continue to provide common carrier freight service over the Line. MassDOT would not acquire any freight operating rights. However, MassDOT will be entitled in the future to initiate (itself, or through a designated third party) intercity passenger service and (potentially) regional commuter rail service over the Railroad Assets.

Summary of the proposed transaction: 49 C.F.R. § 1150.33(e)

The name and address of the railroad transferring its ownership interest in the Railroad Assets:

Housatonic Railroad Company, Inc.
ATTN: John R. Hanlon, Jr., President
1 Railroad Street
P.O. Box 1146
Canaan, CT 06018²

² In the interest of full disclosure, MRC's contact information is as follows:

Maybrook Railroad Company
ATTN: Edward J. Rodriguez
8 Davis Road West
P.O. Box 687
Old Lyme, CT 06371

MassDOT, an instrumentality of the Commonwealth of Massachusetts and a non-carrier, will acquire – (1) MRC’s right, title and interest in the underlying right-of-way and related land interests;³ and (2) HRRC’s right, title and interest in the trackage and other railroad physical plant located upon or along the MRC-owned right of way (subject to HRRC’s retention of its existing, exclusive and perpetual right to provide freight common carrier service). The combination of MRC’s and HRRC’s contributions to the sale constitute the Railroad Assets, which extend from roughly milepost 50.0 at the Massachusetts-Connecticut border at Sheffield, MA, to a connection with CSX Transportation, Inc., at about milepost 86.3 at Pittsfield, MA, a distance of approximately 36.3 route miles. Again, HRRC will retain an exclusive freight rail common carrier

³ MRC has advised MassDOT that MRC owns, and will sell to MassDOT, the land interests comprising the railroad right-of-way, along with the bridges and lineside structures (if any). MRC does not own the trackage affixed to the right-of-way, and it lacks the right to conduct common carrier service. Rather, HRRC owns the track assets and possesses an exclusive and perpetual right to conduct common carrier service on the line. See, Housatonic Railroad Company, Inc., Maybrook Railroad Company, and Housatonic Transportation Company – Intra-Corporate Family Transaction Exemption, Docket No. FD 35723, slip op. at 2 (STB served Mar. 22, 2013) (noting HRRC’s retention of “perpetual and exclusive common carrier freight operating rights pursuant to an operating agreement”). In light of agency statements rendered in the context of rail line abandonment proceedings, it appears to MassDOT that MRC’s real estate holdings (which exclude the subject trackage or the right to conduct rail common carrier operations over the Line) do not qualify MRC as a Board-regulated rail common carrier. See, e.g., Alabama & Florida Railway Co., Inc. – Abandonment Exemption – in Geneva, Coffee and Covington Counties, Ala., STB Docket No. AB-1073X (STB served Aug. 9, 2011); Seminole Gulf Railway Company – Abandonment Exemption – In Lee County, FL, Docket No. AB-400 (Sub-No. 2X) (ICC Served Dec. 22, 1994), 1994 ICC LEXIS 278, *11-*12; and Florida Central Railroad Company, Inc. – Abandonment Exemption – in Lake County, FL., Docket No. AB-319 (Sub-No. 2X) (ICC served June 14, 1993). This issue discussed in greater detail in the accompanying Motion to Dismiss. For these reasons, MRC is, along with HRRC, a participant in the transaction with MassDOT, but MRC is not a rail common carrier, is therefore not in a position to “retain” a common carrier easement (unlike HRRC), and thus is not included as a party in the subject proceeding caption.

service easement over the Railroad Assets at the time that those assets are conveyed to MassDOT.

Although the subject transaction could be consummated at the parties' discretion as of November 15, 2014, the parties anticipate consummating the subject rail assets transaction on or about December 15, 2014 (or sooner), subject to the Board's handling of the concurrently-filed motion to dismiss.

Map: 49 C.F.R. § 1150.33(f)

A map showing the main line track component of the Railroad Assets and the surrounding area is attached as Exhibit B.

Certification of Class III status: 49 C.F.R. § 1150.33(g)

Pursuant to the terms of the proposed transaction, MassDOT would be precluded from conducting freight rail operations over the subject Railroad Assets. Therefore, MassDOT will earn no freight service revenues, and would not in any event earn revenues from freight operations that would exceed those of a Class III railroad. Nevertheless, in keeping with the Board's regulations, MassDOT has supplied herewith as Exhibit A a certification that MassDOT's rail freight revenues would not exceed those that would qualify it as a Class III carrier.

Transactions imposing interchange commitments: 49 C.F.R. § 1150.33(h)

The proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

Environmental and Historic Prescription Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), MassDOT's proposed acquisition of the Railroad Assets is exempt from environmental reporting requirements. The proposed acquisition

will not result in significant changes in freight carrier operations. i.e., changes that exceed the thresholds established in 49 C.F.R. §§ 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), MassDOT's proposed acquisition of the Railroad Assets, which will promote continued rail operations, also is exempt from historic preservation reporting requirements. Advance Board approval would be required if HRRC were to choose to discontinue or abandon any service, and MassDOT has no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.34

A caption summary in appropriate form is attached hereto as Exhibit C.

Respectfully submitted,



Robert A. Wimbish
Audrey L. Brodrick
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29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Phone: (312) 252-1500
Facsimile: (312) 252-2400

Attorneys for the Massachusetts
Department of Transportation

Dated: October 16, 2014

COMPLIANCE WITH MASSACHUSETTS ENVIRONMENTAL POLICY

The Commonwealth of Massachusetts has established a strong policy of minimizing the environmental impacts associated with the preparation and filing of documents prepared by the Commonwealth or on its behalf. Specifically, the Commonwealth encourages greater use of recycled and environmentally preferable products to minimize waste and to promote further recycling. To the extent practicable in light of STB filing requirements, the foregoing verified notice of exemption filing adheres to the Commonwealth's policies by using recycled paper with a minimum post-consumer content of 30%, recyclable and/or re-usable binding materials, and other products that contain recycled content.

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of the Massachusetts Department of Transportation, and that the foregoing notice of exemption is true and correct to the best of my knowledge and belief.


Richard A. Davey
Secretary and Chief Executive Officer
Massachusetts Department of Transportation

October 14, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35866

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
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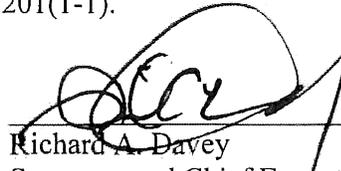
VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. § 1150.31, *ET SEQ.*

EXHIBIT A

CERTIFICATION

CERTIFICATION

I, Richard A. Davey, hereby certify on behalf of the Massachusetts Department of Transportation ("MassDOT") that MassDOT's projected annual revenues resulting from the consummation of the proposed railroad asset acquisition transaction would not exceed \$5 million annually, and would not result in MassDOT becoming a Class I or Class II carrier under the provisions of 49 C.F.R. § 1201(1-1).


Richard A. Davey
Secretary and Chief Executive Officer
Massachusetts Department of Transportation

October 14, 2014

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SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35866

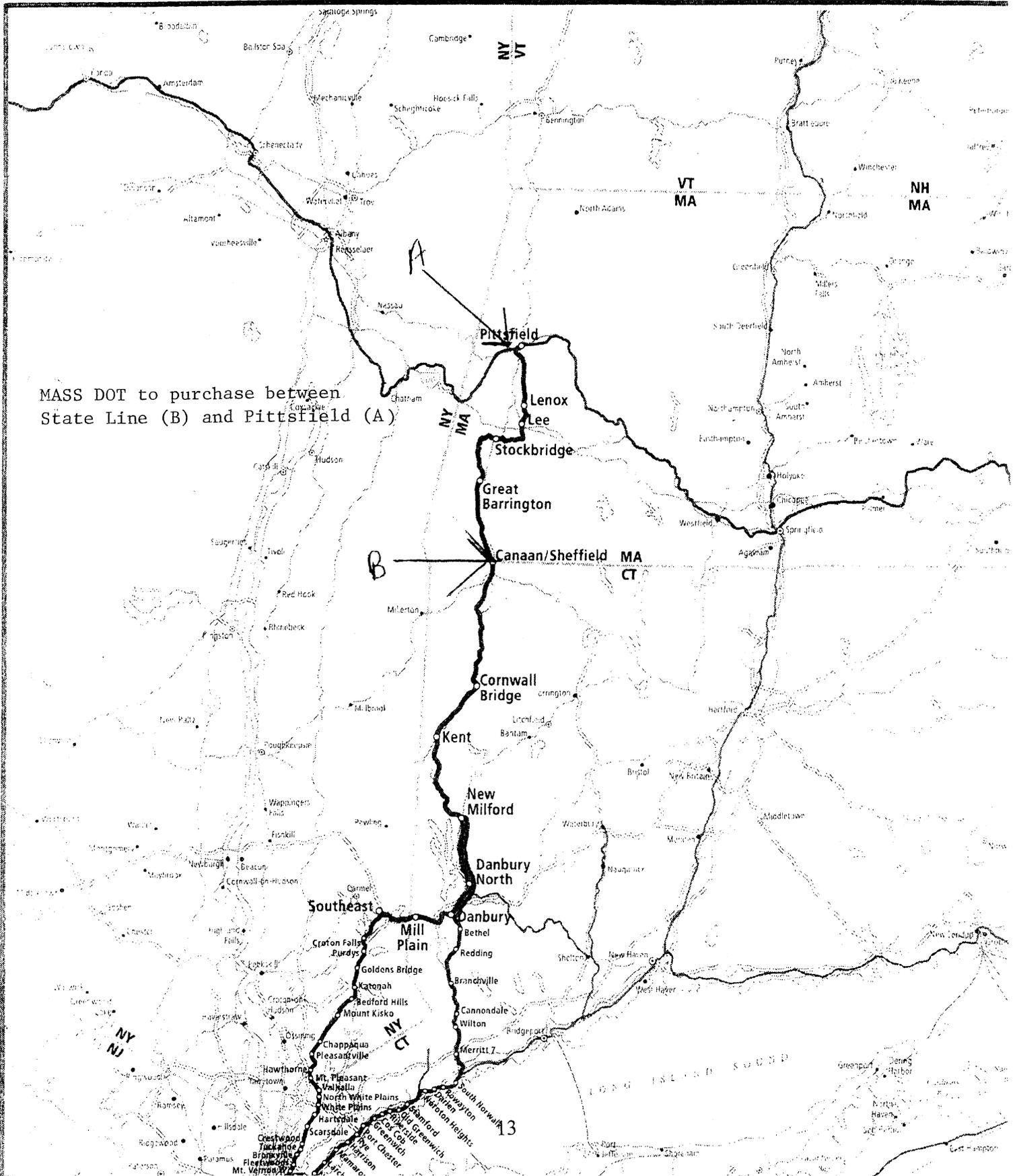
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
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EXHIBIT B

MAP

Housatonic Rail Road Company



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EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 35866

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF HOUSATONIC RAILROAD COMPANY, INC.

The Massachusetts Department of Transportation (“MassDOT”), a non-carrier, has filed a verified notice of exemption to acquire from Housatonic Railroad Company, Inc. (“HRRC”) certain railroad assets extending from about milepost 50.0 at the Massachusetts-Connecticut border at Sheffield, MA, to a connection with CSX Transportation, Inc., at approximately milepost 86.3 at Pittsfield, MA, an approximate distance of 36.3 route miles.

MassDOT’s projected annual operating revenue relating to this transaction will not exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable.

Although the parties to the transaction could at their mutual discretion consummate the subject transaction on or after November 15, 2014, the parties expect to consummate the transaction on or about December 15, 2014, pending the Board’s handling of a simultaneously-filed motion to dismiss this notice of exemption.

The notice is filed under 49 C.F.R. § 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by _____, 2014.

An original and 10 copies of all pleadings, referring to STB Docket No. FD 35866, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, SW, Washington, DC 20523-0001. In addition, a copy of each pleading must be served on MassDOT's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606, (312) 252-1504.

Simultaneously with this verified notice of exemption, MassDOT has filed in this docket a motion to dismiss the subject exemption notice. MassDOT has invoked the class exemption procedure in this case in order to obtain a determination that the proposed rail asset transaction, as structured, does not require Board authorization or invocation of the agency's class exemption procedures. See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C.2d 835 (1991).