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November 16, 2015  
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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. FD 35943**

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

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**AMENDED REQUEST FOR EXPEDITED CONSIDERATION**

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**ATTORNEYS FOR MASSACHUSETTS  
DEPARTMENT OF TRANSPORTATION**

**Dated: November 16, 2015**

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SURFACE TRANSPORTATION BOARD

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For reasons provided herein, the Commonwealth of Massachusetts (the “Commonwealth”), acting by and through its Department of Transportation (“MassDOT”), amends its request for expedited consideration in this proceeding to urge the Board to issue a decision on the merits of MassDOT’s pending motion to dismiss by no later than December 4, 2015.

As background, this proceeding involves MassDOT’s invocation of the Board’s class exemption procedures at 49 C.F.R. part 1150, subpart E, to acquire from Pan Am Southern LLC (“PAS”) the railroad-related assets (i.e., right-of-way, track railroad physical plant, and other assets related to this track segment) comprising the “Adams Branch” in western Massachusetts, extending from Engineering Station 739+20 in Adams, MA, to Engineering Station 981+45 in North Adams, MA (collectively, the “Railroad Assets”). In addition to the aforementioned class exemption filing, MassDOT also tendered what it regards as very routine motion seeking dismissal of the exemption notice, urging the Board to find that the rather straightforward Railroad Assets transaction, as structured, does not require Board authorization.

The exemption notice and corresponding motion to dismiss were filed together on August 14, 2015. MassDOT requested expedited Board consideration of its motion to dismiss, urging a decision on the merits of that motion “by or before September 28, 2015, but in no event any later than December 15, 2015.” Motion to Dismiss at 31. MassDOT has not closed, and cannot close, on the subject Railroad Assets transaction absent a Board decision dismissing the Board’s previously-issued notice of exemption in this proceeding.

It appears that the Board may have elected to process MassDOT’s motion to dismiss in view of the later, December 15 decision date contained in MassDOT’s August 14 filing; the hoped-for September 28 decision date having passed some time ago. MassDOT understands that the earlier decision date it had requested was ambitious, but that date was driven by, among other considerations, MassDOT’s desire to deliver to the affected Massachusetts communities – particularly the City of North Adams and the Town of Adams – certain public benefits as explained in the motion to dismiss, which considerations are still important to MassDOT. Local and statewide interest in a prompt decision on the pending motion to dismiss (which decision, in turn, would facilitate closing on the Railroad Assets transaction as contemplated by the parties) is reflected in a number of supplemental filings to the Board, in which the City of North Adams and the Town of Adams (both separately and jointly), State Senator Benjamin B. Downing, and, most recently, U.S. Senator Elizabeth Warren, have expressed support for MassDOT’s expedited consideration request.

MassDOT very recently has determined that a favorable STB decision as late as December 15 provides too narrow a window to guarantee that the parties will be able to execute the final steps in the real estate acquisition and finalize the closing before the end of the year. As set forth in the Purchase Contract, a copy of which MassDOT previously submitted, the agreement

between the parties contemplates a 2015 closing. Failure to accomplish the closing this year could unnecessarily complicate the Railroad Assets transfer, for budgetary and tax reasons, among others. Accordingly, and out of an abundance of caution driven by the desire to afford the parties sufficient lead time to effectuate closing (in this case, to break escrow with the intended exchange of the committed Commonwealth funds and Railroad Assets) before the year's end, MassDOT hereby amends the Expedited Consideration component of its pending motion to dismiss (filed on August 14, 2014) to reflect that MassDOT now urges a Board decision dismissing the subject exemption notice by or before September 28, 2015, *but in no event any later than December 4, 2015*. Aside from this modest amendment, other elements of MassDOT's motion to dismiss remain the same.

Respectfully Submitted,



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Department of Transportation

Dated: November 16, 2015

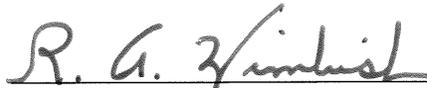
**CERTIFICATE OF SERVICE**

I hereby certify that I have today served the following parties of record with a copy of the foregoing Amended Request for Expedited Consideration by way of U.S. Postal Service delivery, first class postage prepaid or via more expeditious means of delivery:

November 16, 2015

Downing, Benjamin B.  
State House, Room 413F  
Boston, MA 02133-1053

Warren, Hon. Elizabeth  
United States Senate  
Washington, DC 20510-2105



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Attorney for Massachusetts Department of  
Transportation