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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35863

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

MOTION TO EXCISE BY WAY OF WITHDRAWAL OR MODIFICATION

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DEPARTMENT OF TRANSPORTATION**

Dated: February 4, 2015

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The Commonwealth of Massachusetts (the “Commonwealth”), acting by and through its Department of Transportation (“MassDOT”), hereby requests leave to excise from the scope of the notice of exemption filed in the above-captioned proceeding on October 10, 2014 (the “October 10 NOE”) its proposed acquisition of rights that Pan Am Southern LLC (“PAS”) possessed (if any) to operate passenger trains between Springfield, MA, and the Massachusetts-Connecticut border. Specifically, MassDOT requests that it be granted leave to withdraw the passenger rights element of its October 10 NOE or, alternatively, that the Board modify MassDOT’s exemption authority as necessary to accomplish the requested excision of the passenger rights transfer.

In addition, MassDOT recently has discovered that the terminal station point of the railroad line involved in the subject assets sale transaction (at Springfield) was incorrectly identified in MassDOT’s prior filings in this proceeding as “Station 2+25.” The correct southern terminus at Springfield should be given as “Station -2+25” (with a “minus” symbol). The omission of the minus symbol in the Springfield station number was a typographical error, and correction of the

station number will ensure that the scope of the proposed rail assets sale is in accordance with the parties' objectives, and will ensure consistency with MassDOT's (correct) statement in its October 10 NOE that the involved line segment is 49.67 route miles in length.

As background, MassDOT invoked the Board's class exemption procedures at 49 C.F.R. § 1150.31, et seq., in this proceeding to acquire – (1) certain real property and railroad personal property interests (the “Railroad Assets” as described in the October 10 NOE) of a line of railroad extending from Station 2+25 in Springfield, MA,¹ to Station 2613+66.85 at East Northfield, MA; and (2) any right, title, or interest that PAS may currently possess to operate passenger trains between Springfield and the Massachusetts-Connecticut border. See October 10 NOE at 5 (“Summary of the proposed transaction”) and Exhibit C (draft caption summary). The proposed acquisition of the Railroad Assets was subject to PAS' retention of an exclusive, irrevocable, perpetual, divisible, licensable, and transferable freight common carrier easement.

The supposed PAS passenger service rights included within the scope of the October 10 NOE involve the northern end of a roughly 60.5-mile railroad line (the “Amtrak Line”) owned by the National Railroad Passenger Corporation (“Amtrak”) extending southward from Springfield to New Haven, CT. PAS possesses rights to provide freight common carrier service over the relevant portion of the Amtrak Line. The parties to the present transaction doubted that PAS had any passenger operating rights over the Amtrak Line, and thus believed that PAS had no such rights to transfer, hence the consistent reference in MassDOT's filings to PAS' passenger service rights “if any.” (And even if PAS had any such passenger rights to convey, MassDOT understands that PAS

¹ As explained above, MassDOT requests that the Board's records for this transaction be corrected to reflect that the southern terminus of the Railroad Assets at Springfield is at Station -2+25 (with the “minus” symbol preceding the number 2), rather than as Station 2+25.

could terminate those rights voluntarily without prior Board consent, inasmuch as it appears to MassDOT that there are no longer “exit” procedures applicable to the termination of passenger rail common carrier service.)

The parties have since ascertained that PAS possesses no passenger service rights over the Amtrak Line. In fact, Amtrak has contacted the parties in connection with this proceeding to express its position that PAS has no passenger rights interest whatsoever over the Amtrak Line. As part of its communication, Amtrak supplied the parties with the various documents governing PAS’ operations and provision of freight common carrier service over the Amtrak Line, all of which reinforce Amtrak’s position that PAS has no passenger rights interests to transfer. The parties understand that Amtrak wants MassDOT to advise the Board that the passenger rights transfer contemplated as a possible element of the transaction presented in the October 10 NOE is a nullity, and MassDOT has agreed to so advise the agency.

Accordingly, MassDOT hereby advises the Board that it will not acquire any passenger operating rights from PAS as part of this proceeding, inasmuch as the parties now agree with Amtrak that PAS has no such rights to convey to MassDOT over the portion of the Amtrak Line between Springfield and the Massachusetts-Connecticut border. Moreover, consistent with the Board’s observations contained in its decision in this proceeding served on December 24, 2014 (the “December 24 Decision”), MassDOT affirms that it can complete the Railroad Assets transaction without the PAS-MassDOT passenger rights transfer.²

At page 4 of its December 24 Decision, the Board remarked that “If MassDOT does not wish to become a common carrier in light of the apparent acquisition of passenger rights, it may

² December 24 Decision at 5, n. 6.

choose to excise the acquisition of those rights from the transaction” (citing Wis. Dep’t of Transp.—Pet. for Declaratory Order—Rail Lines in Almena, Cameron, & Rice Lake, Barron Cnty., Wis., FD 35455 (STB served Nov. 10, 2011)). In keeping with the Board’s “excision” invitation, MassDOT requests that acquisition of the Springfield-to-the-Massachusetts-Connecticut-border passenger rights (which Amtrak has demonstrated to the parties’ satisfaction that PAS does not possess) be excised from the scope of the transaction set forth in the October 10 NOE by way of the appropriate Board process – whether by Board-granted leave to withdraw or by way of Board modification of the scope of the exemption obtained by operation of the October 10 NOE.³

For the foregoing reasons, MassDOT respectfully requests that the Board permit MassDOT to excise from the scope of this proceeding MassDOT’s proposed acquisition of passenger operating rights over the Amtrak Line from Springfield to the Massachusetts-Connecticut border. If such an excision request is granted, MassDOT also requests that the Board clarify that, as appropriately modified by the requested excision, MassDOT’s October 16 NOE has been dismissed in full. As is also explained above, MassDOT respectfully requests that the Board’s records in this proceeding be modified to account for MassDOT’s incorrect statement in its October 10 NOE that the southern

³ See, e.g., American Surface Lines, LLC – Acquisition and Operation Exemption – Mikrut Properties, LLLP, FD 35741 (STB served Nov. 26, 2013) (allowing the exemption notice filer to withdraw the portion of its exemption filing with respect to a specific track segment identified in the original exemption notice over which the filer later determined it did not intend to “consummate the exemption”); CSX Transportation, Inc. – Abandonment in Vermillion County, OH, Docket No. AB-55 (Sub-No. 193) (granting CSXT’s request to withdraw its request for authority to abandon a portion of a longer line segment that was the subject of CSXT’s original abandonment application); The Alabama Great Southern Railroad Company – Discontinuance Exemption – In Saint Bernard Parish, LA, Docket No. AB-290 (Sub-No. 323X) (STB served Dec. 13, 2013) (granting railroad’s request to alter, by modification, the scope of its exemption request from rail abandonment to the more limited relief of discontinuance of service).

terminus of the Railroad Assets at Springfield is at "Station 2+25," when in fact the correct southern terminus is "Station -2+25."

Respectfully Submitted,



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Attorneys for Massachusetts
Department of Transportation

DATED: February 4, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2015, a copy of the foregoing Motion to Excise By Way of Withdrawal or Modification is being served by U.S. Postal Service first class mail upon the following parties appearing on the Surface Transportation Board's service list (available from the agency's website):

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