

ENTERED
Office of Proceedings
October 10, 2014
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35863

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

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

**Robert A. Wimbish
Audrey L. Brodrick
FLETCHER & SIPPEL LLC
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 10, 2014

**FILED
October 10, 2014
SURFACE
TRANSPORTATION BOARD**

**FEE RECEIVED
October 10, 2014
SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35863

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

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 Pan Am Southern LLC (“PAS”) certain railroad assets and associated rail line right-of-way known generally as a portion of the Connecticut River Main Line (also known as the “Knowledge Corridor”) as follows: from Station 2+25 in Springfield, MA, to the Massachusetts-Vermont border at Station 2613+66.85 at East Northfield, MA. The above-described rail line segment, roughly 49.67 route miles in length, shall be referred to herein as the “Line,” and the assets (i.e., track and right-of-way) along the Line that MassDOT proposes to acquire in connection with this proceeding shall be referred to herein as the “Railroad Assets.”

MassDOT will acquire the Railroad Assets subject to PAS’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 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 trigger the licensing provisions at 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 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 May 25, 2012 Purchase and Sale Contract, subsequently extended (due to postponement of the closing) and modified by way of a Reinstatement and First Amendment to Purchase and Sale Contract, MassDOT has the right to purchase PAS's right, 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 PAS's retained exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight rail operations easement freight railroad operating easement. As part of the transaction PAS would also transfer any right, title or interest PAS may possess (if any) to operate passenger trains between Springfield and the Massachusetts-Connecticut border.¹

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

As indicated above, PAS 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 permit designated third-party operators to provide intercity passenger service and (potentially) regional commuter rail service over the Railroad Assets.

¹ MassDOT does not intend to, and indeed may never, engage in the provision of STB-regulated interstate passenger rail service. Rather, the acquisition of any right that PAS may have to provide passenger service south of Springfield is intended primarily to serve as a means formally to foreclose PAS from invoking such a right (in the unlikely event that such a right exists in the first place) after the consummation of the subject transaction. Should MassDOT elect at some future date directly to engage in the provision of interstate passenger rail business, it understands that it should return to the Board for a determination as to whether its engaging in such activity will require advance Board authorization.

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:

Pan Am Southern LLC
ATTN: General Manager
1700 Iron Horse Park
North Billerica, MA 08162

MassDOT, an instrumentality of the Commonwealth of Massachusetts and a non-carrier, will acquire PAS's right, title and interest in the right-of-way, trackage and other property and physical assets constituting the Railroad Assets, extending from Station 2+25 in Springfield, MA, to Station 2613+6685 at the Massachusetts-Vermont border at East Northfield, MA, a distance of approximately 49.67 route miles. PAS will retain an exclusive freight rail common carrier service easement over the Railroad Assets to be transferred pursuant to the subject transaction.

Also, and as is discussed above, MassDOT will acquire any right, title, or interest that PAS may currently possess to operate passenger trains between Springfield and the Massachusetts-Connecticut border.

The parties may consummate the subject transaction at their discretion on or after November 9, 2014, they anticipate consummating the subject rail assets sale transaction on or about December 29, 2014, 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 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

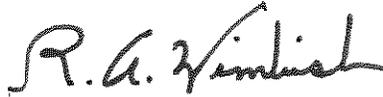
Under 49 C.F.R. § 1105.6(c)(2), MassDOT's proposed acquisition of the Railroad Assets is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in freight carrier operations. i.e., changes that exceed the thresholds established in 49 C.F.R. §§ 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 PAS 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
Fletcher & Sippel LLC
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 10, 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 9, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35863

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

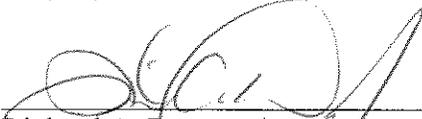
VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. § 1150.31, *ET SEQ.*

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 9, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

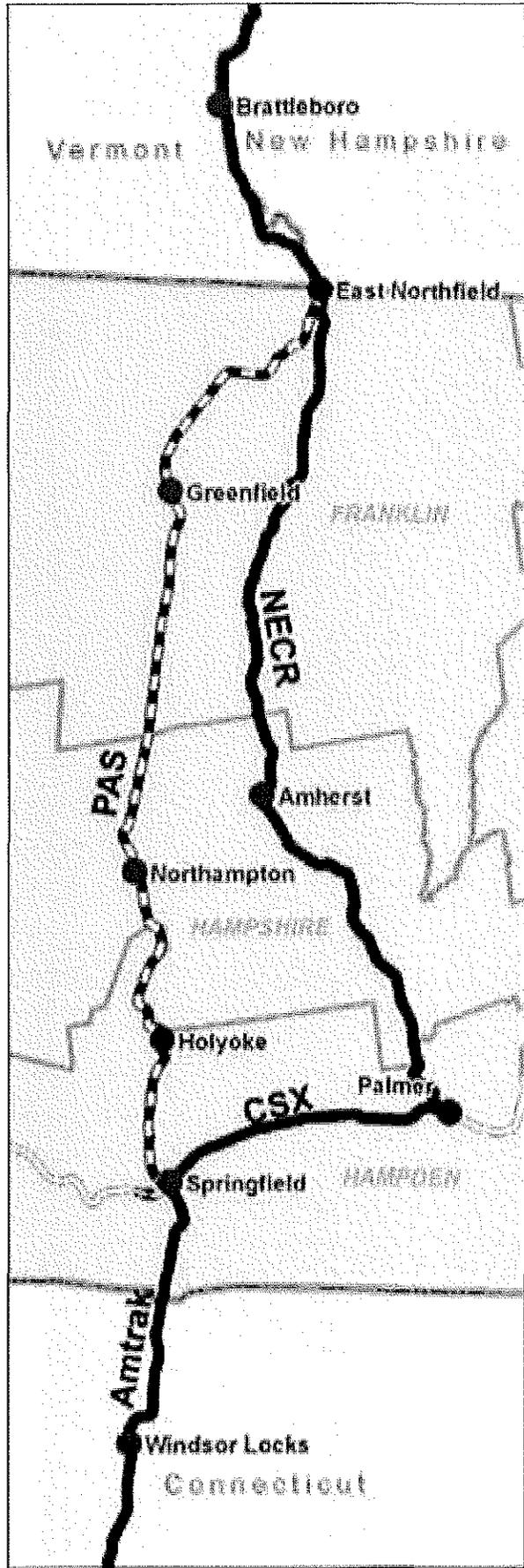
STB Docket No. FD 35863

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

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

EXHIBIT B

MAP



 Proposed MassDOT Acquisition



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35863

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

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

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 35863

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

The Massachusetts Department of Transportation (“MassDOT”), a non-carrier, has filed a verified notice of exemption to acquire from Pan Am Southern LLC (“PAS”) – (1) certain railroad assets extending from Station 2+25 in Springfield, MA, to approximately Station 2613+66.85 at the Massachusetts-Vermont border at East Northfield, MA, a distance of approximately 49.37 route miles; and (2) PAS’s right, title and interest (if any) in providing passenger rail operations between Springfield, Massachusetts, and the Massachusetts-Connecticut border.

The projected annual operating revenue of MassDOT 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 could at their discretion consummate the subject transaction on or after November 9, 2014, the transaction is expected to be consummated on or about December 29, 2014, subject to the Board’s handling of the simultaneously-filed motion to dismiss.

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. 35863, 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 is filing in this docket a motion to dismiss the subject exemption notice. MassDOT has invoked the subject class exemption procedure in this case in order to obtain a determination that the proposed rail asset transaction, as structured, does trigger the Board's licensing procedures. See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C.2d 835 (1991).