

**SURFACE TRANSPORTATION BOARD
OPEN VOTING CONFERENCE
MARCH 21, 2003**

Massachusetts Port Authority–Acquisition Exemption–Certain Assets of Boston and Maine Corporation, STB Finance Docket No. 34276; and Boston and Maine Corporation–Abandonment–In Suffolk County, MA, STB Docket No. AB-32 (Sub-No. 92)

**STATEMENT OF JOSEPH C. LEVIN, ATTORNEY ADVISOR,
OFFICE OF PROCEEDINGS**

Good morning Chairman Nober, Vice-Chairman Burkes and Commissioner Morgan:

These cases involve a rail line some one and one-half miles long located in Charlestown, Massachusetts. The Board authorized the Boston and Maine to abandon this line, known as the Mystic Wharf Branch, on December 21, 2001. Rather than consummating the abandonment, however, the Boston and Maine reached an agreement with Massport, a State agency that owns four maritime properties that abut the line at issue, for Massport to acquire Boston and Maine's interests in the underlying right-of-way and related structures that make up the Mystic Wharf Branch. Under the agreement, Boston and Maine will sell only the physical assets of the line while retaining a permanent easement to permit Boston and Maine and its affiliate, Springfield Terminal Railway Company, to continue operating over and maintaining the line.

To effect these arrangements, on November 5, 2002, Massport filed a verified notice of exemption to acquire the right-of-way and related improvements in the Mystic Wharf Branch. Massport concurrently filed a motion to dismiss the notice, asserting that the transaction should not be subject to Board jurisdiction because Massport will not become a common carrier as a result of the transaction. There have been no objections to these filings.

The draft decision before you grants Massport's motion to dismiss because there is no need for the Board to exercise its jurisdiction here. The acquisition of an active rail line by a noncarrier like Massport would normally require Board approval. However, under Board precedent, that authorization is not required when only the physical assets of a line are conveyed and the common carrier rights and obligations are not transferred.

That is what will happen here. Massport will acquire only the railroad right-of-way and related improvements to preserve the line for rail service. Massport will not become a rail common carrier subject to Board jurisdiction or have any common carrier rights or obligations as a result of the transaction. Boston and Maine is not transferring those rights or obligations. Instead, Boston and Maine and Springfield Terminal will retain them. Under these circumstances, the Board has routinely declined to exercise its jurisdiction, and there is nothing in the record here that suggests a different result.

The draft decision also grants a motion filed by Boston and Maine seeking to withdraw its previously approved abandonment application in STB Docket No. AB-32 (Sub-No. 92). Boston and Maine has not consummated the abandonment and will retain a permanent easement to provide for continued operation and maintenance of the line, thus making abandonment authorization unnecessary.

We would be happy to address any questions you might have.