



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35866]

Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of Housatonic Railroad Company, Inc.

The Massachusetts Department of Transportation (MassDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 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, Mass., to a connection with CSX Transportation, Inc., at approximately milepost 86.3 at Pittsfield, Mass., a distance of approximately 36.3 miles (the Line).

According to MassDOT, the acquisition of the Line is intended to facilitate the Commonwealth’s long-term plans to restore regional passenger train service linking the Berkshire region of western Massachusetts with the New York City metropolitan area and the Northeast Corridor megalopolis. MassDOT states that the acquisition of the Line is one step in what MassDOT anticipates will be an involved, multi-step process that ultimately will lead to the establishment of a new railroad passenger service route in the Northeast. MassDOT states that, pursuant to a draft Purchase and Sale Contract, MassDOT has secured the right to purchase MRC’s and HRRC’s respective rights, title,

¹ MassDOT states that MRC is not a rail carrier for purposes of the present transaction and, therefore, is not listed in the proceeding caption.

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. MassDOT also states that it will not acquire the right, nor will it have the ability, to provide rail common carrier service over the Line.² According to MassDOT, 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 Line. MassDOT, however, will be entitled in the future to initiate (itself, or through a designated third party) intercity passenger service and regional commuter rail service over the Line. MassDOT states that the proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

MassDOT certifies that, because it will conduct no freight operations on the line segment being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.

MassDOT also states that the parties expect to consummate the transaction on or about December 15, 2014, which is after the effective date of November 15, 2014.

² A motion to dismiss the notice of exemption on grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions 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. Petitions to stay must be filed no later than November 7, 2014 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35866, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: October 28, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk