



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35943]

Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of Pan Am Southern LLC

The Massachusetts Department of Transportation (MassDOT)<sup>1</sup> has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Pan Am Southern LLC (PAS) certain railroad assets and associated right-of-way, known generally as the Adams Branch, extending from Engineering Station 739+20 in Adams, Mass., to Engineering Station 981+45 in North Adams, Mass. (the Railroad Assets), a distance of approximately 4.6 miles.

According to MassDOT, the acquisition of the Railroad Assets will promote continued use (and potential growth) of freight traffic due in part to physical plant improvements that MassDOT is already undertaking, and will facilitate use of the property for railroad passenger excursion operations.

MassDOT also states that it will not acquire the right, nor will it have the ability, to provide rail freight common carrier service over the Railroad Assets, and that PAS will

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<sup>1</sup> Citing Massachusetts Department of Transportation—Acquisition & Operation Exemption—Certain Assets of Housatonic Railroad, FD 35866 (STB served May 22, 2015), MassDOT describes itself as being “considered by the Board to be a non-operating passenger rail common carrier by virtue of its possession of as-yet-unexercised interstate passenger rail service rights on an unrelated rail line in western Massachusetts.”

retain a permanent, exclusive freight operating easement over the Railroad Assets.<sup>2</sup>

Under the terms of the governing agreements, MassDOT maintains that it will be entitled to conduct entirely intrastate passenger rail excursion service over the Railroad Assets.

MassDOT states that the proposed transaction has been agreed upon pursuant to a June 26, 2015 Purchase and Sale Contract. According to MassDOT, the agreements governing the subject asset sale and post-transaction railroad operations preclude MassDOT from interfering materially with PAS's provision of railroad common carrier service over the Railroad Assets. MassDOT also 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 it would not conduct freight operations over the Railroad Assets, and therefore, MassDOT's prospective annual common carrier revenues will not result in the creation of a Class I or Class II carrier.

MassDOT also states that the parties intend to consummate the transaction on or about September 28, 2015, subject to a Board decision on the concurrently filed motion to dismiss. The earliest this transaction may be consummated is September 13, 2015 (30 days after the verified notice was filed).

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

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<sup>2</sup> 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.

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 September 4 2015 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35943, 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](http://WWW.STB.DOT.GOV).”

Decided: August 25, 2015.

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

Kenyatta Clay

Clearance Clerk

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