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SERVICE DATE – JANUARY 3, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21089

WINTHROP SARGENT, JOHN COGLIANO, AND PAUL FUERST—ACQUISITION OF  
CONTROL—PLYMOUTH AND BROCKTON STREET RAILWAY COMPANY, BRUSH  
HILL TRANSPORTATION COMPANY, AND MCGINN BUS COMPANY, INC.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On December 6, 2019, Winthrop Sargent (Sargent), John Cogliano (Cogliano), and Paul Fuerst (Fuerst) (collectively, Applicants), all noncarriers, filed an application under 49 U.S.C. § 14303 for authority after-the-fact to acquire control of Plymouth and Brockton Street Railway Company (P&B), Brush Hill Transportation Company (Brush Hill), and McGinn Bus Company, Inc. (McGinn), from George S. Anzuoni and Richard W. Anzuoni (collectively, Sellers). The Board is tentatively approving and granting after-the-fact authorization of the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 C.F.R. §§ 1182.5 and 1182.8.

DATES: Comments may be filed by February 18, 2020. If any comments are filed, Applicants may file a reply by March 2, 2020. If no opposing comments are filed by February 18, 2020, this notice shall be effective on February 19, 2020.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Applicants' representative: Matthew J. Warren, Sidley Austin LLP, 1501 K Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: According to the application, Applicants are three individuals, "none of whom is a passenger motor carrier" or owns any other interest in a passenger motor carrier, and Sellers are two individuals who also are noncarriers and do not hold any other interest in regulated passenger motor carriers. (Appl. 2-3.) Under the transaction,

Sellers have transferred to Applicants 69% of the stock in P&B<sup>1</sup> and 100% of the stock in Brush Hill and McGinn.<sup>2</sup> (Id. at 3.) Specifically, Sargent has acquired 35.19% of P&B's outstanding stock and 51% of the stock in Brush Hill and McGinn; Cogliano has acquired 20.7% of P&B's outstanding stock and 30% of the stock in Brush Hill and McGinn; and Fuerst has acquired 13.11% of P&B's outstanding stock and 19% of the stock in Brush Hill and McGinn. (Id.)

Applicants provide the following description of the three carriers:

- P&B provides local and regional passenger bus service in interstate and intrastate commerce throughout the Commonwealth of Massachusetts and the northeastern United States. It has a fleet of 30 owned and seven leased full-size coaches, three trolleys, and one service truck. (Id. at 4.)
- Brush Hill provides local and regional passenger bus service in interstate and intrastate commerce throughout the Commonwealth of Massachusetts and the northeastern United States. It has a fleet of six full-size coaches and four trolleys. (Id. at 4-5.)
- McGinn provides local and regional passenger bus service in interstate and intrastate commerce throughout the Commonwealth of Massachusetts and the northeastern United States. It has a fleet of 10 full-size coaches and one service truck. (Id. at 5.)<sup>3</sup>

Applicants claim that the transaction would have no impact or adverse effect on available transportation options or level of competition in the motor passenger carrier sector. (Id. at 1.) They plan to manage the assets with the goal of continuing to provide safe and reliable motor passenger transportation. (Id.) They state that they have no current plans to materially alter the

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<sup>1</sup> The remaining 31% of P&B's outstanding stock is owned by approximately 50 individual stockholders who are not parties to the instant transaction. (Appl. 1, n.1.)

<sup>2</sup> Applicants received state regulatory approval from the Massachusetts Department of Public Utilities to acquire a controlling interest of the motor carriers on May 13, 2019. (Id. at 2, 6.) Applicants state that they recognize that their application should have been filed with the Board prior to consummation of the transaction. (Id. at 2.) Applicants state that they inadvertently did not seek Board approval because of a misunderstanding and a belief that they only required approval from the state regulatory authorities. (Id.) Applicants ask the Board to allow them to correct this oversight by granting this after-the-fact approval of their acquisition of control over the three motor carriers. (Id.) The Board has permitted parties to obtain after-the-fact licensing authority for a transaction when the failure to seek approval was done without malice and by mistake. See Allied Indus. Dev. Corp.—Pet. for Declaratory Order, FD 35477, slip op. at 6 (STB served Sept. 17, 2015) (citing Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Ctys., Iowa., FD 34867, slip op. at 5 (STB served June 15, 2007)).

<sup>3</sup> Additional information about these motor carriers, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (See Appl. 4-5; id. at Ex. 1.)

service available to the public, revise the controls that are in place to ensure the continued safety and reliability of that service, or make any significant changes that would adversely affect the motor carriers' employees or customers. (Id. at 1-2.)

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges that result, and (3) the interest of affected carrier employees. Applicants have submitted the information required by 49 C.F.R. § 1182.2, including information to demonstrate that the transaction is consistent with the public interest under 49 U.S.C. § 14303(b), see 49 C.F.R. § 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. § 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded \$2 million during the 12-month period immediately preceding the filing of the application, see 49 C.F.R. § 1182.2(a)(5).

Applicants assert that the transaction will have a positive effect on the adequacy of transportation services for the public. Applicants state that they currently have no intention of materially altering the nature, extent, or frequency of the service provided by the motor carriers. (Id. at 7.) The carriers will continue to operate as they have been, albeit under new ownership. (Id.) According to the application, all of the motor carriers' systems will remain in place, as will management experienced in the operation of bus companies. (Id.) In the long term, Applicants state that they plan to modernize the motor carriers' fleet of vehicles and invest in technological upgrades and improvements. (Id.) Because Applicants control no other carriers, they assert that there will be no negative impact on competition. (Id.)

Applicants also maintain that the transaction will not affect fixed charges. (Id. at 8.) They state that the stock of the motor carriers has been acquired by Applicants individually, by and through their own personal financing. (Id.) No funds will be borrowed to finance the transaction, and therefore, no fixed charged will be incurred by the motor carriers. (Id.)

Finally, Applicants assert that there will be no material effect on employee or labor conditions. (Id.) They state that the transaction does not envision any immediate change in the day-to-day operations of the motor carriers that could negatively impact employees. (Id.) Applicants state that all existing employees, contracts, and programs currently in place will remain, subject to changing market and business demands in the future. (Id.)

The Board finds that the acquisition as described in the application is consistent with the public interest and should be tentatively approved and authorized after-the-fact. If any opposing comments are timely filed, these findings will be deemed vacated, and, if a final decision cannot be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6. If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

It is ordered:

1. The transaction is approved and authorized after-the-fact, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.
3. This notice will be effective February 19, 2020, unless opposing comments are filed by February 18, 2020.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: December 23, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.