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November 8, 2021

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street SW, Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
November 8, 2021
Part of
Public Record

Re: FD 36493

Protect Sudbury Inc. – Verified Petition for Declaratory Order

Dear Ms. Brown,

The Massachusetts Bay Transportation Authority (“MBTA”), hereby responds to the request of the Town of Sudbury, Massachusetts (“Sudbury”) – dated as of October 6, 2021, but not filed until October 18, 2021 – for issuance of a notice of interim trails use (“NITU”), presumably intended to enable Sudbury to assume interim trails sponsorship over an MBTA-owned corridor (the “Corridor”), formerly used for railroad transportation purposes, that passes through Sudbury. Sudbury’s NITU request is procedurally defective, as the Surface Transportation Board (the “Board”) likely already appreciates. In any event, MBTA is not willing to negotiate trails use arrangements with Sudbury or with any other interested party for that matter, the fatal procedural defects of Sudbury’s request notwithstanding. Accordingly, the Board must deny Sudbury’s NITU request.

The docket in which Sudbury has lodged its petition for issuance of an NITU involves a request for issuance of a declaratory order filed on March 11, 2021 (the “Petition”), in which Protect Sudbury Inc. (“PSI”), intent on blocking the installation of a subterranean electricity transmission line through the Corridor, has alleged that – (a) MBTA possesses a residual common carrier obligation over the Corridor; and, on the basis of the first allegation, (b) MBTA’s arrangements for the installation of the power line would interfere with the commuter agency’s ability to fulfill its purported common carrier service obligations over the Corridor. The second element of the Petition presumes, among other things, an emerging and viable demand for railroad service some 41 years after the last common carrier on the line (Boston & Maine Corporation – “B&M”) formally ceased operations pursuant to an order of the United

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States District Court for the District of Massachusetts (the “District Court”), as recounted in MBTA’s reply (the “Reply”) to the Petition.

MBTA responded to the Petition by way of its April 30, 2021 Reply, discrediting any need for a Board declaration as to the fully-abandoned status of the Corridor, and noting, among other things, that the Corridor was abandoned and removed from the scope of federal jurisdiction when B&M (then in bankruptcy) obtained District Court authorization (following the contemporaneous guidance of the Interstate Commerce Commission) to relinquish its freight easement over the Corridor, and, through such action, to terminate common carrier service over the Corridor permanently.

There is no pending abandonment proceeding involving the Corridor, which, under 49 C.F.R. § 1152.29, would be an essential prerequisite to the issuance of the NITU Sudbury has requested (presumably as another creative, but unavailing, attempt to block the aforementioned power line project, incidentally). Moreover, Sudbury’s NITU request is predicated upon an incorrect supposition that MBTA possesses a common carrier obligation on the Corridor. Once again, the Corridor was long ago removed from the scope of this agency’s jurisdiction (and MBTA has urged the Board to so rule), and, in any event, MBTA never became a common carrier with respect to the Corridor, has never held itself out to provide common carrier service over it, and thus has no obligation to provide common carrier service over it (and, indeed, never had such an obligation).

Finally, MBTA also hereby notifies the Board that it would be unwilling to negotiate an interim trails use arrangement with Sudbury (or anyone) with respect to the Corridor, even if MBTA were found to possess a common carrier obligation over the Corridor, and assuming further that this proceeding encompassed an abandonment proceeding, neither of which is the case. All other defects aside, Sudbury’s NITU request lacks MBTA’s consent, which would be a necessary prerequisite to issuance of an NITU. *See* 49 C.F.R. § 1152.29(g).

For these reasons, Sudbury’s request for issuance of an NITU must be denied.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Massachusetts Bay Transportation Authority

cc: All parties of record