

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36669]

Massachusetts Bay Transportation Authority—Acquisition Exemption—CSX
Transportation, Inc.

The Massachusetts Bay Transportation Authority (MBTA)¹ has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from CSX Transportation, Inc. (CSXT), approximately 8.86 miles of track, which includes: (1) an 8.4-mile segment of railroad track between milepost QVG 0.0, at Franklin, Norfolk County, Mass., and milepost QVG 8.4, at Milford, Worcester County, Mass., generally known as the Milford Secondary Line; and (2) a roughly 0.46-mile segment of the Franklin Industrial Track, contiguous with the Milford Secondary, extending between valuation station 1456+00 and valuation station 1480+40 within Franklin, Norfolk County, Mass. (collectively, the Line).²

MBTA states that, under the proposed transaction, it will acquire the Line subject to one freight common carrier service easement that will be retained by CSXT (the

¹ In its verified notice, MBTA states that it is a common carrier by virtue of its ownership of lines of railroad not directly involved in this proceeding. See, e.g., Boston & Me. Corp.—Discontinuance of Service Exemption—in Middlesex Cnty., Mass., AB 32 (Sub-No. 56X) (STB served Feb. 10, 1994).

² MBTA also filed a motion to dismiss its notice of exemption on the grounds that its transaction does not require authorization from the Board. The motion to dismiss will be addressed in a subsequent Board decision.

Easement). According to MBTA, CSXT will operate over the Franklin Industrial segment pursuant to the Easement and the Grafton & Upton Railroad Company (G&U), a Class III carrier, will operate over the Milford Secondary Line via assignment of CSXT's retained easement over that portion of the Line.³ MBTA states that the proposed transaction has been agreed upon pursuant to a contract for sale dated April 11, 2022. According to MBTA, the agreements governing the subject asset sale and post-transaction railroad operations prohibit MBTA from providing freight common carrier service, and from unreasonably interfering with the common carrier operations of the freight service provided over the Line. MBTA asserts, however, that it will possess the right to provide commuter rail service over the Line. MBTA also states that the agreements that underly the acquisition do not contain any provision or agreement limiting future interchange with a third-party connecting carrier.

MBTA certifies that, because it does not currently operate freight common carrier service over the Line (and thus generates no freight common carrier service revenues), MBTA's prospective annual common carrier revenues will not result in the creation of a Class I or Class II carrier.

MBTA states that it will consummate the proposed transaction once the Board has rendered a favorable decision on the concurrently filed motion to dismiss, and upon the

³ MBTA states that G&U currently holds an easement for the Milford Secondary pursuant to a transaction authorized in Grafton & Upton Railroad—Acquisition & Operation Exemption—CSX Transportation, Inc., FD 36444 (STB served Sept. 28, 2020). However, according to MBTA, that easement is set to terminate upon the closing of the present transaction. MBTA asserts that, contemporaneously with its acquisition of the Line, CSXT intends to assign the portion of the Easement over the Milford Secondary to G&U. In Grafton & Upton Railroad—Acquisition & Operation Exemption—CSX Transportation, Inc., Docket No. FD 36670, G&U filed a verified notice of exemption for operation over the Milford Secondary, pursuant to 49 C.F.R. part 1150.

effectiveness of an anticipated notice of exemption to be filed by G&U in a separate proceeding. The earliest this transaction may be consummated is March 15, 2023, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the 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 for stay must be filed no later than March 8, 2023 (at least seven days before the exemption becomes effective). All filings in response to this notice must refer to Docket No. FD 36669 and must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 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 800, Chicago, IL 60606-3268.

Board decisions and notices are available at www.stb.gov.

Decided: February 23, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.