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SERVICE DATE – DECEMBER 15, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36738

MASSACHUSETTS COASTAL RAILROAD, LLC—ACQUISITION AND OPERATION EXEMPTION—BAY COLONY RAILROAD CORPORATION

Decided: December 15, 2023

Massachusetts Coastal Railroad, LLC (Mass Coastal), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Bay Colony Railroad Corporation (Bay Colony), and to operate approximately 3.5 miles of rail line between the northeast side of the Framingham Secondary right-of-way in Medfield Junction (milepost 0.0) and the end of the line in Millis (milepost 3.4) (Millis Industrial Track), together with a portion of the Dover Secondary beginning near BCLR milepost 7.2 located at the south edge of Ice House Road and terminating at milepost 7.3 at Medfield Junction (connection with Millis Branch) (Remaining Dover Secondary Track) (collectively, the Millis Industrial Track and the Remaining Dover Secondary Track will be referred to as “the Line”), all in Norfolk County, Mass. For the reasons discussed below, the verified notice will be rejected.

BACKGROUND

According to Mass Coastal, Bay Colony has been operating the Line, which is owned by the Massachusetts Bay Transportation Authority (MBTA), pursuant to a modified certificate of public convenience and necessity. (Verified Notice 2); see also Bay Colony R.R.—Modified Rail Certificate, FD 29963 (ICC served Sept. 24, 1987) & (ICC served June 29, 1982). In addition, Mass Coastal states that, since 2005, Bay Colony has been operating the Line pursuant to a retained freight rail easement (Easement), which it acquired from CSX Transportation, Inc., and, since 2006, pursuant to a new trackage rights and operating agreement (Operating Agreement) with MBTA. (Verified Notice 2-3.) With its verified notice, Mass Coastal explains that it will be acquiring an assignment of the Easement and the Operating Agreement. (Id. at 3.)

Mass Coastal indicates that, in 2005, there was a dispute between Bay Colony and MBTA over a planned termination of Bay Colony’s modified certificate operations on the Millis Industrial Track. (Id. at 3 n.2); see also MBTA Notice, Apr. 13, 2005, Bay Colony R.R.—Modified Rail Certificate, FD 29963. According to Mass Coastal, Bay Colony and MBTA settled the dispute and informed the Board that Bay Colony had acquired the Easement and entered a new agreement with MBTA, and they anticipated filing appropriate notices of exemption concerning Bay Colony’s operations on the Millis industrial Track in the near future. (Id.); see also Bay Colony R.R.—Pet. for Decl. Ord., FD 34698, slip op. at 1-2 (STB served

July 11, 2006). Mass Coastal states that, ultimately, Bay Colony decided not to file the notices of exemption and to continue operating the Millis Industrial Track pursuant to the modified certificate.¹ (Verified Notice 3 n.2.)

DISCUSSION AND CONCLUSIONS

The verified notice was submitted under the class exemption procedures at 49 C.F.R. § 1150.41, which provide an expedited process for obtaining authority under 49 U.S.C. § 10902. The Board's streamlined class exemption procedures are reserved for transactions involving routine, uncomplicated, and non-controversial matters. See, e.g., Spectrum RR Holdings, LLC—Operation Exemption—R.R. Line in Brookhaven, N.Y., FD 36376 et al., slip op. at 4 (STB served June 16, 2020). Notices raising unresolved issues or questions requiring considerable scrutiny may be rejected. See, e.g., Tri-City R.R.—Lease & Operation Exemption—N. Pac. Dev., LLC, FD 36170, slip op. at 1 (STB served March 21, 2018).

In the verified notice filed in this proceeding, Mass Coastal is seeking authority to acquire, by assignment, the Easement and Operating Agreement from Bay Colony. There are, however, various issues and questions surrounding the status and operation of the Line that render this matter inappropriate for the class exemption procedures.

As an initial matter, it is not clear that Bay Colony's current operation of the Line pursuant to the modified certificate is appropriate as it contradicts arguments Bay Colony itself made with respect to the Millis Industrial Track in Docket No. FD 34698. In response to the notice MBTA filed on April 13, 2005, in Docket No. FD 29963, seeking to terminate Bay Colony's modified certificate operations on the Millis Industrial Track, Bay Colony filed a petition for declaratory order in Docket No. FD 34698. In its petition, Bay Colony argued, among other things, that its modified certificate may not have been appropriate because the Millis Industrial Track was never abandoned or approved for abandonment. Bay Colony Pet. 5, May 5, 2005, Bay Colony R.R.—Pet. for Decl. Ord., FD 34698; see also 49 C.F.R. § 1150.21 (“[Modified certificates] apply to operations over abandoned rail lines which have been acquired by a State. The rail line must have been fully abandoned or approved for abandonment by the Board or a bankruptcy court.”). In settling the dispute concerning Bay Colony's operations on the Millis Industrial Track, Bay Colony and MBTA informed the Board that appropriate notices of exemption would be filed in the near future. See Joint Status Report 1, July 7, 2006, Bay Colony R.R.—Pet. for Decl. Ord., FD 34698. However, Bay Colony never sought or received Board authority under 49 U.S.C. § 10901 or 49 U.S.C. § 10902 for operation of the Millis Industrial Track. Nor did Bay Colony explain why it no longer believes it needed such authority.

Given the uncertain status of the Line, use of the class exemption process is not appropriate in this circumstance. See Providence & Worcester R.R.—Acquis. & Operation Exemption—Certain Rights of Consol. Rail Corp., FD 33132, slip op. at 1 (STB served Sept. 27, 1996) (finding that the proposed transaction “appears to be without precedent” and that “[t]he

¹ Mass Coastal cites 49 C.F.R. § 1150.21, which provides, among other things, that an operator of a state-owned line, which is eligible for a modified certificate, has the option of applying for a modified certificate or a common carrier certificate. (Verified Notice 3 n.2.)

expedited notice of exemption procedure, designed to process routine acquisitions, is an inappropriate vehicle for such an unusual transaction.”) While this decision does not make a finding about whether Bay Colony may properly operate the Line under the modified certificate, there is sufficient ambiguity to make granting authority to a new operator through the notice process inappropriate. The Board has rejected a verified notice of exemption to acquire and operate a line because of unexplained issues related to prior operations. See S. San Luis Valley R.R.—Acquis. & Operation Exemption—Iowa Pac. Holdings, LLC, FD 35586 et al., slip op. at 2-3 (STB served Feb. 10, 2012). In that case, the Board explained that an unauthorized operator would need to file a petition for exemption or an application for authority for the unauthorized acquisition before the proposed transaction could go forward.

Finally, it is unclear whether the Easement and/or the Operating Agreement covers the 0.1-mile Remaining Dover Secondary Track,² which is included as part of the Line described in Mass Coastal’s verified notice. The declaratory order proceeding in Docket No. FD 34698, described above, in which Bay Colony and MBTA referred to the Easement and the Operating Agreement as part of their settlement, only related to the Millis Industrial Track.

For the foregoing reasons, Mass Coastal’s verified notice will be rejected. A copy of this decision will also be served on Bay Colony and MBTA. The rejection does not preclude Mass Coastal or Bay Colony from seeking authority through a petition for exemption or an application. However, any future pleading seeking authority from the Board with respect to these matters should clarify the following:

1. Whether Bay Colony must obtain Board authority to acquire the Line and to operate before Mass Coastal can obtain authority under 49 U.S.C. § 10902.
2. Bay Colony’s arguments in Docket No. FD 34698 that the modified certificate may not have been appropriate because the Millis Industrial Track was never approved for abandonment, whether those arguments apply also to the Remaining Dover Secondary Track, and whether MBTA possesses any common carrier obligation for the Millis Industrial Track or the Remaining Dover Secondary Track.
3. Whether the Easement and/or the Operating Agreement covers the Remaining Dover Secondary Track.

² On August 12, 2013, Bay Colony filed a notice terminating its modified certificate operations on a portion of the Dover Secondary Track between milepost 0.0 and milepost 7.2. Bay Colony Notice 3, Aug. 12, 2013, Bay Colony R.R.—Modified Rail Certificate, FD 29963. Bay Colony indicated that it would continue to operate the Remaining Dover Secondary Track, noting that, although the modified certificate described the Dover Secondary Track as being located between milepost 0.0 and milepost 7.2, the Dover Secondary Track, as currently measured, extended to milepost 7.3, where it connects to the Millis Branch. Id. at 3 n.1.

It is ordered:

1. Mass Coastal's verified notice of exemption is rejected.
2. This decision will be served on Bay Colony and MBTA.
3. This decision is effective on the date of service.

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