

Before the
SURFACE TRANSPORTATION BOARD

308146

STB Docket No. FD 36745

MASSACHUSETTS COASTAL RAILROAD, LLC
– MODIFIED RAIL CERTIFICATE –

ENTERED
Office of Proceedings
March 29, 2024
Part of
Public Record

AMENDED NOTICE OF MODIFIED RAIL CERTIFICATE
PURSUANT TO 49 CFR §1150.23

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Railroad, LLC*

Dated: March 29, 2024

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SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36745

MASSACHUSETTS COASTAL RAILROAD, LLC
– MODIFIED RAIL CERTIFICATE–

AMENDED NOTICE OF MODIFIED RAIL CERTIFICATE
PURSUANT TO 49 CFR §1150.23

Massachusetts Coastal Railroad, LLC (“Mass Coastal”), a Class III railroad, files this Amended Notice of Modified Rail Certificate (“Amended Notice”) pursuant to the requirements of 49 CFR §1150.23 to obtain and hold the common carrier authority to operate, as needed, the Plymouth line of railroad between milepost 1.7 at South Braintree and milepost 27.1 at Plymouth (the “Rail Line”). Bay Colony Railroad Corporation (“Bay Colony”) currently holds a modified rail certificate with respect to the Rail Line and has done so since 1982. *See Bay Colony Railroad Corporation – Modified Rail Certificate*, ICC Finance Docket No. 29963 (served June 29, 1982).

Mass Coastal filed its original Notice of Modified Rail Certificate (“Original Notice”) on December 15, 2023. In the Original Notice, Mass Coastal sought a modified rail certificate based on a proposed transfer of Bay Colony’s modified rail certificate and Mass Coastal retaining rights to operate freight service on the Rail Line. The Board’s staff has indicated to both Mass Coastal and Bay Colony the staff’s belief that the proper procedure would be for Mass Coastal to file for a new modified rail certificate (instead of a transfer). and for Bay Colony to terminate its modified rail certificate with respect to the Rail Line. Accordingly, Mass Coastal is

filing this Amended Notice and Bay Colony is contemporaneously filing a notice of intent to terminate its service over the Rail Line in ICC Finance Docket No. 29963.

Background

Mass Coastal is an existing Class III railroad that was first authorized to operate in southeastern Massachusetts in December 2007, and began operating in January 2008. *See Massachusetts Coastal Railroad, LLC – Modified Rail Certificate* (served December 13, 2007). Mass Coastal operates additional lines that it acquired and operates under 49 USC §§11323-11324. *See Massachusetts Coastal Railroad, LLC – Acquisition - CSX Transportation, Inc.*, Finance Docket No. 35314 (served March 29, 2010).

Mass Coastal entered into an agreement with Bay Colony to acquire all of Bay Colony's remaining operating rights and rail assets. In connection with the proposed acquisition, Mass Coastal has filed notice of exemption under 49 USC §10902 to acquire and operate the Watuppa Branch tracks that Bay Colony owned (FD 36739, filed November 16, 2023), and a petition for exemption to acquire and operate the Millis Branch freight easement that Bay Colony holds to operate over the Branch (FD 36747, filed January 16, 2024).¹ Mass Coastal is filing this Amended Notice to operate the Rail Line under a modified rail certificate.

Bay Colony has had authority to operate the Rail Line under a modified rail certificate since 1982. Although the original operating agreement expired, Massachusetts Bay Transportation Authority ("MBTA"), as the owner of the Rail Line, agreed in a 1993 letter

¹ Mass Coastal originally filed a notice of exemption on November 16, 2023, in Docket No. 36738. The notice was rejected by the Office of Proceedings based on questions regarding Bay Colony's operating rights. On January 16, 2024, Bay Colony filed a petition for exemption in Docket No. FD 36746 seeking after-the-fact authority to acquire and operate the Millis Industrial Track as a full common carrier and to clarify the other ownership and operation questions that had been raised by the Office of Proceedings.

relating to “Old Colony restoration construction” that Bay Colony would have the first right to negotiate to operate the Rail Line for freight service. Bay Colony never terminated its modified rail certificate with respect to the Rail Line CSX Transportation, Inc. (“CSXT”) continues to show South Braintree as an active junction with Bay Colony and also shows the stations on the Rail Line as “adopted” and potential shipping locations.

Mass Coastal and Bay Colony seek to have Mass Coastal become the successor operator of the Rail Line under a modified rail certificate. MBTA has been provided notice of the proposed change in operators and has consented to the extent required. See the notice attached hereto as Exhibit A.² To accomplish the change in operators, Bay Colony has now filed a notice of intent to terminate its service over the Rail Line, and Mass Coastal has filed this Amended Notice. Mass Coastal has received an inquiry from a potential freight shipper and has begun discussions with MBTA regarding the details of what an operating agreement would include, and potentially whether the Rail Line could just be added to one of the existing operating agreements between MBTA and Mass Coastal that cover other rail lines.

Notice

In accordance with 49 C.F.R. §1150.23(b), Mass Coastal hereby provides the following information:

- (1) The full name and address of operator: Massachusetts Coastal Railroad, LLC, 200 Myles Standish Boulevard, Suite 3, Taunton, MA 02780. Mass Coastal is an existing Class III carrier that has been operating as a carrier since 2007. Accordingly, it is not required to provide (i) articles of incorporation, (ii) the names and addresses of its

² The notice attached as Exhibit A has been redacted so that only the portions relevant to the Rail Line are shown.

officers and directors, or (iii) financial information.

(2) As set forth in the Bay Colony Application for a Modified Certificate filed on June 10, 1982, in Finance Docket No. 29963 at pp. 7-8, the Rail Line was acquired from Penn Central by Massachusetts Bay Transportation Authority (“MBTA”) subject to an operating easement in Conrail. Conrail applied to abandon the Rail Line under Section 308(b) of the 3R Act in ICC Docket No. AB 167 (Sub-no. 388), and an operating subsidy was offered by the Commonwealth of Massachusetts under agreement filed with the Interstate Commerce Commission (“ICC”) on February 24, 1982. The subsidy ended May 26, 1982, and an abandonment certificate was expected to be issued to Conrail no later than June 11, 1982. The ICC found that the Rail Line qualified for operation under a modified rail certificate. *See Bay Colony Railroad Corporation – Modified Rail Certificate*, ICC Finance Docket No. 29963 (served June 29, 1982).

(3) Mass Coastal proposes to assume the responsibility for providing freight rail service over the Rail Line under a modified certificate. Mass Coastal originally proposed that its authority be effective on December 18, 2023, and now proposes that the Board find the information included herein to be complete and issue a modified rail certificate notice effective on issuance of the notice. *See* 49 CFR §1150.23(a).³ Service would not commence until there is a reasonable request for service (Mass Coastal has received an initial inquiry) and Mass Coastal has entered into a new or amended operating agreement with MBTA. There is no current end date for Mass Coastal’s proposed operations over

³ Bay Colony is filing a notice of intent to terminate its modified rail certificate with respect to the Rail Line and indicates that that it does not intend its termination to be effective until Mass Coastal is authorized to provide service so that the Rail Line remains available to potential shippers.

the Rail Line.

(4) Mass Coastal will provide common carrier freight service over the Rail Line on the reasonable request of shipper(s). Mass Coastal also provides the following information:

(i) The Rail Line extends between milepost 1.7 at South Braintree and milepost 27.1 at Plymouth.

(ii) The Rail Line connects with CSXT at South Braintree, MA.

(iii) As an operating Class III carrier, Mass Coastal maintains the liability insurance shown on the certificate of insurance attached hereto as Exhibit B.

(iv) There are no preconditions that shippers must meet to receive rail service on the Rail Line.

(5) There will be no subsidizers of Mass Coastal's service on the Rail Line.

(6) Not applicable as there will be no subsidizers.

In accordance with 49 CFR §1150.23(c), Mass Coastal acknowledges that as a common carrier the services it offers and the applicable rates, charges and conditions of service will need to be described in tariffs adopted and "published" by Mass Coastal in accordance with the Board's rules.

Conclusion

Accordingly, Mass Coastal requests that the Board issue a modified rail certificate notice allowing Mass Coastal to provide freight service over the Rail Line upon the execution of an amendment or agreement with MBTA.

Respectfully submitted,

/s/ Eric M. Hocky

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(202) 772-0916
jmarks@clarkhill.com

*Attorneys for Massachusetts Coastal Railroad,
LLC*

Dated: March 29, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Amended Notice of Modified Rail

Certificate was served on the following by email as indicated:

Phillip Eng

General Manager and CEO

peng@mbta.com

Ryan Coholan

Chief Operating Officer

rcoholan@MBTA.com

Massachusetts Bay Transportation Authority

10 Park Plaza, Suite 3830

Boston, MA 02116

/s/ Eric M. Hocky

Eric M. Hocky

Dated: March 29, 2024

EXHIBIT A

Notice to and Consent of MBTA

Bay Colony Railroad Corporation
c/o Seminole Gulf Railway
Attn G. Bruce Fay
4110 Center Pointe Drive, Suite 207
Fort Myers, FL 33916

Massachusetts Coastal Railroad LLC
Attention: P. Christopher Podgurski
200 Myles Standish Blvd
Taunton MA 02780

Via email and FedEx

December 4, 2023

Monica Tibbits-Nutt
Secretary and CEO, Massachusetts Department of Transportation
10 Park Plaza, Suite 4160
Boston, MA 02116

Phillip Eng
General Manager and CEO, Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 3830
Boston, MA 02116

Re: Joint Notice of Transfer of Operating Rights and Related Agreements

Dear Secretary Tibbits-Nutt and General Manager Eng:

We are writing jointly to notify you that Bay Colony Railroad Corporation (“Bay Colony”) and Massachusetts Coastal Railroad LLC (“Mass Coastal”) have entered into an agreement under which Mass Coastal will be acquiring by purchase or assignment all of Bay Colony’s remaining rail assets including tracks, property interests, operating rights and related agreements. The parties expect the transaction to close on or about December 18, 2023. In particular as relates to the interests of the Commonwealth, we are writing to advise you of the proposed transfer / assignment of the following:

1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

3. Plymouth Branch. Bay Colony has had authority to operate the Plymouth Line between milepost 1.7 at South Braintree and milepost 27.1 at Plymouth (the “Rail Line”) under a modified rail certificate since 1982. Although the original operating agreement expired, MBTA agreed in a 1993 letter relating to “Old Colony restoration construction” that Bay Colony would have the first right to negotiate to operate the Plymouth Branch for freight service. CSXT continues to show Braintree as an active junction with Bay Colony and also shows the Plymouth Line stations as “adopted” and potential shipping locations.

Coastal intends to file with the STB for a modified rail certificate to hold the freight operating rights for the Rail Line. There are no formal assignment rights to be satisfied, and accordingly, this letter is merely providing notice of the proposed assignments and modified rail certificate filing.

Like Bay Colony, Mass Coastal has a long history of working with MassDOT and MBTA, and thus we anticipate an easy transition.

Please let us know if you have any questions or concerns. If not, we would appreciate it if you would countersign and return a copy of this letter acknowledging receipt of notice of the various assignments, and granting your consent to the extent required. If you would like to countersign via DocuSign and would like us to facilitate that, please provide the email address of the person who will countersign and we will make the arrangements. We would appreciate receipt of a countersignature within ten days, as the parties intend to close the transaction on December 18, 2023

Respectfully,

P. Christopher Podgurski

P. Christopher Podgurski

President

Massachusetts Coastal Railroad LLC

G. Bruce Fay

G. Bruce Fay

President

Bay Colony Railroad Corporation

cc: Meredith Slesinger, Rail & Transit Administrator
MassDOT Rail & Transit Division

Massachusetts Realty Group
20 Park Plaza, Suite 1120
Boston, MA 02116

The undersigned hereby confirms notice of the assignments described above, and to the extent required, consents to the assignments.

Massachusetts Bay Transportation Authority

By: *Phillip Eng*
[Phillip Eng \(Dec 6, 2023 09:08 EST\)](#)

Phillip Eng, General Manager & CEO

Dated: 12/06/2023

EXHIBIT B

Certificate of Insurance

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

12/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Starkweather & Shepley (WW) Insurance Corp. of MA PO Box 549 Providence, RI 02901-0549	CONTACT NAME: Lisa Lee PHONE (A/C, No, Ext): 781 320-9660 FAX (A/C, No): 508-718-2407 E-MAIL ADDRESS: llee@starshep.com														
INSURED Massachusetts Coastal Railroad LLC Coastal Rail LLC; Cape Rail Inc 200 Myles Standish Blvd #3 Taunton, MA 02780	<table border="1"> <thead> <tr> <th data-bbox="816 426 1437 451">INSURER(S) AFFORDING COVERAGE</th> <th data-bbox="1437 426 1572 451">NAIC #</th> </tr> </thead> <tbody> <tr> <td data-bbox="816 451 1437 478">INSURER A : Aspen Specialty Insurance Company</td> <td data-bbox="1437 451 1572 478">10717</td> </tr> <tr> <td data-bbox="816 478 1437 506">INSURER B : Underwriters at Lloyd's, London</td> <td data-bbox="1437 478 1572 506">1122</td> </tr> <tr> <td data-bbox="816 506 1437 533">INSURER C : Arbella Mutual Insurance Company</td> <td data-bbox="1437 506 1572 533">17000</td> </tr> <tr> <td data-bbox="816 533 1437 560">INSURER D :</td> <td data-bbox="1437 533 1572 560"></td> </tr> <tr> <td data-bbox="816 560 1437 588">INSURER E :</td> <td data-bbox="1437 560 1572 588"></td> </tr> <tr> <td data-bbox="816 588 1437 615">INSURER F :</td> <td data-bbox="1437 588 1572 615"></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Aspen Specialty Insurance Company	10717	INSURER B : Underwriters at Lloyd's, London	1122	INSURER C : Arbella Mutual Insurance Company	17000	INSURER D :		INSURER E :		INSURER F :	
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INSURER F :															

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY ☒ CLAIMS-MADE ☐ OCCUR ☒ Railroad Liability ☒ Retro Date: 7/23/2022 GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			RL00HK923	07/23/2023	07/23/2024	EACH OCCURRENCE \$ 10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 10,000,000 GENERAL AGGREGATE \$ 20,000,000 PRODUCTS - COMP/OP AGG \$ \$
C	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			1020077879	10/17/2023	10/17/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Excess Auto Liabi			SCT1387123	10/17/2023	10/17/2024	\$1M XS \$1M Occ \$1M XS \$1M Agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**** Named Insureds Schedule: Coastal Rail LLC; Cape Rail Inc; Massachusetts Coastal Railroad LLC; Cape Cod Central Railroad LLC**

CERTIFICATE HOLDER**CANCELLATION**

Surface Transportation Board 395 E St., SW Washington, DC 20423	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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