

SERVICE DATE – JUNE 21, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36746

BAY COLONY RAILROAD CORPORATION—
ACQUISITION AND OPERATION OF RAIL LINE—IN NORFOLK COUNTY, MASS.

Docket No. FD 36747¹

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

Digest:² The Board grants Bay Colony Railroad Corporation (Bay Colony) after-the-fact authority to acquire and operate an easement for a 3.4-mile rail line and confirms that a connecting 0.1-mile rail line remains subject to a modified certificate of public convenience and necessity. The Board also grants Massachusetts Coastal Railroad, LLC, the authority to acquire from Bay Colony and operate the same 3.4- and 0.1-mile rail lines.

Decided: June 14, 2024

Bay Colony Railroad Corporation (Bay Colony), a Class III rail carrier, acquired and operates a freight rail easement covering the approximately 3.4-mile Millis Industrial Track (sometimes referred to as the “Millis Branch”) 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), in Norfolk County, Mass. On January 16, 2024, Bay Colony filed, in Docket No. FD 36746, a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10902 for after-the-fact authority for its acquisition and operation of the Millis Industrial Track.

Bay Colony also requests that, to the extent necessary, the Board confirm Bay Colony’s right to operate a portion of the Dover Secondary Track beginning near BCLR milepost 7.2 located at the south edge of Ice House Road and terminating at milepost 7.3 at Medfield Junction

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

(Remaining Dover Secondary Track) (collectively, the Millis Industrial Track and the Remaining Dover Secondary Track will be referred to as “the Line”), also in Norfolk County, Mass.

Concurrently, on January 16, 2024, Massachusetts Coastal Railroad, LLC (Mass Coastal), a Class III rail carrier, filed, in Docket No. FD 36747, a petition under 49 U.S.C. 10502 seeking an exemption from the provisions of 49 U.S.C. 10902 to acquire the Line from Bay Colony and operate it. Both petitions are unopposed.³

As discussed below, the Board finds that exempting Bay Colony’s acquisition of the easement and operation of the Millis Industrial Track, as well as Mass Coastal’s acquisition and operation of the Line, will promote the rail transportation policy (RTP) of 49 U.S.C. 10101, and regulation of these transactions is not needed to protect shippers from the abuse of market power. Therefore, the Board will grant the petitions.

BACKGROUND

Mass Coastal’s 2023 Verified Notice of Exemption to Acquire the Line

In November 2023, Mass Coastal filed a verified notice of exemption under 49 CFR 1150.41 to acquire the Line from Bay Colony and operate it. Mass Coastal explained that Bay Colony has been operating the Line, which is owned by the Massachusetts Bay Transportation Authority (MBTA), pursuant to modified certificates of public convenience and necessity. Verified Notice 2, Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36738; see also Bay Colony R.R.—Modified Rail Certificate, FD 29963 (ICC served Sept. 24, 1987)⁴ & (ICC served June 29, 1982).⁵ In addition, Mass Coastal stated 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. (CSXT), and, since 2006, pursuant to a new trackage rights and operating agreement (Operating Agreement) with MBTA. Verified Notice 2-3, Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36738. In its verified notice, Mass Coastal explained that it would be acquiring an assignment of the Easement and the Operating Agreement from Bay Colony. *Id.* at 3.

Mass Coastal’s verified notice was rejected because of various issues and questions surrounding the status and operation of the Line, which rendered the matter inappropriate for the class exemption procedures. See Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R. (December 2023 Decision), FD 36738, slip op. at 2 (STB served Dec. 15, 2023). The December 2023 Decision explained that it was unclear whether Bay Colony’s current

³ By decision served April 12, 2024, proceedings under 49 U.S.C. 10502(b) were instituted in both dockets. Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746 et al. (STB served Apr. 12, 2024).

⁴ The modified certificate served September 24, 1987, will be referred to as the “1987 Modified Certificate.”

⁵ The modified certificate served June 29, 1982, will be referred to as the “1982 Modified Certificate.”

operation of the Line pursuant to the modified certificates was appropriate, as it contradicted arguments Bay Colony itself previously made with respect to the Millis Industrial Track. Id. Specifically, in response to a 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 which it 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. 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 believed it needed such authority. December 2023 Decision, FD 36738, slip op. at 2.

The December 2023 Decision explained that the rejection of Mass Coastal’s verified notice did not preclude Mass Coastal or Bay Colony from seeking authority through a petition for exemption or an application but directed that any future pleading should clarify the following:

1. Whether Bay Colony must obtain Board authority to acquire and operate the Line before Mass Coastal can obtain authority under 49 U.S.C. 10902.
2. Whether the arguments put forth by Bay Colony in Docket No. FD 34698—that the modified certificate may not have been appropriate because the Millis Industrial Track was never approved for abandonment—also apply 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 cover(s) the Remaining Dover Secondary Track.

December 2023 Decision, FD 36738, slip op. at 3.

Thereafter, on January 16, 2024, Bay Colony filed the petition for exemption currently pending in Docket No. FD 36746, in which it seeks after-the-fact authority to acquire the Easement and operate the Millis Industrial Track pursuant to the Operating Agreement. Bay Colony also seeks confirmation that it may operate the Remaining Dover Secondary Track. On the same day, Mass Coastal filed the petition for exemption currently pending in Docket No. FD 36747, in which it seeks authority to acquire the Line from Bay Colony and operate it.

History of the Millis Industrial Track

According to Bay Colony, the Millis Industrial Track was conveyed to MBTA by deed of Penn Central Transportation Company (Penn Central) dated January 17, 1973, subject to Penn Central’s reservation of the Easement to operate over the track. (Bay Colony Pet. 2, Bay Colony

R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746); see also Bay Colony Notice 3, Sept. 2, 1987, Bay Colony R.R.—Modified Rail Certificate, FD 29963. Bay Colony states that Penn Central—and subsequently, Consolidated Rail Corporation (Conrail)—continued providing freight service on the Millis Industrial Track. (Bay Colony Pet. 2-3, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746); see also Bay Colony Notice 3, Sept. 2, 1987, Bay Colony R.R.—Modified Rail Certificate, FD 29963. As noted in Bay Colony’s petition, on September 2, 1987, it filed with the Interstate Commerce Commission (ICC) a notice for a modified certificate to operate two rail lines, including the Millis Industrial Track. (Bay Colony Pet. 2, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746); see also Bay Colony Notice, Sept. 2, 1987, Bay Colony R.R.—Modified Rail Certificate, FD 29963. In a decision served later that month, the ICC also authorized Conrail, pursuant to 49 U.S.C. 748, to discontinue service⁶ over the Millis Industrial Track. See Conrail Discontinuance of Serv. in Norfolk Cnty., Mass., AB 167 (Sub-No. 954N) (ICC served Sept. 11, 1987). Following that discontinuance decision, on September 24, 1987, the ICC served the 1987 Modified Certificate. See Bay Colony R.R.—Modified Rail Certificate, FD 29963 (ICC served Sept. 24, 1987).

According to Bay Colony, it operated the Millis Industrial Track pursuant to the 1987 Modified Certificate without incident until April 2005 when ownership of the Easement passed from Conrail to New York Central Lines, LLC (NYC), and subsequently to CSXT, when NYC was merged into CSXT. (Bay Colony Pet. 3, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746.) Bay Colony states that neither Conrail nor NYC nor CSXT ever sought to reactivate common carrier operating rights under the Easement. (*Id.*)

In April 2005, MBTA filed a notice seeking to terminate the 1987 Modified Certificate as it related to the Millis Industrial Track. (*Id.* at 3); see also MBTA Notice, Apr. 13, 2005, Bay Colony R.R.—Modified Rail Certificate, FD 29963. In response, Bay Colony filed a motion to dismiss MBTA’s notice to terminate, and, concurrently, in Docket No. FD 34698, filed a petition for declaratory order, arguing that the Millis Industrial Track had potentially not been eligible for a modified certificate in 1987 and that Bay Colony should be deemed to have a full common carrier certificate over the track. (Bay Colony Pet. 3-4, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746.) Bay Colony ultimately settled with MBTA, acquired the Easement by assignment from CSXT, and then Bay Colony and MBTA entered into the Operating Agreement in 2006. (Bay Colony Pet. 4, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746.)⁷

⁶ Conrail stated in its application that, because it did not own the Millis Industrial Track, it was seeking “approval of abandonment of Conrail’s operation only.” Conrail Appl. 2, June 1, 1987, Conrail Discontinuance of Serv. in Norfolk Cnty., Mass., AB 167 (Sub-No. 954N).

⁷ MBTA requested that its notice of termination be dismissed. The Board granted that request on January 5, 2006. Bay Colony R.R.—Modified Rail Certificate, FD 29963 et al., slip op. at 2 (STB served Jan. 5, 2006). And after finalizing the Operating Agreement with MBTA, Bay Colony requested that its petition for declaratory order be dismissed. The Board granted that request on July 11, 2006. Bay Colony R.R.—Pet. for Decl. Ord., FD 34698, slip op. at 2 (STB served July 11, 2006).

Bay Colony notes that, at the time of the settlement, it and MBTA indicated to the Board that appropriate notices of exemption concerning Bay Colony's operations on the Millis Industrial Track would be filed following dismissal of Bay Colony's petition for declaratory order in Docket No. FD 34698. (*Id.*); see also Bay Colony R.R.—Modified Rail Certificate, FD 29963 et al., slip op. at 2 (STB served Jan. 5, 2006). However, Bay Colony acknowledges that no notices were filed, and it continued to operate the Millis Industrial Track pursuant to the existing 1987 Modified Certificate. (Bay Colony Pet. 4, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746.)

History of the Remaining Dover Secondary Track

As to the Remaining Dover Secondary Track, according to Bay Colony, MBTA acquired the Dover Secondary Track, between Needham Junction at milepost 0.0 and Medfield Junction at milepost 7.2, from Penn Central in 1982, subject to an operating easement held by Conrail. (*Id.* at 5); see also Bay Colony Notice 7-8, June 11, 1982, Bay Colony R.R.—Modified Rail Certificate, FD 29963. Bay Colony states that Conrail operated the Dover Secondary Track from Conrail's formation until Conrail applied to abandon it in Docket No. AB 167 (Sub-No. 353). (Bay Colony Pet. 4, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746); see also Bay Colony Notice 7-8, June 11, 1982, Bay Colony R.R.—Modified Rail Certificate, FD 29963. Bay Colony states that Conrail continued to operate the Dover Secondary Track under a subsidy paid by the Commonwealth of Massachusetts (Commonwealth) until the subsidy expired. (Bay Colony Pet. 4, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746); see also Bay Colony Notice 7-8, June 11, 1982, Bay Colony R.R.—Modified Rail Certificate, FD 29963. The ICC issued an abandonment certificate for the Dover Secondary Track on June 11, 1982, and in connection with the abandonment, Conrail released its easement for the Dover Secondary Track to the Commonwealth. (Bay Colony Pet. 4, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746); see also Conrail Aban. Between Chick & Cook St. & Needham Jct. & Medfield Jct. Mass., AB 167 (Sub-No. 353N (ICC served June 11, 1982)). According to Bay Colony, it filed with the ICC on June 11, 1982, a notice for a modified certificate to operate over rail lines owned by the Commonwealth, including the Dover Secondary Track. (Bay Colony Pet. 5, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746); see also Bay Colony Notice, June 11, 1982, Bay Colony R.R.—Modified Rail Certificate, FD 29963. The ICC served the 1982 Modified Certificate on June 29, 1982. Bay Colony R.R.—Modified Rail Certificate, FD 29963 (ICC served June 29, 1982).

Bay Colony states that the Operating Agreement applied to operation of the Dover Secondary Track pursuant to the 1982 Modified Certificate. (Bay Colony Pet. 5, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746.) Bay Colony notes that the Operating Agreement described the Dover Secondary Track as beginning at milepost 0.0 in Needham and continuing to milepost 7.3, which is known as Medfield Junction. (*Id.*) Bay Colony explains that the change in milepost designation at Medfield Junction from milepost 7.2 in the 1982 Modified Certificate to milepost 7.3 in the Operating Agreement reflects only a redesignation of the end of the rail line, as the Dover Secondary Track has always been

described as ending at Medfield Junction, where it connects with the Millis Industrial Track and with track now operated by CSXT.⁸ (*Id.* at 6.)

Bay Colony further explains that it operated the entire Dover Secondary Track pursuant to the 1982 Modified Certificate until October 11, 2013, when it filed a notice terminating its operations over the portion of the Dover Secondary Track from milepost 0.0 to milepost 7.2. (*Id.*) According to Bay Colony, it continues to operate the Remaining Dover Secondary Track to facilitate interchange between the Millis Industrial Track and CSXT. (*Id.* at 6 n.6.)

Bay Colony's Petition for Exemption

In its present petition, Bay Colony seeks an exemption from the prior approval requirements of 49 U.S.C. 10902 to acquire the Easement and to operate the Millis Industrial Track under the Operating Agreement. (Bay Colony Pet. 10-13, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746.)⁹ In its petition, Bay Colony also responds to the issues raised in the December 2023 Decision.

In response to the first question from the December 2023 Decision, Bay Colony states that, with respect to the Millis Industrial Track, it is seeking after-the-fact authority to acquire the Easement and to operate pursuant to the Operating Agreement. (*Id.* at 8.) Bay Colony argues that if it is granted the requested authority, the question of whether it was required to obtain authority to acquire the Easement will be moot and Mass Coastal will be able to obtain authority under 49 U.S.C. 10902 to acquire the Easement and assume common carrier operations over the Millis Industrial Track. (*Id.*) As to the Remaining Dover Secondary Track, Bay Colony argues that it continues to have a valid modified certificate for that track and therefore does not need additional authority from the Board to operate over it. (*Id.*) However, Bay Colony does request that, if necessary, the Board confirm the redesignated endpoint of the Remaining Dover Secondary Track as milepost 7.3. (*Id.*) Bay Colony asserts that, after it obtains the required after-the-fact authorities, Mass Coastal should be able to obtain authority to operate the Remaining Dover Secondary Track under a modified certificate or a common carrier certificate, under 49 CFR 1150.21, through an assignment of the Operating Agreement. (*Id.*)

In response to the second question posed in the December 2023 Decision, Bay Colony notes that the Board was never called upon to rule on the appropriateness of the 1987 Modified Certificate in Docket No. FD 34698, and it asserts that the arguments it made about the 1987 Modified Certificate were mooted when it withdrew its petition for declaratory order in that

⁸ Although it is not entirely clear what the term “redesignation” means as it is used by Bay Colony, the Board understands it to mean, in the fuller context, that the physical endpoint of the Dover Secondary Track has consistently been understood to be at milepost 7.3 regardless of how the endpoint has been documented.

⁹ According to Bay Colony, the Operating Agreement suggests, without explicitly providing, that based on the assignment of the Easement from CSXT to Bay Colony, Bay Colony would thereafter be operating the Millis Industrial Track pursuant to the Easement. (Bay Colony Pet. 4, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746.)

proceeding. (*Id.*) Bay Colony argues that because the ICC issued the 1987 Modified Certificate based on a complete and accurate presentation of the facts there is no reason for the Board to revisit the issue here. (*Id.*) Bay Colony also states that the arguments it made in Docket No. FD 34698 only applied to the Millis Industrial Track, not to the Remaining Dover Secondary Track. (*Id.*) Bay Colony also asserts that MBTA never acquired—and does not currently have—a common carrier obligation on the Millis Industrial Track or the Dover Secondary Track. (*Id.* at 2, 9-10.)

Regarding the third question from the December 2023 Decision, Bay Colony clarifies that the Easement covers only the Millis Industrial Track, not the Remaining Dover Secondary Track. (*Id.* at 10.) Bay Colony also clarifies that the Operating Agreement originally covered the entire Dover Secondary Track, until Bay Colony’s partial termination of service, and that it continues to cover the Remaining Dover Secondary Track in addition to the Millis Industrial Track. (*Id.* at 4, 10.)

Mass Coastal’s Petition for Exemption

In its present petition, Mass Coastal seeks an exemption from the prior approval requirements of 49 U.S.C. 10902 to acquire the Line from Bay Colony and operate it.¹⁰ (Mass Coastal Pet. 7-10, Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36747.) For the Millis Industrial Track, Mass Coastal seeks authority to acquire by assignment the Easement and the Operating Agreement. (*Id.* at 8.) As to the Remaining Dover Secondary Track, Mass Coastal states that, by assignment of the Operating Agreement, it would have the right to operate under the 1982 Modified Certificate. (*Id.*) However, Mass Coastal states that it is seeking to operate the Remaining Dover Secondary Track under an exemption from 49 U.S.C. 10902, which Mass Coastal argues is permitted under 49 CFR 1150.21. (Mass Coastal Pet. 8, Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36747.)

Request for Expedited Consideration. Bay Colony and Mass Coastal request that the Board consider the petitions on an expedited basis and allow the exemptions to become effective upon the Board’s issuance of a decision. (See Bay Colony Pet. 15-16, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746; Mass Coastal Pet. 12-13, Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36747.) Bay Colony and Mass Coastal explain that they anticipated consummating the assignment of the Easement and Operating Agreement to Mass Coastal, the authority originally requested in the verified notice in Docket No. FD 36738, on or about December 18, 2023. (Bay Colony Pet. 15, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746; Mass Coastal Pet. 12, Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36747.) Bay Colony and Mass Coastal state that they intend to complete the transaction once the issues raised in the December 2023 Decision have been addressed and the Board has granted the petitions, and they note that Mass Coastal was able to extend its financing for the transaction for a limited period of time. (Bay Colony Pet. 15-16, Bay Colony R.R.—Acquis. & Operation of

¹⁰ Mass Coastal notes that its request is contingent upon the Board’s granting Bay Colony’s petition for exemption in Docket No. FD 36746.

Rail Line—in Norfolk Cnty., Mass., FD 36746; Mass Coastal Pet. 12, Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36747.)

DISCUSSION AND CONCLUSIONS

Bay Colony's Petition for Exemption

Millis Industrial Track. Under 49 U.S.C. 10902, a Class III rail carrier may not acquire a rail line without the prior approval of the Board. However, under 49 U.S.C. 10502(a), the Board must, to the maximum extent consistent with 49 U.S.C. subtitle IV, part A, exempt a transaction or service from regulation upon finding that: (1) regulation is not necessary to carry out the RTP; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

The Board finds that an exemption from the prior approval requirements of 49 U.S.C. 10902 for Bay Colony's acquisition of the Easement and operation of the Millis Industrial Track under the Operating Agreement is consistent with 49 U.S.C. 10502(a). Detailed scrutiny of this transaction is not necessary to carry out the RTP. An exemption from the application process would promote the RTP by minimizing the need for Federal regulatory control over the transaction, ensuring the development and continuation of a sound rail transportation system able to compete with other modes of transportation and meet the needs of the public, reducing regulatory barriers to entry and exit from the industry, and providing for the expeditious handling and resolution of proceedings. See 49 U.S.C. 10101(2), (4), (7), (15). Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is also not needed to protect shippers from the abuse of market power. The record reflects that Bay Colony has been providing service on the Millis Industrial Track pursuant to the 1987 Modified Certificate since 1987, and the Board finds that granting Bay Colony the requested after-the-fact authority to acquire the Easement and operate the Millis Industrial Track will not adversely affect any customers or the public. In addition, granting the requested exemption will, in turn, allow Bay Colony to assign the Easement and Operating Agreement to Mass Coastal, which will facilitate continued common carrier service. Given this market power finding, the Board need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Section 10902(d), however, precludes the Board from imposing labor protection for Class III carriers receiving authority under 49 U.S.C. 10902. Accordingly, the Board may not impose labor protective conditions here because Bay Colony is a Class III carrier.

Under 49 CFR 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service, Bay Colony has indicated no plans to alter railroad properties 50 years old

or older, and any future abandonment of the Millis Industrial Track would be subject to Board jurisdiction.

Remaining Dover Secondary Track. Based on Bay Colony's representation that the Remaining Dover Secondary Track as currently measured ends at milepost 7.3 and has always been described as ending at Medfield Junction, where it connects with the Millis Industrial Track and with track now operated by CSXT, (see Bay Colony Pet. 5-6, Bay Colony R.R.—Acquis. & Operation of Rail Line—in Norfolk Cnty., Mass., FD 36746), the Board confirms that the Remaining Dover Secondary Track, between milepost 7.2 and milepost 7.3, remains subject to the 1982 Modified Certificate.¹¹

Mass Coastal's Petition for Exemption

The Board finds that an exemption from the prior approval requirements of 49 U.S.C. 10902 for Mass Coastal's acquisition and operation of the Line is consistent with 49 U.S.C. 10502(a). Detailed scrutiny of this transaction is not necessary to carry out the RTP. An exemption from the application process would promote the RTP by minimizing the need for Federal regulatory control over the transaction, ensuring the development and continuation of a sound rail transportation system able to compete with other modes of transportation and meet the needs of the public, reducing regulatory barriers to entry and exit from the industry, and providing for the expeditious handling and resolution of proceedings. See 49 U.S.C. 10101(2), (4), (7), (15). Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is also not needed to protect shippers from the abuse of market power. Granting the requested exemption will simply allow Mass Coastal to replace Bay Colony as the carrier providing service to shippers on the Line; the record reflects that no shipper will experience a reduction in rail service options. (See Mass Coastal Pet. 9, Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36747.) Given this market power finding, the Board need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Section 10902(d), however, precludes the Board from imposing labor protection for Class III carriers receiving authority under 49 U.S.C. 10902. Accordingly, the Board may not impose labor protective conditions here because Mass Coastal is a Class III carrier.

Under 49 CFR 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for

¹¹ The ICC's decision authorizing Conrail to abandon the Dover Secondary Track described that track as between milepost 0.0 and milepost 7.3. See Conrail Aban. Between Chick & Cook St. & Needham Jct. & Medfield Jct., Mass., AB 167 (Sub-No. 353N) (ICC served June 11, 1982).

continued rail service, Mass Coastal has indicated no plans to alter railroad properties 50 years old or older, and any future abandonment of the Line would be subject to Board jurisdiction.

Remaining Issues

MBTA. The Board finds that MBTA does not have a common carrier obligation for either the Millis Industrial Track or the Remaining Dover Secondary Track. In its petition, Bay Colony recounts the history of the Dover Secondary Track and the Millis Industrial Track, which is the same history Bay Colony provided in notices for modified certificates of public convenience and necessity for the Dover Secondary Track¹² and the Millis Industrial Track,¹³ in 1982 and 1987, respectively. The ICC issued the 1982 Modified Certificate and the 1987 Modified Certificate under 49 CFR 1150 subpart C, which contains special rules that apply to state-owned lines that have been abandoned or approved for abandonment. Under 49 CFR 1150.22, if the state intends to operate the line itself, it will be considered a common carrier. However, if the state contracts with an operator to provide service over the line, only the operator incurs a common carrier obligation. Id. Therefore, because MBTA has contracted with Bay Colony to provide service on the Dover Secondary Track and the Millis Industrial Track pursuant to the 1982 Modified Certificate and the 1987 Modified Certificate, and because there is no indication that MBTA intended to provide service itself, or has ever provided service itself, MBTA does not have a common carrier obligation on any part of the Line.

Expedited Consideration and Effective Date. As described above, in requesting expedited consideration, Bay Colony and Mass Coastal request that any Board authority granted to them be effective upon issuance of the Board's decision. This request is reasonable under the circumstances. Accordingly, the exemptions will be effective on the date that this decision is published in the Federal Register.

Relatedly, the Board's regulations require Bay Colony to provide appropriate parties with 60 days' notice of a planned termination of modified certificate operations. See 49 CFR 1150.24. Bay Colony shall provide notice of its termination of modified certificate operations on the Line to the appropriate parties, and to the Board in Docket No. FD 29963. The notice also shall indicate that Mass Coastal will now be providing common carrier service on the Line. To allow Mass Coastal to begin providing the common carrier service authorized in this decision, the Board will, on its own motion, waive the 60-day advance notice requirement under 49 CFR 1150.24, and will instead require only seven days' notice.

It is ordered:

1. In Docket No. FD 36746, under 49 U.S.C. 10502, the Board exempts Bay Colony's acquisition of the Easement and operation of the Millis Industrial Track from the prior approval requirements of 49 U.S.C. 10902, as explained above.

¹² See Bay Colony Notice 7-8, June 11, 1982, Bay Colony R.R.—Modified Rail Certificate, FD 29963.

¹³ See Bay Colony Notice 3, Sept. 2, 1987, Bay Colony R.R.—Modified Rail Certificate, FD 29963.

2. In Docket No. FD 36746, the Board confirms that the Remaining Dover Secondary Track, between milepost 7.2 and milepost 7.3, remains subject to the 1982 Modified Certificate, as explained above.

3. In Docket No. FD 36747, under 49 U.S.C. 10502, the Board exempts Mass Coastal's acquisition and operation of the Line from the prior approval requirements of 49 U.S.C. 10902, as explained above.

4. Bay Colony shall provide notice pursuant to 49 CFR 1150.24 of its termination of modified certificate operations on the Line to the appropriate parties, and to the Board in Docket No. FD 29963.

5. The 60-day advance notice requirement under 49 CFR 1150.24 is waived, as explained above. Instead, Bay Colony must provide the notice required by 49 CFR 1150.24 at least seven days in advance of the planned termination.

6. Notice of the exemptions will be published in the Federal Register.

7. The exemptions will be effective on June 21, 2024. Petitions for reconsideration must be filed by July 11, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.