

B+M Lexington Branch

SERVICE DATE

JUL 18 1991

FR-7035-01
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INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION AND OF INTERIM TRAIL USE OR ABANDONMENT

[Docket No. AB-32 (Sub-No. 44X)]

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY AND BOSTON
AND MAINE CORPORATION--ABANDONMENT AND DISCONTINUANCE
EXEMPTION--IN MIDDLESEX COUNTY, MA

Decided: July 12, 1991

Massachusetts Bay Transportation Authority (MBTA) and Boston and Maine Corporation (BM) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances for MBTA to abandon and BM to discontinue operations over an approximately 10.42-mile line of railroad between milepost 0.00, at Somerville, and milepost 11.91, at Bedford, Middlesex County, MA.

MBTA and BM have certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

BOSTON & MAINE RAILROAD
HISTORICAL SOCIETY
ARCHIVES

Attached to the notice of exemption filed by MBTA and BM are requests by the Towns of Arlington, Lexington, and Bedford for a notice of interim trail use (NITU) as well as statements of their willingness to assume financial responsibility. MBTA indicates its willingness to negotiate with the three towns for interim trail use.

While a petition for interim trail use need not be filed until 10 days after the date the notice of exemption is published in the Federal Register [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) are applicable and all the criteria for imposing interim trail use/rail banking have been met. Accordingly, in light of MBTA's willingness to enter into negotiations, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, MBTA may fully abandon the line. See 49 CFR 1152.29(d)(1).

Any other political subdivision, state, or qualified private entity interested in acquiring or using the involved right-of-way for interim trail use/rail banking may file an appropriate petition before July 29, 1991. If additional statements are filed, MBTA is directed to respond to them. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 17, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 29, 1991.³ Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 7, 1991, with:

¹A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

²See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

³The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Charles H. Montange
1400 16th St., N.W., #301
Washington, DC 20036

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

MBTA has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 23, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. Subject to the conditions set forth above, MBTA may discontinue service, cancel tariffs for this line on not

less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice of exemption and NITU by date and docket number.

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any liability arising out of the transfer of use (if the user is immune from liability, it need only indemnify MBTA against any potential liability), and the payment of any taxes that may be levied or assessed against the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service.

4. If the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after publication of this notice, interim trail use may be implemented. If no agreement is reached by the 180th day, MBTA may fully abandon the line.

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6. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective August 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

(SEAL)

Sidney L. Strickland, Jr.
Secretary