

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36623

RAIL LINE ABUTTING LANDOWNERS -
VERIFIED PETITION FOR DECLARATORY ORDER

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June 22, 2022

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Petitioners Rail Line Abutting Landowners ("Landowners") hereby respectfully petition the Surface Transportation Board ("STB" or "Board") for a declaratory order to eliminate uncertainty pursuant to its authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, finding that a line of railroad in the County of Middlesex, Massachusetts, owned by the Massachusetts Bay Transportation Authority ("MBTA") is or is not abandoned and does or does not remain subject to the jurisdiction of the STB.

THE PARTIES

Landowners are individuals and businesses who each own land in Sudbury, Stow, and Hudson, Massachusetts, County of Middlesex, that abuts the rail line owned by MBTA as described in greater detail below ("the Line"). If the Line has been abandoned, these Landowners may have reversionary rights to this rail property that abuts their existing properties. These individual Landowners are as follows: Andrew Jesmain, 45 Whispering Pine Road, Sudbury, MA; Benjamin Chen, 19 Bulkley Road, Sudbury, MA; Dan Carty, 15 Stone Brook Road, Sudbury, MA; Maura Carty, 15 Stone Brook Road, Sudbury, MA; Raymond Phillips, 40 Whispering Pine Road, Sudbury, MA; Christopher Helon, 25 Buckley Road, Sudbury, MA; Jason Tholander, 95 Austin Road, Sudbury, MA; Jeanine Lewars, 95 Austin Road, Sudbury, MA; Sherry Fendell, 230

Peakham Road, Sudbury, MA; Elna Johnson, 242 Peakham Road, Sudbury, MA; 4 Maple LLC, 4 Maple Ave., Sudbury, MA; Rachel Goodrich, 10 Maple Ave., Sudbury, MA; Kara Harding, 89 Austin Road, Sudbury, MA; David Gibbs, 115 Austin Road, Sudbury, MA; Charles Zimmer, 101 Austin Road, Sudbury, MA; Barbara Deitel, 3 Trailside Circle, Sudbury, MA; Paul Bisson, 290 Dutton Road, Sudbury, MA; Deborah Scheffer, 41 Stonebrook Road, Sudbury, MA; Sanjib Kuman Mohanty, 9 Stonebrook Road, Sudbury, MA; Rhonda Light, 33 Buckley Road, Sudbury, MA; Harish Parwani, 45 Amanda Road, Sudbury, MA; Xiuzi Ye and Ruisheng Yu, 30 Jarman Road, Sudbury, MA; John and Robin Generoso, 6 Colburn Circle, Sudbury, MA; Lisa and Peter Venuto, 29 Stonebrook Road, Sudbury, MA; Theresa Rosen, 18 Jarman Road, Sudbury, MA; Valerie Cass, 42 Jarman Road, Sudbury, MA; Marcus Ainsworth, 44 Maple Ave., Sudbury, MA; Jennifer and Jason Martin, 49 Bridle Path, Sudbury, MA; D. Ruth Gutkecut, 45 Marlboro Road, Stow, MA; Jim Arbella, 62 Marlboro Road, Stow, MA; Pat Dupree, 8 Orchard Drive, Hudson, MA; Shailesh Desai, 29 Parameter Road, Hudson, MA; Jayashee Paraujape, 29 Parmeter Road, Hudson, MA; Christine Nelson, 31 Parmeter Road, Hudson, MA; Brian O'Neil, 31 Parmeter Road, Hudson, MA; Steven Tripps, 27 Parmeter Road, Hudson, MA; Chris and Nicole Catatao, 12 Orchard Drive, Hudson, MA; Nancy King, 145 White Pond Road, Hudson, MA; Sarah Krueger, 20 Parmeter Road, Hudson, MA; Jeffrey Krueger, 20 Parmeter Road, Hudson, MA; Eric Ferjulian, 7 Lewis Street, Hudson, MA; and Dana and Lloyd Stenquist, 159 White Pond Road, Hudson, MA. In addition, there are four business Landowners whose property abuts the Line and would have an interest in freight rail service if the Line was reactivated: Mosher Auto Body, 34 Station Road, Sudbury MA; Cavocchio Greenhouse Inc., 110 Codjer Lane, Sudbury, MA; Hudson Gulf LLC, 394 Chestnut Street, Hudson, MA; and Extra Storage Space, 565 Main Street, Hudson, MA.

(Copies of the signed requests to seek a declaratory order at the STB on the status of the Line by Landowners is attached hereto as Exhibit A.)

The MBTA is one of the oldest public transit systems in the United States. It is also the largest transit system in Massachusetts. As a division of the Massachusetts Department of Transportation, the MBTA provides subway, bus, commuter rail, ferry, and paratransit service to eastern Massachusetts and parts of Rhode Island.

The Boston and Maine Corporation (“B&M”), known as the Boston and Maine Railroad, was a U.S. Class I railroad in northern New England. At the end of 1970, B&M operated 1,515 route-miles on 2,481 miles of track when it entered bankruptcy. In 1983, the B&M emerged from bankruptcy when it was purchased by Guilford Transportation Industries. Guilford Rail System changed its name to Pan Am Railways (“PAR”) in 2006. Recently, on April 14, 2022, PAR was acquired by CSX Transportation, Inc. (“CSX”) as approved by the STB in Finance Docket No. 36472. Technically, B&M still exists today but only as a non-operating ward of CSX.

Eversource Energy (“Eversource”) is a publicly traded, Fortune 500 energy company headquartered in Hartford, Connecticut, and Boston, Massachusetts, with several regulated subsidiaries offering retail electricity, natural gas service, and water service to approximately 4 million customers in Connecticut, Massachusetts, and New Hampshire. Following its 2012 merger with Boston-based NSTAR, Northeast Utilities, the predecessor to Eversource, had more than 4,270 circuit miles of electric transmission lines, 72,000 pole miles of distribution lines, and 6,459 miles of natural gas pipeline in New England. On February 2, 2015, Northeast Utilities and all its subsidiaries rebranded themselves as "Eversource Energy". The stock symbol changed on February 19, 2015, from "NU" to "ES".

The Massachusetts Department of Conservation and Recreation (“DCR”) is the steward of one of the largest state parks systems in the country. Its 450,000 acres is made up of forests, parks, greenways, historic sites and landscapes, seashores, lakes, ponds, reservoirs, and watersheds. Its main office is located in Boston.

THE RAIL LINE AT ISSUE

The Line was part of a branch line called the Central Massachusetts Railroad Division of the B&M. The subject railroad right-of-way or corridor enters from Wayland, MA near Landham Road and proceeds in a northwesterly direction through Sudbury and Hudson ending in Hudson at the Middlesex/Worcester County Line. This portion of the railroad right-of-way is also shown on certain railroad valuation plans (Val Plans V5/14 through V5/26) recorded with the Middlesex South Registry of deeds in Plan Book 442B, Plans 55R through 67R. The Line runs from milepost B27/N77 to B19/N85. It is now a portion of the Mass Central Rail Trail. (A map of the Line is attached hereto as Exhibit B.)

The Central Massachusetts Railroad Division of the B&M was built in the 1800s and ran from Boston to Northampton, MA in 1888. This branch line has a long and storied history, but for purposes of this Petition, the relevant facts begin when B&M entered bankruptcy in 1970, *In the Matter of Boston and Maine Corporation*, Debtor, United States District Court for the District of Massachusetts (“District Court”), Docket No. 70-250-M. On March 12, 1970, certain bondholders of the B&M filed a petition, instituting proceedings in the District Court for reorganization of the railroad in accordance with Section 77 of the Bankruptcy Act (11 U.S.C. § 205). The bondholders' petition was approved, and trustees of the B&M and its property were appointed by the District Court.

In the bankruptcy proceeding, on December 24, 1976, the Trustees of the property of the B&M granted to the MBTA in a deed (a copy of which is attached hereto as Exhibit C) all of their “right, title and interest (sufficient to permit the Authority to operate a passenger and freight rail service over the rail line rights of way...) in and to the Trustees Railroad rights of way”, which included the Central Massachusetts Railroad Division (the “Deed”). Deed at 1, 14. This grant of title was recorded by Deed by the Trustees at Book 13117 Page 113. In said Deed, the Trustees reserved the right and easement to continue Trustees’ freight transportation business. MBTA owned the real estate and had the right “to use, maintain and alter said properties as it sees fit.” Deed at 1-2. MBTA also had the right “to exercise control over the use, condition, maintenance and operation of said property.” Deed at 5-6. See also Deed at 15 (Trustees had sole operating and maintenance control over the “freight only” rail lines which included the Central Massachusetts Branch.) MBTA had the right to give written notice to the Trustees to use a rail line exclusively. Upon receipt of said notice, the Trustees were required to seek abandonment authority from the Interstate Commerce Commission (“ICC”). Deed at 22. Upon receipt of abandonment authority from the ICC, the Trustees had no right to reinstate freight rail service without written approval from MBTA. Deed at 24.

In addition to the Deed, the subject railroad right-of-way is also subject to the terms and provisions of a Taking by MBTA, dated February 16, 1977, and recorded in Book 13156, Page 34. (A copy of the Taking is attached hereto as Exhibit D.) As set forth in the first paragraph, the purpose of the Taking was to provide and extend mass transportation facilities for public use, layout and construct rapid transit extension. The land was taken in fee simple. The Landowners were never notified of the Taking as required under both Federal law and Massachusetts state law.

Moreover, the stated purpose of the Taking has never been met which was to expand or restore railroad services. Therefore, Landowners dispute the legitimacy of this action by MBTA

Section 17(a) of the Public Law 96-101, 93 Stat. 736 (1979), the Milwaukee Railroad Restructuring Act, transferred jurisdiction over the B&M abandonments and discontinuances from the ICC to the District Court in No. 70-250-M. In 1979, B&M filed an application to abandon two branch lines, including the Central Massachusetts Branch from milepost B10.50 near Waltham North, MA to the end of the line at that time near Berlin, MA at milepost B32.18, a distance of 21.68 miles in the Counties of Middlesex and Worcester, MA. This part of the Central Massachusetts Branch includes the Line at issue here. B&M stated that it did not own the right-of-way, tracks, structures, or other materials on the lines proposed for abandonment because they were owned by MBTA pursuant to the Deed. The ICC stated that the B&M could not abandon these lines because it did not own them but instead must seek discontinuance of service. B&M supported its application for discontinuance of service by stating that the lines do not generate a sufficient demand for service which would justify continued operation or warrant rehabilitation. The ICC recommended to the District Court that the Trustees should be permitted to discontinue service over the Central Massachusetts Branch Line. *Robert W. Messerve and Benjamin H. Lacy, Trustees of the Property of the Boston and Maine Corporation, Debtor, Abandonment between Waltham North, Berlin, and Marlboro, MA*, AB-32 (Sub-No. 7F) (ICC decided March 26, 1980) (A copy of this decision is attached hereto as Exhibit E.)

On October 3, 1980, the District Court issued a Memorandum and Order that followed the ICC's recommendation. The Order found it to be in the best interests of the B&M and consistent with the public interest to permit the discontinuance by B&M of freight service over the Central

Massachusetts Branch Line. *In the Matter of Boston and Maine Corporation*, 70-250-M (D. Mass., October 3, 1980) (A copy of this decision is attached hereto as Exhibit F.)

After the issuance of this Order by the District Court, there has been no rail service on the Central Massachusetts Branch Line by MBTA, B&M, or any other rail carrier. Also, there is no evidence that this Line was ever abandoned by MBTA or B&M since freight service was discontinued pursuant to the 1980 Order. Therefore, the Line at issue in this proceeding may remain in the national rail system and be subject to the jurisdiction of the STB.

However, the story of this Line does not end there. On December 30, 2010, MBTA and the Massachusetts Department of Conservation and Recreation (“DCR”) entered into a trails-use agreement over the Central Massachusetts Branch from Waltham to Berlin, MA, which includes the Line at issue here (“Agreement”). (A copy of this Agreement is attached hereto as Exhibit G.) According to the Agreement, the trail is 15’ wide with 2’ shoulders on either side. Agreement at 2. The term of this lease Agreement is 99 years, except MBTA may terminate it upon 2-years notice. DCR understands that MBTA may use the right-of-way for rail transportation in the future under the terms of the Agreement. Agreement at 4. The Agreement also provides that MBTA may continue to utilize the rail corridor, but any portion so utilized in connection with third-party transactions will continue to provide for the continuity of the rail trail corridor. Agreement at 8.

Moreover, on June 9, 2017, MBTA and Eversource entered into an option agreement for a subsurface transmission line easement on the Central Massachusetts Branch line in Hudson, Stow, Marlborough, and Sudbury, MA. (A copy of the option agreement is attached hereto as Exhibit H.) The project would result in a new 115 kv electric transmission line along the rail right-of-way for approximately 8.63 miles, including the Line. The form of the non-exclusive, perpetual easement was attached to the agreement as Exhibit C. It provides Eversource the right to construct,

reconstruct, lay, operate, maintain, repair, replace, rebuild, upgrade and/or remove the improvements within the easement. Easement at 1. The option specifically mentions it is subject to the DCR trails-use agreement and cannot materially interfere with DCR's use of its leased premises. Option at 3.

The form easement reserves to MBTA the right to install, operate, repair, and maintain transportation/rail infrastructure within the easement area provided that such rights will not unreasonably interfere with Eversource's use of the easement for its purposes. Easement at 2. MBTA reserves the right to relocate Eversource's improvements to another location at any time after 20 years from the date of the easement if in MBTA's opinion Eversource's improvements interfere with the use of MBTA's right-of-way for the operation of its transportation system and for no other purpose. MBTA must give Eversource five-years notice after the twenty-year period requesting such relocation. Easement at 3. When MBTA is using the right-of-way for transportation purposes, the easement is subject to the requirements of MBTA to operate its transportation service. Easement at 5.

Moreover, Eversource must ensure that the installation, operation, maintenance, repair, replacement, relocation, and removal of its improvements comply with MBTA's standards for engineering and safety referenced in MBTA Railroad Operations Directorate. However, MBTA specifically waived the following standards in the MBTA Railroad Operations Directorate dated August 2014¹ : I Guidelines and Procedures for Construction on MBTA Railroad Property, Section 9.01 C2; II Maintenance and Protection of Railroad Traffic, Sections 2.10 and 2.11; IV Pipeline

¹ www.mbtarealty.com/wp-content/uploads/pdf/RRopsGuidelinesandProcedures.pdf

Occupancy Specifications, and V Specifications for Wire Conduit and Cable Occupations, Sections 3.02 E 1, 4.01 B, and 5.01 including plates II, III, IV, and VI. Easement at 14-15.

Finally, the subsurface transmission line is proposed to follow the centerline of the right-of-way. It will be placed within a new 5-foot-deep trench and vault system that will eliminate approximately 8.63 miles of rail, ties, and bed on the Line. The stated service life of the transmission line is 60-80 years.

Therefore, the Landowners have an interest in resolving their property interests in the Line but need a clarification of the Line's status to proceed in state land court as discussed below.

ARGUMENT

A Declaratory Order Is Proper Here.

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the STB has discretionary authority to issue a declaratory order to terminate controversy or remove uncertainty. The STB has exercised broad discretion in handling such requests, considering a number of factors, including significance to the industry and ripeness of the controversy. *Delegation of Authority -- Declaratory Order Proceedings*, 5 I.C.C.2d 675, 767 (1989).

First, this controversy is ripe. As discussed herein, MBTA owns the Line at issue. B&M obtained discontinuance authority from the ICC in 1980, but the Line was never abandoned. No rail traffic has run on this Line since the 1970s. Therefore, the Landowners who abut the right-of-way seek clarity about the status of this Line to protect their interests in their land. Only the STB can confirm whether this Line has been abandoned as it has exclusive jurisdiction over such decisions. Therefore, Landowners seek the STB's guidance on what the present state of this Line is, so they can determine what legal avenues are available to them to protect their property rights.

The Landowners Have Standing to Seek this Declaratory Order.

Petitioners, as noted, are Landowners who abut the right-of-way of the Line and are seeking this abandonment determination concerning their possible property rights in the rail corridor. Moreover, several of the Landowners are local businesses who have expressed an interest in receiving rail service. This existing uncertainty regarding the status of the Line has a direct effect on the ability of these Landowners to protect their property interests in Massachusetts Land Court.

In Middlesex County, MA, where the Line sits, the Massachusetts Land Court was faced with an almost identical situation to what the Landowners are confronted with here. *Murray v. Mass. Dep't of Conservation and Recreation*, 2014 WL 4960872 (Mass. Land Court, Oct. 6, 2014). In this case, the court was asked to decide whether an easement, authorizing the running of a portion of an old railroad line over a stretch that included the plaintiffs' properties, had been abandoned. The plaintiffs owned land over which the railroad once operated. They argued that the right-of-way had been abandoned by the railroad, thereby providing them title to their land through reversionary rights. The court held that under federal law it lacks jurisdiction to determine the parties' rights in the subject railway and the question whether or not the disputed easement has been abandoned or otherwise extinguished. *Id.* at *8. The court dismissed the case without prejudice advising the plaintiffs to seek an order from the Board. *Id.* Therefore, it is clear how this existing uncertainty regarding the status of the Line, that only the Board can resolve, has an effect on the ability of the Landowners to protect their property interests. In other words, without clarification here by the Board, the Landowners will not be able to bring a case to Massachusetts Land Court in Middlesex County.

Generally, administrative agencies are not bound by the strict requirements of standing that otherwise govern judicial proceedings. *North Carolina Railroad Company - Petition to Set*

Trackage Compensation and Other Terms and Conditions - Norfolk Southern Railway, et al., Finance Docket No. 33134, slip op. at 2 n.9 (STB served May 29, 1997); *Missouri Pacific Railroad Company - Abandonment - In Douglas, Champaign and Vermilion Counties, IL (Westville and Jamaica Branches)*, Docket No. AB-3 (Sub-No. 103), slip op. at 3 n.4 (ICC served Nov. 3, 1994). Under similar circumstances, the Board has found standing in cases that involve abutting or nearby landowners in declaratory order proceedings. *See, e.g., 14500 Ltd. LLC—Pet. for Declaratory Ord.*, FD 35788 (STB served June 15, 2014) (addressing preemption issue where party asserted state property law claims concerning rail yard property); *Jie Ao—Pet. for Declaratory Ord.*, FD 35539 (deciding, in part, preemption issue where parties asserted state property law claims concerning railbanked rail line); *Diana Del Grosso, et al – Pet. for Declaratory Ord.*, FD 35652 (STB served Dec. 14, 2014) (where petitioners were town residents located near a bulk transloading facility at issue and have an interest in understanding whether state and local or federal laws govern, motion for lack of standing was denied). Based on this more liberal standard and their status as abutting landowners to the Line, standing should be found to be appropriate.²

**Whether the Line Has Been Abandoned and Thus Remains
Subject to the Jurisdiction of the STB Is in Question.**

Congress gave the Board exclusive and plenary authority over rail line abandonments, and Board authority is required before a railroad line can be lawfully abandoned. *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 319-21 (1981); *Phillips Co. v. Denver and*

² In *Protect Sudbury, Inc. – Pet. for Declaratory Ord* (“*Protect Sudbury*”), FD 36493 (STB served Feb. 2, 2022), the STB recently declined Protect Sudbury’s Petition for Declaratory Order asking for clarification of the status of the same rail line in Sudbury, MA, as well as an issue regarding reinstatement of rail service. The Board basically rejected this request based on standing as there was no evidence of land ownership on the rail line by the Petitioner and no explanation of why a ruling was necessary. *Id.*, slip op. at 6. Here, obviously, Landowners are abutting landowners and have demonstrated why an STB clarification is necessary to protect their property interests based on the Massachusetts Land Court case in *Murray, supra*.

Rio Grande Western R., 97 F.3d 1375 (10th Cir. 1996), *cert. denied*, 521 U.S. 1104 (1997). The courts have been clear that “[a]bsent . . . valid . . . abandonment [authority] . . . a state may not require a railroad to cease operations over a right-of-way.” *National Wildlife Federation v. ICC*, 850 F.2d 694, 704 (D.C. Cir. 1988) (citing *New Orleans Terminal Co. v. Spencer*, 366 F.2d 160 (5th Cir. 1966)). Thus, any party seeking the abandonment of a line of railroad, or discontinuance of rail service, must first obtain appropriate authority from the Board. *See Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (D.C. Cir. 1994). In short, the abandonment of a line of railroad may occur only if authorized by the Board. *See* 49 U.S.C. § 10903; 49 CFR § 1152.

Here, B&M sought abandonment authority from the District Court in 1979 in accordance with the Milwaukee Railroad Restructuring Act. The ICC advised the District Court that B&M could not abandon the Line because it did not own the right-of-way. Instead, MBTA owned the right-of-way at that time pursuant to the Deed. B&M only owned a freight easement over the Line like in the *State of Maine*³ line of cases that are commonplace now. Therefore, the District Court authorized the discontinuance of rail service over the Line but not an abandonment.

A full abandonment not only extinguishes the common carrier obligation as to a line, but also removes the underlying right-of-way from the STB’s jurisdiction. *Hayfield N. R.R. v. Chicago*

³ In Finance Docket No. 31847, *State of Maine, Department of Transportation—Acquisition and Operation Exemption—Maine Central Railroad Company* (not printed) (ICC served May 24, 1991) (*State of Maine*), the ICC addressed the question of whether a given transaction involves the sale of a rail line and thus requires this agency’s approval under section 10901, or is simply an unregulated sale of assets. In that case, the ICC dismissed for lack of jurisdiction a notice of exemption involving the sale by Maine Central Railroad Company (“MEC”) to the State of Maine of the physical assets of a rail line, including the track. In concluding that the sale involved only the transfer of assets, rather than a rail line, the ICC noted: (1) that there was no intention by the parties to transfer seller’s common carrier obligation; (2) MEC intended to continue operations over the line through its subsidiary, Springfield Terminal Railroad; and (3) MEC retained an exclusive easement over the line that would ensure MEC (and its successors and assigns) “both the full right and necessary access to maintain, operate and renew the line.”

& N.W. Transp. Co., 467 U.S. 622 (1984) (once abandonment authority is exercised, the right-of-way is no longer subject to Federal rail regulation and its disposition is subject to state property law instead). In contrast, discontinuance authority relieves the carrier from its obligation to provide service over the line, but the carrier holds the right-of-way in reserve for potential future reactivation of rail service (i.e., it “railbanks” the line). In other words, the discontinuance of service as opposed to full abandonment of a line avoids the extinguishment of any rail easements under state property laws and the return of such property to reversionary interest holders. *Preseault v. ICC*, 494 U.S. 1, 5-6 n. 3 (1990).

Therefore, because B&M only obtained discontinuance authority for the Line, MBTA appears presently to hold the right-of-way subject to possible reactivation of rail service until a proper abandonment of the Line occurs. MBTA previously argued in *Protect Sudbury* that it is a noncarrier under the *State of Maine* doctrine because it does not have the authority to operate freight service over this Line, as it gave that exclusive right to B&M in the freight easement pursuant to the Deed in 1976. Therefore, MBTA has taken the position in *Protect Sudbury* that it cannot obtain abandonment authority because it is not subject to the jurisdiction of the STB as a commuter authority and accordingly, all rights on this Line have been properly extinguished. However, that does not change the fact that this Line has never been abandoned and may remain subject to the jurisdiction of the STB based on these decisions by the ICC and the District Court regarding the Line.

For example, in *Illinois Central R.R. Company – Abandonment Exemption – in St. Tammany Parish, LA*, AB-43 (Sub-No. 154X) (ICC served Jul. 2, 1992), the Illinois Central, without ICC approval, sold the real estate underlying the right-of-way at issue in that proceeding to a private buyer, thereby causing the ICC to seek more information about whether this transaction

would impair IC's ability to obtain abandonment authority. The ICC found the IC retained an exclusive easement over the land underlying the track to permit continued rail operations by IC. The easement provided that the buyer could not interfere in any way with continuing rail operations on the property. Because of this easement, the ICC found based on *State of Maine* that IC retained the necessary legal interest in the line to obtain abandonment authority.

Therefore, it is unclear despite the ICC's holding in 1979 that B&M could not abandon the line because it did not own the property whether B&M or MBTA is the party that must seek abandonment authority here or whether the Line can be found to be technically abandoned based on these past decisions regarding the Line. *See, e.g., Boston and Maine – Abandonment Exemption – in Middlesex County, MA*, AB-32 (Sub-No. 99X) (STB served December 7, 2006) (B&M abandonment of line owned by MBTA); *Boston and Maine Corporation – Exemption – Discontinuance of Service in Essex County, MA*, AB-32 (Sub-No. 37X) (ICC decided June 20, 1988) (B&M discontinuance notice treated as abandonment on right-of-way owned by MBTA), *but see Boston and Maine Corporation – Discontinuance of Service Exemption – in Essex County, Mass.*, AB-32 (Sub-No. 106X) (STB served March 3, 2015) (Only discontinuance by B&M used on line owned by MBTA); *Massachusetts Bay Transportation Authority and Boston and Maine Corporation – Abandonment and Discontinuance Exemption – in Middlesex County, MA*, AB-32 (Sub-No. 44X) (ICC decided July 12, 1991) (B&M and MBTA filed for discontinuance and abandonment on line owned by MBTA). Therefore, Landowners seek a determination from the Board about whether this Line is abandoned and remains subject to the jurisdiction of the STB to clarify these inconsistencies in the various decisions regarding abandonment of this Line and others like it in the past.

CONCLUSION

Based on the foregoing discussion, Landowners respectfully ask the Board to issue a declaratory order confirming whether the Line has been legally abandoned or if the Line remains part of the National Transportation System and is within the Board's jurisdiction. Landowners also respectfully ask the Board for expedited consideration because Eversource will begin construction on the Line in the near future which will affect the value of the land.

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June 22, 2022

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on June 22, 2022, I served a copy of this Petition for Declaratory Order on counsel known to represent the following parties by the most expedient method, including email and first-class mail:

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/s/ Daniel R. Elliott