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SERVICE DATE – LATE RELEASE OCTOBER 28, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 32 (Sub-No. 104X)

BOSTON & MAINE CORPORATION—ABANDONMENT EXEMPTION—IN  
ROCKINGHAM COUNTY, N.H.

Docket No. AB 355 (Sub-No. 40X)

SPRINGFIELD TERMINAL RAILWAY COMPANY—DISCONTINUANCE OF SERVICE  
EXEMPTION—IN ROCKINGHAM COUNTY, N.H.

Decided: October 28, 2011

Boston & Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively, applicants) jointly filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service for B&M to abandon and ST to discontinue service over approximately 10 miles of railroad known as the Hampton Branch in Rockingham County, N.H. The rail line extends from milepost 0.00 to milepost 10.0, and includes the cities of Portsmouth, Greenland, Rye, North Hampton, and Hampton. Notice of the exemption was served and published in the Federal Register on September 29, 2011 (76 Fed. Reg. 60,599-600). The exemption is scheduled to become effective on October 29, 2011.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on October 4, 2011. In the EA, OEA stated that the National Geodetic Survey (NGS) has identified 12 geodetic station markers that may be affected by the proposed abandonment. Therefore, OEA recommended a condition requiring B&M to consult with and notify NGS at least 90 days prior to beginning any salvage activities that will disturb or destroy any geodetic station markers. In the EA, OEA also stated that it had not heard from the U.S. Fish and Wildlife Service, New England Field Office (USFWS) and, therefore was unable to determine whether any federally listed threatened or endangered species exist in the area of the proposed abandonment. Accordingly, OEA recommended that B&M shall: (1) contact USFWS prior to beginning salvage activities to discuss potential impacts to any federally listed endangered or threatened species; (2) report the results of the USFWS consultations to OEA in writing; and (3) consult with OEA and USFWS if any potential impacts are identified in order to develop appropriate mitigation measures.

In the EA, OEA also stated that, according to the New Hampshire Coastal Program (NHCP), the line is located within the state's coastal zone and the proposed abandonment is subject to a Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) consistency review by NHCP. Therefore, pursuant to the Coastal Zone Management Act and the Board's

environmental regulations at 49 C.F.R. § 1105.9, OEA recommended that a condition be imposed requiring that B&M: (1) shall consult with the NHCP and obtain state coastal management consistency certification; and (2) may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until B&M reports the results of these consultations in writing to OEA and the Board has removed this condition.

Additionally, OEA stated in the EA that the railroads submitted an historic report to the New Hampshire Division of Historic Resources (State Historic Preservation Office or SHPO) as required by 49 C.F.R. § 1105.8. In response, the SHPO stated that the line was determined to be eligible for listing on the National Register of Historic Places (National Register) and requested continued consultation and additional information about the proposed abandonment. Accordingly, pending the outcome of those consultations and receipt of the SHPO's opinion regarding potential adverse effects from the proposed abandonment, OEA recommended that a condition be imposed requiring that B&M shall: (1) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effects) that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f), has been completed; (2) report back to OEA regarding any consultations with the SHPO and the public; and (3) refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due by October 18, 2011. OEA received comments from the SHPO, NHCP, and USFWS. The SHPO's comments reaffirm its request for continued consultation under the Section 106 process of the NHPA. Therefore, OEA recommends no change in the Section 106 condition. The NHCP's comments state that it has reviewed the federal consistency certification and concludes that the proposed abandonment complies with the state coastal management program. Therefore, OEA states that its recommended condition regarding the coastal zone consistency determination is no longer necessary. Accordingly, none will be imposed.

USFWS' comments indicate that no federally listed or proposed, threatened or endangered species or critical habitat under USFWS jurisdiction exist in the area of the proposed abandonment, and concludes that no further consultations are required. Therefore, OEA states that its recommended condition pertaining to additional USFWS consultations are no longer necessary. Accordingly, none will be imposed.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the notice served and published in the Federal Register on September 29, 2011, exempting the abandonment of the line described above, is subject to the conditions that B&M shall consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers. In addition, B&M shall: (1) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA, 16 U.S.C. § 470(f), has been completed; (2) report back to OEA regarding any consultations with the SHPO and the public; and (3) refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.