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SERVICE DATE – AUGUST 7, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-32 (Sub-No. 53X)

BOSTON AND MAINE CORPORATION–ABANDONMENT EXEMPTION–IN ESSEX
COUNTY, MA

Decided: August 6, 2007

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively, applicants) jointly have filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service for B&M to abandon, and for ST to discontinue service over approximately 1.47 miles of railroad known as the Georgetown Branch, extending from milepost 4.66 to milepost 6.13 in Haverhill, Essex County, MA. Notice of the exemption was served and published in the Federal Register on July 9, 2007 (72 FR 37307).¹ The exemption is scheduled to become effective on August 8, 2007.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 13, 2007. In the EA, SEA noted that the National Geodetic Survey (NGS) has identified several geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that B&M be required to notify NGS at least 90 days prior to beginning salvage or other land disturbing activities within the right-of-way (ROW) to allow NGS to plan for its possible relocation of the geodetic station markers.

No comments to the EA were received by the July 30, 2007 due date. Accordingly, the condition recommended by SEA will be imposed. Based on SEA’s recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In a letter filed on June 20, 2007, as revised by letter filed on July 18, 2007, the City of Haverhill, MA (the City) has requested the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and the issuance of a public use condition under 49 U.S.C. 10905,² in order to negotiate with B&M for acquisition

¹ The notice served and published on July 9, 2007, embraced STB Docket No. AB-355 (Sub-No. 5X), Springfield Terminal Railway Company–Discontinuance of Service Exemption–in Essex County, MA, which covers Springfield Terminal Railway Company’s exemption to discontinue service over the line.

² SEA indicated in the EA that a portion of the ROW may be suitable for other public use following abandonment.

of the ROW as a trail linking parts of the City to a commuter rail station. The City requests that B&M be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms, and that B&M be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment.

By facsimile filed on July 13, 2007, B&M states that it is not willing to negotiate with the City for interim trail use. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. The Board's authority to impose trail use conditions is limited because the Board's role under the Trails Act is ministerial and the trail use program is voluntary and consensual between the railroad and the trail user. See Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001); Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Accordingly, the City's trail use request will be denied.

As an alternative to interim trail use under the Trails Act, the ROW may be acquired for public use as a trail under 49 U.S.C. 10905. Id. at 609. Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the August 8, 2007 effective date of the exemption. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the ROW that has been found suitable for public purposes. Therefore, with respect to the public use condition, B&M is not required to deal exclusively with the City, but may engage in negotiation with other interested persons.

As conditioned, this action 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. The City's request for issuance of a notice of interim trail use is denied.
3. The request for imposition of a public use condition is granted, as discussed in this decision.
4. Upon reconsideration, the notice served and published in the Federal Register on July 9, 2007, exempting the abandonment of the line described above is subject to the conditions

that B&M shall: (1) notify NGS at least 90 days prior to beginning salvage or other land disturbing activities within the ROW in order to plan for the possible relocation of the geodetic station markers by NGS; and (2) keep intact the ROW, including bridges, trestles, culverts and tunnels (but not track and related materials), for a period of 180 days commencing from the August 8, 2007 effective date of the exemption (until February 4, 2008), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.

5. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary