

31183  
EB

SERVICE DATE - AUGUST 16, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-32 (Sub-No. 89)

BOSTON AND MAINE CORPORATION--ABANDONMENT--IN  
MIDDLESEX COUNTY, MA

Decided: August 11, 2000

By application filed April 28, 2000, the Boston and Maine Corporation (B&M) seeks authority under 49 U.S.C. 10903 to abandon and discontinue service on a line of railroad known as the Bemis Branch in Waltham and Watertown, MA, extending from milepost 8.83 to milepost 10.94, a distance of 2.11 miles, in Middlesex County, MA. Notice of B&M's application was served and published in the Federal Register (65 FR 31630) on May 18, 2000.

A request for a public use condition and issuance of a certificate of interim trail use or abandonment (CITU) was filed by the City of Waltham, MA (City). Upon review of the record, we will grant the application, subject to public use and standard employee protective conditions. Because B&M indicates it will not negotiate for trail use, a CITU cannot be issued.

TRAFFIC, OPERATIONS, AND REVENUES

B&M states that the line it proposes to abandon is a dead-end branch line with no agency or terminal stations. According to applicant, traffic over the line has declined due to the decision by the major shipper on the line, Americold Logistics Corporation (Americold), to ship its freight by truck rather than by rail. B&M states that, although Americold shipped 192 carloads of food products in 1998 and 105 carloads in 1999, this shipper has decided to close its Watertown facility and convert its real estate into an office park.<sup>1</sup>

Applicant indicates that a second shipper, Sterritt Lumber Company, also located in Watertown, shipped 17 carloads of lumber products in 1998 and 21 carloads in 1999. During the base year,<sup>2</sup> B&M operated a total of 83 trains over the line on an "as needed" basis via a local

---

<sup>1</sup> In a letter filed May 1, 2000, Americold confirms that it plans to close its facility later this year and that it supports B&M's application because the abandonment will permit it to finalize the sale of its property.

<sup>2</sup> B&M's base year reflects actual operations from September 1, 1998, to August 31, 1999. See the attached Appendix for a comparison of base year and forecast year figures.

train originating at Ayer, MA. B&M states that, because the line is bordered by State Highway 20 and Interstate Highway 90, trucks are readily available to the shippers on the line.

During the base year, B&M received revenues attributed to the line totaling \$175,540 and incurred costs of \$143,583, yielding a base year operating profit of \$31,957. However, based on a projected gross revenue of only \$27,452, due to the loss of Americold's business, B&M projects a forecast year operating loss of \$22,519.

#### AVOIDABLE COSTS

B&M projects a forecast year on-branch avoidable cost of \$38,675. Normalized maintenance accounts for \$16,857 of that total. The balance of B&M's on-branch avoidable costs (transportation, maintenance of equipment, and freight car costs) and B&M's projection of \$11,296 in forecast year off-branch avoidable costs conform to Board regulations at 49 CFR 1152.32-34, and appear reasonable.

#### LINE CONDITION AND REHABILITATION

B&M states that the Bemis Branch is in marginal FRA Class 1 condition and consists of 11,360 feet of 85-pound rail. The last major track rehabilitation was performed in the mid-1980s. According to applicant, the line has two wood pile trestle bridges, with a combined span of 616 feet, that will require rehabilitation within 5 years. There are five public at-grade crossings and five private at-grade crossings on the line. B&M indicates that the right-of-way is approximately 66 feet wide in most areas and is bordered by industrial, commercial, and some residential properties.

#### OPPORTUNITY COST

Opportunity cost (or total return on value) reflects the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets.<sup>3</sup> B&M estimates that the line has a forecast year total opportunity cost of \$577,892. The railroad estimates an NLV of \$5 million for the line, including an estimated land value of \$5,198,900. The carrier's cost evidence shows that the line will generate an avoidable operating loss of \$22,519 and an opportunity cost

---

<sup>3</sup> Under Abandonment Regulations—Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) the net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base (or valuation of the road properties) is multiplied by the current 12% nominal rate of return, to yield the nominal return on value which must be adjusted by applying a holding gain (or loss) to reflect the increase or decrease in value a carrier will expect to realize by holding assets for one additional year.

of \$577,892, for a total forecast year avoidable loss of \$600,411 and an estimated subsidy payment of \$640,579.

### SHIPPER AND COMMUNITY INTERESTS

No protests or comments in opposition to the abandonment have been filed on behalf of shipper interests. As indicated above, the City of Waltham, MA, requested a public use condition and issuance of a certificate of interim trail use or abandonment (CITU).

### DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment or discontinuance of service is whether the present or future public convenience and necessity permit the proposed abandonment and discontinuance. 49 U.S.C. 10903(d). In implementing this standard, we must balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. Colorado v. United States, 271 U.S. 153 (1926). Essentially, the Board must determine whether the burden on the railroad from continued operation is outweighed by the burden on the shippers and the public from the loss of rail service.

The record shows that B&M's continued operation of the line will result in a total forecast year operating loss of \$22,519. If the carrier's estimate of its opportunity costs of \$577,892 is factored in, the total annual loss becomes \$600,411. Due to the departure of the principal shipper on the line, there is nothing of record to suggest that the line will be profitable in the future and neither the affected shippers nor the public have expressed opposition. Thus, we conclude that the line will suffer continual losses if the proposed abandonment is denied.

On balance, we conclude that any harm to the shippers and the community from the proposed abandonment is outweighed by the demonstrated harm to B&M and the burden on interstate commerce through continued operation of the line. We will therefore grant the abandonment application.

### LABOR PROTECTION

In approving this abandonment application, we must ensure that affected rail employees will be adequately protected. 49 U.S.C. 10903(b)(2). We have found that the conditions imposed in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979) (Oregon), satisfy the statutory requirements, and we will impose those conditions here.

### ENVIRONMENTAL ISSUES

The Board is also required to consider the environmental and energy impacts of the proposed abandonment. B&M submitted an environmental report with its application and has

notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on May 31, 2000, and requested comments by June 29, 2000. No comments have been filed. In its EA, SEA recommended that no environmental conditions be placed on the abandonment. We agree with SEA's recommendation.

#### TRAIL USE

The City requests issuance of a CITU pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to enable it to acquire for recreational trail use a 1.22-mile portion of the right-of-way between milepost 9.72 and milepost 10.94.<sup>4</sup> Because the City has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29, the Trails Act is applicable to this proceeding. B&M, however, has notified us that it does not intend to negotiate a trail use agreement.<sup>5</sup> Accordingly, a CITU cannot be issued. See 49 CFR 1152.29(b)(1)(ii).

#### PUBLIC USE

SEA has indicated in its EA that the right-of-way may be suitable for other public use after abandonment, and the City also requests imposition of a public use condition on the same 1.22-mile portion of the right-of-way. The City states that 180 days are needed to assemble and review title information and commence negotiations with B&M. It requests that B&M be prohibited from disposing of the corridor other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that B&M be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. The City states that acquisition of the right-of-way will allow it to connect the proposed trail with the existing trail along the Charles River and a major residential area that lacks sufficient recreation space.

The City has met the public use criteria for imposing a public use condition; it has specified: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. 49 CFR 1152.28(a)(2). Accordingly, the requested 180-day public use condition will

---

<sup>4</sup> This 1.22-mile portion of the Bemis Branch is located within the City's boundaries.

<sup>5</sup> In its letter notification to the Board, received July 20, 2000, B&M indicates its willingness to meet with the City to discuss plans for the property.

be imposed. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

We find:

1. The present or future public convenience and necessity permit the abandonment of the above-described line, subject to the employee protective conditions in Oregon and the condition that B&M leave intact the portion of the right-of-way between milepost 9.72 and milepost 10.94, including bridges, trestles, culverts and tunnels (but not track and track materials), for a 180-day period from the effective date of this decision, to enable any state or local government agency or any other interested person to negotiate an acquisition for public use.

2. Abandonment of service over the line will not have a serious, adverse impact on rural and community development.

3. The line may be suitable for other public purposes.

4. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is granted subject to the conditions specified above.

2. B&M must promptly provide any interested person the information they require to formulate an offer of financial assistance (OFA) to acquire or subsidize the line.

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 25, 2000, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this decision will be effective on September 15, 2000. Petitions to stay must be filed by August 28, 2000, and petitions to reopen must be filed by September 5, 2000.

6. Pursuant to 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by August 16, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary

APPENDIX  
 Computation of Revenue Attributable to the Line, Avoidable Costs, and  
 Reasonable Return on the Value of the Line to Be Abandoned

	Applicant's Base Year Figures	Applicant's Forecast Year Figures
1. Freight Orig. and/or Term. on Branch	\$174,160	\$26,752
2. Bridge Traffic	0	0
3. All Other Revenue and Income	1,380	700
4. Total Attributable Revenue (Ls. 1 thru 3)	\$175,540	\$27,452
5. On-branch Costs:		
a. Maintenance-of-Way and Structures	\$15,423	\$16,857
b. Maintenance-of-Equipment (Including Depreciation)	7,639	5,819
c. Transportation	23,312	12,304
d. General & Administrative	0	0
e. Deadheading, Taxi and Hotel	0	0
f. Overhead Movement	0	0
g. Freight Car Costs (Other Than Return)	23,669	3,695
h. Return on Value - Locomotives	0	0
i. Return on Value - Freight Cars	0	0
j. Revenue Taxes	0	0
k. Property Taxes	0	0
l. Total (Ls. 5a thru 5k)	\$70,043	\$38,675
m. Holding Gains - Locomotives	0	0
n. Holding Gains (Loss) - Freight Cars	0	0
o. Net On-br Costs (Ls. 5l - 5m & 5n)	\$70,043	\$38,675
6. Off-branch Costs:		
a. Off-Branch Costs (Other Than Return)	\$73,540	\$11,296
b. Return on Value - Freight Cars	0	0
c. Holding Gains - Freight Cars	0	0
d. Net Off-br Costs (Ls. 6a+6b - 6c)	\$73,540	\$11,296
7. Total Avoidable Costs (L. 5o + L. 6d)	\$143,583	\$49,971
8. Rehabilitation	\$39,900	\$39,900
9. Administrative Costs (Subsidy Year Only)	1,742	268
10. Casualty Reserve Account	0	0
11. Total Subsidization Cost (Ls. 8 thru 10)	\$41,642	\$40,168
12. Valuation of Road Properties		
a. Working Capital	\$2,605	\$1,313
b. Income Tax Consequences	0	0
c. Net Liquidation Value	5,000,000	5,000,000
d. Total (Ls. 12a thru 12c)	\$5,002,605	\$5,001,313
13. Nominal Rate of Return	12.0%	12.0%
14. Nominal Return on Value (L. 12d x L. 13)	\$600,313	\$600,158
15. Holding Gain (Loss)	\$22,272	\$22,266
16. Total Return on Value (L. 14 - L. 15)	\$578,041	\$577,892
17. Avoidable (Loss) or Profit from Operations (L. 4 - L. 17)	\$31,957	(\$22,519)
18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	(\$546,084)	(\$600,411)
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	(\$587,726)	(\$640,579)