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SERVICE DATE - DECEMBER 21, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-32 (Sub-No. 92)

BOSTON AND MAINE CORPORATION—ABANDONMENT—
IN SUFFOLK COUNTY, MA

Decided: December 18, 2001

By application filed September 4, 2001, the Boston and Maine Corporation (B&M) seeks authority under 49 U.S.C. 10903 to abandon its 1.45-mile Mystic Wharf Branch, extending between milepost 0.00 and milepost 1.45 in Charlestown, Suffolk County, MA.¹ Notice of the filing was served and published in the Federal Register (66 FR 48906) on September 24, 2001.

The Massachusetts Port Authority (Massport) filed comments opposing the application.² The United Transportation Union (UTU) filed a protest. B&M replied to Massport's comments on September 21, 2001, and responded to UTU's protest on October 22, 2001. In a pleading dated October 16, 2001, Massport requested a public use condition.

Having reviewed the record, we will grant the application, subject to standard employee protective conditions, public use, and environmental conditions.

The line is located in the Mystic River Designated Port Area in Boston, MA. B&M states that United States Gypsum Company (US Gypsum) is the only customer currently served on the line. The carrier asserts that US Gypsum does not tender enough traffic to make continued service viable. B&M indicates that several facilities that it formerly served on the line have been converted into non-rail uses, such as office space. In addition, B&M notes that previously planned expansion and improvements to rail-served facilities on the Boston waterfront that could

¹ B&M previously filed an application to abandon this line on July 20, 2001 in STB Docket No. AB-32 (Sub-No. 91), Boston and Maine Corporation—Abandonment—in Suffolk County, MA. In a decision served in that proceeding on August 8, 2001, however, B&M's application was found to be defective because the economic data therein were inconsistent and insufficient for a definitive analysis. The application was dismissed without prejudice to the filing of a new application. B&M's instant application rectifies most of the deficiencies noted in the August 8, 2001 decision and is sufficiently detailed for purposes of reaching a final decision on this record.

² Massport's comment was filed on August 6, 2001, in STB Docket No. AB-32 (Sub-No. 91), referenced in footnote 1. We will consider the comment in this proceeding.

have attracted additional traffic to the line have not occurred. B&M adds that the underlying property has significant value if it is developed for other uses.

TRAFFIC OPERATIONS AND REVENUES

B&M states that, during the base year,³ US Gypsum received 27 carloads of sand, gypsum, flour grain, corn flour and plaster. B&M states that it operated 48 trains over the line and served the line once a week.⁴ There is no overhead or bridge traffic on the line. B&M's base year revenues attributed to the line total \$23, 534. B&M projects forecast year⁵ revenues at \$24,518 if it continues to serve US Gypsum.

AVOIDABLE COSTS

Avoidable costs are costs that applicant will no longer incur if it abandons the line. B&M has submitted data showing avoidable on-branch costs for the base and forecast years. These include: maintenance-of-way and structures, maintenance of equipment, transportation and freight car costs. B&M reports total avoidable on-branch costs of \$19,694 for the base year and \$21,732 for the forecast year. In addition, it reports total avoidable off-branch costs of \$9,824 for the base year and projects \$10,353 in avoidable off-branch costs for the forecast year. Total avoidable costs are \$29,518 for the base year and \$32,085 for the forecast year. These figures are not challenged.

LINE CONDITION AND REHABILITATION

B&M states that the line is currently classified as "excepted track" under Federal Railroad Administration (FRA) standards set forth in 49 CFR 213.4. B&M states that it would need to replace approximately 200 cross ties, retire two turnouts, and rehabilitate an at-grade crossing to

³ B&M's base year reflects actual operations from January 1, 2000, through December 31, 2000.

⁴ B&M notes that the number of carloads delivered to US Gypsum differs significantly from the reported number of train trips over the line. B&M explains that it operated a local switcher in the vicinity of the line 5 days a week, even though the line was not served each day that the switcher operated and US Gypsum did not receive carloads on a daily basis. B&M explains that the local switcher often traveled down the line without carloads to retrieve empty cars from US Gypsum, which is why the number of train trips exceeds the number of cars. B&M indicates that this practice was intended to reduce the dwell times of the empty cars.

⁵ B&M's forecast year projects operations for September 1, 2001, through August 31, 2002.

upgrade the line to FRA Class 1 standards, at an estimated cost of \$58,500. B&M notes further that, if the line were to remain in service, the signal system would have to be upgraded in the near future. B&M did not, however, provide a cost estimate for this item.

OPPORTUNITY COSTS

Opportunity costs (or total return on value of road property) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets.⁶ B&M reports forecast year working capital of \$893, and claims no income tax benefits. B&M asserts that the NLV is \$3,964,000, which includes a land value of \$4,664,000. However, B&M did not submit an estimated net salvage value of track and material. Nevertheless, these figures are not challenged and will be accepted. B&M calculates a holding gain of \$17,652.

B&M applies an unsupported 12% cost of capital figure. We have substituted the pre-tax nominal cost of capital figure for the railroad industry for the year 2000, which is 15.4%.⁷ Based on the corrected cost of capital, B&M's forecast year return on value is restated to be \$592,942.⁸

SUMMARY OF COST AND REVENUE EVIDENCE

Our analysis indicates that the line would suffer a loss from operations of \$7,567 in the forecast year. When the return on value is considered, the line shows an avoidable loss of \$600,509 in the forecast year. When rehabilitation costs are included, the line would require a subsidy of \$659,254 in the forecast year. A summary of our forecast year analysis is set forth in the Appendix to this decision.

⁶ 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 nominal rate of return, to yield the nominal return on value. The nominal return is then 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 1 additional year.

⁷ This figure is derived by applying a combined Federal and state income tax rate of 37% to our 2000 after-tax cost of capital finding of 11.0%, which was determined in Railroad Cost of Capital—2000, STB Ex Parte No. 558 (Sub-No. 4) (STB served July 2, 2001).

⁸ $(\$3,964,000 + \$893) \text{ times } 15.4\%, \text{ minus } \$17,652 = \$592,942.$

ALTERNATIVE TRANSPORTATION

B&M states that the line is located adjacent to Route 99 (Rutherford Avenue) in Charlestown, which is a major truck route. The carrier notes that, since the line connects with the waterfront, water transportation could be an option, if developed.

SHIPPER AND COMMUNITY INTERESTS

Massport indicates that it owns four maritime properties that abut the line: (1) The Moran Terminal, a 60-acre former container terminal that is currently used by Boston Autoport (Autoport) for importing and processing automobiles; (2) Mystic Pier 1, a 5-acre site and covered storage shed that is also used by Autoport; (3) Mystic Piers 48/49/50, a 3-acre bulk cargo terminal used to import, store, and distribute road salt; and (4) the Medford Street Terminal, a 14-acre multi-use marine terminal currently used to import and stockpile construction materials.

Massport states that, although none of its tenants currently use rail service, they could in the future if their businesses grow in that direction. It asserts that Autoport, without available rail service, would have difficulty attracting automobile exports. In addition, Massport indicates that, when its current tenants vacate their properties, the availability of rail service would enhance maritime-related redevelopment opportunities for its terminals. Massport also notes that eliminating rail service would affect US Gypsum's business and increase truck traffic through a densely developed and highly congested area of Boston.

Finally, Massport asserts that the Port of Boston is at a major competitive disadvantage with other East Coast ports because rail service has been discontinued to many of its marine terminals. Without the option of rail service to transport cargo to and from its terminals, Massport claims that it may not attract new business or retain current ones that need access to a variety of transportation options. It points out further that, because its facilities are located in highly congested areas, it is concerned about the adverse environmental and community impacts of relying solely on trucks to transport cargo to and from its terminals.

UTU observes that the line is the only remaining trackage that connects the national rail freight system directly to the Boston waterfront. It notes that the line provides direct access to the Moran terminal and argues that it should be preserved. UTU asserts that abandonment could frustrate any future attempts for rail service to the port.

The sole current shipper on the line, US Gypsum, has not opposed the abandonment or filed a comment.⁹

⁹ B&M submitted an affidavit specifying that it had complied with the notice

(continued...)

Replying to Massport and UTU, B&M asserts that claims about potential future growth are speculative and unsupported. B&M argues that Massport's concerns do not accurately reflect the history of rail service on the line or the carrier's attempts to develop business over the line. As an example, B&M states that it offered to lease Mystic Pier 1 as a storage and transloading facility for rail shipments of paper products for export, but that Massport declined its offer because of labor concerns and then used the facility for purposes that did not require rail service. B&M states further that, in 1997, Massport transferred its container terminal operations from the rail-served Moran Terminal to another facility in South Boston that is not served directly by rail, indicating that Massport was not fully committed to such service on the line.

B&M acknowledges that discontinuing rail service to US Gypsum will result in an increase in truck traffic, but claims the increase will not be significant. Finally, B&M asserts that, if Massport is committed to preserving the rail line, it has the option of submitting an offer of financial assistance (OFA) under the procedures in 49 U.S.C. 10904.

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 or 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 operations is outweighed by the burden on the shippers and the community from the loss of rail service.

Our analysis of the record indicates that B&M would realize a loss in the forecast year of \$7,567 if it were to continue operating the line.¹⁰ When the return on value is considered, the line shows an economic loss of \$600,509, in the forecast year. When rehabilitation costs are included, the line would require a subsidy of \$659,254 in the forecast year.

Massport and UTU want the line retained in service, but they do not submit any concrete proposals to make future rail service on the line viable. Rather, the evidence indicates that there are no prospects for new rail traffic that could generate additional revenues. Massport's facilities near the line do not use rail service and former rail served facilities have been converted into

⁹(...continued)
requirements of 49 CFR 1152.20, which includes a requirement that all significant uses of the line be served with a notice of intent to abandon. 49 CFR 1152.20(a)(2)(i).

¹⁰ No evidence has been introduced to refute the estimates submitted by B&M.

non-rail uses. It is also significant that US Gypsum, the only current rail patron, has not opposed the application.

On balance, we conclude that any harm to shippers and the community from the proposed abandonment is outweighed by the demonstrated harm to B&M and the burden on interstate commerce that would result from 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 has 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 October 5, 2001, and requested comments by November 4, 2001.

On October 4, 2001, the Massachusetts Office of Coastal Zone Management (CZM) submitted a comment indicating that the line is located within the Massachusetts coastal zone and that the proposed abandonment could have an adverse effect on coastal resources or uses.¹¹ CZM indicated that it was seeking approval from the United States Department of Commerce, Office of Ocean and Coastal Resource Management (OCRM) to review the proposed abandonment under the Coastal Zone Management Act, 16 U.S.C. 1450, et seq., (CZMA). Under that Act, we are prohibited from granting a license or permit affecting a coastal zone until we receive a consistency certification from a state.

In a letter dated December 14, 2001, OCRM approved CZM's request to review B&M's proposed abandonment under the CZMA. OCRM advised CZM that its decision must be consistent with the Board's decision in Joint Petition for Declaratory Order—Boston and Maine

¹¹ In a letter dated October 24, 2001, Peabody & Lane Corporation, a steamship agency, supports CZM's request.

Corporation and Town of Ayer, MA, STB Docket No. 33971 (STB served May 1, 2001).¹² At SEA's request, we will impose a condition prohibiting B&M from performing any salvage activities until it completes a CZMA consistency certification and notifies SEA of the completion.

PUBLIC USE

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. On October 16, 2001, Massport requested that a public use condition be imposed on the entire 1.45-mile line, so that the right-of-way could be used as a dedicated truck haul road and potential rail corridor to serve its maritime properties. Massport requests that B&M be prohibited from disposing of the corridor, including the tracks, ties, and signals, except for public use on reasonable terms, and that B&M be barred from removing or destroying structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment authorization. Massport indicates that 180 days are needed to assemble and review title information and begin negotiations with B&M.

Massport has met the criteria for imposing a public use condition for using the right-of-way as a truck hauling road, by specifying: (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 be imposed for the right-of-way. Applicant may remove the tracks, ties and signal equipment on the right-of-way, but must leave bridges, culverts, and tunnels intact during that period.¹³ 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.

¹² By decision served October 5, 2001, we denied a petition for reconsideration of that decision.

¹³ We will not impose a public use condition requiring B&M to preserve the tracks, ties and signals for future rail service, as Massport requests. Public use conditions are imposed for "other" public purposes, but are not imposed to preserve the rail line for future rail freight service. See Wisconsin Central Ltd.—Abandonment Exemption—In Douglas, Washburn. And Barron Counties, WI, Docket No. AB-303 (Sub-No. 12X) (ICC served Apr. 20, 1993), and Chicago and North Western Transportation Company—Near Wisconsin Rapids and Wausau, WI, Docket No. AB-1 (Sub-No. 102F) (ICC served Oct. 9, 1981). If Massport wants to obtain the track, ties and signals to continue rail service, its proper recourse is to use the OFA procedures in 49 U.S.C. 10904.

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 conditions that: (1) B&M leave intact the right-of-way, including bridges, trestles, culverts and tunnels (but not track, ties and signals), 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; and (2) B&M is prohibited from performing any salvage activities until it completes a CZMA consistency certification notifies SEA of the completion.

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. 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. The application is granted subject to the conditions specified above.

2. B&M must promptly provide any interested persons with the information they require to formulate an 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 December 31, 2001, 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 a \$1,000 filing fee. 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 January 20, 2002. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

6. Pursuant to the provisions of 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 December 21, 2002, 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 Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

APPENDIX

Forecast Year September 1, 2001 to August 31, 2002

	B&M's Forecast Year	Restated Forecast Year
1. Freight Orig. and/or Term. on Branch	\$24,518	\$24,518
2. Bridge Traffic	0	0
3. All Other Revenue and Income	0	0
4. Total Attributable Revenue (Ls. 1 thru 3)	\$24,518	\$24,518
5. On-branch Costs:		
a. Maintenance-of-Way and Structures	\$13,280	\$13,280
b. Maintenance-of-Equipment (Including Depreciation)	1,005	1,005
c. Transportation	6,633	6,633
d. General & Administrative	0	0
e. Deadheading, Taxi and Hotel	0	0
f. Overhead Movement	0	0
g. Freight Car Costs (Other Than Return)	814	814
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 On-Branch Costs (Ls. 5a thru 5k)	\$21,732	\$21,732
6. Off-branch Costs:		
a. Off-Branch Costs (Other Than Return)	\$10,353	\$10,353
b. Return on Value - Freight Cars (Less Holding Gain)	0	0
c. Net Off-br Costs (Ls. 6a+6b)	\$10,353	\$10,353
7. Total Avoidable Costs (Ls 5l + 6c)	\$32,085	\$32,085
Subsidization Costs for:		
8. Rehabilitation	\$58,500	\$58,500
9. Administrative Costs (Subsidy Year Only)	245	245
10. Casualty Reserve Account	0	0
11. Total Subsidization Cost (Ls. 8 thru 10)	\$58,745	\$58,745
12. Valuation of Road Properties		
a. Working Capital	\$893	\$893
b. Income Tax Consequences	0	0
c. Net Liquidation Value	3,964,000	3,964,000
d. Total (Ls. 12a thru 12c)	\$3,964,893	\$3,964,893
13. Nominal Rate of Return	12.	15.
14. Nominal Return on Value (L. 12d x L. 13)	\$475,787	\$610,594
15. Holding Gain (Loss)	\$17,652	\$17,652
16. Total Return on Value (L. 14 - L. 15)	\$458,135	\$592,942
17. Avoidable (Loss) or Profit from Operations (L. 4 - l.	(\$7,567)	(\$7,567)
18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	(\$465,702)	(\$600,509)
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	(\$524,447)	(\$659,254)