

35692
EB

SERVICE DATE – JUNE 14, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-32 (Sub-No. 93X)

BOSTON AND MAINE CORPORATION–
DISCONTINUANCE OF SERVICE EXEMPTION–IN SUFFOLK COUNTY, MA

STB Docket No. AB-355 (Sub-No. 31X)

SPRINGFIELD TERMINAL RAILWAY COMPANY–
DISCONTINUANCE OF SERVICE EXEMPTION–IN SUFFOLK COUNTY, MA

Decided: June 7, 2005

By petition filed on March 11, 2005, the Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (jointly, petitioners) seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 1.45-mile line of railroad known as the Mystic Wharf Branch, extending from milepost 0.0 to milepost 1.45 in Suffolk County, MA. Notice of the filing was published in the Federal Register on March 29, 2005 (70 FR 15989), and served on March 31, 2005. We will grant the petition, subject to standard employee protective conditions.

BACKGROUND

In a prior proceeding, the Board granted an application filed by B&M to abandon the Mystic Wharf Branch by a decision that was served in 2001.¹ B&M subsequently withdrew the abandonment application after agreeing to sell the underlying real estate, track and related structures to the Massachusetts Port Authority (Massport). As part of the agreement, B&M retained its common carrier rights and obligations to provide rail service on the line under a perpetual easement granted by Massport. Massport also entered into an operating agreement with B&M and ST for ST to provide rail service on the line. Massachusetts Port Authority–

¹ Boston and Maine Corporation–Abandonment–In Suffolk County, MA, STB Docket No. AB-32 (Sub-No. 92) (STB served Dec. 21, 2001).

Acquisition Exemption—Certain Assets of Boston and Maine Corporation, STB Finance Docket No. 34276 (STB served Mar. 25, 2003).²

Petitioners indicate that there is no longer any demand for rail service on the Mystic Wharf Branch. Since 2001, they state that they have provided limited service to the only customer located on the line: United States Gypsum Company (US Gypsum). According to petitioners, US Gypsum has now relocated to another facility in Wilmington, MA, and is currently receiving rail service by petitioners at its new location. Petitioners indicate that they are not aware of any other potential need for rail service on the line. They note that formerly rail-served facilities on the line have been converted to other uses, and that planned improvements to the Port of Boston waterfront served by the line have not taken place. They assert that discontinuance will relieve them of the obligations for inspecting and maintaining a rail line that has seen little or no service since 2001.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions, and encourage efficient management by relieving petitioners of the costs of maintaining and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. US Gypsum, the only shipper that has been served on the line for the last several years, has relocated to another location where it continues to receive rail service from petitioners. Given our finding regarding market power, we need not determine whether the proposed discontinuance is limited in scope. Nevertheless, to ensure that US Gypsum is informed of the Board's decision, we will require petitioners to serve a copy of this decision on that shipper within 5 days of the service date of this decision and certify to the Board that it has done so.

Because B&M is seeking authority only to discontinue service over the line, B&M remains obligated to seek abandonment authority should it wish to fully extinguish the common

² ST operates the line pursuant to a lease agreement with B&M approved in D&H Ry.—Lease & Trackage Rights Exemp. Springfield Term, 4 I.C.C.2d 322 (1988).

carrier rights and obligations under the perpetual easement granted by Massport. To ensure that Massport is informed of the Board's decision, we will require petitioners to serve a copy of this decision on Massport within 5 days of the service date of this decision and certify to the Board that they have done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests, or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b), because B&M has not sought abandonment authority and the discontinuance will not exceed the thresholds established in 49 CFR 1105.7(e)(4). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by B&M and ST of the operations over the above-described above, subject to the employee protective conditions in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

2. Petitioners are directed to serve a copy of this decision on US Gypsum and Massport within 5 days after the service date of this decision and to certify to the Board that they have done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by June 24, 2005, 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 \$1,200 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. Petitions to stay must be filed by June 29, 2005. Petitions to reopen must be filed by July 11, 2005.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective July 14, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary