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SERVICE DATE - LATE RELEASE APRIL 22, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-32 (Sub-No. 83)

BOSTON AND MAINE CORPORATION--ABANDONMENT--IN HARTFORD AND NEW
HAVEN COUNTIES, CT

STB Docket No. AB-355 (Sub-No. 23)

SPRINGFIELD TERMINAL RAILWAY COMPANY--DISCONTINUANCE OF SERVICE--IN
HARTFORD AND NEW HAVEN COUNTIES, CT

Decided: April 20, 1998

On December 29, 1997, Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively referred to as applicants) filed an application under 49 U.S.C. 10903 seeking authority to permit B&M to abandon and ST to discontinue service on a line of railroad known as the Canal Branch extending from milepost 14.50 in Cheshire, CT, to milepost 24.00 in Southington, CT, a distance of 9.50 miles, in Hartford and New Haven Counties, CT (the line). Notice of the application was served and published in the Federal Register (63 FR 2719) on January 16, 1998.

Protests were filed by Dalton Enterprises, Inc. (Dalton),¹ and Mr. Francis L. Ariola. B&M replied separately to each protest. In addition, a comment was filed by J.J. Ryan Corporation-Rex Forge Division (Rex Forge), and a request for imposition of a public use condition and for issuance of a certificate of interim trail use (CITU) was filed by the Town of Cheshire (the Town).

Upon review of the record, we conclude that the application should be granted, subject to historic preservation, public use, trail use, and standard employee protective conditions.

PRELIMINARY MATTER

On March 18, 1998, Dalton filed a motion requesting permission to late-file a supplement to its protest and tendered a supplemental pleading containing a verified affidavit from a potential shipper on the line, F & F Concrete Corporation (F & F). Dalton asserts that F & F would generate an additional 208 carloads a year to applicants, if service on the line was restored. Applicants

¹ Dalton's request for an oral hearing was denied in a decision served January 13, 1998.

replied to the motion, urging us to reject the tendered supplemental pleading as untimely, but also responding that the tendered evidence, even if considered, is entitled to little weight.

Our rules provide that we will reject any pleading filed after its due date “unless good cause is shown why the pleading is filed late.” 49 CFR 1152.25(d)(5). Protests were due on February 12, 1998. Dalton has not given a reason for the month-long delay in filing the information it now seeks to have considered. Having failed to demonstrate good cause for late-filing this information, we will deny Dalton’s motion and reject the late-tendered supplemental pleading.²

BACKGROUND

The line has been embargoed since November 23, 1994, due to hazardous operating conditions. Applicants’ previous attempts to abandon the line were unsuccessful.

Beginning on September 12, 1996, applicants filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon and discontinue service over the line. Comments and protests were filed by the Cheshire Economic Development Commission, Southington Town Council, State Senator Brian McDermott, Mr. Francis L. Ariola, Rex Forge, Dalton, and Country Lumber, Inc. (Country Lumber). We denied the petition in Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X), et al. (STB served Dec. 31, 1996), because the record was inadequate to address the shippers’ concerns. At that time it appeared that Dalton’s business would be seriously disrupted because of a lack of access for truck deliveries in the event B&M’s property was acquired for trail use after abandonment. It also appeared that Rex Forge would be without alternative transportation service because its oversized shipments required rail movement due to highway and bridge limitations. Both Dalton and Country Lumber contended that their traffic had increased and applicants did not refute their statements that additional traffic was available. In addition, Rex Forge submitted that applicants moved a shipment after the line was embargoed, which brought into question whether at least a portion of the line could be restored to service without incurring significant costs. The record did not contain information on what rehabilitation was necessary or what it would cost to restore the line to service. Nor did the record contain an estimate of the line’s revenue potential if Dalton’s and Country Lumber’s current traffic projections were taken into consideration. We advised applicants in the December 31 decision that they could either refile the petition for exemption if they could cure the noted problems or, in the alternative, file a formal application for abandonment and discontinuance in the first instance.

Applicants chose to file an application for authority to abandon and discontinue service over the line. We rejected the application, which was filed on October 27, 1997, in Boston and Maine

² On April 6, 1998, we received a letter from Mr. Ariola in response to applicants’ reply to his protest. The letter raises no new matters not covered in his protest or that are not adequately considered in our analysis, infra, and will not be addressed further in this decision.

Corporation--Abandonment--In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 82), et al. (STB served Nov. 14, 1997), for failure to comply with our abandonment and discontinuance regulations at 49 CFR part 1152 and the environmental and historic reporting requirements of 49 CFR part 1105.³ Moreover, the record did not contain an estimate of the line's revenue potential if protestants' current traffic projections were taken into consideration as we had requested in the prior decision.

In the refiled abandonment application now before us, the defects in the record noted in our previous decisions have been remedied. Applicants have submitted evidence on the traffic, revenues and costs attributable to the line, rehabilitation expenses, and estimates based on Dalton's traffic projections; and Dalton has submitted evidence in opposition to applicants' case. A sufficient record now exists upon which to make an informed decision.

TRAFFIC, OPERATIONS, AND REVENUES

As previously stated, the line is currently embargoed and, consequently, no service has been provided over it since November 23, 1994, with the exception of two movements of oversized metal presses to Rex Forge, located at Plantsville (milepost 20.00 on the line), that occurred in 1996 and 1997. In 1994, the last year when regular service was provided, Country Lumber and Dalton shipped or received 24 carloads and 58 carloads, respectively.

In the November 14, 1997 decision rejecting their previous application, we told applicants to provide a revised estimate of operating results, assuming that there is no embargo, and to include revenue projections for potential traffic. In addition, we asked applicants to provide detailed estimates of both on- and off-branch costs, including normalized track maintenance costs that assume rehabilitation of the line.⁴

Both applicants and Dalton provide estimates of the financial results of continued operations over the line for the forecast year (beginning December 1, 1997, and ending November 30, 1998). Dalton's figures show increased revenues to account for its projected additional carloads, but make no adjustments for increased costs associated with the movement of the extra carloads. To remedy this, applicants, in their reply, restate Dalton's estimates, taking into account higher cost levels associated with the movement of additional carloads. In the appendix to this decision, we have set forth applicants' forecast year figures as contained in their application, Dalton's figures, applicants'

³ Rejection was without prejudice to the filing by applicants of a new application (with a new subnumber and accompanied by a new filing fee) in compliance with 49 U.S.C. 10903 and the regulations at 49 CFR parts 1152 and 1105.

⁴ Applicants' previous estimate of forecast year operating results had assumed incorrectly that, because the line is embargoed, no traffic would be transported over the line and, consequently, no revenue would be earned or costs incurred.

reply figures using Dalton's revenues, and our restatement of the amounts using both applicants' and Dalton's revenue figures. Our restatement is based on the following analysis of the evidence.

Projected Traffic Volume and Revenues. Applicants' estimate of forecast year revenues is \$55,188. This estimate is predicated upon the movement of 71 carloads per year, consisting of 30 carloads per year from Country Lumber, a traffic level slightly higher than that experienced in the last year of operations in 1994, generating estimated revenues of \$19,910, and 41 carloads per year from Dalton (based on information from Dalton used in a court case between Dalton and applicants), generating revenues of \$24,240. Applicants further adjusted the revenue estimate, increasing it by 25% to take into account Dalton's assumption that trucking rates are 25% higher than rail rates.

Dalton argues that applicants' estimate of 71 carloads is understated. According to Dalton, it will increase its shipping and receiving to approximately 110 carloads per year due to the fact that its largest customer, Home Depot, has increased the number of stores that will purchase from Dalton from 30 to 100. In addition, Dalton claims that, if rail service were available, it could ship 50 additional carloads per year of finished products to Maynard's Warehouse in Plano, IL. No documentation is provided by Dalton from either Home Depot or Maynard's Warehouse in support of its claim. Dalton also asserts that Country Lumber would use on average 50 carloads per year, not the 30 carloads used in applicants' revenue figures (no supporting statement was submitted by Country Lumber). In total, Dalton's projection assumes the movement of 210 carloads (160 carloads attributable to Dalton and another 50 carloads for Country Lumber) which would generate revenues of \$130,143.

The revenue level of \$55,188, contained in the application, amounts to a revenue per carload (for 71 carloads) of \$777.30. Dalton's revenue level of \$130,143, which was not challenged by applicants in their reply statement, amounts to a revenue per carload (for 210 carloads) of \$619.73.⁵

Mr. Ariola also challenges applicants' traffic projections, contending that applicants could potentially move 380 carloads annually (300 carloads estimated for Dalton and 80 carloads estimated for Country Lumber). These estimates are unsupported and, moreover, Mr. Ariola fails to indicate the amount of annual revenue that could be generated at the higher traffic level.

AVOIDABLE COSTS

Avoidable costs are costs that applicants will cease to incur if they abandon and discontinue service over the line. On-branch avoidable costs are shown for: (1) maintenance-of-way and structures; (2) maintenance of equipment (including depreciation); (3) transportation expense; and

⁵ The rail rates used by Dalton in its protest are lower than those used by applicants in their application, but, as stated, are not challenged by applicants in their reply.

(4) freight car costs (other than return). Applicants have submitted data showing avoidable on-branch costs for the forecast year of \$32,954. Using Dalton's revenues for the forecast year, applicants project avoidable on-branch costs of \$80,910.

Applicants state that off-branch avoidable costs are \$40,468 for the forecast year, and \$119,694 for the forecast year if Dalton's revenue projections are used. Dalton does not challenge applicants' costs, adopting them in combination with its estimate of higher traffic volume, and therefore revenues, for its analysis.

While applicants believe that Dalton's revenue projections are overstated, in their reply they nonetheless provide estimates of operating results at protestant's higher revenue level to show that, even at that level of revenue, operations would continue to be unprofitable, with avoidable costs exceeding revenue. Applicants, however, point out that Dalton's costs should be higher because of the higher volume of traffic Dalton assumes in its analysis. Applicants adjust upward each of Dalton's estimated avoidable costs.⁶

With the exception of maintenance-of-way and structures (discussed below), we use all of applicants' avoidable costs as shown in their application. The maintenance-of-way and structures figure is based on applicants' reply statement. Applicants' estimate of avoidable costs is found to be in conformity with the Board's abandonment regulations set forth at 49 CFR 1152.32 and .34 and are, therefore, acceptable. The allocation of costs for 210 carloads by using a proration of the costs for 71 carloads is reasonable and appears to be the only practical method for computing costs at the higher revenue level, given that all these costs are variable. Total avoidable costs, as restated, at the 71-carload level are \$81,972 and at the 210-carload level are \$200,604.

Maintenance-of-way and Structures. Applicants' initial estimate of forecast year maintenance-of-way and structures is \$12,825, based on inspection, brush clearing and snow removal during the first 7 years of operation after rehabilitation. This figure is understated and, as discussed infra, reflects applicants' overstated rehabilitation cost.⁷

Applicants point out that Dalton does not address the maintenance cost related to its rehabilitation program, something that would be particularly important considering the reduced scope of its rehabilitation. Applicants correct this deficiency by including a maintenance cost that

⁶ Applicants' adjustments are made on a pro rata basis by dividing the costs contained in their application (the first column of the appendix) by 71 (the original carload count used by applicants) and multiplying each of these results by 210 carloads. These adjustments assume that each of the estimated avoidable costs are variable.

⁷ In accordance with our regulations, rehabilitation must not exceed Federal Railroad Administration (FRA) class 1 standards and annual maintenance cost following rehabilitation should reflect maintaining the line to the same standards.

reflects Dalton's more modest rehabilitation program. According to applicants, the annual maintenance cost following Dalton's rehabilitation program would be \$21,375. We accept this amount as the best evidence of record.

LINE CONDITION AND REHABILITATION

The parties agree that the line currently does not meet FRA class 1 standards and requires rehabilitation. Dalton alleges that applicants deliberately let the condition of the line deteriorate and removed track materials for use elsewhere on their system. Given the minimal use of the line during the years prior to the embargo, we cannot find that applicants failed to maintain the line adequately.

Rehabilitation. According to applicants, approximately 9,500 new or relay ties need to be installed, and brush cutting and rail joint rehabilitation are needed to bring the line up to FRA class 1 standards. This rehabilitation program would cost \$785,650, and allow the line to be maintained with minimal attention for the next 7 years. Applicants provide a detailed explanation of their costs. Applicants submit that they have inspected the line, but, according to Dalton, applicants have not seen the line since the embargo, and, thus, have no basis for determining the quantities of materials required for rehabilitation.

Dalton contends that applicants' rehabilitation cost estimate is overstated. The most significant figure in the rehabilitation cost is the cost for ties. Dalton notes that applicants' estimate does not consider the 1.1 miles of track that was completely rebuilt after the embargo as part of an interstate road project. According to Dalton, only 6,077 ties need to be replaced for the portion of the line that has not been rebuilt. In addition, Dalton argues that applicants use larger, more expensive new ties instead of smaller, less expensive, relay ties and that applicants' estimates for surfacing, brush removal and joint rehabilitation are overstated. Dalton submits an alternative rehabilitation cost of \$483,125, based on a signed quotation from an independent contractor.

In response, applicants argue that their method of rehabilitation is more economical in the long run. Applicants note that Dalton has not included any disposal cost for the ties being replaced and provide a price quote for this service of \$48,616. For comparative purposes, applicants restate Dalton's figures by adding tie removal costs for a total rehabilitation figure of \$534,779.

We agree with Dalton that applicants' rehabilitation cost is overstated for a number of reasons: it includes more ties than necessary; it uses larger ties than required; and it uses new instead of relay ties. Minimum FRA class 1 standards require about 700 non-defective ties per mile. Compared to this standard, applicants' tie replacement rate of 1,000 ties per mile is excessive, even if all current ties were defective. However, no evidence has been submitted showing that all ties are defective. The fact that one train moved over the line in 1996 indicates that the line may still be passable and that some of the ties may be non-defective. Accordingly, we conclude that applicants have overstated the rehabilitation cost of the line.

Dalton submitted a signed quotation from an independent contractor in support of its rehabilitation cost figure, and its replacement rate of ties per mile is adequate to restore the line to operating condition and to meet minimum FRA class 1 standards, even if all current ties are defective. Accordingly, we find Dalton's supporting evidence persuasive. However, tie removal is a necessary part of rehabilitation and applicants' addition of this cost is appropriate. Therefore, we will use Dalton's rehabilitation cost of \$483,125 and applicants' tie removal cost of \$48,616, for a total rehabilitation cost of \$531,741.⁸

Administrative Costs. Applicants' estimated administrative costs for the forecast year are \$1,301, less than 1% of the total annual revenues attributable to the branch using Dalton's revenues. We find this amount to be reasonable and we accept it.

OPPORTUNITY COSTS

Opportunity costs (or total return on value) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under Abandonment Regulations - Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base that is 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, also called the "valuation of the road properties," is then multiplied by the nominal rate of return, which is 17.7%.⁹ The resulting figure, the nominal return on value, is then adjusted by applying a holding gain (or loss), which is the increase or decrease in value that a carrier will expect to realize by holding assets for 1 additional year.

(1) Working Capital. Our abandonment regulations call for working capital to be equal to 15 days of avoidable on-branch costs (less depreciation and return). Applicants compute working capital for the forecast year to be \$825 at the 71-carload level. Using Dalton's 210-carload projection, the amount is \$3,325.

(2) Net Liquidation Value. NLV is the sum of the net salvage value (NSV) for track and bridges and the value of the merchantable land in the right-of-way. Each of these values is discussed separately below.

⁸ Using this method, applicants state that the cost is \$534,779, but this appears to be an arithmetic error.

⁹ The 17.7% pre-tax nominal cost of capital rate is determined from the after-tax cost of capital (11.9%) developed in Railroad Cost of Capital-1996, STB Ex Parte No. 558 (STB served July 16, 1997).

Applicants' initial NLV estimate for the line is \$2,139,050. Dalton's NLV for the line is \$782,260. In their reply, applicants restated NLV for the line to be \$995,040, using a revised NSV and Dalton's land value.

a. Net Salvage Value. Applicants assume that all track materials are either relay quality or scrap. According to applicants, a \$70 per net ton (NT) removal cost is included in the \$270 per NT price for relay material, and the price for removal of scrap material is included in the price contractors pay for track materials in place, excluding ballast and ties. Prices are based on applicants' direct market price experience within a 60-day period. Applicants do not include a cost for tie removal.

Applicants submit a revised NSV for the line which includes a salvage cost for the 1.1 miles of recently rebuilt track. They value 0.9 miles of 115-lb. new rail that was installed at \$465 per NT less \$70 per NT for removal costs, based on several quotations submitted in support of their figures. Most specify 3/16" wear, indicating that the price is based on relay quality rail. Applicants' revised NSV for the line after including this 115-lb. relay rail is \$274,140.

Dalton values track materials using a different set of categories: relay, reroll, and scrap. It presents a quotation from an independent contractor in support of its NSV of the line. Dalton's gross salvage value (GSV) for the track materials on the line is \$211,360. Dalton argues that applicants did not include the cost to remove the track and estimate it to be \$149,100, excluding any removal and disposal cost for ties and restoration of grade crossings. The NSV for the line, using Dalton's figures, is \$62,260.

Although Dalton argues that applicants' track material values are overstated, it presents no assessment of the condition of the track material on which to base its reduction of applicants' valuation. Its supporting information is contained in a quotation from a contractor, but Dalton does not submit any market data indicating that its unit costs are reasonable. Consequently, we cannot accept its values for track materials.

Dalton uses a separate removal cost to develop its cost estimate. However, similar to applicants, it leaves all ties in place. We also note that there are several grade crossings on the line, but neither party addresses the restoration cost for these grade crossings. As a result, both parties' NLV estimates may be overstated.

Because of the above flaws in Dalton's NSV estimate, we accept applicants' estimate as the best evidence of record. However, applicants inadvertently omitted relay joint bars which adds \$11,600 to their NSV. We correct this error and restate NSV to be \$285,740.

b. Net Land Value. Applicants' land value of \$1,867,000¹⁰ is based on an appraisal of the right-of-way. The right-of-way contains 72.79 acres over 9.50 route-miles, and is generally from 50 to 70 feet wide. Applicants' appraisal uses comparable parcels to develop an across-the-fence (ATF) value.¹¹ The appraisal was developed to assist in condemnation proceedings. Applicants' evidence indicates that there were other railroad right-of-way sales in the area. Applicants believe that a public agency will acquire a portion of the line for a linear park, which will connect to an existing trail located on an adjacent portion of the line that was previously abandoned. A portion may also be acquired by Dalton for use as a private roadway.

In analyzing applicants' land appraisal, Dalton challenges the use of ATF value, because, it asserts, the property is no longer a rail line. Thus, Dalton argues that the highest and best use of the property is to combine it with abutting property. In place of ATF value, Dalton submits that each segment of the right-of-way should be analyzed independently to develop its market value for NLV purposes. Dalton points out that applicants have not adjusted comparable sales to take into account that the property has limited frontage and access, and substantial restrictions due to wetlands and easements.

Dalton presents a detailed appraisal for one segment of the line. The segment contains 5.498 acres. It notes that there is an easement for a coaxial cable, in addition to a sewer easement which is located under or adjacent to this segment. Dalton states that the appraisal is based on comparable sales in the area and reflects the market value of the property. Adjustments were made for the time of sale, location of the property, and the size and condition of the parcel. The median value is \$0.22 per square foot, which Dalton estimates to be \$10,000 per acre. Dalton uses this unit cost to develop its land value of \$720,900 for the line. Dalton believes that only one parcel of land (applicants' Industrial Sale No. 12) is actually comparable to the subject property, and it has a value of \$6,604 per acre.

In response, applicants maintain that their ATF approach to valuation of the right-of-way is appropriate because the property is a rail line. Applicants point out that Dalton's appraisal is for a 3,371-foot segment of the right-of-way that was valued for Dalton as part of its plan to acquire that portion of the line post-abandonment. Applicants note that, ultimately, Dalton was ready to pay a negotiated price of \$150,000 for that segment of the line. Applicants restate their NLV using Dalton's land value of \$720,900 in order to show that the line will still not generate the required rate of return.

We generally agree with Dalton's criticisms of applicants' real estate appraisal. The adjustments it applies to comparable sales are what we typically expect to see in an acceptable

¹⁰ Applicants round off this figure to \$1,900,000. We will use the actual amount.

¹¹ An ATF methodology estimates land values by determining the value, usually by recent sale, of comparable adjacent parcels of land.

appraisal. However, Dalton does not develop a segment-by-segment approach similar to applicants' appraisal. Further, Dalton's land valuation is based on only one comparable sale. We do not consider it reasonable to base the value of the entire 9.50-mile right-of-way on one parcel when other data are available. Nevertheless, Dalton presents the only evidence which takes into account appropriate adjustments that must be made to ATF values to reflect the value of the right-of-way for NLV purposes. In order to develop a reasonable value for the land, we will use applicants' segment-specific data and the comparable sales adjustment factors developed in Dalton's evidence. Using this method, our restated land value for the right-of-way is \$1,244,500.

Our restated NLV for the line is \$1,530,240, computed as follows:

Relay rail	\$242,290
Rail scrap	26,390
Joint bars relay	11,600
Joint bars scrap	1,540
Other track material scrap	<u>3,920</u>
Net Salvage Value Track	\$285,740
Land	<u>1,244,500</u>
NLV	1,530,240

(3) Income Tax Consequences. Neither party includes any income tax consequences in its estimate.

Nominal Return on Value. Both applicants and protestant Dalton use an after-tax 11.9% cost of capital figure for the nominal return element. The pre-tax equivalent (using a 35% Federal and a 2% state tax rate) is 17.7%.¹² It has been our long standing policy to use the pre-tax cost of capital rate in abandonment proceedings. Therefore, we will use the 17.7% rate to compute nominal return on value to be \$270,999 at applicants' projected revenue level and \$271,441 at Dalton's estimated revenue level.

SUMMARY OF COST AND REVENUE EVIDENCE

Our analysis of the evidence indicates that for the forecast year, at the 71-carload revenue level, applicants would incur an avoidable loss from operations of \$26,784, an avoidable loss including return on value of \$297,783, and would require an estimated subsidy payment of

¹² See note 8, supra.

\$830,825. At Dalton's higher 210-carload level, applicants would incur an avoidable loss from operations of \$70,458, an avoidable loss including return on value of \$341,899, and would require an estimated subsidy payment of \$874,941.

SHIPPER AND COMMUNITY INTERESTS

Applicants identify one shipper, Rex Forge, as a significant user on the line. They identify two shippers, Dalton and Country Lumber, who used the line prior to the embargo. Of these, only Dalton filed a protest.

Dalton is a manufacturer of asphalt and sport surface materials. Its plant abuts the line in Cheshire. Prior to the embargo, Dalton used the line to bring in raw materials for processing at its plant. Dalton states that it built and later expanded its plant at its present location because of the existence of the line. Dalton opposes the abandonment and discontinuance because of its reliance upon rail service.

Dalton contends that the proposed abandonment could result in its inability to remain in business. It notes that Cheshire's zoning for industrial use is confined to a narrow strip of land adjacent to the rail line and that the land surrounding that strip, in the area of its plant, has been zoned strictly for residential use. Dalton states that, when the line was embargoed, it was forced to use trucks over residential streets resulting in numerous complaints from property owners.¹³ Dalton also states that the additional cost in shipping by truck versus rail is significant and has financially harmed its business.

Rex Forge produces steel and stainless steel forgings and conducts galvanizing operations at its Plantsville facility. Rex Forge acknowledges that freight levels on the line are not sufficient to support viable rail operations. At the time the line was embargoed, Rex Forge sought an arrangement with applicants to permit the delivery of several large presses, weighing between 300,000 and 600,000 pounds. Because of highway clearances and weight restrictions, the presses could not be delivered by motor carriers. As noted, applicants delivered the presses to the Rex Forge plant during the embargo.

Rex Forge indicates that it needs to obtain additional presses to ensure that its plant has adequate equipment to meet future business requirements. It submits that applicants have agreed to retain a temporary freight easement under which the 4-mile segment of track between milepost 24.00 at Southington and milepost 20.00 at Plantsville will be left intact for at least a 12-month period so that rail delivery of additional presses can be accomplished on reasonable terms and conditions. In addition, according to Rex Forge, applicants and Rex Forge will seek an extension of

¹³ Dalton does not allege, as it did in opposition to the previous petition for exemption, that trucks must cross applicants' property to serve its facility. Applicants characterize such crossing of its property as "trespass."

the freight easement, not to exceed 6 months, from the Town of Southington and/or the Connecticut Department of Transportation, if necessary, to permit delivery of additional presses during the 6-month period.

Rex Forge's operations also require motor vehicle access to the storage and marshaling yard at the rear of its plant. Rex Forge states that applicants have agreed that they will not oppose the grant of a driveway easement and, in cooperation with Rex Forge, applicants will use their efforts to obtain such an easement if the rail line is sold for recreational purposes. Rex Forge indicates that it will coordinate the construction and use of the driveway into its plant with trail purchasers. In light of applicants' willingness to enter into these arrangements, Rex Forge does not object to abandonment of this line.¹⁴

Mr. Ariola is concerned that the proposed abandonment not only will result in loss of rail service for area businesses, but also will result in a significant increase in truck traffic, subjecting residential neighborhoods to noise and air pollution. Mr. Ariola states that the towns of Cheshire, Milldale, Plantsville, and Southington are still rebounding from a severe recession and that this branch line is needed to continue long-term growth and for the economic infrastructure of these towns. Mr. Ariola claims that the presence of a railroad in any one of these towns could lure businesses. He asserts that there are several shippers that would generate substantial traffic for the line if applicants would provide reliable service.

ALTERNATIVE TRANSPORTATION

Applicants state that there is alternative motor transportation available to shippers. The line is located near various state roads and highways which provide an alternate transportation network for all of the affected communities.

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).

¹⁴ Our concern that abandonment of the line would leave Rex Forge without viable alternative transportation service for its oversized shipments was one of the reasons we denied the petition for exemption. Now that applicants and Rex Forge have worked out an agreement, our concern is satisfied.

The Board must determine whether the burden on the railroad from continued operation is outweighed by the burden on the shippers and public parties from the loss of rail service. This involves a question of whether, and to what degree, shippers will be harmed if rail service is no longer available. The fact that shippers are likely to incur some inconvenience and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operation of uneconomic and excess facilities. Protestants must show that the harm to shippers and communities outweighs the demonstrated harm to the railroad and interstate commerce by continued operation of the line. See Chicago and North Western Transp. Co.--Abandonment, 354 I.C.C. 1, 7 (1977).

In determining whether to grant or deny an abandonment or discontinuance application, we consider a number of factors, including operating profit or loss, other costs the carrier may experience (including opportunity/economic cost), and the effect on shippers and communities. No one factor is conclusive. See Cartersville Elevator, Inc. v. ICC, 724 F.2d 668, aff'd on reh'g, en banc, 735 F.2d 1059 (8th Cir. 1984).

Applicants and protestant Dalton disagree on several issues, including traffic levels for the forecast year, track rehabilitation and maintenance costs, and land value. We have analyzed the parties' arguments and evidence for each of the operating projections. Under each projection, we find that the line will result in an operating loss. Even if we accept Dalton's projected traffic level of 210 carloads, we find that applicants would suffer an operating loss of \$70,458, and when opportunity costs are considered, an economic loss of \$874,941.

The loss applicants would suffer from continued operation of the line outweighs protestant Dalton's concerns about potential harm to its business. Protestant has not alleged, much less shown, that its facility cannot be served by motor carriers. Although the cost of motor carrier service to Dalton may be greater than the cost of rail service provided by applicants, applicants have demonstrated that rail service cannot be provided except at a substantial loss to applicants. There is no reason that this cost should be borne by applicants rather than Dalton, which is the user of the transportation service. Dalton's and Mr. Ariola's assertions that there is significant traffic available from other shippers are unsupported and are entitled to little weight because none of the potential shippers has opposed this application. It has been long held that such unsupported evidence of future traffic is not enough to justify a denial of an abandonment. See Burlington Northern Railroad Company--Abandonment Exemption--Between Mesa and Basin City, Franklin County, WA, Docket No. AB-6 (Sub-No. 370X) (STB served Jan. 27, 1997). Thus, absent more specific documentation of the likelihood of future traffic, applicants should not have to continue to incur losses on the line. Moreover, in projecting increased traffic levels, Dalton ignores the costs applicants would incur if they handled the additional traffic. When such avoidable costs are factored in, the line would incur an even greater loss at the higher traffic levels than it would at Dalton's original estimate of 210 carloads.¹⁵

¹⁵ Even if we were to accept protestant's projection of 418 carloads, which would include
(continued...)

Concerning the impact on the community from increased truck traffic, we note that no community interest has opposed this application or corroborated Dalton's allegations. The environmental impact of the proposed abandonment is discussed below.

On balance, we conclude that any harm to shippers and the community from the abandonment and discontinuance of service is outweighed by the demonstrated harm to applicants and the burden on interstate commerce through continued operation of the line.

We note that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be discontinued or abandoned. Under section 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an offer of financial assistance (OFA) to acquire a line or subsidize the losses of the existing operator.

LABOR PROTECTION

In approving this abandonment and discontinuance application, we must ensure that rail employees are 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), 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. Applicants have submitted an environmental report with their application and have 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 February 6, 1998, and requested comments.

In the EA, SEA noted that the Connecticut Historical Commission advised SEA that the line encompasses an important section of the historical Farmington Canal, which is listed on the National Register of Historic Places. Therefore, SEA recommends imposition of a condition requiring B&M to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C.

¹⁵(...continued)

208 carloads for F & F, we project that applicants would incur avoidable costs of \$378,130 and incur an operating loss of \$110,080. After opportunity costs are factored in, applicants would incur an economic loss of \$914,834.

470f. SEA also has determined that the right-of-way may be suitable for other public use following abandonment.

Dalton submitted comments on the EA. It states that the EA is flawed for two reasons: (1) it failed to calculate increases from truck traffic if the rail line proposed for abandonment had not been embargoed; and (2) it failed to take into account the increase in Dalton's business since the line was embargoed in November 1994. According to Dalton, it would now use a minimum of 160 rail cars per year, which translates to approximately 480 trucks per year. In addition, according to Dalton, County Lumber estimates its potential traffic at 50 rail cars per year or 200 trucks. This would equal a total of 680 trucks per year. In accordance with the information submitted in their application, applicants have incorporated specific assumptions about the potential for traffic on the rail line. SEA's environmental analysis is consistent with those assumptions. The fact that SEA has not analyzed increases in truck traffic based on projections offered by Dalton does not render the EA defective. There is no indication in this record that the 480 trucks from Dalton would translate into an increase of more than 10% over the level of current average daily vehicular traffic on the roads near Dalton's facility. In the absence of more complete and reliable data regarding the magnitude of the increase in truck traffic relative to existing vehicular traffic, SEA has reasonably relied on applicants' traffic assumptions in conducting its analysis, and the resulting EA is therefore adequate.

We adopt SEA's analysis and recommended condition. Accordingly, based on SEA's recommendations, we conclude that the proposed abandonment and discontinuance, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

TRAIL USE

The Town 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 a portion of the right-of-way between milepost 14.50 and milepost 18.50 for recreational trail use. The Town 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. By letter dated March 16, 1998, B&M states that it is willing to negotiate with the Town. The Town's request complies with the requirements of 49 CFR 1152.29 and B&M is willing to enter into negotiations. Therefore, we will issue a CITU covering that portion of the line between milepost 14.50 and milepost 18.50 as agreed to by B&M. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, B&M may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails), OFAs to

acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 U.S.C. 1152.27(c)(1), the effective date of this decision and certificate will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the abandonment and discontinuance application will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

PUBLIC USE

SEA has indicated in its EA that the right-of-way may be suitable for other public use after abandonment. The Town also requests imposition of a public use condition on the portion of the right-of-way between milepost 14.50 and milepost 18.50. 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. The Town asserts that the 180 days is needed to work with the Connecticut Department of Environmental Protection and local agencies to complete a trail plan, to acquire funding, and to commence negotiations with B&M.

Persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. When the need for both is established, it is our policy to impose both conditions concurrently, subject to the execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609. The Town has met the public use criteria for imposing a public use condition 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, a 180-day public use condition will also be imposed on the portion of the right-of-way between milepost 14.50 and milepost 18.50. If a trail use agreement is reached on a portion of the right-of-way, B&M must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. 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. Therefore, with respect to the public use condition, B&M is not required to deal exclusively with the Town, but may engage in negotiations with other interested persons.

We find:

1. The present or future public convenience and necessity permit the abandonment and discontinuance of the above-described line, subject to employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that B&M: (1) shall leave intact the portion of the right-of-way between milepost 14.50 and milepost 18.50, including bridges, trestles, culverts and tunnels (but not track and track materials), for a period of

180 days from the effective date of this decision and certificate, to enable any state or local government agency or any other interested person to negotiate the acquisition of that portion of the line for public use; (2) comply with the interim trail use/rail banking procedures for the portion of the right-of-way between milepost 14.50 and milepost 18.50 as set forth below; and (3) retain its interest in and take no steps to alter any sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. Abandonment and discontinuance 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. Dalton's motion to late-file a supplement to its protest is denied.

2. The application for abandonment and discontinuance of service over the above-described line is granted subject to the conditions specified above.

3. If an interim trail use/rail banking agreement is reached for the portion of the right-of-way between milepost 14.50 and milepost 18.50, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and certificate and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and certificate, interim trail use may be implemented. If no agreement is reached by that time, B&M may fully abandon the line, provided the conditions imposed above are met.

7. Applicants must promptly provide the Town and any other interested persons the information they require in order to formulate an OFA to acquire or subsidize the line.

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8. 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 May 1, 1998, 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).

9. 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.”**

10. Provided no OFA has been received, this decision and certificate will be effective May 22, 1998. Petitions to stay must be filed by May 4, 1998, and petitions to reopen must be filed by May 12, 1998.

11. Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file 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 April 22, 1999, 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 and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX
COST AND REVENUE DATA

	Applicants' Opening Forecast Year Figures	Protestant's Revenue Figures	Applicants' Reply Figures Using Protestant's Revenues	Final OEEA&A's Figures (Applicant's Revenues)	Final OEEA&A's Figures (Protestant's Revenues)
1. Freight Orig. and/or Term. on Branch	\$55,188	\$130,143	\$130,146	\$55,188	\$130,146
2. Bridge Traffic	0	0	0	0	0
3. All Other Revenue and Income	0	0	0	0	0
4. Total Attributable Revenue (Ls. 1 thru 3)	\$55,188	\$130,143	\$130,146	\$55,188	\$130,146
5. On-branch Costs:					
a. Maintenance-of-Way and Structures	\$12,825	\$12,825	\$21,375	\$21,375	\$21,375
b. Maintenance-of-Equipment (Including Depreciation)	403	403	1,192	403	1,192
c. Transportation	4,859	4,859	14,371	4,859	14,371
d. General & Administrative	8,136	8,136	24,064	8,136	24,064
e. Deadheading, Taxi and Hotel	0	0	0	0	0
f. Overhead Movement	0	0	0	0	0
g. Freight Car Costs (Other Than Return)	6,731	6,731	19,908	6,731	19,908
h. Return on Value - Locomotives	0	0	0	0	0
i. Return on Value - Freight Cars	0	0	0	0	0
j. Revenue Taxes	0	0	0	0	0
k. Property Taxes	0	0	0	0	0
l. Total (Ls. 5a thru 5k)	\$32,954	\$32,954	\$80,910	\$41,504	\$80,910
m. Holding Gains - Locomotives	0	0	0	0	0
n. Holding Gains (Loss) - Freight Cars	0	0	0	0	0
o. Net On-br Costs (Ls. 5l - 5m & 5n)	\$32,954	\$32,954	\$80,910	\$41,504	\$80,910
6. Off-branch Costs:					
a. Off-Branch Costs (Other Than Return)	\$40,468	\$40,468	\$119,694	\$40,468	\$119,694
b. Return on Value - Freight Cars	0	0	0	0	0
c. Holding Gains - Freight Cars	0	0	0	0	0
d. Net Off-br Costs (Ls. 6a+6b - 6c)	\$40,468	\$40,468	\$119,694	\$40,468	\$119,694
7. Total Avoidable Costs (L. 5o + L. 6d)	\$73,422	\$73,422	\$200,604	\$81,972	\$200,604
8. Rehabilitation	\$785,650	\$483,125	\$534,779	\$531,741	\$531,741
9. Administrative Costs (Subsidy Year Only)	552	0	1,301	1,301	1,301
10. Casualty Reserve Account	0	0	0	0	0
11. Total Subsidization Cost (Ls. 8 thru 10)	\$786,202	\$483,125	\$536,080	\$533,042	\$533,042
12. Valuation of Road Properties					
a. Working Capital	\$825	\$0	\$3,325	\$825	\$3,325
b. Income Tax Consequences	0	0	0	0	0
c. Net Liquidation Value	2,139,050	782,260	995,040	1,530,240	1,530,240
d. Total (Ls. 12a thru 12c)	\$2,139,875	\$782,260	\$998,365	\$1,531,065	\$1,533,565
13. Nominal Rate of Return	11.9%	11.9%	11.9%	17.7%	17.7%
14. Nominal Return on Value (L. 12d x L. 13)	\$254,645	\$93,089	\$118,410	\$270,999	\$271,441
15. Holding Gain (Loss)	\$0	\$0	\$0	\$0	\$0
16. Total Return on Value (L. 14 - L. 15)	\$254,645	\$93,089	\$118,410	\$270,999	\$271,441
17. Avoidable (Loss) or Profit from Operations (L. 4 - 1. 7)	(\$18,234)	\$56,721	(\$70,458)	(\$26,784)	(\$70,458)
18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	(\$272,879)	(\$36,368)	(\$188,868)	(\$297,783)	(\$341,899)
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	(\$1,059,081)	(\$519,493)	(\$724,948)	(\$830,825)	(\$874,941)