

BEFORE THE  
INTERSTATE COMMERCE  
COMMISSION.

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FINANCE DOCKET No. 5098.

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EXCEPTIONS FILED BY THE TOWN OF ESSEX  
TO THAT PORTION OF THE EXAMINER'S  
REPORT RECOMMENDING ABANDONMENT  
OF THAT PORTION OF THE ESSEX BRANCH  
BETWEEN ESSEX AND CONOMO, A DIS-  
TANCE OF APPROXIMATELY ONE-HALF  
MILE.

Now comes the Town of Essex, a party to the above petition, and excepts to the recommendation of Examiner M. S. Jameson that that portion of the Essex Branch between Essex and Conomo, a distance of approximately one-half mile, be abandoned, for the following reasons, viz.:

1.

There is no evidence in the record, nor is there any finding in the proposed draft report, sufficient to show that the operation of the said one-half mile of railroad between the Essex and Conomo stations has resulted in any financial loss to the petitioner.

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2.

The petitioner has not sustained the burden of proving that any financial saving to the Railroad would result in abandoning this one-half mile of track between the Essex and Conomo stations.

3.

The petitioner on the record and finding has not sustained the burden of showing that the present and future public necessity and convenience permit the abandonment of that portion of the Essex Branch between the Essex and Conomo stations, a distance of approximately one-half mile.

4.

On the record in this case and on the findings, the recommendation that the said one-half mile of railroad between the Essex and Conomo stations be abandoned is not warranted as a matter of law.

TOWN OF ESSEX,  
By its Attorney,  
GEORGE E. MEARS.

The respondent Town of Essex requests the Honorable Commission to be permitted to argue orally the above exceptions.

TOWN OF ESSEX,  
By its Attorney,  
GEORGE E. MEARS.

BEFORE THE  
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BRIEF IN SUPPORT OF EXCEPTIONS FILED  
BY TOWN OF ESSEX.

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PRELIMINARY.

This case was heard before the Public Service Commission of the Commonwealth of Massachusetts and hearings were had on December 10, 1925, and on January 18, 19, and 20, 1926. The examiner's proposed draft report recommends that the petition for abandonment of the Essex Branch between Hamilton and Wenham and Essex be denied, but it is recommended that the portion at the terminus of the line between Essex and Conomo, a distance of approximately one-half a mile, be abandoned. It is to be noted from the record and exhibits and findings thereon by the examiner in this case that the Railroad did not specifically direct its evidence as to abandoning this particular portion, but only on the point of abandoning the whole Essex Branch. In consequence thereof the Town of Essex as respondent, although it introduced a great deal of evidence, did not introduce any evidence specifically covering this short portion of the

line. It is submitted, therefore, on the record in this case and on the findings, that the conclusion as drawn by the examiner and the recommendation that one-half mile of road be abandoned is not warranted by the record and the law. The respondent Town maintains that its exceptions to the said recommendation should be sustained, and that this Honorable Board should not issue a certificate permitting the abandonment of said one-half mile of railroad.

#### EXCEPTIONS.

##### 1.

There is no evidence in the record, nor is there any finding in the proposed draft report, sufficient to show that the operation of the said one-half mile of railroad between the Essex and Conomo stations has resulted in any financial loss to the petitioner.

A. As stated above, the Railroad's case was directed to the branch generally, and not specifically to this portion of the line. The figures on the cost of maintenance applied to the whole branch. The Town, therefore, did not specifically introduce any evidence on this particular phase of the question. It appears from the record that this particular portion of the line was built some thirteen years after the branch line from Hamilton and Wenham to Essex was built. An arrangement was entered into between the Railroad and certain individuals residing in that portion of the Town whereby individuals, by donations of land and cash, defrayed a large portion of the cost of this extension. The only piece of evidence introduced by the Railroad directly affecting this particular stretch of railroad showed that there was in this portion a trestle

203 feet long. It was further testified that as a matter of estimate the cost of maintenance of this trestle should be approximately \$810 a year. However, this was conceded to be merely an estimate, and that as a matter of actual cost it appeared that in the previous year the cost of maintenance of this trestle, together with three or four short bridges or culverts on other portions of the line, was only \$9. Although requested by the respondent's counsel to produce actual figures covering maintenance of this trestle in past years, the Railroad was unable to do so, but there is a statement in the nature of an admission that nothing had been spent for a number of years. It is particularly to be noted that no specific evidence was introduced by the Railroad to show that there was need of renewal or extraordinary repairs, or special cost of maintenance on this trestle.

To determine the cost of maintenance of this one-half mile of railroad we are therefore compelled to take the general figures introduced by the Railroad as to the cost of maintenance of the entire branch. These latter figures are of two kinds: One the theoretical cost of maintenance as determined by formulae of the Railroad, and, second, the amount actually spent on the 6 miles of branch. We find a discrepancy in these figures. According to the amounts returned by the questionnaire, maintenance was set down as \$9800. This amount was afterwards itemized by an exhibit in the case. The actual figures, however, as to maintenance amounted to \$7452 for the previous year. If we divide these two amounts by the number of miles, viz., 6, we find the maintenance of way per mile per year is \$1633 theoretically, and \$1242 per mile per

year actually. Applying these figures to the one-half mile in question, we would find the average cost of maintenance on the theoretical figures \$816.50 and on the actual figures \$621. The figure of theoretical maintenance for the whole branch includes, of course, the cost of maintenance of the trestle, viz., \$810. If we eliminate the said trestle from the consideration of the cost of maintenance of the whole line, we get a theoretical maintenance per mile per year of approximately \$1500, or approximately \$1100 per mile per year actual maintenance.

Applying these figures to the one-half mile, we get a theoretical maintenance of \$750 or an actual maintenance of \$550 outside the trestle. If then we add the entire theoretical cost of maintenance to the one-half mile in question, we would get a figure of \$1560 or \$1360, the cost of maintenance for this portion of the track. The Commission, however, is entitled to discredit any such artificial figures and to consider the actual cost of maintenance. It is to be noted in this connection that only \$9 was spent the previous year for the maintenance of the said trestle and three other bridges. The Railroad, although requested to do so, produced no figures as to any expense incurred on this trestle in the past. We think, therefore, that on this record the Commission is well justified in discrediting as a matter of common knowledge any such artificial figures when not supported by evidence, and to assume that the amount is exaggerated. If this cost of the maintenance of the bridge were cut in two, we would have a cost of maintenance of this one-half mile of track of from \$1000 to \$1200 a year, which is amply sufficient on the above figures.

Finally, however, if the cost of maintenance of this bridge is anything along the lines of what it has been in the past, viz. \$9 a year, the cost of maintenance of this one-half mile would run much less than \$1000 a year.

The foregoing considerations refer, however, to general figures as introduced by the Railroad, and every inference has been drawn in their favor on these figures. Taking up now the details of the maintenance of the way introduced in evidence by the Railroad, we find as far as this particular one-half mile is concerned many items that are charged against general maintenance of the entire road that would have no conceivable bearing on this particular stretch of railroad. They are as follows:

- (a) Right-of-way fences. There are no right-of-way fences on this particular stretch.
- (b) Crossings and signs. There are no crossings and signs.
- (c) Station buildings. The station building has been closed, and no repairs are being made thereon.
- (d) Roadway buildings. There are no roadway buildings.
- (e) Engine-house. No deduction could possibly be maintained for the engine-house if the Railroad is obliged to maintain the branch.
- (f) Telephone and telegraph lines. There are no telephone and telegraph lines.
- (g) Signals. There are no signals.

B. Now taking up the cost of operation for this one-half mile of track. It is admitted on the evidence by the Railroad that the train crew's wages on this branch

are \$3.50 a hour. There are three round trips made to this station, consuming in time approximately six minutes a round trip, or a total of approximately eighteen minutes a day. The cost, therefore, of the train crew is approximately \$1.04 a day for six days a week. The distance necessarily traveled on these three round trips is 3 miles.

Taking up the other details of this item of transportation as set out in the questionnaire and supported by detailed statement, it is admitted by the Railroad:

(a) Station employees. There are no station employees affected, there being no employee at the Conomo station.

(b) Station supplies and expenses. For the above there are no station supplies and expenses.

(c) Fuel. The item of fuel is an item that would appear to be negligible. The engine puts up for the night at Essex and the fires are kept going. It is absurd to say that in eighteen minutes' travel over this one-half mile of track there can be any appreciable use of fuel over what would normally occur if the engine were being put up in the engine-house at Essex rather than making the trips.

(d) Water, lubrication, and other supplies. This item also would fall under the same category.

(e) Engine-house expenses. This item of course could not be affected, inasmuch as the engine-house has to be in operation.

(f) Train supplies and expenses. This item is too small even to be considered. Having in mind the total mileage run by this train crew on the branch and on the main line as set out by the evidence, this item need not further be discussed.

C. Under the item "maintenance of equipment" further discussion is not deemed necessary. The findings of the Commission on the whole petition show that these items as set out by the Railroad are excessive and unfair. If they were materially reduced as set out in the finding and in the evidence, it is hard to see how such infinitesimal amounts could be considered by this Board.

D. The receipts attributable directly and indirectly to this one-half mile of line were not and could not be shown precisely by the Railroad. It appeared in evidence that from the period October 5 to October 10, 1925, an average of 22 passengers boarded the train daily at this station. It further appeared that no tickets were sold at this station and that cash fares were paid to the conductor. It is admitted by the Railroad that they were unable to ascertain what these cash fares were except as to tickets sold for destinations on the six miles of branch. As far as the main line was concerned no figures were available, but from the above facts it does appear that a considerable number of people daily used this line as passengers, and of course we must infer that they paid for so doing. It appeared in evidence that the general destination of persons using the branch as a whole was Boston, Lynn, Salem, and Beverly. This Commission, therefore, must find that receipts were substantial, and not too violent an inference would be drawn if it were found that receipts were in excess of the expenditures attributable to this one-half mile of road. In addition, there was evidence that a coal dealer would be obliged to relocate his plant, and that he paid in the vicinity

of \$3500 a year for freight on coal transported over this portion of the line.

E. In conclusion we merely point out that from the result of the above analysis no material financial loss has resulted to the Railroad, and that no loss will result in the future from the operation of this line.

## 2.

The petitioner has not sustained the burden of proving that any financial saving to the Railroad would result in abandoning this one-half mile of track between the Essex and Conomo stations.

Referring precisely to the argument advanced above, it is clear that, if the Railroad is obliged to maintain the Essex Branch to Essex, no material saving would result to the Railroad in abandoning this one-half mile of track.

## 3.

The petitioner on the record and finding has not sustained the burden of showing that the present and future public necessity and convenience permit the abandonment of that portion of the Essex Branch between the Essex and Conomo stations, a distance of approximately one-half mile.

As has been heretofore set out, this case was tried by the Railroad on the general theory of abandoning the whole line, and that case was met by the testimony of the respondent's witnesses. Many witnesses, however, who used the Conomo station testified as to the inconvenience in general which would result if the whole branch was abandoned. It appears from the evidence that, although this station is only one-half a

mile from the Essex station, yet by the highway from the Conomo station to the Essex station it is about a mile. It is certain that on the evidence it would compel one coal dealer practically to go out of business. Although it is said in the draft report that this dealer could truck his coal a distance of a mile, it is not easy to see just how this could be accomplished. No evidence was introduced as to the prospects of this dealer being able to acquire a plant on an available site at the Essex station or to conduct his business generally. We will not attempt in this brief to review separately the testimony of all the witnesses on this particular point. We will call attention to the record generally and the evidence thereunder.

## 4.

On the record in this case and on the findings the recommendation that the said one-half mile of railroad between the Essex and Conomo stations be abandoned is not warranted as a matter of law.

It cannot be said in this case, even if the facts are construed as favorably as may be for the Railroad, that any losses as alleged by the continued operation of this one-half mile of track could affect the petitioner's ability to perform its transportation service as a whole or could remotely affect or remotely add any undue burden or discrimination on interstate commerce. The gross receipts of the Boston & Maine Railroad are in the vicinity of \$85,000,000 a year. The loss incident to the operation of this one-half mile of railroad on their own figures and on the evidence in this case cannot exceed \$1700 a year. To argue that an expenditure of \$1700 a year on the part of a cor-

poration with an income of \$85,000,000 could affect the carrier's ability to perform its transportation service or add any burden on interstate commerce is fantastic. If, however, the figures submitted by the respondent are accepted, then it can be hardly contended that this Honorable Board would deal with the question at all.

Respectfully submitted,  
TOWN OF ESSEX,  
By its Attorney,  
GEORGE E. MEARS.

1134 Tremont Building,  
Boston, Massachusetts.