

FINANCE DOCKET No. 5096¹PROPOSED ABANDONMENT BY BOSTON & MAINE R. R.
OF REFORMATORY, BEDFORD-NORTH BILLERICA, ESSEX,
AND ASHBURNHAM BRANCHES

Submitted January 12, 1927. Decided February 5, 1927

1. Public convenience and necessity not shown to permit the abandonment by the Boston & Maine Railroad of that portion of its Reformatory branch between Bedford and Concord in Middlesex County, Mass., its Bedford-North Billerica branch in Middlesex County, Mass., that portion of its Essex branch between Hamilton-Wenham station and Essex in Essex County, Mass., and its Ashburnham branch in Worcester County, Mass.
2. Certificate issued authorizing the Boston & Maine Railroad to abandon that portion of its Reformatory branch between Concord and Reformatory in Middlesex County, Mass., and that portion of its Essex branch between Essex and Conomo, in Essex County, Mass.

W. A. Cole for applicant.

Samuel Hoar for town of Concord, Whitney Coal & Grain Company of Concord, Middlesex School of Concord, and town of Billerica; *Edward B. Caiger* and *Frank H. Harding* for Municipal Light Board of Concord; *Joseph E. Warner*, assistant attorney general of Commonwealth of Massachusetts; and *Sanford Bates*, commissioner of Massachusetts Department of Correction.

George R. Blinn, *J. W. Flett*, and *Elihu Loomis* for town of Bedford; and *Charles M. Dimond* for town of Bedford, Bedford planning board, and Bedford Civic Club.

William H. Emery for United States Veterans Bureau.

Frederick W. Hill for town of Arlington; *George E. Mears* for town of Essex and others; *Edith Nourse Rogers* for residents of fifth congressional district of Massachusetts; *Robert B. Walsh* for town of Hamilton; *Edward A. Whitman* for town of Ashburnham; *Charles W. Bond* for Cushing Academy, Ashburnham; *Thomas L. Walsh* for manufacturers and industries of Ashburnham; and *George E. Feldman* for constituents of Senator Walsh of Massachusetts.

¹This report also embraces Finance Dockets Nos. 5097, 5098, and 5099; Applications of Boston & Maine Railroad to Abandon Certain Branch Lines in Massachusetts.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, LEWIS, AND WOODLOCK
BY DIVISION 4:

Exceptions were filed to the report proposed by the examiner and the cases were argued orally.

The Boston & Maine Railroad, a carrier by railroad subject to the interstate commerce act, on September 26, 1925, filed applications for certificates that the present and future public convenience and necessity permit the abandonment of four branch lines in the Commonwealth of Massachusetts aggregating approximately 24 miles in length. It is represented in each instance that there is a substantial loss from operation, that there is an absence of indications of increased traffic, and that local transportation needs can be met adequately by other means.

It is stated that these applications are part of a comprehensive plan to reduce the proportion of unprofitable mileage of the Boston & Maine system. In the New Hampshire cases of branch-line abandonment, decided November 3, 1925, 105 I. C. C. 13, we reviewed the general aspects of this problem and in connection with the carrier's condition said:

It is evident that the road must not be deprived of any legitimate and proper means of improving its present financial condition to the end that it may efficiently serve the public and protect the interest of those who have invested in its securities.

Due cognizance should be taken of the improvement in earnings of the Boston & Maine Railroad system during the last few years. Net railway operating income for 1923 was \$2,987,414.22, for 1924, \$8,972,021.88, for 1925, \$12,407,815.38, and for nine months of 1926, \$10,104,856. We have recently approved the issuance of securities in connection with a comprehensive financial plan by which it is expected that the carrier will receive benefits from many operating improvements, from the extension of large bond maturities, and from improved credit. While the carrier's circumstances are thus somewhat different from those existing at the time when the New Hampshire cases were under consideration, its problem in regard to short branch lines of low traffic density still exists. In the instant cases, as heretofore, the local results of abandonment of rail service must be weighed against the larger effect upon the general community and upon the railroad system whose prosperity is so closely connected with that of New England.

Objections to the granting of these applications were filed by the several towns affected, by various institutions, and industries, and by many individuals. At the request of this commission, a hearing

was held, covering the four cases, by the Department of Public Utilities, Commonwealth of Massachusetts, during December, 1925, and January, 1926. The cases were argued orally before the Massachusetts department. On July 15, 1926, the Massachusetts department reported to us its views and recommendation in connection with each application.

In this report the term "town" is used, as in Massachusetts, to apply to a district commonly called in some other States a township. Thus, in the town of Billerica there are the stations, in most cases representing separate communities, of North Billerica, East Billerica, Billerica, South Billerica, Turnpike, etc. The individual applications will now be considered.

REFORMATORY BRANCH

By its application in Finance Docket No. 5096, the Boston & Maine seeks authority to abandon the branch line of railroad extending from Bedford westerly to Reformatory, a distance of about 7 miles, all in Middlesex County, Mass. Intervening petitions in opposition to this proposal were filed by the town of Concord, the Whitney Grain & Coal Company, the Middlesex School, the Municipal Light Board of Concord, and the selectmen of Bedford.

This line was opened for operation to Concord in 1873 and to Reformatory in 1879. Originally built by the Middlesex Central Railroad Company, it was leased by the Boston & Lowell, or by the Boston & Lowell and the Concord Railroad Corporation jointly, until merged with the former in 1883. The Boston & Maine leased the Boston & Lowell in 1887 and acquired it by consolidation in 1919, since which time the Reformatory branch has been a part of the system. It is represented on the applicant's books by a charge to investment in road of about \$161,000. The original construction was aided by the town of Bedford by its subscription to \$20,000 of stock in the Middlesex Central but it does not appear that this stock was ever delivered.

The total population served, as reflected in the combined population of the towns of Bedford and Concord, was 7,823 in 1920, and 8,552 in 1925. The territory is of a suburban or residential character rather than agricultural or industrial. Rail service southward from Bedford station on the Lexington branch is to be retained. Concord is served by the Boston & Maine's Fitchburg division and by the New Haven's Framingham-Lowell line in addition to the Reformatory branch. An excellent highway connects Bedford and Concord, over which busses are operated by the Middlesex & Boston Street Railway Company at two-hour intervals during the day. Passenger service on the branch, formerly furnished by one train

each way daily except Sunday, was of slight importance and has been discontinued since the hearing as a result of conferences between the Massachusetts department and representatives of the Boston & Maine. Freight service is furnished on alternate days. The total traffic handled annually now amounts to approximately 28,000 tons, against approximately 20,000 tons handled five years ago. Nearly all of it consists of inbound coal, grain, gasoline, manure, and miscellaneous. The principal receivers of freight, most of whom protested against granting the application, are those mentioned in the following paragraphs.

The Whitney Coal & Grain Company, with a plant on the branch at Concord and another plant on the Fitchburg division at Concord Junction, 2.5 miles distant, received at the former point 255 cars of coal, grain, etc., in 1924, and 273 cars in 1925. In terms of gross business this concern claims to do between \$150,000 and \$175,000 annually at Concord, and about \$100,000 at Concord Junction. It pays the Boston & Maine over \$30,000 a year. Within four or five years it has spent about \$15,000 on its plant, which is on land leased from the railroad. It rejects the suggestion of supplying its Concord customers by trucking coal, etc., from its Concord Junction plant, fearing the competition of a dealer now located on the Fitchburg division tracks in Concord, and claims that a similar location for itself could not be obtained.

The Concord municipal light and power plant received 82 cars of coal in 1924, and 62 cars in 11 months of 1925. Payments to the railroad were \$4,330 in 1924, and nearly \$5,000 in 1925. It has a spur track on the branch about 1 mile from the Fitchburg division, the nearest other line. Trucking of coal from the Fitchburg division is not thought feasible, however, owing to its cost, and the plant manager is considering obtaining tidewater coal direct from Mystic Wharf, Boston, in the event the branch is abandoned, at an estimated additional cost of about 85 cents per ton. This would increase the present annual outlay of about \$22,000 for coal by \$2,600, and the total annual expenses of the plant by about 3 per cent. A reduction in rates charged for electric current, now under consideration, could not be made. In fact an increase in rates and in the town appropriation would perhaps be necessary. The output of the plant increased over 30 per cent between 1924 and 1925. The town has disapproved of buying current from outside sources, a plan followed by the towns of Carlisle, Bedford, Lincoln, and Sudbury, and has spent \$75,000 in rehabilitating the plant. Its book value after deducting depreciation is \$165,000, and its going-concern value is estimated at over \$400,000.

The Middlesex School is located 2.75 miles from the Reformatory station on the branch and 3.75 miles from the Fitchburg division

station at Concord. Its business manager testified that the additional expense of hauling coal, hay, grain, and heavy goods from the latter station, instead of from Reformatory, would be \$850 annually. The school's total expenses amount to about \$178,000 per year.

The Standard Oil Company of New York received at Concord 114 cars in 1924, and 116 cars in 11 months of 1925. It was testified that the location of the plant would have to be given up if the branch were abandoned.

The State Reformatory, located at the western terminus of the branch, received 194 cars in 1924, and 213 cars in 11 months of 1925. Its consumption of coal is about 4,000 tons annually. This coal is transported from tidewater at Mystic Wharf, Boston, by the Boston & Maine. In the event of abandonment of the branch, the tracks of the New York, New Haven & Hartford Railroad may be used to reach the Reformatory from the Fitchburg division at Concord Junction, about 0.5 mile. Switching and other charges which this arrangement would entail are estimated at about \$3,146 annually. The total annual expenses of the Reformatory are approximately \$360,000.

Operating studies presented by the applicant show estimated annual revenues of the branch as follows: Freight receipts, switching charges, and demurrage, \$5,617; passenger revenue, \$1,644; miscellaneous revenue, \$836; total revenues, \$8,097. Expenses were estimated at \$13,378 for maintenance of way, \$7,176 for maintenance of equipment, and \$10,646 for transportation. These figures indicate a yearly loss of \$23,103, which would be increased to \$32,549 by including a certain proportion of system general expenses. The method followed by the applicant in estimating the direct loss from operation is the same as that used in its previous abandonment cases, and reflects a mileage prorate on all items not strictly local in character. The total Boston & Maine revenue on all freight moving to or from points on the branch was approximately \$52,000, of which \$5,423 was allocated to the branch. The protestants objected to this division and contended that the branch should be credited with the operating profit accruing to the system from these shipments. The amount of this profit was not definitely determined.

The discontinuance of all passenger service, which has now taken place, should effect an annual saving of over \$10,000 in expenses, according to evidence presented at the hearing. Against this there would be a loss in revenue of about \$1,600 if none of the former patrons of the branch used the Fitchburg division or other Boston & Maine lines. The saving in maintenance-of-way expenses to be gained by abandoning the westerly 2.6 miles between Concord and Reformatory would be approximately \$5,500, against an undeter-

mined but probably small loss in traffic. The Massachusetts department recommends that this portion of the branch only be abandoned and finds that by such abandonment and the elimination of a passenger service, already accomplished, the applicant's estimate of loss would be reduced to approximately \$8,000. The total loss the department states, is not susceptible of actual determination and is not sufficient to counterbalance the convenience of the operation to the public and to the industries on this line (referring to the portion between Bedford and Concord).

In reaching its recommendation the Massachusetts department considered the evidence submitted as indicative of very serious inconvenience and financial losses to the Middlesex School and the municipal light and power plant of Concord, the Whitney Coal Grain Company, and to other users of the freight service if the entire branch were abandoned. It finds that such part of the freight as is now handled over the line to the Reformatory can be handled over the main line of the Fitchburg division and the tracks of the New York, New Haven & Hartford Railroad.

Upon the facts presented we find that the present and future public convenience and necessity permit the abandonment of the portion of the Reformatory branch between Concord and Reformatory, a distance of approximately 2.6 miles. A certificate to that effect will be issued. Our certificate will provide that it shall take effect and be in force from and after 30 days from its date. Suitable provision will be made therein for the cancellation of tariff. An order will be entered denying the application with respect to the portion of the branch between Bedford and Concord, approximately 4.4 miles.

BEDFORD-NORTH BILLERICA LINE

By its application in Finance Docket No. 5097, the Boston & Maine seeks authority to abandon a portion of its Lexington branch, namely, the portion extending from Bedford northerly to Billerica a distance of approximately 8 miles, all in Middlesex County, Massachusetts. Intervening petitions in opposition to abandonment were filed by the town of Billerica, the Bay State Coal & Grain Company, F. C. Morey & Company, John A. Richardson, William E. Turner, and by the selectmen of the town of Bedford. A petition in protest signed by nearly 400 inhabitants of Billerica, was submitted.

This line was constructed in 1885 by the Boston & Lowell Railroad Corporation on the location of a narrow-gauge road built about nine years previous. The Boston & Maine leased the Boston & Lowell in 1887 and acquired it by consolidation in 1919, the branch becoming a part of the Boston & Maine system. Its original cost

was about \$80,000, of which \$25,000 was contributed by the town of Billerica, \$2,000 by an individual, and \$2,000 by the town of Bedford. The right of way was largely donated. The property is represented on the applicant's books by a charge to investment in road of \$61,347.

The total population served, comprising the towns of Bedford and Billerica, was 5,008 in 1920 and 6,427 in 1925. The general character of this territory is described by the applicant as agricultural, but the shipments of farm produce from it by rail are slight. Most of the line is paralleled by a State highway over which motor busses are operated at two-hour intervals by the Middlesex & Boston Street Railway Company. Another bus line, running between Boston and Lowell, passes through Billerica. The termini, Bedford and North Billerica, are on rail lines of the applicant which are not involved in this proceeding. The principal station which it is proposed to abandon is Billerica, on the main line between Boston and Lowell, 2.5 miles south of North Billerica. Between Billerica and North Billerica an electric street railway is in operation but no busses.

Passenger trains on the branch are run through between Boston and Lowell, daily except Sunday. A count made in October, 1925, indicates that an average of 40 persons boarded the trains each day at local stations between Bedford and North Billerica, and about 45 persons alighted at these stations. The travel on these trains between Boston and Bedford is considerable. Since the hearing, curtailment of the passenger service has taken place, one train in each direction now being operated on week days. The financial result of this change is not known, but it has undoubtedly tended to reduce the loss on this branch.

Freight service is provided by one regular train running daily in alternate directions and by an additional train several times during each week. The agent at Billerica, which is the only freight agency station on the branch, handles the business there and at South Billerica and Bennett Hall. Most of the incoming freight moves through Lowell and is delivered at Bennett Hall, which is less than 2 miles from North Billerica on the main line. It consists largely of coal, grain, lumber, hay, and fertilizer. The outbound tonnage is mostly ice. All the traffic destined to, or originating at, points on the line and aggregating approximately 20,000 tons per year, is but 20 per cent of the total handled. The remainder is overhead business which may, the applicant states, conveniently move over several alternate routes.

The principal receivers of freight to be affected are a coal and grain company at Bennett Hall, which received 147 carloads in 1924, a coal and grain company at Billerica which received 73 carloads, a
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lumber dealer at Bennett Hall which received 83 carloads, a manufacturer of cider and vinegar at Billerica who received 25 carloads, and a pharmaceutical company at Bedford which received 8 carloads. It was testified by some of the representatives of these concerns that the proposed abandonment would necessitate trucking for various distances at an additional cost ranging from 75 cents to \$1.50 per ton, with a disastrous effect upon their businesses. It was admitted by some witnesses, however, that lumber and coal are now being trucked into the territory from considerable distances.

Nearly all the freight shipments from this line are those made from ice houses on Nutting Pond, 2 miles south of South Billerica station. During 1924, 60 cars of ice were forwarded to Lexington and \$1,500 in freight charges were paid thereon. The evidence indicates that, although some trucking of ice from this plant to Billerica is now being carried on, the main part of the present business could not be continued profitably without rail service. The owner's investment was stated to be \$9,000.

Since the hearing, evidence has been admitted by stipulation of counsel showing that a hospital is soon to be established by the United States Veterans Bureau about 1 mile north of Bedford station. This hospital is planned for 300 beds and will have a personnel of 180. The director of the Veterans Bureau considers that the continued operation of the railroad is most important for the proper functioning of this hospital, and it is probable that the freight and passenger traffic which it will furnish may be of material value to the line.

The applicant's studies of operation show estimated annual revenues as follows: Freight receipts, switching, and demurrage, \$17,460; passenger, mail, milk, and express revenue, \$9,321; miscellaneous revenue, \$340; total revenues, \$27,121. Expenses are shown as \$12,145 for maintenance of way, \$16,525 for maintenance of equipment, and \$28,336 for transportation; total expenses, \$57,016. The amounts indicate a net loss of \$29,895, which would be increased to \$49,000 by including a certain proportion of system general expenses. The method followed by the applicant in estimating the direct loss of operation is the same as that used in its previous abandonment cases, and reflects a mileage prorate for all items not strictly local in character. The total annual Boston & Maine revenue on all freight moving to or from points on this line, based on a study of nine months traffic, was \$265,917, of which \$16,800 was allocated to the line. Eliminating overhead traffic, and traffic at stations common to other lines, the total Boston & Maine revenue was \$20,977 and the amount allocated \$1,539. The protestant contended for a more favorable division than this.

The Massachusetts department, in transmitting its views and recommendation, states that it is, of course, extremely difficult to

determine with anything approaching exactness the burden or the value to the main system of a branch of this sort by any method of allocation that may be adopted. It states that the loss from operation has been reduced since the hearing because of the curtailment of passenger service. It believes that the freight revenue is likely to increase in the future. It considers the evidence submitted by representatives of the industries on the branch as indicating that abandonment would mean serious inconvenience, substantial financial loss, and possibly in some instances, the abandonment of their business. In conclusion, the Massachusetts department expresses the opinion that, considering the public convenience served by this line of railroad to the proposed hospital, together with the probable revenue resulting therefrom, the line ought not to be abandoned at this time.

Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the portion of the Lexington branch extending from Bedford to North Billerica, a distance of approximately 8 miles, in Middlesex County, Mass. An order will be entered denying the application.

ESSEX BRANCH

By its application in Finance Docket No. 5098, the Boston & Maine seeks authority to abandon its Essex branch extending from Hamilton-Wenham station, approximately 6 miles easterly to Conomo, in the towns of Hamilton and Essex, Essex County, Mass. An intervening petition was filed by the selectmen of the town of Essex and a petition signed by 1,200 residents was submitted, both in protest against granting the application. A large number of persons, including representatives of the local industries, commuters, and holders of public office, appeared as witnesses in opposition to the proposal.

The branch was built as far as Essex in 1872. Originally undertaken by the town of Essex, it was aided to completion by the Eastern Railroad and bought by that railroad in 1874 for \$95,000. The Eastern's motive in acquiring it appears to have been based on fear of its falling into the hands of the then competing Boston & Maine. It did not prove remunerative. The extension of 0.5 mile to Conomo was built in 1886-1887 by means of donations of right of way and \$5,000 in cash. In 1890 the Eastern was merged with the Boston & Maine. Thus, the branch became a part of the Boston & Maine system. It is represented on the applicant's books by a charge to investment in road of \$115,715.

The total population served as reflected by that of the towns of Hamilton and Essex combined was about 3,100, according to the census of 1920. In summer this number would be considerably increased. The territory is described by the applicant as neither agri-

the applicant can rightfully claim that its operation causes any financial loss. In view of this, the degree of inconvenience, and the probable amount of financial loss to the industries and people in Ashburnham, while not extremely serious, are entitled to be considered the determining factors in this proceeding.

Upon the facts presented we are unable to find that the present and future public convenience and necessity permit the abandonment of the Ashburnham branch in Worcester County, Mass. An order will be entered denying the application.

COMMISSIONER LEWIS, concurring in part:

(MINORITY OPINION)

I concur with the majority in its finding that public convenience and necessity will not permit the abandonment of the branch line between Bedford and Concord and the branch line between Hamilton-Wenham and Essex; and I further concur in the issuance of permits for abandonment of that portion of the Reformatory branch between Concord and the Reformatory, and of the Essex between Essex and Conomo. However, I am reluctant to join with the majority in denial of authority to abandon the North Billerica line beyond the point a mile or more north of Bedford, where the United States Veterans Bureau is to construct and operate one of its hospitals. Present reliance on and use of the road by this district and the loss that is incurred by operation do not warrant its continuance. The representative of the Veterans Bureau did not, on argument, take the position that continued operation north of this point was essential for the hospital. A hard-surfaced State highway, an electric line operating part of the distance between North Billerica and Bedford, and through motor-bus and truck lines seem to meet the requirements of this section. It does not seem that the traffic of the ice industry on Nutting Pond and other businesses in the 7 or 8 mile stretch of road justify the imposition of a loss on the carrier that would result from requirement of continued operation. The only justification lies in the future rather than in the present. That is, in reduction in the number of trains, the suburban development of the district and a very material contribution to revenues resulting from the operation of the hospital. If these possibilities do not develop sufficiently to turn red operating figures into black, the carrier would be fully justified in renewing its application.

As for the Ashburnham line, it seems that development of new means of transportation is meeting all the urgent demands of that community for transportation service. The only appealing argument in behalf of continued operation lies in the fact that the obligation on the carrier shrinks almost to maintaining an industrial line and occasional service. It is doubtful if this can long be justified.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Issued February 5, 1927

A hearing and investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity permit the abandonment by the Boston & Maine Railroad of that portion of its Reformatory branch extending from Concord to Reformatory, in Middlesex County, Mass., described in the application and report aforesaid.

It is ordered, That the Boston & Maine Railroad, when filing schedules canceling tariffs applicable on said portion of its Reformatory branch, shall in such schedules refer to this certificate by title, date, and docket number.

It is further ordered, That this certificate shall take effect and be in force from and after 30 days from its date. Tariffs applicable to that portion of the Reformatory branch herein authorized to be abandoned may be canceled upon notice to this commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act.

And it is further ordered, That as to all other matters the application herein be, and it is hereby, denied.

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