

BEFORE THE
INTERSTATE COMMERCE COMMISSION

~~FD~~ 10587

APPLICATION OF BOSTON AND MAINE RAILROAD
AND NEW BOSTON RAILROAD COMPANY FOR CER-
TIFICATE AUTHORIZING ABANDONMENT OF THE
LATTER'S LINE OF RAILROAD IN HILLSBOROUGH
COUNTY, NEW HAMPSHIRE.

Respectfully represent the Applicants as follows:

- a. Their full corporate names are BOSTON AND MAINE RAILROAD and NEW BOSTON RAILROAD COMPANY.
- b. They are common carriers by railroad subject to the Interstate Commerce Act; the line of the New Boston Railroad Company was leased to the Concord and Montreal Railroad in 1893 for a term of 99 years, and this lease assumed by the Boston and Maine Railroad in 1919.
- c. Authority is herewith asked to abandon all the line of the New Boston Railroad Company, extending from Parker station, on another line of the Boston and Maine Railroad, to New Boston station, a distance of about 5 miles, all in Hillsborough County, New Hampshire.
- d. Abandonment of this line is sought.
- e. This line is not in receivership.
- f. Operation and maintenance of this line are not warranted, as there is no traffic dependent upon it for service; there is no passenger service on the line, and since June, 1931, the Boston and Maine Railroad has transported by truck between Manchester or Goffstown, other stations on its line, and New Boston, the only station on this line, all freight consigned to or from New Boston.

A 1441 BM - New Boston - .934 76.820

g. Correspondence in relation to this matter may be addressed to Allan P. Mackinnon, General Counsel, Boston and Maine Railroad, 150 Causeway Street, Boston, Massachusetts.

h. Applicant, Boston and Maine Railroad, is organized under the laws of the States of Maine, New Hampshire, Massachusetts and New York, and is authorized to do business in Vermont; Applicant, New Boston Railroad Company, is organized under the laws of the State of New Hampshire.

i. The making and filing of this application were authorized by a vote of the Board of Directors of Boston and Maine Railroad, passed on July 31, 1934, and by a vote of the Board of Directors of New Boston Railroad Company, passed on August 6, 1934, certified copies of which votes are attached.

j. Applicants do not desire a hearing on this application.

BOSTON AND MAINE RAILROAD

By Edward S. French
President

NEW BOSTON RAILROAD COMPANY

By Edward S. French
President

VERIFICATION.

Commonwealth of Massachusetts.

Suffolk, ss.

Edward S. French makes oath and says that he is President of the Boston and Maine Railroad and New Boston Railroad Company, Applicants herein; that he has been authorized by proper corporate action on the part of said Applicants to verify and file with the Interstate Commerce Commission the foregoing application; that he has carefully examined all the statements therein and that all such statements are true and correct to the best of his knowledge, information and belief.

Edward S. French

Subscribed and sworn to
before me, a Notary Public
in and for the Commonwealth
and County above named,
this 7th day of August, 1934.

Arthur B. Nichols
Notary Public

(Notarial seal)

My commission expires March 22, 1940.

At a meeting of the Board of Directors of BOSTON AND MAINE RAILROAD, duly notified and held at Boston, Massachusetts, on July 31, 1934, a quorum being present, the following action was taken:

"VOTED: that the President, Edward S. French, be and he hereby is authorized on behalf of this corporation to make application to the Interstate Commerce Commission for authority to abandon the so-called New Boston Branch between Parker and New Boston stations in New Hampshire, and that he be further authorized to sign, verify and file on behalf of this corporation an appropriate application to the Interstate Commerce Commission and a return to any Questionnaire submitted by said Commission, and generally to perform all acts necessary, convenient or desirable toward accomplishing the foregoing."

Attest:

(Corporate seal)

(Signed) Arthur B. Nichols
Clerk.

At a meeting of the Board of Directors of NEW BOSTON RAILROAD COMPANY, duly notified and held at Concord, New Hampshire, on August 6, 1934, a quorum being present, the following action was taken:

"VOTED: that the President, Edward S. French, be and he hereby is authorized on behalf of this corporation to make application to the Interstate Commerce Commission for authority to abandon all its lines of railroad, and that he be further authorized to sign, verify and file on behalf of this corporation an appropriate application to the Interstate Commerce Commission and a return to any Questionnaire submitted by said Commission or to join in an application and return to any Questionnaire by the Boston and Maine Railroad relating to the same subject, and generally to perform all acts necessary, convenient or desirable toward accomplishing the foregoing."

Attest:

(Signed) Fred S. Heath (Corporate
Clerk seal)

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WAG

BOSTON & MAINE RAILROAD
HISTORICAL SOCIETY
ARCHIVES

RECEIVED

INTERSTATE COMMERCE COMMISSION

JAN 25 1935

Finance Docket No. 10587

EZRA E. WANNER, JR.
WASHINGTON, D. C.

NEW BOSTON RAILROAD COMPANY ET AL. ABANDONMENT

Submitted November 23, 1934.

Decided December 28, 1934

Certificate issued permitting (a) the New Boston Railroad Company to abandon, as to interstate and foreign commerce, its entire railroad in Hillsborough County, N. H., and (b) the Boston & Maine Railroad to abandon operation thereof.

Allan P. Mackinnon and W. A. Cole for applicants.
Francis W. Johnston and Mayland H. Morse for the State of New Hampshire.

REPORT OF THE COMMISSION

BY THE COMMISSION:

~~The Boston and Maine Railroad and the New Boston Railroad Company, on August 9, 1934, jointly applied for permission (a) to the latter to abandon its entire railroad, extending from a connection with a line of the Boston & Maine at Parker to New Boston, about 5 miles, all in Hillsborough County, N. H., and (b) to the Boston & Maine to abandon operation thereof. A protest was filed by the New Boston Chamber of Commerce. The attorney general of New Hampshire entered an appearance for the State. A hearing was had, at which there were no opposing witnesses.~~

The railroad was constructed in 1893 and leased to the Concord & Montreal Railroad for the term of 99 years. The lease was assumed by the Boston & Maine on the consolidation of the Concord & Montreal with the Boston & Maine in 1919. The Boston & Maine controls the New Boston through ownership of 805 shares of its 840 shares of capital stock outstanding.

In Abandonment of Branches by B. & M. R.R., 105 I.C.C. 13, decided November 3, 1925, we denied the application of the Boston & Maine for permission to abandon the railroad covered by the instant application.

Up to June 15, 1931, daily freight service was given at New Boston by side trips of a freight train operating between Nashua and Manchester, N. H., and two round trips of passenger service were afforded by a gas-train operating between Manchester and Hillsborough. In June 1931, the applicants determined that the

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In Abandonment of Branches by B. & M. R.R., 105 I.C.C. 13, decided November 3, 1925, we denied the application of the Boston & Maine for permission to abandon the railroad covered by the instant application.

Up to June 15, 1931, daily freight service was given at New Boston by side trips of a freight train operating between Nashua and Manchester, N. H., and two round trips of passenger service were afforded by a gas-train operating between Manchester and Hillsborough. In June, 1931, the applicants determined that the condition of an 80-foot wooden-trussed bridge on the line was no longer safe for the operation of trains. After some negotiation with the parties interested, particularly in the freight service, the Boston & Maine, on June 15, 1931, discontinued operation of the New Boston Railroad, and in lieu thereof substituted truck service, at its own expense, for freight and express to and from

New Boston, trucking less-than-carload freight and express to and from Manchester and carload freight to and from Goffstown, a Boston & Maine station, about 7 miles from New Boston. Recently a change was made whereby also less-than-carload freight and express are trucked to and from Goffstown. No passenger service has been given at New Boston since June 15, 1931. The population of that village was 693 in 1930. There are no intermediate stations. Good State highways are said to serve the territory.

The applicants state that the maintenance and operation of the railroad are not warranted, as there is no traffic dependent upon it for rail service.

Evidence submitted on behalf of the applicants is that it would require an expenditure of \$44,205 to restore the railroad to operating condition, of which amount \$15,400 would be required to rebuild one bridge. The track is laid with 60-pound rail, which should be replaced within a very short time if operation were resumed. Further evidence is that the normal annual cost of maintaining the line would be \$4,430; that based on actual experience during a period just prior to the suspension of rail service, the cost of train operation would amount to about \$2,760 a year; and that the expense of continued trucking service to and from New Boston would be \$4,447 a year, on the basis of the volume of traffic in 1933, which amounted to about 4,010 tons of freight received and to about 442 tons forwarded. The principal commodities consisted of 2,860 tons of grain and its products and 405 tons of coal received and 436 tons of apples forwarded. The remainder was made up of various commodities of smaller tonnage. Less-than-carload freight and express traffic were negligible.

Testimony for the applicants is that a study was made of revenue accruing to the line from freight handled thereon in 1929, which was found to be \$624, allocated on a mileage-prorate basis, while the system revenue therefrom was \$7,385. The expense of handling the traffic is not of record. In 1933 the freight tonnage was about 32.1 percent greater than in 1929, due principally to an increase in shipments of grain to a mill in New Boston.

Counsel for the State of New Hampshire stated at the hearing that following conferences had with the selectmen of New Boston and the secretary and other members of the New Boston Chamber of Commerce, negotiations were had with representatives of the Boston & Maine and the Boston & Maine Transportation Company, the latter a subsidiary of the Boston & Maine, with respect to continuation of truck service at New Boston, and that as a result, a satisfactory agreement has been reached by which New Boston will be given freight and express services by truck.

The attorney general of New Hampshire has advised us that in view of the aforesaid agreement, the State is agreeable to the granting of the application.

P. D. NO. 10337 - Sheet 2.

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The attorney general of New Hampshire has advised us that in view of the aforesaid agreement, the State is agreeable to the granting of the application.

It is apparent from the record that operation of the New Boston Railroad cannot be resumed without an unjustifiable expenditure for rehabilitation; that such operation would impose an unnecessary and undue burden on interstate commerce; and that

the proposed abandonment will not result in public inconvenience.

We find that the present and future public convenience and necessity permit (a) the abandonment, as to interstate and foreign commerce, by the New Boston Railroad Company of its entire railroad in Hillsborough County, N. H., described in the application, and (b) the abandonment by the Boston and Maine Railroad of operation thereof. An appropriate certificate will be issued, effective from and after 60 days from its date, in which suitable provision will be made for the cancelation of tariffs.

TATE, Commissioner, specially concurring:

I approve the foregoing report; but I explain that I do not, by such action, commit myself to vote for the approval of the publication of a rate to or from New Boston, either for freight or passengers, which does not show the charge made for the rail service and the charge made for the motor-vehicle service separately, but I reserve my opinion on the legality of any such possible publication until that question is squarely presented.

AITCHISON, Commissioner, dissenting:

~~The action of the applicant's controlling and owning~~
corporation, the Boston and Maine Railroad, in discontinuing operation over the line in question, was a flagrant violation of law. The subsequent disrepair of roadbed followed in the course of nature; but it was a violation of the carrier's duty to permit the track to come into and to remain in a condition where it was disabled to perform those services which the law imposed upon it. This is a fit case for application of the maxim ex dolo malo non oritur actio, and the Commission should reprobate, and not condone, so glaring a defiance of its previous order. COMMISSIONER SPLAWN authorizes me to state that he concurs in this expression.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

At a General Session of the INTERSTATE COMMERCE COMMISSION,
held at its office in Washington, D. C., on the 28th
day of December, A. D. 1934

Finance Docket No. 10587

NEW BOSTON RAILROAD COMPANY ET AL. ABANDONMENT

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 a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity permit (a) the abandonment, as to interstate and foreign commerce, by the New Boston Railroad Company of its entire railroad in Hillsborough County, N. H., described in the application and report aforesaid, and (b) the abandonment by the Boston and Maine Railroad of operation thereof.

It is ordered, That this certificate shall take effect and be in force from and after 60 days from its date. Tariffs 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.

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

And it is further ordered, That the New Boston Railroad Company and the Boston and Maine Railroad shall report to this Commission as required by valuation order no. 24, effective May 15, 1928.

By the Commission.

(SEAL.)

GEORGE B. MCGINTY,

Secretary.