

BEFORE THE
**Interstate Commerce
Commission**

Finance Docket No. 13093

**APPLICATION OF
BOSTON & MAINE RAILROAD
FOR A CERTIFICATE AUTHORIZING
ABANDONMENT OF PORTIONS OF ITS
NEWBURYPORT AND GEORGETOWN
BRANCHES IN MASSACHUSETTS**

**APPLICANT'S REPLY
TO PROTESTANTS' EXCEPTIONS**

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Now comes the applicant, Boston and Maine Railroad, and respectfully submits the following reply to the exceptions filed to the proposed report of Examiner Prichard in this proceeding.

The exceptions filed on behalf of the protesting communities while voluminous, in many cases deal with matters of very small moment. They cover all matters dealt with in the exceptions filed on behalf of the Massachusetts Department of Public Utilities.

Accordingly there will be no separate discussion of the latter, and the former will be discussed in the order in which they appear.

EXCEPTION NO. 1

Protestants take exception to the following statement appearing on Sheet 3 of the proposed report:

Passenger service and less-than-carload freight service between Danvers and Topsfield would be discontinued.

This statement by the Examiner is merely a restatement of testimony on behalf of the applicant as to certain changes in service which it proposed to make following abandonment of portions of its Newburyport and Georgetown Branches, hereinafter referred to as the "Branch."

The statement is merely descriptive and there is no reason to think that the Examiner attached any significance to the facts to which protestants take exception. As stated in applicant's brief, while it believes that the related changes in service following abandonment might properly be considered, it is not pressing that matter.

EXCEPTION NO. 2

Protestants take exception to the following statement on Sheet 4 of the proposed report:

Common carrier truck operations are conducted over these highways.

It is asserted that there is no evidence of record supporting this statement. To the contrary, in the return to the Commission's questionnaire which was

received in evidence, there is a statement in the answer to Question 10 that

There are at least five common carrier truck lines certificated by Massachusetts for regular route operation in Georgetown and at least eight in Groveland.

Also in answer to Question 17 that

There is common carrier truck service in most of the territory and common carrier bus service between Georgetown, Groveland and Haverhill.

Moreover, the following testimony was given by witnesses for the protestants; it was stated that about 60 per cent of the business of the nursery at Boxford is handled by trucks which "include what is handled by our trucks as well as by trucking concerns" (148); it was stated that the concern manufacturing snuff at Byfield uses trucks, particularly in the area east and north of Worcester and Providence (486); a shipper of milk testified that his milk had at times "been picked up by a truckman and trucked into the Boston metropolitan district" (543). While protestants concede "that it may be assumed that trucks licensed as common carriers travel from time to time on these roads, as they do on most other roads in the whole country," their contention that there is no evidence of operations by common carrier truckmen is contrary to the testimony of their own witnesses.

EXCEPTION NO. 3

Exception was taken to a statement of the Examiner on Sheet 6 as to the claim of the applicant that

it would realize certain additional economies through reductions in service which it proposed to make following abandonment. The portion of the Examiner's report quoted in the Exceptions does not fairly state his position as it omits his concluding comment that "owing to the circumstances of the instant case it (consideration of evidence as to other economies) will not be necessary." In other words, the Examiner clearly stated that he did not take into account the possible economies from related changes in service, as to which, in fact, he declined to receive any evidence.

EXCEPTION NO. 4

Exception was taken to a statement of the Examiner on Sheet 6 of the proposed report that he treated as irrelevant certain evidence purporting to show that the total operations of the passenger trains which operate in part on the Branch, are profitable if account is taken of the revenue received from their service on other portions of applicant's lines. The basis of the exception appears to be that the Examiner stated that protestants contended that a portion of railroad operated at a loss should not be abandoned because it connects with another portion operated at a profit, whereas their position is that certain passenger trains operated in part on the Branch were profitable for their entire run taking into account traffic on them entirely unrelated to the Branch. The Examiner's comment, however, is equally applicable whichever contention the protestants urge, because they are both based on the

assumption that the Commission should give weight to the profit, if any, realized from traffic and operations off the Branch and related to it remotely, if at all.

EXCEPTION NO. 5

Exception was taken to the Examiner's statement on Sheet 7 that the average number of carload shipments at Boxford was 4 per year and the total for all stations on the Branch, including Topsfield where carload service would be continued, was 413 cars. There does appear to be an error of 2 cars at Boxford where the number of cars should read 6 instead of 4 and the total for all stations, including Topsfield, 415 instead of 413. This error, of course, is trifling.

EXCEPTION NO. 6

Exception was taken to the Examiner's statement on Sheet 8 that figures presented by the applicant disclosed an average annual freight revenue assignable to the Branch of \$736. It appears to be the contention of the protestants that the figure should be either \$1,243 or \$1,292, the difference between these figures depending on whether the revenue for 1940 is taken on the basis of 10 months' or 12 months' figures. Whichever is used, however, the Examiner's figure of \$736, which took into account the full year's business for 1940, is correct. Applicant submitted two allocations of freight revenue: one where the mileage prorata apportionment was based on the short-line rate-making mileage, and the other on the longest possible haul on the Branch with

respect to each shipment and the short-line mileage for the over-all distance. These methods assigned 5.4 per cent and 9.4 per cent, respectively. Applicant submits, however, that the former method is sounder and the Examiner was warranted in using it.

Another exception under this heading relates to the Examiner's statement that figures submitted by the applicant show an annual cost of operating passenger trains on the Branch of \$14,386 (Exhibit 17). Applicant's witness stated that in pro-rating the passenger expenses, the mileage on the Branch was assumed as 16 miles, where the actual distance was 15.6 miles. This slight difference of $2\frac{1}{2}$ per cent would reduce the annual expense by only \$359.65, and the applicant does not insist upon the slightly higher figure.

EXCEPTION NO. 7

Exception was taken to the statement of the Examiner on Sheet 8 that the applicant credited to the Branch 5.31 per cent of the freight revenue from Branch traffic, whereas the Railroad's assignment was 5.4 per cent on one basis and 9.4 per cent on another. Exhibit 17 in stating the off-branch freight revenue for the full year 1940, in error shows the full system freight revenue, which had the effect of overstating the off-branch freight revenue by \$737. When a calculation of the average Branch revenue and off-branch revenue for the six-year period is made from Exhibit 17, a figure less than 5.4 per cent is arrived at as the relationship of the Branch revenue to the total freight revenue. As a matter of

fact 5.4 per cent was actually used in apportioning the freight revenue to the Branch and 5.31 per cent did not enter into any calculations made either by the Examiner or the applicant. So far as the use of the 5.4 or 9.4 per cent is concerned, the Examiner was warranted in taking the former figure because it consistently used the short-line rate-making mileage for hauls, both off and on the Branch, whereas the higher figure was based on the longest possible haul on the Branch and the short-line mileage for the over-all distances which is a theoretical combination of mileages as to most of the traffic. Obviously the former is the sounder method, although the latter is naturally preferred by the protestants.

EXCEPTIONS NOS. 8 AND 9

As these two exceptions deal with various contentions as to the assignments of revenues and expenses, they will be discussed together. Exception was taken to the Examiner's finding that the testimony of Mr. Dow, the witness presented by the protestants in the matter of costs and revenues, was dismissed by the Examiner as "not convincing." In support of this exception is a long discussion of testimony of Mr. Dow who himself arrived at a conclusion that the operations on the Branch resulted in an annual loss of \$4,784, although as to this figure the protestants appear to concede in Appendix A to their exceptions that the calculations of their witness produced an annual loss of \$6,978. The methods pursued by Mr. Dow are discussed at some length in the brief submitted by the applicant and will not be repeated

in detail here. Brief reference will, however, be made to some of his efforts. As shown in Appendix A to the exceptions, Mr. Dow did not contend for substantially higher revenues than were assigned to the Branch by the applicant, except, of course, he preferred to allocate the freight revenues on the basis of 9.4 per cent rather than 5.4 per cent. He did, however, attempt to transfer to this small section of railroad some \$10,000 additional freight revenue by crediting it with 100 constructive miles, which was based on an assumption that the applicant receives such constructive mileage on all traffic moving in and out of New England, although whether such constructive mileage is received on coal and grain which constitute the great bulk of the traffic, he did not know (641-643).

He further increased the freight revenues by taking into account the revenues to and from Topsfield, although the applicant proposes to continue carload service to and from that point, and made a wholly unwarranted assumption that the freight revenues for 1939 should be increased by 28 per cent because the revenues for 1940 had increased to that extent. In making this calculation, however, he omitted the Topsfield revenues which are included in his other calculations, and had he used them, there would have been an increase of only 3.4 per cent. Protestants rather "give up" on this item with the comment "While it is arguable that the figure of \$10,750 (suggested by Mr. Dow) is too high." (p. 21.)

Mr. Dow made a slight reduction of some \$400 in maintenance of way expenses and less than \$100 in

freight train expense. He claimed a reduction of some \$2,000 in passenger train expenses, although he did not explain how he arrived at his figure. He reduced the amount charged for wages of station forces and crossing tenders by some \$1,500 on a theory that the work could be rearranged and one man required to cover all stations, although he admitted that the present labor agreements would not permit such a reduction in forces (649).

At various points throughout these exceptions are discussions of the Examiner's findings as to the revenues and expenses of the traffic on the Branch, which may be summarized and discussed at this point. The findings as to average annual revenues and expenses were substantially as follows:

<i>Expenses</i>	
Maintenance of Way	\$13,660
Freight trains	8,058
Passenger trains	14,386
Station employees	4,070
Total	\$40,174
<i>Revenues</i>	
Freight	\$736
Passenger	1,433
Other	1,135
Total	\$3,304
Deficit	\$36,870

The attack on the correctness of certain of these figures is based largely on the observations of Mr.

estimated \$1.00 per ton (476, 478). Mr. Whiting, a shipper of milk, stated that his increased transportation cost would be partly offset by the saving of his present expense of trucking to the station, but the amount of this offset was not stated (545). No estimate was given by Mr. Pearson of his added transportation cost, but in the exceptions counsel ventures an estimate of \$500 (see page 25).

Furthermore, there is no support for protestants' claim that all the revenue from coal, \$4,335, would be lost with abandonment. This amount is based on 1939 traffic. William R. Dewhurst, a coal dealer in Groveland, did say he would truck from tidewater in event of abandonment. He was out of business in 1939 and received none of this coal (p. 477). Donald E. Elliott of Georgetown, who is the principal coal dealer on the line, did not say he would receive his coal by water in event of abandonment. His testimony on page 471 is as follows:

Q. (By Mr. Henry): Have you given any consideration to what you will do if this railroad is abandoned?

A. Well, we have given considerable consideration to it. I don't know just what we would do. There are several alternatives.

Q. Have you considered the possibility of receiving your coal by tidewater?

A. That is one of them.

In any event, the controlling consideration so far as this issue is concerned, has been expressed by the Commission in the following language:

The record shows that the protestants use the line only for such shipments as may not conveniently be moved by truck. Coal may have to be trucked from other railroad stations at an increased cost to the consumer, and coal dealers will suffer financial loss. Such inconveniences are unavoidable in railroad abandonments. A railroad cannot be expected to operate at a loss merely to supply the transportation conveniences of shippers with respect to certain of their commodities. The continued operation of the line in question would impose an unnecessary and undue burden upon interstate commerce.

New York, N. H. & H. R. R. Abandonment, 228 I. C. C. 4, 19.

EXCEPTION NO. 10

This is an exception to the Examiner's recommendation that abandonment be authorized. It is based on suggestions that on account of the possibility that rationing of gasoline may result from the present controversy as to a possible shortage of gasoline in the northeast, the applicant be directed to attempt some kind of economies for a trial period of two years, or at least that the certificate require three months of further operation in order to facilitate any relocation of homes. So far as any possible gasoline shortage is concerned, these communities would suffer no more than most others. Tank cars do not deliver fuel oil at places of residence or filling-stations and vast amounts of all kinds of commodities must be trucked to and from rail stations wherever located. Only a few miles separate these communities from main lines of railroad which will be contin-

ued in operation and even if there is a shortage of gasoline, these communities will suffer no peculiar hardship. As for experimenting with suggested economies, applicant made such an attempt in connection with this particular line in 1925 (see *Proposed Abandonment by Boston & Maine Railroad*, 105 I.C.C. 68, 74), and no further half measures will solve the difficulty. As for giving a special three months' period of grace in order to permit changes in commercial or traveling habits, this application was filed in November, 1940, hearings held in March, 1941 and the proposed report released early in August, 1941. It is impossible to believe that the residents of these communities are not well aware of the situation and have not made ample preparation to meet any changes in their habits which discontinuance of the rail service may require.

Wherefore applicant asks that said exceptions be denied and the Examiner's recommendations be adopted.

Respectfully submitted,

W. A. COLE,

Counsel for Applicant,
Boston & Maine Railroad.

September 24, 1941.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 1941, I served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed to each other party.

W. A. COLE.

Dow, which were in large part unsound for reasons already discussed herein and more fully discussed in applicant's brief.

Moreover, protestants have no reason to quarrel with the Examiner's suggestion of crediting the Branch with an assumed annual net of \$8,507 or 50 per cent of the off-branch revenues of \$17,014, and the concessions made by Mr. Dow and errors in certain of his claims leave protestants with no sound ground for insisting on any material reductions in the result reached by the Examiner, viz. — that (1) the Branch considered as a separate unit is showing an annual loss of \$36,870; (2) if it were credited with 50 per cent of the off-branch revenue the net loss would be reduced to \$28,363; (3) even if credit were given for *all* the revenue from Topsfield traffic — and carload service to that point will not be discontinued — there will still be an annual deficit of \$7,249. This last figure results from very generous, and in our view unwarranted, concessions to protestants, particularly in the case of the Topsfield revenue.

On page 27 of the Exceptions an attempt is made to balance the savings to the applicant in case of abandonment against the additional expense which might be suffered by protestants. In this connection the claim is made that, dealing with Exhibit 16, the item "operating freight trains — \$4,950" should be changed to an added expense of \$1,000, and this change is carried into a table on page 30. Great point is made of the contention that abandonment would result in a slight increase in freight train mileage each

day, that the applicant ignored the need of switching at Topsfield, and the pro-rated cost of freight train operation is thrown into the picture where it has no place. All these matters were taken into consideration by the applicant.

The facts as to the effect of abandonment on the costs of trains involved in this change are ignored by the protestants. These facts are dealt with on pages 186 and 377, *et seq.*, of the record, the gist of which is that there would be a substantial saving in wages of the freight train now serving the Branch and no increase in wages on the freight train now serving Danvers which would take over the Topsfield business (p. 377). In passing, it should be borne in mind that if the matter of costs is to be determined on the basis of savings, account should be taken of the annual saving of \$4,550 in the wages of towermen at Newburyport.

In balancing the expense of operating the branch against the added expense to the shippers or receivers of freight, the exceptions are based on certain testimony on the latter point, which in some respects at least is of questionable accuracy. For example, Homer Rowell stated that his additional cost for trucking grain would be \$30.00 per car, although the additional truck haul from the railroad to his farm would be about 2.5 miles (467). It is impossible to accept his estimate of an added expense of \$30.00 per car for such a slight increase in trucking haul. Mr. Elliott of Georgetown estimated his additional cost of trucking coal to Georgetown at 50 cents per ton, while Mr. Dewhurst at the adjoining station of Groveland