

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 In Proceedings for the Reorganization of a Railroad

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5 IN THE MATTER OF :

6 BOSTON AND MAINE CORPORATION : No. 70-250-F

7 Debtor :
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12 STENOGRAPHIC TRANSCRIPT OF HEARINGS

13 BEFORE FORD, SR. D.J., ON PETITION FOR ABANDONMENT.

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16 *Mem. A*
S E C O N D D A Y

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18 *ERASABLE*
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22 United States Post Office and
23 Courthouse, Boston,
24 Monday, March 5, 1973
25

THE COURT: I am ready, gentlemen.

ROBERT E. WHITNEY, Resumed

Cross Examination by Mr. Collins, Continued

- Q You may recall that we were in the course of my cross examination of you, Mr. Whitney, and that I represent the State of New Hampshire.
- A Yes, sir.
- Q You and I were discussing, when this case was continued, your inquiries with respect to the reasons for the discontinuation of use of rail service by the Lakes Region Chipping Company; is that your recollection?
- A Yes, sir, that's right.
- Q Did you personally have any contact with the president, Mr. Hawkins?
- A Lloyd Hawkinson.
- Q As to his reasons for discontinuing the use of rail service there?
- A No, I have not personally talked to Lloyd for some time.
- Q Did you tell me Mr. Rourke, under your supervision, discussed the reasons for Lakes Region Chipping's non-use of rail service? Mr. Rourke and

Mr. Hawkinson discussed that; is that correct?

A Yes, sir.

Q Did Mr. Hawkinson disclose, in the course of that conversation as it was related to you, any dissatisfaction with rail service since the time of the last hearing?

A No, I was not made aware of anything along that line.

Q Were there any rate increases with respect to service for his company in the interim?

A Yes, there had been a rate increase.

Q Had there been more than one rate increase, to your knowledge?

A Yes, there was the 15 percent, or, starting with 9 percent November 20th, 1970, 6 percent effective November 13, 1971, and then the 2 1/2 percent that became effective February 5, 1972.

Q This is all in the period between the first hearing in this case and this hearing?

A I believe that's correct.

Q During which time Lakes Region, for one reason or another, ceased to use rail service; is that correct?

A Yes.

Q Was any problem relating to per diem charges ---

strike "per diem" --- demurrage charges related to you with respect to service at Lakes Region?

A No, there was not.

Q You testified, I believe, that you are the assistant chief traffic officer, sales, of the railroad; is that correct?

A Yes, sir.

Q What other positions have you held for the Boston & Maine Railroad or any other railroad?

A Well, do you want to go all the way back? I started with the B & M, and that is the only railroad I have worked for, in 1949 as a clerk in the traffic department.

I held various clerical jobs at Boston.

I was transferred to Concord, New Hampshire as a sales representative.

I remained in Concord as division freight agent and regional sales manager until 1962, when I came back to Boston as assistant general manager in charge of piggyback services, and later manager of piggyback and container services until April, 1972, I became assistant chief traffic officer.

Q What do your duties include as assistant chief traffic officer, sales?

- A Generally to assist the chief traffic officer, who heads the traffic department in all aspects of the department, sales and marketing and any studies involving the operation or function of the sales people.
- Q I believe you testified that within the jurisdiction of that job fell the job of analyzing traffic and projecting traffic increases or decreases; is that correct?
- A That is correct.
- Q In the course of your employment with the Boston & Maine Railroad, have your duties ever involved, prior to this, the determination of costs of operations?
- A Costs in the --- well, the piggyback department, I had everything, sales, service, costs, operations, the whole works.
- Q Have you, prior to this, ever been involved in a cost study in order to recommend to the chief executives whether or not a particular service was profitable?
- A Well, when I was in Concord, New Hampshire as regional sales manager, I would be furnishing information and studies to my superiors in Boston,

with recommendations.

Q And that included development by you of cost figures?

A Primarily volume and revenue.

Q Primarily volume and revenue figures, and by whom were the cost figures determined?

A Well, at that time I would say it was probably our assistant general traffic manager, back in the years that I was at Concord.

Q In connection with your projections as to future revenue on this branch, did you make any trips to Lincoln, New Hampshire to determine from potential shippers there whether or not they would be using rail traffic?

A Yes. I have been in Lincoln during the last twelve-month period.

Q And whom have you discussed projected traffic with in Lincoln?

A Franconia Paper Company or their successor, I should say.

Q That would be the Franconia Manufacturing Company?

A Yes.

Q Did you discuss the possibility of future traffic with anyone from any secondary industry in Lincoln?

A No, I did not personally.

Q Did you have any discussion with any of the town boards that have been created in order to encourage the settlement of industry in Lincoln?

A No, I have not personally.

Q When you add the word "personally" to the last two answers, does that suggest that someone else under your supervision has had such conversations?

A Well, I am sure that our regional sales people talk of other accounts in the area, are calling and have called on other accounts in the area.

As regards any town boards, I can't certify to that.

Q Have you or anyone in your department talked to the Department of Resources and Economic Development in the State of New Hampshire as to what they might be doing to encourage the location of industry in Lincoln, New Hampshire?

A Not to my knowledge.

Q At some point in the preparation of your exhibits, you made the assumption, did you not, that there would be no more substantial traffic coming from the Town of Lincoln, New Hampshire?

A That's correct.

Q Upon what did you base that assumption?

A Well, we based it on the fact that the primary customer, and virtually the only customer at Lincoln, New Hampshire, was the paper mill, and with the cessation of operations of the paper mill, we took the facts as they related, with no cars showing, and this is what we have used in our projections.

Q But somewhere you must have made the assumption that that situation of no cars showing would continue indefinitely; is that correct?

A That is correct.

Q Why did you make that assumption?

A Based on our conversations at the mill in Lincoln, New Hampshire, it did not seem to us that when the shutdown occurred, that steps were taken to protect the mill and its machinery with the idea in mind of reopening the mill.

Q What conversations are you speaking of?

A Well, basically a conversation that I had, along with Mr. Rourke, at Lincoln, New Hampshire, with a gentleman by the name of Mr. Clark.

Q What was Mr. Clark's position and with what company?

A I believe he was general manager of the successor

company to Franconia.

Q Has it been brought to your attention at any time that there is the possibility of a purchase of that mill by another company interested in the manufacture of paper?

A Yes. We have read the newspaper accounts and tried to keep abreast of things, as I am sure everyone has, that they are talking in terms of reopening.

Q But you have, in your figures, assumed that that would never bear fruit; is that correct?

A That is essentially correct.

Q Since the preparation of your figures originally, have you reconsidered the possibility of whether or not the mill would reopen in Lincoln?

A We have considered the possibilities and had some discussion with one of the principals, but ---

Q Have you made any determination as to how much traffic would have to be developed from that mill or from other sources at Lincoln in order for you to meet your costs, as you see them?

A We haven't projected any study because we were unable to develop any specific information as to what would be involved should there ever be a reopening. In other words, what freight would we

handle.

Q In terms of numbers of cars, how many cars do you figure you would need annually in order to break even on that branch?

A I am not testifying to the cost involved, but as far as the revenue goes, I would say we would have to be somewhere back to where we were before the mill shut down originally.

Q That would be how many cars in its last year?

A Well, the last full year of operation was in the area of 3,690 cars total for the branch, and at Lincoln it was in the area of 2,146 cars.

Q But in the period that the mill was open from August 1971 to July 1972, there were how many cars handled on the branch, according to the figures in your exhibits?

A August 1971 to July 1972?

Q Isn't that the study period?

A August 1970 to July 1971?

Q The period during which the mill had reopened?

A Right.

Q May I use this table?

A The period August 1970 to July 1971 ---

Q No, I'm talking about the period August 1971 to

July 1972, during which the mill had been reopened.

- A The total branch figure?
- Q The total number of cars.
- A 1,602.
- Q What was the total revenue derived from those cars?
- A \$436,733.
- Q And according to your figures, was there a net profit or a net loss?
- A I don't have the cost figures here, sir. All I have is the revenue figure.
- Q Sorry. You do not have an exhibit entitled "Projected Annual Profit (Loss) in Operating a Line from Concord, N.H. to Lincoln, N.H. Including Franklin Falls Branch"?
- A No, that is not my exhibit.

MR. COLLINS: Excuse me. May I ask counsel which witness ---

MR. WEINBERG: Mr. Culliford.

- Q Isn't it in the scope of your employment to encourage the development of industry along the Boston & Maine Railroad?
- A Yes, sir.
- Q Will you tell me what steps you have taken to develop new industry on the Lincoln Branch during

the past twelve months?

A Well, I would say that our sales people, going on their normal calls, naturally are trying to inquire all the time as to where they can develop business, but in the last twelve months I would say that there has been virtually no new business developed on that branch.

Q Has there been any concerted effort by the railroad to locate industry on that branch?

A Well, I really don't know what you mean by concerted effort, as such.

Q Well --- the railroad has an industrial development department, does it not?

A Right. Correct.

Q What do those words connote?

A Their function is to handle inquiries from people interested in locating anywhere on our line, to follow up any leads they might see through a newspaper or hearsay or inquiry, to see about the possibilities of locating people on the railroad.

Q Do they actively go out and look for people to locate on the Boston & Maine Railroad's lines?

A To my knowledge, they do.

Q To your knowledge has anyone done this with respect

to the Lincoln Branch in the last twelve months?

A Not that I am aware of.

Q Did you discuss with any other members of your traffic department the recommendations that you are to make to the trustees with respect to the abandonment of this line, or was this solely within your responsibility?

A No. It is joint traffic department and operating department.

Q No, I mean within the traffic department, were you the person to whom the trustees delegated responsibility of studying this situation and advising them whether this line should be abandoned or should not be abandoned?

A This is correct. This is my obligation.

Q And these are your conclusions that are contained in Mr. Drake's memorandum to the trustees; is that correct?

A That's right.

Q Did you work with anyone else in forming the conclusions that are contained in that memorandum, anyone else in the traffic department?

A Yes. Some of my people prepared the necessary figures.

- Q And ---
- A Did the studies, actually.
- Q Did anyone in your department suggest to you, after looking at the figures, any alternatives to abandonment?
- A No, not really.
- Q Was it suggested by anyone in your department that you might try to increase the amount of traffic that is generated on that line in order to improve the picture as an alternative to abandonment?
- A As I say, as a day to day situation, our sales people are trying to do this.
- Q I mean a particular reference to this question of whether abandonment was the only alternative. Was it suggested an increase in revenue was an alternative?
- A Certainly it was, but not a very practical one, in our opinion.
- Q Was it discussed by you or anyone else in your department?
- A Not in that sense.
- Q How about the reduction of costs attendant to this line, was that discussed by anyone in your department with you?

- A No. We don't get into costing.
- Q Did you make any effort to determine, as a general matter, whether the railroad, whether the debtor's estate would be better off financially as a result of keeping this line open, or worse off financially as a result of keeping this line open? Did you make any judgment as to that general question?
- A I would say no.
- Q Are you responsible for the conclusion in Mr. Drake's and Mr. Estey's memorandum to the trustees that abandonment of the line will not have such an adverse effect on rail shippers generally as to render them non-competitive in their present locations?
- A Yes.
- Q Upon what basis did you reach that conclusion?
- A Well, what we did was to take the current movements and analyze them and project the current freight charges as a percentage of the total of the freight moved.
- Q How did you determine the value of the freight moved?
- A For those figures we relied principally on our claim department who were settling claims every

day on all this type of freight and do have access to invoice values as presented to them for claim payment.

Q From that did they draw conclusions as to what the commodity is worth on the market?

A That's correct.

Q You apply the freight rate to the value of that commodity and come out with a fraction or percentage ---

A Percentage; correct.

Q --- and you determined that, with the exception of LP gas, coal, asbestos, the relationship of transportation cost to the value of the commodity was in the range of what percentage?

A It was rather small.

Q I didn't ask you for a general conclusion. You had a range or percentages something like two to fourteen percent?

A The percentage that the transportation cost bears to the total value of rail shipments is estimated at as little as 3.7 percent to a maximum of 14 percent.

Q How do you step from that piece of information to the conclusion that the shippers will be adversely affected very little by the discontinuation of

rail service?

A We first of all concede that they are going to be affected, there is no question about this.

Q Adversely?

A Presumably. That is, assuming that they still use rail service and that they do not go to truck completely or something else which could even be better, who knows, but our statement indicates that what we are saying, it would not make them non-competitive when you consider the value of the merchandise to the cost of the freight charges involved.

Q Did you make any effort to determine what the margin of profit was for each of the various shippers along the branch?

A No, we did not.

Q Then how can you say whether it would have a substantially adverse impact on their business without taking a look at their profit and loss statement?

A Let's say in our opinion it would not have a substantially adverse effect.

Q But you made no investigation as to what their profit margin was?

- A No, we did not.
- Q Did you do anything else to determine the effect of discontinuation upon the public interest?
- A Well, we took and backed up and made the assumption that rail freight continued to move without the line in existence, it would come into Concord, New Hampshire and then we applied truck rates beyond Concord, New Hampshire to ultimate destination and evolved a relationship.
- Q What was the relationship there?
- A The cost increased from 2.5 to a high of 13.2.
- Q This excepted coal, did it not?
- A Yes.
- Q And your other studies excepted LP gas and coal? Strike that question. That just confuses the issue. Why did you except coal?
- A Well, coal being a low-rated commodity, the amount of the rate to the value of the merchandise is very high. Transportation can be greater than 50 percent of the value of the merchandise.
- Q So you rescinded from that in your study?
- A That's correct.
- Q Because that might increase the average?
- A That's right, and there is another reason we took

it out, too. There is no coal left moving up there, too. The Laconia Malleable converted to oil last summer, and of course the paper mill is not functioning, and about the only one left was Peter Dutile of Laconia, New Hampshire, and last year he had five carloads, so that is the only coal moving.

Q Of course this continues the assumption that the plant in Lincoln will never reopen, not using coal, anyway?

A That's right.

Q Again did you make any study with respect to the margin of profit of the various industries to determine what effect there would be on these industries and the people employed by them by an increase of 2 1/2 to 13.2 percent of their cost?

A No, we did not.

Q In your employment as an officer of the railroad, have you ever before been asked to make an assessment of the public's interest in relation to the railroad's in the context of a question of abandonment?

A No.

Q So this is the first time you have ever had to do

this?

A Yes.

Q In your mind how much of an increase in transportation costs to the shippers would create such a sway in the balance in favor of the public interest so that despite the effect on the railroad you would tell your chief executive that they should continue to render service?

A I don't really think I can answer that. I would assume in different industries it is going to vary all over the lot and where one company might enjoy a 25 percent markup, I assume someone else might enjoy a 50 percent markup.

Without getting specific, I can't answer.

Q Do you agree that it might depend upon what their margin of profitability is?

A I think that is entirely possible.

Q And it is entirely possible that that would have an effect on the employees of this industry; is that not correct?

A Presumably.

Q And upon the welfare of the locale in general?

A Well, it is all conjecture. I don't know this.

Q Now, in one of these memoranda you have projected a figure for traffic in the coming twelve months for that branch as \$143,047. This is Exhibit No. 5.

A Yes, sir.

Q In the memorandum presented to the trustees signed by Mr. Drake and Mr. Estey, there is a figure for the traffic in the ensuing twelve months period, and I am referring to Page 2 of the memorandum, of \$167,147. Are you with me?

A Yes.

Q Can you tell me which is --- what is the difference between those two figures? Do they not purport to show a twelve-month projection period?

A Yes, and of the two figures, the lower figure, the projection of \$143,047 would be the more correct figure for this reason, that between the time that memorandum was written and this Exhibit No. 5 figure, we became aware of the loss of the Laconia Malleable coal, which was 42 cars annually, or a loss of \$8,716, and also the chip movement of Lakes Region Chipping to Berlin ceased completely in October of 1972, so we lost \$11,854 there. That will explain the difference in the figures, why they are lower in the Exhibit No. 5 situation.

- Q In both cases, the assumption is made that there will be no more traffic from Lincoln; is that correct?
- A Yes. That's correct. Right.
- Q You testified on direct examination that it was appropriate in determining profitability of this branch to make a deduction from gross revenue for off the line costs, did you not?
- A Yes, I did.
- Q Do I understand you this morning, however, to say that costs and the determination of costs is not within the area that you developed?
- A No. When I said that, what I am testifying to is the beyond-line cost as applied by the ICC formula. The other costs, when you mentioned costs, locomotive costs and labor costs, that is not my province at all.
- Q But the determination of a figure of cost that ought to be attributed to the operation of the traffic that is generated on this line off the line does fall within your area of determination?
- A Yes, sir.
- Q Now, in all events whenever you are asked to make a determination of the figure that is properly

attributable to those off the line costs, do you always use this ICC formula, so-called?

A Yes, we do.

Q Would you explain that formula to me? Use, if you will, the example that was used in the prior hearing of the mileage on the Lincoln branch, the mileage on the total B & M movement from Lincoln to Mechanicville, and revenue of \$100 on a car.

A All right. It would take a car of freight destined to Lincoln, New Hampshire on which the B & M gross revenue was \$100 which the B & M handled from Mechanicville, New York. The distance is 203 miles to Concord, New Hampshire and from Concord to Lincoln, 72 miles.

72/275's gives you 26 percent. You apply that mileage prorated on \$100 gross.

You would credit the branch with \$26 and deduct that from the \$100 gross revenue, which would leave \$74.

50 percent of that is the recognized cost beyond line, or \$37 in the case of a car producing \$100 gross.

Q Now tell me, what would be the off the line costs of moving the same car if you were to gross \$200

for the movement?

A You take 26 percent of the \$200, which is going to double, and apply that to the branch, twice 26, and take 50 percent of the balance, and that is the figure you would arrive at.

Q What is that?

A I haven't done my arithmetic here. \$200, so 50 percent of 37 -- I assume 64.

Q What is the relationship in reality to the difference between those two figures that you would attribute to the actual cost of moving that beyond the line and the increase in gross revenues from \$100 to \$200?

A We were working here with a formula and not working with specific cars.

Q I understand, and what I am trying to determine is, what is the basis in reality for slotting figures into that formula and expecting to come up with a rational off the line cost figure for a movement?

A Only that the Commissioner said this is a fair approximation of the beyond the line costs. They have never come up with a true figure.

Q So you have no basis for using this formula in your own judgment other than the fact that the

Interstate Commerce Commission says this is the formula to use?

A Plus in the cases other companies have tried to arrive at different cost bases and they just couldn't seem to do it.

Q When you are determining whether or not the railroad is better off, whether the debtor's estate is better off as a result of handling this traffic or not, doesn't it make a difference whether or not there is a real basis for allocating a certain figure to a cost, to a very substantial cost?

A Ideally we would love to have that cost available on every piece of traffic but as a practical matter there is no way that I am aware of to do this.

Q Do you have any idea why the ICC picks the 50 percentage?

A It has been argued as high as 80 and as low as 40. They said that that is a fair approximation of the beyond-line cost.

Q But you don't know why they picked 50 as being fair?

A Not really.

Q Do you know whether it has any relationship to the operating ratio?

A Our operating ratio is higher.

Q Do you know whether or not the reasonability of the 50 percent figure has any relationship to your operating ratio?

A Well, I do know that they considered all factors in arriving at the 50 percent.

Q In determining your off the line cost, again you made the assumption that there would be no traffic originated at Lincoln; is that correct?

A Yes.

Q Did anyone tell you to make that assumption or is that an assumption that you chose to make yourself?

A As far as the revenue projections, we in the traffic department made that assumption.

Q By "we" does that mean you?

A Me, yes.

Q What cash savings beyond the line other than the per diem charges can you ascertain would be saved if you did not have this revenue and this traffic?

A I thought I just said there is no way that I can determine that. I have no way of determining it.

Q Certainly per diem would be one element it would save if you didn't have the traffic?

A Right.

Q Can you suggest anything else?

A Well, you run the whole gamut from train service to claim factors to the per diem that you mentioned. Obviously if you don't handle a car of freight, you are never going to have a freight claim on it.

Now, what that relationship is I can't testify, but all these factors certainly would play into that 50 percent.

Q But don't you have freight claims as a separate item on Exhibit No. 3?

A No, I have no freight claims.

Q How about damage to property, Account No. 416? Is that not freight claims?

A No. That is Mr. Culliford's testimony, not mine.

Q Well, do you know whether or not in making the studies and projecting the revenues and the costs, freight claims is something that is already deducted before you add a figure for off the line costs? Do you know whether that is true or not?

A No, I don't know.

Q Has anyone asked you to reassess your evaluation of the effect of this abandonment on the public interest in the light of what you know to be negotiations for the possible reopening of the

mill in Lincoln?

A No, I have not been asked to reassess it.

MR. COLLINS: I have no further questions,
thank you.

MR. WEINBERG: Mr. Whitney ---

THE COURT: Why don't we finish with
all the cross examination of this witness first?

MR. WEINBERG: All right.

Cross Examination by Mr. Killkelley

Q Mr. Whitney, how many salesmen do you have in the
territory that is serviced by this line?

A There are three salespeople in Manchester, New
Hampshire.

Q As I understand, you are the regional sales
manager in Concord, or have been?

A I was in the past.

Q Have any marketing attempts been made since this
last abandonment petition beginning in 1970, the
original abandonment petition, have any marketing
attempts been made in the area?

A Not beyond the regular daily sales effort.

Q Has any consideration been given to leasebacks or
the rental of air rights along the railway?

A No, sir, not to my knowledge.

Q Has any consideration been given to increasing the rental of real estate that is owned by the railroad that is now under present rental arrangements?

A On real estate, we have a man who handles that. I don't know whether his rentals have gone up or down.

Q It is fair to say this territory generally, the economy is dependent upon tourism and recreation; is that true?

A There is a great deal of it up there, yes.

Q And of course also a fair amount of established industries in this territory?

A Right.

Q And the Nashua to Concord line has been a very profitable line; isn't that true?

A To my knowledge, yes.

Q Actually the Nashua to Concord area has seen a substantial industrial explosion within the last ten years; isn't that correct?

A Yes, there have been new accounts come in. Of course there have been some old accounts move out, too. I don't think the railroad has, as you said, enjoyed an industrial explosion. There has been

a lot of development.

Q Has any consideration been given to the national defense aspects of this particular line that is in question here, insofar as it goes through the center of the State of New Hampshire?

A Not to my knowledge.

Q Is there any consideration given to the fact that this line goes along a substantial amount of shorefront, that is, Lake Winnisquam and Lake Winnepesaukee with respect to marketing potentials?

A I am only interested in the freight development aspect. That seems to fall within the real estate part. That is not in my area.

Q Do I understand the salesmen are not involved in the question of rentals ---

A Not directly, no, sir.

Q Their only concern is acquiring new customers for rail service?

A Developing and servicing the accounts we have, yes, sir.

Q Has any consideration been given to the restoration of passenger service to supplement the tourist and recreation industry?

A Not to my knowledge.

MR. KILLKELLEY: I have nothing further,
your Honor.

Redirect Examination by Mr. Weinberg

Q You are now assistant chief traffic officer, sales?

A Yes, sir.

Q And in such capacity, since you assumed that office,
you have the jurisdiction of making revenue and
carload studies for Boston & Maine traffic; is
that so?

A Yes, I do.

Q And are the people who made the previous studies
in this abandonment application, as well as all
the other abandonment applications to the Court
and to the Interstate Commerce Commission, still
in the employ of the Boston & Maine Corporation
under you?

A Yes, they are.

Q And did they participate in all of these previous
studies?

A Yes, they have.

Q Did they furnish the results of the studies of
the accounts of revenue and carloadings to the
previous witnesses that Boston & Maine introduced

before the Court and the Interstate Commerce Commission?

A Yes, they have.

Q And these same people have furnished you with information here on which you based these conclusions?

A Yes, that's correct.

Q And in relation to your projection that there would be a diminution or a complete extinction of movements of wood chips from the Lakes Region Chipping Corporation at Ashland, New Hampshire to Berlin, New Hampshire, did you have conversations with somebody regarding the projection?

A Yes, we did. We discussed it at some length with the receiver, the Brown Company, in Berlin, New Hampshire.

Q Does the Brown Company control the movements and determine what movements of wood chips there would be from Ashland to Berlin?

A Yes, they do.

Q And with whom did you have this conversation at the Brown Company?

A The principal person involved was Ken Phillips, their purchasing agent, who told us of the fact

that they were studying the entire wood chip movement and that they were coming to a conclusion as to whether they would go heavy truck and cut out the rail or they would have to spend money and do something about their rail receiving facilities.

For many reasons, not the least of which is that there are other suppliers of wood chips to Brown Company who are not located on rails and therefore truck is the only way they could come, plus I have to assume the investment that was required at the plant, Brown Company elected to put their money into the truck facilities rather than rail facilities.

Q Brown Company has told you of the decision to put their money into the truck receiving facilities rather than rail receiving facilities?

MR. COLLINS: Objection.

A Yes, sir.

MR. WEINBERG: Strike that.

THE COURT: Mr. Counsel, you asked numerous questions, did he talk to this person and that person about these matters. I will take the evidence. Go forward. There are

numerous question that involve more or less hearsay.

MR. COLLINS: They all amounted to admissions, your Honor.

THE COURT: I understand your point, Mr. Counsel, but let the hearing be broad.

Q Did the man at Brown Company tell you that he had made a decision to take the wood chips formerly received by rail from that time forward by truck?

A That's correct.

Q In that situation at Lincoln, New Hampshire, sir, have there ever been any rail shippers either receiving freight or forwarding freight from Lincoln other than the paper making facility there?

A Well, there have been a few scattered movements here and there but nothing of any consequence. We had a contractor up there in 1971 who had eleven cars, but none in the two years before and none in the year after.

Once in a while the town would receive perhaps a car of material, but 99.9 percent of the business at Lincoln is the paper mill.

Q Is there any other industrial facility located at Lincoln at the present time that would possibly

be a potential receiver or forwarder of freight?

A I don't believe so.

Q And questions concerning the activity and the calls made upon various parties to promote the industrial development of the area in respect to the potential freight movements there are not properly addressed to you, are they?

A No. The industrial development should testify on that.

Q And that is who?

A Mr. Kirk.

Q And likewise anything to do with costs outside of the beyond-line costs are beyond your province of knowledge?

A That's correct.

Q To whom should those questions be addressed?

A Mr. Culliford.

Q In relation to the effect on the public interest, particularly the shippers on the line in the event abandonment is authorized, you told the trustees through Mr. Drake that if the shippers on the line went to a combination of truck movement instead of an exclusive rail movement, their costs for that might increase from a low of

- 2.5 percent to a maximum of 13.2 percent in the major categories of commodities; isn't that so?
- A That is correct.
- Q Was it your determination at that time that this would not make them non-competitive?
- A That's right.
- Q Have you knowledge of the category of labor costs at the present time and the guidelines nationally for increases in labor categories in national collective bargaining agreements?
- A I am aware of it generally.
- Q What is the percentage that is being talked of under Phase III?
- A 5.5 is the figure I hear.
- Q And has labor asked for a greater percentage of increase in their current collective bargaining?
- A I don't really know.
- Q In the questions that were asked of you in respect to beyond-line costs, something was made of the fact that actually the beyond-line costs would correspond proportionately as to the value of revenue received from each freight car movement. That is, if you got \$100 in one and \$200 in another, the beyond-line cost for the same freight

car movement would increase, hypothetically, double?

A Correct.

Q Isn't it true that there is an average of revenue for each carload under the present freight rate structures?

A Yes, there is.

Q So this is a hypothetical question rather than one that bears relationship to actuality?

A That is true.

Q What is the average revenue per freight car in movements under present freight rates?

A On the B & M?

Q Yes.

A About \$194 a car currently.

Q And isn't it true that the figures that you arrived at for beyond-line costs relate to actual studies of the movement of traffic for which you assigned the beyond-line costs?

A Oh, yes, definitely.

Q And no proper beyond-line costs can be assigned to hypothetical revenue based on whether or not the mill at Lincoln ever reopened?

A No, that's true. It is a purely hypothetical

question.

Q Your figures are based on the actual movements?

A On the actual movements, yes.

Q And projections based on actual movements you believed would come as a result of your experience in the past?

A That's correct.

Q Is there any parallel between any industrial expansion in the Nashua to Concord area and the growth in the Lincoln area?

A No, absolutely none.

Q Has there been any industrial expansion in the Concord to Lincoln area during the last five to ten years?

A No. Going back even the last ten years, there has been a history of accounts closing or moving out of the area completely, rather than development.

MR. WEINBERG: Thank you. I have no further questions.

Recross Examination by Mr. Collins

- Q Will you tell me once more, Mr. Whitney, what the figure of \$194 per car represented?
- A The system average revenue for the Boston & Maine Railroad, which fluctuates month to month. 194 is the figure I saw recently.
- Q That is over the whole Boston & Maine system?
- A Correct.
- Q It doesn't have any particular relationship to the revenue from the cars that originated or terminated on the Lincoln branch, does it?
- A Only that they are part of that average.
- Q Do you know what the average per car revenue is for traffic originating or terminating on the Lincoln branch?
- A No, I don't. I didn't work that out on the sheets.
- Q You suggested that any projections that were to be made upon a reopening of the Lincoln mill would be hypothetical and that your projections were based upon what you knew from the past; is that correct?
- A What we know to be the case right now.
- Q You have made, have you not, a gratuitous assumption that there would be no reopening of

that mill?

A That's correct.

Q How long has that mill been in existence, to your knowledge?

A I suppose something like 80 or 90 years. I don't really know. It goes back pre-1900.

Q When did it close for the first time, as far as you know?

A In this current go-around?

Q For the first time in the history of its existence, to your knowledge?

A I don't know.

Q When is the first time you know it has closed in the past 100 years?

A It's closing in July of 1970.

Q When did it reopen?

A August, 1971.

Q How long was it open?

A In August, 1971, it closed again in April 14, 1972.

Q How long was it from April 14, 1972 to the time when you first heard that there was a possibility that it would reopen, roughly?

A I am going to say along about February of this year.

MR. COLLINS: I have no further questions,
thank you.

Recross Examination by Mr. Killkelly

- Q Did you have any studies of the prospects of industrial expansion north of Concord, or anything of that nature?
- A I don't.
- Q They have made no studies, as far as you know?
- A I have made none.
- Q Do you have any municipalities as customers along any of the B & M lines, to your knowledge?
- A Indirectly, we do. Formerly we handled a lot, for example, of road salt direct to cities and towns. Now that no longer obtains. Indirectly we could be handling freight but we wouldn't know it was consigned to a particular town.
- Q Has the railroad at all gotten into the solid waste disposal business?
- A They have in the Greater Boston area on a limited basis.
- Q Along the line in question here, has any suggestion been made or any marketing potential in that area been explored?

A No, sir.

MR. KILLKELLEY: I have nothing further.

MR. WEINBERG: No further questions.

THE COURT: Have you any witnesses to present?

MR. WEINBERG: Yes, sir. I will call Mr. Culliford.

THE COURT: Which side of this case am I hearing now, the petitioner's?

MR. WEINBERG: The petitioner's. He was a petitioner's witness, your Honor.

THE COURT: All right.

SIDNEY B. CULLIFORD, JR., Sworn

Direct Examination by Mr. Weinberg

Q Kindly state your name, address and occupation.

A Sidney B. Culliford, Jr., 15 Merritt Avenue, Groveland, Massachusetts. My occupation is general superintendent, transportation, Boston & Maine Corporation.

Q Will you please state briefly your railroad experience?

A It includes positions in the engineering department, draftsman, engineer, cost engineer,

project engineer, and operating department positions of student trainmaster, assistant trainmaster, trainmaster, assistant superintendent, transportation engineer, superintendent of transportation and my present position.

Q In your present position have you made numerous and are you responsible for the study of costs in the maintenance of equipment, transportation and freight car hire?

A I am.

Q How recently have you inspected the operations of trains over the line from Concord to Lincoln, New Hampshire?

A My last inspection over the line was October, 1972.

Q Tell us what the maximum operating speed limit on the line is at the present time?

A Twenty miles an hour.

Q Is this below the speed limit in other segments of the Boston & Maine system?

A In some areas it is.

Q Is it below the operating speed limits in the majority of the B & M system area?

A Other than main lines, that is correct.

Q Did you make a study of the expense incurred by

Boston & Maine in the operation of this line for the periods August of 1970 to July of 1971 and August of 1971 through July of 1972?

A I did.

Q Will you tell us the categories of costs you included in your studies?

A I included in the periods of August 1970 to July 31, 1971 and August 1st, 1971 to July 31, 1972 the maintenance of equipment, transportation and freight car hire figures.

Q Will you tell us the components of these categories of costs and the basis and method of computing them?

A Maintenance of equipment is, components consist of other locomotive repairs, Account No. 311; freight car repairs; locomotive depreciation; locomotive insurance.

Transportation expenses involved engineman expenses, trainman expenses, train fuel, servicing locomotives, train supplies and expenses, travel expenses, stationery and printing, clearing wrecks, damage to property, and injuries to persons.

Q Did you also study the freight car hire during

those periods?

A I did.

Q Will you tell us the basis and the method, what were average from the system allocations and what were actual costs you used in your study?

A The trainmen, enginemen expense, and the trainmen expense, is based on actual expenses. The other accounts mentioned -- excuse me, station employees also is based on actual expenses. Other expenses are based on system averages.

Q And will you tell the Court what the expense was that B & M incurred in those categories for those periods?

A In the August 1st, 1970 to July 31st, 1971, maintenance equipment expense was \$14,661.

The transportation expense in that same period was \$73,011.

Freight car hire was \$15,672 for the same period.

August 1st, 1971 to July 31, 1972, the maintenance of equipment expense was \$19,4193.

Transportation expense was \$83,963.

Car hire expense was \$17,311.

Q And did you also make a projection of the expense

of operation in the same categories of costs that would be incurred by the Boston & Maine for the annual period beginning August 1st, 1972?

A I did.

Q Did you use the same method of computation and the same basis as you did in the actuals for the previous period?

A Yes.

Q Will you tell us what you found would be the projected costs in those categories for the ensuing annual period beginning August 1st, 1972?

A The maintenance of equipment classed for the ensuing annual period is projected at \$17,622.

The transportation costs, \$75,376.

The car hire figure, \$8,228.

Q Did you prepare an exhibit of those costs?

A I did.

Q Did you incorporate the testimony of another B & M witness or other B & M witnesses in that exhibit?

A I did.

Q Whose testimony?

A I incorporated the testimony of Mr. Berkshire, chief engineer.

Q Was that exhibit which you prepared the same exhibit as Exhibit No. 3 for Identification which has been offered for identification in this case?

A It is.

Q Did you also make a study of the profit or loss to the Boston & Maine from the operation of the segment of the line for the periods August of 1970 to July of 1971 and August of 1971 to July of 1972?

A I did.

Q Did you incorporate the testimony of other witnesses in this case in making that study?

A I did.

Q Whose testimony?

A I incorporated, for freight revenue, the testimony submitted by Mr. Whitney, and rents, testimony to be submitted by Mr. Kirk. Other revenue would be submitted by Mr. Carr. Maintenance of way expenses, which were submitted by Mr. Berkshire. Maintenance of equipment, transportation, car hire, which is under my jurisdiction, and beyond-line costs which is submitted by Mr. Whitney.

Q And these revenues and costs, on what basis were they computed? Were they computed on the actual

wage costs and freight revenue that was earned and expended by B & M during those periods?

A That's correct.

Q What did you find was the profit or loss for the B & M in the operation of this line --- strike that last question. And as far as the maintenance of way expenditures, were they based on the actual expenditures made by Mr. Berkshire, to your knowledge, during those periods, as he testified in this case?

A They were made as he testified.

Q And they had nothing to do with the projected rehabilitative maintenance?

A No, they did not.

Q Based on those considerations, what were the profit and loss during those two periods that you found B & M had incurred on the operation of the line?

A During the period of August 1, 1970 to July 31, 1971, the B & M experienced a loss of \$36,781.

During the period of August 1st, 1971 to July 31st, 1972, the B & M experienced a profit of \$129,612.

Q Did you also make a projection for the ensuing

period beginning August 1st, 1972 through July 31, 1973 of the profit or loss Boston & Maine would experience in the operation of this line?

A I did.

Q And did you use the testimony and the material submitted by the same officers as you did in the previous period study?

A I did.

Q What did you find the projected profit or loss would be in the operation of this line during the ensuing annual period?

A The ensuing annual period projected loss is \$46,271.

Q And that is based on what standard of maintenance of way?

A On the present standard of maintenance.

Q Is it also based on the present volume of traffic?

A That is correct.

Q Did you prepare an exhibit?

A I did.

Q Is this which I now hand you the exhibit which you prepared?

A It is.

MR. WEINBERG: I would like to offer

that.

(Projected annual profit and loss figures are marked Petitioner's Exhibit No. 9 for Identification.)

MR. COLLINS: Am I correct that this is being offered for identification only?

MR. WEINBERG: Identification only at this time, your Honor.

Q And did you also make a study, sir, of the projected profit or loss to the B & M from the operation of this line over the next five years?

A I did.

Q Will you tell us on what standard of maintenance of way the projected profit or loss to the B & M from the operation of this line was computed over the next five years?

A May I have that question again?

Q Will you tell us on what standard of maintenance of way your projected profit or loss from the operation of the line over the next five years was computed?

A Yes. The maintenance of way costs were based on minimum safe operating conditions of the line by year over the next five years.

- Q Did it take into consideration the additional rehabilitative maintenance cost that was necessary to be extended?
- A Yes, it did.
- Q And will you tell us the testimony of what other officers of the B & M was incorporated in your study?
- A The freight revenue figures submitted by Mr. Whitney, the rent figures submitted or to be submitted by Mr. Kirk, the other figures to be presented by Mr. Carr, the maintenance of equipment, transportation and car hire which I am testifying to, and the beyond-line cost submitted by Mr. Whitney.
- Q Will you tell us whether or not the categories of cost under your jurisdiction, namely maintenance of equipment, transportation and car hire, were computed as the same for each of the five year periods?
- A Yes, they were.
- Q Will you tell us what you found would be the projected profit or loss to the Boston & Maine in the operation of this line over the next five years?

A Yes. The first year, the projected loss is \$223,086.

The second year, \$218,611.

The third year, \$200,836.

The fourth year, \$83,611.

The fifth year, \$82,011.

The five year average loss of \$161,631.

Q Did you prepare an exhibit on the results of your study?

A I did.

Q Is this which I now hand you a copy of the exhibit which you prepared?

A It is.

MR. WEINBERG: I would like to offer this for identification.

(Projected annual profit or loss figures marked Petitioner's Exhibit No. 10 for Identification.)

Q And did you also make a study of the projected profit or loss to Boston & Maine from the operations of segments of this line of lesser mileage?

A I did.

Q What were the terminal points and the mileage of

the shorter operation of the line which you studied?

A Two points were picked. One was Lakeport, New Hampshire and the other was Plymouth, New Hampshire.

Q Will you give us the mileage of operation from Concord to each of these terminal points?

A Yes. From Concord to Lakeport, New Hampshire is 31 miles, and from Concord to Plymouth, New Hampshire is 52 miles.

Q And in these studies did you use --- what standard of maintenance of way over the ensuing periods?

A I used the average annual rehabilitative maintenance cost.

Q Did you incorporate the studies and conclusions of other B & M officials and witnesses in making your study?

A I did.

Q Will you tell us whose testimony you incorporated in the study?

A I incorporated the testimony of Mr. Whitney on freight revenue and the testimony of Mr. Kirk and Mr. Carr --- Mr. Kirk on rents and Mr. Carr on others, and maintenance of way figures of

Mr. Berkshire and maintenance of equipment, transportation and car hire of my own testimony, and beyond-line costs of Mr. Whitney.

Q What were the results and conclusions that you reached in each of those studies?

A In the Concord to Lakeport segment it was determined either on a three-man operation or four-man crew operation, and in cases the three-man operation is anticipated at \$38,000 --- \$38,345 loss.

For the four-man crew operation, \$44,526 loss.

On the Concord to Plymouth segment, with the three-man crew operation, the loss was projected to be \$66,700.

The four-man crew, \$73,366.

Q And what is the crew complement under the present operation of Concord to Lincoln?

A Either four or five or six.

Q So that in order to reduce the operation to the three-man crew, it would have to have the consent of the labor organizations?

A That's correct.

Q Did you prepare an exhibit?

A I did.

Q For each of those studies?

A I did.

Q Is this which I now hand you the results of the study and the exhibit which you prepared relating to the operation to Lakeport, New Hampshire?

A It is.

MR. WEINBERG: I would like to offer that for identification.

(Projected annual profit or loss figures marked Petitioner's Exhibit No. 11 for Identification.)

Q Is this which I now hand you the exhibit which you prepared evidencing the results of your study in the operation of the line to Plymouth, New Hampshire?

A It is.

MR. WEINBERG: I would like to offer this for identification.

(Projected annual profit or loss figures marked Petitioner's Exhibit No. 12 for Identification.)

MR. WEINBERG: I have no further questions of this witness, your Honor.

Cross Examination by Mr. Collins

- Q Would you turn to Exhibit No. 3, Mr. Culliford?
- If I understood you correctly, you are responsible for that portion of this exhibit entitled maintenance of equipment and transportation and freight car hire?
- A That's correct.
- Q Am I correct that all those items under maintenance of equipment are system averages?
- A That's correct.
- Q And I am correct in understanding that the train enginemmen figures, the trainmen figures, the station employees and freight car hire are actual figures and that the balance are averages?
- A That's right.
- Q When you are preparing a cost study, when do you use averages and when do you use actual figures? What determines whether you will use averages or actuals?
- A The method of --- what is actually available from our accounting department that we can use. Train enginemmen and station employees figures of course are payroll figures which we can readily draw on.
- Q Locomotive repairs, then, relates to the repairs

that are made over all the whole system and then you apportion it by mileage?

A That's correct.

Q How many engines are used on this particular branch?

A One engine.

Q Does this figure have any particular relationship to the repairs spent on that engine?

A It is prorated by the mileage the engine consumes on the line.

Q But the repairs that you use to which you apply this proration are the repairs you apply to this particular engine?

A No, to all freight locomotives.

Q So that this figure does not have any relationship directly as to whether this engine needed repairs or not during the past year; is that correct?

A No. It is a figure that applies only to the system average.

Q How about the figure of locomotive depreciation? Would you actually depreciate less in terms of locomotives if this line is abandoned from Concord to Lincoln?

A You save a locomotive. Therefore you could either

sell the locomotive or put one in storage.

Q If it is in storage, it does not depreciate?

A It does, but if it is sold it does not.

Q You don't know whether this particular locomotive would be sold or put into storage or cannibalized or what?

A No.

Q Would the figure for locomotive depreciation change at all whether you were to truncate this line at Lakeport, at Plymouth or any point short of Lincoln?

A Only the proration would be the difference.

Q The actual savings to the railroad is indeterminable; is that correct?

A That's correct.

Q Your figure for train enginemen is set forth in Exhibit No. 3, and does that contemplate a three-man or four-man crew?

A That is the present crew.

Q That is ---

A Four-man or five-man crew.

Q Including a fireman?

A That's correct.

Q The freight car hire is an actual figure that would be saved if this line were abandoned, and

you can determine that to the dollar, can you not?

A Yes, we can.

Q And all of these figures assume no traffic originating at Lincoln, is that also correct, all of your figures on Exhibit No. 3?

A No.

Q Sorry. That contemplates what traffic originating from Lincoln?

A The figures on Exhibit No. 3?

Q Yes.

A They are based on the actual experience during the periods indicated between the period of August 1st, 1970 to July 31st, 1971. That is the money expended either to go to Lincoln to serve the entire branch or that portion of the branch that had to be served during that period.

Q I am speaking of the column that indicates projected figures on Exhibit No. 3, and there are certain classes that relate to the volume of traffic and you made certain assumptions, for instance in the freight car hire column, am I correct? You have assumed there would be no traffic originating at Lincoln?

A That's right.

- Q Now, of the maintenance of the equipment figures, the system averages, are they the ones that you calculated yourself or are they ones furnished to you by employees in the operating department or the transportation department?
- A They are furnished to me.
- Q And then you apply the mileage proration to them, or does somebody else furnish it to you?
- A The transportation department determines the number of trips and engine used and we in turn furnish those figures to the accounting department which in turn comes back and gives us the total dollars.
- Q So that those total dollars in Accounts 311 through 333 came from the accounting department?
- A Yes, based on information furnished by us, by the transportation department.
- Q And under the heading transportation, those actual figures were developed in the transportation department; is that correct?
- A Again it is our expenses that the accounting department has notified us of. By that, the train enginemen expense and actual expenses incurred in the transportation department.

- Q How does the accounting department know they were incurred by the transportation department?
- A By the payroll.
- Q They take certain things like train enginemen off the payroll and then advise you?
- A Correct.
- Q That the expense for train enginemen during this period was \$17,000, for example?
- A Yes.
- Q Do you know who in the accounting department takes those figures off and informs you or your department of them?
- A It is under the direct responsibility of Mr. Carr and Mr. Welsh furnishes those figures to me.
- Q What is Mr. Welsh's first name?
- A Richard Welsh.
- Q How about a figure like stationery and printing? How does that come to you in the transportation department?
- A Again that is a system average figure that we presented the number of trips made on the line and they take it and prorate it to the line.
- Q Mr. Welsh in the accounting department again?
- A Correct.

Q Do you know of any stationery and printing expenses that would be saved, actually, if this line were foreshortened at Plymouth, for example?

A You would be reducing ---

Q I know what you would do mathematically. I am asking whether you know of any printing and stationery costs that would be saved if you cut off the line at Plymouth.

A Yes, you would be saving demurrage records and your car location records, CT 61, and your conductor rail report forms.

Q Do you have any way of estimating that savings in terms of dollars?

A No, I do not.

Q The figure in Account 416 for damage to property, is that what I consider --- what I mean when I say or when Mr. Whitney says loss and damage? Is that the same thing or is that damage that --- to persons other than those shipping traffic?

A That's correct.

Q The latter?

A Right.

Q When did you first direct your attention ---

(Brief recess.)

THE COURT: Go forward.

Q Am I correct, in looking at Exhibit No. 9, that there was a profit on this line, according to your figures, during the period August 1, 1971 to July 31, 1972?

A That's correct.

Q And that was a profit of \$129,000 more or less; is that correct?

A That's correct.

Q And that was based upon an experience of handling about 1,600 cars on the branch during that period; is that correct?

A I think that is a figure that Mr. Whitney testified to.

Q I think it is contained on one of the exhibits already --- Exhibit No. 5 for identification. Do you have a copy of that? Are you familiar with Exhibit No. 5?

A I am now.

Q Does that appear, the figure of 1,602 cars, during the period in which you made a profit of \$129,000, does it appear to be correct to you?

A It does.

Q Can I conclude from that that it would be your

opinion that the Lincoln branch would be a profitable venture if you could experience in the area of 1,600 cars there annually?

A I don't think the carloads are the basis. It has got to be the revenue.

Q If you could experience the same revenue you had during that period, would you agree with me that the Lincoln branch is a profitable enterprise for the Boston & Maine Railroad?

A I can't fully agree with you without further study because we have got --- this figure shown of \$129,000 profit of course took into consideration the maintenance of way cost of \$36,000 at that time.

We are of course talking about considerably more maintenance of way cost over the next five years, which would determine our profitability.

Q Only if you rehabilitated the line but not if you continue the level of maintenance the line has experienced in the past ten years; isn't that correct?

A It is determined from Mr. Berkshire's testimony ---

Q We will let his testimony speak for itself, but your figure would indicate a profit could be made

if you continued the current level of maintenance;
is that correct?

A That's correct.

Q There is a beyond the line cost on Exhibit No. 9
which went in through you of \$162,535 during that
period August 1, 1971 to July 31, 1972; is that
correct?

A That's correct.

Q Is that a figure that was developed in our
department or is that a figure developed by
Mr. Whitney and given to you?

A That figure was developed by Mr. Whitney and
presented to me to submit in the exhibit.

Q And you submitted it without any question as to
whether or not his means of developing that figure
was appropriate and reasonable for the purposes
for which you were using it; is that correct?

A That's correct.

Q And what purposes were you going to use that
figure for when it was submitted to you and you
decided not to question the reasonableness of it?
For what purpose were you going to use those figures?

A The figure was going to be used for the sharing
of the revenue beyond the branch line expenses.

Q In connection with a study that would be used in this case to prove that the railroad should be abandoned; is that correct?

A That's correct.

Q When did you first turn your attention to the question of whether the Lincoln branch should be abandoned? What was the first time that that question was put to you?

A Without benefit of the file, I would say somewhere in the period of late 1969-'70 when this branch was first brought to consideration.

Q And then when was it raised again subsequent to the first hearing in this case?

A When the mill again closed in April of 1972.

Q And were you directed then to make a study to determine the profitability or lack of profitability of that branch?

A Yes, I was.

Q You were asked to contribute to that study?

A Yes.

Q Who asked you to do that?

A At that time it was from Mr. Estey and, the member of the group, to review the branch line to determine its profitability.

- Q This is ---
- A Jointly from traffic as well as from transportation.
- Q This is Mr. Fred Estey?
- A Yes.
- Q What is his title?
- A Vice president of transportation and general manager of transportation.
- Q You report to him?
- A That's correct.
- Q And am I correct in understanding it was he that initially decided that this should be reconsidered?
- A Definitely.
- Q Did he make the decision that it should be submitted to this Court to determine whether or not it should be abandoned?
- A With advice from myself; that's correct.
- Q Did he tell you that your studies were to be prepared to be used in an abandonment proceeding? When you prepared Exhibits 10, 11 and 12, did you know that they would be used in a proceeding to obtain the authority from the Federal District Court to ask the Interstate Commerce Commission if the line may be abandoned?
- A If the figures proved it was unprofitable.

- Q But it was communicated to you there was any assumption that the figures would appear profitable or not?
- A It is normally the procedure if it proves unprofitable, we would proceed with the abandonment.
- Q Were you directed to make any assumption as to whether or not the mill would reopen in Lincoln in your figures?
- A In the figures of what period?
- Q In certain of your figures in the projected column you made the assumption there would be no more traffic from Lincoln?
- A That's correct.
- Q Did anyone direct you to make that assumption or is that one you undertook to make by yourself?
- A It is made on the advice of the traffic department.
- Q That would be Mr. Whitney?
- A That is correct.
- Q To the best of your knowledge, he made that decision?
- A Yes.
- Q That the study should be prepared upon that assumption?
- A His department did; that's right.

- Q Would you direct your attention to Exhibits Nos. 10, 11 and 12 --- rather, 10 and 12? Would you look at the beyond the line cost figure on Exhibit No. 10?
- A Exhibit No. 10 is the operation of the line from Concord to Lakeport?
- Q No. It is projected annual profit and loss in operating the line from Concord to Lincoln, New Hampshire.
- A Exhibit No. 10, yes.
- Q Do you see the figure for beyond-line costs?
- A Yes.
- Q Is that \$55,886 in each case?
- A That's correct.
- Q Would you turn your attention to Exhibit No. 12?
- A Yes.
- Q That relates to the operation of a railroad from Concord to Plymouth, New Hampshire, does it not?
- A Yes.
- Q You see the beyond the line figure of \$55,221; is that correct?
- A That's correct.
- Q Do you understand the beyond the line cost formula that Mr. Whitney talked about?
- A No. That is a traffic figure that is presented

and details I am not familiar with.

Q Do you know what the projected maintenance of way cost across the whole B & M system is on a per mile basis?

A No, I don't.

Q Do you know what the actual maintenance of way cost across the whole Boston & Maine system is on a per mile average?

A No, I do not.

Q But in Exhibit No. 3 on which you collaborated with Mr. Berkshire, the actual maintenance of way costs for this branch were used rather than any system average; is that correct?

A Mr. Berkshire's testimony?

Q No. In Exhibit 3 which you prepared with Mr. Berkshire, I understand your testimony ---

A That's right.

Q --- there are certain figures that are averages and there are certain figures that are actual and there are certain figures that came from the transportation department and certain figures that came from the engineering department. In the maintenance of way and structures, that came from the maintenance; is that correct?

- A Yes.
- Q Those are actual figures relating to the branch, as far as you know; isn't that correct?
- A A description of the costs is attached to that Exhibit No. 3 which explains the way Mr. Berkshire arrived at his figure, and if you want I will read it, or it is an exhibit.
- Q No. I will direct my attention to it. You testified, when you used system averages rather than actual expenses, it was because these figures were available to you rather than the actual expenses; is that correct?
- A On transportation, that's right.
- Q Do you know whether it is possible to determine what the system per mile average maintenance of way expense is?
- A I don't know. I do not -- that would be Mr. Berkshire's area.
- Q You were in the engineering department at one time?
- A Yes.
- Q You know how many miles there are on the Boston & Maine system?
- A Yes.

- Q If you were to divide that into the direct maintenance of way expense for the year 1972, you would have a per mile average, would you not, for the entire system?
- A That's right.
- Q Would you have any idea how that relates to the per mile total on this Exhibit No. 3?
- A No, I do not.
- Q Okay. In connection with your determination that there was a profit of \$129,000 during the period August to July 1972, you took into consideration a contribution that this traffic would be making to costs beyond the line, didn't you? That is, beyond the line costs had already been deducted when you arrived at the bottom line figure of \$129,000?
- A The gross revenue figure was given and the beyond-line cost figure was also given and used as part of my calculation?
- Q Isn't it conceivable that the traffic on a branch could cover all of the direct costs contributive to that branch, make some substantial contribution to the beyond the line cost as determined by the 50 percent formula, without covering beyond the

line cost totally and still be a line the retention of which is more advantageous to the debtor's estate than the elimination?

A I don't follow your question.

MR. COLLINS: Could you repeat that question?

(Question read.)

Q Would you prefer that I rephrase that or do you understand it as it has been asked?

A I would like it to be rephrased.

Q Can you conceive of a line which you might study, the revenues from which would cover all of the direct costs attributable to that line ---

THE COURT: We will pause here now until two o'clock.

(Luncheon recess.)

AFTERNOON SESSION

MR. WEINBERG: Your Honor, may I call out of turn Professor Cherington at this time?

THE COURT: Yes indeed.

PAUL W. CHERINGTON, Sworn

Direct Examination by Mr. Weinberg

Q Kindly state your name, address and occupation, sir.

A Paul W. Cherington, 63 Atlantic Avenue, Boston. I am the president and chief executive officer of the Boston & Maine Corporation, Debtor.

Q Since 1970, will you tell the Court what your connections with the Boston & Maine Corporation, Debtor, have been?

A Yes. I was appointed a trustee by this Court of the Boston & Maine effective May 19, I believe, in 1970, and I served as a trustee until December 20th, 1971.

Subsequent thereto I served as a consultant to the trustees until January 1st, 1973, and on January 1st, 1973 I became chief executive officer of the Boston & Maine Corporation.

Q In your capacities both as trustee and as

consultant and as president and chief executive officer, have you conducted negotiations with the State of New Hampshire regarding abandonment of lines and what the State of New Hampshire was willing to do in the acquisition of these lines that we sought abandonment for or in the subsidization of lines we considered unprofitable?

A Yes, I participated in a series with officials of the State of New Hampshire, primarily with Mr. Taft, who, down to the end of 1972, was director of comprehensive planning for the State, and I attended various meetings with other representatives of the Boston & Maine, including the trustees and their counsel, discussing the abandonment program that we had in the State, the possibility of the State of New Hampshire buying certain of these lines and the possibility of their subsidizing the Boston & Maine to continue operations, and generally a complete canvass of the possibilities in the State.

Q Will you tell us, have you offered to continue unprofitable lines on the condition that the State of New Hampshire would subsidize the operations to the breakeven point?

A This is one of the possibilities that we suggested to Mr. Taft and to the officials in the State of New Hampshire, and the answer that we got was that there was no possibility that the State would provide any subsidy whatsoever for these loss lines.

Q Do you think that you can add anything that is material to the issues involved in the application for this abandonment in respect to your negotiations with the State of New Hampshire other than what you have testified to now?

A Only that we have offered on several occasions, the most recent of which was in a letter from Mr. Meserve, the trustees, to Governor Thompson, to sell Concord-Lincoln and various other loss lines in New Hampshire to the State at a price to be negotiated, somewhere between scrap value and gross salvage value and with certain conditions with respect to divisions and the routing of traffic.

MR. WEINBERG: Thank you. That's all the questions I have of this witness, your Honor.

Cross Examination by Mr. Collins

Q Mr. Cherington, you referred to a series of negotiations with officials from the State of New Hampshire. Could you tell me how many meetings there were between you and officials from the State of New Hampshire?

A I can recall at least three, two in Concord and at least one at which time Mr. Taft came to Boston and conferred with the trustees. Those are the ones that I remember having participated in myself. Whether there were others, I don't know.

Q Then you are testifying to those three as constituting the series of negotiations; is that correct?

A Well, in addition there was some exchange of correspondence and there was a series of telephone calls back and forth, primarily between, I believe, Mr. Mulcahy and Mr. Taft.

Q When was the meeting during which --- roughly --- Mr. Taft came to Boston and met with you and others?

A Speaking from memory, I believe that that was in the spring of 1972.

- Q And then, if I'm correct, there was a meeting in Concord, New Hampshire in August of 1972?
- A It was in the summer of 1972, yes.
- Q And then there was a meeting in Concord, New Hampshire on December 21st, 1972; is that correct?
- A Yes, sir.
- Q In those meetings, you suggested that you ask the State whether it would subsidize the operation of the Lincoln branch; is that correct?
- A That suggestion had originally been made in the trustees plan of reorganization which was issued, I believe, on December 20, 1971, and Mr. Taft indicated, in the meeting which was held in Boston in the spring, that he believed that that was entirely beyond the realm of possibility.
- Q Was that the last discussion that you had on the subject of subsidy, to your knowledge?
- A No. I believe it was brought up at least in the summer meeting and --- but it didn't receive very much discussion because it was pretty much rejected by Mr. Taft.
- Q And in the meeting that took place in December of 1972 in Concord, New Hampshire, there were several

things discussed other than the abandonment of the Lincoln branch; is that correct?

A Yes. Most of these discussions have involved a series of branch or secondary lines not confined to the Lincoln branch but involving some of the others for which we have plans for abandonment.

Q Do you remember a conversation relative to the Cheshire branch?

A Yes, I do.

Q Do you remember that there was a connection in the minds of those discussing it between the Cheshire branch and the Ashuelot branch?

A Yes. There was a connection and it was as a result of that session where Mr. Taft requested that we go back and send in the information not only on the portions of line which we intended to abandon but also on the more or less logical extensions of those branches of lines so that perhaps there could be a more viable short line operation, and we did that and transmitted the results to the Governor in Mr. Messerve's letter of February 5 of this year.

Q Now, that is to say, you put into writing that which was requested by Mr. Taft on December 21 on

February 5th; is that correct?

A That is correct.

Q And in the course --- in between those two dates there was a change of administration in the State of New Hampshire; is that also correct?

A That is correct.

Q Do you recall that there also arose at that meeting questions of title, as to who owned the Ashuelot branch and the Cheshire branch?

A Yes, there was a question of title that was raised and discussed.

Q Do you recall that it was left that I would contact counsel for the Boston & Maine Railroad and set forth my reasons for believing that the State of New Hampshire owned title to the underlying fee of the Ashuelot branch and the Cheshire branch?

A I remember that.

Q Do you know whether or not the Boston & Maine Railroad ever received any correspondence from me on that subject?

A No, I do not.

Q Do you know whether they have returned any correspondence to me on that subject?

A No, I do not.

Q Was there also raised, to your recollection, at that meeting a claim by me that the State of New Hampshire owned the underlying fee to that portion of the Lincoln branch that lies between Concord and Plymouth, New Hampshire?

A I don't think I recall that line specifically, but I do recall that you raised the question of title to a number of the other lines which we were proposing for abandonment so it is entirely possible that that was included.

Q What conditions were discussed at those meetings and in your correspondence with respect to protection to be given to the Boston & Maine Railroad against the possibility of diverting traffic which might arise from the subject branches to other railroads?

A We were interested essentially in two kinds of protection: one which applied generally to all of the lines, and that was protection against having the division of rates set in such a way that we would be carrying traffic beyond the branch on our main lines essentially at a loss, so we wanted some protection against an inordinate division of the rates to whatever short line

operator was operating the lines.

The second type of provision involved situations such as that on the Monadnock line into Bellows Falls, possibly the Ossipee line into Intervale or others, where it would be possible by opening gateways to drain traffic away from the Boston & Maine and send it over alternative and competitive routings, and we were to maintain traffic, let's say, on the Ashuelot branch and we felt that we should have at least as much traffic moving over that line as was currently moving and so we wanted some protection to be sure that that would in fact take place.

Q This would be true with respect to even those branches that you intended to abandon if you could get the authority from the District Court and the Interstate Commerce Commission or, in some cases, already had the authority; is that correct? If my question isn't clear, let me say, you intended to impose a restriction upon the diversion of traffic from, for example, the Cheshire branch, which you had already authority to abandon, to the Green Mountain Railroad in Vermont; is that correct?

- A To the Green Mountain and the Central Vermont because if we went forward with the abandonment, we would tear up the track and there would be no possibility of siphoning off traffic out of Keene which would normally flow down the Ashuelot branch.
- Q How about any other traffic that might originate on the Cheshire branch? That is, if you abandoned it, you certainly weren't going to get any traffic originating, were you?
- A There was to all intents and purposes no traffic except that which originated in and around Keene. The line from just north of Keene into Walpole had been shut down for something over a year so that any traffic that was going to flow over that line would inevitably come out of Keene, and if we were not protected, there would be a possibility of diverting that traffic away from the Ashuelot branch.
- Q This is why, is it not, that we conclude that the Ashuelot branch was an integrated part of these conversations?
- A I believe you came to that conclusion, yes.
- Q At any time has a formula been offered by the railroad to the State of New Hampshire by which

you could arrive at divisions which were acceptable to you?

A No, we put forward no formula.

Q Or any particular divisions ---

A No.

Q --- for consideration by the State?

A We haven't gotten that far.

MR. COLLINS: I have no further questions, thank you.

Cross Examination by Mr. Killkelley

Q I understand you were a trustee in 1969-1970, is that true, during those years?

A I believe the effective date of my appointment was May 19, 1970.

Q And in 1972 --- during the years 1971 and 1972, then, you were a trustee?

A No, sir. I was trustee from May 19, 1970 to December 20, 1971 and a consultant from then until January 1, 1973.

Q Were you present at the deliberations on the abandonment petition that is already before this Court?

A I was certainly aware of it. As you know, this is

the second time that this has come before the trustee, or the trustees, then. I think I was not in attendance at that meeting but I may have been.

Q You don't recall being present at a meeting in 1970 with respect to a petition for abandonment of this line from Concord to Lincoln?

A Yes, I do, vaguely.

Q But to the best of your memory you weren't present during the meeting in 1972, on or about August or September of 1972?

A I believe not because I was overseas, I think.

Q So you would not be personally aware of whether the trustees considered any alternatives to abandonment of the line?

A Not from having sat in on the meeting, but this line had been considered on numerous occasions, both formally and informally, and I think almost all of the possible alternatives have been canvassed by the time it came down to the formal vote to seek abandonment again.

Q Those alternatives evidently were not made by the trustees themselves but made by officers within the corporate setup of B & M; correct?

A The staff presented various studies of what might be done, yes.

Q And it was the policy of the trustees to rely upon the judgment of members of the staff of the railroad; isn't that correct?

A In part, yes. But they brought their own independent judgment to bear on these.

MR. KILLKELLEY: I have nothing further, your Honor.

MR. WEINBERG: I have no questions, your Honor.

MR. COLLINS: Would anyone have any objection if I asked a couple of more questions?

THE COURT: Yes. You want to ask something more? Go ahead.

MR. COLLINS: Thank you.

THE COURT: If it is relevant.

Further Cross Examination by Mr. Collins

Q In connection with proposals made to the State of New Hampshire by the trustees of the Boston & Maine Railroad, as set forth in the letter of the trustees dated February 5th, was there another area of condition other than the possibility of

diversion and the question of divisions, to wit, the matter of assumption of some labor obligations?

A Yes. That was a condition that would have applied essentially to some of the add-ons to the line which the trustees were proposing to abandon and whether there would be any labor protection with respect to Concord-Lincoln, I don't think I know.

Q What do you mean by add-ons?

A Well, Mr. Collins, if you remember the letter, we included in that letter not only the lines that the trustees were contemplating abandoning, but also considerable additional mileage which perhaps would have been put together with the abandonment segments and made a more attractive package.

For example in Bennington-Hillsboro, we included information on the entire branch line all the way back to Nashua.

My impression is that if we abandoned or sold that entire branch to the State, we might be liable for labor protection provisions, and that in turn we would expect to be indemnified.

Q That is to say, you would expect the State to pick

up the cost of those indemnification provisions;
is that correct?

A Or to recognize it in the price which was paid.

Q Had that been raised earlier in your negotiations
with the State, to your recollection?

A I believe not because the possibility of
supplementing these abandonment segments was
raised, to the best of my recollection, for the
first time at the December meeting.

Q Do you have any idea in terms of dollars what the
assumption of those liabilities would cost?

A No, we have not. I do not.

MR. COLLINS: That is all, thank you.

MR. WEINBERG: I have no questions,
thank you.

THE COURT: Step down, Professor.

THE WITNESS: Thank you.

MR. WEINBERG: May I call the clerk
of the corporation, before we resume the testimony
of Mr. Culliford?

FREDERICK WILSON, SwornDirect Examination by Mr. Weinberg

Q Please state your name, address and occupation.

A Frederick Wilson, and I live at 26 Arlington Street, Reading, Massachusetts.

I am secretary to the trustee of the Boston & Maine Corporation, Debtor, and as such have custody of the minutes of the trustee's meetings.

Q Have you extracted the minutes of the meeting of September 28, 1972 relative to the matters that were considered by the trustees in the abandonment of the Concord to Lincoln branch?

A I have.

Q And I show you a paper entitled Memorandum to Trustees Regarding the Abandonment of the Line From Concord to Lincoln, N.H., Including the F and T Branch and ask you whether or not these were incorporated with the records of the trustees at that time?

A They were.

Q It was Trustees at the time?

A Yes.

Q Both Mr. Bartlett and Mr. Meserve were trustees

at the time?

A Yes, sir.

Q And you extracted this from the minutes of the meeting of September 28?

A Yes, sir.

MR. WEINBERG: I would like to introduce this.

(Memorandum dated
September 27, 1972
marked Petitioner's Exhibit
No. 13 for Identification.)

MR. COLLINS: Did you say you would like to have it introduced?

MR. WEINBERG: For identification.

Q Did you also extract from those minutes a copy of the vote of the trustees?

A I did, sir.

Q Is this which I show you a copy of the extract from the minutes of the meeting of September 28, 1972 relative to the vote regarding the Concord to Lincoln abandonment?

A It is.

MR. WEINBERG: Thank you. I would like to introduce this for identification also.

(Extract from minutes of meeting of September 28, 1972 marked Petitioner's Exhibit No. 14 for Identification.)

MR. WEINBERG: That's all the questions I have of this witness, your Honor.

Cross Examination by Mr. Collins

Q Were you present at the meeting of September 28, 1972 of which Exhibit No. 14 is an extract?

A I was not.

THE COURT: No further questions?

MR. COLLINS: No further questions.

SIDNEY B. CULLIFORD, JR., Resumed

Cross Examination by Mr. Collins, Continued

Q Before the recess I was in the course of asking you a complicated question which assumed that a given line of the railroad might show revenues which offset fully the costs directly attributable to that line and made a substantial contribution to off the line costs and yet did not fully cover off the line costs. Do you follow my assumption so far?

A Yes, sir.

Q Is it not possible that such a line would be an asset to the railroad, something that the railroad as a debtor in bankruptcy should continue operation, even though it did not fully meet all of its off the line costs and contribute fully to overhead?

A That is an assumption and there are many other factors that have to be applied to that.

If I follow your question, is the revenue on the line and expenses on the line less than the revenue? That is the context of your question?

Q My question assumes that the revenue exceeds the cost directly attributable to the line and yet does not fully meet all of the off the line costs, according to the ICC formula. Is it not still possible that the railroad is better off as a whole operating that branch than not operating it because of the contributions that revenue makes to other segments?

A It is possible.

Q Are you familiar with the trustees plan of reorganization?

A Yes.

Q Do you recall in that plan the suggestion that while the New Hampshire lines might not be

profitable, their contribution to the Massachusetts segment is something that the railroad would not want to lose? Do you recall anything like that in the trustees plan?

A I think they are talking at that time in that plan of the New Hampshire segment.

Q What is that?

A Which encompassed all parts of the State of New Hampshire.

Q What did they mean by such a statement?

A All lines in the State of New Hampshire which, of course, is your main line ---

Q As a whole that may not be profitable in terms of meeting fully distributed costs, yet the contribution that they might make to the Massachusetts segment might be such that the railroad is better off with them than without them; is that correct?

A That's correct.

Q Let me turn your attention to that branch of the railroad that lies between Concord, New Hampshire and White River Junction, the Northern Railroad, so-called. You are familiar with that railroad?

A I am.

Q Are you familiar with the period of time during

which the trustees of the Boston & Maine Railroad decided to close that line of railroad from Concord to White River Junction?

A I am.

Q During what period was that line closed?

A Without going into the file, I think it was April 1971 to August 1972.

Q How far is it, roughly, as the crow flies between the Lakes Region Chipping Company in Ashland, New Hampshire and Berlin, New Hampshire where the chips were going to the Brown Company?

A I don't know.

Q Could you guess?

A It would be a guess. I would say about 60 miles.

Q Prior to the closing of the Northern Railroad, so-called, how was the traffic routed between the Lakes Region Chipping Company in Ashland and the Berlin Paper Company in Berlin?

A It moved from Ashland, New Hampshire to Concord and from Concord to White River and then from White River to Berlin.

Q Was there ever a line open from Lincoln to Haverhill, New Hampshire?

A Not to my knowledge.

- Q Where did the line go, when it existed northwest of Lincoln?
- A The line, to my knowledge, always terminated at Lincoln.
- Q How many miles and how much time would it take to send a car from the Lakes Region Chipping Company in Ashland to Berlin via Concord and then up the Northern to White River and over to Berlin? First, how many miles, and secondly, how long did it take?
- A It is approximately 140 miles via rail, close to 200 miles by rail, I take that back, and it would take I would say three to four days to make the move from Ashland to Berlin.
- Q During the time that the Northern Railroad, so-called, was closed from April of 1971 to July of 1972, how was that traffic routed from the Lakes Region Chipping Company in Ashland to the Brown Company in Berlin?
- A That was routed via the Northern Railroad on a three day a week basis. We had local service on that line.
- Q Didn't at least some of it come down from Lincoln to Concord to North Chelmsford over the Stony

Brook Railroad to Ayer, west on the B & M main line and then north on the Connecticut River?

A We diverted traffic by that route you talked about. It all depended on the clearances.

Q Do you know whether any of this traffic I am talking about ---

A It moved over the Northern ---

Q As far as you know, it moved over the Northern?

A Yes.

Q All of it?

A Yes.

Q Can I turn your attention back to Exhibit No. 3 for a moment? Do you see the item under maintenance of way and structures? This is Account No. 249, signals and interlocking.

A Yes.

Q Do you know whether there is any interlocking on the Lincoln branch?

A There is not.

Q Can you explain to me why there is this figure of \$14,000 to \$15,000?

A I can explain it from my transportation knowledge. There is automatic highway protection on this line. I don't know specifically how many are on there,

but that is no doubt what this figure is representative of.

Q Does that figure seem reasonable to you from your engineering days for the cost of these highway protection devices?

A Yes, it does.

MR. COLLINS: That's all I have, thank you.

THE COURT: Any further questions?

Cross Examination by Mr. Killkelley

Q Mr. Culliford, how long have you been with the railroad?

A Twenty years.

Q And you are thoroughly familiar with the history of this line from Concord to Lincoln?

A When you say history, what do you mean?

Q The background of it, when they had passenger service and things of that nature.

A Yes.

Q And was part of the line referred to as the White Mountain Line as opposed to the Pemigewasset Line?

A Correct.

- Q The White Mountain Line was generally from Concord to Plymouth; is that true?
- A Yes.
- Q And from Plymouth to Lincoln, so-called, the Pemigewasset Line?
- A Right.
- Q And passenger service on the White Mountain Line from Concord to Meredith was available until January 4 of 1965; is that a fair statement?
- A I will rely on your figures. I don't remember what date they took the passenger service off.
- Q Would you say January 4, 1965 would be approximately the date?
- A About that.
- Q And on October 24, 1959, passenger service was discontinued from Meredith to Plymouth; would that be a fair statement?
- A I don't know.
- Q You know that passenger service was available on the line to Meredith up until sometime the mid 60's; is that correct?
- A That's correct.
- Q And the condition of the line from Concord to Meredith is better than the condition of the line

north of Meredith to Lincoln; isn't that true?

MR. WEINBERG: Objection to that question, it should be directed to the maintenance of way.

THE COURT: Let's get along.

A I don't know. That is --- as stated, Mr. Berkshire testified to that, to my knowledge.

Q You haven't inspected the line?

A In my capacity?

Q Yes.

A No, sir. I went over the line in October 1972 to review the line as far as transportation is concerned.

Q So you can't offer anything concerning the condition of the line?

A No, sir.

Q You have indicated alternate figures here, some for three-man crews and some for four-man crews?

A That's correct.

Q There would be no problem in operating this line in the areas you have indicated with a three-man crew as far as the operation is concerned; it could be done, isn't that true?

A I would have to clarify that. It cannot be done without the union's concurrence.

- Q With the union's concurrence, it certainly, as far as operationally, you could do it, isn't that correct?
- A That's correct.
- Q And you can't tell us whether or not you could or could not get the concurrence of the union?
- A In past cases we have been unsuccessful.
- Q As far as this is concerned, you can't tell us one way or the other?
- A No, I cannot.
- Q You have \$150,000 as the revenue received on the line from Concord to Plymouth. This is your Exhibit No. 12.
- A That's correct.
- Q Is there any business that can contribute to this line north of Meredith, to your knowledge?
- A There is business that Mr. Whitney testified to, the Ashland and Plymouth.
- Q And you considered Lakeport in your Exhibit No. 11 and Plymouth in Exhibit No. 12 as stopping points; correct?
- A That's correct.
- Q Why didn't you consider Meredith as a stopping point?

A The exhibit and our recommendation to the trustees at that time, Ashland was a very productive point. There was considerable revenue. If we were going to go to Meredith, we might as well figure on the next terminus, which would be Ashland, and go into Plymouth, so that is why Plymouth was determined.

Q Currently Meredith is your most productive single shipper; isn't that correct?

A On the line, you mean?

Q Yes.

A I have to answer no to that.

Q There is no reason why you couldn't stop at Meredith if you were --- there is no reason operationally you couldn't stop at Meredith?

A No.

Q For the record, Plymouth is approximately 50 miles from Concord; is that fair to say?

A That's correct.

Q And Meredith is approximately 39 miles from Concord ---

A Approximately.

Q And you have a figure on Exhibit No. 12 of maintenance of way of 107,000-plus?

A That's correct.

Q And this is, you have testified, for increased expenditures over the next five years of making substantial repairs and investment in the property, correct?

A No.

Q How do you arrive at the 107,000 figure?

A That figure was submitted by Mr. Berkshire.

Q Is this a ---

A He testified to that. I incorporated that figure in my exhibit.

Q Is this determined as a percentage of the figure in Exhibit No. 10 for the projected maintenance of way expense?

A I don't know. That question should be directed to Mr. Berkshire.

MR. KILLKELLEY: I have nothing further, your Honor.

Redirect Examination by Mr. Weinberg

Q Referring again to Exhibit No. 9, Mr. Culliford, you had a revenue figure of \$436,733 for the period of August 1st, 1971 to July 31, 1972; is that correct?

A That's correct.

- Q Did you obtain that figure from Mr. Whitney's exhibit which has been offered in identification as Exhibit No. 5?
- A That's correct.
- Q And in that Exhibit No. 5 he showed for the period August 1971 to July 1972 there were 1,602 cars; is that right?
- A That's right.
- Q And of those 1,602 cars, he showed that 876 of those cars were cars to or from Lincoln, New Hampshire; isn't that so?
- A That is correct.
- Q Will you tell us, sir, what the commodity was that was carried in those 876 cars?
- A The major commodity was coal.
- Q When you say the major commodity, was it the exclusive commodity?
- A The exclusive commodity.
- Q Can you tell us whether that was voluntary on the part of Franconia Manufacturing Corporation or was it a subject of some sort of court order or stipulation?
- A It was the subject of a court order, the Court of Appeals.

Q In the questions regarding depreciation of the engine used on this line, is the same engine used on this line always?

A No.

Q You use whatever engines you deem most feasible at any particular time; is that right?

A That's correct.

Q In the questions that Mr. Collins asked you, in the hypothetical questions of whether or not you would retain a line if the above-line costs were less than the revenue directly received from that line, isn't it true that if you abandon a line, system savings can be made that could not be made if you retained lines?

A That is correct.

Q Will you tell the Court what overall abandonment of lines might leave in your area of jurisdiction, namely maintenance of equipment, transportation and car hire costs?

A As the lines were abandoned, of course that has an ultimate effect on the number of cars that are handled, which has an effect in many areas.

It is that much less equipment on line, which means less maintenance, less per diem and

more significantly, where you have less cars on line, it has an effect on the yards, where you can make reductions in your yard costs.

Those are the real areas of savings.

Q Taking those considerations in mind, do you have an opinion as to whether or not, in the hypothetical case, simply because the above the rail expenses were less than the revenue derived from the line, you can make a conclusion that it might be advisable for the trustee to retain that line?

A Will you repeat that, please?

Q Taking those considerations in mind, do you have an opinion as to whether you would advise the trustee to retain a line where simply the revenue from that line exceeded the above the line costs?

A Yes, I have an opinion.

Q What is that opinion?

A That a line that may be, as stated, profitable for the branch line revenue to the branch line expenses, may show a profit at that point, the other factors must take into consideration the cost to get the car from the point of interchange to the beginning of the branch, and they have to

be applied.

Q Do you think in that particular case you would recommend retention of the line or recommend proceeding with abandonment?

A I would recommend proceeding with abandonment.

MR. WEINBERG: No further questions, thank you.

Recross Examination by Mr. Collins

Q In all cases, would you recommend proceeding with abandonment?

A Depending on the circumstances.

Q In all cases in which the revenue did not exceed the on-line costs plus the off-line costs as determined by the 50 percent formula promulgated by Mr. Whitney and the ICC?

A Yes.

Q In all cases you would recommend abandonment.

How many branches on the Boston & Maine Railroad show revenues which can fully cover all of the costs allocable to that branch and all of its off-line costs as determined by that formula?

A I can think of one in the State of New Hampshire,

and that is right from Woodsville to Berlin,
New Hampshire.

Q How many others?

A That have been studied, I can't think of any.

Q Can you think of any that haven't been studied
that you expect you would find a branch that
fully covers all of those costs?

A I can't think of any.

Q If it should, upon study, lead to conclude that
there is no branch other than the branch from
Woodsville to Berlin which fully meets those
costs, would you therefore not recommend that all
branches on the Boston & Maine be abandoned?

A Again it depends on the conditions. You are only
applying one fact to the whole.

Q Do you want to explain that?

A Yes, by that I am saying you are taking strictly
economics of the beyond-line costs and saying
any branch that may be profitable, branch line
cost to branch line revenue, and that point
is profitable, you take beyond-line costs and
that makes it unprofitable, and many factors come
in.

Number one, what effect is it going to

have on your railroad if you retain the line, and what is the effect of the line?

Q That is what I am suggesting to you, and somewhere along the line I misunderstood you or you have misunderstood me. I thought that you said that in every case in which the revenues were not sufficient to cover both on the line costs and off the line costs, that you would recommend abandonment. Did I not understand you correctly?

A If that was the question you put before, that I said with conditions.

Q All right. Do you want to tell me what these conditions are?

A Yes. The effect that the line has on the total system and what industrial development may preclude the line, may come to the line.

Q The first condition is distinguishable from the second. That is, you are dealing with two concepts?

A That's right.

Q The second is what may develop for the future in the way of traffic on that line?

A That's right.

Q And the first, would you explain that in a little

more detail?

A You are talking about your beyond-line costs as I identified the problem?

Q That is the area I am concerned with.

A What I am saying is that you have conditions you are talking about, what effect it has on your major yards if this line was not there and what effect it has on your through freights and on your per diem figures.

Q Supposing this line were truncated at Plymouth, what effect would it have on your yards and per diem and what effect would it have on your operating costs? Is there any way to determine that?

A Under the formula that Mr. Whitney testified to is the only way that I know of.

Q Then given the application of that formula and the determination of off the line costs by the use of that formula, there are no other conditions to be met, are there? And that is, if the revenues didn't cover the direct expenses and the off the line costs as determined by this formula, which is the only way, after all, to determine the yard costs and operations costs,

does it not follow that you would recommend abandonment of every branch that doesn't meet that standard?

A Again, with these two conditions, the condition of the potential of the branch, future of the branch, and the effect it has on the yard, that is correct.

Q But the effect it has on the yards is already taken into consideration in the application of the formula; is that correct?

A Yes.

Q So that only the future of the industrial development and the traffic potential on that line is a condition; is that correct?

A That's right.

MR. COLLINS: No further questions; thank you.

WILLIAM A. KIRK, Sworn

Direct Examination by Mr. Weinberg

Q Kindly state your name, address and occupation.

A My name is William A. Kirk. I reside at 40 Lincoln Street, Stoneham, Massachusetts. I am manager of real estate and industrial development, Boston & Maine Corporation.

Q Will you describe briefly your railroad and real estate experience?

A I joined the Boston & Maine in May 1942 as a clerk in the purchasing department and transferred to the industrial department October 1945, and appointed real estate agent April 1951 and manager of real estate industrial development April 1966, and that is my present position.

Q Did you participate with Mr. Berkshire in the preparation of an exhibit relating to the salvage value of the Concord to Lincoln, New Hampshire line which has been offered for identification as Exhibit No. 2 in this case?

A Yes, sir.

Q And were you responsible for the insertion therein of the values of the various segments of the line?

A I am.

Q And will you tell us the values you attributed to these segments and the total and the manner in which you ascribed values to them?

A It is my opinion the southerly section of this right of way commencing on the outskirts of Concord and extending for 20 miles to the former Lochmere Station in Tilton, as well as the northerly end of this right of way of approximately 33 miles from the Meredith-New Hampton town line to the terminus at Lincoln has an overall average value of \$3,000 per mile.

The intervening strip of about 19 miles we feel has a substantially higher value of \$15,000 per mile because of its proximity to lake areas and crossing through a commercial section of the City of Laconia.

This would result in a total for the right of way of \$443,400

Q Will you tell us the components of each making up that \$443,400?

A I believe that the first segment would be \$60,000, that is, from Concord to Lochmere.

From Lochmere to the Meredith-New Hampton town line would be \$285,000.

And the third segment, from Meredith-New Hampton to the terminus, just under \$100,000, 98. \$98,400.

Q And have you submitted the figure for rents in each of the exhibits that the Boston & Maine has presented here in relation to the abandonment of Concord to Lincoln?

A I submitted a figure, yes, sir.

Q And that was made from the ordinary records in your jurisdiction?

A Taken from the accounting department records.

Q And do you have an opinion, Mr. Kirk, of the potential for rail freight carriage on this line from Concord to Lincoln, including the Franklin-Tilton branch?

A Are you speaking of industrial development?

Q Yes.

A My opinion, this line has very little potential for industrial development.

Q Has it experienced any development during the last five to ten years?

A Not to my knowledge.

Q Has it diminished as far as potential?

A I think there have been some closings of a few

small companies, but generally pretty much the same.

Q Is there any comparison between the potential in the Concord and Lincoln line and, let us say, the Concord to Nashua line?

A I think the potential for industrial growth in New Hampshire has been in the south.

Q In your opinion there isn't any potential north of Concord?

A In my opinion it is very low.

MR. WEINBERG: Thank you.

Cross Examination by Mr. Collins

Q Mr. Kirk, did you have an appraisal made by anyone outside of the railroad of the real estate consisting of the right of way from Concord to Lincoln?

A Yes, sir, I did.

Q Who did you have make that appraisal?

A I had Hyde Associates do it.

Q Of where?

A Concord.

Q Concord, New Hampshire?

A Yes, sir.

- Q What were they directed to do by you?
- A They were asked to give me their opinion as to the market value of this right of way.
- Q Did you suggest to them how it should be broken up in terms of parcels or miles or segments?
- A I suggested that it be broken up into three segments that I previously mentioned but I did not insist it be done that way.
- Q And is it they that gave you the figures of 20 miles at 30 --- strike that --- at \$3,000 per mile, equalling 60; 19 miles at 15,000 equalling 285,000 and 32.8 miles at 3,000 equalling 98,400?
- A I will put it this way, Mr. Collins. Mr. Hyde confirmed with my figures. Those were my initial figures and he indicated he was in agreement.
- Q Did you furnish those or was it coincidence that he came up with the same figures as you?
- A He came up with them after he consulted with me. He had some minor changes, but he finally concurred in my figures.
- Q Is he, to your knowledge, going to be a witness in this proceeding?
- A Not to my knowledge.
- Q Based upon your appraisal of this real estate, am

I correct in assuming that you have broken it up into these three segments and then averaged it off on a per mile basis without dividing into black acre and white acre and yellow acre and putting the figure on each?

A No. I put a value on each map, each segment, from beginning to end.

Q How large was the segment?

A Generally about a mile.

Q Then did each mile come out to \$3,000 in the first section?

A No. It depends on location.

Q Why does Exhibit No. 2 set it forth on a per mile basis? Twenty miles at 3,000 per mile?

A Because the total figure came out at \$60,000, roughly \$60,000, so it was averaged out for the 20 miles at \$3,000.

Q So that instead of showing us, in Exhibit No. 2, a figure for the total of the appraisal of each segment, you figured what the total appraisal was for each segment and divided it by the number of miles and gave us a per mile?

A To be sure that I was right.

Q All right. You have valued the segment of 19 miles

from Lochmere to Meredith at \$15,000 per mile.

Am I correct in assuming that that is because of its proximity to the lakes?

A Because of the proximity to the lakes, and, as I mentioned, the proximity to the City of Laconia.

Q But it comes --- you have taken each segment, added it together, divided by 19 and it comes out an even 15? And then, as to the 32.8 miles from Meredith to Lincoln, you added up the total number of segments and came up with \$98,400, divided that by 32.8, and it came to an even 3,000.

Did the line from --- that now runs to Lincoln once run to Woodstock? From Concord and Plymouth to Lincoln and then on to Woodstock, New Hampshire?

A I think it still crosses --- it in Woodstock. Woodstock and Lincoln are very --- one line abuts the other, I believe.

Q Where did the --- did not the line used to continue in a northwesterly direction to join the Connecticut River branch or line?

A I don't know.

Q How long would you gather it would take to sell off the 71 miles at these prices?

- A The entire?
- Q The works --- how long would it take you to, in your judgment, receive \$443,400 in cash for the liquidation of this real estate?
- A To complete the entire sale, it could take up to five years, in my opinion.
- Q How many people do you have working in the real estate and industrial development section of the railroad?
- A Including myself, five.
- Q What has been your experience in disposing of that portion of the abandoned railway between Mount Whittier, New Hampshire and Conway, New Hampshire?
- A We are now in negotiation on that section of right of way.
- Q You have not sold any of it yet; is that correct?
- A No, sir.
- Q When was the last time that you sold a stretch of right of way in the State of New Hampshire that had been abandoned?
- A The last time? In December of 1972.
- Q That was the Wolfeboro branch?
- A Yes.

- Q When was the last time that you sold an abandoned branch of the railroad, a segment that was not to be used as a short line railroad?
- A The last time that we sold what?
- Q An abandoned branch of the Boston & Maine Railroad in New Hampshire in segments, that is, not to one purchaser who was going to use it for a railroad but breaking it into parcels and selling it off?
- A We are selling continually sections of abandoned right of way.
- Q How long does it take you on the average to dispose of the whole abandoned right of way?
- A That depends on the length.
- Q I'm sure that is true. What one was the most recently abandoned that you are now selling off parcel by parcel?
- A That we will be?
- Q No, that you have sold off parcel by parcel.
- A I would say Plymouth to Woodsville.
- Q I think that that is what I was referring to when I said to Woodstock. Would you explain to me where the line ran from Plymouth to Woodsville, where Woodsville is?

A Well, it is about 30 miles north of Plymouth.

Q Excuse me. Do you have Exhibit No. 1 before you?

A No, sir.

Q I don't think it is on Exhibit No. 1. That ran from Plymouth, New Hampshire to Woodsville, New Hampshire, which is near Wells River on the Connecticut River?

A Yes.

Q How long ago was that abandoned?

A I believe it was in 1960 or thereabouts.

Q What have you averaged per mile in selling that off?

A We averaged just over \$2,000 a mile when we sold that property.

Q Is it all gone now?

A It is not all gone. There are segments, small segments, but the bulk of it has been sold.

Q How many miles did that line consist of, roughly?

A My recollection was that it would be 25 miles.

Q And how many miles are left unsold?

A There may be two or three miles.

Q Have you personally investigated the status of the railroad title to the real estate that comprises the 72 miles of the Lincoln branch?

- A Just our own valuation records.
- Q You have not gone beyond your own valuation records to determine that?
- A That is correct.
- Q Is it not true that at least portions of it are what is commonly called location?
- A Yes, sir.
- Q And that consists of a right to use for railroad purposes only and to the exclusion of others; is that correct?
- A That is correct.
- Q Do you have any idea of where the portion of the line from Concord to Plymouth came from, that is, what is its source to the Boston & Maine Railroad consolidation, as you know it?
- A I believe it was originally to the Concord and Montreal Railroad.
- Q And that became part of the Boston to Montreal Railroad; is that correct?
- A Yes.
- Q Do you know whether or not the Concord and Montreal or the Boston and Concord and Montreal ever had title to the underlying fee of that real estate from Concord to Plymouth?

- A Concord --- according to our valuation records, it did.
- Q Are you aware that a claim has been made by the State of New Hampshire through your legal department to own the underlying fee based upon its allegation that it has granted only a lease to the Concord and Montreal Railroad for 100 years beginning in 1844?
- A I understood that there were studies going on between you and our law department but I didn't know it involved this particular line.
- Q With respect to the balance of the road from Plymouth to Lincoln, am I correct that that was once owned by the Pemigewasset Valley Railroad Company?
- A I believe that's right.
- Q And is it your information that the Pemigewasset Railroad Company leased that line to the Concord and Montreal Railroad?
- A I really don't know.
- Q Is it fair to say, then, that you do not know whether or not the predecessor in interest of the Boston & Maine Railroad, to wit, the Boston, Concord and Montreal, has anything more or less

than a lease from the Pemigewasset Valley Railroad?

A As I indicated, according to our valuation records, it received a fee ownership for the bulk of the right of way.

Q Do you have a copy of the application for abandonment of the Lincoln branch that was made to the Interstate Commerce Commission?

A No, I do not.

Q Have you ever seen that petition to the Interstate Commerce Commission or statement of facts that is contained in it?

A Of the Concord to Lincoln?

Q Right.

A I don't think so.

Q And your counsel did not inquire of you, at any rate, as to the source of the Boston & Maine Railroad's claim to title in the so-called Pemigewasset Valley Line when he was preparing that petition?

A No.

Q Have you, in evaluating the real estate that comprises this branch, taken into consideration what may be either defects in title or claims by other parties to title?

A Yes, sir.

Q You took into consideration the possibility that some of it might be location; is that correct?

A Yes.

Q Did you take into account the possibility that the State of New Hampshire might lay claim to the fee of a portion of it?

A No, sir.

Q Did you take into account that there might be an underlying reversionary interest of the Pemigewasset Valley area?

A No, sir.

Q According to your valuation records, what percentage of the line would you consider to represent that on which there is merely a location and not an underlying fee?

A Over the entire line?

Q Right.

A Approximately 20 percent.

Q Is which?

A Non-fee.

Q Is there any particular area in which that 20 percent lies or is that pretty well distributed from Alpha to Omega?

A Yes, it is.

Q Pretty well distributed?

A Yes.

Q So that when you were putting values on each segment, you determined whether or not it was fee or location ---

A Yes.

Q --- with regard to that particular segment and you did not apply an average to that?

A Yes, sir.

Q Which?

A An average.

Q You applied the average to it? That is, you did not take black acre and determine whether or not you had title to it?

A Oh, yes.

Q You did take it parcel by parcel?

A Yes.

Q Determined you did not or did have title?

A Yes.

Q And derived a percentage and then applied that to the overall?

A Yes, sir.

Q I see. Now, have you ever known a bank in the

State of New Hampshire to lend money for construction upon real estate which was purchased from the railroad to which the railroad had less than the fee?

A I don't believe I have.

Q In your years in the real estate department of the Boston & Maine Railroad, have there been occasions on which sales were not consummated because it was discovered that the railroad did not have the underlying fee?

A Yes. That has happened, but on the other hand ---

Q The other hand your counsel will ask you about. Okay? Now, in your capacity as head of the industrial development aspects of your department as distinguished from the sale of real estate aspects of it, can you outline your duties for me?

A We have an interest in attempting to locate industrial firms along the lines of the Boston & Maine.

Q Have you done anything in the past twelve months to try to find industry that might locate in the Town of Lincoln, New Hampshire?

THE COURT: You mean personally?

MR. COLLINS: Has he, as head of the industrial development department of the railroad, taken any steps himself to try to find industry interested in locating in Lincoln, New Hampshire.

THE WITNESS: No, sir.

Q In Plymouth, New Hampshire?

A No, sir.

Q In Meredith, New Hampshire?

A No, sir.

Q And Lakeport?

A No, sir.

Q Has anyone under your direction, supervision and control taken any direct steps to try to find industry that would locate in any of those mentioned towns?

A We have had no one interested ---

Q That isn't what I am asking you. I am asking you whether you have taken any direct steps to develop an interest.

A No, sir.

MR. COLLINS: I have no further questions. Thank you, Mr. Kirk.

Cross Examination by Mr. Killkelley

- Q I understand you had someone perform an appraisal of the land owned by the railroad?
- A That is correct.
- Q This is Mr. Hyde?
- A John Hyde.
- Q A real estate appraiser in Concord?
- A Yes, sir.
- Q When did he do his appraisal?
- A He did his original appraisal in December of 1970 and he updated it in December of 1972.
- Q Do you have the records of his appraisal with you?
- A I have a record of his appraisal but I don't think I have it with me.
- Q Do you know whether you have it with you or do you have some notes you could check?
- A I have some papers, yes.

MR. KILLKELLEY: Could I see it, your Honor please, if he has them?

THE COURT: Have you got it here? He is looking for a record of the appraisal, as far as I know.

(Brief pause.)

THE WITNESS: Thank you.

THE COURT: Here it is. Go forward, please. Do you want to look at it?

MR. KILLKELLEY: Yes, I would like to see it, if your Honor please.

THE COURT: Go ahead.

(Brief pause.)

Q What you have produced is an updating by Mr. Hyde of a previous appraisal?

A Right. That's all I have with me.

Q And this is dated January 30, 1973.

A I thought it was in December of 1972.

Q Showing it to you, the date of it is January 30, 1973; right?

A Yes.

Q And Mr. Hyde indicates there has been about a 10 percent per annum increase in the value of real estate?

A Yes, he does.

Q Has there been any increase in rents within the last couple of years in the area?

A There have been some increases, yes.

Q What increases have been made?

A I can't recall because we have a number of small leases, most of them very small annual figures,

so that --- I believe some of them have been increased.

Q The amount of rent that is collected along the line for rental of real estate is approximately \$5,000, a little bit more than \$5,000; is that correct?

A I think that's right.

Q And could you tell us what representative rentals would be? What do you rent for?

A Depending on the location.

Q Could you give us some examples?

A No, I don't recall any particular example.

Q Capital Supply and Plumbing Company rents some property from the railroad outside of Concord; isn't that true?

A They could. I just don't remember.

Q Are the rentals for the access or the actual use of the railroad property?

A I am sure it is for use of railroad property.

Q Could you give us some examples of the type of use of railroad property that is made that reflects in the rental?

A The use of side track with the land thereunder, the location of a small building, driveway, pole line.

- Q If you get in through the Laconia area, the tracks go by Lake Winnisquam; isn't that correct?
- A Yes, sir.
- Q And they continue on through Laconia and follow along Paugus Bay?
- A Yes.
- Q Which is Lake Winnepesaukee?
- A Yes, sir.
- Q And continue on through the Weirs Beach area on Lake Winnepesaukee?
- A Yes.
- Q And continues on from Laconia heading towards Meredith north of Laconia along the shore of Lake Winnepesaukee; isn't that correct?
- A That is correct.
- Q In that area, the actual shorefront for many individuals that own along there is owned by the railroad; isn't that true?
- A The railroad does own some land on the shorefront.
- Q Does the railroad charge rent to the people to use the railroad land to get to the shore?
- A It does if we are aware of it.
- Q Has any investigation been made within the last four or five years with respect to people using

the shorefront without paying rental to the railroad?

A To some extent, yes.

Q And individuals actually draw water from the lake?

A Correct.

Q And they have to go over the railroad property to do it; correct?

A Right.

Q Do they pay rent to the railroad?

A They pay rental for a pipeline location.

Q Is there any rental that you receive more than \$100 a year from on that line all the way from Concord to Lincoln?

A I would say yes, but I don't recall specifically.

Q Do you have any of your records with respect to the rentals?

A Not all of them.

Q Beg your pardon?

A I don't have any of the rental records with me.

Q Have you actually negotiated an increase in rents on the line within the last five years?

A Yes.

Q Some of the contracts you have with individuals for rent or agreements go back into the 30's and

and 20's; isn't that true?

A Could be.

Q And many of those are rental agreements which have not been increased at all in recent years?

A It could be.

Q As part of the industrial department section of the B&M railroad, have you prepared any reports or do you have access to any reports concerning industrial development in New Hampshire?

A Oh, yes, we get reports from the State Department of Economic Development.

Q Have you prepared any reports or any prospectus as to potential development on your own?

A For this particular line?

Q Yes.

A No.

Q And it is fair to say that during the last ten years there has been an increase in industrial development from Nashua to Concord?

A Yes.

Q And that started in Nashua and has continued to grow northerly; isn't that true?

A And it is pretty much confined to the south.

Q Would you explain your answer?

A It is pretty much confined to the southerly area of Nashua, Merrimack and Manchester. Not really too much industrial development in Concord.

Q But that industrial growth started in the Nashua area and has moved to Merrimack, which is northerly of Nashua, and has increased in Manchester and a lesser degree in Concord, isn't that correct?

A Very little in Concord.

Q Is it fair to say there has been an increase in the Concord area within the last ten years?

A Very little.

Q Have you prepared any reports or has anything been done in connection with this abandonment concerning the prospects of that industrial growth continuing northerly?

A No.

Q Has anything been done with respect to the possibility of leasing air rights over the railroad or the railroad property in any way to individuals along the line?

A Not in that area.

Q Are you also connected with the sales force, in any way, of the railroad?

A When you say sales force, do you mean traffic?

Q Yes.

A No, I am not.

Q But in determining the industrial development, this is part of the sales arm of the railroad; isn't that correct?

A Yes, you could say that.

Q Have you at all contacted any municipalities with respect to their use of the railroad?

A No.

Q And in other areas of the B & M line, have you done so?

A Municipalities?

Q Yes.

A No.

Q Has any consideration been given with respect to restoring passenger service to any of this line?

A Not to my knowledge.

Q And you would agree, wouldn't you, that the property in along Winnisquam, Lake Winnisquam, through Laconia and the Weirs Beach area, which would be Lake Winnepesaukee, is of substantial value because it is shorefront property; isn't that true?

A In part it is shorefront property, only in part.

Q Does the railroad also own the access point to the Weirs Beach swimming area?

A No, sir.

Q Have you been at all involved in the Civil Defense aspects of the use of this railroad?

A No, sir.

MR. KILLKELLEY: I have nothing further, your Honor.

Redirect Examination by Mr. Weinberg

Q Mr. Kirk, recently did you participate in the sale of or attempted sale of the line between Mount Whittier and Intervale, New Hampshire on the Conway branch?

A I have participated in it, yes, sir.

Q That was authorized for abandonment by the Commission, wasn't it?

A Yes, it was.

Q Did you put it out for bids to all and sundry?

A We did. We advertised in the newspapers.

Q Did you get firm offers in response to that solicitation for bids from many people?

A About 17 bids.

Q Was the area --- how many miles is it from

Mount Whittier to Intervale on that line?

A I believe about 18 miles.

Q For how many miles did the offers that you received encompass?

A The entire 18 miles.

Q And what is preventing you from entering into purchase and sale agreements with the people who have offered sale prices for that line? What is preventing you from entering into purchase and sale agreements with the bidders who offered you prices for that entire 18 miles?

A I believe it has been petitioned to the Federal Court.

Q Has an injunction been issued by the court in New Hampshire?

A As I understand it.

Q And aside from the claims which have been advanced by you, by Mr. Collins, regarding New Hampshire's alleged title to some of this land, what is the only limitation in the title to the Concord to Lincoln branch that you are aware of?

A Location rights.

Q Is that the same thing as we know here as rights

of revert are retained in the original parties from whom the land is taken for the location of the railroad?

A My understanding is a location is a right to use for railroad purposes only.

Q And in case it is not used for railroad purposes, in your knowledge to whom does the right to lay claim to the parcel of land no longer used lie?

A Heirs or assigns of the original owners.

Q Most of this land was taken for location purposes in what years?

A 1847, I believe, 1848 and 1849.

Q With knowledge of such limitation of title, have you ever had any objection by purchasers of property from the railroad on claims for diminution of the purchase price in respect to this right of reverter existing in heirs or persons from 1840 conveyances?

A Experience over many years does indicate that in general that railroad land with title deficiency is salable.

Q In the Mount Whittier to Intervale sales, do the same location rights exist there as up in the Concord to Lincoln?

- A Yes, I think that as a matter of fact there are a greater percentage of non-fee land on the Concord branch than on the --- excuse me --- the Conway branch than on the Concord to Lincoln.
- Q Were the persons who offered you purchase prices for that property aware of the existence of these rights of reverter?
- A Yes.
- Q Did they ask for any lessening of the purchase price on account of the existence of these rights of reverter?
- A I don't know how they did in their own mind. They may have discounted it to some extent because of that. I don't know.
- Q But they certainly haven't stopped making offers on account of the existence of these rights?
- A That is right.
- Q What about the New Hampshire Industrial Development Commission, do you work with them quite frequently?
- A Yes, we do.
- Q What is the name of the head of the New Hampshire Industrial Development Commission?
- A Paul Gilderson.
- Q And he is active along with you in looking out for

industrial development in the State of New Hampshire?

A Yes, sir, we cooperate very closely.

Q And he was a witness at the previous hearing, was he, here?

A He has been a witness at some hearings. I can't recall.

Q Was it somebody from his office, namely a Mr. Jordan?

A I don't believe Mr. Jordan is now connected with them.

Q At any rate, has either Mr. Gilderson or anyone in his department brought to your attention any possibility of industrial development that might benefit the railroad in the area of Concord to Lincoln?

A They did indicate two possibilities.

Q What were they?

A A culvert company and a modular home company.

Q Where were they supposed to be located?

A They were considering sites in Canterbury, New Hampshire.

Q Has anything developed from that consideration as yet?

- A Not at the present time.
- Q How long ago did it originally come to your attention?
- A I believe it was in the --- during the summer of 1972.
- Q And nothing has come to fruition since that time?
- A No, sir.
- Q And how many carloads did they at best purport that their location would develop for the Boston & Maine on an annual period?
- A About 50 cars each per year.

MR. WEINBERG: I have no further questions.

Recross Examination by Mr. Collins

- Q Mr. Kirk, you testified you had received 17 bids ---

THE COURT: You can't keep on cross examining this witness. Finish with him, unless some new matter has been brought out.

MR. COLLINS: I will only refer to matters that Mr. Weinberg referred to.

- Q I am referring to the 17 bids which you and Mr. Weinberg just discussed for the Mount Whittier to Conway or North Conway portion of what was the

Conway branch. Were any of those bids made subject to the prospective purchasers making a determination as to title?

A Not one.

Q None of them reserved that right. They made a bid based on what it might be that you might own?

A Yes.

Q All right. Now, if it should turn out that you don't own a particular parcel on that branch, that all you have is the right to use it for railroad purposes, would you sell it anyway and take good money for it?

A Yes, sir.

Q You wouldn't have any qualms about that?

A No, sir.

Q And you wouldn't expect anything --- to hear anything from the Consumers Protective Division of the Attorney General's Office; is that right? Would you sell the Mystic Bridge?

A Yes, sir.

Q The Brooklyn Bridge?

A I would give them right, title and interest, if any.

Q I don't doubt it.

Has it ever come to your attention that there is a company named Profile Paper Company that might be interested in buying and developing the paper mill in Lincoln, New Hampshire?

A It has come to my attention.

Q Have you, as a result of that information coming to your attention, made any effort to seek out the officers of that corporation?

A Mr. Shearer, attorney for Profile Paper, has been in touch with me and indicated that he and his client would communicate with me further, but up to the present I have had no contact with them.

Q And you haven't made any effort to seek them out?

A I have told them I am ready to talk with them, to cooperate with them and furnish whatever information they desire whenever they wish to do so. I can't do any more than that.

Q Have you made any effort to seek out any other people that might be interested in purchasing that mill?

A The mill?

Q The mill in Lincoln.

A No, sir.

Q When you refer to lines of railroad that were laid

out 1847-1849, in that area, was that in connection --- were you then responding to questions relating to the Conway branch or were you talking about the Lincoln branch?

A The Lincoln branch.

Q The Conway branch was laid out somewhat later; isn't that correct?

A I think somewhat later.

Q Are you aware, in connection with the opinions that you expressed about the title, of the statutory authority for the laying out of what you now know as the Lincoln branch, the New Hampshire statutes that were in force in that year, 1847 or 1849? You have no knowledge about that whatsoever?

A No, sir.

MR. COLLINS: All right. I have no further questions.

Recross Examination by Mr. Killikelly

THE COURT: I will take just one more matter.

Q For the record, Canterbury, New Hampshire, which you commented on before, that is north of Concord, New Hampshire?

A Yes, sir.

Q That is within the area that is the subject matter of this line that is in question here; correct?

A Correct.

Q I am showing you Exhibit No. 9 that has been introduced in this case, and that shows rents collected of \$5,765 during the year of August 1, 1970 to July 31, 1971; correct?

A Yes.

Q And I am showing you an exhibit that was introduced in the original, the previous hearing that we had in this case, in 1971. That shows for the year 1969 rents received of \$6,684?

A Correct.

Q So in fact the rents that have been received along this line have decreased and there has been no increase in rental?

A It could be increases in particular rentals but

there could be cancellations that account for the situation that you bring up.

MR. KILLKELLEY: I have nothing further, your Honor.

THE COURT: I think I better pause here.

Come up.

(Conference at the bench.)

(Adjournment.)

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