

August 17, 1971

August 30, 1971

Mr. Larry Henchey
Office of Industrial Development
State of New Hampshire
Department of Resources & Economic Development
Two & One Half North Main Street
Concord, New Hampshire 03301

Dear Mr. Henchey:

SUBJECT: Study of the Development Potential
Forthsmouth Branch
East Manchester to Rockingham Jct., N.H.

Reference our conversation on August 24, 1971 concerning letter dated August 17, 1971, Department of Resources and Economic Development to Mr. Barrigar.

We are enclosing one (1) copy of the following Engineering Department information requested:

- (1) Maintenance of Way & Structure Costs over the past two (2) years - 1969 and 1970.
- (2) Maintenance of Way & Structure Costs over the next five (5) years.
- (3) General Physical Characteristics of the Line.

We have arranged to have the Operating Department and Traffic Department furnish their respective operating costs and revenue information directly to you.

Very truly yours,

J. H. Watts
J. H. Watts
Assistant Chief Engineer

Enc.
CC: Mr. H. E. Ring
Mr. J. G. Patten
Mr. W. A. Kirk
Mr. S. Weinberg

DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT

OFFICE of INDUSTRIAL DEVELOPMENT

2 1/2 NORTH MAIN ST. CONCORD, N. H. MAILING ADDRESS: P.O. BOX 856, CONCORD, N.H. 03301
TELEPHONE 603 271-2621

August 17, 1971

Mr. John Barriger
Boston and Maine Corporation
Executive Department
150 Causeway Street
Boston, Massachusetts 02114

Dear Mr. Barriger:

In reference to your letter of April 29th regarding the study of the development potential on the Manchester to Rockingham Junction branch line, Mr. Marc A. Jolicoeur and Mr. H. Lawrence Henchey, Jr., were assigned to this office for the project sponsored by the New England Board of Higher Education and the New England Regional Commission. Enclosed is a copy of a news release pertaining to these efforts.

One of the prime considerations of the study is the amount and type of traffic which would make the profitable retention of the line possible. With this in mind, we would appreciate the following information:

- 1) Revenues on the Rockingham line over the past ten years and to include the type and amount of traffic.
- 2) The railroad's assessment of the amount and type of traffic required to make the line a profitable one.
- 3) Maintenance expenditures over the past 5-10 years in order to maintain the line in its present condition.
- 4) The Boston and Maine's estimate of the maintenance costs necessary to provide and maintain branch operations consistent with #2 above.

Messrs. Jolicoeur and Henchey will let you know when they plan to be in Boston in the hopes it may be possible for you to meet them.

Received in Office
Chief Executive Officer
Boston and Maine
Corporation, Boston
AUG 18 1971

RJL
8-24-71

BOSTON AND MAINE CORPORATION
Engineering Department

PORTSMOUTH BRANCH
(31.7 Miles)

East Manchester to Rockingham Jct. (including Fremont Branch)

<u>Maintenance of Way & Structures</u>	Year <u>1969</u>	Year <u>1970</u>
202 Roadway Maintenance	\$ 9,020.	\$ 5,630.
208 Bridges, Trestles & Culverts	450.	1,010.
212 Ties - Track	305.	1,344.
214 Rail	450.	500.
216 Other Track Material	3,340.	3,050.
218 Ballast	-	-
220 Track Laying & Surfacing	14,100.	12,530.
221 Fences, Snowsheds & Signs	2,300.	2,400.
249 Signals & Interlockers	4,270.	4,270.
271 Small Tools & Supplies	-	-
272 Removing Snow, Ice & Sand	4,320.	5,840.
273 Pub. Imp. - Overhead Bridges	825.	200.
273 Pub. Imp. - Grade Crossings	4,370.	340.
274 Injuries to Persons	750.	-
	<hr/>	<hr/>
TOTAL	\$ 44,500.	\$ 37,114.

Boston, Mass.
August 27, 1971

BOSTON AND MAINE CORPORATION
Engineering Department

PORTSMOUTH BRANCH
(31.7 Miles)

East Manchester to Rockingham Jct. (incl. Fremont Branch)

MAINTENANCE OF WAY COSTS OVER NEXT FIVE (5) YEARS

	<u>1st</u> <u>Year</u>	<u>2nd</u> <u>Year</u>	<u>3rd</u> <u>Year</u>	<u>4th</u> <u>Year</u>	<u>5th</u> <u>Year</u>	<u>5-Year</u> <u>Average</u>
1. Cut Brush	\$ 1,984.	-	-	-	-	\$ 397.
2. Remove Slash	9,324.	-	-	-	-	1,865.
3. Open Ditches - Spreader & Crane	5,780.	-	-	-	-	1,156.
4. Spray Weeds	-	\$ 2,250.	-	-	-	450.
5. Spray Brush	-	3,519.	-	-	-	703.
6. Install 17,500 Ties	-	-	\$ 96,250.	\$ 96,250.	-	38,500.
7. Spot Surface & Line	-	-	5,500.	5,500.	\$ 5,500.	3,300.
8. Install Switch Timber	240.	240.	240.	240.	240.	240.
9. Replace Broken Joints	1,200.	1,200.	1,200.	1,200.	1,200.	1,200.
10. Gaging	1,100.	1,100.	500.	200.	-	580.
11. Tighten Bolts - O.F.	2,900.	2,900.	2,900.	2,900.	2,900.	2,900.
12. Replace Broken Rails	1,200.	1,200.	1,200.	1,200.	1,200.	1,200.
13. Rebuild Crossings (5)	3,450.	3,450.	3,450.	3,450.	3,450.	3,450.
14. Snow Removal	5,700.	5,700.	5,700.	5,700.	5,700.	5,700.
15. Track Inspection	4,250.	3,270.	4,250.	3,270.	4,250.	3,858.
16. A.H.C.P.	4,270.	4,270.	4,270.	4,270.	4,270.	4,270.
17. Track Bridges	1,000.	1,405.	3,675.	3,575.	1,400.	2,211.
18. Overhead Bridges	100.	125.	50.	425.	125.	165.
TOTAL	\$42,498.	\$30,629.	\$129,185.	\$128,180	\$30,235.	\$72,145.

Boston, Mass.
August 27, 1971

BOSTON AND MAINE CORPORATION
Engineering Department

PORTSMOUTH BRANCH

East Manchester to Rockingham Jct., N.H. (incl. Fremont Br.)

GENERAL PHYSICAL CHARACTERISTICS OF THE LINE

Portsmouth Branch (27.2 Miles)

Passenger service was discontinued on the Portsmouth Branch September 26, 1954. Since 1954 the branch has been maintained for freight train service. The present state of maintenance of the line is poor. The brush condition is fair since it was cut in 1969. Ballast area has a heavy growth of weeds. Drainage is poor due to ditches being fouled with weeds, brush and dirt.

The maximum train speed is 20 miles per hour.

Rail consists of approximately 50% 85# Rail and 50% 72# Rail including a small quantity of 75# Rail. The line is only partially tie plated on certain curves. The ballast is gravel.

There are 6 sidetracks and 3 passing tracks, and 29 public grade crossings. There are 8 track bridges and 5 overhead bridges; 2 owned by the Railroad; 2 owned by State of New Hampshire; and 1 owned by City of Manchester. The maximum curvature is 7°-42' vicinity of Candia Depot grade crossing in Candia, and the maximum grade is 1.60% between Onaway Lake and East Candia.

Fremont Branch

Epping to Epping, N. H. (4.50 Miles)

GENERAL PHYSICAL CHARACTERISTICS OF THE LINE

Passenger service was discontinued on the W.N. & P. line January 6, 1932. Since 1932 this line has been operated as a branch for local freight train service. The present state of maintenance of the line is fair. The brush and weed condition is poor allowing little drainage. The ditches are fouled with brush, weeds, slash and needs to be cleaned.

The maximum train speed is 15 miles per hour.

Rail consists of mainly 85# with some 75#. The line is not tie plated, and the ballast is gravel.

There are 2 sidetracks and 1 passing track, and 3 public grade crossings. There is 1 track bridge, and no overhead bridges. The maximum curvature is 3° at Epping and the maximum grade is 0.84% also located at Epping.

Boston, Mass.
August 27, 1971

March 4, 1975

Mrs. Dean Wilber
Oak Hill Road
Concord, New Hampshire 03301

Dear Mrs. Wilber:

This letter is written in reply to yours dated February 28, 1975.

The Trustees of the property of Boston and Maine Corporation, have petitioned for authority to apply to the Interstate Commerce Commission for a certificate permitting the abandonment of the Epping to Fremont, N. H. line of railroad.

As required by the Bankruptcy Act, the petition was made to the U. S. District Court for the District of Massachusetts in In the Matter of Boston and Maine Corporation, Debtor, No. 70-250-M. This petition is pending in the Court.

Your interest in the proceedings may be brought to the attention of the Court.

Sincerely,

Sidney Weinberg

SW/m

Mrs. Jean Wilber
Oak Hill Road
Concord, New Hampshire
03301

February 28, 1975

Sidney Weinberg, Esq.
Boston and Maine Railroad
Legal Division
150 Causeway Street
Boston, Massachusetts

Dear Mr. Weinberg:

It is my understanding that the Boston and Maine
Railway has applied to the Public Utilities Commission
for abandonment of the roadway between
Epping and Fremont, New Hampshire.

As I have an immediate interest in this action,
would you please advise me on the following:

- 1) When is abandonment planned?
- 2) Why has there been such a delay?
- 3) Is there anything that can be done
to hasten the transaction?

I would appreciate receiving any related
information.

Very truly yours,

Janet P. Wilber

62 SPARKS STREET
CAMBRIDGE, MASSACHUSETTS 02138
Telephone: Area Code 617 - 876-0032

Summer:
Randolph, New Hampshire 03593
Telephone:
Area Code 603 - 466-3849

June 16, 1976

Hon. Frank J. Murray
United States District Judge
Federal Post Office and Court House
Boston, Massachusetts 02109

(Re: Boston & Maine
Corporation, Debtor)

Dear Judge Murray:

1. In the above reorganization, you have recently appointed me special master to hold hearings on certain requests of the railroad for leave to apply to the Interstate Commerce Commission for permission to abandon four branch lines, two of which are in New Hampshire. Today I met with counsel to discuss possible dates for hearings and other preliminaries. At that time, counsel suggested that they were about to seek my appointment by you to hear a controversy between the Debtor and the State of New Hampshire over the disposition of certain unused tracks on the route of lines already abandoned.

2. Mr. John J. Collins of the firm of Sherburne, Powers, and Needham, one Beacon Street, Boston, turns out to be counsel for the State of New Hampshire, in these matters. I have at least two friends who are partners in that firm and one former law clerk, Mr. W.T. Loomis, who is an associate there. Mr. F. Stanton Deland of that firm, who served for three years with me on the Harvard Board of Overseers, has kindly in 1975 and 1976 (since my retirement from the court) lent to me and a

Judge Murray - - - - 2

June 16, 1976

war-time colleague from Baltimore, his house at Hilton Head, North Carolina, in late January and early February, with expressions of hope that a similar loan of the house would be possible another year. So far as I know, Mr. Deland takes no active part in the railroad matter. On the other hand, I am, of course, also well acquainted with Mr. Robert Meserve, one of the railroad's trustees. I am conscious of no bias in any of these matters, but (as a consequence of today's conference) became certain that I should bring the circumstances outlined above to your attention and to that of counsel. I shall seek leave to withdraw as master, of course, if the circumstances outlined above seem likely to (or may) cause concern or embarrassment to you or to any counsel.

3. I know of no possible reason for my withdrawal in the two abandonments which are wholly within Massachusetts.

4. I trust that you and counsel will let me know your views.

Yours faithfully

R. Ammi Carter

Copies to Mr. John Collins, Mr. Robert G. Parks,
Mr. Sidney Weinberg

[I am sending this long-hand letter because tomorrow is a holiday - as there seems to be some need of proceeding fairly rapidly.]

July 9, 1978

Honorable R. Ammi Cutter
62 Sparks Street
Cambridge, Massachusetts 02138

Re: Hearings, Abandonment, Manchester to Newfields, N. H.

Dear Justice Cutter:

I submit herewith two (2) copies of an additional, late-filed exhibit on which the Trustees intend to rely at the above-captioned hearings which bears on the issue of alternatives to the abandonment.

The dependence of the finalization of this exhibit on the finalization of the other exhibits and the time required to prepare it thereafter prevented its earlier submission.

Respectfully,

Sidney Weinberg

SW/maw

Enc.

cc: John T. Collins, Esq.

July 8, 1978

Honorable R. Ammi Cutter
62 Sparks Street
Cambridge, Massachusetts 02138

Re: Hearings, Abandonment, Manchester to Newfields, N. H.

Dear Justice Cutter:

Enclosed are two copies of each of the exhibits which I forwarded to you earlier.

I apologize for the imperfect copies of the minutes of the Trustees' meetings which I have corrected in conformity with the records.

Very truly yours,

Sidney Weinberg

SW/maw

Enc.

June 26, 1978

Honorable R. Ammi Cutter
63 Sparks Street
Cambridge, Massachusetts 02138

Re: Boston and Maine Corporation, Debtor

Dear Justice Cutter:

As counsel for the Trustees in their petitions for authority to proceed with abandonment of certain lines which the Court referred to you as Special Master, I have received a copy of your letter to Judge Murray dated June 16, 1978.

I see no reason for your withdrawing as Special Master in those matters.

Respectfully,

Sidney Weinberg

cc: Honorable Frank J. Murray
John T. Collins, Esq.

SHERBURNE, POWERS & NEEDHAM

ONE BEACON STREET · BOSTON · MASSACHUSETTS 02108

617 / 523-2700

WALTER POWERS
OF COUNSEL

F. WILLIAM ANDRES
JOHN BARR GOLAN
F. STANTON DELAND, JR.
NEAL HOLLAND
ROBERT F. WHITE
DANIEL NEEDHAM, JR.
JOHN T. COLLINS
STEPHEN A. HOPKINS
EARL J. HIRSHMAN

JOHN W. SHERBURNE
(1911-1999)
DANIEL NEEDHAM
(1918-1974)

THEODORE L. TILDENSON
ROBERT E. MCWALTER
C. THOMAS SWAIN
JAMES POLLOCK
WILLIAM V. TRIPP, III
STEPHEN S. YOUNG
ANTHONY E. BARTHELLE
WILLIAM F. HACHEN
JACOB C. GIERERT

JOHN L. DALY
SARAYLA D. DEUTCH
PHILIP J. NOTOROULOS
BYRON E. WOODMAN, JR.

WILLIAM T. LOONIS
G. MITCHELL COHEN, III
HAROLD W. POTTER, JR.
MICHAEL P. BAGLEY

CONCORD OFFICE
747 MAIN STREET, CONCORD, MASSACHUSETTS 01742
617 / 369-1811

June 25, 1976

Honorable R. Ammi Cutter
62 Sparks Street
Cambridge, Massachusetts 02138

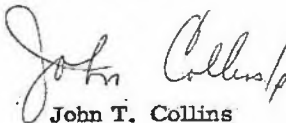
Re: Boston and Maine Corporation, Debtor

Dear Justice Cutter:

I have received a copy of your letter to Judge Murray dated June 16, 1976.

Please be assured that I see no reason for your withdrawing as Master in the above matter.

Respectfully,


John T. Collins

pmc

cc: Honorable Frank J. Murray
Robert Parks, Esq.
Sidney Weinberg, Esq. ✓

June 26, 1976

**Mr. Austin W. Jones, Jr.
Chief Deputy Clerk
U. S. District Court for the District of Massachusetts
P. O. C. E.
Boston, Massachusetts 02109**

**Re: in re Boston and Maine Corporation, Debtor;
Petition for Order No. 158**

Dear Sir:

Enclosed herein are the original and one copy of each of the exhibits on which the Trustees of the property of Boston and Maine Corporation, Debtor, intend to rely in support of their petition for the above-captioned Order which are submitted in accordance with the provisions therefor contained in the order of notice dated June 22, 1976.

Sincerely,

Sidney Weinberg

SW/maw

Enc.

**cc: Honorable R. Anani Cutter
82 Sparks Street
Cambridge, Massachusetts 02138**

**John T. Collins, Esq.
Sherburne, Powers & Needham
One Beacon Street
Boston, Massachusetts 02108**

July 14, 1976

Mr. Henry R. Mallek
Keller Products Inc.,
41 Union Street
P. O. Box 105
Manchester, NH 03105

Dear Mr. Mallek:

Referring to your letter of July 12 relative to the proposed abandonment of the Railroad line from East Manchester to Rockingham Junction, New Hampshire.

I am forwarding copy of your letter to our Attorney who is handling the abandonment proceedings.

Very truly yours,

E. J. Marrs
General Industrial Agent
Real Estate & Industrial Development

EJM/rit

cc: Mr. S. Weinberg- Enclosed is copy of Mr. Mallek's letter for your information.

W. A. Kirk

W. A. Kirk (m)

July 15, 1976

**Honorable R. Ammi Cutter
82 Sparks Street
Cambridge, Massachusetts 02138**

**Re: Hearing on Petition for Order No. 159
(Abandonment, Manchester to Newfields, N.H.)
July 12, 1976**

Dear Justice Cutter:

At the above-captioned hearing, Witness Parks was not able to state whether or not Robert W. Meserve was the sole Trustee of the property of Boston and Maine Corporation, Debtor at the time of the meeting of March 28, 1973, an extract from the record of which was incorporated in Sheets 10-13 of Exhibit 1 at the hearing.

Mr. Meserve was the sole Trustee on that date. The records of that meeting also indicate that the following persons were in attendance throughout:

**Morris G. Sherman - Special Assistant to Trustees
Charles W. Mulcahy, Jr. - Counsel for Trustees
Robert G. Parks - Assistant Counsel for Trustees
Paul W. Cherington - Chief Executive Officer
W. Frederick Wilson - Secretary to the Trustees**

Respectfully,

Sidney Weinberg

SW/maw

cc: John T. Collins, Esq.

Ms. Kathy Good

July 16, 1976

Mr. Henry R. Mallek
Keller Products Inc.
41 Union Street
P. O. Box 105
Manchester, New Hampshire 03105

Dear Mr. Mallek:

Your letter to Mr. Marrs, Industrial Agent for B&M, dated July 12, 1976 has been referred to me for reply.

Notice of the hearing on B&M's petition to the Reorganization Court for authority to proceed with abandonment of the Manchester to Rockingham Junction, N. H. line, held July 12-13, 1976, was afforded to each rail customer of record on the line, including your tenant, Emery Waterhouse Company, Inc. who is not currently such a customer. Kalwall Corporation and Keller Products, Inc. have never utilized rail service at Manchester, N. H.

I am sending a copy of your letter and this reply to the Special Master who heard B&M's petition for incorporation with other letters of protest to the abandonment as a record of protest only.

Abandonment of a line of railroad of railroad carriers in reorganization, such as B&M, must have the prior approval of both the Reorganization Court and the Interstate Commerce Commission. If B&M obtains the approval of the Reorganization Court to proceed with an application for abandonment to the Commission, appropriate notice of hearing on such application will be afforded, including general notice by newspaper publication.

Sincerely,

Sidney Weinberg

SW/maw

cc: Hon. R. Ammi Cutter
John T. Collins, Esq.
Counsel for State of New Hampshire
Sherburne, Powers and Needham
1 Beacon Street
Boston, Mass. 02108

keller products inc

41 UNION STREET P.O. BOX 105 MANCHESTER, NEW HAMPSHIRE 03105 TEL. A/C 603 627-7887



July 12, 1976



Mr. E. J. Marrs, Gen. Industrial Agent
Boston and Maine Corporation
Iron Horse Park
North Billerica, Massachusetts 01862

Dear Mr. Marrs:

Thank you for your letter of June 30, 1976 pin-pointing the location of your yard limit on the Rockingham Junction line.

If you will not offer service from your Manchester yard beyond this point, it will seriously affect our Kalwall Corporation operation at 1111 Candia Road and that of our tenant at the same location.

It is suggested that you move your yard limit in an easterly direction beyond our operation and perhaps that of others in the area to avoid strong objections and actions opposing your discontinuance of this line.

Please may I hear from you?

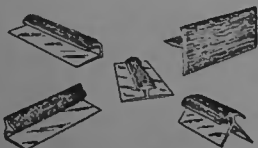
Cordially yours,

KELLER PRODUCTS, INC.

Henry R. Mallek

HRM/ms

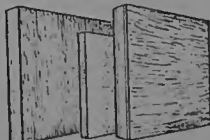
cc: John Scalley



KALWOOD®



MOLDED PLY SEATS
MOLDED PLYWOOD



KELLER
SANDWICH PANELS



KALWALL®
FIBERGLASS PANELS

July 27, 1976

Honorable R. Ammi Cutter
62 Sparks Street
Cambridge, Massachusetts 02138

Dear Justice Cutter:

Re: In the Matter of Boston and Maine Corporation, Debtor,
No. 70-250-M;
Hearings on Petition For Order No. 159, July 12-13, 1976

Enclosed, bound in looseleaf, are copies of the exhibits in
evidence at the above-captioned hearings.

Respectfully,

Sidney Weinberg

SW/maw

Enc.

cc: John T. Collins, Esq.

62 SPARKS STREET
CAMBRIDGE, MASSACHUSETTS 02138
Telephone: Area Code 617 - 876-0032

Summer:
Randolph, New Hampshire 03593
Telephone:
Area Code 603 - 466-3849

August 3, 1976

John J. Collins, Esq.
Sherburne, Powers, & Needham
ONE Beacon Street, Boston 02108

Robert G. Parks Esq. ✓
Sidney Weinberg, Esq.
Boston & Main ~~Corp.~~ Corp. Dept.
Executive Offices, Room 800,
150 Causeway Street, Boston 02114

Miss Kathleen L. Good
Room 1209, Federal Bldg. Boston, MA.

Dear Miss Good and Gentlemen:

(Boston & Main Corp.
No. 70-250 M - Petition for
Order 159)

1. I have received and read the remarkably accurate transcript of the hearings on July 12 and 13. I enclose a copy of a few corrections of testimony which I noticed while going over the pages. Other corrections should be sent to Miss Good and me as promptly as possible.
2. My doctor has given me permission to go to New Hampshire for a month, letter placed in the mail to me from August 5 to September 2 should be addressed to me:

VALLEY ROAD, RANDOLPH (N.H.)
VIA R.F.D. NO. 1
BERLIN, NEW HAMPSHIRE 03570

Tel.
(603)-466-3849

3. I shall await briefs with interest
yours faithfully
Richard L. Plaster

SUBMITTED CORRECTIONS OF TESTIMONY TRANSCRIPT

BY SPECIAL MASTER

JULY 12, 1976

<u>PAGE</u>	<u>LINE</u>	
2	19	"no" should read "now" and insert "a" after "appearing"
	21	"not" should read "now"
7	19	"deliberative role"
54	20	"Berlin" <u>not</u> "building"
74	25	"to" before "which"
80	5	"is" <u>not</u> "as"
92	18	"prescribed" <u>not</u> "proscribed"
99	15	"you" <u>not</u> "I"
108	17	"apart from" <u>not</u> "as far as"
136	25	"discernable" <u>not</u> "presentable"
177	21	"permission" <u>not</u> "the commission"
2-15	44	"objections" <u>not</u> "selectmen"
2-17	10	"was" <u>not</u> "is"
2-22	17	"or" <u>not</u> "if"

August 18, 1976

Honorable R. Amzi Cutter
Valley Road, Randolph (N. H.)
via R. F. D. No. 1
Berlin, New Hampshire 03570

John T. Collins, Esq.
Sherburne, Powers and Needham
One Beacon Street
Boston, Massachusetts 02108

Miss Kathleen L. Good
Room 1206, Federal Building
Boston, Massachusetts 02109

Dear Judge Cutter, Miss Good and Mr. Collins:

Re: Boston and Maine Corporation No. 70-250M - Petition for Order
159

I respectfully make the following suggestions for corrections to the transcript of testimony at the hearings in the above-entitled matter on July 12 and 13, 1976.

<u>Page and Line</u>	<u>Reads</u>	<u>Should Read</u>
P. 5, l. 20	Preferred	proffered
P. 14, l. 18	minutes	meeting
P. 50, l. 11	addendum	abandonment
P. 77, l. 27	direction through	direction of through
P. 87, l. 23	or	on
P. 109, l. 14	using our lock	use our long
P. 110, l. 18	expensive	expense of
P. 130, l. 2	on	beyond
P. 143, l. 9	handle	handled

Hon. R. Ammi Cutter
John T. Collins, Esq.
Miss Kathleen L. Good

-2-

August 18, 1976

<u>Page and Line</u>	<u>Reads</u>	<u>Should Read</u>
P. 153, l. 1	concert	concept
P. 155, l. 8	offering	offing
P. 160, l. 6	Insert under the column heading "In Evid. ", "146"	

Respectfully,

Sidney Weinberg

SW/maw

August 20, 1976

Hon. R. Ammi Cutter
Valley Road, Randolph (N. H.)
Via R. F. D. No. 1
Berlin, New Hampshire 03870

Re: Boston and Maine Corporation, Debtor
No. 70-250-M, Petition for Order No. 159

Dear Justice Cutter:

In accordance with the request in your letter, dated April 8, 1976, I am enclosing a Boston and Maine system map showing the points of interest referred to at the hearings and lines proposed by the Trustees for abandonment which was introduced in the ICC reorganization proceedings (F. D. 26115), now marked as Exhibit No. 11 in the hearing on Petition for Order No. 159.

Respectfully,

Sidney Weinberg

SW/maw

Enc.

cc: John T. Collins, Esq.

August 20, 1976

Hon. R. Ammi Cutter
Valley Road, Randolph (N. H.)
Via R. F. D. No. 1
Berlin, New Hampshire 03570

Re: Boston and Maine Corporation, Debtor - No. 70-250-M
Petition for Order No. 159

Dear Justice Cutter:

In the postscript to your letter, dated April 8, 1976, you requested certain information regarding railroad mileage for traffic routings between Portsmouth, N. H. and points of B&M interchange of traffic with other railroads as affected and unaffected by abandonment of the Manchester-Newfields, N. H. line of railroad sought in Petition for Order No. 159.

The principal points of interchange with other roads for such B&M traffic, respective mileages involved, and maintenance levels for the respective routings are shown on the attachment hereto.

Sincerely,

Sidney Weinberg

SW/maw
Enc.

cc: John T. Collins, Esq.

B&M-Portsmouth, N. H. Routings to and from Interchanges

<u>Point of Interchange</u>	<u>Interchanged With</u>	<u>Mileage assuming routing via branch</u>	<u>Mileage assuming no routing via branch</u>
Rotterdam Jct., N. Y.	Conrail	251	242
Mechanicville, N. Y.	Delaware & Hudson R. R.	231	221
White River Jct., Vt.	Central Vermont R. R. and Canadian Pacific R. R.	127	236
Worcester, Mass.	Providence & Worcester R. R.	108	98
Springfield, Mass.	Conrail	192	182
Portland, Me.	Maine Central	(not involved - 65 miles)	

The F. R. A. class levels of the maintenance by B&M for segments of the routes are:

<u>Point of Interchange</u>	<u>Segment Maintenance of lines on routing via branch</u>			<u>Segment Maintenance of lines on routing excluding branch</u>		
	<u>Segment</u>	<u>Miles</u>	<u>F. R. A. Class</u>	<u>Segment</u>	<u>Miles</u>	<u>F. R. A. Class</u>
Rotterdam Jct., NY	Portsmouth-Manchester, NH	40	I	Portsmouth-Rockingham Jct., NH	10	I
	Manchester, NH-Rotterdam	211	III	Rockingham Jct.-Rotterdam	232	III
Mechanicville, NY	Portsmouth-Manchester, NH	40	I	Portsmouth-Rockingham Jct., NH	10	I
	Manchester-Mechanicville	191	III	Rockingham Jct.-Mechanicville	211	III
White River Jct., Vt. ¹⁾	Portsmouth-Manchester, NH	40	I	Portsmouth-Rockingham Jct., NH	10	I
	Manchester-Concord, NH	18	III	Rockingham Jct.-E. Deerfield, Ma	137	III
	Concord-White River Jct.	69	II	East Deerfield	1	I
				East Deerfield-White River Jct.	88	III
Worcester, Mass.	Portsmouth-Manchester, NH	40	I	Portsmouth-Rockingham Jct., NH	10	I
	Manchester-Worcester	68	III	Rockingham-Worcester	88	III

1) In 1975, 90 carloads of freight were forwarded and received through White River Junction at Portsmouth, N. H. out of a total of 1818 carloads (5%).
The segment of the routing between Concord, N. H. and White River Junction, Vt. is on a line leased from the Northern Railroad which the Trustees propose to disaffirm in their Reorganization Plan.

<u>Point of Interchange</u>	<u>Segment Maintenance of lines on routing via branch</u>			<u>Segment Maintenance of lines on routing excluding branch</u>		
	<u>Segment</u>	<u>Miles</u>	<u>F. R. A. Class</u>	<u>Segment</u>	<u>Miles</u>	<u>F. R. A. Class</u>
Springfield, Mass.	Portsmouth-Manchester, NH	40	I	Portsmouth-Rockingham Jct, NH	10	I
	Manchester-E. Deerfield, Ma.	116	III	Rockingham Jct-E. Deerfield, Ma	137	III
	E. Deerfield	1	I	E. Deerfield	1	I
	E. Deerfield to Springfield	35	III	E. Deerfield-Springfield	34	III
Portland, Me.	Portsmouth-Rockingham Jct, NH	10	I	Portsmouth-Rockingham Jct, NH	10	I
	Rockingham Jct.-Portland	55	III	Rockingham Jct-Portland	55	III

August 23, 1976

Hon. R. Ammi Cutter
Valley Road, Randolph (N.H.)
Via R. F. D. No. 1
Berlin, New Hampshire 03570

Re: Boston and Maine Corporation, Debtor - No. 70-250-M
Petition for Order No. 158

Dear Justice Cutter:

An error appears on the attachment to my letter dated August 20, 1976.

The mileage between Manchester-Mechanicville in the description of the F. R. A. class levels of maintenance should read "191" instead of "81".

Sincerely,

Sidney Weinberg

SW/maw

cc: John T. Collins, Esq.

August 27, 1976

Mr. George F. McGrath, Clerk
U. S. District Court for the District of Massachusetts
1525 P. O. C. H.
Boston, Massachusetts 02109

Re: In the matter of Boston and Maine Corporation, Debtor
No. 70-250-M; Petition for Order No. 159

Dear Sir:

Enclosed herein, for filing, please find the Trustees' Brief on the evidence at the hearing on the above-captioned petition.

Sincerely,

Sidney Weinberg

cc: Hon. R. Ammi Cutter, Special Master
Valley Road, Randolph (N.H.)
Via R. F. D. No. 1
Berlin, New Hampshire 03570

John T. Collins, Esq.
Counsel for the State of New Hampshire
Sherburne Powers and Needham
One Beacon Street
Boston, Massachusetts 02108

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

In the matter of

BOSTON AND MAINE CORPORATION
Debtor

In Proceedings for
The Reorganization of a Railroad

No. 70-250-M

Hearing on Petition for Order No. 159

TRUSTEES' BRIEF

Sidney Weinberg, Esq.
Attorney for Robert W. Meserve and
Benjamin H. Lacy, Trustees of the
property of Boston and Maine Corporation,
Debtor
150 Causeway Street
Boston, Massachusetts 02114

Due Date: August 31, 1976

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In the matter of

In Proceedings for
The Reorganization of a Railroad

BOSTON AND MAINE CORPORATION
Debtor

No. 70-250-M

Hearing on Petition For Order No. 159

TRUSTEES' BRIEF

STATEMENT OF CASE

The petition of the Trustees for Order No. 159 seeks authority from the Reorganization Court to proceed with an application to the Interstate Commerce Commission for a certificate of public convenience and necessity permitting the abandonment of the line of railroad in the Debtor's estate between Valuation Station No. 1964+41 in the City of Manchester to Valuation Station No. 528+24 in the Town of Newfields, approximately 27.2 miles in length, together with a branch line thereof, being the Fremont branch, so-called, between Valuation Station No. 3921+10 in the Town of Epping and Valuation Station No. 3683+20 in the Town of Fremont, approximately 4.5 miles in length, all within the Counties of Hillsborough and Rockingham in the State of New Hampshire, hereinafter in the aggregate referred to as "the line".

The petition is brought to satisfy the requirements for abandonment of a line of railroad which are imposed on trustees of railroads in reorganization by the provision of Section 77 (o) of the Bankruptcy Act (11 U.S.C. 205 (o)). That section, in material part, provides:

"(o) The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by the Interstate Commerce Act as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge."

The U. S. Court of Appeals for the First Circuit in In Re Boston and Maine Corporation, 455 F. 2d 1205, 1208 (1972) decided that approval of a Reorganization Court to the vote of trustees of railroads in reorganization to proceed with an application for the abandonment of a line in a debtor's estate forms part of a three-step process in each step of which Section 77 (o) requires that the economic interests of the railroad in such abandonment be balanced, or reviewed as to balance, against the undue or adverse affect on the public interest resulting therefrom.

"Under the statutory scheme, rail abandonment involves the trustees, the court, and the Commission in a three-step process. First, the trustees decide whether to abandon a line, balancing the economic interests of the railroad against unduly affecting the public interest. Thereafter the district court must determine whether the trustees' decision is justified. Finally, if required by the Interstate Commerce Act, Chapter 1 of Title 49, U.S.C., the court-approved abandonment is presented to the Commission for its approval and authorization. It seems clear to us that if

the district court is to consider whether the trustees' abandonment request is justified, it must receive evidence on all aspects of the statutory criteria. "

STATEMENT OF THE ISSUE

Whether or not a balance of the hearing evidence relating to the statutory criteria required by Section 77 (a) of the Bankruptcy Act warrants and supports a finding that the trustees' decision to seek the abandonment of the line was justified.

ARGUMENT

1. THE TRUSTEES ARE NOT REQUIRED TO SUSTAIN AS HIGH A BURDEN OF PROOF TO OBTAIN APPROVAL OF THE REORGANIZATION COURT TO THEIR VOTE TO ABANDON A LINE OF RAILROAD AS IS REQUIRED OF SOLVENT RAILROADS BY THE INTERSTATE COMMERCE COMMISSION.

The Court's holding in In re Boston and Maine Corporation, cit. supra, that, in determining whether the trustees' decision to abandon was justified, the District Court must weigh the balance between the interests of a debtor's estate in the abandonment of a line of railroad against the undue adverse affect of such abandonment on the public interest merely restates the same weighing process in which the Commission engages in deciding abandonment applications of solvent railroads in the first instance under the provisions of Section 1 (18-21) of the Interstate Commerce Act. The insolvency of the applicant in petitions to the Reorganization Court for approval of the trustees' decision to apply for abandonment of the line increases

the weight which ought to be assigned by the Reorganization Court to the interest of the debtor estate in such abandonment and requires protestants to the abandonment to offer to the Reorganization Court proof of their reliance on the freight service sought to be abandoned and the adverse affect such abandonment would have on their business and the public interest sufficient to offset the added weight that the insolvency of the debtor suggests should be attributed in favor of abandonment. Such offsetting proof must be of a more persuasive nature than that required of protestants to abandonments in proceedings under Section 1 (18) of the Act where protestants are not required to meet proof of a dire financial need of an applicant in reflection of its interest in a line's abandonment.

Colorado v. U. S., 271 U.S. 153, 168-169 (1925)

Purcell v. U.S., 315 U.S. 381, 383-385 (1941)

State of Nebraska v. U.S., 255 F. Supp. 718, 721-723 (1966)

Washington and Old Dominion Users Association v. U.S.,
287 F. Supp. 528, 531-534 (1968)

Washington and Old Dominion R. Abandonment - Virginia,
331 I.C.C. 587, 597-598 (1968)

"The dire financial condition of the railroad is a factor which outweighs considerations of public convenience and necessity for the line's continuation. Not only is the applicant's financial position such that it cannot be expected to risk operating such a marginal line in the absence of real prospects for a significant increase of business, but the benefits to be gained by it through savings and salvage upon its abandonment will be of considerable importance in preserving more essential rail transportation in southern New England. In determining the issue of public convenience and necessity, consideration must be given to the needs of the public using the entire facilities of the railroad as distinguished

from the relatively few actual users of the line to be abandoned." N. Y., N. H. & H. R. R. Abandonment, 324 I. C. C. 396, 403-404. (1965).

2. THE EVIDENCE INTRODUCED BY THE TRUSTEES ON THE STATUTORY CRITERIA SUSTAINS THE BURDEN OF PROOF IN WARRANT AND SUPPORT OF A FINDING THAT THEIR DECISION TO SEEK THE ABANDONMENT OF THE LINE IS JUSTIFIED.

Evidence introduced by the trustees showed that the estate of the debtor suffered losses of approximately \$32,000.00 and \$30,000.00 as a result of the line's operation at minimal service levels in 1974 and 1975, respectively.

Exhibit 7, Tr. 146; Revenue: Witness Rourke, Tr. 91, 96-97. Expense: Exhibit 4, Tr. 146; (a) Maintenance of Way and Structures: Witness Berkshire, Tr. 35-38; (b) Maintenance of Equipment, (c) Transportation, (d) Car Hire: Witness Culliford: Tr. 135-136; (e) Beyond Line Costs: Witness Rourke, Tr. 91-96.

Further, the evidence showed that, over the next ensuing 5-year period, the trustees will suffer an estimated annual average loss of approximately \$48,000.00 for the continued operation of the line at the same minimal service level due principally to some increased maintenance of way costs required to continue maintenance of the line in a condition adequate for the existing service demand.

Exhibit 5, Tr. 146: Revenue: Witness Rourke, Tr. 98.

Expense: (a) Maintenance of Way and Structures: Witness Berkshire, Tr. 41-42; (b) Maintenance of Equipment, (c) Transportation, (d) Car Hire: Witness Cullford, Tr. 138-139, (e) Beyond Line Costs: Witness Rourke, Tr. 91-96.

Net salvage value of the line to the estate of the debtor in the event of abandonment, including net line resale value, is approximately \$492,000.00, though approximately one-half of the rail recovered therefrom which is suitable for relay on other lines essential to the provision of rail service within the State of New Hampshire was required and would be used for that purpose.

Exhibit 3, Tr. 164: Witness Berkshire, Tr. 33-35, 53-54;
Witness Kirk, Tr. 163-164.

Shipper demand for rail service to and from stations on the line has consistently declined during the 10-year period 1966-75. Overall, carloads handled on the line in 1975 were only 2.6% of the carloads handled in 1966.

Exhibit 8, Tr. 88; Witness Rourke, Tr. 87-90.

Continuation of B&M rail freight service to other New Hampshire localities is essential to the economies of those localities and to the prospect for industrial development in those localities.

Witness Gulderson, Tr. 2-30-31.

In the evidence respecting the alternative to abandonment of continuing to provide rail freight service to Epping, N. H. from a westerly direction inasmuch as the demand of customers at Epping represented 86%

of the total rail freight service demand of all customers on the line, Trustees showed that, in the 5-year period, 1971-1975, the annual demand of customers at Epping for rail freight service had decreased from 102 carloads of received freight to 70 and from 20 carloads of forwarded freight to 0.

Exhibit 5, Tr. 88: Witness Rourke, Tr. 88-90.

A study of that alternative assumed service in a westerly direction on a one day per week basis. The study showed that such service could only be extended by utilizing an incremental locomotive and train crew. Such service would operate at an annual loss of approximately \$28,000.00 and eliminate possible labor savings in the B&M system of the salaries of four transportation department employees.

Exhibit 6, Tr. 146: Witness Rourke, Tr. 98-101;

Witness Culliford, Tr. 139, 155.

The evidence on that alternative also showed that, in the cases of the two substantial customers, Home Gas Company would not be injured in its competition with other dealers in LPG because the competition relied solely on trucks for the movement to LPG storage in the Epping area, and, that, at most, Merrimack Farmers relied on rail only for mill in transit shipments from Concord, N. H. to its store at Epping, and that such rail shipments were only 10% to 25% of the total of rail and truck shipments to the store. Abandonment of rail service at Epping would have no affect on either customer's rail usage, except some additional costs to truck their existing inbound shipments a distance of eight miles from Exeter, N. H.

Witness Rourke, Tr. 103-104, 101.

3. THE COMPONENTS OF THE EVIDENCE INTRODUCED BY THE TRUSTEES TO SUSTAIN THEIR BURDEN OF PROOF ON THE STATUTORY CRITERIA ARE VALID AND ENTITLED TO WEIGHT ON THE FACTS TO WHICH THEY ARE ADDRESSED

- (a) Expense of operating the line (Exhibits 4, 5 and 7).

Witness Berkshire testified that the respective costs attributed to the expense for maintenance of the line during the periods described in the exhibits were either the actual records of such labor and material expense which were recorded in the usual course of business or were the result of estimates of such costs based on the recollection and records of field personnel and their supervisors and review of the reasonableness of the costs attributed to maintenance of the line by his subordinate officers in the engineering department and his own further review. (Tr. p. 38). Approximately 50% of the total costs attributed to the expense for maintenance of way and structures in the exhibits was for the expense for maintenance of signals and interlockers which were recorded during the periods involved in the usual course of business of the signal sub-department. (Tr. p. 65-66).

Witness Culliford testified, and Sheets 2 and 3 of Exhibit 4 reflect, that the costs attributed to the line for expenses relating to maintenance of equipment were based on system averages; transportation costs were principally the wage cost and fringe benefits actually paid to or accrued for the accounts of members of train crews operating service on the line. Some incidental costs attributed to transportation costs on the line in the exhibits were based on system averages. The expense of freight car hire were actual

costs extracted from per diem records.

In the absence of recorded actual expenditures for the expense of maintaining and operating light density branch lines which the Commission recognizes as a clerical burden unreasonable to impose generally on railroads, the Commission, in abandonment proceedings, has accepted reasonable estimates based either on system averages or on the recollection of railroad officials as to the actual work performed on such branch lines.

Pendel Co. - Abandonment Between Wilmington Junction and New Wilmington, 342 I. C. C. 570, 575-576.

Penn Central - Abandonment, Canandiagua Br., Ontario County, N. Y., 342 I. C. C. 139, 143, 145.

Erie Lackawanna R. Co. Abandonment, 333 I. C. C. 670, 671.

In review of Commission decisions on abandonment applications, appellate courts have upheld the allocation of costs to branch line expense provided that such allocation is neither arbitrary nor otherwise clearly erroneous.

Transit Commission of State of New York v. U. S. 284, U. S. 360, 370 (1932).

Moeller v. I. C. C. 201 F. Supp. 583, 588 (S. D. Iowa 1962).

(b) Revenue and expense beyond line

Witness Rourke testified that the revenues attributed to the income for the line in the periods shown in the trustees' exhibits represented the actual gross revenue which the trustees had earned on traffic forwarded and received at points on the line (Tr. 96-97). He also testified that the expense item labeled "beyond line cost" represented an estimated expense

for handling the same traffic on B&M's system beyond the line on a pro rate basis which the Commission had accepted as reasonable to establish such expense. The carload movements constituting such traffic had been studied individually and the points of interchange for each movement identified to establish the mileage that each carload travelled on the branch and beyond the branch on B&M's system to and from the interchange point. (Tr. 91-96).

This formula has been accepted by the Commission and appellate courts as reasonable in establishing expense deductions against gross revenue attributable to a line sought to be abandoned for the expense of handling the movements from which the gross revenue was derived.

Chicago & N. W. Ry. Co. Abandonment, 275 I. C. C. 759, 775-776 (1951).

Chicago & N. W. Ry. Co. Abandonment, 282 I. C. C. 525, 531 (1952).

New York, N. H. & H. R. Co. Abandonment, cit. supra, at 398.

Penn Central - Abandonment, Canandiagua Br., Ontario County, N. Y., cit. supra, at 144-145.

Moeller v. I. C. C., cit. supra at 587.

In Re Boston and Maine Corporation, cit. supra at 1209.

4. PROTESTANTS FAILED TO MEET THEIR BURDEN OF PROOF ON THE STATUTORY CRITERIA IN OFFSET OR OUTWEIGHT OF TRUSTEES' EVIDENCE THAT ABANDONMENT OF THE LINE IS IN THE INTEREST OF THE ESTATE OF THE DEBTOR.

No rail freight customer on the line appeared or offered witnesses

on their behalf at the hearings to demonstrate their need, or the need in the general public interest, for the continuation of service on the line though notice of the hearing was duly mailed to each of them eleven (11) days prior to the commencement of the hearings which continued for two (2) days. An inference of their lack of any substantial interest in the affect that abandonment of the line would have on their businesses may be drawn from their failure to appear during the two day hearing despite the attendance and representation of the public interest opposed to such abandonment by counsel for the State of New Hampshire. Their failure to appear and demonstrate the adverse affect that the additional trucking costs from points close to their businesses would have on their ability to compete in the distribution of the commodities which they shipped by rail discounts whatever weight would otherwise be given to their representation of the public interest in opposition to abandonment of the line.

Chicago, M., St. P. & P. R. Co. Abandonment, 342 I. C. C.
146, 152.

Industrial development on the line which would increase customer demand for rail freight service has failed to materialize since the trustees discounted the prospect for such increased business in 1972-1973 when they decided to seek the line's abandonment. Without any foundation from any experience of the past four years, protestants' witness could only estimate that increased demand for rail freight service on the line would materialize within five to ten years.

Witness Gulderson, Tr. 2-31-34.

The public interest in overhead (bridge) traffic to and from Portsmouth, N. H. will not be substantially affected by abandonment of the line. Protestants' witness Chadwick was the only witness offered to demonstrate the public need for such traffic routing. His testimony was limited to the need for such routing in the movement of oil traffic from C. H. Sprague Co. at Portsmouth to northern New England points. The thrust of his testimony was that prior to the change in routing of such traffic in 1973 which eliminated routing over the line, his company had forwarded 10 cars per week of oil to northwestern New England points during the winter months (at or through White River Junction, Vt.). He estimated that the annual volume was approximately 400 cars, but according to conflict in his own testimony as to the volume prior to the routing change, it could have been as little as 200 cars annually (10 cars/wk during five months = 200 cars approximately) or as much as 840 cars annually (200,000 barrels per year x 42 gals. per barrel = 8,400,000 gals. \div 10,000 gals. per car = 840 cars). As a result of the change in the service routing of this traffic, he testified that one-half to two-thirds of this traffic had been diverted to truck partly because of customer complaints against the poor service as a result of the new routing and partly, on his own routing changes, because of additional leasing costs for additional rail cars to make up for the longer time it took within which empty tank cars were returned for loading.

However, he had no personal knowledge of complaints against the new routing from customers formerly served by routings over the line and

did not know whether the customers were served more expeditiously by the old routings or the routing after the routing change was made in 1973. (Tr. 2-48). His testimony is in conflict with Witness Rourke's testimony that overhead oil traffic on the line from Portsmouth to White River had been diverted to truck since 1966, that the destination customers were not concerned with the time interval for the delivery of the oil which, at the worst, would amount to a one-day difference in such time interval and that B&M had experienced no loss of customers due to dissatisfaction with the new routing. (Tr. 107-113). Witness Chadwick's testimony is also in conflict with Witness Culliford's testimony that the more frequent and faster service provided by the new routing provided oil customers at the White River destination with better service (Tr. 159-160).

Witness Culliford's testimony also established that the concentration of routings on B&M's system main lines effected economies in system operations (Tr. 144).

The Commission does not prescribe routings for overhead traffic in order to improve the operating results of a particular line, nor does it require the allocation of bridge traffic revenue to a line proposed to be abandoned where such revenues will be substantially retained by the abandoning carrier in handling the traffic over an alternate route.

CB&Q RR Abandonment, 271 I. C. C. 261, 279.

C&N.W. Ry. Trackage Rights, 317 I. C. C. 350, 354.

Southern Pac. Co. Abandonment, 320 I. C. C. 38, 41.

M. P. RR Abandonment, 324 I. C. C. 357, 367.

5. THE MINUTES OF THE TRUSTEES' VOTE, RECONSIDERATION AND REAFFIRMATION OF SUCH VOTE (EXHIBIT 1) WARRANT A FINDING THAT THEY CONSIDERED BOTH ASPECTS OF THE STATUTORY CRITERIA ADEQUATELY IN DECIDING TO ABANDON THE LINE.

The Court of Appeals in In re Boston and Maine Corporation, cit. supra at 1208 did not require that the record of the vote of trustees in decisions to abandon a line must contain the mental processes leading to their decision. It even allowed an assumption that trustees had exercised their independent judgment on the statutory criteria where only the analyses and recommendation of corporate officers, together with their vote, comprised the record for such vote.

"But there is no prohibition against their reliance on the analyses and recommendations of corporate officers, as was the case here. It is assumed that the trustees exerted their independent judgment. The plenary judicial hearing and determination, with the burden resting upon the petitioning trustees, provide sufficient protection against erroneous conclusions without undue scrutiny of the mental processes of trustee deliberations."

In the instant case, the analyses and recommendation of their corporate officers, which the Trustees considered before their vote of December 19, 1972 to abandon the line, adequately discussed and commented on both aspects of the statutory criteria. The record of that meeting also shows that the Trustees considered the possible alternatives to the line's abandonment, including cuts that had been effected in the operating costs of the line and continuation of service to Epping over a segment of the line.

The minutes of that meeting records their comments beyond those submitted by their corporate officers on the unwillingness of shippers or the State of New Hampshire to subsidize the line's operation against loss. (Sheets 1-6 of Ex. 1). The sole trustee later considered the potential for industrial development on the line which might add to the rail usage and also the unwillingness of labor representatives to change the work rules to make continued service to Epping profitable (Sheets 11-14 of Exhibit No. 1).

The record shows that the trustees considered "realistic and practicable methods short of abandonment [which] would make the line profitable" and met the admonition of the Court of Appeals appearing on page 1209 of its opinion that failure of trustees "to consider such alternatives, if any exist, may weigh against allowing their petition. "

6. FINAL ABANDONMENT AUTHORIZATION WILL TRIGGER SUBSIDY SUPPORT AND CONTINUED OPERATION OF THE LINE.

If the Reorganization Court approves the instant petition, and a certificate of public convenience and necessity permitting the abandonment of the line is issued by the Commission, the State of New Hampshire will be entitled to receive from federal sources at least 70% of each of the annual costs for five years which it may then find in the public interest to assume under an agreement with the Trustees providing for subsidization of the line's continued operation against loss.

Regional Rail Reorganization Act of 1973, P. L. 93-236,
(45 U.S. C. 762 (c) (2) C).

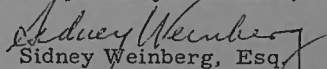
Railroad Revitalization and Regulatory Reform Act of 1976,

P. L. 94-210, Sections 802, 803 (49 U.S.C. 1a: (2), (5 (b)) and (6); 49 U.S.C. 1654).

If the State of New Hampshire is persuaded that any substantial adverse affect on the public interest will occur as a result of the actual abandonment of service upon the issuance of a certificate therefor by the Commission, it can then provide for the continuance of such service through June 30, 1981 with minimal cost to itself. Thus, the weight of the adverse affect on the public interest which the Reorganization Court must consider in assessing the balance between the statutory criteria, which petitioners claim to have been shown as minimal, is further reduced by the probability that abandonment authorization by both the Reorganization Court and the Commission will not result in discontinuance of service on the line, unless the State of New Hampshire determines, after June 30, 1981, that the public interest does not warrant the cost of its sole support for continued service.

Wherefore, the Trustees submit that the evidence warrants and supports a finding that the trustees' decision to seek the abandonment of the line described in their petition was justified, and that the Special Master ought to recommend that the Reorganization Court issue an order authorizing such abandonment, with the approval and authorization of the Interstate Commerce Commission, as provided for under the provisions of Section 77 (o) of the Bankruptcy Act.

Respectfully submitted,


Sidney Weinberg, Esq.
Attorney for Robert W. Meserve and
Benjamin H. Lacy, Trustees of the
property of Boston and Maine Corpora-
tion, Debtor
150 Causeway Street
Boston, Massachusetts 02114

August 26, 1976

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In the Matter of

BOSTON AND MAINE CORPORATION,
Debtor

In Proceedings for
The Reorganization of a Railroad

No. 70-250-M

Hearing on Petition for Order No. 159

BRIEF OF STATE OF NEW HAMPSHIRE

John T. Collins, Esq.
Sherburne, Powers & Needham
Special Counsel to the State of
New Hampshire
One Beacon Street
Boston, Massachusetts 02108

Due Date: September 14, 1976

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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STATEMENT OF THE CASE AND THE ISSUE

The State of New Hampshire is in agreement with the Statement of the Case and of the Issue as presented in the Trustees' Brief, except that whereas the Trustees' Brief refers to the instant proposal as the "abandonment of the line", the State believes that it is more accurate to speak of it in terms of the abandonment of a "portion of a line". The procedures and general criteria are the same in either case but an argument is made hereinafter in which the distinction is relevant.

A R G U M E N T

I. THE FIRST STEP OF THE STATUTORY SCHEME, THE TRUSTEES' BALANCING OF PRIVATE AND PUBLIC INTERESTS WAS INSUFFICIENT.

The statutory scheme of Section 77(o) of the Bankruptcy Act (11 U. S. C. §205(o)) taken with the Interstate Commerce Act (Chapter 1 of Title 49 U. S. C.) involves a three step process:

"First, the trustees decide whether to abandon a line, balancing the economic interests of the railroad against unduly affecting the public interest. Thereafter the district court must determine whether the trustees' decision is justified. Finally, if required by the Interstate Commerce Act, Chapter 1 of Title 49, U. S. C. , the court-approved abandonment is presented to the Commission for its approval and authorization." In re

Boston and Maine Corporation, Debtor 455, F. 2d. 1205, 1208 (1972).

The Railroad's brief suggests (page 14) that the Court in the last mentioned case precludes us from examining the Trustees' mental processes leading to their decision. What the case says is:

"The plenary judicial hearing and determination, with the burden resting upon the petitioning trustees, provide sufficient protection against erroneous conclusions without undue scrutiny of the mental processes of trustee deliberations." (emphasis added).

We do not consider it to be an undue inquiry into the Trustees' deliberations to ask:

When did they take place?

Who took part in the discussions?

Where are they now?

How does the evidence considered by the Trustees compare with that at the "plenary judicial hearing"?

The action of the Trustees introduced as evidence of compliance with the first step in the statutory scheme consisted of two "meetings". (Exhibit 1). The first took place on December 19, 1972, nearly four years ago and the second, March 28, 1973, three and one-half years ago. One of the Trustees resigned between the two meetings and one of the presently serving Trustees had not yet been appointed at the time of either "meeting". (Tr. 6 and 7...to be read together with Mr. Weinberg's letter to the Master, dated July 15, 1976). The Trustees apparently relied upon the memorandum, dated December 15, 1972, submitted by Messrs. Estey, Barriger and Drake, and upon the advice of Mr. Cherrington. Messrs. Barriger, Estey and Cherrington have since departed from the Railroad and Mr. Drake was not made available at the hearing.

The general propriety of reliance upon the recommendations of corporate officers together with an exercise of independent judgment is affirmed in the last mentioned case and is not questioned here. What is challenged is the reasonableness of pursuing the abandonment application four years later in reliance upon advice given by subordinates no longer available without any fresh consideration of the facts or independent judgment exercised by the current Trustees.

One outside the Railroad can only touch upon the most obvious of matters which may have changed in the meantime. For example, the primary concern of Trustee Meserve, as expressed in the Minutes of the March 28,

1973 meeting, was the magnitude of the predicted losses, that they were so great as to "invalidate any contention that operation should continue indefinitely in the expectation of industrial expansion and new traffic". (Exhibit 1, Sheet 12). He had been presented with and was operating in reliance on a "Pro Forma" (Exhibit 1, Sheet 9) which showed losses for 1975 and 1976 of \$147,090 each year, largely on account of Maintenance of Way costs of \$137,900. In reality, in 1975 the Railroad experienced, according to its figures, a loss of \$29,985, with Maintenance of Way costs of \$21,492. (Exhibit 7). It is not unduly invading the mental processes of the Trustees to point this out.

Another important factor having received no consideration by the Trustees is the development since 1973 of national legislation providing means to rehabilitate and improve railroad rights of way without creating an operating deficit. Railroad Revitalization and Regulatory Reform Act of 1976. Pub. Law 94-210 (S. 2718) Title V. The writer does not presume to know at this point how much Title V money will be available to the Trustees, if any, to refurbish the subject branch but it certainly is a new development in the light of which the proposed abandonment should be considered.¹

1. The Railroad's brief (page 15), on the other hand, blithely assumes that federal subsidy money will be available to the State of New Hampshire under Sections 802 and 803 of this Act although no money has yet been allocated to New Hampshire by the Department of Transportation, none will until all the conditions of 49 CFR, Part 255, have been met and in no event will New Hampshire be entitled to more than 3% of the total monies available for States.

Apart from any other changes in circumstances which may have transpired since March of 1973 to which the State is not privy, those developments alone would call for a reassessment of the situation.

II. THE PROPOSED ABANDONMENT WAS NOT SHOWN TO BE IN THE INTEREST OF THE DEBTOR'S ESTATE AND OF ULTIMATE REORGANIZATION.

A. The Railroad Proceeded On The Mistaken Premise That It Must Only Show An Operating Loss.

The cases cited at pages 4 and 5 of the Railroad's brief do not support the proposition advanced by the Railroad that, because of its bankruptcy, it has a lighter burden of proof before the Reorganization Court than that of a solvent carrier before the Interstate Commerce Commission.

Colorado v. U.S. 271 U.S. 153 (1925) did not concern a railroad in bankruptcy. It does not involve the standards to be used by the District Court. There was a reference by the Court to the prosperity of the railroad as an element in the balancing of interests process conducted by the Commission. Purcell v. U.S. 315 U.S. 381 (1941) did not involve a bankrupt carrier either. Nor did State Of Nebraska v. U.S. 255 F. Supp. 718 (1966), nor Washington and Old Dominion Users Association v. U.S. 287 F. Supp. 528 (1968). The New Haven case (N. Y. N. H. & H. RR. Abandonment 324 ICC 396), of course, did involve a bankruptcy situation

but in the context of the Interstate Commerce Act's "public convenience and necessity" rather than in the context of the Bankruptcy Act's "without unduly or adversely affecting the public interest". The only conclusion that can be drawn from a reading of these cases is that each is different and that the weight to be given to one aspect or the other of "public convenience and necessity" before the Interstate Commerce Commission varies from case to case. In State Of Nebraska v. U.S., supra, for example, the Court indicated that there are some cases where it is proper to give little weight to the factor of the carrier's overall prosperity, citing So. R. Co. v. North Carolina 376 U.S. 93.

It is not clear to what extent, if any, the test before the Bankruptcy Court differs from the test before the Interstate Commerce Commission. In re Boston and Maine Corporation 455 F. 2d 1205 (1972), speaks of a three-step process in which the economic interests of the railroad are balanced against the public interest. No particular distinction is made between the weight to be given one factor or another at the various levels but it is clear that, at the district court level, "it must receive evidence on all aspects of the statutory criteria." (id at page 1208). The statutory criteria referred to is contained in Section 77(o) of the Bankruptcy Act, 11 USC §205(o): "in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest." Thus, before the district court, the economic effect of abandonment or

continued operations upon the carrier is to be considered in the context of the "interest of the debtor's estate and ultimate reorganization".

It is submitted that while this might entail emphasis different from the emphasis given various elements in cases involving viable railroads, this does not necessarily indicate a lighter burden of proof.

A bankrupt railroad usually has several lines, including in some cases main lines, which could not meet the test of generating a profit or breaking even in the sense of meeting all direct costs and bearing a fully allocated share of overhead. This is, of course, why the railroad is in bankruptcy. Yet it may well be that because some contribution is being made to the general overhead by a particular branch, the debtor's estate and chances of ultimate reorganization may be better if operations are continued than if they are abandoned. In the case of the Boston and Maine Railroad, Witness Rourke could only think of one branch that might meet a fully distributed cost test, the Groveton Branch. (Tr. 127). It is obvious that if all other branches were abandoned, leaving the Groveton Branch to bear all overhead, it too would become unprofitable. A related problem is acknowledged in the Trustees' Plan of Reorganization dated December 20, 1971 (filed with this Court in the matter of which this hearing is part, In the Matter of Boston and Maine Corporation, Debtor (No. 70-250M), and approved by this Court and the Interstate Commerce Commission). Reference is made to the Segmentation Study, Chapter III C; Tables 1 and 2 (pages 5, 6 and 10) of the Trustees' Plan, where it was noted that while

abandonment of branches in New Hampshire would lead to a reduction in the negative contribution of those branches, the total positive contribution of all of the remaining lines would be less after the abandonment than before. The Trustees explain that this is because the New Hampshire branches produce revenue for the Maine and Massachusetts segments which carry the inbound and outbound traffic connecting with the New Hampshire segment. The contributions of the Maine and Massachusetts segments will be reduced by the loss of the traffic produced on the New Hampshire branches. Thus, the Trustees concluded: "any action which will reduce the fixed burden of the New Hampshire segment, such as selling the branches to short line operators, must include provisions for the protection of prior or subsequent B & M hauls."

What is missing in the Railroad's case in this proceeding is evidence going to the "interest of the debtor's estate and ultimate reorganization", i. e., evidence of the extent to which the whole estate and prospects for reorganization are worsened or improved by the abandonment. To what extent will the contribution of the Massachusetts segment suffer? To what extent will the contribution of the Maine segment suffer? How will this affect the total contribution? Have the subsequent or prior B & M hauls been protected or will the traffic destined for and originating on points on the branch travel by motor carried all the way from origin to destination? We have no way of determining the answers to these questions from the record.

B. Even If The Approach Of The Railroad To Determine The Effect Of Abandonment Upon The Debtor's Estate Is Correct, The Evidence Is Not Reliable.

1. Revenues

The revenue figures from Exhibits 6 through 8 do not include revenue from bridge traffic. (Tr. 107). Bridge traffic may not have been substantial but that was because it was consciously discouraged. (Tr. 109). (The deliberate discouragement of use of a line over a course of years followed by a petition for abandonment predicated upon lack of use is a practice adverse to the public interest dealt with hereinafter). It should be apparent that, excluding from the revenue figures attributable to a given line, at least a portion of the revenues derived from traffic which would ordinarily travel over that line is unfair and misleading. This is particularly true in the context of a revenue cost study in which off-line costs are assigned to the traffic originating or terminating on the line. If one attributes to a line costs calculated by apportioning a share of revenues to other segments, it will distort the total picture if revenue from overload traffic is not allocated in part to the line. Compare regulations proposed by the Interstate Commerce Commission 49 CFR Part 1121.41, 41 Federal Register, page 31892 (Friday, July 30, 1976).

Furthermore, the predictions for freight traffic revenues of \$28,500 for each of the next five years as shown on Exhibit 5 (the projection of annual losses upon which justification for abandonment is

primarily based) is nothing more than a shot in the dark. It represented the experience of a mere three months, multiplied by four, to give one year's projection, then that projection is held firm for the next five years because no one can tell what will really happen in the next five years. (Tr. 115, 116). This method was used because "you can't control your customers and you never know what they're going to do;...". (Tr. 117).

It would not have been too difficult to ask the potential shippers what traffic they could expect to move in the next five years. It certainly would have been more scientific than the exercise in arithmetic conducted by Mr. Rourke.

In summary, given the unfair methodology, with respect to overhead traffic and off-line costs and the blind projection of three months experience over five years, the revenue side of the revenue/cost analysis introduced by the Railroad is not reliable.

2. Costs

Maintenance of Way Costs

The largest single item of costs attributable to the line in the five year projection (Exhibit 5) is Maintenance of Way. This figure ranges from \$28,340 in the first year to \$45,680 in the fifth year for an average of \$39,588. This compares with an actual outlay for 1975 of \$21,500. (Tr. 68). This, in turn, compares with an estimate made for presentation to the Trustees in 1972 for 1975 of

\$137,935, (Exhibit 1, Sheet 9) (Tr. 68) and with an estimate made for presentation to the Federal District Court in 1973 for 1975 of \$395,000. (Tr. 67). These can't all have been reasonable approximations. They are not even close. The 1973 projection for 1975 is eighteen times the amount actually expended in 1975. An attempt was made to explain this by the Chief Engineer's assumption that there was going to be an increase in the amount of traffic on the line when he prepared his 1973 figures. (Tr. 79). At one point, this assumption seemed to be based upon what his traffic people foresaw. (Tr. 79). At another point, the source of that assumption seems less than intelligible (Tr. 82) and it is certainly an odd assumption to make when preparing evidence for an abandonment proceeding. It is in direct conflict with the testimony of the traffic witness (Tr. 120) and incompatible with the evidence presented to the Trustees in December of 1972. (Exhibit 1, Sheet 4).

In assessing the significance of Maintenance of Way figures, it should be understood that regardless of the life of a tie or rail, the cost of replacing it is not spread out over its life but is, under ICC accounting rules, all taken as a cost in the year the replacement is accomplished. Thus, in preparation for a hearing, it is tempting to say that the work which should have been done over the course of a decade should be done next year; that the cost of doing such work will be applied against revenues received next year and the railroad will then have a tremendous loss which it cannot bear. Such statements should not be

taken too seriously, however, and if it should come to pass that abandonment is postponed and operations are continued through the next year, one should not expect to see that such expenditures were actually made.

For example, one can find in this record that in 1972, the Trustees were presented with Maintenance of Way figures of \$137,935 for 1975; that figures were submitted to the District Court for 1975 of \$395,000; and that actual expenditures were \$21,500. The \$395,000 was based upon a representation that there would have to be a considerable tie replacement program in 1975 (Tr. 67), but when it turned out that the line was still in operation in 1975, no ties had been replaced in the meantime. (Tr. 67). An alternative which had escaped the Trustees' consideration in 1972 came to light. Speed was reduced from 20 miles per hour to 10 miles per hour (Tr. 142); frequency of service was reduced to one day a week (Tr. 143) and tie replacement further deferred.

The conclusion is inescapable that the Maintenance of Way figures that might be plugged into a railroad study depends on what needs to be proved and that the figures contained in Exhibit 5 are no more reliable than those submitted on earlier occasions.

Off-Line Costs

In its cost studies (Exhibits 5 and 7), the Railroad included a very substantial item for "beyond-line costs". In the case of

Exhibit 5, representing a five year projection, the figure used was \$10,544, almost twice the figure for 1974, \$5,805. This is not because the actual cost of moving the traffic off the line will double, it is because the Railroad has estimated a substantial increase in revenues, from 1974 (\$16,128) to 1976 (\$28,500) and the cost formula used is merely a function of revenues. The formula is most clearly stated in a footnote, In re Boston and Maine Corporation, Debtor 455 F. 2d 1205 (1972) at page 1209:

"11. The formula employed herein multiplies the line's pro rata mileage (ratio of number of miles traveled on the line to total number of miles traveled on the system) by the gross-revenue generated, subtracts the product (gross revenue credited to the line) from the total gross revenue, and takes 50 percent of the resulting sum as the beyond line cost. For example, if the B & M handled a carload of freight from Mechanicsville, New York, to Lincoln, the total mileage would be 275 miles and the distance traveled on the branch line would be 72 miles. The ratio of 72/275, or 26 percent, is applied to the gross revenue of the shipment, assumed to be \$100. The branch line is credited with this amount, \$26, which leaves a remainder of \$74. Fifty percent of this figure, or \$37, is recognized as the beyond line cost."

The formula is a substitute for an analysis of the total cost of moving traffic including all overhead items, "not just the actual operations". (Tr. 96). Witness Rourke testified that it has nothing to do with expenses. (Tr. 94). He has no idea how close it approximates out-of-pocket costs. (Tr. 95). It does not in any way reflect the actual cost of operations off-line. (Tr. 122).

The Railroad's brief cites authorities to justify as "reasonable" the use of the formula, including In re Boston and Maine Corporation, Debtor, supra. It should be observed that what the First Circuit Court of Appeals said in that case was not an approval of the formula but merely that it was not an abuse of discretion for the District Court to adopt it in the absence of the suggestion of a more accurate approach.

It is submitted that the Trustees, in considering whether the abandonment of a line will improve the condition of the debtor's estate, and the district court, in approving the Trustees' decision, should try to determine what will be the real savings, if any, as a result of abandonment. Not whether there is some arbitrary beyond line cost formula which has on some other occasions been used by the Interstate Commerce Commission for want of a better formula, but what are the avoidable costs attributable to the traffic handled by the subject line, other than those directly related to the line itself.² Except for car-hire costs, the per diem paid for the use of cars while traveling on parts of the system other than the subject branch, there are probably no substantial avoidable costs to be saved. Any savings (other than those attributed to the branch itself) in the law, executive, accounting, engineering, transportation or traffic departments resulting from the abandonment of a 31 mile branch will be infinitesimal.

2. The question, so framed, occurred to the Master, who asked, "How close an approximation do you think this is of the out-of-pocket costs of the system in handling the business over the whole Boston & Maine System?" The Witness, "I have no idea.". (Tr. 95).

The Interstate Commerce Commission has recently published standards for determining avoidable costs of providing branch line service, including off-branch costs. 49 CFR 1125, 1125.5, 41 Federal Register, Page 16782 (Wednesday, April 21, 1976). These standards were published as part of Standards For Determining Rail Service Continuation Subsidies under the Regional Rail Reorganization Act of 1973, Pub. L. 93-236. 87 Stat. 985, 994, as amended by Sec. 309 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, 90 Stat. 31, 57, but similar standards will be used as the "prime factual justification warranting a finding by the Commission that a prospective abandonment is consistent with the public convenience and necessity". 49 CFR 1201, 41 Federal Register, page 23172 (Tuesday, June 8, 1976). These standards were incorporated in Procedures For Pending Abandonment cases, 41 Federal Register, page 13691 (Wednesday, March 31, 1976), which will govern all abandonment cases filed before final regulations are published. The Proposed Regulations, Abandonment of Railroad Lines and Discontinuance of Service, 49 CFR Part 1121 (1121.42(m)), 41 Federal Register, page 31878 (Friday, July 30, 1976), contain an even more detailed method of determining the off-branch costs.

Of course, we do not know how the Final Regulations will read, nor whether the Interim Procedures or the Final Regulations will govern the case, if and when it reaches the Interstate Commerce Commission.

It is clear, however, that there are now available more scientific formulae for determining off-branch costs than an arbitrary allocation of revenues first employed in 1937. It does not truly reflect variable costs. It doesn't even attempt to reflect avoidable costs. It has been most recently criticized by the General Accounting Office as inappropriate for use by the Commission in abandonment cases. United States General Accounting Office, Better Information Needed in Railroad Abandonments July 23, 1976, CED-76-125, at 5.³ Trustees and corporate officers who are sincerely trying to determine the effect of the proposed abandonment on the debtor's estate can do better than to resort to the old "50 percent formula".

III. THE PROPOSED ABANDONMENT IS NOT WITHOUT UNDULY OR ADVERSELY AFFECTING THE PUBLIC INTEREST.

A. Effect Upon Industrial Development

It appears from the Minutes of the Trustees' Meeting of March 28, 1973 (Exhibit 1, Sheet 10), that the area of Southern New Hampshire was considered by their Manager of Real Estate and Development, Mr. Kirk, to be a very promising area of industrial development; that the area served by this particular branch is New Hampshire's most active industrial development area. He was enthusiastic and hopeful about it. (Tr. 165). The Trustees' Counsel, Mr. Weinberg, however, indicated at that meeting that he was counting on Mr. Kirk's not being able to state just when industrial development along this line would occur. (Exhibit 1, Sheet 12). After Trustee Meserve indicated that he wanted them to "press forward with the abandonment proceedings" (Exhibit 1, Sheet 12), Mr. Weinberg said that he could proceed with the case upon the

3. Quoted in Traffic World, August 2, 1976, page 9.

understanding that Mr. Kirk's position would be that:

"(1) Nothing is likely to occur with respect to industrial development along the Manchester-Rockingham line within the next two years and (2) the nature of industrial development during that period, if any, is not presently discernible in respect of rail traffic potential for B & M." (Exhibit 1, Sheet 13).

Mr. Meserve, having told the group what he wanted, and Mr. Weinberg's having told Mr. Kirk what his position would have to be if Mr. Weinberg were to keep Mr. Meserve happy, Messrs. Weinberg, Culliford and Kirk left the meeting.⁴

For the three years following that meeting, Mr. Kirk, when discussing the area with parties who might otherwise be interested in locating along the branch, would warn them of the pending abandonment. (Tr. 173, 174). When, at the hearing in July of 1976, Mr. Weinberg finally put the question to Mr. Kirk, "But now, more than three years, there has been no industrial development at Epping using rail, has there?", it hardly came as a surprise when Mr. Kirk answered, "No Sir." (Tr. 166). The Trustees' decision to press for abandonment had already adversely affected the development of the area!

During the past three years, three or four new industries were located in the area. (Tr. 2-33). Unfortunately, they were not rail users

4. Again, it is submitted that it is not "undue scrutiny of the mental processes of trustee deliberations" to make note of the facts contained in Exhibit 1, offered by the Trustees. This is mentioned not to point out the a priori nature of the mental processes but to show how Mr. Kirk's position may have been affected thereby and how this, in turn, may have affected the industrial development of the region.

but it is the opinion of Paul Gulderson, Director of the New Hampshire Office of Industrial Development, that rail users will, in a major movement, be locating along this branch within the next 5 to 10 years. (Tr. 2-30). There are, at present, several active proposals for such use (Tr. 2-35) and Mr. Gulderson is of the opinion that the potential for development in the area is one of the greatest in the State. (Tr. 2-29). The opinions of representatives of State authorities are entitled to due consideration in abandonment cases. Colorado v. U.S. 271 U.S. 153, 167.

B. Effect Upon Existing Shippers

The brief of the Railroad (page 10) indicates a belief upon its part that the burden of proof with regard to the public interest is on the Protestants. This implies that this is a typically adversary proceeding and ignores the Trustees' fiduciary duty to represent the public interest as well as the private interests. We think the language of Section 77(o) of the Bankruptcy Act as construed by the First Circuit Court of Appeals In re Boston and Maine Corporation, Debtor, supra, indicates otherwise; that just as the Trustees have to consider the effect upon the public interest, even if no member of the public is producing evidence for them to consider, so they must furnish evidence for the District Court when it is trying to determine whether the "Trustees struck a proper balance between private and public effects." This is consistent with the new section of the Interstate Commerce Act dealing with abandonments.

Section 1a. (3) of the Interstate Commerce Act (as most recently amended by the Railroad Revitalization and Regulatory Reform Act) provides in part: "The burden of proof as to public convenience and necessity shall be on the applicant for a certificate of abandonment or discontinuance."

Some recognition of the Trustees' duty in this regard was shown by the effort to introduce evidence through Railroad witnesses as to the effect of the proposed abandonment upon shippers. This consisted of the following:

1. A recitation by Witness Rourke of the number of highway miles between the stations on the branch and the nearest public delivery tracks. (Tr. 101).

2. An effort by Railroad Counsel to bring out from the Witness his opinion of the competitive effect upon the shippers of the additional cost of trucking. (Tr. 102).

3. An effort by the Witness to tell Counsel that he doesn't have an opinion (Tr. 102), and

4. Counsel's reluctant acceptance of that fact. (Tr. 103).

Examination of the record will show that Mr. Rourke was the only Railroad Witness to give evidence on this subject. The subject was raised again on cross-examination of Mr. Rourke, where it appeared that:

1. As to additional cost to the shippers of gas, Mr. Rourke knew only that it was "substantial". (Tr. 129).

2. That as to other shippers, he could guess but he didn't know.
(Tr. 130, 131).

3. He had no knowledge of where Mr. Drake, Vice President - Traffic, to whom he reports, got the idea which he passed on to the Trustees that there would be no significant additional expense. (Tr. 131).

Counsel for the State then inquired whether Mr. Drake was to be a witness to fill this void. Railroad Counsel advised that Mr. Drake would be a witness only if Counsel for the State subpoenaed him. (Tr. 131). Having thus failed to show the lack of competitive disadvantage to shippers on the line, Counsel falls back on the proposition set forth in his brief that this is the burden of Protestants.

C. Effect Upon Alternative Possibilities

The response of the New Hampshire Legislature to the rash of abandonments proposed by the Trustees of the Boston and Maine is to be found in N. H. RSA 372 A, passed in 1974. It represents an effort to preserve essential rail transportation and gives the Public Utilities Commission broad powers to acquire, rehabilitate, lease and operate abandoned lines. The general policy as expressed in the Act was to enable the State, directly or under leases and operating agreements, to operate as short-line railroads those abandoned lines which served sufficient public needs and purposes.

The proposed abandonment cuts off the line to be abandoned, at both ends of the branch; at one end a fourth of a mile west of the crossing diamond of the Portsmouth Main line (Tr. 49) and at the other end, three miles east of the junction of the Nashua - Manchester - Concord Main line. (Tr. 53). This completely frustrates the possibility of introducing a short-line operation on the branch. A short-line becomes impossible, obviously, as an operating matter and, according to Witness Culliford, as a business matter as well. (Tr. 151).

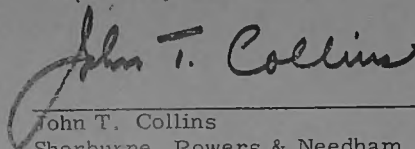
Thus, aside from the effect of the proposed abandonment upon industrial development and upon the welfare of existing shippers, the peculiar truncation of the line proposed by the Railroad completely thwarts the principal means devised by the State legislature for protecting and promoting the public interest. For this reason alone, the Petition, as it stands, must be denied.

CONCLUSION

For the foregoing reasons, the State of New Hampshire urges that the Trustees' decision to seek abandonment of that portion of the line proposed for abandonment herein has not been shown to be in the interest of the debtor's estate and of ultimate reorganization but without

unduly or adversely affecting the public interest.

Respectfully submitted,



John T. Collins
Sherburne, Powers & Needham
One Beacon Street
Boston, Massachusetts

September 13, 1976

September 17, 1976

Mr. C. W. Mulcahy, Jr. ✓

Re: Petition For Order No. 159
Abandonment; Manchester, N. H. to Newfields, N. H.

Attached are three sets of exhibits, Trustees' Brief, and Protestant, State of New Hampshire's Brief which were introduced at the hearings on the above-captioned petitions.

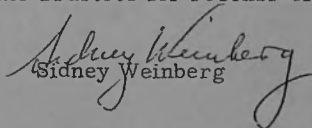
Justice Cutter, Special Master, has set October 15, 1976 as the date for receipt of additional exhibits and November 1, 1976 as the date for renewed hearing. He desires that the record show a reconsideration and vote on the statutory issues (77 (o) of the Bankruptcy Act) by the Trustees in the light of the changed circumstances of the line's operation since their consideration and vote to abandon at the meeting of December 19, 1972, as affirmed at the meeting of March 28, 1973 (Ex. 1).

At the time of the Trustees' votes, bridge traffic from the Portsmouth, N. H. area was routed over the line. The projections of loss were therefore based on expenditure for maintenance of the line as a Class II line accommodating train speeds of 20 M. P. H. Sheet 9 of Exhibit 1 told the Trustees that losses of approximately \$147 thousand would be suffered in two of the succeeding five years because of the expense required to keep the line at a Class II level. Mr. Meserve's affirmation of the vote on March 28, 1973 was influenced by the projected maintenance costs and the resulting projected average annual loss from the line's operation (Sheets 12 and 14 of Exhibit 1).

The bridge traffic was routed over other lines after the Trustees' votes. The maintenance level dropped to Class I level accommodating traffic movements at 10 M. P. H. As a result, Exhibit 5 introduced by B&M at the hearing showed a lesser expense for projected maintenance and a lesser magnitude of average annual loss from the line's continued operation (\$48 thousand in 1976 vs. \$123 thousand in 1973).

The remaining elements for the Trustees' consideration are contained in the other exhibits and the briefs.

Kindly submit this matter to the Trustees for reconsideration and vote at their next meeting.


Sidney Weinberg

Enc.

SW/maw

cc: H. B. Berkshire)
S. B. Culliford) w/o attachments
C. R. Drake)
W. A. Kirk)

Summer:
Randolph, New Hampshire 03593
Telephone:
Area Code 603-466-3819

November 2, 1976

Memo for Mr. Collins and Mr. Weinberg -
(Boston & Maine Abandonment
matters)

I am working at home this morning, so please forgive this handwritten memo.

1. November 29 is satisfactory to me for the hearing on Petition for Order No. 160. I so notified Mr. Weinberg by telephone this morning.

2. On the assumption that the transcript of yesterday's hearing on Petition for Order No. 159 will be available in three weeks - supplemental briefs will be due on December 6 simultaneously. Any replies may be made by letter during that week. If you each agree, you may (without consulting me) extend the time for filing supplemental briefs by one week.

3. Mr. Weinberg is to arrange for a room and a stenographer for November 29 and to see that proper notice is given. Will he please give me written notice (here in Cambridge) of the room assigned and the hour.

4. I expect to be in Cambridge until November 10, in case there is any occasion to consult me about either matter. I shall be at the Hotel Westbury, on an American Law Institute matter on the 11th, 12th and 13th. I expect to be in London [where I can be reached by mail in care of my daughter, Mrs. R. A. R. Madennan, 74 ABINGDON VILLAS, London W.8 (Tel. 937-5960) if necessary] until the 27th when I plan to return to Cambridge. If there is any change in plans for the hearing on the 29th please notify me there late on the 27th or on the 28th.

Sincerely,
R. A. R. Cutler

ORR AND RENO
PROFESSIONAL ASSOCIATION
95 NORTH MAIN STREET
CONCORD, NEW HAMPSHIRE 03301

TELEPHONE
AREA CODE 603
224-2381

DUGLEY W. ORR
ROBERT H. RENO
CHARLES H. TOLL, JR.
MALCOLM MCLANE
JOHN W. BARTO
RONALD L. SNOW
CHARLES F. LEAHY
RICHARD B. COUSER
LEO B. LIND, JR.
NEIL F. CASTALDO
MARY SUSAN GALWAY
WILLIAM L. CHAPMAN
HOWARD M. MOFFETT

November 3, 1976

Sidney Weinberg, Esq.
Attorney for the Trustees of the
Property of Boston and Maine
Corporation, Debtor
150 Causeway Street
Boston, Massachusetts 02114

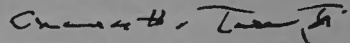
Re: In the Matter of Boston and Maine Corporation, Debtor;
U. S. District Court for the District of Massachusetts
No. 70-250-M; Petition for Order No. 159 - Abandonment
of line between Manchester and Newfields, including the
Fremont Branch, New Hampshire

Dear Mr. Weinberg:

We represent Mrs. Dean (Pamela) Wilber, Oak Hill Road, Concord, New Hampshire 03301. Please send notices and other communications to her in our care.

When the Honorable R. Ammi Cutter, Special Master, files his report relative to abandonment of the above-mentioned line, please advise me and inform me of his recommendation.

Sincerely yours,


Charles H. Toll, Jr.

CHTJr/crm

cc: Mrs. Dean Wilber

November 3, 1976

Mr. R. E. Hill

Re: Manchester - Newfields Abandonment

Justice Cutter requested a new Exhibit No. 13 to conform to the change in numbers appearing on page 1 for Account 249 - Signals and Interlockers. The evidence showed that, due to clerical error, \$7,047 should be substituted for the 6 month figure of \$11,508 and \$14,084 should be substituted for the projected annual period figure of \$28,016.

These changes compel corrections to other numbers in the exhibit which I believe I have shown in the attached copy. I believe the reference to actual expenses for maintenance of way on Sheet 6 should be amended to encompass both actual expense and those derived from studies of average expense.

Kindly provide me with a new Exhibit 13 on or before November 22.

Sidney Weinberg

SW/maw

Enc.

November 10, 1976

Hon. R. Ammi Cutter
62 Sparks Street
Cambridge, Massachusetts 02138

Re: Petition; Order No. 159

Dear Justice Cutter:

Enclosed herein please find revised Exhibit 13 for incorporation in the exhibits of the hearings in the above-entitled matter.

Respectfully,

Sidney Weinberg

SW/maw

Enc.

cc: John T. Collins, Esq.
Sherburne Powers & Needham
One Beacon Street
Boston, Mass. 02108

Mr. Fred Penney
25 Mabelle Avenue
Medford, Mass. 02155

December 1, 1978

Hon. R. Ammi Cutter
62 Sparks Street
Cambridge, Ma. 02138

Dear Justice Cutter:

Re: Petition for Order No. 159
Abandonment, Manchester to Newfields, N. H.

Enclosed herein is Trustees' Supplementary Brief in the above-captioned matter.

Respectfully,

Sidney Weinberg

SW/maw

cc: John T. Collins, Esq.
Sherburne Powers & Needham
One Beacon Street
Boston, Mass. 02108

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In the matter of
BOSTON AND MAINE CORPORATION
Debtor

In Proceedings for
The Reorganization of a Railroad
No. 70-250-M

Hearing on Petition for Order No. 159

TRUSTEES' SUPPLEMENTARY BRIEF

This supplementary brief addresses the issues raised at the continued hearing on the Trustees' petition held on November 1, 1976.

The Trustees' Vote of September 21, 1976 (Ex. No. 12) satisfies the statutory criteria under Section 77 (o) of the Bankruptcy Act in demonstrating an adequate consideration of the criterion of the adverse affect of the abandonment on the public interest.

Ex. 12 and the evidence at the continued hearing show that the Trustees considered exhibits and briefs of the parties earlier introduced and submitted during the course of hearings on their petition, together with updated revenue and cost data. The updated exhibits and the evidence show that little, if any, changes in the revenue and costs of operation of the line occurred since their earlier consideration of the abandonment of the line and their vote thereon in 1973. The earlier exhibits showed Trustee consideration of the decreasing number of shippers who were dependent on the line's operation, the minimal affect of abandonment of the line on their businesses and the net loss to the debtor's estate from alternate

service via Rockingham Junction (Exs. 8, 1 and 6). A discussion of the \$50,000.00 annual loss from the line's operation, based on Ex. 13, as well as the affect of abandonment on the remaining shippers on the line took place prior to their 1976 vote (Parks, Tr. 3: 10-11).

The decision of the Court of Appeals in In re Boston and Maine Corporation, Debtor, cit. supra - Trustees' Brief, did not require any more of the Trustees in the initial step of the three step process for abandonment of a line of a railroad in reorganization than to balance the two statutory criteria, the economic interests of the railroad against unduly affecting the public interest. The review by the Reorganization Court in the second step to determine whether the Trustees' decision was justified, especially in a contested proceeding, safeguards adequate consideration of the adverse affect of abandonment on shippers and on the public interest. Absence of details in the vote of the Trustees demonstrating exactly how they balanced the two statutory criteria was not required by the Court of Appeals' decision. The considerations of the statutory criteria shown on the Trustees' 1976 vote are sufficient for the Reorganization Court's review of the justification of their decision. Their reconsidered vote adequately meets the caution expressed by the Court of Appeals that their failure to consider alternatives to abandonment, if any exist, might weigh against allowing a petition for abandonment.

The State of New Hampshire has failed to sustain the burden of proof on the issue whether the Trustees' Vote to seek abandonment of the

line was justified. The evidence warrants a finding that the Trustees' decision to abandon was justified.

The evidence introduced by the State of New Hampshire is insufficient to warrant a finding that any shipper on the line would be so adversely affected by the line's abandonment that he could not continue to compete in his business.

The two most substantial customers on the line are both located at Epping. The first, Home Gas Corporation, did not offer a witness to demonstrate the affect on its business of the line's abandonment. Evidence offered by the Trustees showed that it could serve its customers either completely by truck or by alternate rail delivery to its storage tanks at Greenland or Goffstown. Its competition in the area relied wholly on truck delivery. The second, Merrimack Farmers Exchange, Inc. (Merrimack) produced a witness on the issue. However, his testimony demonstrated that the only additional costs that his company would incur in the movement of milled feed products from Bow, N. H. to Epping, N. H. would be costs associated with the additional 35-40 miles required to truck the milled feed products from Bow. No additional loading and unloading costs would be incurred since Merrimack now loads the milled feed product contents of rail cars to trucks. The additional costs, if any, would be passed on to the customers of the company. The witness had no personal knowledge of the extent of these additional costs. Alternate rail delivery at Exeter, 8 miles away, would continue to be available for rail delivery of this product.

Location of its nearest competitor in the area for the product is Agway, at Manchester, N. H., 17 miles distant.

The other witnesses, Cummings, Myca Forest Industries, Inc., Tobey, New Hampshire Pulp and Mallek, Keller Company, all admitted that their companies had not used rail services. Cummings and Tobey could only conjecture about their future demand for rail service in the transportation of wood chips and pulp. Even then, if such demand arose, they could be served at Exeter, N.H. Mallek could only rely on a tenant of Keller Company for possible future demand for rail service. Their tenant had discontinued use of rail service in its business and did not itself offer a witness to show any intention to resume such use.

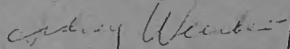
Increased shipping costs to shippers from the alternate transportation service which would be available in the event of abandonment of the line do not outweigh the financial disadvantage to the debtor's estate from continued operation of the line.

"Protestants are concerned about increased shipping costs to them if the line is abandoned. Generally, where lines are abandoned, shippers on that line will be faced with some increased shipping costs from the alternate transportation services available. In the instant situation, this factor must be weighed against the fact that these shippers generate so little traffic that the railroad is losing money on the operation. The applicant is already in reorganization under the bankruptcy laws, and, where, as here, the shippers have other means of transportation available to them, the mere fact that they may have to meet higher costs is not sufficient justification for requiring the already bankrupt applicant to spend about \$115,000 to rehabilitate a line that would undoubtedly continue to incur annual losses in the foreseeable future."

Penn Central - Abandonment, Canandiagua Br., Ontario County, N. Y., cit supra - Trustee's Brief, at page 144.

Wherefore, the Trustees again submit that the evidence warrants and supports a finding that the Trustees' decision to seek the abandonment of the line described in their petition was justified, and that the Special Master ought to recommend that the Reorganization Court issue an order authorizing such abandonment, with the approval and authorization of the Interstate Commerce Commission, as provided for under the provisions of Section 77 (o) of the Bankruptcy Act.

Respectfully submitted,



Sidney Weinberg, Esq.
Attorney for Robert W. Meserve and
Benjamin H. Lacy, Trustees of the
property of Boston and Maine Corpora-
tion, Debtor
150 Causeway Street
Boston, Massachusetts 02114

December 1, 1976

January 4, 1977

Hon. R. Ammi Cutter
62 Sparks Street
Cambridge, Mass. 02138

Re: Boston and Maine Corporation, Debtor; No. 70-250M
Petition for Order No. 159

Dear Justice Cutter:

I have no objections to your draft report on the hearings in the above-captioned matter and do not request hearing thereon.

I suggest that the reference to the case in the First Circuit, appearing on pages 8 and 12 of the Draft Report is more accurately cited as "In re Boston and Maine Corporation, Debtor, Appeal of State of New Hampshire, et al."

Respectfully,

Sidney Weinberg

cc: John T. Collins, Esq.

SW/maw

SHERBURNE, POWERS & NEEDHAM

ONE BEACON STREET · BOSTON · MASSACHUSETTS 02108

617/523-2700

WALTER POWERS
OF COUNSEL

F. WILLIAM ANDRES
JOHN GARR BOLAN
F. STANTON DELAND, JR.
NEAL HOLLAND
ROBERT F. WHITE
DANIEL NEEDHAM, JR.
JOHN T. COLLINS
STEPHEN A. HOPKINS
KARL J. HIRSHMAN

JOHN H. SHERBURNE
(1919-1988)
DANIEL NEEDHAM
(1918-1974)

THEODORE L. TILLOTSON
ROBERT E. MCWALTER
C. THOMAS SWAIN
JAMES POLLOCK
WILLIAM V. TRIPP III
STEPHEN S. YOUNG
ANTHONY E. BATELLE
WILLIAM F. HACHEN
JACOB C. DIEMER

JOHN L. DALY
SAMAYLA D. DEUTCH
PHILIP J. NOTOPOULOS
BYRON E. WOODMAN, JR.

WILLIAM T. LOOMIS
G. MITCHELL ECKEL III
HAROLD W. POTTER, JR.
MICHAEL P. BAGLEY

CONCORD OFFICE
747 MAIN STREET, CONCORD, MASSACHUSETTS 01742
617/369-1611

January 4, 1977

Justice R. Ammi Cutter
62 Sparks Street
Cambridge, Massachusetts 02138

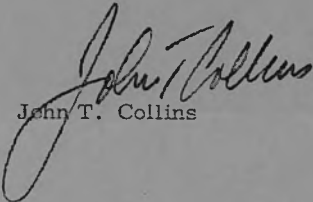
Re: Boston & Maine Corporation, Debtor
No. 70-250M - Petition for Order No. 159

Dear Justice Cutter:

Thank you for sending me a copy of the draft of your Report.

You indicated that you would be glad to receive written comments. I have prepared a memorandum setting forth my comments which is enclosed herewith. I have no particular desire for a hearing on the Draft Report.

Yours very truly,


John T. Collins

pmc
Enclosure
cc: Sidney Weinberg, Esq.
(with enclosure)

62 SPARKS STREET
CAMBRIDGE, MASSACHUSETTS 02138
Telephone: Area Code 617 - 876-0032

Summer:
Randolph, New Hampshire 03593
Telephone:
Area Code 603 - 466-3849

January 21, 1977

Clerk, District Court of the United States
District of Massachusetts
Federal Building
Boston, Massachusetts

Dear Sir: Re: Boston & Maine Corp., Debtor, No. 70-250 M -
Petition for Order No. 159.

I file herewith my report as master in the above matter.

Respectfully,

(s) R. Ammi Cutter

R. Ammi Cutter, Master.

RAC/hmf

(with enclosure)

Copies to:

Mr. Sidney Weinberg (and Mr. Parks)
Law Department
Boston & Maine Corporation
150 Causeway Street
Boston, Massachusetts 02114

Mr. John Collins
Sherburne, Powers & Needham
One Beacon Street
Boston, Massachusetts 02108

*Abstract: E. W. ...
Newfields H.H.*

F-12-101

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

.....
In the Matter of
BOSTON AND MAINE CORPORATION No. 70-250-F
Debtor
.....

TRUSTEES' MOTION TO CONFIRM REPORT OF
SPECIAL MASTER R. AMMI CUTTER
REGARDING TRUSTEES' PETITION FOR
AUTHORITY PURSUANT TO
PETITION FOR ORDER NO. 159

The Trustees of the Debtor's property move the Court to adopt the report of Special Master R. Ammi Cutter filed herein on January 21, 1977, and to adopt the findings of fact and conclusions of law of the said Special Master as its own, and to overrule the objections of the State of New Hampshire to the report as filed.

Charles W. Mulcahy, Jr., Attorney
for Robert W. Meserve and Benjamin
H. Lacy, the Trustees of the Property
of Boston and Maine Corporation,
Debtor

7

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

.....

In the Matter of .

BOSTON AND MAINE CORPORATION . No. 70-250-M

Debtor .

.....

ORDER ADOPTING REPORT OF
SPECIAL MASTER, R. AMMI CUTTER,
ON PETITION OF TRUSTEES FOR AUTHORITY TO
ABANDON THE LINE OF RAILROAD
BETWEEN MANCHESTER AND NEWFIELDS,
INCLUDING THE FREMONT BRANCH, NEW HAMPSHIRE

This cause came on to be heard on the motion of the Debtor's Trustees to adopt the Report of R. Ammi Cutter, Special Master, regarding the petition of the Debtor's Trustees for authority to abandon the line of railroad referred to in the petition, and, hearing having been held on the objections of the State of New Hampshire to the adoption of said Report, and the Court being duly advised in the premises, it is

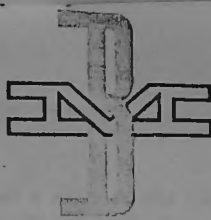
ORDERED, ADJUDGED and DECREED:

1. That the Report of R. Ammi Cutter, Special Master, is adopted.
2. That the Trustees be, and they hereby are, authorized
 - (a) to apply to the Interstate Commerce Commission, pursuant to Paragraphs 18 to 20, inclusive, of Section 1 of the Act, as amended, for a Certificate that the present and future public convenience and necessity permit the abandonment of the line of railroad, approximately 27.2 miles in length, running from Valuation Station No. 1964+41 in the City of Manchester to Valuation Station No. 528+24 in the Town of Newfields, together with the branch line thereof approximately 4.5 miles in length, being the Fremont Branch, so-called, running from Valuation Station No. 3921+10 in the Town of Epping to Valuation Station No. 3683+20 in the Town of Fremont, all within the Counties of Hillsborough and Rockingham, New Hampshire;

- (b) to abandon said line of railroad including said branch line thereof, upon the issuance of a proper certificate by the Interstate Commerce Commission;
- (c) upon the issuance of a proper certificate by the Interstate Commerce Commission for the aforesaid proposed abandonment, including the abandonment of the Fremont Branch line, to salvage such material as may profitably be recovered therefrom and, as provided by and subject to the limitations of other Orders entered herein, sell or otherwise dispose of any property included in said line of railroad, including said branch line thereof; and
- (d) to take such other steps as may be necessary and proper to accomplish the foregoing.

SENIOR DISTRICT JUDGE

BOSTON AND MAINE CORPORATION - DEBTOR
150 CAUSEWAY STREET
BOSTON, MASSACHUSETTS 02114
Telephone: 227-6000



LAW DEPARTMENT

ROBERT W. MESERVE
BENJAMIN H. LACY
TRUSTEES

JOHN J. NEE
Vice President and General Counsel

JOHN E. O'KEEFE
SIDNEY WEINBERG
Attorneys

October 22, 1976

Re: In the Matter of Boston and Maine Corporation, Debtor;
U. S. District Court for the District of Massachusetts
No. 70-250-M; Petition for Order No. 159 - Abandonment
of line between Manchester and Newfields, including the
Fremont Branch, New Hampshire

Gentlemen:

Please be advised that Hon. R. Ammi Cutter, Special Master for the Court, has appointed Monday, November 1, 1976 at 9:30 A.M. in Room 1209 of the Post Office and Court House Building, Post Office Square, Boston, Massachusetts as the date, time and place for the commencement of resumed hearings on the above-captioned petition.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sidney Weinberg'. The signature is written in dark ink and is positioned above the typed name.

Sidney Weinberg, Attorney for
the Trustees of the property of
Boston and Maine Corporation,
Debtor

SW/maw

Hampshire;

-2-

CERTIFICATE OF SERVICE

Lumbermen, Inc.
Route 101
Raymond, New Hampshire 03044

I hereby certify that a copy of the foregoing notice was mailed,
on October 1, 1976, postage prepaid, first class mail, to the addressees
appearing hereinbelow.

Manchester, New Hampshire 03102

R. C. Haselton Company, Inc.
1645 Canada Road
Raymond, New Hampshire 03044

Sidney Weinberg

John T. Collins, Esq.
Sherburne Powers and Needham
One Beacon Street
Boston, Massachusetts 02108

Home Gas Corporation of New Hampshire
P.O. Box 480
Great Barrington, Massachusetts 01230
Att. Mr. Earl L. Way, Division Manager

J. F. Brown & Sons
One Plumer Street
Epping, New Hampshire 03042

Merrimac Farmers Exchange
P.O. Box 470
Concord, New Hampshire 03301
Att. Mr. C. T. Bruno, Manager Milling Dept.

W. S. Goodrich Company, Inc.
Main Street
Epping, New Hampshire 03042

Johnson Lumber Company
Amoskeag Bank Building
Manchester, New Hampshire 03101

Spaulding & Frost Company
Main Street
Fremont, New Hampshire 03044

Fremont Furniture
Route 111-A
Fremont, New Hampshire 03044

Manchester Sand & Gravel
Route 3
Hooksett, New Hampshire 03106

Hampshire;

Lumbertown, Inc.
Route 101
Raymond, New Hampshire 03044

Emery Waterhouse Company, Inc.
Candia Road
Manchester, New Hampshire 03103

R. C. Hazelton Company, Inc.
1645 Candia Road
Manchester, New Hampshire 03108

Gordon A. Cammett, Sr.
Chairman, Board of Selectmen
Raymond, New Hampshire 03077

Jaholska Poultry Farm
Auburn
New Hampshire 03032

Stow Cooperage Co.
Main Street
Fremont, New Hampshire 03044

Mrs. Dean Wilber
Oak Hill Road
Concord, New Hampshire 03301

Sanborn's Farm
Box 285, Route 1
Raymond, New Hampshire 03077

Office of Selectmen
Town of Epping
Epping, New Hampshire 03042

C. M. Dning, Inc.
27 Garfield Street
Exeter, New Hampshire 03833

Hon. Bruce R. Graves
Mayor, City of Portsmouth
Portsmouth, New Hampshire 03801

John P. Regan, Chairman
New Hampshire State Port Authority
555 Market Street, Box 506
Portsmouth, New Hampshire 03801

Hampshire;

Buxton Tractor & Implement
Main Street
Epping, New Hampshire 03042

New Hampshire Pulp Company
Fremont
New Hampshire 03044

Office of Selectmen
Fremont
New Hampshire 03044

Mr. John J. Cummings
Secretary, Planning Board
Town of Brentwood
Brentwood, New Hampshire 03833

Hon. John Hoar, Jr.
Epping
New Hampshire 03042

Myca Forest Industries, Inc.
RFD Rowell Road
Exeter, New Hampshire 03833

W. E. Goodrich Co., Inc.
Main Street
Epping, N. H. 03042

W. E. Goodrich Co., Inc.
Main Street
Epping, N. H. 03042

Johnson Lumber Co.
Apostrophe Bank Building
Manchester, N. H. 03101

Quidding & Fernald Co.
Main Street
Fremont, N. H. 03044

Hampshire;

Governor of New Hampshire

Attorney General of New Hampshire

Chairman, N. H. Public Utilities Commission

John T. Collins, Esq.
Sherburne, Powers and Needham
225 Franklin St.
Boston, Massachusetts 02110

TOWNSEND-GREENVILLE LINE

Pilgrim Foods, Inc.
Paul Santich, President
Wilton Road
Greenville, N. H. 03048

Seppala and Aho Construction Co., Inc.
New Ipswich, N. H. 03071

Frost Farm Service
Mason Road
Greenville, N. H. 03048

EAST MANCHESTER-ROCKINGHAM LINE

Home Gas Co.
Main St.
Epping, N. H. 03402

J. F. Brown & Sons
Main Street
Epping, N. H. 03402

Merrimac Farmers Exchange
Main Street
Epping, N. H. 03402

W. S. Goodrich Co., Inc.
Main Street
Epping, N. H. 03402

Johnson Lumber Co.
Amoskeag Bank Building
Manchester, N. H. 03101

Spaulding & Frost Co.
Main Street
Fremont, N. H. 03044

Hampshire;

Petition for Order No. 159---Abandonment of (a) the Manchester to Newfields, New Hampshire, line; and (b) the Fremont, New Hampshire, branch line.

Corporation of New Hampshire

Home Gas Company
Main Street, Box 141 P.O. Box 488
Epping, New Hampshire 03042

*Gordon A. Cummett, Sr.
Chairman, Board of
Selectmen
Raymond N.H. 03077*

J. F. Brown & Sons
Main Street 1 Plum St
Epping, New Hampshire 03042

*Great Burlington, Mass 01230
247 Mr. Carl W. Way,
Bureau
Manchester*

Merrimac Farmers Exchange
Main Street
Epping, New Hampshire 03042

*P.O. Box 470
Concord, N.H. 03301*

W. S. Goodrich Company, Inc.
Main Street
Epping, New Hampshire 03042

*Attn. Mr. C.T. Brown, manager
Mullins Dept.*

Johnson Lumber Company
Amoskeag Bank Building
Manchester, New Hampshire 03101

*Jaholsha Paubry Jarou
Acquon, N.H. 03032*

Spaulding & Frost Company
Main Street
Fremont, New Hampshire 03044

*Howe George Co
Main Street
Fremont, N.H. 03044*

Fremont Furniture
Route 111-A
Fremont, New Hampshire 03044

Manchester Sand & Gravel
Route 3
Hooksett, New Hampshire 03106

Lumbertown, Inc.
Route 101
Raymond, New Hampshire 03044

*Mrs. Dean Wilber
Oak Hill Road
Concord N.H. 03301*

Hampshire;

Petition for Order No. 159--Abandonment of (a) the Manchester to Newfields, New Hampshire, line; and (b) the Fremont, New Hampshire, branch line.

Corporation of New Hampshire

Home Gas Company
Main Street, Box 141 P.O. Box 480
Epping, New Hampshire 03042

*Yorkon A. Cummett, Sr.
Chairman, Board of
Selectmen
Raymond N.H. 03077*

J. F. Brown & Sons
Main Street 1 Plum St
Epping, New Hampshire 03042

*Great Barrington, Mass 01230
Att. Mr. Carl W. Way,
Revenue
Worcester*

Merrimac Farmers Exchange
Main Street
Epping, New Hampshire 03042

*P.O. Box 470
Concord, N.H. 03301*

W. S. Goodrich Company, Inc.
Main Street
Epping, New Hampshire 03042

*Att. Mr. C.T. Brown, manager Milling
Dept.*

Johnson Lumber Company
Amoskeag Bank Building
Manchester, New Hampshire 03101

*Jakobska Poultry Farm
Raymond, N.H. 03077*

Spaulding & Frost Company
Main Street
Fremont, New Hampshire 03044

Fremont Furniture
Route 111-A
Fremont, New Hampshire 03044

*Howe Lumber Co
Main Street
Fremont, N.H. 03044*

Manchester Sand & Gravel
Route 3
Hooksett, New Hampshire 03106

Lumbertown, Inc.
Route 101
Raymond, New Hampshire 03044

*Mrs. Deane Miller
Oak Hill Road
Concord N.H. 03301*

Emery Waterhouse Company, Inc.
Candia Road
Manchester, New Hampshire 03103

*Soulson's Farm
Box 285, Route 1
Raymond, N.H. 03077*

R. C. Hazelton Company, Inc.
1645 Candia Road
Manchester New Hampshire 03109

Petition for Order No. 160--Abandonment of (a) the Bennington to Hillsborough, New Hampshire, line; (b) the Townsend, Massachusetts, to Greenville, New Hampshire, line; and (c) the Acton to Maynard, Massachusetts, line.

Mr. Paul Santich, President
Pilgrim Foods, Inc.
Wilton Road
Greenville, New Hampshire 03048

Seppala and Aho Construction Company, Inc.
New Ipswich, New Hampshire 03071

Frost Farm Service
Mason Road
Greenville, New Hampshire 03048

J. B. Vallancourt Oil Co., Inc.
Main Street
Hillsboro, New Hampshire 03244

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

.....
In the Matter of
BOSTON AND MAINE CORPORATION
Debtor

No. 70-250-M

ORDER OF NOTICE RELATIVE TO
PETITION FOR ORDER NO. 159

At Boston in said District, this *22nd* day of June, 1976.

The Trustees of the Debtor's property having presented their petition for Order No. 159 to the Court for authority to apply to the Interstate Commerce Commission for leave to abandon the line of railroad between Manchester and Newfields, including the Fremont Branch, New Hampshire, said matter being more fully described in said petition, a copy of which is on file in this Court, and the said petition having been referred to R. Ammi Cutter, as Special Master, to take and hear evidence with respect to the issues of fact and law raised in said petition, it is

ORDERED:

1. That hearings be held before R. Ammi Cutter, as Special Master, beginning on Monday, July 12, 1970, at 9:30 A.M. in Room *1269*, United States Courthouse Building, Post Office Square, Boston, Massachusetts, as to whether Robert W. Meserve and Benjamin H. Lacy, as Trustees of the property of the Debtor, should be authorized to file an application with the Interstate Commerce Commission for leave to abandon a line of railroad between Manchester and Newfields, including the Fremont Branch, New Hampshire;

2. That said Trustees shall give notice to all parties who have been allowed to intervene in these proceedings as well as all parties who are required by law to be given notice of abandonment hearings, of the hearing to be held before this court on July 12, 1976, at 9:30 a.m. by mailing a copy of this order by regular mail, postage prepaid, addressed to all such parties, or their counsel, at least ten (10) days prior to the date of said hearing.

3. That, on or before July 1, 1976, the Trustees shall submit to Austin W. Jones, Jr., Chief Deputy Clerk, U. S. District Court, P. O. C. H. Boston, Massachusetts 02109 an original and one copy of each of the exhibits on which they intend to rely at the hearings in support of their petition and serve copies thereof on Counsel for the State of New Hampshire.

4. That, on or before July 6, 1976, Counsel for the State of New Hampshire shall submit, and all other parties to whom the within notice is given who intend to participate in the hearings are requested to submit to the aforesaid Chief Deputy Clerk an original and two copies of written statements, views, arguments or other comments regarding such party's support or opposition to the grant of authority for which the Trustees petitioned.

DISTRICT JUDGE

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

.....
In the Matter of
BOSTON AND MAINE CORPORATION
Debtor
.....

No. 70-250-M

ORDER OF NOTICE RELATIVE TO
MOTIONS OF TRUSTEES TO REFER ABANDONMENT PETITIONS
TO A SPECIAL MASTER

At Boston, in said District, this 13 day of May
1976.

The motions of the Trustees to refer various abandon-
ment petitions to a Special Master (Docket Nos. 1613 and 1770)
having been filed herein and good cause appearing to me therefor,
it is hereby

ORDERED:

I. That hearings be held before this Court on May 27 ,
1976, at 10:00AM in Courtroom 4, United States Courthouse Building,
Post Office Square, Boston, Massachusetts, on the motions of the
Trustees to refer the following abandonment petitions to a Special
Master:

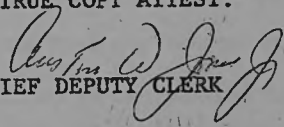
1. Petition for Order No. 42--Abandonment of the
Concord to Lincoln, New Hampshire, line;
2. Petition for Order No. 43--Abandonment of the
Franklin Falls, New Hampshire, branch line;
3. Petition for Order No. 159--Abandonment of
(a) the Manchester to Newfields, New Hampshire,
line, and (b) the Fremont, New Hampshire,
branch line;
4. Petition for Order No. 160--Abandonment of
(a) the Bennington to Hillsborough, New Hamp-
shire, line; (b) the Townsend, Massachusetts,
to Greenville, New Hampshire, line; and (c) the
Acton to Maynard, Massachusetts, line;

5. Petition for Order No. 198--Abandonment of the Northampton to Hardwick, Massachusetts, line; and
6. Petition for Order No. 303--Abandonment of the Marlboro, Massachusetts, branch line.

II. That the Trustees shall give notice to all parties who have been permitted to intervene generally in these proceedings and to all parties who have intervened with respect to such abandonment petitions of the hearings to be held before this Court on **May 27** , 1976, at **10:00AM** , by regular mail, postage prepaid, addressed to all such parties, or their counsel, at least seven (7) days prior to the date of said hearings.

s/ **FRANK J. MURRAY**
DISTRICT JUDGE

A TRUE COPY ATTEST:


CHIEF DEPUTY CLERK

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

.....
In the Matter of .
BOSTON AND MAINE CORPORATION . No. 70-250-M
Debtor .
.....

OPPOSITION OF STATE OF NEW HAMPSHIRE
TO PETITION FOR ORDER NO. 159

The State of New Hampshire, in compliance with Order of Notice Relative To Petition For Order No. 159, by its Counsel, hereby submits its opposition to Petition For Order No. 159 on the grounds that the evidence proposed to be submitted by the Trustees does not show that the Estate would be substantially better off as the result of the proposed abandonment and that the proposed abandonment is not consistent with the public interest.

State of New Hampshire

June 30, 1976

By *John Collins*
Its Attorney

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

.....

In the Matter of
 BOSTON AND MAINE CORPORATION, No. 70-250-F
 Debtor

.....

PETITION OF TRUSTEE FOR AUTHORITY TO ABANDON
 A LINE OF RAILROAD BETWEEN MANCHESTER AND
 NEWFIELDS, INCLUDING THE FREMONT BRANCH,
 NEW HAMPSHIRE

Now comes Robert W. Meserve, Trustee of the property of the Debtor herein, and respectfully represents:

1. Included in the property of the Debtor is a line of railroad, approximately 27.2 miles in length, running from approximately Station No. 1964+41 in the City of Manchester to Station No. 528+24 in the Town of Newfields, together with a branch line thereof approximately 4.5 miles in length, being the Fremont branch, so-called, running from approximately Station No. 3921+10 in the Town of Epping to Station No. 3683+20 in the Town of Fremont, all within the Counties of Hillsborough and Rockingham in the State of New Hampshire.
2. The Trustee has balanced the economic interests of the railroad against unduly affecting the public interest and has decided, on December 19, 1972, that the aforesaid line of railroad should be abandoned and sold in the interest of the Debtor's estate and of ultimate reorganization, and that such abandonment will not unduly or adversely affect the public interest.

WHEREFORE, PETITIONER PRAYS:

1. That the Court authorize petitioner to apply to the Interstate Commerce Commission, pursuant to Paragraphs 18 to 20, inclusive, of

Section 1 of the Act, as amended, for a Certificate that the present and future public convenience and necessity permit the abandonment referred to in this petition;

2. That the Court authorize petitioner, upon issuance of a proper certificate by the Interstate Commerce Commission, to abandon said line of railroad.

3. That the Court authorize petitioner, upon the issuance of a proper certificate by the Interstate Commerce Commission, to salvage such material as may profitably be recovered and, as provided by and subject to the limitation of other Orders entered herein, to sell or otherwise dispose of any property included in said line of railroad.

4. That the Court also authorize petitioner to take such other steps as may be necessary and proper to accomplish the foregoing.

ROBERT W. MESERVE, Trustee
of the Property of Boston and
Maine Corporation, Debtor

By _____
Charles W. Mulcahy, Jr.
Counsel for the Trustees

The reason for the proposed abandonment is that such abandonment
Dated: _____
is consistent with the public convenience or necessity.

This line of railroad has appeared on the system diagram map in
_____ since June 24, 1977.

NO. AB 32 (SUB-NO. 1F)
NOTICE OF INTENT TO ABANDON OR
TO DISCONTINUE SERVICE

Robert W. Meserve and Benjamin H. Lacy, Trustees of the property of Boston and Maine Corporation, Debtor, hereby give notice that on or about July 1, 1978 they intend to file with the Interstate Commerce Commission, Washington, D. C. 20423, an application for a certificate of public convenience and necessity permitting the abandonment of a line of railroad comprised of (1) a segment of a line of railroad known as the Portsmouth Branch extending from railroad milepost M-2.80 near East Manchester to Newfields near M-30.0 a distance of 27.2 miles, and (2) a branch line of railroad thereof known as the Fremont Branch extending from railroad milepost W-69.7 near Epping to W-73.3 near Fremont a distance of 3.5 miles, all in Rockingham and Hillsboro Counties, New Hampshire, hereinafter jointly referred to as the "line of railroad". The line for which the abandonment application will be filed includes the stations of Candia, milepost P29.01, Raymond, milepost P22.85, Epping, milepost P17.19, and Fremont, milepost 69.59.

The reason for the proposed abandonment is that such abandonment is consistent with the public convenience or necessity.

This line of railroad has appeared on the system diagram map in category 1 (§1121.20 (b) (1)) since June 24, 1977.

The interest of railroad employees will be protected by

Any interested person, in response to this notice, is entitled to take either of the following actions:

1. File with the Interstate Commerce Commission written comments containing:

- (a) Exact name and address of the commenting party;
- (b) Brief statement of interest in the abandonment or discontinuance proceeding;
- (c) Specific statement of position and summary of evidence with regard to any or all of the following:
 - (1) Intent to offer financial assistance;
 - (2) Environmental impact;
 - (3) Impact on rural and community development;
 - (4) Suitability of the properties for other public purposes; and
 - (5) Recommended provisions for protection of the interests of employees.

Written comments will be considered by the Commission in all proceedings in developing conditions and in determining whether to conduct an investigation on its own motion. In the event an investigation is conducted, then the commenting party may participate in the proceeding as its interests may appear.

2. File with the Interstate Commerce Commission a petition requesting that the application and proposed abandonment be investigated.

The petition to investigate shall be in the form of a verified statement, and at minimum, contain:

- (a) Identification of petitioner including its name, address, and business;
- (b) Statement of petitioner's interest in the abandonment or discontinuance proceeding; whether petitioner uses the involved service; and if it does not, information with respect to the group or public interest it represents;
- (c) Specific reason(s) for requesting the institution of an investigation, including information with respect to petitioner's reliance on the involved service, with allegations of fact supported by an affidavit of personal knowledge of the facts;
- (d) Any rebuttal of information or material submitted by applicant; and
- (e) Request for oral hearing and reasons therefore if desired.

Upon receipt of a petition to investigate, the Commission shall determine the extent of the investigation to be instituted. Those parties filing petitions to investigate should be prepared to participate actively in either oral hearings or via the submission of additional material in the form of verified statements. Parties seeking information concerning the filing of petitions should refer to 49 CFR 1121.36.

Petitions to investigate and written comments should indicate the proceeding designation No. AB-32 (Sub-No. 1F) and should be filed with the Interstate Commerce Commission, Washington, D. C. 20423, no later than August 7, 1978. Interested persons may file either a written comment or a petition to investigate with the Commission to become a party

to this abandonment proceeding. A copy of each petition to investigate or written comment shall be served upon the representative of the applicant, Sidney Weinberg, Esq., Boston and Maine Corporation, Debtor, 150 Causeway Street, Boston, Massachusetts 02114. Replies to comments or petitions, the latter shall be in the form of a verified statement, shall be filed with the Commission no later than August 17, 1978 and shall be served on all commenting parties and petitioners. The original and 2 copies of all petitions, comments and replies shall be filed with the Commission together with a certificate of service.

In the event a petition to investigate prepared in accordance with the above instructions is filed, then the Commission will conduct an investigation of the abandonment. Written comments filed with the Commission will be considered by the Commission in all proceedings in developing conditions and in determining whether the Commission should conduct an investigation on its own motion in the event no petition to investigate is filed. Additionally, if an investigation is conducted then parties filing comments may participate in the investigation as their interests may appear.

Persons desiring further information concerning abandonment procedures may contact the Interstate Commerce Commission's Section of Finance, Office of Proceedings or refer to the full abandonment and discontinuance regulations at 49 CFR Part 1121. Persons desiring information concerning financial assistance for the continued operation or acquisition of the involved line should contact the Commission's Rail Services Planning Office. The carrier's representative to whom inquiries may be made is

Sidney Weinberg, Esq., Boston and Maine Corporation, Debtor, 150 Causeway Street, Boston, Massachusetts 02114. A copy of the application will be available for public inspection on or after July 1, 1978 at each agency station or terminal on the line proposed to be abandoned.

STATEMENT OF THE CASE

In January of 1973, the Trustee of the Boston and Maine Railroad filed in the United States District Court a petition for authority to apply to the Interstate Commerce Commission for permission to abandon a line of railroad running from a point about three miles east of Manchester, New Hampshire to a point about one-fourth of a mile west of Rockingham Junction, New Hampshire, including an off-shoot running to Epping, New Hampshire.

On May 27, 1976, the matter was referred to R. Ammi Cutter, a Special Master.

Hearings were held on July 12, July 13 and November 1 of 1976. At the hearings, the Petitioner appeared by counsel and participated.

On January 21, 1977, the Special Master sent his Report to the Clerk of the United States District Court.

Pursuant to Rule 53(e)(2) of the Federal Rules of Civil Procedure, the State of New Hampshire states its objections to the Report of Master Cutter.

OBJECTIONS

1. Exhibit 12 was improperly admitted into evidence, even for the limited purposes set forth by the Master. It purported to be a record of the Minutes of the Trustees of the Debtor but it was hearsay and it was never authenticated by the testimony of the custodian or other qualified witnesses (Rule 803(6)) and it is not self-authenticating (Rule 902).

2. The finding contained in paragraph 7 that the statistical material prepared for the hearings represent reasonable efforts to present data compiled is not in accordance with the weight of the evidence.

3. There was insufficient evidence to find in paragraph 9 that the loss to the Debtor would be \$28,218.

4. The Report contained no findings as to the extent of additional cost to shippers of using alternative methods of transportation.

5. There was insufficient evidence to support a finding that the Trustees had considered the effects of abandonment upon the public. (A finding was made in paragraph 23, not that the Trustees had taken such effects into account, but that the record contained no indication that they had not).

6. The finding contained in paragraph 22 that the Trustees reached their decision after opportunity to consider essentially all of the documenting evidence presented to the Master and to have that evidence analyzed for them by the Debtor's staff is clearly erroneous and is contradicted by the Master's finding that the actual loss is about \$28,000, a figure nothing like any figure suggested to the Trustees by their staff, and by the findings set forth in paragraph 23.

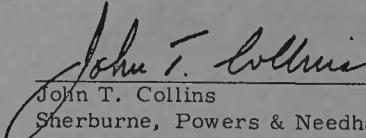
7. The suggestion in paragraph 23 that the Trustees might cure the defect of not having considered all relevant facts by conditioning this Court's approval upon a later determination by the Trustees to proceed before the Interstate Commerce Commission is based upon an erroneous view of the order of the three steps contemplated to be taken by Section 77 of the Bankruptcy Act prior to abandonment.

8. There was insufficient evidence upon which a finding might have been made that the Trustees had considered alternatives to abandonment and the Master's decision erroneously infers that no such finding is necessary.

9. Conclusion B of the Master's Report is erroneous in holding that Twenty Eight Thousand Dollars (\$28,000) is a "significant burden on the Debtor's ability to continue basic rail service on the balance of the Debtor's system". The conclusion that a loss of \$28,000 is a significant burden in relation to Railway Operating Revenues of Eighty Eight Million Dollars (\$88,000,000) (Exhibit 9) is clearly erroneous.

10. Conclusion E of the Master's Report, taken together with Appendix 2, fails to find the extent of additional expense caused to shippers and receivers. This failure makes unfounded the conclusion contained in paragraph E that such consequences are outweighed by the public interest in relieving the Debtor estate of the burden referred to above.

For the above reasons, the State of New Hampshire objects to the Report of Special Master R. Ammi Cutter.



John T. Collins
Sherburne, Powers & Needham
Special Counsel for the State of
New Hampshire

One Beacon Street
Boston, Massachusetts

Dated: January 26, 1977

In The
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In Proceedings For The
Reorganization of a Railroad

In the Matter of)
)
)

BOSTON & MAINE CORPORATION,)

Debtor)
)

No. 70-250-M

CERTIFICATE OF SERVICE

I, John T. Collins, attorney for the State of New Hampshire,
hereby certify that on the 26th day of January, 1977, I served the within
Objections To Report of Master upon the Trustees of the Boston and Maine
Corporation, Petitioner herein, by mailing copies of the same, postage
pre-paid, to their attorneys:

Sidney Weinberg and Robert Parks
Boston & Maine Corporation
150 Causeway Street
Boston, Massachusetts 02114



John T. Collins

Sherburne, Powers & Needham
One Beacon Street
Boston, Massachusetts 02108
(617) 523-2700

Dated: January 26, 1977

February 1, 1977

Mr. C. W. Mulcahy, Jr.

Re: Petition For Order No. 159

Attached is proposed petition to confirm report of the Special Master recommending order authorizing Trustees to apply for abandonment of the Manchester-Newfields, N. H. line.

Sidney Weinberg

SW/maw

Enc.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In Proceedings For The
Reorganization of a Railroad

In the Matter of)
)
BOSTON AND MAINE CORPORATION) No. 70-250-M
)
Debtor)

TRUSTEES' BRIEF IN SUPPORT OF
MOTION TO ADOPT THE REPORT OF
R. AMMI CUTTER, MASTER, ON HEARINGS
CONCERNING PETITION FOR ORDER NO. 159

Sidney Weinberg
150 Causeway Street
Boston, Massachusetts 02114

Attorney for Robert W. Meserve
and Benjamin H. Lacy, Trustees
of the property of Boston and Maine
Corporation, Debtor

March 8, 1977

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I. THE FINDINGS OF FACT CONTAINED IN THE REPORT ARE SUPPORTED BY THE EVIDENCE AND SHOULD BE ACCEPTED.

Petition for Order No. 159 was filed pursuant to the requirements imposed on trustees of railroads in reorganization by the provisions regarding abandonments of lines of railroad contained in Section 77 (o) of the Bankruptcy Act (11 U.S.C. 205 (o)). In material part, that section provides:

"(o). The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by the Interstate Commerce Act as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge."

The U. S. Court of Appeals for the First Circuit in In Re Boston and Maine Corporation, 455 F. 2d 1205, 1208 (1972), decided that approval of a Reorganization Court to the vote of trustees of railroads in reorganization to proceed with an application for the abandonment of a line in a debtor's estate forms part of a three-step process in each step of which Section 77 (o) requires that the economic interests of the railroad in such abandonment be balanced, or reviewed as to balance, against the undue or adverse affect on the public interest resulting therefrom.

"Under the statutory scheme, rail abandonment involves the trustees, the court, and the Commission in a three-step process. First, the trustees decide whether to abandon a line, balancing the economic interests of the railroad against unduly affecting the public interest. Thereafter the district court must determine whether the trustees' decision is justified. Finally, if required by the Interstate Commerce Act, Chapter 1 of Title 49, U.S.C., the court-approved abandonment is presented to the Commission for its approval and authorization. It seems clear to us that if the district court is to consider whether the trustees' abandonment request is justified, it must receive evidence on all aspects of the statutory criteria."

1. The evidence supports the finding that the Debtor will lose at least \$28,000 in 1976 from operations on the line.¹⁾

The Master made the above finding on the evidence submitted by the Trustees in satisfaction of the first of the statutory criteria contained in 77 (o) that abandonment of the line was warranted in the interest of the debtor's estate and of ultimate reorganization. The Master's Report concedes that the loss may well be greater, but that the Trustees' evidence failed to establish any greater loss.

Two categories of costs which the Trustees offered in evidence as deductions against revenues in determining the line's profitability were respectively downgraded and eliminated.

The first category of costs, which the Master downgraded in extent from approximately \$10,000.00 to \$7,400.00, was the "beyond the line costs". These costs are indisputably incurred by a railroad in moving

1) The "line" hereinafter includes both the branch between East Manchester and Newfields and the branch between Epping and Fremont, N. H.

traffic which originates or terminates on a line proposed for abandonment over other lines of the railroad's system. The \$10,000.00 cost as a deduction against revenue to determine the line's profitability would have been entitled to full weight prior to adoption, on November 1, 1976, of new regulations governing the evidentiary methodology of establishing "avoidable costs" in abandonment proceedings.

Ex. 13, Sheet 5. Report, par. 11, pp. 12-14.

In re Boston and Maine Corporation, *cit supra*, at 1209.

41 Fed. Reg. 48520, et seq., November 4, 1976 (the Regulations).

49 C.F.R. 1121.42 (m).

Because of a lack of data (Rail Form A) to demonstrate beyond the line costs in accordance with the formula mandated by the Commission in its 1976 Regulations, the Trustees could only establish the costs in this category under the old formula, theretofore recognized by the Commission and affirmed by the First Circuit "as properly includable in determinations of the line's profitability", although not susceptible to precise calculations. As a result of the Trustees' inability to meet the requirements of the Regulations and based on the Trustees' evidence as to the direct costs incurred by them in this category, the Master found an annual loss of only \$7,400 as the beyond the line costs (Report, pp. 12-14).

The second category of costs on which the Trustees introduced evidence, but which the Master totally eliminated in his findings of costs in offset of revenues to determine profitability from the operation of the line, were those costs which the Trustees must indisputably incur to maintain, or restore, the line to safe operating condition at posted speeds.

Prior to the adoption by the ICC of the Regulations, this Court, in other abandonment proceedings, allowed into evidence and found as a deduction against revenues in the determination of a line's profitability, the average of the total costs over a 5-year period which would be required to be expended to maintain, or restore, the line to a safe operating condition at posted speeds.

49 C. F. R. 1121.42 (b) Avoidable Costs of Providing Service provides:

(b) "Rehabilitation costs shall not be included unless: (1) the track involved does not meet minimum Federal Railroad Administration (FRA) Class I safety standards. (49 C. F. R. Part 213)" . . .

The railroads have petitioned the U. S. Court of Appeals for the 7th Circuit to review the Order of the Commission establishing the Regulations and to set aside the Order in respect to 49 C. F. R. 1121.42 (b) (U.S. C. A. 7th Cir. Nos. 76-2283 and 77-1008). Challenge to this section of the Regulations is made on the basis that it conflicts with the provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210) which provides for the inclusion of rehabilitation costs as "avoidable costs" if they are "expenditures to eliminate deferred maintenance" 49 U.S.C. 1 a 11 (a). Witness Plumer, an engineering witness introduced by the Trustees, testified that the cost to maintain, or, as being a "close" question, to restore, the line to the Class I F. R. A. minimal standard was approximately \$279,030. The Regulations would require an engineering witness appearing for a railroad seeking abandonment

to testify that he had permitted operations over a line on which the standard of maintenance was below the minimal Class I standard allowed by the Federal Railroad Administration before he could expect acceptance of costs in this category as an offset against revenue in determining a line's profitability. It is apparent that no railroad engineering witness can be expected so to testify and, in the hearing on this proceeding, when confronted with this dilemma, Witness Plumer would only testify that the question whether, at that time, the line's state of maintenance met the Class I minimal standard was "close". Paragraph 11 of the Master's Report, page 15. In this category, the Master did not credit any rehabilitative expense to correct deferred maintenance against revenue produced by the line's operation in a determination of the line's profitability on the basis that, though "some rehabilitation must be done with promptness, if operations are long to continue," it will be postponed as long as possible. At the earlier hearing, Witness Berkshire, Trustee's Vice President-Engineering, testified that the average annual cost to correct deferred maintenance on the line by maintaining such line within the minimal Class I standard would be approximately \$40,000 (Tr. 1-42; Ex. 5).

Trustees do not contest the Master's findings as being inconsistent with the requirements in these categories established by the Commission's Regulations, but offer these elements of costs to establish that the Trustees' losses do, indeed, exceed the annual \$28,000.00 loss found by the Master.

The provisions of 77 (o) that the District Court review the determination

of the Trustees to proceed with an application to the Commission for abandonment of a line and decide, after hearing, whether such determination was justified has not been amended by Section 1 (a) of the Interstate Commerce Act, or the regulations of the Commission adopted pursuant thereto. The changes in the regulations regarding the methodology of establishing the avoidable costs in the event authorization for a line's abandonment is granted were made so that the Commission could establish in the abandonment proceeding an annual subsidy which, if provided to the railroad applicant upon the Commission's preliminary authorization for abandonment, would defer issuance of a certificate of public convenience and necessity permitting such abandonment while such annual subsidy continued. The exactitude of the amount of loss from the continued operation of a line which trustees in reorganization are obliged to prove in the proceedings before the Commission so that a subsidy offer may be established is not required in the second step of the three-step process wherein the District Court need only determine whether the evidence submitted at the hearing shows that, on balance of the statutory criteria contained in 77 (o), the Trustees' vote to petition the Court for authority to apply for the line's abandonment was justified.

The Master also found that, if abandonment were authorized, the estate of the debtor will realize in salvage approximately \$372,000, approximately \$113,000 of which would be in land resale values which might not be realized for an indefinite period of time (Report, par. 16-17,

pp. 20-21).

2. The evidence supports the Master's finding that the inconvenience and some additional expense which abandonment of the line will cause to the remaining receivers of freight on the line did not unduly affect the public interest.

77 (o) requires the trustees to satisfy the second of the statutory criteria that abandonment of the line will not unduly affect the public interest. The report found that the trustees had adequately considered this aspect of the statutory criteria and that the evidence supported a finding that the trustees' determination on this aspect of the statutory criteria was justified. The report found that the Trustees had adequately considered any possible alternatives to the line's abandonment, short of subsidy which has never been offered, and that no viable alternative was available.

The record adequately supports his finding that shipper demand for rail service on the line had sharply decreased (Report, par. 13, p. 17; Ex. 8); that there was no substantial prospect of any rail user development on the line (Report, par. 14, pp. 17-18); that truck service was available to the remaining rail users in the event of the line's abandonment on which some of the shippers who would be adversely affected by the line's abandonment already relied for their transportation needs (Report, Par. 14 C, pp. 18-19).

Specifically, the evidence showed that, in 1975, 70 of the 81 rail cars originating or terminating on the line were generated by customers

at Epping, N. H. (Ex. 8). In the first six months of 1976, of the total traffic on the line comprised of 35 cars of received traffic, 34 cars were received by customers at Epping. 18 of these cars were carloads of milled grain received by Merrimack Farmers Exchange (Merrimack) from its mill at Concord, New Hampshire at a public delivery requiring reloading to trucks and 14 of these cars were shipments of LPG gas to the storage tanks of Home Gas Company on their private siding. Home Gas did not appraise its interest in these proceedings sufficient to warrant affording a witness to show that the proposed abandonment unduly affected Home Gas Company's interests in continued rail service to Epping.

Whatever weight would otherwise be given to Home Gas Company's representation of the public interest in continued rail service to Epping should be discounted.

Chicago, M. St. P. & P. R. Co. Abandonment, 342 I.C.C.
146, 152

The report found that Merrimack could serve its customers in the Epping area either by taking rail delivery of the milled grain at Exeter, N. H. , eight miles away, or by trucking the milled grain after rail delivery at Exeter in its own trucks to its store at Epping. Merrimack's Witness, Bruno, its Mill Manager, testified that at least 50% of the milled grain was shipped for warehousing purposes only to its Epping store and that approximately 80-90% of the supplies to the Epping store were received by truck (Tr. 3-70). He could not substantiate the claim made on the computations of others in Merrimack's employ that Merrimack

would incur approximately \$250.00 more in transportation costs per carload if it delivered the milled products from Concord to Epping by its own trucks (Tr. 3-60) but, at any event, it would be able to pass on the additional costs to its customers (Tr. 3-61).

The insolvency of the applicant in petitions to the Reorganization Court for approval of the Trustees' decision to apply for abandonment of the line increases the weight which ought to be assigned by the Reorganization Court to the interest of the debtor's estate and requires protestants to the abandonment to offer to the Reorganization Court proof of their reliance on the freight service sought to be abandoned and the adverse affect such abandonment would have on their business and the public interest sufficient to offset the added weight that the insolvency of the debtor suggests should be attributed in favor of abandonment. Such offsetting proof must be of a more persuasive nature than that required of protestants to abandonments in proceedings under Section 1 (18) of the Act where protestants are not required to meet proof of a dire financial need of an applicant in reflection of its interest in a line's abandonment.

Colorado v. U.S., 271 U.S. 153, 168-169 (1925)

Purcell v. U.S., 315 U.S. 381, 383-385 (1941)

State of Nebraska v. U.S., 255 F. Supp. 718, 721-723 (1966)

Washington and Old Dominion Users Association v. U.S.,
287 F. Supp. 528, 531-534 (1968)

Washington and Old Dominion R. Abandonment - Virginia,
331 I. C. C. 587, 597-598 (1968)

"The dire financial condition of the railroad is a factor which outweighs considerations of public convenience and necessity for the line's continuation. Not only is the applicant's financial position such that it cannot be expected to risk operating such a marginal line in the absence of real prospects for a significant increase of business, but the benefits to be gained by it through savings and salvage upon its abandonment will be of considerable importance in preserving more essential rail transportation in southern New England. In determining the issue of public convenience and necessity, consideration must be given to the needs of the public using the entire facilities of the railroad as distinguished from the relatively few actual users of the line to be abandoned."

N. Y., N. H. & H. R. R. Abandonment, 324 I. C. C. 396,
403-404. (1965)

It is submitted that the record adequately supports the Master's conclusions to the effect that the Trustees have maintained their burden of proof on the statutory criteria mandated by 77 (o) of the Bankruptcy Act regarding their justification in determining to seek the abandonment of the line.

II. Reply to Objections to Master's Report

The first objection of the State of New Hampshire (State) to the Master's Report is directed to the admission of Ex. 12 into evidence. In paragraph 6 of the Report, the Master states that Ex. 12 was admitted only as establishing the facts (a) that the matter was again considered by the Trustees, (b) that the documents referred to in Ex. 12 had been furnished to the Trustees (at the time their vote was taken) and (c) that the vote quoted in Ex. 12 had been adopted. The testimony of Witness Parks, associate of the Counsel for the Trustees, supports the admission of this exhibit as a memorial of the deliberations of the Trustees on the

statutory criteria for the limited purposes for which the Master admitted the exhibit into evidence (Tr. 3-3 to 3-17).

The burden of proof as to the extent of additional cost to shippers of using alternative methods of transportation, urged as Objection 4 to the Master's Report by the State, shifted to the State after Trustees had introduced evidence estimating such additional cost as minimal (Witness Rourke, Tr. pp. 3-23 to 3-35). State utterly failed to prove that the extent of additional transportation costs to shippers in the event of the line's abandonment exceeded Witness Rourke's estimate that such additional costs were minimal and would have little, if any, affect on their competitive positions.

Objection No. 5 points to the negative tenor of the Master's finding contained in paragraph 22 (misnumbered paragraph 23 in State's objection) that the record contains no indication that the Trustees have not taken the public interest into account, both in 1973 and upon reconsideration of the problem in 1976. Exhibits 1 and 12 show that the public interest question was presented to them in the staff memoranda which they had before them when they voted to abandon the line on December 19, 1972 and when they affirmed their decision in 1976. Their conclusion contained in Ex. 1 that the abandonment would not unduly or adversely affect the public interest, affirmed by their 1976 vote (Ex. 12), support an affirmative expression on the issue, but the Master was only required to find that the record did not support the opposite view.

"But there is no prohibition against their reliance on the analyses and recommendations of corporate officers, as was the case here. It is assumed that the trustees exerted their independent judgment. The plenary judicial hearing and determination, with the burden resting upon the petitioning trustees, provide sufficient protection against erroneous conclusions without undue scrutiny of the mental processes of trustee deliberations."

In re Boston and Maine Corporation, cit supra at p. 1208

The remaining objections go to the weight of the evidence on which the Master made his findings. The evidence supports the Master's findings on the issues of fact to which the objections are made. They should be adopted by the Court as not clearly erroneous.

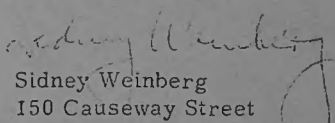
F. R. C. P. Rule 53 (e) (2).

For the foregoing reasons, petitioners submit that the facts found by the Master, his conclusions and recommendation, all as contained in his Report, dated January 21, 1977, should be adopted.

Respectfully Submitted,

Robert W. Meserve and Benjamin H.
Lacy, Trustees of the property of
Boston and Maine Corporation, Debtor

By their attorney,


Sidney Weinberg
150 Causeway Street
Boston, Massachusetts 02114

Dated: March 8, 1977

March 14, 1977

Hon. R. Ammi Cutter
62 Sparks Street
Cambridge, MA. 02138

Re: Petition for Order No. 159

Dear Judge Cutter:

Enclosed herein please find a copy of the Trustees' Brief in support of their motion to adopt your Report in the above-captioned matter.

Respectfully,

Sidney Weinberg

SW/maw

Enc.

August 18, 1977

Mr. C. W. Mulcahy, Jr.

Re: Status of Petitions for Abandonment Authorizations -
Motions to Confirm (Adopt) Reports of Special Master
R. Ammi Cutter

My records do not indicate that any orders have issued from
the Reorganization Court on the following:

<u>Petition for Order No.</u>	<u>Line or Lines</u>	<u>Status</u>
159	E. Manchester to Newfields, N. H.	Motion opposed by State of New Hampshire. Heard by Judge Murray on March 9, 1977. No order has issued.
160	Bennington to Hills- borough, N. H. Townsend, Ma. to Greenville, N. H. Acton to Maynard, Ma.	Reports of Judge Cutter filed in Court on February 9, 1977 and May 31, 1977. Form of motion submitted to you on June 10, 1977.
198	Northampton to Hard- wick, Ma. (Wheelwright Branch)	Report of Judge Cutter filed in Court on April 4, 1977. Form of motion submitted to you on April 11, 1977.
303	Portion of Marlboro, Ma. Branch in Marlboro	Report of Judge Cutter filed in Court on May 31, 1977. Form of motion submitted to you on June 10, 1977.

Sidney Weinberg

SW/mew

SW

MULCAHY & MULCAHY
306 DARTMOUTH STREET
BOSTON, MASSACHUSETTS 02116

CHARLES W. MULCAHY (1918-1970)
CHARLES W. MULCAHY, JR.

AREA CODE 617 462-7395

ROBERT G. PARKS

September 22, 1977

Austin W. Jones, Chief Deputy Clerk
U. S. District Court
U. S. Courthouse and P. O. Bldg.
Post Office Square
Boston, MA. 02109

Re: Boston and Maine Corporation, Debtor
No. 70-250-M

Dear Austin:

Enclosed herewith are four motions to confirm reports of Special Master Cutter relative to line abandonments. No objections to these reports were filed and entry of the orders, without hearings, would seem to be appropriate. Please see to their entry and return copies of the orders to me so that the staff may proceed with the applications to the I. C. C.

If you have any questions, feel free to call me.

Very truly yours,

Robert G. Parks

RGP/maw

Enc.

9/23/77
Advised
Jones did
159 was
opposed

ORR AND RENO
PROFESSIONAL ASSOCIATION
95 NORTH MAIN STREET
CONCORD, NEW HAMPSHIRE 03301
P. O. Box 709

DUDLEY W. ORR
ROBERT H. RENO
CHARLES H. TOLL, JR.
MALCOLM McLANE
JOHN W. BARTO
RONALD L. SNOW
CHARLES F. LEAHY
RICHARD B. COUSER
LEO B. LIND, JR.
NEIL F. CASTALDO
MARY SUSAN GALWAY
WILLIAM L. CHAPHAN
HOWARD M. MOFFETT
WILLIAM B. ROBERTS

TELEPHONE
AREA CODE 603
224-2381

December 1, 1977

Sidney Weinberg, Esquire
Attorney for the Trustees of the
Property of Boston and Maine
Corporation, Debtor
150 Causeway Street
Boston, Massachusetts 02114

Re: In the Matter of Boston and Maine Corporation, Debtor;
U. S. District Court for the District of Massachusetts
No. 70-250-M; Petition for Order No. 159 - Abandonment
of line between Manchester and Newfields, including the
Fremont Branch, New Hampshire

Dear Mr. Weinberg:

Has Judge Murray made an order relative to the proposed
abandonment of the above-mentioned line? If he has, please
send me a copy of it.

Sincerely,



Charles H. Toll, Jr.

dls

Dear Mr. Toll 12/9/77
Judge Murray has not made
any order yet. I will send copy when
and if issued
Sidney Weinberg

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In the Matter of
BOSTON AND MAINE CORPORATION,
Debtor

In Proceedings for
the Reorganization of
a Railroad
No. 70-250-M

Hearing on Petition for Order No. 159

SUPPLEMENTAL BRIEF OF STATE OF NEW HAMPSHIRE

John T. Collins, Esq.
Sherburne, Powers & Needham
Special Counsel to the State of
New Hampshire
One Beacon Street
Boston, Massachusetts 02108

Dated: December 6, 1976

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

In the Matter of

BOSTON AND MAINE CORPORATION,

Debtor

In Proceedings for
the Reorganization of
a Railroad

No. 70-250-M

Hearing on Petition for Order No. 159

SUPPLEMENTAL BRIEF OF STATE OF NEW HAMPSHIRE

INTRODUCTION

The point of this Supplemental Brief is not simply to indicate further flaws in the Railroad's presentation so that a third hearing can be held at which the Railroad can introduce evidence of further deliberation on the part of the Trustees and a fifth set of figures. The point is to show that the Trustees have not and are disposed not to consider adequately the public interest nor alternatives to abandonment and that the figures presented by the various departments of the Railroad to justify the conclusions already reached by the Trustees are just not reliable.

Furthermore, the consideration of effects of discontinuance of rail service upon the public by the traffic department of the Railroad, which furnished the basis for the petition, was far from adequate and was contradicted by the shippers on the line.

I. THE TRUSTEES' MEETING OF SEPTEMBER 21, 1976

Evidence of the Trustees' Meeting of September 21, 1976 was submitted by way of a purported "excerpt from the minutes" of that meeting (Exhibit 12) which purported to be certified by the Secretary to the Trustees. The Secretary did not testify to authenticate the "minutes". There was no authentication of the paper. It was not admissible. The very document was hearsay and it contained further hearsay. It was not prepared "ante litem motam" and was further inadmissible. It was admitted over objection (Tr. 3-5). It showed the Trustees' actions to be based upon a statement of Mr. Dustin that the line was losing \$50,000 per year. Mr. Dustin was not produced at the hearing. Counsel could not test his conclusions and none of the several sets of figures at various times submitted in support of the abandonment conforms to Mr. Dustin's. Exhibit 12 shows no bona fide discussion of the public interest but merely a pro forma recitation in the vote itself, obviously drawn by counsel, to the effect this time that all "i"s had been dotted and all "t"s crossed.

The testimony of Witness Parks on this subject is defensive and indicates no real consideration relating to the public interest and alternatives

to abandonment other than the mere conclusions stated in the certificate.

When asked what discussions lead to these conclusions,

Mr. Parks answered:

"I don't have total recall of every word that was said" (Tr. 3-8)

"I can't remember exactly what was said and in what order...." (Tr. 3-8)

"I don't recall specifically him saying what the source was, if he did at all." (Tr. 3-9)

"because my recall isn't total in this regard" (Tr. 3-10)

"I can't remember what words they used" (Tr. 3-11)

This was not in response to questions asking for a word by word or total recall of what was said. This was in response to questions which time after time indicated that the questioner was not looking for specific wording but merely whether there was discussion of facts, as distinguished from conclusions, about the public interest (Tr. 3-9 through 3-11), the availability of alternatives (Tr. 3-12) or efforts to stimulate business (Tr. 3-12). Mr. Parks did testify that these matters were usually discussed in meetings relating to abandonments but not with respect to the subject matter hereof (Tr. 3-9 through 3-15). The efforts of counsel to testify through Mr. Parks to supply the missing facts is classic (Tr. 3-16).

II. THE TRUSTEES' FIGURES ARE UNRELIABLE

The State's original Brief pointed out that the Railroad's cost studies were not only not in compliance with Federal Regulations but that the maintenance of way costs projected for given years at earlier dates varied wildly from what actually took place; that those projected at different times varied greatly from one to another and that they can't all be right. It is sometimes suggested that the cost figures are what they are and that counsel for the State might accept them in the interest of saving time. Counsel for the State is not privy to all of the facts contained in the Railroad records but can only probe at suspect items. Nevertheless, every time he probes, he finds figures were concocted based on erroneous assumptions (Tr. 1-67, 1-68) or that they contain simple but significant clerical errors (Tr. 3-109). Prior to the second hearing, counsel for the State agreed to question only the cost figure for Signals and Interlockers, choosing that item because it was the largest single maintenance of way cost factor. It was overstated by about 60% (Tr. 3-110). If corrected to reflect the proper Signal costs, the Railroad figures contained in Exhibit 13 show a six-months actual out of pocket cost of about \$11,000 - which, if doubled, is close to \$22,000 per year rather than the \$50,000 given to Mr. Dustin and the Trustees, and what confidence have we that this figure is correct? Isn't there some point where the Trustees' figures as a whole lose their credibility?

Computing profit or loss on the basis of "rehabilitation" costs is only an exercise in arithmetic. It is otherwise meaningless for, as we have seen reviewing figures submitted earlier, "rehabilitation" while desirable in prior or current years could be safely postponed but "next year" the work is absolutely necessary. The whole concept of attributing projected maintenance of way figures resulting from deferred maintenance to the total costs which must be justified by the revenues in any given year only appears to be reasonable in view of traditional I. C. C. accounting rules. It makes no sense in a sincere effort to determine the wisdom of abandoning a line (Tr. 3-168-169).

On November 5, 1976, the Interstate Commerce Commission served an Order dated October 29, 1976, adopting Regulations, "Abandonment of Railroad Lines and Discontinuance of Service", 49 C. F. R. Part 1121. Section 1121.42, Avoidable Costs of Providing Service, in subparagraph b., states clearly that rehabilitation costs shall not be included as avoidable costs unless the track does not meet Class I standards or unless a subsidizer requests a higher degree of maintenance. The Railroad is, right now, in Class I condition (Tr. 1-38), although it might be "close" (Tr. 3-147).

Note, finally, in Exhibit 13 the unwillingness of the Railroad to accept the obsolescence of the "50% off line cost formula" and the irony of suggesting that the Federal Regulations should be disregarded in this respect

but followed in respect of computing a "return on investment" of 8.3% as an additional cost. Imagine the application of that concept to the Railroad as a whole.

III. THE RAILROAD'S EVIDENCE OF THE EFFECT UPON THE PUBLIC OF THE PROPOSED ABANDONMENT WAS INSUFFICIENT

The Railroad's Sales Manager for Manchester, New Hampshire, made what was said to be an "analysis of the effect on the competitive ability of these companies (the shippers on the line) in the event this line were abandoned." (Tr. 3-23).

This turned out to be a "study" consisting of measuring the mileage to the location of each shipper from Manchester and applying that to his "personal knowledge" of the companies in the area, which thus gave him some "feeling" as to whether the additional cost would render the shipper "non-competitive". (Tr. 3-25, 3-26).

In the first place, whether the shipper is rendered non-competitive is not the beginning and end of the effect upon the public. The shipper either absorbs the additional cost, in which case he is hurt, or he passes it on to the customer. The Sales Manager's experience in no way qualifies him to draw conclusions about these effects and he made no effort to determine the underlying facts.

As to R. C. Hazelton Co., Mr. Rourke could only "estimate" the relative costs upon which he based his conclusion (Tr. 3-26). He knew nothing about loading or unloading (Tr. 3-26, 3-27).

As to Jasholka, Mr. Rourke had no cost information but he "felt" that Jasholka's competitive situation couldn't be adversely affected because Jasholka had already shown a willingness to come to Manchester to save two or three days (Tr. 3-27). This non-sequitur constituted his "study" as it related to this shipper.

As to Merrimack Farmers Exchange, he "felt" that since there was no competition, the loss of rail service could not make the Exchange non-competitive (Tr. 3-30). Now, there is an analysis of the public interest.

As to Home Gas, again there was no evidence as to the additional cost (except on cross-examination, where it appeared to be \$300 to \$400 per week (Tr. 3-53)), but merely an inference that, since Home Gas' competition had to use truck, it's only fair for Home Gas to lose rail service too (Tr. 3-31, 3-32).

As to W. S. Goodrich, there was an acknowledgement that "this would increase their cost of operation" (Tr. 3-33). Nothing more, except on cross-examination (Tr. 3-52).

As to J. F. Brown, he didn't state on direct examination the amount of the additional cost, just a feeling that Brown's competitive position would not be injured to any large extent. He really had no knowledge of what J. F. Brown received at Epping from which he could figure the additional cost (Tr. 3-53, 3-54).

If the Trustees had any information about the effect of the abandonment upon the public interest before them at the September 21, 1976 Meeting (other than counsel's draft of the Vote itself), it could not have been more than the foregoing unless it is presumed that a more thorough study was presented to the meeting than what was presented at the hearing.

IV. IN THE FACE OF ADVERSE EFFECTS UPON THE PUBLIC BY VIRTUE OF ADDITIONAL COSTS, THE TRUSTEES GAVE INADEQUATE CONSIDERATION OF ALTERNATIVES TO ABANDONMENT

Despite the evidence of additional costs of trucking to the shippers on the line, deduced from Mr. Rourke on cross-examination and from Witnesses Bruno (Tr. 3-56) and Cummings (Tr. 3-79), there was no consideration given to alternatives.

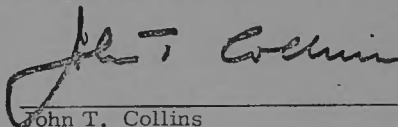
The Trustees did not consider raising rates or requiring the payment of an "arbitrary" by shippers which might keep their costs down but still make the service compensatory to the carrier (Tr. 3-12). They did nothing to stimulate business on the line nor even discuss it except perhaps "retroactively" and at other meetings relating to other lines (Tr. 3-13). They did not consider the reduction of costs, for example, by replacing the signal method of protection by a "stop and protect" method, which might have saved the largest simple maintenance of way expense (Tr. 3-116, 3-120).

Such consideration never came up at the Trustees' Meeting for, if anything is clear on this record, it is that the Trustees were predisposed to abandon this line and that all studies, including those which were produced following the first hearing, were merely exercises in support of the Trustees' conclusions rather than empirical examinations aimed at determining whether the Debtor's Estate and the public in general would be served by the proposed abandonment.

CONCLUSION

For the foregoing reasons the Petition for Order No. 159 should be denied.

Respectfully submitted,



John T. Collins
Sherburne, Powers & Needham
Special Counsel to the State of
New Hampshire
One Beacon Street
Boston, Massachusetts 02108
(617) 523-2700

Comments of State of New Hampshire on Draft Report

Statement of Past Proceedings, Paragraph 3. There was no evidence offered in explanation for the delay. We are all aware of the heavy docket of the Federal District Court, Judge Ford's illness and demise (Tr. 21-22, 70) and of the limitations upon the resources of the Trustees in progressing all legal matters which have arisen in the course of reorganization. There is nothing in the record to suggest that an open mind on the possibility of industrial growth or the reduction of maintenance of way costs were causes for not pressing the abandonment. The only person who had an open mind on this question was straightened out at an early date (Exhibit 1, Sheet 13). The reduction in maintenance was the result of the delay, not its cause.

Findings, Paragraph 7. suggests that cost projections as to results for future periods, for example, those set forth in 1972 and 1973 submissions, like any estimates were a bit off the mark. It is requested that a finding be made as to the extent that they were exaggerated, \$395,000 vs. \$21,000 (Tr. 67), \$137,935 vs. \$21,000 (Tr. 68). This was said to be the result of "somewhat erroneous" assumptions. It is requested that a finding be made that at the time maintenance of way cost figures were being prepared for submission to the Federal District Court in an abandonment proceeding based upon a dramatic decrease in traffic (Exhibit 1), the chief engineering officer of the Debtor was supplying his figures based upon the assumption that traffic on the line was going to increase (Tr. 79).

Findings, Paragraph 9.

Although there is mention in paragraph 9 of the fact that Exhibit 13 was revised after the hearing, I find no reference to the fact that Exhibit 13 as it was originally submitted contained a substantial error in its most significant component; that Exhibit 13 as originally submitted was the basis for the Trustees' Vote of September 21, 1976 (Exhibit 12) and for the advice of the Railroad President to the Trustees that the line was "losing in the order of \$50,000 per year, net". The fact was that the error in the figure for Signals and Interlockers was brought out at the hearing (Tr. 3-109) on November 1, 1976. Exhibit 13 was later cleaned up and resubmitted without any consideration by the Trustees of the correct information.

This is relevant in respect to the Master's finding in paragraph 22 that "although I am of the opinion that the estimate of losses from the two branches presented to them in 1973 and 1976 were overstated, they have reached their decision after opportunity to consider essentially all the evidence presented to me, and to have that evidence analyzed for them by the Debtor's staff".

The evidence which was presented to the Trustees in 1973 was completely discredited and contradicted by that produced in 1976. The evidence and analysis of Debtor's staff upon which Trustee Meserve based his 1973 decision ("the information reflected in the memorandum of March 28, as to actual expenses of continued operation. . . ." Exhibit 1, Sheet 12) showed an annual loss 4.5 times greater than that found by the Master. The evidence and analysis of Debtor's staff upon which the Trustees based their 1976 decision showed losses \$22,000 in excess of that found by the Master.

Paragraph 10 of the Draft Report fails to deal with the thrust of Section IV of the State's Supplemental Brief. The point is that the Trustees did not give anything but lip service to alternatives to abandonment. The possibility of substituting a "stop and protect" method of protection for a system which was costing \$14,000 per annum (\$172 per car!) was used only as an example of alternatives the Trustees might have considered but did not. The question was not whether the Trustees were unreasonable in not having sought permission of the New Hampshire Department of Public Utilities to change the method of protection while the proceeding was pending (three and one-half years), but whether this or any other alternative to abandonment had been considered. (Reducing speed was not considered as an alternative to abandonment but only as a method of reducing losses while abandonment was pending.)

In Paragraph 19, reference is made to there having been no reliable indication that the State would enter into a rail service continuation subsidy arrangement. Of course, the whole scheme of Section 402(c)(2) of the RRRRA (as amended by 802 of the RRRRA) is that federal assistance to States for subsidies is available after a line has been abandoned. The State is involved actively in making such arrangements on lines which have been already been abandoned by the Boston and Maine and the Maine Central and only longer range planning involves the line which is the subject matter of this case. The longer range planning in considering the subsidization of this line involves the obvious observation that the line can only be operated if a connection can be made at Manchester and at Rockingham Junction. The proposed abandonment would

frustrate that opportunity. Paragraph 19 deals with this problem by finding that even with the connection, short line operations would be unattractive. With no evidence as to the costs of such a short-line operation or the availability of subsidy, it is difficult to find a basis for that finding, a finding which might ultimately preclude such a subsidized short line operation; nevertheless, other findings of Paragraph 19 referred to below may resolve that problem if they are clarified.

Paragraph 19 includes, parenthetically, a finding that the three miles of track east of Manchester is "really part of the Manchester rail yards". The significance of this characterization is not clear. If it constitutes a finding that this portion of the track is a spur, industrial team, switching or sidetrack (which are exempted¹ from the ICC's jurisdiction and subject to State regulation), we would appreciate a more clear indication. (We are more confident that a finding has been made with that one-fourth mile of track west of Rockingham Junction will be a "switching" track.) If the significance of the Manchester end being part of the "yards" is not that it is a spur, industrial team, switching or sidetrack, but that it is part of the "terminal facilities" under Section 3(5) of the Interstate Commerce Act, a finding to the effect would be helpful to future rail planning.

1. Originally exempted under Interstate Commerce Act, Section 1(22).

The exemption was omitted by oversight from Section 1(18) as amended by the RRRRA. It was restored by P.L. 94-555, enacted on October 19, 1976.

March 7, 1979

Ms. Pamela C. Wilbar
c/o Stuart Cullum
Mayflower Point
Orleans, Massachusetts 02653

Re: Abandonment, E. Manchester to Newfields, N. H.,
including Fremont Branch

Dear Ms. Wilbar:

B&M leases approximately five (5) acres of land in the vicinity of Fremont Station to New Hampshire Pulpwood Co., Inc., terminable upon 30 days notice.

Judge Murray has not yet authorized B&M to apply to the ICC for the abandonment of the line.

Very truly yours,

Sidney Weinberg

SW/m

S. Day Weinberg, Esq.
150 Causeway Street
Boston, Massachusetts 02114

Mrs. Pamela C. Wilbur
c/o Stuart Cullum
Mayflower Point
Quincy, Massachusetts 02263

February 13, 1979

Re: In the matter of Boston and Maine Corporation, Debtor; U.S. District
Court for the District of Massachusetts No. 70-250-M, Petition
for Order No. 159- Abandonment of Line between Manchester and
Newfields, including the Freetown Branch, New Hampshire

Dear Mr. Weinberg:

I no longer have Mr. Charles Toll, Jr. of Orford Road in
Concord, New Hampshire, as my counsel in the above-mentioned
matter. Please send future correspondence directly to me.

It is my understanding that Mr. Charles Tobey or N.H. Pulpwood Co.
is leasing 9.6 acres of land around the old Freetown Depot
on a thirty day basis from the B&M Railroad. Is my
information correct?

Also, has Judge Murray made an order relative to the proposed
abandonment of the Freetown Branch of the rail line?

Please let me know about the lease and the Judge's decision.

Yours sincerely,

Pamela C. Wilbur

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SW,

Ms. Fonda C. Wilber
c/o Stewart Cullum
Inglis Flower Point
Orleans, Massachusetts 02653



Sidney Weinberg, Esq.
150 Causeway Street
Boston, Massachusetts 02114

April 5, 1978

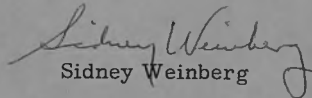
C. W. Mulcahy, Jr.:

Re: Petition for Order No. 159; Abandonment, Manchester to Newfields, N.H., including Fremont Branch. Petition for Order No. 198; Abandonment, No. Hampton to Hardwick, Mass. (Wheel Wright Branch)

As I have advised you earlier, Judge Murray has not acted on the above proposed orders. Copies of the forms of orders submitted to the Court are enclosed. The report of the Special Master on Petition for Order No. 159 was opposed by the State of New Hampshire. There was no opposition to the Master's recommended report on Petition for Order No. 198.

The staff is preparing both these abandonments for submission to the Commission under the new abandonment regulations. I do not believe that B&M will be prepared for an application to the I. C. C. before June 1, 1978.

In the absence of some expectation that Judge Murray will rule on these petitions prior to June 1, 1978, do you recommend that we file application with the Court under Rule 8-512(a) of the Bankruptcy Rules? Is such procedure barred by the fact that hearings on both these petitions have been held by the Court?


Sidney Weinberg

SW/jmr
Encs.

Sid -

See me on this

Cwd.

MEMORANDUM

TO: Alan Dustin

FROM: Charles W. Mulcahy, Jr.

DATE: May 31, 1979

RE: East Manchester--Newfields Abandonment
Petition for Order 159

At a conference with Judge Murray yesterday he stated that he would like to act upon the subject petition, but that he was worried about the length of time that had transpired since Judge Cutter's decision--particularly with regard to the public interest question.

He suggested that a current memorandum be prepared for the Trustees consideration bringing an up-to-date figure on the valuation, traffic and information on public interest (both public and private). Based on such a review he indicated that he thought the record should contain a vote of the Trustees reaffirming their earlier decision to abandon.

Following such a vote he requested that a petition to reopen the record should be filed with the Court to include this supplementary data.

I believe that the suggestion emanates from his desire to have a record in the case which cannot be deemed incomplete by the Court of Appeals.

Would you kindly have prepared a current review by the staff along the lines suggested above and have it included in the next Trustees Agenda for their consideration.

Sincerely,



Charles W. Mulcahy, Jr.

CWMjr:mno

Copies: Messrs. Lacy,
Meserve and

→ Weinberg

June 15, 1979

To: D. J. Hughes
S. B. Calliford
M. V. Smith
E. J. Marra

Re: Abandonment, E. Manchester to
Newfields (Rockingham Junction),
New Hampshire

Judge Murray has asked for an update of revenue and cost data on this branch prior to ruling on authority to proceed before the I. C. C.

Would you kindly prepare such update for the years 1977 and 1978 and first four (4) months of 1979, together with comments on customer demand for continued service and alternate transportation modes available, net liquidation value and rehabilitation costs.

S. Weinberg

SW/mon

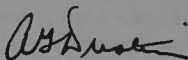
cc: A. G. Dustin
C. W. Mulcahy, Jr.

6/19
SW
↑
June 18, 1979

Mr. J. J. Nee:

I am enclosing a copy of a letter from Mr. Mulcahy discussing the East Manchester to Newfields abandonment.

By copy of this letter, I am requesting all departments to submit up-to-date information to your office so that a memorandum can be prepared for the Trustees' consideration.



A. G. Dustin

cc: P. W. Carr
S. B. Culliford
D. J. Hughes
M. V. Smith

Provide up-dated information to Jack Nee as soon as possible so that we can move forward on this abandonment.

A.G.D.

MEMORANDUM

TO: Alan Dustin

FROM: Charles W. Mulcahy, Jr.

DATE: May 31, 1979

RE: East Manchester--Newfields Abandonment
Petition for Order 159

At a conference with Judge Murray yesterday he stated that he would like to act upon the subject petition, but that he was worried about the length of time that had transpired since Judge Cutter's decision--particularly with regard to the public interest question.

He suggested that a current memorandum be prepared for the Trustees consideration bringing an up-to-date figure on the valuation, traffic and information on public interest (both public and private). Based on such a review he indicated that he thought the record should contain a vote of the Trustees reaffirming their earlier decision to abandon.

Following such a vote he requested that a petition to reopen the record should be filed with the Court to include this supplementary data.

I believe that the suggestion emanates from his desire to have a record in the case which cannot be deemed incomplete by the Court of Appeals.

Would you kindly have prepared a current review by the staff along the lines suggested above and have it included in the next Trustees Agenda for their consideration.

Sincerely,



Charles W. Mulcahy, Jr.

CWMjr:mnp
Copies: Messrs. Lacy,
Meserve and
Weinberg

June 21, 1979

Messrs: S. B. Culliford E. J. Marrs
 D. J. Hughes E. E. Leblanc
 M. V. Smith

We have been asked to prepare certain Revenues and Cost Data for East Manchester - Newfields Abandonment no later than June 27, 1979. We will need the following information for the first four months of 1979 and the prior two years to enable us to prepare data as follows.

Transportation

Time and miles on branch of Locals servicing branch, a split of Engine and Train Crew wages chargeable to branch.
Estimate for subsidy year.

Traffic

Revenues for the period
Estimate for subsidy year.

Engineering

Attached - Maintenance of Way expense May 1, - Dec. 1977 - develop expense for Jan. - April 1977 to make a complete year. We have 1978 and 1979 expense but will need an estimated subsidy year.
Rehabilitation Cost.
Net Liquidation Value.

Law

Property Taxes for the periods.
Estimate for subsidy year.

Real Estate

Income from rents on branch.
Estimated rents for subsidy year.

R. C. Welch
R. C. Welch

cc: Mr. P. W. Carr
 Mr. S. Weinberg

RCW/pcb

*since RGD had figures could be had
by 7/3 meeting*

June 26, 1979

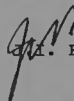
S. Weinberg:

Re: Abandonment, E. Manchester, NH to
Newfields (Rockingham Junction),
New Hampshire

In response to your letter of June 15, 1979, and Mr. Dustin's letter of June 18, the following is submitted to support your petition to be filed with the Trustees and the Court.

The revenue data for 1977, 1978 and four months of 1979 is attached on a separate statement.

There is not any traffic forwarded, statistics reflect all received traffic and it would appear, based on the previous two (2) years and four months traffic that business in 1979 and ensuing periods would remain somewhat constant.

 J. Bean

cc: D.J. Hughes
S.B. Culliford
E.J. Marrs
P.W. Carr
R.C. Welch
R.E. Hill

<u>Station</u>	<u>1977</u>			<u>1978</u>			(Four Months) <u>Jan.-April, 1979</u>		
	<u>Cars</u>	<u>Tons</u>	<u>B&M Gross Revenue</u>	<u>Cars</u>	<u>Tons</u>	<u>B&M Gross Revenue</u>	<u>Cars</u>	<u>Tons</u>	<u>B&M Gross Revenue</u>
<u>Received</u>									
East Manchester, NH	1	33	\$ 1,003	14	391	\$ 8,717	2	60	\$ 1,290
Raymond, NH	2	162	1,141	5	404	3,539	6	491	4,156
Epping, NH	<u>43</u>	<u>1375</u>	<u>11,817</u>	<u>23</u>	<u>887</u>	<u>6,735</u>	<u>6</u>	<u>339</u>	<u>3,084</u>
<u>Totals</u>	46	1570	\$13,961	42	1682	\$18,991	14	890	\$ 8,530

<u>Consignees</u>	<u>Commodities</u>	1977	1978	(Four Months)
		<u>Carloads</u>	<u>Carloads</u>	<u>Jan.-April, 1979</u>
				<u>Carloads</u>
<u>E. Manchester, NH</u>				
R.C. Hazelton	Tractors	1	14	2
<u>Raymond, NH</u>				
Rehrig Pacific	Plastics	2	5	6
<u>Epping, NH</u>				
W.S. Goodrich	Brick	5	7	4
J.F. Brown	Tractors	1	---	---
Merrimack Farmers Exchange	Feed & Grain	<u>37</u>	<u>16</u>	<u>2</u>
Total		46	42	14

Major Value Commodities

H. in on the road

Sales Rep Charles Hazen - Hazelton

East Manchester, NH

R.C. Hazelton, a dealer in heavy construction equipment has a private siding. If service discontinued we do not believe it would render this consignee non-competitive; the equipment could be unloaded at the Manchester, NH public delivery and either trucked or moved on its own wheels to their location at East Manchester, NH.

Raymond, NH

The Rehrig Pacific receive bulk covered hopper cars of plastic resins at their own siding. If service discontinued the product could be handled at either Fitchburg, MA, Worcester, MA or Nashua, NH through the means of a bulk distribution truck transfer terminal or consignee could elect to truck direct from point of origin. This type handling is not unique and should not place the consignee in a non-competitive situation.

Epping, NH

The Merrimack Farmers Feed Company operate a feed store at Epping; the material is shipped by rail from their Concord, NH mill to their private siding at Epping. If rail service were not provided, they would probably utilize their own trucks and no doubt, to some extent, increase their distribution costs. There are no other feed distributors in this area with whom they now compete.

J.F. Brown Company receive agricultural implements (farm tractors, etc.). With no rail service available, they could take public delivery at Exeter, NH -- about 8 miles away. They presently use their own trucks to haul from Epping since they do not have a private siding. The increased cost involved from Exeter would be minimal, generally cars are stop-off cars (not full but partial cars).

W.S. Goodrich Company receive carloads of brick. With no rail service, they would either have the brick trucked in from origin or take delivery at Exeter, NH -- about 8 miles away -- although this would entail additional expense, as they presently have their own private siding. It would appear they could haul the brick in their own trucks from Exeter, retaining a favorable rail rate and not increasing their expense to the point of non-competitiveness.

July 2, 1979

Mr. R. C. Welch:


Referring to your letter of June 21, relative to revenues and cost data for the East Manchester-Newfields, N.H., branch abandonment.

The income from rents on this branch is \$1,565. The estimated rents for the subsidy year will be the same.

E. J. Marrs

EJM/psc

cc: Mr. P. W. Carr

Mr. S. Weinberg 

FREMONT BRANCH
EPPING TO FREMONT, N.H. (4.5 Miles)

SALVAGE

TRACK

Rail 85# Relay	276	G.T.	@	170.	=	46,920.
Rail 75# Relay	95	G.T.	@	170.	=	16,150.
Rail Scrap	278	G.T.	@	80.	=	22,240.
Joints 85# Relay	354	Ea.	@	8.	=	2,832.
Joints 75# Relay	172	Ea.	@	6.	=	1,032.
Misc. Scrap	58	G.T.	@	90.	=	5,220.
Connections Scrap	15	G.T.	@	90.	=	1,350.
Cross Ties Relay	1000	Ea.	@	2.	=	2,000.

ESTIMATED TRACK SALVAGE \$97,744.

BRIDGE

ESTIMATED BRIDGE SALVAGE 0.

ESTIMATED GROSS SALVAGE \$97,744.

ESTIMATED COST TO REMOVE SALVAGE

Track and Fastenings	23760 ft.	@	1.75	=	41,580.
Repair Grade Crossings				=	2,500.
					ESTIMATED COST TO REMOVE SALVAGE <u>\$44,080.</u>
					ESTIMATED NET SALVAGE VALUE \$53,664.

LAND VALUE

Land 4.5 Miles					<u>\$13,700.</u>
					TOTAL NET SALVAGE VALUE \$67,364.

SUMMARY

East Manchester to Rockingham Jct., N.H. (including Fremont Branch)		
PORTSMOUTH BRANCH (27.2 Miles)		\$264,510.
FREMONT BRANCH (4.5 Miles)		\$ 67,364.
		<u>GRANT NET TOTAL - SALVAGE \$331,874.</u>

Office of Vice President-Engineering
 North Billerica, MA
 July 2, 1979

PORTSMOUTH BRANCH

EAST MANCHESTER TO ROCKINGHAM JCT., N.H. (27.2 MILES)

SALVAGE

TRACK

RAIL 85# Relay	952	G.T.	@	\$170.	=	\$161,840.
Rail Scrap	2340	G.T.	@	80.	=	187,200.
Joints 85# Rail	2300	Ea.	@	8.	=	18,400.
Tieplates 85# Relay	9800	Ea.	@	1.50	=	14,700.
Misc. Small Scrap	390	G.T.	@	90.	=	35,100.
Connections Scrap	45	G.T.	@	90.	=	4,050.
Cross Ties Relay	8000	Ea.	@	2.	=	16,000.
						<u>ESTIMATED TRACK SALVAGE</u>
						\$437,290.

BRIDGE

Bridge #20.59	75	N.T.	@	40.	=	\$ 3,000.
Bridge #22.34	78	N.T.	@	40.	=	\$ 3,120.
Bridge #25.31	5	N.T.	@	40.	=	\$ 200.
Bridge #32.90	10	N.T.	@	40.	=	\$ 400.
						<u>ESTIMATED BRIDGE SALVAGE</u>
						\$ 6,720.

ESTIMATED GROSS SALVAGE \$444,010.

ESTIMATED COST TO REMOVE SALVAGE

Track & GFastenings	143600 ft.	@	1.75	=	\$251,300.
Bridges					\$ 16,000.
Repair Grade Crossings (29)					17,000.
AHCP (6)					<u>1,600.</u>

ESTIMATED COST TO REMOVE SALVAGE \$285,900.

ESTIMATED NET SALVAGE VALUE \$158,110.

LAND VALUE

Land 27.2 Miles \$106,400.

TOTAL NET SALVAGE VALUE \$264,510

Office of Vice President-Engineering
North Billerica, MA
July 2, 1979

BOSTON & MAINE CORPORATION-DEBTOR
ABANDONMENT
EAST MANCHESTER, N.H. TO NEWFIELDS, N.H.
REVENUE AND COST DATA

	1977	1978	Jan-Mar 1979	Base year note 1	Subsidy year note 2
<u>REVENUES ATTRIBUTABLE FOR</u>					
1. Freight Originated and/or Terminated on Branch	13,961	18,991	8,530	18,991	25,590
2. Bridge Traffic					
3. All Other Revenue and Income	1,955	2,125	752	2,125	2,255
4. Total Revenues Attributable (lines 1 thru 3)	<u>15,916</u>	<u>21,116</u>	<u>9,282</u>	<u>21,116</u>	<u>27,845</u>
<u>AVOIDABLE COSTS FOR</u>					
5. On-branch Costs (lines 5a thru 5j)					
a. Maintenance of Way and Structures	14,705	13,431	12,900	13,431	15,840
b. Maintenance of Equipment	2,557	3,136	552	3,196	3,449
c. Transportation	9,414	11,499	2,222	11,499	16,137
d. General administrative					
e. Deadheading, taxi, and hotel					
f. Overhead movement					
g. Freight car costs	2,005	1,986	776	1,986	2,195
h. Return on investment-locomotives	245	686	92	686	686
Avoidable costs for					
i. Revenue taxes					
j. Property taxes	3,907	4,910	1,636	4,910	4,910
6. Off-branch costs	<u>10,224</u>	<u>10,926</u>	<u>4,005</u>	<u>10,926</u>	<u>10,926</u>
7. Total avoidable costs (line 5 plus line 6)	<u>43,057</u>	<u>46,594</u>	<u>22,183</u>	<u>46,634</u>	<u>54,143</u>
<u>SUBSIDIZATION COSTS FOR</u>					
8. Rehabilitation					3,900
9. Administration costs (subsidy year only)					
10. Casualty reserve account					
11. Total subsidization costs (lines 8 thru 10)					<u>3,900</u>
<u>RETURN ON VALUE FOR</u>					
12. Valuation of property (lines 12a thru 12c)					93,143
a. Working capital					
b. Income tax benefits					
c. Net liquidation value					
13. Rate of return					
14. Total return on value (line 12 times 13)					
15. Avoidable loss from operations (line 4 minus line 7)					
16. Estimated subsidy (line 4 minus lines 7, 11, and 14)					

Notes 1 Base year based on 1978 operations
 2 Subsidy year reflects the same operation as the base year plus rehabilitation cost
 Revenue based on Jan.-March 1979 extended to a year.

(27,141) (25,458) (12,901) (25,518) (65,298)

July 2, 1979

To: Robert W. Meserve and Benjamin H. Lacy, Trustees

In re: Abandonment - East Manchester to Rockingham Junction, N. H.

Judge Murray has requested that the profit and loss evaluation for the abandonment of the East Manchester to Rockingham Junction line be updated and the updated evaluation be submitted to the Trustees for their consideration and renewal of the vote on whether the line should be abandoned.

Our studies indicate the following:

<u>Revenues Attributable For</u>	1977	1978	Jan.- Apr. 1979	Base Year Note 1	Subsidy Year Note 2
1. Freight Originated and/or Terminated on Branch	13,961	18,991	8,530	18,991	25,590
2. Bridge Traffic					
3. All Other Revenue and Income	1,955	2,125	752	2,125	2,255
4. Total Revenues Attributable (lines 1 thru 3)	15,916	21,116	9,282	21,116	27,845
<u>Avoidable Costs For</u>					
5. On-branch Costs (lines 5a thru 5j)					
a. Maintenance of Way and Structures	14,705	13,431	12,900	13,431	15,840
b. Maintenance of Equipment	2,557	3,136	552	3,196	3,449
c. Transportation	9,414	11,499	2,222	11,499	16,137
d. General administrative	-	-	-	-	-
e. Deadheading, taxi, and hotel	-	-	-	-	-
f. Overhead movement	-	-	-	-	-
g. Freight car costs	2,005	1,986	776	1,986	2,195
h. Return on investment-locomotives					
Avoidable costs for	245	686	92	686	686
i. Revenue taxes	-	-	-	-	-
j. Property taxes	3,907	4,910	11,636	4,190	4,910
6. Off-branch costs	10,224	10,926	4,005	10,926	10,926
7. Total avoidable costs (line 5 plus line 6)	43,057	46,574	22,183	46,634	54,143

Robert W. Meserve and Benjamin H. Lacy, Trustees
 Page Two
 July 2, 1979

<u>Subsidization Costs For</u>	<u>1977</u>	<u>1978</u>	<u>Jan.- Apr. 1979</u>	<u>Base Year Note I</u>	<u>Subsidy Year Note 2</u>
8. Rehabilitation					39,000
9. Administration costs (subsidy year only)					
10. Casualty reserve account					39,000
11. Total subsidization costs (lines 8 thru 10)					<u>93,143</u>
Note 1 - Based on 1978 operation					
Note 2 - Base year plus rehabilitation cost					
<u>TOTALS</u>					
	(27,141)	(25,458)	(12,901)	(25,518)	(65,298)

The studies show that the line operated at a loss of \$27,141 for 1977, \$25,958 for 1978 and that, with required rehabilitation costs to bring the line up to Class I standards, its operation will result in a loss of \$65,298 in 1979.

Further, only two customers on the main branch and three customers on the Fremont to Epping Branch have used the line from January 1, 1977 to April 30, 1979. They received in the aggregate 46 carloads in 1977, 42 in 1978 and 14 for the first four months of 1979.

It is staff's opinion that the additional costs to these receivers of freight from the line's abandonment, either as a result of resort to truck delivery or alternate rail delivery will not render them non-competitive in their business.

The net liquidation value of the line if abandonment is authorized is \$212,000 in rail relay and other metals and \$120,000 in land resale. A recommended vote is attached.

A. G. Dustin

AG/SW/mon
 Attachment

VOTE

Based on Mr. Dustin's memorandum, dated July 2, 1979, which is ordered to be filed with the records of this meeting, it is

VOTED: That, upon reconsideration of our vote of September 21, 1976, it appearing (1) that continued operation over, and maintenance of the line of railroad between East Manchester and Rockingham Junction, including the Fremont Branch, 30.7 miles in length in the aggregate, in the counties of Rockingham and Hillsboro, New Hampshire is not warranted in view of the net losses which the Railroad is continuing to sustain therefrom and (2) that the Trustees, having again considered the public interest, both in terms of the area and shippers served on line, and in terms of the broader public interest in the successful reorganization of the Debtor, are of the opinion that the public interest will not be unduly and adversely affected by the abandonment of the said line, counsel for the Trustees be and they are hereby directed to continue to prosecute the Application for Abandonment of said Line filed on or about February 27, 1973, before the Reorganization Court and, subject to its approval, before the Interstate Commerce Commission.

July 2, 1979

To: Robert W. Meserve and Benjamin H. Lacy, Trustees

In re: Abandonment - East Manchester to Rockingham Junction, N.H.

Judge Murray has requested that the profit and loss evaluation for the abandonment of the East Manchester to Rockingham Junction line be updated and the updated evaluation be submitted to the Trustees for their consideration and renewal of the vote on whether the line should be abandoned.

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<u>Avoidable Costs For</u>					
5. On-branch Costs (lines 5a thru 5j)					
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c. Transportation	9,414	11,499	2,222	11,499	16,137
d. General administrative	-	-	-	-	-
e. Deadheading, taxi, and hotel	-	-	-	-	-
f. Overhead movement	-	-	-	-	-
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Avoidable costs for	245	686	92	686	686
i. Revenue taxes	-	-	-	-	-
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\$ 61,050

Robert W. Meserve and Benjamin H. Lacy, Trustees
Page Two
July 2, 1979

<u>Subsidization Costs For</u>	<u>1977</u>	<u>1978</u>	<u>Jan.- Apr. 1979</u>	<u>Base Year Note 1</u>	<u>Subsidy Year Note 2</u>
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July 3, 1979

Messrs: S. B. Culliford
 D. J. Hughes
 E. J. Marrs
 R. V. Smith
 and the S. Weinberg

Attached is a copy of a letter addressed to the Trustees concerning abandonment of the East Manchester to Rockingham Junction line which conveys the information requested in Mr. Weinberg's letter of June 15, 1979.

Also attached is the resolution made by the Trustees at their meeting today to progress this matter for ultimate ICG approval.

I would appreciate it if Mr. Weinberg would handle this with Mr. Mulcahy for Court action and also that he continue to direct our efforts toward the abandonment of this line, requesting and preparing whatever information is necessary.

A. C. Dustin

A. C. Dustin

cc: C. W. Mulcahy

	1978	1979	1979	Note 1	Note 2
A. Total Revenue	10,518	10,518	9,283	24,110	27,843
B. All Other Revenue	850	3,125	750	3,125	3,250
C. Total Revenue	11,368	13,643	10,033	27,230	31,093
D. Operating Expenses	18,703	12,421	12,290	18,421	20,000
E. Depreciation	2,287	2,128	2,287	2,287	2,287
F. Interest	2,219	11,400	2,427	11,400	11,400
G. Total Expenses	23,209	25,949	17,004	32,108	33,687
H. Net Income	(11,841)	(12,306)	(7,000)	(5,878)	(2,594)
I. Total Assets	10,518	10,518	11,238	11,238	11,238
J. Total Liabilities	10,518	10,518	10,518	10,518	10,518
K. Total Equity	0	0	720	720	720

July 2, 1979

To: Robert W. Meserve and Benjamin H. Lacy, Trustees

In re: Abandonment - East Manchester to Rockingham Junction, N.H.

Judge Murray has requested that the profit and loss evaluation for the abandonment of the East Manchester to Rockingham Junction line be updated and the updated evaluation be submitted to the Trustees for their consideration and renewal of the vote on whether the line should be abandoned.

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e. Deadheading, taxi, and hotel	-	-	-	-	-
f. Overhead movement	-	-	-	-	-
g. Freight car costs	2,005	1,986	776	1,986	2,195
h. Return on investment-locomotives					
Avoidable costs for	245	686	92	686	686
i. Revenue taxes	-	-	-	-	-
j. Property taxes	3,907	4,910	11,636	4,190	4,910
6. Off-branch costs	10,224	10,926	4,005	10,926	10,926
7. Total avoidable costs (line 5 plus line 6)	43,057	46,574	22,183	46,634	54,143

<u>Subsidization Costs For</u>	<u>1977</u>	<u>1978</u>	<u>Jan.- Apr. 1979</u>	<u>Base Year Note 1</u>	<u>Subsidy Year Note 2</u>
8. Rehabilitation					39,000
9. Administration costs (subsidy year only)					
10. Casualty reserve account					39,000
11. Total subsidization costs (lines 8 thru 10)					93,143
Note 1 - Based on 1978 operation					
Note 2 - Base year plus rehabilitation cost					
<u>TOTALS</u>					
	(27,141)	(25,458)	(12,901)	(25,518)	(65,298)

The studies show that the line operated at a loss of \$27,141 for 1977, \$25,958 for 1978 and that, with required rehabilitation costs to bring the line up to Class I standards, its operation will result in a loss of \$65,298 in 1979.

Further, only two customers on the main branch and three customers on the Fremont to Epping Branch have used the line from January 1, 1977 to April 30, 1979. They received in the aggregate 46 carloads in 1977, 42 in 1978 and 14 for the first four months of 1979.

It is staff's opinion that the additional costs to these receivers of freight from the line's abandonment, either as a result of resort to truck delivery or alternate rail delivery will not render them non-competitive in their business.

The net liquidation value of the line if abandonment is authorized is \$372,000 in rail relay and other metals and \$120,000 in land resale. A recommended vote is attached.

(148)

A. G. Dustin

AG/SW/mon
 Attachment

VOTE

Based on Mr. Dustin's memorandu, dated July 2, 1979, which is ordered to be filed with the records of this meeting, it is

VOTED: That, upon reconsideration of our vote of September 21, 1976, it appearing (1) that continued operation over, and maintenance of the line of railroad between East Manchester and Rockingham Junction, including the Fremont Branch, 30.7 miles in length in the aggregate, in the counties of Rockingham and Hillsboro, New Hampshire is not warranted in view of the net losses which the Railroad is continuing to sustain therefrom and (2) that the Trustees, having again considered the public interest, both in terms of the area and shippers served on line, and in terms of the broader public interest in the successful reorganization of the Debtor, are of the opinion that the public interest will not be unduly and adversely affected by the abandonment of the said line, counsel for the Trustees be and they are hereby directed to continue to prosecute the Application for Abandonment of said Line filed on or about February 27, 1973, before the Reorganization Court and, subject to its approval, before the Interstate Commerce Commission.

July 6, 1979

To: A. G. Dustin

Re: East Manchester to Rockingham
Junction, N.H. including the
Fremont Branch

After I had submitted the memo to the Trustees to you, I received the attached salvage value memo from the Engineering Department.

The net liquidation value of the rail relay and other metals is \$212,000 instead of the \$372,000 furnished earlier.

A form of memo for submission to the Trustees is attached.

S. Weinberg

SW/mon
Attachment

PORTSMOUTH BRANCH

EAST MANCHESTER TO ROCKINGHAM JCT., N.H. (27.2 MILES)

SALVAGE

TRACK

RAIL 85# Relay	952	G.T.	@	\$170.	=	\$161,840.
Rail Scrap	2340	G.T.	@	80.	=	187,200.
Joints 85# Rail	2300	Ea.	@	8.	=	18,400.
Tieplates 85# Relay	9800	Ea.	@	1.50	=	14,700.
Misc. Small Scrap	390	G.T.	@	90.	=	35,100.
Connections Scrap	45	G.T.	@	90.	=	4,050.
Cross Ties Relay	8000	Ea.	@	2.	=	16,000.
						<u>ESTIMATED TRACK SALVAGE</u>
						\$437,290.

BRIDGE

Bridge #20.59	75	N.T.	@	40.	=	\$ 3,000.
Bridge #22.34	78	N.T.	@	40.	=	\$ 3,120.
Bridge #25.31	5	N.T.	@	40.	=	\$ 200.
Bridge #32.90	10	N.T.	@	40.	=	\$ 400.
						<u>ESTIMATED BRIDGE SALVAGE</u>
						\$ 6,720.
						<u>ESTIMATED GROSS SALVAGE</u>
						\$444,010.

ESTIMATED COST TO REMOVE SALVAGE

Track & GFastenings	143600 ft.	@	1.75	=	\$251,300.
Bridges					\$ 16,000.
Repair Grade Crossings (29)					17,000.
AHCP (6)					<u>1,600.</u>
					<u>ESTIMATED COST TO REMOVE SALVAGE</u>
					\$285,900.
					<u>ESTIMATED NET SALVAGE VALUE</u>
					\$158,110.

LAND VALUE

Land 27.2 Miles						<u>\$106,400.</u>
						<u>TOTAL NET SALVAGE VALUE</u>
						\$264,510

Office of Vice President-Engineering
North Billerica, MA
July 2, 1979

FREMONT BRANCH
EPPING TO FREMONT, N.H. (4.5 Miles)

SALVAGE

TRACK

Rail 85# Relay	276	G.T.	@	170.	=	46,920.
Rail 75# Relay	95	G.T.	@	170.	=	16,150.
Rail Scrap	278	G.T.	@	80.	=	22,240.
Joints 85# Relay	354	Ea.	@	8.	=	2,832.
Joints 75# Relay	172	Ea.	@	6.	=	1,032.
Misc. Scrap	58	G.T.	@	90.	=	5,220.
Connections Scrap	15	G.T.	@	90.	=	1,350.
Cross Ties Relay	1000	Ea.	@	2.	=	2,000.
ESTIMATED TRACK SALVAGE						\$97,744.

BRIDGE

ESTIMATED BRIDGE SALVAGE	0.
ESTIMATED GROSS SALVAGE	<u>\$97,744.</u>

ESTIMATED COST TO REMOVE SALVAGE

Track and Fastenings	23760 ft.	@	1.75	=	41,580.
Repair Grade Crossings				=	2,500.
ESTIMATED COST TO REMOVE SALVAGE					<u>\$44,080.</u>
ESTIMATED NET SALVAGE VALUE					\$53,664.

LAND VALUE

Land 4.5 Miles	<u>\$13,700.</u>
TOTAL NET SALVAGE VALUE	\$67,364.

SUMMARY

East Manchester to Rockingham Jct., N.H. (including Fremont Branch)	
PORTSMOUTH BRANCH (27.2 Miles)	\$264,510.
FREMONT BRANCH (4.5 Miles)	\$ 67,364.
<hr/>	
GRANT NET TOTAL - SALVAGE	\$331,874.

Office of Vice President-Engineering
 North Billerica, MA
 July 2, 1979

July 6, 1979

Memo to the Trustees

Re: East Manchester to Rockingham Junction, N. H.
Including the Fremont Branch

My memo of July 2, 1979 overstated the present net liquidation value of the rail relay and other metals. The net liquidation value of the rail relay and other metals is \$212,000 instead of \$372,000.

Request is made that you reaffirm your vote of July 3, 1979 unless you deem the lesser liquidation value of sufficient weight to change your vote.

A. G. Dustin

July 20, 1979

Hon. Frank J. Murray
Senior Judge, U. S. District Court
for the District of Massachusetts
U. S. Courthouse and P.O. Building
Post Office Square
Boston, Massachusetts 02109

Re: In the matter of Boston and Maine Corporation,
Debtor No. 70-250-M - Petition for Order No. 159

Dear Judge Murray:

Enclosed herein please find a copy of the memorandum of Alan G. Dustin, President to the Trustees, dated July 2, 1979, together with a copy of the vote of the Trustees, taken at their meeting of July 3, 1979, in reconsideration and reaffirmation of their decision to apply for the abandonment of the line of railroad extending from East Manchester to Rockingham Junction, including the Fremont Branch, New Hampshire.

Sincerely,

Sidney Weinberg

SW/amen
Enclosure

bcc: Charles W. Mulcahy, Jr.

BOSTON AND MAINE CORPORATION - DEBTOR
150 CAUSEWAY STREET
BOSTON, MASSACHUSETTS 02114
Telephone: 227-6000



LAW DEPARTMENT

ROBERT W. MESERVE
BENJAMIN H. LACY
TRUSTEES

JOHN J. NEE
Vice President and General Counsel

JOHN E. O'KEEFE
SIDNEY WEINBERG
Attorneys

August 1 , 1979

Re: U. S. District Court for the District
of Massachusetts No. 70-250-M - Petition
for Order No. 159 - Abandonment, E. Manchester
to Newfields, N. H. (Including Fremont Branch)

Gentlemen:

Kindly be advised that the Court has set the above-captioned petition for hearing before the Court, U. S. Post Office and Courthouse, Post Office Square, Boston, MA 02109 at 11:00 A.M. on Wednesday, August 22, 1979.

Very truly yours,

Sidney Weinberg
Attorney for Petitioners
150 Causeway Street
Boston, MA 02109
(617) 227-6000

SW/mon

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

In the Matter of

BOSTON AND MAINE CORPORATION,

BK 70-250-M

Debtor

ORDER OF NOTICE

At Boston, in said District, this 6th day of August ,
1979.

The Trustees of the Debtor having filed herein a Motion to Confirm Report of Special Master R. Ammi Cutter Regarding Trustees' Petition for Authority to Apply to the Interstate Commerce Commission for Permission to Abandon a Line of Railroad between East Manchester, New Hampshire and Newfields, New Hampshire (Petition for Order No. 159), and objections to said Report of the Special Master having been filed herein, and a hearing on said motion and said objections having been held before this Court on March 9, 1977, and the Trustees having submitted to the Court a report of their reconsideration of the petition and their vote on July 3, 1979 to continue to prosecute said petition, it is hereby

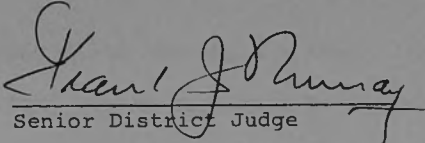
ORDERED:

1. That the certified vote of the Trustees taken on July 3, 1979 relative to Petition for Order No. 159 together with the "updated evaluation" report prepared by the staff of the Debtor be placed on file with the Clerk;
2. That a hearing be held before this Court on August 22 , 1979, at 11:00AM, at the United States Courthouse Building, Boston, Massachusetts, on the Trustees' Motion to Confirm Report of Special Master R. Ammi Cutter Regarding Trustees' Petition

2848

for Authority Pursuant to Petition for Order No. 159, and the objections thereto;

3. That the Trustees shall give notice to all parties who have been permitted to intervene generally in these proceedings and to all parties who have intervened with respect to such abandonment petition (Petition for Order No. 159) of the hearing to be held before this Court on August 22 , 1979, at 11:00 AM , by regular mail, postage prepaid, addressed to all such parties, or their counsel, at least twelve (12) days prior to the date of said hearing.


Senior District Judge

BOSTON AND MAINE CORPORATION - DEBTOR
150 CAUSEWAY STREET
BOSTON, MASSACHUSETTS 02114
Telephone: 227-6000



LAW DEPARTMENT

ROBERT W. MESERVE
BENJAMIN H. LACY
TRUSTEES

JOHN J. NEE
Vice President and General Counsel

JOHN E. O'KEEFE
SIDNEY WEINBERG
Attorneys

August 14, 1979

John Cummings
Rowell Road
Brentwood, N.H. 03833

Re: U. S. District Court for the District
of Massachusetts No. 70-250-M - Petition
for Order No. 159 - Abandonment, E. Manchester
to Newfields, N. H. (Including Fremont Branch)

Gentlemen:

Kindly be advised that the Court has set the above-captioned petition for hearing before the Court, U. S. Post Office and Courthouse, Post Office Square, Boston, MA 02109 at 11:00 A.M. on Wednesday, August 22, 1979.

Very truly yours,

Sidney Weinberg
Attorney for Petitioners
150 Causeway Street
Boston, MA 02109
(617) 227-6000

SW/mon

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

In the Matter of

BOSTON AND MAINE CORPORATION,

BK 70-250-M

Debtor

PETITION FOR ORDER NO. 159
CERTIFICATE OF SERVICE OF NOTICE OF HEARING

I hereby certify that in compliance with the Order of Notice, dated August 6, 1979, I this day gave notice to all parties who have been permitted to intervene generally in these proceedings and to all parties who have intervened with respect to the above-captioned abandonment petition by mailing notice of the hearing on said petition to be held before this Court on August 22, 1979 at 11:00 A.M. addressed to all such parties or their counsel by regular mail, postage prepaid.

Dated at Boston, Massachusetts this fourteenth day of August, 1979.

Sidney Weinberg
Attorney for Petitioners

Mailing List - Petition for Order No. 159

Ms. Pamela C. Wilbar
c/o Stuart Cullum
Mayflower Point
Orleans, MA 02653

John T. Collins, Esquire
Sherburne, Powers & Needham
One Beacon Street
Boston, MA 02108

John Hoar, Jr.
Box 51
Epping, N.H. 03042

Henry R. Mallek
Keller Products, Inc.
41 Union Street
P.O. Box 105
Manchester, N.H. 03105

John H. Broadley, Esquire
Department of Justice
Todd Building (Room 1162)
550 11th Street
Washington, D. C. 20530

John J. Coffey, Esquire
Executive Office of Transp.
One Ashburton Place
Boston, MA 02108

Joseph H. B. Edwards, Esquire
100 Federal Street
Boston, MA 02110

Clifford Elkins, Esquire
N.Y. State Dept. of Transp.
1220 Washington Ave. Bldg. 5
Albany, N.Y. 12226

Robert B. Field, Jr., Esquire
11 Concord Street
Nashua, New Hampshire 03060

Hirsh Freed, Esquire
One Federal Street
Boston, MA 02110

Paul B. Galvani, Esquire
225 Franklin Street
Boston, MA 02110

Michael Haley, Esquire
FRA - Dept. of Transportation
400 Seventh Street, S.W.
Washington, D. C. 20591

Hon. Edward F. Harrington
U. S. Attorney - Mass.
1107 Post Office - Courthouse
Boston, MA 02109

George B. Hefferan, Jr., Esquire
Counsel for Central Vt. RR
477 Congress Street
Portland, Maine 04111

Carl Helmetag, Esquire
Penn Central Transportation
1700 Market Street, Suite 3100
Philadelphia, PA 19103

Edward J. Hickey, Jr., Esquire
Suite 400
1125 Fifteenth Street, N.W.
Washington, D.C. 20005

Joseph H. D. Hinkley, Esquire
One Beacon Street
Boston, MA 02108

W. Charles Hogg, Jr., Esquire
1700 Widener Building
Philadelphia, PA 19107

William M. Houston, Esquire
Counsel for B & A RR
84 Harlow Street
Bangor, Maine 04401

George H. Kleinberger, Esquire
Delaware & Hudson Railway
40 Beaver Street
Albany, New York 12207

Alan L. Lefkowitz, Esquire
One Federal Street
Boston, MA 02110

Daniel J. Mahoney
7 Water Street
Boston, MA 02109

George W. McLaughlin, Esquire
for Canadian Pacific Railroad
19 Milk Street
Boston, MA 02109

Thomas F. Patton and
Ralph S. Tyler, Jr., Trustees
Erie Lackawanna Railway
Midland Building
Cleveland, Ohio 44115

William P. Quinn, Esquire
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, PA 19106

Herbert M. Rafner, Esquire
Lehigh Valley Railway Co.
415 Brighton Street
Bethlehem, PA 18015

Scott Scully, Esquire
Maine Central Railroad
232 St. John Street
Portland, Maine 04102

Hon. David H. Souter
Attorney General for N.H.
State House
Concord, New Hampshire 03303

Donald J. Staples
92 Bosse Avenue
Manchester, N.H. 03103

Davald M. Tolmie
Norfolk & Western Railroad
Eight North Jefferson Street
Roanoke, Virginia

William H. Tucker, Esquire
One State Street
Boston, MA 02109

Lewis H. Weinstein, Esquire
Ten Post Office Square
Boston, MA 02109

Thomas B. Burch, Esquire
Associate General Counsel
Metropolitan Life Ins. Co.
One Madison Avenue
New York, New York 10010

Keith B. Hook, Esquire, Counsel
Connecticut Mutual Life Ins.
140 Garden Street
Hartford, Connecticut 06115

Thomas R. Kiley, Esquire
Asst. Attorney General
State House - Room 373
Boston, Massachusetts 02133

Hon. Geraldine R. Keyes
Interstate Commerce Commission
Room 7314 - I.C.C. Building
12th St. & Constitution Avenue
Washington, D. C. 20423

Robert M. Gargill, Esquire
28 State Street
Boston, MA 02109

Thomas J. Rafferty Esquire
28 State Street
Boston, MA 02109

Ann Rogers, Attorney
Office of Transportation
One Ashburton Place (16th Floor)
Boston, MA 02116

Mr. W. N. Burnett, V. P.
Corporate Trust Division
First National Bank - Boston
Post Office Box 1897
Boston, MA 02105

Benjamin H. Lacy, Esquire
225 Franklin Street
Boston, MA 02110

Robert W. Meserve, Esquire
Palmer & Dodge
One Beacon Street
Boston, MA 02108

Alan G. Dustin, President
and Chief Executive Officer
Boston and Maine Corporation
Billerica, MA 01821

John W. Rowe, Esquire
Isham, Lincoln & Beale
One First National Plaza
Chicago, Illinois 60603

John Cummings
Rowell Road
Brentwood, N.H. 03833

Charles E. Tobey
Sandwich Road
Plymouth, MA 02360

Paul E. McBride, Asst. Secretary
Exec. Office of Trans.
One Ashburton Place
Boston, MA 02108

Merrimac Farmers Exchange
P.O. Box 470
Concord, N.H. 02200

Attn: Mr. C. T. Bruno, Manager
Milling Department

John J. Nee, Esquire
Vice President and General Counsel
Boston and Maine Corporation
Boston, MA 02114

Mr. Peter W. Carr
Vice President - Comptroller
Boston and Maine Corporation
150 Causeway Street
Boston, MA 02114

August 16, 1979

To: J. I. Bean
R. E. Hill
V. T. Terrill
E. J. Marks
F. C. Welch
C. E. LeBlanc

Re: Petition For Order No. 159,
Abandonment, E. Manchester
to Newfields, including
Front Branch

Judge Murray has set the above-captioned petition for hearing at the U. S. Post Office and Courthouse, Post Office Square, Boston, MA at 11:00 A.M. on Wednesday, August 22, 1979.

Your attendance is required to substantiate the figures in the statement to the Trustees, dated July 2, 1979, a copy of which is attached, concerning the net losses in operation of the line, rehabilitation costs and estimated net liquidation value.

Kindly call me regarding the scope of your testimony.

S. Weinberg

SW/mon
Attachment

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----)
In the Matter of)
Boston & Maine Corporation,)
Debtor)
-----)
In Proceedings for the
Reorganization of a
Railroad
No. 70-250 M

REPORT OF MASTER ON HEARINGS
CONCERNING PETITION FOR ORDER NO. 159.

Statement of Past Proceedings.

1. In 1973, the Debtor's Trustee¹ filed this petition for authority to apply to the Interstate Commerce Commission for leave to abandon a line of railroad (running approximately east and west) between a point about three miles east of Manchester, New Hampshire, and a point in Newfields, New Hampshire, a little west of Rockingham Junction. The position of this line (hereinafter called the Epping branch) is indicated in red on Exhibit No. 2, reproduced as page 1A of this report. A larger territory is shown on page 1B, based on Exhibit No. 11, prepared (at my request) to show the whole Boston & Maine system and its principal

¹ When abandonment was originally proposed in late 1972, there were apparently two Trustees of the debtor. When the petition first was approved in 1973 there was only one Trustee, Mr. Meserve. In 1976, when the petition was reviewed (see Ex. 12), there were again two Trustees

the Matter of
BOSTON & MAINE CORPORATION
Debtor

In Proceedings for
The Reorganization of
A Railroad
No. 70-250-F

Hearing on Trustee's Petition for Authority to Abandon a Line of
Railroad between Manchester and Newfields, N.H. including the
Fremont Branch.

Order of Notice Entered on June 22, 1976



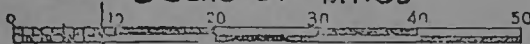
PLANTICOC

BOSTON AND MAINE RAILROAD SYSTEM AND CONNECTIONS

Office of Chief Engineer.

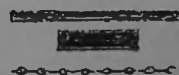
January 1973

Scale of Miles



• LEGEND •

D. M. R. R. & Leased Lines
Proposed Abandonment
Joint Operation





BOSTON AND MAINE CORPORATION
 LINES AUTHORIZED BY
 TRUSTEES FOR AGREEMENT
 Lines Authorized on 2nd
 Lines For use in 1911
 on 1st 1st 1st 1st 1st 1st 1st
 1st 1st 1st 1st 1st 1st 1st

external interchange points with other systems. Included in the proposed abandonment is a branch line leading south from Epping to Fremont (the Fremont branch). All the rail lines covered by this petition lie within the State of New Hampshire.

2. The petition for abandonment was originally authorized by the then sole Trustee, Mr. Robert Meserve, at a trustee's meeting on March 28, 1973, confirming an earlier vote of the then two Trustees (see Tr. 6) on December 19, 1972. See Ex. 1, pp. 1 to 3, 10 to 14. At these meetings (as the exhibit shows) there was consideration by the Trustees or Trustee of then available data concerning the alleged unprofitability and lack of usefulness of the Epping and Fremont branches, and their effect on the Boston & Maine (B & M) system's earnings. These data (so far as they involved predictions and projections) were based on then existing conditions and possible developments in the area served by the branches. Tr. 5 to 6, 8 to 18, 19 to 29.

3. For reasons, not apparent from the record, the petition for Order No. 159 was not immediately pressed by the Trustees. Tr. 142. In any event, during the period 1973 to 1976, there occurred a railroad decision (1) to attempt to reduce losses attributable to the Epping and Fremont

branches by cutting down the level of maintenance of these branches from Level II to Level I and (2) by transferring "bridge" traffic (Tr. 140-144, 147) over the branch to somewhat longer routes where there was already a concentration of freight traffic, moving at higher speeds and with more frequent service than on the Epping branch. Tr. 159-162. See Tr. 38-39, and par. 15, infra.

4. The railroad Trustees, after a lapse of some three years, began to press the petition. The matter was referred to me as master on May 27, 1976, by Order No. 334. An order of notice of hearings to begin on July 12, 1976, was issued on June 22, 1976. A certificate of service of the petition (upon persons listed in two schedules attached to the certificate) appears at the end of the first volume of the transcript.

5. (A) The first set of hearings consumed a day and a half. The railroad debtor was represented by counsel (Mr. Weinberg). Counsel for the State of New Hampshire (Mr. Collins) appeared in opposition to the petition and participated actively by cross-examination of witnesses called by the railroad and by the presentation of evidence in behalf of the State. A member of the New Hampshire House of Representatives who represents in the Legislature two towns (Raymond and Epping) crossed by the Epping branch, appeared in opposition and testified. Tr. 2-7 et seq. This representative (Representative John Hoar, Jr.)

is not a member of the bar, and inquiry of Mr. Hoar, as a witness at the first hearings, was made by counsel for the State of New Hampshire, as a matter of courtesy and for my assistance. Tr. 47 et seq., 2-6 et seq. Mr. Hoar produced no witness other than himself, although he purported to voice opposition to the proposed abandonment for a number of persons with businesses along the Epping and Fremont branches. A number of letters from Mr. Hoar's constituents and others were marked for identification only (Ex. 10, iden.) as indicating only the fact that objections were made but not as bearing upon the truth of statements in the letters. Tr. 2-25. I have considered these letters only as unsworn statements of position and opposition.

(B) After the first set of hearings had been completed, briefs were filed. After examining these briefs, I concluded (1) that the original authorization of the petition by the Trustees in 1973 preceded significant changes in the operations of the two branches, which made it desirable (although not necessary) that the Trustees reconsider the matter in the light of the new conditions, and (2) that the railroad should prepare a new exhibit which would comply somewhat more closely with proposed regulations to govern abandonment proceedings published

by the Interstate Commerce Commission in the spring and summer of 1976. It seemed to me that the District Judge should have the benefit of such renewed Trustee consideration of the situation and of any exhibits and data which could be collected by the railroad to reflect operations of the two branches in general compliance with the proposed new regulations. See 41 Federal Register 13691 (March 31, 1976); 16782 (April 21, 1976); 23172 (June 8, 1976); 31878 (July 30, 1976). See discussion par. 3, infra.^{2/}

(C) Accordingly, on my own motion, I reopened the hearings, (1) so that the data submitted in evidence at the first set of hearings could be made available for examination by the Trustees, and (2) so that additional exhibits and evidence could be presented by the Trustees and the State of New Hampshire (in the latter instance, particularly from allegedly affected shippers with places of business along the two branches). A reopened hearing was held (after due notice) on November 1, 1976, at which additional exhibits were received and additional testimony was offered in behalf of the Trustees and the State. In the discussion of the evidence in the paragraphs which follow, I have treated all evidence in the record made before me essentially as a unit. It should be mentioned, however, that the exhibits at the first hearing (July, 1976) were based, in part, upon operating data for the first three months only of 1976, whereas by the second

^{2/} See also I.C.C. order of October 29, 1976, served November 5, 1976. Vol. 41 Federal Register 48520 et seq., 48972 et seq. and 49 C.F.R. Part 1121, section 1121.42.

hearing (November) results for the first six months of 1976 had become available.

(D) Supplemental briefs were filed about December 6, 1976. This report takes into account contentions advanced in those briefs as well as arguments found in the first set of briefs.

Description of the Exhibits and References
to Certain Relevant Testimony.

6. The railroad's affirmative case is found, not only in the testimony of various witnesses called as experts, but also in the exhibits received in evidence as described in this and succeeding paragraphs of this report:

Ex. 1 - (14 sheets) Extracts from minutes of the Trustee (Trustees) of the Debtor, held on December 19, 1972, and on March 28, 1973, received as showing the official record of the Trustee(s) (in pertinent respects) of those meetings, and certain documents there presented, but not of the truth of statements of fact therein set forth. See Tr. 32. [In this connection there should be considered Exhibit 12, the record of pertinent parts of the Trustees' record of a meeting on September 21, 1976, at which the 1973 action discussed in Exhibit 1 was again considered. Exhibit 12, I have considered only as establishing the facts (a) that the matter was again considered by the Trustees, (b) that

documents referred to in Exhibit 12 had been furnished to the Trustees, and (c) that the vote quoted in Exhibit 12 had been adopted. See Tr. 3-4 to 3-17.]

Ex. 2 - (Sketch) Map of the Epping and Fremont branches and certain adjacent railroad lines in southern New Hampshire and northeastern Massachusetts. See. Tr. 33.

Ex. 3 - (2 sheets) Statement of estimated net salvage (7/12/76) from rails, structures, and land, if proposed abandonment should take place. Tr. 34, 164.

Ex. 4 - (3 sheets) Detailed listing (for the two branches) of operating expenses (maintenance of way and structures; maintenance of equipment; transportation) for the calendar years 1974, 1975, the first three months of 1976, and an extension (by multiplying by four the first quarter 1976 figures) of estimated results for the "ensuing annual period." See Tr. 35-39, 146.

Ex. 5 Projected annual loss in operating the Epping and Fremont branches for five years (plus five year average). This exhibit shows a projected (estimated) loss from operating the two branches of \$36,928 for the first year and an average (five-year) projected annual loss of \$48,176. Tr. 39.

Ex. 6 - (2 sheets) Projected annual loss in operating only that portion of the Epping branch, east of Epping and west of Newfields, for the annual period, April 1, 1976, to March 31, 1977. This indicates a projected loss of \$20,687. Tr. 40-41, 44-45, 146. See, however, par. 20 below.

Ex. 7 - (one sheet) Projected annual loss in operating the Epping and Fremont branches for the calendar years 1974 and 1975, the first three months of 1976, and the "ensuing annual period" (i.e. the twelve months ended March 31, 1977, Tr. 40-41, 44-45). This exhibit computes operating revenues for past periods by an examination of waybills for those periods for cars originating or terminating on the two branches. Revenue and expenses for the "ensuing annual period" were computed by multiplying by four the revenues and expenses (as shown on the exhibit) for the first quarter of 1976. Expenses for the Epping and Fremont branches were taken for past periods (1974, 1975, and first quarter 1976) from Exhibit 4. "Beyond the line costs" (that is, an estimate of the burden or cost of carrying, on other parts of the debtor's system, freight originating or terminating on the Epping and Fremont branches) were computed by a formula which had at least the acquiescence of the United States Court of Appeals for the First Circuit in an earlier appeal in this reorganization. See Boston & Maine Corp. v. State of New Hampshire, 455 F. 2d 1205, 1209 (1st Cir. 1972). See also discussion below, par. 8.

Ex. 8 - (one sheet) is an analysis (see Tr. 87 to 90), for the calendar years 1966 to 1975, of the carloads of freight "received" and "forwarded" by each community on the Epping and Fremont branches. It shows for totals (all stations) a 97.4% decline (1966-1975).

<u>1966</u>	<u>1971</u>	<u>1975</u>
Received 194 cars	129 cars	81 cars
Forwarded 2950 cars	350 cars	none

There is no less-than-carload (LCL) traffic on the Epping and Fremont branches. See Tr. 90 to 91. Occasionally a shipper or consignee uses a so called "stop-off" car service. See Tr. 3-53 to 3-55.

Ex. 9 - (one sheet) is a comparative income statement for the debtor's whole system for the five calendar years 1971 through 1975. In 1975, the net loss was \$13,536,869.

[Ex. 10 (iden.), see par. 5, supra, is a group of letters marked for identification offered by State Representative John Hoar, Jr.]

Ex. 11 (prepared at my request after the first hearings) is a sketch map of the debtor's whole rail system for convenient reference in understanding testimony about traffic routings. See. Tr. 3-2, and p. 1B, supra.

Ex. 12 (2 sheets) is a certified extract from the minutes of a meeting of the Trustees of the Debtor on September 21, 1976, used by me, as indicating only that a resolution was adopted by the Trustees on that date after the submission to them of certain data, exhibits and documents referred to in the exhibit. See Tr. 3-6 et seq. and discussion above, par. 6, concerning Ex. 1.

Ex. 13 - (6 sheets, originally introduced for identification, Tr. 3-18, until verified by all the Debtor's employees who contributed to its compilation, see Tr. 3-16, 3-104, 3-124, 3-163, and 3-165) and finally (Tr. 3-170) received

in evidence, is an attempt to restate the operating results of the two branches for the first six months of 1976 (by I.C.C. standard accounts) on a basis reflecting (so far as the Debtor's accounting records permit) the "avoidable costs" of providing service. This attempt more closely complies with the new I.C.C. proposed and interim regulations than do the exhibits introduced at the first hearings, but absolute compliance with those proposed regulations is not possible until the Debtor maintains Rail Form A data, compiled from its Form R-1 Annual Reports to the Commission. See Ex. 13, p. 6, note 1. The exhibit does not satisfactorily reflect many of the Debtor's costs for carrying, on other parts of the B & M system, freight originating or terminating on the two branches, abandonment of which is now sought. See Tr. 3-163. See also discussion below, par. 8. The exhibit, in other respects, may be subject to criticism.

Ex. 14 - (one sheet) reveals rail mileages from Portsmouth, New Hampshire, to certain major points of interchange with other railroads. In one column (Routing via Manchester) is shown the mileage to each interchange point via the Epping branch and in the next column ("Routing via Lowell") is shown the mileage covered by such traffic if handled (without any use of the two branches) via Lowell. The final two columns show in miles the parts of each routing which are maintained to Class I, Class II,

and Class III standards, respectively. See discussion below in par. 15. See Tr. 3-154.

FINDINGS

On all the evidence and exhibits, I make the findings set out below. These are in addition to certain findings already made (pars. 1-4, supra) concerning prior proceedings and the hearings on the present petition, and concerning the exhibits (par. 6, supra), and related facts.

7. The statistical material prepared for the 1976 hearings before me (Exs. 3-9, inclusive, and Exs. 13 and 14) are reasonable efforts to present data compiled, so far as practicable, in accordance with standard or permissible I.C.C. accounting and statistical rules and practices. So far as they purport to reflect records of revenues received during actual past periods of operation, they are highly accurate. Less accuracy is possible with respect to records of expenses as some of these are necessarily based on accounting allocations. Projections, in the exhibits, of results for future periods are made on a basis carefully explained in testimony or in exhibits. These necessarily are less accurate than figures reflecting actual operations for completed periods. At best, these are approximations only and provide only a rough guide to judgment in matters to be based on expected operating results. For example, the comparable estimates prepared in 1973 and presented to

the Debtor's Trustees at meetings in 1972 and 1973 (see Ex. 1) included confused and erroneous guesses about future events and set out excessively high estimates of the burden on system results attributable to the Epping and Fremont branches. See fn. 6, below and Appendix 2.

8. (A) In computing "beyond-the-line costs" the exhibits (except Ex. 13) state that element of cost only on the basis of a computation formula recognized in earlier I.C.C. decisions, discussed in Re Boston & Maine Corp., Appeal of State of New Hampshire, 455 F. 2d 1205, 1209 (1st Cir. 1972). "Such 'beyond the line costs,'" said the First Circuit opinion at p. 1209, "although not susceptible to precise calculation are properly includable in determinations of the line's profitability" (see fn. 11, at 455 F. 2d 1205, 1209). The I.C.C. in past cases has given this formula application to some extent. In proposed regulations, however, the Commission has indicated that, in the future, it is likely to require more refined methods of calculating "beyond-the-line costs" for various purposes. See Commonwealth of Pennsylvania v. Interstate Commerce Commission, 535 F. 2d 91, 93-97 (D.C. Cir. 1976) and 41 Federal Register 31892 (July 30, 1976). See also discussion in par. 6, supra, of Exhibit 7. The Commission's present effort appears to be to obtain data which will give a more precise indication of "avoidable costs," i.e. the costs which the

Debtor (or another railroad) will no longer have to incur if a proposed abandonment is permitted.

(B) The computation used in the exhibits (except parts of Ex. 13) involves ascertaining from waybills, see e.g. Ex. 7, the Debtor's total revenue from carrying each car-load of freight on the whole of the Debtor's lines,^{2A} so far as the freight originates or terminates at points on the Epping and Fremont branches. From that total revenue is deducted the proportion of the total which (a) the mileage on the Epping and Fremont branches traversed by each car, bears to (b) the total mileage traversed by the car on the Debtor's lines. Of the balance (of revenue), one half is somewhat arbitrarily treated as representing the expense of "the railroad operation [with respect to the pertinent car] on that balance of the line . . . not under consideration for abandonment" over which the car actually moves. Tr. 93. This makes the allowance for "beyond-the-line costs" a percentage of "beyond-the-line revenues" which does not necessarily (but may) approximate the expense of carrying freight (originating or terminating on the two branches proposed for abandonment) on the balance of the system. Tr. 93-98.

^{2A} Exhibit 13, Sheet 6, describes the freight revenues listed in Account 101, Sheet 1 of that exhibit as "Freight-All revenue assigned to this account are actual revenues for the six months period and are gross Boston and Maine revenues. There is no bridge traffic on the line."

(C) I do not accept testimony (Tr. 97-98) that the formula used by the Debtor results in "conservative estimates of beyond the line costs." The Debtor does not maintain accounts which really permit such a judgment. Tr. 3-19, 3-125 et seq., 3-166 et seq. Certain costs (first six months, 1976) were identified by a railroad witness (Mr. Culliford) as "beyond the line" costs (for the first six months of 1976) definitely caused by cars originating or terminating on the two branches:- viz. yard costs of \$2,557 and per diem costs of \$875, a total of \$3,432. Tr. 3-126. Obviously, other costs also were thus caused. Tr. 3-125 to 3-128. There is no certainty on this record that such other costs would raise the "beyond the line" costs to \$5,011 (computed for the same six-months period by use of the old formula). See Ex 13, sheet 5, note 1. Taking into account all relevant evidence, I find that additional "beyond the line costs" would bring the total of such costs for the six-months period at least to \$3,700 (or \$7,400 on an annual basis by projection). Accordingly, in appraising the various exhibits relating to the 1976 annual period or the twelve months ending March 31, 1977, I compute the probable annual loss from the two branches using \$7,400 as the annual "beyond the line" expense.

9. Portions of Exhibit 13 (as revised after the hearing on November 1, 1976, see Tr. 3-101 to 3-110, 3-170) in my judgment, give the most accurate picture now available con-

cerning the current results (on an "avoidable cost" basis) of operations on the two branches. The figures for the first six months of 1976 may be summarized.

FREIGHT REVENUES AND RENTS (Sheet 1)		<u>1st 6 months 1976</u>
less Maintenance of Way		\$13,537 (see fn. 2A, <u>supra</u>)
(Sheets 1-2)	\$13,077.	
Equipment maintenance		
(Sheet 3)	1,525.	
Transportation expense		
(Sheet 4)	7,363.	
Fringe benefits (Sheet 4)	871.	
Freight car costs (Sheet 4)	<u>1,110.</u>	
		<u>\$23,946.</u>
Net <u>loss</u> before "beyond the line" expense		(<u>\$10,409.</u>)
Add \$3,700 minimum half year allowance for "beyond the line" costs		(3,700.)
Estimated <u>loss</u> from operating the two branches for the first six months of 1976		<u>(\$14,109.)</u>
Multiply by 2 for 12 months		(\$28,218.)

The loss may well be greater but only to this extent can I conclude (as I do) that it has been adequately established.

10. I have considered the testimony that some signal expense now incurred could be avoided by adopting highway crossing protection of the "stop and protect" type, that is by stopping the few slow moving trains and then stopping vehicular traffic before crossing the highway. See Tr. 3-119 et seq., 3-135 to 3-140. Although there are no signal devices on these two branches to regulate the movement of trains, flashers are maintained at highway crossings. Tr. 65.

There is heavy traffic at some grade crossings. Tr. 3-135 et seq. I conclude that, with abandonment proceedings pending, the Debtor reasonably continues providing the highway protection hitherto provided, without having resort (Tr. 3-117 to 3-119) to the New Hampshire regulatory commission for permission to substitute a possibly less adequate (and from the public standpoint, more dangerous) form of protection. I accept as reasonable also other operating expenses shown on Ex. 13.³

11. On all the evidence, I find and conclude that the Debtor will lose from operations on the two branches at least about \$28,200 for the twelve months of 1976, before any consideration is given to the costs of rehabilitating the lines.^{3A} On Sheet 2 of Ex. 13, the Debtor estimates that to restore the branches to a condition meeting F.R.A. standards (for a line operating on a Class I basis) would mean spending \$279,030. That may be the case, as in essence witnesses called by the Debtor testified. There was testimony, however, that the two branches (as of July, 1976) met Class I standards

³ There is no evidence that the Trustees have considered reduction in this signal expense as a possible alternative to abandonment. [Elimination of the whole signal expense would reduce the loss (see par. 9, supra) from the branches by \$14,094. Ex. 13, Account No. 249.]

^{3A} Because of I.C.C. accounting requirements, roadbed rehabilitation expenses are charged off in the year in which they are incurred. This, unless understood, may distort results in the year in which such expenditures (e.g. for tie replacements) are made. Tr. 3-168 to 3-169.

(Tr. 1-38), although (Tr. 3-144 to 3-149) whether ~~they~~ now do ~~so~~ so, may be "close." Upon past indications about the Debtor's expenditures on rehabilitation, I conclude that all major expenditures (while possible abandonment is pending, Tr. 3-148) in fact will be postponed as long as possible without assuming undue risks of accidents. There have been no roadbed-caused derailments or other major accidents. Tr. 3-149. Undoubtedly the roadbed of the two branches has deteriorated and some rehabilitation must be done with promptness, if operations are long to continue. I would not expect these to reach the figures for such rehabilitation shown on Ex. 5 and on Sheet 5 of Ex. 13 (projected).

12. On Exhibits 5, 6, and 7, accordingly, I conclude that "beyond the line" expense and projected maintenance expenses are overstated. In other respects, I conclude that the figures shown on Exhibits 5, 6, and ⁴7 are reasonably consistent with those for similar items on Ex. 13. The

⁴ See Tr. 113-114 and Tr. 136 for certain known prospective increases in revenues and expenses taken into account in computing these exhibits. Any computations based on projections (by extending by multiplication the results for a brief known period) may result in some distortion. See Tr. 113, 115-117, 136-137.

latter figures seem to me more adequately substantiated. On these exhibits and related testimony, I base my conclusion that operation of the two branches in the present period will be a burden upon system earnings to the extent of at least \$28,000 a year, plus any absolutely necessary and non-postponeable rehabilitation expense.

13. I find that Exhibit 8 (see par. 6, supra) correctly shows for the period 1966 to 1975, the startling decrease in carloads of freight originating and terminating on the two branches. In 1975 only 81 cars terminated on the branches (five at Manchester, six at Candia, and 70 at Epping). Total cars dropped from 3,153 in 1966 to 81 in 1975, largely because no cars of freight originated on the two branches in 1974 and 1975, and few cars after 1971. The decline in cars originating on the two lines is largely because movement of gravel from a source in Raymond has ceased entirely. Tr. 88-89. See Tr. 70-71, 120.

14. (A) There was some testimony (see Appendix 1) about prospects for future business. None of this testimony has convinced me that shipments to and from the branch are likely to increase within the foreseeable future. Just prior to 1973, there had been some effort by communities on the Epping branch to obtain industrial development in the area and to set aside land for "industrial parks." Tr. 105-106, 165-166, 2-23 to 2-24 (Epping), and Tr. 2-28 (Raymond). This

effort may unduly have encouraged some of the Debtor's officials in 1973 then to be optimistic. See e.g. Tr. 165; Ex. 1, Sheets 3, 12-13. In the period since 1973, there has been no industrial development along the two branches by rail users, and I find that there is no prospect of rail user development which can be predicted with any confidence. Tr. 104-106, 166, 173-174, 2-32 to 2-36, 3-35 et seq.

(B) In Appendix 1, there is a summary of (a) rail users on or near the two branches whose freight traffic has disappeared or been greatly reduced in recent years, and (b) of possible freight shippers whose business prospects are at best a matter of conjecture. Companies selecting sites in New Hampshire and wishing to have rail service, will be likely to select a new location from the available sites near main lines (not likely to be abandoned) rather than places on these thinly patronized two branches, where lack of freight business has necessarily led to reductions in service and the present abandonment petition. Tr. 90, 2-30, 2-33 to 2-36. I have taken into consideration the circumstance that reduced service and the pendency of abandonment proceedings may have discouraged industrial development along the two branches to some extent.

(C) The record indicates that some businesses in the area served by the two branches largely rely on the greater flexibility of truck service. Truck service enables them

to keep inventories at a minimum. Tr. 114-115. Many businesses rely upon manufacturers "to warehouse for" them. They will pay a higher truck rate to get such warehouse service and to get, when it is needed, quicker delivery from the manufacturers than can be had by rail. The truck competition plainly is a factor to be considered in appraising the possibilities of increasing future rail business in this area.

15. In 1972-1973 there was some "bridge" or "overhead" traffic on the Epping branch going from Portsmouth to the north-south main line through Manchester. Tr. 142-143. In 1973, the Debtor's officials decided that overall economies could be achieved (a) by concentrating this former "bridge" traffic on other lines of the Debtor, necessarily maintained for frequent use and higher speeds because of greater traffic volume, (b) by cutting the maintenance level on the two branches from a grade II (permitted speed 20 miles an hour) to a grade I level (maximum speed 10 miles an hour), and (c) by reducing freight service on the two branches to once only each week. The former "bridge" traffic is now being handled over other lines of the Debtor⁵ without causing any very significant

⁵ Concentration of the former "bridge" traffic on the Debtor's main lines fits in with the Debtor's natural desire to get as long a haul on its own lines as possible, e.g. to Rotterdam Junction and Mechanicville as interchange points rather than to White River Junction. Tr. 109-110. Exhibit 14 shows that (except to White River Junction) the distances from

increase of costs on these other lines. See Tr. 3-43, 3-127 et seq. Any longer mileage (by using the Debtor's main lines for the former "bridge" traffic) is shown by Exhibit 14 to be of slight significance, in view of the higher speeds and more frequent service on the Debtor's main lines. The shift of the "bridge" traffic was prudent and permitted material economies on the two branches, especially by cutting maintenance of way expenditures. The reduction of the roadbed from Class II to Class I, of course, continued (and may have accentuated) the physical deterioration of the roadbed⁶ on

Portsmouth to the major interchange points are shorter by the main-line routes than by way of the Epping branch. Even to White River Junction, the main line routes permit higher speeds and afford more frequent service than by way of the Epping branch. Portsmouth is a city appropriate for use in testing the propriety of the shift of "bridge" traffic from these two branches.

⁶When the 1973 exhibits (see Ex. 1) were prepared there had been fairly heavy use of the Epping branch for gravel traffic which ended in 1971. This traffic may have contributed to the deterioration of the roadbed and caused, in part, the 1973 (Ex. 1, Sheets 8 and 9) projections of heavy maintenance expenses, if it should thereafter be decided to continue to maintain the branches for grade II operations as had been the case prior to 1973. Because of the current (1976) failure to maintain the roadbed on the two branches even up to wholly satisfactory level I operating standards, the 1972-1973 projections are now wholly irrelevant. Counsel for the State of New Hampshire has requested that I make findings about the considerable discrepancy between (1) the 1973 predictions of 1975 and 1976 expenditures for maintenance of way, and (2) the expenditures actually made in those years. Such findings appear in Appendix ², pars. A and B.

the two branches, in that it was no longer necessary even to attempt to keep the two branches up to Class II operating standards. The frequency of service has been cut to the lowest level which can handle the remaining traffic.

16. As already noted, Exhibit 3 contains estimates of salvage which will follow an abandonment of the two branches. Some rail can then be relaid elsewhere on the Debtor's lines (Tr. 53 to 56). Some rail is suitable for use only as scrap. The dollar value of possible salvage of rail, bridges, and other items to be salvaged has risen in the past three years. Tr. 58 to 59. The values in Ex. 3 are based on exploration by the Debtor's purchasing department of the current market for "relay" rail and scrap. Tr. 56. I find that, if abandonment is authorized (and if clear title to the rail is in the Debtor), the Debtor will realize as salvage about the amounts listed on Ex. 3 for rail and other metal items which belong to the Debtor.

17. Estimates of real estate salvage (Tr. 170 et seq.) are subject to greater uncertainties. As real estate affected by any abandonment is sold, the Debtor will realize significant sums, but I can make no more precise finding than that. I have no doubt that the estimates of real estate salvage were made honestly and in good faith by the Debtor's manager of real estate (Tr. 163) and a private real estate firm (Tr. 167-169) but the disposal of such real estate may encounter unfore-

seen difficulties and may take substantial time.

18. The freight stations on the two branches are all within fairly short distances of other rail service by the Debtor (Tr. 101-102).

(a) Candia is twelve miles from rail delivery points in Manchester.

(b) Raymond is fourteen miles from Exeter.

(c) Epping is eight miles from Exeter.

(d) Fremont is ten miles from Exeter.

19. The proposed abandonment involves the Debtor's retention of about three miles of track east of Manchester (serving freight customers in the Manchester community). Tr. 30, 149. See Tr. 49 to 54, 3-100 to 3-101. There are shippers and freight receivers with side tracks in this three-mile segment. Also, at the eastern end of the proposed abandonment, the Debtor proposes to retain about one-fourth of a mile of track west of Rockingham Junction in the town of Newfields for engineering reasons, viz. to preserve the opportunity of turning trains and cars at that point. Tr. 49 et seq. I find that both these retentions are reasonable. The State of New Hampshire thus far has not produced any proposal for an independent operation of this line. There has been no reliable indication that it will do so. Tr. 19-28, 2-4 to 2-6. See Tr. 176-177. ✓

✓ There is no indication in the evidence that it would be impossible to work out trackage arrangements, over the two retained segments, if abandonment by the Debtor should be authorized and if the State of New Hampshire then should attempt to work out a short line operation of the two branches. The evidence does not enable me to make findings about the nature of the three miles of track just east of Manchester, i.e. whether they constitute "terminal facilities" under § 3 (5) of the Interstate Commerce Act [U.S. Code (1970) Title 49, as amended]. See Pub. L. 94-535, § 215 (a). See also Tr. 53, 3-100 to 3-101.

Shippers close to Manchester (in the three-mile stretch not to be abandoned) should not be deprived of direct service by the Debtor if that service can fairly be continued. In any event, recent legislation affords an opportunity for negotiations for further operation of the branches by others than the Debtor while (or after) the abandonment is being considered by the Interstate Commerce Commission. See the Railroad Revitalization and Regulatory Reform Act of 1976; Pub. L. 94-210, § 802, inserting a new § 1A in the Interstate Commerce Act. See Tr. 2-2 to 2-3.

20. Exhibit 6 purports to compute the reduction in loss if an abandonment of the two branches did not affect at all the Epping branch between Epping and Newfields. For reasons already noted in connection with discussing Exhibits 7 and 13, the expense item of "Beyond line costs" on Ex. 6 may be too high. Adjusting that item in proportion to the cars moving to Epping in 1975 (Ex. 8 - 70 at Epping out of 81 for the two branches as a whole) would reduce the \$7,400 (allowed above in par. 9 for the whole of the two branches) to about \$6,000 instead of the \$12,462 allowed on Ex. 6. I find that the loss from continued operation of only the rail line between Epping and Rockingham Junction would be not less than \$12,000 to \$16,000 (instead of the not less than \$28,000 estimated in par. 11, supra, for the whole of the two branches). This, of course, necessarily is at best an approximation and rough

estimate of the minimum loss only on this easterly segment of the Epping branch.

21. The amount of the losses, which are now being incurred on the two branches (as I have found them above, pars. 9, 11, 20), obviously will not be realized as savings in full immediately upon authorization of abandonment. Reductions in work force will depend in part upon the authorization of other abandonments, the effect of which in the aggregate will permit force reductions. Over a period of time, however, I conclude that the Debtor should be able to effect savings of at least the losses on the two branches computed on the basis which has been employed in pars. 9, 11, and 12, above. Tr. 3-116 to 3-117, 3-120 to 3-122.

22. The Debtor has been in process of reorganization under the Bankruptcy Act for over six years. Its service is important to the State of New Hampshire for the Debtor provides about ninety per cent of the rail mileage in the State. Tr. 2-30 to 2-31. The service is vital to the economy of those regions which give it significant use. The Debtor has not been operating at a profit and it, as a system, has not in any one of the calendar years, 1971 to 1975 (see Ex. 9), had a "net railway operating income." Each year that figure has been in red ink. The Trustees of the Debtor are (and have been) entitled to consider the public interest from the broad standpoint of how best the Debtor can survive to provide its basic rail services to customers who are using them and will use them enough to

permit continuation of railroad operation. They must consider shearing off the Debtor's least used, least essential, and most unprofitable operations. They must weigh (a) the broad public interest in the most basic rail service which can be made viable against (b) the interest (partly public and partly private, see Tr. 2-23) of individual shippers and freight receivers on unprofitable branch lines (not adequately used or likely soon to be so used; see Tr. 2-30). I perceive in this record no indication that the Trustees have not taken the public interest into account, both in 1973 and upon reconsideration of the problem in 1976. They have had an opportunity to reconsider the 1973 application for abandonment and they have decided to continue to press it. Although I am of opinion that the estimates of losses from the two branches presented to them both in 1973 and 1976 were overstated, the Trustees have reached their decision after opportunity to consider essentially all the documentary evidence presented to me, and to have that evidence analyzed for them by the Debtor's staff.

23. The Trustees have not been shown to have been aware of the mistake in computing Account No. 249 in the original form of Ex. 13, which is discussed in Appendix 2, par. C, infra. Because their action on September 21, 1976 (see par. 6, supra, discussion of Ex. 1) preceded the final hearing before me on November 1, 1976, they obviously then had no opportunity to examine the testimony heard on that day. Under the new abandonment regulations promulgated by the Interstate Commerce

Commission (I.C.C.) on November 4, 1976, see 41 Federal Register (Nov. 4, 1976) 48520, and fn. 2, supra), the Debtor (before pressing an abandonment petition before the I.C.C.) must undertake to prepare carefully a number of exhibits based upon much more time consuming and refined accounting methods (see Ex. 13, Sheet 5, note 1) than the Debtor has employed heretofore. The approximations of the loss from the branches shown in revised Ex. 13, necessarily will be supplemented by new maps and exhibits required by the new regulations. The Trustees doubtless will examine (a) such new exhibits, (b) the testimony taken on November 1, 1976, (c) this report, and (d) any decision of this Court which may deal with this report. Nothing in the present record leads me to expect that such an examination is likely to result in any change in the Trustees' decision of September 21, 1976. It may be, however, that this Court will wish to be assured (before the Trustees actually file an abandonment petition with the I.C.C.) that the Trustees are then proceeding with full knowledge of all the data then available. I would not regard this as necessary but, if the District Judge should take a different view, it would be wholly feasible to require (as a condition of granting permission to initiate I.C.C. proceedings) that the Trustees undertake to reconsider the abandonment petition after the new exhibits are available, and file then with this Court a certified copy of their

definite decision to proceed. There is, however, significant evidence that (as I conclude, see par. B, infra) the two branches constitute a burden upon the Debtor's system. Accordingly, I recommend that the Debtor should now be given appropriate authority to proceed with the petition to the I.C.C. before it must incur any expense (which may be substantial) of compliance with the new I.C.C. regulations.

24. The State of New Hampshire in effect contends that the Trustees have not adequately considered alternatives to abandonment of the branches. I perceive on the evidence no possibility or suggestion of any viable alternative in the absence of some subsidy. No real alternative has been suggested by the Debtor or by the State. Elimination of all signal expense would not avoid some annual loss on the branches or the necessity of undertaking promptly some rehabilitation expenditure. The State has not advanced before me any specific proposal for short-line operation of the branches or any subsidy. In view of the provisions of Pub. L. (1974) 93-236, Title IV, Local Rail Services, especially § 402, § 802 (inserting a new § 1a in the Interstate Commerce Act), and § 803, it would be natural that a State might wish to wait until abandonment had been authorized by the I.C.C. with the result that a Federal subsidy might then become available, before proposing any subsidized operation. This may explain why

no proposal for subsidized continued operation has been advanced. The possibility of a later subsidy should not prevent present consideration by the I.C.C. of abandonment, if a petition for abandonment now appears to be reasonable in the absence of a subsidy. Indeed I.C.C. action in 1977 may operate indirectly to induce or to make possible an appropriate subsidy arrangement. See Tr. 2-4 et seq.

CONCLUSIONS

On all the evidence and on the findings set out above I reach the following conclusions:

A. To the extent that, in the foregoing paragraphs, I have found that losses on the two branches are currently being incurred, I regard as reliable the figures (supporting such losses) presented to me by witnesses called by the Debtor. Higher losses may in fact be the result of current operations, but I am not convinced by the evidence, and parts of exhibits to that effect and I do not rely upon such evidence and parts of exhibits.

B. I conclude that the loss now being incurred on the two branches of at least \$28,000 (although not as large as the losses estimated by the Debtor) is a significant burden on the Debtor's ability to continue basic rail service on the balance of the Debtor's system, including those parts of the system serving areas in New Hampshire depending upon

and making substantial current use of the Debtor's lines.

C. There is no substantial ground on which to expect development of significant additional rail traffic on the two branches within the next five years.

D. The economies effected by the Debtor on the two branches since 1972-1973 have been prudent. These include the shift of "bridge" traffic to other lines of the Debtor and reduction in frequency of service on the two branches.

E. Inconvenience and some additional expense will be caused to the remaining receivers of freight on the two branches by abandonment of the two branches. These consequences, I conclude, are outweighed by the more general public interest in enabling the Debtor to maintain its most significant main line and other service elsewhere on its system. Even those shippers adversely affected have rail service within a reasonable distance and (with some adjustments) can change their operations to use that rail service.

F. The Debtor, upon abandonment, will realize substantial benefit from salvage of rails and other items on any part of these branches permitted to be abandoned.

G. No evidence before me indicates any firm prospect of State or industrial subsidy of the two branches. Despite the suggestion in cross-examination (that economies could be effected by a change in methods of highway protection), there has been no indication in evidence that the New Hampshire

regulatory authorities are (or would be) inclined to approve such changes. Opportunity to offer a State subsidy or other support will continue, of course, during any further proceedings growing out of the present petition.

RECOMMENDATION

I recommend that the Debtor be given leave to apply to the Interstate Commerce Commission for permission to abandon these two branches.

Dated this 21st day of January, 1977.

Respectfully,

/s/ R. Hammi Carter
Master

Certificate

On December 24, 1976, I submitted by first class mail postage prepaid to counsel (Mr. Collins, and Messrs. Parks and Weinberg) appearing before me in this proceeding, a copy of a draft of the foregoing report with a notice that I would receive written objections to this report and suggestions for modification of this report, postmarked on or before January 11, 1977. All such written objections and suggestions have been considered. I now file this report (including any modifications of the draft report) for the consideration of the Court, together with the transcript of the testimony and copies of the exhibits presented before me.

Dated this 21st day of January, 1977.

131 R. A. ...

Master

APPENDIX 1 (see par. 14, supra)

On the evidence, I find the following facts with reference to (a) the recipients and shippers of freight on the Epping and Fremont branches, and (b) certain other matters.

EAST MANCHESTER - R. C. Hazelton Company is the only customer now receiving rail freight. Tr. 3-25 to 3-27. They receive carloads of high-cost heavy industrial machinery, tractors, road building machinery, graders, and similar items. They now have a private siding, but could (at slight additional expense) receive freight in Manchester two to three miles distant and truck it or use the self-propelled items to move this freight to their plant.

Emery Waterhouse formerly received freight at East Manchester. It has sold its plant and moved to Portland, Maine. Tr. 3-35, 3-102. There is some possibility that the new owner of Emery Waterhouse's former plant may want to use rail facilities but it is not certain enough to require significant consideration.

CANDIA - Jaskolka Farms is the only rail user. It receives (at public delivery) shipments of egg cartons. Because there is freight service only one day each week, it, on some occasions at least, picks up freight deliveries at Manchester. The customer could receive all deliveries in that manner. Candia is about twelve miles

from Manchester. At Candia in 1974, the customer received two carloads. In 1975, it received six carloads. In the first six months of 1976, no cars were received. The customer may have picked up some freight at Manchester in 1976. Tr. 3-27 to 3-28.

RAYMOND - There were no cars and no customers at Raymond in 1975 or in the first six months of 1976. Tr. 3-29. As noted elsewhere (par. 13, supra) a gravel pit in Raymond which formerly produced much traffic has ceased entirely to operate. Tr. 3-36. See Tr. 1-88. See also Tr. 1-70 to 1-71. Regis Tanning Company formerly received a few cars, but its plant was never rebuilt after a fire in 1972. Tr. 3-37.

FREMONT - Spaulding and Frost made barrels, tubs, and similar items for the food industry. With the advent of plastics, the company is making the products as specialty items which do not move in rail volume. There have been no cars for 1975 and the first six months of 1976. Tr. 3-29.

There was a request at one time (Tr. 3-48) from the Fremont area to supply special cars to ship pulpwood. Bulk end flat cars were required. The Debtor did not have these cars and its representative concluded that insufficient revenue was involved to call for

obtaining the cars. Tr. 3-134. Myca Forest Industries, Inc., a forest harvesting company, now ships each week from Fremont by truck about two truck loads of round wood and three truck loads of chips. It once sought to move traffic by rail but, when business dried up a year or so ago, pressure for this rail movement was not continued. Business is now beginning to pick up to some extent. The company has not used rail service in the past in any substantial degree. Tr. 3-79 to 3-91. See Tr. 3-92 to 3-97. I conclude that whether any substantial freight business could be developed from these sources is purely speculative and is highly uncertain.

EPPING - (a) Merrimack Farmers Exchange receives cars of grain and feed for their retail store at Epping, mostly (if not entirely) from the Exchange's mill at Bow, near Concord, New Hampshire. The Exchange also operates feed stores at Exeter (served by truck) and at Rochester. At Epping, the Exchange must unload by truck, as there is no direct track to the Exchange's present building. Tr. 3-65. Exeter is eight miles from Epping and the Exchange's truck service to Exeter could be expanded to serve the Epping outlet. This would be less convenient (Tr. 3-60 to 3-75) than present rail service. Tr. 3-29 to 3-31. It would increase

(Tr. 3-57 et seq.) the Exchange's present costs of loading grain on cars by conveyer belt at Bow. See Tr. 3-63 et seq. Grain, however, would continue to move from the West to Bow by rail even if the two branches are abandoned. Tr. 3-62. About half of the shipments of items other than feed grain to the Epping store now move by truck.

(b) Home Gas Company - This company has a private track and two 30,000 gallon tanks for storing liquid petroleum gas. It has a competitor within a half mile which receives his gas by truck and not by rail. Home Gas has a plant at Greenland (20 miles from Epping) and one at Goffstown (30 miles from Epping). Home Gas at Epping pumps gas from the rail cars to the 30,000 gallon tank and then from the tank to trucks for delivery to customers. Tr. 3-31 to 3-32. Home Gas would remain competitive with the other gas company even if rail service is abandoned, but it will lose the advantage over its competition which rail service now affords it.

(c) W. S. Goodrich - This company receives bricks by rail on its private track. In 1974, six cars were received; in 1975, two. Tr. 3-27. Cf. Tr. 3-36. No cars were received in the first six months of 1976. Bricks are received on pallets which have to be removed by fork lift from the cars. Delivery could be taken

at Exeter (eight miles) but it would be more expensive to the company.

(d) J. F. Brown Company is about one mile from the main public delivery where it receives carloads of farm machinery and unloads it to trucks. It could receive this material at Exeter. Additional costs would be the expense of trucking for eight miles. The company received seven carloads in 1974, three in 1975, and none in the first six months of 1976.

(e) Johnson Lumber Company formerly maintained a mill at West Epping and trucked local lumber to load it at a public delivery facility in Epping. The mill has been sold and there has been no business for the last three years. Tr. 3-38.

(f) General - In Epping in 1971, 102 carloads were received and twenty carloads were shipped. In 1975, 70 carloads were received and none were shipped. There has "been a continual decline in the . . . business" moving by rail. With respect to "bridge" traffic, which formerly moved over these branches, there is now no revenue traffic in oil moving by rail out of Portsmouth. National Gypsum moves only an occasional carload of wall-board from Portsmouth to Maine, a movement which would not normally use the Epping branch.

APPENDIX 2

CERTAIN FURTHER FINDINGS

A. Exhibit 1, Sheet 5, in 1973 estimated "an approximate average annual loss of \$84,450 for the Epping and Fremont branches for the years 1973, 1974, 1975, 1976, and 1977. See Tr. 68. This in part was based (see Ex. 1, Sheet 9) on predicted expenditures for "Maintenance of Way & Structures" of \$38,790 for 1973, \$31,609 for 1974, \$137,935 for 1975, \$137,910 for 1976, and \$30,235 for 1977. The reduction from a Grade II operation (20 miles an hour ~~maximum~~) to a Grade I (ten miles an hour) operation (see main report, par. 15) had not then occurred and the estimates were prepared for a hearing (never held) before Judge Ford, at one time marked for March, 1973. I infer that the large proposed maintenance expenditures for 1975 and 1976 were designed (if abandonment did not take place) to bring a deteriorated roadbed (Tr. 74) to a satisfactory Grade II level for increased traffic (Tr. 72, and some "through" or "bridge" traffic, Tr. 77), then expected by the Debtor's Engineering Division (see Tr. 29, 79). There was a prediction by the Engineering Division in 1973 of "a considerable tie replacement program" in 1975 (and also 1976 - see Ex. 1, Sheet 9). At the same time, the Debtor's traffic department (1) was not predicting any increase in freight revenue (kept constant at \$26,648 for the whole five-

year period on Ex. 1, Sheet 9), (2) was telling the Trustees that the Raymond gravel deposit (which had produced a significant revenue prior to 1972, Ex. 1, Sheet 7, and Ex. 8 under heading "Raymond, N. H.") was "worked out" (see Ex. 1, Sheet 4), and (3) that "The principal shipper at East Manchester will remove its facility from the line in the near future." No satisfactory explanation (see Tr. 80 to 82) of the failure of the traffic department and the engineering department to coordinate their predictions and their 1973 estimates appears in the record.

B. The actual 1974, 1975, and 1976 (largely projected from first quarter experience) expenditures for maintenance of way were \$23,574, \$21,492, and \$24,932. See Ex. 7. The 1973 estimated expenditures for 1975 on this item were (as has been noted above) \$137,935 and for 1976, \$137,910. See Ex. 1, Sheet 9. [On Tr. 67, appears a figure of "\$395,000" for 1975, which has no confirmation on Ex. 1, Sheet 9.] The 1973 predictions had ceased to be relevant in 1976, and I gave them no weight as reflecting 1976 conditions which were significantly different because of (1) the removal of "bridge" traffic from the two branches, (2) the greatly reduced frequency of local service, and (3) the reduction of maintenance to Grade I (maximum speed, 10 miles an hour). I had in mind the poor quality of the Debtor's

1973 predictions in considering later predictions by the Debtor's staff.

C. In 1976 at the resumed hearings before me on November 1, 1976, Exhibit 13 was introduced. As originally presented, Account No. "249 Signals and interlockers" was shown for the period January 1, 1976, to June 30, 1976, as \$11,508 and for the projected 1976 annual period as \$23,016. During direct examination (Tr. 3-104 to 3-110, esp. at Tr. 3-109 to 3-111. See Tr. 3-170) of Mr. Kennedy, one of the witnesses (called by the Debtor) testifying about Ex. 13, it was brought out by the Debtor's counsel that an overhead item by error had been duplicated in computing the original figures for Account No. 249. This was described (Tr. 3-109) as a "clerical error." The correct figures for January 1 to June 30, 1976, were \$7,047, and for the projected year 1976, they were \$14,094. At my direction (Tr. 3-169 to 3-170) a corrected Exhibit 13 was submitted to avoid confusion. Both the original form of Ex. 13, and the revised form of that exhibit are included in a pamphlet containing all the exhibits (bound in white cardboard) to be filed herewith. There is no evidence that, up until now, this correction has been brought to the attention of the Debtor's Trustees. The correct figure has been used in par. 9 in computing the total maintenance of way expenses for the first six months of 1976 of \$13,077.

JW

*Rel. Abandonment E. Manchester to
DX- 82-377 Rockingham
Jct
11.11*

*VAT 126,114
FFW
As info
Adm
1/13*

CITY OF MANCHESTER

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ORDER NO. 16,114

WHEREAS, the City of Manchester was ordered in DT 5403, Order No. 9560 dated January 10, 1969 to install and maintain standard stop signs at each approach on Lake Shore Road at the grade crossing of the Boston and Maine Railroad's Portsmouth Branch identified as AARDOTB45750V; and

WHEREAS, the Boston and Maine Railroad has received abandonment authority for the Portsmouth Branch east of Page Street to Rockingham Jct.; and

WHEREAS, there is no rail traffic over this portion of the line, Lake Shore Road being east of Page Street; it is

ORDERED, that the provisions of Order No. 9560 in DT 5403 dated January 10, 1969 be and hereby are rescinded.

By Order of the Public Utilities Commission of New Hampshire this December 31, 1982.

Decision By:

Paul R. McQuade
Paul R. McQuade
Commissioner

J. Michael Love
J. Michael Love
Chairman

Lea H. Aeschliman
Lea H. Aeschliman
Commissioner

Attested By:

Vincent J. Iacopino
Vincent J. Iacopino
Executive Director and Secretary

RECEIVED
JAN 18 1983
LAW DEPT.