

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**WASHINGTON COUNTY RAILROAD COMPANY AND THE BALTIMORE AND
OHIO RAILROAD COMPANY – ABANDONMENT OF PORTION OF THE
HAGERSTOWN BRANCH IN WASHINGTON COUNTY, MARYLAND****NO. FD36606**

**PETITION OF MARYLAND DEPARTMENT OF NATURAL RESOURCES
FOR DECLARATORY ORDER****I. INTRODUCTION**

The Maryland Department of Natural Resources (“MDNR”) seeks a determination from the Surface Transportation Board as to whether the Washington County Railroad Company (the “WCRC”), as owner, and the Baltimore and Ohio Railroad Company (“B&O Railroad”), as operator, exercised authority under the Interstate Commerce Commission Certificate and Decision (the “ICC Certificate”), dated June 22, 1978, Docket No. AB-19 (Sub-No. 20), to abandon the portion of the Hagerstown Branch between Valuation Station 0+00 at Weverton, Maryland, and Valuation Station 980+00 at Roxbury, Maryland (the “Railway Line”). By Quitclaim Deed dated September 6, 1991 and record in the Land Records of Washington County, MD at Liber 01015, folio 796, MDNR acquired the Railway Line from CSX Transportation, Inc., which was the WCRC’s successor in interest in the Railway Line. MDNR is exploring options for a rail-to-trail project along the Railway Line and therefore is in need of a determination as to whether the Railway Line has been abandoned under federal law.

II. BACKGROUND

By application filed on March 18, 1975 to the Interstate Commerce Commission (the “ICC”), the WCRC and B&O Railroad sought authority to abandon a portion of the Hagerstown

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Branch between Valuation Station 0+00 at Weverton, Maryland, to Valuation Station 1218+60 at Hagerstown, Maryland, a total distance of approximately 25.54 miles. *See* Exhibit A, Initial Decision, No. AB-19 (Sub-No. 20), dated October 26, 1977, at 1. On July 21, 1976, WCRC and B&O Railroad amended their application by removing from the proposed abandonment a 4.52-mile portion of the line from Valuation Station 980+00 at Roxbury, Maryland, to Valuation Station 1218+60 at Hagerstown, Maryland, leaving the Railway Line as the portion sought to be abandoned. *Id.*

In an Initial Decision, dated October 26, 1977, the ICC found that “present and future convenience and necessity permit abandonment” of the Railway Line and directed issuance of a certificate of abandonment. Exhibit A at 6, 8. That decision was upheld on review by Decision dated April 21, 1978. *See* Exhibit B, Decision, No. AB-19 (Sub-No. 20), April 21, 1978. Three months later, on June 22, 1978, the Acting Secretary of the ICC issued a Certificate and Decision, which provided that for the WCRC and B&O Railroad to exercise their authority granted under the certificate to abandon the Railway Line they “shall submit two copies of the journal entries showing the retirement of the [Railway Line] from service, and shall advise [the ICC] in writing, immediately after the abandonment of the line of railroad, of the date on which the abandonment actually took place.” *See* Exhibit C, ICC Certificate, at 2. The ICC Certificate further provided that the “authority granted” under the certificate to abandon the Railway Line “shall be of no further force or effect” if “not exercised within one year from” the date of the ICC Certificate. *Id.*

On March 15, 2022, counsel for MDNR sent an inquiry to counsel for the STB for information as to whether after issuance of the ICC Certificate the WCSC or B&O Railroad had completed the abandonment process for the Railway Line. In response, STB’s counsel stated that while the ICC had authorized the abandonment, the STB’s files did not contain documents

indicating that the WCSC or B&O Railroad had consummated the abandonment by completing all steps required by the ICC Certificate. The only documentation known to MDNR related to actions taken by either WCSC or B&O Railroad with respect to the abandonment after issuance of the ICC Certificate are: (1) a letter dated December 6, 1978 from Chessie System—believed to be a holding company that once owned B&O Railroad—advising that “the abandonment authority [under the ICC Certificate] was exercised at 12:01 AM, November 14, 1978,” and noting that “journal entries” were forthcoming, *see* Exhibit D; and (2) a letter dated April 10, 1979 to Chessie System, not on letterhead, noting the submission by Chessie System of “the accounting for the authorized abandonment[] of the Hagerstown...branch[]” and stating that the “accounting is acceptable and our file on this matter will be closed.” *See* Exhibit E. Counsel for STB suggested that these two letters are not a part of the STB’s own file on the ICC Certificate.

From the documentation known to MDNR related to the abandonment of the Railway Line, MDNR, the current owner of the Railway Line, is unable to ascertain whether the WCSC and B&O Railroad exercised their authority to abandon the Railway Line by providing to the ICC journal entries and requisite notice, as called for in the ICC Certificate. MDNR requests a determination from the STB as to whether the Railway Line has been abandoned, so that it may consider railbanking under Section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), if available.

III. RELIEF SOUGHT

To resolve this matter, MDNR requests that the Board determine whether: (1) the Railway Line was legally abandoned through the timely filing by the WCSC and B&O Railroad of journal entries and written notice, as called for in the ICC Certificate; and (2) the Board continues to retain residual jurisdiction over the Railway Line such that MDNR may pursue railbanking under Section 8(d) of the National Trails System Act.

Dated: April 22, 2022

Respectfully Submitted,



Talley H-S. Kovacs
Assistant Attorney General
Office of the Attorney General
Maryland Department of Natural Resources
580 Taylor Ave., C-4
Annapolis, Maryland 21401
(410) 260-8351
talley.kovacs@maryland.gov

*Attorney for the Maryland Department of
Natural Resources*

VERIFICATION

I, Talley H-S. Kovacs, verify under penalty of perjury that the statements made in this Petition of the Maryland Department of Natural Resources for Declaratory Order are true and accurate to the best of my knowledge, information, and belief. Furthermore, I certify that I am qualified and authorized to make such verification on behalf of the Maryland Department of Natural Resources.

Executed this 22nd day of April, 2022.



Talley H-S. Kovacs

Exhibit A

AB-19 Sub 20

NOV 8 1977

INTERSTATE COMMERCE COMMISSION

SERVICE DATE 7

INITIAL DECISION

NOV - 8 1977

No. AB-19 (Sub No. 20)

WASHINGTON COUNTY RAILROAD COMPANY AND BALTIMORE AND OHIO RAILROAD COMPANY ABANDONMENT PORTION HAGERSTOWN BRANCH BETWEEN WEVERTON AND HAGERSTOWN, ALSO PORTION OF THE ANTIETAM BRANCH NEAR SECURITY, ALL IN WASHINGTON COUNTY, MARYLAND

FINANCE DOCKET NO. 28348

WESTERN MARYLAND RAILWAY COMPANY - LEASE AND OPERATE - WASHINGTON COUNTY RAILROAD COMPANY, SUBSIDIARY OF BALTIMORE AND OHIO RAILROAD COMPANY, IN WASHINGTON COUNTY, MARYLAND

In No. AB-19 (Sub No. 20), present and future public convenience and necessity found to permit the Washington County Railroad Company and The Baltimore and Ohio Railroad Company to abandon a portion of their Hagerstown Branch between Weverton, Md. and Roxbury, Md., and a portion of their Antietam Branch at or near Security, Md.; conditions prescribed.

In Finance Docket No. 28348, the lease and operation by Western Maryland Railway Company of portions of Washington County Railroad Company's Hagerstown and Antietam Branches found to be consistent with the public interest; conditions prescribed.

By David H. Allard, Administrative Law Judge:

Upon consideration of the record in the above-entitled proceedings, and:

It appearing, That, by application filed on March 18, 1975, the Washington County Railroad Company (Washington County), as owner, and The Baltimore and Ohio Railroad Company (B&O), as operator, jointly sought authority under section 1(18)-(20) of the Interstate Commerce Act (Act) to abandon a portion of their Hagerstown Branch between Valuation Station 0+00 at Weverton, Md. and Valuation Station 1218+60 at or near Hagerstown, Md., and a portion of their Antietam Branch between Valuation Stations 0+00 and 130+00 at or near Security, Md., a total distance of approximately 25.54 miles; that by petition to amend their application, filed July 21, 1976, applicants sought to eliminate 4.52 miles from the abandonment application between Valuation Stations 980+00

and 1250+94, thereby retaining service to the portion of the Hagerstown Branch between Hagerstown and Roxbury, Md.; and that, by application filed on November 24, 1976, under section 5(2) of the Act, the Western Maryland Railway Company (WM) sought authority to acquire by lease and operate a portion of Washington County's Hagerstown Branch, between Valuation Station 980+00 at or near Roxbury, Md. and Valuation Station 1250+94 at or near Hagerstown, Md., and a portion of Washington County's Security Branch, between Valuation Stations 130+00 and 194+21.3 near Security, Md.;

It further appearing, That the environmental effects of the proposed abandonment and lease applications were considered in a Commission prepared Threshold Assessment Survey, which was served on January 28, 1977; that this Survey concluded that the application did not constitute a major Federal action which would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969; that the Survey also found that the involved right-of-way, upon abandonment, would be suitable for public use and recommended the imposition of a condition which would afford interested persons the opportunity to acquire the line for such purpose; that the Survey also found that a bridge trestle of historic significance is located on the abandonment segment and, accordingly, certain conditions concerning disposal of this structure were also recommended in the Survey; that Comments on the Threshold Assessment Survey were filed by applicants herein and the Commission considered such Comments in an Addendum to the Survey, served May 10, 1977, which Addendum maintained the findings of the Survey;

It further appearing, That Notice of the proposed abandonment and lease applications and the environmental findings was accomplished in accordance with Commission regulations; that protests and other statements to the applications were filed; that the matters herein were referred to this Administrative Law Judge for hearings, which were conducted at Hagerstown, Md., on September 12 and 13, 1977; that, at the hearings, various public, union and shipper interests appeared; that the effect of the applications as sought, subject to the above-referenced amendment, would provide continued rail service to all B&O patrons by WM, save the Hagerstown Lumber Company, a protestant shipper located on the Antietam Branch; that, at the hearings, applicants offered a further amendment to the applications which would permit continued rail service to the Hagerstown Lumber Company by the WM under the WM lease and operation proposal;

It further appearing, That in support of their applications, B&O and WM presented substantial evidence which demonstrates the effects of these proposals from operating, traffic, engineering and financial bases; that, considered separately, their evidence shows as follows: first, operating: that the abandonment section of the Hagerstown Branch has been out of service since February 13, 1976, because of track conditions, and that no rail patrons have been adversely affected by this disruption; that traffic formerly moving overhead to the abandonment section has been handled economically and efficiently under rerouting, pursuant to Commission Service Order No. 154 and that, essentially, the same rerouting of such traffic would occur subsequent to approval of these applications; and that service

to B&O patrons on the Hagerstown and Antietam Branches will continue at the same, if not better, level under the proposed WM lease; second, traffic: that over the years patrons once located on the abandonment sections have relocated, terminated operations, or no longer require rail service; that presently no shippers are protesting the abandonment of the subject portions of the Hagerstown and Antietam Branches; that the abandonment section of the Hagerstown Branch generated 2 cars in 1976 and the abandonment section of the Antietam Branch generated 21 cars in 1976, which latter traffic will be retained under the amendments; that adequate team track facilities and alternate transportation exist in the general area; and that no rates will be adversely affected for current rail patrons under the lease, except for cement traffic via B&O under a certain tariff, from Security, Md. to Southern Freight Association territory; third, engineering: that the Hagerstown abandonment section requires substantial rehabilitation in the amount of \$1,030,802; that normalized maintenance on the Hagerstown and Antietam Branches would require average annual expenditures of \$104,677; and that abandonment would result in the realization of net salvage of \$396,405; and fourth, financial: that operation of the abandonment sections, including the portion necessary to serve Hagerstown Lumber Company, resulted in a net railway operating deficit of \$90,111 and \$51,417 for 1975 and 1976, respectively; that operation of the lease section by WM will result in a net railway operating income to it of \$65,578 based on actual B&O revenues for 1976 from the lease segment; and that rerouting of the involved overhead traffic would have resulted in increased costs of \$1,440 to the B&O, based on an actual reroute study of overhead traffic on the Hagerstown Branch in 1976;

It further appearing, That various parties appeared at the hearings and presented testimony and positions concerning the applications; that such parties represented public, union and shipper interests; that such public interests were as follows: first, the Maryland Department of Transportation, which was not opposed to the abandonment but sought preservation of the right-of-way for recreational purposes; second, the Maryland Department of Economic and Community Development, which withdrew its opposition to the abandonment; third, the Appalachian Trail Conference, which expressed its interest in acquiring the right-of-way on the Hagerstown abandonment section for hiking purposes; fourth, a representative of U. S. Congressman Goodloe Byron, who noted his opposition to the abandonment; fifth, Maryland State Senator Victor Cushman, who expressed his opposition, arguing that the Hagerstown Branch abandonment section provides a good route for oversize loads and direct access to Washington, D. C., and that the abandonment section is necessary to attract new business to Washington County and to provide adequate service to existing shippers; and sixth, Mayor Jess D. Orndorff, of Brunswick, Md., who expressed his interest in retention of the line for future development as a commuter corridor and for movement of oversize loads;

It further appearing, that employee interests were represented by the United Transportation Union; that by its witness it expressed concern for the efficient handling of traffic moving overhead to the Hagerstown Branch subsequent to abandonment, as well as the usefulness of the Branch for

oversize loads and as a detour route in emergency situations such as derailments on other lines of applicants; that the union further requested that should the abandonment be approved, the Commission impose herein appropriate labor protective conditions;

It further appearing, That Hagerstown Lumber Company, located on the Antietam Branch, offered testimony in opposition to the abandonment; that its testimony demonstrated the adverse financial effect which the abandonment would have upon it; that such evidence has been considered, but in view of applicants' amendments which would result in continued service to this shipper under the WM lease proposal and this shipper's withdrawal of its opposition, no detailed statement of the evidence offered by this shipper is necessary; that Conservit, Inc., Arnold Graphics Industries, Inc. and Industrial Merchants Storage Company, shippers located on the lease portion of the Hagerstown Branch also appeared at hearing; and that in view of applicants' amendments, and the withdrawal of these shippers' objections to the abandonment, a detailed statement of their testimony and positions is similarly unnecessary;

It further appearing, That the only shipper which maintained opposition to the applications was the Marquette Cement Manufacturing Company (Marquette); that this shipper is located in Hagerstown, Md., with its railhead at Security, Md., and presently receives service from the B&O and WM and is open to reciprocal switching by the Norfolk and Western Railway Company (N&W); that this shipper expressed concern for the effect of the abandonment on car supply, service and rates; that, by its testimony, this shipper indicated that its primary objection was a rate matter rather than an abandonment matter; that the stated rate difficulty involves the application of a specific tariff on cement to southern points, to which tariff the B&O is a party and the WM is not; that the N&W is a party to the subject tariff and this shipper could enjoy this tariff under the reciprocal switching agreement between N&W and WM for traffic at Hagerstown, Md.;

It further appearing, That, in rebuttal to the concern expressed by Marquette, applicants presented testimony by their manager of pricing, whose jurisdiction includes cement rates on B&O and WM; that he stated that the specific tariff, which concerns Marquette, is proposed to be cancelled and hearings have been conducted by the General Freight Traffic Committee at which Marquette offered testimony substantially the same as that contained in these proceedings; that, should the applications herein be approved, the subject tariff would remain in force and be available to Marquette via N&W until such time as the tariff may be cancelled; that Marquette had not shipped from Hagerstown via B&O under the subject tariff until several months prior to the hearing; and that other Maryland mills, which do not have the subject tariff available to them, have shipped to southern destinations in competition with Marquette, under higher rates;

It further appearing, That the evidence of record adduced in these proceedings demonstrates that the amended abandonment and lease applications will not result in the loss of rail service to any concerned B&O

patron; that such B&O patrons located on the Hagerstown and Antietam Branches will receive adequate, and perhaps better, service by WM under the lease proposal; that traffic formerly moving overhead to the Hagerstown Branch will be handled under reroute in a more efficient and economic manner; that, by the abandonment, B&O will avoid the continued occurrence of losses which it has suffered by provision of service on the abandonment section and WM will enjoy profitable operations by the proposed lease; that the Hagerstown abandonment section is in need of substantial rehabilitation, in the amount demonstrated by applicants, which would be necessary should operations be resumed thereover; that such rehabilitation and normalized maintenance thereafter would be an improvident and unnecessary expenditure of carrier resources, which is not required by any present or demonstrated future need for service to shippers on the abandonment section or for the movement of overhead traffic thereover; that the concerns expressed for retention of the Hagerstown Branch for oversize traffic are not supported by any evidence that any oversize loads will be generated which can be transported only over this Branch; that, by contrast, applicants and union protestant have shown that other routes are available for the movement of oversize loads and detour movements; and that the evidence produced at hearing and the findings contained in the Threshold Assessment Survey demonstrate that no definite plans exist for either rail-oriented industrial growth or the development of commuter rail service, which would necessitate the retention of the subject lines;

It further appearing, That the opposition of Marquette herein is primarily concerned with the application of a certain tariff on movements of cement to southern destinations; that service to Marquette will not be adversely affected by approval of these applications in that Marquette will continue to receive rail service by WM and be open to reciprocal switching with N&W; that the rates under the subject tariff will be available to Marquette via N&W until such time as the rates may be cancelled pursuant to appropriate authority; that other tariffs also exist for movement of the involved commodities by WM; that Marquette will have an opportunity to represent its interest on the rate matter in an appropriate proceeding; and, as presented herein, such rate matters are not capable of resolution in these proceedings and do not warrant the denial of the applications herein or the imposition of restrictions upon the abandonment or lease authority;

It further appearing, That this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969; that the record herein, including the findings of the Threshold Assessment Survey and the testimony offered at hearing by public interests, warrants the imposition of the public use and preservation conditions recommended in the Survey;

It further appearing and it is hereby found, That the public convenience and necessity permit the abandonment of the subject lines of railroad, as specified below; that the lease transaction, subject to its modification to permit rail service by the Western Maryland Railway Company

over the Antietam Branch of the Washington County Railroad Company between Valuation Stations 0+00 and 65+71, is a transaction within the scope of section 5(2) of the Interstate Commerce Act and is consistent with the public interest; and that the interests of carrier employees shall be protected by the imposition of conditions, as specified below; and

It is ordered, That the amendments to the application in Docket No. AB-19 (Sub No. 20) are granted; and that, subject to the employee protective conditions specified in Oregon Short Line R. Co.-Abandonment-Goshan, 354 I.C.C. 76 (1977), the present and future public convenience and necessity permit abandonment by the Washington County Railroad Company of the portion of its Hagerstown Branch between Valuation Station 0+00 at Weverton, Md. and Valuation Station 980+00 at or near Roxbury, Md., and the portion of its Security Branch between Valuation Stations 65+71 and 130+00 at or near Security, Md., and that the present and future public convenience and necessity permit the abandonment by The Baltimore and Ohio Railroad Company of operations over said lines of railroad.

It is further ordered, That in Finance Docket No. 28348, the application of the Western Maryland Railway Company to acquire by lease and operate the portion of the Washington County Railroad Company's Hagerstown Branch between Valuation Station 980+00 at or near Roxbury, Md. and Valuation Station 1250+94 at or near Hagerstown, Md., and its portion of the Antietam Branch between Valuation Stations 130+00 and 194+21.3 at or near Security, Md., be, and it is hereby, approved subject to the employee protective conditions imposed in Oklahoma Railway Co. Trustees Abandonment, 257 I.C.C. 177 (1944), as supplemented by the applicable provisions of section 405 of the Rail Passenger Service Act and also subject to the lease and operation by the Western Maryland Railway Company of the portion of Washington County Railroad Company's Antietam Branch between Valuation Stations 0+00 and 65+71, at or near Security, Md.

It is further ordered, That the following conditions to permit public use of the abandoned railroad right-of-way and to support preservation of the historic "Long Bridge" located thereon shall be imposed upon a certificate of abandonment to be issued herein:

1. Washington County Railroad Company and The Baltimore and Ohio Railroad Company shall not sell, lease, exchange, or otherwise dispose of the right-of-way underlying the track, all bridges, and all culverts on the line for a period of 120 days following issuance of the certificate unless said property has first been offered upon reasonable terms, to responsible persons interested in acquiring the property for public use.
2. In the event that a public or private organization interested in acquisition of the right-of-way does not come forward within the above-specified 120-day period, then applicants shall include in any contract for sale of the abandonment property the following:

- (a) That the subsequent purchase of said property submit plans for future use of the property, including bridge structures, to the Commission and the Historic Preservation Council for review; and
- (b) That in the event the bridge is eventually demolished, the subsequent purchaser will, prior to demolition, ensure that appropriate measures are taken to adequately record the structure according to standards prescribed by the Historic American Engineering Record.

It is further ordered, That in the event any person or government entity is considering an offer of financial assistance to enable the rail service involved to be continued, then such person or government entity should promptly give notice that it is considering such an offer by certified mail to carrier applicants and by first class mail to all parties of record and the Commission;

It is further ordered, That applicant railroads shall, within 10 days after receiving notice that an offer of financial assistance is being considered, make available to the party considering the offer of financial assistance the information described under the heading "Railroads Seeking Abandonment Authority," which appears in the attached Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases," served March 31, 1976, and published on that date in the Federal Register, 41 FR 13691 (hereinafter called the Procedures), and such information shall be made available in the manner described in the Procedures;

It is further ordered, That upon this order becoming administratively final, notice of the finding of public convenience and necessity made herein shall be published in the Federal Register pursuant to the requirements of section 1a (6)(a) of the Interstate Commerce Act, as amended;

It is further ordered, That, notwithstanding any notice that financial assistance is being considered that may have been given pursuant to the above ordering paragraph, any person or government entity desiring to offer financial assistance to enable the rail service involved to be continued shall, within 15 days of publication in the Federal Register of the above-described finding of public convenience and necessity, send notification of such offer by certified mail to applicant railroads and the Commission and by first class mail to all parties of record, and such notification shall include the terms and information described under the heading, "Persons Offering Rail Service Assistance," which appears in the Procedures;

It is further ordered, That if the Commission finds that a financially responsible person has offered financial assistance in accordance with the Procedures, the Commission shall postpone the issuance of a certificate of abandonment for such reasonable time, not to exceed 6 months, as is necessary to enable such person or government entity to enter into a binding

agreement with the applicant railroads to provide financial assistance for continued rail service or to purchase the rail line;

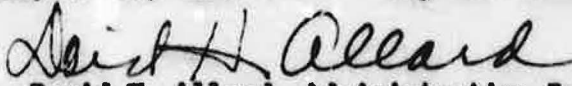
It is further ordered, That when the Commission is informed of the execution of any financial assistance agreement or acquisition and operating agreement, the issuance of the certificate of abandonment shall be postponed for such period of time as such an agreement (including any extension or modifications) is in effect;

It is further ordered, That all correspondence to the Commission with respect to offers of financial assistance for the continued operations or acquisition of the subject line shall contain an appropriate reference to the suitable proceeding; and that on the lower left-hand corner of envelopes containing such correspondence the following notation shall be typed in boldface "AB-RSCP";

It is further ordered, That subject to the conditions set forth above, an appropriate certificate of abandonment shall be issued, and the applicants shall not effect any abandonment or discontinuance of service prior to the effective date of such certificate of abandonment.

And it is further ordered, That this order shall be effective 20 days from the date of service.

Dated at Washington, D. C., this 26th day of October, 1977.


By the Commission, David H. Allard, Administrative Law Judge.

H. J. Homme, Jr.,
Acting Secretary

(SEAL)

Exhibit B

APR 18 1978

APR 28 1978

SERVICE DATE

DIV 2

APR 27 1978

INTERSTATE COMMERCE COMMISSION

DECISION

No. AB-19 (Sub-No. 20)

WASHINGTON COUNTY RAILROAD COMPANY AND BALTIMORE
AND OHIO RAILROAD COMPANY-ABANDONMENT PORTION HAGERSTOWN
BRANCH BETWEEN WEVERTON AND HAGERSTOWN, ALSO PORTION OF THE
ANTIETAM BRANCH NEAR SECURITY, ALL IN WASHINGTON COUNTY,
MARYLAND

Finance Docket No. 28348

WESTERN MARYLAND RAILWAY COMPANY--LEASE AND OPERATE--
WASHINGTON COUNTY RAILROAD COMPANY, SUBSIDIARY OF BALTIMORE
AND OHIO RAILROAD COMPANY, IN WASHINGTON COUNTY, MARYLAND

On March 18, 1975, the Washington County Railroad Company (Washington County), as owner, and the Baltimore and Ohio Railroad Company (B & O), as operator, jointly sought authority under section 1(18)-(20) of the Interstate Commerce Act to abandon a portion of the Hagerstown Branch between Weverton and Hagerstown, and a portion of the Antietam Branch between Security and Security Junction, a total distance of 25.5 miles in Washington County, MD. On July 21, 1976, applicants filed a petition for authority to amend the abandonment application to eliminate from abandonment that portion of the Hagerstown Branch between Hagerstown and a point near Roxbury, a distance of 4.52 miles.

On November 24, 1976, the Western Maryland Railway Company (WM) filed an application under section 5(2) of the act in which it sought authority to acquire by lease and operate a portion of Washington County's Hagerstown Branch between a point near Roxbury, MD, and a point near Hagerstown, MD, and a portion of Washington County's Security Branch between valuation stations 130+00 and 194+21.3 near Security, MD.

In an initial decision of October 26, 1977, in No. AB-19 (Sub-No. 20), the Administrative Law Judge approved abandonment by Washington County and the B & O of a portion of their Hagerstown Branch between Weverton and Roxbury, MD, and a portion of their Antietam Branch at or near Security, MD. In Finance Docket No. 28348, the Administrative Law Judge approved the lease and operation by Western Maryland Railway Company of portions of Washington County's Hagerstown and Antietam Branches.

The abandonment in No. AB-19 (Sub-No. 20) was approved "subject to the employee protective conditions specified in Oregon Short Line R. Co.--Abandonment--Goshen, 354 I.C.C. 76 (1977)..."

In approving Finance Docket No. 28348 the Administrative Law Judge prescribed "the employee protective conditions imposed in Oklahoma Railway Co. Trustees Abandonment, 257 I.C.C. 177 (1944), as supplemented by the applicable provisions of section 405 of the Rail Passenger Service Act..."

On November 14, 1977, the Brotherhood of Locomotive Engineers (BLE) filed a petition for administrative review. Applicants replied on December 2, 1977. BLE's petition was limited to the scope of the employee protective conditions imposed in the abandonment application, i.e. those contained in Oregon Short Line. BLE maintains that the Oregon Short Line conditions do not comply with the mandates of section 1a(4) of the Interstate Commerce Act, and that conditions more protective of employee interests should be imposed in this abandonment proceeding.

The Rail Revitalization and Regulatory Reform Act of 1976 (4R Act) indicated that consistent treatment of employee protection in abandonment proceedings would best be satisfied by the imposition, as a minimum, of the employee protective conditions enacted in and developed pursuant to section 405 of the Rail Passenger Service Act of 1970. It is our judgment that all abandonment applications pending as of November 1, 1976, are subject to the imposition of the labor protective conditions as discussed in Oregon Short Line. Accordingly, BLE's petition for review should be denied.

However, in Oregon Short Line, the Commission retained jurisdiction to provide all interested parties an opportunity to comment on the decision. BLE filed such comments. The Commission is now reviewing the matter to determine whether the conditions specified in Oregon Short Line or some other conditions provide the appropriate employee protection as required by Congress.

In the meantime, carriers may consummate abandonments during this period, but if they do so, the Commission will deem them to have no objection to the employee protective conditions specified in Oregon Short Line. If after reviewing the comments, the Commission determines that other labor protective conditions would be more appropriate, then in those proceedings not consummated we will by our retention of jurisdiction impose such other conditions.

It is ordered:

(1) The petition for administrative review filed by the Brotherhood of Locomotive Engineers is denied.

(2) The Administrative Law Judge's decision dated October 26, 1977, is affirmed. The Commission reserves the right to modify this order in accordance with any modifications made in Oregon Short Line. This decision will be effective on the date it is served.

Decided April 21, 1978.

By the Commission, Division 2, acting as an Appellate Division,
Commissioners Stafford, Murphy, and Clapp.

H. G. HOMME, JR.
Acting Secretary

(SEAL)

Exhibit C

JUN 22 1978

SERVICE DATE

INTERSTATE COMMERCE COMMISSION

JUN 22 1978

CERTIFICATE AND DECISION

Docket No. AB-19 (Sub-No. 20)

WASHINGTON COUNTY RAILROAD COMPANY AND THE BALTIMORE AND OHIO RAILROAD COMPANY ABANDONMENT PORTION HAGERSTOWN BRANCH BETWEEN WEVERTON AND HAGERSTOWN, ALSO PORTION OF THE ANTIETAM BRANCH NEAR SECURITY, ALL IN WASHINGTON COUNTY, MD

Decided June 19, 1978

I have considered the record in this proceeding, including the administratively final decision served April 27, 1978, in which the Commission, Division 2, acting as an Appellate Division, affirmed the decision of the Administrative Law Judge served November 8, 1977, which authorized the abandonment by the Washington County Railroad Company of the portion of its Hagerstown Branch between Valuation Station 0+00 at Weverton, MD, and Valuation Station 980+00 at or near Roxbury, MD, and the portion of its Security Branch between Valuation Stations 65+71 and 130+00 at or near Security, MD, and that the present and future public convenience and necessity permit the abandonment by The Baltimore and Ohio Railroad Company of operations over said lines of railroad. The decision served November 8, 1977, also provided that any person, including a government entity, would be given the opportunity to make an offer of financial assistance to the carrier applicant, within 15 days of the date of publication of the Commission's findings in the Federal Register, by filing with the Commission an offer containing the evidence specified in Procedures for Pending Rail Abandonment Cases, 41 Fed. Reg. 13691 (1976).

The notice of findings was published in the Federal Register on May 23, 1978. The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

It is certified that the present and future public convenience and necessity permit abandonment of the above-described line, subject to the appropriate conditions for the protection of railway employees as specified in the prior decision and further that (1), Washington County Railroad Company and The Baltimore and Ohio Railroad Company shall not sell, lease, exchange, or otherwise dispose of the right-of-way underlying the track, all bridges, and all culverts on the line for a period of 120 days from the service date of this certificate and decision unless said property has first been offered upon reasonable terms, to responsible persons interested in acquiring the property for public use and (2) in the event that a public or private organization interested in acquisition of the right-of-way does not come forward within the above-specified 120 day period, then applicants shall include in any contract for sale of the abandonment property the following: (a) that the subsequent purchaser of said property submit plans for future use of the property, including bridge structures, to the Commission and the Historic Preservation Council for review; and (b) that in the event the bridge is eventually demolished, the subsequent purchaser will, prior to demolition, ensure

that appropriate measures are taken to adequately record the structure according to standards prescribed by the Historic American Engineering Record.

It is ordered:

(1) This certificate and decision shall take effect and be in force on the date it is served. Tariffs applicable to the line permitted to be abandoned may be canceled upon not less than 10 days' notice to this Commission and to the general public by filing and posting in the manner prescribed by the Commission under Section 6 of the Interstate Commerce Act. When filing schedules cancelling tariffs applicable to said line, the applicants shall, in such schedules, refer to this certificate and decision by date and docket number.

(2) If the authority granted by this certificate and decision is exercised, applicants shall submit two copies of the journal entries showing the retirement of the line from service, and shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place.

(3) If the authority granted in this certificate and decision is not exercised within one year from its effective date, it shall be of no further force and effect.

By the Commission, Robert J. Brooks, Director, Office of Proceedings.

NANCY L. WILSON
Acting Secretary

(SEAL)

Exhibit D

René J. Gunning
General Attorney
Law Department

Chessie System

2 North Charles Street
Baltimore, Maryland 21201
301 237 3811

December 6, 1978
File MD-6

FILE IN DOCKET

FILE IN DOCKET

Mr. H. G. Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Constitution Avenue & 12th Street, N.W.
Washington, D.C. 20423

Re: Washington County Railroad Company and
Baltimore and Ohio Railroad Company-
Abandonment portion Hagerstown Branch
between Weverton and Hagerstown, also
portion of the Antietam Branch near
Security, all in Washington County,
Maryland -
Docket No. AB-19 (Sub No. 20)

Dear Mr. Homme:

By certificate and decision dated June 19, 1978
(served June 22, 1978), the Commission authorized the captioned
abandonment.

Please be advised that the abandonment authority was
exercised at 12:01 AM, November 15, 1978.

Copies of the journal entries in this regard will be
forwarded to the Commission in due course.

Very truly yours,

René J. Gunning

RJG:awc

INTERSTATE
COMMERCE COMMISSION
RECEIVED

DEC 10 1978

ADMINISTRATIVE SERVICES
MAIL UNIT

RECEIVED
INTERSTATE COMMERCE
COMMISSION
DEC 11 1978

The Baltimore and Ohio Railroad Company

The Chesapeake and Ohio Railroad

Exhibit E

APR 10 1979

ACAR/MJ

Mr. B. G. Lawler
Assistant Vice-President
& Comptroller
Chessie System
2 North Charles Street
Baltimore, Maryland 21201

Dear Mr. Lawler:

Thank you for your letter of April 4, 1979, submitting the accounting for the authorized abandonments of the Hagerstown and Antietam branches that had been inadvertently omitted from your original submission to us of February 2, 1979.

The accounting is acceptable and our file on this matter will be closed.

Sincerely yours,

AH
Aubrey H. Herndon, Jr.
Chief, Interpretations Branch

bc: Regional Auditor - Philadelphia
✓ Room 1221 for insertion in AB 19 (Sub. 20)