

E1-18202
AB 1043 /
Daw

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1043 (Sub-No. 1)

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD -
DISCONTINUANCE OF SERVICE AND ABANDONMENT -
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

**COMMENTS OF HUBER ENGINEERED WOODS, LLC
TO DRAFT ENVIRONMENTAL ASSESSMENT**

Dated: May 25, 2010

Respectfully submitted,

Scott G. Knudson
BRIGGS AND MORGAN, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2157
(612) 977-8400

ATTORNEYS FOR HUBER ENGINEERED
WOODS, LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1043 (Sub-No. 1)

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –
DISCONTINUANCE OF SERVICE AND ABANDONMENT –
IN AROOSTOOK AND PENOBSBOT COUNTIES, MAINE

**COMMENTS OF HUBER ENGINEERED WOODS, LLC
TO DRAFT ENVIRONMENTAL ASSESSMENT**

INTRODUCTION

On April 19, 2010, Surface and Transportation Board's ("Board") Section of Environment Analysis ("SEA") released its Draft Environmental Assessment ("Draft EA") of the Application of the Montreal, Maine & Atlantic Railway, Ltd. ("MMA") to abandon service on 233 miles of rail line on which MMA provides service in Maine (the "Abandonment Lines").

On April 27, 2010, the Board extended the deadline for comments to May 26, 2010. With these comments, Huber Engineered Woods, LLC ("Huber") requests the Board direct its SEA to reopen the record to address the comments of Huber.

I. The Draft EA Fails To Adequately Assess The Impact On Local Roads

The Draft EA concludes that the added traffic, estimated at an additional 19 million vehicle-miles, will have "no discernable adverse effects to the regional or local

transportation systems or traffic patterns.” Draft EA at 25. This conclusion ignores the localized impacts of MMA’s proposed abandonment.

The rail lines MMA proposed to abandon seriously impact communities in Aroostook County. This impact is particularly focused on the lines of rail (or subdivisions) east of Squa Pan.

The Draft EA fails to reflect this fact, or its implications to local roads. If MMA service is discontinued, many shippers (identified in the Hunter Verified Statement, Ex. A) will be forced to truck their products to I-95. Houlton, Maine, is the nearest access to I-95 for many of these shippers. But to get to I-95, shippers will go over local roads in Presque Isle, Easton, Caribou, Houlton or other cities. While engineering traffic capacity estimates suggest local highways can absorb the added traffic, this added traffic can destroy local roads, which the Draft EA fails to reflect. Downstream there could be significant congestion issues, such as in Portland and, especially, Boston. *Cf. Medina County Environmental Action Ass’n v. Surface Transportation Board*, 602 F.3d 687, 697-98 (5th Cir. 2010) (STB considered impact of noise and vibration from alternatives to rail).¹

II. The Draft EA Disrespects The Impact Of Abandonment On The Physical Environment

The Draft EA calculates that abandonment will require an additional 3.3 million gallons of fuel to haul what MMA hauls now. Draft EA at 29. From this, the Draft EA

¹ Likewise, the Draft EA fails to assess the localized impact of construction and operation of any transload facility or MMA’s maintenance or other facilities on the stranded Madawaska segment it proposes to retain in service.

concludes that the additional trucking needed to replace MMA “would not have a significant adverse effect.” Draft EA at 29.

This conclusion is factually flawed because it is based on an assumption, per MMA, that traffic levels will not recover. Draft EA at 19, 20. Huber (and other forest product shippers) project a significant recovery in rail shipments based on a recovery in the housing market. The Draft EA conclusion also ignores – indeed, does not even calculate – the added greenhouse gas emissions from loss of rail service.

Besides the downplaying of significant energy costs, and wholly ignoring global warming, the Draft EA ignores the obvious environmental impacts of this increase in added trucking. Diesel engines discharge fine particulates, and while diesel electric locomotives also do so, the Draft EA does not assess how added trucking will exacerbate particulate emissions. Trucks also drop oil and grease on roadways, which will wash into surface waters or percolate into groundwater. The Draft EA makes no assessment of that impact.

III. The Draft EA Misstates The Impact To The Human Environment

The Draft EA determines that the socio-economic impact of MMA’s proposed abandonment is best left to consideration of the merits of the proposed abandonment. Draft EA at 33. Huber makes two points in response to what the Draft EA nevertheless says in this regard. The Draft EA seriously understates the impact to the human environment. Aroostook County has a much higher unemployment rate than reported in the EA. The Draft EA reports unemployment in Aroostook County at 7.3% in 2008. Draft EA at 32. As reported by Maine Department of Labor, the April 2010

unemployment for Aroostook County was 11.1%, compared to 8.7% for Maine as a whole. Penobscot County statistics are similarly understated in the Draft EA at 5.1% versus 8.6% for April.²

Aroostook County is largely dependent on basic industry, primarily of forest products. Loss of rail service imperils hundreds of millions of dollars in investments in plants to process lumber and associated employment and payrolls. If shipping costs rise, lumber processors will need to reduce other input costs to stay competitive. All of Huber's timber inputs are third party-sourced. This pressure will push back to timber harvesters. If harvested timber prices fall, there could be further pressure to harvest timber in a less environmentally-sensitive manner to reduce costs. The Draft EA makes no mention of this possibility.

IV. The Board Should Impose Environmental Reporting Conditions On MMA

MMA is the successor to the Bangor and Aroostook Railroad ("BAR"), acquiring BAR's assets out of bankruptcy. MMA began operating the Abandonment Lines in January 2003. *See* MMA Application at 4.

Railroads are among the oldest industries in the United States, and many operated manufacturing and repair facilities on their properties. BAR was no exception. With the advent of diesel electric locomotives in the 1930s, railroads began storing diesel fuel and operating fueling facilities. If underground storage facilities or piping was used, much was installed before anticorrosion measures were required. It is very likely that BAR

² These data are found at www.maine.gov/labor/lmis/laus.html.

spilled diesel fuel on its properties; it is probable other hazardous materials were released on property MMA acquired from the bankruptcy estate.

Notwithstanding the rail industry's historic experience of having environmental contamination on its properties, the Draft EA states "no hazardous spills have occurred on the lines to be abandoned under the present owner," Draft EA at 31, a claim that may be true if MMA adhered to its environmental reporting duties since beginning operations in 2003. The Draft EA also states MMA represents it "is not aware of any spills that occurred prior to ownership." Draft EA at 31. The Draft EA does not indicate what SEA did to independently confirm these assertions, such as contacting state authorities or reviewing MMA's environmental due diligence documents relating to its acquisition of BAR assets.

STB precedent exists to impose conditions to protect the public in these circumstances. In a series of abandonment applications in North Dakota, the Board imposed a reporting obligation on the carrier to report the discovery of chemical releases, including petroleum products, discovered during salvage operations. *See, e.g., Red River Valley & Western R. Co. – Abandonment Exemption – In Foster and Wells Counties, ND*, STB Dkt. No. AB-391 (Sub. No. 10X), 2004 WL 2734545 (STB). The Board should impose similar conditions here, and require a similar reporting obligation on MMA to report to Maine's Department of Environmental Protection.

CONCLUSION

Huber respectfully requests that the Board return the Draft EA to its SEA to address the oversights noted above, and incorporate the reporting condition in any order

approving abandonment, which Huber continues to believe is not supported by the public convenience and necessity.

Dated: May 25, 2010

Respectfully submitted,

BRIGGS AND MORGAN, P.A.

By: Scott G. Knudson
Scott G. Knudson
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2157
(612) 977-8400

ATTORNEYS FOR HUBER ENGINEERED
WOODS, LLC

CERTIFICATE OF SERVICE

I certify that on this 25th day of May, 2010, I caused a copy of the foregoing to be served by Federal Express upon the following parties:

James E. Howard
Suite 201
1 Thompson Square
Charlestown, MA 02129
(617) 886-9322
(617) 886-9324 (fax)
jim@jehowardlaw.Com

Linda J. Morgan
Covington & Burlington
1201 Pennsylvania Ave. NW
Washington, DC 20004
(202) 662-5214
(202) 778-8214 (fax)
lmorgan@cov.com

*Counsel for Montreal, Maine & Atlantic
Railway*

Toni L. Kemmerle
Chief Counsel
Department of Transportation
State of Maine
16 State House Station
Augusta, ME 04333-0016
(207) 624-3020

*Counsel for Maine Department of
Transportation*

Michael S. Wolly
Zwerdling Paul Leibig Kahn & Wolly
Suite 712
1025 Connecticut Avenue NW
Washington, DC 20036
(202) 857-5000
(202) 223-8417

*Counsel for Brotherhood of Locomotive
Engineers and Trainmen*

Donald G. Avery
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036-3003
(202) 347-7170
(202) 347-3619 (fax)
dga@sloverandloftus.com
pap@sloverandloftus.com

Counsel for LP Building Products, Inc.

Eric M. Hocky
Thorp Reed & Armstrong LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
ehocky@thorpreed.com

*Counsel for Maine Department of
Transportation*

Karyn A. Booth
Jeffrey O. Moreno
David E. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
202-263-4108
202-331-8330 (fax)

*Counsel for Irving Woodlands LLC and
Irving Forest Products, Inc., Fraser
Papers, Inc., Portage Wood Products,
LLC, Seven Islands Land Company, and
Red Shield Acquisition LLC*

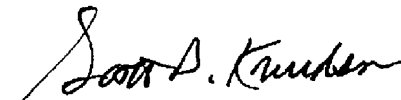
Walter J. Elish
Aroostook Partnership For Progress
c/o NMDC
P.O. Box 779
Caribou, ME 04736-0779
(207) 498-8731
(207) 493-3108

Jon A. McLaughlin
SADC On The Go
P.O. Box 783
Houlton, ME 04730
(207) 521-0157

Larry E. Clark
Presque Isle Industrial Council
650 Airport Drive
Presque Isle, ME 04769-2088
(207) 764-2542
(207) 764-2544 (fax)
skyway@maine.rr.com

Virginia R. Joles
Leaders Encouraging Aroostook
Development
P.O. Box 1209
Presque Isle, ME 04769-1209
(207) 760-2418
vjoles@mainepublicservice.com

Michael James Willette
Big Bear Real Estate Co.
80 Hardy St.
Presque Isle, ME 04769
(202) 227-5989
mikeblackbear@gmail.com



Scott G. Knudson