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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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MONTREAL, MAINE & ATLANTIC RY., LTD.

- DISCONTINUANCE OF SERVICE AND ABANDONMENT -
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

**COMMENTS OF STATE OF MAINE, DEPARTMENT OF TRANSPORTATION
TO DRAFT ENVIRONMENTAL ASSESSMENT**

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The State of Maine ("State"), by and through its Department of Transportation ("Maine DOT"), hereby submits these comments to the Draft Environmental Assessment ("Draft EA") issued by the Board's Section of Environmental Analysis ("SEA") on April 9, 2010. The Draft EA was prepared by SEA to analyze the environmental impacts from the proposed abandonment by Montreal, Maine and Atlantic Railway, Ltd. ("MMA") of approximately 233 miles of rail lines (the "Abandonment Lines") located in Aroostook and Penobscot Counties in northern Maine. Comments were originally required to be postmarked by May 12, 2010 (or submitted electronically), but the due date was extended to May 26, 2010, by order of the Board served April 27, 2010. Although these comments are submitted on behalf of the State, they are intended to supplement and not to supersede any comments received from any other agencies or Departments of the State.

Upon review of the Draft EA, the State and Maine DOT believe that there are areas of inquiry that require additional study by SEA, and additional conditions that should be imposed on MMA if the abandonment were to be granted and any or all of the Abandonment Lines were to be salvaged.

I. Additional Areas of Inquiry

A. Additional Consultation with Federal Agencies and the Public

The introductory letter from SEA notes that the citizens of Maine have yet to be heard from. Draft EA, p. ii. The State agrees, and while these comments are submitted on behalf of the citizens of Maine, additional concerns raised by other public agencies and governmental representatives should be considered as reflective of the concerns of the citizens as well. Additionally, from the Draft EA it appears that a number of significant federal agencies, including U.S. Environmental Protection Agency (“USEPA”), U.S. Fish and Wildlife Service (“USFWS”), the Army Corps of Engineers (“ACOE”), and National Oceanic and Atmospheric Administration (“NOAA”)¹, have not commented or responded to the Preliminary Draft Environmental Assessment or provided input with respect to potential harms within the scope of their jurisdiction. This input is critical before SEA can make a determination of the significance of the harms that might result. As discussed more fully below, the State believes that there are a number of “Critical Habitats” that the proposed abandonment and salvage could impact, and SEA should ensure that USFWS/NOAA identify those areas and propose conditions to ensure that any possible harm is mitigated.

B. Underrepresentation of Impacts

As noted in the protests filed by the State and by several of the larger shippers on the Abandonment Lines (including Irving Woodlands and Irving Forest Products, Louisiana Pacific, and Huber Engineered Woods), current rail traffic on the Abandonment Lines is at a low point due to overall decline in the economy and the effects on the housing market in particular. However, they have presented evidence that given the recent trend showing improvement in the economy and in

¹ In Maine, USFWS and NOAA have collaborated on a joint program that maps of Critical Habitats for the Atlantic Salmon.

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housing starts, there is a strong likelihood that there will be increased production by these shippers and increased rail traffic if there were no abandonment. This would also suggest increased truck traffic if the abandonment were to be granted. By doing its truck diversion analysis based on historical car loadings instead of on reasonable predictions of future traffic, the Draft EA understates the effects on road wear and tear, diesel usage, emissions and safety.

The State believes that the Draft EA understates the effect of the additional truck traffic in two additional ways. While the Draft EA looks at the number of additional trucks as a percentage of the overall traffic on various roadways (Draft EA at 22), it does not examine by what percentage the truck traffic will increase. Because heavy trucks are more likely to cause roadway damage than automobile traffic, the increased percentage of truck traffic may be more significant than the percentage increase in overall traffic would indicate.

Further, the Draft EA treats the truck traffic as being spread out over the various road ways that may be affected. Draft EA at 25-28. However, there are certain points, for example where Route 1 meets Route 95 in Houlton, and where the traffic off Route 11 reaches Route 95 in Sherman where there would be a confluence of trucks from the region coming together. Both Holton and Sherman are already designated as "High Crash Locations." Draft EA at 25. Further, as discussed more fully in Section C below, the Draft EA, although it assumes approximately 50% of the trips would remain in state, does not identify transload locations where the trucks might be destined. These points would also represent locations where trucks diverted from various locations would come together, and these locations should be separately evaluated for impacts on noise, vibration, emissions and safety.

The Draft EA, while mentioning that there are numerous wetlands, streams and rivers, focuses on the named ones that it lists. Focusing only on named streams as a basis for analysis under represents the potential impacts and possibly the significances of the impacts. For example, Winterville may have no named streams, but the area has 6 unnamed streams that are associated with St Froid Lake. All of these streams need to be evaluated from a fisheries standpoint. Additionally, the proposed abandonment would affect Dyer Brook (not just the identified Battle Brook) in the town of Dyer Brook. This surface water feature is a Critical Habitat for Atlantic Salmon, and potential impacts need to be evaluated. Additional consultation with State and federal agencies should be done to identify all Critical Habitats and other potential impacts on wildlife and natural resources, whether or not they relate to named water resources.

While MMA has indicated that is not aware of any environmental contamination or spills since it took ownership of the Abandonment Lines in 2003, the State is not aware of any environmental testing of the property that has been done. The Draft EA acknowledges that the affected property has been used by MMA's predecessor for railroad operations since 1891. As such, there is some chance of environmental contamination of the soil within the project area. While MMA may attempt to minimize soil disturbance during salvage operations, it will not be possible to do so completely. The State recommends that a Phase I environmental study be conducted at each location along the Abandonment Lines where there is an increased risk of contamination. Locations which Maine DOT has historically found to be of concern include rail sidings and locations where fueling or maintenance was performed by MMA or its predecessor. *See Red River Valley & Western Railroad Company – Abandonment Exemption – In Foster and Wells Counties, ND*, STB Docket No.

AB-391 (Sub-No. 10X) (served December 1, 2004)(requiring reporting any past releases, known or discovered).

C. Consideration of Indirect, Secondary and Cumulative Effects

The Draft EA focuses only the direct environmental impacts from possible salvage and the diversion of rail traffic to trucks. However, NEPA requires that indirect or secondary effects, and cumulative impacts also be addressed. *See* 40 CFR 1508.7, 1508.8. In examining the effects of the abandonment, the Draft EA needs, therefore, to look at not just at what will result from abandonment of the lines, but what will foreseeably happen as a result of the abandonment off of the lines.

MMA has acknowledged that in order to operate the Van Buren Branch between Madawaska and St. Leonard after it is severed from the rest of its system by the abandonment, it will need to construct a locomotive and car maintenance facility. Further, MMA has asserted that much of the traffic from the abandonment lines will be diverted to truck and will move within Maine to transload facilities. Although the construction of these facilities are clearly foreseeable consequences of the proposed abandonment, the Draft EA does not examine the potential environmental impacts from the construction or operation of these facilities. SEA has found the noise and vibration from truck alternatives to be significant in other cases. *See, e.g.*, Environmental Impact Statement and Supplemental Environmental Impact Statement issued in *Southwest Gulf Railroad Company – Construction and Operation Exemption – Medina County, TX*, STB Finance Docket No. 34282 (petition for review of based on challenge on failure to comply with NEPA denied, *Medina County Environmental Action Association v. STB*, 2010 U.S. App. LEXIS 9326 (5th Cir 2010)).

Other secondary or indirect impacts that should be considered include impacts on groundwater and surface water from oils, greases and rubber that will be deposited on area roadways

and carried as runoff into the local stream network. Additionally, although it may be difficult to measure the impact of additional roadkill, or to develop a condition to reduce it, with respect to protected species such as the Canadian lynx (Draft EA at 47), it is still an indirect impact that is foreseeable from the diversion of rail traffic to trucks that must be considered.

D. Socioeconomic Impacts

The Draft EA, p. 48, states that economic effects, though both “critically important” and potentially “adverse,” are “not environmental issues to be addressed in detail in this draft EA.” Additionally, the document states that “socioeconomic issues” are only considered in the environmental review if those actions result from change or disruption to physical environment. While it is true that the Board should consider adverse impacts on rural and community development, including socio-economic impacts, that will result from the proposed abandonment (49 USC 10903(d)(2)), the State does not agree that this eliminates the need for SEA to consider such impacts under the requirements of NEPA. The definition of “effects” under the NEPA regulations, 40 CFR 1508.8, includes not only ecological effects (such as effects on natural resources), but also economic and social impacts – whether direct, indirect or cumulative. The Draft EA, p. 31, acknowledges the potential economic and social harms that the State and others have pointed out will result from the loss of over 1700 jobs in a portion of northern Maine already experiencing above-average unemployment: “The proposal itself, if approved and implemented, could have socioeconomic effects that are not related to the physical environment. For example, there may be substantial potential adverse effects on employment (both locally and statewide) if rail service in the area were to cease.” This statement suggests that the socioeconomic impacts of the abandonment are very likely to be significant, and that a more complete economic analysis should be developed and

included either as a supplement to the EA, or if necessary as part of an Environmental Impact Statement.

II. Additional Conditions

In Section 5.0 of the Draft EA, SEA proposes a number of conditions in order to mitigate potential environmental harms that might result from the abandonment and salvage of the Abandonment Lines. The State supports the conditions requested and urges the Board to adopt such conditions in any abandonment that might be granted. In addition, the State believes that there are additional conditions that should be imposed as follows:

(1) MMA should be required to consult with appropriate federal agencies including NOAA, USFWS and ACOE with respect to any salvage in the vicinity of streams or other wetlands that are Critical Habitats for Atlantic Salmon to determine if stream work and possible bridge removal is required to protect the identified Critical Habitats.

(2) MMA should be required to conduct Phase I testing of rail sidings and locations where fueling or maintenance was performed by MMA or its predecessor. MMA should further be required to report to Maine Department of Environmental Protection and USEPA if any contaminated soil, petroleum products, hazardous materials or chemicals, that may impact human health or the environment are discovered during abandonment and salvage operations. All salvage in the area of contaminated soil should be suspended until a remediation plan is implemented.

III. Conclusion

For the reasons set forth above, the State and the Maine DOT request that SEA conduct additional inquiries and evaluation of the abandonment, and request the imposition of additional conditions, as set forth herein.

Respectfully submitted,

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