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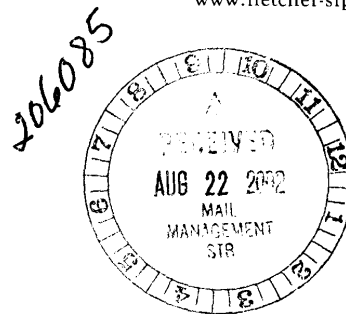
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August 21, 2002

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006



Re: **Docket No. AB-279 (Sub-No. 3)**
Canadian National Railway Company – Adverse
Discontinuance – Lines of Bangor and Aroostook Railroad Company
and Van Buren Bridge Company in Aroostook County, Maine

Docket No. AB-124 (Sub-No. 2)
Waterloo Railway Company – Adverse Abandonment –
Lines of Bangor and Aroostook Railroad Company and
Van Buren Bridge Company in Aroostook County, Maine

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are an original and ten copies of the **Reply of Canadian National Railway Company and Waterloo Railway Company to Petition for Waiver**, dated August 21, 2002.

One extra copy of the Reply and this letter also are enclosed. Please date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

ENTERED
Office of Proceedings

AUG 22 2002

Part of
Public Record


William C. Sippel
Attorney for Canadian National Railway Company
and Waterloo Railway Company

WCS:tjl

Enclosures

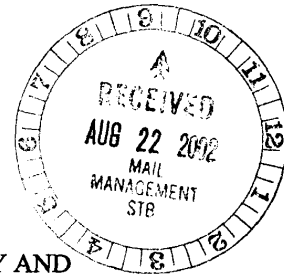
cc: Parties on Certificate of Service

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-279 (SUB-NO. 3)

**CANADIAN NATIONAL RAILWAY COMPANY
-- ADVERSE DISCONTINUANCE --
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND
VAN BUREN BRIDGE COMPANY IN AROOSTOOK COUNTY, MAINE**



DOCKET NO. AB-124 (SUB-NO. 2)

**WATERLOO RAILWAY COMPANY
-- ADVERSE ABANDONMENT --
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND
VAN BUREN BRIDGE COMPANY IN AROOSTOOK COUNTY, MAINE**

**REPLY OF CANADIAN NATIONAL RAILWAY COMPANY AND
WATERLOO RAILWAY COMPANY TO PETITION FOR WAIVER**

Sean Finn
Cynthia A. Bergmann
Canadian National/Illinois Central
455 North Cityfront Plaza Drive
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**ENTERED
Office of Proceedings**

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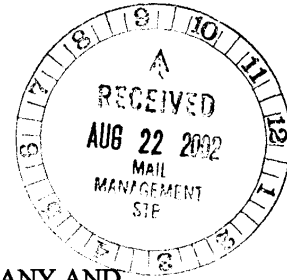
**ATTORNEYS FOR CANADIAN NATIONAL
RAILWAY COMPANY AND WATERLOO
RAILWAY COMPANY**

Dated: August 21, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-279 (SUB-NO. 3)

CANADIAN NATIONAL RAILWAY COMPANY
-- ADVERSE DISCONTINUANCE --
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND
VAN BUREN BRIDGE COMPANY IN AROOSTOOK COUNTY, MAINE



DOCKET NO. AB-124 (SUB-NO. 2)

WATERLOO RAILWAY COMPANY
-- ADVERSE ABANDONMENT --
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND
VAN BUREN BRIDGE COMPANY IN AROOSTOOK COUNTY, MAINE

**REPLY OF CANADIAN NATIONAL RAILWAY COMPANY AND
WATERLOO RAILWAY COMPANY TO PETITION FOR WAIVER**

Canadian National Railway Company ("CNR") and Waterloo Railway Company ("Waterloo" and, collectively with CNR, where appropriate, "CN") hereby file this reply to the petition of Bangor and Aroostook Railroad Company, James E. Howard, Trustee ("Trustee" or "BAR") requesting waiver of certain Board regulations for an adverse discontinuance and abandonment application that BAR intends to file against CNR and Waterloo. BAR seeks through this proceeding to eliminate the existing access to competitive rail service enjoyed by a major shipper on BAR's rail line in Madawaska, Maine. As the Board has previously recognized, such action would be primarily for the economic benefit of certain BAR creditors. BAR's efforts raise serious and far-reaching issues regarding rail competition and service, and will be strenuously opposed by CN. Indeed, we are aware of no prior instance in the modern era where a rail carrier has utilized the adverse abandonment procedures to eliminate an existing competitor.

As a result, waivers that may have been granted in prior adverse abandonment or discontinuance proceedings provide little guidance for the Board in acting on BAR's petition here. We note in particular that the "change in operator" adverse discontinuance cases cited by BAR in support of its waiver petition¹ are plainly irrelevant to the scenario in this case. BAR is trying to remove the existing competitive rail alternative provided by CN, not replace it. While certain waivers from the abandonment regulations of 49 C.F.R. § 1152 may be appropriate here, many of the waivers requested by BAR plainly are not. The Board must assure that it has an adequate and complete evidentiary submission from BAR before undertaking any consideration of the drastic and unprecedented relief that BAR seeks.

The CNR trackage rights at issue in this proceeding extend from St. Leonard, New Brunswick, Canada to Madawaska, Maine.² From St. Leonard to Van Buren, Maine, those trackage rights are over a line of railroad of the Van Buren Bridge Company ("VBBC"), a BAR subsidiary.³ From Van Buren to Madawaska the trackage rights are over a BAR line. Waterloo holds a separate property interest in the form of an easement over the St. Leonard-Madawaska line. Both the CNR trackage rights and the Waterloo easement were acquired in an arms-length transaction with BAR in March, 2001, and allow CN to directly provide rail service to Fraser Papers Inc. ("Fraser") at Madawaska. See Canadian National Railway Company -- Trackage

¹ See BAR Petition at 4-5 (citing Fore River Railroad Corporation -- Discontinuance of Service Exemption -- Norfolk County, MA, Docket No. AB-359 (ICC served February 13, 1992) and Tacoma Eastern Railway Company -- Adverse Discontinuance of Operations Application -- A Line of City of Tacoma in Pierce, Thurston and Lewis Counties, WA, Docket No. AB-548 (STB served March 3, 1999)).

² The Board's jurisdiction here is limited to the portion of the St. Leonard-Madawaska route that is located in the United States.

³ Like BAR, VBBC is currently in bankruptcy. In filing his petition for waiver, the BAR Trustee does not indicate that he is acting in any capacity on behalf of VBBC or seeking relief on behalf of VBBC.

Rights Exemption -- Bangor and Aroostook Railroad Company and Van Buren Bridge Company, Finance Docket No. 34014 (STB served March 21, 2001), 66 *Fed. Reg.* 15941; Waterloo Railway Company -- Acquisition Exemption -- Bangor and Aroostook Railroad Company and Van Buren Bridge Company, Finance Docket No. 34015 (STB served March 21, 2001), 66 *Fed. Reg.* 15941. Previously, Fraser had access to rail service only from BAR.

Since entering bankruptcy, BAR has sought to terminate Fraser's competitive access to CN rail service, first at the bankruptcy court and then in revocation proceedings before the Board. The bankruptcy court found that it should not act until the Board has considered the relevant transportation issues at stake. Eight weeks ago, the Board rejected BAR's revocation efforts, finding that the relief sought by BAR "would deprive Fraser of the benefits of a competitive option" Canadian National Railway Company -- Trackage Rights Exemption -- Bangor and Aroostook Railroad Company and Van Buren Bridge Company, Finance Docket No. 34014 (STB served June 25, 2002) ("Revocation Decision") at 8. The Board also noted that the primary motivation for eliminating Fraser's competitive service options via CN was to obtain a higher sale price for BAR for the benefit of BAR's creditors -- something that had little if anything to do with the Rail Transportation Policy of 49 U.S.C. § 10101. Revocation Decision at 7 & n.12.

BAR's current petition for waiver here⁴ must be considered in light of this history and the clear purpose and effect of BAR's forthcoming adverse abandonment and discontinuance application: to eliminate existing rail competition for the economic benefit of third-party

⁴ BAR seeks expedited consideration of its petition for waiver, and CN does not object to the Board accommodating that request to the extent reasonable. Given, however, that BAR waited more than six weeks after issuance of the Revocation Decision (and a corresponding bankruptcy court hearing the next day) to initiate this proceeding, it is difficult to detect any real sense of urgency here.

creditors. Especially against that backdrop, there is no basis for the blanket waiver that BAR seeks from all of the abandonment application content requirements of 49 C.F.R. § 1152.22(b), (c), (d) and (e). BAR has not made -- or even attempted to make -- any individualized showing that any particular regulatory requirement would not be relevant to the arguments that BAR intends to offer in support of its application. Indeed, BAR has provided absolutely no indication of what its arguments in favor of eliminating CN as a competitor at Madawaska actually will be. Waivers should be tailored to the issues and questions likely to arise in a particular case -- a process that is impossible given the cursory nature of BAR's petition.

Hypothetically, BAR might be expected to make some argument that retention of CNR's trackage rights and Waterloo's easement is an undue economic burden on BAR's ability to participate in interstate commerce. Yet much of the traffic, operational, revenue, cost and other data encompassed within 49 C.F.R. § 1152.22(b)-(e) -- as it relates to existing rail service to Fraser and service on BAR's system as a whole -- would be an obvious and critical component of any such arguments. Given that BAR expressly seeks to remove an existing railroad competitor and existing competitive service options for Fraser, it is hardly the case that "there is no point in requiring the submission of traffic data, data on revenues and costs, and information about transportation alternatives." BAR Petition at 4 (quoting Fore River).

BAR, which owns and currently conducts all rail operations on the St. Leonard-Madawaska line, plainly has access to all or nearly all of the information that is contemplated by the content requirements of 49 C.F.R. § 1152.22(b)-(e). Thus, BAR's perfunctory request for a blanket waiver of those regulations in their entirety is not only unsubstantiated and unjustified, but largely unnecessary as well. Given the drastic, anti-competitive relief that BAR intends to seek, it must be prepared to submit detailed, persuasive evidence in support of its position.

It also is unclear why BAR cannot comply with the map requirements of 49 C.F.R. 1152.22(a)(4). BAR (or its affiliate VBBC) owns the St. Leonard-Madawaska line in its entirety, is a party to the trackage rights agreement with CNR and provided the freight easement to Waterloo. It should be able to prepare the required map. Finally, it is not clear that waiver of the environmental and historic reporting requirements of 49 C.F.R. § 1105 is appropriate in these circumstances. If BAR believes that its proposal qualifies as exempt under 49 C.F.R. §§ 1105.6(c)(6) and 1105.8(b)(3), it should make and support that argument in its filing rather than seeking a waiver of the requirements of 49 C.F.R. § 1152.22(f). CSX Corporation and CSX Transportation, Inc. -- Adverse Abandonment Application -- Canadian National Railway Company and Grand Trunk Western Railroad Inc., Docket No. AB-31 (Sub-No. 38) (STB served March 2, 2001) at 3-4.⁵

CN does not object to BAR's other waiver requests, dealing with system diagram maps (49 C.F.R. § 1152.22(a)(5)), physical posting of a notice of intent (49 C.F.R. § 1152.20(a)(3)), and offers of financial assistance (49 C.F.R. § 1152.27). Notwithstanding any such waivers, however, it remains clear that BAR "retains the burden to support its case with relevant evidence." Salt Lake City Railroad Company, Inc. -- Adverse Abandonment -- Line of Utah Transit Authority in Salt Lake City, UT, Docket No. AB-520 (STB served August 26, 1999) at 4.

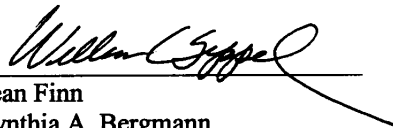
Lastly, we note that BAR has incorrectly filed its petition for waiver solely in Docket No. AB-279 (Sub-No. 3), involving the adverse discontinuance of CNR's trackage rights. Yet BAR plainly seeks two, distinct forms of relief here: the adverse discontinuance of CNR's

⁵ As noted below, BAR seeks here not just the adverse discontinuance of CNR's trackage rights, but the adverse abandonment of Waterloo's permanent rail freight operating easement on the St. Leonard-Madawaska line. It is thus far from clear that BAR's proposal qualifies as exempt under 49 C.F.R. § 1105.6(c)(6).

trackage rights and the adverse abandonment of the permanent freight operating easement -- a property interest -- that Waterloo separately holds in the St. Leonard-Madawaska line. While the evidence supporting BAR's two requests for relief may overlap, that does not change the fact that this case involves different rights held by different rail carriers obtained in different STB proceedings. See supra at 2-3. This matter should thus be docketed under both Docket No. AB-279 (Sub-No. 3) and Docket No. AB-124 (Sub-No. 2), as shown in the caption of this pleading.

WHEREFORE, CN respectfully requests that BAR's petition for waiver of the Board's abandonment regulations, 49 C.F.R. § 1152, be denied to the extent described herein.

Respectfully submitted,

By: 

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**ATTORNEYS FOR CANADIAN NATIONAL
RAILWAY COMPANY AND WATERLOO
RAILWAY COMPANY**

Dated: August 21, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2002, a copy of the foregoing
**Reply of Canadian National Railway Company and Waterloo Railway Company to
Petition for Waiver** was served by overnight delivery upon:

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Attorney at Law
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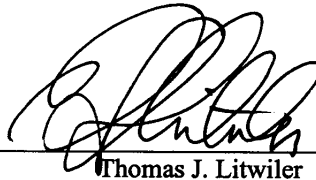
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