

Kirkpatrick & Lockhart LLP

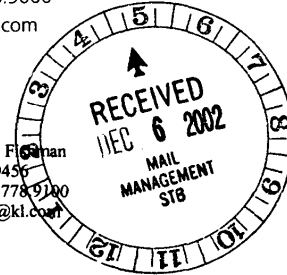
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December 6, 2002

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Edward J. Fishman
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Re: **Docket No. AB-279 (Sub-No. 3) > 206775**
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) > 206777
Waterloo Railway Company -- Adverse Abandonment -- Lines of
Bangor and Aroostook Railroad Company and Van Buren Bridge
Company in Aroostook County, Maine

Dear Secretary Williams:

I am enclosing an original and ten copies of the **Trustee of Bangor and Aroostook Railroad Company's Motion to Compel or, in the Alternative, For Subpoena Duces Tecum to Fraser Papers Inc**, dated December 6, 2002, for filing in the above-captioned proceeding. The Trustee respectfully requests expedited consideration of this motion.

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

Respectfully submitted,

Edward J. Fishman

Attorney for Trustee of Bangor and Aroostook
Railroad Company, et al.

Enclosures

cc: **Parties on Certificate of Service**

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-279 (Sub-No. 3) *>206775*

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) *>206777*

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

**TRUSTEE OF BANGOR AND AROOSTOOK RAILROAD COMPANY'S MOTION TO
COMPEL OR, IN THE ALTERNATIVE, FOR SUBPOENA DUCES TECUM TO
FRASER PAPERS INC.**

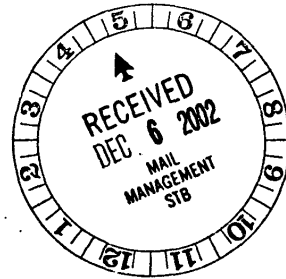
EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEYS FOR TRUSTEE OF BANGOR
AND AROOSTOOK RAILROAD COMPANY,
ET AL.**

Dated: December 6, 2002



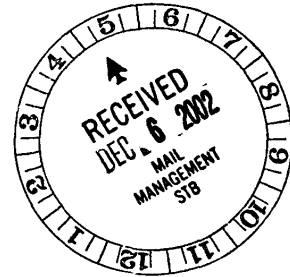
BEFORE THE
SURFACE TRANSPORTATION BOARD

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



**TRUSTEE OF BANGOR AND AROOSTOOK RAILROAD COMPANY'S MOTION TO
COMPEL OR, IN THE ALTERNATIVE, FOR SUBPOENA DUCES TECUM TO
FRASER PAPERS INC.**

Pursuant to 49 C.F.R. § 1114.31 and §1117.1, James E. Howard, Chapter 11 Trustee of Bangor and Aroostook Railroad Company, Debtor (the "Trustee")¹ hereby moves the Surface Transportation Board ("STB" or "Board") to compel Fraser Papers Inc. ("Fraser") to respond to the discovery requests attached hereto as Exhibits A and B that were served upon Fraser on November 14, 2002 or, in the alternative, to issue a subpoena duces tecum directing Fraser to produce the documents and answer the interrogatories set forth in those discovery requests. The Trustee seeks expedited consideration of this motion for the reasons set forth herein.

¹ James E. Howard is acting in his capacity as the Chapter 11 Trustee for the Bangor and Aroostook Railroad Company, Van Buren Bridge Company, Canadian American Railroad Company, Northern Vermont Railway Company and Newport & Richford Railroad Company. These railroads along with the Quebec Southern Railway Company, Ltd. ("QSR") are referred to herein collectively as the "BAR System." James E. Howard is not the Chapter 11 Trustee of QSR.

I. BACKGROUND

This action arises out of an involuntary Chapter 11 bankruptcy filing brought against the Bangor and Aroostook Railroad Company ("BAR") on August 15, 2001. In March of that year, BAR and BAR affiliate Van Buren Bridge Company granted the Canadian National Railway Company ("CN") trackage rights to serve Fraser over approximately twenty-three (23) miles of rail line between Madawaska, Maine and the Canadian border (the "Madawaska Line"), and provided CN subsidiary Waterloo Railway Company ("Waterloo") an overlapping freight easement. Fraser owns and operates a paper mill in Madawaska ("Madawaska Mill") that is located on the Madawaska Line. The Madawaska Mill is the only facility CN has the right to serve pursuant to the trackage rights and the overlapping freight easement.

On April 24, 2002, the Trustee filed a petition with the Board to reopen and revoke the notices of exemptions that were filed in March 2001 in connection with the CN trackage rights and Waterloo freight easement on the Madawaska Line. On May 10, 2002, CN filed a reply urging the Board to deny the Trustee's petition without prejudice to the Trustee filing a formal application for adverse abandonment and discontinuance authority.² CN framed the relief sought by the Trustee as an effort to eliminate "existing competitive rail access to a significant shipper on that line."

On May 16, 2002, Fraser filed a petition for leave to intervene and become a party to the revocation proceeding. In support of its petition, Fraser stated that it was directly affected by and strongly opposed to the relief sought by the Trustee. Fraser attached to its petition to intervene the Verified Statement of Austin S. Durant, Fraser's

² CN was joined in its reply by Waterloo. For convenience, we will continue to refer only to CN except where specifically noted.

Vice President of Materials Management ("Durant V.S.").³ Mr. Durant stated that revocation of the CN trackage rights would have a "substantial adverse effect on Fraser" by removing "an important competitive option" for transportation to and from the Madawaska Mill. Durant V.S. at 2. Mr. Durant asserted that the mere availability of possible direct rail service from CN provides Fraser with "competitive leverage," that the loss of CN's trackage rights would make Fraser "vulnerable to potential service deficiencies or even complete loss of service," and that CN's ability to directly serve the Madawaska Mill "alleviates Fraser's concerns over any potential loss of rail service to the plant." Durant V.S. at 3-4.

On June 13, 2002, Fraser filed a supplemental reply that reiterated its opposition to the relief sought by the Trustee.⁴ Fraser indicated that the removal of the CN trackage rights and Waterloo easement "would remove a critical measure of transportation security and an important competitive option for Fraser at Fraser's paper mill in Madawaska, Maine." Fraser expressed concerns about its vulnerability to "potential service deficiencies" and asserted that eliminating CN's rights would harm the public interest.⁵

In a decision served June 25, 2002, the Board granted Fraser's motion to intervene and denied the Trustee's request to reopen and revoke the exemptions. In support of its ruling, the Board stated that Fraser could benefit from the "fall-back"

³ A copy of Fraser's petition to intervene (which includes the Durant V.S.) is attached hereto as Exhibit C.

⁴ A copy of Fraser's supplemental reply is attached hereto as Exhibit D.

⁵ As described further below, the Trustee intends to establish in its Application that Fraser will not be adversely affected by the discontinuance of the CN trackage rights and abandonment of the Waterloo easement because of the array of competitive transportation options that would remain available to Fraser.

service availability and competitive option occasioned by the existence of the CN's trackage rights even if CN were never to commence operation under them. In addition, the Board noted that revocation of the exemptions would not provide the relief sought by the Trustee unless and until the STB had specifically determined that discontinuance of the trackage rights and abandonment of the easement would be consistent with the public interest. The Board ruled that the Trustee would have to file a formal application for adverse discontinuance of the trackage rights and adverse abandonment of the easement in order to obtain the requested relief.⁶

On November 14, 2002, the Trustee filed and published its Notice of Intent for Discontinuance of Trackage Rights and Abandonment of Freight Easement ("Notice of Intent").⁷ The Notice of Intent indicates that on or about December 23, 2002, the Trustee intends to file a formal application for the adverse discontinuance of the CN trackage rights and the adverse abandonment of the Waterloo freight easement ("Application"). Pursuant to 49 C.F.R. § 1114.26 and § 1114.30, the Trustee served document requests ("Document Requests") and interrogatories ("Interrogatories") on Fraser. A copy of those Document Requests and Interrogatories are attached hereto as Exhibits A and B, respectively.⁸

The Trustee intends to establish in the Application, among other things, that the discontinuance of the trackage rights and abandonment of the easement will not

⁶ Canadian National Railway Company – Trackage Rights Exemption – Bangor and Aroostook Railroad Company and Van Buren Bridge Company, STB Finance Docket No. 34014, et al. (STB served June 25, 2002) ("June 25 Decision").

⁷ A copy of the Notice of Intent was served on Fraser.

⁸ The Trustee also served document requests and interrogatories on CN. CN's inadequate responses are the subject of a separate motion to compel that is being filed by the Trustee.

adversely affect Fraser, the only shipper covered by those rights, because of the array of competitive transportation options available to Fraser at the Madawaska Mill. See Notice of Intent at 3. In determining whether to grant authority for the discontinuance of the CN trackage rights and the abandonment of the Waterloo freight easement, the Board will determine whether the discontinuance and abandonment is consistent with the "public convenience and necessity," which in turn will require a balancing of the potential harm of permitting CN to retain the trackage rights (and the Waterloo easement) against the potential harm of permitting the discontinuance and abandonment of those rights. Apart from CN, the only possible beneficiary of the CN trackage rights and Waterloo easement is Fraser.

The Trustee will have the burden of proof in the Application and the Trustee's case in chief must be filed in the Application. Whether Fraser would be harmed by the discontinuance of the CN trackage rights (and abandonment of the Waterloo freight easement) and the extent to which any harm is outweighed by the harm of permitting CN to retain the trackage rights (and permitting Waterloo to retain the freight easement) will be at the center of the Trustee's case and the Board's evaluation and decision. Among other things, it is relevant to the Trustee's application whether and to what extent the discontinuance and abandonment would cause a deterioration in rail service to Fraser; whether and to what extent the discontinuance and abandonment would cause a material reduction in Fraser's rail transportation routing options; whether and to what extent the discontinuance and abandonment would leave Fraser subject to inadequate transportation competition; whether and to what extent Fraser has bargaining power for transportation service; and whether and to what extent Fraser has

transportation options on inbound shipment of materials used in the paper-making process at the Madawaska Mill and outbound paper product transportation from the Madawaska Mill.

Therefore, the Document Requests and Interrogatories served on Fraser seek two general categories of information directly related to the central issue of this case.⁹ The first category involves the transportation options available to Fraser at its Madawaska Mill, including the extent to which Fraser relies on rail service by CN and other trunk line carriers for the transportation of inbound materials to and outbound products from the Madawaska Mill, the availability and use of truck transportation for such inbound materials and outbound products, and the rates and certain other service terms applicable to the various transportation options available to Fraser at the Madawaska Mill.¹⁰

The second category of requested information involves Fraser's communications relating to the BAR's financial condition, the sale of the BAR System and the negotiation and execution of the March 2001 transaction between CN and BAR that resulted in the CN trackage rights and Waterloo easement.¹¹ Fraser's communications regarding BAR's financial condition, the sale of the BAR system, and the CN/BAR transaction likely will reveal Fraser's own evaluation of its transportation options with and without the CN trackage rights and the Waterloo freight easement.

⁹ The Trustee recognizes that the discovery requests may require Fraser to produce information that Fraser considers confidential or commercially sensitive. In order to address any such concerns, the Trustee transmitted a proposed protective order to Fraser in conjunction with the discovery requests.

¹⁰ See Document Requests Nos. 1, 3-4, and 7-10; Interrogatories Nos. 1-7.

¹¹ See Document Requests Nos. 2 and 5-6.

The discovery requests attached hereto as Exhibits A and B were served on Fraser on November 14, 2002. Fraser was asked to respond within fifteen (15) days after service. Fraser has failed to submit any response to the discovery requests and its response period has long expired.¹² Therefore, pursuant to 49 C.F.R. § 1114.31 and § 1117.1, the Trustee moves the Board to compel Fraser to answer the Document Requests and Interrogatories previously served or, in the alternative, to issue a subpoena duces tecum directing Fraser to respond to such Document Requests and Interrogatories.

II. ARGUMENT

Fraser is on record as a party in a directly related proceeding in this matter and has strongly objected to the relief sought by the Trustee. Therefore, Fraser should be compelled to respond to the discovery served by the Trustee. To the extent that Fraser is considered a non-party, Fraser should be directed by subpoena to respond to that discovery. The information sought by the Trustee from Fraser is directly relevant to the central issue in this case and Fraser is the only source of all of this information.

A. Fraser Should Be Compelled To Respond As A Party

The Board's discovery rules provide that a party "may obtain discovery ... regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a). The various discovery tools available to the

¹² On November 19, 2002, the Trustee's counsel contacted Fraser's counsel to discuss the discovery requests. Fraser's counsel indicated, among other things, that Fraser was not convinced that it had any obligation to respond to the discovery. Earlier today, the Trustee's counsel was notified that Fraser had retained outside counsel in this proceeding. However, the parties were unable to reach any compromise on discovery matters.

Trustee here include document requests and interrogatories, both of which may be served by a party upon any other party.¹³ A "party" is defined under the Board's rules of practice to include an intervener in any proceeding or other persons directed by the Board to participate in a proceeding.¹⁴

The Trustee respectfully submits that Fraser should be considered a party subject to discovery for several reasons. Fraser is a party of record in a directly related proceeding in this matter. Fraser filed for leave to intervene in the exemption revocation proceeding that preceded this proceeding. The Board granted Fraser's motion to intervene as a party in the June 25 Decision. In that same decision, the Board ruled that the Trustee would have to file an adverse application for abandonment and discontinuance in order to obtain the relief to which Fraser has objected. Fraser is the only shipper that could be served pursuant to the CN trackage rights and the Waterloo easement, and whether Fraser would be harmed by the discontinuance and abandonment of those rights is the central issue in this case. The Trustee seeks discovery from Fraser in order to support the arguments that it intends to make in its application about the extent of harm to Fraser. Fraser should not be immune from discovery because it has not yet chosen to file any pleadings in this proceeding.¹⁵

In addition, Fraser has strongly objected on the record to the relief sought by the Trustee. Fraser has asserted, in part through verified statements from its transportation manager, that Fraser would be adversely affected by the discontinuance of the CN

¹³ See 49 C.F.R. § 1114.26; 49 C.F.R. § 1114.30.

¹⁴ 49 C.F.R. § 1101.2(d).

¹⁵ It is very unlikely that Fraser will choose to remain silent here given the extent of its participation in the revocation proceeding and the asserted importance of these issues to Fraser.

trackage rights and the abandonment of the Waterloo easement because of the alleged competitive benefits those unexercised rights provide. The Trustee intends to show in its Application that Fraser will not be adversely affected by the removal of those rights, primarily because of the competitive transportation options that will remain available to Fraser at the Madawaska Mill. Fraser is on record as objecting to the Trustee's position on the competition issue, has fully supported CN's position in this matter, and has possession and control over information directly relevant to this proceeding. Therefore, Fraser should be compelled to respond to the discovery requests. See In the Matter of Theodore Polydoroff and Timothy C. Miller, 133 M.C.C. 364, 365 (April 11, 1984); Water Transport Ass'n v. Interstate Commerce Comm'n, 819 F.2d 1189, 1193 (D.C. Cir. 1987).¹⁶

B. Even If Fraser Were Considered A Third-Party, Discovery Should Be Compelled By Subpoena

The Board has the authority to issue a subpoena duces tecum under 49 U.S.C. § 721(c) and 49 C.F.R. § 1117.1. The Board permits third-party discovery when two conditions are met: (1) the materials sought are relevant to an important, contested issue; and (2) the materials are not available from other sources.¹⁷

The information sought from Fraser meets these two requirements. First, the information is relevant to the central issue in this case, namely whether Fraser will be harmed by the discontinuance and abandonment. The extent of possible harm to

¹⁶ It should also be noted that both the Trustee and CN have included Fraser as a party of record on the certificates of service attached to their filings in this proceeding.

¹⁷ See Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24309(a) – Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company, Finance Docket No. 33381 (STB served May 5, 1997); Public Service Company of Colorado d/b/a/ Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42057 (STB served January 31, 2002).

Fraser has been contested by Fraser and CN, both of whom have asserted repeatedly in this matter that the trackage rights and easement provide competitive benefits to Fraser that outweigh the potential harms that would arise to the Trustee, the BAR System and others if such rights were discontinued.

Second, the information sought by the Trustee from Fraser is not available from other sources. Although the Trustee has information about compensation BAR and the BAR System railroads earn and other terms applicable to rail service to and from the Madawaska Mill on the Madawaska Line or on other BAR System lines, and has sought other rate and service information from CN, the Trustee (and BAR System railroads) do not have rate or service information on the other transportation options available to Fraser with respect to the Madawaska Mill, including (i) the rates and other key terms applicable to all non-rail transportation alternatives, and (ii) the rates and other key terms applicable to rail transportation service that does not occur over CN or the BAR System. Only Fraser has possession and control over all of this information. For these reasons, if the Board determines that Fraser should not be treated as a party in this proceeding for discovery purposes, the Board should issue a subpoena directing Fraser to respond to the Trustee's discovery requests in a timely manner.

III. EXPEDITED CONSIDERATION REQUESTED

The Trustee is seeking information from Fraser that will enable the Trustee to fully develop its case in chief prior to the filing of the Application. Fraser has been aware of the specific information sought by the Trustee since November 15, 2002. Fraser has had sufficient time to formulate any objections to producing such information and has failed to respond to date. Therefore, the Trustee respectfully requests that the

Board issue an order making any reply to this motion due by December 13, 2002. See FMC Wyoming Corp. v. Union Pacific Railroad Co., STB Docket No. 42022 (STB served December 12, 1997) (Board limited time for reply to motion to compel in order to expedite discovery and allow the development of a complete record). The Trustee also respectfully requests that the Board order Fraser to provide answers to the Interrogatories within five (5) days of a Board decision on this motion and documents responsive to the Document Requests within ten (10) days of a Board decision on this motion.¹⁸

The Trustee had intended to file its Application on or about the December 23, 2002, date set forth in its Notice of Intent. The Trustee believes that it would have been able to meet that anticipated filing date if it had received a response to its discovery requests from Fraser (and adequate responses to its discovery requests from CN). However, due to the refusal of Fraser and CN (with very minor exceptions) to produce any information sought in discovery, the Trustee will not be in a position to file its Application by the anticipated December 23, 2002 (even under the expedited reply schedule requested above). In order to avoid further delay in this proceeding, and enable the Trustee to file its Application as soon as possible after receiving and evaluating the information produced by Fraser and CN, the Trustee seeks the expedited schedule described above. The Trustee believes that the public interest will be served by expediting discovery under these circumstances.

¹⁸ The Trustee also requests that all such orders be made effective on their date of service.

IV. CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Board compel Fraser to respond to the Document Requests and Interrogatories served on November 14, 2002 or, in the alternative, issue a subpoena duces tecum directing Fraser to respond to those discovery requests. In addition, the Trustee respectfully requests that the Board give expedited consideration to this motion by (1) issuing an order making any reply to this motion due by December 13, 2002; (2) directing Fraser (as a party subject to discovery or by subpoena) to provide answers to the Interrogatories within five (5) days of the issuance of a Board decision on this motion; and (3) directing Fraser (as a party subject to discovery or by subpoena) to provide documents responsive to the Document Requests within ten (10) days of the issuance of a Board decision on this motion.

Respectfully submitted

By:


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**ATTORNEYS FOR TRUSTEE OF BANGOR &
AROOSTOOK RAILROAD COMPANY, ET.
AL.**

Dated: December 6, 2002

EXHIBIT A

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

**TRUSTEE OF BANGOR AND AROOSTOOK RAILROAD COMPANY'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS FROM FRASER PAPERS INC.**

Pursuant to 49 C.F.R. § 1114.30, James E. Howard, Trustee of the Bangor and Aroostook Railroad Company, Debtor ("Trustee"),¹ by his undersigned attorneys, hereby requests that Fraser Papers Inc. produce, in accordance with the Definitions and Instructions set forth below, the documents and tangible things identified in this Request within fifteen (15) calendar days of the service hereof, such production to be at the offices of Kirkpatrick & Lockhart LLP, 1800 Massachusetts Ave., N.W., Second Floor, Washington, D.C. 20036.

¹ The Trustee is acting in the capacity of Trustee for the Bangor and Aroostook Railroad Company ("BAR"), Van Buren Bridge Company ("VBBC"), Canadian American Railroad Company ("CDAC"), Northern Vermont Railway Company ("NVT") and Newport & Richford Railroad Company ("NRR").

GENERAL DEFINITIONS AND INSTRUCTIONS

I. Definitions

A. "BAR" means the Bangor & Aroostook Railroad Company and, unless indicated to the contrary, its directors, officers, trustees, employees, representatives, agents, affiliates, subsidiaries, parents, predecessors, successors, counsel and all other persons or entities acting or purporting to act on its behalf.

B. "BAR System" means the BAR, Canadian American Railroad Company ("CDAC"), Van Buren Bridge Company ("VBBC"), Northern Vermont Railway Company ("NVT"), Newport & Richford Railroad Company ("NRR") and the Quebec Southern Railway ("QSR") and their parent companies, subsidiaries, and affiliates, including without limitation BAR parent company Iron Road Railways, Inc. ("Iron Road") and, unless indicated to the contrary, their directors, officers, trustees, employees, representatives, agents, affiliates, subsidiaries, parents, predecessors, successors, counsel and all other persons or entities acting or purporting to act on their behalf.

C. "CN" means the Canadian National Railway Company and its parent company, subsidiaries, and affiliates, including without limitation the Waterloo Railway Company ("Waterloo") and, unless indicated to the contrary, CN's directors, officers, trustees, employees, representatives, agents, affiliates, subsidiaries, parents, predecessors, successors, counsel and all other persons or entities acting or purporting to act on its behalf.

D. "Communication" means any oral, written, or electronic statement of any kind conveyed by one person to another person through any means, any statement

made by one person in the presence of one or more other persons, and/or any document delivered by or for one person to another person through any means. This includes, but is not limited to, voice messages, voicemail, dictation, or any other form of oral or unwritten statement.

E. The term "document" means every type of recorded information dated or prepared prior to or subsequent to this request, including, but not limited to, any letter, intra-company communication, note, e-mail, memoranda, report, analysis, study, record, minutes of a meeting, printed publication, article instruction, work assignment, notebook, draft, work sheet, drawing sketch, photograph, charge, advertisement, catalogue, brochure, news release, trade publication, invoice, and any other written, recorded, electronic, mechanical or electric form of representation of any kind, or graphic material however produced or reproduced and, in the absence of the original, a copy thereof and any copy bearing markings thereon not present on the original or other copy thereof. All drafts, copies or preliminary material that are different in any way from the executed or final document shall be considered to be additional documents as the term is used herein.

F. "Effective Rates" means any and all charges, rates, prices, fees, costs and expenses inclusive of rebates, reclaims, credits, discounts or other adjustments applicable to the transportation of a particular quantity of commodities, products, substances or materials.

G. "Fraser" or "you" or "your" means Fraser Papers Inc. and its parent company, subsidiaries and affiliates, including without limitation its parent company Nexfor and, unless indicated to the contrary, Fraser's directors, officers, trustees,

employees, representatives, agents, affiliates, subsidiaries, parents, predecessors, successors, counsel and all other persons or entities acting or purporting to act on its behalf.

H. "Junction Settlement Agreement" shall mean the agreement so titled that was entered into by and among CN, BAR and VBBC in March 2001.

I. "Madawaska Mill" means the Fraser paper mill in Madawaska, Maine.

J. "March 2001 Transaction" means the negotiation and implementation of the transaction that resulted in a \$5 million payment by CN, the execution of the Junction Settlement Agreement, the execution of the Trackage Rights Agreement and the conveyance of the freight easement to Waterloo.

K. The term "person or entity" means any natural person or legal entity, including without limitation any corporation, partnership, limited liability company, union, proprietorship, trust, association, incorporated or unincorporated organization and any group of persons or entities.

L. The terms "relating to" or "relate to" a given subject means any document or communication that constitutes, contains, embodies, comprises, reflects, identifies, states, refers to, deals with, comments on, relates to, responds to, describes, analyzes or is in any way pertinent to that subject, including, without limitation, documents concerning the transmittal of other documents.

M. "Trackage Rights Agreement" means the agreement so titled that was entered into by and among CN, BAR and VBBC in March 2001.

N. The term "transportation" or "transported" or any form thereof means the movement, transfer, exchange or delivery of property of any kind by rail, truck or any

other mode or combination of modes between two or more locations in either direction, and includes without limitation (i) any such movement, transfer, exchange or delivery to or from intermediate storage facilities, warehousing facilities, transload facilities, interchange points or other intermediate points between origin and destination, and (ii) any services related to such movement, transfer, exchange or delivery (including receipt, delivery, elevation, transfer in transit, storage, handling and interchange of property or equipment).

II. Instructions

A. This request includes all documents in Fraser's possession, custody, or control, and the possession, custody and control of any person or entity acting in Fraser's interest or on Fraser's behalf, including employees, attorneys, agents and representatives, regardless of the location of the document and includes any draft or copy of such document which differs in any respect from the original, whether because of handwritten notations or otherwise.

B. Organize and label all documents produced to correspond with the categories set forth in this request; identify all binders, folders or containers in which such documents are found prior to their production, including the titles, labels or other descriptions of such binders, folders, or containers; provide all these documents for inspection and copying. Provide every copy of each document which has any writing, figuring, notation or similar marking, all drafts of each document, all attachments or enclosures with each document and every document referred to in such document for inspection and copying.

C. If you assert a claim of privilege with respect to any document hereinafter requested, provide the following information:

- (1) the name of the author of the document;
- (2) the names of all recipients of the document, including all parties receiving undisclosed copies of the document;
- (3) the date appearing on the document and the date the document was created or prepared;
- (4) the nature of the privilege or privileges claimed; including the factual grounds supporting the privilege or the privileges claimed; and
- (5) the names of all persons, whether recipients or not, having knowledge of the factual basis upon which the privilege is asserted.

D. If for any reason, any document responsive to this request has been lost, misplaced, shredded, destroyed, or otherwise disposed of at any time, state the time, place, manner, and reason for loss, misplacement, destruction, shredding, or other disposition of such document. Provide a description of the information contained in the document, including, but not limited to, the author, addressee, any undisclosed recipients, and subject matter.

E. If any document responsive to this request was, but no longer is, in your possession, custody or control, identify it. Such identification shall include to the fullest extent possible, a description of the nature, date, author, length, addressee, or recipient and subject matter of such document, and who has possession, custody or control of such document.

- F. Use of the singular shall be deemed to include the plural and use of the masculine shall be deemed to include the feminine, as appropriate, and vice versa.
- G. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make any document request inclusive rather than exclusive.
- H. The past tense includes the present tense where the clear meaning is not distorted by the change of tenses.
- I. The term "between", when used in the context of a request for communications between persons and/or entities, or between and among persons and/or entities, refers to communications to, from, shared between or among, or transmitted in any other manner or direction between or among such persons and/or entities.
- J. These requests are continuing in nature so as to require Fraser to produce all additional documents responsive to them that may hereafter come into the custody, possession or control of Fraser or any person or entity acting on its behalf.
- K. Unless otherwise stated, your responses should cover the period from January 1, 1999 to the present.

III. Requested Documents

1. Any and all Communications between CN and Fraser relating to the Effective Rates applicable to transportation that originates from or terminates at the Madawaska Mill, including without limitation any such transportation provided by or on behalf of CN (as origin, destination and/or intermediate carrier) with respect to rail traffic

destined to or originating from the Madawaska Mill but excluding waybills and bills of lading.

2. Any and all Communications between CN and Fraser relating to the March 2001 Transaction, the proposed abandonment of the Waterloo freight easement and proposed discontinuance of the CN trackage rights on the railroad line between Madawaska and Van Buren, the proposed acquisition of substantially all of the BAR System by the Montreal, Maine and Atlantic Railway, LLC ("MM&A"), the viability of the BAR or the BAR System, and the consequences of financial distress, bankruptcy, dissolution or other events that might affect service provided by BAR to, from or at the Madawaska Mill.

3. Any and all Communications between and among any employees, directors, officers, representatives, or other agents of Fraser (including without limitation any analyses, studies, reports or other documents prepared by such persons) relating to the Effective Rates applicable to transportation that originates from or terminates at the Madawaska Mill, including without limitation any such transportation provided by or on behalf of CN (as origin, destination and/or intermediate carrier) with respect to rail traffic destined to or originating from the Madawaska Mill but excluding waybills and bills of lading.

4. Any and all Communications between Fraser and any person or entity other than CN relating to the Effective Rates applicable to transportation that originates from or terminates at the Madawaska Mill, including without limitation any such transportation provided by or on behalf of CN (as origin, destination and/or intermediate

carrier) with respect to rail traffic destined to or originating from the Madawaska Mill but excluding waybills and bills of lading.

5. Any and all Communications between and among any employees, directors, officers, representatives, or other agents of Fraser (including without limitation any analyses, studies, reports or other documents prepared by such persons) relating to the March 2001 Transaction, the proposed abandonment of the Waterloo freight easement and proposed discontinuance of the CN trackage rights on the railroad line between Madawaska and Van Buren, the proposed acquisition of substantially all of the BAR System by MM&A, the viability of the BAR or the BAR System, and the consequences of financial distress, bankruptcy, dissolution or other events that might affect service provided by BAR to, from or at the Madawaska Mill.

6. Any and all Communications between Fraser and any person or entity other than CN relating to the March 2001 Transaction, the proposed abandonment of the Waterloo freight easement and proposed discontinuance of the CN trackage rights on the railroad line between Madawaska and Van Buren, the proposed acquisition of substantially all of the BAR System by MM&A, the viability of the BAR or the BAR System, and the consequences of financial distress, bankruptcy, dissolution or other events that might affect service provided by BAR to, from or at the Madawaska Mill.

7. Any agreements, contracts, leases, or other documents (including additions and modifications thereto) entered into by CN and Fraser or effective between CN and Fraser relating to transportation that originates from or terminates at the Madawaska Mill (including without limitation the Effective Rates applicable to such transportation) but excluding waybills and bills of lading.

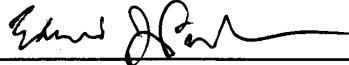
8. Any and all Communications between and among any employees, directors, officers, representatives or other agents of Fraser (including without limitation any analyses, studies, reports or other documents prepared by such persons), or between Fraser and any person or entity, relating to the availability or unavailability of alternate geographic sources of Inbound Material (and any corresponding changes in the Effective Rates, origins, modes, carriers and routings that would be applicable to the transportation of such alternate sources) during the period from January 1, 1998 through the present.

9. Any and all Communications between and among any employees, directors, officers, representatives or other agents of Fraser (including without limitation any analyses, studies, reports or other documents prepared by such persons), or between Fraser and any person or entity, relating to Fraser's ability or inability to switch, change or modify any aspect of transportation to or from the Madawaska Mill from rail to non-rail transportation during the period from January 1, 1998 through the present, including without limitation the switch from all-rail to all-truck transportation of wood pulp from Thurso to the Madawaska Mill and the switch from CN-BAR transportation to CN-truck transportation of wood pulp from St. George, British Columbia to the Madawaska Mill..

10. Any and all Communications between and among any employees, directors, officers, representatives or other agents of Fraser (including without limitation any analyses, studies, reports or other documents prepared by such persons), or between Fraser and any person or entity, relating to the cost and feasibility of constructing, expanding or rehabilitating loading docks and other improvements and facilities used in connection with truck transportation to, from or at the Madawaska Mill.

Respectfully submitted

By:



Charles H. White, Jr.
Attorney at Law
1200 Britania Lane
Annapolis, MD 21403
(410) 268-8575

Charles L. Eisen
Kevin M. Sheys
Edward J. Fishman
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, N.W.
2nd Floor
Washington, DC 20036
(202) 778-9000

**ATTORNEYS FOR TRUSTEE OF BANGOR &
AROOSTOOK RAILROAD COMPANY, ET.
AL.**

Dated: November 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2002, a copy of the foregoing
**Trustee of Bangor and Aroostook Railroad Company's First Request for
Production of Documents from Fraser Papers Inc. was served by Federal Express**
upon:

Cynthia A. Bergmann
Sean Finn
Canadian National/Illinois Central
455 North Cityfront Plaza Drive
Chicago, IL 60601-5317

John P. Borgwardt
Austin S. Durant
Fraser Papers, Inc.
70 Seaview Avenue
Stamford, CT 06902

William A. Mullins
David C. Reeves
Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004-2134

William C. Sippel
Thomas J. Litwiler
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Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, IL 60601-6721

Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401



Edward J. Fishman

EXHIBIT B

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

**TRUSTEE OF BANGOR AND AROOSTOOK RAILROAD COMPANY'S FIRST SET
OF WRITTEN INTERROGATORIES TO FRASER PAPERS INC.**

Pursuant to 49 C.F.R. § 1114.26, James E. Howard, Trustee of the Bangor and Aroostook Railroad Company, Debtor ("Trustee"),¹ by his undersigned attorneys, hereby requests that Fraser Papers Inc., by its duly authorized officers and agents, serve upon counsel for Trustee, within fifteen (15) days after service of this request, sworn answers to Trustee's First Set of Interrogatories set forth below.

I. DEFINITIONS

A. "BAR" means the Bangor & Aroostook Railroad Company and, unless indicated to the contrary, its directors, officers, trustees, employees, representatives,

¹ The Trustee is acting in the capacity of Trustee for the Bangor and Aroostook Railroad Company ("BAR"), Van Buren Bridge Company ("VBBC"), Canadian American Railroad Company ("CDAC"), Northern Vermont Railway Company ("NVT") and Newport & Richford Railroad Company ("NRR").

agents, affiliates, subsidiaries, parents, predecessors, successors, counsel and all other persons or entities acting or purporting to act on its behalf.

B. "BAR System" means the BAR, Canadian American Railroad Company ("CDAC"), Van Buren Bridge Company ("VBBC"), Northern Vermont Railway Company ("NVT"), Newport & Richford Railroad Company ("NRR") and the Quebec Southern Railway ("QSR") and their parent companies, subsidiaries, and affiliates, including without limitation BAR parent company Iron Road Railways, Inc. ("Iron Road"), and, unless indicated to the contrary, their directors, officers, trustees, employees, representatives, agents, affiliates, subsidiaries, parents, predecessors, successors, counsel and all other persons or entities acting or purporting to act on their behalf.

C. "CN" means the Canadian National Railway Company and its parent company, subsidiaries, and affiliates, including without limitation the Waterloo Railway Company ("Waterloo") and, unless indicated to the contrary, CN's directors, officers, trustees, employees, representatives, agents, affiliates, subsidiaries, parents, predecessors, successors, counsel and all other persons or entities acting or purporting to act on its behalf.

D. The term "describe" means to explain and report a full account of all aspects of the event, transaction, or subject matter.

E. "Effective Rate" means any and all charges, rates, prices, fees, costs and expenses inclusive of rebates, reclaims, credits, discounts or other adjustments applicable to the transportation of a particular quantity of Outbound Product or Inbound Material.

F. "Fraser" or "you" or "your" means Fraser Papers Inc. and its parent company, subsidiaries, and affiliates, including without limitation its parent company Nexfor and, unless indicated to the contrary, Fraser's directors, officers, trustees, employees, representatives, agents, affiliates, subsidiaries, parents, predecessors, successors, counsel and all other persons or entities acting or purporting to act on its behalf.

G. "Madawaska Mill" means the Fraser paper mill in Madawaska, Maine.

H. "Outbound Product" means any and all post-production products or materials that are generated by the operation of the Madawaska Mill and then transported from the Madawaska Mill, including without limitation printing paper and groundwood paper.

I. The term "person or entity" means any natural person or legal entity, including without limitation any corporation, partnership, limited liability company, union, proprietorship, trust, association, incorporated or unincorporated organization and any group of persons or entities.

J. "Inbound Material" means each type of physical substance, raw material or other input (solid, liquid or gaseous), including without limitation starch, wood pulp, clay, sand/silica, alum and talc, which is or has been transported to the Madawaska Mill and used in the creation of Outbound Products.

K. The term "transportation" or "transported" or any other form thereof means the movement, transfer, exchange or delivery of property of any kind by rail, truck or any other mode or combination of modes between two or more locations in either direction,

and includes without limitation (i) any such movement, transfer, exchange or delivery to or from intermediate storage facilities, warehousing facilities, transload facilities, interchange points or other intermediate points between origin and destination, and (ii) any services related to such movement, transfer, exchange or delivery (including receipt, delivery, elevation, transfer in transit, storage, handling and interchange of property or equipment).

II. INSTRUCTIONS

A. These Interrogatories are served upon Fraser pursuant to 49 C.F.R. § 1114.26. You are required to answer the following Interrogatories separately and fully in writing under oath pursuant to 49 C.F.R. § 1114.26.

B. If any information specified by an Interrogatory below is not available in the full detail requested, such Interrogatory shall be deemed to require information that is responsive to the Interrogatory in such detail as is available.

C. If Fraser refuses to answer any Interrogatory or part of an Interrogatory on the basis of some type of privilege with respect to the information requested, or if Fraser refuses to produce a document or any part of a document on the basis of some type of privilege with respect to the document, Fraser must state the following with respect to such information or document:

1. The Interrogatory or part of an Interrogatory to which such information responds;
2. The identity of each document that may encompass or be included within the information that Fraser refuses to provide;

3. The reason for refusing to answer the Interrogatory or part of an Interrogatory; and
4. A statement of facts constituting the basis for any claim of privilege or other ground for nondisclosure with respect to such information.

D. These Interrogatories are of an ongoing nature and should Fraser obtain, acquire or otherwise come to have any additional or further information or document responsive to these Interrogatories, the answers hereto shall be updated to provide that information in accordance with 49 C.F.R. § 1114.29.

E. Use of the singular shall be deemed to include the plural and use of the masculine shall be deemed to include the feminine, as appropriate, and vice versa.

F. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make any Interrogatory inclusive rather than exclusive.

G. The past tense includes the present tense where the clear meaning is not distorted by the change of tenses.

H. Unless otherwise stated, your responses should cover the period from January 1, 1999 to the present.

III. INTERROGATORIES

1. Describe each type of Inbound Material that is not or has not been transported to the Madawaska Mill exclusively by rail. Your description should include, without limitation, the STCC codes applicable to such Inbound Material.
2. Describe the Effective Rates applicable to the transportation to the Madawaska Mill of each type of Inbound Material (including without limitation those Inbound Materials that are transported exclusively by rail but excluding (i) any

transportation of Inbound Material exclusively over BAR or the BAR System, (ii) any transportation of Inbound Material exclusively over CN, and (iii) any transportation of Inbound Material exclusively over BAR and CN or the BAR System and CN) during each of calendar years 1999, 2000, and 2001, and during the period from January 1, 2002 through the present. If the Effective Rates changed during any applicable period, describe the changes and when they occurred. Your response should include without limitation the following information for each time period:

(i) the Effective Rates applicable to each type of Inbound Material by origin(s), mode(s), carrier(s), routing(s) and volume transported (in tons, carloads, truckloads or other relevant measure);

(ii) the different components of such Effective Rates, including without limitation the standard rate or charge applicable to each shipment of Inbound Material, the nature and amount or percentage of any volume or other credits, discounts, rebates or reclaims, and any other adjustments that affected such Effective Rates; and

(iii) the nature and amount or percentage of any division of such Effective Rates among or between different carriers if more than one carrier was involved in the transportation to the Madawaska Mill of such Inbound Material.

3. Describe each type of Outbound Product that is not or has not been transported from the Madawaska Mill exclusively by rail. Your description should include, without limitation, the STCC codes applicable to such Outbound Product.

4. Describe the Effective Rates applicable to the transportation from the Madawaska Mill of each type of Outbound Product (including without limitation those Outbound Products that are transported exclusively by rail but excluding (i) any

transportation of Outbound Product exclusively over BAR or the BAR System, (ii) any transportation of Outbound Product exclusively over CN, and (iii) any transportation of Outbound Product exclusively over BAR and CN or the BAR System and CN) during each of calendar years 1999, 2000, and 2001, and during the period from January 1, 2002 through the present. If the Effective Rates changed during any applicable period, describe the changes and when they occurred. Your response should include without limitation the following information for this period:

(i) the Effective Rates applicable to each type of Outbound Product by destination, mode(s), carrier(s), routing(s) and volume transported (in tons, carloads, truckloads or other relevant measure);

(ii) the different components of such Effective Rates, including without limitation the standard rate or charge applicable to each shipment of Outbound Product, the nature and amount or percentage of any volume or other credits, discounts, rebates or reclaims, and any other adjustments that affected such Effective Rates; and

(iii) the nature and amount or percentage of any division of such Effective Rates among or between different carriers if more than one carrier was involved in the transportation from the Madawaska Mill of such Outbound Product.

5. For each type of Inbound Material transported to the Madawaska Mill and for each type of Outbound Product transported from the Madawaska Mill (but excluding (i) any such transportation exclusively over BAR or the BAR System, (ii) any such transportation exclusively over CN, and (iii) any such transportation exclusively over BAR and CN or the BAR System and CN), describe: (1) the average transit times applicable to such transportation (by applicable origin, mode, routing and destination);

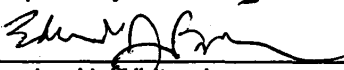
and (2) the person or entity that supplies the railcars, trucks or other equipment used in such transportation, the person or entity that is responsible for car hire, rental or other charges relating to the use of such equipment and the nature and amount or percentage of such car hire, rental or other charges (by applicable origin, mode, routing and destination) unless and to the extent such equipment is supplied by CN, BAR or the BAR System (in which case no response as to such equipment arrangements is required). If the average transit times or equipment arrangements changed during any applicable period, describe the changes and when they occurred.

6. Describe the truck fleet that is owned, leased or otherwise controlled by Fraser and used in transportation to, from or at the Madawaska Mill. Your response should include without limitation the following information: (i) the number, size and loading capacity of trucks owned by Fraser, (ii) the number, size and loading capacity of trucks leased by Fraser, and (iii) the number, size and loading capacity of trucks otherwise controlled by Fraser (including any such trucks that carry the Fraser logo even if not owned or leased by Fraser).

7. Describe the extent to which Fraser reviews, approves, rejects or otherwise influences (or has the ability to review, approve, reject or otherwise influence) the Effective Rates or routings applicable to the transportation of starch from Iowa to the Madawaska Mill.

Respectfully submitted,

By:



Charles H. White, Jr.
Attorney at Law
1200 Britania Lane
Annapolis, MD 21403
(410) 268-8575

Charles L. Eisen
Kevin M. Sheys
Edward J. Fishman
Kirkpatrick & Lockhart LLP
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2nd Floor
Washington, DC 20036
(202) 778-9000

**ATTORNEYS FOR TRUSTEE OF BANGOR &
AROOSTOOK RAILROAD COMPANY, ET.
AL.**

Dated: November 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2002, a copy of the foregoing

Trustee of Bangor and Aroostook Railroad Company's First Set of Written

Interrogatories to Fraser Papers Inc. was served by Federal Express upon:

Cynthia A. Bergmann
Sean Finn
Canadian National/Illinois Central
455 North Cityfront Plaza Drive
Chicago, IL 60601-5317

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, IL 60601-6721

John P. Borgwardt
Austin S. Durant
Fraser Papers, Inc.
70 Seaview Avenue
Stamford, CT 06902

Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

William A. Mullins
David C. Reeves
Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004-2134



Edward J. Fishman

EXHIBIT C

John P. Borgwardt
General Counsel



ENTERED
Office of the Secretary

MAY 17 2002

Part of
Public Record



May 15, 2002

VIA UNITED PARCEL SERVICE

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

205410 Re: Finance Docket No. 34014
Canadian National Railway Company—Trackage Rights Exemption—
Bangor and Aroostook Railroad Company and Van Buren Bridge
Company

205409 Finance Docket 34015
Waterloo Railway Company—Acquisition Exemption—Bangor and
Aroostook Railroad Company and Van Buren Bridge Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are an original and ten copies of the Petition of Fraser Papers Inc. for Leave to Intervene and Verified Statement of Austin S. Durant, both dated May 15, 2002.

One extra copy of the Petition and Verified Statement 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 in the matter.

Respectfully submitted,

John P. Borgwardt
General Counsel, Fraser Papers Inc.

cc. Parties on Certificate of Service

Fraser Papers Inc.
70 Seaview Avenue
P.O. Box 10055
Stamford, CT
USA 06904

Tel 203 705-2366
Fax 203 705-2362
www.nexfor.com

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34014

CANADIAN NATIONAL RAILWAY COMPANY
– TRACKAGE RIGHTS EXEMPTION –
BANGOR AND AROOSTOOK RAILROAD COMPANY
AND VAN BUREN BRIDGE COMPANY

FINANCE DOCKET NO. 34015

WATERLOO RAILWAY COMPANY
– ACQUISITION EXEMPTION –
BANGOR AND AROOSTOOK RAILROAD COMPANY
AND VAN BUREN BRIDGE COMPANY

PETITION OF FRASER PAPERS INC. FOR LEAVE TO INTERVENE

John P. Borgwardt
Fraser Papers Inc.
70 Seaview Avenue
Stamford, Connecticut 06902
(203) 705-2366

ATTORNEY FOR FRASER PAPERS INC.

Dated: May 15, 2002



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34014

CANADIAN NATIONAL RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BANGOR AND AROOSTOOK RAILROAD COMPANY
AND VAN BUREN BRIDGE COMPANY

FINANCE DOCKET NO. 34015

WATERLOO RAILWAY COMPANY
-- ACQUISITION EXEMPTION --
BANGOR AND AROOSTOOK RAILROAD COMPANY
AND VAN BUREN BRIDGE COMPANY

PETITION OF FRASER PAPERS INC. FOR LEAVE TO INTERVENE

Pursuant to 49 C.F.R. § 1112.4, Fraser Papers Inc. ("Fraser"), by its counsel, hereby petitions the Board for leave to intervene and to become a party in this proceeding. Specifically, Fraser seeks leave to submit the attached Verified Statement of Austin S. Durant, Vice President Materials Management for Fraser in response to the Petition to Reopen and Revoke Exemptions, dated April 24, 2002 filed by the Trustee of the Bangor and Aroostook Railroad Company ("BAR").

The relief sought by the Trustee directly affects Fraser. The exemptions which the Trustee seeks to revoke relate to trackage rights and easement rights held by Canadian National Railway Company ("CN") over a line of the BAR for the sole purpose of serving Fraser's paper mill at Madawaska, Maine. Accordingly, Fraser has an inherent interest in the

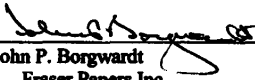
exemptions at issue. As discussed in Mr. Durant's verified statement, Fraser strongly opposes the relief sought by the Trustee.

Fraser's intervention in this proceeding and the Board's acceptance of the attached verified statement will not unduly broaden the issues already presented by the Trustee's petition nor unduly delay this proceeding.

Notwithstanding Fraser's substantial interest in the issues raised by the Trustee's petition, the Trustee did not serve a copy of his petition on Fraser. Fraser has endeavored to file this Petition for Leave to Intervene with the Board as soon as it could.

WHEREFORE, Fraser Papers, Inc. respectfully requests that the Board grant Fraser's Petition for Leave to Intervene and accept the attached Verified Statement of Austin S. Durant into the record.

Respectfully submitted,



John P. Borgwardt
Fraser Papers Inc.
70 Seaview Avenue
Stamford, Connecticut 06902
(203) 705-

ATTORNEY FOR FRASER PAPERS INC.

Dated: May15, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34014

CANADIAN NATIONAL RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BANGOR AND AROOSTOOK RAILROAD COMPANY
AND VAN BUREN BRIDGE COMPANY

FINANCE DOCKET NO. 34015

WATERLOO RAILWAY COMPANY
-- ACQUISITION EXEMPTION --
BANGOR AND AROOSTOOK RAILROAD COMPANY
AND VAN BUREN BRIDGE COMPANY

VERIFIED STATEMENT
OF
AUSTIN S. DURANT

My name is Austin S. Durant. I am Vice President Materials Management for Fraser Papers Inc. ("Fraser"). I am responsible for corporate purchasing, information systems and transportation for all of Fraser's facilities. I have served in my present position since 1998. I have been involved in the purchasing of transportation services for Fraser throughout my entire 15-year career with the company.

It is Fraser's understanding that the bankruptcy trustee for the Bangor and Aroostook Railroad ("BAR") has filed a petition with the STB which could affect the ability of the Canadian National Railway ("CN") to serve Fraser's paper mill at Madawaska, Maine. Although the Trustee did not serve a copy of his petition on Fraser, it is our understanding that

the Trustee seeks to have the Board revoke rights held by CN to operate over BAR's line to our Madawaska mill.

Fraser strongly opposes the Trustee's petition. Revocation of CN's rights would have a substantial adverse effect on Fraser, essentially removing a critical measure of transportation security for our Madawaska mill and an important competitive option for Fraser.

Fraser is a large producer of specialized paper products in North America with pulp and/or paper manufacturing facilities in two states and two Canadian provinces. One of Fraser's largest facilities is a paper mill at Madawaska, Maine in the far northeast corner of Maine. The Madawaska mill produces approximately 1200 tons per day of lightweight fine, specialty grade and coated and uncoated groundwood papers. The mill is located on a line of the BAR at the extreme northern end of the BAR system. The mill is approximately 25 rail miles from the CN's main line at St. Leonard, New Brunswick. Until last year when CN acquired the right to directly serve the Madawaska mill, only BAR could serve the mill.

Consistent and reliable rail service to the Madawaska mill is extremely important to Fraser. The mill is highly dependent on rail service both for inbound supplies, such as clay from Georgia and specialty chemicals from the Midwest, and for outbound transportation of paper products through the United States. The mill has limited ability to store raw materials and outbound product on-site. The mill receives supplies and ships product by truck, but logistics, physical constraints and economics, prevent Fraser from sole reliance on truck transportation. Without consistent and reliable rail service, the mill could not operate for long.

The impact would not be limited to the Madawaska mill. Fraser operates a sister mill at Edmundston, New Brunswick across the St. John's River from the Madawaska mill. The Edmundston mill manufactures woodpulp and related products exclusively for the Madawaska

mill. The two mills are thus highly interdependent. Although the Edmundston mill is located on CN's main line, if the Madawaska mill were to shut down, the Edmundston mill would have to shut down as well. More than 1600 employees and \$8.5 million in Fraser revenue per week would be affected.

When it became apparent to Fraser in late 1999 that BAR was having serious financial difficulties, we became extremely concerned. We did what we could to support and assist BAR, such as immediate payment of their invoices to assist cash flow. We also contacted CN, the nearest other railroad, to determine what could be done to assure continued rail service to the mill. In early 2001, CN advised us that CN had reached an agreement with Iron Road, the parent of BAR, that would allow direct CN routing on traffic to and from the Madawaska mill. I subsequently learned that in exchange for a substantial cash payment from CN, BAR had agreed to a haul CN cars, and CN had acquired trackage rights and an easement over BAR's line, to our Madawaska mill. It is those rights that I understand the Trustee now seeks to have revoked.

Continuation of CN's rights to the Madawaska mill is extremely important to Fraser. CN's ability to directly serve the mill alleviates Fraser's concerns over any potential loss of rail service to the plant and eliminates the possibility of – and the inherent delay in – having to seek emergency authority from the STB for CN to serve the plant should a BAR service failure occur. CN's rights also serve to protect Fraser's access over the long term to CN's long-haul routes and service. This is especially important in the event of a sale of the BAR to a competitor of CN or to a third party who might take action to economically close the St. Leonard gateway with CN in an effort to force the traffic to move via non-CN routes.

Continuation of CN's rights also benefits Fraser from the competition that such rights provide. With Fraser having access to two railroads, and access to both CN and non-CN

routes, each railroad has a strong incentive to provide us with competitive rates and service on our traffic. Much like a shipper with a build-out option, even without direct service from CN to the mill, the availability of that service alone provides Fraser with competitive leverage.

Revoking CN's rights, as the BAR has apparently requested, would send Fraser back to where we were in 2000, wholly dependent on one railroad and vulnerable to potential service deficiencies or even complete loss of service. Moreover, in the event of a sale of BAR, Fraser would have no assurance that the buyer would not take action to foreclose or inhibit Fraser's access to CN.

What we want is what we have – access to two railroads and the security and competitive benefits that that provides. It would truly represent an astonishing and chilling change of course in the area of competitive access for shippers if the Board were to undo competitive access that had been achieved by private agreement by allowing a railroad to oust its competitor in an effort to increase the sale price of its property.

I urge the Board to deny the BAR's petition.

VERIFICATION

I, Austin S. Durant, verify under penalty of perjury under the laws of the United States that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on May15, 2002.


Austin S. Durant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Petition of
Fraser Papers Inc. For Leave to Intervene and the attached **Verified Statement of Austin S.**

Durant upon the following persons by overnight delivery:

Charles H. White, Jr.
Attorney at Law
1200 Britania Lane
Annapolis, MD 21403

Kevin M. Sheys
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, N.W.
Second Floor
Washington, DC 20036

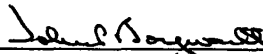
and upon the following persons by first -class mail, postage prepaid:

Cynthia A. Bergmann
Canadian National/Illinois Central
455 North Cityfront Plaza Drive
Chicago, Illinois 60601-5317

William C. Sippel
Fletcher & Sippel LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721

Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401

Dated at Stamford, Connecticut this 15th day of May, 2002.



John P. Borgardt

EXHIBIT D

John P. Borgwardt
General Counsel



ENTERED
Office of the Secretary

JUN 13 2002

Part of
Public Record

205608

June 12, 2002



VIA UPS

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

Re: Finance Docket No. 34014 - 205608
Canadian National Railway Company - Trackage Rights
Exemption - Bangor and Aroostook Railroad Company
and Van Buren Bridge Company

Finance Docket No. 34015 - 205610
Waterloo Railway Company - Acquisition Exemption - Bangor and
Aroostook Railroad Company and Van Buren Bridge Company

Dear Secretary Williams:

By Petition dated May 15, 2002, Fraser Papers Inc. ("Fraser") requested leave to intervene in these proceedings in opposition to the Petition to Reopen and Revoke Exemptions filed by the Trustee of the Bangor and Aroostook Railroad Company ("BAR"). As discussed in the Verified Statement of Austin Durant, Fraser's Vice President Materials Management, filed with the Petition to Intervene, the relief sought by the Trustee directly affects Fraser and, if granted, would remove a critical measure of transportation security and an important competitive option for Fraser at Fraser's paper mill in Madawaska, Maine.

At the time Fraser filed its Petition to Intervene, we were unaware of a filing made the day before by Bank Austria Creditanstalt Corporate Finance, Inc. and Bank Austria Creditanstalt SBIC, Inc. (collectively "Bank Austria"), BAR's principal secured creditor, in support of the Trustee's petition. Bank Austria's unverified filing purports to represent what Fraser's transportation needs are and what effect revocation of CN's rights would have on Fraser's interests. Bank Austria did not serve a copy of its filing on Fraser, and provides no discernible basis to speak on our behalf. Fraser respectfully requests that the Board accept this brief response to the Bank Austria filing solely as it pertains to Fraser.

We strongly disagree with Bank Austria's assertions that revocation would not affect Fraser's competitive options, and that Fraser does not need CN to serve it via trackage rights.

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General Counsel



The Haulage Agreement between BAR and CN standing alone, does not and cannot provide the security or competitive options that Fraser currently has. The Haulage Agreement is fundamentally based on BAR hauling the cars for CN. BAR provides the actual service between Madawaska and the interchange with CN at St. Leonard, New Brunswick. Without the option to turn to CN for direct service, Fraser would be back where it was in 2000, wholly dependent on BAR for service and vulnerable to potential service deficiencies or even complete loss of service.

Moreover, Fraser can hardly rely on the continued existence of the Haulage Agreement. BAR has made it clear that it does not want to continue the haulage arrangement with CN. The Trustee has moved to reject it. CN's rights are also needed to protect Fraser's access over the long term to CN's long-haul routes and service. Without such rights, Fraser has no assurance that in the event of a sale of the BAR, the buyer would not take action to foreclose or inhibit Fraser's access to CN. Fraser currently has two rail options available to it at its Madawaska mill. Eliminating one by definition makes Fraser a 2-1 shipper. Public policy with respect to competitive access for shippers cannot possibly support such a result.

Contrary to Bank Austria's assertions, eliminating CN's rights would harm the public interest. The benefits to Fraser from these rights are real and substantial. As discussed by Mr. Austin, Fraser benefits from the existence of these rights even where CN does not operate its own trains, so long as CN has the right to do so. The Trustee's petition to revoke the exemptions should be denied.

Ten copies of this letter are enclosed with the original for filing with the Board.

I certify that a copy of this letter has been served on all parties of record, including counsel for Bank Austria, by first-class mail, postage prepaid.

Respectfully submitted,


John P. Borgwardt
General Counsel, Fraser Papers Inc.

JPB
Enclosures
cc: Parties of Record

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the forgoing letter upon the following persons by first-class mail postage prepaid:

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Dated at Portland, Oregon this 12th day of June, 2002.


John P. Borgwardt

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2002, a copy of the foregoing
**Trustee Of Bangor And Aroostook Railroad Company's Motion To Compel Or, In
The Alternative, For Subpoena Duces Tecum To Fraser Papers Inc.** was served by
facsimile and regular mail upon:

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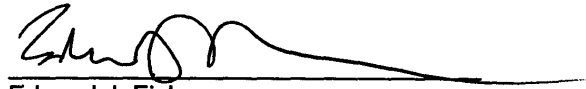
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