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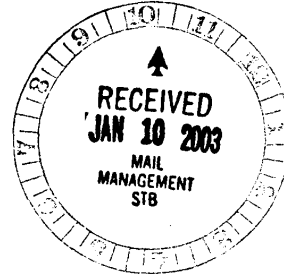
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January 9, 2003

**Via Federal Express**

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



ENTERED  
Office of Proceedings

JAN 10 2003

Part of  
Public Record

Re: Docket No. AB-279 (Sub No. 3) *207023*  
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) *207024*  
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 Canadian National and Waterloo Railway Companies' Response to the Trustee of Bangor and Aroostook Railroad Company's Motion to File a Reply to the Reply of Canadian National Railway Company.

Kindly file stamp the enclosed duplicate of this letter and return the same to me in the self-addressed stamped envelope that I have provided for this purpose.

Thank you for your assistance in this matter.

Respectfully submitted,

*Myles L. Tobin*  
Myles L. Tobin  
Attorney for Canadian National  
and Waterloo Railway Companies

MLT/kib  
Enclosures

cc: Parties on Certificate of Service  
Mr. Joseph H. Dettmar

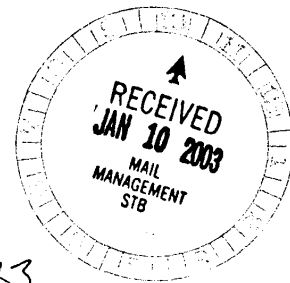
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-279 (Sub-No. 3)



207023

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)

207024

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

RESPONSE OF  
CANADIAN NATIONAL RAILWAY COMPANY AND  
WATERLOO RAILWAY COMPANY TO TRUSTEE OF BANGOR  
AND AROOSTOOK RAILROAD COMPANY  
MOTION TO FILE A REPLY TO A REPLY

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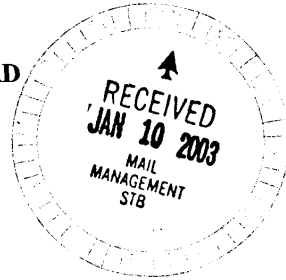
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**ATTORNEYS FOR  
CANADIAN NATIONAL RAILWAY  
COMPANY AND WATERLOO  
RAILWAY COMPANY**

Dated: January 9, 2003

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**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**

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**RESPONSE OF  
CANADIAN NATIONAL RAILWAY COMPANY AND  
WATERLOO RAILWAY COMPANY TO TRUSTEE OF BANGOR  
AND AROOSTOOK RAILROAD COMPANY  
MOTION TO FILE A REPLY TO A REPLY**

**I. ARGUMENT**

Canadian National Railway Company and Waterloo Railway Company (hereinafter collectively "CN"), by its undersigned attorneys, hereby file this Response in Opposition to the Motion of the Trustee of Bangor and Aroostook Railroad Company ("Trustee" or "BAR") to File a Reply to CN's Reply.

It is well established that a Reply to a Reply is not favored by the Board, and the Trustee has presented no basis for the Board to depart from that policy here.

CN has shown that the Board and its predecessor, the ICC, have strongly disfavored use of discovery in abandonment cases, including adverse abandonment cases. *Salt Lake City Corp. – Adverse Abandonment – In Salt Lake City, UT*, STB Docket No. AB-33(Sub-No. 183) (STB served January 11, 2002), See also *Kansas City So. Ry. Co. – Adverse Discontinuance Application – A Line of Arkansas and Missouri R. Co.*, STB Docket No. AB-103(Sub-No. 14) (STB served January 19, 1999). BAR has cited nothing to cause the Board to diverge from this long-standing policy here. The only case which BAR even attempts to cite is the *Chelsea Property Owners* case which bears no relationship whatsoever to the facts in the matter at hand. In *Chelsea Property Owners*, applicants were real estate developers and municipal agencies which had not previously operated the line proposed for abandonment and, therefore, legitimately needed some discovery in connection therewith. Here, on the other hand, BAR is the operating carrier on the subject line, and it continues to serve the Fraser plant today. *Chelsea Property Owners* provides no support for the use of discovery in this proceeding.<sup>1</sup>

BAR has failed to show that it cannot present its arguments without additional discovery from CN. BAR has the information to prepare its application. BAR has handled CN traffic to and from Fraser in conjunction with CN under a divisions arrangement through March of 2001, and continues to handle CN traffic to and from Fraser today under a haulage arrangement. Furthermore, BAR competes with CN for Fraser's traffic via a BAR routing in conjunction with the Canadian American Railroad Company. BAR would have the Board believe that it has no idea of

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<sup>1</sup> Indeed, as the Board is aware, *Chelsea Property Owners* is a highly unusual case in which the parties have battled before the ICC and STB for the past fourteen years. Moreover, the particular decision cited by BAR (served November 16, 1989), involved a circumstance where Conrail had refused to even respond to discovery, and the ICC merely ordered that it respond. CN, on the other hand, has not only responded to discovery, but has provided information pursuant to the discovery requests.

Fraser's transportation options, but, in fact, BAR participates in and competes against those transportation options now.

BAR focuses much of its attention on the purported need to discover rate and service terms associated with CN's transportation agreements with Fraser. The fact is, however, that BAR does not need this information from CN, since BAR participated in the CN joint line rate arrangements for Fraser traffic through March of 2001, and continues to compete against CN today for Fraser traffic. More importantly, the rate and service term information is not relevant or necessary for BAR's adverse discontinuance application. The public interest analysis here does not encompass rates which CN is charging Fraser for its traffic. Fraser and CN have negotiated arms-length rates for transportation movements to and from the Madawaska Mill, and BAR may not presume to substitute its judgment (or ask the Board to substitute its judgment) for Fraser as to the rates Fraser is willing to pay. Rather, the real public interest issue here must focus on whether Fraser will be denied the opportunity to negotiate rates with CN in competition with the rates offered by BAR.

Finally, BAR summarily dismisses CN's arguments regarding the incredibly burdensome nature of these discovery requests. Perhaps that is because BAR is not the entity which will have to expend the hundreds of employee-hours necessary to compile the information. CN will not belabor this point in its Response. The Board need only review the breadth of the discovery requests, which seek documents from the four corners of the CN on an extensive array of communications, both oral and written, as well as information on every carload of traffic, inbound or outbound, and on every commodity moving to every origin and/or destination involving Fraser's Madawaska Mill for the past four years. Notwithstanding BAR's assertions to the contrary, compiling this unnecessary information will entail substantial effort. Such burdensome discovery is not appropriate in an abandonment proceeding, and should not be sanctioned here.

## II. CONCLUSION

Consistent with the foregoing, the Trustee's Motion for Leave to File a Reply to a Reply should be denied. If BAR believes that Fraser would not be harmed by making Fraser captive to the BAR system, then BAR is free to make that argument in its application. Consistent with Board precedent, this argument does not necessitate or justify additional discovery from CN.

Respectfully submitted,

By: Myles L. Tobin

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

Dated: January 9, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of January, 2003, a copy of the foregoing **Response of Canadian National Railway Company and Waterloo Railway Company to Trustee of Bangor and Aroostook Railroad Company's Motion to File a Reply to a Reply**, was served by telefax and first class mail postage prepaid, to:

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Edward J. Fishman  
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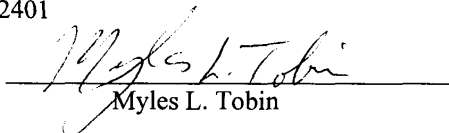
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And by first class mail postage prepaid to:

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