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November 6, 2003

BY HAND

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

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Re: Docket No. AB-279 (Sub-No. 3) - 209340
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) - 209341
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 have enclosed for filing in the above-captioned docket an original and ten copies of Montreal, Maine & Atlantic Railway's Reply to the Canadian National Railway Company's Motion to Compel.

I have also enclosed one extra copy of the filing. I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosures

cc: Parties of Record

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

**MONTREAL, MAINE & ATLANTIC RAILWAY'S REPLY TO THE
CANADIAN NATIONAL RAILWAY COMPANY'S MOTION TO COMPEL**

The Board should deny the motion to compel filed by Canadian National Railway Company ("CN") against Montreal, Maine & Atlantic Railway Ltd. ("MMA"). CN has already obtained extensive discovery from MMA. It now seeks to compel responses to three sweeping discovery requests to which MMA asserted objections.

CN's motion should be denied because it seeks discovery that would be "unduly burdensome in relation to the likely value of the information sought." *Canadian Nat'l Ry. – Adverse Discontinuance – Lines of Bangor & Aroostook R.R. & Van Buren Bridge Co. in Aroostook County, ME*, Docket No. AB-279 (Sub-No. 3), STB served May 6, 2003 ("CN Discovery Order") at 3. Most of the information CN seeks would be irrelevant to the issues in

these proceedings, and any small part that might be relevant would be merely cumulative and unduly burdensome to produce.

Document Request Nos. 7 & 8

In Document Request Nos. 7 and 8, CN seeks an overly broad range of communications between MMA and the Trustee of Bangor & Aroostook Railroad Company (the “Trustee”), and between MMA and Bangor & Aroostook Railroad Company (“BAR”). Contrary to its assertions, CN has not tailored these requests to focus narrowly on how MMA is affected by CN’s rights to serve Fraser Papers, Inc. (“Fraser”). For example, in one subpart, CN seeks all communications relating to “the proposed acquisition of substantially all of the MM&A System by MM&A.” That one subpart alone encompasses nearly a year-and-a-half worth of communications covering a wide range of topics. It encompasses every letter, e-mail or voicemail, every shared draft of the Asset Purchase Agreement, and all written information conveyed to MMA by BAR or the Trustee. *See* CN Document Requests, Def. E (defining “communication” to include “any document delivered by or for one person to another person through any means”) (Exhibit 1). Almost all of those communications are irrelevant to these proceedings, and CN’s requests that MMA identify, collect, and produce them impose an undue burden on MMA. *See CN Discovery Order* at 3.

Even if it had tailored its requests narrowly, CN would not be entitled to the discovery it seeks because it is cumulative. MMA and the Trustee have already provided extensive information about the effects of CN’s rights to serve Fraser. The Trustee’s Application addresses those effects in detail, and CN has the workpapers supporting the Application. In addition, through discovery, CN has obtained years of BAR and MMA traffic data; it has obtained all contracts between BAR and Fraser and between MMA and Fraser; and it has

obtained all tariffs, rate quotes and other documents affecting BAR's and MMA's rates to Fraser.¹ CN can use these many sources of information to address the effects of its rights on MMA; there is no reason to impose additional discovery burdens on MMA. *Cf. CN Discovery Order* at 4 (“[W]e will not require compliance with document requests . . . which are directed at communications about rates. We are requiring that the rates themselves be provided, and that is sufficient.”).

CN asserts that there is a special relevance to documents created before this litigation, when MMA was evaluating an acquisition of BAR. However, the Board rejected an almost identical argument – that CN's communications were particularly relevant to show the harms to CN of losing its rights to serve Fraser – when the Trustee sought discovery on the same topics from CN. *See CN Discovery Order* at 4 (“The Trustee has not shown that information about CN's communications regarding the 2001 transaction [in which it obtained rights to serve Fraser] would be relevant to our assessment of the public interest in this proceeding.”).

Moreover, MMA has already produced a significant number of documents that were created when it was evaluating an acquisition of BAR. In response to CN's request for “financial documents . . . submitted to investors or financial institutions . . . in connection with MM&A's obtaining financing for acquisition of the BAR System,” MMA produced its business plans, consulting reports, and other documents. *See CN Document Requests*, No. 14 (Exhibit 1). Most of these documents address CN's rights to serve Fraser. The Board should not require

¹ See CN Document Requests, Nos. 4 & 5 (Exhibit 1); CN Interrogatories, Nos. 1-8 (Exhibit 2); Letter from Myles L. Tobin, Esq., to Michael L. Rosenthal, Esq., dated Oct. 22, 2003 (discussing the scope of discovery responses MMA would provide to CN) (Exhibit 3); CN's and the Trustee's Stipulation Regarding Discovery (discussing the scope of discovery responses the Trustee would provide to CN) (Exhibit 4).

MMA to produce additional discovery that would be cumulative at best. *See CN Discovery Order* at 3.

Finally, CN's actions in these proceedings demonstrate the low value it places on the additional discovery it seeks. As CN admits, it propounded similar requests to the Trustee back on August 19, 2003. *See CN Motion* at 5 n.1 However, it was willing to bargain away these requests in order to minimize its own discovery burdens. *See id.* Now, more than two months later, it cannot plausibly claim that responses to those same requests are essential to its case. The Board should recognize CN's requests for what they are – an unduly burdensome and unnecessary fishing expedition – and deny the motion to compel. *See Railroad Ventures, Inc. - Abandonment Exemption--Between Youngstown, OH & Darlington, PA, in Mahoning & Columbiana Counties, OH, & Beaver County, PA*, Docket No. AB-556 (Sub-No. 2X) (STB served Jan. 7, 2000) at 6 (“[W]e will not allow [petitioner] to conduct a fishing expedition in discovery.”).

Document Request No. 10

In Document Request No. 10, CN seeks “[a]ll operating agreements, trackage rights agreements, joint facility agreements, voluntary coordination agreements, most favored nations agreements, marketing agreements, or haulage agreements” entered into by MMA and Canadian Pacific Railway Company (“CP”). These agreements involve highly sensitive commercial information. In the spirit of compromise, MMA earlier agreed to withdraw its burden, vagueness, overbreadth, and relevance objections. However, MMA told CN that confidentiality provisions in the agreements might preclude voluntary production. *See Letter from Michael L. Rosenthal, Esq., to Myles L. Tobin, Esq., dated Oct. 28, 2003 (Exhibit 5).*

MMA then sought to determine whether CP would consent to production. When CP objected, MMA promptly notified CN. *See id.*

In its motion, CN mischaracterizes MMA's position with respect to the agreements at issue. Contrary to CN's assertion (CN Motion at 6), MMA does not agree that the agreements are discoverable. As MMA has previously told CN, Document Request No. 10 appears to be a fishing expedition into a highly sensitive area, and MMA does not regard it as proper discovery. *See* Exhibit 5. MMA was willing to waive its objections, other than confidentiality, in order to avoid a discovery dispute. However, CN has already received extensive evidence about MMA's rates and routings to Fraser, including six months of traffic data and other documents relating to the rates charged to Fraser. *See* pp. 3-4 & n.1, *supra*. In MMA's view, CN's interests in these proceedings do not justify its request for broad discovery into the relationship between MMA and CP.

CONCLUSION

For the foregoing reasons, CN's motion to compel with respect to CN Document Request Nos. 7, 8, and 10 should be denied.

Respectfully submitted,



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*Attorneys For Montreal, Maine & Atlantic
Railway Ltd.*

November 6, 2003

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 6th day of November, 2003, I caused a copy of Montreal, Maine & Atlantic Railway's Reply to the Canadian National Railway Company's Motion to Compel to be served by hand on:

Charles L. Eisen
Kevin M. Sheys
Edward J. Fishman
Kirkpatrick & Lockhart LLP
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Washington, D.C. 20036

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Terence M. Hynes
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Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005

by overnight mail on:

William C. Sippel
Myles L. Tobin
Fletcher & Sippel LLC
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Chicago, Illinois 60606

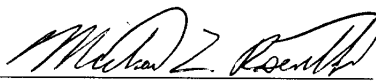
Charles H. White, Jr.
Attorney at Law
1200 Britania Lane
Annapolis, Maryland 21403

and by first-class mail, postage prepaid, on:

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

William A. Mullins
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Washington, D.C. 20037

Marcella Szel
Paul Guthrie
Canadian Pacific Railway Company
401 9th Avenue, S.W.
Gulf Canada Square, Suite 500
Calgary, Alberta T2P 4Z4 Canada



Michael L. Rosenthal

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

CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
FROM MONTREAL, MAINE & ATLANTIC RAILWAY, LLC

Sean Finn
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ATTORNEYS FOR CANADIAN
NATIONAL RAILWAY COMPANY

Dated: September 4, 2003

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

**CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
FROM MONTREAL, MAINE & ATLANTIC RAILWAY, LLC**

Pursuant to 49 C.F.R. § 1114.26, Canadian National Railway Company ("CN"), by its undersigned attorneys, hereby requests that Montreal, Maine & Atlantic Railway, LLC, 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 Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, Illinois 60606-2875.

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. "CP" means the Canadian Pacific Railway Company and its subsidiaries, and affiliates (including, but not limited to, the Delaware & Hudson Railway), and, unless indicated to the contrary, CP'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.

E. "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.

F. 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 of 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.

G. "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 commodities, products, substances or materials.

H. "Fraser" 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.

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

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

K. "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.

L. "MM&A", "you" or "your" means the Montreal, Maine & Atlantic Railway, LLC and its subsidiaries, and affiliates, and, unless indicated to the contrary, MM&A'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.

M. "MM&A system" means those portions of the BAR System and BAR rail properties acquired by the MM&A.

N. "Notice of Intent" means the amended Notice of Intent for discontinuance of trackage rights and abandonment of freight easement filed by the Trustee with the Surface Transportation Board on August 13, 2003 in Docket Nos. AB-279(Sub-No. 3) and AB-124(Sub-No. 2).

O. 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.

P. The terms "relating to" or "relate to" a given subject mean any document or communication that constitutes, contains, embodies, comprises, reflects, identified, 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.

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

R. 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).

S. "Trustee" means James E. Howard, Chapter 11 Trustee of the Bangor & Aroostook Railroad Company, the Trustee's directors, officers, employees, representatives, agents, affiliates, predecessors, successors, counsel and all other persons or entities acting or purporting to act on its behalf.

II. Instructions

A. This request includes all documents in MM&A's possession, custody, or control, and the possession, custody and control of any person or entity acting in MM&A's interest or on MM&A's behalf, including MM&A's 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 binds, 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 claims, 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 Interrogatory 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 MM&A to produce all additional documents responsive to them that may hereafter come into the custody, possession or control of MM&A or any person or entity acting on its behalf.

K. Unless otherwise stated, your responses should cover the period from January 1, 2001 to the present.

REQUESTED DOCUMENTS

1. Any and all Communications between MM&A 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 MM&A (as

documents of general applicability that do not have any direct impact on Effective Rates applicable to transportation of rail traffic destined to or originating from the Madawaska Mill.

6. Any and all Communications between and among any employees, directors, officers, representatives or other agents of MM&A (including without limitation any analyses, studies, reports or other documents prepared by such persons) relating to: (i) the ability or inability of Fraser, MM&A or any other rail transportation service provider to divert any aspect of transportation to or from the Madawaska Mill from non-rail to rail transportation; and (ii) the ability or inability of Fraser, or any non-rail transportation service provider, to divert any aspect of transportation to or from the Madawaska Mill from rail to non-rail transportation.

7. Any and all Communications between MM&A and BAR relating to: (1) the March 2001 Transaction, (2) 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, (3) the proposed acquisition of substantially all of the MM&A System by MM&A, (4) the viability of MM&A or the MM&A System, (5) the effect of the Waterloo freight easement and/or the CN trackage rights on MM&A's financial viability or the service provided by MM&A, and (6) the preparation, development and content of the Notice of Intent and the Adverse Abandonment Application referenced therein.

8. Any and all Communications between the Trustee and MM&A relating to: (1) the March 2001 Transaction, (2) 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, (3) the proposed acquisition of substantially all of the MM&A system by MM&A, (4) the viability of the MM&A or the MM&A system, (5) the effect of the Waterloo freight easement and/or the CN trackage rights on MM&A's financial viability or the service provided by

MM&A, and (6) the preparation, development and content of the Notice of Intent and the Adverse Abandonment Application referenced therein.

9. All documents utilized in support of, preparation of, or relating to the Trustee's Application for Adverse Abandonment of CN's trackage rights and the Waterloo freight easement.

10. All operating agreements, trackage rights agreements, joint facility agreements, voluntary coordination agreements, most favored nations agreements, marketing agreements, or haulage agreements entered into by CP and MM&A or effective between MM&A and CP.

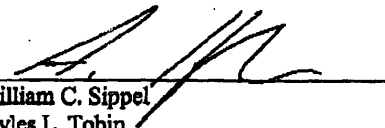
11. All engineering evaluations and analyses of the track, roadbed, bridge structures, grade crossings and rail equipment (cars and locomotives) on the MM&A system.

12. All documents detailing capital expenditures made by the MM&A, including, but not limited to, expenditures for rail, OTM, bridge materials, grade crossing materials, signals (both crossing and track signals) and rail equipment (cars and locomotives).

13. All documents utilized in support of, in preparation of, or relating to the claim in the Notice of Intent, that: "the continued existence of the CN Trackage Rights and the WRC Freight Easement may require abandonment of the line between Madawaska and Portage, ME (the "Madawaska-Portage Line"). In addition, the continued existence of the CN Trackage Rights and the WRC Freight Easement may require abandonment of the line between Brownville Junction and the U.S./Canadian Border, west of Lowellton, ME (the "Brownville Junction-Border Line")."

14. All prospecti and other financial documents, including but not limited to business plans, submitted to investors and/or financial institutions by MM&A in connection with MM&A's obtaining financing for acquisition of the BAR System.

Respectfully submitted,

By: 

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Thomas J. Litwiler
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**ATTORNEYS FOR CANADIAN
NATIONAL RAILWAY COMPANY**

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(312) 755-7613

Dated: September 4, 2003

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

CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST SET OF WRITTEN INTERROGATORIES
TO MONTREAL, MAINE & ATLANTIC RAILWAY, LLC

Sean Finn
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ATTORNEYS FOR CANADIAN
NATIONAL RAILWAY COMPANY

Dated: September 4, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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VAN BUREN BRIDGE COMPANY
IN AROOSTOOK COUNTY, MAINE

**CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST SET OF WRITTEN INTERROGATORIES
TO MONTREAL, MAINE & ATLANTIC RAILWAY, LLC**

Pursuant to 49 C.F.R. § 1114.26, Canadian National Railway Company ("CN"), by its undersigned attorneys, hereby requests that the Montreal, Maine & Atlantic Railway, LLC, by its duly authorized officers and agents, serve upon counsel for CN, within fifteen (15) days after service of this request, sworn answers to CN's First Set of Interrogatories set forth below:

I. DEFINITIONS

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. "CP" means the Canadian Pacific Railway Company and its subsidiaries, and affiliates (including, but not limited to, the Delaware & Hudson Railway), and, unless indicated to the contrary, CP'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. "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.

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

F. "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.

G. "Fraser" means Fraser Papers Inc. and its parent company, subsidiaries, and affiliates, including without limitation is 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. "Inbound Material" means any and all substances, products, materials or commodities transported to a shipper/receiver.

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

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

K. "MM&A", "you" or "your" means the Montreal, Maine & Atlantic Railway, LLC and its subsidiaries, and affiliates, and, unless indicated to the contrary, MM&A'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.

L. "MM&A system" means those portions of the BAR System and BAR rail properties acquired by the MM&A.

M. "Notice of Intent" means the amended Notice of Intent for discontinuance of trackage rights and abandonment of freight easement filed by the Trustee with the Surface Transportation Board on August 13, 2003 in Docket Nos. AB-279 (Sub-No. 3) and AB-124 (Sub-No. 2).

N. "Outbound Product" means any and all substances, products, materials or commodities transported from a shipper/receiver.

O. 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.

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

Q. 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).

R. "Trustee" means James E. Howard, Chapter 11 Trustee of the Bangor & Aroostook Railroad Company, the Trustee's directors, officers, employees, representatives, agents, affiliates, predecessors, successors, counsel and all other persons or entities acting or purporting to act on it's behalf.

II. INSTRUCTIONS

A. These interrogatories are served upon MM&A 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 MM&A 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 MM&A refuses to produce a document or any part of a document on the basis of some type of privilege with respect to the document, MM&A 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 MM&A 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 MM&A 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, 2001 to the present.

I. If you cannot supply exact data in answering any Interrogatory that calls for a numerical response, you should provide your best estimate of the data called for, indicate that you have done so by making the notation ("est.") in your answer, and describe the basis upon which your estimate was derived.

III. INTERROGATORIES

1. Describe each type of Inbound Material which is or has been transported to the Madawaska Mill by MM&A as origin, intermediate, haulage and/or destination carrier. Your description should include, without limitation, the STCC codes applicable to such Inbound Material.

2. For the period from January 1, 2003 through the present, describe the Effective Rates applicable to the transportation to the Madawaska Mill of each type of Inbound Material by MM&A (as origin, destination, haulage and/or intermediate carrier). 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 the transportation of each type of Inbound Material by origin(s), mode(s) if not exclusively by rail, carrier(s), routing(s) and volume transported (in tons, carloads or other relevant measure);
- (ii) the 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, which is or has been transported from the Madawaska Mill by MM&A as origin, destination, haulage and/or intermediate carrier. Your description should include, without limitation, the STCC codes applicable to such Outbound Product.

4. For the period from January 1, 2003 through the present, describe the Effective Rates applicable to the transportation to the Madawaska Mill of each type of Outbound Product by MM&A (as origin, destination, haulage and/or intermediate carrier). 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 the transportation of each type of Outbound Product by destination (s), mode(s) if not exclusively by rail, carrier(s), routing(s) and volume transported (in tons, carloads or other relevant measure);
- (ii) the 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 to the Madawaska Mill of such Outbound Product.

5. Describe each type of Inbound Material which is or has been transported to any shipper/receiver (other than Fraser) on the MM&A system by MM&A as origin, intermediate,

haulage and/or destination carrier. Your description should include, without limitation, the STCC codes applicable to such Inbound Material.

6. For the period from January 1, 2003 through the present, describe the Effective Rates applicable to the transportation to any shipper/receiver on the MM&A system (other than Fraser) of each type of Inbound Material by MM&A (as origin, destination, haulage and/or intermediate carrier). 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 the transportation of each type of Inbound Material by origin(s), mode(s) if not exclusively by rail, carrier(s), routing(s) and volume transported (in tons, carloads or other relevant measure);
- (ii) the 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, from January 1, 2003 through the present; 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 of such Inbound Material.

7. Describe each type of Outbound Product, which is or has been transported to any shipper/receiver (other than Fraser) on the MM&A system by MM&A as origin, destination, haulage and/or intermediate carrier. Your description should include, without limitation, the STCC codes applicable to such Outbound Product.

8. For the period from January 1, 2003 through the present, describe the Effective Rates applicable to the transportation from any shipper/receiver (other than Fraser) on the MM&A system of each type of Outbound Product by MM&A (as origin, destination, haulage and/or intermediate carrier). 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 the transportation of each type of Outbound Product by destination (s), mode(s) if not exclusively by rail, carrier(s), routing(s) and volume transported (in tons, carloads or other relevant measure);
- (ii) the 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 of such Outbound Product.

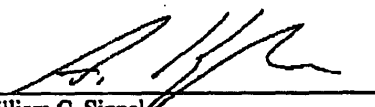
9. For each type of Inbound Material transported to the Madawaska Mill by CP (as origin, destination and/or intermediate carrier) and for each type of Outbound Product transported from the Madawaska Mill by CP (as origin, destination and/or intermediate carrier), describe the average transit times applicable to such transportation by CP and MM&A (by applicable origin and destination).

10. Describe the train operations on the MM&A system, including, but not limited to, the number of wayfreight trains per day, the number of through trains per day, the origin and terminus of each wayfreight and each through train, the average number of loaded and empty cars on each wayfreight and through train, and the number of crew members and locomotives on each wayfreight and each through train.

11. Describe the train operations on MM&A's line between Madawaska and Portage, ME and its line between Brownville Junction and the U.S./Canadian border, west of

Lowellton, ME, including, but not limited to, the number of wayfreight trains per day, the number of through trains per day, the origin and terminus of each wayfreight and each through train, the average number of loaded and empty cars on each wayfreight and through train, and the number of crew members and locomotives on each wayfreight and each through train.

Respectfully submitted,

By: 

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Dated: September 4, 2003

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October 22, 2003

VIA FACSIMILE (202/662-6291)

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

**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 Mike:

This will confirm our oral agreement last week on the scope of discovery responses to be provided to CN by MMA (and the corresponding waiver by MMA of its objections thereto) in connection with the First Set of Written Interrogatories and Document Production Requests propounded on MMA on September 4, 2003.

Interrogatory Nos. 1 through 8 – MMA will respond to each of those Interrogatories through tender of a spreadsheet detailing the requested information, including, but not limited to, shipper, commodity, routing, origin/destination pair, MMA's divisions and other carriers' revenues (to the extent known) for the period from January 9, 2003 through June 30, 2003.

Interrogatory No. 9 – MMA advises that it does not possess such information.

Interrogatory No. 10 – MMA continues to object to providing this information.

Interrogatory No. 11 – MMA has responded to Interrogatory No. 11.

Document Production Request Nos. 1 through 5 – MMA will provide the documents requested in Request Nos. 4 and 5 in response to all five requests.

FLETCHER & SIPPEL LLC

Mr. Michael L. Rosenthal
October 22, 2003
Page 2

Document Production Request No. 6 – MMA will provide the requested documents if they are available.

Document Production Request Nos. 7 and 8 – MMA continues to object to providing such documents, and CN reserves its right to seek a motion to compel.

Document Production Request No. 9 – MMA has agreed to provide all workpapers utilized in preparation of Mr. Ed Burkhardt's verified statement.

Document Production Request No. 10 – MMA will provide all requested documents.

Document Production Request No. 11 – MMA does not have any narrative evaluations, and CN has agreed to withdraw this request.

Document Production Request No. 12 – MMA will provide a spreadsheet detailing capital expenditures from January 9, 2003 through June 30, 2003.

Document Production Request No. 13 – CN has agreed to withdraw the request.

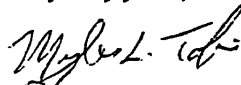
Document Production Request No. 14 – MMA will provide all requested documentation.

You have further advised that you will endeavor to tender the requested information by the end of this week and, in any event, no later than early next week.

Please advise if you take issue with any aspect of this letter regarding our oral agreement.

In furtherance of receipt of the requested documentation, enclosed please find copies of highly confidential undertakings executed by me and Mr. Sippel. The undertaking of Mr. Litwiler will follow shortly.

Very truly yours,



Myles L. Tobin

MLT:kib

Enclosures

STIPULATION

The following reflects the understanding between the Trustee and CN with respect to the scope of the Trustee's responses to CN's August 19, 2003 document production requests and interrogatories.

1. CN Interrogatories

The Trustee will respond to each of Interrogatory Numbers 1 through 9. Inasmuch as CN has agreed to provide effective rate data for calendar year 2000, the Trustee will similarly provide such data for year 2000. Inasmuch as the Trustee sold substantially all of the BAR System to Montreal, Maine & Atlantic Railway, Ltd. ("Montreal Maine") on January 9, 2003, the end point of the Trustee's response period for the Interrogatories shall be January 9, 2003. Further, inasmuch as CN has interpreted the STB Order (regarding Trustee discovery propounded upon CN) as encompassing the data specified in Subsections (ii) and (iii) of Interrogatory Nos. 2, 4, 6, and 8, with respect to similar interrogatories propounded by the Trustee, and has provided such data to the Trustee, the Trustee will, in turn, provide complete data for Interrogatory Nos. 2, 4, 6, and 8, including but not limited to, items (ii) and (iii). Notwithstanding the foregoing, (a) the Trustee's responses with respect to Interrogatories 1-4 will exclude CN/BAR-routed traffic and (b) the scope of the Trustee's responses with respect to Interrogatory Nos. 5, 6, 7 and 8 will be (i) limited to those shippers/receivers which move rail traffic to, from or via any rail line segment which the Trustee contends that Montreal Maine will have to abandon as a result of the trackage rights and junction settlement transactions and (ii) limited to the time period December 1, 2001 through January 9, 2003, except that the Trustee will produce computer-generated traffic volume data for the period January 1, 2000 through January 9, 2003 and will produce any other readily accessible traffic volume data for the same period. In the event that the Trustee does not make an argument that any Montreal Maine line segment will have to be abandoned as a result of the aforementioned transactions, then the Trustee will not be obligated to respond to Interrogatory Nos. 5-8.

2. CN Document Production Requests

The Trustee will not respond to Document Production Request Nos. 1-3, 7-8, and 13. The Trustee will respond to Document Production Request Nos. 4-5 (but the Trustee's responses will exclude agreements, contracts or leases if CN is or was a party and tariffs, rate quotes, circulars, transportation contracts or other documents issued or subscribed to by CN), 6, 9, 10 (but only to the extent that such documents encompass Fraser traffic or were issued or available to move Fraser traffic regardless of whether any Fraser traffic actually moved thereunder), 11 (but only to the extent such evaluations and analyses encompass line segments which the Trustee asserts Montreal Maine will have to abandon as a result of the CN transactions), and 12 (but only to the extent such expenditures encompass line segments which the Trustee asserts that Montreal Maine will have to abandon as a result of the CN transactions). The end point of the Trustee's response period for the Document Production Requests shall be January 9, 2003.

3. Trustee's Response Deadline

The Trustee will provide its discovery responses on the earlier of October 7, 2003 or five (5) days after it files its abandonment application; except that the Trustee's response to Interrogatory No. 9 is due on or before October 15, 2003.

4. Trustee Interrogatories

CN agrees to supplement its prior responses to Interrogatory Nos. 1, 2, 3, 4, 5, 6 and 8 from the Trustee's November 14, 2002 STB Discovery Requests to include the period from January 1, 2000 through February 28, 2001 and from January 1, 2003 through June 30, 2003. The scope of CN's supplemental responses shall be the same as the scope of CN's prior responses.

5. Trustee Document Production Requests

CN agrees to supplement its prior responses to Document Request Nos. 7, 8 and 10 from the Trustee's November 14, 2002 STB Discovery Requests to include the period from January 1, 2000 through February 28, 2001 and January 1, 2003 through June 30, 2003. The scope of CN's supplemental responses shall be the same as the scope of CN's prior responses. CN's response to Document Request Nos. 7, 8 and 10 will exclude agreements, contracts or leases if BAR is or was a party and tariffs, rate quotes, circulars, transportation contracts or other documents issued or subscribed to by BAR.

6. CN's Response Deadline

CN shall make a good faith effort to produce such responsive information and documents by September 15, 2003 but, in any event, shall complete its production of responsive information and documents by September 22, 2003.

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October 28, 2003

BY FACSIMILE AND FIRST-CLASS MAIL

Myles L. Tobin
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

Re: Docket Nos. AB-279 (Sub-No. 3) & AB-124 (Sub-No. 2)

Dear Myles:

I received your letter of October 27, 2003 regarding CN's Document Request No. 10, which seeks agreements between MMA and Canadian Pacific. I am writing to set the record straight.

I told you previously that MMA was willing to withdraw its burden, vagueness, overbreadth, and relevance objections in order to avoid a discovery dispute. However, I also told you that MMA might be precluded from producing the agreements because of their confidentiality provisions. Based on your suggestion, MMA sought to obtain Canadian Pacific's consent to production. On Friday, I told you that Canadian Pacific had objected to MMA's production of the documents and that MMA would not produce the documents voluntarily.

Contrary to your assertion, I did not suggest that you seek a motion to compel. In fact, when we first spoke about Request No. 10, I told you that it appeared to be a fishing expedition into a highly sensitive area, and my view has not changed.

Sincerely,



Michael L. Rosenthal