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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –
DISCONTINUANCE OF SERVICE AND ABANDONMENT –
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE**

MOTION TO REJECT OR DISMISS APPLICATION

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LLC.*

- March 12, 2010

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Fraser Papers, Inc., Irving Woodlands LLC, Irving Forest Products, Inc., Huber Engineered Woods, LLC, Louisiana Pacific Corp., Portage Wood Products, LLC, Seven Islands Land Company, and Red Shield Acquisition LLC (collectively, “Petitioners”), pursuant to 49 CFR §§ 1117.1 and 1152.24(e), respectfully request that the Surface Transportation Board (“Board”) reject or dismiss the abandonment application (“Application”) filed by the Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) in the above-captioned proceeding on February 25, 2010. In support hereof, Petitioners state as follows:

I. FACTUAL BACKGROUND

In its Application, MMA proposed to abandon approximately 233 miles of track in northern Maine, comprised of the rail line between Madawaska and Millinocket as well as numerous branch lines. MMA would retain its rail network south and west of Millinocket and an isolated 23-mile segment between Madawaska and Van Buren in extreme northern Maine. *See* Application narrative at pages 1-2, and Exhibits 1 and 2. Petitioners have a keen interest in the MMA proposal because they are all shippers served by MMA.

II. SUMMARY OF ARGUMENT

The MMA abandonment Application is fatally flawed because the proposed abandonment would unlawfully result in a 23-mile “stranded segment” of common carrier track unconnected to the rest of the national rail network, between Madawaska and Van Buren. Precedent is unequivocal that the Board will not allow the creation of stranded segments in abandonment proceedings. Disconnecting this segment from the remainder of the MMA system and the rest of the national rail system would permanently impair MMA’s ability to meet its common carrier obligation. For this reason, the Application is facially deficient and should be rejected by the Board before more time and effort is consumed by this fatally flawed proposal.¹

III. THE APPLICATION SHOULD BE REJECTED BECAUSE IT IS DEFECTIVE AND SUBSTANTIALLY INCOMPLETE

Under 49 CFR § 1152.24(e)(2), the Board reviews a newly filed abandonment application to determine if it “conforms with all applicable regulations” and whether it is “substantially incomplete...or otherwise defective.” Where the application fails this evaluation, the Board “shall reject the application.” 49 CFR § 1152.24(e)(2). A decision on rejection must occur within 20 days of the application filing. *Id.* In the case of the MMA Application, the 20th day is March 17, 2010.

A. The Application Creates An Impermissible Stranded Line Segment

The MMA Application is “defective” because the proposed abandonment would strand a segment of common carrier rail line in violation of Board precedent and policy. Board precedent does not allow a segment of common carrier track to be “stranded” due to abandonment of an adjacent section of track: “It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become

¹ In addition to the reasons stated herein, Petitioners also support rejection of the Application on the grounds stated in the motion filed by the State of Maine on March 11, 2010.

isolated from the rail system as a result of the abandonment of the adjoining segment.” *Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance of Service – In Coos, Douglas, and Lane Counties, OR*, STB Docket No. AB-515 (Sub-No. 2), slip op. at 12 (served Oct. 31, 2008) (“*Central Oregon*”).²

Consistent with this precedent, the Board also has denied abandonment exemptions where the proposed abandonment would result in a stranded segment. *Norfolk Southern Railway Company – Abandonment Exemption – In Baltimore County, MD*, STB Docket No. AB-290 (Sub-No. 237X), slip op. at 4 (served April 3, 2006) (Board denies exemption because, among other things, no party adequately addressed the apparent “stranded segment” created by the proposed abandonment); *Buffalo & Pittsburgh Railroad, Inc. – Abandonment Exemption – In Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 3X), slip op. at 7 (served Sept. 18, 1998) (Board denies exemption because, among other things, proposed abandonment would “isolate” another rail line “from the national rail system”).

The Application clearly shows a roughly 23-mile segment between Madawaska and Van Buren that would be permanently disconnected from not only the rest of MMA’s rail network, but also from the entire U.S. rail network. *See* Exhibits 1 and 2 to Application narrative. As a consequence of this stranding, current and future shippers on this 23-mile segment, as well as the communities in which these shippers are located, would permanently lose a direct rail connection to the rest of the U.S. rail system to reach their American customers and suppliers. *See, e.g.*, the attached Verified Statement of Brian Sass (“Sass V.S.”) at page 4 (describing the desire of a

² The abandonment application was not rejected in *Central Oregon* because the abandonment filing was secondary to a prior feeder line application that encompassed the same line of track in STB Docket No. 35160. Additionally, no party raised the “stranded segment” doctrine prior to the Board’s 20-day acceptance or rejection of the application under 49 CFR § 1152.24(e)(2).

business located on the stranded segment to have the option of reaching its customer base, which primarily consists of domestic businesses, via southbound rail service through the U.S.).

The consequences of stranding this line segment are more than theoretical. The failure of MMA to explain how it will be able to operate and fulfill its common carrier obligation on the stranded segment renders its Application “insufficient for a definitive analysis.” *Boston and Maine Corporation – Abandonment – In Suffolk County, MA*, STB Docket No. AB-32 (Sub-No. 91), slip op. at 2 (served Aug. 8, 2001). MMA has not shown how, if its Application is approved, it would be able to respond to car requests, pick-up or deliver loaded cars, repair locomotives, replace locomotives when unexpected mechanical issues arise, or otherwise meet its common carrier obligations over the stranded segment. Moreover, as described more fully herein, (1) granting the Application would be tantamount to the Board ceding much of its regulatory jurisdiction over the stranded segment to Canadian regulators; (2) the stranded segment would cause intractable problems for the Board in trying to assess the Application and protect the rights of the shippers and communities on that segment; and (3) the Application splits the MMA rail system in a way that makes it more difficult to preserve rail service on the abandoned lines to serve the greater public interest.

Due to the uncertainties and problems inherent in the MMA Application, the Board should enforce the stranded segment rule and reject the Application because it is irredeemably deficient on its face. *Id.* at 1-2. (rejecting abandonment application that is “inconsistent on its face” and contains obvious discrepancies).

B. The Application, If Approved, Would Create Operational And Legal Problems While Isolating The Stranded Segment From Necessary Rail Equipment And Service

MMA's proposed abandonment would split its system into two separate pieces: (1) the 23-mile stranded segment in extreme northern Maine, and (2) the great bulk of the MMA network, including a rail line between Millinocket and the Maine coastline as well as an east-west section that connects central Maine with the Montreal area to the west. MMA has not explained how operations will be possible on the stranded segment if the proposed abandonment goes forward.

Fraser Papers, Inc. ("Fraser") operates a large paper mill in Madawaska, Maine on the MMA. This mill would be on the stranded segment if the MMA abandonment is approved. As described in the attached verified statement of Fraser's Director of Supply Chain, MMA has no locomotive servicing facility and no car repair shops on what would be the stranded segment. *Sass V.S.* at page 3. Fraser is very concerned about how MMA would logistically operate this short 23-mile segment in terms of daily rail operations, such as responding to car orders, moving locomotives, repairing cars and locomotives, and replacing locomotives when mechanical issues arise. *Id.* at pages 3-4.³

These concerns are not theoretical. They directly affect how MMA would meet its common carrier obligations under 49 USC §§ 11101, 11121, and other aspects of federal law from day one after the proposed abandonment would occur. Additionally, these concerns affect not just Fraser's Madawaska mill, but any shipper that exists now or would locate in the future on the 23-mile segment between Madawaska and Van Buren. MMA has not addressed these

³ Despite the fact that Fraser's Madawaska mill is not on the line proposed for abandonment, the Board must still consider Fraser's views. *Owensville Terminal Company Inc. – Abandonment Exemption – In Edwards and White Counties, IL and in Gibson and Posey Counties, IN*, STB Docket No. AB-477 (Sub-No. 1X), slip op. at 3 (served Aug. 1, 1997).

fundamental operational issues in its Application and, therefore, the Application is fatally flawed and should be rejected.

It is possible that MMA's "operations" on the stranded segment would depend entirely upon its single connection with another railroad, the Canadian National Railway ("CN") at Saint-Leonard, New Brunswick. *See, e.g.,* Verified Statement of Joseph R. McGonigle, at page 14 (attached to Application) (describing a "haulage arrangement" between MMA and CN).

Whether or not this is the case, the Application is not clear as to how operations would occur on the stranded segment. It also remains uncertain that MMA could adequately fulfill its common carrier obligations under U.S. law if it intends to rely entirely upon the provision of locomotives and railcars by another railroad from across an international border. Due to these policy considerations, the Board should enforce the stranded segment rule and reject the Application.

C. The Proposed Abandonment Would Force All Rail Traffic On The Stranded Segment To Transit Through Canada

Under the proposal outlined in the Application, the 23-mile stranded segment between Madawaska and Van Buren would connect only to the Canadian rail network. The Board should not force businesses that desire to transport products from the United States to other locations in the United States to depend upon the laws and regulations of a foreign country in order to access the U.S. interstate rail network. In such a scenario, the Board would not be able to implement the statutory provisions of the national rail transportation policy with respect to the businesses and communities on the stranded segment. *Cf.* 49 USC § 10101(2) ("In regulating the railroad industry, it is the policy of the United States Government...to require fair and expeditious regulatory decisions when regulation is required.").

If the Board allows the Application to go forward on the merits, and the abandonment is eventually approved, then rail service to the communities and businesses along the stranded

segment would depend entirely upon the transportation policies and priorities of a foreign government. The quality of rail service and, indeed, the entire legal regulatory structure applicable to such service, would be under the purview of a foreign government whenever businesses along the 23-mile rail line desire to use rail transportation to send products to, or receive products from, a location in the United States.

This scenario would create countless problems and due process concerns. For example, if the connecting rail line in Canada were proposed for “abandonment” using the Canadian equivalent of 49 USC § 10903, then the communities of northern Maine would be required to seek redress under the laws and procedures of the Canadian regulatory system. It is highly questionable whether the Canadian government would be required, or willing, to consider the views of businesses and communities served by this 23-mile stranded segment in such a proceeding.

In sum, it would be an abdication of the Board’s statutory responsibility to allow a foreign government to control the quality and continuation of rail service to American businesses and communities. This cannot be what Congress intended when it created the Board.

D. Proper Analysis Of The Application Is Impossible Due To The Stranded Segment

Acceptance of the Application also would create vexing problems for the Board in its evaluation of the abandonment proposal on the merits. If approved, the Application would force all interstate rail travel between extreme northern Maine and the rest of the United States to transit through Canada. Thus, the Application puts the Board in the untenable position of evaluating whether the Canadian rail regulatory structure would sufficiently protect the interests of the businesses and communities along the 23-mile northern portion of the MMA.

In the context of an abandonment, the Board balances “the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce.” *South Orient Railroad Company, Ltd. – Abandonment and Discontinuance of Trackage Rights – Between San Angelo and Presidio, TX*, STB Docket No. AB-545, 3 STB 743, 757 (1998). In evaluating the MMA proposal based on this balancing standard, the Board would necessarily have to determine if the Canadian regulatory system provided sufficient safeguards for the communities and businesses of northern Maine. Not only is this an impossible task (due to the fact that the Board cannot predict the future of Canadian rail regulation), but it would be an impermissible ceding of the Board’s statutory responsibility under 49 USC § 10903.

E. The Application Would Split A Rail Line That Has Historically Been Operated As A Single Unit

MMA’s Application inappropriately attempts to retain revenues from the stranded segment at the expense of the public interest in preserving rail service over the abandonment lines. Clearly, MMA’s sole reason for retaining the 23-mile stranded segment is to reap the revenue from a large shipper, Fraser, located on that segment. After the abandonment, the stranded segment would have no connection to the rest of the MMA network and there would be no rational operational advantage to maintaining that segment. Yet that segment is crucial to the ability of a third party to purchase and operate the abandoned lines through an offer of financial assistance (“OFA”).

Although a purpose of abandonments is to allow a railroad to shed unprofitable track while continuing to operate over its profitable lines, MMA’s Application has taken that objective to an impermissible extreme. As noted above, it is not even clear whether or how MMA will operate the stranded segment, for example, without the ability to move locomotives or cars

between the stranded segment and the rest of the network, and without locomotive maintenance and repair facilities on the stranded segment. Furthermore, this stranded segment threatens further service reductions to customers on the line and eliminates all but one routing option for those customers, which is through Canada on the CN. It may be that MMA intends to grant CN trackage rights to serve the stranded segment, thereby avoiding the need to do so itself, but we do not know because MMA's Application is silent on those facts. Moreover, if this is the case, it would be strong evidence that MMA seeks to retain the stranded segment solely for its potential to produce rental income and not to provide rail service.

Where, as in this proceeding, there is a compelling public interest in preserving rail service over the abandonment lines, a carrier should not be permitted to cling to a stranded line segment solely for its revenue potential when that line segment also is important to the preservation of rail service on the abandoned lines. The Board recognizes the importance of preserving connections between two historically integrated lines that are essential to the provision of effective and efficient rail service. *See Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Toledo, Peoria and Western Railway between La Harpe and Hollis, IL*, STB Docket No. 34335, slip op. at 9-10 (served Feb 7, 2005) (Board affirms feeder line decision forcing incumbent to sell a subsection of a "unitary, historically integrated line" that was "integral to [the purchaser's] plan to reactivate and operate the [line] as an effective and efficient route for local and through traffic").⁴

As MMA notes in its Application, the State of Maine has expressed a desire to purchase the abandonment lines in order to preserve vital rail service to businesses and communities in northern Maine. Such a purchase would not only preserve rail service to shippers on the

⁴ This decision was affirmed in *Toledo, Peoria & Western Railway v. Surface Transportation Board*, 462 F.3d 734 (7th Cir. 2006).

abandonment lines, it also would preserve existing routing options to shippers on the stranded segment, including all-U.S. routings. But the newly purchased abandonment lines would be captive to MMA at both the northern and southern termini, which would significantly hinder the operating and financial flexibility that is essential to successfully operate the abandonment lines, and it would require two interchanges with MMA on all traffic moving south from shippers on the stranded segment. As a bottleneck carrier, MMA also would be in a strong position to squeeze the divisions of the OFA purchaser, making it even more difficult to operate the abandonment lines.

Petitioners suggest that situations like this are exactly why the stranded segment doctrine exists – to prevent railroads from indiscriminately filing for abandonment of various internal segments of their rail networks. With no stranded segment rule, railroads might lawfully abandon various segments and retain the disconnected pieces with heavy traffic, despite significant local interest in maintaining complete rail service. Once local and state governmental entities have mobilized to retain rail service on the internal segments of the abandoning railroad, the governments would be saddled with maintenance costs while being shut out of large revenue generating shippers. Meanwhile, the railroad that filed for abandonment would have slashed its maintenance costs while retaining virtually all benefits from the major shippers on its lines.

IV. REJECTING THIS FATALY FLAWED PROPOSAL WILL FACILITATE A BETTER SOLUTION

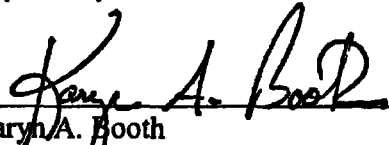
Petitioners seek a solution that balances MMA's interest with the broader public interest. MMA's Application makes that very difficult because it focuses solely on MMA's interest. A large part of the problem is the fact that MMA proposes to abandon 233 miles in the middle of its existing network, while retaining the 23-mile stranded line segment at the extreme northern end of the current MMA network. This proposal makes little sense from a service or operating

perspective, but appears to be solely a revenue-based decision by MMA. Furthermore, it hinders the ability of third party OFA purchasers of the abandoned lines to successfully operate those lines. A more balanced solution is needed if the public interest is also to be served. Petitioners seek the right solution that serves both MMA's interest and the public interest in a fair and balanced manner. The stranded segment is a fatal flaw in MMA's Application both from a legal and a policy perspective. Therefore, it would be unproductive to expend any more of the Board's time in considering this Application, or the time of MMA and the numerous parties who have already expressed an interest in participating in this proceeding. Such time would be better spent finding a permanent and lawful solution.

V. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board reject or dismiss the Application filed by MMA on February 25, 2010.

Respectfully submitted,



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March 12, 2010

CERTIFICATE OF SERVICE

I certify that on this 12th day of March, 2010 I caused a copy of the foregoing to be served by e-mail or by first class mail, postage prepaid upon the following:

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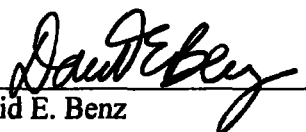
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David E. Benz

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VERIFIED STATEMENT OF BRIAN SASS

March 12, 2010

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VERIFIED STATEMENT OF BRIAN SASS

My name is Brian Sass and I am the Director of Supply Chain for Fraser Papers, Inc. ("Fraser"), a position I have held since September 2007. Fraser is an integrated specialty paper company that produces specialty packaging, specialty printing, specialty high-bright groundwood, commodity freesheet paper, commodity groundwood paper, as well as certain sulfite pulp and softwood lumber products. Fraser operates in both the United States and Canada, with its corporate headquarters in Toronto. Fraser was established as a stand-alone company in 2004 from the paper, pulp, lumber, and timber assets of Nexfor, Inc. (now Norbord, Inc.).

As the Director of Supply Chain, I oversee and manage purchasing, transportation, customer service, shipping, and information technology for all of Fraser, including Fraser's Madawaska Paper Mill ("Mill") in Madawaska, Maine. The Mill opened in 1925, has approximately 680 employees, and is 86% powered by electricity from biomass or hydro-electric

facilities. With a production capacity of 380,000 tons per year, the Mill is the largest Fraser paper mill. It produces various coated and uncoated paper products for specialty printing, packaging, labels, and publishing. The Mill is also the site of Fraser's product development expertise.

In my role with Fraser, I am very familiar with the operations at the Mill, the use of rail transportation by Fraser, and the operations of the Montreal, Maine & Atlantic Railway ("MMA"). The Mill is located directly on the MMA rail line in Madawaska and is one of MMA's largest customers.

Fraser and its predecessors at the Mill in Madawaska have made regular use of rail transportation since the Mill's construction in the early 20th century. In particular, the Mill has shipped roughly 2500 to 3700 carloads of traffic outbound on the rail line in recent years, and received approximately 400 to 425 carloads of traffic inbound by rail in recent years. Fraser expects to ship approximately 3700 to 4000 carloads during 2010, and receive approximately 425 to 450 carloads during 2010. Like all businesses, Fraser has been impacted by the economic downturn of the past two years. Business is picking up again, however, and Fraser will produce more paper at the Mill in 2010 than in 2009. I would prefer to use rail transportation for this increased output but, given recent rail service problems and delays, Fraser may be forced to use trucking for the increased 2010 output. Rail service from the Mill to Northern Maine Junction near Bangor (a rail distance of about 230 miles) has recently taken from three (3) to five (5) days and sometimes one week.

In recent years, roughly 50% of the rail traffic originating or terminating at the Mill has utilized the rail line connecting Millinocket and Madawaska. The great majority of the customers and suppliers of the Mill are American businesses in places such as New Jersey,

Pennsylvania, Illinois, Tennessee, Georgia, and other locations generally east of the Mississippi River. Other traffic shipped from or bound to the Mill uses the MMA rail line between Madawaska and Van Buren, Maine, where connection to the Canadian National Railway in Canada is possible. Other than the route south through Millinocket and the route north into Canada, there is no other possible means to ship by rail from Madawaska.

I am aware that MMA has recently filed an application at the Surface Transportation Board, seeking permission to abandon 233 miles of track in northern Maine, including the rail line between Madawaska and Millinocket. The rail line proposed for abandonment does not include the MMA line on which the Mill is located; in fact, the MMA portion included in the abandonment application begins just outside the Mill.¹

If approved, this abandonment would disconnect the Mill and the entire rail line between Madawaska and Van Buren from the rest of the U.S. rail network. Such an abandonment would force all of the rail traffic between the Mill and other locations in the U.S. to pass north through Canada. Fraser does not want the Mill to be isolated and stranded from the national rail network. I am extremely concerned about losing the option of using the Millinocket to Madawaska rail line for Mill rail traffic.

It is unclear how MMA would still be able to provide rail service to the Mill on the stranded rail segment. For example, how will MMA deliver cars to the Mill when we order them? How will MMA service its locomotives and rail cars? What will happen if an MMA locomotive experiences mechanical difficulty? MMA does not have any repair facilities located on the 23-mile northern segment. If a locomotive has a breakdown, how long will Fraser have to wait for a replacement locomotive to arrive from the (now disconnected) other part of the MMA

¹ Fraser also operates MMA-served lumber mills at Ashland and Masardis in Maine. The rail line proposed for abandonment would remove all rail service from these lumber mills.

network? What if the abandoned line is sold and the rail removed? In short, Fraser is very concerned about being isolated in terms of rail service and rail equipment.

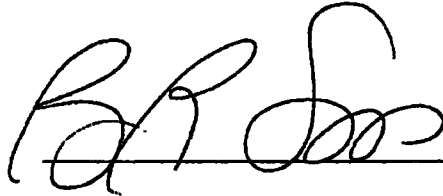
The proposed MMA abandonment would force all traffic between the Mill and other locations in the U.S. to transit through Canada. Abandonment of the Madawaska to Millinocket portion of the MMA would forever foreclose the possibility of routing U.S.-bound traffic on a direct route southbound through Maine, New Hampshire, and beyond. While the vast majority of southbound Mill traffic through Millinocket currently remains on the MMA for transit through the Montreal area, I would prefer to have the option of avoiding the potential regulatory problems and cross-border complications inherent in transiting through Canada.

Moreover, I am uneasy about the proposed MMA abandonment because it will reduce the rail transportation options at the Mill, effectively forcing all Mill traffic over the CN route during transit through Canada.

Finally, as stated above, the vast majority of southbound traffic from the Mill passes through Millinocket before heading west on the MMA to the Montreal area for connections to other railroads and service into the United States. However, connections with other railroads are possible for southbound traffic at Brownville Junction and in the Bangor area. If the rail service were more efficient and timely, Fraser would be interested in having more of its southbound traffic connect to other railroads in Brownville Junction or the Bangor area before eventual delivery to U.S. locations. Fraser is troubled that the proposed MMA abandonment would permanently prevent southbound Mill traffic from having the option of connecting to other railroads at Brownville Junction and Bangor.

VERIFICATION

I, Brian Sass, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

A handwritten signature in black ink, appearing to read 'B. Sass', is written over a horizontal line.

Brian Sass
Director of Supply Chain, Fraser Papers, Inc.

Dated March 12, 2010