

## FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2875

November 10, 2003

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

MYLES L. TOBIN  
(312) 252-1502  
mtobin@fletcher-sippel.com

### VIA FACSIMILE AND FEDERAL EXPRESS

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

### EXPEDITED CONSIDERATION REQUESTED

Re: Docket No. AB-279 (Sub-No. 3) *209372*  
Canadian National Railway Company -- Adverse  
Discontinuance -- Line of Montreal, Maine & Atlantic  
Railway Ltd. in Aroostook County, Maine

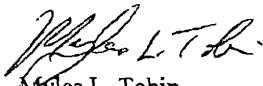
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Public Record

Docket No. AB-124 (Sub-No. 2) *209373*  
Waterloo Railway Company -- Adverse Abandonment -- Line of  
Montreal, Maine & Atlantic Railway Ltd. in Aroostook County, Maine

Dear Secretary Williams:

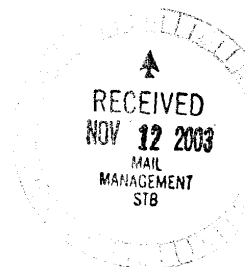
Enclosed please find an original and ten copies of a Joint Motion for Extension of Time filed on behalf of Fraser Papers, Inc. and Canadian National Railway Company. This Motion seeks a 21-day extension of time for the filing of Comments in response to the Adverse Application for Discontinuance of Trackage Rights and Abandonment of Easement filed by the Trustee of The Bangor & Aroostook Railroad Company. In view of the fact that comments are currently due to be filed on November 20, 2003, Fraser and Canadian National respectfully request that the Board consider this Motion on an expedited basis.

Respectfully submitted,



Myles L. Tobin  
Attorney for Canadian National  
Railway Company

MLT:kib  
Enclosures  
cc: Parties on Certificate of Service



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

CANADIAN NATIONAL RAILWAY COMPANY  
-- ADVERSE DISCONTINUANCE --  
LINE OF MONTREAL, MAINE & ATLANTIC RAILWAY LTD.  
IN AROOSTOOK COUNTY, MAINE

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

WATERLOO RAILWAY COMPANY  
-- ADVERSE ABANDONMENT --  
LINE OF MONTREAL, MAINE & ATLANTIC RAILWAY LTD.  
IN AROOSTOOK COUNTY, MAINE

**FRASER PAPERS, INC. AND CANADIAN NATIONAL RAILWAY COMPANY JOINT  
MOTION FOR EXTENSION OF TIME TO FILE COMMENTS TO ADVERSE  
APPLICATION FOR DISCONTINUANCE OF TRACKAGE RIGHTS AND  
ABANDONMENT OF EASEMENT**

**EXPEDITED CONSIDERATION REQUESTED**

Charles A. Spitulnik  
Alex Menendez  
McLeod, Watkinson & Miller  
One Massachusetts Avenue, N.W.  
Suite 800  
Washington, D.C. 20001-1401  
(202) 842-2345

Sean Finn  
Cynthia A. Bergmann  
Theodore K. Kalick  
Canadian National Railway Company  
455 North Cityfront Plaza Drive  
Chicago, Illinois 60601-5317  
(312) 755-7613

**ATTORNEYS FOR FRASER PAPERS,  
INC.**

William C. Sippel  
Myles L. Tobin  
Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive, Suite 920  
Chicago, Illinois 60606-2875  
(312) 252-1500

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

Dated: November 10, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

CANADIAN NATIONAL RAILWAY COMPANY  
-- ADVERSE DISCONTINUANCE --  
LINE OF MONTREAL, MAINE & ATLANTIC RAILWAY LTD.  
IN AROOSTOOK COUNTY, MAINE

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

WATERLOO RAILWAY COMPANY  
-- ADVERSE ABANDONMENT --  
LINE OF MONTREAL, MAINE & ATLANTIC RAILWAY LTD.  
IN AROOSTOOK COUNTY, MAINE

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**FRASER PAPERS, INC. AND CANADIAN NATIONAL RAILWAY COMPANY JOINT  
MOTION FOR EXTENSION OF TIME TO FILE COMMENTS TO ADVERSE  
APPLICATION FOR DISCONTINUANCE OF TRackage RIGHTS AND  
ABANDONMENT OF EASEMENT**

Fraser Papers, Inc. ("Fraser") and Canadian National Railway Company ("CN") hereby jointly move the Surface Transportation Board ("STB" or "Board") for a twenty-one (21) day extension of time, to and including December 11, 2003, in which to file their Comments to the Adverse Application filed by the Trustee of the Bangor and Aroostook Railroad Company ("Trustee").

**I. BACKGROUND**

On October 6, 2003, the Trustee filed its Adverse Application seeking the involuntary discontinuance of certain trackage rights acquired by CN from the Bangor and Aroostook, and its wholly-owned subsidiary, the Van Buren Bridge Company ("BAR"), as well as the involuntary abandonment of an operating easement acquired by CN's subsidiary, the Waterloo Railway Company, over the same line. The line runs between Madawaska, ME and the Canadian border, and serves a mill owned by Fraser at Madawaska. The line is now owned by the Montreal,

Maine & Atlantic Railway Ltd. ("MM&A"), which purchased it from the Estate of the bankrupt BAR on January 9, 2003. As the Board noted in its October 24, 2003 decision in this proceeding, the Trustee is seeking to terminate CN's authority to serve Fraser over the line, which would leave MM&A as the only carrier with authority to serve that shipper. Slip. Op. at 2.

The Board required that all comments and responses to the Adverse Application be filed on or before November 20, 2003. However, given the voluminous nature of the Adverse Application, and the failure of the Trustee and the MM&A to willingly comply with legitimate discovery requests, Fraser and CN respectfully need additional time in which to file an adequate response to the Application.<sup>1</sup>

## II. ARGUMENT

The Trustee filed its Adverse Application on October 6, 2003, consisting of approximately 550 pages, including five (5) verified statements and extensive data analysis. The Application had been preceeded by a series of Notices of Intent, in which the Trustee had initially proposed to file its Application on December 23, 2002, then later on September 12, 2003, then September 19, 2003, and ultimately October 6, 2003. Thus, while the Application is not necessarily substantive, it is voluminous, and the Trustee has apparently been working on it for quite a long time.

Fraser is a shipper that has been diligently working to prepare its comments. Given the significant adverse impact that the Trustee's proposed Abandonment would have on Fraser, its customers, the communities in Maine, and CN, Fraser needs additional time to refute numerous unfounded allegations made in the Application.

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<sup>1</sup> Although counsel for Fraser has sought the Trustee's concurrence to this extension of time, the Trustee has refused to concur.

CN cannot adequately prepare its comments to the Application due the repeated failure of the Trustee and MM&A to comply with legitimate discovery requests. On August 19, 2003, CN served Interrogatories and Document Production Requests on the Trustee. The Trustee has been slow in responding to this discovery.<sup>2</sup> More importantly, the Trustee has failed to provide numerous workpapers utilized by its witnesses in the development of their verified statements. As detailed in both the attached correspondence to counsel for the Trustee and the Motion to Compel filed on October 28, 2003, hundreds of pages of workpapers have yet to be provided, all of which are critical to CN's analysis of the Verified Statements attached to the Application.<sup>3</sup>

Similarly, MM&A was served with an initial set of Interrogatories and Document Production Requests on August 28, 2003, to which MM&A broadly objected. It was only after extensive negotiations that MM&A ultimately agreed to provide a portion of the requested information on October 24, 2003 and, as discussed in CN's Motion to Compel Responses to Discovery filed on October 28, 2003, MM&A continues to object to the production of numerous documents critical to CN's analysis of the Application. The documents which the Trustee and MM&A have failed or refused to provide all focus on the competitive options available to Fraser and, as such, are critical to the central issues in this case.

Also, on October 23, 2003, CN served a second set of limited Document Production Requests on MM&A, with responses due on November 7, 2003. That discovery focused on correspondence and agreements between MM&A and the State of Maine pertaining to line abandonments and funds provided by the State for rail line upgrades. Although the parties continue

<sup>2</sup> Although the parties ultimately agreed that the Trustee could delay the filing of its discovery responses until October 7, 2003, several sets of documents were not provided until a week and a half later, and in any event, numerous workpapers have yet to be provided.

<sup>3</sup> These workpapers were utilized by Messrs. Heller and Howard in developing their Verified Statements.

to negotiate for the production of those documents, thus far MM&A has interposed further objections to the Document Requests.

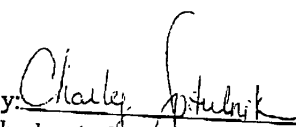
Thus, while the November 20, 2003 filing date is rapidly approaching, the Trustee has failed to produce all of the workpapers utilized in the Application, and MM&A continues to interpose objections to limited discovery which focuses on central issues in the case. Without this discovery, and sufficient time to review it, CN cannot adequately prepare its comments.

Finally, it should be noted that this limited request for extension of time would in no way prejudice the parties in this case. As the Board is aware, the BAR Chapter 11 Bankruptcy proceeding was filed on August 15, 2001. Over nine (9) months later, the Trustee filed a Petition with the Board to reopen and revoke CN's and Waterloo's trackage rights and easement exemptions. While the Board denied the Trustee's Petitions to Revoke on June 25, 2002, it has taken the Trustee an additional fifteen (15) months to file its Adverse Abandonment Application. In light of this lengthy time period, and the extensive time the Trustee has had to prepare an Application, it is reasonable to grant Fraser and CN a short twenty-one (21) day extension for the filing of an adequate response.

### III. CONCLUSION

For all of the foregoing reasons, Fraser and CN respectfully request a short twenty-one (21) day extension of time, to and including December 11, 2003, for the filing their Comments to the Trustee's Adverse Application.

Respectfully submitted,

By:   
Charles A. Spitznik  
Alex Menendez  
McLeod, Watkinson & Miller  
One Massachusetts Avenue, N.W.  
Suite 800  
Washington, D.C. 20001-1401  
(202) 842-2345

**ATTORNEYS FOR FRASER PAPER,  
INC.**

By:   
Seari Finn  
Cynthia A. Bergmann  
Theodore K. Kalick  
Canadian National Railway Company  
455 North Cityfront Plaza Drive  
Chicago, Illinois 60601-5317  
(312) 755-7613

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Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2875  
(312) 252-1500

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

Dated: November 10, 2003

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29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2875

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

MYLES L. TOBIN  
(312) 252-1502  
mtobin@fletcher-sippel.com

November 7, 2003

**VIA FACSIMILE (202/778-9100)**

Mr. Edward J. Fishman  
Kirkpatrick & Lockhart LLP  
1800 Massachusetts Avenue, N.W.  
Suite 200  
Washington, D.C. 20036-1221

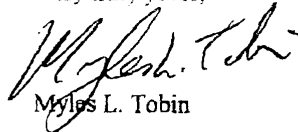
**Re: Docket No. AB-279 (Sub No. 3)  
Canadian National Railway Company – Adverse Discontinuance –  
Lines of Bangor and Aroostook Railroad Company and Van Buren  
Bridge Company in Aroostook County, Maine**

**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 Ed:

As we continue to review the Application and Verified Statements, we are seeing evidence of additional workpapers which have not been provided. For example, there are numerous references in Mr. Heller's statement to Document Nos. FR 000016-FR000259, although those documents do not appear to have been provided. Additionally, Mr. Heller refers to use of MMA correspondence in footnote 91 on page 31 of his verified statement, although it does not appear that such correspondence has been provided. Please advise as to the status of these workpapers.

Very truly yours,



Myles L. Tobin

Enclosures  
MLT:kib

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29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2875

Telephone: (312) 252-1500  
Facsimile: (312) 252-2400  
www.fletcher-sippel.com

### FAX COVER LETTER

Date : November 10, 2003  
Completed by : Kris Bailey  
Phone Extension : 312-252-1542  
To : Vernon A. Williams-Secretary  
Company : Surface Transportation Board  
Fax No. : 202-565-9002  
Phone No. :  
From : Myles L. Tobin  
Direct Dial : 312-252-1502  
E-Mail : mtobin@fletcher-sippel.com  
Re :  
Comments :

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