

Kirkpatrick & Lockhart LLP

1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
www.kl.com

Tracie D. Spear
202.778.9390
Fax: 202.778.9100
tspear@kl.com

November 14, 2002

BY HAND DELIVERY AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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



Re: **Finance Docket No. AB-279 (Sub-No. 3)** *206646*
**Canadian National Railway Company -- Adverse Discontinuance --
Lines of Bangor and Aroostook Railroad Company, and Van Buren
Bridge Company in Aroostook County, Maine**

Finance Docket No. AB-124 (Sub-No. 2) *206647*
**Waterloo Railway Company -- Adverse Abandonment -- Lines of
Bangor and Aroostook Railroad Company and Van Buren Bridge
Company in Aroostook County, Maine**

Dear Secretary Williams:

Pursuant to 49 C.F.R. §§ 1152.20(a)(1) and (b)(3), I am enclosing an original and ten copies of the **Notice of Intent for Discontinuance of Trackage Rights and Abandonment of Freight Easement**, dated November 14, 2002, for filing in the above-captioned proceeding. The Notice was published in the Bangor Daily News on November 14, 2002.

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

Respectfully submitted,

Tracie D. Spear

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

ENTERED
Office of Proceedings

NOV 15 2002

Part of
Public Record

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 --
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, MAINE¹**

**NOTICE OF INTENT FOR DISCONTINUANCE OF TRACKAGE RIGHTS AND
ABANDONMENT OF FREIGHT EASEMENT**

James E. Howard, Chapter 11 Trustee of the Bangor and Aroostook Railroad Company, Debtor ("Trustee")² gives notice that on or about December 23, 2002, he

¹ The STB has directed that the proceedings in Docket No. AB-279 (Sub-No. 3) and Docket No. AB-124 (Sub-No. 2) be consolidated for concurrent handling. See Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-124 (Sub-No. 2), Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-279 (Sub-No. 3) (STB served October 23, 2002) (the "WRC Waiver Decision") at 1.

² The Trustee is acting in the capacity of Chapter 11 Trustee for the Bangor and Aroostook Railroad Company ("BAR"), Van Buren Bridge Company ("VBBC"), Canadian American Railroad Company ("CDAC"), Northern Vermont Railway Company ("NVT") and Newport & Richford Railroad Company ("NRR"). The carriers in the Bangor and Aroostook System include BAR, VBBC, CDAC, NVT, NRR and Quebec Southern Railway Company, Ltd. ("QSR"). James E. Howard is not the Chapter 11 Trustee of QSR. QSR is the subject of a case pending under the Bankruptcy and Insolvency Act (Canada).

intends to file with the Surface Transportation Board ("Board" or "STB"), Washington, D.C. 20423, an application for authorization for (i) the adverse discontinuance of trackage rights held by Canadian National Railway Company ("CN") and (ii) the adverse abandonment of a freight easement held by Waterloo Railway Company ("WRC" and collectively with CN, where appropriate, "CN").³ The Trustee intends to seek discontinuance of the CN trackage rights and abandonment of the WRC freight easement on the following lines of railroad: 1) a line owned by BAR between approximately MP 0.0 at Madawaska, Maine and approximately MP 22.72 at Van Buren (Canadian Junction), Maine; and 2) a line owned by VBBC between approximately MP 0.0 at Van Buren (Canadian Junction), Maine and approximately MP 0.31 at the United States-Canada Border (the referenced BAR-owned and VBBC-owned lines are collectively referred to as the "Subject Line"), which traverses United States Postal Service ZIP Codes 04756, 04773, 04746, 04749, and 04785, a distance of approximately 23 route miles, in Aroostook County, Maine. The Subject Line includes the stations of: Madawaska (MP 0.0); N CL Sign Madawaska (MP 1.25); Saint David (MP 4.20); and Grand Isle (MP 8.66).

On October 8, 2002, the United States Bankruptcy Court, for the District of Maine approved the sale of substantially all of the assets of the Bangor and Aroostook System (including the Subject Line) to the Montreal, Maine & Atlantic Railway LLC ("MMA").⁴ A

³ The abandonment of the WRC freight easement would not result in a cessation of rail carrier service on the lines subject to the application or the removal of any rail or other track material.

⁴ See Montreal, Maine & Atlantic Railway LLC – Acquisition & Operation Exemption – Bangor and Aroostook Railroad Company, Canadian American Railroad Company, The Northern Vermont Railroad Company, Inc., Newport & Richford Railroad

closing is expected to occur before December 31, 2002. BAR will be an operating rail carrier on the Subject Line until the sale of the Bangor and Aroostook System, at which time MMA will become an operating rail carrier on the Subject Line.

The reason for the proposed discontinuance and abandonment is that the trackage rights held by CN and the freight easement held by WRC threaten the viability of the Bangor and Aroostook System as a whole (of which BAR is a part). The CN trackage rights and the WRC freight easement give CN the unilateral ability to immediately and substantially reduce BAR's revenue. The continued existence of the CN trackage rights and the WRC freight easement may require abandonment of the BAR line between Madawaska and Portage, ME, or a point south of Portage. In addition, the continued existence of the CN trackage rights and the WRC freight easement may require abandonment of the CDAC line between Brownville Junction and the U.S./Canada border. The abandonment of the BAR Madawaska-Portage line or the CDAC line between Brownville Junction and the U.S./Canada border would require separate Board approval, which will not be sought as part of the application. The discontinuance of the CN trackage rights and the abandonment of the WRC freight easement will not harm Fraser Papers, the only shipper covered by the trackage rights and the freight easement.

Based on information in the Trustee's possession, the Subject Line does not contain federally granted rights-of-way. Any documentation in the Trustee's possession

Company and Van Buren Bridge Company, Finance Docket 34110 (STB served September 19 and 25, 2002).

relevant to determining the presence of federally granted rights-of-way will be made available promptly to those requesting it.

The Trustee is unable to compel the publication by CN or WRC of a system diagram map or system narrative description that shows whether the Subject Line is in category 1. The STB has waived this requirement with respect to this proceeding.⁵

The interests of CN and WRC railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

The application will include the Trustee's entire case for discontinuance of the CN trackage rights and abandonment of the WRC freight easement. After the application is filed on or about December 23, 2002, any interested person may file with the Board written comments in support of the application or in opposition to the application or protests concerning the proposed CN trackage rights discontinuance and/or the proposed WRC freight easement abandonment. These filings are due 45 days from the date of filing of the application.

Since either BAR or MMA will continue to be an operating rail carrier on the Subject Line if the CN trackage rights are discontinued and the WRC freight easement is abandoned, interim trail use would not be appropriate.

Any request for a public use condition must be filed within 45 days from the date of filing of the application. In the application, the Trustee will argue that the public use requirements (49 U.S.C. 10905; 49 C.F.R. §1152.28) are not applicable because BAR

⁵ Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-279 (Sub-No. 3) (STB served Sept. 25, 2002) (the “CN Waiver Decision”) at 6; WRC Waiver Decision at 3.

(or after its acquisition of the Subject Line, MMA) will continue to be a rail carrier on the Subject Line.

Persons who may oppose the discontinuance of the CN trackage rights and/or abandonment of the WRC freight easement but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons who may support the discontinuance of the CN trackage rights and/or abandonment of the WRC freight easement but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, also should file comments. Persons interested only in seeking public use conditions should also file comments.⁶

Persons opposing the proposed discontinuance of the CN trackage rights and/or abandonment of the WRC freight easement that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following:

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the CN trackage rights or the WRC freight easement;

⁶ See discussion, supra regarding Trustee's intention to argue that public use requirements are not applicable to the instant discontinuance and abandonment proceeding.

- (ii) If protestant does not use the CN trackage rights or the WRC freight easement, information concerning the group or public interest it represents; and
 - (iii) If protestant's interest is limited to the retention of service over a portion of the line subject to the CN trackage rights or the WRC freight easement, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and (if applicable) evidence showing that the CN trackage rights or the WRC freight easement should be retained on that portion of the line.
- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the CN trackage rights or the WRC freight easement. This information must be supported by affidavits of persons with personal knowledge of the fact(s).
 - (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

- (1) Environmental impact;
- (2) Impact on rural and community development;
- (3) Recommended provisions for protection of the interests of employees; and

- (4) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905.⁷

A protest may demonstrate that: (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the discontinuance/abandonment application; (3) the feeder line application was filed prior to the date the discontinuance/abandonment application was filed; and (4) the feeder line application is pending before the Board.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceedings as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed discontinuance and/or abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. §1152.25.

⁷ See discussion, supra regarding Trustee's intention to argue that public use requirements are not applicable to the instant discontinuance and abandonment proceeding. The STB granted an exemption from the offer of financial assistance requirements of 49 U.S.C. § 10904 and waiver of the related regulations, 49 C.F.R. § 1152.27, with respect to the CN trackage rights and the WRC freight easement. CN Waiver Decision at 5; WRC Waiver Decision at 3. Therefore, this discontinuance and abandonment proceeding will not be subject to the offer of financial assistance procedures.

Written comments and protests, including all requests for public use conditions, should indicate the proceeding designations Docket No. AB-279 (Sub-No. 3) and Docket No. AB-124 (Sub-No. 2) and must be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than 45 days after the date the Trustee files his application, which is expected to be on or about December 23, 2002. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance/abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant:

Charles H. White, Jr., Esq.
c/o Kirkpatrick & Lockhart, LLP
1800 Massachusetts Avenue – 2nd Floor
Washington, D.C. 20036
(202) 778-9000

The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the discontinuance/abandonment proceeding. 49 CFR § 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Board or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

A copy of the application will be available for public inspection on or after December 23, 2002 at the following address:

Ms. Jocelyne Baranek
The Bangor & Aroostook System
15 Iron Road
Hermon, ME 04401

This office is open from 9:00 a.m. to 4:00 p.m., Monday through Friday. BAR shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

If required, an environmental assessment (EA) (or environmental impact statement (EIS)), prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who comment during its preparation.⁸ Any other persons who would like to obtain a copy of any EA (or EIS) may contact the Section of Environmental Analysis. EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on an EA will generally be 30 days after its service. The comments received will be addressed in the Board's decision and a supplemental EA (or EIS) may be issued where appropriate.

⁸ The CN trackage rights discontinuance is exempt from the environmental and historic reporting requirements of 49 C.F.R. § 1105. 49 C.F.R. § 1105.6(c)(6) and § 1105.8(b)(3). In the application, the Trustee will assert that the environmental and historic reporting requirements are inapplicable to abandonment of the WRC freight easement.

CERTIFICATE OF SERVICE

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

Notice of Intent for Discontinuance of Trackage Rights and Abandonment of

Freight Easement was served by Federal Express upon:

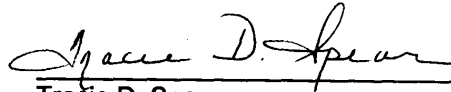
Cynthia A. Bergmann
Sean Finn
Canadian National/Illinois Central
455 North Cityfront Plaza Drive
Chicago, IL 60601-5317

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

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

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

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


Tracie D. Spear