

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-279 (Sub-No. 3) - 206126

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 DISCONTINUANCE--
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND
VAN BUREN BRIDGE COMPANY
IN AROOSTOOK COUNTY, MAINE

**REPLY OF TRUSTEE OF BANGOR AND AROOSTOOK RAILROAD COMPANY TO
REPLY OF CANADIAN NATIONAL RAILWAY COMPANY AND
WATERLOO RAILWAY COMPANY TO PETITION FOR WAIVER**

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**ATTORNEYS FOR TRUSTEE OF BANGOR
AND AROOSTOOK RAILROAD COMPANY**

Dated: August 26, 2002

BEFORE THE
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James E. Howard, Esq., Trustee of the Bangor and Aroostook Railroad Company, Debtor ("Trustee")¹, hereby files this reply to the reply of Canadian National Railway Company ("CN") and Waterloo Railway Company ("WRC" and collectively with CN, "CN") to Trustee's Petition for Waiver. On August 9, 2002, Trustee filed a Petition for Waiver in connection with an adverse discontinuance application that Trustee

¹ The CN trackage rights and the WRC easement at issue extend over: 1) a line owned by Bangor and Aroostook Railroad Company ("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 Van Buren Bridge Company ("VBBC") extending between approximately MP 0.0 at Van Buren, Maine and approximately MP 0.31 at the United States-Canadian Border. The Trustee will seek discontinuance of the CN trackage rights and WRC easement on the BAR and the VBBC owned lines (referenced herein as the "Subject Line"). Although the Trustee will therefore be acting in the dual capacity of Trustee for the BAR and for the VBBC, for convenience we will continue to refer to him as the Trustee of the BAR.

intends to file in this proceeding (the "Application"). Trustee intends to seek adverse discontinuance of trackage rights held by CN and of a freight easement held by WRC.² On August 22, 2002, CN filed a reply to Trustee's Petition for Waiver (the "Reply").

Apart from the suggestion regarding the use of dual docket numbers, CN's Reply has no merit. The issue in this case will be whether discontinuance of the CN trackage rights and the WRC easement on the Subject Line is in the public interest. The Trustee will meet its burden of proof by demonstrating that the CN and WRC discontinuances are in the public interest. When we get to the merits of the case, CN will no doubt argue (as it has on virtually every page of the Reply) that the relief sought by the Trustee has far-reaching competitive implications and that the case is unlike any adverse abandonment/discontinuance case ever filed. CN will have ample opportunity to make whatever arguments it wants in opposition to the relief sought by the Trustee, but nothing in the Reply merits a denial of any aspect of the Trustee's Waiver Petition. Denial of any aspect of the Trustee's Waiver Petition only would increase the cost of the proceeding to the Estate of the BAR and delay a decision on the merits of the Application, without any benefit to the evidentiary record.

Although the Reply frames CN's opposition³ to the Trustee's waiver requests broadly, it only makes a specific argument in opposition with respect to four elements: §

² If the Board grants the Trustee's application, its jurisdiction with respect to WRC's easement will end, but its jurisdiction with respect to the relevant line will not end. BAR will remain as a rail carrier on the line. For this reason, the relief sought by the Trustee with respect to WRC's easement should be referred to as "discontinuance" rather than "abandonment." See The Atchison, Topeka and Santa Fe Ry. -- Abandonment Exemption -- Between Arcadia and Los Angeles, CA, Docket No. AB-52 (Sub.-No. 75X) (served December 15, 1993).

1152.22(a)(4) (map requirements), § 1152.22(c) (service provided), § 1152.22(d) (revenue and cost data) and § 1152.22(f) (environmental/historic reporting requirements).⁴

Section 1152.22(a)(4) requires an abandonment/discontinuance application to include a detailed map, drawn to scale, showing in clear relief the “exact location of the rail line to be abandoned, or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.” The Trustee has sought waiver of these requirements, but indicated that it will provide a map showing relevant information. Waiver Petition at 3, n.1. CN argues that the Trustee “should be able to prepare the required map.”⁵ Preparation of a compliant map would be time-consuming and expensive. The map requirements clearly go beyond what will be necessary for the Board to decide this case. CN offers no explanation of why a map in the format of the regulations is needed.

³ CN does not object to the Trustee’s request for expedited consideration of the Waiver Petition, even though it does provide the argument it would have made if it had objected. Reply at 3, n. 4.

⁴ CN nominally objects to waiver of the requirements of § 1152.22(b) (property condition) and § 1152.22(e) (rural and community impact), but does not make any argument in opposition to these waiver requests. CN does assert that the Trustee should comply with these requirements because BAR “has access to all or nearly all of the information that is contemplated by the content requirements of 49 C.F.R. § 1152.22(b)-(e).” Reply at 4. However, the standard for a waiver is not whether the applicant “has” the information. If that were the standard, waivers would be rare in adverse discontinuance/abandonment cases. The standard is whether the information at issue is needed (in the format of the Board’s regulations) to decide the case. See e.g., Grand Trunk Western Railroad – Adverse Discontinuance – A Line of Norfolk and Western Railway Co. in Cincinnati, OH, STB Docket No. AB-31 (Sub.-No. 30) (STB served Feb. 12, 1998).

⁵ Reply at 5.

CN objects to the Trustee's request for waiver of the requirements of 49 C.F.R. § 1152.22(c) and (d) relating to service, revenue and cost data. Section 1152.22(c) requires a description of service data (i.e., number of trains operated and their frequency, miles of track operated, average number of locomotives operated, tonnage and car load data by commodity group, bridge traffic by commodity group, average crew size, level of maintenance, recent train service changes and reasons for decline in traffic) all for a designated Base Year. The Base Year must be the latest 12-month period (ending no earlier than 6 months prior to the filing of the application) for which data have been collected at the branch level (prescribed in Subpart D of the Board's abandonment regulations). Section 1152.22(d) requires computation of revenues and avoidable costs for the line to be abandoned for the Base Year, in conformance with the Board's cost, revenue and return on value standards (i.e., branch line revenue, cost, income data and avoidable cost) in a prescribed format. Section 1152.22(d) also requires computation of revenues and avoidable costs and reasonable return on value for the line to be abandoned for the Forecast Year (the 12-month period beginning on the date of the filing of the application) in conformance with the Board's cost, revenue and return on value standards, in a prescribed format.

The Application will include evidence demonstrating that discontinuance of CN's trackage rights and WRC's easement is in the public interest, including inter alia, relevant traffic, operational, revenue and cost data. Most of this data will by necessity relate to BAR, because CN has never operated under the trackage rights. The Trustee will have the burden of proof and CN will have an opportunity to reply to the Trustee's evidence and arguments with whatever evidence and arguments in deems relevant or

persuasive. CN has not written one word to justify forcing the Trustee to make any aspect of its traffic, operational, revenue or cost evidence under the methodology or in the format of the Board's regulations. Even if one accepts CN's oft-repeated characterization of this case, there is no reason that the Trustee should be required to frame its traffic, operational, revenue or cost evidence within the requirements of 1152.22 (c) and (d). Doing so only would increase the cost of the proceeding to the Estate of the BAR and delay a decision on the merits of the application, without any benefit to the evidentiary record.

With respect to the environmental/historic reporting requirements, the Reply notes that it is not clear whether the relief to be sought is exempt and argues that the Trustee should deal with the issue later in the Application rather than now through the waiver petition. Reply at 5. The discontinuance of the CN trackage rights is squarely within §§ 1105.6(c)(6) and 1105.8(b)(3). Waiver Petition at 5. The discontinuance of the WRC easement is not; however, discontinuance⁶ of WRC's easement would not result in any change in operations or in the level of maintenance on the Subject Line, or alteration of historic sites. Because discontinuance of the WRC easement does not fall squarely within §§ 1105.6(c)(6) and 1105.8(b)(3), but (on the other hand) would not involve any activities which would raise environmental or historic preservation concerns, the Trustee asked the Board for any further exemption or waiver it deemed necessary to confirm the inapplicability in this case of the environmental and historic reporting

⁶ The outcome would be the same if the Board characterized the treatment of the WRC easement as an "abandonment."

requirements. Waiver Petition at 5.⁷ Inexplicably, CN wants the Board to leave this issue open and make BAR address it again in the Application. Granting CN's request would serve no purpose. The issue can be decided now, allowing the Trustee (and CN and the Board) to focus on substantive and relevant issues in the case.

WHEREFORE, James E. Howard, Esq., Trustee of the Bangor and Aroostook Railroad Company, respectfully requests that the Board grant the requested waivers and exemptions sought in Trustee's Petition for Waiver.

Respectfully submitted,

By:  _____

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Dated: August 26, 2002

⁷ See Implementation of Environmental Laws, 7 I.C.C.2d 807, 836 (1991); Burlington Northern Railroad Company-- Abandonment and Discontinuance of Trackage Rights Exemption-- In Walla Walla County, WA, and Umatilla County, OR, Docket No. AB-6 (Sub-No. 327X) (decided Mar. 8, 1991).

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2002, a copy of the foregoing **Trustee's Motion For Leave To Reply To Reply Of Canadian National Railway Company And Waterloo Railway Company To Petition For Waiver and Reply Of Trustee Of Bangor & Aroostook Railroad Company To Reply Of Canadian National Railway Company And Waterloo Railway Company To Petition For Waiver** was served by overnight delivery upon:

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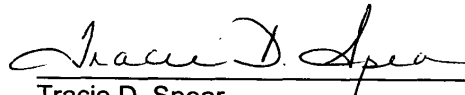
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