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November 11, 2003

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VIA FEDERAL EXPRESS

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

ENTERED
Office of Proceedings

NOV 12 2003

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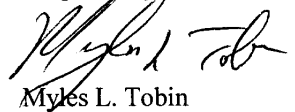
Re: **Docket No. AB-279 (Sub-No. 3) -209380**
Canadian National Railway Company -- Adverse
Discontinuance -- Line of Montreal, Maine & Atlantic
Railway Ltd. in Aroostook County, Maine

Docket No. AB-124 (Sub-No. 2) -209381
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 (10) copies of Canadian National Railway Company's Response to the Petition for Leave to Intervene filed by Canadian Pacific Railway Company.

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

**CANADIAN NATIONAL RAILWAY COMPANY'S RESPONSE TO CANADIAN
PACIFIC RAILWAY COMPANY'S PETITION FOR LEAVE TO INTERVENE**

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

Dated: November 11, 2003

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

**CANADIAN NATIONAL RAILWAY COMPANY'S RESPONSE TO CANADIAN
PACIFIC RAILWAY COMPANY'S PETITION FOR LEAVE TO INTERVENE**

Canadian National Railway Company ("CN") does not object to Canadian Pacific Railway Company's ("CP") intervention for the purpose of responding to CN's Motion to Compel Discovery. However, CN does take exception to CP's unfounded mischaracterizations as to the nature and scope of the discovery sought by CN in connection with Document Request No. 10 propounded on MM&A. In Request No. 10, CN seeks the following documents from MM&A:

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.

CP claims that CN has "failed to establish any legitimate need for it to obtain access to those agreements in order for it to respond to the Trustee's Application." It is apparent from this assertion that CP has not read the Trustee's Application.

In its Application, the Trustee contends that the Board should not be concerned that the abandonment of CN's access to Fraser's Madawaska Mill will reduce competition from two rail carriers to one (and render Fraser a captive shipper to MM&A), because of alleged extensive "bridge competition" between CN and CP. CN is certainly entitled to test and refute this assertion. For example, MM&A's Business Plan indicates that CP is providing incentives to MM&A for the routing of rail traffic via CP's lines. Certainly, if MM&A is receiving incentives from CP to route traffic away from CN and onto CP then, post-abandonment, MM&A will have significant motivation (and ability) to disadvantage the CN routing in favor of the CP routing for Fraser traffic. This does not bode well for Fraser's alleged "competitive options", post-abandonment. To the extent that CP and MM&A have entered into voluntary coordination agreements or most favored nations agreements which create these incentives for MM&A, CN's outside counsel and consultants (as well as the Board), are entitled to see exactly what incentive or coordination arrangements exist between MM&A and CP.¹

Moreover, to the extent that these incentives would encompass traffic moving to or from the CDAC Line, it is arguable that MM&A would be less likely to abandon that line, notwithstanding the Trustee's pronouncement to the contrary.

CP claims that the rate information provided by BAR and MM&A "is clearly sufficient" to enable CN and the Board to assess the extent to which the MM&A/CP route offers a viable competitive option. However, unlike Fraser, CP does not stand to lose any competitive options here. Unlike CN, CP does not have any access rights at issue here. To the contrary, CP only stands to gain in this proceeding by having MM&A potentially force the routing of Fraser

¹ CP appears to question whether such a voluntary coordination agreement even "exists", notwithstanding that the Trustee specifically refers to the agreement in his Verified Statement and that agreement was publicly announced by MM&A several months ago. See attachment.

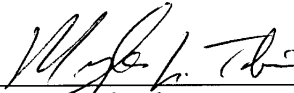
traffic via the CP system. While the Trustee has provided some CP contracts (which pre-date acquisition of BAR by the MM&A), the rate data provided by MM&A and BAR do not provide a full picture of CP's enticements to MM&A which may very well motivate MM&A to economically force Fraser to move its traffic via CP, post-abandonment. CP's agreements in this regard must be reviewed.

In the same vein, to the extent that haulage agreements and trackage rights agreements exist between CP and MM&A, CN's outside counsel and consultants are entitled to review them. Operating agreements which could be utilized to move Fraser traffic are relevant for evaluation of the service performance capabilities of a joint MM&A/CP route for Fraser traffic as compared to the CN routing. MM&A was not able to provide service performance levels for the MM&A/CP routing in response to CN's Interrogatories and, as such, review of the operating agreements between those carriers provides a method of evaluating those service capabilities.

Finally, to the extent CP raises a concern about "disclosure of the details of CP's commercial arrangements with MM&A to CN", confidentiality protections are precisely the purpose of the Board's protective order. Such documents will only be reviewed by CN's outside counsel and consultants, all of whom have executed Highly Confidential Undertakings. Information included in CN's filing regarding these agreements would correspondingly be marked "highly confidential" and could not be viewed by third parties. To reject CN's outside counsel's access to these agreements, on the basis of commercial sensitivity, would strike at the very foundations of the STB's protective order process, and undermine the ability of CN to adequately present its case.

For the foregoing reasons, CN respectfully requests that its Motion to Compel be granted.

Respectfully submitted,

By: 

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ATTORNEYS FOR

CANADIAN NATIONAL RAILWAY

COMPANY AND WATERLOO RAILWAY

COMPANY

Dated: November 11, 2003

Small-Road Update

Bangor & Aroostook, the final chapter

Sale of the bankrupt Bangor & Aroostook System, one of the oldest names in U.S. freight railroading, to Rail World, Inc., subsidiary MMA, which consists of Montreal, Maine & Atlantic Railway LLC and Montreal, Maine & Atlantic Canada Co., was approved in U.S. Bankruptcy Court in Portland, Me., last month. The Bangor & Aroostook System includes the Bangor & Aroostook Railroad Company, Canadian American Railroad Company, Northern Vermont Railroad Company, Newport and Richford Railroad Company, and Van Buren Bridge Company; Litwin Boyadjian Inc., Trustee to the Proposal of Quebec Southern Railway Company, Ltd.; and Logistics Management Systems, Inc. The sale is expected to be completed by early December, as the U.S. Surface Transportation Board and the Canadian Transportation Agency have both approved the transaction.

"We welcome the opportunity to provide stable, viable rail service to B&A's service territory," said Rail World and MMA President Edward A. Burkhardt. "We have targeted Dec. 1 as closing date, and have a lot of work to do to prepare for startup of our new railway." He said that MMA's priorities were "rail customer and employee issues, and technical matters such as locomotives and cars."

Out: One of the oldest names in U.S. railroading. In: The Montreal, Maine & Atlantic.

In addition to the takeover of the B&A System, MMA has concluded an agreement with Canadian Pacific Railway to acquire CPR lines between the U.S./Canadian border at Richford, Vt., through Brookport to St. Jean, Quebec, and the north-south line from St. Rosalie through Farnham to Stanbridge that were previously leased to Quebec Southern Railway. These lines connect with the B&A at Richford and Brookport and will provide MMA access to Montreal.

CPR and MMA have created an alliance designed to "work together to enhance the operation and viability of the lines MMA is purchasing, provide competitive rail service to shippers, and provide mutual long-term benefits." The alliance "is designed to maximize routing of traffic over CPR lines, and to provide reciprocal pricing authority to both."

"Concluding these negotiations with CPR is a major step toward completing our purchase of the majority of B&A's rail assets," said Burkhardt. "CPR will be our main interchange partner, and we look forward to close cooperation in marketing joint MMA/CPR service through the Montreal gateway."

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of November, 2003, a copy of the foregoing **Canadian National Railway Company's Response to Canadian Pacific Railway Company's Petition for Leave to Intervene** was served by overnight commercial carrier, to:

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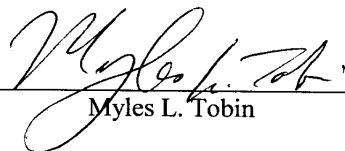
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