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October 28, 2003

VIA FEDERAL EXPRESS

209245

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

**EXPEDITED CONSIDERATION
REQUESTED**

**ENTERED
Office of Proceedings**

OCT 29 2003

**Part of
Public Record**

Re: **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) 209246
Waterloo Railway Company -- Adverse Abandonment -- Line of
Montreal, Maine & Atlantic Railway Ltd. in Aroostook County, Maine**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are an original and ten copies of Canadian National Railway Company's Motion to Compel Production of Documents by Montreal, Maine & Atlantic Railway Ltd. and the Trustee of the Bangor and Aroostook Railroad Company. Inasmuch as all protests and responses to the Trustee's Adverse Abandonment Application are due on or before November 20, 2003, Canadian National respectfully requests expedited consideration of this Motion.

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

Respectfully submitted,

Myles L. Tobin

Myles L. Tobin
Attorney for Canadian National
Railway Company

MLT:tjl
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 MOTION TO COMPEL
PRODUCTION OF DOCUMENTS BY
MONTREAL, MAINE & ATLANTIC RAILWAY, LLC AND THE TRUSTEE OF
BANGOR AND AROOSTOOK RAILROAD COMPANY**

EXPEDITED CONSIDERATION REQUESTED

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

Dated: October 28, 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 MOTION TO COMPEL
PRODUCTION OF DOCUMENTS BY MONTREAL, MAINE &
ATLANTIC RAILWAY LTD. AND THE TRUSTEE OF
BANGOR AND AROOSTOOK RAILROAD COMPANY**

Pursuant to 49 C.F.R. § 1114.30 and 1114.31, Canadian National Railway Company ("CN"), hereby moves the Surface Transportation Board ("STB" or "Board") to compel the Montreal, Maine & Atlantic Railway Ltd. ("MM&A") and the Trustee of the Bangor and Aroostook Railroad Company ("Trustee") to produce certain documents in response to CN's First Request for Production of Documents ("Document Requests"). The portions of CN's Document Requests at issue are attached hereto as Exhibits A and B respectively. CN respectfully requests that the Board expedite its consideration of this Motion to Compel so that CN can provide its comments to the Trustee's Adverse Application for Discontinuance of Trackage Rights and Abandonment of Easement on November 20, 2003, in accordance with the Board's Order in this proceeding, served October 24, 2003.

I. BACKGROUND

On August 13, 2003, the Trustee filed the second in a series of Notices of Intent for Discontinuance of Trackage Rights and Abandonment of Freight Easement. After several extensions, the Trustee ultimately filed its Adverse Application for Discontinuance and Abandonment on October 6, 2003. In its Application, the Trustee is 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 (collectively "BAR"), as well as the involuntary abandonment of an operating easement acquired by CN's subsidiary, The Waterloo Railway Company, over the same lines. The lines run between Madawaska, ME and the Canadian border, and serve a mill owned by Fraser Papers, Inc. at Madawaska ("Fraser").

The lines are now owned by MM&A, which purchased them from the estate of the bankrupt BAR on January 9, 2003. Curiously, MM&A is not an applicant in the Adverse Abandonment proceeding. MM&A did file a Petition for Leave to Intervene, and the verified statement of its President, Mr. Edward Burkhardt, is included with the Application.

As the Board noted in its October 24, 2003 decision in this proceeding, "the Trustee seeks to terminate CN's authority to serve Fraser over the lines. This would leave MM&A as the only carrier with authority to serve that shipper." Slip Op. at 2.

On August 19, 2003, pursuant to 49 C.F.R. § 1114.26 and 1114.30, CN served Interrogatories and Document Requests on the Trustee. On August 28, 2003, CN also served Interrogatories and Document Requests on MM&A.

MM&A initially objected to all Interrogatories and Document Requests (except one) submitted by CN. However, over the past two weeks, CN and MM&A have resolved most of their discovery disputes, with MM&A agreeing to respond to certain discovery requests and

CN agreeing to withdraw other requests (see correspondence between CN's and MM&A's attorneys attached hereto as Exhibit D). Three Document Requests remain outstanding. With respect to Document Request Nos. 7 and 8, MM&A has continued to object to providing responses (See Exhibit C). With respect to Document Request No. 10, MM&A is agreeable to providing a response, but has failed to do so by virtue of Canadian Pacific Railway Company interposing an objection based on confidentiality provisions contained in the agreements sought by the Document Request (see Exhibit D).

With respect to discovery served on the Trustee, CN believed that it and the Trustee had resolved all disputes relating to the Trustee's provision of discovery to CN. However, the Trustee has refused to provide one specific document which was heavily relied upon by the Trustee in his verified statement, and, as such, is clearly a workpaper within the scope of CN's Document Request No. 9.

II. ARGUMENT

A. The information CN seeks from MM&A and the Trustee is relevant to this proceeding and the Discovery Requests are narrowly tailored to obtain that information.

49 C.F.R. § 1114.21(a) provides that parties may "obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." The scope of discovery is broad, and it is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. 49 C.F.R. § 1114.21(a)(2); see also FMC Corp. v. Union Pacific Railroad Company, STB Docket No. 42022 (STB served February 5, 1998). Indeed, in this very proceeding the STB has recognized that discovery is appropriate, and has ordered both CN and Fraser to comply with substantial portions of the Trustee's Discovery Requests. (See Decisions in this proceeding served on May 6, 2003.)

It is within this framework of legitimate discovery that, on August 28, 2003, CN propounded extremely limited Interrogatories and Document Production Requests on MM&A. Although MM&A initially objected to virtually all of the discovery, after several conversations between counsel, most of the disputes were resolved. CN withdrew some discovery requests, and MM&A agreed to respond to others.

However, the parties' dispute with respect to Document Request Nos. 7 and 8 was not resolved. In those two requests, CN seeks communications between and among MM&A, BAR and the Trustee relating primarily to CN's trackage rights and the Waterloo freight easement, the viability of MM&A, and the alleged effect, if any, of CN's trackage rights and the Waterloo freight easement on MM&A and its viability. MM&A clearly purchased the BAR system with the CN trackage rights and Waterloo freight easement in place. MM&A was certainly aware of the existence of the trackage rights and freight easement agreements prior to purchasing the BAR system (Burkhardt verified statement attached to the Application at p.1). The purchase price for the BAR properties undoubtedly reflected the existence of these rights. Thus, MM&A's and the Trustee/BAR's communications regarding these agreements and their alleged impact on MM&A are highly relevant, particularly since they would have occurred at a time when MM&A (1) was evaluating its purchase of the BAR system and (2) was not engaged in litigation regarding the abandonment.

MM&A objects to these Document Requests on the grounds that they are "unduly burdensome and overbroad in that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." Nothing could be further from the truth. The alleged impact of these agreements on MM&A is the principal focus of the Trustee's Adverse Abandonment application. Communications between MM&A and the Trustee/BAR are

therefore clearly relevant to ascertaining exactly what those parties thought about this alleged adverse impact when they were negotiating the sale of the BAR system. CN is entitled to review those communications.¹

In Document Request No. 10, CN seeks operating agreements, voluntary coordination agreements, marketing agreements and haulage agreements, etc., between MM&A and the Canadian Pacific Railroad. Although MM&A initially objected to this Request, MM&A ultimately withdrew its objection subject only to Canadian Pacific's acquiescence on the basis that the applicable agreements contained confidentiality provisions. MM&A informed CN late last week that Canadian Pacific had objected on the basis of those confidentiality provisions and, as such, the requested agreements could not be produced (See Exhibit D).

MM&A's agreements with Canadian Pacific and, in particular, voluntary coordination agreements, marketing agreements and haulage agreements, are relevant to CN's analysis of the application. The Trustee touts MM&A's route with CP as reflecting a significant alternative in lieu of the route currently provided by CN for Fraser traffic. As such, CN is entitled to explore the exact scope and nature of the agreements covering that routing. Indeed, in documents already provided in discovery by MM&A, there is a suggestion that Canadian Pacific is providing substantial incentives to MM&A for the routing of Fraser traffic away from CN, and onto the Canadian Pacific system. Clearly, the provisions contained in those MM&A-Canadian Pacific agreements are appropriately reviewable by CN's outside counsel and consultants (subject to compliance with the Protective Order in this proceeding), to determine their impact on current

¹ The MM&A will undoubtedly point to the fact that CN agreed in its stipulation with the Trustee to withdraw similar requests propounded upon the Trustee. That is so. However, beyond the fact that the withdrawal was made in exchange for the Trustee agreeing to withdraw certain Discovery Requests in the BAR bankruptcy proceeding, the fact is that MM&A is the purchaser of the BAR system and, as such, its evaluation of the relationship of these agreements to its purchase (particularly at the time of the purchase) is clearly relevant to CN's analysis of assertions being made by the Trustee now.

competitive options at Fraser's Madawaska Mill and MM&A's incentives to economically disadvantage joint line routings with CN if CN's direct access to the mill is eliminated.

MM&A does not dispute that such agreements are discoverable. Rather, it is hindered from producing these documents simply by virtue of Canadian Pacific's enforcement of confidentiality provisions within the agreements. However, this Board has issued a Protective Order in this proceeding to protect that very confidentiality. CN understands that these agreements will be marked "Highly Confidential" and that only outside counsel and outside consultants engaged by CN will be entitled to review them. And that review may only be undertaken after execution of highly confidential undertakings by outside counsel and outside consultants, which commit to preservation of the confidential nature of the documents.² CN has already provided copies of executed highly confidential undertakings to MM&A for those outside counsel currently reviewing the discovery, and will provide further highly confidential undertakings if additional outside counsel or outside consultants are employed.

For the Board to allow MM&A to refuse to tender these documents on the basis of alleged confidentiality provisions contained therein would undermine the very purposes of the Board's Protective Order process, and would severely hamper CN in its ability to present its response to the Adverse Abandonment application.

Finally, CN seeks enforcement of its Document Request No. 9 propounded upon the Trustee, in which CN sought "all documents utilized in support of, preparation of, or relating to the Trustee's Application for Adverse Abandonment" (see Exhibit B).

² The Trustee has already provided certain BAR/Canadian Pacific agreements to CN, subject to the Protective Order and the highly confidential undertakings.

Pursuant to a stipulation between CN and the Trustee, the Trustee agreed to respond to certain Document Production Requests propounded by CN, including, but not limited to, Request No. 9 (see Exhibit G).³

Document Request No. 9 seeks the workpapers utilized in preparation of or in support of the Application for Adverse Abandonment. Although the Trustee has evidently supplied some of those workpapers, it clearly has not supplied all of them. Specifically, at page 18 of the Trustee's own verified statement, he refers extensively to traffic being routed via MM&A-Canadian Pacific through use of a coordinated marketing and operating agreement executed by those two railroads. CN has requested that the Trustee provide a copy of this Agreement, since it was so heavily relied upon by the Trustee. Incredibly, the Trustee has responded that he has never seen the document and it is not a workpaper (see correspondence attached hereto as Exhibit H).

CN respectfully submits that if the Trustee spends one-half page of his verified statement discussing a particular agreement, it is a workpaper and CN is entitled to review it (subject, of course, to the STB's Protective Order and highly confidential undertakings). If the Trustee did not review the agreement, and yet has felt entitled to comment extensively on its contents, then CN can only be left to question the basis and support for the balance of the statements made by the Trustee in his verified statement.

B. CN requests that the Board expedite its consideration of the Motion to Compel, and shorten the time for MM&A's and the Trustee's reply.

CN is seeking information from MM&A and the Trustee that is relevant to the proceeding that will enable CN to fully develop its case in response to the Application for Adverse Abandonment. In light of the November 20, 2003 due date for CN's comments, it is in the Trustee's

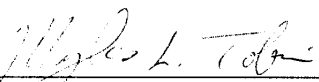
³ Even if the Trustee had not stipulated to Document Request No. 9, in view of the fact that the request seeks the workpapers utilized in support of or preparation of the application, CN would be entitled, as a matter of right, to review those documents.

and MM&A's interests to delay responses to CN's discovery as long as possible. Therefore, CN respectfully requests that the Board issue an Order making any reply to this Motion due by November 5, 2003. See FMC Wyoming Corp. v. Union Pacific Railroad Company, STB Docket No. 42022 (STB served December 12, 1997) (Board reduced time for reply to Motion to Compel in order to expedite discovery and allow the development of a complete record). CN also respectfully requests that the Board order MM&A and the Trustee to respond to the Document Production Requests on or before November 14, 2003, in order to provide CN with adequate time to prepare its comments to the Application.

III. CONCLUSION

For the foregoing reasons, CN respectfully requests that the Board give expedited consideration to this Motion by (1) issuing an Order making any reply to this Motion due by November 5, 2003 and (2) directing the Trustee and MM&A to provide the requested documents on or prior to November 14, 2003.

Respectfully submitted,

By: 

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

Dated: October 28, 2003

EXHIBIT A

**Document Production Requests Which Remain Outstanding From Montreal, Maine &
Atlantic Railway Ltd.**

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, MAINE

**CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
FROM MONTREAL, MAINE & ATLANTIC RAILWAY, LLC**

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**ATTORNEYS FOR CANADIAN
NATIONAL RAILWAY COMPANY**

Dated: September 4, 2003

documents of general applicability that do not have any direct impact on Effective Rates applicable to transportation of rail traffic destined to or originating from the Madawaska Mill.

6. Any and all Communications between and among any employees, directors, officers, representatives or other agents of MM&A (including without limitation any analyses, studies, reports or other documents prepared by such persons) relating to: (i) the ability or inability of Fraser, MM&A or any other rail transportation service provider to divert any aspect of transportation to or from the Madawaska Mill from non-rail to rail transportation; and (ii) the ability or inability of Fraser, or any non-rail transportation service provider, to divert any aspect of transportation to or from the Madawaska Mill from rail to non-rail transportation.

7. Any and all Communications between MM&A and BAR relating to: (1) the March 2001 Transaction, (2) the proposed abandonment of the Waterloo freight easement and proposed discontinuance of the CN trackage rights on the railroad line between Madawaska and Van Buren, (3) the proposed acquisition of substantially all of the MM&A System by MM&A, (4) the viability of MM&A or the MM&A System, (5) the effect of the Waterloo freight easement and/or the CN trackage rights on MM&A's financial viability or the service provided by MM&A, and (6) the preparation, development and content of the Notice of Intent and the Adverse Abandonment Application referenced therein.

8. Any and all Communications between the Trustee and MM&A relating to: (1) the March 2001 Transaction, (2) the proposed abandonment of the Waterloo freight easement and proposed discontinuance of the CN trackage rights on the railroad line between Madawaska and Van Buren, (3) the proposed acquisition of substantially all of the MM&A system by MM&A, (4) the viability of the MM&A or the MM&A system, (5) the effect of the Waterloo freight easement and/or the CN trackage rights on MM&A's financial viability or the service provided by

MM&A, and (6) the preparation, development and content of the Notice of Intent and the Adverse Abandonment Application referenced therein.

9. All documents utilized in support of, preparation of, or relating to the Trustee's Application for Adverse Abandonment of CN's trackage rights and the Waterloo freight easement.

10. 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.

11. All engineering evaluations and analyses of the track, roadbed, bridge structures, grade crossings and rail equipment (cars and locomotives) on the MM&A system.

12. All documents detailing capital expenditures made by the MM&A, including, but not limited to, expenditures for rail, OTM, bridge materials, grade crossing materials, signals (both crossing and track signals) and rail equipment (cars and locomotives).

13. All documents utilized in support of, in preparation of, or relating to the claim in the Notice of Intent, that: "the continued existence of the CN Trackage Rights and the WRC Freight Easement may require abandonment of the line between Madawaska and Portage, ME (the "Madawaska-Portage Line"). In addition, the continued existence of the CN Trackage Rights and the WRC Freight Easement may require abandonment of the line between Brownville Junction and the U.S./Canadian Border, west of Lowellton, ME (the "Brownville Junction-Border Line")."

EXHIBIT B

**Document Production Requests Which Remain Outstanding From The Trustee of The
Bangor and Aroostook Railroad Company**

**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, MAINE**

**CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
FROM TRUSTEE OF BANGOR & AROOSTOOK RAILROAD COMPANY**

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**ATTORNEYS FOR
CANADIAN NATIONAL RAILWAY
COMPANY**

Dated: August 19, 2003

Application filed on August 13, 2003, and (2) the Adverse Abandonment Application.

9. All documents utilized in support of, preparation of, or relating to the Trustee's Application for Adverse Abandonment of CN's trackage rights and/or the Waterloo freight easement.

10. All operating agreements, trackage rights agreements, joint facility agreements, voluntary coordination agreements, most favored nations agreements, marketing agreements, or haulage agreements entered into by BAR and CP or effective between BAR and CP.

11. All engineering evaluations and analyses of the track, roadbed, bridge structures, and grade crossings on the BAR System.

12. All documents detailing capital expenditures made by the BAR, including, but not limited to, expenditures for rail, OTM, bridge materials, grade crossing materials, and signals (both crossing and track signals).

EXHIBIT C

Montreal, Maine & Atlantic Railway Ltd.'s Objections to Discovery Request Nos. 7 and 8

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, MAINE

**MONTREAL, MAINE & ATLANTIC RAILWAY'S RESPONSES
AND OBJECTIONS TO THE CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Montreal, Maine & Atlantic Railway Ltd. ("MMA") responds and objects to the First Request for Production of Documents ("Document Requests") of Canadian National Railway Company ("CN"), dated September 4, 2003.

MMA is conducting a reasonable search for documents responsive to the Document Requests. Subject to the objections set forth below, and pursuant to the Protective Order entered in this proceeding, MMA is producing, or as soon as practicable will be producing, documents responsive to the Document Requests. If necessary, MMA is prepared to meet with counsel for CN at a mutually convenient time and place to discuss informally resolving its objections.

originates from or terminates at the Madawaska Mill, but excluding railroad industry agreements and any other similar documents of general applicability that do not have any direct impact on Effective Rates applicable to transportation of rail traffic destined to or originating from the Madawaska Mill.

Response:

MMA objects to this request on the ground that it is unduly burdensome and overbroad in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 6:

Any and all Communications between and among any employees, directors, officers, representatives or other agents of MM&A (including without limitation any analyses, studies, reports or other documents prepared by such persons) relating to: (i) the ability or inability of Fraser, MM&A or any other rail transportation service provider to divert any aspect of transportation to or from the Madawaska Mill from non-rail to rail transportation, and (ii) the ability or inability of Fraser, or any non-rail transportation service provider, to divert any aspect of transportation to or from the Madawaska Mill from rail to non-rail transportation.

Response:

MMA objects to this request on the ground that it is unduly burdensome and overbroad in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, MMA will produce, to the extent that they are located after a reasonable search, communications between and among any employees, directors, and officers relating to the ability of MMA, Fraser, other rail transportation service providers, or non-rail transportation service providers to divert any aspect of transportation to or from the Madawaska Mill from non-rail to rail transportation, and vice versa.

Document Request No. 7:

Any and all Communications between MM&A and BAR relating to: (1) the March 2001 Transaction, (2) the proposed abandonment of the Waterloo freight

easement and proposed discontinuance of the CN trackage rights on the railroad line between Madawaska and Van Buren, (3) the proposed acquisition of substantially all of the MM&A System by MM&A, (4) the viability of MM&A or the MM&A System, (5) the effect of the Waterloo freight easement and/or the CN trackage rights on MM&A's financial viability or the service provided by MM&A, and (6) the preparation, development and content of the Notice of Intent and the Adverse Abandonment Application referenced therein.

Response:

MMA objects to this request on the ground that it is unduly burdensome and overbroad in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 8:

Any and all Communications between the Trustee and MM&A relating to: (1) the March 2001 Transaction, (2) the proposed abandonment of the Waterloo freight easement and proposed discontinuance of the CN trackage rights on the railroad line between Madawaska and Van Buren, (4) the viability of the MM&A or the MM&A system, (5) the effect of the Waterloo freight easement and/or the CN trackage rights on MM&A's financial viability or the service provided by MM&A, and (6) the preparation, development and content of the Notice of Intent and the Adverse Abandonment Application referenced therein.

Response:

MMA objects to this request on the ground that it is unduly burdensome and overbroad in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 9:

All documents utilized in support of, preparation of, or relating to the Trustee's Application for Adverse Abandonment of CN's trackage rights and the Waterloo freight easement.

Response:

MMA objects to this request on the ground that it is unduly burdensome and overbroad in that it seeks information that is neither relevant nor reasonably

calculated to lead to the discovery of admissible evidence. MMA further objects to this request on the ground that the term “utilized in support of, preparation of, or relating to” is vague.

Document Request No. 10:

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.

Response:

MMA objects to this request on the ground that it is unduly burdensome, unduly vague, and overbroad in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 11:

All engineering evaluations and analyses of the track, roadbed, bridge structures, grade crossings and rail equipment (cars and locomotives) on the MM&A system.

Response:

MMA objects to this request on the ground that it is unduly burdensome and overbroad in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 12:

All documents detailing capital expenditures made by the MM&A, including, but not limited to, expenditures for rail, OTM, bridge materials, grade crossing materials, signals (both crossing and track signals) and rail equipment (cars and locomotives).

EXHIBIT D

Correspondence Regarding Discovery Between Attorneys for CN and MM&A

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October 22, 2003

VIA FACSIMILE (202/662-6291)

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**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 Mike:

This will confirm our oral agreement last week on the scope of discovery responses to be provided to CN by MMA (and the corresponding waiver by MMA of its objections thereto) in connection with the First Set of Written Interrogatories and Document Production Requests propounded on MMA on September 4, 2003.

Interrogatory Nos. 1 through 8 – MMA will respond to each of those Interrogatories through tender of a spreadsheet detailing the requested information, including, but not limited to, shipper, commodity, routing, origin/destination pair, MMA's divisions and other carriers' revenues (to the extent known) for the period from January 9, 2003 through June 30, 2003.

Interrogatory No. 9 – MMA advises that it does not possess such information.

Interrogatory No. 10 – MMA continues to object to providing this information.

Interrogatory No. 11 – MMA has responded to Interrogatory No. 11.

Document Production Request Nos. 1 through 5 – MMA will provide the documents requested in Request Nos. 4 and 5 in response to all five requests.

FLETCHER & SIPPEL LLC

Mr. Michael L. Rosenthal
October 22, 2003
Page 2

Document Production Request No. 6 – MMA will provide the requested documents if they are available.

Document Production Request Nos. 7 and 8 – MMA continues to object to providing such documents, and CN reserves its right to seek a motion to compel.

Document Production Request No. 9 – MMA has agreed to provide all workpapers utilized in preparation of Mr. Ed Burkhardt's verified statement.

Document Production Request No. 10 – MMA will provide all requested documents.

Document Production Request No. 11 – MMA does not have any narrative evaluations, and CN has agreed to withdraw this request.

Document Production Request No. 12 – MMA will provide a spreadsheet detailing capital expenditures from January 9, 2003 through June 30, 2003.

Document Production Request No. 13 – CN has agreed to withdraw the request.

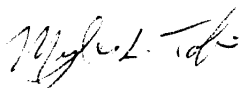
Document Production Request No. 14 – MMA will provide all requested documentation.

You have further advised that you will endeavor to tender the requested information by the end of this week and, in any event, no later than early next week.

Please advise if you take issue with any aspect of this letter regarding our oral agreement.

In furtherance of receipt of the requested documentation, enclosed please find copies of highly confidential undertakings executed by me and Mr. Sippel. The undertaking of Mr. Litwiler will follow shortly.

Very truly yours,



Myles L. Tobin

MLT:kib

Enclosures

COVINGTON & BURLING

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MICHAEL L. ROSENTHAL
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FAX 202.778.5448
MROSENTHAL@COV.COM

October 24, 2003

BY FACSIMILE AND OVERNIGHT MAIL

Myles L. Tobin, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

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 Mr. Tobin:

I received your October 22, 2003 letter regarding discovery. Although I generally agree with your summary of our discussions, I provide a few clarifications below:

Interrogatory No. 9. MMA does not possess the average transit time information you requested and could not produce it without a burdensome special study.

Document Request Nos. 1 through 5. MMA continues to object to production of documents in response to Document Request Nos. 1 through 3. MMA will produce documents in response to Document Request Nos. 4 and 5.

Document Request No. 6. MMA will produce responsive documents.

Document Request Nos. 7 and 8. I understood that CN agreed to withdraw these requests.

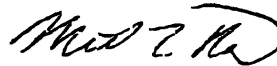
COVINGTON & BURLING

Myles L. Tobin, Esq.
October 24, 2003
Page 2

Document Request No. 10. I told you that MMA's ability to produce MMA/CP agreements might be affected by confidentiality provisions contained in those agreements. MMA has notified CP of the discovery request in order to ascertain whether CP objects to production, and we are awaiting CP's response. I will inform you once MMA receives a response from CP.

Along with this letter, I am enclosing copies of the material that MMA agreed to produce. The enclosed documents are labeled MMA-HC-000001 through MMA-HC-000492. The "HC" label indicates that the documents should be treated as "Highly Confidential" under the Protective Order. The cost for copying these documents is \$73.95. Please remit payment to Covington & Burling promptly. Thank you.

Sincerely,



Michael L. Rosenthal

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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

Phone: (312) 252-1500
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MYLES L. TOBIN
(312) 252-1502
mtobin@fletcher-sippel.com

October 27, 2003

VIA FACSIMILE

Mr. Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

**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 Mike:

This will confirm the substance of your telephone call to me on Friday, October 24, 2003 in which you indicated that, notwithstanding MM&A's willingness to comply with CN Document Request No. 10 covering agreements between MM&A and Canadian Pacific Railroad, MM&A would not be able to comply with the request as Canadian Pacific has objected to release of the agreements on the basis of confidentiality clauses in those agreements. Accordingly, you advised that CN would have to file a Motion to Compel in order to obtain the documents.

As you know, we would have expected these documents to be marked "highly confidential", and as such, they would be covered by the STB's Protective Order in this proceeding, and would be reviewable only by outside counsel and outside consultants. Nevertheless, we will seek a motion to compel, pursuant to your suggestion.

We did receive your responses to CN's Interrogatories and Document Production Requests, along with your "clarification" of my earlier letter memorializing our agreement regarding discovery. As I indicated in my October 22, 2003 letter, we did not agree to withdraw Document Production Request Nos. 7 and 8, but rather "agreed to disagree", and reserved our right to file a motion to compel responses to those two Document Production Requests.

Very truly yours,



Myles L. Tobin

MLT:kib

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October 28, 2003

BY FACSIMILE AND FIRST-CLASS MAIL

Myles L. Tobin
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

Re: Docket Nos. AB-279 (Sub-No. 3) & AB-124 (Sub-No. 2)

Dear Myles:

I received your letter of October 27, 2003 regarding CN's Document Request No. 10, which seeks agreements between MMA and Canadian Pacific. I am writing to set the record straight.

I told you previously that MMA was willing to withdraw its burden, vagueness, overbreadth, and relevance objections in order to avoid a discovery dispute. However, I also told you that MMA might be precluded from producing the agreements because of their confidentiality provisions. Based on your suggestion, MMA sought to obtain Canadian Pacific's consent to production. On Friday, I told you that Canadian Pacific had objected to MMA's production of the documents and that MMA would not produce the documents voluntarily.

Contrary to your assertion, I did not suggest that you seek a motion to compel. In fact, when we first spoke about Request No. 10, I told you that it appeared to be a fishing expedition into a highly sensitive area, and my view has not changed.

Sincerely,



Michael L. Rosenthal

EXHIBIT E

Page 18 of Trustee James Howard's Verified Statement in the Application

**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**

**ADVERSE APPLICATION FOR DISCONTINUANCE
OF TRackage RIGHTS AND ABANDONMENT OF EASEMENT**

**VERIFIED STATEMENTS OF JAMES E. HOWARD, FREDERIC W. YOCUM, JR.,
EDWARD A. BURKHARDT, ROBERT C. FINLEY AND JAMES N. HELLER**

**Charles H. White, Jr.
Attorney At Law
1200 Britania Lane
Annapolis, MD 21403
(410) 268-8575**

**Kevin M. Sheys
Edward J. Fishman
Tracie D. Spear
Janie C.I. Sheng
Brendon P. Fowler
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, N.W. - 2nd Floor
Washington, DC 20036
(202) 778-9000**

**ATTORNEYS FOR TRUSTEE OF BANGOR
AND AROOSTOOK RAILROAD COMPANY,
ET AL.**

Dated: October 6, 2003

VERIFIED STATEMENT

OF

JAMES E. HOWARD¹

1. INTRODUCTION

My name is James E. Howard. I am the Trustee of the Bangor and Aroostook Railroad Company ("BAR") and of its affiliate railroads, constituting the former BAR System.²

Through counsel, I am filing an application for Surface Transportation Board ("Board") authority for discontinuance of certain Canadian National Railway Company ("CN") trackage rights and abandonment of a certain Waterloo Railway Company ("WRC") freight easement.³

The purposes of this Verified Statement are to: 1) describe the role of the Trustee in the BAR bankruptcy; 2) explain why the CN trackage rights and the WRC easement must be discontinued and abandoned to ensure the viability of the Montreal, Maine & Atlantic Railway Ltd. ("MMA");⁴ and 3) describe the harm to shippers and the public interest in general that is likely to result if the Board does not grant the application and MMA is forced to abandon certain segments of the former BAR System.

¹ A resume summarizing my relevant qualifications and experience is attached hereto as **Appendix 1**.

² The BAR System included, in addition to the BAR, the Canadian American Railroad Company ("CDAC"), the Van Buren Bridge Company ("VBBC"), the Northern Vermont Railway Company ("NVT"), the Newport & Richford Railroad Company ("NRR") and the Quebec Southern Railway ("QSR"). QSR, for which I am not Trustee, was the subject of a case pending under the Bankruptcy and Insolvency Act (Canada) in the Superior Court of Quebec, Canada.

³ The trackage rights and easement in issue are on: (i) the former BAR rail line between Madawaska, ME (BAR M.P. 0.0) and Canadian Junction, ME (BAR M.P. 22.72/VBBC M.P. 0.0) and (ii) the former VBBC rail line between Canadian Junction and the point of connection with CN, near St. Leonard, New Brunswick (CN M.P. 194.1) (the "Madawaska Line").

⁴ The MMA System includes substantially all of the railway operating assets of the BAR System except for a portion of the former NVT south of Newport, Vermont.

PUBLIC VERSION - REDACTED

with roughly [] of those cars moving west across the former CDAC route. Westroc's traffic originates on the New Brunswick Southern Railway at McAdam and terminates at points west of Montreal (e.g. Alberta, Ontario) and at points in the northeast (e.g. New York, Connecticut, New Jersey). If the CDAC Line were to be abandoned, Westroc's traffic most likely would continue to move by rail, but would be diverted to a CN or Guilford routing from the Atlantic Province area. As described below, such diversions would be to the detriment of Westroc.

Traffic destined for points west of Montreal most likely would move from McAdam east to CN at Saint John, NB, then northeast to Moncton, NB, west through St. Leonard to St. Andre Junction and then south to Quebec and Montreal. Traffic destined for points in the northeast most likely would move from McAdam west to Guilford at Mattawamkeag, ME and then south through Bangor and Portland to an interchange with other carriers to move the Westroc traffic to points in the northeast.

At present, approximately half of the Westroc traffic moving by the MMA-CP route is destined for a CP station to the west. While this CP-destination traffic is currently moved by two individual carriers (MMA and CP), they are handling the business using a coordinated marketing and operating agreement, and therefore many of the benefits of a single-line haul are being realized. If the CDAC abandonment were to take place and this traffic were diverted to CN or Guilford, it would result in at least one additional carrier being inserted into Westroc's routings on these shipments. In addition, it would be necessary to haul the shipments a significant additional distance due to the configuration of the alternative carriers' routes. Given the increased distances required for Westroc's CP-bound traffic together with the need to utilize additional rail carriers in the routings, it appears likely that a CDAC Line abandonment would

EXHIBIT F

Correspondence from Trustee's Attorney Regarding Refusal to Provide Workpapers

Kirkpatrick & Lockhart LLP

1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
202.778.9100 Fax
www.kl.com

October 27, 2003

Edward J. Fishman
202.778.9456
Fax: 202.778.9100
efishman@kl.com

VIA FACSIMILE (312-252-2400)

Myles L. Tobin
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2875

**Re: 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**

Dear Myles:

I am writing in response to your letter of October 22, 2003. In that letter, you ask me to confirm that all workpapers utilized in connection with preparation of the Application (including the Verified Statements) have been produced to CN pursuant to CN Document Request #9. You also ask about a specific agreement referenced in Jim Howard's Verified Statement.

As I stated in my October 16, 2003 letter, the Trustee has produced all available documents that are responsive to the CN Document Requests and Interrogatories (including all workpapers required under CN Document Request #9) to which we agreed to respond subject to any applicable privileges. BAR is not a party to the agreement between MMA and CP referenced on page 18 of Jim Howard's Verified Statement and the Trustee did not review a copy of that agreement in preparing its Application. Therefore, the Trustee is not under any obligation to produce that agreement to CN.

Sincerely,


Edward J. Fishman

EXHIBIT G

CN's and Trustee's Stipulation Regarding Discovery

STIPULATION

The following reflects the understanding between the Trustee and CN with respect to the scope of the Trustee's responses to CN's August 19, 2003 document production requests and interrogatories.

1. CN Interrogatories

The Trustee will respond to each of Interrogatory Numbers 1 through 9. Inasmuch as CN has agreed to provide effective rate data for calendar year 2000, the Trustee will similarly provide such data for year 2000. Inasmuch as the Trustee sold substantially all of the BAR System to Montreal, Maine & Atlantic Railway, Ltd. ("Montreal Maine") on January 9, 2003, the end point of the Trustee's response period for the Interrogatories shall be January 9, 2003. Further, inasmuch as CN has interpreted the STB Order (regarding Trustee discovery propounded upon CN) as encompassing the data specified in Subsections (ii) and (iii) of Interrogatory Nos. 2, 4, 6, and 8, with respect to similar interrogatories propounded by the Trustee, and has provided such data to the Trustee, the Trustee will, in turn, provide complete data for Interrogatory Nos. 2, 4, 6, and 8, including but not limited to, items (ii) and (iii). Notwithstanding the foregoing, (a) the Trustee's responses with respect to Interrogatories 1-4 will exclude CN/BAR-routed traffic and (b) the scope of the Trustee's responses with respect to Interrogatory Nos. 5, 6, 7 and 8 will be (i) limited to those shippers/receivers which move rail traffic to, from or via any rail line segment which the Trustee contends that Montreal Maine will have to abandon as a result of the trackage rights and junction settlement transactions and (ii) limited to the time period December 1, 2001 through January 9, 2003, except that the Trustee will produce computer-generated traffic volume data for the period January 1, 2000 through January 9, 2003 and will produce any other readily accessible traffic volume data for the same period. In the event that the Trustee does not make an argument that any Montreal Maine line segment will have to be abandoned as a result of the aforementioned transactions, then the Trustee will not be obligated to respond to Interrogatory Nos. 5-8.

2. CN Document Production Requests

The Trustee will not respond to Document Production Request Nos. 1-3, 7-8, and 13. The Trustee will respond to Document Production Request Nos. 4-5 (but the Trustee's responses will exclude agreements, contracts or leases if CN is or was a party and tariffs, rate quotes, circulars, transportation contracts or other documents issued or subscribed to by CN), 6, 9, 10 (but only to the extent that such documents encompass Fraser traffic or were issued or available to move Fraser traffic regardless of whether any Fraser traffic actually moved thereunder), 11 (but only to the extent such evaluations and analyses encompass line segments which the Trustee asserts Montreal Maine will have to abandon as a result of the CN transactions), and 12 (but only to the extent such expenditures encompass line segments which the Trustee asserts that Montreal Maine will have to abandon as a result of the CN transactions). The end point of the Trustee's response period for the Document Production Requests shall be January 9, 2003.

3. Trustee's Response Deadline

The Trustee will provide its discovery responses on the earlier of October 7, 2003 or five (5) days after it files its abandonment application; except that the Trustee's response to Interrogatory No. 9 is due on or before October 15, 2003.

4. Trustee Interrogatories

CN agrees to supplement its prior responses to Interrogatory Nos. 1, 2, 3, 4, 5, 6 and 8 from the Trustee's November 14, 2002 STB Discovery Requests to include the period from January 1, 2000 through February 28, 2001 and from January 1, 2003 through June 30, 2003. The scope of CN's supplemental responses shall be the same as the scope of CN's prior responses.

5. Trustee Document Production Requests

CN agrees to supplement its prior responses to Document Request Nos. 7, 8 and 10 from the Trustee's November 14, 2002 STB Discovery Requests to include the period from January 1, 2000 through February 28, 2001 and January 1, 2003 through June 30, 2003. The scope of CN's supplemental responses shall be the same as the scope of CN's prior responses. CN's response to Document Request Nos. 7, 8 and 10 will exclude agreements, contracts or leases if BAR is or was a party and tariffs, rate quotes, circulars, transportation contracts or other documents issued or subscribed to by BAR.

6. CN's Response Deadline

CN shall make a good faith effort to produce such responsive information and documents by September 15, 2003 but, in any event, shall complete its production of responsive information and documents by September 22, 2003.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day Of October, 2003, a copy of the foregoing **Canadian National Railway Company Motion To Compel Production of Documents by Montreal, Maine & Atlantic Railway Ltd. and the Trustee of Bangor and Aroostook Railroad Company** was served by overnight commercial carrier, to:

Charles H. White, Jr.
Attorney at Law
1200 Britania Lane
Annapolis, MD 21403

Charles L. Eisen
Kevin M. Sheys
Edward J. Fishman
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, N.W.
2nd Floor
Washington, D.C. 20036

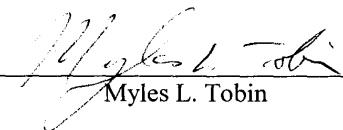
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Myles L. Tobin