

July 5, 2007

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Via Electronic Filing

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: State of Maine -- Acquisition Exemption --
Certain Assets of St. Lawrence & Atlantic Railroad Company,
STB Finance Docket No. 35018

Dear Secretary Williams:

The June 20, 2007 decision of the Surface Transportation Board ("Board") in the above-referenced proceeding directed the St. Lawrence & Atlantic Railroad Company ("SLR") to explain how it will continue to fulfill its common carrier obligations on the line of railroad between Deering, Maine and a point south of Yarmouth Junction, Maine (the "Subject Line") following the planned sale transaction between SLR and the State of Maine, acting by and through its Department of Transportation ("Maine DOT"). SLR hereby submits this letter in response to the Board's request for additional information and in support of the Motion to Dismiss filed in this proceeding by Maine DOT.

Significant Provisions of Operating Agreement

SLR is confident that it will be able to continue to fulfill its common carrier obligations on the Subject Line following the planned transaction. SLR will reserve an exclusive, perpetual freight railroad operating easement on the Subject Line and will maintain sufficient control over its freight rail operations on the Subject Line notwithstanding Maine DOT's planned acquisition of the underlying trackage and railroad right-of-way. The proposed Operating Agreement¹ between SLR and Maine DOT (i) specifically accounts for the fact that SLR has and will retain exclusive common carrier freight railroad operating rights on the Subject Line, (ii) prohibits

¹ References herein are to the proposed Operating Agreement between SLR and Maine DOT that was attached as Exhibit C to the Motion to Dismiss filed in this proceeding by Maine DOT (the "Operating Agreement").

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Maine DOT from conducting or authorizing others to conduct any freight rail service on the Subject Line, and (iii) ensures that any passenger rail service that may be conducted on the Subject Line in the future by Maine DOT will not materially interfere with SLR's freight rail operations.

The Operating Agreement will have a term of ten years from closing of the planned sale transaction unless renewed for an additional ten-year term at the discretion of SLR. See Operating Agreement at § 3. SLR's freight railroad operating easement, which will be reserved in the Deed to be conveyed by SLR to Maine DOT at closing, is perpetual and will remain in full force and effect after the Operating Agreement expires by its terms or otherwise is terminated. As set forth in the proposed Deed attached hereto as Exhibit A,² SLR will reserve a "perpetual, exclusive easement in, on, under, over, and through the [Subject Line] for purposes of conducting [SLR's] freight rail business and otherwise to fulfill [SLR's] obligations as a common carrier railroad under applicable laws and regulations."

The Operating Agreement specifies that "SLR currently provides, and shall have the exclusive right to continue to provide, local and overhead freight rail service to current and future freight rail shippers, receivers, consignees, and other entities that are located on the Subject Line or that may be seeking freight rail service over or on the Subject Line in the future." See Operating Agreement at §2.1(a). The Operating Agreement further provides that (i) "SLR retains the obligation to provide common carrier freight rail service" over the Subject Line, (ii) "Maine DOT expressly declines to assume any obligation to provide common carrier freight rail service on the Subject Line," and (iii) "[n]either Maine DOT nor any person or entity other than SLR (or its successors or assigns) shall be permitted to provide any type of freight rail service on the Subject Line." See Operating Agreement at §2.1(a) and §2.1(d). Thus, the Operating Agreement makes it clear that SLR is retaining all common carrier rights and obligations on the Subject Line and that Maine DOT is not acquiring any such rights or obligations. SLR also will retain full control and discretion over its ability to seek abandonment authority on the Subject Line. See Operating Agreement at §2.1(c).

As specified in the Operating Agreement, SLR will maintain control of and responsibility for dispatching and maintenance on the Subject Line unless and until Maine DOT initiates passenger rail service. See Operating Agreement at §2.6(b) and § 2.7. In the event that Maine DOT elects to initiate passenger rail service at some point in the future under the Operating Agreement, it will assume dispatching and maintenance obligations on the Subject Line and generally will be required to maintain the Subject Line at no less than FRA Class II standards. Id.³ The Operating Agreement gives Maine DOT the right to upgrade the Subject Line for

² This final version of the Deed differs slightly from the earlier version submitted with Maine DOT's Motion to Dismiss.

³ SLR will have the option of bidding on the dispatching and maintenance work for Maine DOT. See Operating Agreement at § 2.6(d) and § 2.7. If another party is engaged by Maine DOT to perform such

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passenger rail service in accordance with all applicable rules, regulations and railroad industry standards and prohibits any such upgrade from materially interfering with SLR's use of the Subject Line for freight rail service. See Operating Agreement at §2.2. SLR also will retain the right to make any changes or improvements to the Subject Line as required for its current or future freight operations. See Operating Agreement at §2.4(a).

Section 2.3(d) of the Operating Agreement

The Board's June 20 decision in this proceeding questioned whether Section 2.3(d) of the Operating Agreement would give Maine DOT the ability to force SLR to relinquish its freight easement or otherwise jeopardize SLR's ability to fulfill its common carrier obligations on the Subject Line. For the following reasons, SLR respectfully submits that Section 2.3(d) is fully consistent with SLR's retention of control over its common carrier obligations on the Subject Line and will not give Maine DOT the power to force the cessation of freight rail operations. In the event that Maine DOT initiates passenger rail service on the Subject Line at some point in the future under the Operating Agreement, SLR will transfer its freight easement to another operator or will continue to operate on the Subject Line jointly with Maine DOT during exclusive operating windows.⁴

Under Section 2.3(d) of the Operating Agreement, Maine DOT is required to provide SLR with at least one year of advance notice in the event that Maine DOT decides to initiate passenger rail service. In the event that Maine DOT provides such notice, Maine DOT must use its best efforts to identify an acceptable freight railroad operator that may be willing to accept an assignment of SLR's freight easement on the Subject Line prior to the start of any such passenger rail service.⁵ In the event that SLR and the freight operator identified by Maine DOT are able to negotiate mutually acceptable terms and conditions for the assignment of the freight easement and coordination of operations on the Subject Line and adjoining SLR lines, then SLR will transfer the freight easement to the new operator (*provided*, however, that SLR would continue to fulfill its common carrier obligations on the Subject Line until such new operator

maintenance work, and that contractor fails to fulfill its maintenance obligations, SLR has the right to perform such maintenance at the cost and expense of Maine DOT. See Operating Agreement at § 2.6(e).

⁴ SLR has an affiliate in Oregon (the Portland & Western Railroad) that is planning to operate freight service during similar exclusive freight windows on a line of railroad that will be used for commuter rail service in the Portland area. See Finance Docket No. 34810, Washington County, OR – Acquisition Exemption – Certain Assets of Union Pacific Railroad Company (STB served April 11, 2007).

⁵ Maine DOT has relationships with other freight railroads that operate on other rail properties that Maine DOT owns in Maine. Therefore, SLR does not anticipate at this time that Maine DOT would have difficulty identifying an operator acceptable to Maine DOT that may be willing to accept the assignment of SLR's freight easement.

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obtains authority from the Board to acquire SLR's freight easement and begins common carrier operations).

In the event, however, that Maine DOT is unable to identify an acceptable freight operator or if SLR and the freight operator are unable to negotiate a mutually agreeable arrangement for transfer of the freight easement at least 60 days prior to the start of future passenger rail service, then SLR and Maine DOT will jointly use the Subject Line for their respective freight and passenger rail operations during exclusive operating windows.

Section 2.3(d) does not give Maine DOT the ability to force SLR to abandon its common carrier easement on the Subject Line. Instead, in the event that Maine DOT initiates passenger rail service, and Maine DOT identifies an acceptable freight operator that is able to negotiate a mutually acceptable arrangement with SLR for assignment of the freight easement, SLR will transfer its freight easement to that third party operator in a transaction subject to Board jurisdiction. If such an assignment does not take place, SLR will continue to fulfill its common carrier obligations on the Subject Line. This arrangement is fully consistent with the perpetual and exclusive nature of SLR's freight easement and will not give Maine DOT the right to curtail or otherwise materially interfere with freight rail operations on the Subject Line. Maine DOT will have no ability to compel SLR or any subsequent operator into abandoning its common carrier rights or otherwise ceasing to provide common carrier service to customers on the Subject Line. For these reasons, the proposed transaction does not give Maine DOT inordinate control over common carrier operations on the Subject Line.⁶

The Potential Freight Window

As noted above, in the event that Maine DOT decides to initiate future passenger rail service on the Subject Line and SLR does not transfer its freight easement to a third party, SLR has agreed to operate its freight rail service on the Subject Line during an exclusive freight operating window. This window will extend between 11 p.m. and 4:30 a.m. on such days as SLR designates in its schedule. See Operating Agreement at §2.3(d). During that exclusive freight window, neither passenger rail service nor routine maintenance of or upgrades to the Subject Line will be allowed to occur. See Operating Agreement at §2.3(d).

⁶ The cases cited by the Board in its June 20 decision involved materially different situations where the acquiring public agency had the right to force the common carrier into abandoning its freight operations. See Orange County Transp.-- Exempt. – Atchison, T. & SF. Ry. Co., 10 I.C.C.2d 78 (1994); Southern Pacific Transp. Co. – Abandonment, 8 I.C.C.2d 495 (1992), reconsidered and clarified, 9 I.C.C.2d 385 (1993); see also Wisconsin Department of Transportation – Petition for Declaratory Order, Finance Docket No. 34764 (STB served Feb. 6, 2006)(expressing concerns about requiring freight operator to obtain permit from state agency acquiring line before it could provide common carrier service).

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SLR believes that it can adequately satisfy its common carrier obligations on the Subject Line during the exclusive freight window scenario because of the minimal traffic on the Subject Line and the short distance involved (approximately 10 miles). SLR has moved a total of approximately 24 carloads over the Subject Line in 2007 for only two active customers – Burnham & Morrill and Hancock Lumber. SLR provides switching service to these customers approximately once a week. SLR typically completes that switching service in approximately three hours. Burnham & Morrill has received approximately 20 hopper cars of beans and Hancock Lumber has received approximately four carloads of lumber products in 2007.⁷

Within the last five years, SLR has provided service to a total of five shippers or receivers on the Subject Line (including the two active customers mentioned above). However, Nappi Distributors has shut down its beer distribution business and is no longer accepting traffic. SLC Cement also is not accepting rail traffic at this time, although it anticipates resuming rail usage at some unspecified point in the future. The only other customer on the line within the last two years, Richardson Dana, is a small lumber company which has received rail service once or twice a year near the Yarmouth Junction end of the Subject Line (one carload in 2006 and none to date in 2007).

In light of the foregoing, SLR is confident that it can continue to satisfy its common carrier obligations on the Subject Line even if SLR provides service during the exclusive freight window between 11 p.m. and 4:30 a.m. This more than five-hour window would give SLR sufficient time to complete its switching activity, which presently occurs once a week and takes approximately three hours. SLR will have the discretion to select which day(s) of the week it wants to provide such freight switching service. Moreover, SLR does not believe that any of these shippers, due to the nature of their business operations and the extent of their rail service needs, will be materially and adversely affected by restricting SLR's switching service to the nighttime period.

SLR also believes that these customers will in fact benefit from the transaction with Maine DOT because of the improvements to the Subject Line that Maine DOT most likely will be required to undertake in order to run passenger trains on the Subject Line. These improvements should improve operating speeds and otherwise enhance SLR's ability to provide freight service on the Subject Line, even if such service is limited to an exclusive freight operating window. As such, SLR does not expect that the arrangement provided for under the Operating Agreement will have any material adverse impact on its ability to fulfill its common carrier obligations on the Subject Line.

It is worth noting that Maine DOT has not provided any specific timeline for its commencement of passenger service and likely will not be in a position to initiate such service

⁷ SLR moved a total of 77 carloads of traffic over the Subject Line in 2006.

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on the Subject Line for a number of years. Under the Operating Agreement, Maine DOT is required to give SLR at least one year prior notice of its intention to begin passenger rail service. The one-year advance notice period will allow more than enough time for SLR to coordinate with its remaining customers and make any necessary adjustments to its freight rail schedule prior to the commencement of any passenger rail service by Maine DOT.

Conclusion

The Operating Agreement was designed by SLR and Maine DOT to provide the rights and protections needed by SLR in order to ensure that the possibility of future Maine DOT passenger rail service will not materially interfere with SLR's freight rail operations on the Subject Line. For the reasons stated above, SLR believes that it can continue to fulfill its common carrier obligations on the Subject Line without any material interference from Maine DOT. SLR will retain exclusive and perpetual freight operating rights under the easement and the other protections set forth in the Operating Agreement. Maine DOT will not acquire any right to compel the cessation of common carrier service to customers on the Subject Line.

As the Board knows from Maine DOT's Motion to Dismiss in this proceeding, the parties agreed to close the sale transaction as of the later of June 30, 2007 or ten days after the Board issues a jurisdictional determination that Maine DOT is not a carrier as a result of the planned transaction. SLR supports Maine DOT's request for expedited consideration and respectfully requests that the Board act promptly on the jurisdictional determination so that the parties can finalize a transaction that has been under consideration for several years.

We hope this letter is responsive to your request for additional information. If you have any questions regarding this filing, please feel free to contact me.

Sincerely,



Edward J. Fishman
Counsel for St. Lawrence & Atlantic
Railroad Company

cc: James E. Howard - Counsel for Maine DOT

QUITCLAIM DEED

ST. LAWRENCE & ATLANTIC RAILROAD COMPANY, a Delaware corporation (“Grantor”), whose mailing address is 415 Rodman Road, Auburn, Maine 04210, for consideration paid, hereby grants to the **STATE OF MAINE**, acting by and through its **DEPARTMENT OF TRANSPORTATION** (“Grantee”), whose mailing address is 16 State House Station, Augusta, Maine 04333-0016, all of Grantor’s right, title, and interest (except as hereinafter reserved) in the property located in the **City of Portland** and in the **Towns of Falmouth, Cumberland, and Yarmouth**, Cumberland County, Maine, described in Exhibit A and depicted in Exhibit B attached hereto and made a part hereof, which property is hereinafter referred to as the “Railroad Line.” The property rights granted to Grantee hereunder as part of the Railroad Line shall include all improvements, fixtures, trackage, and structures owned by Grantor and located on the property described in Exhibit A and depicted in Exhibit B as of the date hereof.

EXCEPTING AND RESERVING to Grantor, its successors, and permitted assigns, a perpetual, exclusive easement in, on, under, over, and through the Railroad Line for purposes of conducting Grantor’s freight rail business and otherwise to fulfill Grantor’s obligations as a common carrier railroad under applicable laws and regulations (the “Freight Railroad Easement”); *provided, however*, that the Freight Railroad Easement shall terminate (in whole or in part) upon the recording in the Cumberland County Registry of Deeds of a Notice of Consummation that has been filed with the United States Surface Transportation Board or successor agency (“STB”) subsequent to, and in connection with, any final order or other final action by the STB permitting or requiring the holder of the Freight Railroad Easement to abandon all or part of the Railroad Line. Contemporaneously with the delivery of this Quitclaim Deed, Grantor and Grantee are entering into an Operating Agreement pertaining to the Railroad Line (the “Operating Agreement”). The terms and conditions of the Freight Railroad Easement shall include those contained in the Operating Agreement (as the Operating Agreement may be amended from time to time) while the Operating Agreement remains in effect.

IN WITNESS WHEREOF, St. Lawrence & Atlantic Railroad Company has caused this Quitclaim Deed to be signed as an instrument under seal by [INSERT], its [INSERT], duly authorized, this ____ day of _____, 200__.

ATTEST:

**ST. LAWRENCE & ATLANTIC
RAILROAD COMPANY**

Name:

By: _____
Print Name: _____
Its _____

STATE OF _____
COUNTY OF _____, 200__

Personally appeared the above-named _____ in his/her capacity as
_____ of St. Lawrence & Atlantic Railroad Company and acknowledged the
foregoing instrument to be his/her free act and deed and the free act and deed of said corporation.

Before me,

Notary Public/Attorney-at-Law

Printed Name: _____