

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1043 (Sub-No. 1)

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.—DISCONTINUANCE OF
SERVICE AND ABANDONMENT—IN AROOSTOOK AND PENOBSCOT COUNTIES,
ME.

Decided: July 23, 2010

The Montreal, Maine & Atlantic Railway, Ltd. (MMA or the railroad) filed an application under 49 U.S.C. § 10903 for permission to abandon and discontinue service over approximately 233 miles of line in Aroostook and Penobscot Counties, Me. on February 25, 2010. On March 17, 2010, the Board set dates for persons to submit filings on the application.¹

The Board received protests from the State of Maine, by and through its Department of Transportation (State) and from various shippers. Specifically, a joint protest was filed by Irving Woodlands LLC, Irving Forest Products, Inc., Fraser Papers Inc., Fraser Timber Limited, and Katahdin Paper Company (collectively, Joint Protestants). Separate protests were filed by Huber Engineered Woods, LLC, The Brotherhood of Locomotive Engineers and Trainmen (BLET), and Louisiana-Pacific Corporation. MMA challenges the claims of the protestants in a rebuttal.

On May 25, the Board issued an order encouraging the parties, in particular the railroad and the State, to enter into talks with the assistance of Board staff in order to resolve issues arising out of the abandonment application and a proposal by the State to purchase the line for continued rail service under the Offer of Financial Assistance (OFA) provisions of 49 U.S.C. § 10904. The Board noted that the State was in the process of seeking voter approval to issue bonds to provide funds with which to acquire the line to preserve rail service should the Board grant MMA's application. The bond referendum passed on June 8, 2010. The parties, in particular MMA and the State, have continued to meet and have made progress on the price of the line to be sold, but have not reached an agreement on all issues before them.

The Board held a public hearing on the proposed abandonment in Presque Isle, Me., on July 7, 2010. Speakers representing public officials, the railroad, the State, shippers, business and community interests, and the BLET testified at the hearing.

¹ In decisions served in this docket on April 5, 2010, and April 26, 2010, the Board modified this procedural schedule.

On July 19, 2010, the State filed an OFA under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27 to purchase the entire line. The State is filing the OFA to protect its right to pursue a purchase of the line through the Board's processes in the event that the agency grants MMA the abandonment authority it has requested. The State proposes to purchase the line for \$18,109,129.²

The State notes that its offer is conditioned on: (1) closing occurring 120 days after terms and conditions of sale are set by the Board or agreed to by the parties; (2) repayment to the State at closing of \$4,956,122 because the railroad has allegedly breached a series of rail funding agreements between MMA and the State; (3) granting the State's new operator overhead trackage rights over the northern and southern ends of MMA's remaining system to reach other carriers; and (4) the transfer being free and clear of monetary liens and encumbrances, including those held by the Federal Railroad Administration. The State notes that it reserves its rights to withdraw its OFA if any or all of the requested conditions are not imposed by the Board, or to proceed with the purchase even if the requested terms and conditions are not imposed.

The State's offer is substantially less than the railroad's estimated net liquidation value (NLV) of \$26,279, 876. The reasoning behind this lower estimate is found in the OFA and is also discussed in the State's April 21 filing in opposition to the abandonment proposal, which included its opposition to the railroad's estimated NLV for the line. Briefly, the State claims that the railroad has overstated the value of the land by basing it on a corridor methodology rather than the "across the fence" methodology generally used. Pursuant to the corridor methodology, the land is valued as if it were to be sold as an intact right-of-way as opposed to a collection of parcels valued by using sales of similar parcels. The State also claims that the railroad overvalues the track materials based on a number of reasons. Among other reasons, the State claims that the railroad's NLV is based on April steel prices as opposed to July steel prices, fails to include any costs for restoring the at-grade crossings on the line, and overestimates the number of ties and the weight of the rail.

The State asks that, if the Board accepts its OFA, the balance of the OFA process be tolled until the Board issues its decision on the merits of the abandonment and discontinuance application. If the Board authorizes the abandonment, the States asks that it be given 40 days from the date of the Board's decision to try to finalize an agreement with MMA before requests to set terms and conditions are due.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). The State is presumed to be financially

² The State notes that it is still negotiating to purchase the line through a private agreement and that the terms of those negotiations are confidential. It avers that the purchase price and the other terms and conditions requested in this OFA do not necessarily reflect the current status and terms of the negotiations. The State does not intend this OFA to represent a change in its position on the terms that have been agreed to in negotiations, but rather to represent terms requested if negotiations are ultimately unsuccessful.

responsible. See 49 C.F.R. § 1152.27(c)(1)(ii)(B). The State has explained the difference between its offer and MMA's estimated NLV for the line. Accordingly, the State's OFA is accepted.

The request to toll the remainder of the OFA process is reasonable and will be granted. Should the Board grant the abandonment application, it will determine whether to impose the conditions requested by the State.

It is ordered:

1. The State's OFA is accepted, as described above.
2. The OFA process is tolled pending the Board's decision on the merits of MMA's abandonment and discontinuance application.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.