

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: April 5, 2010

On February 25, 2010, Montreal, Maine & Atlantic Railway, Ltd. (MMA) filed an application under 49 U.S.C. 10903 for authority to discontinue service over and abandon approximately 233 miles of line in Aroostook and Penobscot Counties, ME.<sup>1</sup> On March 17, 2010, the Board announced the application proceeding and set forth dates for persons to submit filings on the application.

On March 24, 2010, the State of Maine (Maine), by and through its Department of Transportation, filed a motion asking that the Board extend the due dates for comments, protests, and other filings related to the application and for MMA's reply. The State explains that the railroad has made the lines available for the State's inspection between April 5 and April 7. The State is concerned that the proximity of these inspection dates to the April 12 due date for comments and protests will not leave it enough time to complete its evaluation and prepare its comments or protest. The State also desires additional time to engage in discovery, because it had delayed formal discovery while it was negotiating with the railroad.

The State asks that the Board delay the deadlines for submission of comments and protests, requests for public use and interim trail use conditions, and applicant's responses by 21 days. Granting this request would result in comments, protests, and related filings being due on May 3 and replies from the railroad being due by May 17. The State notes that certain

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<sup>1</sup> MMA seeks discontinuance and abandonment authority for the following: (1) the Madawaska Subdivision, consisting of approximately 151 miles of line between milepost 109 near Millinocket and milepost 260 near Madawaska in Penobscot and Aroostook Counties; (2) the Presque Isle Subdivision, consisting of approximately 25.3 miles of line between milepost 0.0 near Squa Pan and milepost 25.3 near Presque Isle in Aroostook County; (3) the Fort Fairfield Subdivision, consisting of approximately 10 miles of line between milepost 0.0 near Presque Isle and milepost 10.0 near Easton in Aroostook County; (4) the Limestone Subdivision, consisting of approximately 29.85 miles of line between milepost 0.0 near Presque Isle and milepost 29.85 near Limestone in Aroostook County; and (5) the Houlton Subdivision, consisting of approximately 16.9 miles of line between milepost 0.0 near Oakfield and milepost 16.9 near Houlton in Aroostook County.

shippers—Louisiana-Pacific Corporation, Irving Woodlands LLC and Irving Products, Inc., and Huber Engineered Woods Products, LLC—support its extension request.

MMA filed a reply opposing the State's extension request on March 26, 2010. MMA notes that the schedule governing the proceeding conforms to the one set forth in the Board's regulations. It also asserts that it has provided information to those who have sought it, and that the State could have pursued discovery while it was pursuing negotiations. The railroad lastly claims that the inspection will be more useful for anyone interested in filing an offer of financial assistance to continue rail service under 49 U.S.C. § 10904 than in verifying the cost evidence underlying its application.

Also on March 26, the State filed a reply to MMA's opposition, reasserting that an extension is warranted.<sup>2</sup> It notes that, not only is the inspection important to the OFA process, but it is also important for examining cost data, calculating opportunity cost, and evaluating the need for the line's rehabilitation.

The Board will grant the State's request in part, by providing a 9-day extension of the relevant deadlines. A 9-day extension will give the State sufficient time to analyze what it learns from the inspection and engage in discovery while still allowing the Board sufficient time to adequately analyze the submissions. Moreover, the Board, by order served March 12, 2010, announced that a public hearing in Maine would be held shortly after the written record on the transportation merits closes.<sup>3</sup> If the comments offered at that hearing are to be given due consideration, that hearing must occur early enough in the proceeding to allow the Board time to evaluate the comments. Nor would it be advisable to hold a hearing before the participants have had the opportunity to review all of the filings on the application.

The due date is advanced for all parties. Accordingly, comments on the application, protests, interim trail use requests, and public use requests must be filed by April 21, 2010. A rebuttal from the railroad is now due by May 5, 2010. The Board continues to urge the parties to work together to resolve the issues raised in this proceeding by mutual agreement.

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<sup>2</sup> On March 29, Irving Woodlands LLC and Irving Forest Products, Inc. jointly filed a separate reply to MMA's March 26 filing.

<sup>3</sup> The Board's environmental staff is separately preparing environmental documentation in accordance with the National Environmental Policy Act, 42 U.S.C. § 4321. That documentation shortly will be issued for public review and comment.

It is ordered:

1. The State's motion is granted in part and denied in part as discussed above.
2. The due dates for this proceeding are adjusted as discussed above.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.