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SERVICE DATE - LATE RELEASE OCTOBER 23, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB 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, ME

STB 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, ME

Decided: October 23, 2002

In STB Docket No. AB-124 (Sub-No. 2), we are granting the petition of the Trustee of the Bangor & Aroostook Railroad Company, Debtor (BAR)<sup>1</sup> for waiver of certain regulatory requirements, and exemption from certain statutory requirements, in connection with an adverse (third-party) abandonment application that BAR intends to file in that proceeding.

In STB Docket No. AB-279 (Sub-No. 3), we are denying BAR's petition for reconsideration of the portion of our prior decision in that docket, served September 25, 2002 (September 2002 decision), that instructed BAR on how to proceed if it seeks to file an adverse abandonment application in STB Docket No. AB-124 (Sub-No. 2). Also, on our own motion, we are directing that these proceedings be consolidated for concurrent handling.

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<sup>1</sup> Although the Trustee is acting in his capacity as Trustee of both BAR and its subsidiary Van Buren Bridge Company (VBBC), for convenience we will refer throughout to BAR and VBBC, collectively, as "BAR."

## BACKGROUND

Our September 2002 decision in STB Docket No. AB-279 (Sub-No. 3) contains detailed background information that will not be repeated here.<sup>2</sup> Briefly, BAR is attempting to terminate the right of the Canadian National Railway Company (CN) to operate over track owned by BAR and a subsidiary. The track at issue runs between Madawaska, ME, and the Canadian border, and serves a large paper mill at Madawaska. In our prior decision, we granted BAR waivers of, and exemptions from, certain regulatory and statutory requirements in connection with an application that BAR intends to file seeking a finding that the public convenience and necessity require or permit termination of CN's right to operate over this track.

CN's subsidiary, the Waterloo Railway Company (Waterloo), holds an overlapping easement to provide freight service over the same BAR track that is subject to CN's trackage rights. When BAR requested the waivers and exemptions approved in our September 2002 decision, it did not also request waivers and exemptions pertaining to filing an adverse abandonment application seeking termination of Waterloo's overlapping operating easement, although it seemed clear that BAR would also pursue this at some future time. CN called attention to this and observed that BAR would have to file a separate adverse application with regard to Waterloo's easement when it chose to do so. Addressing CN's argument, we agreed that, if BAR intends to seek termination of Waterloo's operating easement, BAR would have to file a separate application for that purpose (and, if needed, a separate advance request for waivers and exemptions) and could seek to have that application consolidated for concurrent handling with the adverse discontinuance application in STB Docket No. AB-279 (Sub-No. 3).

By petition filed on September 30, 2002, in STB Docket No. AB-124 (Sub-No. 2), BAR seeks waivers and exemptions to facilitate an application it intends to file seeking adverse abandonment of Waterloo's operating easement to provide freight service over the track at issue in STB Docket No. AB-279 (Sub-No. 3). Specifically, BAR seeks:

- (1) waiver of the posting requirements of 49 CFR 1152.20(a)(3), the system diagram map requirements of 49 CFR 1152.22(a)(5) and 1152.10 - 1152.14, the revenue and cost data required in 49 CFR 1152.22(d), and the financial assistance provisions of 49 CFR 1152.27; and

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<sup>2</sup> For additional background information, see also, Canadian National Railway Company – Trackage Rights Exemption – Bangor and Aroostook Railroad Company and Van Buren Bridge Company, STB Finance Docket No. 34014, et al. (STB served June 25, 2002) (CN – Trackage Rights Exemption – BAR).

(2) exemption, pursuant to 49 U.S.C. 10502, from the posting requirements of 49 U.S.C. 10903(a)(3)(B), the system diagram map requirements of 49 U.S.C. 10903(c)(2), and the financial assistance requirements of 49 U.S.C. 10904.

BAR argues that these waivers and exemptions should be granted because these types of waivers and exemptions are routinely granted by the Board in connection with adverse abandonment and discontinuance applications, and because the application in STB Docket No. AB-124 (Sub-No. 2) will involve the same transportation and service for which the same waivers and exemptions were granted in our September 2002 decision in STB Docket No. AB-279 (Sub-No. 3).

By separate petition filed on September 30, in STB Docket No. AB-279 (Sub-No. 3), BAR requests reconsideration of the statement in our prior decision that, if BAR also seeks to require Waterloo to abandon its operating easement, BAR will have to file a separate application for that purpose and ask to have that application consolidated for concurrent handling with the adverse discontinuance application in STB Docket No. AB-279 (Sub-No. 3).

On October 21, 2002, CN and Waterloo filed separate replies to BAR's petitions for waiver and reconsideration. CN does not object to BAR's request to file a single application embracing both dockets, as long as (1) BAR is required to independently justify the relief sought in both dockets and (2) BAR is required to obtain separate waivers and exemptions pertaining to its pending adverse abandonment application in STB Docket No. AB-124 (Sub-No. 2).<sup>3</sup> Waterloo states that it does not object to BAR's request for waiver in that docket.

#### DISCUSSION AND CONCLUSIONS

We will grant the waivers and exemptions sought in STB Docket No. AB-124 (Sub-No. 2). As noted, the freight operating easement at issue in that proceeding overlaps the trackage rights that are at issue in STB Docket No. AB-279 (Sub-No. 3).<sup>4</sup> The waivers and exemptions sought in this docket are the same as those we granted in STB Docket No. AB-279 (Sub-No. 3) in our September 2002 decision. Both dockets involve related facts and issues. Because of this overlap, we will grant the waivers and exemptions sought in STB Docket No. AB-124 (Sub-No. 2) for the same reasons that we

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<sup>3</sup> CN addressed only BAR's request for reconsideration in STB Docket No. AB-279 (Sub-No. 3). Waterloo addressed BAR's request for waiver in STB Docket No. AB-124 (Sub-No. 2).

<sup>4</sup> In its pleadings in CN – Trackage Rights Exemption – BAR, CN explained that Waterloo's easement was created to overlap the trackage rights as a means of protecting CN's rights in a pre-bankruptcy agreement whereby CN provided financing to BAR in return for CN's receipt of trackage rights.

granted the waivers and exemptions in our prior decision in STB Docket No. AB-279 (Sub-No. 3). We need not repeat our reasoning here.

We will deny BAR's request for reconsideration of that portion of our September 2002 decision instructing BAR on how to proceed if it seeks to file an adverse abandonment application in STB Docket No. AB-124 (Sub-No. 2).<sup>5</sup> BAR argues that we should not require a separate filing because we have allowed joint filings in the past. But when BAR filed its original waiver request, it had not filed any pleading with us specifically pertaining to the adverse abandonment of Waterloo's operating easement and had not requested consolidation of STB Docket No. AB-279 (Sub-No. 3) with any other pending docket. Thus, we instructed BAR to file a separate application pertaining to the adverse abandonment of Waterloo's operating easement and noted that it could seek consolidation with the trackage rights discontinuance application in STB Docket No. AB-279 (Sub-No. 3).

BAR subsequently began the process of seeking adverse abandonment of Waterloo's easement by filing the petition for waivers and exemptions in STB Docket No. AB-124 (Sub-No. 2). Although we are not granting BAR's request that we construe the original filing as embracing Waterloo's easement, we agree with BAR's argument that the adverse abandonment and adverse discontinuance proceedings should be processed together from this point forward. As discussed above, the two dockets involve related evidence and issues because the freight operating easement at issue in STB Docket No. AB-124 (Sub-No. 2) overlaps the trackage rights at issue in STB Docket No. AB-279 (Sub-No. 3). Thus, we will consolidate the two dockets. BAR may file a single, consolidated application seeking both the adverse discontinuance of CN's trackage rights and the adverse abandonment of Waterloo's easement. Duplicative notices, maps, and filings will not be required. Because the adverse discontinuance and the adverse abandonment are legally separable outcomes involving different railroads, however, a consolidated application will be captioned with both docket

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<sup>5</sup> Those instruction were as follows (September 2002 decision at 6):

Scope of Application. If BAR, as it suggests in its petition and as it indicates in its reply, also intends to seek termination of Waterloo's easement approved in STB Finance Docket No 34015, it must file a separate application to do so, following the procedures required for filing such an application (including seeking waivers and exemptions, if needed). BAR may then seek to have these proceedings consolidated for concurrent handling. The instant proceeding, however, embraces only the request for discontinuance of the CN trackage rights approved in Canadian National Railway Company – Trackage Rights Exemption – Bangor and Aroostook Railroad Company, STB Finance Docket No. 34014 (STB served Mar. 21, 2001).

numbers.<sup>6</sup> CN is correct in observing that BAR's consolidated application must independently justify the relief sought in each docket.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BAR's petition for waiver and exemption is granted.
2. BAR's petition for reconsideration is denied.
3. These proceedings are consolidated for concurrent handling in the manner discussed in this decision.
4. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary

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<sup>6</sup> This is consistent with past practice. BAR cites the following consolidated abandonment and discontinuance proceedings where a consolidated application was filed with separate docket numbers: Boston and Maine Corporation – Abandonment – in Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 83); and Springfield Terminal Railway Company – Discontinuance of Service – in Hartford and New Haven Counties, CT, STB Docket No. AB-355 (Sub-No. 23) (STB served Apr. 22, 1998).