

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 9, 2010

This decision grants in part and denies in part a motion to compel discovery filed by Irving Woodlands LLC and Irving Forest Products, Inc. (collectively, the Irving Parties).

BACKGROUND

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, Maine.¹

On March 17, 2010, the Board denied a motion to reject the application jointly filed by the Irving Parties and several other parties and a separate motion to reject filed by the State of Maine. The Irving Parties raised a number of arguments concerning a northern portion of MMA's system that the railroad intends to retain. This northern portion consists of a 23-mile segment between Madawaska and Van Buren, Maine, which connects to a Canadian National Railway Company (CN) line at St. Leonard, New Brunswick. The Irving Parties raised concerns that the abandonment of the lines covered by the application would result in the northern portion becoming a "stranded segment." When denying the motion to reject on those grounds, the Board noted that the segment would not *per se* be stranded and that the sufficiency of the connection could be challenged when arguments are made on the merits of the application.

¹ 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.

On April 1, 2010, the Irving Parties filed a motion to compel discovery from MMA. According to the Irving Parties, they submitted interrogatories and document requests to MMA on March 12, 2010. They assert that MMA objected to the majority of the requests and refused to produce most of the documents requested in a response sent to them on March 25. The Irving Parties replied to MMA on March 26, narrowing the scope of their requests and providing further description of the information and documents sought and justification for the continued requests. In a response to the Irving Parties filed on March 30, MMA reiterated its objections to certain requests.

In their present motion, the Irving Parties have asked the Board to compel MMA to respond to Interrogatories 17-19 and 23-25 and Requests for Production 2, 17-20, and 22. MMA filed a reply on April 5, 2010, opposing the motion to compel.

DISCUSSION AND CONCLUSIONS

The Irving Parties' motion to compel will be granted in part and denied in part. In Board proceedings generally parties are entitled to discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). Further, 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). But the Board has also noted that discovery is typically disfavored in abandonment cases, in part due to the strict time constraints. Thus, parties seeking discovery in abandonments must demonstrate relevance and need. Central R.R. of Indiana—Aban. Exemption—in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, Ind., AB 459 (Sub-No. 2X) (STB served Apr. 1, 1998).

Operations. With Interrogatory 25, the Irving Parties seek information on the number of rail cars of logs, woodchips, and wood pulp originated on the northern, Madawaska to Van Buren/St. Leonard segment, which is not part of the abandonment application. In Request for Production 20, they seek documents regarding how MMA would conduct its rail operations on that segment if the application were approved. They claim that both of these requests directly concern the effect of the proposed abandonment on shippers in the area and those shippers' transportation options, implicating the public interest standard for granting abandonment authority.

MMA opposes these requests. MMA questions their relevance because it has not made this northern segment a part of its abandonment application and because the Irving Parties do not have a facility located on that segment, but rather have a sawmill at St. Leonard in Canada. MMA asserts that the traffic data for this northern segment is not pertinent to whether the segment would actually become stranded as a result of the proposed abandonment. The railroad further argues that it has provided all that it knows at this time as to how it would conduct operations on this line segment should the abandonment application be granted and the abandonment consummated.

MMA will not be required to respond further to Interrogatory 25 or for Request for Production 20. The Irving Parties have not sufficiently explained the potential relevancy of the number of rail cars for the specified commodities originating on the northern, Madawaska to Van Buren/St. Leonard segment to their argument that this segment should be considered as a stranded line segment, with potential service and maintenance problems, if the proposed abandonment were granted. Furthermore, because MMA has asserted that it currently knows no more about future operations than it has already disclosed, there is no basis to compel it to produce more information on that matter.

Real Estate Data. The Irving Parties seek to compel responses to Requests for Production 2 and 17-19. These requests concern the potential sale of the real estate underlying the right-of-way of the lines proposed for abandonment. The Irving Parties claim that this data is critical for evaluating the net liquidation value (NLV) put forward by the railroad and, in turn, the opportunity costs MMA claims it is foregoing by continuing to own and operate the lines.

MMA opposes production. It claims that these documents relate to discussions between MMA and parties that have expressed potential interest in purchasing portions of the right-of-way. The railroad asserts that this information is not needed to challenge either of the methods it used to determine the NLV.² MMA acknowledges that there is a protective order safeguarding the dissemination of data, but it fears that the information on potential real estate sales might nonetheless become public based on the high-profile nature of the case.

MMA will be required to produce the documents requested in Requests for Production 2 and 17-19. The requested information could be potentially relevant to challenging the NLVs put forward by the railroad. The NLV is a major component of the opportunity cost that the railroad is claiming to incur by continuing to own the lines. Moreover, because an offer of financial assistance may be filed in this case, it makes sense here, given the size and complexity of the NLV, to allow the parties to collect as much evidence relevant to the value of the lines as soon as possible. Finally, as MMA acknowledges, there is a protective order governing the production and dissemination of information in this case. The Board expects that all parties in this case will strictly adhere to the requirements of the protective order to ensure that confidential or highly confidential information and documents are not mishandled or improperly disclosed.

Trucking. The Irving Parties' Interrogatories 17 and 18 concern certain statements made by an MMA witness, Joseph R. McGonigle, included in MMA's application. These statements involve his assertion that the roads near the proposed lines have sufficient capacity to carry the truck traffic that would be diverted if the lines were abandoned. Interrogatory 19 pertains to a similar statement by Mr. McGonigle that MMA's rail share in the area served by the lines proposed for abandonment when compared to trucks amounts to less than 10% of overall shipping activity. The Irving Parties claim that MMA should provide additional clarification and

² The railroad provided two appraisals when valuing the real estate and thus determining in part its opportunity cost. One appraisal is done on the across-the-fence- methodology that is used in most abandonment cases. The other appraisal is done on a corridor methodology, which is based on the sale of the land as an assembled corridor rather than as a collection of individual parcels.

documents in support of these statements. MMA counters that it has adequately satisfied these inquiries. The railroad claims that these statements are based on Mr. McGonigle's experience and observations and that it has listed all of the documents it is aware of that Mr. McGonigle used to buttress those statements.

MMA will not be compelled to respond further to Interrogatories 17-19, because the Board is satisfied that MMA has provided all of the responsive information it possesses at this time. To the extent the Irving Parties believe the listed documents do not provide an adequate foundation for Mr. McGonigle's statements, they may so argue in their comments or protest to the application. Moreover, the parties will have an opportunity to comment and provide additional explanations on the possible effect on trucking due to the proposed abandonment after the Board's draft environmental documentation is issued for public review and comment.

RRIF Loan. The Irving Parties directed their discovery requests in Interrogatories 23 and 24 and Requests for Production 22 to the loan obtained by MMA pursuant to the Railroad Rehabilitation and Improvement Financing (RRIF) program. Based on the explanation presented by MMA in its reply to the motion to compel, it appears that the parties have resolved this dispute. The agency therefore will not take any action on this portion of the motion to compel.

It is ordered:

1. The Irving Parties' motion to compel is granted in part and denied in part, as discussed above.
2. This decision is effective on its date of service.

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