

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: March 17, 2010

On February 25, 2010, Montreal, Maine & Atlantic Railway, Ltd. (MMA) filed an application under 49 U.S.C. 10903 for authority to abandon and discontinue service over approximately 233 miles of line in Aroostook and Penobscot Counties, ME.¹

On March 11, 2010, the State of Maine (State), by and through its Department of Transportation, filed a motion asking the Board to reject MMA's application. MMA filed a reply in opposition on March 12, 2010.

On March 12, 2010, Fraser Papers, Inc., Irving Woodlands LLC, Irving Forest Products, Inc., Huber Engineered Woods, LLC, Louisiana Pacific Corp., Portage Wood Products, LLC, Seven Islands Land Company, and Red Shield Acquisition LLC (collectively, Shipper Petitioners) jointly filed another motion also seeking rejection or dismissal of the application. MMA filed a reply to the Shipper Petitioners on March 15, 2010.

Under 49 CFR 1152.24(e)(2), the Board must reject an application if we determine that the application is substantially incomplete or that its filing is otherwise defective. Here, the State and the Shipper Petitioners have failed to demonstrate that the application is incomplete or that it is otherwise defective. Therefore, both motions are denied.

¹ According to the application, the line for which abandonment is sought comprises the following subdivisions: (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.

DISCUSSION AND CONCLUSIONS

State's Motion. The State argues that, under the Board's regulations, an applicant must provide cost and revenue data for the line to be abandoned, but that MMA provides this data only for the total 233 miles of line rather than separately for each of the five identified subdivisions. The State is concerned that the aggregation of data will prevent the Board from making a reasoned determination about whether the public convenience and necessity permits the abandonment of each of the individual subdivisions. The State claims that this failure to present economic evidence for each subdivision is grounds for dismissing the application.

The State's argument is incorrect. The pertinent regulation, 49 CFR 1152.22(d), does not require the applicant to submit revenue and cost data on a per-subdivision basis, but rather only requires the applicant to include an Exhibit 1 with supporting evidence of revenue and cost data for the *line* to be abandoned.² Nothing in the Board's regulations requires the information submitted in the initial application to be defined separately for each individual subdivision. The applicant has defined the line to be abandoned as consisting of 233.05 miles, which the applicant has described as including five interconnected subdivisions. The applicant has submitted a proper Exhibit 1 with supporting evidence in accordance with our regulations. If the State wishes to present specific arguments concerning the economic viability of one or more of the five components of the line proposed for discontinuance and abandonment, it may do so in its protest due on April 12, 2010.³ But the State has failed to show that we should reject the application because MMA has not submitted cost and revenue data on a segmented basis.

The State also expresses concern about the alleged rehabilitation costs. The State essentially claims that the subsidy payment calculated by the applicant contains impermissible rehabilitation costs. This is not a reason to reject MMA's application as being incomplete or defective. This argument instead goes to the merits of the application; therefore, we will address this issue in our final decision.

Shipper Petitioners' Motion. The Shipper Petitioners submit a number of arguments concerning a northern portion of MMA's system that it intends to retain. This northern portion consists of a 23-mile segment between Madawaska and Van Buren, ME, which connects to a Canadian National Railway Company (CN) line at St. Leonard, NB. Shipper Petitioners claim that the application should be rejected as defective because, if it were granted, the northern segment would become a "stranded segment," cut off from the national rail network, contrary to agency precedent. They argue further that the application should be rejected because MMA has not shown how it would respond to car requests, pick-up or deliver loaded cars, repair locomotives, replace locomotives when mechanical issues arise, or otherwise meet its common

² Our abandonment regulations call for revenue and cost data to be provided at the "branch" level. See 49 CFR 1152.22(d); see also sections 1152.31-1152.33. Under our regulations, "branch" means "a segment of line for which an application for abandonment or discontinuance, pursuant to 49 U.S.C. 10903, has been filed." 49 CFR 1152.2(e).

³ See Conrail—Aban.—Bet. Warsaw & Valp., Counties, IN, 9 I.C.C. 2d 1299, 1319 (1994).

carrier obligations over the northern segment. Moreover, they express concern that granting the application would be tantamount to the Board ceding much of its regulatory jurisdiction over the allegedly stranded segment to Canadian regulators and that the Board could not properly protect the rights of the shippers and communities, and the public interest, on that line segment.

In its March 15 reply, MMA argues that the northern segment in fact would not be stranded because it would remain connected to the CN system (and also, therefore, connected to the U.S. rail network via that CN connection) and because our precedent allows a line to be dependent solely on a Canadian connection following an abandonment.⁴ Whether this connection is adequate is a question that goes to the merits of the application rather than its completeness. Accordingly, we will address this issue when we rule on the application.

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

It is ordered:

1. The State of Maine's motion to reject is denied.
2. The Shipper Petitioners' motion to reject or dismiss is denied.
3. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

⁴ See Maine Central Railroad Co.—Abandonment in Penobscot, Hancock and Washington, Counties, ME, Docket No. AB-83 (Sub-No. 7) (ICC served Nov. 4, 1985).