

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: July 20, 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. § 10904.² 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

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

² The State filed an OFA on July 19, 2010 requesting that the Board find it to be financially responsible; that the Board toll the OFA process until after it decides the abandonment; that the Board provide a 40-day negotiating period in lieu of the usual 30 days; and that the MMA be required to grant the State or a rail operator under contract to the State certain specified trackage rights over the MMA. The Board will consider these requests in a subsequent decision.

particular MMA and the State, have continued to meet and, as discussed below, 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. The speakers included public officials and their representatives, shippers, business and community interests, and the BLET. The railroad noted that it and the State had agreed on a purchase price for the line, but that they were still discussing what access a new operator would have over the remaining portion of MMA's system to reach other carriers. The issue looms large because the line connects with the MMA system, and only the MMA system, at both ends.

The railroad stated at the hearing that it would agree to enter into a haulage agreement³ with a new operator on the line. The State argued, and a number of other speakers agreed, that the Board should grant trackage rights⁴ to the new operator at a reasonable cost. The railroad agreed that mediation should resume on this question.

Although access was mentioned repeatedly at the hearing by a number of parties, the prior written record contains very little about the issue of access. The only reference to this point arises from a request by the Joint Protestants. The Joint Protestants ask that, should the Board approve MMA's abandonment application, the agency impose trackage rights for an OFA purchaser. The Joint Protestants fear that should the Board grant MMA's application and a new operator commence service over the line, that new operator would be captive to the MMA both in the north between Madawaska and Van Buren and in the south between Millinocket and Brownville Junction. They are concerned that the new operator would be weakened by MMA's alleged poor service and the ability MMA would have to squeeze profits from the new operator's inbound and outbound traffic. Accordingly, the Joint Protestants request that the Board impose trackage rights at both the north and south end of the line.

In its May 26 rebuttal, MMA opposes the request that the Board impose trackage rights. The railroad cites cases which, it claims, hold that the Board and the agency's predecessor, the Interstate Commerce Commission (ICC), lack authority to impose trackage rights as part of the OFA process.

Aside from these limited references, the record before the Board on the issue of access that the State claims it needs if it is to provide adequate rail service over the line is not well developed. It is the agency's hope that the parties will resolve this issue by a mutually satisfactory agreement. However, this issue may need to be resolved by the Board if the proposed abandonment is granted and the line is to remain in service through an OFA.

³ Haulage rights allow a rail carrier to have its trains operated by another rail carrier over that rail carrier's tracks.

⁴ Trackage rights allow a rail carrier to operate over another rail carrier's tracks.

Authority to Grant Access

The Board invites evidence and argument on the Board's authority to impose access in this case. MMA, as noted, has cited a number of decisions by the ICC disclaiming authority to impose trackage rights as a "term and condition" set by the Board pursuant to its authority to set terms and conditions for continued rail service under 49 U.S.C. § 10904.⁵ In these cited cases, our predecessor agency indicated that what is now § 10904 did not provide the agency with specific authority to grant trackage rights. By contrast, the ICC in Cairo found that authority at 49 U.S.C. § 10910 (now 49 U.S.C. § 10907), ". . . which also provides for forced sales to financially responsible persons, allows us, upon the offeror's request, to provide the 'acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier . . .'"⁶

Here, the Board's statutory mandate is found in § 10903. As part of the Board's broad authority to evaluate "present or future public convenience and necessity," § 10903(d) specifically requires the Board to consider the impact of abandonment on rural and community development. Moreover, § 10903(e)(1)(B) expressly authorizes the Board to "approve the application with modifications and require compliance with conditions that the Board finds are required by public convenience and necessity." Thus, the statute grants the Board discretion to impose appropriate conditions in proceedings on abandonment applications.

The Board seeks briefing from interested parties as to whether provisions of 49 U.S.C. § 10903 and 49 U.S.C. § 10904 would support the imposition of conditions in this case requiring access of any sort, including trackage rights and haulage rights, and the specific terms and conditions thereof (including cost and duration). Finally, because the terminus of the MMA line to the north over which the State seeks access is located in Canada, the Board seeks comment on its authority to order access over a carrier's lines into a foreign country.

Nature of the Access Requested in this Case

The Board also requests further briefing on both the location and type of access that could be ordered, as well as the appropriate role of the Board should an access condition be imposed. First, although the State testified at the hearing that it requires access over the MMA at both the north and south ends of the line, and makes the same request in its OFA, it has offered no evidence or argument on that issue in its filings in this docket. Likewise, a number of the shippers located on the line also testified on this issue, citing both their perceived needs for access over the MMA and their dissatisfaction with the service offered by that carrier. The Board requests further briefing on whether access, and oversight thereof, would be needed at both the north and south ends of the lines.

⁵ See Chi. & N. W. Transp. Co.—Aban. Exemption—Mason City, Iowa, Docket No. AB 1 (Sub-No. 205X) (ICC served Nov. 20, 1987), and Conrail Aban. of the Cairo Branch in Ill., AB 167 (Sub-No. 56N) (ICC served Mar. 4, 1982) (Cairo).

⁶ See Cairo, slip op. at 3.

Second, the State has not provided any details regarding the level of service over the MMA that would be needed or the terms and conditions it would offer. In response to a question at the hearing about whether a haulage agreement would suffice in lieu of trackage rights, the State testified that it would need “reasonable access.” Although the State has since included a request for trackage rights in its OFA, the Board seeks further details on that request. For example, would a haulage agreement be sufficient to satisfy the State’s need for reasonable access? If not, why not?

Comments from interested parties to this proceeding are requested by July 27, 2010. Cross-replies are due August 3, 2010.

It is ordered:

1. The parties are requested by July 27, 2010 to file supplements discussing the matters discussed above.
2. Replies to the supplements are due August 3, 2010.
3. This decision is effective on its service date.

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