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December 11, 2002

VIA FACSIMILE AND OVERNIGHT DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006



**ENTERED
Office of Proceedings**

DEC 12 2002

**Part of
Public Record**

Re: **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, Maine

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, Maine

206825

Dear Secretary Williams:

The Trustee for the Bangor and Aroostook Railroad Company ("Trustee") has filed a Motion to Compel Answers to Interrogatories and Production of Documents against Canadian National Railway Company ("CN"). A copy of the motion was faxed to the undersigned counsel for CN during the late afternoon of December 9, 2002. (We have yet to be served with a hard copy of the Motion). The Trustee requests expedited consideration of this Motion and, among other things, asks for an Order making CN's reply due by December 16, 2002, instead of the normal twenty (20) days allowed for such a reply pursuant to the Board's Regulations (49 C.F.R. § 1104.13).

CN objects to having to file its response to the Motion within five business days. CN respectfully submits that the Trustee has moved at an extremely slow pace throughout this proceeding while simultaneously, at every turn, requesting that the Board act on an expedited basis.

As the Board will recall, the Bangor and Aroostook Chapter 11 bankruptcy proceeding was filed on August 15, 2001. Over nine months later, the Trustee filed a petition with the Board to reopen and revoke CN's and Waterloo's trackage rights and easement exemptions. Expedited consideration was requested.

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The Board denied the Trustee's petitions to revoke on June 25, 2002, but yet it took the Trustee over six weeks to file a petition for waiver in connection with a proposed adverse abandonment of CN's trackage rights. Again, expedited consideration was requested by the Trustee.

And, even though the Trustee also intended to seek adverse discontinuance of Waterloo Railway Company's easement rights over the Bangor and Aroostook, the Trustee did not file a petition for waiver in connection with that adverse discontinuance for another seven weeks. Again, the Trustee requested that the Board give the petition expedited consideration.

Following the Board's partial grant of the Trustee's petitions for waiver, the Trustee waited another three weeks to file its Notice of Intent for discontinuance of trackage rights and abandonment of easement. Simultaneous with the Notice of Intent, the Trustee sought extensive discovery, in the form of interrogatories and document production requests from CN and Fraser Paper. CN responded in a timely manner to the discovery requests. Although CN has been willing to provide some discovery responses, it has legitimately objected to much of the discovery as being irrelevant, inappropriate, and unnecessary.

Now, once again, the Trustee demands expedited consideration of a Motion to Compel and requests that the Board force CN to respond to the Motion to Compel this unnecessary and inappropriate discovery in about one-third of the time normally allotted for such responses.

Sixteen months after the initial bankruptcy filing, and almost eight months after the Trustee first appeared before the Board in these matters, the Trustee continues to demand expediency while dragging its feet at every turn.

There is no reason whatsoever for this alleged need for expediency. The Trustee says it wants to file an abandonment and discontinuance application by December 23, 2002. There is no magic to December 23. Indeed, by virtue of the fact that the Notice of Intent was filed on November 14, 2002, the Trustee will already have violated the jurisdictional requirement that the Abandonment Application be filed within thirty (30) days of the Notice of Intent (49 C.F.R. § 1152.20(b)(1)). Nor has the Trustee revealed any other reason why December 23 is a critical date, or why CN should be deprived of its due process rights to have a reasonable time to respond to the Motion to Compel, particularly where, as here, it is the Trustee itself who has continued to delay this proceeding repeatedly.

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In accordance with the Board's regulations, CN's reply to the Trustee's Motion would normally be due on December 29, 2002. The Trustee has raised extensive reasons why its discovery requests are appropriate. CN needs sufficient time to adequately prepare its response. CN intends to point out that discovery is not favored by the Board in these types of proceedings; that discovery is no more necessary here than it has been in the numerous other instances in which the STB has denied similar motions to compel; and that the information sought by the Trustee is simply not relevant to this proceeding and CN rightfully withheld its release. It should also be pointed out that counsel for CN has a variety of other significant commitments which impede such a filing in only five business days.

CN anticipates being able to file its response to the Motion no later than December 23, 2002, well before the normal time for a response. Accordingly, CN respectfully requests that the Trustee's Motion be denied or at the very least that the STB not require a response for CN prior to December 23, 2002.

Respectfully submitted,



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Railway Company

MLT:dg

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