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November 20, 2003

BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Docket No. AB-279 (Sub-No. 3) *209461*
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) *209462*
Waterloo Railway Company – Adverse Abandonment – Lines of Bangor
and Aroostook Railroad Company and Van Buren Bridge
Company in Aroostook County, Maine

Dear Secretary Williams:

I have enclosed for filing in the above-captioned docket an original and ten copies of Montreal, Maine & Atlantic Railway's Reply to Fraser Papers Inc.'s Motion for Leave to Disclose Verified Statement of James N. Heller to In-House Personnel at Fraser Papers Inc.

I have also enclosed one extra copy of the filing. I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosures

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

ENTERED
Office of Proceeding

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

Part of
Public Record

**MONTREAL, MAINE & ATLANTIC RAILWAY'S REPLY TO FRASER
PAPERS INC.'S MOTION FOR LEAVE TO DISCLOSE VERIFIED STATEMENT
OF JAMES N. HELLER TO IN-HOUSE PERSONNEL AT FRASER PAPERS INC.**

Montreal, Maine & Atlantic Railway Ltd. ("MMA") hereby replies in opposition to the motion of Fraser Papers Inc. ("Fraser") seeking leave to disclose to in-house personnel the verified statement of James N. Heller ("Heller Statement"). MMA has an interest in this matter because the Heller Statement contains proprietary, competitively sensitive information of MMA. MMA, which provides rail service to Fraser and other shippers, provided Mr. Heller with highly confidential, competitively sensitive rate and traffic information, and Mr. Heller interviewed MMA personnel to gather information for his statement, including information about MMA's perceptions of the competitive options available to Fraser.

MMA strongly objects to any disclosure of its highly confidential information to in-house personnel from Fraser. MMA provided proprietary, competitively sensitive information

for the Heller Statement with the understanding that such information would be treated as highly confidential under the Board's Protective Order, served May 21, 2003. Fraser concedes that the Heller Statement contains information properly classified as highly confidential. *See* Fraser Motion, pp. 4-6. Fraser does not refer to proprietary or competitively sensitive MMA information. However it concedes that the Heller Statement contains at least some highly confidential information of other parties that was not provided by or otherwise available to Fraser. *See id.* at 8 (discussing Fraser's agreement to redact confidential information relating to Canadian National Railway ("CN")).

Fraser seeks access to a version of the Heller Statement redacted to remove certain information confidential to CN (*see* Tab B to the Fraser Motion), or in the alternative, to place the burden of identifying information that is "truly highly confidential" vis-à-vis Fraser on the Trustee of the Bangor & Aroostook Railroad (the "Trustee"). *Id.* Neither alternative is appropriate.

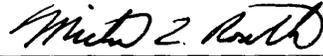
The Board should not grant Fraser's in-house personnel blanket access to the Heller Statement (or access subject to the redactions Fraser has proposed, which do not protect MMA's highly confidential information). The Board has repeatedly denied similar requests by commercial entities, like Fraser, with which parties to a proceeding "have had in the past and are likely to have in the future 'arms-length business relationships.'" *CSX Corp. & CSX Transp., Inc., Norfolk Southern Corp. & Norfolk Southern Ry. – Control & Operating Leases/Agreements – Conrail Inc. & Consolidated Rail Corp.*, STB Finance Docket No. 33388 (STB served Aug. 1, 1997) at 2. Fraser complains about the costs of hiring an expert to review highly confidential information, but an exception based on that concern would quickly swallow the rule.

The Board also should not require the Trustee to identify portions of the Heller Statement that are not highly confidential vis-à-vis Fraser. Such a process would likely engender additional disputes about the appropriate scope of redactions. Fraser's request comes far too late to send the parties down that road. Fraser filed its motion forty-two days after the Trustee filed the Adverse Application for Discontinuance – just four days before the original due date for protests and comments. As of today, only a little over a week remains before the current due date. Fraser could have and should have acted much earlier to bring this matter to the Board.

If the Board does require the Trustee to provide Fraser with access to portions of the Heller Statement, Fraser's outside counsel should bear the burden of proposing appropriate redactions. Fraser's outside counsel is plainly in the best position to identify the information provided by or otherwise available to Fraser. Fraser has demonstrated that it is capable of addressing such confidentiality issues: its outside counsel consulted with counsel for CN to resolve questions of access to certain highly confidential CN information contained in the Heller Statement. *See* Fraser Motion at 6 n.6.¹ Moreover, any redaction process should include consultation with MMA, which has a strong interest in ensuring that its proprietary and competitively sensitive information is not made available to Fraser in-house personnel.

¹ Fraser did not make a similar effort to consult with counsel for MMA. MMA would have been willing to discuss a practical resolution of Fraser's concerns if Fraser had contacted MMA earlier. MMA does not object in principle to a decision to provide Fraser with access to portions of the Heller Statement containing information provided by or available to Fraser, so long as the information could be separated from MMA material that is highly confidential vis-à-vis Fraser. However, we believe that Fraser's motion comes far too late to begin addressing those issues now.

Respectfully submitted,



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*Attorneys For Montreal, Maine & Atlantic
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November 20, 2003

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 20th day of November, 2003, I caused a copy of Montreal, Maine & Atlantic Railway's Reply to Fraser Papers Inc.'s Motion for Leave to Disclose Verified Statement of James N. Heller to In-House Personnel at Fraser Papers Inc. to be served by hand on:

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