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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.--
DISCONTINUANCE OF SERVICE AND ABANDONMENT--
IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE

REPLY OF MONTRÉAL, MAINE & ATLANTIC
RAILWAY, LTD. IN OPPOSITION TO "MOTION
OF STATE OF MAINE, DEPARTMENT OF
TRANSPORTATION FOR REJECTION OF APPLICATION

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Dated: March 12, 2010

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TRANSPORTATION FOR REJECTION OF APPLICATION**

The State of Maine, acting by and through its Department of Transportation ("State"), has filed a Motion asking the Board to reject the abandonment application filed by Montréal, Maine & Atlantic Ry., Ltd. ("MMA") on February 25, 2010. As demonstrated below, the State has provided no basis for the rejection of the application. The Board should deny the Motion and proceed with the evaluation of the merits of the application.

The State alleges that MMA is seeking authority to abandon "five separately identified lines of railroad". Alternatively, the State refers to separate "branches" and claims that MMA should have presented revenue and cost data on a "branch by branch basis". The State concludes that failure to present disaggregated revenue and cost data amounts to a substantially defective application within the meaning of 49 CFR

1152.24(e). For the reasons outlined below, the State's argument misses the mark and does not support a rejection of the application.

The State's position should be evaluated in proper context. Since mid-2009, MMA and the State have been discussing the possibility of abandonment of the 233 miles of line that are the subject of the application. The end points of the abandonment segments have been well known to the State from an early date in the discussions. Indeed, the State submitted a so-called "TIGER" application in September, 2009 seeking federal stimulus funds in order to purchase and rehabilitate the very lines that are the subject of the abandonment application. The State has requested and MMA has provided a substantial amount of information concerning the lines, but at no time has the State requested segregated information regarding the revenues or expenses of the operation of each of the 5 subdivisions that comprise the abandonment lines.

As the starting point in the analysis of the State's argument, there is no dispute that a railroad has the right to decide the end points of a line that it seeks to abandon. CSX Transportation, Inc.--Exemption--Abandonment in Putnam and Parke Counties, IN, ICC Docket No. AB--55 (Sub-No. 222 X), decided June 7, 1989 ("the option of how to proceed with a transaction lies with the applicant"). In affirming the ICC's decision on appeal, the Court of Appeals for the 7th Circuit noted that "carriers have the initiative in proposing the length of line to be abandoned . . ." Futurex Industries, Inc. v. Interstate Commerce Commission, 897 F.2d 866, 872 (7th Cir. 1990).

Each of the 5 line segments is a subdivision of MMA. They are characterized as subdivisions for management and identification purposes, and the characterization is not controlling for purposes of determining whether or not all or part of any subdivision

should be the subject of an abandonment application. The 5 subdivisions are physically connected to one another, and MMA's analyses lead to the conclusion that these subdivisions operating together produced substantial losses. The selection of these subdivisions for abandonment together was, therefore, an entirely logical and supportable exercise of discretion vested in the rail carrier.

The MMA decision to abandon the 5 subdivisions is supported by the Board's regulations. The term "branch", which appears throughout 49 CFR 1152.31 and 32 discussing the calculation of avoidable revenues and costs, is "a segment of line for which an application for abandonment or discontinuance, pursuant to 49 U.S.C. 10903, has been filed." It is clear that MMA has presented revenue and cost information for the "branch", which in this case means the 5 subdivisions for which an application for abandonment has been filed.

The logical conclusion of the argument advanced by the State is that MMA should have submitted 5 separate applications. Had MMA done so, however, the State would likely have criticized such an approach as failing to provide a complete picture, relying upon the cautionary statements in the CSX and Futurex decisions cited above. A segmented approach would have imposed considerable extra expense on MMA, both in terms of application fees and the cost of analyzing avoidable losses on a multiplicity of scenarios and different bases.¹ More fundamentally, presentation of 5 separate applications would not have accurately portrayed the relief that MMA seeks-- abandonment of all 5 subdivisions.

¹ The application does provide information by subdivision and in the aggregate for net liquidation value and rehabilitation costs.

The State also asserts that MMA has incorrectly calculated the subsidy amount. More specifically, the State claims that in projecting rehabilitation costs MMA did not take into account expenditures required to permit efficient operations and that MMA improperly included the entire cost of rehabilitating these lines in calculating the subsidy amount. As shown below, these contentions are either incorrect or misplaced for purposes of determining whether the Board should accept the application.

The Verified Statement of Melody A. Sheahan (at pages 5-7) explains why the projected capital expenditures are necessary and appropriate to "permit efficient operations", "to attain the lowest operationally feasible track level", "to attain the rehabilitation level resulting in the lowest operating and rehabilitation expenditures" and "to attain the rehabilitation level resulting in the lowest loss, or highest profit, from operations." 49 CFR 1152.32(m). Rehabilitation from the existing FRA class 2 to class 3 on the Madawaska subdivision and from FRA class 1 to class 2 on the other subdivisions is necessary due to the current transit times and the ascending grades on these lines. The current permissible track speeds require additional locomotives and fuel and result in additional labor costs. Clearly, the proposed rehabilitation would address these problems, and, in answer to the point raised by the State, the application is responsive to the criteria of the regulations.

The State claims that the total rehabilitation cost should not be included in the calculation of the subsidy and that only the cost to bring the Limestone subdivision up to class 1 should be counted. MMA believes that the subsidy amount has been correctly calculated in accordance with the regulations, as described in the Verified Statement of Robert C. Finley (at pages 15-16). Moreover, the State ignores the second subsection of

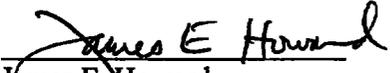
49 CFR 1152.32 (m)(2), which provides that rehabilitation costs can be included for subsidy purposes if the "potential subsidizer requests a level of service which requires expenditures for rehabilitation." The State has indicated that it wants to make an offer of financial assistance in order to preserve rail operations on the abandonment lines. In addition, the State requested federal funding in the TIGER application referred to above for the rehabilitation expenditures referred to in the Sheahan Verified Statement, recognizing, on the basis of MMA's estimates, that a total expenditure of approximately \$20 million is needed in order to bring these lines to a state of good repair. The State, therefore, recognizes that efficient service requires such capital expenditures.

Even if the subsidy was not correctly calculated, however, it would not be a reason to reject the application. Rather, the Board has all the information it needs to determine whether the subsidy calculation was correct or, if it was not, to adjust the calculation, all of which can and should be done in connection with the evaluation of the application on its merits.

As demonstrated above, there is no basis for the Board to reject the application. It is time to consider the application on the merits and decide whether MMA should be relieved of these loss producing operations.

Respectfully submitted,

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Dated: March 12, 2010

Certificate of Service

I hereby certify that I have served the foregoing Reply as of this 12th day of March, 2010 by causing copies to be sent by e-mail to the parties indicated below as having e-mail addresses and by US Mail, postage prepaid, to other parties shown below:

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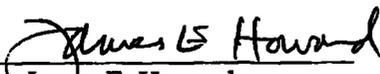
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