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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

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

**PROTEST AND COMMENTS OF
IRVING WOODLANDS LLC, IRVING FOREST PRODUCTS, INC.,
FRASER PAPERS INC., FRASER TIMBER LIMITED, AND
KATAHDIN PAPER COMPANY LLC**

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Irving Woodlands LLC and Irving Forest Products, Inc. (collectively, “Irving”), and Fraser Papers Inc., Fraser Timber Limited, and Katahdin Paper Company LLC (collectively “Fraser”), pursuant to 49 CFR § 1152.25, hereby file this Protest and Comments (“Protest”) with the Surface Transportation Board (“Board”) in response to the abandonment application (“Application”) filed by the Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) in the above-captioned proceeding on February 25, 2010.

In this Protest, Irving and Fraser (collectively termed “Petitioners”) describe their opposition to the abandonment and discontinuance of rail service proposed in the Application. 49 CFR § 1152.25(a)(1)(iii). Petitioners have attached Verified Statements of Robert J. Pinette, Vice President at Irving Woodlands, Gaston Poitras, Vice President at Irving Forest Products, Brian Sass, Director of Supply Chain for Fraser Papers Inc., and Thomas Crowley, President at L.E. Peabody and Associates in support of their Protest. Additionally, Irving replies to certain

claims and information included in the Application. 49 CFR § 1152.25(a)(1)(iv). In support hereof, Petitioners state as follows:

I. INTRODUCTION.

A. Factual Background.

The Application proposes to discontinue rail service on, and abandon, approximately 233 route miles in northern Maine, comprised of the rail line between Madawaska and Millinocket as well as numerous branch lines (the “Lines”). The rail service provided by the Abandonment Lines is of vital importance to the communities and businesses of northern Maine, with over [] carloads transported on the Lines in 2009.¹ Application at 9. Northern Maine is a resource-rich area that produces a wide variety of lumber and paper products, and rail service is critical to the transport of these products. Additional commodities are transported via the Lines.

B. Identity And Interest Of Irving

In this section, Petitioners provide the information required by 49 CFR §§ 1152.25(a)(1)(i) and (ii). The other required information, described in § 1152.25(a), will be included elsewhere in this Protest. As the interests of Irving Woodlands LLC and Irving Forest Products, Inc. are similar, the remainder of the Protest, after this section, will discuss the interest of “Irving” except where appropriate.

1. Irving Woodlands LLC

The address of Irving Woodlands LLC (“Irving Woodlands”) is P.O. Box 240, Fort Kent, Maine 04743. Irving Woodlands is a logging and forest products company that employs approximately [] , either as direct employees or contractors, in Maine. Irving

¹ Information denoted in double brackets [] is designated “Highly Confidential” as to all parties pursuant to the Protective Order in this proceeding. Information denoted in single brackets [] is “Confidential” as to MMA, but is “Highly Confidential” as to all other parties.

MMA would close the Logistics Management System (“LMS”) transload facility at Van Buren, and eliminate the ability of Irving Forest Products to ship south from Van Buren on MMA by splitting the MMA system. V.S. Poitras at 2-3.

Irving Forest Products desires to preserve rail service on the MMA so that railcars loaded in Van Buren can head south on the MMA to central Maine, where connections to the west and south are possible.

C. Identity And Interest Of Fraser

In this section, Fraser provides the information required by 49 CFR §§ 1152.25(a) (1) (i) and (ii). The other required information, described in § 1152.25(a), will be included elsewhere in this Protest. The interests of two Fraser affiliates, Fraser Timber Limited and Katahdin Paper Company, are similar to those of other shippers located elsewhere on the line proposed for abandonment, and in this regard, these affiliates share the concerns identified by Irving and similarly situated shippers. The interests of Fraser Papers, Inc² while also similar to other shippers such as Irving, are in addition focused on the stranded segment concerns raised in the Verified Statement of Brian Sass and elsewhere in the Protest. For ease of reference, Fraser Papers, Inc, its affiliates and successors/assigns, will collectively be referred to as “Fraser” in the Protest.

1. Fraser Papers Inc.

The address of Fraser Papers Inc. is 82 Bridge Avenue, Madawaska, ME 04756. Fraser Papers operates the Madawaska paper mill in Madawaska, Maine, which is interconnected with

² Fraser Papers Inc and its Fraser affiliates are currently in bankruptcy in the U.S. and Canada. Assets including the Madawaska mill are the subject of a court-approved Asset Purchase Agreement whereby Twin Rivers Paper Company LLC will acquire the Madawaska mill. This transaction is expected to close before the Board’s public hearing in this matter in may 2010. It is expected that Twin Rivers will continue to participate in this proceeding.

Fraser's Edmundston, NB pulp mill. Together these Fraser mills employ approximately 1,200 employees, of which about 680 work at the Maine paper mill. Fraser Papers is opposed to MMA's proposed abandonment because Fraser Papers relies upon rail service on the Lines to transport raw materials and commodities into the Madawaska mill and finished paper products from the Madawaska mill to customers via the MMA. Fraser Papers desires to preserve rail service via the northern, southwestern and southern connections referenced in the attached Verified Statement of Brian Sass.

2. Fraser Timber Limited

The address of Fraser Timber Limited is 1224 Masardis Road, Masardis, Maine 04732. Fraser Timber is in the business of producing wood products from raw materials at sawmills it owns and operates in Maine. Fraser Timber currently employs approximately 142 employees at its Masardis sawmill. Fraser Timber's Ashland sawmill is currently shutdown due to market conditions. Fraser Timber is opposed to MMA's proposed abandonment because Fraser Timber uses MMA rail service from Masardis, Maine for outbound lumber products heading north and south. The abandonment proposed by MMA would completely cut off the ability to ship via rail to and from Masardis or Ashland. Fraser Timber desires to preserve rail service on the MMA so that railcars loaded in Van Buren can head south on the MMA to central Maine, where connections to the west and south are possible.

3. Katahdin Paper Company LLC

The address of Katahdin Paper Company LLC is 50 Main Street, East Millinocket, ME 04430. Katahdin is in the business of producing paper products at paper mills in East Millinocket and Millinocket, Maine. When both mills are operating, Katahdin employs more than 500 employees. Katahdin's Millinocket mill is currently shutdown due to market

conditions, while the East Millinocket mill is currently operating. Katahdin is opposed to MMA's proposed abandonment because Katahdin uses MMA rail service to and from the Millinocket region for inbound raw materials and commodities and for outbound finished products. The abandonment proposed by MMA would eliminate the ability to bring in raw materials from the north and ship products north to Canada, and may totally isolate the Millinocket mill since it is unclear where the demarcation line exists for the proposed abandonment in relation to this mill. Katahdin desires to preserve rail service on the MMA in order to bring raw materials into its mills via rail and to ship finished products to its customers via rail to customers in the north, west and south.

II. SUMMARY OF ARGUMENT.

The proposed abandonment and discontinuance should be denied because MMA has not met its burden in this case.³ The Application includes numerous errors and problems that undermine the proposed abandonment, such as overstated costs, unsupported claims, and contradictory statements. These errors and problems reveal that MMA has not met its burden of proof to show that abandonment is warranted under the standard of 49 U.S.C. § 10903. As an initial matter, the attached Verified Statement of Thomas Crowley shows that MMA has drastically overstated the avoidable loss of MMA rail operations on the Lines. Given the extraordinary economic downturn of the past few years, the moderate avoidable loss calculated by Mr. Crowley warrants denial of the abandonment. See attached Verified Statement of Thomas Crowley ("V.S. Crowley") at page 15. Other problems with the Application are addressed throughout this Protest.

³ Petitioners will generally use the term "abandonment" in this Protest to refer to both the proposed abandonment and the proposed discontinuance of service.

Furthermore, the burden on MMA of continued rail operations on the Lines, if any, is far outweighed by the negative impact that the abandonment would have on the shippers, businesses, and citizens of northern Maine. As described in the attached Verified Statements of Robert J. Pinette and Gaston Poitras, alternative transportation is not feasible for Irving, the largest shipper located on the Lines. Hence, abandonment would force Irving to reduce its business. Roughly [[██████████]] jobs would be lost and communities would be severely impacted by the proposed abandonment. V.S. Pinette at 8. Irving Woodlands also has built its business model based on an expectation of rail service and, thus, would lose millions of dollars in sunk investments in rail-related infrastructure. In short, the substantial harm to Irving and the public interest at large strongly weighs in favor of denying abandonment.

Moreover, Fraser Witness, Brian Sass, describes how the MMA's proposed abandonment would create a stranded segment in extreme northern Maine, such that all outbound rail traffic from and inbound rail traffic to Fraser's Madawaska Mill would be forced to travel through Canada, even if the destination or origin was also in the U.S. The creation of a stranded line segment would reduce Fraser's competitive options and force Fraser to rely on the Canadian regulatory system to address rail service matters. Disconnecting this segment from the remainder of the MMA system and the rest of the national rail system also casts serious doubt over MMA's ability to meet its common carrier obligation to Fraser. See attached Verified Statement of Brian Sass ("V.S. Sass") at pages 1 and 3-4.

Three additional factors support denying the proposed abandonment. First, MMA has drastically understated the impact on shippers and communities from the proposed abandonment. Second, the abandonment implicates the rural and community development factor of 49 U.S.C. § 10903(d) because the Lines are a vital transportation link for the small towns and rural

communities of northern Maine. Third, MMA has overstated the avoidable costs on the Lines, and thus overstated the impact of the Lines on its financial health, which calls into question whether MMA has fully and accurately evaluated the need for, and the affects of, its proposed abandonment.

The combination of the numerous factors mentioned above warrants denial of the abandonment sought by MMA. *Cf. South Orient Railroad Company, Ltd. – Abandonment and Discontinuance of Trackage Rights – Between San Angelo and Presidio, TX*, STB Docket No. AB-545, slip op. at 15 (served Oct. 6, 1998) (finding abandonment “not warranted at this time,” but noting that the railroad can seek abandonment in the future if projected traffic does not come to fruition). The Board should deny the abandonment and discontinuance sought by MMA.

III. STANDARD OF REVIEW.

MMA may only discontinue its service on, and abandon, the Lines if the Board finds that “the present or future public convenience and necessity require or permit the abandonment or discontinuance.” 49 U.S.C. § 10903(d). The Board must also consider whether the abandonment and discontinuance would have a “serious, adverse impact on rural and community development.” *Id.* A finding of public convenience and necessity requires the Board to “balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce.” *South Orient* at 13.

In determining the public interest, the Board considers factors such as the profitability of the line, costs that the railroad may experience from continued operations, the potential for the line to become profitable, the availability of alternative transportation, and the effect on shippers and communities from loss of rail service. *Id.* at 13-14; *Georgia Public Service Commission v.*

United States, 704 F.2d 538, 541 (11th Cir. 1983). No single factor, however, is determinative. *South Orient* at 14.

To support its abandonment application, a railroad “must demonstrate that the line in question is a burden on interstate commerce.” Typically, the carrier submits evidence to show that the costs incurred by it for the line exceed the revenues attributable to it.” *CSX Transportation, Inc. – Abandonment Exemption – (Between Memphis and Cordova) In Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 590X), slip op. at 5 (served Dec. 12, 2001). The fact that some shippers may incur inconvenience and added expense is insufficient by itself to outweigh the harm to the public interest of continued operation of uneconomic rail lines. *South Orient* at 13. Yet, at the same time, evaluation of abandonment applications is not a purely mathematical computation. *CSX Transportation, Inc. – Abandonment Exemption – In Anderson County, SC*, STB Docket No. AB-55 (Sub-No. 664X), slip op. at 4 (served Aug. 15, 2006).

The burden of proof in an abandonment or discontinuance case is on the railroad applicant. *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903*, STB Ex Parte No. 537, 1 STB 894, 906-907 and 909 (1996). See also *Boston and Maine Corporation – Abandonment – In Suffolk County, MA*, STB Docket No. AB-32 (Sub-No. 91), slip op. at 2 (n. 3) (served Aug. 8, 2001) (“The burden is on the applicant to show that the proposed abandonment is in the public interest.”). The applicant must show that “keeping the line in service would impose a burden on it that outweighs the harm that would befall the shipping public, and the adverse impacts on rural and community development, if the rail line were abandoned.” *Id.* See also *Busboom Grain Company, Inc. v. Interstate Commerce Commission*, 856 F.2d 790, 793 (7th Cir. 1988) (“proceedings before the Interstate Commerce Commission are not supposed to be purely adversarial contests...[T]he Commission is supposed

to protect the public interest...”) (internal quotation omitted). Cursory or speculative analyses and unsupported assertions will not satisfy the railroad’s burden. *E.g., Georgia Pub. Service*, 704 F. 2d at 543-44; *Southern Pac. Transp. Company v. Interstate Commerce Commission*, 871 F.2d 838, 842 (9th Cir. 1989); *CSX Transp. Inc.—Abandonment Exemption—In Anderson County, SC*, STB Docket No. AB-55 (Sub-No. 664X), slip op at 4-5 (served Aug. 16, 2006). *Cf. Tulare Valley R.R. Co.—Abandonment and Discontinuance Exemption—In Tulare and Kern Counties, CA*, STB Docket No. AB-397 (Sub-No. 5X), slip op. at 3 (served March 6, 1998).

IV. PROTEST AND COMMENTS.

As demonstrated in this Part IV, MMA has failed to carry its burden of showing that the discontinuance and abandonment proposed by its Application is in the public interest. Under close scrutiny, the Application is riddled with inconsistencies, unsupported assertions, and erroneous characterizations of transportation options in the abandonment area. Collectively, these problems raise serious concerns regarding the reliability and accuracy of the Application to justify the proposed abandonment. Moreover, there is a strong public need for rail service that cannot be satisfied by alternative modes. In light of such a strong public interest in continued rail service, MMA’s Application falls far short of the required showing to justify its proposed abandonment.

A. MMA’s Application Is Predicated Largely On Recession Economics And The Consequences Of Its Own Self-Defeating Actions.

MMA has chosen to file its Application on the basis of traffic and revenue levels occurring at the depths of the worst economic downturn in this nation since the Great Depression. The paper and forest products industries that MMA serves have been particularly hard hit, which has led to a consequent reduction in rail volumes. MMA has used that reduction in traffic to justify its abandonment while refusing to give much, if any, credence to the

- Because MMA has reduced service from five days per week to just three days, a missed pick-up means that a car is delayed anywhere from 2-3 days, instead of just one day with daily weekday service.
- When MMA misses a pick-up, the cars continue to occupy siding that could, and often would, be used to load another empty car. That is additional business for MMA that is either deferred or completely lost.
- After a missed pick-up, the accumulation of loaded cars over several days sometimes is too much for the locomotive power, which forces MMA to drop some cars from the train, causing further delay for those cars.
- In addition to delays caused by missed pick-ups, MMA's trains too often miss interchanges with connecting trains, which causes still more delay.
- Transit delays also adversely affect car utilization, which can cause car shortages and more lost business.

V.S. Pinette at 5-7.

Irving cannot afford to pay increased rates for unreliable service. V.S. Pinette at 7. But MMA has raised rates as its service continues to deteriorate. In that situation, Irving has little choice but to use alternative transportation when it can, or simply to forego the business when it cannot. The end result is that MMA's traffic levels continue to decline; Irving's business continues to shrink along with other MMA-served businesses; and the communities of northern Maine suffer the consequences. V.S. Pinette at 5-8 and 14.

B. Cessation Of Rail Service Would Be Devastating For Irving And The Rural Communities Of Northern Maine.

The Application contemplates abandonment of a rail line in a rural area of northern Maine that relies heavily on rail service for the forest product industries that populate the region.

Northern Maine is an isolated corner of the United States, far from any large cities. Yet, at the same time, it is blessed with natural beauty and abundant forests. As described in the attached verified statement of Robert Pinette from Irving Woodlands, cessation of rail service would devastate the businesses and communities of northern Maine, with an untold loss of jobs. V.S. Pinette at 5-8. Abandonment also would seriously harm Irving Forest Products' ability to transport directly to certain customers normally reached via the abandonment Lines. V.S. Poitras at 3-4. In short, the proposed abandonment would have a "serious, adverse impact on rural and community development." The Board must take this factor into account when evaluating the Application. 49 U.S.C. § 10903(d).

The forest products industry that is so important to the economy of northern Maine relies heavily upon rail transportation in order to compete in the marketplace. Because of Maine's remote location, its forest products businesses must transport their products greater distances than their vast majority of competitors to reach most markets. V.S. Pinette at 11-14. The economics of rail transportation are essential to reaching these markets. Without rail, Maine's forest product industry cannot compete effectively in many markets that it currently serves. If businesses cannot compete in those markets, they must resize to the much smaller marketplace that still can be served economically by truck. This means lost sales and, ultimately, a loss of jobs in a rural area that already is experiencing high unemployment.

As described in the comments and protests of other parties to this proceeding, untold jobs are dependent, either directly or indirectly, on the forest products industry. Of course, jobs not only support individuals but also create tax dollars for local governments. Northern Maine already is economically distressed, and a further loss of jobs would be catastrophic. *Cf. Georgia Public Service*, 704 F.2d at 546-547 (abandonment denied due partially to rural and community

development factor where unemployment in region was already nearly 20%). As policy-makers in Washington have embraced free trade and the global economy, transportation is an even more critical aspect of any region's economic health. It would be devastating for the northern Maine region to lose all rail service while trying to compete in a global economy.

Efficient, reliable, and cost-effective rail service is critical, not just to Irving's business, but to the entire forest products industry that comprises so much of the northern Maine economy. A permanent loss of rail service in northern Maine would dramatically increase Irving's cost of doing business and cause several logistical problems, as described in the attached Verified Statement of Robert Pinette. These cost increases and problems would cause the loss of [[■■■]] at Irving Woodlands alone. V.S. Pinette at 8.

Contrary to representations in its Application, MMA recently expressed the view that rail service is critical to the communities and shippers of northern Maine, implying that truck transportation is not a viable alternative.⁴ Specifically, MMA informed the Board that its customer base of paper and forest products businesses in Maine is "highly dependent on rail service, being located far from high-volume transport routes that might afford several competitive transportation alternatives." Statement of Position and Request for Conditions of Montreal, Maine & Atlantic Railway, Limited, at page 4 (filed August 11, 2008) ("Statement of Position"), in *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements – Pan Am Southern LLC*, STB Docket No. 35147. In fact, MMA's Joseph McGonigle (who also provided testimony in support of the Application) said in 2008 that "[s]uch customers could clearly not survive if MMA were forced to curtail or abandon

⁴ The Board was reminded of MMA's prior statements in a Petition to Classify the Scope of the Board's Environmental Review, filed on March 18, 2010 in this proceeding.

its service.” Verified Statement of Joseph R. McGonigle, at page 2, attached to Statement of Position.

Now, however, just 18 months later, MMA states that shippers on the Lines have “adequate alternative transportation options” they could use if the abandonment is approved. Application at 21. The Board should not permit MMA to completely change its stance on the importance of rail service to the shippers in the region without a compelling explanation. No such explanation was provided in the Application and, therefore, MMA has not met its burden of proof.

C. Feasible Alternative Transportation To Rail Does Not Exist For Most Of Irving’s Traffic.

MMA blithely contends that Irving and other forest products companies will be adequately served by trucks post-abandonment. Application at 21. But, alternative transportation must be feasible both economically and logistically. *Georgia Public Service*, 704 F.2d at 545-546. The Application fails to carry MMA’s burden on both counts. If rail service ceases, the only transportation alternative for Irving would be trucking or an extended truck trip to a rail transload. For the reasons described below, neither of these options would be feasible or viable for Irving.

1. Truck costs would be prohibitive.

Trucking is not economically feasible for Irving due to the huge cost differential between rail and truck transportation. By the calculations of MMA’s own witness, Irving would incur an increase in transportation costs from [[[REDACTED]] in [REDACTED]] in transportation costs in the Base Year for traffic originating or terminating on the Lines.

Application Verified Statement of Robert Holland (“A.V.S. Holland”), Exhibit A.⁵ For the Forecast Year, meanwhile, the increase in transportation cost for Irving’s originating and terminating traffic was projected by MMA to go from [[[REDACTED]]]

Moreover, these alternative transportation costs are based on a faulty railcar to truckload ratio that understates the increase in Irving’s transportation costs. MMA calculated these cost increases based on a ratio of just 1.6 trucks to 1 railcar, which is a significant deviation from Board precedent. A.V.S. Holland at 3 and Exhibit A. In prior abandonment cases, the Board has customarily relied upon a 4:1 ratio of truckloads to railcar loads. *See, e.g., Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance – In Coos, Douglas, and Lane Counties, OR (Coquille to Vaughn)*, STB Docket No. AB-515 (Sub-No. 2), slip op. at 3 (served Aug. 15, 2008) (SEA decision); *San Joaquin Valley Railroad Company – Abandonment Exemption – In Tulare County, CA*, STB Docket No. AB-398 (Sub-No. 8X), slip op. at 2 (served April 28, 2008) (SEA decision). *See also Union Pacific Railroad Company - Abandonment - In Rusk County, TX*, STB Docket No. AB-33 (Sub-No. 275), slip op. at 2 (served June 26, 2009) (SEA decision, using 3.72:1 ratio). Although MMA contends that the lumber-based nature of Irving’s inbound and outbound traffic requires use of a 1.6 ratio, prior cases with a similar heavy emphasis on the forest products industry utilized a 4:1 ratio. *Central Oregon, Combined Environmental and Historic Report* at 5 (filed June 24, 2008). Irving Forest Products’ witness Gaston Poitras also explains that even use of tri-axle trucks would still require a ratio of at least 3:1 from trucks to railcars. V.S. Poitras at 4.

⁵ Irving will describe Verified Statements from the MMA Application as “A.V.S.” in order to distinguish them from Verified Statements offered by Irving.

Due to a loss of business from these [[██████████]], cessation of rail service on the lines proposed for abandonment would reduce Irving Woodlands' annual revenue by [[██████████]]. Consequently, Irving Woodlands would have to eliminate [[██████████]] jobs, including both direct Irving Woodlands employees and contractors. The eliminated jobs would be in a variety of areas, including the cutting force, trucking, yard, and loading. *Id.* at 8.

MMA has also suggested that the private road network of northern Maine could be used as a substitute for the rail service lost if the Application is approved due to the heavy trucks that use the private roads. Application at 19; A.V.S. McGonigle at 5 and 7. In truth, however, MMA's suggestion is too simplistic. As described above, there is a symbiotic relationship between use of heavy trucks on private roads and rail access to northern Maine area. Irving Woodlands uses off-road trucks of over 225,000 pounds to reach rail sidings on the MMA, at which point a transfer of cargo to railcars occurs. V.S. Pinette at 3-4. Then, final transport to Irving Woodlands' customers can occur via rail. *Id.* at 9-14.

If no rail service existed, Irving Woodlands would have to use lighter trucks, of 80,000 pounds or 100,000 pounds gross weight, so that truck travel on Maine public roads would be legally possible. This option is untenable because the favorable economics of the 225,000-pound trucks would be lost. *Id.* at 9-10. In other words, the value of the heavy off-road trucks relies upon rail access to the area of private roads. Because it still would be necessary to transload product from heavy-haul to lighter trucks in order to complete the transportation, any economic advantage of heavy haul trucks would be lost.

Lastly, Irving Woodlands has made a huge commitment to rail use over the past decade, investing [[██████████]] in railcars, off-road trucks, and various expensive equipment at its four rail sidings on the MMA. Irving Woodlands' operations in northern Maine have been

organized around use of rail, and this plan was undertaken in consultation with the state of Maine, the Bangor & Aroostook Railroad, and the MMA. V.S. Pinette at 2-4. Many investments have been made since 2003. *Id.* Abandonment would cause Irving to lose the value of these investments.

3. MMA has not met its burden to show that adequate trucking and road capability exists.

Even if trucking were feasible, MMA has not demonstrated that adequate truck or road capacity exists in northern Maine. MMA's witnesses make mostly conclusory assertions with little or no support. Moreover, they fail to factor the effect of longer truck hauls and slower speeds into their analysis.

MMA relies upon the conclusion of one of its witnesses that there "appears to be" sufficient trucking capacity in the area. A.V.S. McGonigle at 5. Meanwhile, another of MMA's witnesses "drove over some of the major highways" in the area in order to observe traffic and "a few of" the major customers of MMA purportedly to show the existence of ample truck and road capacity, and the capability of shippers to logistically switch from rail to truck for all relevant traffic. A.V.S. Holland at 3-4. There is no evidence that any of MMA's witnesses actually spoke with either trucking firms or shippers on the Lines. This sort of drive-by analysis does not meet the burden of proof required in abandonment proceedings. *See Georgia Public Service*, 704 F.2d at 543-544 (railroad proposing an abandonment does not meet its burden of proof when its witness: (1) merely finds names of trucking firms in a directory; and (2) does not talk to the railroad's shippers about the trucking alternative).

Although MMA expects trucks to handle the longer haul traffic that MMA currently transports by rail, there is no indication that MMA considered that more trucks are needed to handle the same commodity over greater distances. In addition, MMA cites the ability to use

private logging roads for truck transportation, but makes no mention of the slower speeds on those roads compared to the public road system or the tolls that must be paid. Slower speeds also require more truck capacity.

The sufficiency of trucking capacity in Maine to absorb tens of thousands of additional truckloads per year, and the ability of Maine roads to handle this increase, is based on the opinion of Mr. McGonigle, who evaluated 4 websites. See attached Exhibit 1 at 5 (MMA responses to Interrogatories #17-19 and Request for Production #1); attached Exhibit 2 at 2-3 (MMA counsel letter, March 30, 2010). The 4 websites evaluated by Mr. McGonigle consist of:

- the 2008 Maine Forest Service Wood Processor Report, which shows historical forest products production in Maine
- a general introduction webpage of the state government for commercial vehicle operators in Maine
- the homepage of the Maine Potato Board
- the homepage of the Maine state government

These websites provide little support for MMA's assertions in order to satisfy its burden of proof in this case on the economic and logistical feasibility of alternative transportation.

Apparently to show that the rail transportation needs of the northern Maine region are not extensive, Mr. McGonigle states that MMA's "rail market share compared to trucks in the area served by the Abandonment Lines amounts to less than 10% of overall shipping activity." A.V.S. McGonigle at 5. In discovery, Irving sought the method by which Mr. McGonigle arrived at this 10% figure – such as workpapers showing the inputs and the calculations from which the figure was derived. See attached Exhibit 3 at 7 (Irving discovery requests, Interrogatory #19). MMA stated that no documents or calculations exist. Exhibit 2 at 2 (MMA counsel letter, March 30, 2010). Given the lack of support for Mr. McGonigle's assertion, the Board should ignore it. Furthermore, as noted in the previous section, Mr. McGonigle has failed to distinguish between traffic that routinely moves by truck and traffic that must move by rail.

Finally, Mr. Holland asserts that Maine roads can handle trucks weighing up to 100,000 pounds (A.V.S. Holland at 3), but the allowance for trucks up to 100,000 pounds on most of Interstate 95 in Maine is limited to a one-year pilot program signed by President Obama in December 2009. V.S. Pinette at 12. This program will expire after one-year unless further action is taken.

The reality of trucking capacity in northern Maine is very different from the world portrayed by MMA. Every year, Irving must place advertisements in newspapers for drivers and trucks. *Id.* at 12. This is not indicative of a market with excess capacity, where one would expect trucking companies to be beating down the door of a potential customer. Due to the lack of back-haul opportunities, truckers do not want to travel the long distances required to serve northern Maine. *Id.* at 10, 12, and 14. Those who are willing to do so demand higher rates. *Id.* at 12-13.

In sum, MMA has not met its burden of proof regarding the extent of the negative impact on shippers and communities from a loss of rail service. Under 49 U.S.C. § 10903, the Board balances the burden on the applicant and on interstate commerce from continued operation with the burden on shippers and communities if rail service ceases. By not providing adequate or defensible information regarding transportation alternatives available to shippers and communities if the abandonment is approved, MMA has effectively prevented the Board from conducting the required balancing under § 10903. In other words, MMA has failed to meet its burden of proof.

4. Transload options are not a feasible alternative for most of Irving's traffic.

MMA has also relied upon the assumption that feasible alternative transportation is available to shippers like Irving in the form of truck-to-rail transloading, with trips under 300

in transloading traffic at the Hermon LMS facility or at the contemplated Millinocket facility. Discovery in this case reveals that MMA has conducted no analysis or planning of post-abandonment operations. See attached Exhibit 4 at 6 (Irving counsel letter, March 26, 2010); Exhibit 2 at 3-4 (MMA counsel letter, March 30, 2010, regarding Request for Production #20). Similarly, no documents have been created and no analysis has been conducted regarding construction and operation of the proposed Millinocket transload facility, or operations at the Hermon transload facility. Exhibit 1 at 11-12 (MMA response to discovery, Request for Production #28); Exhibit 1 at 11 (MMA response to discovery, Request for Production #27).

5. Trucking is not a viable alternative due to the environmental impact.

Irving believes that businesses would be harmed and jobs would be lost if the proposed abandonment is approved. In addition, if current traffic levels continue despite a loss of rail service, the proposed MMA abandonment would cause a massive influx of trucks on Maine roads. There were [] carloads carried on the Abandonment Lines in 2009, a year of dramatic economic trauma. Application at 9. As described above, in Part IV.C.1., the Board's Section of Environmental Analysis ("SEA") generally uses a ratio of four trucks for each railcar in determining the impact of truck traffic on roads. When using a 4:1 ratio, as well as MMA's assumption that all trucks will have an empty backhaul (see A.V.S. Holland at 3), there would be 8 truck trips created for each railcar load. Based on annual traffic of [], this would create [] truck trips per year.

An increase of this magnitude should be evaluated by the SEA using an Environmental Impact Statement ("EIS"). 49 CFR § 1105.7(e)(5)(i)(C). Irving recognizes the 4-month abandonment proceeding statutory time limitation created by 49 U.S.C. § 10904(c). However, the Board also has Congressionally-mandated duties under the National Environmental Policy

Act ("NEPA"), 42 U.S.C. §§ 4321 et seq. The requirements under these two statutes can conflict when the Board is faced with a proposed abandonment that necessitates the detailed environmental review that only occurs in an EIS. Given the potential huge increase in trucks on the largely 2-lane roads of northern Maine, an EIS is warranted in this case, and an extension of the 4-month timetable in 49 U.S.C. § 10904(c) will be necessary.

There is precedent for just this sort of action. *The Baltimore and Ohio Railroad Company, Metropolitan Southern Railroad Company and Washington and Western Maryland Railway Company – Abandonment and Discontinuance of Service – In Montgomery County, MD and the District of Columbia*, ICC Docket No. AB-19 (Sub-No. 112), 1986 ICC Lexis 294 (May 21, 1986) ("*Baltimore and Ohio*"). In this prior case, while the Interstate Commerce Commission ("ICC") recognized the "strong congressional policy in favor of expeditious action" on abandonment applications, it decided that the deadline in § 10904 was "not so inflexible as to prevent us from meeting our responsibilities under NEPA to ensure that actions with potential for significant adverse environmental impact are taken only after adequate investigation." *Baltimore and Ohio*, 1986 ICC Lexis 294 at *6 (May 21, 1986).

The main environmental concerns in the *Baltimore and Ohio* case were the future uses of the abandoned right-of-way and the trucking of coal through the streets of Washington, DC. If an EIS was warranted in *Baltimore and Ohio*, it should be even more warranted with regard to MMA's Application. There is significant interest in and opposition to the abandonment. Moreover, the abandonment could create an additional [█████] annual truck trips, or more when traffic rebounds. In contrast, the number of truck trips created by the abandonment in the *Baltimore and Ohio* case was less than 1,400. *Baltimore and Ohio*, 1988 ICC Lexis 94 at *11 (Feb. 25, 1988). The Board should direct the SEA to conduct an EIS in order to meet its

circuitry factor for all mileage-related costs. V.S. Crowley at 6-7. Use of a circuitry factor is appropriate when the actual miles of a route of movement are unknown, but, in the case of MMA, the actual route is known in all cases. Therefore, a circuitry factor should not be used. *Id.*

Third, Mr. Finley included return on investment for railroad-provided railcars in his off-branch calculations despite the fact that “MMA owns none of the freight cars used on the Abandonment Lines.” A.V.S. Finley at 9. Uniform Rail Costing System (“URCS”) cost calculations include return on investment for railroad-provided railcars. The URCS regional cost used by Mr. Finley includes, as a default, return on investment for all railcars based on the assumption that the railroad has provided those cars. However, MMA provided none of the railcars on the Abandonment Lines. Mr. Finley’s failure to remove the return on investment caused overstatement of the off-branch costs. V.S. Crowley at 7.

Fourth, Mr. Finley overstated the terminal portion of off-branch costs by including a full terminal cost for all movements, regardless of the movement type. *Id.* at 7-8. When a railcar originates or terminates on the line proposed for abandonment, the full terminal cost must be replaced with a modified terminal cost. *Id.* at 8. Mr. Finley’s inclusion of full terminal costs for all movements has overstated MMA’s off-branch costs.

Fifth, Mr. Finley included off-branch costs for [[[REDACTED]]] As both of these locations are on the Abandonment Lines, no off-branch costs are incurred by MMA. *Id.* at 9.

Sixth, MMA failed to include net revenues from traffic that would be retained if the abandonment is approved. Mr. Finley’s spreadsheets reveal [[[REDACTED]]] of traffic currently moving over the Abandonment Lines that MMA expects to retain after abandonment. *Id.* at 10. MMA has not included net revenue from this retained traffic in its

calculation of avoidable costs. Therefore, this net revenue must be subtracted from the URCS costs to determine the correct avoidable costs. *Id.* at 10-11.

Finally, MMA's net liquidation value contains a calculation error in the development of net tons to be disposed of both for rail and other track material for continuous welded rail and jointed rail. Correcting this error reduces the net liquidation value, which further lowers MMA's avoidable also in both the Base and Forecast Years. *Id.* at 12.

2. MMA improperly ignores additional costs that it will incur on the stranded segment solely as a consequence of the abandonment.

Due to the fact that MMA's proposed abandonment would strand the Madawaska to Saint Leonard line from the remainder of the MMA system, MMA must incur additional costs as a consequence of the abandonment in order to continue to provide rail service over this "stranded" segment post-abandonment. MMA ignores these costs that it must incur solely due to the abandonment in its avoidable loss calculation. If these costs are offset against the avoidable loss from operations, MMA's avoidable loss is just \$400,148 for the Base Year. *V.S. Crowley* at 15 and Exhibit TDC-4.

MMA would build a mechanical facility on the stranded segment between Madawaska and Saint Leonard if the abandonment is approved. Reply of MMA in Opposition to Motion to Dismiss or Reject Application at 5 (filed March 15, 2010). Costs to build and operate this facility would not be incurred if there were no abandonment. *V.S. Crowley* at 13, 14. These costs were not included by MMA in its Application.

Moreover, MMA is also planning to transport locomotives from the stranded segment over the CN for heavy maintenance when necessary. Reply of MMA in Opposition to Motion to Dismiss or Reject Application at 5 (filed March 15, 2010). MMA has its main maintenance facility on the southern portion of its proposed bifurcated system. Routing over CN to reach this

facility involves costs not currently incurred by MMA today, because MMA can simply conduct heavy maintenance on locomotives as they travel from Madawaska to Millinocket over the abandonment Lines. If that segment is abandoned as MMA proposes, significant costs would be incurred to transport locomotives over a much longer CN route. V.S. Crowley at 14-15.

Of course, MMA's lack of cost information is not surprising, because no documentation exists regarding the proposed mechanical facility. [[[REDACTED]

[REDACTED]]] See also Exhibit 2 at 3-4 (MMA counsel letter, March 30, 2010, regarding Request for Production #20). In other words, MMA has completed no evaluation or work of any kind regarding the exact location, siting, construction, cost, financing, operation, staffing, or any other aspect of the mechanical facility.

3. MMA has understated inevitable costs associated with abandonment.

In addition to the omitted stranded segment costs discussed in the preceding section, MMA has omitted other types of costs that it would incur if abandonment proceeds. Those costs would further reduce MMA's avoidable loss calculation.

First, MMA has a Rail Funding Agreement with the state of Maine that requires a "substantial penalty" be paid to the state if MMA abandons any rail line before 2013 or 2014. *Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine*, STB Docket No. AB-124 (Sub-No. 2), slip op. at 9 (served May 3, 2004) ("*Waterloo Railway Company*"). The Board has previously described this Rail Funding Agreement, under which MMA apparently obtained \$5.4 million from the state of Maine in 2003 or 2004 in exchange for an agreement to not abandon any rail lines for a 10-year period. *Id.* According to the Board, a lien was placed on MMA property to secure MMA's obligations, and a "substantial penalty" is imposed if MMA abandons any rail line before the end of the 10-year period. *Id.* The penalty is apparently equal

to the funds received by MMA – \$5.4 million. This cost should have been deducted by MMA in calculation of its avoidable loss.

MMA may also incur costs to ferry crews between the upper and lower segments of its system after the proposed abandonment. Again, it does not appear that these costs have been included in MMA's analysis of the financial impact of abandonment. In fact, MMA apparently has not performed any analyses regarding how its operations will change if the abandonment is approved. Exhibit 4 at 6 (Irving counsel letter, March 26, 2010); Exhibit 2 at 3-4 (MMA counsel letter, March 30, 2010, regarding Request for Production #20).

Lastly, MMA has stated that, if additional cars or locomotives are needed on the upper segment after abandonment, MMA would transport them from the lower segment via the CN – a circuitous route several hundred miles longer than if the MMA were not split into two sections. Reply of MMA in Opposition to Motion to Dismiss or Reject Application at 6 (filed March 15, 2010). MMA has not estimated costs associated with this circuitous routing, such as additional fuel, wages, and fees owed to CN.

4. The evidence shows that MMA's losses may be largely due to factors other than the abandonment lines.

The Base Year is comprised of the period from October 1, 2008 to September 30, 2009 and, as shown in the preceding portions of this Part IV.D., the true avoidable loss to MMA from operations on the Lines during that time period was at most \$1.65 million, and potentially much less when other abandonment costs are considered. MMA as a whole claims to have experienced a loss of [[██████████]] that would have been a profit of [[████████]] but for its operation of the abandonment Lines. Application at 10. When MMA's avoidable loss calculation is corrected by Mr. Crowley, it is clear that [[██████████]] MMA's operating loss during the Base Year came from operations on rail lines other than those proposed for

abandonment. The Board should deny the abandonment due to the Application's failure to carefully evaluate the true source of MMA's financial problems.

In fact, it is quite possible that MMA does not even know where the operating losses originate. [[[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]]]

E. MMA Has Grossly Overstated The Estimated Subsidy.

MMA has erred by including [[REDACTED]] in rehabilitation expenses in the calculation of the subsidy needed to continue operations. A.V.S. Finley at 15-16 and Exhibit 1. Under the Board's rules, rehabilitation costs are not to be included in the determination of the subsidy unless the track fails to meet FRA Class 1 status or the potential subsidizer requests service that requires rehabilitation expenditures. 49 CFR § 1152.32(m)(2). *See also Camas Prairie Railnet, Inc. – Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID (Between Spalding and Grangeville, ID)*, STB Docket No. AB-564, slip op. at 17 (served Sept. 13, 2000). There is no potential subsidizer at this time and all of the Lines, except for a small section of the Limestone Branch, meet or exceed FRA Class 1 track standards.

MMA's rehabilitation cost estimate, however, includes costs necessary to attain Class 3 status on the entire Madawaska Subdivision, and Class 2 status on the Fort Fairfield, Houlton, and Presque Isle Subdivisions, and Class 1 on the Limestone Subdivision. Application at 17-18; A.V.S. Sheahan at 5-6. MMA's rehabilitation witness agrees that all of the Lines, with the exception of part of the Limestone Branch, already qualify as Class 3, Class 2, or Class 1 status

under the FRA grading scale. A.V.S. Sheahan at 5; Exhibit 6 at 42-43 (Sheahan Deposition). Therefore, the Board should find that the appropriate rehabilitation expense under § 1152.22 is no more than [] – the amount claimed by MMA to return the Limestone Subdivision to FRA Class 1 status– and not the [] otherwise stated by MMA.

Mr. Crowley has restated the estimated subsidy payment in accordance with the Board’s rules to be only \$6.1 million. V.S. Crowley at 17 and Ex. TDC-4.

F. Inconsistencies And Unsupported Assertions Plague MMA’s Evidence On Deferred And Annual Maintenance Costs.

The maintenance costs, deferred and annual, asserted by MMA in Exhibits G and K of the Verified Statement of Melody Sheahan are entirely speculative and should be rejected by the Board because MMA has not met its burden of proof. *Cf. Southern Pacific*, 871 F.2d at 840 and 842 (court affirms ICC denial of abandonment where long-term repair costs were speculative because unlikely to be incurred until two to three years in the future). MMA provided conflicting documentation regarding Ms. Sheahan’s assertion that [] \$4.895 million in normal annualized capital maintenance must be completed every year.

1. Numerous problems surround MMA’s claims regarding surfacing maintenance.

As asserted by Ms. Sheahan, []

[] Yet, at the same time, Ms. Sheahan admits that the Base Year maintenance expenses included surfacing. Sheahan A.V.S. at 5. Clearly, [] surfacing had

just been completed on part of the Lines in the Base Year (October 1, 2008 to September 30, 2009).

[[REDACTED]
[REDACTED]]

surfacing expense is listed at \$4,000 per mile in the normal annualized capital maintenance section. A.V.S. Sheahan at Exhibit K. [[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]]

[[REDACTED]
[REDACTED]
[REDACTED]]

According to Ms. Sheahan's own opinion, surfacing lasts two years. See Sheahan's Exhibit K (showing that only half of the Lines need to be surfaced each year). [[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]]

Beyond the inconsistencies noted above, the level of surfacing described as necessary for the MMA appears excessive. In a rate reasonableness case featuring extremely heavy loads on track of a stand-alone railroad ("SARR"), surfacing costs included by the Board were based on surfacing once every three years for heavily-used track and once every four years for more lightly used track. *AEP Texas North Company v. BNSF Railway Company*, STB Docket No. 41191 (Sub-No. 1), slip op. at 70 (served Sept. 10, 2007). This SARR featured heavy coal traffic

from the Powder River Basin to approximately 107 power plant destinations, plus non-coal traffic. *AEP Texas* at 9 and 35. Compared to the heavy loads at issue in *AEP Texas*, where surfacing was only projected at once every three or four years, MMA's plan for surfacing every two years on the Lines appears overstated.

2. MMA's rail cost assertions are inconsistent.

As mentioned above, MMA witness Sheahan has [REDACTED]
[REDACTED]] in a good state of repair such that \$4.895 million in normal annualized capital maintenance could be conducted each year. A.V.S. Sheahan at 5-6; Exhibits G and K. The values used by Ms. Sheahan for rail replacement inexplicably vary, however. [REDACTED]
[REDACTED]
[REDACTED]] Meanwhile, the normal annualized maintenance cost for rail replacement is set at \$420,000 per mile. A.V.S. Sheahan at Exhibit K. This discrepancy is not explained or justified by Ms. Sheahan.

The Board should find that MMA has not met its burden of proof with respect to the assertions of deferred maintenance and normal annualized capital maintenance. *Cf. CSX Transportation, Inc. – Abandonment Exemption – In Anderson County, SC*, STB Docket No. AB-55 (Sub-No. 664X), slip op. at 4-5 (served Aug. 15, 2006) (Board denies abandonment exemption because of “questionable” rehabilitation cost estimates, including deviating from FRA standards and including rehabilitation needs unconfirmed by inspection reports).

G. MMA Has Inappropriately Deviated From Across-The-Fence Real Estate Valuation.

The Board should reject MMA's attempt to use a corridor methodology in calculating the net liquidation value of the real estate comprising the right-of-way of the Lines. Application at

13-15; A.V.S. Gottlieb. In proceedings before the Board, the across-the-fence valuation method is the appropriate way to value real estate, “[u]nless there is a specific, documented interest expressed by a potential purchaser for an intact corridor.” *Boston and Maine Corporation – Abandonment – In Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 83), slip op. at 4 (served July 1, 1998) (rejecting use of corridor valuation method in establishing price for OFA sale). No such specific, documented interest has been presented by MMA in this case. MMA has only cited to sales of other rail corridors, and to the view of Mr. Gottlieb that recreation trails or electric transmission lines are appropriate for the Lines’ corridor. Application at 13-15; A.V.S. Gottlieb at 2-3 and 7-8. It should be noted that Mr. Gottlieb has no experience in electric transmission line development. Exhibit 2 at 1 (MMA counsel letter, March 30, 2010). The Board should reject MMA’s use of a “corridor methodology” for valuation of the rail line right-of-way because no documented interest in purchasing the entire corridor was included in the Application.

Furthermore, MMA has not even shown that it has marketable title to the entire rail corridor. In certain locations on the corridor, MMA has not been able to find the relevant deeds. In other locations, MMA title was found to be encumbered due to the existence of reversionary rights. A.V.S. Tardif at 2. See also A.V.S. Gottlieb at 5. However, MMA’s corridor valuation witness, Mr. Gottlieb, merely wished these problems away. He valued the real estate as if MMA could sell the entire corridor as a unit with no discount for the reversionary rights or the areas where MMA does not even have a deed. A.V.S. Gottlieb at 6-7. Mr. Gottlieb justifies this assumption by stating that he has never seen anyone attempt to show (let alone succeed in an attempt at showing) better title than a railroad. A.V.S. Gottlieb at 6. Contrary to Mr. Gottlieb’s assertion, the relevant issue is not whether someone has better title than a railroad, but whether

someone has a property interest that limits the ability of the railroad's successor to use the property for non-rail purposes. Thus, the reversionary interest lowers the price the railroad is able to obtain for the property, because the buyer must compensate the party with the reversionary interest.

Mr. Gottlieb's simple assumption that lack of fee simple ownership would not affect the sale price of the right-of-way shows that defensible support does not exist for the corridor valuation, and the Board should reject the corridor valuation put forth by MMA. *Cf. Tulare Valley Railroad Company – Abandonment and Discontinuance Exemption – In Tulare and Kern Counties, CA*, STB Docket No. AB-397 (Sub-No. 5X), slip op. at 3 (served March 6, 1998) (Board rejects abandonment exemption "because any future decision concerning the abandonment of this line must rest on solid financial data").

H. Abandonment Would Create A Stranded Line Segment.

In a Motion to Reject or Dismiss Application filed on March 12, 2010, Irving and several other shippers expressed opposition to the proposed abandonment because it would permanently sever a 23-mile segment of the MMA from the national rail system. While access to that 23-mile segment through Canada remains possible, Board precedent indicates that disconnecting a rail line "from the national rail system" is impermissible. *Buffalo & Pittsburgh Railroad, Inc. – Abandonment Exemption – In Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 3X), slip op. at 7 (served Sept. 18, 1998). *See also Central Oregon*, slip op. at 12. Irving and the other shippers also raised numerous concerns about (1) MMA's ability to meet its common carrier obligation on the stranded segment; and (2) the policy implications of forcing all rail traffic between extreme northern Maine and the rest of the U.S. to transit through Canada. Finally, Fraser Papers expressed its opposition to permanently severing its mill at Madawaska

from the rest of the U.S. rail system. The Board issued a decision, on March 17, 2010, stating that the issues raised were better considered in the merits phase of this proceeding. In this section, Irving renews those arguments.

As described by MMA, service to the Fraser facility in Madawaska currently occurs via a haulage agreement between CN and MMA. A.V.S. McGonigle at 14 and 16. Additionally, CN and MMA are parties to a trackage rights agreement under which CN can, at any time, decide to serve Fraser directly via overhead rights on the MMA between Madawaska and Van Buren/St. Leonard. *Canadian National Railway Company – Trackage Rights Exemption – Bangor and Aroostook Railroad Company and Van Buren Bridge Company*, STB Docket No. 34014, slip op. at 2 (served June 25, 2002). In the event that CN ever exercises this right, then the need for MMA to retain crews, locomotives, cars, and the alleged maintenance facility on the stranded segment would decrease substantially. It is uncertain whether MMA could fulfill its common carrier obligation to the communities and other shippers on the stranded segment if CN exercises its rights under the trackage rights agreement.

A stranded segment also would reduce rail transportation options at a large mill in St. Leonard, New Brunswick. This mill is located on the CN [[[REDACTED]]]
[REDACTED]
]] traffic to and from the St. Leonard mill can go south via MMA to connect with CP in Quebec, Eastern Maine Railway at Brownville Junction, or Pan Am Railways near Bangor. Traffic can also go north and west via CN. If the proposed abandonment is approved, all rail options will be eliminated other than the CN route. [[[REDACTED]]]
[REDACTED]
[REDACTED]]]

Similarly, creation of a stranded segment would eliminate more efficient routing options for the Fraser Papers facility at Madawaska. Currently, Fraser can transport products via MMA (1) north to connect with CN at St. Leonard, (2) west to connect with Canadian Pacific in Quebec, and (3) south to connect with either Eastern Maine Railway or Pan Am Railways. Approval of the abandonment will drastically limit Fraser's rail shipping options. All direct routes to the west and south will be lost. Instead, all rail traffic will be forced to connect with CN at St. Leonard, a circuitous routing for most Fraser traffic (which either originates in or is destined to other locations in the United States). V.S. Sass at 4. See also earlier V.S. Sass at 2-3, attached to Motion to Reject or Dismiss Application (filed March 12, 2010) (stating that most of Fraser's traffic is destined to other locations in the U.S.). In other words, the abandonment will reduce competition and introduce an inefficient, more circuitous, and, most likely, more costly routing for Fraser traffic. Denial of the Application is warranted to preserve the competition at Fraser's Madawaska mill and other shippers located on what would be the stranded segment. *Waterloo Railway Company* at 5-6 (Board notes reduction in existing competition requires a "very strong showing").

Although MMA claims it could fulfill its common carrier obligations on the stranded line segment after abandonment, it has not performed any analysis or developed any plans for post-abandonment operations. [[[REDACTED]
[REDACTED]
[REDACTED]]] Exhibit 4 at 6 (Irving counsel letter, March 26, 2010); Exhibit 2 at 3-4 (MMA counsel letter, March 30, 2010, regarding Request for Production #20). No documentation exists regarding the alleged "maintenance facility" that MMA says it will construct on the stranded segment. Id.

The bare assertion that common carrier obligations will be fulfilled does not meet MMA's burden of proof to show that the public interest warrants approval of the Application. Board precedent holds that rail operations on what would be the stranded segment must be considered in the abandonment decision. *Owensville Terminal Company Inc. – Abandonment Exemption – In Edwards and White Counties, IL and in Gibson and Posey Counties, IN*, STB Docket No. AB-477 (Sub-No. 1X), slip op. at 3 (served Aug. 1, 1997). Furthermore, under 49 U.S.C. § 10903, the Board balances the burden on the applicant and on interstate commerce from continued operation with the burden on shippers and communities if rail service ceases. By not providing information regarding its post-abandonment operations, MMA has not adequately offered evidence regarding the likely harm to shippers and communities if the Application is approved. Consequently, the Board cannot conduct the required balancing, and MMA has failed to meet its burden of proof.

MMA attempts to avoid this precedent by pointing to the existence of another stranded segment in Maine. Reply of MMA in Opposition to Motion to Dismiss or Reject Application at 2 (filed March 15, 2010). But, the mere presence of another stranded segment does not absolve MMA of its burden to demonstrate that this stranded segment does not impose an impermissible burden upon interstate commerce. The case cited by MMA in its Reply in Opposition reveals characteristics that distinguish it from the MMA situation. First, there was virtually no opposition to the abandonment that occurred in *Maine Central Railroad Company – Abandonment in Penobscot, Hancock, and Washington County, ME*, ICC Docket No. AB-83 (Sub-No. 7) (served Nov. 4, 1985). The only protesting party shipped a grand total of 16 cars in the previous full year. Other shippers on the stranded segment, such as Georgia Pacific at Woodland, ME, were apparently unconcerned and did not object. Apparently no one raised the

stranded segment issue because the ICC did not mention it in the decision. Finally, the ICC did not institute an investigation into the proposed abandonment.

Conversely, significant opposition exists to the MMA proposal. Several shippers have raised the stranded segment issue early in the process, and expressed their concerns regarding MMA's post-abandonment operations. Fraser Papers, a large shipper on what would be the stranded segment, has also expressed opposition to being forced to go through Canada to reach the rest of the U.S. rail system. V.S. Sass at 4.

MMA attempts to discredit Fraser by reference to an earlier case in which Fraser attempted to preserve its access to CN via a haulage and trackage rights agreement between CN and MMA's predecessor, the Bangor and Aroostook Railroad ("BAR"). MMA Opposition to Motion to Reject or Dismiss Application at 3-4. In fact, Fraser's opposition to the adverse abandonment of CN's rights in the prior case is entirely consistent with its position in this proceeding. In both cases, Fraser has opposed abandonment of essential rail services. Understandably, Fraser wanted to retain its access to CN in the event that the BAR's financial troubles caused service problems. Those concerns were completely justified by the BAR's bankruptcy and subsequent line sale to MMA, and they remain justified today by MMA's poor service and abandonment proposal. V.S. Sass at 2-3.

Moreover, in an age of ever-increasing border security, Fraser, just like any business, would like to minimize both uncertainty and potential regulatory problems that could arise with cross-border operations if at all possible. The Application would eliminate Fraser's ability to avoid cross-border transportation for shipments that are ultimately destined to or arriving from elsewhere in the U.S. V.S. Sass at 4. For this reason, Fraser is obviously concerned about the proposed abandonment.

Approval of this abandonment would leave the communities and shippers of extreme northern Maine (both current and future) permanently reliant on the Canadian rail regulatory structure for access to the rest of the U.S. rail network. Counsel for Irving is not aware of any prior proceeding where the Board directly addressed this issue. Nonetheless, this is a fundamental issue that should be considered by the Board. Regardless of whether Irving or Fraser or other entities also have operations in Canada, and regardless of whether traffic currently transits through Canada, the future of rail regulation in Canada is obviously beyond the Board's jurisdiction and control. As part of its balancing evaluation under 49 U.S.C. § 10903, and as part of its consideration of rural and community development, the Board should determine whether the interests of communities like Madawaska and Van Buren are adequately protected if an abandonment strands a rail line from the national rail system, with connections to the U.S. only possible through Canada.

MMA claims that it would fulfill its common carrier obligations on the stranded segment, but the evidence provided by MMA in this proceeding reveals that MMA has given virtually no thought to how its rail operations would function if the abandonment is approved. In discovery, Irving has learned that MMA has no documents regarding:

- the selection of the precise endpoints included in the Application. Exhibit 1 at 8 (MMA response to discovery, Request for Production #9).
- how rail operations of MMA would change if the abandonment is approved. Exhibit 2 at 3-4 (MMA counsel letter, March 30, 2010, regarding Request for Production #20).
- the percentage of current traffic on the Lines that would still be carried by MMA if the abandonment is approved. Exhibit 1 at 9 (MMA response to discovery, Request for Production #12).

- projected transportation rates, revenues, and operating profits from current traffic on the Lines that would still be carried by MMA if the abandonment is approved. Exhibit 1 at 9 (MMA response to discovery, Request for Production #13).
- expected traffic and revenues at the Hermon, Maine transload facility owned by MMA affiliate Logistics Management Systems if the abandonment is approved. Exhibit 1 at 11 (MMA response to discovery, Request for Production #27).
- the contemplated transload facility at Millinocket. Exhibit 1 at 11-12 (MMA response to discovery, Request for Production #28).
- the locomotive and car mechanical facility that would be constructed on the stranded segment between Madawaska and Van Buren if the abandonment is approved. Exhibit 2 at 3-4 (MMA counsel letter, March 30, 2010, regarding Request for Production #20).

MMA clearly has not performed much, if any, analysis or evaluation of its post-abandonment operations. MMA has made no effort to show the quality of rail service to the region if the Application is approved, either on the Lines, on the stranded segment, or elsewhere on the MMA system. Thus, MMA has utterly failed to carry its burden of proof. *Cf. The Cincinnati, New Orleans and Texas Pacific Railway Company – Abandonment Exemption – in Roane County, TN*, STB Docket No. AB-290 (Sub-No. 236X) (served Dec. 2, 2005) (Board refuses to grant abandonment exemption until abandoning railroad explains how shipper will be served post-abandonment).

The Board should deny the Application because MMA has not adequately addressed the fundamental shift proposed in its own operations, including: (1) splitting the MMA system; (2) abandoning 233 route miles; (3) potentially increasing truckloads by the thousands at MMA-

served transload locations (see A.V.S. McGonigle at 16-17; A.V.S. Holland at 4); and
(4) constructing a new car and locomotive mechanical facility.

V. IF THE APPLICATION IS APPROVED, THE BOARD SHOULD ADD CONDITIONS REGARDING ANY OFFER OF FINANCIAL ASSISTANCE.

If the Board grants MMA's Application, certain conditions to preserve the future viability of rail service on the Lines should be attached to the abandonment. As the Board is well-aware, there exists significant interest among shippers, government officials, and communities in Maine to preserve rail service. As major shippers on or near the Lines, Irving and Fraser share this interest. While many shippers have recently been dissatisfied with MMA's service, they do not want to lose rail service permanently.

If the Application is approved, there is a strong possibility that an Offer of Financial Assistance ("OFA") to purchase the Lines will be filed pursuant to 49 U.S.C. § 10904. However, because the Lines lie in the middle of the MMA rail system, any OFA purchaser will be dependent upon the MMA at both the southern and northern ends to interchange all Joint line traffic. This would inject an additional interchange into existing routes, which renders rail transportation over the abandonment lines less efficient than current MMA service from the very start. Moreover, shippers on the abandonment Lines would remain subject to the poor service that they currently receive from MMA. This would undermine the ability of an OFA purchaser to preserve and enhance rail transportation service over the Lines. The Board should consider these concerns in its determination of the public interest. *Cf. Wisconsin Central Ltd. – Abandonment – In Ozaukee, Sheboygan, and Manitowoc Counties, WI*, STB Docket No. AB-303 (Sub-No. 27), slip op. at 25, Vice Chairman Mulvey commenting (served Oct. 18, 2004) (Vice Chairman Mulvey expressing concern regarding abandonment of a middle segment of a Wisconsin Central rail line).

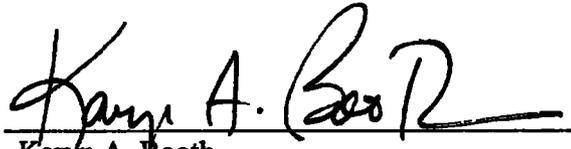
Furthermore, as a necessary carrier to all off-line destinations, MMA could exert monopoly bottleneck power to extract all excess revenue from rail traffic that originates or terminates on the Lines, impairing the ability of the rail purchaser to reinvest net income in the Lines. *Id.* (Vice Chairman Mulvey expressing concern that, given the “poor state of the line’s infrastructure...creating an economically viable operation under these conditions would be a difficult challenge”). In short, the Lines would be relegated to permanent marginal status.

To prevent the above scenario, and to afford the best opportunity for long-term viability of the Lines, the Board should condition any approval of the Application on granting of trackage rights to an OFA purchaser over the MMA from (1) Madawaska to Van Buren/St. Leonard for connection with CN; and (2) from Millinocket to Brownville Junction for connection with the Eastern Maine Railway. *Id.* (Vice Chairman Mulvey stating that he would have “conditioned the abandonment on requiring that the WCL enter into negotiations with any successor operator of the abandoned segment to provide trackage rights to the nearest interchange point with another railroad”). Moreover, the Board should require MMA to permit the OFA purchaser to directly serve the Fraser facility at Madawaska for all inbound traffic from the south and all outbound traffic routed south. Because the Fraser facility is located at the very end of the stranded segment, such access is necessary to avoid an inefficient MMA switch that would be measured only in yards when Fraser receives or tenders traffic over the southern route of the OFA purchaser.

VI. CONCLUSION

For all the reasons set forth hereinabove, the Board should deny the abandonment and discontinuance proposed in the Application. In the event the Board approves the abandonment, the conditions described above should be imposed.

Respectfully submitted,



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*Attorneys for Irving Woodlands LLC and
Irving Forest Products, Inc.*

April 21, 2010

CERTIFICATE OF SERVICE

I certify that on this 21st day of April, 2010 I caused a copy of the foregoing to be served upon all parties of record by e-mail, and in addition upon the following as indicated below:

Overnight Delivery:

James E. Howard
1 Thompson Square, Suite 201
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Linda J. Morgan
Charles H.P. Vance
Covington & Burling LLP
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Chief Counsel
Department of Transportation, State of Maine
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Augusta, ME 04333-0016

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Philadelphia, PA 19103


David E. Benz

EXHIBIT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

**ANSWERS AND OBJECTIONS OF MONTRÉAL, MAINE
& ATLANTIC RAILWAY, LTD. TO "IRVING WOODLANDS
LLC'S AND IRVING FOREST PRODUCTS, INC.'S
FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION
OF DOCUMENTS, AND REQUEST TO ENTER UPON LAND"**

Montréal, Maine & Atlantic Ry., Limited ("MMA") hereby responds to "Irving Woodlands LLC's and Irving Forest Products, Inc.'s First Set of Interrogatories, Requests for Production of Documents, and Requests to Enter upon Land":

INTERROGATORIES

Interrogatory 1. Please state MMA's operating revenues and operating costs from providing rail transportation service for the entire MMA system, as well as by each subdivision of the MMA rail system, for each of the years 2009, 2008, 2007, 2006, 2005, 2004, and 2003.

Answer and Objection 1. MMA objects to this interrogatory, because operating revenues and operating costs from rail transportation service for the entire MMA system or for subdivisions that are not part of the Line are not relevant. Furthermore, MMA does not maintain records of operating revenues and operating costs by subdivision in the ordinary course of business. MMA has provided operating revenues and operating costs for the Line for the Base Year and the Forecast Year in the application. Without waiving such objections, the operating revenues and operating costs from rail transportation service for the entire MMA system for 2009 were [\$27,974,967 and \$26,098,481—
CONFIDENTIAL], respectively.

Interrogatory 2. Please state MMA's operating revenues and operating costs from providing rail transportation service on the Line for each of the years 2009, 2008, 2007, 2006, 2005, 2004, and 2003.

Answer and Objection 2. MMA objects to this interrogatory, because information concerning operating revenues and operating costs from rail transportation service on the Line for the years 2003-2009 are not relevant. In accordance with the Board's regulations, MMA has provided such information for the Base Year and the Forecast Year in the application. Furthermore, MMA did not maintain records of operating revenues and operating costs separately for the Line for such years, and it would be unduly burdensome, time-consuming and expensive to conduct an analysis in order to determine operating revenues and operating costs for rail transportation service on the Line for each such year.

Interrogatory 3. For each of the years 2009, 2008, 2007, 2006, 2005, 2004, and 2003, please state MMA's capital expenditures separately for each of the following subdivisions: Madawaska, Presque Isle, Fort Fairfield, Limestone, and Houlton.

Answer and Objection 3. MMA objects to this interrogatory, because the information is not relevant. Furthermore, it would be unduly burdensome and time consuming to review records in order to produce capital expenditure information separately for each of the subdivisions comprising the Line.

Interrogatory 4. Please identify all sources of revenue arising from the Line that are not associated with railroad operations, and identify the amount of such revenues, by type and location, on an annual basis for years 2009, 2008, 2007, 2006, 2005, 2004, and 2003.

Answer and Objection 4. MMA objects to this interrogatory, because sources of revenue arising from the Line not associated with rail operations for all years from 2003 to 2009 are not relevant. Furthermore, sources of such revenue for the Base Year and the Forecast Year have been provided in the application in accordance with the regulations.

Interrogatory 5. Please identify by name and milepost all customers on the Line that were served by MMA in the year 2009.

Answer and Objection 5. MMA objects to this interrogatory, because the information sought is not relevant. Such information has been provided in the application for "significant users", as defined in the regulations, for the Base Year and the Forecast Year. Without waiving such objection, the names and milepost locations of customers on the Line served by MMA in 2009 were as set forth in the attached document entitled "2009 Customers on Abandonment Line".

Interrogatory 6. For each customer identified in response to Interrogatory No. 6 [sic], please state the number of inbound and the number of outbound railcar shipments that MMA handled and, to the extent possible, the respective customer commodities and railcar types used for service.

Answer and Objection 6. MMA objects to this interrogatory, because the information sought is not relevant and it would be unduly burdensome and time consuming to provide such information. Furthermore, such information for the Base Year has been provided for the "significant users", as defined in the Board's regulations, in the application.

Interrogatory 7. Please describe the experience of your witness Melody A. Sheahan in the following areas, including specific names of rail lines and dates where appropriate: determining the net liquidation value of rail assets, selling rail assets recently removed from rail corridors, removing rail assets, transporting removed rail assets, providing testimony or verified statements in STB proceedings or other agency or court proceedings, and valuing rail assets in rail lines planned for abandonment.

Answer and Objection 7. Ms. Sheahan has supervised and exercised management responsibility for the removal, sale and transportation of rail assets in connection with capital and maintenance track programs on lines of MMA.

Interrogatory 8. Please explain the extent to which Melody A. Sheahan personally inspected the rail assets of the Line as part of her determination of the net liquidated value of those assets.

Answer and Objection 8. Ms. Sheahan personally inspected the rail assets of the Line by geometry car or hy-rail vehicle. In addition, staff members who report to Ms. Sheahan inspected and reported on such rail assets

Interrogatory 9. Please describe the experience of your witness Richard M. Gottlieb in the following areas, including specific names of rail lines and dates where appropriate: determining the net liquidated value of railroad real estate property interests by use of a "corridor methodology", selling railroad real estate property interests as complete rail corridors, providing testimony or verified statements in STB proceedings or other agency or court proceedings, valuing railroad real estate property interests by use of a "corridor methodology" in rail lines planned for abandonment, and electric power transmission line planning and siting.

Answer 9. Mr. Gottlieb's experience in selling railroad real estate property interests as complete rail corridors and valuing railroad real estate property interests by use of a corridor methodology in rail lines planned for abandonment is set forth in his Verified Statement.

Interrogatory 10. Please describe the experience of your witness Lowell Sherwood in the following areas, including specific names of rail lines and dates where appropriate:

determining the net liquidated value of railroad real estate property interests, selling railroad real estate property interests, providing testimony or verified statements in STB proceedings or other agency or court proceedings, and valuing railroad real estate property interests in rail lines planned for abandonment.

Answer 10. Mr. Sherwood's experience in valuing railroad real estate property interests in rail lines is set forth in his Verified Statement and the appraisals attached to the Verified Statement.

Interrogatory 11. Explain the basis for the statement on page 6 of the Verified Statement of Richard M. Gottlieb that "most holders of adverse rights do not know that they hold them."

Answer 11. The basis for the statement is Mr. Gottlieb's experience in selling abandoned railroad rights-of-way, as described in his Verified Statement.

Interrogatory 12. Describe the damages paid to compensate for reversionary or servient rights in connection with the sale of a rail right-of-way from the Bangor & Aroostook Railroad to the Maine Department of Conservation, as described on pages 2-3 and 5-6 of the Verified Statement of Richard M. Gottlieb.

Answer 12. Mr. Gottlieb's Verified Statement does not describe, and the seller did not pay, damages to compensate for reversionary or servient rights in connection with the sales referred to in pages 2-3 and 5-6 of the Verified Statement.

Interrogatory 13. Explain the basis for the statement on page 7 of the Verified Statement of Richard M. Gottlieb that "[t]he potential producers of electricity have indicated that the rail corridors are sufficiently wide."

Answer 13. The basis for Mr. Gottlieb's statement that potential producers of electricity have indicated that the rail corridors are sufficiently wide is conversations with potential users of the rights-of-way for the transmission of electricity.

Interrogatory 14. Explain the basis for the statement on page 8 of the Verified Statement of Richard M. Gottlieb that "parties desiring to produce electricity for sale in US markets will probably be looking for the ability to tie up or reserve corridors to be used for transmission capacity."

Answer 14. The basis for Mr. Gottlieb's statement that producers of electricity for sale in US markets will probably be looking for the ability to tie up or reserve corridors to be used for transmission capacity is conversations with potential users of the rights-of-way for the transmission of electricity.

Interrogatory 15. Explain the "[p]reliminary indications" which support the "the value of an option for 5 years" described on page 8 of the Verified Statement of Richard M. Gottlieb.

Answer 15. The preliminary indications supporting the value of an option as described at page 8 of Mr. Gottlieb's Verified Statement are based on conversations with potential users of the rights-of-way for the transmission of electricity.

Interrogatory 16. Please identify each person you have retained, or expect to retain as an expert witness or outside consultant, in connection with this proceeding.

Answer 16. MMA has retained Robert C. Finley, Robert E. Holland, Lowell T. Sherwood, Jr. and Richard M. Gottlieb as expert witnesses or outside consultants in connection with this proceeding.

Interrogatory 17. Explain the basis for the statement on page 5 of the Verified Statement of Joseph R. McGonigle that "there appears to be sufficient trucking capacity in the region to handle the business that would be diverted from rail if rail operations cease on the Abandonment Lines."

Answer 17. The bases for Mr. McGonigle's statement that there appears to be sufficient trucking capacity to handle business that would be diverted after the abandonment are his experience and personal knowledge and observation of the trucking services that are available to and currently used by customers that are served by the Line.

Interrogatory 18. Explain the basis for the statement on page 5 of the Verified Statement of Joseph R. McGonigle that "the current volumes of traffic on these roads are at levels that could that might be generated if the Abandonment Lines are no longer in operation."

Answer 18. The bases for Mr. McGonigle's statement that current volumes of traffic on the roads in the area of the Line if the Line is no longer in operation are his experience and personal knowledge and observation of the roads and truck service in the area and the information set forth in the preliminary draft environmental assessment served in these proceedings.

Interrogatory 19. Explain the basis for the statement on page 5 of the Verified Statement of Joseph R. McGonigle that "MMA's rail market share compared to trucks in the area served by the Abandonment Lines amounts to less the [sic] 10% of overall shipping activity."

Answer 19. The basis for Mr. McGonigle's statement that MMA's rail market share compared to trucks is less than 10% is an estimate based upon his experience and personal knowledge.

Interrogatory 20. Explain the basis for the statement on page 18 of the Verified Statement of Joseph R. McGonigle that "additional rate increases would only result in losing more business to trucks or other transportation alternatives."

Answer 20. The bases for Mr. McGonigle's statement that additional rate increases would result in losing more business to trucks are his experience and personal knowledge generally and in with respect to customers served by the Line.

Interrogatory 21. Explain the basis for the statement on page 4 of the Verified Statement of Joseph R. McGonigle that “[i]t is highly unlikely that there will be future investments in either plant or machinery to expand production of paper in the state of Maine.”

Answer 21. The bases for Mr. McGonigle's statement that it is highly unlikely that there will be future investments in plant or machinery to expand the production of paper in Maine are his experience and personal knowledge of the paper industry generally and in the State of Maine.

Interrogatory 22. Explain the basis for the assumption on page 4 of the Verified Statement of Robert E. Holland that “for rail movements of approximately 300 miles or less, it would be likely that a rail car would be diverted exclusively to truck.”

Answer 22. The bases for Mr. Holland's assumption that rail movements of approximately 300 miles or less would be diverted exclusively to truck are his experience and personal knowledge and consultation with MMA personnel.

Interrogatory 23. Describe which portions of the MMA system are encumbered as a result of the loan received by the MMA through the Federal Railroad Administration Railroad Rehabilitation and Improvement Financing program.

Answer and Objection 23. MMA objects to this interrogatory, because the information sought is not relevant. Without waiving such objection, the MMA system in the United States is encumbered as a result of the loan provided by the Federal Railroad Administration pursuant to the Railroad Rehabilitation and Improvement Financing program.

Interrogatory 24. Please describe the repayment schedule for the loan received by MMA through the Federal Railroad Administration Railroad Rehabilitation and Improvement Financing Program.

Answer and Objection 24. MMA objects to this interrogatory, because the information sought is not relevant.

Interrogatory 25. Provide the number of rail cars of logs, woodchips, and wood pulp that MMA originated in the Base Year that were destined to points outside of Maine.

Answer and Objection 25. MMA objects to this interrogatory, because information concerning rail cars of logs, woodchips and wood pulp originated by MMA on lines other than the Line are not relevant. Such information for rail cars originated on the Line during the Base Year has been provided in the application.

Interrogatory 26. State whether MMA has estimated the number of truck-to-rail and rail-to-truck transloads by MMA's own customers that bypass MMA, and if so, provide those estimates.

Answer and Objection 26. MMA objects to this interrogatory, because the information requested is not relevant. Without waiving such objection, MMA states that it has made no such estimate.

REQUESTS FOR PRODUCTION

Request 1. Produce all documents relating to MMA's responses to all Interrogatories above.

Answer and Objection 1. MMA objects to this request, because it is overly broad, vague and compliance would be unduly burdensome.

Request 2. Produce all documents related to discussions about purchasing or offers to purchase real estate property interests held by MMA in the Line.

Answer and Objection 2. MMA objects to this request, because any such documents are confidential and proprietary and reflect ongoing discussions concerning potential transactions.

Request 3. Produce all documents related to discussions about purchasing or offers to purchase track assets owned by MMA in the Line.

Answer 3. MMA objects to this request, because any such documents are confidential and proprietary and reflect ongoing discussions concerning potential transactions. Without waiving such objection, MMA does not believe that it has any documents related to discussions about purchasing or offers to purchase track assets in the Line.

Request 4. Produce all documents related to discussions about removing rail assets of the Line, or offers to remove rail assets of the Line.

Answer 4. Other than documents included in the application, MMA does not believe that it has any documents related to discussions about removing rail assets of the Line.

Request 5. Produce all documents related to discussions about transporting newly-removed rail assets of the Line, or offers to transport newly-removed rail assets from the Line.

Answer 5. Other than documents included in the application, MMA does not believe that it has any documents related to discussions about transporting remove rail assets of the Line.

Request 6. Produce all documents regarding the possibility of MMA retaining the Madawaska Subdivision while filing for abandonment of any portion or all of the Presque Isle Subdivision, the Fort Fairfield Subdivision, the Limestone Subdivision, and the Houlton Subdivision.

Answer and Objection 6. MMA objects to this request, because the information sought is not relevant. Without waiving such objection, MMA does not believe that it has any documents regarding the possibility of retaining the Madawaska subdivision while filing for abandonment of any of the other subdivisions.

Request 7. Produce all documents regarding MMA's decision to not seek STB abandonment authority for the MMA between Madawaska and Van Buren.

Answer and Objection 7. MMA objects to this request, because the information sought is not relevant. Without waiving such objection, MMA states that it does not believe that it has any documents regarding any decision not to seek abandonment authority for the line between Madawaska and Van Buren.

Request 8. Produce all documents regarding MMA's decision to not seek STB abandonment authority for the MMA between Millinocket and Brownville Junction.

Answer and Objection 8. MMA objects to this request, because the information sought is not relevant. Without waiving such objection, MMA states that it does not believe that it has any documents regarding any decision not to seek abandonment authority for the line between Millinocket and Brownville Junction.

Request 9. Produce all documents related to MMA's decision about the precise endpoints (approximately at Madawaska and Millinocket) that would be included in the abandonment application filed on or about February 25, 2010 at the STB.

Answer and Objection 9. MMA objects to this request, because the information sought is not relevant. Without waiving such objection, MMA states that it does not believe that it has any documents related to any decision about the precise end points of the Line.

Request 10. Produce all documents regarding the going concern value and the net liquidation value of the MMA lines between Madawaska and Van Buren and between Millinocket and Brownville Junction.

Answer and Objection 10. MMA objects to this request, because the information sought is not relevant. Without waiving such objection, MMA states that it does not believe that it has any documents regarding the going concern value of the lines between Madawaska and Van Buren and between Millinocket and Brownville Junction

Request 11. Produce all documents regarding the effect of higher railroad speeds and/or faster response time to customers' service requests on the traffic levels and profitability of the Line.

Answer and Objection 11. MMA objects to this request, because the information sought is not relevant. Without waiving such objection, MMA states that it does not believe that it has any documents, other than Exhibit J. attached to the Verified Statement of Melody A. Sheahan, regarding the effect of higher speeds or faster response time on traffic levels and profitability of the Line.

Request 12. Produce all documents regarding projections of the portion of traffic currently using the Line that would still be carried by MMA, such as from a transload facility, in the future after abandonment.

Answer and Objection 12. MMA objects to this request, because the information sought is not relevant. Without waiving such objection, MMA states that it does not believe that it has any documents regarding projections of traffic currently using the Line that would still be carried by MMA after abandonment.

Requests 13. Produce all documents regarding projections of transportation rates, MMA revenues, and MMA profit to be earned from traffic currently using the Line that will still be carried by MMA, such as from a transload facility, in the future after abandonment.

Answer and Objection 13. MMA objects to this request, because the information sought is not relevant. Without waiving such objection, MMA states that it does not believe that it has any documents regarding projections of transportation rates, revenues or profit from traffic currently using the Line that would still be carried by MMA after abandonment.

Request 14. Produce copies of all complaints from customers about MMA service on the Line, as well as MMA's response to those complaints.

Answer and Objection 14. MMA objects to this request, because the information sought is not relevant, the request is overly broad and compliance would be unduly burdensome.

Request 15. Produce all documents related to due diligence performed by MMA before its 2003 purchase of the Line. Include all documents related to future expected traffic levels, revenues, operating costs, and capital expenditures.

Answer and Objection 15. MMA objects to this request, because the information sought is not relevant.

Request 16. Produce all documents related to MMA's valuation of the Line before and at the time of the MMA purchased the Line in 2003.

Answer and Objection 16. MMA objects to this request, because the information sought is not relevant.

Request 17. Produce all documents related to the “discussions with a group in the timber business...concerning the possibility of a purchase and sale of approximately 80 miles of the 233 mile corridor” described on page 4 of the Verified Statement of Richard M. Gottlieb.

Answer and Objection 17. MMA objects to this request, because any such documents are confidential and proprietary and disclosure could adversely affect potential further discussions and transactions.

Request 18. Produce all documents related to the “offer from the Maine Public Service to acquire land at various locations within the 233 miles relating to existing utility easements” described on page 4 of the Verified Statement of Richard M. Gottlieb.

Answer and Objection 18. MMA objects to this request, because any such documents are confidential and proprietary and reflect ongoing discussions concerning potential transactions, disclosure of which could adversely affect potential further discussions and transactions.

Request 19. Produce all documents supporting the statement “[o]ther parties have expressed similar interests directly to MMA” found on page 7 of the Verified Statement of Richard M. Gottlieb.

Answer and Objection 19. MMA objects to this request, because any such documents are confidential and proprietary and reflect ongoing discussions concerning potential transactions, disclosure of which could adversely affect potential further discussions and transactions.

Request 20. Produce all documents related to how MMA rail operations will or may change if the abandonment of the Line is approved by the STB.

Answer and Objection 20. MMA objects to this request, because the information requested is not relevant.

Request 21. Produce your most recent track charts and maps for the Line.

Answer and Objection 21. Attached are track charts for the Madawaska subdivision. Track charts do not exist for the other subdivisions in the Line. There are no maps of the Line.

Request 22. Produce all documents, including the RRIF loan application, related to the Federal Railroad Administration Railroad Rehabilitation and Improvement Financing loan obtained by MMA.

Answer and Objection 22. MMA objects to this request, because the information requested is not relevant.

Request 23. Produce all documents related to any other liens on the real property or track assets of the Line.

Answer and Objection 23. MMA objects to this request, because the information requested is not relevant.

Request 24. Produce any and all workpapers (such as those mentioned on page 5 of the Verified Statement of Melody Sheahan) and other documents, materials, data, information, analysis, or calculations underlying, supporting, explaining, or contradicting the Verified Statements included in the MMA application for abandonment filed with the STB on or about February 25, 2010.

Answer and Objection 24. MMA objects to this request, because it is overly broad and compliance would be unduly burdensome. Furthermore, relevant workpapers were included in the application.

Request 25. Produce all documents related to any marketing efforts or initiatives that MMA undertook between 2003 and 2010 to increase traffic on the Line from existing shippers and/or from any new shipper. For purposes of this request, "new shipper" means any company that had not previously shipped goods on the Line.

Answer and Objection 25. MMA objects to this request, because the information requested is not relevant, the request is overly broad and compliance would be unduly burdensome.

Request 26. Produce all documents related to the volume of traffic handled and the total capacity at the Hermon, Maine facility of Logistics Management Systems for the years 2003, 2004, 2005, 2006, 2007, 2008, and 2009.

Answer and Objection 26. MMA objects to this request, because the information requested is not relevant, the request is overly broad and compliance would be unduly burdensome.

Request 27. Produce all documents related to expected traffic at (and revenues generated by) the Hermon, Maine facility of Logistics Management Systems if the STB approves abandonment of the Line or rail operations cease on the Line.

Answer and Objection 27. MMA objects to this request, because the information requested is not relevant. Without waiving such objection, MMA states that it does not have any documents related to expected traffic and revenues at LMS if the abandonment is approved.

Request 28. Produce all documents related to the "contemplated" transload facility at Millinocket, as described on page 17 of the Verified Statement of Joseph McGonigle.

Answer and Objection 28. MMA objects to this request, because it is not relevant. Without waiving such objection, MMA states that it does not have any documents related to the contemplated transload facility at Millinocket.

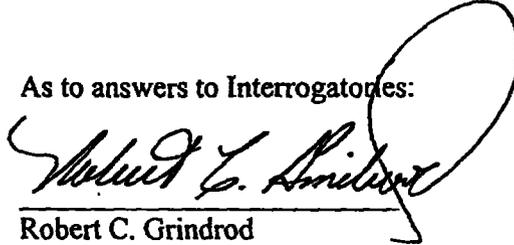
REQUEST FOR RIGHT TO ENTER UPON AND INSPECT LAND

1. Please grant a right of access to Irving and its counsel or consultants retained in connection with this proceeding to enter upon the Line and related MMA property for all lawful purposes related to this proceeding in STB Finance Docket No. AB-1043 (Sub-No. 1), including inspection, survey, measuring, testing, photographing and sampling. Irving will work with MMA to determine an appropriate time and manner for this inspection.

Answer 1. MMA is willing to discuss the appropriate scope, time and manner for entry of Irving upon the Line.

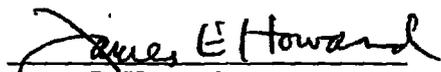
**MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.**

As to answers to Interrogatories:



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Hermon, Maine 04401

As to objections:



James E. Howard
One Thompson Square
Suite 201
Charlestown, MA 02129

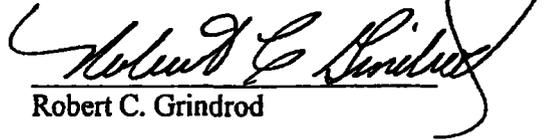
VERIFICATION

State of Maine

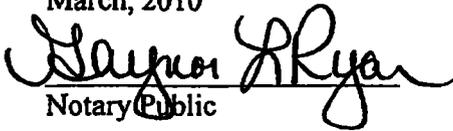
ss:

County of Penobscot

Robert C. Grindrod, being duly sworn, deposes and says that he has read the foregoing answers to interrogatories, knows the facts asserted there are true and that the same are true as stated.


Robert C. Grindrod

Subscribed and sworn to
before me this 23 day of
March, 2010


Notary Public

GAYNOR L. RYAN
Notary Public, Maine
My Commission Expires May 4, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Answers and Objections by causing a copy to be sent by Federal Express as of this 24th day of March, 2010 to Karyn A. Booth, Thompson Hine, 1920 N Street, N.W., Suite 800, Washington, DC 20036.

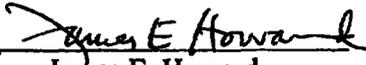

James E. Howard

EXHIBIT 2

James E. Howard

Attorney at Law

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jim@jehowardlaw.com

March 30, 2010

VIA E-MAIL

David E. Benz
Thompson Hine
1920 N Street, N.W.
Washington, DC 20036

Dear David:

This will respond to your letter to me dated March 26, 2010 concerning your written discovery directed to Montréal, Maine & Atlantic Railway and MMA's response. The numbered paragraphs below correspond to the numbers in your letter.

Interrogatories

3. We continue to believe that information concerning capital expenditures segregated by subdivision is not relevant to MMA's decision concerning the lines that it seeks to abandon, but we will either provide such information from MMA's records or permit you to review those records. It is not clear that such information is readily available for the earlier years.

9. In answer to your interrogatory, Mr. Gottlieb's experience was stated in MMA's response. To the extent that there was no answer addressing the question of testimony in STB proceedings or other proceedings or no answer concerning experience in "electric power transmission line planning and siting", means that there is no such experience.

10. Mr. Sherwood's experience valuing railroad real estate property interests includes valuations of properties 1, 2 and 5 listed at pages MMA 000729, 000731 and 000737 of the application and a review on behalf of the State of Maine of the appraisal done for sale 6 on page 000739. In addition, Mr. Sherwood appraised the right-of-way between Presque Isle and Washburn, Maine on behalf of the State of Maine in 2001 and reviewed the appraisal of the line between Fort Kent and St. Francis, Maine on behalf of the State in 2000. Mr. Sherwood has not provided testimony in STB proceedings. He has testified in various courts or other proceedings, as shown in the list attached hereto.

11. Mr. Gottlieb did not consult, review or create any documents in developing his opinion concerning holders of adverse rights.

12. Mr. Gottlieb does not have any knowledge whether the State of Maine paid any damages in connection with the sale of 43 miles of right away. Mr. Gottlieb's Verified Statement states at page 6 that the State used a statutory procedure, not, as implied by your letter, that the state paid any damages.

13-15. MMA does not believe that disclosure of further details concerning confidential conversations with potential users of the rights-of-way for the transmission of electricity is warranted or justified at this time. Notwithstanding the protective order, there is a risk that any such disclosure would prejudice MMA. Furthermore, such conversations are not the basis for any valuation of MMA's real estate in the rights-of-way that constitute the lines to be abandoned.

16. At the time of its response, MMA did not expect to retain any additional expert witnesses or outside consultants. MMA now anticipates the possibility of retaining James N. Heller of Chevy Chase, Maryland.

17-18: Mr. McGonigle consulted several public documents, including documents available at the following websites:

http://www.maine.gov/doc/mfs/pubs/pdf/wdproc/08_wdproc.pdf;

<http://www.maine.gov/mdot/freight/comm-vehicle-maine.php>

<http://www.maine potatoes.com/pubreser.html>

www.maine.gov.

19. Mr. McGonigle developed his calculation of rail market share by taking into account the overall transportation activity within the region, including transportation and which MMA does not participate, such as the potato/grain harvest and timber harvest. He consulted various documents, including documents available at the websites noted above.

20-22. Mr. McGonigle and Mr. Holland consulted, reviewed or created no documents in developing these opinions.

23. The MMA system in the United States includes the lines to be abandoned.

24. There are no costs associated with the RRIF loan included in the Base Year or Forecast Year calculations in the abandonment application.

25. MMA continues to believe that information concerning carloads of wood pulp, wood chips or logs originating on the line between Madawaska and St. Leonard and moving to destinations outside of Maine is not relevant. The stranded segment argument raises the issue whether a particular line will remain connected to the rail system after abandonment of a connected line. The argument does not raise issues concerning traffic originated on a segment that is alleged to be stranded.

Requests for Production

1. MMA will search for documents reviewed, consulted or created by Ms. Sheahan or MMA staff members in their inspection of the lines proposed for abandonment. The other documents requested are addressed in the discussion of the Interrogatories above.

2. MMA does not believe that production of documents related to discussions about purchasing real property interests is warranted or justified at this time. Notwithstanding the protective order, there is a risk that production would prejudice MMA.

3. MMA does not believe that production of documents related to discussions about purchasing track assets is warranted or justified at this time. Notwithstanding the protective order, there is a risk that production would prejudice MMA. The statement that MMA does not believe that it has any responsive documents is based upon a reasonable inquiry to determine whether any such documents exist.

4-5. See response in third sentence of 3 above.

6-13. As described above, the stranded segment theory raises the question only whether any particular line would be isolated from the rail system as a result of an abandonment of a connecting line. The information sought by Irving does not bear on the argument that the Madawaska-St. Leonard line is a stranded segment. See also response in third sentence of 3 above.

14. You have contended that complaints from customers and MMA's responses are relevant to the "possible success of rail operations on the lines proposed for abandonment if rail service were more efficient". MMA denies that it has "given credence to this idea", as you contend, and continues to believe that customer complaints are not relevant to any issue in this proceeding. Furthermore, Irving presumably has a complete record of any complaints that it has made as well as MMA responses, and Irving is presumably able to obtain from other customers any documents such customers may have concerning complaints. Notwithstanding the foregoing, we will review appropriate files to determine whether, consistently with your narrowed request, there are documents reflecting complaints beginning January 1, 2006 from significant customers (other than Irving) located on the abandonment lines.

17-19. Notwithstanding the protective order, MMA does not believe production of such documents would be warranted or appropriate at this time, because there is a risk that production would prejudice MMA.

20. Any change in MMA rail operations that will or may occur if the abandonment is approved is either self-evident--operations on the abandonment lines will cease--or not relevant to any issue in this proceeding, including the stranded line theory.

Furthermore, MMA does not have any documents related to the mechanical facility that it would construct on the Madawaska line if the abandonment application is approved.

22. Costs related to the RRIF loan were not included, in accordance with the Board's regulations, in the Base Year or Forecast Year calculations.

24. Workpapers and documents related to the Verified Statements were included in the application for Messrs. Finley and Holland and for Ms. Sheahan. We will make another review to see whether there are any additional workpapers or documents consulted, reviewed or created in connection with the preparation of the Verified Statements.

25. MMA continues to object to this request. Furthermore, the reasons for the decline in traffic were set forth in the application and verified statements. Notwithstanding this objection, we will review appropriate files in order to determine whether there are documents showing travel logs, schedules or lists of visits to significant customers since January 1, 2006.

26. MMA continues to believe that documents reflecting the capacity and usage of the LMS facility in Hermon are not relevant. Furthermore, the characterizations in your letter concerning MMA's statements in the application are not accurate. MMA referred to the LMS facility as part of the alternative transportation discussion in the event that customers on the abandonment lines no longer have direct rail service to or from their facilities. Notwithstanding these objections, MMA will undertake a review for documents showing the capacity and usage of the LMS facility since January 1, 2006.

27. MMA hereby clarifies that the statement in its response that "it does not have any documents related to expected traffic and revenues at LMS if the abandonment is approved" means that it does not have any such documents.

28. The characterizations in your letter concerning MMA's statements in the application are not accurate. MMA hereby clarifies that the statement in its response that "it does not have any documents related to the contemplated transload facility at Millinocket" means that it does not have any such documents.

Please consider our response to your written discovery supplemented to the extent outlined above. In addition, we are supplementing the answer to interrogatory 7 by stating that Ms. Sheahan has experience in determining the net liquidation value of rail assets in connection with the TIGER grant application submitted by Maine DOT in September, 2009. I understand your recent e-mail to indicate that Irving no longer wishes to conduct any inspection of the lines.

Very truly yours,


James E. Howard

EXHIBIT 3

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

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

**IRVING WOODLANDS LLC'S AND IRVING FOREST PRODUCTS, INC.'S
FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS,
AND REQUEST TO ENTER UPON LAND**

COMES NOW, Irving Woodlands LLC and Irving Forest Products, Inc. (collectively, “Irving”) and serves its First Set of Interrogatories and Requests for the Production of Documents, and its Request for Right to Enter Upon and Inspect Land upon the Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) in the above-captioned proceeding, pursuant to 49 CFR Part 1114. The Interrogatories, Requests for Production, and the Request for Right to Enter Upon and Inspect Land contained herein are subject to the Instructions and Definitions set forth below. Irving requires responses from MMA within fifteen (15) days from the date hereof. If there are any questions concerning the Instructions, Definitions, Interrogatories, Requests for Production, or Request for Right to Enter Upon and Inspect Land, MMA is asked to contact Irving’s undersigned counsel.

I. INSTRUCTIONS.

- 1. These Interrogatories and Requests for Production of Documents are continuing and MMA is required to supplement its responses to the extent that further or different information becomes known or available.**
- 2. Each numbered Interrogatory is to be answered separately and fully in writing, and no Interrogatory limits or modifies any other Interrogatory unless specifically stated.**
- 3. Each numbered Request for Production is independent of any other, unless specifically stated, and requires a separate response.**
- 4. If any objection is interposed to any of these Interrogatories or Requests for Production, or to the Request for Right to Enter Upon and Inspect Land, the basis for, and scope of the objection must be stated, and a response must be provided to the extent that the Interrogatory or Request for Production is not objectionable.**
- 5. If any privilege is claimed as to any information or response called for by these Interrogatories and Requests for Production, state the nature of the privilege claimed and the basis for claiming the privilege, and then provide information or a response to the maximum extent possible without intruding upon the claim of privilege.**
- 6. If any document responsive to any Request for Production has been lost or destroyed, then such document shall be identified, including the names of the author(s) and recipient(s), the dates of creation and loss or destruction, the contents of the document, and the circumstances surrounding its loss or destruction.**
- 7. These Interrogatories and Requests for Production and the Request for Right to Enter Upon and Inspect Land are subject to the following Definitions, but otherwise are to be construed in accordance with their ordinary, plain-language meaning.**

8. These Interrogatories and Requests for Production and the Request for Right to Enter Upon and Inspect Land are subject to the discovery rules of the Surface Transportation Board, codified at 49 CFR Part 1114, and the Instructions contained herein should be interpreted in harmony with such discovery rules, and not in derogation thereof.

II. DEFINITIONS.

1. The term "Board" or "STB" means the Surface Transportation Board, an agency of the United States government, and its staff, officers, employees, agents or other representatives.

2. The term "communications" means any exchange of words, thoughts, or ideas with another person(s), whether person-to-person, in a group, in a meeting, orally, or by telephone, letter, memorandum, writing, telefax, electronic mail, or otherwise and includes without limitation any printed, typed, handwritten or other readable document or audio and/or visual recording.

3. The terms "MMA" and "you" and "your" mean the Montreal, Maine & Atlantic Railway and/or anyone acting on its behalf.

4. The term "document" is used in its broadest sense and means any written, typewritten, handwritten, printed, electronic, or recorded information, now or at any time in your possession, custody or control, including all originals, copies, and versions. For purposes of illustration, the term "document" includes, but is not limited to, agreements, memoranda, reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, email, telegrams, receipts, appraisals, pamphlets, desk calendars, magazines, newspapers, prospectuses, interoffice and intra-office communications, contracts, cables, time

records, analyses, writings, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, bank statements, canceled checks, tax returns, reports, reviews, opinions, offers, studies, investigations, questionnaires, surveys, worksheets, maps, photographs, pictures, charts, graphs, microfiche, microfilm, videotape, motion pictures, and other information of any kind or nature recorded in writing, electronic data storage, disk, film, tape, disc or videotape.

5. The "Line" means the lines of railroad for which MMA has sought STB approval to abandon, as described more fully in MMA's application for abandonment, received at the STB on February 25, 2010,

6. "Identify", when used in reference to a natural person, means to state that person's full name, and on the first occasion that such person is identified, the following information concerning that person:

- a. Present or last known business address and telephone number;
- b. Present or last known employer; and
- c. Present or last known job title.

7. "Identify" when used in reference to any entity other than a natural person, means to set forth the full name or title of the entity and, on the first occasion that such entity is identified, to state the address, telephone number, and principal business or activity of such entity.

8. "Identify" when used in connection with a document, means to state the following:

- a. The nature of the document (e.g., letter, memorandum, contract, tariff, bill of lading, invoice, etc.);
- b. The date of the document or, if undated, the date the document was written or created;
- c. The identity of the person or persons who wrote or created the document;
- d. The identity of all persons to whom the document was sent, or who

- received the document;
- e. The file number or other identifying mark or code of the document;
- f. The general subject matter of the document;
- g. The present or last known location of the document; and
- h. The name and address of the present or last known custodian of the document.

In all instances where you are asked to identify a document, you may supply fully legible copies of such documents as attachments to your answers to these interrogatories in lieu of the above-described identification, provided that you specify each interrogatory as to which the document is responsive.

9. "Relating to" and "relates to" mean, without limitation, referring to, regarding, embodying, mentioning, pertaining to, or concerning, directly or indirectly, the subject matter.

III. INTERROGATORIES.

1. Please state MMA's operating revenues and operating costs from providing rail transportation service for the entire MMA system, as well as by each subdivision of the MMA rail system, for each of the years 2009, 2008, 2007, 2006, 2005, 2004, and 2003.
2. Please state MMA's operating revenues and operating costs from providing rail transportation service on the Line for each of the years 2009, 2008, 2007, 2006, 2005, 2004, and 2003.
3. For each of the years 2009, 2008, 2007, 2006, 2005, 2004, and 2003, please state MMA's capital expenditures separately for each of the following subdivisions: Madawaska, Presque Isle, Fort Fairfield, Limestone, and Houlton.
4. Please identify all sources of revenue arising from the Line that are not associated with railroad operations, and identify the amount of such revenues, by type and location, on an annual basis for years 2009, 2008, 2007, 2006, 2005, 2004, and 2003.
5. Please identify by name and milepost all customers on the Line that were served by MMA in the year 2009.

6. For each customer identified in response to Interrogatory No. 6, please state the number of inbound and the number of outbound railcar shipments that MMA handled and, to the extent possible, the respective customer commodities and railcar types used for service.
7. Please describe the experience of your witness Melody A. Sheahan in the following areas, including specific names of rail lines and dates where appropriate: determining the net liquidation value of rail assets, selling rail assets recently removed from rail corridors, removing rail assets, transporting removed rail assets, providing testimony or verified statements in STB proceedings or other agency or court proceedings, and valuing rail assets in rail lines planned for abandonment.
8. Please explain the extent to which Melody A. Sheahan personally inspected the rail assets of the Line as part of her determination of the net liquidated value of those assets.
9. Please describe the experience of your witness Richard M. Gottlieb in the following areas, including specific names of rail lines and dates where appropriate: determining the net liquidated value of railroad real estate property interests by use of a "corridor methodology", selling railroad real estate property interests as complete rail corridors, providing testimony or verified statements in STB proceedings or other agency or court proceedings, valuing railroad real estate property interests by use of a "corridor methodology" in rail lines planned for abandonment, and electric power transmission line planning and siting.
10. Please describe the experience of your witness Lowell Sherwood in the following areas, including specific names of rail lines and dates where appropriate: determining the net liquidated value of railroad real estate property interests, selling railroad real estate property interests, providing testimony or verified statements in STB proceedings or other agency or court proceedings, and valuing railroad real estate property interests in rail lines planned for abandonment.
11. Explain the basis for the statement on page 6 of the Verified Statement of Richard M. Gottlieb that "most holders of adverse rights do not know that they hold them."
12. Describe the damages paid to compensate for reversionary or servient rights in connection with the sale of a rail right-of-way from the Bangor & Aroostook Railroad to the Maine Department of Conservation, as described on pages 2-3 and 5-6 of the Verified Statement of Richard M. Gottlieb.
13. Explain the basis for the statement on page 7 of the Verified Statement of Richard M. Gottlieb that "[t]he potential producers of electricity have indicated that the rail corridors are sufficiently wide."
14. Explain the basis for the statement on page 8 of the Verified Statement of Richard M. Gottlieb that "parties desiring to produce electricity for sale in US markets will probably be looking for the ability to tie up or reserve corridors to be used for transmission capacity."

15. Explain the “[p]reliminary indications” which support the “the value of an option for 5 years” described on page 8 of the Verified Statement of Richard M. Gottlieb.
16. Please identify each person you have retained, or expect to retain as an expert witness or outside consultant, in connection with this proceeding.
17. Explain the basis for the statement on page 5 of the Verified Statement of Joseph R. McGonigle that “there appears to be sufficient trucking capacity in the region to handle the business that would be diverted from rail if rail operations cease on the Abandonment Lines.”
18. Explain the basis for the statement on page 5 of the Verified Statement of Joseph R. McGonigle that “the current volumes of traffic on these roads are at levels that could accommodate additional truck traffic that might be generated if the Abandonment Lines are no longer in operation.”
19. Explain the basis for the statement on page 5 of the Verified Statement of Joseph R. McGonigle that “MMA’s rail market share compared to trucks in the area served by the Abandonment Lines amounts to less the [sic] 10% of overall shipping activity.”
20. Explain the basis for the statement on page 18 of the Verified Statement of Joseph R. McGonigle that “additional rate increases would only result in losing more business to trucks or other transportation alternatives.”
21. Explain the basis for the statement on page 4 of the Verified Statement of Joseph R. McGonigle that “[i]t is highly unlikely that there will be future investments in either plant or machinery to expand production of paper in the state of Maine.”
22. Explain the basis for the assumption on page 4 of the Verified Statement of Robert E. Holland that “for rail movements of approximately 300 miles or less, it would be likely that a rail car would be diverted exclusively to truck.”
23. Describe which portions of the MMA system are encumbered as a result of the loan received by the MMA through the Federal Railroad Administration Railroad Rehabilitation and Improvement Financing program.
24. Please describe the repayment schedule for the loan received by MMA through the Federal Railroad Administration Railroad Rehabilitation and Improvement Financing Program.
25. Provide the number of rail cars of logs, woodchips, and wood pulp that MMA originated in the Base Year that were destined to points outside of Maine.
26. State whether MMA has estimated the number of truck-to-rail and rail-to-truck transloads by MMA’s own customers that bypass MMA, and if so, provide those estimates.

III. REQUESTS FOR PRODUCTION.

1. Produce all documents relating to MMA's responses to all Interrogatories above.
2. Produce all documents related to discussions about purchasing or offers to purchase real estate property interests held by MMA in the Line.
3. Produce all documents related to discussions about purchasing or offers to purchase track assets owned by MMA in the Line.
4. Produce all documents related to discussions about removing rail assets of the Line, or offers to remove rail assets of the Line.
5. Produce all documents related to discussions about transporting newly-removed rail assets of the Line, or offers to transport newly-removed rail assets from the Line.
6. Produce all documents regarding the possibility of MMA retaining the Madawaska Subdivision while filing for abandonment of any portion or all of the Presque Isle Subdivision, the Fort Fairfield Subdivision, the Limestone Subdivision, and the Houlton Subdivision.
7. Produce all documents regarding MMA's decision to not seek STB abandonment authority for the MMA between Madawaska and Van Buren.
8. Produce all documents regarding MMA's decision to not seek STB abandonment authority for the MMA between Millinocket and Brownville Junction.
9. Produce all documents related to MMA's decision about the precise endpoints (approximately at Madawaska and Millinocket) that would be included in the abandonment application filed on or about February 25, 2010 at the STB.
10. Produce all documents regarding the going concern value and the net liquidation value of the MMA lines between Madawaska and Van Buren and between Millinocket and Brownville Junction.
11. Produce all documents regarding the effect of higher railroad speeds and/or faster response time to customers' service requests on the traffic levels and profitability of the Line.
12. Produce all documents regarding projections of the portion of traffic currently using the Line that would still be carried by MMA, such as from a transload facility, in the future after abandonment.
13. Produce all documents regarding projections of transportation rates, MMA revenues, and MMA profit to be earned from traffic currently using the Line that will still be carried by MMA, such as from a transload facility, in the future after abandonment.

14. Produce copies of all complaints from customers about MMA service on the Line, as well as MMA's response to those complaints.
15. Produce all documents related to due diligence performed by MMA before its 2003 purchase of the Line. Include all documents related to future expected traffic levels, revenues, operating costs, and capital expenditures.
16. Produce all documents related to MMA's valuation of the Line before and at the time of the MMA purchased the Line in 2003.
17. Produce all documents related to the "discussions with a group in the timber business...concerning the possibility of a purchase and sale of approximately 80 miles of the 233 mile corridor" described on page 4 of the Verified Statement of Richard M. Gottlieb.
18. Produce all documents related to the "offer from the Maine Public Service to acquire land at various locations within the 233 miles relating to existing utility easements" described on page 4 of the Verified Statement of Richard M. Gottlieb.
19. Produce all documents supporting the statement "[o]ther parties have expressed similar interests directly to MMA" found on page 7 of the Verified Statement of Richard M. Gottlieb.
20. Produce all documents related to how MMA rail operations will or may change if the abandonment of the Line is approved by the STB.
21. Produce your most recent track charts and maps for the Line.
22. Produce all documents, including the RRIF loan application, related to the Federal Railroad Administration Railroad Rehabilitation and Improvement Financing loan obtained by MMA.
23. Produce all documents related to any other liens on the real property or track assets of the Line.
24. Produce any and all workpapers (such as those mentioned on page 5 of the Verified Statement of Melody Sheahan) and other documents, materials, data, information, analysis, or calculations underlying, supporting, explaining, or contradicting the Verified Statements included in the MMA application for abandonment filed with the STB on or about February 25, 2010.
25. Produce all documents related to any marketing efforts or initiatives that MMA undertook between 2003 and 2010 to increase traffic on the Line from existing shippers and/or from any new shipper. For purposes of this request, "new shipper" means any company that had not previously shipped goods on the Line.

26. Produce all documents related to the volume of traffic handled and the total capacity at the Hermon, Maine facility of Logistics Management Systems for the years 2003, 2004, 2005, 2006, 2007, 2008, and 2009.

27. Produce all documents related to expected traffic at (and revenues generated by) the Hermon, Maine facility of Logistics Management Systems if the STB approves abandonment of the Line or rail operations cease on the Line.

28. Produce all documents related to the "contemplated" transload facility at Millinocket, as described on page 17 of the Verified Statement of Joseph McGonigle.

V. REQUEST FOR RIGHT TO ENTER UPON AND INSPECT LAND.

1. Please grant a right of access to Irving and its counsel or consultants retained in connection with this proceeding to enter upon the Line and related MMA property for all lawful purposes related to this proceeding in STB Finance Docket No. AB-1043 (Sub-No. 1), including inspection, survey, measuring, testing, photographing and sampling. Irving will work with MMA to determine an appropriate time and manner for this inspection.

Respectfully submitted,



Karyn A. Booth
Jeffrey O. Moreno
David E. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
202.263.4108
202.331.8330 (fax)

*Attorneys for Irving Woodlands LLC and
Irving Forest Products, Inc*

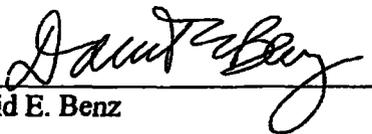
March 12, 2010

CERTIFICATE OF SERVICE

I certify that on this 12th day of March 2010 I caused a copy of the foregoing First Set of Interrogatories, Requests for the Production of Documents, and Request to Enter Upon Land to be served by e-mail and U.S. first-class mail upon counsel for the Montreal, Maine & Atlantic Railway at:

James E. Howard
Suite 201
1 Thompson Square
Charlestown, MA 02129

jim@jehowardlaw.com



David E. Benz

EXHIBIT 4

Via e-mail and first-class mail

March 26, 2010

James E. Howard
Suite 201
One Thompson Square
Charlestown, MA 02129

jim@jehowardlaw.com

Re: STB Docket No. AB-1043 (Sub-No. 1), Montreal, Maine & Atlantic Railway Ltd. – Discontinuance of Service and Abandonment – In Aroostook and Penobscot Counties, Maine

Dear Jim:

On March 25, 2010, we received the Answers and Objections of the Montreal, Maine & Atlantic Railway (“MMA Response”) to the first discovery of Irving Woodlands LLC and Irving Forest Products, Inc. in the above-captioned case. We disagree with several of your objections and your general refusal to answer or provide documents to many of the Interrogatories and Requests for Production. In an effort to reach an amiable solution to this disagreement, we have set forth our position in this letter, which reduces the number and scope of our discovery requests. Given the tight timeframe in this case, we ask that you respond to this letter by March 29, 2010 so that we know whether it will be necessary to pursue these matters with the Surface Transportation Board.

In the remainder of this letter, we will set forth our position on the issues raised in the MMA Response regarding specific discovery requests made by Irving Woodlands LLC and Irving Forest Products, Inc.

Interrogatories

3. This Interrogatory seeks MMA’s capital expenditures separately for each of the following subdivisions: Madawaska, Presque Isle, Fort Fairfield, Limestone, and Houlton. You objected as to relevance, and to the burdensome nature of compiling the requested information. The information sought is relevant to the theory that the MMA abandonment application is excessively broad in scope, and that retaining one of the several subdivisions proposed for abandonment may have been the proper step to take in light of the public convenience and necessity standard, as well as the rural community and development standard, of 49 USC § 10903(d). As you have stated that you do not separately maintain this information by

David.Benz@ThompsonHine.com Phone 202.263.4116 Fax 202.331.8330

db

March 26, 2010

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subdivision, we request that you produce business records as stated in 49 CFR § 1114.26(b) so that we can undertake that burden.

9. Your response to this Interrogatory only mentioned Mr. Gottlieb's experience in selling railroad real estate property interests as complete rail corridors, and his experience valuing railroad real estate property interests by use of a corridor methodology. The Interrogatory also asked for his experience "providing testimony or verified statements in STB proceedings or other agency or court proceedings" and his experience in "electric power transmission line planning and siting." Please supplement your response.

10. Your response to this Interrogatory stated that Mr. Sherwood's experience in valuing railroad real estate property interests in rail lines was set forth in his Verified Statement and the appraisals attached thereto. However, the Verified Statement merely makes the conclusory statement that Mr. Sherwood has "extensive experience in the valuation of real estate generally and in particular with the appraisal of property owned by railroads," with no support or examples. The Verified Statement also refers the reader to the appraisals. In the appraisals, there is no reference to Mr. Sherwood having any experience valuing railroad real estate property interests. The only items remotely related were a course Mr. Sherwood took in 2000 on the Appraisal of Partial Acquisitions from the International Right of Way Association, and a statement that Mr. Sherwood's assignments have included "easements." If Mr. Sherwood has any experience in valuing railroad real estate property interests in rail lines, or providing testimony or verified statements on this topic in STB proceedings or other agency or court proceedings, please provide specific examples with relevant names, places, and dates.

11. Your response to this Interrogatory stated that Mr. Gottlieb's opinion (that "most holders of adverse rights do not know that they hold them") is based on his experience. To the extent that Mr. Gottlieb consulted, reviewed, or created any documents in developing his opinion, please produce those documents as requested by Request for Production #1.

12. Your response referred only to the absence of damages paid by the seller. Please describe Mr. Gottlieb's knowledge about whether the State of Maine, acting through the Department of Conservation or some other authority, paid damages in connection with the sale of the 43 miles of right-of-way as stated at the top of page 6 of Mr. Gottlieb's Verified Statement.

13-15. Your responses to these Interrogatories referred to conversations between Mr. Gottlieb and potential users of the right-of-way for transmission of electricity. Please describe those conversations, including the parties participating in them and the date. Additionally, to the extent that Mr. Gottlieb consulted, reviewed, or created any documents in developing his opinion, please produce those documents as requested by Request for Production #1.

March 26, 2010

Page 3

16. Your response to this Interrogatory merely mentioned the experts that MMA “has retained.” The Interrogatory also requested identification of witnesses MMA expects to retain. Please supplement your response as needed.
- 17-18. These Interrogatories asked for the basis of various statements by your witness Mr. McGonigle. Your response was that Mr. McGonigle relied upon his experience, his observations, and his personal knowledge (and, with respect to #18, information set forth in the preliminary draft environmental assessment). To the extent that Mr. McGonigle consulted, reviewed, or created any documents in developing his opinion, please produce those documents as requested by Request for Production #1.
19. Your response to this Interrogatory (regarding the basis for the statement of Mr. McGonigle that “MMA’s rail market share compared to trucks in the area served by the Abandonment Lines amounts to less the [sic] 10% of overall shipping activity”) is that Mr. McGonigle relied upon his experience and personal knowledge. Given that the Interrogatory seeks the basis for Mr. McGonigle’s use of a 10% figure, please describe how Mr. McGonigle calculated the 10% figure, including a copy of his calculations and identification of the inputs. To the extent that Mr. McGonigle consulted, reviewed, or created any documents in developing his opinion, please produce those documents as requested by Request for Production #1.
- 20-22. These Interrogatories asked for the basis of various statements by your witnesses Mr. McGonigle and Mr. Holland. Your response was that Mr. McGonigle and Mr. Holland relied upon their experience and personal knowledge (and, with respect to #22, consultation with MMA employees). To the extent that Mr. McGonigle or Mr. Holland consulted, reviewed, or created any documents in developing his opinion, please produce those documents as requested by Request for Production #1.
23. This Interrogatory asked which portions of the MMA system are encumbered as a result of the RRIF loan received by the MMA. Your response stated that the MMA system in the United States is encumbered. Please clarify whether the encumbrance applies to the MMA rail lines proposed for abandonment in STB Docket AB-1043 (Sub-No. 1).
24. This Interrogatory asked for the repayment schedule for the RRIF loan received by MMA, and you objected as to relevance. However, if any costs associated with the RRIF loan were included in the Base Year or Forecast Year in your abandonment application on February 25, 2010 in STB Docket AB-1043 (Sub-No. 1), then the repayment schedule is relevant. Please state whether RRIF-related costs were included in the Base Year or Forecast Year, and, if so, please provide the RRIF repayment schedule.
-

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25. We are willing to restrict the scope of this Interrogatory to the line segment from Madawaska to St. Leonard. This Interrogatory is relevant to the issues raised by the Motion to Reject or Dismiss Application, filed by Irving Woodlands and Irving Forest Products on March 12, 2010, which the STB indicated were more appropriate for the merits phase of this proceeding.

Requests for Production

1. This Request seeks documents relating to MMA's responses to all Interrogatories. You objected on breadth, vagueness, and the burdensome nature of responding. In order to reduce the scope of the Request, define it more specifically, and reduce the burden of response, we will limit the Request to the Interrogatories listed below:

- 3 – documents as described above in our statement on Interrogatory #3
- 8 – documents reviewed, consulted, or created by Ms. Sheahan or MMA staff members in their inspection of the MMA lines proposed for abandonment.
- 11 – documents reviewed, consulted, or created by Mr. Gottlieb in forming the opinion referenced in the Interrogatory.
- 12 – documents showing all damages paid by anyone to potential holders of reversionary or servient rights in connection with the sale of 43 miles of right-of-way as stated on pages 5-6 of Mr. Gottlieb's Verified Statement.
- 13-15 - documents reviewed, consulted, or created by Mr. Gottlieb in forming the opinions referenced in the Interrogatories.
- 17-22 - documents reviewed, consulted, or created by the MMA witnesses in forming the opinions referenced in the individual Interrogatories.

2. This Request asked for all documents related to discussions about purchasing or offers to purchase real estate property interests held by MMA in the rail lines proposed for abandonment. Your response stated that any such documents are confidential, proprietary, and reflect ongoing discussions. Given that the Protective Order in this case protects the confidential and proprietary nature of all designated documents, your objection is unfounded. Please provide the requested documents.

3. This Request asked for all documents related to discussions about purchasing or offers to purchase track assets owned by MMA in the rail lines proposed for abandonment. Your response stated that any such documents are confidential, proprietary, and reflect ongoing discussions. Given that the Protective Order in this case protects the confidential and proprietary nature of all designated documents, your objection is unfounded. Please provide the requested

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documents. Additionally, you stated that "MMA does not believe it has any documents" responsive to the request. The duty of a party responding to discovery is to make a "reasonable inquiry," not merely state its "belief." Moreover, the attorney signing discovery responses certifies the completeness and correctness of the responses. See Federal Rule of Civil Procedure 26(g)(1). Please make the reasonable inquiry, supplement your response, and produce the requested documents as appropriate.

4-5. In response to these Requests, you stated that "MMA does not believe it has any documents" responsive to the request. The duty of a party responding to discovery is to make a "reasonable inquiry," not merely state its "belief." Moreover, the attorney signing discovery responses certifies the completeness and correctness of the responses. See Federal Rule of Civil Procedure 26(g)(1). Please make the reasonable inquiry, supplement your response, and produce the requested documents as appropriate.

6-13. In response to these Requests, you objected as to relevance. The requested documents are relevant to the stranded line theory, which the Surface Transportation Board said (in a decision served March 17, 2010 in this docket) would be addressed on the merits in the ultimate decision in this case. Additionally, the requested documents are relevant to the public convenience and necessity standard that the STB must evaluate under 49 USC § 10903(d), as well as the rural community and development standard that the STB must also consider. Specifically, the requested documents relate to the quality of transportation service that would be provided (and the affect on shippers) if the proposed abandonment is approved. You also stated that "MMA does not believe it has any documents" responsive to the requests. The duty of a party responding to discovery is to make a "reasonable inquiry," not merely state its "belief." Moreover, the attorney signing discovery responses certifies the completeness and correctness of the responses. See Federal Rule of Civil Procedure 26(g)(1). Please make the reasonable inquiry, supplement your response, and produce the requested documents as appropriate.

14. This Request asked for copies of complaints, as well as copies of MMA's responses. You objected as to relevance, the breadth of the request, and the overly burdensome nature of responding. This Request is relevant to the possible success of rail operations on the lines proposed for abandonment if rail service were more efficient. MMA has given credence to this idea on pages 18-19 of its abandonment application. To narrow the Request, and limit the burden on MMA, we will agree to limit the Request to complaints beginning January 1, 2006 from customers (located on the lines proposed for abandonment) who have shipped or received at least 50 cars in any one year since January 1, 2006.

17-19. These Requests seek documents related to Mr. Gottlieb's statements (on page 4 of his Verified Statement) regarding possible sale of MMA real estate interests. You objected, stating

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that any such documents are confidential, proprietary, and reflect ongoing discussions. Given that the Protective Order in this case protects the confidential and proprietary nature of all designated documents, your objection is unfounded. Please provide the requested documents.

20. This Request seeks documents related to how MMA rail operations will or may change if the abandonment of the Line is approved by the STB. You objected, stating that the Request is not relevant. Your objection is misplaced. The Request is relevant to the stranded line theory, which the Surface Transportation Board said (in a decision served March 17, 2010 in this docket) would be addressed on the merits in the ultimate decision in this case. Additionally, the requested documents are relevant to the public convenience and necessity standard that the STB must evaluate under 49 USC § 10903(d), as well as the rural community and development standard that the STB must also consider. Specifically, the requested documents relate to the quality of transportation service that would be provided (and the affect on shippers) if the proposed abandonment is approved. Please supplement your response, and include documents related to the “mechanical facility” that MMA plans to construct on the Madawaska to Van Buren segment, as stated in MMA’s filing on March 15, 2010 in this case.

22. This Request asked for MMA’s RRIF loan application, and you objected as to relevance. If any costs associated with the RRIF loan were included in the Base Year or Forecast Year in your abandonment application on February 25, 2010 in STB Docket AB-1043 (Sub-No. 1), then the RRIF loan application is relevant. Please state whether RRIF-related costs were included in the Base Year or Forecast Year, and, if so, please provide the RRIF loan application.

24. This Request seeks workpapers and documents related to the Verified Statements of the MMA witnesses. You objected, claiming the Request is overly broad and that a response would be unduly burdensome. In order to reduce the scope and burden associated with the Request, we will limit the Request to just those workpapers and documents consulted, reviewed, or created in the drafting of the Verified Statements.

25. In response to this Request, you objected as to relevance and breadth, and you said compliance would be unduly burdensome. The Request is relevant to the reasons for the decline in traffic on the abandonment lines. In order to reduce the breadth of the Request, and the burden of response, we will limit the Request to travel logs, schedules, or lists of visits by MMA marketing personnel to significant customers of MMA since January 1, 2006.

26. This Request seeks documents related to the volume of traffic handled and the total capacity at the Hermon, Maine facility of Logistics Management Systems from 2003-2009. You objected as to relevance and breadth, and you said compliance would be unduly burdensome. The Request is relevant to the stranded line theory, which the Surface Transportation Board said

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(in a decision served March 17, 2010 in this docket) would be addressed on the merits in the ultimate decision in this case. Additionally, the requested documents are relevant to the public convenience and necessity standard that the STB must evaluate under 49 USC § 10903(d), as well as the rural community and development standard that the STB must also consider. Specifically, the requested documents relate to the quality of transportation service that would be provided (and the affect on shippers) if the proposed abandonment is approved. MMA has specifically stated that shippers will not be materially affected by the proposed abandonment because they can use the Hermon LMA facility. See MMA application at page 19, and McGonigle V.S. at page 17. In order to reduce the breadth of the Request, and the burden of response, we will limit the Request to documents showing the capacity of the Hermon LMA facility, and the usage of the facility, since January 1, 2006.

27. This Request seeks documents related to expected traffic at (and revenues generated by) the Hermon, Maine facility of Logistics Management Systems if the proposed abandonment is approved. You objected as to relevance. As described above in our statement on Request #26, the requested documents are relevant. You also stated that MMA does not have any of the requested documents. Given the importance of the LMA facility to MMA's theories in the abandonment application, we are seeking clarification that MMA has no documents responsive to Request #27.

28. This Request seeks documents related to the "contemplated" transload facility at Millinocket, as described on page 17 of the Verified Statement of Joseph McGonigle. You objected as to relevance. This Request is relevant, because MMA is relying upon the possible construction of the contemplated transload facility as one reason why shippers would not be materially affected by the proposed abandonment. See pages 19-20 of the abandonment application. You also stated that MMA does not have any of the requested documents. Given the importance of the transload option to MMA's theories in the abandonment application, we are seeking clarification that MMA has no documents responsive to Request #28.

Please let us know if you have any questions.

Best regards,



David E. Benz

EXHIBIT 5

REDACTED

EXHIBIT 6

REDACTED

VERIFIED STATEMENT
OF
ROBERT PINETTE

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –
DISCONTINUANCE OF SERVICE AND ABANDONMENT –
IN AROOSTOOK AND PENOBSOT COUNTIES, MAINE**

**PROTEST AND COMMENTS OF
IRVING WOODLANDS LLC, IRVING FOREST PRODUCTS, INC.,
FRASER PAPERS INC., FRASER TIMBER LIMITED, AND
KATAHDIN PAPER COMPANY LLC**

**VERIFIED STATEMENT OF ROBERT J. PINETTE
IRVING WOODLANDS LLC**

April 21, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –
DISCONTINUANCE OF SERVICE AND ABANDONMENT –
IN AROOSTOOK AND PENOBSOT COUNTIES, MAINE**

**PROTEST AND COMMENTS OF
IRVING WOODLANDS LLC, IRVING FOREST PRODUCTS, INC.,
FRASER PAPERS INC., FRASER TIMBER LIMITED, AND
KATAHDIN PAPER COMPANY LLC**

**VERIFIED STATEMENT OF ROBERT J. PINETTE
IRVING WOODLANDS LLC**

My name is Robert J. Pinette and I am the Vice President for Irving Woodlands LLC, a logging company in Maine. Irving Woodlands LLC (“Irving Woodlands”) is a subsidiary of J.D. Irving, Limited and operates on [[[REDACTED]]] timberland in Maine, which is concentrated in the northern part of the state. In my role as Vice President, I am responsible for the Irving Woodlands timberland operations in Maine. I oversee and manage the logging and other aspects of the Irving Woodlands business in Maine.

I. About Irving Woodlands

Irving Woodlands harvests approximately [[[REDACTED]]]
[REDACTED]] in normal operation years. As described in more detail below, harvested logs and other wood products are transported to mills owned by other subsidiaries of J.D. Irving, Limited, or sold to third parties in the region. Transportation is

provided by rail and/or trucks. Irving Woodlands employs, either directly or indirectly through contractors, approximately [[[REDACTED]]].

II. Use Of Rail Service By Irving Woodlands

Irving Woodlands and its predecessors have used rail transportation in northern Maine for several decades. Rail transportation is critical to the success of the Irving Woodlands' business. Logs and wood products are harvested at widely disparate locations throughout northern Maine from the lands on which Irving Woodlands operates. Logs harvested by Irving Woodlands are either: (1) transported via large off-road trucks and trailers (with a gross capacity of over 225,000 pounds) on private roads to four rail sidings on the MMA (the logs would then be transported by MMA to mills in the region); (2) transported via the same 225,000 pound off-road trucks via private roads to one of the two MMA rail-served conversion facilities in the immediate region; or (3) transported via small highway truck (of no more than 100,000 pounds gross weight) to local wood users [[[REDACTED]]] of the immediate Irving Woodlands operation areas. Use of these smaller highway trucks is only economically feasible for localized movements. Irving Woodlands only has rail access in its forested operations area at four MMA rail sidings, all of which are on the lines proposed for abandonment.

[[[REDACTED]

[REDACTED]

[REDACTED]] Biomass power plants consume some of the materials produced by Irving Woodlands. Cessation of rail service on the lines serving northern Maine would eliminate or dramatically curtail the ability of Irving Woodlands to sell to certain primary wood markets. As described below, rail transportation is

the only economically feasible means of transporting Irving Woodlands' logs and chips to these markets.

The sawmill in St. Leonard, New Brunswick merits special mention. It is the largest sawmill in eastern Canada, [[[REDACTED]

[REDACTED]
[REDACTED]]]

In other words, abandonment would harm U.S. exports.

The private road network of northern Maine is a unique feature of the American transportation landscape and is also noteworthy. The private road network is comprised of a series of connected, but separately maintained, roads owned by the different private landowners of the area. Landowners are generally able to use the roads owned and maintained by their neighbors as long as tolls are paid. Irving Woodlands makes use of the network, operating on roads in its logging area as well as roads owned by others. The benefits of this private road network include being able to use trucks of over 225,000 pounds gross weight (more than double the public road limit) and segregating logging trucks from passenger cars. These roads are not paved, but they require extensive maintenance due to the operation of the heavy trucks.

The current heavy use of rail transportation by Irving Woodlands reflects a commitment to rail made by Irving Woodlands almost ten years ago. Irving Woodlands made a deliberate decision to organize its operations around rail transportation for numerous reasons, including to reduce fuel usage, reduce environmental impacts, limit the potentially damaging effects of trucks on public roads, and respond to public concerns about heavy truck traffic on public roads. This decision was made in consultation with the state of Maine, the Bangor & Aroostook Railroad, and the MMA in its early years.

The commitment to rail did not come cheap – Irving Woodlands invested significant funds in the private road network. [[[REDACTED]

[REDACTED]]] Additionally, Irving Woodlands has extensive rail-related infrastructure at four sidings on the MMA lines proposed for abandonment. At Skerry (milepost 198), there is a truck dumper, chipper, chip pad, and rail siding.¹ Irving Woodlands also stages off-road trucks and trailers at this location. At St. Croix (milepost 168), there is a rail yard and scales. Oakfield (milepost 148) also has scales. Furthermore, Irving Woodlands has made recent investments in rail infrastructure at these locations in reliance upon continued rail service. Over [[[REDACTED]]] was spent on the rail yard and scales at St. Croix and Oakfield.

Irving Woodlands has spent over [[[REDACTED]]] on railcar purchases, over [[[REDACTED]]] on off-road trucks and trailers, and over [[[REDACTED]]] on the truck dumper, chip pad, rail siding, and chipper at Skerry. All of these expenditures have been made since 2003, and much of it would be stranded with no alternative uses.

The dumper built at Skerry is emblematic of the commitment to rail transportation made by Irving Woodlands in the last ten years. The dumper was purpose-built for Irving Woodlands and is specially tailored for our 225,000 pound trucks. As far as I know, it is the largest of its kind in the entire United States. It was uniquely engineered, sized, and constructed for the site at Skerry, and could not be effectively used elsewhere.

III. The Montreal, Maine & Atlantic Railway

In my role as Vice President with Irving Woodlands, I am very familiar with the Montreal, Maine & Atlantic Railway (“MMA”). I am aware that MMA filed an application at

¹ The Skerry Siding is sometimes referred to as the Ashland Siding.

the Surface Transportation Board in late February 2010, seeking permission to abandon MMA tracks between Madawaska and Millinocket, Maine, as well as the following branch lines: Fort Fairfield, Houlton, Limestone, and Presque Isle.

MMA has provided rail service to Irving Woodlands since MMA purchased the rail lines in northern Maine in the bankruptcy of the Bangor & Aroostook Railroad in 2003. As relevant in this proceeding, MMA provides rail service to Irving Woodlands at the Oakfield Siding (milepost 148), the St. Croix Siding (milepost 168), the Skerry Siding (milepost 198), and the Fort Kent Siding (milepost 248). All four of these locations are on the lines proposed for abandonment by MMA. Irving Woodlands does not have rail access at any other locations, whether on MMA or any other railroad.

IV. Rail Service Provided By MMA

MMA rail service to Irving Woodlands at the four sidings mentioned above has been uneven at best since 2003. Chronic problems suffered by MMA include a lack of reliable rail equipment, a lack of locomotive capacity which causes tonnage restrictions, slow travel speeds, and lack of manpower. Additionally, MMA misses business opportunities due to crews timing out, which itself is caused by the slow travel speeds and equipment failures.

While Irving Woodlands cuts roughly [[██████████]] of logs in a normal year, this amount was reduced by roughly [[████]] in 2009 due to a combination of MMA's poor rail service and the challenging economic conditions. The decline in the cut amount represents lost sales and lost revenue for Irving Woodlands and lost carloads for MMA.

The difficulties encountered by Irving Woodlands in using MMA for rail service are all interconnected and create a snowball effect, where problems feed off of each other to create even worse problems. As a general matter, the reliability of MMA service has been poor. After

requesting rail service from MMA at a particular siding, Irving Woodlands must sometimes wait for several days or even a week before MMA is able to pick up the cars. Even after pickup, during MMA's transportation, loaded railcars are sometimes parked for up to 10 days at MMA locations due to MMA mechanical, manpower, or other issues. A shipment might take a day or two, or it might take two weeks or more, and there is no way for Irving Woodlands to predict which will occur. Thus, we cannot commit to customers when products will be delivered. Irving Woodlands owns or leases virtually all of the railcars it uses, so when shipments take much longer than they should, that limits our ability to keep our logging business flowing smoothly. As the economy continues to improve, I could easily see Irving Woodlands running out of railcars if the cars continue to end up scattered and idle, all over the MMA system, due to MMA's operational problems.

Our Skerry Siding can hold up to 20 cars at a time. During times when this siding is full of cars waiting for MMA to pick them up, we are unable to load any additional cars. Production and logging may slow or stop in these situations. Inventorying product on the ground is rarely a viable solution due to the extra handling required. In the past, when MMA was providing rail service five days per week, the occasional delay or hiccup in the system was easier to absorb. Now, however, with rail service provided only three days per week, it is much easier for an MMA delay to cause cascading problems throughout the rail system, adversely affecting Irving Woodlands' operations along the way.

The snowball effect also has other impacts. MMA delays sometimes create loads too heavy for MMA's locomotives to handle. Full railcars must be set aside somewhere on the MMA system in order to lighten the load of a train.

Irving Woodlands has had many discussions over the years with the Bangor & Aroostook Railroad and MMA regarding how, in a cooperative fashion, we can work together to make rail service operate most efficiently for the region. Irving Woodlands has invested heavily in rail facilities, and has tried to limit its requests for service to larger groups of cars (rather than just one or two cars) whenever possible. Unfortunately, steps taken by MMA in the last few years, including raising rates significantly in August 2009 and dramatically limiting the number of days of service, have seriously compromised the attempt to create a thriving rail transportation system in northern Maine.² MMA has increased rates, while reducing service levels, and provides unreliable and inconsistent service even at these reduced levels. Irving Woodlands cannot afford to pay more in transportation costs for untimely, unreliable, and inefficient rail service.

V. Efficient and Timely Rail Service is Vitrally Important to Irving Woodlands

A permanent cessation of rail service on the lines included in the MMA abandonment application would be extremely harmful to Irving Woodlands for several reasons. Many of the customers of Irving Woodlands prefer rail transportation, and have invested in rail infrastructure at their facilities to accommodate rail deliveries. Also, compared to truck transportation, rail is less affected by severe winter weather and the spring road closures common in the area. It is only through use of the four Irving Woodlands rail sidings on the MMA that the value of the private road network can be fully realized. As described above, Irving Woodlands has spent [[
██████████]] to organize its operations around rail as much as possible.

Rail provides access to more markets for Irving Woodlands' products. More markets means more sales, which in turn means more jobs.

² MMA reduced its days of service and increased transportation rates in the summer of 2009, when it became clear that MMA was no longer interested in long-term operations on the rail lines proposed for abandonment.

VI. Irving Woodlands Would Suffer Significant Harm if Rail Service Ceases

Due to certain customers that are dependent on rail for deliveries, I believe that Irving Woodlands would [[[REDACTED]]] if rail service ceased on the lines proposed for abandonment. These customers are [[[REDACTED]]]
[[[REDACTED]]]
[[[REDACTED]]] Business to these customers would be lost because they are too far from Irving Woodlands' log harvesting sites to enable economically feasible transportation without active rail sidings near the harvesting sites.

Due to loss of business from these [[[REDACTED]]], I project that cessation of rail service on the lines proposed for abandonment would reduce the Irving Woodlands annual revenue by [[[REDACTED]]]. Consequently, Irving Woodlands would have to permanently eliminate [[[REDACTED]]] jobs, including both direct Irving Woodlands employees and contractors. The eliminated jobs would be in a variety of areas, including the cutting force, trucking, yard, and loading.

MMA has stated that there would be an increase in transportation costs for shippers on the lines proposed for abandonment if the Application is approved. Application at 21. The business of Irving Woodlands is sensitive to increases in transportation costs. For example, an across-the-board increase of 40% in the annual Irving Woodlands transportation bill from Maine operations would result in [[[REDACTED]]]. Meanwhile, an increase of 80% would result in [[[REDACTED]]].

I understand that MMA believes that shippers have numerous alternative transportation options to replace any rail service lost due to the proposed abandonment, such as direct trucking to destinations or trucking to a rail transload facility. MMA has specifically mentioned that its affiliate, the Logistics Management System (“LMS”), can provide transload services in Hermon, Maine (near Bangor), and also stated that it is considering building another LMS facility on the MMA line in Millinocket, Maine. These transload facilities would not provide any assistance to Irving Woodlands in replacing lost rail service in northern Maine for several reasons. As an initial matter, truck transportation to these transload facilities would require Irving Woodlands to invest in smaller highway trucks. Our current truck fleet (as well as the contractors we use) consists of heavy off-road trucks and trailers (with gross capacity over 225,000 pounds) that are too large and otherwise inappropriate for highway travel. We would have to move another [[
██████]] highway truckloads annually if rail service ceased.

Not only would we have to invest in smaller highway trucks at significant expense, but trucking to Hermon or Millinocket would require Irving Woodlands to choose one of two untenable scenarios. First, Irving Woodlands could continue to use its large off-road trucks up to locations where highway travel became necessary, then we would have to find locations for transferring cargo to smaller trucks, and engage in a costly and time-consuming transfer between the truck types – all before reaching a transload to rail service at Hermon or Millinocket. The costs, time, and complexities inherent in this option (including maintaining two separate truck fleets and transloading cargo twice) make it uneconomical and unsustainable.

Second, Irving Woodlands could use smaller highway trucks for the entire trip from the harvesting areas all the way to Hermon or Millinocket. Just as with the first scenario, this option would not be feasible. This option would cost Irving Woodlands the economic advantage of

using large off-road trucks for a significant portion of the journey. Smaller trucks do not have the economic efficiencies of large-payload trucks. Moreover, a substantial increase in logging trucks on public roads would encounter public opposition in Maine, as well as concerns about damage to roads and bridges.

In any event, the distance from Irving Woodlands' harvesting areas and the transload locations at Hermon and, possibly, Millinocket, is too great to make trucking a reasonable proposition. As explained further below, these transload locations are too distant for economical transportation due to the increased freight charges that would be incurred by Irving Woodlands in trucking the first segment of the delivery. In short, the trucking costs and transload fees make the economics so poor that Irving Woodlands could no longer afford to sell to a significant portion of its customers.

Lastly, long-distance trucking from the northern Maine woods is not a viable option because of the lack of backhauls. That is, long-distance trucking is much more economically viable if the truck carries a load in both directions – both to the northern Maine forests and back out again with lumber products. Unfortunately, due to the rural nature of the northern Maine forests, there is little demand for inbound trucking. Hence, the trucks would have to run empty for the backhaul, making it very difficult to attract trucks and drivers into this market.

VII. Traffic levels

In the last few years, Irving Woodlands' rail traffic has varied with the economy. Traffic was fairly good from 2005 to 2008. Due to the economic recession and the slowdown in the construction industry, 2009 was a noticeably slower year. As mentioned earlier, Irving Woodlands operates four sidings on the rail lines proposed for abandonment by MMA. Outbound rail traffic from these four sidings has varied from [[REDACTED]]

Woodlands' perspective, harvesting logs occurs at innumerable constantly changing locations across a vast expanse of northern Maine. The first few miles of any outbound shipment of logs must necessarily be by truck. As mentioned earlier, Irving Woodlands makes use of heavy off-road trucks during this part of transportation.

Use of motor carriers is also not unusual for certain other traffic – namely, shipments to local mills [[██████████]]. As I have stated elsewhere in my Verified Statement, motor carriage is not an efficient or economic choice for a large portion of other traffic.

Mr. McGonigle also refers to the recent one-year pilot program (created in December 2009) under which trucks up to 100,000 pounds can travel on the full length of Interstate 95. V.S. McGonigle at 5. This pilot program was created to relieve the congestion of large trucks in Maine's small towns (as the weight limit on many Maine roads was already 100,000 pounds). It was also created due to concerns about service declines by railroads. Even if this pilot program is eventually extended, the ability to carry 100,000 pounds on Interstate 95 is of very little help to Irving Woodlands, as described above. Irving Woodlands utilizes a fleet of off-road trucks of over 225,000 pounds in order to access rail sidings on the MMA.

Heavy reliance is placed on the purported availability of "sufficient trucking capacity in the region to handle the business that would be diverted from rail if rail operations cease on the Abandonment Lines." V.S. McGonigle at 5. I disagree that "sufficient" trucking capacity exists. In fact, the trucking supply is already strained and could not handle a huge influx of additional traffic. Every year we must place advertisements in newspapers, seeking truckers who are willing to haul from northern Maine. The lack of supply means that rates are higher than they are in more populated areas. Shifting additional rail traffic to trucks will only increase demand in this under-supplied market, resulting in even higher costs.

Lastly, both Mr. McGonigle and Robert Holland provide an incomplete picture of the network of private roads that exists in northern Maine. V.S. McGonigle at 7; V.S. Holland at 3. This network is used by forest landowners in order to move large loads on specialized trucks (of 225,000 pounds or more) to transload facilities (for transfer to rail) or to processing facilities. As described earlier, Irving Woodlands makes use of the private road network with heavy off-road trucks and trailers to reach rail sidings. Thus, the private road network works in tandem with rail service – both grow together and depend on each other. The private road network cannot substitute for rail service. Without rail service, Irving would have to invest in a fleet of smaller trucks to meet the 100,000 pound limit of public roads. This dramatic reduction would make it uneconomical to serve customers that can be served by a combination of 225,000 pound trucks and rail. If rail service ceased, those customers would be lost, despite the existence of the private road network.

C. Robert Holland

In his Verified Statement, MMA witness Robert Holland evaluates alternative transportation costs if no rail service existed on the lines proposed for abandonment. He assumed that movements under 300 miles would be diverted to truck, while movements over 300 miles would use a truck-to-rail transload option. V.S. Holland at 4. This assumption ignores several factors inherent to logging in Aroostook County. First, the mileage at which trucking becomes economically infeasible depends greatly on the commodity involved. Additionally, northern Maine faces heavy competition from other forested areas closer to major population centers.

Given the unique circumstances surrounding logging in Aroostook County, I would estimate that trucking any product [[REDACTED]] is economically infeasible for

Irving Woodlands. Any movement of Irving Woodlands logs must generally move, first, about 20-60 miles on the private dirt roads. Then, travel on roughly 90 miles of paved public roads is necessary to get to Interstate 95. [[[REDACTED]

]] The lack of backhauls to rural forested areas in northern Maine, as I mentioned earlier, also significantly impedes the economic feasibility of truck hauls over 100 miles. The price of fuel is a factor, too. If diesel prices return to levels from the summer of 2008, the economic viability of trucking would end at around [[[REDACTED]]] for Aroostook County.

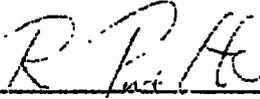
Finally, Mr. Holland bases much of his testimony on the supposed fact that 100,000 pound trucks have a payload capacity of 34 tons. V.S. Holland at 3. This is incorrect; the actual payload capacity is 31 tons.

IX. Conclusion

In short, the permanent loss of rail service in northern Maine would be extremely damaging to both Irving Woodlands and the communities in which we operate. The loss of rail transportation options would eliminate [[[REDACTED]]] jobs at Irving Woodlands or its contractors, and otherwise create uncertainty regarding the long-term future of the lumber industry in northern Maine.

VERIFICATION

I, Robert J. Pinette, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.



Robert J. Pinette
Vice President

Dated APRIL 21, 2010

**VERIFIED STATEMENT
OF
GASTON POITRAS**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

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

**PROTEST AND COMMENTS OF
IRVING WOODLANDS LLC, IRVING FOREST PRODUCTS, INC.,
FRASER PAPERS INC., FRASER TIMBER LIMITED, AND
KATAHDIN PAPER COMPANY LLC**

**VERIFIED STATEMENT OF GASTON POITRAS
IRVING FOREST PRODUCTS INC.**

April 21, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –
DISCONTINUANCE OF SERVICE AND ABANDONMENT –
IN AROOSTOOK AND PENOBSOT COUNTIES, MAINE**

**PROTEST AND COMMENTS OF
IRVING WOODLANDS LLC, IRVING FOREST PRODUCTS, INC.,
FRASER PAPERS INC., FRASER TIMBER LIMITED, AND
KATAHDIN PAPER COMPANY LLC**

VERIFIED STATEMENT OF GASTON POITRAS

My name is Gaston Poitras and I am a Vice President at Irving Forest Products, Inc. (“Irving Forest Products”). I have held this position since 2000. Irving Forest Products is a lumber company that produces and sells lumber from its Dixfield, Maine facility. The company also purchases lumber from affiliates and outside sawmills, and sells those products throughout the central and eastern regions of the United States.

My duties as Vice President include responsibility for our sawmill operations in Maine, as well as overseeing the purchase and distribution of lumber to our customer base which is heavily concentrated on the eastern seaboard of the United States.

I. About Irving Forest Products

Irving Forest Products is a subsidiary of J.D. Irving, Limited, a family-owned business founded in 1882 with operations throughout eastern Canada and the United States. Irving Forest

MMA has provided rail service to Irving Forest Products since MMA purchased the rail lines in northern Maine in the bankruptcy of the Bangor & Aroostook Railroad in 2003. As described above, MMA provides rail service to Irving Forest Products from the LMS facility in Van Buren, Maine at milepost number 24.3. All of Irving Forest Products' traffic that is loaded onto the MMA at Van Buren moves south as bridge traffic over the lines proposed for abandonment.

We incorporate an extra week of transportation time with MMA compared to loads that move on other railroads due to slower MMA service. For destinations where we currently use MMA heading south from Van Buren, the alternate routing by the Canadian National Railway is so circuitous and inefficient that we continue to use MMA despite its poor service.

IV. Impact on Irving Forest Products From Loss of MMA Rail Service

The LMS facility utilized by Irving Forest Products in Van Buren, Maine is not on the portion of the MMA lines proposed for abandonment at the Surface Transportation Board. But, all of Irving Forest Products' traffic that originates at Van Buren moves south over the lines proposed for abandonment. Moreover, MMA plans to close the LMS facility if the abandonment is approved. V.S. McGonigle at 17. If the abandonment and the LMS closure occur, Irving Forest Products would not have feasible access to MMA rail service, nor would Irving Forest Products be able to economically reach certain customers south of Van Buren.

I understand MMA has stated that its LMS transload facility in Hermon, Maine will provide a transportation alternative for customers losing service as a result of the abandonment. I also understand that MMA is considering building another LMS transload facility in Millinocket, Maine if the abandonment is approved. Neither of these transload facilities would provide a viable alternative for the Irving Forest Products traffic currently loaded on the MMA in

Van Buren at LMS. Both Hermon and Millinocket are too far from the St. Leonard – Van Buren border where we buy lumber that is loaded on MMA at Van Buren. [[

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

]] It would take three tri-axle trucks to fill each railcar at Hermon or Millinocket. With the long-distance trucking costs of a trip from Van Buren to Hermon or Millinocket, plus the reload fee, MMA rail transportation from LMS in Hermon or Millinocket would be far too costly for Irving Forest Products.

A loss of MMA rail service, as contemplated in the abandonment application, would reduce the competitive options available to Irving Forest Products. While we make use of the Canadian National Railway already, the loss of MMA rail service would reduce rail competition in the area. Additionally, the MMA routing from Van Buren is much more direct for certain customers than a routing on CN.

VERIFICATION

I, Gaston Poitras, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.



Gaston Poitras
Vice President

Dated April 21/2010

VERIFIED STATEMENT
OF
BRIAN SASS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –
DISCONTINUANCE OF SERVICE AND ABANDONMENT –
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**PROTEST AND COMMENTS OF
IRVING WOODLANDS LLC, IRVING FOREST PRODUCTS, INC.,
FRASER PAPERS INC., FRASER TIMBER LIMITED, AND
KATAHDIN PAPER COMPANY LLC**

**VERIFIED STATEMENT OF BRIAN SASS
FRASER PAPERS INC.**

April 21, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –
DISCONTINUANCE OF SERVICE AND ABANDONMENT –
IN AROOSTOOK AND PENOBSHOT COUNTIES, MAINE**

**PROTEST AND COMMENTS OF
IRVING WOODLANDS LLC, IRVING FOREST PRODUCTS, INC.,
FRASER PAPERS INC., FRASER TIMBER LIMITED, AND
KATAHDIN PAPER COMPANY LLC**

**VERIFIED STATEMENT OF BRIAN SASS
FRASER PAPERS INC.**

My name is Brian Sass and I am the Director of Supply Chain for Fraser Papers, Inc. (“Fraser”). I previously provided testimony to the Board as part of the Motion to Reject or Dismiss Application, filed on March 12, 2010 in this proceeding. In that earlier testimony, I described the history of the Fraser Madawaska Paper Mill (“Mill”) in Madawaska, Maine, including Fraser’s experience with the Montreal, Maine & Atlantic Railway (“MMA”). I also explained that Fraser is opposed to permanent cessation of rail service on the rail line between Madawaska and Millinocket because Fraser (1) would be harmed by the loss of the option of using the direct southbound route from Madawaska, and (2) is concerned about losing direct access to the U.S. rail network and being forced to route its rail traffic only through Canada. Lastly, I raised numerous concerns and questions about how, if the abandonment is approved, MMA would organize its rail operations with a split in its rail system.

In this Verified Statement I respond to and clarify certain assertions made by MMA about Fraser in its Reply in Opposition to the Motion to Reject or Dismiss the Application (“Reply in Opposition”) submitted to the Board on March 15, 2010. I note for the record that Fraser affiliates also served by the MMA include the Fraser Timber sawmills at Ashland and Masardis, Maine and the Katahdin Paper Company facilities in the Millinocket, Maine area. These affiliates, like other shippers in the MMA service area, will be harmed by the proposed abandonment. However, the impacts for Fraser’s Madawaska mill are the specific subject of this Verified Statement.

In its Reply in Opposition, MMA claims that Fraser “has no grounds” to object to being cut off from the rest of the national rail system because of statements made by Fraser in an earlier proceeding at the Board during 2003 and 2004. Reply in Opposition at 3-4. MMA fails to understand the nature and extent of these prior Fraser comments. In the case cited by MMA¹, Fraser was in danger of losing one of its competitive options for rail service, i.e. direct access to CN provided by a preexisting trackage rights agreement. It should not be surprising that Fraser wanted to retain the CN option, given the obvious benefit of competition as explicitly noted in the 2003 Verified Statement of Austin S. Durant, partially cited by MMA. Moreover, Fraser wanted to keep the CN option in the event that MMA’s financial troubles caused service problems.² As recent events have shown, Fraser’s concern from 2003 has been completely justified, since MMA has provided poor service to Fraser, has encountered financial difficulties, and is proposing to abandon a key MMA route used for roughly half of the traffic to or from Fraser’s Madawaska Mill.

¹ *Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine*, STB Docket No. AB-279 (Sub-No. 3).

² See filing by Fraser Papers Inc. on December 11, 2003 in STB Docket No. 279 (Sub-No. 3).

I have also considered MMA's response to my earlier concerns about how MMA would adequately engage in rail operations if the abandonment is approved. In its Reply in Opposition, MMA has contended that it will fulfill its common carrier obligation, and specifically mentioned the following steps that would be taken if the abandonment is approved:

- a car and locomotive maintenance facility would be built on the stranded segment
- sufficient cars would be assigned to the segment, where sufficient storage space is available
- additional cars would be obtained from CN as necessary
- two locomotives would be assigned to the segment
- heavy maintenance and substitution of locomotives would be accomplished by movement over the CN from the remainder of the MMA system.

This description of proposed MMA rail operations on the stranded segment is problematic because at no time has MMA or its representatives explained to me how and where the purported "car and locomotive maintenance facility"; "sufficient cars"; and "sufficient storage space" would be sited, maintained and located. As a result, there has been no discussion of the number of cars or locomotives that would constitute a sufficient number to serve Fraser's needs. I have seen no agreement, nor am I aware of any such agreement, between MMA and CN that would allow MMA to obtain additional cars from the CN "as necessary." I am not aware of any discussion, documentation, or agreement related to ensuring the availability, sufficiency, or quality of necessary track maintenance equipment. Based on my knowledge and experience with movements and travel times along the MMA and CN systems, I am concerned that the proposed substitution of locomotives "by movement over the CN from the remainder of the MMA system" could take an entire week or more. I also understand that in response to certain discovery requests propounded by Irving Woodlands LLC and Irving Forest Products Inc, the MMA has stated that it has no documents regarding the retention of the portion of the line from Madawaska

to Van Buren. This response leads me to the conclusion that no planning for such retention or operation has been done.

Furthermore, MMA's Reply in Opposition does not address the loss of competition that would be incurred by Fraser's Madawaska Mill if the abandonment is approved. Presently, Fraser can transport products via MMA (1) north to connect with CN at St. Leonard, (2) southwest to connect with Canadian Pacific in Quebec, and (3) south to connect with either Eastern Maine Railway or Pan Am Railways. Approval of the abandonment will drastically limit Fraser's rail shipping options. All direct routes to the southwest and south will be lost. Instead, all rail traffic will be forced to connect with CN at St. Leonard, a circuitous routing for most Fraser traffic which either originates in or is destined to other locations in the United States.

Lastly, in an age of ever-increasing border security, Fraser, just like any business, would like to minimize both uncertainty and also potential regulatory problems that could arise with cross-border operations if at all possible. The proposed abandonment would eliminate Fraser's ability to avoid cross-border transportation for shipments that are ultimately destined to or arriving from elsewhere in the U.S. For this reason, Fraser is obviously concerned about the proposed abandonment. While roughly half of Fraser's current traffic does transit through Canada via the northern connection, the other half transits within the U.S. via the southwestern or southern connections. Fraser's preference is to maintain its existing rail connections, including the option of staying within the U.S. entirely for its traffic.

VERIFICATION

I, Brian Sass, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

A handwritten signature in black ink, appearing to read "Brian Sass", is written over a solid horizontal line.

Brian Sass
Director of Supply Chain, Fraser Papers, Inc.

Dated 4/20/10

VERIFIED STATEMENT
OF
THOMAS CROWLEY

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LIST OF EXHIBITS

<u>EXHIBIT NO.</u> (1)	<u>EXHIBIT DESCRIPTION</u> (2)
(TDC_1)	Statement of Qualifications of Thomas D. Crowley
(TDC_2)	Schematic of MMA Rail Lines
(TDC_3)	Avoidable Cost Offset for Traffic Retained by MMA
(TDC_4)	Exhibit 1 – Revised Revenue and Cost Data

I. INTRODUCTION

My name is Thomas D. Crowley. I am an economist and President of L. E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting and fuel supply problems. I have spent most of my consulting career over thirty-nine (39) years evaluating fuel supply issues and railroad operations, including railroad costs, prices, financing, capacity and equipment planning issues. My assignments in these matters were commissioned by railroads, producers, shippers of different commodities, and government departments and agencies. As a part of my work, I have evaluated railroad abandonment applications and submitted testimony on behalf of shippers. A copy of my credentials is included as Exhibit_(TDC-1) to this opening verified statement (“OVS”).

I have been asked by Counsel for Irving Woodlands LLC and Irving Forest Products, Inc. (collectively referred to as “Irving”) to review and evaluate Exhibit 1 to Montreal, Maine and Atlantic Railway, Ltd’s (“MMA”) Abandonment Application in this proceeding and, if necessary, restate Exhibit 1 to correct any theoretical or mathematical errors in the information presented. Exhibit 1 to the Application is developed in the verified statement of Robert C. Finley.

I was asked to specifically focus on the MMA’s presentation of “Avoidable Cost” as presented in Exhibit 1 to the Application and to review MMA’s calculation of the Net Liquidation Value (“NLV”) of the lines to be abandoned. My analysis is based on a review of the testimony and supporting workpapers of Mr. Finley, Ms. Sheahan and Mr. Sherwood.¹ I

¹ Mr. Finley’s electronic workpapers were provided to Irving’s counsel in native format (including mathematical formulas) on March 27, 2010, more than a month after MMA filed its Abandonment Application. It should be noted that many of the on-branch operating expenses contained in the workpapers supporting MMA’s Application are not supported by any documentation. Rather they are merely “hard coded” inputs which cannot be verified.

was not asked to independently verify the inputs to the analyses of MMA's witnesses and nothing in my Verified Statement should be construed as expressing my opinion on the accuracy of these inputs.

My testimony is organized by functional expense categories and discussed further below under the following topical headings:

- II. Background
- III. On-Branch Costs
- IV. Off-Branch Costs
- V. Avoidable Cost Offset for Traffic Retained by MMA
- VI. Net Liquidation Value
- VII. Offset to MMA Avoidable Loss for a Stranded Branch Mechanical Facility
- VIII. Restatement of MMA's Exhibit 1 – Avoidable Costs
- IX. Conclusions

II. BACKGROUND

According to its website, the MMA began operations in January 2003 and owns more than 745 route miles of track in Maine, Vermont, Quebec and New Brunswick. The MMA employs approximately 350 people. The MMA operates 25 trains daily with a fleet of 32 locomotives. Daily operations are provided between Madawaska and Searsport, ME, and from Brownsville Junction, Maine to Montreal, Quebec. Service is also provided between Farnham, Quebec, and Newport, Vermont. The MMA connects with nine Class I, regional and shortline railroads and with the lines scheduled for abandonment, provides the shortest and most direct rail service between Northern Maine, Saint John, NB and Searsport, ME.

MMA proposes to abandon a total of 233.1 route miles of track, including 151 route miles of mainline track between Madawaska and Millinocket, ME. The remaining route miles to be abandoned are comprised of four subdivisions all of which feed the mainline route to be abandoned.

The abandonment of these lines will result in a “stranded branch” line² between Madawaska and St. Lenoard, NB. The stranded branch will continue to be operated by the MMA. The mainline route proposed for abandonment is the main north/south line of the railroad. Abandonment of this line will eliminate the “shortest and most direct rail service between Northern Maine (i.e. the stranded branch line) and Saint John, NB and Searsport, ME.”³ As a result, many of the shippers on the stranded branch will be faced with substantially longer rail routes for continued service.

² A stranded branch line is a rail line which is disconnected from all other lines of the owning carrier. In this instance the stranded branch line created by the abandonment extend from Madawaska, ME to St. Leonard, NB, where it connects to the Canadian National Railway. See Exhibit (TDC-2).

³ See MMA's website at www.mmarail.com/profile_main.php.

A schematic of the MMA rail lines is included as Exhibit_(TDC-2) to this verified statement.

III. ON-BRANCH COSTS

Mr. Finley has one error in his calculation of on-branch costs. Specifically, Mr. Finley overstates on-branch costs in the Forecast and Subsidy Years due to an error in the calculation of locomotive fuel expense. {

}

When the correct fuel cost per gallon is used to calculate on-branch costs for the Forecast and Subsidy Years then on-branch costs are reduced by { }

IV. OFF-BRANCH COSTS

Mr. Finley uses the Surface Transportation Board's ("STB" or "Board") Uniform Rail Costing System ("URCS") 2007 Eastern Region unit costs to develop off-branch costs for traffic which will be lost as a result of the abandonment. Mr. Finley miscalculated numerous items in his development of off-branch costs, which include: (1) inappropriate use of a circuitry factor; (2) double counting return on investment for railroad provided cars; (3) inappropriate assignment of terminal costs for shipments originating or terminating the lines to be abandoned; and (4) including off-branch costs for a movement which originates and terminates on the branch lines to be abandoned.

Each of these incorrect calculations is discussed below.

A. CIRCUITY FACTOR

When calculating off-branch costs, Mr. Finley incorrectly includes a circuitry factor for all mileage related costs.⁴ The circuitry factor included in the 2007 Eastern Regional URCS unit cost varies depending on car type {

}
A circuitry factor is used in developing costs for a Class I railroad when alternative routes are available for a specific movement and the actual route used for the movement is unknown. In that instance, the miles associated with the shortest alternative route are used to develop costs and a circuitry factor is applied to the miles to reflect the possibility that the shipment may actually move via a longer alternative route of movement.

⁴ {

}

In developing off-branch costs for the MMA, alternative routes of movement do not exist and actual miles are available and used, therefore the addition of circuitry factor is incorrect.

Mr. Finley's use of the circuitry factor overstates off-branch costs by { }

B. RETURN ON INVESTMENT RAILROAD PROVIDED CARS

Mr. Finley states: "Because MMA owns none of the freight cars used on the Abandonment Lines, there was no off-branch freight car return on investment cost for purposes of line 6b."⁵ In spite of this statement, Mr. Finley has included return on investment for railroad provided cars in his URCS Off-Branch cost calculations.

URCS cost calculations include return on investment on railroad provided cars, and to the extent that MMA originated cars and provided the railcars for these movements, return on investment is included in Mr. Finley's off-branch costs. A review of Mr. Finley's workpapers shows that { }⁶ The URCS regional cost used by Mr. Finley assumes these cars are provided by MMA and includes a return on investment which Mr. Finley has failed to remove from his calculations.

Mr. Finley's failure to adjust the URCS off-branch cost to remove the return on investment portion of railcar expense for carloads originating on the Abandonment lines overstates off-branch cost in the Base Year by { }

C. TERMINAL COSTS

Mr. Finley incorrectly calculated the terminal portion of Off-Branch costs by including a

⁵ See Finley VS at 9.

⁶ { }

full terminal cost and an interchange cost for all movement regardless of the type of movement,⁷ i.e., originated and terminated, originated and forwarded, received and terminated, or overhead shipments. Each of the different types of movements requires different terminal costs when developing URCS costs. When using URCS for development of off-branch costs in an abandonment proceeding, the calculation is different for each movement type and requires the replacement of a full terminal cost with a “modified terminal” cost when a carload originates or terminates on the line(s) to be abandoned.⁸

Table 1 below compares Mr. Finley’s assignment of terminal costs and the appropriate terminal cost for development of off-branch costs for each movement type.

<u>Movement Type</u> (1)	<u>MMA Off-Branch Costs</u> (2)	<u>Correct Off-Branch Costs</u> (3)
1. Originates or terminates on-branch and received or forward to another carrier	{ }	Modified Terminal/ Interchange
2. Originates or terminates on-branch and terminates or originates off-branch	{ }	Modified Terminal/ Full Terminal
3. Originates or terminates off-branch, moves over the branch and received or forwarded off-branch (i.e. overhead to the line to be abandoned)	{ }	Full Terminal/ Interchange
4. Originates or terminates off branch, moves over the branch and terminates or originates off-branch (i.e. overhead to the line to be abandoned)	{ }	Full Terminal/ Full Terminal

Mr. Finley’s incorrect assignment of terminal cost overstates off-branch cost by { } in the Base Year.

⁷ See Finley statement at page 9 { }

⁸ When calculating off-branch costs, a modified terminal cost replaces a full terminal cost for carloads originating or terminating on the line to be abandoned because on-branch costs account for many of the terminal costs that are incurred in a full terminal cost.

**D. INAPPROPRIATE INCLUSION
OF OFF-BRANCH COSTS FOR
MOVES LOCAL TO THE
LINES TO BE ABANDONED**

A review of Mr. Finley's off-branch cost analysis shows that off-branch costs are included for a movement { } Both of these locations are on the branch lines to be abandoned.⁹ Off-branch costs { } is an overstatement of off-branch costs.¹⁰

⁹ {
¹⁰ {
}

V. AVOIDABLE COST OFFSET FOR TRAFFIC RETAINED BY MMA

Mr. Finley identifies all traffic that originates or terminates on the lines to be abandoned and traffic which currently moves over the lines to be abandoned as overhead traffic. MMA's revenue from this traffic is shown on line 1 and line 2 of Exhibit 1. The on- and off-branch costs associated with the identified traffic is subtracted from the revenue to yield total avoidable costs for the lines to be abandoned as shown on line 7 of Exhibit 1.

A review of "lost revenue" columns in Mr. Finley's spreadsheets reveal {

}¹¹ {

}

Also shown on Exhibit_(TDC-3) is the MMA URCS costs associated with the retained traffic after abandonment. I estimate MMA will earn { } in net revenue¹² from the retained traffic in the Base Year. Further, MMA will earn { } in net revenues from the retained traffic in the Forecast and Subsidy Years.

¹¹ { }

¹² See Column (11) of Exhibit_(TDC-3).

Exclusion of the retained traffic from the calculation of avoidable cost misrepresents the impact of the abandonment on MMA. In other words, Mr. Finley's evidence, and the MMA application, indicates that MMA will lose revenue from the retained traffic and avoid the cost associated from handling the traffic. In reality, MMA will retain a significant amount of the traffic that currently moves over the lines to be abandoned. To properly reflect the impact of the abandonment on MMA, the avoidable cost in Exhibit 1 must be reduced to reflect the net margin MMA will realize from this traffic.

VI. NET LIQUIDATION VALUE

The Avoidable Income/Loss calculated in Exhibit I to an abandonment application includes return on investment on the NLV of the lines to be abandoned for the Forecast and Subsidy Years. The NLV is an estimate of the value of the assets in the line to be abandoned less the cost of removal and disposition of those assets.

MMA's NLV calculations contain a calculation error in the development of net tons to be disposed of for both rail and other track material "OTM" for both continuous welded rail ("cwr") and jointed rail in the rail lines to be abandoned.¹³ {

}

Correcting these values increases the liquidation costs and thereby, lowers the NLV by slightly more than { } in both the Forecast and Subsidy Year. The reduction in the NLV results in a decrease in the Total Return on Value of { } in both the Forecast Year and the Subsidy Year.

¹³ The net tons for rail and OTM calculated for determination of the gross asset value are correct and therefore not understated.

VII. OFFSET TO MMA AVOIDABLE LOSS FOR A STRANDED BRANCH MECHANICAL FACILITY

MMA, in its *Reply of Montreal Maine & Atlantic Railway, Ltd. in Opposition to Motion to Reject or Dismiss Application* (“Reply to Motion to Reject”) filed with the Board in this proceeding on March 15, 2010, stated that in order to maintain service on the stranded branch line between Madawaska and St. Leonard, it will do the following: (1) construct a mechanical facility on the line in order to maintain both locomotives and cars; (2) heavy maintenance and substitution of locomotives will be accomplished by movement over the Canadian National (“CN”) to and from MMA’s maintenance facilities; and (3) necessary personnel will be assigned to the mechanical facility.¹⁴

While MMA states that it will incur these capital and operating expenses, assuming the proposed abandonment is approved, it provided no estimate of these capital and operating expenses. MMA’s failure to provide an estimate of these capital and operating expenses overstates the MMA’s estimated avoidable loss. These capital and operating expenses resulting from the abandonment must be used to offset any reduction in MMA’s avoidable loss from the abandonment of the lines.

For example, based on my Revised Exhibit 1 (see Exhibit_TDC-4), MMA’s Avoidable Loss in the Base Year equals \$1.64 million. If this amount is used to offset MMA’s system net income or loss, it overstates the amount of the offset to the extent that MMA constructs the mechanical facility, employs locomotive or car mechanical personnel at the new mechanical facility, or transports locomotives over CN to its primary mechanical facilities for heavy maintenance.

¹⁴ See Reply to Motion to Reject at pp. 5-6.

I have estimated the cost of each of these items and used them to offset MMA's Avoidable Loss in the Base Year and Forecast Year and its Estimated Subsidy in the Subsidy Year. Development of the expense of each item is discussed below.

A. MECHANICAL FACILITY

I have estimated the cost to construct a locomotive and car repair mechanical facility to equal \$5.12 million based on the amount the Wallowa-Union Railroad¹⁵ plans to expend to construct a repair and maintenance shop for locomotives and other rolling stock in Eastern Oregon.¹⁶ The annual return on value on \$5.12 million {
}

**B. TRANSPORT OF
LOCOMOTIVES BY
CANADIAN NATIONAL**

As stated above, MMA's planned mechanical facility will not be able to perform heavy repairs to locomotives. For heavy repairs, MMA proposes to transport the locomotives via CN from St. Leonard to a connection with MMA for continuance to an MMA maintenance facility.¹⁷

Also based on the Reply to Motion to Reject, I have assumed two locomotives will be assigned to the stranded branch. One locomotive per train will be required for operations and a spare locomotive will be required for emergency purposes. I also estimate that each of these

¹⁵ The Wallowa-Union Railroad is a 62 mile shortline carrier which operates in Wallowa and Union counties Oregon.

¹⁶ The STB in Docket No. 42088, *Western Fuels Association, Inc and Basin Electric Power Cooperative v. BNSF Railway Company*, decided September 7, 2007, the cost of construction of a locomotive maintenance facility designed to provide "repair-and-return or unit-exchange" service, rather than repair to major components service, would equal \$8.9 million in 2004 dollars. Thus the \$5.12 million the Wallowa-Union will expend for its mechanical facility appears to be a reasonable estimate of the cost of the required locomotive and rail car mechanical facility for MMA's stranded branch line.

¹⁷ See Reply to Motion to Reject at 6.

locomotives will be transported by CN to MMA at St. Jean, QC for heavy repairs once each year, a distance of 380 one-way miles.¹⁸

The 2008 STB Public Use Waybill file contains 996 movements of locomotives (Standard Transportation Commodity Code 37411) moving within the Official Territory. The average rate for these movements equals \$17.70 per mile, which equates to \$26,833¹⁹ for two locomotives per year to move round trip from St. Leonard to St. Jean.

C. MECHANICAL PERSONNEL

MMA's Reply to the Motion to Reject states that mechanical personnel as necessary will be assigned to the locomotive and repair facility to be constructed on the stranded branch. In calculating on-branch costs for the lines to be abandoned, Mr. Finley included salaries and benefits of six locomotive mechanics, five railcar mechanics and one-half of a manager. Using Mr. Finley's salaries and benefits by mechanical employee category, I have assumed the mechanical facility on the stranded branch will be manned by one manager, two locomotive mechanics and two railcar mechanics at an annual cost of \$298,187.

Based on the above, I estimate the total cost to maintain service on the stranded branch for the mechanical facility and transport of the locomotives for heavy repair will equal \$1,254,350.²⁰ Reducing the MMA's revised avoidable loss by this amount results in an adjusted avoidable loss for the Base Year of \$400,148 and for the Forecast Year of (\$2,954,728). These values are calculated in Exhibit_(TDC-4).

¹⁸ Alternatively, the locomotives could be moved by CN to St. John, NB then via haulage agreement with NB Southern Railway ("NBSR") and the Eastern Maine Railway ("EMRY") to Brownsville Jct, a one-way distance of 477 miles.

¹⁹ 2 locomotives x 380 miles x 2 directions x \$17.70 per mile.

²⁰ \$929,280 ROI + \$26,883 locomotive expenses + \$298,187 mechanical personnel.

VIII. RESTATEMENT OF MMA'S EXHIBIT 1 – AVOIDABLE COSTS

Based on each of the items discussed above, I have restated Exhibit 1 to Mr. Finley's verified statement. This restatement is shown in Exhibit_(TDC-4). Table 2 below compares Mr. Finley's Exhibit 1 calculations with my restatement of the Avoidable loss in the Base Year by major component.

<u>Item</u> (1)	<u>MMA Exhibit 1</u> (2)	<u>Restatement</u> (3)	<u>Difference</u> (4)
1. Attributable revenue	{ }	\$8,813,839	{ }
2. On-branch cost	{ }	\$6,326,205	{ }
3. Off-branch cost	{ }	\$4,647,603	{ }
4. Offset for retained traffic	{ }	\$505,472	{ }
5. Total Off-branch cost (line 3 – line 4)	{ }	\$4,142,131	{ }
6. Avoidable cost (line 2 + line 5)	{ }	\$10,468,336	{ }
7. Avoidable loss (line 1 – line 6)	{ }	\$(1,654,497)	{ }

As shown in Table 2, the errors in Mr. Finley's calculations results in an overstatement of the avoidable cost { } Correcting Mr. Finley's overstatements result in a reduction of MMA's avoidable loss { } to \$1.65 million.

As discussed in the previous section, the \$1.65 million Avoidable Loss must be further reduced by MMA's cost of constructing and operating a mechanical facility on the stranded branch equal to \$1.25 million. This reduces the Base Year Avoidable Loss to (\$400,000). This offset is shown in Exhibit_(TDC-4).

Finally, Mr. Finley's Estimated Subsidy payment in the Subsidy Year is substantially overstated, not only for the reasons discussed above, (i.e., on-branch fuel costs, several off-branch costs and the offset for the mechanical facility), but also because Mr. Finley has significantly overstated the rehabilitation expense associated with the Estimated Subsidy. The Board's rules at 49 CFR 1152.32(m)(2) clearly state: "For subsidy purposes rehabilitation costs shall not be included unless: (i) the track fails to meet minimum Federal Railroad Administrative Class 1 safety standards." According to MMA witness Sheahan, all of the abandonment lines qualify as FRA Class 1 standards or better in their current state, except for portions of the Limestone Subdivision. As stated by witness Sheahan, rehabilitation of the Limestone Subdivision to restore the track to FRA Class 1 standards requires an expenditure of {

}²¹

Reducing the rehabilitation cost in the Subsidy Year shown in Mr. Finley's Exhibit 1 from { } and making the other adjustments to the Subsidy Year discussed previously in this statement, reduces Mr. Finley's Estimated Subsidy payment { } to \$6.1 million. These adjustments are reflected in Exhibit_(TDC-4).

²¹ { }

IX. CONCLUSIONS

The Avoidable Loss and Estimated Subsidy payment included in MMA's abandonment application contain numerous incorrect calculations. These include:

1. Overstatement of on-branch fuel costs in the Forecast and Subsidy years;
2. Overstatement of off-branch costs resulting from improper inclusion of a circuitry factor;
3. Overstatement of off-branch costs due to a failure to remove return on investment in railroad provided cars;
4. Overstatement of off-branch costs due to incorrect assignment of terminal costs;
5. Overstatement of off-branch costs due to the inappropriate inclusion of off-branch cost for traffic originating and terminating on the lines to be abandoned;
6. A failure to recognize the net revenue that MMA will retain from branch line traffic that will continue to move on the MMA system assuming the abandonment of the lines is granted;
7. A failure to reduce the avoidable loss in the Base Year and Forecast Year and the Estimated Subsidy in the Subsidy Year by MMA's cost of constructing and operating a mechanical facility on the stranded branch; and
8. Overstatement of the rehabilitation cost in the Subsidy Year resulting in a substantial overstatement of the Estimated Subsidy.

Correcting MMA's overstatement of costs and its failure to account of the net revenue from retained traffic results in a reduction of the avoidable cost of operating the lines to be abandoned { }²² Including the offset resulting from the construction and operating of a mechanical facility on the stranded branch reduces the avoidable loss of operating the lines to be abandoned in the Base Year to \$400,000 and the Estimated Subsidy Payment in the Subsidy Year to be \$6.1 million.

²² { }

STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, and 760 E. Pusch View Lane, Tucson, Arizona 85737, and 21 Founders Way, Queensbury, New York 12804.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of coal. As a result of my extensive economic consulting practice since 1971 and my participating in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers that move coal over the major coal routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of coal by rail.

STATEMENT OF QUALIFICATIONS

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from coal mine origins in the Powder River Basin and in Colorado to various utility destinations in the eastern, mid-western and western portions of the United States and from the Eastern coal fields to various destinations in the Mid-Atlantic, northeastern, southeastern and mid-western portions of the United States. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal and numerous other commodities handled by rail.

STATEMENT OF QUALIFICATIONS

I have frequently been called upon to develop and coordinate economic and operational studies relative to the acquisition of coal and the rail transportation of coal on behalf of electric utility companies. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various coal shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers,

STATEMENT OF QUALIFICATIONS

with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively

STATEMENT OF QUALIFICATIONS

involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

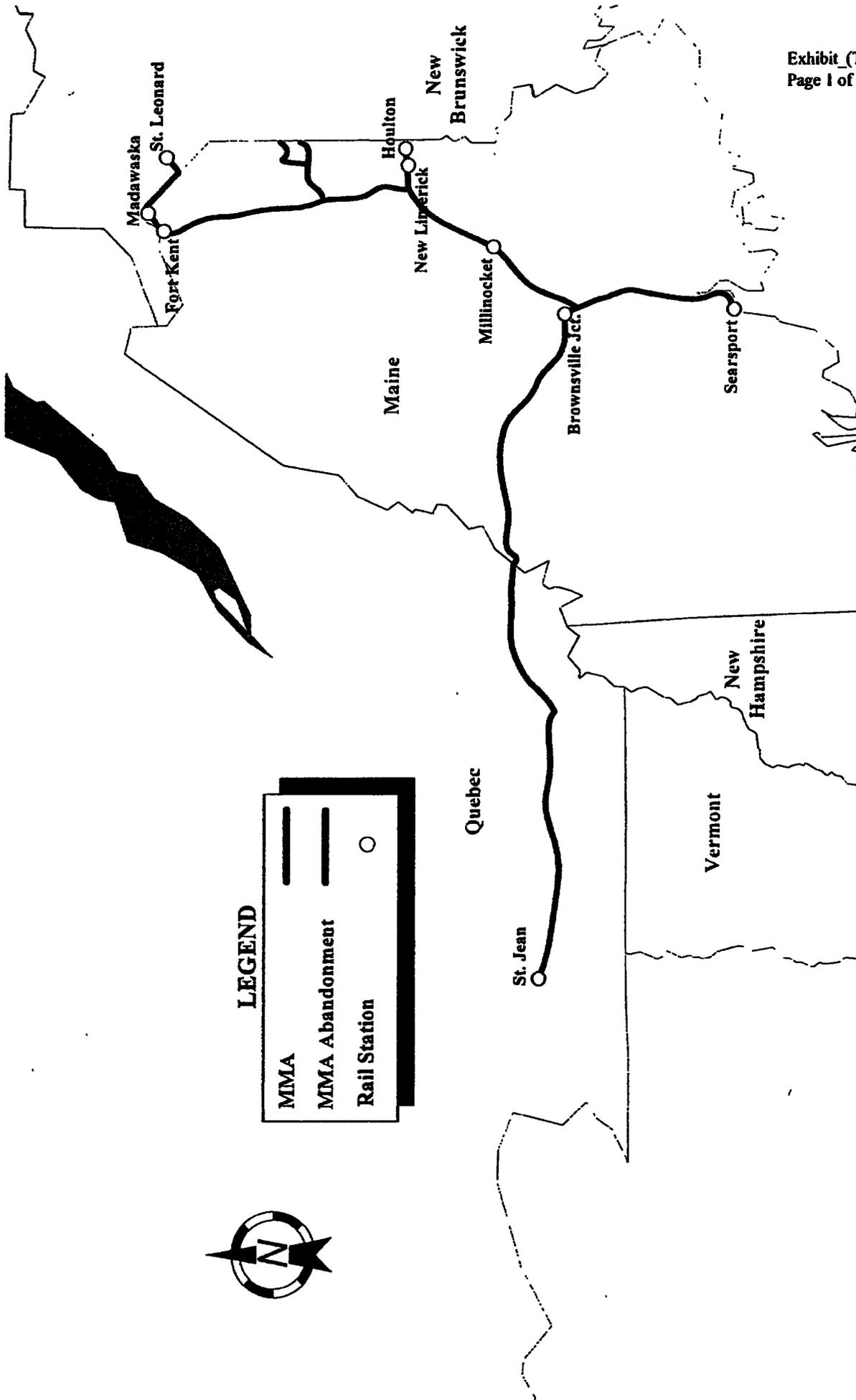
I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, North America Freight Car Association, the Fertilizer Institute and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

STATEMENT OF QUALIFICATIONS

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al. which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, Notice of Intent to File Division Complaint by the Long Island Rail Road Company.

MMA Abandonment



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