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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

MONTREAL, MAINE & ATLANTIC)	
RAILWAY LTD. - DISCONTINUANCE OF)	Docket No. AB-1043
SERVICE AND ABANDONMENT - IN)	(Sub-No. 1)
AROOSTOOK AND PENOBSCOT)	
COUNTIES, MAINE)	

**SUPPLEMENTAL COMMENTS
OF LOUISIANA-PACIFIC CORPORATION**

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ENTERED
Office of Proceedings
AUG 3 - 2010
Part of
Public Record

Dated: August 3, 2010

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**SUPPLEMENTAL COMMENTS AND PROTEST
OF LOUISIANA-PACIFIC CORPORATION**

Louisiana-Pacific Corporation (“LP”) hereby submits the following Supplemental Comments in response to the Board’s decision served in this proceeding on July 20, 2010. (“July 20 Decision”). In its July 20 Decision, the Board requests evidence and comments from interested parties, on (1) the Board’s authority to require that any approval of the abandonment be conditioned on Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) granting rail access over the remaining portion(s) of its system not a part of MMA’s abandonment application; (2) the location and type of access that could be ordered, as well as the Board’s appropriate role should an access condition be imposed; and (3) whether a haulage agreement, rather than full service trackage rights, would be sufficient to satisfy the need for reasonable access.

For the reasons set forth in LP’s April 21, 2010 Comments and Protest, LP continues to believe that the present and future public convenience and necessity do *not* permit the proposed discontinuance and abandonment because the potential harm to LP, other affected shippers, and rural communities from the loss of MMA rail service far

outweighs the future burden that continued operations on the lines could impose on MMA and on interstate commerce. However, should the Board ultimately determine that approval of the proposed abandonment is appropriate, LP respectfully submits that the public interest requires the Board to take all appropriate actions under its expansive authority to ameliorate the adverse service and competitive impacts of the proposed transaction on LP and the region, through the imposition of appropriate and reasonable access conditions. The conditions requested by LP herein are narrowly designed to ameliorate the harmful effects, and permit LP and other shippers to mitigate the direct and negative impact that the transaction would have on the transportation and service options of shippers on the abandonment lines. The authority and need for such a conditions are set forth herein and in the accompanying supplemental verified statement of Travis W. Turner (“Supp. V.S. Turner”), Plant Manager of LP’s Houlton, Maine wood manufacturing facility.

I.

**THE BOARD HAS AMPLE AUTHORITY TO PRESCRIBE
TRACKAGE RIGHTS CONDITIONS**

In evaluating abandonment requests, the statutory standard is whether the “present or future public convenience and necessity require or permit” the proposed abandonment or discontinuance. 49 U.S.C. § 10903(d). Additionally, in making its determination, “the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.” *Id.* at § 10903(d)(2); *see Georgia Pub. Serv. Comm’n v. ICC*, 704 F.2d 538, 546-47 (11th Cir.

1983). This requires a balancing of 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. *See Colorado v. United States*, 271 U.S. 153 (1926). Furthermore, the public convenience and necessity standard must be applied in the context of the nation's Rail Transportation Policy ("RTP"), set forth at 49 U.S.C. § 10101. *See Soo Line R.R. Co. – Abandonment Exemption – in Marshall and Roberts Counties, SD*, STB Docket No. AB-57 (Sub-No. 48X) (STB served Nov. 17, 1999), 1999 WL 1038406 at *4. Paragraph (4) of the RTP provides that, in regulating the railroad industry, it is the policy of the United States Government "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers . . . to meet the needs of the public."

The core questions are whether, and to what degree, shippers will be harmed if rail service is no longer available, and whether that harm outweighs the demonstrated harm to the railroad and to interstate commerce from continued operations. *See Chicago and North Western Transportation Co. – Abandonment*, 354 I.C.C. 1, 7 (1977); *Boston and Maine Corp. – Abandonment and Discontinuance of Service – In Middlesex County, MA*, STB Docket No. AB-32 (Sub-No. 74) (STB served Sept. 10, 1996), 1996 WL 512019 at *12. If the Board determines that, on balance, a proposed abandonment meets the public convenience and necessity test, the Board still has broad discretion and authority to impose any conditions on abandonments that are necessary to ameliorate potential adverse effects. In this respect, the statute gives the Board the

authority to “approve the application with modifications and require compliance with conditions that the Board finds are required by the public convenience and necessity.” 49 U.S.C. § 10903(e)(1)(B).

The Board’s conditioning authority under the statute is expansive, and the Board has repeatedly rebuffed past challenges to its authority to condition grants of permissive abandonment authority. *See, e.g., Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation’s west 30th Street Secondary Track in New York, NY*, 8 I.C.C.2d 773, 795 n.23 (1992) (“[u]nder 49 U.S.C. § 10903(b)(1)(A) we are specifically authorized to impose *any* conditions required by the public convenience and necessity) (emphasis added) (“*Chelsea Property Owners*”). The Board has imposed a wide-variety of conditions in abandonment proceedings. *See, e.g., Central Oregon & Pacific R.R., Inc. – Abandonment and Discontinuance of Service – in Coos, Douglas, and Lane Counties, OR*, STB Docket No. AB-515 (Sub-No. 2) (STB served Oct. 31, 2008) (conditioning approval in a number of respects, including that abandonment not occur until owners of certain connected branch lines file for and obtain abandonment authority, to protect against the possibility of stranding line segments); *Chelsea Property Owners* (conditioning approval on the adverse abandonment applicants’ indemnifying the rail carrier for associated demolition expenses); *Central Michigan Ry. Co. – Abandonment Exemption – in Saginaw County, MI*, STB Docket No. AB-308 (Sub-No. 3X) (STB served Oc. 31, 2003) (conditioning approval on the payment of compensation by the railroad to a displaced shipper); *Missouri Pacific R.R. Co. – Abandonment – in Wodson*

County, KS, ICC Docket No. AB-3 (Sub-No. 112) (ICC served Mar. 17, 1994)

(conditioning approval on the applicant's removal of track at a shipper's facility that impeded efficient and smooth motor vehicle access).¹

A. The Cases Cited by MMA are Inapposite

In its May 25, 2010 Rebuttal Argument, MMA claims that the trackage rights conditions that previously had been requested in this proceeding "must be rejected" on the basis that "the relevant statutes do not permit" the Board to impose trackage rights. As the Board appears to recognize in its July 20 Decision, MMA's arguments can be dispensed with swiftly, for none of the authorities cited by MMA involved the Board's conditioning authority under § 10903. Rather, all but one of them involved the Board's authority under § 10904 when called upon to fix the price and other terms of a sale or subsidy for continued rail operations pursuant to the Board's offer of financial assistance ("OFA") procedures under § 10904(f)(1) and 49 C.F.R. § 1152.27.² Of course, § 10904 is a separate statutory provision that comes into play only *after* abandonment authority is

¹ See also *Wisconsin Central Ltd. – Abandonment – in Ozaukee, Sheboygan and Manitowoc Counties, WI*, STB Docket No. AB-303 (Sub-No. 27) (STB served Oct. 18, 2004 (Vice Chairman Mulvey, commenting that he preferred conditioning the abandonment on the granting of trackage rights, but he did not seek to do so because nothing in the record indicated that any party had requested access conditions).

² The other case cited by MMA, *Request for an Order Directing the Southern Pacific Transportation Company to Negotiate Trackage Rights with the Great Western Railway*, ICC Finance Docket No. 30872 (ICC decided Oct. 15, 1986), also did not involve an abandonment application filed under 49 U.S.C. § 10903, but rather involved a feeder line development program application filed under former 49 U.S.C. § 10910 (now 49 U.S.C. § 10907).

approved (with or without conditions), and where the Board has been asked to establish conditions and the amount of compensation for continued rail use.

The Board need not grapple here with the question of whether § 10904 provides it with the authority to impose trackage rights conditions, as it clearly has such authority under § 10903 when, as in this case, the abandonment has not yet been approved. MMA does not, and cannot under the statute and long-standing precedent, dispute or otherwise overcome the fact that § 10903 vests the Board with ample authority to grant the track access conditions being requested.³

II.

THE PUBLIC INTEREST REQUIRES THAT THE BOARD ESTABLISH TRACKAGE RIGHTS AND ASSOCIATED HAULAGE CONDITIONS IN A MANNER THAT FULLY AND ADEQUATELY ADDRESSES THE ADVERSE SERVICE AND COMPETITIVE IMPACTS OF THE PROPOSED ABANDONMENT, WHILE BEING OPERATIONALLY FEASIBLE

LP respectfully submits that, should the Board ultimately decide to grant discontinuance and abandonment authority to MMA, the following conditions should be imposed to alleviate the harmful effects of the transaction on LP and on the public interest:

- 1) A grant of overhead trackage rights (1) between Madawaska, MP 260 and an interchange with Canadian National Railway at St. Leonard, (2) between Millinocket, MP 109 and an

³ The Board also asks for comments regarding its authority to require trackage rights over the portion of MMA's Madawaska-St. Leonard segment that is located in Canada. LP submits that because the Board would not be affirmatively ordering MMA to grant such trackage rights, but rather would be telling MMA that it will have to grant such rights *voluntarily* if it wants to proceed with its proposed abandonment of jurisdictional trackage in the United States, there can be no serious doubt that the trackage rights condition can properly embrace the entire Madawaska-St. Leonard line.

interchange with Eastern Maine Railway/New Brunswick Southern Railways at Brownville Junction; and (3) between Millinocket, MP 109 and an interchange with Pan Am Railways at Northern Maine Junction; and

- 2) That MMA will be held to its representations on the record in this proceeding that it will agree to enter into a haulage agreement with the state and its new operator on the line. Such a haulage agreement should include MMA's lines between Millinocket, MP 109 and Brownville Jct., and between Brownville Jct. and MMA's connections on the western end of its system with CN and CP at or near St. Jean, PQ.

As noted in the Board's July 20 Decision, condition (1) was previously requested in substantial part in the Protest and Comments of Irving Woodlands LLC, Irving Forest Products, Inc., Fraser Papers Inc., Fraser Timber Limited, and Katahdin Paper Company LLC, as well as in the State of Maine's recent Offer of Financial Assistance. As further noted in the Board's July 20 Decision, MMA has represented that it would agree to enter into a haulage agreement over its system with a new operator of the lines it is proposing to abandon; condition (2) simply seeks to hold MMA to those representations.

As set forth above, the STB has broad discretion and authority to impose *any* conditions on an abandonment that it concludes "are required by the public convenience and necessity" to ameliorate the adverse effects of the abandonment. 49 U.S.C. § 10903(e)(1)(B). The imposition of the conditions requested above meets the Board's standard, because the proposed conditions are narrowly tailored; they will promote efficient, adequate, and competitive transportation to the public; they will

mitigate the abandonment's adverse impacts on rural and community development; and there is no reason to believe that the trackage rights will interfere with MMA's remaining operations (especially given the fact that the requested trackage rights would use lines that are not heavily used by MMA, and the amount of traffic from the abandonment lines that might move via such trackage rights is relatively small). Additionally, the conditions requested merely seek to preserve, as closely as possible, the *status quo*, and will not place LP or any other shipper in a better-off competitive position than they were pre-abandonment.

It must be understood that even if the State of Maine and MMA can agree on terms for the State's acquisition of the lines proposed for abandonment, unless the conditions LP is requesting are imposed the transaction will have very significant and harmful effects on LP and on the other shippers who currently receive single-line service over the entirety of MMA's system to connections with Class I carriers. *See* Supp. V.S. Turner at 2-3. Specifically, if a third party carrier is brought in by the state to operate the lines, the current single-line movements of LP's and other shippers' traffic to MMA's Class I connections will suddenly become interline movements (new carrier-MMA) as a result of the transaction. The elimination of single-line service over the MMA to the connecting carriers constitutes a significant service and competitive detriment to LP and the other shippers because it will result in less efficient interline-service. *Id. See, e.g., CSX Corp. et al. – Control and Operating Leases/Agreements – Conrail Inc. et al., 3*

S.T.B. 196, 258 (1998) (“we have acknowledged that, as a general matter, single-line service is superior to joint-line service”).

The trackage rights requested in condition (1) would mitigate the foregoing harm to some extent by allowing the new carrier to provide the same single-line service to MMA’s connections on the north and the south that MMA presently offers. In the North, this would require trackage rights over approximately 23 miles of MMA trackage in the northernmost part of Maine, which MMA has isolated from the rest of its system. In the South, the trackage rights would extend over approximately 75 miles of MMA’s other lightly-used north-south lines.

As noted earlier, the trackage rights condition is necessary to preserve single-line service for LP and other shippers to a Class I connection to the north, and indirect connections to other Class I carriers to the south, without the adding the cost of another interchange operation to such connections. It is also needed to ensure that MMA, which has already demonstrated that it has little interest in serving LP and the other shippers on the lines proposed for abandonment, cannot demand excessive rates on their traffic and thereby threaten the economic viability of such shippers and of the new carrier itself; *see* Supp. V.S. Turner at 3-5.

Unfortunately, the requested trackage rights cannot fully mitigate the harm that the transaction will cause for LP’s Houlton operations, because the vast majority of LP’s rail shipments from Houlton move in single-line service over MMA’s main east-west line to connections with CP and CN near St. Jean, PQ, which is the shortest route to

the Chicago gateway (about 1,250 miles), *see* Supp. V.S. Turner at 3. Trackage rights are not being requested over that MMA line, which is more heavily used (and would involve about 300 miles of trackage rights), and accordingly LP's preferred routing will remain burdened with an additional interchange between the new carrier and MMA after the transaction takes place.⁴ However, LP's requested condition (2) would partially mitigate this burden by holding MMA to its representations in this proceeding, as discussed above, that it will negotiate with a new carrier appropriate haulage rights conditions. *See, e.g., Chelsea Property Owners*, 8 I.C.C.2d 773, 795 n.23 (holding applicant to offers and representations concerning abandonment authority conditions). LP requests that the scope of such a condition include, at a minimum, haulage rights over its preferred Houlton-Brownville Jct., St. Jean, PQ east-west routing. *See* Supp. V.S. Turner at 4. Haulage arrangements still entail a physical interchange of the traffic, of course, and thus would not be as efficient as MMA's current single-line service to connecting Class I carriers at St. Jean. *Id.* However, the haulage condition would at least protect LP and the new State-designated carrier from excessive rate demands from MMA for service over that route.

⁴ As Mr. Turner testifies, the next best routing, via the northern connection to CN at St. Leonard, would add about 140 miles to the movement, an increase of about 11% compared to the St. Jean routing. Supp. V.S. Turner at 3.

III.

A HAULAGE RIGHTS CONDITION, BY ITSELF, WOULD BE INADEQUATE TO AMELIORATE THE ABANDONMENT'S HARMFUL EFFECTS

While LP believes that a carefully crafted haulage rights condition over MMA's east-west main line would be a useful and important complement to a trackage rights condition, for the reasons set forth above and in Mr. Turner's supplemental VS, haulage rights by themselves would be a wholly inadequate remedy for the harmful effects that the proposed abandonment would have on LP and other shippers. In the first place, as Mr. Turner observes, haulage rights would not address the reduced efficiency and extra costs that will inevitably result from the loss of single-line service – including the costs of an additional interchange operation. Moreover, he notes, haulage rights without more would leave the State's replacement carrier completely dependent on MMA service simply to reach the outside world, which could seriously impair the replacement carrier's ability to provide improved service to its shippers.⁵ Supp. V.S. Turner at 4-5. Only with both the trackage rights and the haulage rights conditions requested herein, can the harmful effects of the transaction be ameliorated.

In this respect, MMA has elsewhere acknowledged the importance of maintaining efficient service and cost-effective, competitive routings:

⁵ For example, if the replacement carrier wished to increase the frequency of service for its traffic interchanged with Class I carriers, it presumably would be unable to do so unless MMA agreed to increase the frequency of its haulage services.

MMA handles paper and forest products originating in Maine and moving to destinations throughout North America, along with other commodities, some of which are related to the paper and forest products industry, such as clay and certain chemicals, and some of which are not, moving inbound to Maine. . . . The economic condition of the paper and lumber shippers in Maine at this time is not particularly strong. In certain cases, the mills are highly dependent on rail service and **likely could not survive if the most competitive rail routings were closed or made more expensive.**

Statement of Position and Request for Conditions of MMA, *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements – Pan Am Southern LLC*, STB Finance Docket No. 35147 (filed Aug. 8, 2008), V.S. Joseph R. McGonigle at 2 (emphasis added).

* * *

Finally, the Board has asked for comments regarding the appropriate level of fees for trackage rights or haulage rights. LP submits that the Board need not attempt to dictate compensation arrangements for either trackage rights or haulage rights at this time. The State of Maine has requested that the trackage rights be at a reasonable commercial rate to be agreed to by the parties or, if not, as established by the Board. This is standard practice in STB proceedings, and the Board should leave it to the State and the MMA to establish reasonable conditions and compensation for the use of the facilities, and if the parties cannot agree, the parties can then request that the Board establish appropriate conditions and compensation for use of the facilities.

III.

CONCLUSION

As LP has previously stressed, this case is precedent setting. No abandonment application approved by the Board in recent years has had the type or level of impacts presented by the present application, and the MMA Application must be carefully reviewed in light of *current* national policy goals and objectives, and not in light of the disparate circumstances that may have been present several decades ago (e.g., when there were excessive and redundant rail lines in many areas of the country).

The conditions requested herein will ameliorate the harmful effects of the transaction, are operationally feasible, and will produce public benefits far outweighing any harm that could potentially befall MMA through the granting of the conditions. As such, these requested conditions comport with the Board's governing standards, because they are "required by the public convenience and necessity" to mitigate against the harmful effects of the transaction (49 U.S.C. § 10903(e)(1)(B)) and they should be granted. Without these conditions, for the foregoing reasons, and the reasons set forth in LP's Comments and Protest, the public convenience and necessity do not support discontinuance and abandonment, and the Application should be denied.

Respectfully submitted,

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**SUPPLEMENTAL VERIFIED STATEMENT OF
TRAVIS W. TURNER**

My name is Travis W. Turner. I am the Plant Manager of Louisiana-Pacific Corporation's ("LP's") engineered wood manufacturing facility in New Limerick, ME, near Houlton, ME. I am the same Travis W. Turner who submitted testimony as a part of the LP's Comments and Protest filed in this proceeding on April 21, 2010. The purposes of this Supplemental Verified Statement is to address the need for appropriate trackage rights conditions to be imposed on any future approval of the MMA's abandonment application in order to mitigate the harmful competitive and service impacts the transaction would have on LP.

As discussed in my previous Verified Statement, LP recently engaged in a massive upgrade of its Houlton, Maine facility in order to allow its use for the manufacture of a new, innovative product, Laminated Strand Lumber ("LSL"). That upgrade cost LP more than \$140 million and took two years. LP discussed its planned conversion of the Houlton plant with MMA before committing to the conversion, and at no point during those discussions did MMA give LP any indication that continued rail

service to Houlton was in jeopardy. LP would never have invested in the Houlton LSL conversion if reliable rail service had not been available, because LP requires such service to reach a nationwide market for its new product. Currently, approximately 65% of LP's market (by volume) is moved from the plant by rail, destined primarily for target markets on the west coast, mountain states, and the southwest and southeast, and we project that this percentage of traffic moved by rail will grow going forward as the Houlton plant's production increases. Rail service is vital, and motor carriage is simply not an effective competitive means of reaching distant markets such as California. Without the continuation of cost-effective rail service, our LSL product will be unable to compete outside the Northeast.

A. The Need for Appropriate Trackage Rights Conditions

The vast majority of LSL rail movements from Houlton have moved over the MMA's main east-west main line to connections with CP and CN at St. Jean, PQ, and thence to Detroit, Chicago, and beyond. This means that our current shipments move in single-line service to the Class I railroad connections. If the State of Maine is successful in purchasing the lines MMA proposes to abandon in this proceeding, LP will be left with a new State-appointed carrier serving Houlton – but that carrier will not connect with any Class I carriers directly, because MMA proposes to retain its line segments connecting the abandoned lines with such other carriers. If allowed, this would mean that LP and other northern Maine shippers would be forced to use a less-efficient interline service just to reach a Class I railroad. Inevitably, the addition of an extra interchange operation between the new carrier and MMA would both reduce the efficiency and add to the cost

of our rail service. Moreover, MMA would continue to have a stranglehold on our rates and service, and would be able to extract any available profits from the traffic of LP and other northern Maine shippers, to the financial detriment of the carrier taking over operation of the lines being abandoned.

In order to address the foregoing harms, as set forth in the argument section of LP's Supplemental Comments, LP is seeking discrete trackage rights conditions to the north and to the south. The trackage rights to the north would preserve single-line service to a connecting Class I carrier, CN; those to the south would allow through service (albeit not single-line service) to other, nearby Class I carriers. These trackage rights conditions are the same as those that have been requested by the State of Maine and by other shippers in this proceeding. As I will explain, such conditions are necessary both to mitigate the harm that the abandonment would otherwise cause to rail-dependent shippers such as LP, and to help ensure the economic viability of the new carrier.

Frankly, LP would prefer a condition requiring trackage rights over MMA's entire east-west mainline between Brownville Jct. and St. Jean, PQ which, again, is part of LP's current routing. However, this would require approximately 300 miles of trackage rights over the MMA. The alternative northern routing would add approximately 140 miles to the haul to Chicago, an 11% increase (based on PCMiller (version 24)). However, the northern routing would require only about 23 miles of trackage rights in order to preserve single-carrier service to a Class I connection. (The requested southern connections would require another 75 miles or so of trackage rights.) Moreover, both the northern and southern trackage rights we have requested would be

confined to less heavily-used portions of MMA's lines, and would therefore be less intrusive.

In addition to these trackage rights, LP is also requesting that MMA be held to its representations that it will negotiate appropriate haulage rights agreements with the state and the new carrier. These rights should include haulage via LP's preferred Houlton-Brownville Jct.-St. Jean routing over MMA's main east-west lines. Such rights would ensure that LP's existing routing to connecting Class I railroads is preserved at a predictable cost, albeit in less efficient interline service.

It is important to understand that while MMA's stated willingness to enter into a haulage rights agreement with the new carrier is appreciated, it is not sufficient by itself to address the service and competitive harms that will result from the loss of MMA single-line service between LP Houlton and connecting Class I carriers. For one thing, haulage rights operations will require an extra physical interchange, adding to the costs of the service. Moreover, haulage as the only means of reaching the outside world would place too much operational control in the hands of MMA, which has already demonstrated its lack of interest in meeting the reasonable rail service needs of LP Houlton and other Northern Maine shippers, and has bluntly told LP and other shippers that they do not need rail service, and should instead move all of their products by truck or intermodal service, which LP has previously demonstrated is economically infeasible for it. LP believes that if MMA is allowed to abandon the lines serving LP Houlton, the replacement carrier must have the ability to provide efficient and economical service, without being beholden to MMA – in other words, MMA must not be allowed to limit

and control LP Houlton's service options, either directly or indirectly. Trackage rights that enable the replacement carrier to connect to and interchange directly with other carriers are the only remedy that can provide that assurance.

LP hopes to have a good business relationship with the MMA going forward, as it did before MMA decided to abandon its lines. In particular, we hope that MMA, in conjunction with the State-designated carrier taking over the lines being abandoned, will be willing and able to offer joint rates on our shipments to Chicago and points beyond via its Brownville Junction-St. Jean line that will compare favorably with the rates the State-designated carrier is able to offer using its trackage rights over the more circuitous routes I discussed above. The haulage rights we are requesting over the Brownville Junction-St. Jean, PQ line would provide another, alternative mechanism for keeping that route open. However, haulage arrangements over the northern and southern segments would NOT be an adequate substitute for the trackage rights we have requested for the reasons I have already explained, and would be insufficient, in and of themselves, to ameliorate the competitive and service harms that would result from the proposed abandonment.

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of August, 2010, caused copies of the foregoing Supplemental Comments to be served on all known parties of record in STB Docket No. AB-1043 (Sub-No. 1).

/s/ Donald G. Avery
Donald G. Avery