



KAPLAN KIRSCH ROCKWELL

December 17, 2010

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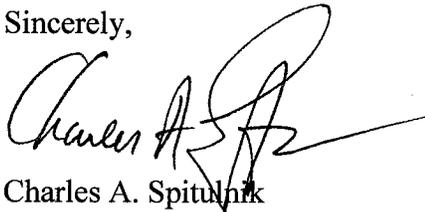
Re: *Montreal, Maine & Atlantic Railway, Ltd. – Discontinuance of Service and  
Abandonment – In Aroostook and Penobscot Counties, Maine*  
STB Docket No. AB 1043 (Sub-No. 1)

Dear Ms. Brown:

I am enclosing the Reply of Twin Rivers Paper Company and United Steelworkers International Union and United Steelworkers Local 4-0291, 4-0365 and 4-1247 to Joint Petition for Approval of Settlement in the above-referenced docket.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Charles A. Spitulnik

Enclosure

cc: All Parties of Record

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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

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**REPLY OF TWIN RIVERS PAPER COMPANY  
AND  
UNITED STEELWORKS INTERNATIONAL UNION AND  
UNITED STEELWORKERS LOCALS 4-0291, 4-0365, and 4-1247  
TO JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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Attorneys for Twin Rivers Paper Company

Dated: December 17, 2010

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Twin Rivers Paper Company (“Twin Rivers”) and the United Steelworks International Union and United Steelworks Locals 4-0291, 4-0365, and 4-1247 (“USW”)<sup>1</sup>, by undersigned counsel, hereby submits its Reply in opposition to the Joint Petition of Montreal, Maine & Atlantic Railway, Ltd. (“MM&A”) and the State of Maine, Department of Transportation (“the State”), filed jointly by the State and MM&A on December 9, 2010 (the “Joint Petition”). The Joint Petition asks this Board, the shipping public in the State of Maine and the thousands of people those shippers employ to accept an as-yet incomplete arrangement, the preliminary parameters of which appear to be contrary to the interests of the public in general, the shippers and their employees in preserving competitive rail service options. As result, Twin Rivers and USW respectfully request the Board to withhold its approval until all parties have had an opportunity to review all of the relevant documents and take an informed position as to whether the proposed arrangement is consistent with the public interest.

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<sup>1</sup> USW represents many of the members of the hourly work force at the Madawaska mill of Twin Rivers Paper Company and joins in this Reply in order to protect the interests of the employees whom it represents.

Twin Rivers has consistently asserted in this proceeding that no solution of the proposed abandonment of the MM&A lines is appropriate if that solution limits the ability of Twin Rivers to enjoy competitive direct rail service at its Madawaska mill. The proposed settlement restricts service options for the shippers like Twin Rivers who are located on those lines, and as a result is not consistent with the public convenience and necessity. Unless this Board removes the restrictions in paragraph 4(e) of the proposed Term Sheet, submitted to this Board by Linda J. Morgan, counsel to MM&A on October 20, 2010 (the "Term Sheet"), that restrict the short line operator and MM&A to overhead service on the lines of the other that they use *via* otherwise unspecified trackage rights arrangements, the proposed abandonment and other terms of the proposed settlement should be denied.

### **INTRODUCTION**

In this proceeding, MM&A seeks authority to discontinue or abandon service obligations on lines specified in its application (the "Lines"). After an extended period of dispute, debate, hearings and contentiousness, during which the State and shippers alike opposed the abandonment, MM&A and the State have reached a settlement. The terms of that settlement are briefly outlined in the Term Sheet and the Joint Petition but its details remain unknown at this time and therefore neither this Board nor any party other than the State and the railroad can comment fully on them and make an informed decision as to whether the deal should be approved. According to the Term Sheet and the summary in the Joint Petition, MM&A will abandon its common carrier obligations on the specified lines. The State will then acquire those Lines following the approval of the abandonment in order to avoid incurring a common carrier obligation with respect to them. In addition, the parties to the proposed settlement expect that the State will select a short line operator to provide service over the Lines. The short line

operator will also have the ability to operate overhead, not local, service on segments of the current MM&A system. The lack of detail about the implementation of the proposed arrangement, one that is being funded by the use of Maine taxpayer dollars, and the limitation to overhead rights are the keys to Twin Rivers' and USW's opposition to the Joint Petition.<sup>2</sup>

There is no way to determine whether the scenario posited by the Joint Petition and the earlier-filed summary Term Sheet is consistent with the public interest. The State is asking this Board and the shipping public in Maine, including Twin Rivers and USW of course, to endorse a deal that will be funded with tax payer dollars without allowing all parties affected to have an opportunity to review in full the terms and conditions of that arrangement.<sup>3</sup> MM&A's rush to secure STB approval of this deal to permit a year-end closing, whether for corporate fiscal reasons or to allow closing before the advent of a new administration in the State House in Maine, should not be allowed to overcome the needs of both this Board and of the affected public to review and comment in full on all of the terms of the proposed deal, especially where the brief outline of terms creates the appearance that one of its conditions is inconsistent with the public interest in preserving competition.

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<sup>2</sup> Twin Rivers is not, as it has done in the past, asking the Board to specifically require that the short line operator have the right or the obligation to serve the Madawaska plant, only that the rights not be limited. In the past, Twin Rivers explained in its Supplemental Comments filed jointly with Fraser Timber Limited in this proceeding on August 3, 2010, that Twin Rivers had recently acquired assets of Fraser Papers, Inc. ("Fraser"), and it can only support the proposed abandonment if "... the STB impose[s] commercially reasonable access rights, specifically trackage rights, across the lines retained, in order to alleviate the potential abusive situation created by the applicant's retention of all access to the nation's rail system." *Id.* at 1-2. *See also*, Reply Comments of Twin Rivers Paper Company and Fraser Timber Limited, submitted in this proceeding on August 10, 2010 ("In fact, because of the unique circumstances of this proposed abandonment and discontinuance, as designed and shaped by the applicant, access rights are so critical that without them, the proposed abandonment and discontinuance should not be approved by the Board.")

<sup>3</sup> Consistent with this attempt to require the public and any interested parties to buy into a deal without complete knowledge and without the opportunity to become fully informed about the deal's implications, the State has issued an RFP on December 15, 2010 for the short line operator and requires responses by January 19, 2011. <http://www.maine.gov/mdot/cpo/rfps/>. Given this truncated time frame, there is no guaranty to the prospective operator that all of the terms of the agreement with MM&A and the State that will govern the operation will have been finally decided upon or that weather conditions and snow-cover will permit the operator to view all of the property that it is proposing to operate.

Moreover, the presence of a side arrangement between MM&A and Irving Forest Products only raises additional questions that must be answered before this Board can make a determination as to whether to grant the abandonment. The situation is complicated. Twin Rivers' concerns with respect to Irving Forest Products are two-fold: First, Irving Forest Products is a major supplier of raw materials essential to Twin Rivers' operations and those of other forest products companies in the region; and Irving Forest Products must not be permitted any incentive to interfere with the existing volume and frequency of delivery of those items. Second, Irving Forest Products' affiliate, Eastern Maine Railway ("EMR"), is potentially positioned to control the shipment of such materials throughout the region. Twin Rivers purchases two commodities from Irving Forest Products: (a) biomass to fuel Twin Rivers' Edmundston cogeneration plant, which supplies energy to the Madawaska paper mill, and (b) pulp wood chips for paper manufacturing. Twin Rivers believes it is Irving Forest Products' largest customer for these commodities.

Twin Rivers understands that Irving Forest Products has entered into side agreements, not part of the package summarized in either the Joint Petition or the Term Sheet, under which Irving Forest Products will pay \$1 million as part of the compensation to MM&A in order to buy down MM&A's trackage rights fee from \$0.50 to \$0.30. It is not clear from the record produced so far what is the nature of that payment – is it loan? Is it a donation? Are there any conditions attached? Will Irving's customers or other shippers in the region bear the brunt of repayment? Additionally, Twin Rivers believes that MM&A and Irving Forest Products have entered into an agreement, the details of which remain unknown at this time, providing for MM&A to have access to Irving Forest Products' plant in St. Leonard, New Brunswick, across the river from the end of MM&A's US line at Van Buren, ME. These arrangements could affect the competitive

landscape in the region, and should be reviewed by this Board and by affected members of the public alike before the Board can approve MM&A's proposed abandonment and the State's acquisition of the Line. Accordingly, Twin Rivers seeks to review, pursuant to the Protective Order in this proceeding, any agreements Irving Forest Products or any of its affiliates have entered into with MM&A, the State, or other parties with respect to the proposed transaction as well as with respect to transportation of Irving Forest Products' goods over the Line or the lines connecting to it at either end.

In addition, Irving Forest Products' parent company, J.D. Irving, Ltd., is also the parent company of EMR and New Brunswick Southern Railway ("NBSR"). Both EMR and NBSR are short line railroads, with EMR providing service in the U.S. and NBSR operating in Canada. EMR and NBSR together provide rail service between New Brunswick and northern Maine. Twin Rivers observes that EMR could potentially bid to become the short line operator under the arrangement proposed by MM&A and the State in the Joint Petition filed on December 9. If the Board approves the MM&A-State transaction, whether or not the short line operator will have the right to provide local service, the prospect that EMR could be the successful short line proposer, raises questions about the delivery of raw materials to Twin Rivers.

Accordingly, before this Board takes any action at all on the proposed settlement, Twin Rivers and USW seek the opportunity to review not just the details of the proposed arrangement between MM&A and the State, but also any agreements Irving Forest Products or EMR has entered into that relate to or potentially affect the Line and any contiguous rail segments. Twin Rivers and USW also request, as set forth in greater detail herein, that this Board impose a condition on the abandonment that removes the restriction on the new short line operator's ability to provide local service on the lines that MM&A will retain.

## ARGUMENT

### **THE BOARD SHOULD CONDITION ITS APPROVAL OF THE PROPOSED ABANDONMENT ON MODIFICATION OF THE SETTLEMENT TO ALLOW THE SHORT LINE OPERATOR TO PROVIDE LOCAL SERVICE ON THE MM&A LINE BETWEEN MADAWASKA AND VAN BUREN**

Twin Rivers and its predecessor in interest, Fraser Paper Company, along with other shippers served by MM&A have filed the record in this proceeding and in the earlier adverse abandonment proceeding<sup>4</sup> with an explanation of why the presence of an alternative to MM&A for direct rail service at the Madawaska mill is essential. Twin Rivers and USW will not burden this record with a repetition of that recitation. The proposed settlement agreement ignores that fully developed explanation of the need for competitive service and should be modified.

Without a modification of Section 4(e) of the Term Sheet to allow the short line and MM&A to at least have the option of providing local service, rather than simply overhead service, on the lines over which each will operate, the proposed settlement and the MM&A abandonment that will follow will be contrary to the public interest and the agreement should not be approved.

The statute unambiguously permits the Board to impose conditions on proposed abandonments. 49 U.S.C. §10903(e)(1)(B) allows the Board to “approve the [abandonment] application with modifications and require compliance with conditions that the Board finds are required by public convenience and necessity.” There is no §10904 element of this proceeding at this point, and any arguments that the parties may have made in the past that suggest that the proceeding is not ripe for imposition of conditions must fail – this is an abandonment proceeding at this point, period. The Joint Petition makes clear that the State’s acquisition of the property will be considered at another time in another proceeding to ensure that the State does not incur

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<sup>4</sup> See STB Docket No. AB-124 (Sub-No.2), *Waterloo Ry. Co. – Adverse Abandonment – Lines of Bangor and Aroostook R. Co. and Van Buren Bridge Co. In Aroostook Co., Maine, slip op.* (Service Date May 3, 2004).

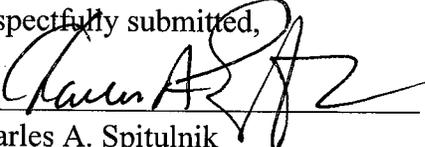
any common carrier obligation by virtue of its acquisition of the Lines from MM&A. The certification of the new short line operator will also come later. This is an abandonment proceeding and the Board may and in this case should impose conditions upon its approval.

That having been established, there is nothing in the scant information submitted by the State and MM&A about the proposed settlement that allows Twin Rivers or USW to understand whether the concerns that Twin Rivers and its predecessor Fraser have consistently expressed will be addressed. As a result, this Board should withhold its approval of the settlement agreement proposed in the Joint Petition:

- (1) until it permits Twin Rivers, USW and other interested parties the opportunity to review and comment on all of the terms of the agreement between the State and MM&A before it is approved by this Board; and
- (2) until it permits Twin Rivers, USW and other interested parties the opportunity as well to review the terms of the Irving – MM&A arrangement to (i) confirm that it contains no provisions that are by themselves anti-competitive and that would therefore require the imposition of additional conditions to preserve competition in the relevant markets and (ii) determine whether there are any terms that have adverse impacts on Twin Rivers or other shippers, and request further conditions to address those impacts; and
- (3) unless it imposes a condition requiring modification of Paragraph 4(e) of the Term Sheet, and any agreement that may follow, to remove the restriction to overhead service only.

WHEREFORE, and in view of all of the foregoing, Twin Rivers and USW respectfully requests the Board to deny the Joint Petition pending satisfaction of the conditions imposed above.

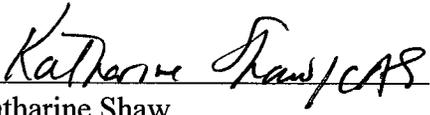
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December 17, 2010

  
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## Certificate of Service

I certify that I have this day caused to be served a copy of the foregoing REPLY OF TWIN RIVERS PAPER COMPANY AND UNITED STEELWORKERS INTERNATIONAL UNION AND UNITED STEELWORKERS LOCAL 4-0291, 4-0365 and 4-1247 TO JOINT PETITION FOR APPROVAL OF SETTLEMENT to be served by first class mail, postage prepaid upon the following:

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