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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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

**- DISCONTINUANCE OF SERVICE AND ABANDONMENT -**

**IN AROOSTOOK AND PENOBSCOT COUNTIES, MAINE**

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**MOTION OF STATE OF MAINE, DEPARTMENT OF TRANSPORTATION  
FOR REJECTION OF APPLICATION**

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Dated: March 11, 2010

Attorneys for State of Maine, Department of  
Transportation

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FOR REJECTION OF APPLICATION**

The State of Maine, by and through its Department of Transportation (“State”), hereby moves for the Board to reject the Application of Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) filed in this proceeding on February 25, 2010. Under 49 CFR 1153.24(e)(1) and (2), the Board is required to review the Application and to reject the Application if it does not substantially conform to the regulations regarding notice, form or content. Any rejection (with the reasons for rejection stated in the order) must be issued within 20 days of the filing of the Application, *i.e.*, by March 17, 2010. *See Norfolk Southern Railway Company – Abandonment – In Beaufort County, NC*, STB Docket No. AB-290 (Sub-No. 262) (served December 7, 2005) (Board must reject application if substantially incomplete or filing is otherwise defective); *Boston and Maine Corporation – Abandonment – In Suffolk County, MA*, STB Docket No. AB-32 (Sub-No. 91) (served August 8, 2001)(dismissed for failure to explain discrepancies and insufficient data for a definitive analysis). The State contends that the Application does not conform to the regulations regarding content and in support thereof states as follows:

The regulations set forth detailed requirements for abandonment applications. *See* 49 CFR §1152.22. In particular, the regulations require the computation of the revenues attributable to and

the avoidable costs for “*the line* to be abandoned,” as well as estimates of the future revenues attributable to, avoidable costs for, and reasonable return on value for “*the line* to be abandoned” for the Forecast Year, and an Estimated Subsidy Payment. 49 CFR §1152.22(d) (emphasis added). The regulations set forth further standards for determining costs, revenues and return on value in 49 CFR Subpart D. Both sections 49 CFR §1152.31 (revenue and income) and 49 CFR §1152.32 (avoidable costs) make clear that the data is to be presented for each individual branch. There are no provisions for aggregating the data from different branches together.

In this proceeding, the Application seeks authority to abandon five separately identified lines of railroad. See P-MMA 1-2; HC-MMA 1-2.<sup>1</sup> See also MMA System Diagram Map, STB Docket No. SDM-1043 (filed August 28, 2009). According to the regulations, MMA should have submitted revenue and cost data for each branch that it proposes to abandon in order that parties in interest, such as the State, can determine whether the operations of a particular branch can determine the burden continued operation of the branch would impose on the applicant and compare it to the potential harm from loss of rail service on shippers and the public. Instead, MMA has lumped all five lines together,<sup>2</sup> and the revenue and cost data, in particular the calculations of avoidable cost, have been aggregated so that it is impossible to analyze the information on a branch by branch basis. See Finley Verified Statement and “Exhibit 1” thereto.<sup>3</sup> For example, it is impossible to tell from the Application, whether the revenue attributable to the main line from Millinocket to Madawaska

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<sup>1</sup> The State will reference page numbers from both the public version (“P-MMA”) and the highly confidential version (“HC-MMA”) of the Application to facilitate the Board and interested parties.

<sup>2</sup> MMA refers to the five subdivisions collectively as the “Abandonment Lines.” P-MMA 2; HC-MMA 2.

<sup>3</sup> With respect to some data, the Applicant has presented the information on a branch by branch basis. See Sheahan Verified Statement, Exhibit D; Sherwood Verified Statement, Exhibit 1.

(the Madawaska Subdivision) exceeds the avoidable costs for that line. With the aggregation of data the Board will not be able to make a reasoned determination about whether the public convenience and necessity permit the abandonment of each of the individual lines. Since the burden is on the applicant to show that the proposed abandonment is in the public interest (*Abandonment and Discontinuance of Rail Lines and Transportation under 49 USC 10903*, 1 STB 894, 906-07 (1996)), without the proper economic evidence for the Board to evaluate the public convenience and necessity standard for each branch line, the Application should be dismissed.

Without waiving the right to challenge any other particular elements of the data, and without determining whether it would be willing to offer a subsidy, the State also notes that the Applicant's inclusion of rehabilitation costs in its calculation of the Estimated Subsidy Payment (49 CFR §1152.22(d)(3)) does not conform to the Board's regulations. While 49 CFR §1152.32(m) permits an applicant to project rehabilitation amounts necessary "to permit efficient operations," and to indicate the FRA class safety standard to be attained, it also requires the Applicant to give consideration to the costs to attain the lowest operationally feasible track level, the rehabilitation level resulting in the lowest operating and rehabilitation expenditures, or the rehabilitation level resulting in the lowest loss or highest profit from operations. There is no indication in the Sheahan Verified Statement that these considerations were taken into account in her determination that the Madawaska subdivision should be improved from FRA class 2 to FRA class 3, or that three other branches should be improved from FRA class 1 to FRA class 2. Sheahan Verified Statement, P-MMA 113-114; HC-MMA 193-195. More importantly, in calculating the Estimated Subsidy Amount, Mr. Finley used the entire rehabilitation costs in calculating the subsidy in Exhibit 1. P-MMA 17; HC-MMA 17; and Finley Verified Statement, P-MMA 92, HC-MMA 93 and "Exhibit 1",

Line 8, HC-MMA 102. Inclusion of all of these rehabilitation costs is contrary to the provisions of 49 CFR §1152.26, line 8, fn1, and 49 CFR §1152.32(m)(2) which provides: “For subsidy purposes rehabilitation costs *shall not be included unless* (i) the track fails to meet minimum Federal Railroad Administrative class 1 safety standards ...” (Emphasis added.) Based on the existing condition of the branch lines as described by Ms. Sheahan, only the subsidy for the Limestone Branch should include rehabilitation costs. The calculation of the subsidy for each of the other four branch lines may not include rehabilitation costs.

For the foregoing reasons, the Board should find that the Application fails to conform to the Board’s regulations, and that the Application should therefore be rejected.<sup>4</sup>

Respectfully submitted,



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Dated: March 11, 2010

Attorneys for State of Maine, Department of  
Transportation

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<sup>4</sup> Under 49 CFR §1152.24(e)(3), a revised application may be submitted. If a proper application is submitted within 60 days, it would not be subject to new notice or publication, but it would be considered a new application for the purpose of the computation of the time periods for protests, comments and offers of financial assistance. *Id.*; 49 CFR §1152.24(e)(4).

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I served a copy of the foregoing Motion for Rejection of Application on the following by e-mail or fax where information is shown, or by U.S. mail, postage prepaid:

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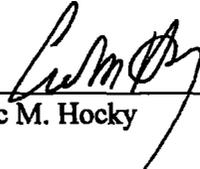
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