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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

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

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REPLY OF MONTRÉAL, MAINE & ATLANTIC  
RAILWAY, LTD. IN OPPOSITION TO "MOTION  
TO REJECT OR DISMISS APPLICATION"

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Attorney for Montreal, Maine  
& Atlantic Railway, Ltd.

Dated: March 15, 2010

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INTRODUCTION

Montréal, Maine & Atlantic Ry., Ltd. ("MMA") submits this Reply in opposition to the "Motion to Reject or Dismiss Application" filed on behalf of Fraser Papers, Inc., Irving Woodlands LLC, Irving Forest Products, Inc., Portage Wood Products, LLC, Seven Islands Land Co. and Red Shield Acquisition LLC.<sup>1</sup> The Petitioners have hypothesized several imaginary, nonexistent issues that allegedly require the Board to reject the abandonment application filed by MMA. As demonstrated below, however, the Petitioners have put forward no reason that would warrant rejection of the application. To the extent that any of the issues have any merit whatsoever, they can be addressed after the application is accepted and the Petitioners have an opportunity to submit their opposition and evidence.

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<sup>1</sup> Fraser Papers, Irving Woodlands, Irving Forest Products and Portage Wood Products are customers served by the lines that MMA proposes to abandon. MMA does not recognize Seven Islands Land Company or Red Shield Acquisition as customers, and the Motion does not identify them or their interests.

## ARGUMENT

The Petitioners rely primarily on the "stranded segment" principle for the proposition that the application is "substantially incomplete" or "otherwise defective". More specifically, they contend that the 23 mile MMA line between Madawaska and Van Buren, which MMA will continue to own and operate, is a stranded segment and that on this basis alone the application should be rejected. As shown below, the Madawaska line is not stranded, and the so-called stranded segment principle cannot bear the weight that Fraser places on it.

### I. The Madawaska Line is Not a Stranded Segment

As a threshold matter, the Madawaska line is by no means a stranded segment. It connects with Canadian National at St. Leonard, New Brunswick and affords Fraser access to the rest of the North American rail system. Fraser, which is the only Petitioner located on the Madawaska line, has the ability to ship or receive to or from any point in the United States via Canadian National, which, as the Board is well aware, has routes through Canada and back into the United States. Simply stated, Fraser will not lose rail service as a result of the abandonment.

A line is not stranded if it is connected with the rail system only via Canada. For example, the former Calais branch of the Maine Central Railroad was abandoned between Brewer, Maine and St. Croix Junction near Calais, but the 12 mile line from St. Croix Junction to Milltown Junction, on the Canadian border, continues to be operated. Maine Central Railroad Co.--Abandonment in Penobscot, Hancock and Washington Counties, ME, ICC Docket No. AB-83 (Sub-No. 7), decision dated November 4, 1985. The segment's only connection with the rest of the rail system is at St. Stephen, New

Brunswick with the New Brunswick Southern Ry., which is an affiliate of Irving Woodlands and Irving Forest Products and which operates in New Brunswick and Maine, where it connects with MMA at Brownville Junction and the Pan Am system at Mattawamkaeg.

It is particularly surprising that Fraser Papers would argue that the Madawaska line is isolated from the rail system. In 2003, Fraser supported Canadian National in opposing the adverse abandonment application filed on behalf of Bangor & Aroostook Railroad in an effort to nullify Canadian National's trackage rights over the Madawaska line. Waterloo Railway Co.--Adverse Abandonment--Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, STB Docket No. AB-279 (Sub-No. 3), decision served May 3, 2004. Fraser supported the continuation of Canadian National's trackage rights as a means to protect rail service to Fraser in the event that MMA suffered financial or service problems.<sup>2</sup> In the words of Fraser's witness, Canadian National's "ability to directly serve the mill alleviates Fraser's concerns over any potential loss of rail service to the plant . . . should a MMA service failure occur." Verified Statement of Austin S. Durant, attached to Fraser Papers opposition filed December 11, 2003. Fraser achieved the goal of maintaining its connection to the national rail system via Canadian National and has no grounds--indeed, should be embarrassed--to complain that it would allegedly be severed from the rail

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<sup>2</sup> In its musings at page 9 of the Motion as to whether MMA might grant trackage rights to Canadian National to serve the Madawaska line, Fraser has apparently forgotten that such trackage rights already exist.

system by the MMA abandonment. Ironically, Fraser will be the only Petitioner that will continue to have direct rail service after the abandonment is approved.<sup>3</sup>

## II. The Stranded Segment Principle Does Not Support Rejection of the Application

Even if the Madawaska branch were considered to be a stranded segment, there would be no grounds for rejection of the abandonment application. Fraser cites 3 Board decisions, but none of them supports the monolithic prohibition against acceptance of an abandonment application that Fraser would have the Board adopt.

In Central Oregon & Pac. Railroad, Inc.--Abandonment and Discontinuance of Service--In Coos, Douglas, and Lane Counties, OR, STB Docket No. AB-515 (Sub-No. 2), served October 31, 2008, the Board noted that it would not allow a segment "to become isolated from the rail system as a result of the abandonment of the adjoining segment." The comment was made to remind the owners of the segments that after discontinuance of service by the applicant--Central Oregon, which did not own the segments and was granted authority only to discontinue service--the owners would not be relieved of their common carrier obligations. Moreover, the language used by the Board referred to isolation from the "rail system", rather than any reference to a "national" or "U.S." rail system, as implied by Fraser.

In Norfolk Southern Railway Co.--Abandonment Exemption--In Baltimore County, MD, STB Docket No. AB-290 (Sub-No. 237 X), served April 3, 2006, the Board denied a petition for exemption for a variety of notice deficiencies and added, in passing, that another issue that had been raised but not adequately addressed related to a stranded rail segment. The petition was denied without prejudice to refile. In Buffalo &

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<sup>3</sup> While arguing for preservation of the option to use the MMA system, Fraser also makes it clear that it does not intend to increase rail shipments via MMA due to Fraser's dissatisfaction with MMA's service. Verified Statement of Brian Sass

Pittsburgh Railroad, Inc.--Abandonment Exemption--In Erie and Cattaraugus Counties, NY, STB Docket No.-AB 369 (Sub-No. 3 X), served September 18, 1998, the Board denied a petition for exemption without prejudice to filing a full abandonment application. The Board cautioned Buffalo & Pittsburgh that it should coordinate any such filing with its affiliate, which had filed for exemption to abandon a line that connected with Buffalo & Pittsburgh.

None of these decisions addressed the merits of any stranded segment argument, and none stands for the proposition that an abandonment application should be rejected merely because there might be a stranded segment issue. Rather, the cases imply that arguments concerning stranded segments may be raised and should be considered in connection with the merits of an application and the development of a full record.

### III. MMA Will Fulfill its Common Carrier Obligations on the Madawaska Line

The Petitioners also question how MMA will operate the Madawaska line after abandonment of the line between Madawaska and Millinocket. In its simplest terms, MMA will operate the line much in the same fashion as many short lines operate line segments that are not connected with other parts of their systems. More specifically, MMA has sufficient rail cars to assign to service on the Madawaska line and sufficient storage capacity to have the necessary cars available. In addition, the haulage agreement between MMA and Canadian National provides for the possibility of Canadian National supplying cars as well. MMA will construct a mechanical facility on the line in order to maintain both locomotives and cars. Necessary personnel will be assigned and can be supplemented at any time to the extent necessary. MMA intends to station two locomotives on the Madawaska line so that it would have a spare in order to provide

service if one locomotive required maintenance. Heavy maintenance and substitution of locomotives, as necessary, will be accomplished by movement over the Canadian National line to and from MMA's other maintenance facilities. In short, MMA will have the capability to fulfill its common carrier obligations on the Madawaska line. Moreover, as noted by the Petitioners, MMA has a profit motive to perform well on the Madawaska line.

MMA did not discuss the details of operations on the Madawaska line in the application for an obvious reason--the Madawaska line is not scheduled for abandonment. To the extent that such operations are relevant, they can be addressed by the Petitioners in their opposition. Such details of operation are not, however, a reason for rejection of the application.

#### **IV. The Hypothetical Problems Posed by Petitioners Do Not Warrant Rejection**

The Petitioners also postulate a series of alleged problems that the Board will face if it accepts the application. For example, it is asserted, without the benefit of any citation, that the Board should not force shippers "to depend upon the laws and regulations of a foreign country in order to access the U.S. interstate rail network." This allegation overlooks the fact that virtually all of the rail traffic to or from the Fraser mill at Madawaska moves through Canada today, whether handled by Canadian National or MMA over its route to the Montréal area and its connections there with Canadian Pacific and Canadian National.<sup>4</sup> The allegation ignores the fact that Fraser and the Irving companies are based in Canada and operate extensively both in Canada and United States

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<sup>4</sup> The purported concerns of Fraser witness Sass about "avoiding the potential regulatory problems and cross-border complications inherent in transiting through Canada" are not supported by any facts. As noted above, virtually all of the rail traffic to or from Fraser at Madawaska passes through Canada, and such traffic moves routinely without any regulatory problems or cross-border complications.

and are, therefore, thoroughly familiar with, and presumably comfortable with, the rail service and regulatory regime in Canada.<sup>5</sup>

The Petitioners also express concern that the Board would face "vexing problems" and be in an "untenable position" by having to evaluate the Canadian rail regulatory scheme and whether it would protect the interest of customers on the Madawaska line. This, of course, is not a criterion that the Board is required to evaluate in an abandonment. Even if it were relevant, it is an issue for consideration in connection with the merits of the application, not in connection with acceptance of the application.

Finally, the Petitioners suggest that there is something inappropriate about MMA's decision to continue to operate the Madawaska line because it generates profits. On an even more draconian level, the Petitioners speculate that MMA will, after the abandonment, "squeeze the divisions of the OFA purchaser" as a "bottleneck" carrier. Surely, wild speculation of this type, unsupported by any facts, cannot be the basis for rejection of the application. The Petitioners are capable of submitting OFAs if they choose to do so, and any issues arising in connection with an OFA can and should be dealt with at the appropriate time--after the abandonment application has been granted.

#### CONCLUSION

For the reasons outlined above, the Board should deny the Motion and accept the application for consideration on the merits. All of the arguments put forward by the Petitioners can be addressed later, and none constitutes sufficient grounds to reject the application. The effort of the Petitioners should be recognized and rejected for what it

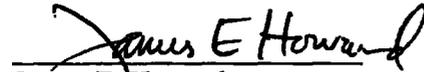
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<sup>5</sup> Fraser Papers and its affiliates are currently in a bankruptcy proceeding that they initiated in Canada. As noted above, the Irving companies not only use international rail service but also are affiliated with rail carriers operating both in the United States and in Canada.

really is-- an attempt to delay these proceedings and to have 2 "bites at the apple" on certain issues.

Respectfully submitted,

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Dated: March 15, 2010

Certificate of Service

I hereby certify that I have served the foregoing Reply as of this 15th day of March, 2010 by causing copies to be sent by e-mail to the parties indicated below:

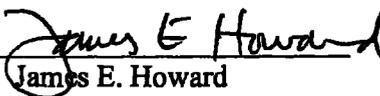
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Affirmation

I., Robert C. Grindrod, declare under penalty of perjury that the facts set forth in the foregoing Reply are true and correct. Further, I certify that I am qualified and authorized to affirm such facts. Executed as of March 5, 2010.

  
Robert C. Grindrod