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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)	

**PETITION TO CLASSIFY THE SCOPE
OF THE BOARD'S ENVIRONMENTAL REVIEW**

Karyn A. Booth
Jeffrey O. Moreno
David E. Benz
Thompson Hine LLP
1920 N Street, N.W. Suite 800
Washington, D.C. 20036
(202) 263-4108

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

Karen S. Austin
Associate General Counsel -
Director of Compliance
Christopher M. (Kit) Keyes
Associate General Counsel

Donald G. Avery
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

*Attorneys for Louisiana-Pacific
Corporation*

Scott G. Knudson
Briggs and Morgan, PA
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 977-8279

Attorney for Huber Engineered Woods, LLC

Dated: March 18, 2010

region. This system has been in continuous operation for over 100 years and has been relied upon by forest and paper products, agricultural, and other industries located on the lines it serves to meet their essential business needs. The MMA system serves a vital public interest: connecting regional businesses and industries locally to one another and to the national railroad system, and providing an important north-south North American railroad connection.

On February 25, 2010, MMA filed an application for authority to discontinue rail service and abandon approximately 233 miles of railroad lines in Penobscot and Aroostook Counties, Maine (“Application”). MMA’s proposed actions seek to permanently discontinue and cease all rail service on the vast majority of its northern lines, and abandon, salvage and scrap the entirety of the lines. The actions MMA has proposed in its Application require appropriate environmental review and documentation under the National Environmental Policy Act (“NEPA”).²

This is not a routine abandonment application. The proposed actions involve significant rail volumes, customers, and regional transportation impacts and are highly controversial. These actions would have enormous and far-reaching adverse socio-economic and environmental consequences requiring thoughtful and appropriate environmental review.

² 42 U.S.C. § 4321 *et seq.*

II. ARGUMENT

A. The Board Should Direct That An EIS Be Prepared

The Board is required to comply with NEPA and to prepare environmental documentation if its approval of a proposal over which it has jurisdiction is likely to have consequences affecting the quality of the human environment.³ The Board's environmental regulations classify various transactions as "normally" requiring an EIS, an EA, or neither. The regulations provide that an EA will "normally" be prepared for proposed abandonment or discontinuance actions, however, as MMA has acknowledged in its February 4, 2010 pre-application filing (at 7), and the Board has recognized in its March 17, 2010 decision (at 5), the use of an EA in such proceedings is not automatic, and the Board can and has utilized an EIS in appropriate circumstances, even where the proceeding is relatively limited in scope.⁴

Additionally, the applicable regulations provide that the Board may modify or "reclassify" the normal environmental review requirements for individual proceedings.

³ NEPA, together with regulations implemented by the Council on Environmental Quality, 40 C.F.R. Parts 1500-1508, set forth the governing principles for the evaluation of actions involving "major Federal action." The Board's regulations setting forth its environmental review procedures are set forth at 49 C.F.R. Part 1105, "Procedures for Implementation of Environmental Laws."

⁴ See, e.g., *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) (ICC corrected decision served May 27, 1986) (full EIS ordered in proposed abandonment of a 11-mile rail line involving the potential diversion of rail traffic to truck, and public concerns over the impacts of the abandonment).

See 49 C.F.R. § 1105.6(d) (“[f]or actions generally requiring an EA, the Board may prepare a full EIS where the probability of significant impacts from the particular proposal is high enough to warrant an EIS”). To date, the Board has not issued an order classifying the MMA Application as requiring an EA or EIS.⁵

NEPA requires that an EIS be prepared when a proposed federal action has the potential to significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). In determining whether impacts are significant, the Board considers, *inter alia*, the nature of the involved impacts, whether these impacts are controversial, and whether the proposed action is precedent-setting. Petitioners respectfully submit that the Board must classify (or reclassify) its environmental review of MMA’s Application as an EIS because (1) MMA’s Application will have significant adverse environmental impacts, (2) the impacts are controversial, and (3) the Application is precedent-setting.

⁵ In its Application, MMA states that SEA had approved the request of MMA to retain a third-party consultant to assist the Board in conducting appropriate environmental review. *See* Application at 33. MMA also states that a preliminary draft EA has already been prepared and served on certain parties (presumably on affected public agencies and tribes) and that after reviewing comments on the preliminary draft EA, SEA will issue an EA to the public for review and comment. *Id.* at 33-34. Elsewhere in its Application, MMA indicates that no decision has been made by the Board on the preparation of an EA or EIS. *See* Exh. 7, at 3 (draft Federal Register notice). The Board’s March 17, 2010 decision simply states that an EA or an EIS will be prepared. SEA has confirmed to counsel for petitioners that it is currently engaged in the preparation of an EA, although it has not ruled out the possibility of additional or supplemental environmental review, or the possibility of reclassification.

1. MMA's Proposed Abandonment Will Have Significant Adverse Environmental Impacts

a. The Need to Carefully Evaluate the Socio-Economic and Cumulative Effects of the Proposed Abandonment

In its Application, MMA concedes that, even in the past year (year ending September 30, 2009), during a time period of enormous national and regional economic turmoil and decline, the MMA still moved considerable rail traffic over the lines it seeks to abandon. During the year, MMA moved approximately 9,200 carloads over the proposed abandonment lines. *See* Application at Exhibit 3. While this traffic level is not as high as that of a few years ago, or as high as MMA would like, it is still an amount far greater than normally seen in Board abandonment proceedings.

MMA asserts that it is unprofitable to move this traffic and that it hopes to save the rest of its system by severing its northern lines, instead focusing MMA's business on its remaining east-west lines. MMA alleges that, with the future elimination of service on its northern lines, generally no harm will be caused customers on these lines, because this traffic can move by alternate truck or combination truck/rail transload (for longer hauls of 300 miles or more). *See id.*, Verified Statement ("V.S.") of Robert E. Holland. MMA contends that, because truck competition is so "pervasive," all of its customers can easily use substitute truck (or truck/rail) service to meet their business needs. *See* V.S. Joseph R. McGonigle at 4-5.

MMA's Application representations on the feasibility of alternative truck (or truck/rail) are directly contrary to representations MMA made to the Board only a

year-and-a-half ago. In August 2008, the same MMA officials represented to the Board that MMA's rail service was "essential" to its Northern Maine customers and further asserted that, even modest changes in rail routings or curtailments to service, let alone the full abandonment of a substantial portion of the MMA system, would result in the economic demise of some of its core customers:

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. MMA is the only rail carrier providing rail service to several mills in Maine, and certain cases the mills could not survive without such rail service. 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. The economic viability of MMA is closely linked to the well-being of these customers. Such customers could clearly not survive if MMA were forced to curtail or abandon its service.

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).

MMA's theory in its Application appears to be that if it is theoretically possible to use truck service, then truck service (or truck/rail service for longer

distances⁶) is an effective replacement, regardless of the acknowledged significant additional handling costs MMA apparently simply assumes that shippers can readily absorb or otherwise pass through to others (i.e., consumers). This is certainly not the case as MMA has acknowledged in its previous Board filings. Northern Maine businesses served by MMA operate in highly competitive environments and have reasonably relied on the existence and continuation of this long-serving rail system in making decisions to locate, continue, and expand their operations. Especially for those shippers involved in longer-distance movements, trucking or truck/rail is simply not a viable economic option.

The MMA ignores the possibility of its proposed actions having potentially devastating impacts on businesses located on the abandonment lines (as a result of increased transportation costs), and the associated socio-economic and cumulative impacts (including consumer and employment impacts) of the proposed abandonment.⁷

⁶ Conveniently, MMA asserts that for longer movements of over 300 miles, which it admits would require combination truck/rail service, its affiliate Logistics Management Systems has the nearest available transloading facility in Bangor, Maine, that is ready and willing to meet the needs of the shippers – thus apparently enabling MMA to ultimately profit off its proposed abandonment actions.

⁷ For example, LP recently invested over \$150 million in new facilities at its Houlton mill (which employs approximately 150 people), which investment was made in reliance on the existence and continuance of rail transportation. MMA's proposed abandonment would adversely affect LP's ability to deliver its products at competitive rates, and places this considerable investment (and important jobs) at risk. Likewise, if the Application is approved, northern Maine gas and heating oil distributors (e.g., Dead River Company) who depend on rail service will face significant cost increases for inbound shipments that currently move by rail. This will result in increased fuel and heating oil prices being borne by northern Maine consumers (many of whom live at or

Thorough examination of these impacts is especially important here as the region consists of primarily rural communities that are struggling economically, and the Board has a special statutory obligation in abandonment and discontinuance proceedings to fully consider “whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.” 49 U.S.C. § 10903(d)(2).⁸ Accordingly, these important socio-economic and cumulative impact issues need to be carefully evaluated in a full EIS.

b. The Need to Carefully Evaluate the Core Environmental Impacts of the Proposed Abandonment

Even if alternative truck service were feasible for all displaced rail movements, which is highly doubtful, MMA fails to adequately explain in its Application the critical impacts of its proposed actions. Much of the environmental review associated with this proposed abandonment, as in all abandonment cases, will likely be focused on the impacts of rail-to-truck diversions. Even a cursory review of the Application reveals that MMA has vastly underestimated the impacts of rail-to-truck diversions. It does this

below the poverty line) – and who have already faced significant fuel cost increases in recent years. Additionally, large private capital expenditures and public funding has been made to support continued rail service, which investments will be lost if the lines are abandoned. These and other significant socio-economic/cumulative impacts of the proposed abandonment have been expressed in letters to the U.S. Department of Transportation and the Maine Department of Transportation from numerous affected rail users, consumers, and public and elected officials seeking to preserve northern Maine rail service. See <http://www.maine.gov/mdot/tigergrants/ntrpp/supportletters.htm>.

⁸ See also, *Mid States Coalition for Progress v. STB*, 345 F.3d 520, 549-50 (8th Cir. 2003) (as part of its NEPA responsibilities, STB must examine and evaluate all reasonably foreseeable direct and indirect effects of proposed actions).

by using inappropriate base-year traffic assumptions,⁹ by using inappropriate rail-to-truck diversion ratios,¹⁰ by making generalized and erroneous assumptions on the routings available to heavy load trucks,¹¹ and by excluding much of the existing overhead rail

⁹ In developing realistic base-year figures for which to perform an environmental review, in instances like here where there are extraordinary recent events (e.g., the 2008-2009 credit crisis, a recession, and turmoil in the housing market), the Board usually excludes the outlier year by using a normal service year, or by employing a multi-year regression or other analysis to ensure that appropriate base-year figures are utilized. *See, e.g., Pyco Industries, Inc. – Feeder Line Application—Lines of South Plains Switching, LTD. Co.*, STB Finance Docket No. 34890 (STB served Aug. 31, 2007) at 24-26; *R.J. Corman Equipment Company, LLC – Abandonment Exemption to Johnson, Magoffin, and Breathitt Counties, KY*, STB Docket No. AB-876X (STB served Nov. 5, 2004) at 4-5. MMA acknowledges that 2008-09 were extraordinary and that “[s]ome portion of the business lost due to the recession will likely return as the economy strengthens,” (V.S. McGonigle at 6) but it does not adjust its base-year computations to present a realistic base-year traffic level.

¹⁰ The Board traditionally has used a 4-to-1 rail-to-truck conversion factor ratio, even with heavy load truck lumber and wood product movements. *See, e.g., Union Pacific Railroad Company – Abandonment – In Rusk County, TX*, STB Docket No. AB-33 (Sub-No. 275) (STB served June 26, 2009) at 2; *Union Pacific Railroad Company – Abandonment Exemption – In Bexar County, TX*, STB Docket No. AB-576 (Sub-No. 2X) (STB served Feb. 13, 2007) at 1-2. In its Application, MMA contends that the conversion ratio should be almost one-half that amount. *See V.S. Holland at 3.*

¹¹ MMA assumes that most of the traffic will move in 100,000 pound gross weight truck payloads and further assumes that the traffic will move over low-density Northern Maine local and state roads and connect into the U.S. Interstate 95 system at Houlton and Sherman Mills, Maine south to Bangor and beyond. However, MMA failed to conduct any detailed analysis of the transportation systems or how individual shippers would connect into those systems. Since most of the shippers on the proposed abandonment lines are located well-north of the I-95 connections (or are not directly situated on I-95), a detailed study of the feasibility of all segments of each impacted state and local highway (and I-95) to handle the increased traffic, as well as the impacts on the small communities situated on these roads, is in order. Additionally, contrary to the general representations in MMA’s Application, the Maine Department of Transportation has questioned the feasibility of trucking large volumes of products to and from Aroostook County:

traffic from its rail-to-truck diversion analysis.¹² Each one of these assumptions can have significant impacts on the environmental analysis and must be carefully and thoroughly considered.

For example, even using MMA's unrealistic baseline of 9,168 rail carloads that would need to be diverted to trucks, and assuming that all such traffic could be cost-effectively moved via truck, under traditional STB analysis (assuming four trucks required to move every rail carload), this amounts to an additional 36,672 loaded trucks annually (9,168 carloads x 4), or an additional 73,344 loaded and empty backhaul truckloads moving over Maine's highways and beyond on an annual basis. That amounts

Trucking raw and finished products in and out of the County is difficult due to the distances travelled and the relatively slow speed requirements. Many of the required travel routes traverse small towns with slow speed limits, where the terrain is mountainous and the roads are narrow with multiple hazards such as frost heaves, curves and wildlife.

Maine Department of Transportation, Tiger Grant Application, Northern Tier Rail Preservation Project (submitted Sept. 15, 2009) at 13. Moreover, MMA's assumptions as to the future availability of I-95 to accommodate 100,000 pound trucks are highly questionable. Prior to this year, 100,000 pound trucks were not allowed on this portion of I-95 Maine, and currently these heavy-load trucks are only able to temporarily operate on I-95 pursuant to a one-year "pilot program" rider attached to the Fiscal Year 2010 U.S. Department of Transportation Appropriations legislation (expiring September 30, 2010). See Pub. L. No. 111-117, Sec. 194 (2010). Thus, if 100,000 pound trucks are to be utilized (as contemplated by MMA) then it cannot be assumed that I-95 will be available to accommodate these movements in the future, and the environmental analysis needs to appropriately consider this fact.

¹² MMA claims that there are other alternative rail transportation arrangements that could be made for the vast majority of the overhead traffic, even though elsewhere in its Application MMA claims that trucks are a more feasible means of moving northern Maine traffic. The STB has not excluded overhead traffic from its rail-to-truck

to an additional 306 trucks per day under traditional STB analysis (assuming 240 operating days per year).¹³

These amounts appear to easily exceed the Board's threshold for further study, which is an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment. 49 C.F.R. 1105.7(e)(5)(C).¹⁴ These figures can be expected to be much higher if the Board employs more realistic base-year traffic level figures than those presented in the MMA's abandonment application. Further, even under MMA's unrealistic rail-to-truck traffic assumptions the Board's study thresholds would be met. These levels of truck-to-rail diversions are extraordinary in rail abandonment proceedings.

Additionally, a recent comprehensive analysis of the region's transportation system¹⁵ has conclusively demonstrated that the roadway systems are deficient, have significant safety issues, and are very ill-suited to moving heavy local or through truck

conversion analysis in past abandonment proceedings.

¹³ Maine Department of Transportation confirms that "the loss of this important rail segment may translate into as much as an additional 34,100 to 39,000 trucks on local and state roads and highways per year" on a loaded basis – which translates to between a 68,200 to 78,000 increase in loaded and empty backhaul movements. *See* Maine Department of Transportation Tiger Grant Application, Northern Tier Rail Preservation Project (submitted Sept. 15, 2009) at 13.

¹⁴ Petitioners have not conducted a survey of average daily traffic on the involved highways, but understand that many of the affected highways have average daily traffic levels that are less (and often far less) than 3,000.

¹⁵ *See* Final Environmental Impact Statement, Aroostook County Transportation Study (FHWA-ME-EIS-02-1-F) (Dec. 2009).

traffic. The regional transportation system consists of 2-lane highways of varying speeds (the State of Maine has documented that Route 1 alone has more than 55 abrupt speed limit changes) crossing directly through local downtown areas. The roadways have acute safety issues, are inefficient, and are inadequate to handle the present traffic mix, let alone the significant additional heavy truck volumes that may be diverted if the

Application is approved:

Aroostook County has a limited transportation system that presents access and mobility challenges to, from, and within the county. Poor mobility in turn limits economic opportunity. The regional transportation system of 2-lane highways, often extending through downtown centers, does not provide direct, efficient connections between population and commercial, industrial, and agricultural centers . . . to the high speed Interstate highway systems of Maine. . . . Many highways in Aroostook County have geometric and safety deficiencies that make it difficult for commercial vehicles to travel safely. Farming and forestry are the chief economic activities in Aroostook County, resulting in disproportionate numbers and percentages of heavy trucks as compared to all other vehicle types. The preponderance of heavy trucks causes functional conflicts between through traffic (trucks) and local traffic in downtown areas and also causes functional conflicts between through traffic (trucks) and local traffic in downtown areas and also causes congestion and safety problems. Travel times between points within northern Aroostook County, and between the Study Area and external points, hamper the mobility of goods and people, and thus increase the cost of goods brought in and goods sold to market. The additional travel and delivery costs affect the local economy, and reduce job opportunities. The existing highway system connecting the county's major population and commercial, industrial, and agricultural centers with each other, [and] the I-95 . . . does not have a consistent cross-section and consistent speed, has dramatic speed differentials between rural and developed areas and between different vehicular types.

The limited highway system does not provide efficient access to jobs and services.

Maine Department of Transportation, Tiger Grant Application, Caribou Connector (submitted Sept. 15, 2009) at 5-6 (emphasis added, citation omitted). The thoroughly-documented safety, structural, and other deficiencies of this region's transportation system have focused in particular on Route 1 and Route 11 – the two key truck routes that MMA says it is relying on to meet the future transportation needs of its abandoned customers. *See, e.g.*, Supplemental Draft Environmental Impact Statement, Aroostook County Transportation Study (FHWA-ME-EIS-02-1-SD) (June 2006) at Chapter 3.¹⁶

Because of the acute regional transportation system problems, a thorough examination of the involved traffic transportation system, with particular focus on system continuity, safety, and mobility, on a route-by-route, and segment-by-segment basis, clearly should be conducted as part of an EIS review.

Petitioners respectfully submit that, given the large amount of traffic involved, and because of the widespread major impacts and the established major deficiencies of the existing transportation systems, an EIS in this case should address all potential significant impacts normally reviewed in a STB-conducted EIS, including safety, transportation systems, land use, energy, air quality, noise, biological resources,

¹⁶ Other critical east-west connecting roadways that MMA relies on post abandonment also have serious safety problems. For example, over one-half of Route 161 violates Maine shoulder width design criteria and another over one-third of that same route violates travel lane width criteria. *Id.* Also, Route 161 has 18 vertical geometric deficiencies and 4 horizontal curve deficiencies. None of these deficiencies are addressed by MMA. *Id.*

water resources, socio-economic effects (including the possible effects of diminished business output and closures), environmental justice, cultural and historic resources, and indirect and cumulative effects. Petitioners suggest that the specific issues to be addressed by the Board in each of these categories should be developed through an appropriate open scoping process.

2. MMA's Proposed Abandonment Is Highly Controversial

The Board has held that preparation of an EIS is required in situations where “the effects of the proposed project on the quality of the human environment are likely to be highly controversial.” See *Southwest Gulf Railroad Company – Construction and Operation Exemption – Medina County, TX*, STB Finance Docket No. 34284 (STB served Jan. 28, 2004) at 1, 3 and STB served March 13, 2006 at 3 (reclassifying a proposed action from an EA to an EIS); *HolRail LLC – Construction and Operation Exemption – In Orangeburg and Dorchester Counties, South Carolina*, Finance Docket No. 34421 (STB served July 29, 2005) at 1-2 (preparation of an EIS for a proposal to construct two miles of new rail line was appropriate because “the [environmental] effects of the proposed project . . . are likely to be controversial”). The significant impacts associated with MMA’s Application are highly-controversial. These controversies arise, *inter alia*, because the size and scope of the MMA Application as explained above, the fact that active shippers on the proposed abandonment lines use MMA rail service today and face the loss of that service, the considerable adverse socio-economic and environmental impacts of the prospective loss of this service to the region, the failure of

the MMA's Application to adequately address the impacts of its proposed actions, and the great concern to communities and their elected representatives, several who have already written to the Board in this proceeding.

Because of the controversy surrounding the MMA Application, the STB has taken the extreme step of deciding to hold a public field hearing in Maine in this proceeding. *See Montreal, Maine & Atlantic Railway, LTD – Discontinuance of Service and Abandonment – in Aroostook and Penobscot Counties, ME*, STB Docket No. AB-1043 (Sub-No. 1) (STB served Mar. 12, 2010) at 1 (“[b]ecause this proceeding clearly involves important issues for the people of Maine, the Board will . . . hold a public hearing in Maine”); *see also, STB Release* (Mar. 12, 2010) (Statement of Chairman Elliott) (“This proposed abandonment would affect many shippers and the local and regional economy”). The scheduling of a field hearing is rare and extraordinary in abandonment proceedings and is an indication of the controversy surrounding the MMA Application.

3. MMA's Proposed Abandonment Is Precedent-Setting

Under NEPA, in determining whether an action is significant and warrants an EIS, actions are considered significant where the matter is precedent-setting. *See* 40 C.F.R. § 1508.27(b)(6). The size and scope of the MMA proposed abandonment actions are unprecedented in the modern era, and it is one of the largest railroad abandonment applications of its kind in terms of miles of track proposed to be eliminated, the volume of traffic affected, the expanse of the geographic region in one state to which rail freight

service would be eliminated, and the loss of an important north-south North American railroad connection. The unique question arising is whether a carrier can strand and eviscerate a substantial portion of a longstanding railroad system that serves core customers to the substantial detriment of the affected communities forced to bear the significant social, environmental, economic, and safety costs associated with the railroad's unilateral choice. The answer to the question in this proceeding will be precedent-setting and the question should be answered in an appropriate proceeding that includes a full environmental review, *i.e.*, an EIS.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board classify (or re-classify) this proceeding as one requiring an EIS rather than an EA, and

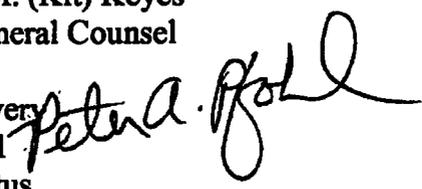
prepare an EIS with respect to the environmental impacts of MMA's proposed abandonment application.

Respectfully submitted,

Karyn A. Booth
Jeffrey O. Moreno
David E. Benz
Thompson Hine LLP
1920 N Street, N.W. Suite 800
Washington, D.C. 20036
(202) 263-4108

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

Karen S. Austin
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Associate General Counsel

Donald G. Avery
Peter A. Pfohl 
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

*Attorneys for Louisiana-Pacific
Corporation*

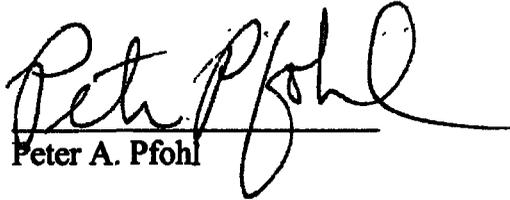
Scott G. Knudson
Briggs and Morgan, PA
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 977-8279

Attorney for Huber Engineered Woods, LLC

Dated: March 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of March, 2010, caused copies of the foregoing Petition to be served on all known parties of record in STB Docket No. AB 1043 (Sub-No. 1).


Peter A. Pfohl