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April 20, 2010

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**VIA FEDERAL EXPRESS**

Chief  
Section of Administration  
Surface Transportation Board  
Washington, DC 20423

**Re: Montreal, Maine & Atlantic Railway, Ltd.  
STB Docket No. AB 1043 (SubNo. 1)**

ENTERED  
Office of Proceedings  
APR 21 2010  
Part of  
Public Record

Dear Sir/Madam:

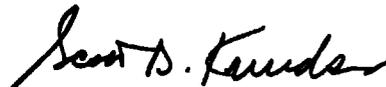
Enclosed for filing in the above-referenced matter please find the original and 10 copies of the following:

1. Protest of Huber Engineered Woods, LLC (Highly Confidential Version)
2. Verified Statement of Alan Weber (Highly Confidential Version);
3. Protest of Huber Engineered Woods, LLC (Public Version);
4. Verified Statement of Alan Weber (Public Version).

Mr. Weber's original signature pages will follow under separate cover.

By copy of this letter all parties are being served with a copy of the public versions of the Protest and Verified Statement. Counsel who have agreed to the Protective Order in this matter may contact us to obtain a copy of the highly confidential versions.

Very truly yours,

  
Scott G. Knudson

SGK/bcs

Enclosures

cc: All Parties on Attached Service List

Chief  
Section of Administration  
April 20, 2010  
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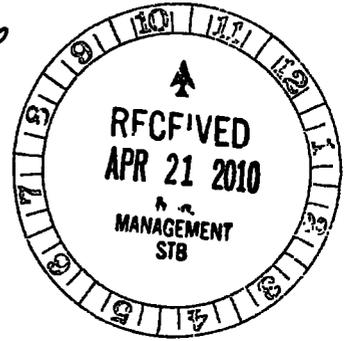
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April 20, 2010  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB 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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**PROTEST OF HUBER ENGINEERED WOODS, LLC**

**(PUBLIC VERSION)**

ENTERED  
Office of Proceedings  
APR 21 2010  
Part of  
Public Record

Dated: April 20, 2010

Respectfully submitted,

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ATTORNEYS FOR HUBER ENGINEERED  
WOODS, LLC



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

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MONTREAL, MAINE & ATLANTIC RAILWAY, LTD –  
DISCONTINUANCE OF SERVICE AND ABANDONMENT –  
IN AROOSTOOK AND PENOBSHOT COUNTIES, MAINE

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**PROTEST OF HUBER ENGINEERED WOODS, LLC**

**INTRODUCTION**

Pursuant to 49 C.F.R. § 1152.25, Huber Engineered Woods, LLC (“Huber”) protests the Application of the Montreal, Maine & Atlantic Railway, Ltd. (“MMA”), which MMA filed with the Surface Transportation Board (“STB”) on February 25, 2010. In its Application, MMA is seeking the Board’s permission to abandon rail service on 233 miles of track in northern Maine, including the track necessary to serve Huber’s wood processing plant in Easton, Maine. Because MMA has failed to establish that the public convenience and necessity permit the abandonment, the Board must deny the Application. *See* 49 U.S.C. § 10903(e)(2).

**BACKGROUND INFORMATION**

**Protestant’s Business**

Huber has its headquarters in Charlotte, North Carolina. It is a wholly owned subsidiary of J.M. Huber Corporation, a diversified supplier of engineered materials,

natural resources and technology services to wide range of end users. Huber manufactures an improved version of oriented strand board and other engineered wood products used primarily in the housing industry. *See Verified Statement of Alan Weber at 1.*

Huber has had a plant in Easton, Maine, since 1981. The Easton plant is focused on producing Huber's AdvanTech® Flooring and Sheathing, as well as Huber's Zip System® Wall and Zip System™ Roof Sheathing products. Currently, the plant employs 117 people, with an annual payroll of over \$5.3 million in wages and benefits. In 2007 Huber invested nearly \$43 million at its Easton plant to upgrade and add equipment to improve plant productivity. *See Weber Verified Statement at 1-2.*

*Protestant's Interest in the Proceeding*

MMA is the only railroad that serves Easton, or virtually all of northern Maine for that matter. The goods Huber receives or ships move over MMA's Fort Fairfield and Presque Isle Subdivisions and that part of the Madawaska Subdivision that reaches Squa Pan, where the Presque Isle Subdivision begins. Huber's Easton plant is vitally dependent on access to rail service. It receives by tank car 100 percent of two key inputs used to make its engineered wood products: resin and slack wax. Huber also ships a significant share of its output by rail. *See Weber Verified Statement at 2.* In 2009 Huber received or shipped \_\_\_ carloads, the lowest ever, due to the extreme recession in the housing industry. Huber is projecting that by 2013, it will be receiving or shipping \_\_\_ carloads at Easton. *See Weber Verified Statement at 3-4.*

*Adverse Impact to Huber's Easton Plant*

The loss of rail service to Easton will have major economic consequences for Huber. As noted, 100 percent of two important inputs currently arrives by rail. MMA seriously understates the cost of losing rail service to the plant for these two inputs. Given the location of Huber's suppliers, the economics of shipping means these inputs will move by rail to a transload facility. Huber estimates that transloading and trucking costs to Easton will add five cents in shipping costs per pound of resin or wax shipped to Easton. *See Weber Verified Statement at 4.* The added inbound costs to Huber is projected at \$\_\_\_\_\_ in 2011, rising to \$\_\_\_\_\_ by 2013, as the housing industry recovers, and Huber's production at Easton recovers correspondingly. *See Weber Verified Statement at 5.*

There will be a similar impact on outbound shipping costs. Transloading finished products to rail is uneconomic, so all outbound shipments will transfer to trucks. The increased incremental cost will range from \$\_\_\_ to \$\_\_\_ per rail car. Outbound shipping costs will rise by \$\_\_\_\_\_ in 2011, rising to \$\_\_\_\_\_ in 2013. Total shipping costs will increase by \$\_\_\_\_\_ in 2011, rising to \$\_\_\_\_\_ in 2013. *See Weber Verified Statement at 5.*

*MMA Understates the Impact to Huber*

MMA's consultant Robert Holland concluded that Huber would be one of the most significantly impacted shippers from abandonment. *See Verified Statement of Robert Holland at Exh. C.* However, his estimate of transload costs, plus associated incremental trucking costs to the final destination, *see Holland Verified Statement at 5,* is

much lower than what Huber estimates. The cost figure it is using is \_\_\_ a pound, which translates to an additional cost of \$\_\_\_\_\_ per tank car for transloading and trucking to Easton.

A more glaring flaw to MMA's analysis is MMA CEO Robert Grindrod's wholly unsupported assertion that traffic on the lines of rail proposed for abandonment will not recover soon. *See Verified Statement of Robert Grindrod at 1-2, 5.* That assertion sweeps far too broadly over MMA's traffic base. Huber's Easton plant is directly linked to the housing industry. Various housing industry analysts expect the housing market to recover significantly in the next two to three years. *See Weber Verified Statement at 2.* Yet MMA's forecast year actually shows a decrease in shipments for Huber, dropping from \_\_\_ carloads to \_\_\_ (both inbound and outbound). Huber projects for calendar year 2010 total car loads will be \_\_\_, and rising to \_\_\_ by 2013. *See Weber Verified Statement at 4.* MMA's forecast year for Huber is off by over 200 percent. Grindrod's pessimistic outlook is totally unfounded as far as Huber is concerned. MMA's forecast for other wood product manufacturers is also very likely similarly off base. Because the traffic decline Grindrod says drives his abandonment decision occurred overwhelmingly in forest products, *see Grindrod Verified Statement at 3*, a recovery in the housing market should increase MMA's car loadings and revenues dramatically, vitiating one of MMA's core justifications for abandonment.

#### *Adverse Community and Environmental Impacts*

Huber currently employs 117 people at Easton. It is one of the largest employers in the area and pays a substantial amount of local property taxes. Additional capital

investments at Easton is under evaluation. Employment should also increase with the recovery of the housing market. But loss of rail service will drive up Huber's operating costs and make the plant less competitive. Added investment and employment may go to another of Huber's plants. Weber Verified Statement at 5. There also will be a negative environmental impact from moving (by 2013) over \_\_\_\_\_ tons of freight from rail to local and state highways. Likewise the 40 miles of local and state highways leading to the juncture with I-95 at Houlton, Maine, will see incremental wear and tear. Weber Verified Statement at 6.

## **ARGUMENT**

### **I. The Applicable Legal Standards**

In 49 U.S.C. § 10903(d)(1), Congress has required before any rail carrier can abandon service, the carrier must show the STB that "the public convenience and necessity require or permit the abandonment." As part of its consideration whether the carrier has met that standard, the STB must consider what impact abandonment would have on "rural and community development." *Id.* In considering an abandonment application, the STB must weigh the harm to shippers and rural and community development with the burden on the carrier from providing on-going service. *See Colorado v. United States*, 271 U.S. 153, 169 (1926).

MMA has the burden to offer competent evidence to prove that the public convenience and necessity require abandonment of rail service. *See Illinois Cent. Gulf R. Co. – Abandonment*, 363 I.C.C. 93, 101 (1980), *reversed on other grounds sub nom. City of Cherokee v. I.C.C.*, 641 F.2d 1220 (8th Cir. 1981). Here, given the scope of its

application, MMA must show that abandoning service to all of northern Maine (except an isolated segment dependent on Canadian-based carriers for continued service) serves the public convenience and necessity.

## **II. The STB Should Deny MMA's Application**

There should be little doubt that STB should deny MMA's Application. This is an abandonment application unlike any other recent application. MMA proposes to eliminate rail service to a depressed, remote area dependent on basic industries which, in turn, depend on rail service. MMA's Application overstates its justification for abandonment, while brushing off the severe shipper and community impact that its proposed abandonment will cause.

### **A. MMA's Application Grossly Overstates Its Justification For Abandonment**

Foremost among the flaws in MMA's Application is its misleading forecast year, February 1, 2010 to January 31, 2011. A major share of MMA's revenues is derived from hauling finished wood products, which in the main are used in the housing industry. There can be no dispute that the housing industry is in a severe recession, one of the worst in decades. But even today that industry is moving out of the doldrums. Contrary to what MMA's CEO Grindrod proclaims, the housing industry will recover. With that recovery, Huber's Easton plant would increase production, which would in turn increase its use of MMA's services. Indeed, contrary to MMA's forecast of a decline in Huber shipments in 2010, Huber expects to increase railcar usage, by over 200 percent more than MMA's forecast. The same gross understatement must apply, as a matter of

common sense, to the other producers of finished wood products on MMA's lines. *Cf. Southern Pac. Transp. Co. v. I.C.C.*, 871 F.2d 838, 842 (9th Cir. 1989) (affirming denial of abandonment application based in part on cyclical recovery of local lumber industry).

Another serious error in MMA's application is the rehabilitation cost its Vice President of Engineering proclaims is needed to bring the lines proposed for abandonment to FRA Class III standards. Verified Statement of Melody Sheahan at 6. MMA's asserted rehabilitation costs provide no justification for abandoning service altogether. STB's own regulations say that rehabilitation costs must reflect what is necessary to operate efficiently the track proposed for abandonment. *See* 49 C.F.R. § 1152.32(m). Nowhere in the Sheahan Verified Statement is there any meaningful discussion of how rehabilitation would make for more efficient use of MMA's motive power or rolling stock. (The tank cars Huber receives are not owned by MMA.) Moreover, the current service lines impose the main burden on Shippers, who must build in-transit times into their supply chain management.

STB's own guidance provides that only rehabilitation costs to meet FRA Class I standards are allowed. But MMA's discovery responses show the Madawasha subdivision is currently at Class II standards. The Sheahan Verified Statement concedes all other subdivisions are Class I except the Limestone Subdivision, over which no traffic has moved in years. *See* Sheahan Verified Statement at 5.

Finally, Huber takes issue with the costs of transloading tank cars. Its own assessment places those costs as far higher than what MMA's consultant estimated.

**B. Abandonment Will Adversely Affect Huber's Easton Plant**

There is no doubt that MMA's Application will seriously and negatively affect Huber's Easton plant. In three years Huber's transportation costs will rise over \$\_\_\_\_\_. These cost increases will make the Easton plant less competitive. Huber's future capital investment may go to other plants, which will have an adverse affect on plant employment, payroll and local property taxes.

**C. Community Impact**

Huber's Easton plant is in Aroostock County, a remote and comparatively depressed area of the region. Unemployment significantly exceeds state average. Loss of railroad service will undermine the competitiveness of Huber's Easton plant, and with that, the future prospects of the plant, including capital investment and employment. Huber may well elect to move its future capital investments to other locations, which will at the minimum limit employment opportunities at Easton. *Cf. Georgia Public Serv. Comm'n v. United States*, 704 F.2d 538, 546-47 (11th Cir. 1983) (impact on local community a factor in reversing decision to approve abandonment). The diversion of \_\_\_\_\_ tons of freight from rail to over \_\_\_\_\_ truckloads, while hard to quantify, will deteriorate local roads and add to greenhouse gas emissions.

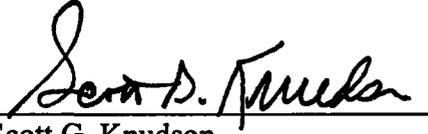
**CONCLUSION**

The STB should deny MMA's application because it fails to demonstrate that the public convenience and necessity permit abandoning service to a rail-dependent economy in a remote and depressed section of Maine.

Dated: April 20, 2010

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on this 20th day of April, 2010, I caused a copy of the foregoing to be served by Federal Express upon the following parties:

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