

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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



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

**- DISCONTINUANCE OF SERVICE AND ABANDONMENT -  
IN AROOSTOOK AND PENOBSHOT COUNTIES, MAINE**

**PROTEST OF STATE OF MAINE, DEPARTMENT OF TRANSPORTATION  
OR IN THE ALTERNATIVE,  
REQUEST FOR PUBLIC USE CONDITION**

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Dated: April 20, 2010

Attorneys for State of Maine, Department of  
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**PUBLIC VERSION**

**BEFORE THE  
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**Nathan Moulton  
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**Gary V. Hunter  
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The State of Maine, by and through its Department of Transportation ("State"), files this protest opposing the request of Montreal, Maine & Atlantic Railway, Ltd. ("MMA" or "Applicant") for authority to discontinue service over and abandon over 233 miles of rail lines servicing the northern third of the State of Maine. The State believes that it is important to the shippers and the communities in which they and their employees are located, that rail service be preserved. In the event that the Board finds that abandonment is warranted, then the State alternatively requests that the Board impose a public use condition.<sup>1</sup>

**Background**

On February 24, 2010, Montreal, Maine & Atlantic Railway, Ltd. ("MMA") filed an application (the "Application") to discontinue rail service on and abandon five subdivisions totaling approximately 233 miles (the "Abandonment Lines"). The Abandonment Lines include MMA's main north south line from just north of Millinocket to the Canadian border. The proposed abandonment would virtually eliminate the ability of shippers to move freight between the northern one-third of Maine and points to the south of the State.

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<sup>1</sup> The State also reserves the right to make an offer of financial assistance to purchase the Abandonment Lines at the appropriate time in the proceedings.

The State's goal has long been to preserve rail service in the Aroostook County region served by the Abandonment Lines and throughout the State. As such, and as noted in the Application, the State has negotiated with MMA regarding the purchase of the Abandonment Lines up until, and through the filing of the Application. Although the State opposes the proposed abandonment for the reasons set forth herein, it reserves its right to make an offer of financial assistance if the abandonment were to be approved.

### **Discussion**

#### **I. Comments and Protest**

##### **A. Legal Standard**

Under 49 USC 10903(d), the Board is to permit abandonment only if it finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the determination, the Board is required under the statute to consider whether the abandonment will have a serious, adverse impact on rural and community development. As the Board has recently summarized the analysis it takes:

When abandonment authorization is sought, whether by application or exemption petition, the railroad must demonstrate either that there is no longer any need for service on the line or that the line in question has become a burden on interstate commerce. Typically, in an attempt to make the latter showing, the carrier submits evidence to demonstrate that the costs it incurs exceed the revenues attributable to the line. While abandonment decisions are not based solely on mathematical computations and considerations, *the railroad bears the burden of showing* that keeping the line in service would impose a burden on it that outweighs the harm that would befall shippers and other members of the public and the adverse impacts on rural and community development, if the line were abandonment.

*The Indiana Rail Road company – Abandonment Exemption – In Martin and Lawrence Counties, IN*, STB Docket No. AB-295 (Sub-No. 7X), served March 26, 2010, slip op. at 6 (emphasis added). In this proceeding, the State does not believe that MMA has met its

burden of clearly establishing that its costs of operating the Abandonment Lines exceed its revenues. Further, the State believes that the harm to shippers and the adverse economic impacts the communities in Aroostook County and throughout the State, outweigh whatever burden continuing operations might impose on MMA.

**B. Revenue**

While MMA overall shows a continuing dramatic drop in system wide carloadings and revenues (Grindrod V.S., HC MMA 52), it acknowledges that it does not expect revenues on the Abandonment Lines to continue to drop in the same manner. Revenues for Abandonment Lines for the forecast year are actually expected to rise slightly, primarily from an increase revenues from one on line move, offset by a slight predicted reduction in other revenues (\_\_\_\_\_). Finley V.S., HC MMA 88. The traffic and revenue figures for the base year and the forecast year are generally consistent with the traffic analysis done by the State's consultant. Hunter V.S. at 2-3, Ex. A.

However, where MMA has only skepticism about the ability of the traffic on the Abandonment Lines to rebound, the State believes strongly that there is additional traffic available, that with better marketing (MMA currently has no formal marketing plan for the lines, and some shippers report no contact with any one from MMA over the past couple of years), and more consistent service, that traffic could rebound to the 11-12,000 carload level over the next couple of years as the housing market and the economy continue their rebound. Hunter V.S. at 2-3, Ex. A. Shippers have a lot of money invested in their facilities, and the State believes that testimony to be presented by the shippers will show their commitment to rail service on the Abandonment Lines and will support these projections, and that this traffic potential is not mere speculation.

## **C. Avoidable Costs**

### **1. Standards**

The Board's regulations provide for the calculation of avoidable costs, i.e., of the costs that the applicant would no longer need to bear if the requested abandonment authority were granted. Although the regulations set forth in detail how avoidable costs are to be determined, there are two over arching principles – they must be related to the freight service being provided on the line, and they must be “just and reasonable, and shall not exceed those necessary for an honest and efficient operation.” 49 CFR 1152.32.

In this proceeding, the State believes that many of the costs MMA has assigned to the Abandonment Lines are not costs that relate to the current operations being conducted by MMA; rather they are related to excess capacity that MMA acquired when its system as a whole, and the Abandonment Lines in particular, were handling significantly higher car loadings. However, excess capacity can be eliminated by MMA without the necessity of abandoning the Abandonment Lines, and therefore are not properly included in avoidable costs. These items of excess capacity are discussed in more detail below.

Further, as a check on what expenses are required for an efficient operation, the State has had its consultant Railroad Industries Incorporated (“RII”) prepare operating feasibility analyses under various traffic scenarios.<sup>2</sup> See Hunter V.S., at 24-25, Ex. D, Ex. E. These analyses indicate that even at the revenue projected for the forecast year, the Abandonment Lines should be able to be operated with costs below revenues. With additional traffic and revenues as

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<sup>2</sup> These analyses were prepared help the State evaluate whether to seek to purchase the Abandonment Lines either through negotiation or through the OFA process, to determine whether a stand alone carrier could operate the Abandonment Lines on a break even or profitable basis. Accordingly, the costs should be somewhat overstated compared to MMA's operations since MMA can share certain personnel and equipment costs with its other lines.

discussed above, the Abandonment Lines should be able to be operated so as to generate operating profits.

## **2. Offsets**

Although not clearly required in the regulations, in determining the costs that a carrier can avoid by abandoning a line, the Board should consider what additional costs the carrier will incur as a necessary result of the abandonment. If the abandonment results in creating additional costs for the carrier, then obviously the carrier will not be getting relief the full benefit of the avoidable costs from the lines being abandoned. In this instance, MMA has indicated that post-abandonment it expects to handle the overhead traffic over the Van Buren Branch to CN. It appears though that it has not considered what additional costs will be incurred. There will be additional use of the Van Buren Branch which presumably will require additional maintenance to keep up. MMA will need to find property for and build a new facility to maintain cars and locomotives, and do necessary inspections. None of these have been quantified, but MMA should be required to account for these additional costs as an offset to or a reduction in its avoidable costs. One cost that can be quantified is that the seeking of abandonment has triggered repayment obligations to the State under its Rail Funding Agreements. This represents a \$4.95 million cost to MMA that it would not have had if it did not file for abandonment. Moulton V.S. at 5, Ex. C.

## **3. Errors in calculation of avoidable costs**

The State's consultant has identified a number of errors in MMA's calculation of avoidable costs. Hunter V.S. at 6-13. Many of the errors related to MMA's apparent attempt to allocate costs to the operation of the Abandonment Lines that exceed what is reasonable for its current operations. For example, MMA says that it has 760 cars that are used for the

Abandonment Lines. However,

), and as Mr. Hunter explains, only 450 cars should be necessary for current operations. Hunter V.S. at 9-10.<sup>3</sup> Similarly, MMA says that it will no longer need 12 locomotives, although it is clear from a review of their locomotive usage that they do not have a need to use more than six. Hunter V.S. at 8-9. (As MMA acknowledges, it is only operating 12-13 trains per week on the Abandonment Lines, and it only using between 2 and 3 locomotives per day. Application, HC MMA 27-28. Certainly it does not need a separate locomotive for every train that it runs.) The use of an excessive number of locomotives passes through and affects other calculations as well – a reduced amount of locomotive maintenance for supplies, and reduced transportation costs for sand and fuel, and a reduced return on value for locomotives, all of which should be reduced by one-half the amounts shown. Hunter V.S. at 8-9.

It is also clear that MMA overstates the number of maintenance of equipment jobs (mechanics) that can be avoided by the proposed abandonment, claiming that 11 mechanics and one manager can be eliminated. Even at six for 12 locomotives and five for 760 cars, the ratios are clearly excessive; at the required levels of 6 locomotives and 450 cars, even more so. Certainly, operation of the Abandonment Lines requires no more than a manager and 2 locomotive mechanics and 2 car mechanics. Hunter V.S. at 7.

MMA's operations have shrunk in size over all from over \_\_\_\_\_ carloads in 2005 to an estimated \_\_\_\_\_ in 2009, and reduced the service to customers beginning in 2008 (Grindrod V.S., HC MMA at 52), and it has experienced reduced contract work for its shops (Ex. 4, Sheahan dep. at 21). It would not be surprising that it has extra capacity in its locomotive and

<sup>3</sup> MMA also fails to acknowledge that the leases for almost 400 of the cars will expire during the forecast year. Hunter V.S. at 11. Accordingly, the car lease cost for the forecast year is overstated in any event.

car fleets, as well as extra mechanics on its roster; however, it cannot place the burdens associated with this excess capacity on the Abandonment Lines. If it has that excess capacity, it could be shedding it now, regardless of whether the abandonment were granted.

The State believe it is error for Mr. Finley to have not included the 45G Tax Credit as an offset to maintenance of way expenses in the forecast year in the same way as it was done in the base year. The extension of the tax credit was passed by both houses of Congress, but before it was reconciled, it was added to a tax extender bill which includes a number of other items.

The credit is, if not yet extended for 2010, surely on its way to being so. MMA will likely be able to sell its credits in the same manner as in previous years (Ex. 2, Grindrod dep. at 19), and the credit if / when passed should be deducted from maintenance of way expenses in the same way as it was in the base year. Ex. 3, Finley dep. at 11. This would reduce maintenance of way expenses by approximately \_\_\_\_\_ . Hunter V.S. at 6-7.

#### 4. Avoidable Cost Summary

In sum, based on the various adjustments discussed above and in the Hunter Verified Statement, the State believes that the on-line avoidable costs for the forecast year should properly be reduced to no more than \_\_\_\_\_ as opposed to the \$ \_\_\_\_\_ calculated by MMA. Hunter V.S. at 13.<sup>4</sup> Using the State's on-line avoidable costs, and accepting for argument's sake MMA's off-line costs of \$ \_\_\_\_\_ the total avoidable costs would be only \_\_\_\_\_ in excess of revenues. Due to the number of errors and adjustments, the Board should find that MMA has not met its burden of showing avoidable costs in excess of revenues, and should deny MMA's abandonment request.

<sup>4</sup> Other parties could demonstrate additional adjustments that reduce the on-line avoidable costs further.

**D. Return on Value**

Return on value starts with an investment base of working capital, income tax consequences and net liquidation value. The State believes that there are problems with the values used by MMA on all three elements. See *Finley V.S.*, HC MMA 102-103.

**1. Working Capital**

Working capital is dependent on the on-branch avoidable costs. Accordingly, the adjustments discussed above for those costs would need to be included in this calculation. Additionally, the reduction from 12 saved locomotives to 6 saved locomotives would result in the halving of the depreciation and return on value for locomotives.

**2. Income tax consequences**

MMA uses a nominal interest rate of \_\_\_\_\_, however, \_\_\_\_\_

Further, based on the fact that the suggested losses will only increased the losses already being reported (*Grindrod V.S.*, HC MMA 52) it is not likely that there will be any income tax consequences from liquidation of the rail line assets.

**3. Net liquidation value**

The largest component of the investment base is MMA's calculation of NLV. Because there are a number of errors in MMA's calculation, NLV is overstated.<sup>5</sup> Initially, MMA has not used the correct value for NLV under its own calculations. Mr. Finley used a value of \_\_\_\_\_ as the NLV for track and materials. *Finley V.S.*, HC MMA 120. However, Ms. Sheahan who calculated the NLV for track and materials acknowledges that the salvage would

<sup>5</sup> The State's preliminary comments to the NLV calculation are made for the purposes of this protest, and are not intended to be final. The State reserves the right to make other or additional adjustments in any offer of financial assistance procedure.

take 2-3 years, and that the discounted present value of the NLV is only \_\_\_\_\_ . Sheahan V.S., HC MMA 192. It is the discounted present value that represents the true salvage value of track and materials to MMA today.

The State has identified overstatements in the value of the rails and ties based on its own inspection of the Abandonment Lines, which reduce the NLV to \$ \_\_\_\_\_ , and the discounted present value of the NLV to \$1\_\_\_\_\_. See Hunter V.S. at 19-22. Additionally, the State believes that MMA did not include the restoration costs for at-grade crossings when it calculated its salvage costs. \_\_\_\_\_ . See *Boston & Maine Corporation – Abandonment- In Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 83), served July 1, 1998, slip op. at 7 (adjusting salvage value for restoration costs); *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH and Beaver County, PA*, STB Docket No. AB-556 (Sub-No. 2X), served January 7, 2000, slip op. at 9. The State believes that a reasonable cost of restoration for each of the 98 public at-grade crossings is \$8,000, or a total cost of \$784,000. Moulton V.S. at 5-6. Further, as acknowledged by MMA, they did not include any bridge removal costs, \_\_\_\_\_

\_\_\_\_\_ ; See *Railroad Ventures, supra*, slip op. at 9 fn24. Because the costs of salvaging the bridges would likely exceed their value, the State believes that they should be valued at -0-; however to do so, the value of the rail on the bridges needs to be deducted from NLV. The State's consultant has determined that the rail on the bridges is worth approximately \_\_\_\_\_ , with a discounted present value of \_\_\_\_\_ Hunter V.S. at 22-24. Accordingly, after making these additional deductions, the State believes that the NLV of the track and materials should be no more than \$ \_\_\_\_\_ , and that the discounted present value of the NLV

would be \$ \_\_\_\_\_, applying the same \_\_\_\_\_ discount rate over the time period that Ms. Sheahan applied.

With respect to value of land, the State believes based on a review of a sampling of approximately 70 miles of deeds by the Department of Transportation Title Office staff, that MMA overstates the amount of fee title that it has, Moulton V.S. at 6. However, the State is not yet in a position to determine how much additional property should be excluded from the NLV calculation. Accordingly, for purposes of MMA's opportunity cost calculation, the State would accept the land value of \$ \_\_\_\_\_.

However, the State cannot accept MMA's attempt to use a corridor valuation. MMA argues that it is appropriate in this proceeding to use a corridor methodology in valuing the land. However, MMA acknowledges, that the use of a corridor methodology is appropriate only if there is a "*documented specific interest*" in purchasing assembled corridors. Application at HC MMA 15 (emphasis added) (citing *Boston and Maine Corp., supra; Railroad Ventures, Inc., supra*). It has presented no evidence of even any firm offers for use as a corridor. Further, although MMA alludes to the possibility of utility easements along the Abandonment Lines, it has produced no evidence that there is any specific interest in the use of the Abandonment Lines as a utility easement corridor.<sup>6</sup> Additionally, according to Mr. Finley \_\_\_\_\_

\_\_\_\_\_ he used the same revenue number for both the base year and fiscal year. Finley V.S., HC MMA 82,88, 105; \_\_\_\_\_

<sup>6</sup> Mr. Gottlieb indicates that it is premature to provide specifics. In response to a request for documents, MMA refused to produce any documents related to corridor interest or proposals to the State. Further, if there were specific opportunities for utility or similar easements, then the income should have included by MMA in its forecast year analysis.

A senior appraiser from the State Department of Transportation Property Office also finds fault with the attempt to apply a corridor valuation. In particular he notes that (1) the corridor contains at least 66 miles of right-of-way for which MMA acknowledges it is without fee title, (2) in determining "highest and best use," public interest, and thus sales to the State of Maine for the public interest, should not be considered as they do not represent an economic use, (3) the comparable corridor sales were for much shorter distances than the 233 miles being abandoned here, and (4) the assumption that the corridor could be broken up and sold in pieces does not account for segments that might not sell. *Moulton V.S.* at 6-7, Ex. E. Since MMA has provided no specific evidence of interest in the purchase of the Abandonment Lines as corridor, or any evidence that it would, upon abandonment, have a corridor to market, the use of a corridor methodology is not appropriate.

Based on the foregoing, the total NLV to be used for the calculation of opportunity costs should be \$: \_\_\_\_\_ for the track and materials, and \$ \_\_\_\_\_ for the land, for a total of \_\_\_\_\_.

### 3. Nominal Rate of Return

The proper rate of return is discussed more fully in connection with Opportunity Costs below.

#### E. Opportunity Costs

Opportunity costs are intended to reflect the economic loss a carrier experiences from foregoing a more profitable alternative use of its assets. *Union Pacific Railroad Company – Discontinuance – In Utah County, Utah*, STB Docket No. AB-33 (Sub-No. 209), served January 2, 2008, slip op. at 5. Generally, opportunity cost is computed on an investment base equal to

<sup>7</sup> The reduced NLV would also reduce the holding gain.

the sum of allowable working capital, NLV, and current income tax benefits (if any) resulting from the abandonment. *Id.* (citing *Abandonment Costing Regulations – Costing*, 3 ICC 3d 340 (1987)). As discussed more fully above in connection with the Return on Value, the State believes MMA has made various errors in computing the base.

Additionally, while the investment base is usually multiplied by the current nominal rate of return, the State believes the rate used by MMA is overstated. First, MMA should have applied the return rates for capital and for debt established by the Board to its own actual capital structure instead of using the Class I composite structure, all as set forth in *Railroad Cost of Capital*, STB Ex Parte No. 558 (Sub-No. 12), served September 25, 2009. See *Finley V.S.*, HC MMA 119. MMA has refused to produce documents reflecting its capital structure, but the State believes it would show a substantially higher debt to equity ratio than used in the Cost of Capital proceeding, which would lower the rate of return. Further, because MMA is in default under its FRA RRIF loan, \_\_\_\_\_ all of the proceeds that would become available would need to be paid to FRA. See Ex.1 correspondence between Grindrod and FRA; \_\_\_\_\_. Since the FRA loan is only bearing interest at the rate of \_\_\_\_\_ (Ex. 1), MMA's opportunity cost should be limited to that rate of return.<sup>8</sup>

#### F. Rehabilitation Costs

MMA calculates that the Abandonment Lines need \$ \_\_\_\_\_ to be put into proper operating condition, and that thereafter the lines would need \$ \_\_\_\_\_ per year additional in normalized annual maintenance. *Sheahan V.S.*, HC MMA 222, 223, 226. (The rehabilitation figure is then plugged into MMA's subsidy calculations. *Finley V.S.*, HC MMA 105.) As

<sup>8</sup> To the extent the FRA is not entitled to the funds, the State believes that it is entitled to repayment of \$4.95 million. See *Moulton V.S.* at 5, Ex. C. Since without abandonment, these funds would not be required to be repaid, they have an opportunity cost of -0-. See *Rail Funding Agreements*, *Moulton V.S.*, Ex. B.

claimed by MMA, \$ \_\_\_\_\_ ) of the work is necessary to bring the Madawaska subdivision into FRA Class 3 condition, and all of the other branch lines into FRA Class 2 condition. Sheahan V.S., HC MMA 193-194. The remaining \$ \_\_\_\_\_ is to rehabilitate a portion of the Limestone Branch ( \_\_\_\_\_

\_\_\_\_\_ .”) Sheahan V.S., HC MMA 194; 1 \_\_\_\_\_

\_\_\_\_\_ there is no reason that the current classifications should not be sufficient for efficient operations at the current levels of service. Hunter V.S. at 4-6. The State’s own inspection indicates that some amount of capital improvements to fix deferred maintenance would likely be recommended. Hunter V.S. at 6. However, in any event, the Board’s regulations clearly provide that rehabilitation costs should not be included in subsidy calculations unless the track fails to meet FRA Class 1 standards. 49 CFR 1152.32(m)(2).

MMA also clearly overstates the normalized maintenance that would be required if the line were rehabilitated. Ms. Sheahan’s estimate of \$ \_\_\_\_\_ 1 per year works out to over \$ \_\_\_\_\_ per mile. As explained by the State’s consultant, normalized maintenance of \$5,000 per mile should be sufficient to maintain the tracks in their current condition, and is similar to the amounts the MMA shows for maintenance in its base year and forecast year calculations. Hunter V.S. 5,6.

### **G. Rural and Community Impact**

A noted previously, the Board is required by 49 USC 10903(d) to consider the effects of the proposed abandonment on rural and community development. The State believes strongly that rail service throughout the State needs to be maintained. In particular, the proposed abandonment would eliminate direct rail service to over 20 on-line shippers and reduce the available routings to one of MMA's largest shippers (Fraser) from two to one, further impacting the already hurting economy in a substantial region of the State. Aroostook County, where the lines are mostly located, is a rural area that is considered economically distressed. The major customers on the Abandonment Lines are primarily related to the forest industry, and are dependent on rail to remain competitive. They have made substantial investments in their plants to be ready to expand as the economy and the housing market improves. Abandonment of these lines would cause contraction at best, and closures at worst. There are over 1700 jobs directly or indirectly that would be called into question with the loss of rail service to the region. Moulton V.S. at 1-3.

If abandonment were granted, there would be other substantial adverse effects on the community. There would be an increase in trucks for those industries that could convert, increasing wear and tear on the local roadways and bridges, higher fuel usage and emissions, and increasing the risk of accidents. Moulton V.S. at 3. Detailed descriptions of the adverse effects are presented by the State's consultant. Hunter V.S. at 14-19.

Continuation of rail service in the Aroostook region has long been the State's goal, in order to enhance economic growth and competitiveness. The State supported MMA's original acquisition from BAR in 2003, in large measure because of MMA's promise to operate all of the lines it was acquiring. Moulton V.S. at 4, Ex. A. Indeed, since then, the State has provided over

\$10.5 million in rail funding assistance to MMA with the understanding that the lines would be operated for a period of at least 10 years. Moulton V.S. at 4-5, Ex. B. (MMA's decision to seek abandonment triggers a repayment obligation of approximately \$4.95 million. Moulton V.S. at 5, Ex. C.) The FRA has also demonstrated public support for MMA by providing a RRIF loan in 2005, to allow MMA to refinance its original bank debt and to do certain capital projects. See Ex. 1. Denying the abandonment would preserve essential rail service and enhance the economic viability of the region and increase safety of the general population. Moulton V.S. at 3-4.

## **II. Alternative Relief – Public Use Condition**

As discussed above, the State does not believe that MMA should be permitted to abandon the Abandonment Lines. However, in the event that the Board were to authorize the proposed abandonment, and if the State determined not to make an OFA, or was not successful in acquiring the Abandonment Lines under the OFA process, then the State requests a public use condition be imposed to protect the Abandonment Lines from being disposed of during the course of negotiations, and while concurrent State law requirements are satisfied.

Pursuant to 49 U.S.C. §10905 and 49 C.F.R. §1152.29(a)(1), the State requests that the Board prohibit MMA from disposing of any of the rail properties that are proposed for abandonment for a period of 180 days from the effective date of any decision approving the abandonment in order to preserve the status quo pending satisfaction of the Maine state law requirements that apply to rail lines approved for abandonment.. In this case, where the primary purpose of the State is to preserve the Abandonment Lines for restoration of rail service, it would be appropriate for the Board to prohibit not only the salvage and disposal or sale of the real property, culverts and other structures, but also to prohibit the sale of the tracks, ties and other

structures essential for the reactivation of rail service, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

The issuance of the requested public use condition would be consistent with and support compliance with the requirements of Maine state law. Under 23 Me. Rev. Stat. §7105(3), before dismantling any track or offering any railroad property for sale, or upon abandonment of service, the Maine Department of Transportation must be given the first option to lease or purchase, on just and reasonable terms, the railroad line. Imposition of the requested public use condition would support MMA's compliance with its statutory duties by preventing any sale of the Abandonment Lines (either the right of way or the track, appurtenances, ties, or other structures) until the State's option to lease or purchase has been satisfied. A period of 180 days should be sufficient for negotiations to take place.

**III. Conclusion**

For all of the foregoing reasons, the State believes that the balancing of interests requires that the Board deny MMA's request for authority to abandon the Abandonment Lines. In the alternative, if the Board grants abandonment authority, the State requests that the Board impose a 180-day public use condition prohibiting any disposition of the right-of-way, structures, track or track materials, except to a public entity.

Respectfully submitted,

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Dated: April 20, 2010

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# EXHIBIT 1



**MONTREAL, MAINE & ATLANTIC RAILWAY**  
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Mr. Joseph C. Szabo  
Administrator  
Federal Railroad Administration  
1200 New Jersey Avenue SE  
Washington, DC 20590

12 February 2010

Dear Mr. Szabo:

Please refer to my letter of August 31, 2009, copy attached, in connection with MMA's RRIF loan administered by your agency.

Since my letter was written, poor business conditions affecting MMA have continued, and our cash position continues to deteriorate. We have identified annual losses in the area of \$5 million incurred on 233 miles of light-density railway located in the State of Maine as the source of these losses, and are in the final stages of preparing an abandonment application to be submitted to the Surface Transportation Board. The application should be ready by February 24<sup>th</sup>, and we would like to file on that date with the STB.

Our projected cash holdings will not permit our payment of principal and interest on the FRA loan due on March 15, 2010. In consideration of our robust plans to address this situation through the abandonment, we request that FRA permit us to defer interest and principal payments on our RRIF loan until the abandonment application can be processed by the STB and sufficient proceeds of track removal can be received. At such time, we would propose to immediately catch up on deferred principal and interest payments and remain current thereafter.

In the circumstances, we request FRA's waiver of the technical provisions of the RRIF loan agreement, as requested in my letter of August 31, 2009, so we may proceed with the abandonment application and deferral of principal and interest payments. This will ensure uninterrupted rail service to the states of Maine and Vermont and ultimately to meet all financial obligations, including the RRIF loan.

I should point out that we continue to work with the state of Maine to assist the state in development of a plan for continued rail operation on the lines we can no longer afford to operate. Possible solutions include TIGER funding and a state bond issue. But while these options are being considered, we must move to stanch the losses that threaten our continued ability to provide essential public services.

We will appreciate your prompt response.

Kind regards,

Robert C. Grindrod  
President and CEO

Cc - Senator Olympia J. Snowe  
Senator Susan M. Collins  
Congressman Michael H. Michaud  
Governor John E. Baldacci  
Commissioner David A. Cole

**[REDACTED PAGE(S)]**

# EXHIBIT 2



**[REDACTED PAGE(S)]**

# EXHIBIT 3



**[REDACTED PAGE(S)]**

# EXHIBIT 4



**[REDACTED PAGE(S)]**

**MOULTON**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

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

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**VERIFIED STATEMENT OF NATHAN MOULTON**

My name is Nathan Moulton, and I am the Director of the Rail Program in the Office of Freight Transportation at the Maine Department of Transportation ("MaineDOT"). My business address is 16 State House Station, Augusta, Maine 04333. I have over 20 years of experience related to transportation matters as shown in my curriculum vitae attached to this statement.

In my current position I have responsibility for oversight of planning, development and implementation of rail transportation programs and services for the State of Maine. In this capacity I have access to records and knowledge of dealings between MaineDOT and the Montreal, Maine and Atlantic Ry., Ltd. (MMA) in Maine since their purchase of the former Bangor & Aroostook Railroad (BAR) rail system from the Bankruptcy Trustee in 2002.

**A. *Rural and Community Impact***

This Abandonment Lines are located within an economically distressed area of Maine. Aroostook County is a rural area, and is known for its extensive forests and associated industries, potato, beef, dairy, broccoli and organic farms, and its lakes and streams and overall unspoiled scenic beauty. It contains the last great wilderness waterway in the East. Aroostook's population is 73,938 (US Census 2000). There are over 2000 lakes, rivers, streams and ponds located within Aroostook County. Aroostook is Maine's largest county consisting of 6,435 square miles. To put

Moulton -1

the magnitude of Aroostook County's area in perspective, it is larger than the states of Connecticut and Rhode Island combined.

This region is eligible for assistance under Economic Development Administration criteria identified in Section 301 of the Economic Development Act of 1965. The Aroostook county per capita income of \$26,633 (2006) is eighty percent (80%) or less of the national average of \$36,794 (2006). In fact, the average per capita income in Aroostook County was only 72.4% of the national per capita income for 2006. The project also qualifies for eligibility given that the area has an unemployment rate that is at least one percent (1%) greater than the national average unemployment rate. Aroostook county's most recently published 24 month unemployment rates were 6.2% and 7.3% for 2007 and 2008, respectively as compared to the national average of 4.6% and 5.8% unemployment rates for the same periods. In 2007 and 2008, Aroostook County's unemployment rates were 1.6% and 1.5% higher than the national average, respectively. The poverty rate for people of all ages in Aroostook County during 2007 was at 17.4%. For residents under the age of 18, the poverty rate for 2007 was 19.9%. For children ages 5 – 9 in families in poverty, 17.1% lived in poverty during 2007.

The rail system operated by MMA is of vital importance to the Maine economy, serving shippers in the northern part of the State as well as connecting the Bangor area with Quebec, Ontario, and the U.S. mid-west. In particular the lines that MMA seeks to abandon in this proceeding (the "Abandonment Lines") provide important links to the Aroostook region and the forest products industry centered there. The forest products industry so vital to the Maine economy is highly dependent on rail to remain competitive in the world market. Numerous other natural resources-based industries in Aroostook County depend upon rail service as well, and many have made significant investments in their physical plants so that they can take advantage

of improving economic conditions. Rail service is an essential part of their aggressive business plans.

If the proposed abandonment were permitted, instead of experiencing economic growth as the economy in general, and the housing industry in particular, rebounds, these industries would be contracting instead of growing. The abandonment of service would have an immediate and direct negative economic effect on industries in a county that is already experiencing serious economic challenges. Without direct rail service these firms will face higher costs for inbound transportation of materials required for production, or outbound costs of moving products to national markets, overall making them less competitive in the marketplace. Some firms maybe forced to curtail or stop some levels of production, potentially resulting in layoffs and reduced spending in the region. Northern Maine Development Commission (NMDC), which provides business/economic development resources to the Aroostook region, estimates the long term viability of more than 1700 jobs will be in question with the loss of this rail service. Such a loss would exacerbate the current economic conditions in the region where unemployment is already in excess of 10%.

Those firms that are able will convert rail shipments to truck, further exacerbating the already serious problems on the state and local roadway network in the region. The Draft Environmental Assessment issued by the STB's Section of Environmental Analysis on April 9, 2010, shows that more than 71,000 trucks would be added to Maine roads as a result of the abandonment. Increases in the number of trucks increases the risk of fatalities, injuries and property damage, in addition to the increased wear and tear on existing roads and bridges and increased air pollution from diesel emissions..

MaineDOT's goal is, and has always been to ensure the continuation of the essential freight rail services provided over the Abandonment Lines in order to enhance the economic health and competitiveness (and survival) of the region and its communities. Preservation of rail service by preventing the lines from being abandoned would enable local companies to manage their transportation costs and allow for greater investments in their workforce and productivity. It would also enhance the economic viability of the region and increase the safety of the general population by keeping truck traffic off the local roads in the region.

**B. Relationship with MMA**

MaineDOT supported the bid that MMA submitted to the BAR Bankruptcy Trustee because MMA sought to acquire *all* of the BAR system in Maine and appeared to have adequate capital for the purchase and operations of these lines. At that time, MMA seemed committed to operating the system for the long term. Recognizing the importance of keeping the former BAR system intact, then Governor King and subsequently Governor Baldacci agreed to make significant investments of State funds in MMA's rail infrastructure to assist the MMA's capital program and put the lines in a state of good repair. The commitment of MMA to operate the entire system for at least 10 years, and the State's reliance on this commitment, is shown in a 2002 exchange of correspondence between Ed Burkhardt, President and CEO of Rail World, Inc. (the successful bidder for the BAR assets), and current Chairman of the Board of MMA, and John Melrose, then-Commissioner of MaineDOT. Copies of the correspondence are attached hereto as Exhibit A.

Based on these commitments, MaineDOT has provided approximately \$10.5 million in direct State grants to MMA since 2002 under the terms and conditions of a series of Rail Funding Agreements dated March 12, 2003, March 12, 2005, May 1, 2006, and May 21, 2009, as

amended and modified (the "Agreements"). Copies of the Rail Funding Agreements are attached hereto as Exhibit B. As consideration for the State's investment in its rail infrastructure, MMA warranted that it would continue operations on the entire system of rail lines acquired from BAR for ten years from the date of each Rail Funding Agreement and agreed that, if it sought to abandon any portion of its rail system, that the State could require repayment according to a formula set forth in the Rail Funding Agreements. Under the terms of the Rail Funding Agreements, I calculate that \$4.95 million in repayment obligations have been triggered by MMA's filing of its abandonment application. A copy of my calculations are attached hereto as Exhibit C.

To protect the State's investment, MMA agreed to grant the State a first priority security interest in the rail assets purchased with State funds. When in 2005 MMA needed additional funds for capital projects and to refinance its debt, the State facilitated MMA's \$34,000,000 loan from the United States (represented by the Secretary of Transportation, acting through the Administrator of the Federal Railroad Administration ("FRA")) (the "RRIF Loan"), by subordinating its security interest to the lien of the FRA mortgage. A copy of the Subordination Agreement is attached hereto as Exhibit D.

**C. *Net Liquidation Value***

In connection with this statement, I have reviewed the Abandonment Application filed by the MMA and MMA's calculation of Net Liquidation Value ("NLV") for both the track and track materials, and for the real estate.

In connection with the NLV of the track and track materials, I note that the salvage costs do not include the costs of restoration of the public crossings. MMA's application identifies 58 signalized public crossings; however, the FRA database shows 98 public at-grade crossings of

the Abandonment Lines. After consultation with MaineDOT engineers and based on my own experience, I estimate that the cost of restoration of each crossing, including repaving, is a minimum of \$8,000.<sup>1</sup> Accordingly, the total costs related to restoration of all of the public at-grade crossings conservatively would be \$784,000. The NLV for the track and materials should be reduced by that amount.

I also note in my review of MMA's Application that the land valuation it provides is based on assumptions concerning the quality of the title conveyed by the BAR Bankruptcy Trustee. Members of MaineDOT's Title Office staff reviewed the BAR schedules, and the title insurance policy issued by Lawyers Title Insurance Corporation when MMA made its purchase, as well as a sampling of 122 deeds covering approximately 70 miles of conveyances. They found that 94 deeds (77%) conveyed fee title, and 28 deeds (23%) conveyed less than a fee<sup>2</sup>; however, the fee deeds represented only 37 miles (53%), with 33 miles (47%) being less than fee. MaineDOT believes that this analysis indicates that there is more property for which MMA does not have fee title than is reflected in the Tardiff Verified Statement; however, it is not yet in a position to estimate how much additional property should be excluded from the NLV calculation. MaineDOT's conveyance review continues.<sup>3</sup>

Additionally, a senior appraiser from MaineDOT's Property Office, Raymond Quimby, reviewed the land valuation that MMA included as part of its calculations of NLV. A copy of Mr. Quimby's Report is attached hereto as Exhibit E. As is evident from his Report, Mr. Quimby

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<sup>1</sup> This estimate relates to a single track crossing a standard two lane road. Of course, with multiple tracks, wider roads or crossing at a tangent, the costs would be greater.

<sup>2</sup> "Fee" was a voluntary deed conveyance with no reverters. If qualifying language (such as "for railroad purposes only") appeared only in the Meaning and Intending clause, it was treated as fee. "Less than fee" includes county commissioner award's, easement conveyances or deed with qualifying language in the granting clause, or actual reverter language.

<sup>3</sup> MaineDOT expects to have a definitive analysis by the time it would be required to submit an offer of financial assistance.

takes exception to the corridor valuation that is part of the Gottlieb Verified Statement. Among other issues, Mr. Quimby notes (1) the corridor contains at least 66 miles of right-of-way for which MMA acknowledges it is without fee title; (2) in determining "highest and best use," public interest, and thus sales to the State of Maine for the public interest, should not be considered as they do not represent an economic use; (3) the comparable corridor sales were for much shorter distances than the 233 miles being abandoned here; and (4) the assumption that the corridor could be broken up and sold in pieces does not account for segments that might not sell. Accordingly, the corridor valuation should not be considered in the NLV calculation for the real estate.

**D. Conclusion**

For all of the reasons set forth above and in the State's Protest to which this Verified Statement is attached, the State believes that the requested abandonment should be denied.

**VERIFICATION**

I, Nathan Moulton, Director, Rail Program of the Maine Department of Transportation, Office of Freight Transportation, verify under penalty of perjury that statements contained in the foregoing Verified Statement are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 20, 2010.

  
\_\_\_\_\_  
Nathan Moulton

**Nathan E. Moulton - Professional Profile/Relevant Experience**

**Director, Rail Program, MaineDOT, Office of Freight (2004-Present)**

Oversight of planning, development and implementation of rail transportation programs and services for the State of Maine. Work includes:

- Rail program and policy development
- Asset management of 320 miles State-owned rail lines, facilities and structures
- Oversight to 3<sup>rd</sup> party rail operators on State-owned lines
- Rail system evaluation and real estate procurement
- Policy work with private railroads, businesses, rail planning and logistics studies

**Deputy Director, Northern New England Passenger Rail Authority (NNEPRA) (1999-2004)**

Rail line rehabilitation and startup of Downeaster Passenger Rail service

- Daily oversight and management, completion and closeout of \$62M rail rehabilitation, station and support facility construction project.
- Assist Executive Director in startup and management of Downeaster Passenger Rail Service operating over two host railroads and through 3 states in a 116 mile rail corridor between Portland ME and Boston MA operated by AMTRAK.
- Provide financial management and federal/state compliance functions for NNEPRA.

**Capital Programs Administrator, MaineDOT, Office of Passenger Transportation (1993-1999)**

Oversight of non-highway capital and construction projects at MaineDOT

- Oversaw procurement of transit vehicles and equipment on behalf of the State, contracting and construction oversight on transit projects.
- Project/Grant management and compliance for all Federal Transit Administration and Federal Rail Administration projects in MaineDOT passenger office.

**External Auditor, MaineDOT, Office of Audit, (1988-1990)**

Performed Federal and State financial and compliance audits on railroads, utilities and consultants with contracts with the State of Maine on behalf of funding agencies.

**Education – Bachelor of Science – Business Administration, University of Maine, 1987**

- Certificate, USDOT Freight Academy, Rutgers University, 2008

A

**Melrose, John G**

**From:** Melrose, John G  
**Sent:** Monday, March 11, 2002 4:17 PM  
**To:** Elder, Robert  
**Subject:** FW: Capital Expenditure Program - Support from State of Maine

----- Original Message -----

**From:** Edward Burkhardt [mailto:esburkhardt@railworld-inc.com]  
**Sent:** Sunday, March 10, 2002 8:39 AM  
**To:** John Melrose (E-mail)  
**Cc:** Robert Elder (E-mail); Mark Roemer; Glenn Kerba; Charles Olson;  
Cathy Aldana  
**Subject:** Capital Expenditure Program - Support from State of Maine

Dear John

Thanks for arranging the meeting with the Governor, and also for the good discussion on MM&A's plans for the B&A property and the objectives of the State. I am most impressed with the level of support we are receiving from your department and other units of the State government.

I would like to summarize our proposal to you, taking account of our discussions, as follows:

1. The State is in a position to commit in grants \$2,700,000 per year for the first two years of our operation, and \$800,000 in the third year, assuming a matching contribution by the railway. The "project" will be capital renewals throughout MM&A's system in the State.
2. The State would agree to support a continuation of this level of grant funding for a five year period, contingent on appropriations being available from the Legislature. This would require an additional \$2,100,000 in the third year, and \$2,700,000 in each of the fourth and fifth years.
3. MM&A would agree to assume obligation to complete the Caribou - Limestone rehabilitation currently in place in order to access \$1.8 million appropriated for this program, with such funds included in item 1 above.
4. MM&A would agree to maintain and operate its entire network in the State for a period of 10 years, subject to a pro-rata refund of the grant funds from salvage recovery should any line abandonments take place during the period. For example, if an abandonment took place in the fifth year, the State would recover 50% of its total grant funds up to the total value of the salvage recovery from the particular abandonment.

Would you please consider the above and give me your comments. Also, please advise if you are willing to enter into an agreement covering our arrangement. We will need a firm understanding as a part of our finance negotiations.

Thanks for your support in this. We have made good progress with the Trustees and with other aspects of our proposal, and hope to close in May or June.

Regards,



STATE OF MAINE  
 DEPARTMENT OF TRANSPORTATION  
 16 STATE HOUSE STATION  
 AUGUSTA, MAINE  
 04333-0016

RECEIVED  
 APR 08 2001  
 BY:

ANGUS S. KING, JR.  
 GOVERNOR

April 3, 2002

JOHN G. MELROSE  
 COMMISSIONER

Mr. Edward Burkhardt, President & CEO  
 Rail World, Inc.  
 8600 West Bryn Mawr Avenue  
 Suite 500N  
 Chicago, Illinois 60631-3579

Dear Ed:

Thank you for your e-mail dated March 11, 2002 (hard copy attached), in which you summarize MM&A's proposal regarding acquisition of the BAR system, and State participation in efforts to keep the entire system in active status. The Department is willing to work with MM&A to preserve and redevelop a healthy rail system serving the northern part of Maine. In that light, there are certain issues that need further clarification.

The Department has a total of \$5.5M potentially available to support MM&A during early years of operation of the BAR system. \$1M general obligation bond funds are available from the funds reserved for use on the CDAC but unspent as of this date. \$3.5M is available from the general obligation bonds passed by Maine voters in the November, 2002 transportation referendum. An additional \$1M, out of the \$1.8M set aside for the Loring Commerce Center, may also be available.

\$800,000 of the \$1.8M was targeted for track rehabilitation on the Limestone Branch between Caribou and Limestone, and \$1M was targeted for siding construction at Loring Commerce Center. The Loring Development Authority has advised that they are seeking an EDA grant of \$800,000, with an expected match of \$800,000 from the Department's bond funds, for rehabilitation of track between Caribou and Limestone. This \$1.6M public investment will provide operational track for MM&A from Caribou into Limestone. Subsequent to this rehabilitation the remaining \$1M would be available to support MM&A's capital funding request if MM&A guarantees funding for new track construction at Loring when new development by firms such as Irving or Lamb-Weston require such track.

The Department is prepared to recommend to the incoming administration that general fund bond requests be sought to support additional grants to MM&A of \$2.7M for operational years three through five. Naturally, both the Legislature and the voters must approve those bonding requests. Additionally, the Department's commitment to make such a recommendation, and to provide funding for a 5 year period, is conditioned upon MM&A's guarantee to match all State funds dollar for dollar.



DEPARTMENT OF TRANSPORTATION

THE STATE OF MAINE DEPARTMENT OF TRANSPORTATION IS AN AFFIRMATIVE ACTION EQUAL OPPORTUNITY EMPLOYER

Mr. Edward Burkhardt

Page 2

April 3, 2002

The Department's primary goal throughout the decline and ultimate bankruptcy of BAR has been to preserve the entire BAR system in active status. An agreement to invest \$13.5M of public funds in a private entity over five years must include language to protect that investment and to support our primary goal. Therefore, any agreement must contain language stating that MM&A guarantees a minimum ten year period of operation of the entire BAR system. If MM&A abrogates the ten year commitment, then two conditions would apply.

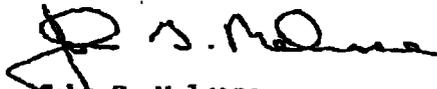
First, if MM&A files for abandonment of any portion of the BAR system within the first five years of operation, then the Department would not be obligated to provide any grant funds beyond those provided prior to the abandonment. If MM&A files for abandonment of any segment of the BAR system after payment by the Department of the \$13.5M, or any portion thereof, and before 10 years of operation are complete, then MM&A will repay a percentage of grant funds equal to the number of years prior to ten that abandonment is sought divided by ten.

Second, MM&A would grant the Department a first priority security interest in all track materials installed using public funds. The Department acquired such an interest in the track materials installed on the CDAC during calendar year 2000. The Department would have a right to exercise its priority interest in any section of track that is abandoned before the useful life of the track materials has expired.

The Department is willing to enter into an agreement with MM&A, and we look forward to sitting down with you to discuss terms. I trust you understand that this agreement must have clear language stating that the Department cannot commit future legislatures to the grant monies that would be sought for years three through five.

Thank you for taking the time to come to Maine and meet with us and with Governor King. We hope that your discussions with BAR's trustee will prove fruitful and that MM&A will reinvigorate the entire BAR system.

Sincerely,



John G. Melrose  
Commissioner

JGM/ab

cc: Brian Hamel

Enc.

**B**

2009 06 08 00:00:00  
6893  
OSN 26067

**RAIL FUNDING AGREEMENT**

THIS RAIL FUNDING AGREEMENT (the "Agreement") made on the date last signed below by and among MONTREAL, MAINE AND ATLANTIC RAILWAY LTD, a Delaware corporation, having its principal place of business at Northern Maine Jct Park, RR#2, Box 45, Bangor, Maine 04401-9602 ("MMA"), and the STATE OF MAINE, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State")

**WITNESSETH**

WHEREAS, MMA and the State previously entered into agreements for infrastructure improvements and those agreements have expired, and

WHEREAS, the State has agreed to provide One Million Dollars (\$1,000,000 00) to MMA for specified infrastructure improvements ("State Funds"), said funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 1999, chapter 37 and Private and Special Law 2001, Chapter 38, and

WHEREAS, to memorialize the terms and conditions of the State's agreement to provide such funds to MMA as successor to BAR, the State and MMA desire to enter into this Agreement

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, and with the intent to be legally bound hereby, the State and MMA agree as follows

**SECTION 1 - PAYMENT OF FUNDS**

1 1 Subject to the terms of this Agreement including the contingencies set forth in Section 2 below, the State hereby agrees to provide a maximum of One Million Dollars (\$1,000,000 00) to MMA as successor to BAR in calendar year 2009 to enable MMA to acquire and install railroad track materials on designated rail lines

1 2 For purposes of this Agreement, expenditures by MMA for engineering, labor, equipment, work trains, matching material properly installed in rail lines (including ties, rail, other track material, and ballast), and other necessary expenses incurred by MMA to incorporate and install the track materials are eligible for reimbursement under this Section. The State agrees to make payments on significant quantities of high value materials such as welded rail and ties when delivered in order to assist in project cash flows. The State shall have the right to inspect all invoiced work and materials prior to payment of invoices

1 3 Prior to funding, the State shall have the right to review and approve the scope of MMA's work, estimates, and work locations. MMA shall provide transportation for Maine

5/21/09 11:11 PM

Tedoc 963413

Department of Transportation ("MaineDOT") representatives to and from MMA's work locations to facilitate the State's review

**SECTION 2—CONDITIONS FOR FUNDING**

**2.1** The State's obligations hereunder are subject to the following conditions. If one or more of these conditions are not satisfied, the State's obligations hereunder shall cease.

**a** MMA will at all times will hold title to and own the real property and assets of BAR described in the Asset Purchase Agreement approved by the United States Bankruptcy Court, District of Maine (Chapter 11 Case No. 01-11565) under an October 9, 2002 Order Approving Asset Purchase Agreements, Authorizing Sale of Assets to MMA, and Authorizing Assignment and Assumption of Related Agreements. The parties agree to exclude non-operating real estate.

**b** MMA will own and will continue to own all rail and related cross ties, tie joints, tie plates, switch ties, turnouts, switches, anchors and spikes located on the Property acquired from BAR, as well as any and all replacements thereof and accessions thereto installed by MMA, including, without limitation, the "Rail Assets" as defined in Section 3 below.

**c** MMA will enter into the security instruments described in Section 3 below and any other security instruments reasonably required by the State under terms acceptable to the State in its sole discretion to protect the public investment in rail infrastructure contemplated by this Agreement.

**d** Records of the MMA's costs for compensation under the project agreement shall be kept in accordance with 23 CFR (Code of Federal Regulations) Part 140 Subpart I—Reimbursement for Railroad Work. To the extent necessary to verify MMA's charges and upon the State's timely request, copies of such records shall be made available to the State. Records shall be available for audit or review by the State for a period of three (3) years following final uncontested payment.

**e** Direct expenses such as telephone, tolls, reproduction costs, per diem (requires overnight stay) shall be billed at actual cost to the Railroad as defined in 48 CFR, Part 31. The reimbursable costs for per diem shall not exceed that allowed by the State's Administrative Policy Memorandum No. 191. Mileage shall be paid at the current amount allowed by the State of Maine, Title 5 M.R.S.A. § 1541. Reproduction of plans for submittal to the State shall be charged at actual costs. Any reproduction costs incurred for the MMA's internal use are considered overhead expenses and not chargeable as a direct expense.

2.2 As consideration for the State's investment in its rail infrastructure as set forth herein, MMA hereby represents and warrants that it will not abandon any line improved through the use of funds in this agreement for a period of at least 10 years from the agreement date. If MMA abrogates this ten year operating commitment by seeking to abandon its common carrier obligations as to any portion of trackage improved through funding in this agreement before the ten years of operation are complete, the State may

- a decline to provide any State Funds beyond those provided prior to the abandonment, and
- b require MMA to repay a percentage of grant funds. That percentage will be based on the number of years prior to ten that the abandonment is sought divided by ten (A ten-year straight line basis)

Exercise by the State of its remedy under Section 2.2(b) and payment by MMA of the required funds shall terminate the State's remedy under Section 4

### SECTION 3 - COLLATERAL

3.1 MMA's obligations to the State hereunder shall be secured by a security interest in the following property of MMA pursuant to the Subordination Agreement dated 3/25/05

- a all rail and related cross ties, tie joints, tie plates, switch ties, switches, anchors, spikes, and other related track materials incorporated or installed in or attached to the real property described in Exhibit A hereto (the "Property") which are paid for with Funds provided to the MMA as successor to BAR by the State pursuant to the term of this Agreement (the "Rail Assets"), and
- b all proceeds from any sale or transfer of any of the Rail Assets unless specifically permitted by the terms of the Security Agreement

3.2 As a precondition to the provision of State Funds under this Agreement, MMA's grant of a security interest in the Rail Assets as set forth above must be evidenced by a Purchase Money Security Agreement and Financing Statement in a form satisfactory to the State together with any other documents reasonably required for the State to obtain a perfected security interest in the Rail Assets, consistent with the Subordination Agreement dated March 25, 2005. For the purposes of this section, the parties agree to execute appropriate amendments to the Purchase Money Security Agreement and Financing Statement dated concurrently with the execution of this Agreement

3.3 Subject to the agreement of the State and MMA, will be periodically revise to reflect the scope of work financed under the provisions of this Agreement

### SECTION 4 - DEFAULT AND REMEDIES

MMA hereby agrees that its failure to comply with any of the terms, conditions and warranties set forth herein shall constitute an "Event of Default" under this Agreement. Upon

the occurrence of an Event of Default, in addition to any other remedies provided herein, the State shall be entitled to recover from MMA an amount equal to the value of the Rail Assets at the time of the Event of Default ("Value Recovery Remedy"), and upon demand for and receipt of such amount, the State's security interest in the Rail Assets shall terminate. The value of the Rail Assets at the time of the Event of Default shall be calculated using straight line, 20 year depreciation. An Event of Default under any security instruments held by the United States of America, or any other lender holding security interests in the Rail Assets shall also constitute an Event of Default under this Agreement. Exercised by the State of its Value Recovery Remedy under this Section 4 and recovery of such funds from MMA shall terminate the State's remedy under Section 2 2(b)

#### **SECTION 5 – GENERAL PROVISIONS**

5.1 This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

5.2 No amendment of this Agreement shall be effective unless it is in writing and signed by all of the parties hereto.

5.3 This Agreement and the rights and obligations of the parties hereunder shall be construed and governed by the laws of the State of Maine, without reference to choice of law rules.

5.4 This Agreement is not assignable by MMA without the express written consent of the State.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK/  
SIGNATURES FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as of the date last signed below

Date Signed May 21<sup>st</sup>, 2009

Melody A. Keenan  
Witness

**MONTREAL, MAINE AND ATLANTIC  
RAILWAY**

By Robert C. Brunner

Print Name ROBERT C BRUNNER

Title PRESIDENT & CEO

Date Signed June 8, 2009

[Signature]  
Witness

**STATE OF MAINE, acting by and through its  
DEPARTMENT OF TRANSPORTATION**

[Signature]  
By David A. Cole, Commissioner

## EXHIBIT A

As part of the Montreal, Maine and Atlantic Railway Ltd (MMA) agreement with the State of Maine Department of Transportation (MDOT), MMA commits to not abandoning the following rail lines for a period of ten years from the date of this agreement. The lines that this agreement includes are as follows:

### MAIN LINES

The main line of the former Bangor & Aroostook Railroad from Searsport Maine (MP 0 12) to Madawaska Maine (MP 263 33). This line includes the following subdivisions:

- Searsport
- Millinocket
- Madawaska

The main line of the former Canadian Pacific Railway from Brownville Junction (MP 0 0) to the US/Canadian border at Boundary Maine (MP 101 7). This line includes the following subdivisions:

- Moosehead

### BRANCH LINES

The following branch lines of the former Bangor and Aroostook Railroad will be operated:

- Van Buren Subdivision from Madawaska Maine (MP 0 0) to Van Buren Maine (MP 24 1)
- Presque Isle Subdivision from Squa Pan Maine (MP 0 0) to Presque Isle (MP 25 3)
- Houlton Subdivision from Oakfield Maine (MP 0 0) to Houlton Maine (MP 16 9)
- Fort Fairfield Subdivision from Presque Isle Maine (MP 0 0) to Easton Maine (MP 10 0)
- KI Subdivision from Brownville Maine (MP 0 85) to Brownville Junction Maine (MP 3 74)
- East Millinocket Subdivision from Millinocket Maine (MP 0 0) to East Millinocket Maine (MP 6 19)

MMA will keep in place the contiguous rail network listed above but reserves the right to alter or remove tracks that are not economically viable such as sidings and yard tracks.

**Track Work in Progress - CT - 17E - 2009060800000006893 - 1**

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Date Submitted 6/8/2009 Submitter Kendra Gero

Approval Rule ID	Seq No	Approval Level	Assignment Date	Assignee Name	Approval Status	Approval User Name
2047	1	1	2009-06-08	MDOT - Rail and Van Pool Appro	Approved	Mare Malloy
2047	2	3	2009-06-09	PC CONTRACT ADMIN APPROVER	Approved	Kathy Paquette
2047	3	4	2009-06-18	PC DIR OF PURCHASES APPROVER	Approved	Kathy Paquette

[View Log](#)

**MODIFICATION #1 TO RAIL FUNDING AGREEMENT**

**MDOT PROGRAM / DIVISION / OFFICE: Freight Transportation**  
**MDOT Contact Person: Nathan Moulton**  
**Type of Services: Rail Program**

Project Location: Statewide  
State P.I.N. #: 016001.00  
Federal P.I.N. #: N/A  
Appropriation #: 1769  
Vendor Customer #: VC1000065831

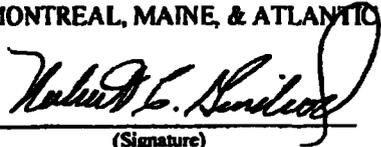
Original Agreement Maximum Amount: 1,000,000.00  
Original Agreement Expiration Date: 12/31/2009  
Modified Agreement Maximum Amount: N/A  
Modified Agreement Expiration Date: 12/31/2010

This Modification hereby amends a Rail Funding Agreement that was executed by the Department on June 08, 2009 with Montreal, Maine, & Atlantic for rail improvements services for the above referenced project as follows:

1. The Expiration Date of the Cooperative Agreement shall be extended from December 31, 2009 to December 31, 2010 due to delays in delivery of materials to complete work.
2. The services to be provided under this Cooperative Agreement shall be modified by N/A.
3. The maximum amount of the Cooperative Agreement shall be increased by: \$ N/A from \$ N/A to \$ N/A due to a change in scope of work as provided in Appendix      to this Modification.

All other terms and conditions of the original Project Agreement shall remain in effect. The Department and Montreal, Maine, & Atlantic by their duly authorized representatives, have executed this modification to said original Project Agreement on the date last signed below.

MONTREAL, MAINE, & ATLANTIC

By: 

(Signature)

Robert C. Grindrod, President, CEO

Nov. 13, 2009

(Date Signed)

MAINE DEPARTMENT OF TRANSPORTATION

By: 

(Signature)

David A. Cole, Commissioner

Nov. 16, 2009

(Date Signed)

**Track Work in Progress - CT - 17E - 2009060800000006893 - 3**

[Menu Back](#)

Date Submitted : 11/16/2009 Submitter : Kendra Gero

Approval Rule ID	Seq No	Approval Level	Assignment Date	Assignee Name	Approval Status	Approval User Name
2047	1	1	2009-11-16	MDOT - Rail and Van Pool Appro	Approved	Marie Malloy
2047	2	3	2009-11-17	PC CONTRACT ADMIN APPROVER	Approved	Kathy Paquette
2047	3	4	2009-11-18	PC DIR. OF PURCHASES APPROVER	Approved	Kathy Paquette

[View Log](#)

PIN 12145.00  
CSN 21717  
U067061034

## RAIL FUNDING AGREEMENT

THIS RAIL FUNDING AGREEMENT (the "Agreement") made on the date last signed below by and among MONTREAL, MAINE AND ATLANTIC RAILWAY LTD, a Delaware corporation, having its principal place of business at Northern Maine Jct. Park, RR#2, Box 45, Bangor, Maine 04401-9602 ("MMA"), and the STATE OF MAINE, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State").

### WITNESSETH:

WHEREAS, MMA and the State previously entered into agreements for infrastructure improvements and those agreements have expired; and

WHEREAS, the State has agreed to provide Two Million One Hundred Thousand, Seventy Three Dollars (\$2,100,073.00) to MMA for specified infrastructure improvements ("State Funds"), said funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 1999, chapter 37 and Private and Special Law 2001, Chapter 38; and

WHEREAS the State recognizes that the amount provided by this agreement is \$599,927 less than the amount originally proposed for this project and agrees in good faith to pursue this remaining amount in future funding for award to the MMA.

WHEREAS, to memorialize the terms and conditions of the State's agreement to provide such funds to MMA as successor to BAR, the State and MMA desire to enter into this Agreement.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, and with the intent to be legally bound hereby, the State and MMA agree as follows.

### SECTION 1 - PAYMENT OF FUNDS

- 1.1 Subject to the terms of this Agreement including the contingencies set forth in Section 2 below, the State hereby agrees to provide a maximum of Two Million One Hundred Thousand, Seventy Three Dollars (\$2,100,073.00) to MMA as successor to BAR in calendar year 2006 to enable MMA to acquire and install railroad track materials on designated rail lines. If additional funding becomes available for this project, the maximum amount shall be increased and funds will be added to this agreement by amendment.
- 1.2 All payments of State Funds shall be matched by MMA on a dollar for dollar basis. For purposes of this Agreement, expenditures by MMA for engineering, labor, equipment, work trains, matching material properly installed in rail lines (including ties, rail, other track

4/25/06 11:10 AM

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material, and ballast), and other necessary expenses incurred by MMA to incorporate and install the track materials eligible for reimbursement by the State hereunder shall qualify as matching expenditures under this Section. The State agrees to make payments on significant quantities of high value materials such as welded rail and ties when delivered in order to assist in project cash flows. The State shall have the right to inspect all invoiced work and materials prior to payment of invoices.

1.3 Prior to funding, the State shall have the right to review and approve the scope of MMA's work, estimates, and work locations. MMA shall provide transportation for Maine Department of Transportation ("MaineDOT") representatives to and from MMA's work locations to facilitate the State's review.

## SECTION 2--CONDITIONS FOR FUNDING

2.1 The State's obligations hereunder are subject to the following conditions. If one or more of these conditions are not satisfied, the State's obligations hereunder shall cease.

a. MMA will at all times will hold title to and own the real property and assets of BAR described in the Asset Purchase Agreement approved by the United States Bankruptcy Court, District of Maine (Chapter 11 Case No. 01-11565) under an October 9, 2002 Order Approving Asset Purchase Agreements, Authorizing Sale of Assets to MMA, and Authorizing Assignment and Assumption of Related Agreements.

b. MMA will own and will continue to own all rail and related cross ties, tie joints, tie plates, switch ties, turnouts, switches, anchors and spikes located on the Property acquired from BAR, as well any and all replacements therefore and accessions thereto installed by MMA, including, without limitation, the "Rail Assets" as defined in Section 3 below.

c. MMA will enter into the security instruments described in Section 3 below and any other security instruments reasonably required by the State under terms acceptable to the State in its sole discretion to protect the public investment in rail infrastructure contemplated by this Agreement.

d. Records of the MMA's costs for compensation under the project agreement shall be kept in accordance with 23 CFR (Code of Federal Regulations) Part 140 Subpart I - Reimbursement for Railroad Work. To the extent necessary to verify MMA's charges and upon the States timely request, copies of such records shall be made available to the State. Records shall be available for audit or review by the State for a period of three (3) years following final uncontested payment.

e. Direct expenses such as telephone, tolls, reproduction costs, per diem (requires overnight stay) shall be billed at actual cost to the Railroad as defined in 48 CFR, Part 31. The reimbursable costs for per diem shall not exceed that allowed by the State's Administrative Policy Memorandum No. 191. Mileage shall be paid at the

current amount allowed by the State of Maine, Title 5 M.R.S.A. § 1541. Reproduction of plans for submittal to the State shall be charged at actual costs. Any reproduction costs incurred for the MMA's internal use are considered overhead expenses and not chargeable as a direct expense.

2.2 As consideration for the State's investment in its rail infrastructure as set forth herein, MMA hereby represents and warrants that it will continue operations on the entire system of rail lines acquired from BAR as more particularly set forth on attached Exhibit A (the "BAR System") for a period of ten years from the date of this Agreement. If MMA abrogates this ten year operating commitment by seeking to abandon its common carrier obligations as to any portion of the BAR System before the ten years of operation are complete, the State may:

- a. decline to provide any State Funds beyond those provided prior to the abandonment; and
- b. require MMA to repay a percentage of grant funds. That percentage will be based on the number of years prior to ten that the abandonment is sought divided by ten. (A ten-year straight line basis)

Exercise by the State of its remedy under Section 2.2(b) and payment by MMA of the required funds shall terminate the State's remedy under Section 4.

### SECTION 3 - COLLATERAL

3.1 MMA's obligations to the State hereunder shall be secured by a security interest in the following property of MMA pursuant to the attached Subordination Agreement (Attachment A) dated 3/25/05:

- a. all rail and related cross ties, tie joints, tie plates, switch ties, switches, anchors, spikes, and other related track materials incorporated or installed in or attached to the real property described in Exhibit B hereto (the "Property") which are paid for with Funds provided to the MMA as successor to BAR by the State pursuant to the term of this Agreement (the "Rail Assets"); and
- b. all proceeds from any sale or transfer of any of the Rail Assets unless specifically permitted by the terms of the Security Agreement.

3.2 As a precondition to the provision of State Funds under this Agreement, MMA's grant of a security interest in the Rail Assets as set forth above must be evidenced by a Purchase Money Security Agreement and Financing Statement in a form satisfactory to the State together with any other documents reasonably required for the State to obtain a perfected security interest in the Rail Assets, consistent with the Subordination Agreement dated March 25, 2005 and attached hereto as Attachment A. For the purposes of this section, the parties agree to execute appropriate amendments to the Purchase Money Security Agreement and Financing Statement dated concurrently with the execution of this Agreement.

3.3 Subject to the agreement of the State and MMA, Exhibit B will be periodically revised to reflect the scope of work financed under the provisions of this Agreement.

#### **SECTION 4 – DEFAULT AND REMEDIES**

MMA hereby agrees that its failure to comply with any of the terms, conditions and warranties set forth herein shall constitute an "Event of Default" under this Agreement. Upon the occurrence of an Event of Default, in addition to any other remedies provided herein, the State shall be entitled to recover from MMA an amount equal to the value of the Rail Assets at the time of the Event of Default ("Value Recovery Remedy"), and upon demand for and receipt of such amount, the State's security interest in the Rail Assets shall terminate. The value of the Rail Assets at the time of the Event of Default shall be calculated using straight line, 20 year depreciation. An Event of Default under any security instruments held by the United States of America, or any other lender holding security interests in the Rail Assets shall also constitute an Event of Default under this Agreement. Exercised by the State of its Value Recovery Remedy under this Section 4 and recovery of such funds from MMA shall terminate the State's remedy under Section 2.2(b).

#### **SECTION 5 – GENERAL PROVISIONS**

5.1 This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

5.2 No amendment of this Agreement shall be effective unless it is in writing and signed by all of the parties hereto.

5.3 This Agreement and the rights and obligations of the parties hereunder shall be construed and governed by the laws of the State of Maine, without reference to choice of law rules.

5.4 This Agreement is not assignable by MMA without the express written consent of the State.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK/  
SIGNATURES FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as of the date last signed below.

Date Signed: May 1, 2006

Fredric W. Ryan, Jr.  
Witness

**MONTREAL, MAINE AND ATLANTIC  
RAILWAY**

By: Robert C. Gunderson

Print Name: ROBERT C. GUNDERSON

Title: PRESIDENT & CEO

Date Signed: June 9, 2006

Christy M. [Signature]  
Witness

**STATE OF MAINE, acting by and through its  
DEPARTMENT OF TRANSPORTATION**

[Signature]  
By: David A. Cole, Commissioner

## EXHIBIT A

As part of the Montreal, Maine and Atlantic Railway Ltd. (MMA) agreement with the State of Maine Department of Transportation (MDOT), MMA commits to not abandoning the following rail lines for a period of ten years from the date of this agreement. The lines that this agreement includes are as follows:

### MAIN LINES:

The main line of the former Bangor & Aroostook Railroad from Searsport Maine (MP 0.12) to Madawaska Maine (MP 263.33). This line includes the following subdivisions:

- Searsport
- Millinocket
- Madawaska

The main line of the former Canadian Pacific Railway from Brownville Junction (MP 0.0) to the US/Canadian border at Boundary Maine (MP 101.7). This line includes the following subdivisions:

- Moosehead

### BRANCH LINES:

The following branch lines of the former Bangor and Aroostook Railroad will be operated:

- Van Buren Subdivision from Madawaska Maine (MP 0.0) to Van Buren Maine (MP 24.1)
- Presque Isle Subdivision from Squa Pan Maine (MP 0.0) to Presque Isle (MP 25.3)
- Houlton Subdivision from Oakfield Maine (MP 0.0) to Houlton Maine (MP 16.9)
- Fort Fairfield Subdivision from Presque Isle Maine (MP 0.0) to Easton Maine (MP 10.0)
- Limestone Subdivision from Presque Isle Maine (MP 0.0) to Limestone Maine (MP 29.85)
- KI Subdivision from Brownville Maine (MP 0.85) to Brownville Junction Maine (MP 3.74)
- East Millinocket Subdivision from Millinocket Maine (MP 0.0) to East Millinocket Maine (MP 6.19)

MMA will keep in place the contiguous rail network listed above but reserves the right to alter or remove tracks that are not economically viable such as sidings and yard tracks.

SUBORDINATION AGREEMENT

For good and valuable consideration, the STATE OF MAINE acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 ("MDOT") holder of a security interest in certain real or personal property and/or fixtures, evidenced by a UCC Financing Statement recorded at the Penobscot County Registry of Deeds in Book 9631, Page 164, hereby subordinates the lien of said security interest to the lien of a Mortgage, Security Agreement and Financing Statement in the original principal amount of Thirty-Four Million Dollars (\$34,000,000.00) from Montreal, Maine & Atlantic Railway, Ltd., a Delaware limited liability company, to the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Railroad Administration (the "FRA") (the "Mortgage") and agree that the Mortgage once executed, delivered and recorded shall have priority over the above-referenced security interest held by MDOT as if the Mortgage had been duly executed, delivered and recorded prior to the execution and delivery of said security interest to MDOT and prior to the recording of said UCC Financing Statement by MDOT.

IN WITNESS WHEREOF, the STATE OF MAINE, acting by and through its Department of Transportation, has caused this Subordination Agreement to be executed by DAVID A. COLE, its COMMISSIONER thereunto duly authorized this      day of March, 2005.

WITNESS:

Joni A. Kemmule

STATE OF MAINE DEPARTMENT OF TRANSPORTATION

By: [Signature]  
Its: COMMISSIONER  
Print Name: DAVID A. COLE

STATE OF MAINE  
COUNTY OF KENNEBEC, SS.

March 25, 2005

Personally appeared the above-named DAVID A. COLE, COMMISSIONER of the Maine Department of Transportation, as aforesaid, who acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of the Maine Department of Transportation.

Before me,

[Signature]  
[Stamp]  
Notary Public/Attorney-at-Law

U067061034  
CSN 21717

**FIRST AMENDMENT TO  
RAIL FUNDING AGREEMENT  
AGREEMENT NUMBER U067061034  
PIN 012145.00**

This First Amendment to Rail Funding Agreement (the "First Amendment") is made and entered into on this 29<sup>TH</sup> day of August, 2006, by and between MONTREAL, MAINE & ATLANTIC RAILWAY, LTD., a Delaware corporation, having its principal place of business at Northern Maine Jct Park, RR #2, Box 45, Bangor, Maine 04401-9602 ("MMA") and the STATE OF MAINE, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State")

WHEREAS, MMA and the State entered into a Rail Funding Agreement dated June 9, 2006, the ("Agreement"), whereby the State, under the terms and conditions set forth in the Agreement, agreed to provide to MMA as successor to the Bangor & Aroostook Railroad Company certain funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 2001, chapter 38, and,

WHEREAS, MMA has requested that \$262,411 in State funds not expended in the calendar year 2005 contract be brought forward to be used in calendar year 2006, and,

WHEREAS, the State agrees that these funds should be brought forward to be used for the ongoing capital projects, and,

WHEREAS, the parties have agreed to amend the terms of the Rail Funding Agreement accordingly

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties do hereby agree as follows

- 1 Paragraph 3, Page 1, is hereby replaced in its entirety by the following

WHEREAS the State has agreed to provide Two Million, Three Hundred Sixty Two Thousand, Four Hundred Eighty Four Dollars (\$2,362,484 00) to MMA for specified infrastructure improvements ("State Funds"), said funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 1999, chapter 37 and Private and Special Law 2001, Chapter 38, and

- 2 Paragraph 11 of Section 1- Payment of Funds is hereby replaced in its entirety by the following

Tedoc 731,260

11 Subject to the terms of this Agreement including the contingencies set forth in Section 2 below, the State hereby agrees to provide a maximum of Two Million, Three Hundred Sixty - Two Thousand, Four Hundred Eighty - Four Dollars (\$2,362,484 00) to MMA as successor to BAR in calendar year 2006 to enable MMA to acquire and install railroad track materials on designated lines. If additional funding becomes available for this project, the maximum amount shall be increased and funds will be added to this agreement by amendment.

3 All other terms and conditions of the Rail Funding Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized representatives as of the date and year first written above.

Date Signed August 29, 2006

Melinda A. Stenham  
Witness

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

By Robert C. Guindrot

Print Name ROBERT C. GUINDROT

Title PRESIDENT & CEO

Date Signed 08/29, 2006

\_\_\_\_\_  
Witness

STATE OF MAINE, acting by and through the DEPARTMENT OF TRANSPORTATION

By David A. Cole  
David A. Cole, Commissioner

UNENCUMBERED  
APR 10 2007  
NO FUNDS RESERVED  
FOR THIS CONTRACT

**Contract/Grant Designation Form and Requisition for Contract/Grant Authorization BP37R (Oct2004)**

**Part One Contract/Grant Designation**

• It is required to CHECK ONE of the following options which best describes the attached document

The document is a **Contract**

The principal purpose of this relationship is to purchase, lease, or barter property or services for the direct benefit of the government

The document is a **Grant**

The principal purpose of this relationship is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support—with no substantial involvement between the state agency or department and the recipient during the performance of the activity

Please refer to State Controller's Bulletin 05 03 Determination of Subrecipient vs Vendor Relationship for additional guidance as well as OMB Circular A 133

**Part Two Requisition for Contract/Grant Authorization BP37R (Oct2004)**

• Please complete any of the following entries which apply to the document (agreement or amendment)

<b>Agency/Department</b>		Transportation				<b>Dept Contact</b>		Nate Moulton		
<b>Contractor Name</b>		Montreal Maine & Atlantic Railway, Ltd				<b>Contact Phone</b>		624-3563		
<b>At the right, briefly Describe the Service Provided</b>		Modification #1 to Rail Funding Agreement 17E U067061034				<b>Contract Amount</b>		\$2,100,073.00		
						<b>Amendment Amt</b>		\$262,411.00		
						<b>Doc End Date</b>		06/08/2007		
<b>Show Principal Item Coding</b> The coding could be any combination of these	<b>Fund</b>	<b>Agency</b>	<b>Org</b>	<b>SubOrg</b>	<b>Approp</b>	<b>Activity</b>	<b>Object</b>	<b>SubObj</b>	<b>Job No</b>	<b>RptCtgy</b>
	017	17E	60000	-	0350	660	4099		012145.00 009232.00	

• Please respond to all questions applicable for this document. Additional pages may be attached if necessary.  
NOTE: If this is an amendment, please complete the Substantiation of Need section only.

**Substantiation of Need.** Include statutory citations, cost savings which will be achieved, and a history of the relationship with the contractor.  
**Modification #1**

**Impact on the Civil Service System.** Describe any displacement or dislocation of state employees.  
N/A

**Employer/Employee Relationship** between the State and the Contractor (if any)

**Effect on State Affirmative Action Efforts**

**Justification for Sole Source Procurement** Is this the only source of the service, is the service so specialized that it can only be effectively obtained from a single source, what will be the impact if the contract is delayed as a result of competitive bidding?

**Evidence of Prior or Scheduled RFP** If no RFP was issued, show the vendors contacted for quotations. If the value of the contract exceeds \$2,500, attach the written quotations.

<b>MSEA REVIEW</b> Date Forwarded	<b>Purchases</b> File Number
--------------------------------------	---------------------------------

• Completed forms should be attached to the document and the package forwarded to Division of Purchases, 4<sup>th</sup> Floor Burton M. Cross Building, 9 State House Station, Augusta, ME 04333 0009

ITE U068061034  
CSN21717

**MODIFICATION 2  
TO  
RAIL FUNDING AGREEMENT**

This Modification hereby modifies a Rail Funding Agreement that was executed on June 8, 2006 with MONTREAL, MAINE AND ATLANTIC RAILWAY LTD, a Delaware corporation, having its principal place of business at Northern Maine Jct Park, RR#2, Box 45, Bangor, Maine 04401-9602 ("MMA"), and the STATE OF MAINE, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State") This agreement is hereby amended by this modification as follows

1 The termination date is extended from June 8, 2007 to June 8, 2008  
(old term date) (new term date)

Reason This date extension is to allow time for the project to be completed

All other terms and conditions of the original contract remain in full force and effect

IN WITNESS WHEREOF, the DEPARTMENT and CONTRACTOR, by their duly authorized representatives, have executed this amendment in duplicate originals as of the day and year first above written

Date Signed Apr 19, 2007

Fredrick W. Young Jr.  
Witness

MONTREAL, MAINE AND ATLANTIC RAILWAY

By Robert C. Grandjean

Print Name ROBERT C. GRANDJEAN

Title PRESIDENT & CEO

Date Signed 4-18, 2007

Cheryl M. Martin-Hunt  
Witness

STATE OF MAINE, acting by and through its DEPARTMENT OF TRANSPORTATION

David A. Cole  
By David A. Cole, Commissioner

UNENCUMBERED  
APR 24 2007  
NO FUNDS RESERVED  
FOR THIS CONTRACT

Tedoc 748796

**Contract/Grant Designation Form and Requisition for Contract/Grant Authorization BP37R (Oct2004)**

**Part One Contract/Grant Designation**

• It is required to CHECK ONE of the following options which best describes the attached document

The document is a **Contract**

The principal purpose of this relationship is to purchase, lease, or barter property or services for the direct benefit of the government

The document is a **Grant**

The principal purpose of this relationship is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support—with no substantial involvement between the state agency or department and the recipient during the performance of the activity

Please refer to State Controller's Bulletin 05 05 Determination of Subrecipient vs. Vendor Relationship for additional guidance as well as OMB Circular A-133

**Part Two Requisition for Contract/Grant Authorization BP37R (Oct2004)**

• Please complete any of the following entries which apply to the document (agreement or amendment)

<b>Agency/Department</b>	Transportation				<b>Dept Contact</b>	Nate Moulton				
<b>Contractor Name</b>	Montreal Maine & Atlantic Railway, Ltd				<b>Contact Phone</b>	624-3563				
<b>At the right, briefly Describe the Service Provided</b>	Modification #2 to Rail Funding Agreement 17E U067061034				<b>Contract Amount</b>	\$2,362,484 00				
					<b>Amendment Amt</b>	\$0 00				
					<b>Doc End Date</b>	06/08/2008				
<b>Show Principal Item Coding The coding could be any combination of these</b>	<b>Fund</b>	<b>Agency</b>	<b>Org</b>	<b>SubOrg</b>	<b>Approp</b>	<b>Activity</b>	<b>Object</b>	<b>SubObj</b>	<b>Job No</b>	<b>RptCtgy</b>
	017	17E	60000		0350	660	4099		012145 00 009232 00	

• Please respond to all questions applicable for this document Additional pages may be attached if necessary  
NOTE If this is an amendment, please complete the Substantiation of Need section only

**Substantiation of Need.** Include statutory citations cost savings which will be achieved, and a history of the relationship with the contractor  
Modification #2

**Impact on the Civil Service System.** Describe any displacement or dislocation of state employees  
N/A

**Employer/Employee Relationship** between the State and the Contractor (if any)

**Effect on State Affirmative Action Efforts.**

**Justification for Sole Source Procurement** Is this the only source of the service, is the service so specialized that it can only be effectively obtained from a single source, what will be the impact if the contract is delayed as a result of competitive bidding?

**Evidence of Prior or Scheduled RFP** If no RFP was issued, show the vendors contacted for quotations If the value of the contract exceeds \$2,500, attach the written quotations

<b>MSEA REVIEW</b> Date Forwarded	<b>Purchases</b> File Number
--------------------------------------	---------------------------------

• Completed forms should be attached to the document and the package forwarded to Division of Purchases, 4<sup>th</sup> Floor Burton M Cross Building 9 State House Station Augusta, ME 04333 0009

**MODIFICATION 3  
TO  
RAIL FUNDING AGREEMENT**

This First Amendment to Rail Funding Agreement (the "First Amendment") is made and entered into on this 22<sup>nd</sup> day of January, 2008, by and between **MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.**, a Delaware corporation, having its principal place of business at Northern Maine Jct. Park, RR #2, Box 45, Bangor, Maine 04401-9602 ("MMA") and the **STATE OF MAINE**, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State")

**WHEREAS**, MMA and the State entered into a Rail Funding Agreement dated **JUNE 8, 2006**, the ("Agreement"), whereby the State, under the terms and conditions set forth in the Agreement, agreed to provide to MMA as successor to the Bangor & Aroostook Railroad Company certain funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 2001, chapter 38,

**WHEREAS**, MMA has requested that the State temporarily waive, for the 2007 construction season only, the requirement that MMA match all payments of State funds on a dollar for dollar basis and match State funds on a 75% State 25% MMA basis, to which the State has agreed

**WHEREAS**, the State has determined that, in light of the significant drop in traffic on MMA lines from forest products and building material shippers, it is appropriate and in the public interest to temporarily reduce MMA's contributions to rail corridor development work to assist MMA in maintaining its rail corridors while remaining financially viable, and,

**WHEREAS**, the parties have agreed to amend the terms of the Rail Funding Agreement accordingly

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the parties do hereby agree as follows

1. Paragraph 1.2 of Section 1 - Payment of Funds is hereby replaced in its entirety by the following

1.2 All payments of State funds after January 1, 2007 shall be matched by MMA on a 75% State 25% MMA basis. For purposes of this Agreement, expenditures by MMA for engineering, labor, equipment, work, trains, matching material (including ties, rail, other track material, and ballast), and other necessary expenses incurred by

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MMA to incorporate and install the track materials eligible for reimbursement by the State hereunder shall qualify as matching expenditures under this section. The State agrees to make payments on significant quantities of high value materials such as welded rail and ties when delivered in order to assist in project cash flows. The State shall have the right to inspect all invoiced work and materials prior to payment of invoices.

2. All other terms and conditions of the Rail Funding Agreement shall remain in full force and effect

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized representatives as of the date and year first written above

Date Signed: January 22, 2008

Melody A. Sheahan  
Witness

MONTEREAL, MAINE & ATLANTIC  
RAILWAY, LTD.

By [Signature]

Print Name R C GARDNER

Title PRESIDENT & CEO

Date Signed: 1-23, 2008

Cheryl Martin Hunt  
Witness

STATE OF MAINE, acting by and  
through the DEPARTMENT OF  
TRANSPORTATION

By [Signature]

David A. Cole, Commissioner

Legal shared/Komarcio/Montreal, Maine & Atlantic Railway/First Amendment to Rail Funding Agreement 2 26 08 doc

17E \$3,244,000

12/31/05

**RAIL FUNDING AGREEMENT**

U125050932

THIS RAIL FUNDING AGREEMENT (the "Agreement") made on the date last signed below by and among MONTREAL, MAINE AND ATLANTIC RAILWAY LTD, a Delaware corporation, having its principal place of business at 15 Iron Road, Hermon, Maine 04401-9602 ("MMA"), and the STATE OF MAINE, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State").

**WITNESSETH:**

WHEREAS, MMA and the State previously entered into agreements for infrastructure improvements and those agreements have expired; and

WHEREAS, the State has agreed to provide Three Million Two Hundred Forty Four Thousand Dollars (\$3,244,000.00) to MMA for specified infrastructure improvements ("State Funds"), said funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 1999, chapter 37 and Private and Special Law 2001, Chapter 38; and

WHEREAS, to memorialize the terms and conditions of the State's agreement to provide such funds to MMA as successor to BAR, the State and MMA desire to enter into this Agreement.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, and with the intent to be legally bound hereby, the State and MMA agree as follows.

**SECTION 1 - PAYMENT OF FUNDS**

1.1 Subject to the terms of this Agreement including the contingencies set forth in Section 2 below, the State hereby agrees to provide a maximum of Three Million Two Hundred and Forty Four Thousand Dollars (\$3,244,000.00) to MMA (\$2,700,000.00 in funds programmed for 2005 and \$544,000 in funds carried over from 2004) as successor to BAR in calendar year 2005 to enable MMA to acquire and install railroad track materials on designated rail lines.

1.2 All payments of State Funds shall be matched by MMA on a dollar for dollar basis. For purposes of this Agreement, expenditures by MMA for engineering, labor, equipment, work trains, matching material properly installed in rail lines (including ties, rail, other track material, and ballast), and other necessary expenses incurred by MMA to incorporate and install the track materials eligible for reimbursement by the State hereunder shall qualify as matching expenditures under this Section. The State agrees to make payments on significant quantities of high value materials such as welded rail and ties when delivered in order to assist in project cash flows. The State shall have the right to inspect all invoiced work and materials prior to payment of invoices.

UNENCUMBERED  
MAY 19 2005  
NO FUNDS RESERVED  
FOR THIS CONTRACT

5/12/05 11:52 AM

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515880

1.3 Prior to funding, the State shall have the right to review and approve the scope of MMA's work, estimates, and work locations. MMA shall provide transportation for Maine Department of Transportation ("MaineDOT") representatives to and from MMA's work locations to facilitate the State's review.

## SECTION 2-CONDITIONS FOR FUNDING

2.1 The State's obligations hereunder are subject to the following conditions. If one or more of these conditions are not satisfied, the State's obligations hereunder shall cease.

a. MMA will at all times will hold title to and own the real property and assets of BAR described in the Asset Purchase Agreement approved by the United States Bankruptcy Court, District of Maine (Chapter 11 Case No. 01-11565) under an October 9, 2002, Order Approving Asset Purchase Agreements, Authorizing Sale of Assets to MMA, and Authorizing Assignment and Assumption of Related Agreements.

b. MMA will own and will continue to own all rail and related cross ties, tie joints, tie plates, switch ties, turnouts, switches, anchors and spikes located on the Property acquired from BAR, as well any and all replacements therefore and accessions thereto installed by MMA, including, without limitation, the "Rail Assets" as defined in Section 3 below.

c. MMA will enter into the security instruments described in Section 3 below and any other security instruments reasonably required by the State under terms acceptable to the State to protect the public investment in rail infrastructure contemplated by this Agreement.

d. Records of the MMA's costs for compensation under the project agreement shall be kept in accordance with 23 CFR (Code of Federal Regulations) Part 140 Subpart I - Reimbursement for Railroad Work. To the extent necessary to verify MMA's charges and upon the States timely request, copies of such records shall be made available to the State. Records shall be available for audit or review by the State for a period of three (3) years following final uncontested payment.

e. Direct expenses such as telephone, tolls, reproduction costs, per diem (requires overnight stay) shall be billed at actual cost to the Railroad as defined in 48 CFR, Part 31. The reimbursable costs for per diem shall not exceed that allowed by the State's Administrative Policy Memorandum No. 191. Mileage shall be paid at the current amount allowed by the State of Maine, Title 5 M.R.S.A. § 1541. Reproduction of plans for submittal to the State shall be charged at actual costs. Any reproduction costs incurred for the MMA's internal use are considered overhead expenses and not chargeable as a direct expense.

2.2 As consideration for the State's investment in its rail infrastructure as set forth herein, MMA hereby represents and warrants that it will continue operations on the entire system of rail lines acquired from BAR as more particularly set forth on attached Exhibit A (the "BAR System") for a period of ten years from the date of this Agreement. If MMA abrogates this ten year operating commitment by seeking to abandon, without the prior agreement of the State, its common carrier obligations as to any portion of the BAR System (other than spurs and de minimis portions of track) before the ten years of operation are complete, the State may:

- a. decline to provide any State Funds beyond those provided prior to the abandonment; and
- b. require MMA to repay a percentage of grant funds. That percentage will be based on the number of years prior to ten that the abandonment is sought divided by ten. (A ten-year straight line basis)

Exercise by the State of its remedy under Section 2.2(b) and payment by MMA of the required funds shall terminate the State's remedy under Section 4.

### SECTION 3 - COLLATERAL

3.1 MMA's obligations to the State hereunder shall be secured by a security interest in the following property of MMA pursuant to the attached Subordination Agreement (Attachment A) dated 3/25/05:

- a. all rail and related cross ties, tie joints, tie plates, switch ties, switches, anchors, spikes, and other related track materials incorporated or installed in or attached to the real property described in Exhibit B hereto (the "Property") which are paid for with Funds provided to MMA as successor to BAR by the State pursuant to the term of this Agreement (the "Rail Assets"); and
- b. all proceeds from any sale or transfer of any of the Rail Assets unless specifically permitted by the terms of the Security Agreement.

3.2 As a precondition to the provision of State Funds under this Agreement, MMA's grant of a security interest in the Rail Assets as set forth above must be evidenced by a Purchase Money Security Agreement and Financing Statement in a form satisfactory to the State together with any other documents reasonably required for the State to obtain a perfected security interest in the Rail Assets, consistent with the Subordination Agreement dated March 25, 2005 and attached hereto as Attachment A. For purposes of this section, the parties agree to execute appropriate amendments to the Purchase Money Security Agreement and Financing Statement dated concurrently with the execution of this Agreement.

3.3 Subject to the agreement of the State and MMA, Exhibit B will be periodically revised to reflect the scope of work financed under the provisions of this Agreement.

### SECTION 4 - DEFAULT AND REMEDIES

MMA hereby agrees that its failure to comply with any of the material terms, conditions and warranties set forth herein shall constitute an "Event of Default" under this Agreement. Upon the occurrence of an Event of Default, in addition to any other remedies provided herein, the State shall be entitled to recover from MMA an amount equal to the value of the Rail Assets at the time of the Event of Default ("Value Recovery Remedy"), and upon demand for and receipt of such amount, the State's security interest in the Rail Assets shall terminate. The value of the Rail Assets at the time of the Event of Default shall be calculated using straight line, 20 year depreciation. An Event of Default under any security instruments held by the United States of America, or any other lender holding security interests in the Rail Assets shall also constitute an Event of Default under this Agreement. Exercise by the State of its Value Recovery Remedy under this Section 4 and recovery of such funds from MMA shall terminate the State's remedy under Section 2.2(b).

#### SECTION 5 – GENERAL PROVISIONS

5.1 This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

5.2 No amendment of this Agreement shall be effective unless it is in writing and signed by all of the parties hereto.

5.3 This Agreement and the rights and obligations of the parties hereunder shall be construed and governed by the laws of the State of Maine, without reference to choice of law rules.

5.4 This Agreement is not assignable by MMA without the express written consent of the State.

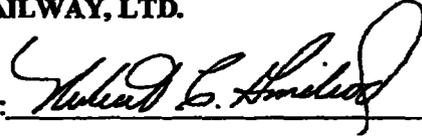
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK/  
SIGNATURES FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as of the date last signed below.

Date Signed: May 12, 2005

  
Witness

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.

By: 

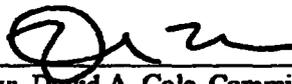
Print Name: ROBERT C. GREENWOOD

Title: PRESIDENT & CEO

Date Signed: May 13, 2005

  
Witness

STATE OF MAINE, acting by and through its  
DEPARTMENT OF TRANSPORTATION

  
By: David A. Cole, Commissioner

## EXHIBIT A

As part of the Montreal, Maine and Atlantic Railway Ltd. (MMA) agreement with the State of Maine Department of Transportation (MaineDOT), MMA commits to not abandoning the following rail lines for a period of ten years from the date of this agreement. The lines that this agreement includes are as follows:

### MAIN LINES:

The main line of the former Bangor & Aroostook Railroad from Searsport Maine (MP 0.12) to Madawaska Maine (MP 263.33). This line includes the following subdivisions:

- Searsport
- Millinocket
- Madawaska

The main line of the former Canadian Pacific Railway from Brownville Junction (MP 0.0) to the US/Canadian border at Boundary Maine (MP 101.7). This line includes the following subdivisions:

- Moosehead

### BRANCH LINES:

The following branch lines of the former Bangor and Aroostook Railroad will be operated:

- Van Buren Subdivision from Madawaska Maine (MP 0.0) to Van Buren Maine (MP 24.1)
- Presque Isle Subdivision from Squa Pan Maine (MP 0.0) to Presque Isle (MP 25.3)
- Houlton Subdivision from Oakfield Maine (MP 0.0) to Houlton Maine (MP 16.9)
- Fort Fairfield Subdivision from Presque Isle Maine (MP 0.0) to Easton Maine (MP 10.0)
- Limestone Subdivision from Presque Isle Maine (MP 0.0) to Limestone Maine (MP 29.85)
- KI Subdivision from Brownville Maine (MP 0.85) to Brownville Junction Maine (MP 3.74)
- East Millinocket Subdivision from Millinocket Maine (MP 0.0) to East Millinocket Maine (MP 6.19)

MMA will keep in place the contiguous rail network listed above but reserves the right to alter or remove tracks that are not economically viable such as sidings and yard tracks.

SUBORDINATION AGREEMENT

For good and valuable consideration, the STATE OF MAINE acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 ("MDOT) holder of a security interest in certain real or personal property and/or fixtures, evidenced by a UCC Financing Statement recorded at the Penobscot County Registry of Deeds in Book 9631, Page 164, hereby subordinates the lien of said security interest to the lien of a Mortgage, Security Agreement and Financing Statement in the original principal amount of Thirty-Four Million Dollars (\$34,000,000.00) from Montreal, Maine & Atlantic Railway, Ltd., a Delaware limited liability company, to the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Railroad Administration (the "FRA") (the "Mortgage") and agree that the Mortgage once executed, delivered and recorded shall have priority over the above-referenced security interest held by MDOT as if the Mortgage had been duly executed, delivered and recorded prior to the execution and delivery of said security interest to MDOT and prior to the recording of said UCC Financing Statement by MDOT.

IN WITNESS WHEREOF, the STATE OF MAINE, acting by and through its Department of Transportation, has caused this Subordination Agreement to be executed by DAVID A. COLE, its COMMISSIONER thereunto duly authorized this      day of March, 2005.

WITNESS:

*Soni A Kemmelle*

STATE OF MAINE DEPARTMENT OF TRANSPORTATION

By: *DAVID A. COLE*  
Its: COMMISSIONER  
Print Name: DAVID A. COLE

STATE OF MAINE  
COUNTY OF KENNEBEC, SS.

March 25, 2005

Personally appeared the above-named DAVID A. COLE, COMMISSIONER of the Maine Department of Transportation, as aforesaid, who acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of the Maine Department of Transportation.

Before me,

*Yves J. Plouffe*  
YVES J. PLOUFFE  
Notary Public, Maine  
My Commission Expires December 3, 2005  
Notary Public/Attorney-at-Law

**EXHIBIT B**

**[Rail World's engineers will start working on this, but will need to coordinate with MaineDOT.]**

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## RAIL FUNDING AGREEMENT

THIS RAIL FUNDING AGREEMENT (the "Agreement") made on the date last signed below by and among MONTREAL, MAINE & ATLANTIC RAILWAY, LTD., a Delaware corporation, having its principal place of business at Northern Maine Jct. Park, RR #2, Box 45, Bangor, Maine 04401-9602 ("MMA"), and the STATE OF MAINE, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State").

### WITNESSETH:

WHEREAS, MMA has entered into an Asset Purchase Agreement with the Bangor & Aroostook Railroad Company ("BAR") and related entities under which it intends to acquire certain property and assets of BAR including all of BAR's rail right of way and track structure within the State; and

WHEREAS, the State has agreed to provide Five Million Four Hundred Thousand Dollars (\$5,400,000.00) to BAR or its successor for specified infrastructure improvements ("State Funds"), said funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 2001, chapter 38; and

WHEREAS, to memorialize the terms and conditions of the State's agreement to provide such funds to MMA as successor to BAR, the State and MMA desire to enter into this Agreement.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, and with the intent to be legally bound hereby, the State and MMA agree as follows.

### SECTION 1 - PAYMENT OF FUNDS

- 1.1 Subject to the terms of this Agreement including the contingencies set forth in Section 2 below, the State hereby agrees to provide, when and as needed to fund the acquisition and installation of railroad track materials on designated rail lines, up to a maximum of Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) to MMA as successor to BAR in each of calendar years 2003 and 2004. Up to One Million, Five Thousand Three Hundred Thirty Four Dollars (\$1,005,334.00) will be paid to BAR as the current operating railroad as an advance against the 2003 allocation to MMA for mobilization of materials and equipment to install railroad track materials on the designated rail lines to upgrade such rail lines as required for the continuation of operations through the 2002-2003 winter season (November 2002 to April 2003) in accordance with the terms of this Agreement.

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1.2 All payments of State Funds shall be matched by MMA on a dollar for dollar basis. For purposes of this Agreement, expenditures by MMA for engineering, labor, equipment, work trains, matching material (including ties, rail, other track material, and ballast), and other necessary expenses incurred by MMA to incorporate and install the track materials eligible for reimbursement by the State hereunder shall qualify as matching expenditures under this Section.

1.3 Prior to, and as a condition of funding, the State shall have the right to review and approve the scope of MMA's work, estimates, and work locations. MMA shall provide transportation for Maine Department of Transportation ("MDOT") representatives to and from MMA's work locations to facilitate the State's review.

#### SECTION 2—CONDITIONS FOR FUNDING

2.1 The State's obligations hereunder are subject to the following conditions. If one or more of these conditions are not satisfied, the State's obligations hereunder shall cease and this Agreement will be automatically terminated.

a. MMA will complete its acquisition of and at all times will hold title to and own the real property and assets of BAR described in the Asset Purchase Agreement approved by the United States Bankruptcy Court, District of Maine (Chapter 11 Case No. 01-11565) under an October 9, 2002 Order Approving Asset Purchase Agreements, Authorizing Sale of Assets to MMA, and Authorizing Assignment and Assumption of Related Agreements.

b. MMA will assume the loans, contingent repayment obligations, and all other obligations owing to the State by BAR or Canadian American Railroad (CDAC) in connection with track and branch line improvement grants.

c. MMA will own and will continue to own all rail and related cross ties, tie joints, tie plates, switch ties, turnouts, switches, anchors and spikes located on the Property acquired from BAR, as well any and all replacements therefor and accessions thereto installed by MMA, other than those disposed of in the ordinary course of business, including, without limitation, the "Rail Assets" as defined in Section 3 below.

d. MMA will enter into the security instruments described in Section 3 below and any other security instruments reasonably required by the State under terms reasonably acceptable to the State to protect the public investment in rail infrastructure contemplated by this Agreement.

2.2 As consideration for the State's investment in its rail infrastructure as set forth herein, MMA hereby represents and warrants that it will continue operations on the entire system of rail lines acquired from BAR as more particularly set forth on attached Exhibit A (the "BAR System") for a period of ten years from the date of this Agreement. If MMA abrogates this ten year operating commitment by abandoning, or seeking authority from the Surface Transportation Board to abandon, its common carrier obligations as to any portion of the BAR System (other than spurs and de minimis portions of track which are excluded) as defined in Exhibit A hereto before the ten years of operation are complete, the State may:

- a. decline to provide any State Funds beyond those provided prior to the abandonment; and
- b. require MMA to repay a percentage of funds granted pursuant to this Agreement equal to the number of years prior to ten that abandonment is sought divided by ten.

Exercise by the State of its remedy under Section 2.2(b) shall terminate the State's remedy under Section 4.

### SECTION 3 - COLLATERAL

3.1 MMA's obligations to the State hereunder shall be secured by a first priority security interest in the following property of MMA:

- a. all rail and related cross ties, tie joints, tie plates, switch ties, switches, anchors, spikes, and other related track materials incorporated or installed in or attached to the track described in Exhibit B hereto (the "Property") which are paid for with Funds provided to MMA as successor to BAR by the State pursuant to the terms of this Agreement (the "Rail Assets"); and
- b. all proceeds from any sale or transfer of any of the Rail Assets unless specifically permitted by the terms of the Security Agreement.

3.2 To evidence MMA's grant to the State of a security interest in the Rail Assets, MMA shall execute and deliver to the State a Purchase Money Security Agreement and Financing Statement in a form satisfactory to the State in its sole discretion together with such other documents and instruments as are reasonably necessary for the State to obtain a perfected, first priority security interest in the Rail Assets. Execution and delivery of the Purchase Money Security Agreement and Financing Statement and any other security instruments reasonably required by the State and receipt by the State of satisfactory evidence of perfection of the State's lien in the Rail Assets shall be a precondition to the provision of Funds hereunder in accordance with Section 1 above.

3.3 Subject to the agreement of the State and MMA, Exhibit B will be periodically revised to reflect the scope of work financed under the provisions of this Agreement.

**SECTION 4 – DEFAULT AND REMEDIES**

Any foreclosure on, or action taken to possess or use, the Rail Assets by any of MMA's lenders following an Event of Default under any security instruments held by any of MMA's lenders shall constitute an Event of Default under this Agreement. Any failure by MMA to maintain in effect the State's security interest in the Rail Assets as provided in Section 3.1 or any other failure by MMA to comply with any of the terms, conditions and warranties set forth herein, if not cured within 30 days after notice thereof by the State to MMA, shall also constitute an Event of Default. Upon the occurrence of an Event of Default, in addition to other remedies provided in Section 2.2(a) herein, the State shall be entitled to recover from MMA an amount equal to the value of the Rail Assets at the time of the Event of Default ("Value Recovery Remedy"), and upon demand for and receipt of such amount, the State's security interest in the Rail Assets shall terminate. The value of the Rail Assets at the time of the Event of Default shall be calculated using straight line, 20 year depreciation. Exercise by the State of its Value Recovery Remedy under this Section 4 shall terminate the State's remedy under Section 2.2(b).

**SECTION 5 – GENERAL PROVISIONS**

5.1 This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

5.2 No amendment of this Agreement shall be effective unless it is in writing and signed by all of the parties hereto.

5.3 This Agreement and the rights and obligations of the parties hereunder shall be construed and governed by the laws of the State of Maine, without reference to choice of law rules.

5.4 This Agreement is not assignable by MMA without the express written consent of the State.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK/  
SIGNATURES FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as of the date last signed below.

Date Signed: 12/23, 2002

Cathy D. Adams  
Witness

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.

By: Edward A. Burkhardt

Print Name: EDWARD A. BURKHART

Title: CHAIRMAN

Date Signed: 12/23, 2002

Allan H. Badler  
Witness

STATE OF MAINE, acting by and through its  
DEPARTMENT OF TRANSPORTATION

Carl A. Croce  
By: Carl A. Croce, Acting Commissioner

*Marie Wilson  
6-23-03*

UNENCUMBERED  
JUN 10 2003  
NO FUNDS RESERVED  
FOR THIS CONTRACT

## **Exhibit A**

### **MMA – MDOT AGREEMENT**

As part of the Montreal, Maine and Atlantic Railway Ltd. (MMA) agreement with the State of Maine Department of Transportation (MDOT), MMA commits to not abandoning the following rail lines for a period of ten years from the date of this agreement. The lines that this agreement includes are as follows:

#### **MAIN LINES:**

The main line of the former Bangor & Aroostook Railroad from Searsport Maine (MP 0.12) to Madawaska Maine (MP 263.33). This line includes the following subdivisions:

- Searsport
- Millinocket
- Madawaska

The main line of the former Canadian Pacific Railway from Brownville Junction (MP 0.0) to the US/Canadian border at Boundary Maine (MP 101.7). This line includes the following subdivisions:

- Mooshead

#### **BRANCH LINES:**

The following branch lines of the former Bangor and Aroostook Railroad will be operated:

- Van Buren Subdivision from Madawaska Maine (MP 0.0) to Van Buren Maine (MP 24.1)
- Presque Isle Subdivision from Squa Pan Maine (MP 0.0) to Presque Isle (MP 25.3)
- Houlton Subdivision from Oakfield Maine (MP 0.0) to Houlton Maine (MP 16.9)
- Fort Fairfield Subdivision from Presque Isle Maine (MP 0.0) to Easton Maine (MP 10.0)
- Limestone Subdivision from Presque Isle Maine (MP 0.0) to Limestone Maine (MP 29.85)
- KI Subdivision from Brownville Maine (MP 0.85) to Brownville Junction Maine (MP 3.74)
- East Millinocket Subdivision from Millinocket Maine (MP 0.0) to East Millinocket Maine (MP 6.19)

MMA will keep in place the contiguous rail network listed above but reserves the right to alter or remove tracks that are not economically viable such as sidings and yard tracks.

PIN 12145.00

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6/26/03 for  
Processing thru  
Purchases

**FIRST AMENDMENT TO  
RAIL FUNDING AGREEMENT**

This First Amendment to Rail Funding Agreement (the "First Amendment") is made and entered into on this 12th day of March, 2003, by and between **MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.**, a Delaware corporation, having its principal place of business at Northern Maine Jct. Park, RR #2, Box 45, Bangor, Maine 04401-9602 ("MMA") and the **STATE OF MAINE**, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State").

KK

11/20/03  
No funding  
or termination  
Change - didn't  
go to  
Purchases  
KK

**WHEREAS**, MMA and the State entered into a Rail Funding Agreement dated December 23, 2002, the ("Agreement"), whereby the State, under the terms and conditions set forth in the Agreement, agreed to provide to MMA as successor to the Bangor & Aroostook Railroad Company certain funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 2001, chapter 38;

**WHEREAS**, MMA has requested that the State temporarily waive, for the 2003 construction season only, the requirement that MMA match all payments of State funds on a dollar for dollar basis;

**WHEREAS**, the State has determined that, in light of the bankruptcy filing of Great Northern Paper, it is appropriate and in the public interest to temporarily waive MMA's contributions to rail corridor development work to assist MMA in maintaining its rail corridors while remaining financially viable; and,

**WHEREAS**, the parties have agreed to amend the terms of the Rail Funding Agreement accordingly.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the parties do hereby agree as follows:

1. Paragraph 1.2 of Section 1 - Payment of Funds is hereby replaced in its entirety by the following:

1.2. All payments of State funds after January 1, 2004, shall be matched by MMA on a dollar for dollar basis. For purposes of this Agreement, expenditures by MMA for engineering, labor, equipment, work, trains, matching material (including ties, rail, other track material, and ballast), and other necessary expenses incurred by MMA to incorporate and install the track materials eligible for reimbursement by the State hereunder shall qualify as matching expenditures under this section.

2. All other terms and conditions of the Rail Funding Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized representatives as of the date and year first written above.

Date Signed: March 12, 2003

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.

Fredric W. Young, Jr.  
Witness

By: Robert C. Grandner

Print Name: Robert C. Grandner

Title: PRESIDENT & CEO

Date Signed: March ~~12~~<sup>24</sup> 2003

STATE OF MAINE, acting by and  
through the DEPARTMENT OF  
TRANSPORTATION

Sh. Q. L.  
Witness 3/24/03

By: David A. Cole  
David A. Cole, Commissioner

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PIN 12145.00

**SECOND AMENDMENT TO  
RAIL FUNDING AGREEMENT**

This Second Amendment to Rail Funding Agreement (the "Second Amendment") is made and entered into on this 30<sup>TH</sup> day of DECEMBER, 2003, by and between **MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.**, a Delaware corporation, having its principal place of business at Northern Maine Jct. Park, RR #2, Box 45, Bangor, Maine 04401-9602 ("MMA") and the **STATE OF MAINE**, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State").

**WHEREAS**, MMA and the State entered into a Rail Funding Agreement dated December 23, 2002, the ("Agreement"), whereby the State, under the terms and conditions set forth in the Agreement, agreed to provide to MMA as successor to the Bangor & Aroostook Railroad Company certain funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 2001, chapter 38; and,

**WHEREAS**, MMA has requested that the State advance funds allotted for expenditure in the 2004 construction season, for use in the 2003 construction season; and,

**WHEREAS**, MMA has requested that the State advances in 2003 be matched by MMA in 2004 and at a different percentage basis: and,

**WHEREAS**, the State has determined that, in light of the continued financial struggles of MMA, it is appropriate and in the public interest to make the requested monetary advances and to temporarily waive MMA's contributions to rail corridor development work to assist MMA in maintaining its rail corridors while remaining financially viable; and,

**WHEREAS**, the parties have agreed to amend the terms of the Rail Funding Agreement accordingly.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the parties do hereby agree as follows:

1. Paragraph 1.2 of Section 1 - Payment of Funds is hereby replaced in its entirety by the following:

1.2. All payments of State funds after January 1, 2004, shall cover 80% of MMA expenditures in calendar year 2004 approved by the State. All payments of State funds made in the month of December, 2003 shall be matched by MMA on a four State dollar to one MMA dollar basis before December 31, 2004. For purposes of this

Agreement, expenditures by MMA for engineering, labor, equipment, work, trains, matching material (including ties, rail, other track material, and ballast), and other necessary expenses incurred by MMA to incorporate and install the track materials eligible for reimbursement by the State hereunder shall qualify as matching expenditures under this section.

2. All other terms and conditions of the Rail Funding Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized representatives as of the date and year first written above.

Date Signed: DECEMBER 30, 2003

Witness

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

By: 

Print Name: ROBERT C. GRANDNER

Title: PRESIDENT & CEO

Date Signed: JAN. 14, 2004, ~~2003~~

Witness

STATE OF MAINE, acting by and through the DEPARTMENT OF TRANSPORTATION

By: 

David A. Cole, Commissioner

**SECOND AMENDMENT TO  
RAIL FUNDING AGREEMENT**

This Second Amendment to Rail Funding Agreement (the "Second Amendment") is made and entered into on this 30<sup>th</sup> day of DECEMBER, 2003, by and between **MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.**, a Delaware corporation, having its principal place of business at Northern Maine Jct. Park, RR #2, Box 45, Bangor, Maine 04401-9602 ("MMA") and the **STATE OF MAINE**, acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (the "State").

**WHEREAS**, MMA and the State entered into a Rail Funding Agreement dated December 23, 2002, the ("Agreement"), whereby the State, under the terms and conditions set forth in the Agreement, agreed to provide to MMA as successor to the Bangor & Aroostook Railroad Company certain funds to be derived from General Obligation Bonds for rail corridor development work as provided by Private and Special Law 2001, chapter 38; and,

**WHEREAS**, MMA has requested that the State advance funds allotted for expenditure in the 2004 construction season, for use in the 2003 construction season; and,

**WHEREAS**, MMA has requested that the State advances in 2003 be matched by MMA in 2004 and at a different percentage basis; and,

**WHEREAS**, the State has determined that, in light of the continued financial struggles of MMA, it is appropriate and in the public interest to make the requested monetary advances and to temporarily waive MMA's contributions to rail corridor development work to assist MMA in maintaining its rail corridors while remaining financially viable; and,

**WHEREAS**, the parties have agreed to amend the terms of the Rail Funding Agreement accordingly.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the parties do hereby agree as follows:

1. Paragraph 1.2 of Section 1 - Payment of Funds is hereby replaced in its entirety by the following:

1.2. All payments of State funds after January 1, 2004, shall cover 80% of MMA expenditures in calendar year 2004 approved by the State. All payments of State funds made in the month of December, 2003 shall be matched by MMA on a four State dollar to one MMA dollar basis before December 31, 2004. For purposes of this

Agreement, expenditures by MMA for engineering, labor, equipment, work, trains, matching material (including ties, rail, other track material, and ballast), and other necessary expenses incurred by MMA to incorporate and install the track materials eligible for reimbursement by the State hereunder shall qualify as matching expenditures under this section.

2. All other terms and conditions of the Rail Funding Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized representatives as of the date and year first written above.

Date Signed: December 30, 2003

[Signature]  
Witness

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

By: [Signature]

Print Name: ROBERT C. GANNETT

Title: PRESIDENT & CEO

Date Signed: JAN. 14, 2004, ~~2003~~

[Signature]  
Witness

STATE OF MAINE, acting by and through the DEPARTMENT OF TRANSPORTATION

By: [Signature]  
David A. Cole, Commissioner

C

**MMA CAPITAL AMOUNTS OWED BY YEAR UNDER GRANT REPAYMENT  
PROVISIONS OF AGREEMENTS**

Contract documents provide for MMA repayment of capital funding based on a 10yr depreciation schedule by year upon filing of abandonment of any lines in system. Based on MaineDOT payment records it is reconciled as follows:

<u>YEAR</u>	<u>TOTAL PMTS MADE X DEPR. FACTOR</u>			<u>AMOUNT OWED</u>
2002	\$ 554,213	X	.2	\$ 110,843
2003	\$2,275,180	X	.3	\$ 682,554
2004	\$2,026,534	X	.4	\$ 810,614
2005	\$2,981,588	X	.5	\$1,490,794
2006	\$1,119,132	X	.6	\$ 671,479
2007	\$ 646,246	X	.7	\$ 452,372
2008	\$ 597,087	X	.8	\$ 477,670
2009	\$ 288,662	X	.9	\$ 259,796
	<b><i>TOTAL</i></b>			<b><i>\$4,956,122</i></b>

**D**

SUBORDINATION AGREEMENT

For good and valuable consideration, the STATE OF MAINE acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 ("MDOT) holder of a security interest in certain real or personal property and/or fixtures, evidenced by a UCC Financing Statement recorded at the Northern Aroostook County Registry of Deeds in Book 1426, Page 57, hereby subordinates the lien of said security interest to the lien of a Mortgage, Security Agreement and Financing Statement in the original principal amount of Thirty-Four Million Dollars (\$34,000,000.00) from Montreal, Maine & Atlantic Railway, Ltd., a Delaware limited liability company, to the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Railroad Administration (the "FRA") (the "Mortgage") and agree that the Mortgage once executed, delivered and recorded shall have priority over the above-referenced security interest held by MDOT as if the Mortgage had been duly executed, delivered and recorded prior to the execution and delivery of said security interest to MDOT and prior to the recording of said UCC Financing Statement by MDOT.

IN WITNESS WHEREOF, the STATE OF MAINE, acting by and through its Department of Transportation, has caused this Subordination Agreement to be executed by DAVID A. COLE, its COMMISSIONER, thereunto duly authorized this \_\_\_ day of March, 2005.

WITNESS:

Joni W Kemmerle

STATE OF MAINE DEPARTMENT OF TRANSPORTATION

By: [Signature]  
Its: COMMISSIONER  
Print Name: DAVID A. COLE

STATE OF MAINE  
COUNTY OF KENNEBEC, SS.

March 25, 2005

Personally appeared the above-named DAVID A. COLE, COMMISSIONER of the Maine Department of Transportation, as aforesaid, who acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of the Maine Department of Transportation.

Before me,

[Signature]  
TOM L. FLOURNOY  
Notary Public, Maine  
My Commission Expires December 3, 2008  
Notary Public/Attorney-at-Law

SUBORDINATION AGREEMENT

For good and valuable consideration, the STATE OF MAINE acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 ("MDOT) holder of a security interest in certain real or personal property and/or fixtures, evidenced by a UCC Financing Statement recorded at the Southern Aroostook County Registry of Deeds in Book 4053, Page 261, hereby subordinates the lien of said security interest to the lien of a Mortgage, Security Agreement and Financing Statement in the original principal amount of Thirty-Four Million Dollars (\$34,000,000.00) from Montreal, Maine & Atlantic Railway, Ltd., a Delaware limited liability company, to the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Railroad Administration (the "FRA") (the "Mortgage") and agree that the Mortgage once executed, delivered and recorded shall have priority over the above-referenced security interest held by MDOT as if the Mortgage had been duly executed, delivered and recorded prior to the execution and delivery of said security interest to MDOT and prior to the recording of said UCC Financing Statement by MDOT.

IN WITNESS WHEREOF, the STATE OF MAINE, acting by and through its Department of Transportation, has caused this Subordination Agreement to be executed by DAVID A. COLE, its COMMISSIONER, thereunto duly authorized this \_\_\_ day of March, 2005.

WITNESS:

Joni R. Kemmerle

STATE OF MAINE DEPARTMENT OF TRANSPORTATION

By: DA  
Its: COMMISSIONER  
Print Name: DAVID A. COLE

STATE OF MAINE  
COUNTY OF KENNEBEC, SS.

March 25, 2005

Personally appeared the above-named DAVID A. COLE, COMMISSIONER of the Maine Department of Transportation, as aforesaid, who acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of the Maine Department of Transportation.

Before me,

Clair J. Plouffe  
Notary Public, Maine  
My Commission Expires December 3, 2005  
Notary Public/Attorney-at-Law

Piscataquis

SUBORDINATION AGREEMENT

For good and valuable consideration, the STATE OF MAINE acting by and through its Department of Transportation, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016 ("MDOT") holder of a security interest in certain real or personal property and/or fixtures, evidenced by a UCC Financing Statement recorded at the Piscataquis County Registry of Deeds in Book 1610, Page 232, hereby subordinates the lien of said security interest to the lien of a Mortgage, Security Agreement and Financing Statement in the original principal amount of Thirty-Four Million Dollars (\$34,000,000.00) from Montreal, Maine & Atlantic Railway, Ltd., a Delaware limited liability company, to the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Railroad Administration (the "FRA") (the "Mortgage") and agree that the Mortgage once executed, delivered and recorded shall have priority over the above-referenced security interest held by MDOT as if the Mortgage had been duly executed, delivered and recorded prior to the execution and delivery of said security interest to MDOT and prior to the recording of said UCC Financing Statement by MDOT.

IN WITNESS WHEREOF, the STATE OF MAINE, acting by and through its Department of Transportation, has caused this Subordination Agreement to be executed by DAVID A. COLE, its COMMISSIONER, thereunto duly authorized this 25th day of March, 2005.

WITNESS:

STATE OF MAINE DEPARTMENT OF TRANSPORTATION

Soni L. Kimmell

By: [Signature]  
Its: COMMISSIONER  
Print Name: DAVID A. COLE

STATE OF MAINE  
COUNTY OF KENNEBEC, SS.

March \_\_, 2005

Personally appeared the above-named DAVID A. COLE, COMMISSIONER of the Maine Department of Transportation, as aforesaid, who acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of the Maine Department of Transportation.

Before me,

[Signature]  
TINA L. FLOURDE  
Notary Public, Maine  
My Commission Expires December 3, 2005  
Notary Public/Attorney-at-Law

**E**

**[REDACTED PAGE(S)]**

**HUNTER**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

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

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**VERIFIED STATEMENT OF GARY V. HUNTER**

My name is Gary V. Hunter. I am Chairman and Chief Executive Officer of Railroad Industries Incorporated ("RII"), and my business address is at 1575 Delucchi Lane, #210, Reno, Nevada. I have 34 years of experience in the railroad industry, having worked for Class I railroads, and as a consultant to the industry. RII is a full service consulting firm providing services on, among other matters, operations, marketing, finances, equipment, industrial development, cost, rates, contracts, agreements, real estate, track and structures, training, safety and FRA compliance. Among its projects, RII developed an abandoned rail line for an inland port authority, including setting up the railroad and supervising operations, and acted as the general manager of a \$5,000,000 short line, supervising and handling all rail operations, customer service, finance and marketing. A complete description of my relevant experience and curriculum vitae follow this statement.

RII was originally retained by the Maine Department of Transportation ("MaineDOT") in November, 2009, after Montreal, Maine & Atlantic Ry., Ltd. ("MMA") announced plans to abandon the five lines that are the subject of this proceeding (the "Abandonment Lines"). I have been the principal contact for MaineDOT and have performed or supervised and directed all of the work done by RII. RII was retained to prepare an analysis of the rail assets included in the Abandonment Lines, a traffic analysis, an operational feasibility analysis, and an examination of

Hunter -1

the public benefits for preserving service. In the course of preparing a report for MaineDOT, RII interviewed shippers, met with representatives of MMA, provided detailed analysis of the lines to be abandoned, assisted with negotiations, performed track and bridge inspections, provided guidance, and reviewed confidential material.

RII has now been retained by MaineDOT additionally to review and comment on the abandonment analysis presented by MMA in its Application. To prepare this Verified Statement, I have reviewed the Application, including relevant Verified Statements, and certain additional documents provided to me by MaineDOT as being produced by MMA in response to discovery requests. In addition, on April 5-7, 2010, RII was permitted to inspect the Abandonment Lines.

#### **Traffic / Marketing Analysis**

During week of December 1, 2009, personal interviews with over 20 major shippers, as well as several potential shippers, towns and economic development agencies, were conducted by RII to gain an understanding of the customers, traffic and service needs on the Abandonment Lines. Attached as Exhibit A is our Market Analysis including interview summaries. Based on the interviews we concluded that the current shippers are committed to using rail service, and need it to continue at the present time and for their future needs.

Based on the interviews and on traffic figures provided by MMA for the past 5 years, RII determined that for the 20 existing shippers and two potential customers, expected traffic levels should be as follows:

CUSTOMER	Freight Rate	Total Cars - Low Traffic Scenario	Total Cars - High Traffic Scenario	Total Cars - With Potential Traffic Scenario
Aroostock Starch	\$			
Beaver Brook Mill Inc.	\$			
Boralex Inc.	\$			
Columbia Forest	\$			
Dead River Company	\$			
The Fiber Resource Group	\$ —			
Fraser Papers Ltd.	\$			
Fraser Timber Ltd.	\$			
Huber Engineering Woods	\$			
Irving Woodlands LLC	\$			
Louisiana Pacific	\$			
McCain Foods	\$—			
MPG Fresh	\$			
Cavendish Farms Operations, Inc.	\$			
Cavendish Agri Services	\$			
Chandler Lake, Inc.	\$			
Lane Construction Corp.	\$			
Other Misc. Traffic	\$			
<b>Total Traffic:</b>		<b>8,913</b>	<b>9,887</b>	<b>12,557</b>

The low and high traffic scenarios reflect projections for the year 2010. (The low traffic is mainly the volume that the shippers are currently moving; the high traffic scenario primarily depends on the recovery of the macroeconomic environment and new traffic opportunities.) This is generally consistent with MMA's reported base year traffic of \_\_\_\_\_ carloads (Finley V.S., HC MMA 81), and forecast year traffic. However, as the economy and housing industry continue to rebound, our interviews indicate a strong potential for an additional 3,426 carloads, which would bring traffic levels up to over 12,000 carloads per year (the "high with potential scenario"). To realize this potential, the macroeconomic prospects must continue to improve, and MMA would need to provide more frequent, and certainly more reliable service. Additionally, shippers would need to add infrastructure to accommodate more rail volume.

MMA states that shippers have shown little interest in the Abandonment Lines, and that shippers have alternate means of transportation available to them. Application, HC MMA 20-22. My interviews indicated otherwise. The shippers I spoke with clearly depend on reliable rail transportation. Without it, some of these shippers are facing the possibility of shutting their

facilities down. Any loss of business would represent a severe loss to the State of Maine generally, and to Aroostook County in particular. Further, the fact that a number of shippers are contesting this abandonment demonstrates their keen interest in preserving rail service. In fact, based on my interviews, it is MMA that has shown a lack of interest in serving the shippers. The on line customers for the most part do not have a strong voice with MMA, and MMA has shown very little interest or ability to develop and maintain traffic levels. As an example, MMA does not currently have a formal marketing plan for the Abandonment Lines. A railroad of this size and customer base needs to have a well-defined marketing plan that drives the operations and results in new opportunities. It should be noted that many of the customers interviewed stated that they had not seen anyone from MMA over the last several years.

As far as alternative transportation is concerned, trucking would be the only alternative to rail service, and trucks are not readily available in this region. Consequently, many of the mills and facilities were built and set up to handle rail. Transloading does not make sense with many of the short hauls involved. If they are forced to forego rail service, shippers will incur significant additional transportation costs. See Holland V.S. In addition, with the loss of rail, a minimum of 36,000 loaded trucks will be added to the regional highway system, causing congestion, higher road maintenance, more potential accidents, higher fuel usage and higher emissions in the region.

#### **Deferred Maintenance / Rehabilitation**

MMA indicates in the Application that it spent \$ \_\_\_\_\_ on maintenance of way on the Abandonment Lines during the base year. Sheahan V.S., HC MMA 193. This equates to over \_\_\_\_\_ per mile. (In my meeting with MMA in December 2009, Ms. Sheahan indicated that MMA was spending only \$ \_\_\_\_\_ per mile.) In our experience, railroads generally spend an

average of \$3,000 to \$5,000 per mile on track maintenance for FRA Class 1 track. The average track maintenance of short line railroads ranges from \$4,000 to \$7,000, depending upon the condition of the railroad. At \$ [redacted] plus a mile, MMA should be able to maintain at existing safety and track speed levels. Since MMA's maintenance of way figure is consistent with the operating plan we prepared, discussed later in this Verified Statement, we will accept the figure as a reasonable annual cost of maintenance for the forecast year.

MMA claims that the estimated current deferred maintenance needs are almost \$ [redacted] million for the mainline in rail and ties in order to bring the Madawaska subdivision into FRA Class 3, and the other branch lines into FRA Class 2. Sheahan V.S., HC MMA 193, 222. Thereafter, MMA claims that the lines will require an additional \$ [redacted] per year (over \$ [redacted] per mile) in normalized annual capital maintenance to maintain the Abandonment Lines in the upgraded condition. Sheahan V.S., HC MMA 226. However, MMA cannot justify these costs. Our operating plan demonstrates that the current FRA Class 2 for the Madawaska subdivision, and FRA Class 1 for the other branch lines is sufficient to provide efficient service. Based on the recent track inspection, most of the Madawaska mainline is FRA Class 2 or FRA Class 3 track speeds, and most of the branch lines are FRA Class 1 or Class 2 today. The railroad overall is in good condition, and it will take very little to maintain the current track speeds over the forecast year. The traffic volume of [redacted] carloads equals to [redacted] annual gross tons over these rail lines, and with a well-developed track maintenance plan within the [redacted] /year stated earlier, MMA should easily be able to maintain this railroad at track speeds that will allow the traffic to move efficiently and safely.

Also, based on RII's inspection of the Abandonment Lines, a capital expenditure of \$1.5 - \$2 million would place these lines in good condition for the current classifications. This

suggested work includes: (1) in-track welding of 100 # 39' jointed 1930-34 rail (10.5 miles) with an estimated Cost of \$1,050,000; (2) replace additional 5 worst miles of 100RA as identified by rail test and maintenance consultant with an estimated cost of \$500,000; and (3) remove short section of 80# and 2 switches in Madawaska main line at Ft. Kent with an estimated cost of \$150,000. This does not include any work on the last 15 miles of the Limestone Branch which has not seen any service for many years. Additionally, as discussed above, thereafter, standard normalized annual maintenance of approximately \$5,000 per mile should be sufficient to maintain the tracks in the needed condition. By claiming that the Abandonment Lines need to be maintained in higher classifications than are necessary, MMA overstates the rehabilitation costs, ongoing maintenance costs, and its calculation of subsidy costs.

#### **On-Branch Avoidable Costs**

We have reviewed various aspects of MMA's on-branch avoidable costs, and have identified various errors.

#### **Maintenance of Way**

According to the operation notes provided by MMA prior to this proceeding, there are 9 people dedicated to maintenance of way on the Abandonment Lines. which is consistent with the number of maintenance of way positions listed on HC MMA109.

Section 45G of the U.S. Tax Code, the Railroad Track Maintenance Tax Credit, is legislation that allows shippers, contractors and suppliers of short line railroads to claim or transfer credits against the total amount of federal taxes owed by their shippers, contractors and suppliers under certain circumstances. It is based upon the money spent in track maintenance and qualifying upgrades to roadbeds, bridges and other related railroad structures. We have been

asked by counsel for Maine DOT to assume that the tax credit will be extended for 2010. Accordingly, we applied the same tax credit for the forecast year as MMA did for the base year. Based on our adjustments, the adjusted on branch avoidable cost for maintenance of way should be:

Management Labor:  
Labor:  
Materials, Supplies:

45G Tax Credit:

Total M of W

(Compare to Finley V.S., HC MMA 110.)

#### **Locomotive and Freight Car Maintenance**

MMA claims that 11 mechanics (6 for locomotives and 5 for freight cars) and 1 maintenance of equipment manager can be eliminated if the abandonment were granted. Finley V.S., HC MMA 83, 109. This is certainly an excessive number of mechanics to assign to the Abandonment Lines even if you accept the claims that 12 locomotives and 760 freight cars are being used on the Abandonment Lines. Further, as discussed below, it appears that MMA is currently only using 6 locomotives and approximately 450 cars are estimated to be sufficient to handle the traffic volume on the Abandonment Lines. RII believes that for the proper number of locomotives and freight cars to service the lines, no more than one manager and 4 mechanics (2 for locomotives and 2 for freight cars) would be needed. Using the proper number of mechanics would reduce the labor costs for maintenance of equipment –locomotive costs (HC MMA 111) and the maintenance of equipment – freight car repairs (HC MMA 112) for the forecast year to \$: \_\_\_\_\_ each.

**Locomotive Usage and Expense**

MMA claims that there are 12 locomotives assigned to Abandonment Lines whose costs can be avoided if the lines are abandoned. Finley V.S, HC MMA.83, 86. This claim is difficult to believe. MMA acknowledges that it operates only about 13 trains per week (HC MMA 27) and that it uses only between 2 and 3 locomotives per day. HC MMA 28. In determining avoidable costs, the questions should be what are they operating today and what is needed for the operation.

In earlier meetings with me, I was told that MMA was using the following locomotives to provide service on the Abandonment Lines:

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(This is also consistent with locomotive usage chart MMA provided to MaineDOT in discovery, a copy of which is attached hereto as Exhibit B.) Additionally, it should be noted that the types of locomotives actually used are not consistent with the types of locomotives MMA identifies will be eliminated. Finley V.S., HC MMA 86. MMA can shift locomotives, so for ease of comparison, we will assume that the six locomotives MMA would actually be able to eliminate would be five GE B39-8's and one GE C30-7.

The six locomotives would represent only 17.1% of the total locomotive fleet of 35, as opposed to the 34.3% used by Mr. Finley in his allocations.

Labor & Fringe  
(1/2 mgr, 2 mechanics)  
Administrative  
Locomotive parts, etc.

Total locomotive M of E

(Compare Finley V.S., HC MMA 111.)

Further, the return on value would be one-half of the \$99,889 calculated by Mr. Finley (Finley V.S., HC MMA 117), as would depreciation.

#### **Freight Car Usage and Expense**

MMA claims that this abandonment would allow it to save the costs of 760 surplus railcars. Our analysis shows that it is unlikely that MMA is currently using that many cars to provide service on the Abandonment Lines. In doing some analysis of the car supply, MMA is responsible for providing cars for on line moves and traffic originating on these lines. Local Maine moves total \_\_\_\_\_ cars, and originating moves for which MMA supplies cars are \_\_\_\_\_ for a total of \_\_\_\_\_ cars. If I divide that number by 760 cars, that means MMA cars would be turning only 9 times per year. Even at 12 times a year, they would need a fleet of only 550 cars. This would be very poor management of assets, even at these numbers. At worst case, the local Maine cars should get 10-15 day turns, while the cars originating in Maine and going outside should get 20-30 day turns. At these turn rates, the needed car fleet size would be as follows:

# of Cars	Days	to	Turn
	10		15
	68		103
# of Cars	Days	to	Turn
	20		30
	236		354
Needed Fleet	304		457

The chart shows that if MMA were operating efficiently, they would need between 304-457 cars in their fleet, not 760. The extra cars are an unnecessary cost to the MMA operation. (This also assumes that MMA supplies all cars for local traffic or traffic originating on their lines. In reality, MMA probably does not supply 100% of these cars.)

According to RII's railcar utilization efficiency analysis shown above, for the operations on the Abandonment Lines, the service should require no more than 450 cars given the traffic volume. Accordingly, various costs allocated to the freight cars should be reduced by 40% to reflect the costs of cars that are not necessary to provide service on the lines. It should also be noted that based on our review of the car leases provided to us by MMA, the leases on almost 400 of the cars will expire by the middle of the forecast year which ends in January 2011. See the following lease chart:



Labor & Fringe  
(1/2 mgr, 2 mechanics)  
Administrative  
Freight car parts, etc.

Total freight car M of E

(Compare Finley V.S., HC MMA 112.)

### Transportation Costs

Since there are only six instead of twelve locomotives actually being used for the operations on the Abandonment Line, the total fuel and sand expenses should be reduced by one-half each. The reduced fuel amount is consistent with (although somewhat higher than) the fuel cost in RII's operating plan.

MMA eliminates all of the "crew start costs" although no trainmen are actually shown in the list of positions to be eliminated. See HC MMA 109. Thus, it is not clear whether all of the associated positions will be saved. Because we do not have sufficient information to determine how many positions will actually be saved, we have not made any adjustment to these costs. For the forecast year, transportation avoidable costs should be adjusted as follows:

Management labor  
Abandonment Line Labor  
Abandonment Labor Fringe  
Diesel Fuel  
Sand  
Misc. Expenses

Total

(Compare Finley V.S., HC MMA 113.)

## Summary of On-Branch Cost Adjustments

The adjustments to On-Branch Costs calculated by RII, and discussed above can be summarized as follows:

On-Branch Avoidable Cost Comparison (Forecast Year)		
	Finley's Exhibit 1	RII's Estimate
Maintenance of Way	\$	
Maintenance of Equipment	\$	
Transportation	\$	
General Administrative	\$	
Deadheading, Taxi & Hotel	\$	
Overhead Movement	\$	
Freight Car Cost	\$	
Return on Value-Locomotive	\$	
Return on Value-Freight car	\$	
Revenue Taxes	\$	
Property Taxes	\$	
<b>Total On-branch cost</b>	<b>\$</b>	<b>\$</b>
<b>Total Avoidable Cost</b>	<b>\$</b>	<b>\$</b>

## Economic, Safety and Environmental Impacts

As part of our work for the State we reviewed the economic, safety and environmental impacts that the proposed abandonment would have on the Aroostook County region of the State. Many environmental, economic and safety benefits from retaining the rail infrastructure were identified and can be summarized here.

### Maine Rail Initiatives

Retention of the rail lines would complement other Maine rail program initiatives, including the Industrial Rail Access Program and Freight Rail Improvement Program. The Maine Freight Strategy identified this rail corridor as important to the economic viability of the natural resource-based industries of northern and western Maine. Maine also established the Rail Corridor Protection Program to purchase, lease or otherwise partner with railroad to improve rail corridors that are at risk of abandonment or have deferred maintenance due to reduced traffic

levels. The goal of this program is to protect economic assets including paper mills, forest and lumber product facilities and other manufacturing facilities critical to the state's economy, sustainability and overall quality of life.

#### Economic Impact

MaineDOT has identified twenty-one (21) businesses that use rail transportation in Aroostook County. The outright abandonment of freight rail service would have an immediate and direct negative economic effect on these companies which are located in this county. These companies, already experiencing serious economic challenges, would endure increased operating costs for the delivery of materials used in production, in turn making them less competitive in regional and national markets. Without continued rail service these firms may be forced to cut production levels, potentially resulting in layoffs.

#### Environment Cost for Abandoning the Railroad

If MMA eventually abandons the Madawaska Subdivision and the rail service along this line is completely shut down, the potential damage to the community would be significant. At the beginning, all the shippers along the line might have to divert all their current traffic to truck to try to survive. This will create a huge traffic burden on Maine's existing road transportation system in highway maintenance cost, increased fuel consumption and spending and pollutant air emission. In the long run, the shippers along the rail line will lose their competitiveness due to the increased cost of truck shipping. If we assume all the business will be able to survive and have to divert all the traffic to truck, here is the snapshot of the environmental cost resulting from the closed rail service:

Summary of Environmental Impact if Railroad is Abandoned		
<b>Transportation System Impact</b>		
Additional Annual Pavement Replacement Costs	\$	3,528,000
Potential Additional Highway Accidents		202
Total Additional Fuel Consumed (Gallons)		2,162,403
Total Additional Fuel Consumed (Dollars)	\$	6,487,208
<b>Environmental Impact - Air Emission</b>		
	Total Added Air Emission in Tons	
Carbon Dioxide Emission		159,835.80
Nitrogen Oxide Emission		2,811.15
Carbon Monoxide		1,333.35
Hydrocarbons		333.34
Volatile Organix Compounds		666.68

### Increased Highway Maintenance Cost

According to a previous Pennsylvania Railroad Economic Assessment Study, the marginal pavement replacement cost exceeding state diesel tax revenue (\$/ton mile) is at an average of \$0.007 per ton mile nationwide. If we borrow this variable to quantify the environment cost of diverting all the rail traffic to truckload, the additional annual highway maintenance cost and congestion price are estimated as follows:

Additional Highway Maintenance and Congestion Expenses		
Average annual truck trips added if railroad abandoned	36000	
Average tons per truck load	25	
Average hauling miles via truck within the State of Maine	400	
<b>Additional Annual Highway Maintenance Expenses</b>		
	Unit Variable	Total
Number of annual truck trips added		36,000
Additional annual pavement replacement costs (\$ per ton mile)	\$ 0.007	\$ 3,528,000.00
Potential Additional Highway Accidents Per Year	0.28 Per 1 million vehicle miles	202

This calculation is based on the following assumptions:

1. Annual traffic is estimated at 9,000 rail cars.

2. Each rail car is assumed to be equivalent to four truck loads, with each truck holding net 25 tons of commodities.
3. The net weight of a truck without load is assumed at 10 tons.
4. The average hauling miles of one way truck traffic within the State of Maine is estimated at 400 miles.

#### Additional Fuel Consumption

According to United States Bureau of Transportation Statistics data, rail fuel consumption is approximately 87% less per ton-mile than trucks. One gallon of diesel fuel moves one ton of freight an average of 406 miles by rail compared with 217 miles that one gallon of diesel fuel can move by truck. The following facts compare the fuel efficiency of rail transportation to trucks:

- If just 10% of the freight moved by highway was diverted to rail, the nation could save as much as 200 million gallons of fuel annually.
- Railroad fuel efficiency has increased by 72 % since 1980. At that time, a gallon of diesel fuel moved one ton of freight an average of 235 miles. In 2001, the same amount of fuel moved one ton of freight an average of 406 miles.
- Trains are 2-4 times more fuel efficient than trucks on a ton-mile basis.

It is becoming more and more apparent that trucks are adding to the daily traffic congestion on all of our major highways. The trend is that all the transportation related government agencies, regardless it is Federal level, State level, County level or City level, are making great efforts to divert as much truck traffic possible to rail, the opposite effect of forced diversion of traffic from rail to truck will not only add significant additional traffic to road, but also increase the fuel consumption, and thus emit more air pollution as well. The quantified cost

of diverting the rail traffic along the intended abandoned rail line to truck is illustrated as follows:

Additional Fuel Expenses if Railroad Abandoned				
		Rail Fuel consumption	Truck Fuel Consumption	Total Additional Fuel Consumption via Truck
Fuel Efficiency (ton miles per gallon of diesel)		406	217	
Average annual truck trips added if railroad abandoned	36,000			
Average tons per truck load	25			
Average hauling miles via truck	400			
Total added annual truck trips	36,000			
Total added ton miles	1,008,000,000			
	Additional Fuel Used in Gallon	2,482,759	4,645,161	2,162,403
	Additional Expenses in \$ Assuming \$3. Per Gallon	\$ 7,448,276	\$ 13,935,484	\$ 6,487,208

### Emissions

According to U.S. Environmental Protection Agency data, rail emissions are from 75% to 96% lower per ton-mile than trucks for three criteria pollutants: carbon monoxide, volatile organic compounds and NOx. In addition, automobile traffic tends to increase in emissions in urban areas when there is increased truck traffic involved due to lower speeds traveled. A few facts about emissions comparisons include:

- The U.S. EPA estimates that for every ton-mile, a typical truck emits roughly three times more nitrogen oxides and particulates than a locomotive. Other studies suggest that trucks emit 6 to 12 times more pollutants per ton-mile than do railroads, depending upon the pollutant measured.
- According to the American Society of Mechanical Engineers, 2.5 million fewer tons of carbon dioxide would be emitted into the air annually if 10% of intercity freight now moving by highway were shifted to rail.
- Trains are 3 to 4 times cleaner than trucks on a ton-mile basis.

If we just look at the number of truck trips that will potentially increase from the abandoning of the MMA's Madawaska subdivision, the air emission will significantly increase and the increased air emission is estimated as follows:

Environmental Impacts - Additional Air Emissions if Railroad Abandoned		
Average annual truck trips added if railroad abandoned	36,000	
Average tons per truck load	25	
Average hauling miles via truck	400	
Total added annual truck trips	36,000	
Total added ton miles	1,008,000,000	
Variables of Air Emission Increase (Note: Variables are rail vs. truck grams per ton-mile)		
	Variable	Total Added Air Emission in Tons
Carbon Dioxide Emission	143.85	159,835.80
Nitrogen Oxide Emission	2.53	2,811.15
Carbon Monoxide	1.2	1,333.35
Hydrocarbons	0.3	333.34
Volatile Organix Compounds	0.6	666.68
(Source: Carpenter, T.G. <i>The Environmetnal Impacts of Raitways</i> )		

### Safety Impacts

In addition to the safety impacts of air quality degradation, adding a minimum of 36,000 truck loads per year to the state's highway system also poses serious safety concerns for roadway travel. More truck traffic increases the probability and instance of traffic accidents on highways and could potentially increase insurance premiums in the area.

There is also a misconception that abandoning railroads will reduce the number of railroad crossings, thereby reducing the number of accidents at railroad grade crossings. However, adding traffic to the other crossings does not reduce the number vehicles traveling over grade crossings. Adding a minimum of 36,000 additional trucks traveling over the existing grade crossings throughout Maine's extensive short line railroad network will likely increase the

traffic over even busier grade crossings, not reducing the probability and instance of crossing accidents at all.

#### **Net Liquidation Value – Track and Track Materials**

Net Liquidation Value (“NLV”) refers to the market value of an asset less the costs associated with its disposal. The disposal costs can include, but are not limited to, the following: time to liquidate, sales commissions, excavation, disposal, and environmental restoration. In essence, Net Liquidation Value is the realizable value of the assets – the track, land, equipment, vehicles and other structures – less the costs associated with their disposal to be used for any other purpose.

On April 5-7, 2010, RII was allowed to inspect the track on the MMA segments planned for abandonment. The inspection was performed by RII Associate, C. David Pettry, former Assistant Chief Engineer for CSX Transportation. A copy of his curriculum vitae follows this statement. Based on this inspection, the rail weights and condition of the rail differed slightly from that as presented in MMA’s NLV dated November, 2009. (To the extent MMA relied on track charts and rail charts, the visual inspection should be more reliable. In discussions with RII, MMA acknowledged that the track charts and documents had not been updated.) MMA estimated a total of 3,300 ties per mile to derive the total number of ties on the line; however, according to Mr. Pettry’s inspection, the average total number of ties per mile is estimated at no more than 3,000 ties with significant consistency along the lines in all five subdivisions. The discrepancy of average total number of ties counted per mile would decrease the gross number and value of ties, and the total removal and transportation cost of the ties. In addition, the reduced tie count would also reduce the total OTM weight. Compared with the previous count of 3,300 ties per mile, 3,000 ties per mile represent about 9% reduction in total tie counts. It is

reasonable to estimate that the total OTM weight should be reduced by at least 9% as well. RII applied the 9% reduction on the total OTM weight to derive the updated estimated NLV for all five subdivisions due to the consistent tie count of about 3,000 ties per mile.

Using the unit steel and salvage values presented by MMA in its analysis, would require the following adjustments to NLV:

*Madawaska Subdivision*

The total mileage of Madawaska subdivision including mainline and sidings is 183.57 miles. RII made the adjustment for ties discussed above. According to MMA's NLV report, there was no 70 lb. rail recorded. However, Mr. Pettry did spot about 19.17 miles of 70 lb. rail, which would be scrapped compared with what was previously reported as 100 lb. rail for relay use. There is also about two miles less of 112 lb. rail than was stated in the MMA NLV. Additionally, Mr. Pettry counted a total of only 97 turnouts, compared with 113 turnouts that were in the MMA NLV, which would result in a reduction of the NLV by approximately \$? -----

Summary: MMA \$ ----- RII \$ -----

*Fort Fairfield Subdivision*

There is a total of 12.3 miles at Fort Fairfield subdivision including ten miles of mainline and 2.3 miles of sidings and other track. There are about 2.3 miles of 70 lb. rail that was recorded as 80 lb. rail on MMA's NLV report. This would reduce the track value by about \$7,000. RII made the adjustment for ties discussed above.

Summary: MMA \$ ----- RII \$ -----

*Limestone Subdivision*

There is a total of 35.3 miles at Limestone subdivision including 29.85 miles of mainline and 5.45 miles of sidings and other track. There is no discrepancy in tracks reported. Only the tie adjustment discussed above will affect the NLV of this subdivision. Since 90% of the ties were reported to be equally salvaged as landscape and scrap, only 10% of the relay ties will affect the tie value. However, the removal cost and transportation cost of the ties would be reduced as well due to the reduced tie count per mile, which ultimately increases the NLV for this subdivision slightly.

Summary: MMA \$'----- RII \$'-----

*Presque Isle Subdivision*

There is a total of 29.1 miles at Presque Isle subdivision including 25.3 miles of mainline and 3.8 miles of sidings and other track. There are about two miles of 70 lb. rail that was not recorded by MMA. The total mileage of 85 lb. rail was overstated by one mile. RII also made the tie adjustment discussed above.

Summary: MMA \$'----- RII \$'-----

*Houlton Subdivision*

The total mileage of the Houlton Subdivision is 24.43 miles including mainline, sidings and other tracks. There are approximately 3 miles of 75 lb. rail that was not recorded by MMA. The total length of 100 lb. rail was overstated by over half a mile compared to the amount shown in MMA's NLV report. Again, RII made the tie adjustment discussed above.

Summary: MMA \$'----- RII \$'-----

The NLV adjustments based on the inspection are summarized in the following chart:

	Sheahan V.S. Exhibit D	RII Adjusted Net Liquidation Value
Madawaska Subdivision	\$	\$
Houlton Subdivision	\$	\$
Presque Isle Subdivision	\$	\$
Fort Fairfield Subdivision	\$	\$
Limestone Subdivision	\$	\$
<b>Total NLV of Track &amp; Ties</b>	<b>\$</b>	<b>\$</b>

Ms. Sheahan discounted her calculation of NLV to present value to account for the time it would take to salvage the track and materials, and concluded that the discounted present value of the NLV would be \$\_\_\_\_\_ Sheahan V.S. at 192. Applying the same interest rate of 5% and the same assumption regarding the time period it takes to dispose of the railroad, the discounted present value of RII's Adjusted Net Liquidation Value is \$\_\_\_\_\_.

*Additional Adjustments to NLV*

In reviewing the MMA calculation of NLV we noted that MMA did not include any increased salvage costs for the restoration of public at-grade crossings, including the paving that would be required by the removal. Although MMA shows 58 signalized crossings, the FRA inventory shows 98 total public at-grade crossings. We understand from MaineDOT, that the cost of restoration will conservatively be \$8,000 per crossing. See Moulton V.S. Accordingly, the NLV should be reduced by an additional \$784,000 to reflect additional costs of salvage.

Additionally, there were no bridge removal costs or crossing removal costs accounted for in the MMA NLV. RII's bridge consultant expert, Charles (Sonny) Cooper, whose resume is attached following this statement, reviewed available bridge reports for the Madawaska subdivision MP 108-180, and for the Fort Fairfield, Houlton and Limestone branches. RII was not provided with bridge reports for the Presque Isle subdivision or the bridge report for Madawaska subdivision from MP 181 through 260. Mr. Cooper also reviewed aerial

photographs of the rail line, rivers and land they cross to determine an estimated cost to salvage all bridges on the line to the nearest salvage locations.

Per Mr. Cooper's analysis, a bridge removal cost estimate of \$1,780 per linear foot was determined to be appropriate, subject to the following:

- Maine DEP lead abatement regulations
- State disposal regulations
- Possible Federal and State environmental studies required per creek/river
- Possible Federal and State endangered species regulations

The total removal costs in this estimate are conservative, and additional environmental factors would only increase the salvage costs.

Mr. Cooper noted a total of 20 bridges that would have substantial removal costs totaling 2,770 linear feet, or a total removal cost of \$4,930,600. Mr. Cooper estimated there should be roughly 500 tons of bridge scrap (not including rail) with a scrap value of \$100,000. Even accounting for an estimated additional-salvage value of bridge-materials of \$100,000, removal costs will far exceed the value of these bridges. The remaining smaller bridges (totaling approximately 569 linear feet) would have a zero dollar value, where the salvage costs would at least cancel out the scrap value from any bridge materials.

Since the STB does not usually allow for salvage value of a structure to exceed the value of the structure, the value of the rail for all bridges should be deducted from the NLV. There are a total of 3,339 linear feet of track on the bridges for the 4 subdivisions for which bridge reports were provided (no report was provided by MMA for the Presque Isle subdivision). See Exhibit C attached hereto. The rail on these bridges should also be deducted from the NLV. Assuming

115 lb. rail makes up the majority of, if not all, of the bridges, the following calculation shows the amount that should be deducted from the NLV for bridges:

$$3,339 \times 2 = 6,678 \text{ ft.} \times .0364166 \text{ (net tons per foot)} \times \$ \text{ (salvage value)} = \$170,233$$

The discounted present value of the rail on the bridges would be \$

### **Operational Feasibility**

As part of RII's initial engagement, I prepared operational analyses to determine if the Abandonment Lines could be operated profitably by and as a stand-alone short line. The analysis included a review of the operational requirements of the line and their associated costs to determine the economic sustainability of the line. The analysis took into account the traffic numbers, estimated rates and other revenue sources, as well as the costs of operating the line based on shipper service requirements.

We can now use these analyses to act as a base line of the reasonable costs needed to operate at the current levels. (As a stand-alone, it is likely that some costs would be higher than those of MMA currently since MMA can share certain employees and equipment with other parts of its system. Attached as Exhibit D are relevant excerpts for the operating feasibility analyses that I ran for the different traffic levels discussed in the Traffic / Marketing Analyses above. When the studies were first done, we did not have actual revenue figures from MMA, and I used estimates.

In the Application, MMA indicates that in the base year its revenues were \$ for its carloads - an average of \$ per car. Finley V.S., HC MMA 81. With this new revenue figure, I re-ran the analyses, and excerpts from the results for the different traffic levels are attached hereto as Exhibit E.

Even at the lower revenue number in my initial model, the models indicate that the operations can make money with just a small increase in traffic. It certainly makes money if the lines realize their high potential. With the higher revenues MMA is earning, operations should already be making money.

The revenues on the Abandonment Lines represent 28% of the revenues earned on the entire MMA. It is unclear how the loss of this income will impact MMA's ability to carry an unaltered debt service supported by less revenue. This leads me to conclude that MMA's problems are not driven by losses generated by operating the Abandonment Lines but rather are a reflection of broader problems with the whole system.

**VERIFICATION**

I, Gary V. Hunter, Chairman and Chief Executive Officer of Railroad Industries Incorporated, verify under penalty of perjury that statements contained in the foregoing Verified Statement are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 20, 2010.

  
Gary V. Hunter

## ***Expert Experience***

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### **Rail Career Background**

My railroad career started June 1, 1976 after completing my BA Degree in Business at San Francisco State University. While working full time at the Western Pacific Railroad, I completed my Masters Degree in Business in December, 1979. In 1980, I was named MBA student of the year at San Francisco State University.

In June of 1976, I was hired by the Western Pacific Railroad with headquarters in San Francisco. My first assignment was an assistant trainmaster/agent in Oakland, California's yard. I had 1 week training at the division headquarters in Sacramento before mastering the job. Nine months later, I was promoted to Trainmaster. After a year and a half, I moved to San Francisco headquarters to take the position as Transportation Budget Officer for the system. After a year, I was promoted to Regional Trainmaster, headquartered in Fremont, California. My operating career spanned five years with Western Pacific and I was able to advance and learn job positions quickly. I stressed safety, rules and a safe work environment for all personnel. I had extensive involvement with all agreements, real estate and train operations.

In June of 1981, Southern Pacific Railroad contacted me about working with their marketing department. My first job was Assistant Marketing Manager of Bulk services and a year later, I was promoted to Market Manager of Bulk Services. My next job was

**Product Manager for Construction Materials. I later went to the Intermodal department, first as an Assistant to the Assistant Vice President of Intermodal and later, Manager of Intermodal Marketing. My last job with Southern Pacific was Group Manager of Marketing Programs. In this capacity I handled special projects, merger work, branch lines, agreements and work with several departments including marketing, operations, economics, equipment, engineering, real estate and the executive department.**

**Upon leaving Southern Pacific in 1987, I went to work for Transportation Marketing Services in Pleasant Hill, California. This consulting firm handled the Rio Grande merger with Southern Pacific including all operations, agreements and negotiations. The firm also handled shipper and shortline work.**

**In 1989, I turned Railroad Industries Incorporated (RII) into a full time consulting practice. The largest 2 assignments included developing an abandoned rail line for Perry County Port Authority/Hoosier Southern Railroad, including setting up the railroad and supervising operations for several years and then serving as General Manager for the Arkansas Midland Railroad, supervising and handling all rail operations, customer service, finance and marketing. RII today has developed into a full service consulting firm handling operations, marketing, finances, equipment, expert witness, industrial development, cost, rates, contracts, agreements, real estate, track and structures, training, safety, FRA compliance and many other areas. RII clients include Class I railroads, short-lines, shippers, industrial developers, investors, economic development agencies, cities, counties, states and investors – both groups and individuals**

Resume

**Gary V. Hunter**

**Experience**

***Railroad Industries Incorporated***

**Chairman and Chief Executive Officer - Reno, Nevada 1997-Present**

**Chairman and Chief Executive Officer - Hot Springs, Arkansas 1993-1997**

**President - Reno, Nevada 1983-1993**

Mr. Hunter put his rail hands-on experience into his own consulting firm to provide expertise to rail shippers, railroads, public transportation and economic development agencies, private investors and other transportation service companies across the country. Work has included branch line analysis, equipment utilization and analysis, development of operating plans, market development, transportation costing, intermodal analysis, merger studies, developing short line railroads, and financial analysis. Mr. Hunter serves as the Chairman and CEO of the firm, managing all major business decisions, in addition to serving as Project Manager for most projects. He ensures quality control and provides most input for contract negotiations between Class I's, shippers and short line railroads, alternative operations scenarios and traffic development strategies. Projects of note include Expert witness services for injury, rate, equipment, right of way and contract issues; Project Management for Utah Coal Rail Line development; 100's of NLV and GCV evaluations for short line, regional and

branch line railroads; yard and terminal operations analysis for 12 BNSF Railways' terminals nationwide; Contract switching, operations and economics analysis for shippers nationwide, including Procter and Gamble, Cargill Grain, AK Steel, Palladon Iron, Sierra Pacific Power, Martin Marietta Materials and Bayer Materials; and Shipper Coalition projects in California, Oregon and Utah to protect rail service for future economic development.

**Arkansas Midland Railroad, General Manager**

**1993-1994**

**Jones Mill, Arkansas**

Mr. Hunter was responsible for the overall operations of a \$5 million short line railroad which includes 131 miles of track, 37 employees, and 21,000 annual carloads. The maintenance of way, maintenance of equipment, operations, marketing and agency departments reported to Mr. Hunter. In addition, Mr. Hunter was responsible for all purchasing activities and real estate transactions.

**Transportation Marketing Services, Inc., Consultant**

**1987-1989**

**Pleasant Hill, California**

Mr. Hunter was responsible for achieving revenue and profit objectives of the firm as directed by the President. His duties included market development, strategic planning, equipment analysis, physical distribution analysis, branch line acquisition analysis, competitive analysis, market research, contract rate negotiations, sales development,

operations analysis, and development of business plans. He prepared testimony, traffic and revenue projections diversion estimates, and traffic flow analyses for the Anschutz Corporation and Rio Grande Industries in their acquisition of the Southern Pacific Transportation Company. Clients included the government, shippers, transportation companies, and port authorities.

<i>Southern Pacific Transportation Company, San Francisco, California</i>	1981-1987
Marketing Services Department	1986-1987
Intermodal Department	1985-1986
Market Planning Department	1981-1985

In the Marketing Services Dept., Mr. Hunter was responsible for achieving revenue and profit objectives for the corporation as directed by the Assistant Vice President - Marketing Services. His duties included developing agreements with other railroads, developing a network of short-haul TOFC trains, and evaluating the competitive environment and implications for the corporation. He was involved with branch line sales and agreements, working with both investors and financiers to develop short line railroads. He handled SPTCo's application for trackage rights in the Union Pacific-Missouri-Kansas-Texas Railroad merger including a traffic flow analysis, diversion estimates, and revenue projections.

In the Intermodal Dept., Mr. Hunter was responsible for special studies on all aspects of domestic and international TOFC and container traffic as directed by Assistant Vice

**President - Intermodal. His duties included contract development and negotiations, developing and analyzing costs, developing and analyzing various markets, and pricing, representing approximately \$500 million in annual revenue.**

**In the Market Planning Dept., Mr. Hunter was responsible for the market development and pricing of the aggregate and cement commodities representing approximately \$80 million in annual review. He was originally hired as Assistant Manager, Market Development - Bulk Services (May 1981-July 1982), and promoted to Product Manger, Marketing & Sales - Aggregates and Cement (July 1982-1985). His duties included forecasting and analyzing of product market with objective of expanding SPTCo's market share, reducing operating costs, and increasing profit margin. Additional responsibilities included negotiation of contracts with customers, developing and analyzing costs, and commercial decisions involving equipment allocation and acquisition. In response to the Staggers (4R) Act, directed marketing efforts in aggregates/ cement from traditional single car rate to unit train contracts generating a 20% increase in SPTCo's share in the western railroad market. Over a three-year period, this represented a net contribution turnaround from an \$8 million loss to a \$5 million profit.**

***Western Pacific Railroad, Transportation Department***

**1976-1981**

**San Francisco and Bay Area**

Mr. Hunter's responsibilities included both staff and direct line supervision of railroad operations. Staff position reported to Director-Operating Administration.

Responsibilities included projecting and monitoring of annual system operating budget of \$70 million; in-depth analysis of operating expenses; working with line managers to determine and coordinate individual terminal and district costs with overall system forecast; presentation of budget variances to Vice President-Operations; and providing guidelines and requirements for the programming of departmental reports. This line position reported to Division Superintendent. Mr. Hunter was responsible for directing rail operations in the district between Oakland and Stockton - the fastest growing region on the railroad, which generated \$15 million in gross revenue with an operating budget of \$2.2 million. The territory comprised a variety of rail operations; main and branch line, industry and road switching, interchange, and joint facilities. Mr. Hunter coordinated schedules, assignments, and train performance to customer requirements with other departments of the railroad (i.e. Sales, Car Distribution, Train Operations/Dispatching, Roadway, and Mechanical). He also supervised train and engine operating employees within the district in addition to 20 station employees.

#### Education

*Master of Business Administration, San Francisco State University* 1976-1979

Selected as Master of Business Administration "Alumnus of the Year" 1980

*Bachelor of Art, Business Administration, San Francisco State University* 1972-1976

Majors: Business, Transportation, and Real Estate

## **Awards**

Selected to receive Strathmore's Who's Who for 2001-2005. This award recognizes individuals who have demonstrated leadership and achievement in their occupation, industry or profession.

Selected to receive the 1998-1999 Who's Who in Executives and Professionals. This award recognizes outstanding professionals.

Selected by Citation's to receive the award of Who's Who Among Rising Young Americans for 1992 and 1993. This award recognizes achievements in American Society and Business.

Selected by American Biographical Institute to receive the award of 2,000 Notable American Men for 1992 and 1993. This award recognizes past achievements and outstanding service to community, state and nation.

## **Other Activities**

*Speaker and Presenter, American Short Line Railroad Association 2008 Annual Conference*

*Speaker and Presenter, Transload Distribution Association 2007 Annual Conference*

*Speaker and Presenter, North American Rail Shippers 2005 SWARS Meeting*

*Financial Advisor, Ansonia, LLC 2004-Present*

*Member, Board of Directors, Sierra Northern Railway 2004-Present*

*Operation Lifesaver Presenter 2003-Present*

*Trustee, Philip E. Kalthoff Estate 2000-2004*

*Member, Board of Directors, and Treasurer, Meadowridge Homeowner's Association 2002-Present*

**Chairman of the Board and Chief Operating Officer, Reno Pacific Rail Corporation 1998-Present**

**Instructor, San Francisco State University 1983-1993**

"California Railroads" seminar in rail transportation developments, past, present, and future.

**Lecturer, San Francisco State University 1985-1992**

"Private Carrier Management" seminar in transportation management.

"Traffic Management" seminar in traffic management.

Physical Distribution and Logistics" seminar in physical distribution.

**Career Mentor, San Francisco State University 1984-1992**

Work with students in career and education development.

**Teaching Assistant, San Francisco-State University 1974-1979**

"Railroad Excursions." Assisted professor in conducting tours and leading discussions.

Guest speaker at San Francisco State University, local groups, and associations.

Currently pursuing research on railroad management, equipment, innovations, history, future projections, transportation policies, and United States laws. Involved with business, management, and transportation consulting.

**Expert Witness History**

The following is a list of cases Mr. Hunter has been involved with to date as an expert witness, excluding the petition represented by this report:

***Testified or Deposition***

2000-2001 – Pacific Coast Building Products Company (PABCO) - Patent Infringement case. Attorney: Ned Gelhaar of *Boutin Dentino Gibson Digusti Hodell & West* in Sacramento, CA. Case # 793288-5 Superior Court of State of California.

2003 – Albany and Eastern Railway Company (AERC) Verification of value of rail line for divorce settlement. Attorney: Gilbert Feibleman of *Feibleman and Case Attorneys* in Salem, OR. No Docket # provided to RII.

2004 – Oregon Pacific Railroad (OPR) Verification of value of rail line for divorce settlement. Attorney: Brett Engel of *Stahancyk, Gearing, Rackner & Kent* in Portland, OR. Case # DR02-04-788 in Circuit Court of State of Oregon, County of Clackamas.

2007-2008 – Norfolk Southern Railroad vs. Ambros Brothers Construction – Property and train delay revenue and cost damages – Attorney: Jeff Hienrichs of *McLeod and*

**Heinrichs in St. Louis, MO. Case # 06CH-CC00011 in the Circuit Court of Chariton County, State of Missouri.**

**2007-Present – General Electric vs. National Steel Car – Warranty Dispute on Railcars – Attorney: Megan Poetzle of Jenner and Block in Chicago, IL. Case #04-L-003473 in the Circuit Court of Cook County, IL. (Deposition pending)**

**2008 – Coos-Siskiyou Shipper Coalition vs. Central Oregon and Pacific Railroad – Challenge of rail service and common carrier obligation Emergency Service Order request – Attorney: Tom McFarland of Thomas F. McFarland, PC in Chicago, IL Docket # 35175 with US Surface Transportation Board.**

**2009 – Dwight Johnson vs. Omnitrax – Evaluation of Omnitrax rail holding company for stock valuation for previous CEO – Attorney: Dennis P. Walker, Attorney at Law in Denver, CO. Case No. 08-CV-761 in Denver District Court, City and County of Denver, State of Colorado, Courtroom 5.**

**2009 – Current – Patrick Joseph Carney vs. Happs, Inc. and Union Pacific Railroad. – Salvage practices, liability and agreement interpretation for injury case involving rail salvage case – Attorney: Jon Papin of Cogan and McNabola, P.C. in Chicago, IL. Case No. 07-L-8369 in the Circuit Court of Cook County, IL.**

Additional expert witness services that did not end up requiring testimony but included reports, inspections, research or advisory and were settled or are current and deposition/testimony are pending:

2004 – Amtrak – Rate case. Attorney: Ronan McHugh of Thelen Reid & Priest LLP in Washington DC No Case# (Case settled).

2005 – Amtrak – Loss of revenue case. Attorney: Kalea of *Wilmer Cutler Pickering Hale and Dorr* (provided services for another RII representative who testified).

2005 – Western Farm Services – Switch Injury case. Attorney: David Kippur of *Booth Mitchell Strange* in Los Angeles, CA. (Case settled).

2005 – Colorado and Wyoming – Job injury case. Attorney: Chip Delap of *Dufford and Brown* in Denver, CO Case# 04-MK-1651 (Case settled).

2005 – Current - Southeast Produce vs. Ambrosino – Transportation cost damages case. Attorney: Anna Giuliano of *Wong, Wong and Associates* in New York, NY. Case #28441/99 in Supreme Court of State of New York – County of Queens (Trial Pending).

2006 – John Miller – Railcar Injury Case. Attorney: Randy Andrus in Folsom, CA. Case # 2:06 CV-00377 FCD EFB in the United States District Court – East District of California (Case closed by judge).

2007 – Western Rail Services – Evaluation of assets for divorce settlement. Attorney: Allen Gauper of *Salina, Sanger and Gauper* in Spokane, WA. Case# 06-3-02220 in the Superior Court of Washington County of Spokane (Case settled).

2008 – Carl Kelly vs. City of Philadelphia, Conrail, et. Al. – Injury liability case – Attorney: James T. Vernile of *Vernile Law Offices* in Philadelphia, PA Case #001430 in Court of Common Pleas of Philadelphia County (Case settled).

2008 – PR Farms, Inc. vs. Amtrak – Challenge of car repair damages – Attorney: Theodore Hoppe of *Hoppe Law Group* in Fresno, CA. Case # 107-cv-1639 OWW GSA United States District Court; Eastern District (Case settled).

2009 – 2010 – Merinda Watson, (Estate of Mardie Olden) vs. Alton and Southern Railway Co. – Investigation of operations, safety protocols and reporting rules for fatality in switching yard – Attorney: Anne Marie Brockland, *Simon Law Firm* in St. Louis, MO. Case No. 07-L-26 in 20<sup>th</sup> Judicial Circuit Court St. Clair County, IL. (settled)

2009 – Branckewicz and Piekutz vs. BNSF Railway – Assessment of safety protocols and liability for injury to 2 contracted workers at a BNSF terminal. Attorney: John Marszalek of *Marszalek and Marszalek* in Chicago, IL. Case No. 05 L 14221 and Case No. 06 L 10609. Circuit Court of Cook County, Illinois, County Department, Law Division. (Trial pending).

**Rio Grande and Pacific Railroad national merger case— Verification of traffic data.**

**Union Pacific and South Orient Express national Class I case – Loss of business case.**

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**C. David Pettry  
Incorporated**

**Railroad Industries**

**Experience**

*Railroad Industries Incorporated*  
Senior Associate, Reno, NV

2004 - Present

Mr. Pettry specializes in railroad maintenance, inspection, and cost analysis, with a strong background in rail engineering and management. He has provided consulting projects from new rail construction costing and rehabilitation costing, to development of annual maintenance budgets and schedules. He also performs safety and track maintenance training, FRA regulations consulting, capacity analysis for Class I and short line railroads, and market analysis and valuation for rail and intermodal equipment. Projects of note with RII have included complete track inspection, safety audits and maintenance programs developed for several major rail shipper facilities of multiple commodities, track and structure rehabilitation costing and evaluation for Federal Emergency Management Administration and Federal Railroad Rehabilitation and Infrastructure Financing funding, and track assessment, upgrade costing and new construction costing for a redevelopment project in Benin, Africa.

*Petry Rail Services, LLC, Partner*  
Ponte Vedra, Florida

2004 - Present

Mr. Pettry formed this Limited Liability Corporation and uses his skills to help others in the rail industry improve Safety, Quality, and Costs. He provides fact based evaluations and recommendations to give clients high impact results. Mr. Pettry has evaluated the Peru Rail System for FRA (213) Standards and developed the presentation leading to his training of the Management Staff of the Peru Rails System. He also developed and implemented a Short Line course for the B&P Railroad which resulted in their FRA test scores improving in excess of 40%.

*CSX Transportation Railroads- Subsidiary of CSX Corp., Jacksonville, Florida*

Assistant Chief Engineer – System Maintenance

1999-2004

Assistant Chief Engineer – Production and Programs

1993-1998

Division Engineer – Mobile Alabama

1990-1993

Assistant Division Engineer

1977-1990

As Assistant Chief Engineer for System Maintenance, Mr. Pettry managed a staff of 10, responsible for all maintenance operations. He oversaw the improvement of Signal Switch reliability by 70%, 10 mph speed restrictions on Principal Routes by 90%, reduction of total slow order miles by 60%, and the improvement of relations with the FRA on sensitive maintenance issues. He developed and implemented a cost effective way to remove crushed heads, poor or failed welds, and defective insulated joints. He developed the Track Inspectors Training manual. He also surveyed, organized, and directed the recovery for major hurricane, tropical storm, and other catastrophic events.

As Assistant Chief Engineer of Production and Programs, Mr. Pettry worked closely with the Sr. Vice President of Engineering and Mechanical, and the Vice President of Network Operations. He was responsible for the development and execution of the yearly Capital budget between

\$200-\$300 million. He managed a staff of 38 plus traveling teams of 570-1100 employees. He oversaw the improvement of Safety Performance by 75%, the improvement of Track Curfew processes, the improvement in major tie and curve rail teams over 250%, and the improvement of equipment reliability by 50% while reducing cost by absorbing the Work Equipment Group. Mr. Pettry also developed and implemented cost effective teams for night working.

As the Division Engineer, Mr. Pettry reported to the General manager of Transportation and directed all engineering functions for 3582 track miles across Tennessee, Georgia, Alabama, Florida, Mississippi, and Louisiana; 2 major hump yards; 11 flat switching yards; 70 miles of bridges including 31 drawbridges. He managed 45 managers and up to 760 contract employees. He oversaw the improvement of safety performance by 90%, reduction of slow order more than 60%, and reduction of derailments by 90%. His Division earned the awards of the First Engineering Division with a Safety Frequency Index under 1.0, the First Quality sub-division, and the Best Engineering Division in 1992 and 1993.

As Assistant Division Engineer, Mr. Pettry managed track supervisors and contract employees in West Virginia, Ohio, Pennsylvania, Maryland, Virginia, Washington D.C., and New York. He was responsible for Employee Safety and maintaining safe train operations. He acquired the reputation of a troubleshooter and a leader who was capable of dealing with challenging issues. He accomplished safety improvements that included reducing 1 district from 53 injuries to 0 in two years. He also worked on the 8,300 foot clearance improvement project in a major CSX tunnel and stopped track that caused derailments in Pennsylvania to re-establish Engineering credibility.

#### **Education & Training**

*B. A. Business Management, Mountain State University*

*Courses in Railway Engineering, Northwestern University*

*Courses in Railroad Analysis, Design, and Maintenance, University of Delaware*

*Leadership Training, Tom Peters*

*Various courses in Experience Compression Laboratory*

## **Charles "Sonny" Cooper**

### **Experience**

*Railroad Industries Incorporated*  
Associate, Reno, NV

2004- Present

Mr. Cooper serves as RII's bridge expert consultant. Projects of note have included inspection of bridges and culverts on rail lines ranging from small short lines to regional railroads, cost estimating for repairs or upgrades, operational maintenance costing, development of reports for feasibility and emergency funding, and coordinating repair construction.

*Cooper Rail Services*  
President

1982 - Present

Mr. Cooper started this company over 28 years ago and has built it into the successful rail track work and bridge design and construction firm it is today. They have built over 34 bridges during the last 14 years for various railroads, and erected 6 state highway bridges. Work includes track and bridge repair, bridge design and rehabilitation, maintenance and cost estimating, emergency repairs and mitigation. Work includes both private and public contracts, including detailed government bidding processes. Mr. Cooper has been responsible for all project management details, from reporting and directing diverse construction teams, to planning, procurement of bulk materials and logistics.

*L&S Coal Mine*  
Owner and General Superintendant

1978-1980

Mr. Cooper directed all operations at this mine, including the 40 person crew. Operations included mine productivity and transport, which involved unit coal trains delivered empty, filled at the mine loading units, and setting out the unit train for pick up. Mr. Cooper was responsible for all safety, track and equipment within the facility.

Red-E-Mix Concrete  
General Manager

1968-1978

Mr. Copper was responsible for all supervision, operations, purchasing and logistics for this concrete producer, including inbound rail cement and other materials.

General's Construction - Construction Foreman  
US Army - National Guard - medic

1965-1968  
1966-1972

### **Certifications and Education**

Member - State Contractors Association  
State Contractor's License  
Multiple Civil Engineering, Trackwork, FRA guidelines and technical workshops over last 30 years.

A

## **Market Analysis**

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The most important factor in determining whether the line can be operated feasibly or not is to determine the traffic actually moving and expected to move on the line. Although carload counts were provided by MMA, the preliminary analysis of this traffic performed in November 2009 indicated that there was substantial traffic on the line. Comparing this traffic with what operational costs for the railroad should be resulted in what looked like a possible profitable operation. Therefore, to look deeper and gain a more concrete understanding of the traffic, it was important to perform primary research. Speaking directly to the customers on the line not only provides the traffic numbers expected, but also gives insight into service issues that can affect the actual traffic counts and future plans to understand the impact of the rail line to economic development concerns and future needs beyond what the past year can illustrate.

During the week of December 1<sup>st</sup>, 2009, RII interviewed over 20 shippers in person to gain an understanding of their traffic, service needs, past problems with the railroad, intentions moving forward and impacts of rail service to their businesses. Additional interviews were conducted by phone, and several communities and economic development agencies were also interviewed.

### **Methodology**

- RII contacted and interviewed the existing and potential customers on the rail line as identified by Maine DOT and MMA as well as the stakeholders of this project.
- The interviews determined current traffic on the line and also identified potential traffic that could be pulled from other modes of transportation given service issues were addressed.
- RII was also able to identify potential traffic that would most likely become available, and this information was based on responses from the interviewed shippers regarding their anticipated traffic volume increases which they in turn relied upon their own economics and forecasting.
- RII also reviewed traffic numbers supplied by MMA for the years July 2004 to July 2009, with most current fiscal year numbers being used for analysis purposes.
- Based on the traffic numbers obtained during the interviews of shippers located directly on the line and MMA supplied traffic figures for the shippers that were not interviewed, RII prepared a traffic analysis and traffic forecast. These figures were used in the operational and business analysis of the railroad.

**Summary**

**HIGHLY CONFIDENTIAL**

This section is an overview of those interviews, but most importantly provides the traffic figures for the line. These figures are used in the operational economics to determine feasibility of the operations and profitability for a potential third party operator or investor.

RIL was able to contact and interview 20 existing customers and two additional potential customers, which make up 95% of the business on the lines. The companies contacted and their annual estimated traffic numbers in carloads are highlighted in the chart below:

Company Contacted	Existing Traffic Low	Existing Traffic High	Additional Potential	Total with Potential	Commodity
Aroostook Starch					Starch to West Coast/Canada
Beaver Brook Mill Inc.					Inbound Logs from Michigan
Boralex Inc.**					Wood Chips
Columbia Forest Products					Veneer, Logs
Dead River Company					Heating Oil, Propane
The Fiber Resource Group					Paper, Various
Fraser Papers Ltd.					Paper, Starch, Talc, Clay
Fraser Timber Ltd.					Lumber
Huber Engineered Woods					Resin, Powder PF, OSB, Wax
Living Woodlands, LLC					Chips, Lumber, Pup, Logs
Louisiana Pacific Corp.					OSB
McCain Foods					Potatoes, Cooking Oil
MPG Fresh					Barley, Oats, Fertilizer
Maire Woods Company					Logs
Old Town Fuel & Fiber*					Wood Chips
Seven Islands Land Co.					Hardwood
Lane Construction					Limestone, Aggregate, Sand
Cavendish Farms					Potatoes
Cavendish Agri-Business					Fertilizer
Moose River Lumber Co.					Logs
<b>Total Traffic:</b>	<b>8,563</b>	<b>9,257</b>	<b>3,426</b>	<b>12,207</b>	<b>in carloads per year</b>
* These companies ship to customers currently on the MMA line and their traffic numbers are counted elsewhere.					
** These companies have rail traffic they have been moving by truck. They would need to see solid rail service and transportation savings vs. their current modes before committing traffic.					

The shippers that were interviewed report existing traffic on the line totaling between 8,563 carloads to 9,257 carloads per year. During normal years, such as when the economy rebounds, traffic numbers will likely reach well over 12,000 carloads annually.

Rll did not interview all shippers with annual carloads of less than 50 cars. These small shippers have a combined traffic of about 143 cars based on 2009 traffic numbers. In addition, Rll was unable to interview one larger shipper with estimated traffic of 1 annual carloads: Chandler Lake, Inc. The chart below outlines MMA Fiscal Year 2008/2009 traffic numbers for the eleven smaller shippers and one large shipper on the line that were not interviewed, but are included in the economics to follow:

2008 Traffic Numbers of Customers not Interviewed	Traffic Counts	Commodity
Chandler Lake, Inc.		Logs, Wood Chips
Maine Foods Company		Soybean Oil
New Limerick Log Yard		Logs
Tate & Lyle		Corn Starch
GAC Chemicals		Petroleum Gases
Interstate Commodities, Inc.		Potassium Sulph, Petroleum Gases
Katahdin Paper Co.		Woodpulp
Lachawanna Products		Oats
Logistics Management		Woodpulp
Maine Energy Inc.		Propane
Pine Tree Propane		Propane
Premium Log Yards		Logs
<b>Total Traffic:</b>	<b>350</b>	<b>in carloads per 2008 year</b>

Based on all interviews, the traffic in this analysis is likely to move by rail; however, factors such as service, rates and equipment will all be important for determining what actual moves by rail.

The following pages give a brief description of the existing and potential customers on the line and summarize the customer interviews conducted for this market analysis.

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The following economic development agencies and government entities were also interviewed and their information is profiled below:

**Loring Development Authority**  
154 Development Dr  
Limestone, ME 04750  
207-328-7005  
Contact Person- Carl Flora, CEO



The MMA Line runs from Caribou to Limestone. In the past, the Air Force handled 25 inbound cars per week to Limestone and utilized rail to send supplies and equipment.

There are currently two potential businesses for rail:

- 1.) J.D. Irving – This company has been considering building a DSB plant. The key to this project was that their location allowed them to use back roads to source material from the mill around to Loring with a potential 5-7 cars per day.
- 2.) Conagra - This company has been considering the construction of a French Fry factory and would also need rail service.

Without rail service the economic impact on the area would be high due to the fact that rail would be necessary for future projects; one of which is a future biomass plant.

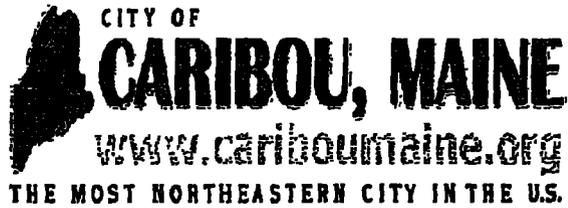
**Presque Isle Industrial Council**  
650 Airport Drive, Suite 10  
Presque Isle, ME 04769-2088  
Office: (207) 764-2542  
Cell: (207) 227-2524  
Contact Person: Larry Clark - Executive Director



Located in a strategic distribution area, the Skyway Industrial Park owns 5.5 miles of track and also has a transload facility with 1800 feet of track. The transload facility, built in 2001-2001, has handled containers, windmill products, salt and fertilizer. The warehouse itself is 90,000 square feet with a 3-car siding.

The Skyway Industrial Park currently has 50 tenants, a few of which use rail such as Columbia Forest Products, TaterMeal, Inc., a Division of McCane Foods and Maine Potato. The industrial park needs rail service to draw future tenants and cannot afford to lose this service.

**City of Caribou**  
25 High Street  
Caribou, Maine 04736  
(207)493-3324 ext. 230  
Contact Person – Steve Buck  
City Manager



Dead River is a key customer on the MMA, carrying propane and #2 heating oil. Additionally, Maine Bio Fuel is considering bringing materials to Caribou, therefore, maintaining rail service in the area is extremely important to the City of Caribou. Without rail service, the City could face a loss of customers, higher product prices and be forced to pay high trucking prices. This could put their city out of the competitive arena; they need reasonable and reliable rail service for their economy.

Due to the decline in service, there has been no contact with MMA.

**Town of Fort Fairfield**  
18 Community Drive  
Fort Fairfield, ME 04742  
(207) 472-3800  
Contact Person: Dan Foster  
Ft. Fairfield Town Manager



Years ago, the Town of Fort Fairfield secured financing to purchase and rehabilitate the rail line from Easton to Fairfield with the hope of using rail in the future. To date, only a small amount of grain has moved. However, there is a biomass plant in Fairfield that is in need of rail service at present time.

The line totals 8.6 miles and MMA has shown little interest in using and developing this line, and the MMA is not known for being "user friendly". Losing rail service would greatly affect the area and it is imperative that whatever needs to be done should be done to preserve rail service. Additionally, Mr. Foster would like to see a national policy created to in order to save rail lines such as these.

## **Conclusion**

It appears that there is substantial existing traffic, potential traffic and future traffic opportunities on this line to allow it to be self-sustaining in the future. There is not only enough traffic to marginally sustain the current operations, but there appears to be solid plans for increasing traffic with shippers in the near future. Much of the traffic that has declined in the last two years can be pointed back to diversions to truck due to poor rail service. This is an artificial decline in traffic.

It is much harder to re-establish rail service if it is allowed to lay dormant for too long. The area loses valuable industries as shippers go out of business, leave the area, or more specifically, move to other modes. Other alternatives are invested in, and the area loses its attraction for new rail-conducive industries. The public benefits are an upward spiral. With the identified and future industries attracted to the area due to the rail service, new jobs are created, and the entire area benefits from the growth. If the rail service lapses for too long, the condition of the line deteriorates as well since there is no maintenance from the current owner of the line.

In referencing the shipper profiles, a recurring theme is evident. Service has declined drastically over the last several years, and a commitment from MMA has not been forthcoming to rectify the issues. The current shippers are interested in keeping their rail service and need it to continue at the present time and for future needs.

**B**

**[REDACTED PAGE(S)]**

C

Subdivision	Total Bridge Length	per Bridge Reports
Ft. Fairfield	79.3	
Houlton	931	
Presque Isle		
Limestone	1016.67	
Madawaska 108-180	1312.1	
Madawaska 181-260		
<b>TOTAL</b>	<b>3339.07</b>	<b>Linear Feet</b>

D

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