

Steven A. Hudson

August 10, 2010

**VIA E-MAIL
ELECTRONIC FILING**

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

**RE: STB Docket No. AB-1043 (Sub-No. 1) Montreal Maine & Atlantic Railway,
Ltd - Abandonment and Discontinuance of Service - in Aroostook and
Penobscot Counties, ME**

Dear Chief Brown:

As allowed by the Board in its most recent Decisions in this proceeding, I am transmitting with this cover letter the Reply Comments of Twin Rivers Paper Company LLC and Fraser Timber Limited in support of the imposition, if necessary, of trackage rights under 49 USC § 10903 and § 10904 as a condition of any abandonment and discontinuance in this proceeding. These materials have been electronically filed with the Board and have been served on parties of record via e-mail.

Please let me know if you have any questions.

Respectfully,



Steven A. Hudson
Attorney

SAH:
Attachment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (Sub-No. 1)

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

**REPLY COMMENTS OF
TWIN RIVERS PAPER COMPANY LLC and FRASER TIMBER LIMITED**

In accordance with the Board's order allowing Reply Comments to comments submitted by parties regarding whether and to what extent the Board can impose access conditions across an applicant's retained lines as conditions for the approval of an application to discontinue service and abandon other lines, Twin Rivers Paper Company LLC ("Twin Rivers") and Fraser Timber Limited ("FTL") file these Comments in Reply. As noted in previous filings with the Board in this matter, Twin Rivers recently acquired certain assets of Fraser Papers Inc. including the pulp mill in Edmundston, New Brunswick and the paper mill in Madawaska, Maine. FTL owns sawmills in Masardis and Ashland, Maine. The Madawaska, Masardis and Ashland facilities are all served by the Montreal Maine & Atlantic Railway ("MMA") and are affected by the proposed discontinuance and abandonment. Twin Rivers and FTL support the State of Maine's and other parties' requests for access rights and incorporates by reference and adopts those comments supporting the granting of access rights in this proceeding submitted by the State of Maine, Huber Engineered Woods LLC, Irving Woodlands LLC and Irving Forest

Products, Inc., Louisiana-Pacific Corporation, Maine Woods Company and Seven Islands Land Company (collectively and along with Twin Rivers and FTL, "Access Proponents")

Need for Trackage Rights is Undisputed

As noted by Twin Rivers, FTL and the remaining Access Proponents, access rights are necessary in this proceeding. In fact, because of the unique circumstances of this proposed abandonment and discontinuance, as designed and shaped by the applicant, access rights are so critical that without them, the proposed abandonment and discontinuance should not be approved by the Board. The Access Proponents, in their respective submittals before the Board, have demonstrated convincing need for substantive access rights. MMA and the other Access Opponents (the American Association of Railroads, the Canadian Pacific Railway Company, and Kansas City Southern) do not appear to dispute the need for such access rights; rather their arguments are focused on denying the Board's broad authority to grant such rights in proceedings under 49 USC § 10903. Therefore the Board should find ample demonstrated need for such rights in this proceeding.

Twin Rivers, FTL and the other Access Proponents also submitted substantial evidence and argument concerning the nature of the access rights to be granted. Evidence was provided of the substantial concerns over the efficiency and reliability of MMA, and the need for trackage rights to address those concerns, reduce delays from added interchanges, encourage additional shipments by rail, and to give any new operator a meaningful chance for success. While Access Opponents argue against the authority of the Board to grant any access rights, their arguments lead to the conclusion that if the Board does have such authority, that authority is more properly exercised by the granting of trackage rights instead of haulage rights.

The Unique Circumstances of This Proceeding Require Trackage Rights

Access Proponents have submitted arguments concerning the Board's authority under § 10903 to broadly grant trackage rights as it deems appropriate and necessary to carry out its duties and implement national transportation policy. Access Opponents argue that the Board does not have such broad authority under § 10903 and should not create precedent by granting such rights in this proceeding.

The Access Opponents' arguments on the Board's authority would require the Board to ignore its statutory mandates, which includes minimizing "serious adverse impact on rural and community development."¹ It would also result in the bizarre situation where the Board can bifurcate abandonment requests, approving part and denying part, but cannot condition abandonment approvals. Clearly, the Board has such power to impose conditions, including trackage rights.

However, the circumstances of the proposed abandonment in this case are seemingly unique in the nation's rail history. Instead of an abandonment and discontinuance of a short branch line serving one or two shippers, the applicant has proposed abandoning and discontinuing service on approximately 233 miles of track, by carving the middle out of their system, while maintaining control of that abandoned line by retaining the ends of the system. As noted by the State of Maine in their Supplemental Filing, the proposed abandonment affects "over 20 active shippers moving over 9,000 carloads of traffic."² Substantial evidence has been provided by the Access Proponents, that with improved service, historical levels of shipments above the current level could be quickly resumed. Finally, the extensive scope of the

¹ 49 USC § 10903(d).

² Supplemental Filing on Access Conditions, State of Maine, Department of Transportation, in *Montréal, Maine & Atlantic Railway, Ltd. – Discontinuance of Service and Abandonment – in Aroostook and Penobscot Counties, Maine*, page 6, filed August 3, 2010.

discontinuance and abandonment is most easily realized when considering that Aroostook County, which is most directly impacted by the proposed abandonment, is roughly the size of Connecticut and Rhode Island combined. Whether or not the Board has ever granted such rights before may simply reflect the fact that no one has ever before proposed such a large scale discontinuance and abandonment affecting such a large area and so many shippers and communities; while proposing to abandon the heart of their system and retain two geographically separated ends. It is unlikely that such a set of circumstances would ever again present itself to the Board; but clearly the imposition of trackage rights in the current proceeding would set a high bar for any future consideration of such rights in abandonment proceedings.

Conclusion

The need for access rights in the event that a discontinuance and abandonment is granted in the current proceeding is undisputed. Board policy encourages, and the parties hope that, a mutually agreed-upon solution will be reached that provides for such rights. However, the plain language of the Board's statutory charge, the legislative history of that charge, the national transportation policy embedded in statute, and the unique circumstances of this case; all support the imposition of such rights by the Board if necessary. The Board has clear explicit authority to do so in § 10903, especially to mitigate adverse impacts on rural and community development. The applicant has chosen to structure the proposed discontinuance and abandonment as it has; it cannot now complain if the Board seeks to execute its statutory duties through imposition of conditions intended to alleviate some of serious adverse impacts directly created by the applicant's choices.

Respectfully submitted,

TWIN RIVERS PAPER COMPANY LLC and
FRASER TIMBER LIMITED



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Certificate of Service

I hereby certify that I have served the foregoing Supplemental Comments and accompanying Verified Statements this 3rd day of August, 2010 by causing copies to be sent the applicant and other parties of record in these proceedings.

A handwritten signature in black ink, appearing to read "S. Hudson", written over a horizontal line.

Steven A. Hudson