

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**

**REBUTTAL OF
STATE OF MAINE, DEPARTMENT OF TRANSPORTATION
TO REPLY OF TWIN RIVERS PAPER COMPANY AND
UNITED STEELWORKERS INTERNATIONAL UNION, ET AL**

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Dated: December 20, 2010

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The State of Maine, by and through its Department of Transportation (“State”), files this Rebuttal in response to the Reply of Twin Rivers Paper Company (“Twin Rivers”) and United Steelworkers International Union and three Locals (collectively, “USW”) filed in response to the Joint Petition of the State and Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) for approval of their settlement agreement and related relief. The State files this Rebuttal to address factual errors and misleading omissions in the Twin Rivers Reply,¹ and to urge the Board to grant the relief requested in the Joint Petition. MMA is filing a separate Rebuttal addressing similar issues and asking the Board for similar relief. The State joins in the MMA request for relief.

BACKGROUND

MMA commenced this proceeding by filing to abandon approximately 233 miles of rail lines in Maine (the “Abandonment Lines”). The State opposed the abandonment and simultaneously sought to purchase the lines for continued rail service – the ultimate goal being to

¹ USW has joined in the Reply of Twin Rivers to protect the interests of its members who work at the Twin Rivers Madawaska Mill. Twin Rivers Reply, at 1 fn.1. However, the Reply is about the Twin Rivers and its facility, and accordingly, for convenience, the State will refer to the Reply as the “Twin Rivers Reply.”

preserve service over the Abandonment Lines for the 25 shippers located on the lines, and to help preserve the 1700 jobs dependent on those businesses. The State has insisted that any purchase of the Abandonment Lines would need to include access rights for its short line operator (the “Short Line”) so that the Short Line, and the shippers, would not be dependent solely on MMA for connecting service. MMA contested various aspects of the relief requested.

At the urging of the Board, and through the Board’s mediation services, MMA were able to reach a settlement agreement that would allow the litigated issues to be resolved – as part of the package, the settlement provides for the purchase of the lines for continued rail service at an agreed upon price, and it provides trackage rights for Short Line to reach connecting carriers in Brownville Junction and in St. Leonard at a favorable rate. In reaching the settlement, the State – through its Department of Transportation – has consulted with numerous constituencies, including members of a task force appointed by the Governor to oversee the process, affected shippers (including Twin Rivers), state legislators and members of the US Congress, and the Federal Railroad Administration. And it continues to do so. Through these meetings, the term sheet filed with the Board, and through the request for qualifications/proposals for short line operators published on the Department of Transportation’s web site on December 15, 2010 (<http://www.maine.gov/mdot/cpo/rfps/>), the State has been open and transparent about the proposed transaction and the terms that will govern. In June, the voters of the State approved a bond package that included funds to be used towards the purchase, and the State has other funds available to complete the purchase.

On the other hand, the Twin Rivers now seeks to delay or upset the proposed settlement without regard to the effects that such action will have on the proposed abandonment and on continued service over the Abandonment Lines. While it cloaks its request in the “public

interest” it is clear that Twin Rivers is only interested in the service that its Madawaska Mill receives, and in forcing MMA to provide the Short Line with access to the Mill. Twin Rivers leaves out several crucial facts in its discussion – prior to October of this year, Twin Rivers could ship via MMA to and from the south, and via MMA or Canadian National Railways (“CN”) via St. Leonard (MMA handled the CN traffic under a haulage arrangement); in June, Twin Rivers entered into a contract with CN under which all of its traffic to and from the Madawaska Mill would be shipped to and from CN via St. Leonard; Twin Rivers has joined CN in litigation regarding CN’s access rights at the Mill;² and since December 1 (apparently as a result of the litigation), Twin Rivers has moved all of its traffic in and out of the Madawaska Mill by truck.

DISCUSSION

I. Privately Negotiated Settlement Agreements are and should be encouraged by the Board.

This has been a somewhat unique abandonment proceeding both in scope and in the issues presented by the parties. Rather than leave the results unknown, MMA and the State were able to reach agreement on the terms of a settlement that attain for the State the essential goals of preserving service over all of the Abandonment Lines (and to the shippers they serve), together with access rights for the Short Line that will operate them, and relieving MMA of its service obligations over the Abandonment Losses (and the losses it claims), while providing fair compensation for the assets. As with all settlements, it does not provide either party with everything it originally wanted. The Board has long encouraged private negotiations and settlements as a way to resolve difficult issues before the Board – both in general, and in this case in particular.

² USW also sought to intervene but was denied. The State has not taken a position in the litigation as it remains a private dispute between the involved carriers and Twin Rivers.

The Joint Petition asks for more than the mere approval of the abandonment by MMA. It asks as part of the approval that the Board find the State can after abandonment purchase the lines without incurring a common carrier obligation (as prohibited by State law), and that service can continue to be operated – first by MMA and later by a short line operator be selected by the State. Thus, the State and MMA are not merely seeking unconditional approval of the MMA abandonment. Compare Twin Rivers Reply at 6-7.

While the final terms of the implementing agreements are still be negotiated and drafted, the essential terms of the settlement have been filed with the Board and made available to the public. The State has discussed the terms and why it reached this compromise with a broad array of interested parties, including Twin Rivers. The most active shippers on the Abandonment Lines, and those that have participated in this abandonment proceeding – Irving Woodlands and Irving Forest Products (“Irving”), Louisiana-Pacific Corporation and Huber Engineered Woods – have all supported the proposed settlement by withdrawing their objections (conditional on the State reaching final agreement with MMA on the purchase and sale agreement, and the trackage rights and interchange agreements that are essential to the acquisition). Allowing a single objecting party (a shipper not located on the Abandonment Lines) to scuttle the settlement reached between the State and MMA, and supported by shippers generally, would chill efforts of parties in future proceedings and would undermine the Board’s policy of encouraging such settlements.

II. The settlement is in the public interest.

The State as a public entity would not have entered into a settlement with MMA if it did not believe that such settlement was in the public interest. As discussed above, the proposed acquisition would preserve service to approximately 25 shippers and save over 1700 jobs. The

settlement attains access rights for the Short Line by obtaining trackage rights over MMA to reach alternate connections with Eastern Maine Railway at Brownville Junction and with CN at St. Leonard. The trackage rights are at a favorable rate that will ensure that they will be effective. The limitations on the trackage rights recognize the legal uncertainties of being able to require MMA to provide any trackage rights over its lines. All of this was obtained for a price that the State has determined is within the range of net liquidation value, and that is deemed fair.

Shippers on the lines and elected officials (both at the State level and the federal level) have expressed support for the proposed transaction. The voters in Maine approved a bond issue specifically directed to be used to support the purchase of the lines for continued rail service. The federal government has also recognized the importance of maintaining service over the Abandonment Lines and awarded over \$10 million in “TIGER II” funds for improving the lines.

What Twin Rivers seeks is relief that will benefit it – it wants the Short Line to have access to the Madawaska Mill on the way to or from St. Leonard. Although Twin Rivers states it has consistently asserted that no solution is adequate without this access (Twin Rivers Reply at 2), such access has no present value given that Twin Rivers has entered into a contract with CN that will route all of its traffic via CN and St. Leonard. Thus, the only purpose would be some unquantifiable future benefit of competitive access down the road. While the settlement does not provide the specific access that Twin Rivers seeks, it will in general preserve the possibility of future rail options. Without the settlement, there is the risk that the Board would grant the abandonment authority requested, and Twin Rivers would forever lose any option of moving traffic to or from the south. With the settlement, the line that provides access will be kept in service and the possibility of service remains – while it would only be MMA via its retained

trackage rights over the lines for now, there would at least be the opportunity for further discussions in the future with MMA and the Short Line.

III. The terms of the settlement and the selection process for the Short Line have been fully and adequately disclosed.

Twin Rivers also complains that it needs to review the implementing agreements and not just the settlement, and that it does not know how the Short Line will be selected. The State believes that the settlement term sheet sets forth the essential terms of the transaction, and has represented by its conditional withdrawal of its objections, that it will not consummate the transaction unless the implementing agreements adequately reflect those terms. (Irving, Louisiana-Pacific and Huber have all indicated through their conditional withdrawals of objections, that they are all relying on the State to do so as well.) Further, throughout the course of this proceeding the State has met with shippers, including Twin Rivers, and other interested parties to explain the process, the negotiations and ultimately the settlement.

The Short Line selection process will likewise be transparent. The State has issued a request for qualifications/proposals that has been posted on the Maine Department of Transportation web site since December 15, 2010, and that is based on the information gained during the proceeding and by its consultant, as well as the terms of the proposed settlement. The State will initially review the qualifications of bidders before accepting proposals. The State believes that it has established an open and fair process where all interested qualified rail operators will an opportunity to be the selected operator.

CONCLUSION

Based on the foregoing, the State requests that the Board approve the settlement as requested in the Joint Petition over the objections of Twin Rivers and USW.

Respectfully submitted,

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Dated: December 20, 2010

Attorneys for State of Maine, Department of
Transportation

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused a copy of the foregoing Rebuttal to be served electronically on counsel for Montreal, Maine and Atlantic Ry., Ltd., and Twin Rivers Paper Company and USW as follows:

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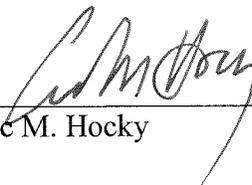
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and to be served on all other parties of record either electronically or by U.S. first class mail,
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Dated: December 20, 2010

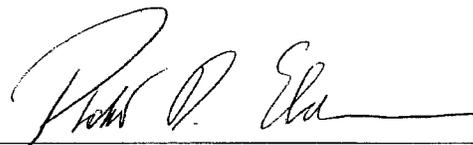


Eric M. Hocky

VERIFICATION

I, Robert Elder, Director, Office of Freight and Business Services, Bureau of Transportation Systems Planning of the Maine Department of Transportation, verify under penalty of perjury that statements contained in the foregoing Rebuttal 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 December 20, 2010.

A handwritten signature in cursive script, appearing to read "Robert D. Elder", is written over a horizontal line.

Robert Elder