



KAPLAN KIRSCH ROCKWELL

December 23, 2010

E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Ms. Brown:

Twin Rivers Paper Company LLC (“Twin Rivers”) respectfully requests the Board’s leave to file this brief letter in response to (a) the Reply filed by Irving Forest Products, Inc. and Irving Woodlands LLC (collectively, “Irving”) on December 22, 2010 (the “Irving Reply”), (b) the Reply filed by Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) on December 20, 2010 (the “MMA Reply”) and (c) the Reply filed by the State of Maine (“State”) on December 20, 2010 (the “State Reply”). Twin Rivers’ comments herein contain no new facts or argument and do not expand the scope of issues in this proceeding. Twin Rivers seeks to briefly address mischaracterizations of its position as alleged in the aforementioned Replies.

Irving protests strenuously that Twin Rivers is engaged in a “fishing expedition” to “intrude” on Irving’s private business relationships in seeking to review agreements Irving may have executed with parties to this proceeding. Irving Reply at 1-2. When agreements may have a potential direct effect on access generally to goods and services in the freight rail context, public interests are implicated, not merely those of existing shippers. Twin Rivers simply seeks access to Irving’s agreements in order to ascertain whether those agreements would have such an effect. Twin Rivers emphasizes that Irving was previously vehemently opposed to MMA’s proposed abandonment, but has since withdrawn its opposition, provided financial support for the purchase of the line, and has apparently made other business arrangements that may provide it with an unfair advantage relative to all other potential shippers – not just Twin Rivers. To the extent that these agreements and arrangements affect (1) the abandonment proceeding, (2) the transaction

Attorneys at Law
Denver • New York • Washington, DC

Kaplan Kirsch & Rockwell LLP tel: (202) 955-5600
1001 Connecticut Ave., N.W., Suite 800 fax: (202) 955-5616
Washington, DC 20036 www.kaplankirsch.com

proposed by the State and MMA, (3) the potential bidders to operate the State Short Line, and (4) the other shippers affected by the abandonment; it seems only fair to allow attorneys for affected parties to review these agreements and arrangements to ensure that no undue influence, adverse effect, or undisclosed quid pro quo is created by them.

In addition, Twin Rivers is not seeking to “scuttle” the settlement between the State and MMA, as the State Reply alleges. State Reply at 4. In fact, Twin Rivers has supported the general proposition of State ownership of the lines, for example by openly and extensively advocating for the public funds to be made available for such acquisition. Twin Rivers is simply urging the Board not to prematurely give the green light to the proposed settlement before all of the participants in this proceeding have had the opportunity to determine, what, exactly, will be the benefits or pitfalls of that settlement. The State asserts to the Board that the settlement provides for the “possibility of service” to Twin Rivers (State Reply at 5) and that the selection process for a short line operator “will likewise be transparent” (State Reply at 6), but such generalized assurances cannot substitute for a reasoned, systematic analysis of the potential impact or the specific terms of the settlement. In fact, as noted in Twin Rivers’ filing, paragraph 4(e) of the Term Sheet contains specific language to the contrary of the State’s Reply. In addition, as Twin Rivers also noted, the December 15-January 19 period for bids to be made to operate the Short Line is so short as to be unfair, except to those such as MMA and Irving who have been deeply involved in the negotiations of the proposed transaction and who have been identified by MDOT as potential bidders to operate the Short Line. Transparency alone does not guarantee a fair process. Despite the assurances of the State and MMA that all relevant terms and conditions of the proposed settlement are before the Board, this is not yet the case, as noted by the State’s own filing transmitting the Term Sheet. The Purchase and Sale Agreement and various other ancillary agreements are apparently currently being drafted, but it is not clear who besides the State and MMA will be able to review and comment upon them prior to execution. Twin Rivers, as we stated in our Reply, urges the Board to allow for just such a proper examination and not to rush to approve the settlement.

Finally, MMA characterizes the relief Twin Rivers seeks as “the delay and review of privately-settled agreements”. MMA Reply at 6. A “privately-settled agreement” between a public entity, in this case the State of Maine, and a common carrier freight railroad is necessarily a matter of public scrutiny and open discussion. To suggest, as MMA does, that a large shipper, who is also one of the largest taxpayers and employers in the area affected by the proposed abandonment should not be allowed to review documents and agreements in this matter, is to suggest contempt for the taxpayers of Maine who are providing MMA with its economic windfall of nearly \$26,000,000. In addition, the State invited all intervening shippers to propose conditions on the abandonment approval, and by implication, on the terms and conditions of the proposed transaction. Without the documents referenced above, it is difficult to do more than Twin Rivers

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has suggested regarding the proposed transaction and abandonment. All Twin Rivers asks is that scrutiny of the transaction be complete and transparent, as the parties have previously promised it would be.

Twin Rivers appreciates the Board's attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Allison I. Fultz". The signature is written in a cursive style with a large, stylized initial 'A'.

Allison I. Fultz

cc: All Parties of Record