

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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**STATE OF MAINE, DEPARTMENT OF TRANSPORTATION  
SUPPLEMENTAL FILING ON ACCESS CONDITIONS**

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Dated: August 3, 2010

Attorneys for State of Maine, Department of  
Transportation

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SURFACE TRANSPORTATION BOARD**

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The State of Maine, by and through its Department of Transportation (“State”), makes this supplemental filing in response to the request of the Board as set forth in its decision served July 20, 2010 (the “July 20 Decision”). As noted by the Board, the Applicant, Montreal, Maine & Atlantic Ry., Ltd. (“MMA”), structured the abandonment of the 233 miles of rail lines (the “Abandonment Lines”) in such a way as to connect only with MMA at both the northern and southern ends. Accordingly, any new operator would be dependent on MMA both in terms of service and pricing, unless the State’s operator is granted direct access to connecting carriers. In the hearing, MMA indicated it was willing to provide access under a haulage agreement, while the State, shippers and other economic development agencies requested access via trackage rights.<sup>1</sup>

As noted by the Board, the parties have continued to negotiate in an attempt to reach agreement on terms that would permit the sale of the Abandonment Lines, including terms that would provide access for the State’s proposed operator to connecting carriers. Indeed, the parties requested, and received, an extension of the filing deadlines for these supplemental filings to see

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<sup>1</sup> The State certainly would not reject the offer of haulage rights if it were in addition to, and not in lieu of, trackage rights.

if agreement could be reached. The parties continue to talk but still have not reached final agreement on the type of access, or the terms of such access, that MMA would be willing to grant to the State's operator.

The State submitted an offer of financial assistance ("OFA") to acquire the Abandonment Lines on July 19, 2010. The OFA was found to meet the Board's requirements and was accepted in a decision served July 23, 2010. At the same time, the OFA process was tolled until after the Board issues a decision on the merits of the abandonment application. The OFA included a request that the Board impose a trackage rights condition as a term of the OFA that would allow the State's operator to reach connections at St. Leonard with Canadian National at the north, at Brownville Junction with Eastern Maine Railway, and in Northern Maine Junction with Pan Am Railways.

The July 20 Decision invites evidence and argument on the Board's authority to impose access conditions in this case, and on the nature of the access requested..

### **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") described in the Application as follows:

- (1) the Madawaska Subdivision, consisting of approximately 151 miles of line between milepost 109 near Millinocket and milepost 260 near Madawaska in Penobscot and Aroostook Counties;
- (2) the Presque Isle Subdivision, consisting of approximately 25.3 miles of line between milepost 0.0 near Squa Pan and milepost 25.3 near Presque Isle in Aroostook County;

- (3) the Fort Fairfield Subdivision, consisting of approximately 10 miles of line between milepost 0.0 near Presque Isle and milepost 10.0 near Easton in Aroostook County;
- (4) the Limestone Subdivision, consisting of approximately 29.85 miles of line between milepost 0.0 near Presque Isle and milepost 29.85 near Limestone in Aroostook County; and
- (5) the Houlton Subdivision, consisting of approximately 16.9 miles of line between milepost 0.0 near Oakfield and milepost 16.9 near Houlton in Aroostook County.

The State, shippers and other interested parties have opposed the abandonment. The proposed abandonment was structured by MMA such that if granted it would carve the middle out of the MMA system, leaving a short segment across the northern Maine / Canadian border, and an east-west line between the Maine Coast and Montreal. The hollow middle would be left without any rail service.

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, by acquiring the Abandonment Lines and entering into an agreement with an operator who will fulfill the common carrier obligations. As designed by MMA, any operator of the Abandonment Lines will connect only with MMA at both the north and south end of the lines. As presented at the public hearing by the State, shippers and interested economic development agencies, successful operations will require that the State's operator have direct access to carriers other than MMA. The State has tried to negotiate such access with MMA while also negotiating the other terms and conditions of a potential purchase.<sup>2</sup> Since no agreement has yet been reached, the State filed an OFA to acquire the Abandonment Lines in accordance with the deadline established by the Board. Included in the OFA was the following requested condition:

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<sup>2</sup> The negotiations which are taking place are confidential.

(3) Trackage rights over MMA to connecting carriers.

As designed by MMA, the Abandonment Lines are isolated from all other carriers in the region, and connect only with MMA. For operations of the Abandonment Lines to be economically feasible, the State believes that the operator must be able to provide direct connections to carriers other than MMA. The State proposes that MMA be required to grant its operator overhead trackage rights (1) between Madawaska, MP 260 and an interchange with Canadian National at St. Leonard; (2) between Millinocket, MP 109 and an interchange with Eastern Maine Railway/New Brunswick Southern Railways at Brownville Junction; and (3) between Millinocket, MP 109 and an interchange with Pan Am Railways at Northern Maine Junction. The State or its operator would be responsible for the costs of any additional infrastructure determined to be reasonably required at the interchange locations to accommodate the addition of trackage rights operations. The trackage rights would be at a reasonable commercial rate to be agreed to by the parties or as established by the Board in setting the terms and conditions of the OFA purchase.

The State believes that the requested trackage rights are essential if its operator is to be able to take the lines that MMA seeks to abandon and create an economically viable short line operation.

### **Discussion**

#### **A. Authority to Grant Access**

There are two aspects of the abandonment process that deal with the potential imposition of conditions. Under Section 10903(d), a railroad can only abandon its lines if the Board finds that the present or future public convenience and necessity require or permit the abandonment. In making its finding the Board is specifically required to consider whether the proposed abandonment will have a serious, adverse impact on rural and community development. Further, Section 10903(e)(1)(B) permits the Board to approve an abandonment application and “require conditions that the Board finds are required by the public convenience and necessity.”

Additionally, if abandonment were granted, there are provisions in Section 10904 that cover offers of financial assistance to avoid abandonment and to facilitate the statute's goal of preserving rail service. Once a proper OFA has been made (as is the case with the State's OFA in this proceeding), then the parties either reach an agreement on the transaction or the Board can be requested to establish "the conditions and the amount of compensation." Section 10904(d)(2)(B); (e); (f). Clearly, the statute contemplates the possibility of terms and conditions that go beyond the price.

Neither Section 10903 nor Section 10904 includes any limitation on the type of conditions that can be imposed or considered. It is clear from the testimony presented by the State and various shippers in their protests, and by those parties and various economic development agencies that there are as many as 20 or more businesses served by the Abandonment Lines that are dependent on rail service, that there are opportunities for new and increased business if rail service can be preserved, and that the economic development of Aroostook County, one of the most rural and economically challenged regions of the State of Maine requires rail service.

Imposing the requested condition would also be consistent with rail transportation policy as set forth in Section 10101. The requested trackage rights would preserve shipper access to connecting carriers, preserving competitive routings that are currently available, and allowing competition to establish reasonable rates for transportation by rail. 49 USC §10101(1). By giving the operator the ability to present competitive options to shippers and by relieving MMA from the burden of providing what it deems unprofitable service,, the condition would allow the rail carriers to earn adequate revenues, promote safe and efficient rail transportation, and ensure

the development of a sound transportation system with effective competition among rail carriers to meet the needs of the public. 49 USC §§10101(3), 10101(4).

The State is cognizant that imposition of the requested condition would impact the proposed sale of the rail lines regardless of which section it is imposed under. Because an OFA involves a forced sale, the Board may not want to impose such conditions in all abandonment cases. However, this is certainly not an ordinary abandonment. The proposed abandonment which involves 233 miles of rail lines with over 20 active shippers moving over 9,000 carloads of traffic, is certainly one of the largest abandonments presented to the Board or to the ICC in many years, and granting the abandonment would leave the heart of the largest county east of the Mississippi without rail service. Since the statute does not include guidelines for the imposition of conditions in abandonment cases, the State suggests that the Board look to the standards that have been developed for the imposition of conditions in merger cases. In such cases, because conditions tend to reduce the benefits of a consolidation, they are only imposed to ameliorate or eliminate harms to the public interest – loss of competition, or loss of the ability to provide essential services (services for which there is no adequate transportation alternative). The condition must address an effect of the transaction; and should be tailored to remedy adverse effects of a transaction. *See CSX/NS/Conrail*, STB Finance Docket No.33388, Decision No. 89 (served July 23, 1988) at 78.

Currently, traffic can be moved from the Abandonment Lines by MMA to Canadian National, to Eastern Maine Railway, to Pan Am Railway, or “direct” to Montreal. All of these service options would be lost if the abandonment were granted; the trackage rights would preserve the options without adding an additional railroad to the route. As such, the trackage rights condition directly addresses the loss of service that would be suffered if the abandonment

were granted; it is essential for the shippers to preserve competitive routings and for the operator to have a chance to be successful. The trackage rights proposed by the State would preserve the access of shippers to connecting carriers that they currently have without reducing the compensation or benefits to MMA from the OFA. The trackage rights would be compensatory, and would not add burdens on MMA – the operator would pay for additional wear and tear on the tracks attributable to its operations, and the State has offered to pay for infrastructure necessary to accommodate the trackage rights traffic (although State does not believe at the current levels of traffic handled by MMA and proposed to be handled by operator that any additional tracks would be immediately necessary). *See* attached Supplemental Verified Statement of Gary V. Hunter (“Hunter Supp. V.S.”) at 3-4. Further, the State has offered reciprocal trackage rights to MMA between Millinocket and Madawaska so that MMA can move overhead traffic, as well as locomotives and equipment – connecting what would otherwise be a disconnected system.

Further, the trackage rights which have been proposed would be essential if the future operation of the lines are to be economically feasible. They are necessary in order for the operator to have the ability to control its traffic and costs, and to reduce the dependence on MMA. Because of the poor relations between MMA and the shippers, it will be difficult for the new operator to convince shippers to increase their use of rail if MMA were the sole connection. Hunter Supp. V.S. at 4-6.

The State acknowledges that the three ICC decisions cited by MMA in its Rebuttal indicate that the ICC had determined that it did not have the authority to impose trackage rights in setting the terms and conditions for an OFA under 49 USC §10905 (now §10904). *See Chicago and North Western Transportation Company – Abandonment Exemption – Mason City,*

LA, ICC Docket No. AB-1 (Sub-No. 205X) (served November 20, 1987); *Illinois Central Gulf Railroad Co.-Abandonment-Between Tuscaloosa and Maplesville, AL*, ICC Docket No. AB-43 (Sub-No. 101) (Aug. 7, 1984), 1984 Lexis 555 at 2-3; *Conrail Abandonment of the Cairo Branch in Illinois*, ICC Docket No. AB-167 (Sub-No. 56N) (served March 4, 1982). MMA has not pointed to any appellate decisions that approved this interpretation of the statute. Additionally, it should be noted that all of the decisions predate the ICC Termination Act, and the original Conrail case was a “NERSA” abandonment under which the statutory intent was to provide Conrail an expedited method of abandonment, and there was not the same emphasis as today on the preservation of rail service. As acknowledged by the ICC, the statute does not have any express prohibition on the granting of trackage rights conditions.<sup>3</sup> The State urges the Board to reconsider the previous policy as set forth in these cases, and to acknowledge that it will grant trackage rights conditions as part of an OFA in the appropriate circumstances.

Importantly, the cases cited by MMA address only the power of the Board to impose trackage rights as a condition in a proceeding to set terms and conditions of an OFA. They do not address the power of the Board under Section 10903 to condition the grant of abandonment authority on the applicant agreeing to provide trackage rights to an operator of the lines. In the absence of requirements to the contrary, the Board has the power to do so, and should exercise that power in this case. *Cf. Wisconsin Central Ltd. – Abandonment – In Ozaukee, Sheboygan and Manitowoc Counties, WI*, STB Docket No. AB-303 (Sub-No. 27) (served October 18, 2004), Vice Chairman Mulvey commenting.

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<sup>3</sup> The comparison to the feeder line language of 49 USC §10910 (now §10907) is not convincing. The feeder line provisions permit only a limited type of trackage rights to provide a reasonable interchange or to connect with other lines operated by the acquiring carrier. Rather than this being a broader condition than under the OFA, it can be read as more limiting – that Congress specifically referenced the trackage rights because only the limited rights, and not unlimited trackage rights, were permitted.

Similarly, the State believes that Section 10903 gives the Board the power to condition the abandonment on the requirement that MMA grant trackage rights between Madawaska and the interchange with Canadian National at St. Leonard, even if the interchange might need to take place in Canada. While the Board would not have jurisdiction over any necessary rights in Canada, there is no reason that it cannot require MMA to take an extra-territorial action as a condition to the grant of abandonment authority for lines that are clearly within its jurisdiction.

The imposition of a requirement, either as a condition on MMA's abandonment authority or as a condition of the State's OFA, that MMA grant trackage rights to the State's operator from the Abandonment Lines to interchange points with connecting carriers, would be consistent with the goals of statute to preserve rail service on lines proposed to be abandoned, and in particular with requirement that STB consider effects on rural and community development, as well as with railroad policy.

If the Board were to find that it cannot impose a trackage rights condition as proposed, it is not certain that the State would, or could, proceed with the purchase. As the Board noted, the voters of the State in June approved the issuance of bonds, \$7,000,000 of which are to be used for the purchase of the Abandonment Lines. As explained by Maine Department of Transportation Commissioner David A. Cole, the bonds cannot be used for the purchase unless the State obtains trackage rights as a condition of the purchase. *See* attached Verification of David A. Cole ("Cole Supp. V.S."). If the Board does not require MMA to grant trackage rights, or MMA does not voluntarily grant such rights, then the State may not be able to complete the purchase.

## **B. Nature of Access**

The Board has also requested briefing on the location and type of access that should be ordered. As noted, the State has requested access for its operator to alternate carriers at both the north and south ends of the Abandonment Lines (in addition to access to MMA at both ends). The requested access – approximately 25 miles to Canadian National at St. Leonard, 30 miles to Eastern Maine Railway at Brownville Junction, and 80 miles to Pan Am Railway at Northern Maine Junction, preserves for shippers on the Abandonment Lines all of the access that they currently have today via MMA. (The only exception being to Canadian Pacific at Montreal – reaching Canadian Pacific would require use of almost the entire MMA system, and the State has not requested such access.) With trackage rights, shippers will have single line service available to reach these connecting carriers; without the rights it will be a joint line move just to reach the connections. As the Board has noted in the merger context, joint line service is generally less efficient than single line service. *See CSX/NS/Conrail*, STB Finance Docket No.33388, Decision No. 89 (served July 23, 1988) at 72. *See also* Hunter Supp. V.S. at 1-2. This would be true whether MMA was in the route, or to a lesser extent, whether MMA was providing haulage service. There is still an additional interchange, a changing of crews and equipments, and additional chances for delay and handling issues. *Id.*

Another major reason for the State's insistence on trackage rights over haulage rights in this instance is the shippers' complaints about the service problems and delays that they feel that they have suffered at the hands of MMA, especially in recent years. This was made clear to the State's consultant in his shipper interviews, as well as in the testimony presented by shippers in their protests and in the public hearing. Hunter Supp V.S. at 4-6. Haulage would require continued reliance on MMA to provide the connecting service, and the State does not believe

that shippers will provide any increased traffic to its operator if the traffic must rely on MMA's service. The State's operator must be able to control its own service to win back the customers. Hunter Supp. V.S. at 5-6.

This does not mean that the State would reject MMA's offer of haulage rights, if it were in addition to the trackage rights. Haulage is a contractual commercial arrangement between carriers, and if the operator and MMA can make arrangements that make commercial sense, the State assumes that the operator would take advantage of those arrangements. However, the operator cannot be solely dependent on MMA service and handling.

Additionally, because of the contractual nature of haulage, the Board does not have jurisdiction over haulage arrangements and it is unclear that the Board can impose haulage arrangements. If there were disputes the parties would be left to the courts for resolution. On the other hand, the Board has continuing jurisdiction over trackage rights agreements since they involve two carriers jointly using the same facilities. As such, the Board will automatically have continuing oversight over the trackage rights agreements under 49 USC §11323 and 49 CFR Part 1180.

The Board has also invited evidence and discussion on the terms and conditions of any access that were to be granted. July 20 Decision at 4. However, as the State has noted previously, the parties continue to negotiate over the specific terms and conditions that would apply to the trackage rights requested. The State has offered to pay (or have its operator pay) for additional infrastructure that is reasonably required to accommodate the trackage rights operations. With respect to other terms, the State believes that it is best to see if the parties are able to agree on the specific terms once the Board determines whether to impose, or MMA were to voluntarily agree to grant, trackage rights. If the parties are not able to agree, then the Board

could be asked to set the terms and conditions of the trackage rights under either their general authority over joint use agreements 49 CFR Part 1180, or under its powers to set OFA terms and conditions. 49 USC §10904(e); 49 CFR §1152.27(g).

### **Statement of Shippers and Other Parties**

The State has been served with copies of supplemental filings made by the following shippers and other parties: Seven Islands Land Company and Maine Woods Company. These parties have filed to reiterate their respective positions at the public hearing, that direct access for the new short line operator to connecting carriers other than MMA is essential to preserve their competitive options without the need to rely on the service provided by MMA. Although the State understands that these statements have been filed directly with the Board, they have been included in Exhibit C to this filing to ensure that copies are served on all parties of record.

## CONCLUSION

Based on the foregoing, the State hereby requests that the Board find that it has the power to impose the trackage rights condition requested by the State in its OFA.

Respectfully submitted,

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Dated: August 3, 2010

Attorneys for State of Maine, Department of  
Transportation

**EXHIBIT A**

**VERIFIED STATEMENT OF**

**DAVID A. COLE**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

MONTREAL, MAINE & ATLANTIC RY., LTD.

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**VERIFIED STATEMENT OF DAVID A. COLE**

My name is David A. Cole, and I am the Commissioner of the State of Maine Department of Transportation. My responsibilities include assisting in the development and operation of transportation facilities and services in the State and promoting the coordinated and efficient use of all available modes of transportation. Accordingly, I have been actively involved in the State's efforts to acquire the rail lines proposed for abandonment (the Abandonment Lines) by the Montreal, Maine and Atlantic Ry, Ltd. (MMA) in this proceeding. I have direct knowledge of the bond authorization process and the assembling of other public monies that have been part of the State's effort to avert the loss of rail service to Aroostook County and to the many shippers that depend upon it.

As a key component of the funding for the purchase of the Abandonment Lines, the 124<sup>th</sup> Maine Legislature authorized the issuance of bonds for railroad purposes in the amount of \$16,000,000. Of this amount, \$7 million was specifically allocated for the purpose of purchasing and preserving the Abandonment Lines with the proviso that the "track, upon acquisition by the State, must be operated by a rail operator chosen through a competitive process, in consultation with shippers and other stakeholders of the track . . . ."

This condition was implemented through a concomitant Executive Order issued by Governor John Baldacci entitled “An Order to Create the Aroostook County Rail Advisory Task Force” (the Executive Order). In addition to creating a means of implementing and overseeing the competitive process for the selection of an operator, the Executive Order set forth additional conditions for the acquisition of the Abandonment Lines and assigned to the local stakeholders and government officials making up the Task Force the duty of ensuring that the terms of the acquisition fulfill these conditions.

Among these requirements, the Executive Order specifically states that the acquisition “will be conditioned upon the inclusion of permanent trackage rights from the MMA on the north and south ends of the acquired lines to allow access to the interconnections at St. Leonard Station, southeast of Madawaska, and Brownville Junction.” In discussions leading up to the passage of the bond, legislators involved in the negotiations and the Governor determined that the use of public monies could only be justified in this instance if a successor operator were given every opportunity to succeed as a stand-alone railroad not subject to the vagaries of service by the MMA. Given this explicit directive, neither the Department of Transportation nor the Task Force will authorize or implement the acquisition of the Abandonment Lines by the State unless permanent trackage rights are secured for the successor operator as part of the transaction. In our view, when the legal voters of the State voted to accept the bond issue on June 11, 2010, they understood the interests of the State would be protected. Therefore, it is the position of the State that without trackage rights, either through the Board’s intervention or a voluntary grant from MMA, the State will not use the allocated bond funds to acquire the Abandonment Lines.

**VERIFICATION**

I, David A. Cole, Commissioner of the Maine Department of 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 August 3, 2010

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

David A. Cole



OFFICE OF  
THE GOVERNOR

NO. 10 FY 10/11  
DATE April 13, 2010

### AN ORDER TO CREATE THE AROOSTOOK RAIL ADVISORY TASK FORCE

**WHEREAS**, on February 25, 2010, the Montreal Maine and Atlantic Railway, Ltd. (the "MMA") filed with the Surface Transportation Board (the "STB") an Application for Abandonment of 233 miles of mainline track and subdivisions in northern Penobscot and Aroostook Counties (the "Abandonment"); and

**WHEREAS**, this action has the potential to cause catastrophic financial damage to the shippers and industries currently utilizing this rail service, to their employees, and to the economy of the entire State of Maine; and

**WHEREAS**, the Abandonment would eliminate energy-efficient, cost-effective transportation options, which would severely disadvantage Maine's competitive position in the global economy; and,

**WHEREAS**, effective coordination between local stakeholders and state government officials in responding to the proposed Abandonment is imperative;

**NOW THEREFORE**, I, John E. Baldacci, Governor of the State of Maine, do hereby order the establishment of the Aroostook Rail Advisory Task Force, the purposes and composition of which are set forth below.

#### **Purpose and Duties**

The Aroostook Rail Advisory Task Force, shall:

- Provide input to the State of Maine during the course of the STB Abandonment process to ensure that State interests are articulated and protected in a coordinated and effective manner; and,
- Advise the State of Maine in its efforts to evaluate, and, if feasible, structure and implement the acquisition of the real property and rail assets that are the subject of the Abandonment (the "Corridor"); and

- Ensure transparency in the acquisition process and in the issuance of a Request for Proposals to secure a Third Party Operator for rail service over the Corridor.

The State of Maine, working with the Aroostook Rail Advisory Task Force in connection with an acquisition, will ensure:

- That the State receives clear title to the land and track that make up the Corridor without assuming the financial obligations of the MMA;
- That the State receives a credit for previous state grants to be applied to the purchase price of the Corridor;
- That the purchase price is established by an independent analysis of the net liquidation value of the property right and assets to be acquired;
- That an assessment of current track conditions be performed and that appropriate applications be made for all available federal funding opportunities;
- That the State will seek cooperation and contributions from shippers utilizing the lines to sustain rail operations;
- That the acquisition will be conditioned upon the inclusion of permanent trackage rights from the MMA on the north and south ends of the acquired lines to allow access to the interconnections at St. Leonard Station, southeast of Madawaska, and Brownville Junction; and
- That the State will solicit and secure a third party operator through a competitive process and oversee operations to ensure improved standards of service over the Corridor with appropriate equipment to run the service efficiently and essential and ongoing investments in maintenance.

### **Membership and Support**

The Task Force shall consist of thirteen members, seven of whom are appointed by and serve at the pleasure of the Governor. The Governor shall designate the Chair and Vice-Chair.

The Task Force Members appointed by the Governor shall include:

- The Commissioner of Transportation, or the Commissioner's designee;
- Three representatives of economic development or business associations in Aroostook County;
- Two representatives of businesses that use the rail line subject to abandonment, recommended by those businesses; and
- One representative of a statewide business organization.

The President of the Senate shall appoint two members of the Senate, one from each of the two major political parties, and the Speaker of the House shall appoint four members of the House of Representatives, two from each of the two major political parties. At least four of the members shall be from Aroostook County. Members appointed by the President and the Speaker serve at the pleasure of their appointing authority.

Maine's United States Senators and the Representative from the 2<sup>nd</sup> Congressional District, or their staff representatives, are invited to participate as ex officio, non-voting members of the Task Force.

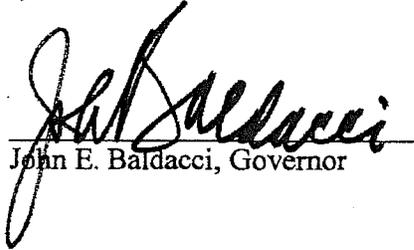
The Department of Transportation shall provide staff support to the Task Force, and may request assistance of other state agencies as needed.

### **Procedures**

The Aroostook Rail Advisory Task Force shall meet at times and places called by the Chair. Members of the Task Force serve without compensation.

### **Effective Date**

The effective date of this Executive Order is April 13, 2010.

  
John E. Baldacci, Governor

**EXHIBIT B**

**SUPPLEMENTAL VERIFIED STATEMENT**

**OF GARY V. HUNTER**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

MONTREAL, MAINE & ATLANTIC RY., LTD.  
- DISCONTINUANCE OF SERVICE AND ABANDONMENT -  
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**SUPPLEMENTAL 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. My background, experience and curriculum vitae, as well as that of RII are set forth in the Verified Statement filed earlier in this proceeding as part of the Protest filed by the State of Maine, Department of Transportation ("State"). This Supplemental Verified Statement is being provided in support of the State's Supplemental Filing on Access Issues.

**Overview**

The State proposes to acquire the lines that the Montreal, Maine and Atlantic Railway (MMA) seeks to abandon, and to contract with an operator that will provide rail service. MMA chose to abandon these lines, 233 miles from Madawaska to Millinocket, and associated branch lines, asserting in its STB application that the lines can no longer be operated profitably with the current traffic levels. The MMA carefully selected the lines to abandon such that there is no connection to another railroad, thereby ensuring that MMA retained control of any traffic on these lines if a new operator were ever selected to operate them. It is our contention that a third party operator can indeed operate these lines successfully and profitably if given the chance. Being captive to MMA for any connection to the greater railroad system is not a circumstance that would give a new operator the chance to succeed.

**Economics of the new line**

Operational economics of the new line show that it can be operated profitably with a conservative and customer focused operator. However, the operation will be sensitive to managing costs carefully and developing traffic through excellent customer service in order to remain profitable. Extra costs associated with additional unnecessary

interchanges, extended car delays due to multiple carriers in the routing, and service disruptions from a carrier that no longer has a stake in the customer service relationships of the new operator would add unnecessary costs and delays that could make the difference between a new operator being successful or not. Please refer to the pro forma economics developed for this new operation included in my original Verified Statement filed with the State's Protest ("Hunter V.S."). Hunter V.S., Exhibits D and E.

The key to success for this new operation will be cost efficiencies. A qualified new operator will be challenged to develop strong and efficient operations without waste and redundancies. Any failings on its part will be clearly reflected in the new operator's bottom line, and it will be up to the operator to run the lines smoothly and develop close relationships with its customers to save in mutual costs and continue to develop rail traffic. The risks to a new operator in a sensitive operation like this would be too high if it does not have control over its own operations and customer service. If the new operator remains physically cut-off by MMA from the rest of the rail system, the operator will be subject to extended transit times for most moves, service delays at interchange and scheduling problems. All of these issues result in lost equipment utilization, which equals substantial costs for railroads, not to mention the high risk of additional car hire charges. The new railroad would not have control over its own operations enough to ensure its own sustainability without the ability to connect directly to other carriers.

### **Economic Impact and Importance of the Lines**

The State proposes to invest a substantial amount of money into these lines if it is able to purchase them. Long term survival of the operations on the lines is important to Maine and the northeast rail system. This 233 mile segment connects Northeast Maine to all parts of the United States and Canada by rail. Future economic development and attracting rail-conducive industries will depend on adequate rail service. Many customers will make decisions regarding expansion or closing plants based on rail transportation. As per my interviews, there are many opportunities to attract new industry and expand facilities of some current customers. Many of the cities along the way have the potential to attract new businesses, but a lot will depend on adequate rail service. Many of the commodities will move more economically by rail, especially with the future uncertainty of trucking costs and equipment availability.

## **Preservation of System Integrity**

Saving this 233 miles of rail infrastructure will preserve a vital connection between Northeastern Maine and Canada, and the Northeastern part of the United States. Since the 1970's, the rail track miles in the United States have been reduced significantly through abandonments, track/facility reductions and consolidations. It was not until 2004-2007 that the rail industry saw a high enough demand for rail transportation to actually put a strain on existing rail line capacity. This 233 mile segment represents an important piece of existing, and more importantly, future rail capacity. There are over 9,000 carloads of current traffic on these lines from over 20 existing shippers. We expect that the number of carloads will likely increase as the economy returns to normal, driving up the demand rail transportation in the Northeast Maine area. It should be noted that this Northeast Maine area represents one of the largest sources of wood products in the United States, which is a significant traffic base even for rail lines of this size and complexity.

The current northeast rail system over the years has been saddled with numerous railroads and multiple connections which have increased transit times and car delays. This network of railroads can often have the unfortunate effect of having so many railroads in the routing that transit times and costs can restrict the rail traffic's competitiveness. It is important to avoid these additional interchanges when possible to save on transit times, increase equipment utilization and reduce overall rail costs. The proposed trackage rights will allow the new operator to step into the place of MMA, and help avoid adding an additional interchange except where the necessary because the traffic will be moving in a route with the MMA. The entire northeast rail system will benefit by this arrangement with better traffic flows and equipment utilization.

## **Use of the Trackage Rights**

The proposed trackage rights are for the purpose of interchange traffic only. The proposed trackage rights would be from Madawaska to St. Leonard on the north side of the lines, and from Millinocket to the Brownville Junction or Millinocket to the Northern Maine Junction on the south side of the lines. The mileage is 26 miles to St. Leonard, 30 miles to the Brownville Junction and 80 miles to the Northern Maine Junction. RII estimates that even with the trackage rights available, 80% of the traffic will continue to be handled with MMA, with only 20% of the traffic being interchanged directly to other carriers. As such trackage rights volumes, at least initially will be minimal.

The proposed trackage rights should not interfere in any way with the present MMA operation and, if necessary, the new operator could operate in reasonable windows established by MMA. The line from Northern Maine Junction/Brownville to Millinocket

currently has 4-6 trains operating daily. Even adding one trackage rights train a day each way should not interfere with present operations of the MMA. Even with dark signal territory, many rail lines in the United States are able to handle in excess of 10 trains a day. The St. Leonard to Madawaska line currently has only one train per day but could be less depending on traffic volume. So again, adding one trackage rights train to this line should not interfere with present operations. After reviewing the current MMA operations to St. Leonard, Northern Maine Junction and Brownville, it is our opinion that the affected lines have the capacity to move additional traffic and trains. The State would commit itself and its operator to work with MMA on establishing interchange times that work would equitably for both parties. Even though there is adequate track capacity to the Brownville Junction, Northern Maine Junction and St. Leonard, the State would consider building additional tracks for interchange if it were required to handle the additional trackage rights traffic.

Diversion of some of the traffic to the trackage rights could even help MMA in its handling of traffic, reducing the traffic it must handle, while removing its need to sort cars from the abandonment lines that need to be moved to other carriers. This would allow MMA to focus its handling of cars from the abandonment lines to those for which it will have an extended haul.

### **MMA's Service History and its Impact**

MMA has already proven through its recent service and abandonment filing that it is not interested in the existing traffic on the abandonment lines, or in its potential. Service and pricing issues have damaged MMA's relationship with most of the shippers on the lines. This has manifested itself in reduced service for both local switching and train service. Shippers complain that transit times have been terrible. This is reflected in the interviews RII conducted of the customers which are summarized in my earlier Verified Statement. In many cases, shippers and even the railroad have had to go out and secure additional equipment just to compensate for the poor transit times. Due to these operational inefficiencies by MMA, they have too many cars in their system, costing themselves and customers additional equipment expenditures just to move the same amount of freight. This is inefficient, increases operating costs and loads the system with unnecessary rail cars. See Hunter V.S. at 9-12 (discussing excess cars in service). Customers have indicated they can no longer continue to shoulder that burden, and the new operator, if it is to be successful, cannot be subjected to the inefficiencies of its sole connecting carrier. The proposed trackage rights will help improve car movement and potentially help reduce the operating costs to the MMA because traffic will move to one of the three designated interchanges without MMA having to handle that traffic.

MMA asserts that it has incurred considerable deferred maintenance on all of its lines, and on the abandonment lines in particular. Setting aside the fact that system

maintenance should be part of ongoing operations, the fees that would be paid for the use of the tracks would help contribute to track maintenance of the 26, 30 and 80 mile segments over which the operator would have trackage rights.

Based on interviews with almost all of the current shippers on line, it is clear that they have had a seriously rough time dealing with MMA. See Hunter V.S., Exhibit A. For the most part, the shippers were faced with increasing rates, poor local service, poor transit times, lack of some equipment types, lack of marketing, lack of business development and, in general, poor communication for the last several years. This new rail operation will need to be a drastic change from that of the past, and the shippers will be demanding such improvements in order to cooperate. The success of this operation will depend upon mutual cooperation between the shippers and the new operator.

A new operator and the success of the lines would have other risks if dependent solely on MMA for connecting service. MMA has expressed interest in remaining as the operator of the lines once the State purchases them, and may respond to the State's request for proposals. If an operator other than MMA is selected, MMA may have not be inclined to see the new operator succeed where it could not. The new operator will need the access to other carriers to keep MMA competitively "honest" in their dealings.

### **Competitiveness**

A key area will be the ability to interchange with more than one carrier and have multiple routing options for traffic. History has shown that when a short line carrier has more than one interchange connection, service and transit times are much better and the customers tend to be more competitive in the market.

These trackage rights will give current shippers access to multiple carriers and routings vs. having only the MMA to rely on as in the past. While shippers theoretically have access to multiple carriers now, MMA tends to favor its longer hauls to the Montreal gateway, even if it is not the best service route. (As per the shipper interviews, many customers have brought opportunities to MMA only to have MMA show no interest or just quote a very high rate that would not move the traffic.) Shipments of traffic to Chicago and points west demonstrate the options that might be available. Currently, such traffic would be handled by MMA to St. Jean and then by CP or CN, or it might move by MMA to CN at St. Leonard. With the trackage rights, those moves remain possible, but the new operator could also provide the connecting service to CN, or it could interchange the traffic to Pan Am for further handling by either NS or CSXT. (NS has haulage rights to Waterville, Maine via the Pan Am Railway.) If MMA were the only railroad connection, then it would be able to dictate moves, routing, equipment and rates to the existing shippers. Having neutral access to all of these carriers will allow the shippers to stay competitive in their own existing markets, and allow shippers to

open up new markets. Having multiple connections will also help with the equipment supply by providing additional sources for the equipment instead of just one carrier. With 70% of this operation's traffic current relying on an interchange with another railroad, it is critical for the long term survival of this railroad to be able to provide multiple connections and routing options. Business development is critical and having routing and rail options will help the new rail operation.

Based on the MMA today, it would not be economically feasible for the new operator to survive with only an MMA connection. Poor service, lack of equipment, uncompetitive rates and history of a "take it or leave it" attitude will only cause the new operator to fail. The numbers - rates and costs - provided by the MMA in their STB Filing Application indicate that they are not able to make the service to these lines work. Based on the pro formas we prepared, the new operator should be able to operate at a lower cost, and provide improved service. There is room for the new operator to work with the current shippers to keep them competitive in the market. However, this will only work if the new operator has access to other connecting carriers, and can prevent MMA from taking away the competitive advantage by raising rates or providing poor service.

If the new operator is not able to increase traffic by providing competitive options for the shippers, then its chances of long term survival and success will be limited. The new operator will need to be market driven and have the ability to be creative in the market place vs. being dictated to by the MMA. MMA, by abandoning their lines, has shown little interest in maintaining the traffic. That will not be the case of the new operator. If the MMA chooses to work with the new operator and be competitive, MMA stands to benefit from the new cost effective operator. If not, with the trackage rights, the new operator will still be able to seek other rail options and routings for its customers. With multiple connections, the market place will help decide how the rail traffic will be routed.

### **Trackage Rights vs. Haulage**

As discussed above, having trackage rights is critical to the long-term survival of this new railroad. Haulage rights would not serve the same purpose needed to ensure cost effectiveness and success for the new operator. With haulage rights only, the new operator will still have to rely on the MMA to move the traffic to St. Leonard, Northern Maine Junction and Brownville Junction. According to our shipper interviews, MMA has already proven not to be reliable for efficient service, and shippers do not want to remain captive to the service provided by MMA. This could result in increasing costs and poor transit times, both of which will make the current shippers not competitive in moving their freight to markets. Haulage puts the shippers back in business with and dependent upon the same MMA to move cars, whereas with trackage rights, the new operator will operate on its own schedules, develop its own customer service and routing options, and be able to connect with other railroads, reducing costs and transit

times. Any cost increases due to poor service will be detrimental for the new operator. With 70% of the traffic moving via interchange, it is critical to move and control one's own traffic.

Also, this is an area where many of these moves are only a few hundred miles long, transit times are critical in order to compete. It should be noted that 80% of the traffic originating or terminating on these lines is a haul of less than 1,000 miles.

I have run the economics of the proposed third party operator and based on the current revenue and costs, this operation can be very successful. On the other hand, increasing transit times and operating costs or increasing rates that the new operator must make up will make it very difficult to survive.

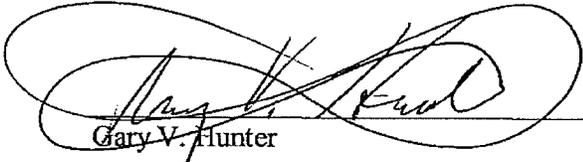
## **Conclusion**

The State, Cities, Counties and shippers deserve a competitive rail system that has a reasonable chance to survive. Any unnecessary handicaps to this operation could contribute to its failure. Today, the over 20 customers on the lines have theoretical access to alternative carriers through the MMA track, and this access needs to be preserved and exploited. However, MMA has attempted to isolate these lines by designating lines that cannot connect to the rest of the national or Canadian rail system without being dependent upon MMA. The prudent action would be to give the customers access to the alternate carriers to maintain competition and ensure competitive service and costs for all parties involved. Shippers need options for service, rates, routing and car supply to maintain competition and ensure competitive service. The requested trackage rights are the only way to provide the independent access needed by the new operator to provide these service options without the need to rely on the MMA.

## 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 August 3, 2010.



Gary V. Hunter

**EXHIBIT C**

**STATEMENTS OF SHIPPERS AND OTHER PARTIES**



## Seven Islands Land Company

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July 29, 2010

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

227536

ENTERED  
Office of Proceedings

JUL 29 2010

Part of  
Public Record

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

In support of the request by the STB for briefings from interested parties as to whether provisions of 49 U.S.C. Para. 10903 and 10904 would support imposition of conditions for access of any sort including trackage rights and haulage rights, Seven Islands Land Company offer the following for consideration.

Seven Islands Land Company is a forest management company, located at Bangor, Maine. We manage approximately 1.1 million acres in northern Maine and own two hardwood production facilities in Portage Lake, Maine that rely on the rail system to move products to market. Portage Wood Products uses rail extensively for chips for pulp and paper mills in the region. Maine Woods Company, our hardwood sawmill, uses the rail to a more limited extent but usage could increase significantly if a cost efficient intermodal facility was located in Northern Maine.

We fully support the imposition of trackage versus haulage rights to St Leonard, NB; Northern Maine Junction in Hermon; and Brownville Junction, Maine for the following reasons:

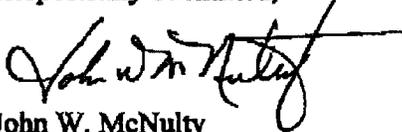
- MMA has not demonstrated that it can be a cost efficient and reliable service provider on rail and allowing them haulage rights on the short spur bookends will further hinder Northern Maine's ability to use rail efficiently.
- Nominal costs associated with carload interchange amongst carriers are usually \$60/car. Assuming MMA is allowed to keep the haulage rights on the bookends, we can assume our freight costs to market will increase as another interchange will be added as compared to the present mode of operations. MMA has failed to provide accurate activity cost accounting associated with individual rail sections. Therefore, when the question of appropriate haulage and interchange charges surface in the future with the new carrier, MMA would never be able to demonstrate what the appropriate charges should be

thus creating greater barriers on current issues for shippers and efficiency problems for the new carrier.

- The new carrier on the line will have little if any leverage to negotiate favorable rates. Shippers and the new carrier will essentially be held hostage by MMA if haulage rights are maintained on the bookends. Granting Maine and subsequently the new carrier trackage rights will provide for a more level playing field when negotiating with MMA.
- Trackage rights will encourage an expansion of use of the rail as shippers will maintain control of their shipments and benefit from the increased efficiencies of rail as use of the rail grows.

Northern Maine desperately needs a reliable and efficient railroad to service it. Years of rail inefficiencies and neglect have brought our region to this crossroad. In comparison just across the border in Canada; rail has enabled the forest products industry, agriculture and food processing to thrive. Having a reliable and efficient rail system is fundamental to our future if we are to successfully compete for world markets with our resource-based economy. We strongly recommend that you impose trackage rights for the State of Maine on both ends of the abandonment section such that we can efficiently access national and international rail service for Northern Maine.

Respectfully Submitted,



John W. McNulty  
President  
Seven Islands Land Company

cc: Nathan Moulton  
Director, Rail Program  
Maine DOT, Office of Freight Transportation  
16 State House Station  
Augusta, Maine 04333

**Chairman Elliott  
Vice Chairman Mulvey  
Commissioner Nottingham  
Office of Proceedings  
Surface Transportation Board  
395 E. Street SW  
Washington, D.C. 20423**

**MM&A Abandonment in Northern Maine:**

**In support of the request by the STB for briefings from interested parties as to whether provisions of 49 U.S.C. Para. 10903 and Para. 10904 would support imposition of conditions for access of any sort including trackage rights and haulage rights, we at Maine Woods Company offer the following for consideration.**

**First, Maine Woods Company is a hardwood lumber manufacturing facility located in Portage Lake, Maine. MWC is also part of a greater family of companies affiliated under the Seven Islands Land Management Company. Our spokesperson, John Cashwell is a member of the Governor's Task Force and has represented us at hearings on the MM&A abandonment process. A sister company, Portage Wood Products is also located on the same site and uses rail extensively for chips to pulp and paper mills in the region. MWC's rail usage is limited to less than a dozen carloads per year but usage could be significantly more if a cost efficient intermodal facility was located in Northern Maine.**

**We fully support the imposition of trackage versus haulage rights to St Leonard, NB; Northern Maine Junction in Hermon; and Brownville Junction, Maine for the following reasons:**

- MM&A has not demonstrated that it can be a cost efficient, reliable service provider on rail and allowing them haulage rights on the short spur bookends will further hinder Northern Maine's ability to use rail efficiently.**
- Nominal costs associated with carload interchange amongst carriers are usually \$60/car and adds precious time to get products to market. Assuming MM&A is allowed to keep the haulage rights on the bookends, we can assume our freight costs to market will increase, as another interchange will be added as compared to the present mode of operations. MM&A has failed to provide accurate activity costs associated with its individual rail sections. Therefore, when the question of appropriate haulage and interchange charges surface in the future with the new carrier, MM&A may not be able to or want to demonstrate what the appropriate charges should be. MM&A's maintenance of haulage rights has all the potential of creating even greater barriers on current issues for shippers and efficiency problems for the new carrier. Shippers absolutely need to reduce exposure to costs, reduce freight time to market plus eliminate**

current barriers, not create the opportunity for more to surface.

- The new carrier on the line will have little, if any leverage to negotiate favorable rates. Shippers and the new carrier will essentially be held hostage by MM&A if haulage rights are maintained on the bookends. Granting the State of Maine and subsequently the new carrier trackage rights will provide for a more level playing field when negotiating with MM&A.

Northern Maine desperately needs a reliable and efficient railroad to service it. Years of rail inefficiencies, neglect and a down turn in our economy have brought our region to this crossroad. In comparison just across the border in Canada; rail has enabled the forest products industry, agriculture and food processing to thrive. Having a reliable and efficient rail system is fundamental to our future if we are to successfully compete for world markets with our resource-based economy. We strongly recommend that you impose trackage rights for the State of Maine on both ends of the abandonment section such that we can efficiently access national and international rail service for Northern Maine.

Respectfully Submitted,

Donald A. Tardie  
Managing Director  
Maine Woods Company

**CERTIFICATE OF SERVICE**

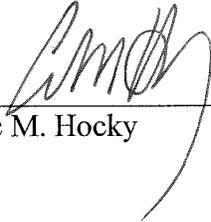
I hereby certify that on the date set forth below, I caused a copy of the foregoing Supplemental Filing on Access Issues to be served electronically on counsel for Montreal, Maine and Atlantic Ry., Ltd., as follows:

James E. Howard  
1 Thompson Square  
Suite 201  
Charlestown, MA 02129  
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and to be served on all other parties of record either electronically or by U.S. first class mail, postage prepaid.

Dated: August 3, 2010

  
\_\_\_\_\_  
Eric M. Hocky