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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

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MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.—  
DISCONTINUANCE OF SERVICE AND ABANDONMENT—  
IN AROOSTOOK AND PENOBSBOT COUNTIES, MAINE

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JOINT PETITION OF MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.  
AND THE STATE OF MAINE, DEPARTMENT OF TRANSPORTATION  
FOR APPROVAL OF SETTLEMENT

**EXPEDITED CONSIDERATION REQUESTED**

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Dated: December 9, 2010

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INTRODUCTION

This petition, made jointly by the Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) and the State of Maine, Department of Transportation (the “State”), seeks to apprise the Surface Transportation Board (“STB” or “Board”) that the parties have reached a settlement that will allow for the purchase by the State of MMA’s rail lines located in Aroostook and Penobscot Counties, Maine (the “Lines”) that are the subject of this abandonment proceeding. The parties previously advised the Board by letter dated October 20, 2010 of the terms of their settlement,<sup>1</sup> and the parties have substantially completed the negotiation of a Purchase and Sale Agreement and the related trackage rights and interchange agreements necessary to implement the settlement. The State has agreed to withdraw its opposition to MMA’s abandonment application, subject only to the conditions discussed below (including execution of the Purchase and Sale

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<sup>1</sup> The October 20 letter included a Term Sheet that had been executed by the parties (the “Term Sheet”) and that set forth the essential terms of the transaction.

Agreement), and has recommended to the other shippers opposing the abandonment that they also withdraw their opposition thereto. As anticipated by the October 20 letter, the parties hereby formally request that the Board approve, subject to the terms and conditions described below, those aspects of the settlement that are subject to the Board's jurisdiction (as described more fully below) and enter an order in this proceeding as requested in Section VI.

The State and MMA propose to consummate the purchase and sale transaction on or prior to December 31, 2010. It is important to both parties to effectuate the closing as of that date. Consequently, the State and MMA respectfully request that the Board afford this joint petition expedited treatment.

#### SUMMARY

##### I. PURCHASE AND SALE

Pursuant to the Purchase and Sale Agreement, MMA shall sell and the State shall purchase the following Lines:

- (1) The Madawaska Subdivision, consisting of approximately 151 miles of railroad line between milepost 109 in Millinocket and milepost 260 in Madawaska in Penobscot and Aroostook Counties;
- (2) The Presque Isle Subdivision, consisting of approximately 25.3 miles of railroad line between milepost 0.0 in Squa Pan and milepost 25.3 in Presque Isle in Aroostook County;
- (3) The Fort Fairfield Subdivision, consisting of approximately 10 miles of railroad line between milepost 0.0 in Presque Isle and milepost 10.0 in Easton in Aroostook County;
- (4) The Limestone Subdivision, consisting of approximately 29.85 miles of railroad line between milepost 0.0 in Presque Isle and milepost 29.85 in Limestone in Aroostook County; and
- (5) The Houlton Subdivision, consisting of approximately 17.27+ miles of railroad line between milepost 0.0 in Oakfield and milepost 17.27 in

Houlton, plus the "B Spur" from milepost 17.27/0.00 (as shown on Val Plan V2k/5) to Station Point 113+90 End of Track (as shown on Val Plan V2k/6), in Aroostook County.<sup>2</sup>

The purchase price for the Lines shall be \$21.1 million. The amount payable in cash to MMA at closing shall be \$20.1 million. The balance of the purchase price shall be in the form of MMA receiving a credit in the amount of \$1 million in partial satisfaction of a claim of the State against MMA pursuant to certain rail funding agreements, arising as a result of the filing of MMA's abandonment application.

The Purchase and Sale Agreement includes various other provisions relevant to MMA's sale and the State's purchase of the Lines; the portions involving Board jurisdiction are explained in more detail in the following sections. The negotiation and drafting of the Purchase and Sale Agreement has been substantially completed, and execution by the parties is expected to occur shortly, together with the completion of the other agreements (described below) which will be attached as exhibits to the Purchase and Sale Agreement. The State and MMA will advise the Board and interested parties immediately upon final execution of the Purchase and Sale Agreement. As noted above, the closing of the purchase and sale transaction is targeted to occur no later than December 31, 2010.

## II. PROVISION OF CONTINUED RAIL SERVICE

The State is acquiring the Lines to allow for continued rail service thereon. However, as the State has previously indicated to the Board over the years, it is

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<sup>2</sup> In the course of due diligence, MMA and the State realized that MMA's abandonment application inadvertently listed the end point of the Houlton Subdivision as milepost 16.90 instead of milepost 17.27, and did not include the "B Spur" described above. The parties request that the Board treat MMA's abandonment application as amended to include the revised description of the Houlton Subdivision as described above.

statutorily prohibited from becoming a common carrier. Accordingly, it is essential that the State acquire the Lines without acquiring any common carrier obligation. The State believes that it can do so if (a) the Board approves abandonment of the Lines and (b) the State acquires the Lines from MMA before MMA consummates the abandonment. In *Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions*, 363 I.C.C. 132 (1980), *aff'd sub nom. Simmons v. ICC*, 697 F.2d 326 (D.C. Cir. 1982), the Interstate Commerce Commission (“ICC”) created an exemption that allows states and state agencies to acquire, for the purposes of allowing continued rail service, rail lines that have either been abandoned or “approved for abandonment.” 363 I.C.C. at 135. Through this joint petition, and assuming the Purchase and Sale Agreement is executed and the Federal Railroad Administration (“FRA”) indicates it will release its liens (as discussed more fully below), the State is withdrawing its objections to the abandonment and its requests for conditions (the objections and requests being referred to collectively as “objections”) and requesting that the Board approve abandonment of the Lines, subject to the terms and conditions described in this joint petition. It also asks the Board to confirm that the State, following such approval, can acquire the Lines for continued rail service without incurring any common carrier obligation.<sup>3</sup> To invoke the exemption under *Common Carrier Status of States*, the State need only notify the Board of the acquisition and indicate that it intends to have operations continued. 363 I.C.C. at 135.

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<sup>3</sup> The State currently has an offer of financial assistance (“OFA”) pending in this proceeding. However, subject to the Board’s issuance of the order requested hereunder, the State will acquire the Lines outside of the OFA process. See *E. Penn R.R., LLC—Abandonment Exemption—In Berks & Montgomery Counties, PA*, STB Docket No. AB-1020X (STB served Apr. 9, 2009).

In conjunction with the *Common Carrier Status of States* exemption, the ICC also established "modified certificates" that would be available to operators of lines acquired under that exemption. See 49 C.F.R. 1150.21-24. The State currently is in the process of selecting a rail carrier to operate the Lines on its behalf (the "Short Line"), but it is not expected that the Short Line will be ready to assume operations until after the closing on December 31, 2010. Pursuant to the Interim Service Agreement being negotiated by the parties as part of the Purchase and Sale Agreement, MMA shall continue to provide local and overhead common carrier freight rail service, under arrangements that are tantamount to a "modified certificate," to shippers, receivers, consignees, or other entities located on the Lines (or using the Lines for overhead service) at the frequencies and levels of service required by business conditions and consistent with the frequencies and levels of service that MMA provided during the 12-month period prior to the closing, until such time as the Short Line selected by the State is ready to provide such service.

The Interim Service Agreement also will stipulate that MMA may market, price, and provide freight rail service on the Lines to freight rail shippers and receivers during this time without restriction or interference by the State, and that MMA shall be entitled to retain all revenues it receives for providing freight rail service on the Lines during this time. No subsidies will be provided, and there will be no preconditions that shippers must meet to receive service. The Interim Service Agreement further will stipulate that during this time MMA shall, at its sole cost and expense, maintain all segments of the Lines to the same levels of utility and to the same FRA track standards at which they were on the date of the closing. In effect, rail service on the Lines will be substantially

the same during the period after the closing until the Short Line is ready to assume operations as such service was prior to the closing.

Once the Short Line has been selected by the State and an operating agreement negotiated, the Short Line will file an appropriate notice with the Board to establish its authority to operate the Lines as a common carrier.

### III. TRACKAGE RIGHTS

As part of the closing, (1) MMA will agree to grant to the Short Line, when selected, permanent overhead trackage rights (a) between the end of the Lines at Madawaska and the connection of MMA's line with Canadian National Railway at St. Leonard, New Brunswick, and (b) between the end of the Lines at Millinocket and the connection of MMA's line with Eastern Maine Railway at Brownville Junction, Maine; and (2) the State will agree to require the Short Line to grant to MMA permanent overhead trackage rights between the ends of the Lines in Madawaska and Millinocket to connect the lines that MMA will continue to operate at either end. MMA and the State intend that these trackage rights will be binding on successor operators or owners of the lines that are subject to the trackage rights agreements. The terms and conditions of these trackage rights will be set forth in three trackage rights agreements, the forms of which will be attached as exhibits to the Purchase and Sale Agreement, and include provisions relating to (1) the underlying grant of rights; (2) construction, repair, maintenance, additions to, and operation and control of the relevant trackage; (3) compensation and billing; (4) liability, indemnification, and insurance; (5) dispute resolution; (6) government approvals; and (7) default and remedies. The parties anticipate that the trackage rights agreements will become effective when the Short Line begins its

operations and that there will be filings with the Board of appropriate notices of exemption with respect to such trackage rights agreements by MMA and the Short Line.

#### IV. POSITION OF THE FRA

The Lines currently are subject to a mortgage and security agreement granted by MMA to the United States of America, by and through the FRA, in connection with a loan to MMA by the FRA. A condition precedent to consummation of the Purchase and Sale Agreement is that the Lines be released from this mortgage and security agreement, so that MMA is able to convey the Lines to the State free of liens and encumbrances. Based on discussions with the FRA, MMA expects that the FRA will release its lien and security interest and submit a letter to the Board so indicating and expressing its support for the abandonment and consummation of the Purchase and Sale Agreement in accordance with the terms described. The State's withdrawal of its objections to MMA's abandonment application is conditioned on the FRA so advising the Board.

In addition to releasing the Lines from the FRA mortgage and security agreement, MMA anticipates that it will reach a satisfactory agreement with the FRA with respect to other issues relating to the financing agreement between MMA and the FRA.

#### V. FAILURE TO CLOSE

As indicated herein, the State is conditionally withdrawing its objections so that the Board can enter an order approving the abandonment. The Purchase and Sale Agreement will provide that if the State fails or refuses to close for described conditions within its control or responsibility, then MMA can proceed to consummate the abandonment. However, the Purchase and Sale Agreement further provides that if MMA fails or refuses to close for described conditions within its control or responsibility, the

parties agree that the Board should reopen its decision granting the abandonment and restore the parties to the procedural status quo that existed before MMA and the State notified the Board of an agreement in principle in their October 20 letter.<sup>4</sup> The Board would then proceed to reconsider the abandonment application on its merits, taking into account the objections of the State and any other party that may have withdrawn its objections on the basis of this joint petition, and issue a new decision.

## VI. STB-RELATED CONDITIONS

Another condition precedent to consummation of the Purchase and Sale Agreement is that the Board enter an order in this proceeding that is consistent with requirements of the transaction as described above. In particular, the parties request that the Board enter an order:<sup>5</sup>

- (1) authorizing the abandonment of the Lines (subject only to customary abandonment conditions),<sup>6</sup> but providing for the withdrawal of such authorization and reopening the proceeding to consider the abandonment application, and objections filed thereto and requests for conditions, should the closing under the Purchase and Sale Agreement not occur as a result of MMA's failure to close as set forth in the Purchase and Sale Agreement;

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<sup>4</sup> See, e.g., *Mid-Mich. R.R., Inc.—Abandonment Exemption—In Kent, Ionia, & Montcalm Counties, MI*, STB Docket No. AB-364 (Sub-No. 14X) (STB served Sept. 26, 2008) (citing 49 U.S.C. 722(c) and 49 C.F.R. 1115.3(b) for the proposition that the Board “may reopen and reconsider a prior Board decision on the grounds of...substantially changed circumstances”). The parties hereby stipulate that MMA's failure or refusal to close for described conditions within its control or responsibility would constitute “substantially changed circumstances” warranting reopening and reconsideration of the requested Board order authorizing abandonment of the Lines.

<sup>5</sup> The parties request that the Board not issue the order until (1) the parties have advised the Board that the Purchase and Sale Agreement has been executed, and (2) the Board receives notice from the FRA that it supports the abandonment and the proposed purchase by the State, and that it will release its lien on the Lines.

<sup>6</sup> Such conditions would include those suggested in the Final Environmental Assessment issued by the Board's Section of Environmental Analysis in this proceeding on July 19, 2010.

- (2) determining that the OFA submitted by the State meets the Board's criterion, and postponing the effective date of the authorization for the abandonment in accordance with the provisions of 49 C.F.R. 1152.27(e)(1);
- (3) permitting consummation of the abandonment and salvage of the Lines, should the closing under the Purchase and Sale Agreement not occur as a result of the State's failure to close as set forth in the Purchase and Sale Agreement;<sup>7</sup>
- (4) accepting this joint petition as notice of the State's acquisition of lines approved for abandonment for continued rail service, presuming other preconditions to such an acquisition have been met, and acknowledging that the State's acquisition of the Lines is exempt from the Board's jurisdiction under *Common Carrier Status of States*, and that the State will not acquire any common carrier obligations as a result of the acquisition; and
- (5) accepting this joint petition as a notice of modified certificate, if necessary, for MMA to provide the interim service described above in Section II.

The parties respectfully request that the Board enter an order to this effect and that the Board do so in an expeditious manner. While the parties recognize the need to allow time for comment by interested parties on the proposed settlement and this joint petition, MMA and the State believe that a 7-day comment period would be sufficient, given that the essential terms of the Purchase and Sale Agreement have been public knowledge since the parties submitted the Term Sheet to the Board on October 20, and given that the State sought input from interested parties during the course of the negotiations that ultimately resulted in the Purchase and Sale Agreement.

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<sup>7</sup> As MMA has argued in previous filings, abandonment of the Lines is warranted in light of the financial challenges that MMA would certainly face were the status quo maintained on a long term basis. The State has agreed, on the conditions set forth in this joint petition, to withdraw its objections to the abandonment and requests for conditions, and has requested that the other shippers who protested do so as well.

## CONCLUSION

As the Board has noted in this and other proceedings, the promotion and adoption of privately-negotiated agreements serves the public interest.<sup>8</sup> The parties therefore request that the Board approve the parties' settlement as set forth in the Purchase and Sale Agreement, and enter an order as described in Section VI upon (1) receipt of notice from the parties that the Purchase and Sale Agreement has been signed and (2) receipt of notice from the FRA that it will release its liens.

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<sup>8</sup> See, e.g., Decision, STB Docket No. AB 1043 (Sub-No. 1) (STB served Apr. 26, 2010) ("The Board favors the negotiated resolution of disputes."); *CSX Corp. & CSX Transp., Inc., Norfolk S. Corp. & Norfolk S. Ry. Co.—Control & Operating Leases/Agreements—Conrail Inc. & Consol. Rail Corp.*, 3 S.T.B. 196 (STB served July 23, 1998) ("There is a strong public interest in encouraging private parties to negotiate procompetitive transactions.") (Chairman Morgan, commenting).

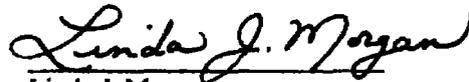
Respectfully submitted,



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Dated: December 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Joint Petition of Montreal, Maine & Atlantic Railway, Ltd. and the State of Maine, Department of Transportation for Approval of Settlement this 15 day of December, 2010 by causing copies to be sent to the parties of record in these proceedings by overnight delivery service, by United States mail (postage prepaid), or by email.

  
Charles H.P. Vance