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VIA E-FILING

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

December 20, 2010

Re: STB Finance Docket No. 35440
State of Maine - Petition for Declaratory Order
Supplemental Information and Comments (Duplicate Filing)

228499

Dear Ms. Brown

On Friday, the State of Maine electronically filed Supplemental Information and Comments. Enclosed is a copy of the confirmation we received. However, the filing has not yet been posted. In the event there was a problem with the filing, and because the filing deadline is today, we are resubmitting it with this letter. We apologize if this duplication causes any confusion.

Please let me know if you have any questions.

Respectfully,

Eric M. Hocky

EMH/e

cc. All persons shown on the Certificate of Service

Hocky, Eric M.

From: SevernS@stb.dot.gov
Sent: Friday, December 17, 2010 12:19 PM
To: Hocky, Eric M
Subject: Acknowledgement of formal filing

STB acknowledges that you have submitted a formal filing regarding docket number
FD-35440--

BEFORE THE
SURFACE TRANSPORTATION BOARD

SIB Finance Docket No. 35440

STATE OF MAINE – PETITION FOR DECLARATORY ORDER

SUPPLEMENTAL INFORMATION AND COMMENTS

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Dated: December 17, 2010

Attorneys for State of Maine, Department of
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35440

STATE OF MAINE – PETITION FOR DECLARATORY ORDER

SUPPLEMENTAL INFORMATION AND COMMENTS

On October 26, 2010, the State of Maine, by and through its Department of Transportation (“State”) filed a petition for declaratory order requesting that the Board determine that the described transactions between the State and St. Lawrence & Atlantic Railroad Company (“SLR”) are not subject to the Board’s regulatory authority, and that the State will not be subject to the Board’s regulatory authority as a carrier, under the Board’s precedents under *State of Maine, Department of Transportation - Acquisition and Operation Exemption – Maine Central Railroad*, 8 ICC 2d 835 (1991) (“*State of Maine*”) and its progeny. The Board examined the petition and the transaction documents, and in a decision served December 10, 2010 (the “December 10 Decision”) requested that the State provide specific additional information to assist the Board in its determination.¹ The State is hereby supplying the requested information, as well as some additional comments. Other interested parties were also invited to file comments.

The December 10 Decision also required that the State serve a copy of the Decision on H&M Beans, a shipper located at the end of the tracks previously acquired from SLR by the State. The State mailed a copy of the decision to the shipper on December 13, 2010, and electronically filed a certificate of service with the Board on that date.

¹ 138.

SUPPLEMENTAL INFORMATION

The State hereby responds to the Board's request for information as follows:

1. **A description of any passenger rail service presently provided by Maine DOT, SLR, Amtrak, or any other carrier over the lines acquired by Maine DOT through the 1991 and 2007 transactions; and the proposed timing of Maine DOT's future initiation of various types of passenger rail service, including any interstate services.**

The State has previously informed the Board that it cannot act as a freight rail operator on any of the lines it owns. Similarly, it cannot act as a passenger rail operator.

The property acquired in 1991 included the Lewiston Lower Road from Brunswick to Lisbon, and several additional pieces of track. The passenger service provided by Maine Eastern Railroad ("MER") from Brunswick to Rockland, described more fully below, uses a segment of the 1991 acquisition between Hardings and Brunswick. Additionally, the Amtrak extension to Brunswick, also described below, will use an approximately one-mile segment of the 1991 acquisition to reach Brunswick. There are no current plans for passenger service over the remainder of this property.

There is also no passenger service on the initial segment acquired from SLR in 2007. The transaction was consummated on September 27, 2007. Passenger operations of any nature are not expected in the near future and are still in the preliminary study phase. Before the SLR tracks and right of way could be used for commuter service into downtown Portland, a bridge would need to be reconstructed across the channel between Back Cove and Casco Bay. The State acquired the right of way and tracks related to this light density freight line to ensure that it would not be abandoned and that it would be preserved in place for future passenger operations, as well as future freight operations.

2. **Maps showing, and a description of, where Maine DOT's passenger rail service connects and will connect to the passenger rail network in Maine, the Northeast U.S., and Canada; and a description of whether joint ticketing arrangements, continuous travel, other common arrangements with connecting carriers, or direct physical connections or interchanges will be available between Maine DOT and other carriers providing passenger rail service or providers of other modes of passenger transportation, and how and to whom the services will be marketed.**

As noted above, the State does not directly provide any passenger service. Currently there is limited passenger service being provided in the State. Amtrak has provided interstate passenger service between Boston, Massachusetts and Portland, Maine, since 2001. Intermediate stops in Maine include Wells, Saco, and Old Orchard Beach. The Maine portion of the service operates over tracks owned by Pan Am Railways ("PAR"). Amtrak operates this service pursuant to an agreement with the Northern New England Passenger Rail Authority, a body politic and corporate established by the Maine legislature. There are currently plans to extend the Amtrak service from Portland to Brunswick, Maine, with an intermediate stop in Freeport. The extension would also operate over tracks owned by PAR, and a short segment owned by the State in Brunswick. The service would pass through Yarmouth (where the line crosses the SLA segments) although no stop is currently planned there. The extension is expected to start service in the Fall of 2012.

Seasonal (summer and fall) passenger excursion / tourist service is offered by MER between Brunswick and Rockland. MER uses a segment that the State acquired from Maine Central (now PAR) between Brunswick and Hardings, and the track and right of way between Hardings and Rockland which the State acquired after it was abandoned. MER also is the freight common carrier on the line (as well as on an additional line between Brunswick and Augusta). While the extension of the Amtrak service to Brunswick will reach the same terminus as MER, the State is not aware of any current arrangements for joint or through ticketing.

Passenger service for the Middle and Northern Segments which the State hopes to acquire from SLR is still being studied. As discussed above, service to downtown Portland from these segments via the segment acquired in 2007 is not currently practicable because of a bridge that would need to be reconstructed; however, commuter or excursion passenger service could meet the Amtrak extension in Yarmouth if a station were established there, or could use the PAR tracks to reach Portland if arrangements could be reached with PAR and Amtrak. No such arrangements have been discussed at this time.

A copy of the relevant portion of the 2009 State Rail Map is attached hereto as Attachment 1. Passage: service being provided, or currently being studied, in the State is marked on the map.

3. **A description of excursion, tourist, entertainment, recreational passenger rail service; commuter rail passenger transportation; intercity or interstate passenger rail transportation (including high-speed passenger rail service) that Maine DOT proposes to provide.**

As noted above, the State will not directly provide any passenger service. No interstate passenger rail transportation (including high-speed passenger rail service) is contemplated for the near future on the initial segment acquired from SLR, or on the Middle or Northern Segments that are the subject of this proceeding. The State acquired the right of way and tracks related to this light density freight line to ensure that it would not be abandoned and that it would be preserved in place for future passenger operations, as well as for future freight operations. The SLR segments generally run between the population centers of Portland and Lewiston-Auburn and could ultimately be used for commuter operations or for tourist excursions. However, before the SLR tracks and right of way could be used for commuter service into downtown Portland, a bridge would need to be reconstructed across the channel between Back Cove and Casco Bay. As discussed above, the SLR segments would cross the

extended Amtrak service to Brunswick at Yarmouth. Commuter or excursion passenger service could meet the Amtrak extension in Yarmouth if a station were established there, or could use the PAR tracks to reach Portland if arrangements could be reached with PAR and Amtrak. Any discussions of joint or through ticketing would be premature. Passenger operations of any nature are not expected to start for several years and are still in the preliminary study phase. (The State is the process of completing a Statewide Rail Plan that will evaluate the freight and passenger rail system in the State.)

4. A description of what role SLR plays and will play in planning, marketing, and providing Maine DOT's passenger rail service in light of SLR's retention of the exclusive control and management of passenger rail service over the Northern Segment.

It is currently not planned that SLR will have any role in the planning, marketing or providing of passenger service over either the Middle Segment being sold to the State or over the Northern Segment that SLR will retain, with the exception of SLR's control over all railroad operations on the Northern Segment. SLR will retain control and management of such operations through, for example, the adoption of operating rules and control of dispatching. It will not be responsible for the actual provision or marketing of any passenger service. In connection with its dispatching control, SLR would also be consulted with respect to the scheduling of service so that any passenger service plans could be integrated with SLR's freight service plans in a way that both can provide efficient safe service.

COMMENTS

The Board in this instance is being asked to review a two-part transaction. The first involves a "traditional" *State of Maine* transaction under which the State will acquire physical assets and right of way property, and SLR will retain a freight easement. The second involves only the acquisition by the State of passenger operating rights for which it can designate an

operator, but does not involve the acquisition of any of the physical assets or right of way property comprising the line. Earlier this week, the Board reiterated the *State of Maine* standard in a case involving the acquisition of the physical assets and associated right of way by the Florida Department of Transportation ("FDOT") from CSX Transportation, Inc. ("CSX")

Under *State of Maine*, the key question is whether the terms and conditions governing FDOT's acquisition of the Orlando Line assets and CSX's reservation of a freight easement meet the Board's requirements for assuring that common carrier freight rail service can continue to be provided on these rail assets without interference.

Florida Department of Transportation - Acquisition Exemption - Certain assets of CSX Transportation Inc., STB Docket No. FD 35110 (served December 15, 2010), slip op. at 11. Both parts of the State-SLR transaction have been structured to assure that SLR's common carrier freight service can continue to be provided on these rail assets without interference.

With respect to the "Middle Segment," the transaction is structured to match the 2007 transaction previously reviewed by the Board in which the State will acquire the physical assets, and SLR will retain a permanent freight easement. The parties will enter into an operating agreement that will govern the respective obligations of the parties if and when passenger operations commence. As discussed in the Petition, the Board has previously determined that the proposed arrangements will not interfere with SLR's ability to provide common carrier freight rail service. *State of Maine - Acquisition Exemption - Certain Assets of St. Lawrence & Atlantic Railroad Company*, STB Finance Docket No. 35018 (served September 13, 2007).

With respect to the "Northern Segment," the State is only acquiring the right to have passenger operations conducted in the future over the segment. SLR is retaining ownership of the rail line and will control all dispatching. The Passenger Operating Agreement, attached to

and explained more fully in the Petition, ensures that SLR will be able to provide common carrier freight rail service without interference from the passenger operations.

As set forth in the supplemental information provided above, the State will, by these proposed transactions, preserve the right to have passenger service conducted at some future time. The State will never provide passenger operations itself; rather it and when it is determined that there is sufficient demand for passenger services, the State will select a passenger operator.²

For all of the foregoing reasons and the reasons set forth in the Petition, the Board should declare that the transactions described herein between the State and SLR are not subject to the Board's regulatory authority, and that the State will not be subject to the Board's regulatory authority as a carrier, under the Board's precedents under *State of Maine*.

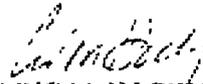
In its Petition, the State requested expedited consideration of its request, and appreciates that the Board has promptly acted upon the petition in issuing the December 10 Decision. The State and SLR would both benefit from continued expedited consideration which would allow a closing before year end. As noted in the Petition, the State has funding currently programmed for the acquisition to occur this calendar quarter (before the end of the year), and closing this year would allow for the acquisition while the funding is available and in accordance with the State planning process. Further, for SLR, it will allow the matching of the income from the sale with expenses incurred in connection with recent upgrades on the Northern Segment which will benefit its financial planning. The parties have prepared all of the necessary documents for the closing and are ready and able to close by the end of the year. Although reply comments are not

² At that time, if the passenger operator or the proposed operations were subject to STB jurisdiction, it would be up to the operator to obtain any necessary authorizations.

due until December 28, 2010 if a favorable determination were served by Board by December 29, 2010, then the parties would be able to close this year.³

Respectfully submitted,

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Dated: December 17, 2010

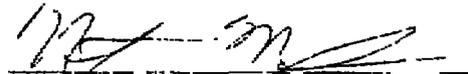
Attorneys for State of Maine, Department of
Transportation

³ For closing to occur and funds to be disbursed, the State will need to arrange for the title to be updated (to ensure no intervening liens) and for the deed to be recorded. Because the registries of deeds in Maine are closed on December 31, 2010, the updating and recording would need to be completed before the registry closes on December 30 to complete the closing by year end.

VERIFICATION

I, Nathan Moulton, Director, Rail Program of the Maine Department of Transportation, Office of Freight Transportation, verify under penalty of perjury that statements contained in the foregoing Supplemental Information and Comments 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 17, 2010


Nathan Moulton

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused a copy of the foregoing Supplemental Information and Comment to be served by first class mail on the potentially affected shipper and electronically on St. Lawrence & Atlantic Railroad Company and its counsel:

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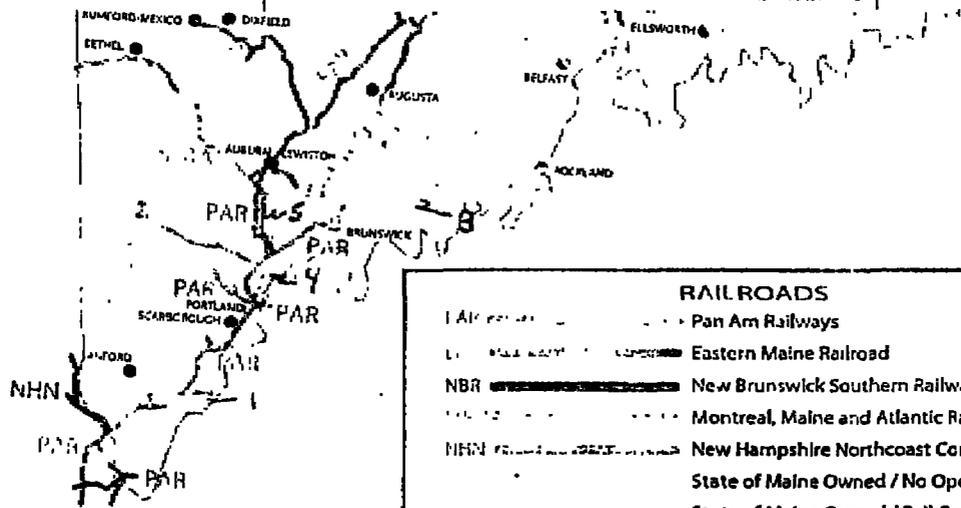
Dated: December 17, 2010


Eric M. Hocky

ATTACHMENT 1

STATE RAIL MAP

MAINE RAIL SYSTEM 2009



0 5 10 20 30 40
Approximate Scale in Miles

INDEX

1. Amtrak (current)
2. Amtrak (proposed)
3. MER excursion
4. 2007 SLR
5. 2010 SLR

RAILROADS

PA	Pan Am Railways
EM	Eastern Maine Railroad
NBR	New Brunswick Southern Railway
MAA	Montreal, Maine and Atlantic Railway
NHN	New Hampshire Northcoast Corp.
	State of Maine Owned / No Operator
	State of Maine Owned / Rail Corridor (Tracks Removed)
	State of Maine Owned / St. Lawrence & Atlantic Railroad Company Operated
	State of Maine Owned / Maine Eastern Railroad Company Operated
	St. Lawrence & Atlantic Railroad Company
ABANDONED	

