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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

REBUTTAL OF MONTREAL, MAINE & ATLANTIC RAILWAY, LTD. TO THE
REPLY OF TWIN RIVERS PAPER COMPANY AND UNITED STEELWORKS
INTERNATIONAL UNION AND UNITED STEELWORKERS LOCAL 4-0291,
4-0365, AND 4-1247 TO JOINT PETITION FOR APPROVAL OF SETTLEMENT

Linda J. Morgan
Charles H.P. Vance
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
202.662.5214
lmorgan@cov.com
cvance@cov.com

James E. Howard
1 Thompson Square
Suite 201
Charlestown, MA 02129
617.886.9322
jim@jehowardlaw.com

*Attorneys for Montreal, Maine &
Atlantic Railway, Ltd.*

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INTRODUCTION

The Montreal, Maine & Atlantic Railway, Ltd. (“MMA”) hereby submits a rebuttal to the Reply of Twin Rivers Paper Company (“Twin Rivers”) and United Steelworkers International Union and United Steelworkers Locals 4-0291, 4-0365 and 4-1247 (“USW”), filed on December 17, 2010 (“Reply”), in connection with the Joint Petition of MMA and the State of Maine, Department of Transportation (the “State”) filed on December 9, 2010 (“Joint Petition”).¹ The Reply asks the Surface Transportation Board (“STB” or “Board”) to withhold its approval of the settlement as presented in the Joint Petition until all parties have reviewed all relevant privately-negotiated documents, including a privately-negotiated contract over which the Board by statute has no

¹ MMA understands that the State intends to make a separate filing urging the Board to deny the relief sought by Twin Rivers and USW and to approve the settlement as requested in the Joint Petition.

jurisdiction, and to deny approval of the settlement unless the Board amends the settlement to ensure that Twin Rivers is guaranteed additional competitive options.

MMA strongly urges the Board to deny the relief Twin Rivers and USW seek and expeditiously approve the settlement as requested in the Joint Petition. The settlement was strongly encouraged by the Board under the auspices of its mediation process and is clearly in the public interest. The relief sought by Twin Rivers and USW would unnecessarily delay approval of the settlement and would only serve to promote the interest of one company over the broader public interest in the continuation of important rail service in the region. Furthermore, any action by the Board to provide the relief sought in the Reply would discourage private settlements and have a chilling effect on the future success of the Board's mediation process.

ARGUMENT

I. **THE BOARD HAS AN INTEREST IN EXPEDITIOUSLY APPROVING A SETTLEMENT IT ENCOURAGED.**

The settlement reached by the State and MMA is the result of many months of negotiation between the parties, which intensified specifically in response to a direct request from the Board earlier this year to engage in mediation under the Board's auspices. The settlement ensures the continuation of important rail service over the railroad lines that are the subject of MMA's abandonment application filed in February 2010 (the "Lines") and clearly reflects the interest of a broad group of affected parties in the region.

The Joint Petition and the Term Sheet submitted earlier comprehensively present the elements of the settlement that are relevant to the jurisdiction of the STB.

Nevertheless, the Reply would have the Board delay approval of this settlement merely to

promote the commercial interest of one company at the expense of the broader public interest. The Board must reject this attempt to undermine its policy of encouraging private sector resolution and its mandate to promote the public interest in viable rail service.

II. THE SETTLEMENT IS CLEARLY IN THE PUBLIC INTEREST.

The Reply would have the Board believe that there is some question about whether the settlement is in the public interest, and thus that approval should be withheld until all interested parties are satisfied that the public interest is being served. The premise for the relief being sought is completely without foundation.

First and foremost, the public interest is clearly served by this settlement because it will preserve important rail service in the region. A sale by MMA of the Lines ensures that the rest of the MMA system is sustainable. A purchase by the State under the terms of the settlement creates the opportunity for a new operator to provide financially viable rail service over the Lines. And, if approved by the Board, the settlement further protects the public interest by providing that there will be no abandonment without further authorization from the Board if MMA, by its own action, does not consummate the sale. The other interested parties who have filed comments on the Joint Petition—Irving, Louisiana Pacific, and Huber—recognize the clear benefit of the settlement, and these shippers have specifically withdrawn their original opposition to the abandonment based on the terms and conditions of the settlement. In addition, the Federal Railroad Administration has indicated its willingness to facilitate the settlement by agreeing to release its mortgage lien on the lines to be sold by MMA to the State.

Thus, the only interested parties that seek a delay in the approval of the settlement are Twin Rivers and USW. It is important to note that USW has only now, at the end of the process, decided to participate. The Board should view the Reply for what it is: under the guise of promoting the greater public interest, Twin Rivers is really seeking to use this proceeding and governmental action to obtain a commercial advantage beyond what the marketplace will provide. The Board must not act against its mandate to promote the public interest by acting to protect the private interest of a single company.

III. TWIN RIVERS ALREADY BENEFITS UNDER THE SETTLEMENT, BUT SIMPLY WANTS MORE.

The Reply asks the Board to amend paragraph 4(c) of the Term Sheet that memorializes the settlement to remove what it terms a restriction that limits the ability of Twin Rivers to enjoy competitive rail service to its Madawaska mill. In essence, Twin Rivers is asking the Board to rewrite the terms of a privately-negotiated trackage rights agreement to gain commercial advantage. It is important to put the request by Twin Rivers in the proper perspective.

Specifically, Twin Rivers has intervened as a plaintiff, and USW sought unsuccessfully to intervene, in pending litigation initiated on October 29, 2010, by Canadian National Railways ("CN") against MMA in the United States District Court for the District of Maine (*Canadian National Railway Co., et al. v. Montréal, Maine & Atlantic Railway, Ltd.*, Civil Action No. 1:01-cv-452-JAW). In that proceeding, CN and Twin Rivers are asking the court to enter a preliminary injunction that would enable CN to have direct physical switching access, using tracks owned by MMA beyond the limits of CN's trackage rights, within MMA's yard and the Twin Rivers mill in Madawaska.

The premise of the litigation is an arrangement entered into by CN and Twin Rivers in June 2010, pursuant to which Twin Rivers agreed to route all of its rail traffic via CN, to the exclusion of the MMA route, if CN could obtain the access that it is now seeking in court. MMA's position in the litigation is that CN is not entitled to perform the switching services on MMA's tracks at the Twin Rivers' mill. The Board must not allow the abandonment proceeding to become leverage in this unrelated litigation.

In addition to the litigation, Twin Rivers has, since December 1, 2010, completely ceased using MMA rail service. Instead, traffic that formerly was switched by MMA and moved either via the CN route or the MMA route is now being trucked by Twin Rivers between the Twin Rivers mill in Madawaska and the CN rail line across the international boundary in Edmundston, New Brunswick, where outbound paper and inbound raw materials are transloaded between CN trains and trucks.

Twin Rivers is unique among rail customers in Aroostook County in that it has long enjoyed competitive rail service provided by MMA and CN. Elimination of MMA and its ability to serve the Twin Rivers mill will eliminate one of the two competitive routes. Earlier in this proceeding, Twin Rivers joined with other shippers in a motion asking the Board to reject the abandonment application, arguing that the abandonment would disconnect the Twin Rivers mill from the United States rail network and force all of the traffic to be routed via CN, which, alleged Twin Rivers, would be to its great detriment. Ironically, Twin Rivers' own actions have now achieved that result. Twin Rivers also took the position that, if the abandonment were granted and the abandoned lines were acquired by the State, then a short line operator should be given trackage rights to have direct access to the Twin Rivers mill in Madawaska, presumably to the exclusion

of MMA. Twin Rivers now claims that it seeks only to have the Board declare that the trackage rights that have been negotiated between MMA and the State should not be limited to overhead rights, but the distinction between “overhead rights” and “local rights” to serve Twin Rivers is merely semantic.

IV. THE MATERIAL DETAILS OF THE SETTLEMENT WITHIN THE JURISDICTION OF THE BOARD HAVE BEEN FULLY PRESENTED.

The Reply argues that the details of the settlement are not finalized or fully understood and asks the Board to delay consideration of whether to approve the settlement until all interested parties have reviewed all relevant documents. In particular, Twin Rivers asks the Board to make available for review a private contractual agreement reached between MMA and Irving. Again the premise for the relief sought is ill-founded and should be rejected.

First of all, the Term Sheet and the Joint Petition provide significant detail concerning the settlement. The agreements to which Twin Rivers refers are privately-negotiated agreements implementing the terms and conditions already set forth in the Term Sheet and the Joint Petition. If the Board were to provide the relief requested—delay and review of privately-negotiated agreements—it would, in essence, be sending a message that there is a risk that private settlements will be subject to intense governmental scrutiny and second guessing. Parties would be less inclined to see the benefit in reaching such agreements, a result that will only serve to frustrate one of the Board’s top priorities—private settlements under the auspices of Board-sanctioned mediation. This is certainly not a result that the Board would or should want.

Furthermore, Twin Rivers is specifically asking the Board to exercise jurisdiction over a privately-negotiated transportation contract between MMA and Irving, which by

statute the Board does not have. Because Twin Rivers and Irving have commercial relationships, Twin Rivers is attempting to use the Board's review processes to gain competitive advantage. The statute is clear that such private contracts are not within the jurisdiction of the agency, and the Board must not allow itself to be used as a pawn in a commercial matter involving the parties that is best resolved in the marketplace.

V. THE STATE IS A RESPONSIBLE PARTY AND WILL CONTINUE TO ACT IN THE PUBLIC INTEREST.

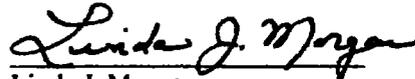
The Reply would have the Board believe that the settlement may not be in the public interest and requires further scrutiny because the State may not have acted responsibly in determining how to spend governmental funds in purchasing the Lines, in deciding how it will select the new operator, or in negotiating the terms by which rail service will continue. Based on mere innuendo, and without any substantiation, Twin Rivers essentially is questioning how the State has done its job. Such a claim has no basis in fact and should be summarily dismissed.

Throughout the negotiations, the State consulted regularly with affected parties to ensure that the public interest would be promoted. Furthermore, the State is in the best position to determine how its funds should be disbursed, not Twin Rivers. In addition, the process undertaken by the State to select the new rail operator for the Lines, which envisions the selection through a thorough Request for Proposal process initiated after closing, and the designation of a new operator as the party responsible for fulfilling the common carrier obligation, is clearly grounded in the public interest. Twin Rivers is in no position to second guess any of the State's initiatives. The Board should not question a settlement that is clearly in the public interest, and should not delay its approval based on such unsubstantiated concerns.

CONCLUSION

The Board has clearly highlighted as a top priority privately-negotiated settlements reached under the auspices of Board-sanctioned mediation. The settlement reached by MMA and the State is one such agreement that is clearly in the public interest and should be approved expeditiously in accordance with the Joint Petition. Any delay in such an approval brought about by granting the relief sought by Twin Rivers and USW would only serve to harm the greater public interest in this case for the sake of protecting the private commercial interest of one company, and to chill future settlement efforts. This result is not one that the Board should want; it should quickly and summarily deny the relief sought by Twin Rivers and USW.

Respectfully submitted,



Linda J. Morgan
Charles H.P. Vance
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
202.662.5214
lmorgan@cov.com
cvance@cov.com

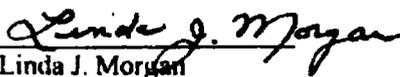
James E. Howard
1 Thompson Square
Suite 201
Charlestown, MA 02129
617.886.9322
jim@jehowardlaw.com

*Attorneys for Montreal, Maine &
Atlantic Railway, Ltd.*

Dated: December 20, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Rebuttal of Montreal, Maine & Atlantic Railway, Ltd. to the Reply of Twin Rivers Paper Company and United Steelworkers International Union and United Steelworkers Local 4-0291, 4-0365, and 4-1247 to Joint Petition for Approval of Settlement this 20th day of December, 2010 by causing copies to be sent to the parties of record in these proceedings either by overnight delivery service or by United States mail, postage prepaid.


Linda J. Morgan