R A I L S & P O R T S

operating railroads + ports, intermodal facilities, and government environment

**Regional Issues**

Portland/Yarmouth/Halifax: No ferry selected.*

NEW YORK

CSXT/D&H: No start of D&H haulage for CSXT.*

NYA: US Rail transfers ownership.

New York: Port Authority decides to raise Bayonne Bridge; date and cost undetermined.*

CONNECTICUT

CSO: New customers in Berlin, North Haven.*

PW: Borrows $4M for state portion of Willi.*

MAINE

MDOT/SLR: Sale of rest of Portland branch ok.

Mountain Division: MDOT awards track work.*

MMA/MDOT: Twin Rivers’ Dutton on sale terms.*


MMA/MDOT: James Irving says Twin Rivers abandoned the group of shippers.*

MMA/MDOT: STB approves abandonment by MMA, so sale to state can proceed.*

MMA/MDOT: RFP process delayed.

CN v MMA: After three days of hearings, judge lets CN file brief, and MMA reply.*

CN v MMA: Briefs describe hearing testimony.

ST: Madison parent sold UPM-Kymmene.*

Searsport: DCP Midstream proposes propane terminal.*

MASSACHUSETTS

NS-ST/CSXT: Schnitzer’s Everett scrap yard gets more ST traffic.*

NEW HAMPSHIRE

MBRX v ST: Court orders that the two meet by 14 January to set schedule.*

ST: High Liner buys Malden-based seafood company.*

RHODE ISLAND

PW: Schnitzer buys State Line Scrap. Fate of ProvPort yard unknown.*

VERMONT

VRS: Justin Services in White River Junction ramping up transload of pulp.*

MARITIMES/QUÉBEC

MMA: Selling St.Guillaume subdivision in Quebec to Bell-Gaz family.*

MMA/CN: Resolving the crossing in Sainte-Rosalie.

PEOPLE, POSITIONS, EVENTS

[No report.]

FROM THE PUBLISHER

Happy New Year!

I wish for a resolution to the Twin Rivers and Peter Leishman situation, as well as a successful deal by MMA on the Saint-Guillaume sub.

Also, selfishly, much progress on extending the Downeaster to Brunswick.

- Chop Hardenbergh

Next formal issue 24 January
PORTLAND-YARMOUTH-HALIFAX:
NO FERRY IN 2011*

4 January. **THE YARMOUTH AREA INDUSTRIAL COMMISSION HAS REJECTED ALL PROPOSALS TO ESTABLISH A FERRY SERVICE** between Yarmouth and New England this year.

“We are unable to prove financial capacity at this point,” said Dave Whiting, commission chair. “We had a couple (proposers) contact us. One had their financing fall through and had to pull out and another one said they would lose their shirt going in here this spring and are now looking at 2012. Then we looked at the others and felt there was nothing there and they don’t have the ability to put a boat in the water and at same time they were looking for upfront money from the taxpayers. I don’t think anybody can responsibly ask government to put a few million dollars into a venture before it hits the water especially when you are looking at books that don’t show you anything.”

Consultants confirm

Whiting said the commission had PriceWaterhouse and staff at Nova Scotia Economic Development also review the proposals and all agreed they lacked financial backing. “So we had to back off and I think our strongest possible operators are still out there but it is just taking them more time because of the international monetary situation,” he said. Whiting said the situation is frustrating but the commission is continuing to work toward re-establishing the service hopefully in 2012. {Discussions with ANR&P’s Tom Peters 4.Jan.11}
Halifax move to Yarmouth?
Scotia Cruises is considering a Halifax-to-New-England ferry by 2012 [see 10#11A]. On 3 January, Bruce McNeil, spokesperson, said: “What we’re willing to do is go back to the table with the Yarmouth Area Industrial Commission to see if we can come up with an amicable agreement from Yarmouth to Portland.”

McNeil said they’ve received hundreds of emails and phone calls from Yarmouth citizens in support. As for a boat, McNeil said they’ve lined up a shipping agent in Miami and have intentions to charter a ship that is ready to go. {Jennifer Taplin in Metro Halifax 4.Jan.11}

NEW YORK

CSXT/D&H:
NO NORTH SERVICE YET*
3 January. WHEN MIGHT CSXT MOVE ITS MONTREAL TRAFFIC OFF THE MASSENA SUBDIVISION?
Under the joint use agreement of 2010 [see 10#10B], CSXT is now moving D&H traffic to New York City in its regular trains under haulage agreement.

The last D&H train
Rail observers report that the last D&H-operated train using its trackage rights to Fresh Pond operated on 12 December, and the return trip occurred on the 13th. {D&H e-list} [See 10#11B.]

But no D&H haulage of CSXT
Under the agreement, CSXT would stop sending its Montreal traffic out of Selkirk via Massena, and instead hand it to D&H to move in haulage to Montreal. As of now, though, as shown in the photo, it is still moving via Massena.

CSXT spokesperson Bob Sullivan wrote on 3 January: ‘CSXT and CP continue to discuss service plans north of Albany, but there is nothing to announce at this time.’ {e-mail to ANR&P}
NYA/US RAIL: OWNERSHIP

7 January, DC. **THE STB PUBLISHED NOTICE THAT GABRIEL HALL, OWNER OF US RAIL,** will transfer construction and operation authority involving the Brookhaven Rail Terminal [see 10#10A], together with the leasehold interest in the underlying property, to US Rail -New York [USR-NY]. USR-NY will facilitate financing for the approved construction and subsequent carrier operations, while Applicant remains in control of both entities....

‘Applicant controls U S Rail, a Class III carrier, which operates in Ohio, Indiana, and New York, and U S Rail New Jersey, also a Class III carrier, which operates in New Jersey.’ {STB website, decisions page, Docket No. FD 35458}

PANYNJ: RAISE THE BRIDGE

29 December. **THE PORT AUTHORITY WILL RAISE THE ROADWAY OF THE BAYONNE BRIDGE,** the most cost-effective solution to the bridge clearance issue. The new roadbed will give approximately 215 feet of clearance, versus the existing 151-foot navigational clearance restriction.

The existing clearance ‘will pose a navigational problem for larger ships trying to access the Port of New York and New Jersey terminals after the Panama Canal expands in 2014.’

The announcement did not include a time line or a cost. {text from PANYNJ}

**Corps study**

According to a 2009 US Army Corps of Engineers analysis, ‘[a]t its current height, the Bayonne Bridge is an obstruction to large container vessels (i.e., most vessels greater than 7,000 TEUs) that might otherwise call the Port of New York and New Jersey within the 50-year planning horizon.’

The Corps noted that as of 2009, ‘[t]wo of the largest vessels in service today are the Emma Maersk and MSC Daniela, which hold 12,508 to 14,000 TEUs and have [keel to mast heights] of 251 and 221 feet, respectively.’ A survey of ocean carriers showed that only 38% of world TEU capacity is able to serve terminals in the PONYNJ west of the Bayonne Bridge.

The Corps weighed vessel size, loading, tides, and other factors to conclude that the most beneficial new clearance would be 215 feet, an increase of 64 feet over the current 151 feet. {text from Corps}

CONNECTICUT

CSO: NEW CUSTOMERS*

27 December. **THE DRAFT CONNDOT RAIL PLAN STATES CSO HAS TWO POTENTIAL NEW CUSTOMERS:** ‘a paving stone manufacturer constructing a sidetrack in North Haven, and a major construction and demolition [C&D] transfer station is under construction in Berlin.’ {text of draft from ConnDOT website, page 60}

**Who could the C&D be?**

The Connecticut Department of Environmental Protection (ConnDEP) lists one facility permitted for C&D in Berlin: Connecticut Waste Processing Materials, LLC, at 475 Christian Lane. An official at the facility said it would use rail “in the future.” {ANR&P discussion 4.Jan.11}

[Automated Material Handling at 655 Christian Lane handles scrap paper, and occasionally uses railcars—our Directory #610. It was formerly Waste Management/Recycle America Alliance Company; Murphy Road acquired it in 2007, according to the Berlin Resource Recover website.]
PW: WILLI WORK**

21 December, Worcester. **PW BORROWED $4 MILLION FROM ‘COMMERCIAL BANK & TRUST COMPANY ON AN UNSECURED BASIS.** The proceeds of the Loan will be used for the purchase and installation of 14 miles of rail on the west end of the Company’s Willimantic Branch to which the Company has long-term freight rights under an agreement with the owner, the State of Connecticut.

‘Upon completion of installation of the new rail and additional railroad ties on the entirety of the 22-mile Willimantic Branch (the “Construction Project”), the Branch will be in FRA Class 3 track condition [see 10#1B for repairs to permit ethanol, and 10#11B for Town of Sprague grant application]. The Willimantic Branch affords the Company additional connections with Class I railroads thereby improving the Company’s competitive position. The Loan matures on June 21, 2021. Principal is payable based on a 20-year amortization schedule, with the first principal payment to be made upon completion of the Construction Project or June 21, 2011, whichever occurs first.

‘Interest is payable at the rate per annum equal to the Wall Street Journal Prime Rate of interest through completion of the Construction Project and, thereafter, at a rate per annum equal to the then prevailing 5/20 Federal Home Loan Bank rate. Pursuant to provisions of the Loan Agreement and related documents (collectively, the “Loan Documents”), the Company is required annually to maintain a tangible net worth (as defined in the Loan Documents) of at least $70 million and a minimum debt service coverage ratio (as defined in the Loan Documents) of 1.25 to 1. In addition, the Company has agreed not to mortgage, grant a security interest in, or otherwise pledge any of its assets with the exception of assignments of track made in connection with the assignment of tax maintenance credits pursuant to Section 45G of the Internal Revenue Code of 1986. The Company has the right to prepay the Loan in whole or in part at any time, without penalty, out of internally generated funds.’ {PW filing at SEC}

**Why not use the Line of Credit?**

In 2009, PW created a $5 million line of credit [see box 10#06B], but did not use that for this transaction. PW general counsel Marie Angelini wrote on 28 December: ‘P&W’s decision to invest in the Willimantic Branch is consistent with its longstanding focus on the quality of its infrastructure and other assets.

The Company determined that obtaining term financing rather than utilizing its existing line of credit was in the Company's best interests and selected from proposals by four different lenders.’ {e-mail to ANR&P}

---

MAINE

MDOT/SLR: TRACK PURCHASE

29 December, DC. **THE STB Ruled MDOT COULD PURCHASE A SECTION OF THE SLR WITHOUT BECOMING A RAIL CARRIER.** MDOT plans to purchase from the SLR

‘(1) the physical assets and the associated rights-of-way along 13.807 miles of rail line between milepost 12.163, at Yarmouth, Cumberland County, Me., and milepost 25.97 at the line between New Gloucester, Cumberland County, Me., and Auburn, Androscoggin County, Me. (the Middle Segment); and (2) passenger operating rights for an operator to be designated by Maine DOT, over a 3.59-mile segment in Auburn, between milepost 25.97 and milepost 29.56 (the Northern Segment).’ [See 10#10B for filing.]

The Board noted: ‘The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. § 10901, even if the acquiring entity is a noncarrier, including a state. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff’d sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). However, Board authority is not required where no common carrier rights or obligations are transferred with the physical assets on the line. See State of Maine, 8 I.C.C.2d at 836-37.’

The Board ruled the SLR transaction fell within the State of Maine exception. However, ‘[w]e emphasize that, as concrete plans for passenger rail service materialize, it will be incumbent upon the appropriate party or parties to determine whether Board authority is required and seek that authority as needed.’ {STB website, decisions page,
MDOT: MOUNTAIN DIVISION*
December. MDOT HAS CONTRACTED WITH MAINE TRACK MAINTENANCE OF SOUTH PORTLAND TO REPLACE MISSING TRACK between Westbrook and South Windham starting in spring 2011 as working conditions permit [see 10#11A]. At a December meeting of the Route 113 Corridor Committee it was announced that a proposed biomass pellet plant requiring rail service is under serious consideration for an on-line Mountain Division site, and that a legislative bill is forthcoming to fund track rehabilitation to Fryeburg. {MRG newsletter 1-2.11}

MDOT/MMA: TWIN RIVERS*
19 December, Madawaska. TWIN RIVERS PRESIDENT JEFF DUTTON PUBLISHED AN OP-ED PIECE reflecting his company’s filing at the STB on 17 December [see 10#12A] opposing the MDOT purchase of the MMA track as currently structured. ‘Let us be clear. We support the rescue of the rail line, but it is incomprehensible for Maine to spend $20 million of public money with zero transparency into the process, terms and desired outcomes for rail customers and the taxpayers at large.

‘It is well-known that Twin Rivers is battling with MMA [see below] to secure cost-effective, reliable rail service from our Madawaska plant. The state’s rail, if accessible to Twin Rivers, may in the future provide important rail options to our plant and, by extension, help secure our long-term sustainability. However, we need assurances that the rail will be operated under the principles of capitalism, not backroom deal making.’ [He was not as specific as the STB filing [see 10#12A], which requested the Board order a future operator have the right to serve Twin Rivers.] {Bangor Daily News}

MMA/MDOT: TWIN RIVERS COMMENT*
23 December, DC. TWIN RIVERS ARGUED THAT THE SALE AND SELECTION OF OPERATOR WAS RUSHED, in a letter comment to the Surface Transportation Board this day:

‘[A]s Twin Rivers noted [in its filing on 17 December–see 10#12A], the December 15-January 19 period for bids to be made to operate the Short Line [see 10#12A] is so short as to be unfair, except to those such as MMA and Irving who have been deeply involved in the negotiations of the proposed transaction and who have been identified by MDOT as potential bidders to operate the Short Line.

‘The Purchase and Sale Agreement and various other ancillary agreements are apparently currently being drafted, but it is not clear who besides the State and MMA will be able to review and comment upon them prior to execution. Twin Rivers, as we stated in our Reply, urges the Board to allow for just such a proper examination and not to rush to approve the settlement.’ {letter on STB website filings page Docket No. AB 1043 (Sub-No.1)}

Mini-Editorial
Twin Rivers’ contention, like its original 17 December filing, is hardly plausible. The terms of the sale agreement will reflect the term sheet, and any comments on the term sheet could have been made upon its filing in October.

The RFP for the operator needs a short time, as MMA wants to be rid of the burden of the 233 miles as soon as possible. Observers have known for at least nine months that the shippers wanted a new operator, and eager bidders made themselves known to MDOT early on. The 34 days give plenty of time for the early watchers of the process. In this case, as in so many others, the early bird has a much better chance of getting the worm.

I am left with the feeling, underscored by Jim Irving’s op-ed [see below], that MMA and Irving are allied against Twin Rivers and CN, and that the fight has become personal. Editor
MDOT/MMA: IRVING WEIGHS IN*

24 December, Saint John. **JAMES IRVING RESPONDED TO JEFF DUTTON** in an op-ed piece this day in The Bangor Daily News: ‘The Dec. 20 letter by Jeff Dutton, CEO of Twin Rivers Paper Co., is very troubling to many of us who worked hard to ensure the preservation of the critical north-south rail line in Maine....

Twin Rivers deserted
‘A coalition of shippers worked alongside local communities to gain support for a state purchase of the line. This effort was dealt a blow in May when Twin Rivers (formerly Fraser Papers) announced that it had entered a three-year deal with the Canadian National Railway to move 100 percent of the freight to and from the Madawaska mill.

‘I personally asked Mr. Dutton to stick with the united front that shippers had formed to save MMA’s vital Maine rail link. Our efforts to keep this critical volume from Twin Rivers moving south through the state of Maine were unsuccessful. Mr. Dutton moved on a separate deal with CN with apparent disregard for the rest of the Maine shippers....

‘Now, Mr. Dutton’s deal with CN is not looking as good, and he is using public positioning and legal filings with the Surface Transportation Board in Washington to attempt to influence his business dealings and to delay the Maine railway solution supported by so many. Once again, it seems without regard for the other shippers.

‘It’s time for action so we committed shippers can make plans for our businesses.’ {James Irving is president of Irving Woodlands as well as the entire JD Irving group of companies, which includes NBSR}

David Cole also weighs in
MDOT Commissioner David Cole published his own op-ed piece in The Bangor Daily News on 30 December, noting that Dutton ‘voluntarily left the [Aroostook Rail Task Force] in June.’ Cole also said ‘The entire process has been open and transparent, with affected shippers, legislators and other Aroostook County interests kept continuously informed.’ {newspaper website}

MMA/MDOT: STB OKAYS ABANDONMENT*

27 December, DC. **THE BOARD FOUND NO IMPEDIMENT TO ABANDONMENT OF THE 233 MILES OF LINE IN NORTHERN MAINE.** ‘Here, the record shows, first, that continued operation of the line by MMA would impose a substantial economic burden on the railroad and its entire system, potentially undermining MMA’s service on its other lines. It is unclear that an economic recovery would counteract the harm this line causes to MMA and the service it provides to shippers on the remainder of its system.

‘Second, truck transportation is, or could be, available, to transport the vast majority of shipments at issue in this case.

‘Third, the environmental review shows that, with the environmental mitigation that we will impose, the proposed abandonment would have no significant environmental impacts.’

Even if the sale falls through. The Board noted the planned sale of the line to MDOT. ‘If the sale fails to materialize, however, the loss of service would affect a number of shippers and could have ripple effects in the State’s employment. Given these ramifications, the State has gone to great lengths to maintain the line. However, the factors would still weigh in favor of granting the abandonment. As the record shows, continued operation of the line by MMA would impose a substantial economic burden on the railroad and on interstate commerce. Although it is possible that a recovered economy could aid the situation, this is too speculative a reason upon which to deny the abandonment and force MMA to continue sustaining its present losses....

‘The only product that cannot be transported by truck, LP’s laminated strand lumber (LSL), which is longer than 48 feet, only comprises 4% of the LSL produced at the company’s Houlton facility.’

No problem with Canadian route out. ‘Some parties have raised concerns about being left dependent on the Canadian
regulators if their traffic is rerouted through Canada, but these parties have not pointed to any potentially realistic abuses or deficiencies as a result. They also raise concerns about how their voices would be heard should Canadian National Railway Company (CN) attempt to abandon the connecting line at St. Leonard. However, as noted in a July 28 letter from Geoffrey C. Hare, (Hare Letter) the Chair and Executive Officer of the Canadian Transportation Agency (CTA), that Canadian entity has a regulatory regime similar to ours.’

Twin Rivers objections not valid. ‘...TR/USW seek [see 17 December filing in 10#12A] a benefit beyond that requested by Fraser Papers. They want the Board to provide, as a condition of our grant of the requested abandonment authority, that the mill be assured of service by an additional carrier, the operator to be chosen by the State to operate the line, a benefit it has not enjoyed in the past. Unlike the shippers actually located on the line proposed to be abandoned, TR/USW do not merely wish to be protected from any adverse effects of the State’s acquisition of the line. Rather, they wish to use the transaction as a vehicle to improve their competitive position by gaining access to an additional carrier. TR/USW cite no statutory or regulatory basis for such a request, nor do they point to supporting court or agency precedent....

‘TR/USW claim that Irving Forest Products has agreed to pay $1 million as part of the compensation to MMA in order to “buy down” MMA’s trackage rights fees. TR/USW fails to show any relevance of such an agreement, if it exists, to either our exercise of our abandonment authority or the proposed transfer to the State.... The purported agreement between MMA and Irving Forest Products, assertedly giving MMA access to an Irving Forest Products plant in St. Leonard, New Brunswick is beyond the scope of our inquiry. Moreover, St. Leonard is in Canada; see Hare Letter, supra. Accordingly, we will not withhold our approval of either the abandonment or the Common Carrier transfer so that TR/USW can seek to engage in discovery of these alleged agreements.’ {STB website decisions page Docket No. AB 1043 (Sub-No. 1)}

MDOT/MMA: NEW OPERATOR
6 January, Augusta. **THE STATE IS ‘MOVING BACK THE ENTIRE SCHEDULE FOR THE RFP’** because the purchase has not yet closed. At 2:34PM this day, the following notice was posted by rail manager Nate Moulton:

It was the goal of the MAINEDOT to have the purchase of the Aroostook Lines from the MMA completed by December 31, 2010. While we are very close we are still awaiting final approvals and a closing on the property. With many of the questions we received it will be very important to post the details of the transaction once completed including the trackage rights and interchange agreements. With this in mind we will be postponing the answers to the questions and moving back the entire schedule for the RFP for a short period.

We are hopeful that the real estate transaction will be closed in the next week or so however we do not have a definitive schedule as yet.

We will continue to advise all interested parties via email as well as postings to the RFP website on the progress. Once the real estate transaction is completed we will restart the process beginning with the answers to the questions and post an new schedule. {text from MDOT website}

Four parties
One source at a recent railroad meeting came away with the impression that four different parties would respond to the RFP. {e-mail to ANR&P 8,Jan.10}

**CN v MMA: NO DECISION**
20-22 December, Bangor. **THREE DAYS OF A HEARING ON CN’S MOTION FOR A PRELIMINARY INJUNCTION** ended without a decision by the judge. According the court website, CN asked for time to file another brief, and was given until 31 December, with MMA given until 7 January to file a reply. One participant anticipated that the judge would then decide by the middle of January. {e-mail to ANR&P 23.Dec.10}
CN v MMA: THE FINAL ARGUMENTS

31 December & 7 January. BY REVIEWING THE POST-HEARING BRIEFS, one can understand the arguments presented at the three days of hearings 20-22 December, on CN’s motion for a preliminary injunction. Both sides agree that for CN to prevail, it must meet a four-part test. These, and each side’s argument, follow.

A. Probability of success on the merits

CN must show that it can prove that CN and MMA predecessor B&A made a ‘mutual mistake’ in the 2001 documents which permitted CN trackage rights to Madawaska. CN contends that the documents intended to permit it to reach the actual Twin Rivers (formerly Fraser) mill, while MMA contends that CN had the right to come just short of the mill, where B&A and now MMA would interchange the traffic.

MMA argument. MMA put on the stand Fred Yocum, president of B&A in 2001, who signed the documents and testified as follows:

Q: What did you understand [the TRA] to permit or provide?
A: It provided physical trackage rights by CN over the bridge and on the Van Buren subdivision to the end of that subdivision at milepost 0.0.
Q: Did you know in February of -- I'm sorry -- did you know in March of 2001 that the mill at Madawaska was not located at milepost 0.0?
A: Absolutely. {Yocum Transcript at 22:1-8 (emphasis added).}

MMA’s brief argued: ‘As the only person authorized by BAR’s Board of Directors to bless and execute any deal with CN in 2001, Mr. Yocum’s understanding should be dispositive. He made no mistake. He had no intention of giving away physical access for 99 years, having already sold CN 5 years of commercial access at the fire-sale price of $5 million.’

CN argument. CN put on the stand Myles Tobin, whose ‘testimony was unequivocal: the TRA [trackage rights agreement] was designed to reflect both parties’ intent to permit CN to directly access the Fraser plant with its own locomotives, serve the shipper, and spot and pull cars—independent of BAR or any other intermediary—at Canadian National’s discretion, e.g., if service under the JSA were inadequate, or if BAR collapsed financially....

‘Further, Mr. Tobin testified that use of the Milepost 0.0 landmark was a mutual mistake of fact, made by him and by Mr. Rooney, the BAR representative who negotiated the deal. He made clear that the use of milepost 0.0 originated with BAR and its representatives; everyone involved in the rapidly-evolving deal had roles, and one of Mr. Rooney’s roles was to supply the milepost description for the mill.... Mr. Rooney knew that the parties intended to give CN direct access to the mill—so if milepost 0.0 does not allow direct access because it is not at the mill, then it is not what he or Mr. Tobin intended.’

CN also introduced some letters. ‘On February 28, 2001, BAR representatives agreed to the terms in a February 22, 2001 letter that stated, inter alia, that the parties would enter a trackage rights agreement “that will permit CN to perform pick-up and delivery of this same traffic (i.e., from St. Leonard, NB to Madawaska, ME) with its own power and crews.” The February 22 letter also stated, “Iron Road / BAR will grant CN an easement on this same track so that CN’s right to reach Fraser – Madawaska would also be protected in an asset sale of the company.”

CN impugned Yocum’s testimony: ‘He signed the deal documents, but conceded that he was not involved in the negotiation or creation of the deal. Indeed, Mr. Yocum conceded that he never even saw the February 28, 2001 email (Exhibit 29E) in which other BAR representatives agreed to the terms in a February 22, 2001 letter (Exhibit
N), confirming direct, physical access.’

B. CN and Twin Rivers must show irreparable harm

CN argument. ‘[F]rom Canadian National’s perspective, being denied of the use of its real property rights to properly serve its customers is exactly the kind of harm to both real estate rights and business goodwill that, in this circuit, warrants injunctive relief. K-Mart Corp. v. Oriental Plaza, Inc., 875 F.2d 907 (1st Cir. 1989).’

MMA argument. Neither CN nor Twin Rivers testified to any irreparable harm. Indeed, Brian Sass of Twin Rivers said the existing transloading arrangement [see 10#12A] could be continued indefinitely.

C. Balance of harms
The harm to CN and Twin Rivers must outweigh the harm to MMA from issuing the preliminary injunction.

CN argument. ‘B]oth the balance of harms and public policy favor granting injunctive relief in this case’ because CN access will create competition.

MMA argument. ‘[A]n injunction would harm MMA considerably, cementing in place the job losses (31 Mainers to date) and revenue losses ($5 million out of $32 Million) that the transloading diversion has already precipitated... It would also create an operational nightmare.... “We’ve always said that Madawaska [yard] was 5 pounds in a 2-pound bag”....

D. The injunction must be in the public interest

MMA argument. CN’s ‘only comment since [the hearing] has been its vaguely demagogic assertion that MMA should be stripped of its property rights in the interest of “eliminat[ing] a monopoly.” Plaintiffs. Post-Trial Memo. at 10. Ousting MMA from its own track is not in the public interest.’

EQUITY
The history of United States injunctions dates back to the English courts of equity, which were not the same as the courts of law. Equity courts had the power to require action such as injunctions to act or desist from acting, and this power has come down intact to US courts, where law and equity jurisdiction are combined into the same court. In equity courts, various principles arose, among them ‘He who seeks equity must do equity.’ {editor}

MMA introduced evidence that CN and the mill had discussed transloading for years, yet Twin Rivers’ Brian Sass, in affidavits, maintained that the mill was facing an emergency situation.

‘In an email titled dated two weeks before CN and TR represented to this Court that TR had no other viable transportation options, [Michel Pelletier of CN] on 4 November 2010 discussed the transloading system: “Not expecting a win on the T.R.O. and ready to teach MMA a lesson, they are moving forward with a paper and inbound clay/chemical reload at their Edmonston, NB plant . . .” Ex. 56 (emphasis added); see also Ex. 59 (similar).’

[MMA is apparently arguing, though the brief did not make this explicit, that Twin Rivers created its own emergency and hence is not entitled to relief from the emergency. Editor] {court website, case 10-cv-452}

NEXT STEP
The judge now has the transcript of the entire hearing, plus the briefs, before him. [If readers will permit me a prediction: Another principal, that of ‘judicial economy’, could lead the judge to decide that since no irreparable harm

---

1See, e.g. defendant’s court exhibit #36: May 8, 2009 email from [Michel] Pelletier to V.

Checkrow re: AMEND – Fraser Papers asking to meet ref running rights into Madawaska (CN1006 – CN1007)
is occurring, CN has not met one necessary part of its case for a preliminary injunction, and he could deny the motion. That would leave Twin Rivers trucking, CN without access to the mill, and MMA without any mill traffic. If the parties then failed to resolve the matter out of court, CN could proceed to a full trial on the question of mutual mistake. Editor]

**MMA view**

Ed Burkhardt, chair of MMA, wrote: ‘I became convinced some time ago that nothing will happen with respect to CN and Twin Rivers at Madawaska until the current war of the lawyers is over. We expect to win, albeit at great cost. Those funds won't have done anything for the rail network, but will have lined the pockets of the lawyers. I think both CN and Twin Rivers have acted outrageously, but we live in a free country and anyone with $35 can file a lawsuit. After the judge rules, the issue will be settled, and we will be in a new ball game.’ {e-mail to ANR&P 8.Jan.11 - see comment on Sainte-Rosalie in Quebec}

**ST: MAINE CUSTOMER SOLD**

21 December, Madison. **MADISON PAPER WAS SOLD TO ANOTHER FINNISH COMPANY,** with a closing scheduled for June 2011. Finnish company Myllykoski Corporation has owned the paper mill for 32 years and is selling it to UPM-Kymmene Corporation, based in Helsinki. UPM will take over the business’ seven publication paper mills in Finland, Germany and the United States, according to information provided by both companies. The value of the businesses totals 900 million euro, or $1.2 billion, according to a release from UPM.

Myllykoski struggled for the last several years, based on its financial review available on its website. Net sales in 2009 were down 17.6% from 2008. UPM President and CEO Jussi Pesonen said in a release that the decrease in print paper profitability world-wide calls for greater efficiencies. {press releases cited in mainetoday.com}

**UPM returns**

UPM Kymmene exited the Atlantic NorthEast with its sale of the Miramichi mill on 15 January 2009, along with sawmills in Bathurst and Blackville and its woodlands operations to the Norwegian solar panel manufacturer Umoe Solar. {foresttalk.com}

**SEARSPORT: NEW TRAFFIC?**

14 December. **DCP MIDSTREAM IS PROPOSING TO MOVE PROPANE THROUGH MACK POINT.** It held an information session this day at the Searsport Town Hall, and anticipates another one in January. [More in a future issue.]

**Massachusetts**

**NS-ST/CSXT: SCRAP MOVES**

3 January, Everett. **SCHNITZER STEEL IS ACCEPTING MORE SCRAP VIA ST** at its facility here, said a source at Schnitzer. “We signed some deals with some customers on NS and ST, and so the scrap is coming in that way. It’s not a strategic shift” away from CSXT, which up to now was doing most of the moves.

Use of rail

The facility in Everett receives 15-20% of its scrap by rail, mostly already processed, said Atwood. The balance arrives by truck from points south of Portland and east of Springfield.

With the new scale [see 09#03A], the facility can handle the 10,000 to 20,000 tons per month by rail car; without the scale, “it would be almost impossible.”

ST service has become “much better” in the last two weeks, after Schnitzer met with ST operations and commercial officers. Everett has received two blocks of cars twice a week over the past few weeks.
CSXT also serves Schnitzer, though not nearly as much as the ST over the last few months. “When we do [receive from CSXT], they seem to be a little bit off their game.”

Scrap booming
“We’re seeing a miniboom in scrap prices in the last month,” said the source, to $400/ton. The majority of the Schnitzer scrap traditionally goes to customers overseas. \{ANR&P discussion\}
Schnitzer is rapidly expanding [it bought several yards in Maine–see 09#01B]; it recently bought 12 facilities in British Columbia, and other facilities in Puerto Rico and Georgia; and just bought State Line Scrap [see below]. While the NASDAQ stock index rose 18% in 2010, Schnitzer stock did 41%. \{company website\}

New moves
One rail source said ST is operating a new-symboled train LAEV beginning 2 January, which may run three times a week. \{e-mail to ANR&P 2.Jan.11\}

NEW HAMPSHIRE

MBRX v ST: PROGRESS?**
28 December, Concord. THE PARTIES FILED A JOINT STATUS REPORT indicating the outstanding issues. [The judge wanted a joint report within 14 days of his 15 December order–see 10#12A].

- ‘[T]he parties disagree as to the proper interpretation of NORAC Rule 138(e)’ governing warnings at grade crossings.

- The parties disagree about the fairness of the administrative hearings at which Leishman was found to violate the NORAC rule.

Proposed next step
The parties have identified a broad range of issues and have agreed to meet informally in early January 2011 in an attempt to resolve these issues. If the issues cannot be resolved informally, the parties propose that the Court schedule a hearing regarding the case status, and following that hearing, as necessary, the Plaintiffs revise their Complaint to set forth claims based on the disputed issues, and that Defendants respond to the Revised Complaint by way of an Answer or Motion to Dismiss. \{filing found in court website\}

28 December, Concord. THE JUDGE REQUIRED A CASE SCHEDULE BY 15 JANUARY, in an order issued this day: ‘The parties shall file a Joint Proposed Case Management Order that complies with the requirements of Fed. R. Civ. P.26(f) on or before January 15, 2011.’ \{order on court website, case 10-cv-264\}

Rule 26 (f) Conference of the Parties; Planning for Discovery [and settlement]
(1) Conference Timing.
Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable — and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).

(2) Conference Content; Parties’ Responsibilities.
In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report
outlining the plan. The court may order the parties or attorneys to attend the conference in person. [emphasis added]

Meeting
The two sides will meet on 13 January. {e-mail to ANR&P from Leishman}

ST: CUSTOMER EXPANDS*
15 December. HIGH LINER FOODS PLANS TO ACQUIRE VIKING SEAFOODS of Malden, a private company with net sales of $40 million in 2010. High Liner, a publicly-traded company, wants to substantially increase High Liner Foods’ share of the market for broadline seafood products. Fishery Products International (FPI), High Liner Foods’ go-to-market arm for the US foodservice industry, is a leading supplier of seafood to the foodservice marketplace. {High Liner press release}

Rail
According to rail observes, the High Liner plant in Portsmouth, New Hampshire, has steadily received railcars at the rate of perhaps two or three a week in recent months. {GuilfordRailSightings e-list}

RHODE ISLAND

PW: SCHNITZER ACQUIRES*
4 January, Portland, Oregon. SCHNITZER WILL ACQUIRE STATE LINE SCRAP, according to a press release from Schnitzer. It did not provide any detail, except to say that it ‘has entered into a definitive agreement to acquire substantially all of the assets of State Line Scrap Co., Inc. and certain of its affiliates. State Line and affiliates operate from facilities in Attleboro, Massachusetts.’ {text from Schnitzer}

Chip Terhune, Schnitzer spokesperson, begged off answering questions about the deal until after the quiet period imposed by Sarbanes Oxley on publicly-traded companies before they announce earnings. He will provide further details after 10 January. {ANR&P discussion 5.Jan.11}

State Line assets
State Line operates a yard in Attleboro, split by I-95; each portion has a spur into it served by PW.

In addition, State Line subsidiary Three Flags Stevedoring operates the scrap yard in the Port of Providence, also served by PW.

Whether the new owner would retain the ProvPort or the Attleboro location was unknown. However, a official at the Attleboro location said the facilities would remain open; “it’s just a name change.” {ANR&P discussion 5.Jan.11}

VERMONT

VRS: CUSTOMER RAMPING UP**
16 November, White River Junction. JUSTIN SERVICES IS INCREASING BUSINESS, both truck and rail. On this day the company, which offers transloading, delivery by truck, and warehousing, was unloading seven boxcars. These all contained wood pulp originated at Domtar Pulp & Paper in Kamloops, British Columbia. {Kevin Burkholder in New England Rail News e-list}

Enthusiasm for VRS
In June, Kenny Keith, president of the Justin Companies, estimated he was doing 20 carloads a month, which had
come about via “tenacity” and working with “a very aggressive short line,” VRS and in particular Jerry Hebda [former vice-president, who retired at the end of October]. “They have a much different attitude than a lot of the short lines.” A couple of Justin customers the railroad and Justin worked with “for many months” to get them to use rail.

Keith also credited Roger Desrosiers and Tom Ring of NECR. “Now I finally have live rail. I’ve learned so much over the last few years.” {ANR&P discussion 11.June.10}

Source of traffic
Keith said Justin distributes product railed from a Bowater mill in Thunder Bay, Ontario and a Domtar mill in British Columbia. [The latter is interesting, since Domtar recently sold its pulp mill in Baileyville, Maine, because it is a stand-alone operation—see 10#09B.]

Monadnock Paper in Bennington, New Hampshire receives the most pulp drayed from White River Junction. Hollingsworth & Vose mills receive the second-highest amount: Justin drays to five or six different facilities, the farthest in Hawkensville, Georgia, receiving seven to eight trucks a month, according to Keith. The H&V mill in West Groton, Massachusetts also receives a substantial amount. Another receiver is Burrows Paper in Little Falls, New York on CSXT's Syracuse - Selkirk mainline). 2

Justin Services is working with Vermont Rail System on new business and Keith believes this may manifest itself as soon as this springs. Logs and scrap have been identified as potential opportunities.

Trucking
Observers note that Justin is using VRTZ trailers, which VRS formerly put into the TOFC national fleet [see 08#05A].

History
Justin Services was formed when the Justin Companies purchased the former Guardian Lumber property in White River Junction at Harrison Avenue in 2006. It formerly operated as Justin Excavation & Demolition.

VRS contacted Justin soon thereafter, to enquire about transloading. Wood pulp began in 2007 and has recently increased with a new account, so that Justin is now transloading 10-15 cars a week. Justin belongs to the VRS-Connect network. {Kevin Burkholder in NERN e-list; Keith discussion with ANR&P correspondent 20.Dec.10}

QUEBEC/MARITIMES

MMA: SELLING SUBDIVISION**
24 December, Sainte-Rosalie, Quebec. ‘WE ARE DISCUSSING WITH THE BELLEVILLE FAMILY INTERESTS A SALE OF THE STE GUILLAUME south of the CN right-of-way at Ste Hyacinthe, which will include them upgrading the track and handling MMA traffic under a haulage agreement. The CN connecting trackage and property north of the CN r-o-w (Ste Rosalie) will be transferred to a wholly-owned subsidiary of MMA. Final arrangements haven’t been concluded, but we expect to do so early next year,’ wrote Ed Burkhardt, MMA chair. {e-mail to ANR&P}

The Belleville family
Bell-Gaz limitée was founded in the 1950s by Hervé Belleville in Saint-Félix-de-Valois in the Lanaudière region, north of Montreal. By the end of the 1990s, the transfer of the company to the third generation, grandsons Michel,
Sylvain, Dominic, and Sébastien, was well under way.

**The first short line**
In 1990, CPR, which was delivering the gas by rail to Bell-Gaz, decided to cease operating in Lanaudière. Bell-Gaz, after two years of negotiations, acquired the 17-kilometre line between Joliette and Saint-Félix-de-Valois, and created Compagnie du chemin de fer Lanaudière (CFL). This short line now serves several gas terminals, interchanging with CP and CN network via the Quebec Gatineau Railway (QGRY). CFL would like to attract other customers as well.

CFL owns a fleet of tank cars. {Bell-Gaz website}

**The proposed second short line/ownership history**
Until 2002, CPR owned its former lines east of Montreal in Quebec, and leased them to the Quebec Southern Railway, a subsidiary of Iron Road Railways, which operated them and lines in the United States as the Bangor & Aroostook System. When the B&A went bankrupt, MMA bought its properties, and also bought the lines themselves in Quebec from CPR [see 02#10A].

Now Bell-Gaz is proposing to buy the 30-mile St.Guillaume subdivision from MMA. The line has that title because it formerly extended to Saint-Guillaume, another 30 miles north of Sainte-Rosalie; CPR abandoned it in 1977 {Lines of Country}.

![Southeast Quebec](image_url)
Bell-Gaz position
Robert Belleville of Bell Gaz said on 5 January that the deal was not far enough along for him to comment on it.  
{ANR&P discussion}

MMA/CN: RAIL IN SAINTE-ROSALIE

THE CANADIAN TRANSPORTATION AGENCY CASES

2000: CN filing on diamonds
In 1851, Montreal and Portland leaders decided to connect the two cities to provide an ice-free port for Montreal. While construction was underway, the Grand Trunk Railway (GTR) acquired the Quebec (St.Lawrence & Atlantic) and United States (Atlantic & St.Lawrence) portions. The Quebec line passed through Saint-Hyacinthe and Sainte-Rosalie.

In 1877, the South Eastern Railway planned a line between Farnham and Saint-Guillaume, and reached agreement with GTR to cross its tracks in Sainte-Rosalie.  {Lines of Country}

In 2000, when the Quebec Southern Railway (QSR, part of the Bangor & Aroostook System) operated the Saint-Guillaume subdivision (leased from South Eastern Railway successor CPR, and by that time cut back to only Farnham to Sainte-Rosalie), a dispute arose about responsibility for maintenance of the diamonds. By then CN, the successor to GTR, had double-tracked its line, in part because it diverged just east of Sainte-Rosalie, one line to Portland, and one line to Quebec City.

CN blocked QSR access, and CPR as the owner filed an action with the Canadian Transportation Agency. CN also requested access to Leblanc et Lafrance, the grain handler north of the diamond [see 01#01B].

In June 2000, the parties removed the diamonds, and began using a zig-zag arrangement [see map]. In January 2001, per CPR spokesperson Michel Spenard, engineering designs for a new diamond were complete, and the two sides agreed in principle to proceed with construction.

2001: Intervening bankruptcy
But in 2001, the entire B&A was clearly in financial difficulty, and up for sale. Also, the owners made their now infamous deal with CN to provide trackage rights to Madawaska in return for $5 million [see other article]. The diamond work was never done.

When in 2003 MMA bought the B&A assets out of bankruptcy, including the lines in Quebec, it bought the St.Guillaume subdivision from CPR at the same time. MMA continues to use the zig-zag route to cross CN.

The status of the case in 2011
On 11 May 2007, after a series of requests from both MMA and CN to the CTA to keep the case open, the agency wrote to both railways it was willing to keep the case on inactive status, and to reopen it upon the request of the parties. {text of letter from CTA, case file R 8110/369, LET-R-88-2007}

2003: CN filing for interswitching
In 2003, in the context of a B&A filing to the CTA to require CN to interswitch potash traffic to Saint John, CN filed to interswitch traffic at Sainte-Rosalie [see 3#06B - presumably to gain access to the Leblanc et Lafrance traffic as it had requested in 2000].

In 2003, CTA ruled against B&A on the Saint John matter [see 03#08A], and CN withdrew its request for Sainte-Rosalie.  {CTA Annual Report 2003}

THE CREATION OF THE ZIG-ZAG ROUTE
As noted, in June 2000 the diamonds were taken out. QSR used the zig-zag route, which entailed using a spur southwest of the diamonds. The track labelled E180 on the map once permitted both CN and CPR or its successors to serve the Griffin Wheel plant. That plant is long gone, but the spur remained, and was put into use for the zig-zag route. {e-mail to ANR&P from MMA chair Ed Burkhardt 6.Jan.11}

CURRENT EMBARGO
On 3 August 2010, MMA renewed an embargo on the entire line for hazmat cars, due to ‘track conditions’. Exception: ‘Cars received at Ste. Rosalie Jct for Griffin Siding will be accepted.’ {AAR embargo list, MMAAE0460}

ROLE OF CN
One seasoned rail observer conjectured that in both the Twin Rivers (Madawaska Maine) and Bunge (the grain facility north of CN on the St.Guillaume sub) constitute major chunks of traffic for MMA. Both could also be accessed by CN. What if MMA sold the ‘other end’ of each line to local interests, and sold the access to the shipper to CN?

Ed Burkhardt, MMA chair, responded: ‘You are suggesting a strategy for the dismantling of parts of MMA, which would be valid if that was our plan. But it isn't, and even if it was, we must complete the restructuring we have under way before considering further steps. This means getting rid of those portions of our system that aren’t

**Sainte-Rosalie, Quebec.** Showing the double-track CN line from Montreal (left) splitting into the line to Quebec City (top line on right) and line to Portland (bottom line on right. Dashed yellow shows zig-zag route MMA uses to attain the north side of the CN line, and its major customer Bunge. {courtesy anonymous source}
‘...sustainable, and strengthening those that are.’ {e-mail to ANR&P 8 Jan. 11 - see note on Twin Rivers in Maine}

**RAIL SHIPPERS**

Described in this issue.

Our Directory of Rail Freight Facilities in New England has more information on the companies denoted with their directory number.

- Brookhaven Rail Terminal (NYA, New York) Changes hands.
- High Liner (ST, New Hampshire) Buys Malden co.
- Justin Services (VRS, Vermont) Ramping up pulp.
- Madison Paper (ST, Maine) Sold to UPM.
- Schnitzer (ST, CSXT, Massachusetts) ST increase.
- State Line (PW, Rhode Island) Schnitzer buys.
- Twin Rivers (MMA, Maine) Wants CN service.

**New to the region? This helps:**

**RAIL FREIGHT FACILITIES IN NEW ENGLAND**

Malcolm Laughlin, editor
Chop Hardenbergh, publisher

A directory of the 760+ shippers, receivers, transload facilities, and intermodal terminals on the rail lines.

**NEW ENGLAND RAIL DIRECTORIES**

19 Holden Road, Belmont MA 02478
m.laughlin@atlanticnortheast.com
Vox: 617-489-4383        Fax: 617-507-0472

**Coverage**

The newsletter covers the operating freight railroads and ports in New England, the Maritimes, and eastern Québec, as well as the government environment they function within. Coverage includes passenger rail and ships when relevant to freight operations.

**Frequency and the e-bulletin**

ANR&P appears at least four times a month. We send a formal issue twice a month, via post or e-mail. Between the issues, we send out the e-bulletin, only by e-mail. All information in the e-bulletin is included, and often updated, in the issue.

Stories not updated for the issue are noted with an asterisk. I urge readers to look at the issue’s updated stories (those without an asterisk).

Readers building a personal archive of the newsletter should discard the e-bulletins. All subscribers have access to the newsletter archive on the web, via password, at www.atlanticnortheast.com. If you do not have a password, merely request one from me.

**Pricing**
Subscriptions cost $395 for professionals, $125 per year for students, young and old. (Subtract $30/year for e-mail). Introductory prices available. The e-bulletin, sent by e-mail at least weekly between issues, is free of charge to all subscribers.

Advertising
Subscribers may purchase half-page ads for $100 per issue. Non-subscribers, $200.

Copyright notice
PLEASE DO NOT COPY THIS NEWSLETTER, or forward it in e-mail format, in whole or in part. You receive it as a paying subscriber, or a potential subscriber. Passing it on without explicit permission of the editor violates copyright law, and diminishes the likelihood of our staying in business.

HOWEVER, anyone may quote bits of articles, with attribution, under the fair use doctrine.

Purpose
Atlantic Northeast Rails & Ports, née Maine RailWatch (1994-1997) and later Atlantic RailWatch (1998-1999), is dedicated to the preservation and extension of the regional rail network. The editor believes that publishing news on railroads and ports spotlights needed action to preserve the rail network. The publication also imbues the region with a sense of an interdependent community, employing the network to move rail and port traffic. ‘No railroad is an island, entire onto itself.’