

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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<b>MONTREAL, MAINE &amp; ATLANTIC</b>	)	
<b>RAILWAY, LTD. – DISCONTNUANCE</b>	)	<b>Docket No. AB 1043 (Sub-No. 1)</b>
<b>OF SERVICE AND ABANDONMENT –</b>	)	
<b>IN AROOSTOOK AND PENOBSCOT</b>	)	
<b>COUNTIES, MAINE</b>	)	
	)	
	)	

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Verified Statement  
Of  
Thomas D. Crowley  
President  
L.E. Peabody & Associates, Inc.

On behalf of

Irving Woodlands LLC and  
Irving Forest Products, Inc.

**PUBLIC VERSION**

Date: April 21, 2010

<b><u>TABLE OF CONTENTS</u></b>	<b><u>PAGE</u></b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. BACKGROUND.....</b>	<b>3</b>
<b>III. ON-BRANCH COSTS .....</b>	<b>5</b>
<b>IV. OFF-BRANCH COSTS .....</b>	<b>6</b>
<b>A. CIRCUITY FACTOR.....</b>	<b>6</b>
<b>B. RETURN ON INVESTMENT RAILROAD PROVIDED CARS.....</b>	<b>7</b>
<b>C. TERMINAL COSTS .....</b>	<b>7</b>
<b>D. INAPPROPRIATE INCLUSION OF OFF-BRANCH COSTS         FOR MOVES LOCAL TO THE LINES TO BE ABANDONED .....</b>	<b>9</b>
<b>V. AVOIDABLE COST OFFSET FOR TRAFFIC RETAINED BY MMA .....</b>	<b>10</b>
<b>VI. NET LIQUIDATION VALUE .....</b>	<b>12</b>
<b>VII. OFFSET TO MMA AVOIDABLE LOSS FOR A STRANDED BRANCH     MECHANICAL FACILITY .....</b>	<b>13</b>
<b>A. MECHANICAL FACILITY.....</b>	<b>14</b>
<b>B. TRANSPORT OF LOCOMOTIVES BY CANADIAN NATIONAL.....</b>	<b>14</b>
<b>C. MECHANICAL PERSONNEL.....</b>	<b>15</b>
<b>VIII. RESTATEMENT OF MMA'S EXHIBIT 1 – AVOIDABLE COSTS .....</b>	<b>16</b>
<b>IX. CONCLUSIONS.....</b>	<b>18</b>

**LIST OF EXHIBITS**

<b><u>EXHIBIT NO.</u></b> (1)	<b><u>EXHIBIT DESCRIPTION</u></b> (2)
(TDC_1)	Statement of Qualifications of Thomas D. Crowley
(TDC_2)	Schematic of MMA Rail Lines
(TDC_3)	Avoidable Cost Offset for Traffic Retained by MMA
(TDC_4)	Exhibit 1 – Revised Revenue and Cost Data

## **I. INTRODUCTION**

My name is Thomas D. Crowley. I am an economist and President of L. E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting and fuel supply problems. I have spent most of my consulting career over thirty-nine (39) years evaluating fuel supply issues and railroad operations, including railroad costs, prices, financing, capacity and equipment planning issues. My assignments in these matters were commissioned by railroads, producers, shippers of different commodities, and government departments and agencies. As a part of my work, I have evaluated railroad abandonment applications and submitted testimony on behalf of shippers. A copy of my credentials is included as Exhibit\_(TDC-1) to this opening verified statement (“OVS”).

I have been asked by Counsel for Irving Woodlands LLC and Irving Forest Products, Inc. (collectively referred to as “Irving”) to review and evaluate Exhibit 1 to Montreal, Maine and Atlantic Railway, Ltd’s (“MMA”) Abandonment Application in this proceeding and, if necessary, restate Exhibit 1 to correct any theoretical or mathematical errors in the information presented. Exhibit 1 to the Application is developed in the verified statement of Robert C. Finley.

I was asked to specifically focus on the MMA’s presentation of “Avoidable Cost” as presented in Exhibit 1 to the Application and to review MMA’s calculation of the Net Liquidation Value (“NLV”) of the lines to be abandoned. My analysis is based on a review of the testimony and supporting workpapers of Mr. Finley, Ms. Sheahan and Mr. Sherwood.<sup>1</sup> I

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<sup>1</sup> Mr. Finley’s electronic workpapers were provided to Irving’s counsel in native format (including mathematical formulas) on March 27, 2010, more than a month after MMA filed its Abandonment Application. It should be noted that many of the on-branch operating expenses contained in the workpapers supporting MMA’s Application are not supported by any documentation. Rather they are merely “hard coded” inputs which cannot be verified.

was not asked to independently verify the inputs to the analyses of MMA's witnesses and nothing in my Verified Statement should be construed as expressing my opinion on the accuracy of these inputs.

My testimony is organized by functional expense categories and discussed further below under the following topical headings:

- II. Background
- III. On-Branch Costs
- IV. Off-Branch Costs
- V. Avoidable Cost Offset for Traffic Retained by MMA
- VI. Net Liquidation Value
- VII. Offset to MMA Avoidable Loss for a Stranded Branch Mechanical Facility
- VIII. Restatement of MMA's Exhibit 1 – Avoidable Costs
- IX. Conclusions

## II. BACKGROUND

According to its website, the MMA began operations in January 2003 and owns more than 745 route miles of track in Maine, Vermont, Quebec and New Brunswick. The MMA employs approximately 350 people. The MMA operates 25 trains daily with a fleet of 32 locomotives. Daily operations are provided between Madawaska and Searsport, ME, and from Brownsville Junction, Maine to Montreal, Quebec. Service is also provided between Farnham, Quebec, and Newport, Vermont. The MMA connects with nine Class I, regional and shortline railroads and with the lines scheduled for abandonment, provides the shortest and most direct rail service between Northern Maine, Saint John, NB and Searsport, ME.

MMA proposes to abandon a total of 233.1 route miles of track, including 151 route miles of mainline track between Madawaska and Millinocket, ME. The remaining route miles to be abandoned are comprised of four subdivisions all of which feed the mainline route to be abandoned.

The abandonment of these lines will result in a “stranded branch” line<sup>2</sup> between Madawaska and St. Lenoard, NB. The stranded branch will continue to be operated by the MMA. The mainline route proposed for abandonment is the main north/south line of the railroad. Abandonment of this line will eliminate the “shortest and most direct rail service between Northern Maine (i.e. the stranded branch line) and Saint John, NB and Searsport, ME.”<sup>3</sup> As a result, many of the shippers on the stranded branch will be faced with substantially longer rail routes for continued service.

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<sup>2</sup> A stranded branch line is a rail line which is disconnected from all other lines of the owning carrier. In this instance the stranded branch line created by the abandonment extend from Madawaska, ME to St. Leonard, NB, where it connects to the Canadian National Railway. See Exhibit (TDC-2).

<sup>3</sup> See MMA's website at [www.mmarail.com/profile\\_main.php](http://www.mmarail.com/profile_main.php).

A schematic of the MMA rail lines is included as Exhibit\_(TDC-2) to this verified statement.

**III. ON-BRANCH COSTS**

Mr. Finley has one error in his calculation of on-branch costs. Specifically, Mr. Finley overstates on-branch costs in the Forecast and Subsidy Years due to an error in the calculation of locomotive fuel expense. {

}

When the correct fuel cost per gallon is used to calculate on-branch costs for the Forecast and Subsidy Years then on-branch costs are reduced by { }



**IV. OFF-BRANCH COSTS**

Mr. Finley uses the Surface Transportation Board's ("STB" or "Board") Uniform Rail Costing System ("URCS") 2007 Eastern Region unit costs to develop off-branch costs for traffic which will be lost as a result of the abandonment. Mr. Finley miscalculated numerous items in his development of off-branch costs, which include: (1) inappropriate use of a circuitry factor; (2) double counting return on investment for railroad provided cars; (3) inappropriate assignment of terminal costs for shipments originating or terminating the lines to be abandoned.

In developing off-branch costs for the MMA, alternative routes of movement do not exist and actual miles are available and used, therefore the addition of circuitry factor is incorrect.

Mr. Finley's use of the circuitry factor overstates off-branch costs by { }

**B. RETURN ON INVESTMENT RAILROAD PROVIDED CARS**

Mr. Finley states: "Because MMA owns none of the freight cars used on the Abandonment Lines, there was no off-branch freight car return on investment cost for purposes of line 6b."<sup>5</sup> In spite of this statement, Mr. Finley has included return on investment for railroad provided cars in his URCS Off-Branch cost calculations.

URCS cost calculations include return on investment on railroad provided cars, and to the extent that MMA originated cars and provided the railcars for these movements, return on investment is included in Mr. Finley's off-branch costs. A review of Mr. Finley's workpapers shows that { }<sup>6</sup> The URCS regional cost used by Mr. Finley assumes these cars are provided by MMA and includes a return on investment which Mr. Finley has failed to remove from his calculations.

Mr. Finley's failure to adjust the URCS off-branch cost to remove the return on investment portion of railcar expense for carloads originating on the Abandonment lines overstates off-branch cost in the Base Year by { }

**C. TERMINAL COSTS**

Mr. Finley incorrectly calculated the terminal portion of Off-Branch costs by including a

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<sup>5</sup> See Finley VS at 9.

<sup>6</sup> { }

full terminal cost and an interchange cost for all movement regardless of the type of movement,<sup>7</sup> i.e., originated and terminated, originated and forwarded, received and terminated, or overhead shipments. Each of the different types of movements requires different terminal costs when developing URCS costs. When using URCS for development of off-branch costs in an abandonment proceeding, the calculation is different for each movement type and requires the replacement of a full terminal cost with a “modified terminal” cost when a carload originates or terminates on the line(s) to be abandoned.<sup>8</sup>

Table 1 below compares Mr. Finley’s assignment of terminal costs and the appropriate terminal cost for development of off-branch costs for each movement type.

<u>Movement Type</u> (1)	<u>MMA Off-Branch Costs</u> (2)	<u>Correct Off-Branch Costs</u> (3)
1. Originates or terminates on-branch and received or forward to another carrier	{ }	Modified Terminal/ Interchange
2. Originates or terminates on-branch and terminates or originates off-branch	{ }	Modified Terminal/ Full Terminal
3. Originates or terminates off-branch, moves over the branch and received or forwarded off-branch (i.e. overhead to the line to be abandoned)	{ }	Full Terminal/ Interchange
4. Originates or terminates off branch, moves over the branch and terminates or originates off-branch (i.e. overhead to the line to be abandoned)	{ }	Full Terminal/ Full Terminal

Mr. Finley’s incorrect assignment of terminal cost overstates off-branch cost by { } in the Base Year.

<sup>7</sup> See Finley statement at page 9 { }

<sup>8</sup> When calculating off-branch costs, a modified terminal cost replaces a full terminal cost for carloads originating or terminating on the line to be abandoned because on-branch costs account for many of the terminal costs that are incurred in a full terminal cost.

**D. INAPPROPRIATE INCLUSION  
OF OFF-BRANCH COSTS FOR  
MOVES LOCAL TO THE  
LINES TO BE ABANDONED**

A review of Mr. Finley's off-branch cost analysis shows that off-branch costs are included for a movement { } Both of these locations are on the branch lines to be abandoned.<sup>9</sup> Off-branch costs { } is an overstatement of off-branch costs.<sup>10</sup>

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<sup>9</sup> {  
<sup>10</sup> {  
}

**V. AVOIDABLE COST OFFSET FOR TRAFFIC RETAINED BY MMA**

Mr. Finley identifies all traffic that originates or terminates on the lines to be abandoned and traffic which currently moves over the lines to be abandoned as overhead traffic. MMA's revenue from this traffic is shown on line 1 and line 2 of Exhibit 1. The on- and off-branch costs associated with the identified traffic is subtracted from the revenue to yield total avoidable costs for the lines to be abandoned as shown on line 7 of Exhibit 1.

A review of "lost revenue" columns in Mr. Finley's spreadsheets reveal {

}<sup>11</sup> {

}

Also shown on Exhibit (TDC-3) is the MMA URCS costs associated with the retained traffic after abandonment. I estimate MMA will earn { } in net revenue<sup>12</sup> from the retained traffic in the Base Year. Further, MMA will earn { } in net revenues from the retained traffic in the Forecast and Subsidy Years.

<sup>11</sup> { }

<sup>12</sup> See Column (11) of Exhibit (TDC-3).

Exclusion of the retained traffic from the calculation of avoidable cost misrepresents the impact of the abandonment on MMA. In other words, Mr. Finley's evidence, and the MMA application, indicates that MMA will lose revenue from the retained traffic and avoid the cost associated from handling the traffic. In reality, MMA will retain a significant amount of the traffic that currently moves over the lines to be abandoned. To properly reflect the impact of the abandonment on MMA, the avoidable cost in Exhibit 1 must be reduced to reflect the net margin MMA will realize from this traffic.

## VI. NET LIQUIDATION VALUE

The Avoidable Income/Loss calculated in Exhibit 1 to an abandonment application includes return on investment on the NLV of the lines to be abandoned for the Forecast and Subsidy Years. The NLV is an estimate of the value of the assets in the line to be abandoned less the cost of removal and disposition of those assets.

MMA's NLV calculations contain a calculation error in the development of net tons to be disposed of for both rail and other track material "OTM" for both continuous welded rail ("cwr") and jointed rail in the rail lines to be abandoned.<sup>13</sup> {

}

Correcting these values increases the liquidation costs and thereby, lowers the NLV by slightly more than { } in both the Forecast and Subsidy Year. The reduction in the NLV results in a decrease in the Total Return on Value of { } in both the Forecast Year and the Subsidy Year.

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<sup>13</sup> The net tons for rail and OTM calculated for determination of the gross asset value are correct and therefore not understated.

**VII. OFFSET TO MMA AVOIDABLE LOSS FOR A STRANDED BRANCH MECHANICAL FACILITY**

MMA, in its *Reply of Montreal Maine & Atlantic Railway, Ltd. in Opposition to Motion to Reject or Dismiss Application* (“Reply to Motion to Reject”) filed with the Board in this proceeding on March 15, 2010, stated that in order to maintain service on the stranded branch line between Madawaska and St. Leonard, it will do the following: (1) construct a mechanical facility on the line in order to maintain both locomotives and cars; (2) heavy maintenance and substitution of locomotives will be accomplished by movement over the Canadian National (“CN”) to and from MMA’s maintenance facilities; and (3) necessary personnel will be assigned to the mechanical facility.<sup>14</sup>

While MMA states that it will incur these capital and operating expenses, assuming the proposed abandonment is approved, it provided no estimate of these capital and operating expenses. MMA’s failure to provide an estimate of these capital and operating expenses overstates the MMA’s estimated avoidable loss. These capital and operating expenses resulting from the abandonment must be used to offset any reduction in MMA’s avoidable loss from the abandonment of the lines.

For example, based on my Revised Exhibit 1 (see Exhibit\_TDC-4), MMA’s Avoidable Loss in the Base Year equals \$1.64 million. If this amount is used to offset MMA’s system net income or loss, it overstates the amount of the offset to the extent that MMA constructs the mechanical facility, employs locomotive or car mechanical personnel at the new mechanical facility, or transports locomotives over CN to its primary mechanical facilities for heavy maintenance.

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<sup>14</sup> See Reply to Motion to Reject at pp. 5-6.



I have estimated the cost of each of these items and used them to offset MMA's Avoidable Loss in the Base Year and Forecast Year and its Estimated Subsidy in the Subsidy Year. Development of the expense of each item is discussed below.

**A. MECHANICAL FACILITY**

I have estimated the cost to construct a locomotive and car repair mechanical facility to equal \$5.12 million based on the amount the Wallowa-Union Railroad<sup>15</sup> plans to expend to construct a repair and maintenance shop for locomotives and other rolling stock in Eastern Oregon.<sup>16</sup> The annual return on value on \$5.12 million {  
}

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**LOCOMOTIVES BY  
CANADIAN NATIONAL**

As stated above, MMA's planned mechanical facility will not be able to perform heavy repairs to locomotives. For heavy repairs, MMA proposes to transport the locomotives via CN from St. Leonard to a connection with MMA for continuance to an MMA maintenance facility.<sup>17</sup>

Also based on the Reply to Motion to Reject, I have assumed two locomotives will be assigned to the stranded branch. One locomotive per train will be required for operations and a spare locomotive will be required for emergency purposes. I also estimate that each of these

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<sup>15</sup> The Wallowa-Union Railroad is a 62 mile shortline carrier which operates in Wallowa and Union counties Oregon.

<sup>16</sup> The STB in Docket No. 42088, *Western Fuels Association, Inc and Basin Electric Power Cooperative v. BNSF Railway Company*, decided September 7, 2007, the cost of construction of a locomotive maintenance facility designed to provide "repair-and-return or unit-exchange" service, rather than repair to major components service, would equal \$8.9 million in 2004 dollars. Thus the \$5.12 million the Wallowa-Union will expend for its mechanical facility appears to be a reasonable estimate of the cost of the required locomotive and rail car mechanical facility for MMA's stranded branch line.

<sup>17</sup> See Reply to Motion to Reject at 6.

locomotives will be transported by CN to MMA at St. Jean, QC for heavy repairs once each year, a distance of 380 one-way miles.<sup>18</sup>

The 2008 STB Public Use Waybill file contains 996 movements of locomotives (Standard Transportation Commodity Code 37411) moving within the Official Territory. The average rate for these movements equals \$17.70 per mile, which equates to \$26,833<sup>19</sup> for two locomotives per year to move round trip from St. Leonard to St. Jean.

### **C. MECHANICAL PERSONNEL**

MMA's Reply to the Motion to Reject states that mechanical personnel as necessary will be assigned to the locomotive and repair facility to be constructed on the stranded branch. In calculating on-branch costs for the lines to be abandoned, Mr. Finley included salaries and benefits of six locomotive mechanics, five railcar mechanics and one-half of a manager. Using Mr. Finley's salaries and benefits by mechanical employee category, I have assumed the mechanical facility on the stranded branch will be manned by one manager, two locomotive mechanics and two railcar mechanics at an annual cost of \$298,187.

Based on the above, I estimate the total cost to maintain service on the stranded branch for the mechanical facility and transport of the locomotives for heavy repair will equal \$1,254,350.<sup>20</sup> Reducing the MMA's revised avoidable loss by this amount results in an adjusted avoidable loss for the Base Year of \$400,148 and for the Forecast Year of (\$2,954,728). These values are calculated in Exhibit\_(TDC-4).

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<sup>18</sup> Alternatively, the locomotives could be moved by CN to St. John, NB then via haulage agreement with NB Southern Railway ("NBSR") and the Eastern Maine Railway ("EMRY") to Brownsville Jct, a one-way distance of 477 miles.

<sup>19</sup> 2 locomotives x 380 miles x 2 directions x \$17.70 per mile.

<sup>20</sup> \$929,280 ROI + \$26,883 locomotive expenses + \$298,187 mechanical personnel.

**VIII. RESTATEMENT OF MMA'S EXHIBIT 1 – AVOIDABLE COSTS**

Based on each of the items discussed above, I have restated Exhibit 1 to Mr. Finley's verified statement. This restatement is shown in Exhibit (TDC-4). Table 2 below compares Mr. Finley's Exhibit 1 calculations with my restatement of the Avoidable loss in the Base Year by major component.

<u>Item</u> (1)	<u>MMA Exhibit 1</u> (2)	<u>Restatement</u> (3)	<u>Difference</u> (4)
1. Attributable revenue	{ }	\$8,813,839	{ }
2. On-branch cost	{ }	\$6,326,205	{ }
3. Off-branch cost	{ }	\$4,647,603	{ }
4. Offset for retained traffic	{ }	\$505,472	{ }
5. Total Off-branch cost (line 3 – line 4)	{ }	\$4,142,131	{ }
6. Avoidable cost (line 2 + line 5)	{ }	\$10,468,336	{ }
7. Avoidable loss (line 1 – line 6)	{ }	\$(1,654,497)	{ }

As shown in Table 2, the errors in Mr. Finley's calculations results in an overstatement of the avoidable cost { } Correcting Mr. Finley's overstatements result in a reduction of MMA's avoidable loss { } to \$1.65 million.

As discussed in the previous section, the \$1.65 million Avoidable Loss must be further reduced by MMA's cost of constructing and operating a mechanical facility on the stranded

Finally, Mr. Finley's Estimated Subsidy payment in the Subsidy Year is substantially overstated, not only for the reasons discussed above, (i.e., on-branch fuel costs, several off-branch costs and the offset for the mechanical facility), but also because Mr. Finley has significantly overstated the rehabilitation expense associated with the Estimated Subsidy. The Board's rules at 49 CFR 1152.32(m)(2) clearly state: "For subsidy purposes rehabilitation costs shall not be included unless: (i) the track fails to meet minimum Federal Railroad Administrative Class 1 safety standards." According to MMA witness Sheahan, all of the abandonment lines qualify as FRA Class 1 standards or better in their current state, except for portions of the Limestone Subdivision. As stated by witness Sheahan, rehabilitation of the Limestone Subdivision to restore the track to FRA Class 1 standards requires an expenditure of {

}<sup>21</sup>

Reducing the rehabilitation cost in the Subsidy Year shown in Mr. Finley's Exhibit 1 from { } and making the other adjustments to the Subsidy Year discussed previously in this statement, reduces Mr. Finley's Estimated Subsidy payment { } to \$6.1 million. These adjustments are reflected in Exhibit\_(TDC-4).

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<sup>21</sup> { }

## **IX. CONCLUSIONS**

The Avoidable Loss and Estimated Subsidy payment included in MMA's abandonment application contain numerous incorrect calculations. These include:

1. Overstatement of on-branch fuel costs in the Forecast and Subsidy years;
2. Overstatement of off-branch costs resulting from improper inclusion of a circuitry factor;
3. Overstatement of off-branch costs due to a failure to remove return on investment in railroad provided cars;
4. Overstatement of off-branch costs due to incorrect assignment of terminal costs;
5. Overstatement of off-branch costs due to the inappropriate inclusion of off-branch cost ~~for traffic originating and terminating on the lines to be abandoned.~~

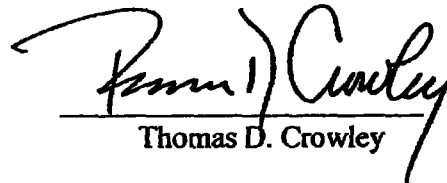
6. A failure to recognize the net revenue that MMA will retain from branch line traffic that will continue to move on the MMA system assuming the abandonment of the lines is granted;
7. A failure to reduce the avoidable loss in the Base Year and Forecast Year and the Estimated Subsidy in the Subsidy Year by MMA's cost of constructing and operating a mechanical facility on the stranded branch; and
8. Overstatement of the rehabilitation cost in the Subsidy Year resulting in a substantial overstatement of the Estimated Subsidy.

Correcting MMA's overstatement of costs and its failure to account of the net revenue from retained traffic results in a reduction of the avoidable cost of operating the lines to be abandoned { }<sup>22</sup> Including the offset resulting from the construction and operating of a mechanical facility on the stranded branch reduces the avoidable loss of operating the lines to be abandoned in the Base Year to \$400,000 and the Estimated Subsidy Payment in the Subsidy Year to be \$6.1 million.


**VERIFICATION**

COMMONWEALTH OF VIRGINIA    )  
  )  
CITY OF ALEXANDRIA             )

I, THOMAS D. CROWLEY, verify under penalty of perjury that I have read the foregoing Verified Statement of Thomas D. Crowley, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Thomas D. Crowley

Sworn to and subscribed  
before me this 20th day of April, 2010

  
Diane R. Kavounis  
Notary Public for the State of Virginia

My Commission Expires: November 30, 2012  
Registration Number: 7160645

**STATEMENT OF QUALIFICATIONS**

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, and 760 E. Pusch View Lane, Tucson, Arizona 85737, and 21 Founders Way, Queensbury, New York 12804.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of coal. As a result of my extensive economic consulting practice since 1971 and my participating in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers that move coal over the major coal routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of coal by rail.

**STATEMENT OF QUALIFICATIONS**

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from coal mine origins in the Powder River Basin and in Colorado to various utility destinations in the eastern, mid-western and western portions of the United States and from the Eastern coal fields to various destinations in the Mid-Atlantic, northeastern, southeastern and mid-western portions of the United States. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal and numerous other commodities handled by rail.



**STATEMENT OF QUALIFICATIONS**

I have frequently been called upon to develop and coordinate economic and operational studies relative to the acquisition of coal and the rail transportation of coal on behalf of electric utility companies. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various coal shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface

**STATEMENT OF QUALIFICATIONS**

with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively

**STATEMENT OF QUALIFICATIONS**

involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

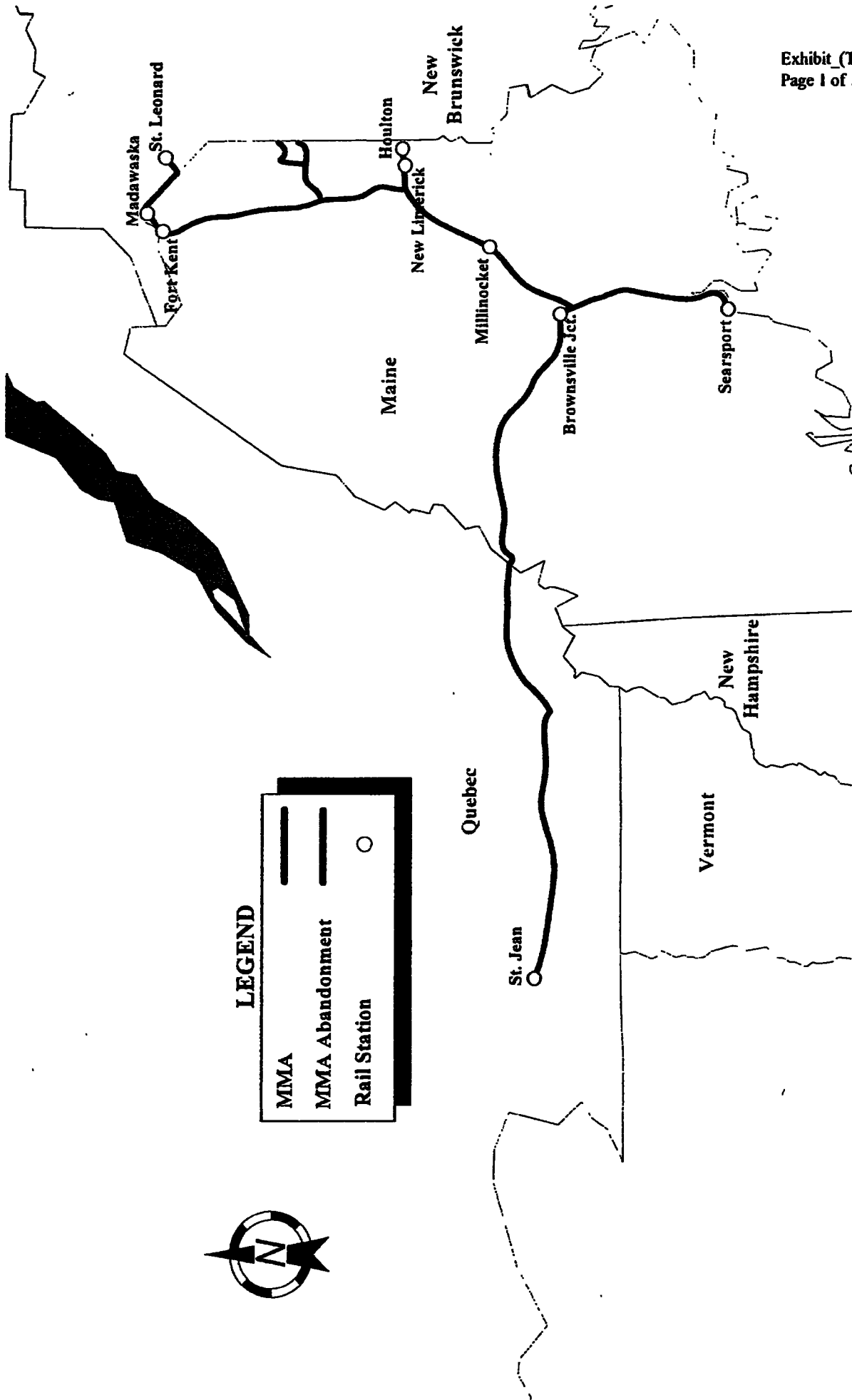
I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, North America Freight Car Association, the Fertilizer Institute and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

**STATEMENT OF QUALIFICATIONS**

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

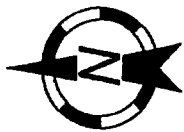
I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al. which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, Notice of Intent to File Division Complaint by the Long Island Rail Road Company.

# MMA Abandonment



## LEGEND

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