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BY EMAIL

Ms. Johanne Gélinas
Chair, Expert Panel
Review of Environmental Assessment Processes
c/o Secretariat
160 Elgin Street, 8th Floor
Ottawa, Ontario K1A 0H3

Dear Ms. Gélinas:

On behalf of CN, I am pleased to attach our written submission to the Expert Panel reviewing the federal environmental assessment process, as a supplement to CN's oral presentation to the Panel in Prince Rupert, British Columbia on December 8, 2016.

CN appreciates having these opportunities to share our views on this important issue, and we look forward to seeing the outcome of the Expert Panel's work. If you have any questions about the contents of our submission, please do not hesitate to contact us.

Yours truly,

Eric Harvey
Senior Counsel

CN Submission to the Expert Panel
Review of Federal Environmental
Assessment Processes

December 2016



CN Submission to the Expert Panel

Background

About the Railway Industry

Canada's railways move more than 75 million people and more than \$300 billion worth of goods each year, while relieving road congestion and helping to reduce greenhouse gas emissions. Rail is a safe, reliable, and environmentally friendly means of transport, providing Canadians with access to national and international markets and supporting the growth and competitiveness of the Canadian economy.

While the transportation sector accounts for approximately 30 per cent of Canada's greenhouse gas emissions, the railway industry produces just one per cent of all emissions. Analysis has shown that if just 10 per cent of truck traffic were transferred to rail, Canada would reduce its GHG emissions by approximately 3.7 mega tonnes.¹ Canadian National Railway Company (CN) is proud to be approximately 15% more fuel-efficient than the railroad industry average, and continues to strive for further improvement.

About CN

CN is a North American transportation company that handles over 300 million tonnes of cargo annually for a variety of business sectors, moving a wide array of goods, including key Canadian resources such as lumber and grain products, manufactured goods, as well as the entire range of consumer products from the groceries Canadians buy every week to the furniture in Canadian homes.

With a rail network extending from Vancouver and Prince Rupert in the west to Montreal and Halifax in the east and Mobile and New Orleans in the south, CN plays a critical role in ensuring the country's economic success by connecting Canadian shippers and receivers within Canada and to and from international markets.

Maintaining the rail infrastructure that supports the Canadian economy, which is entirely privately funded, is a capital-intensive undertaking. CN reinvests approximately 20% of its revenues every year. In 2016, that amounts to C\$2.75 billion, with approximately C\$1.5 billion targeted towards maintaining the safety and integrity of CN's 35,000-kilometre network, particularly track infrastructure.

¹ Railway Association of Canada

As a federally regulated railway, certain CN activities have been subject to the requirements of the *Canadian Environmental Assessment Act, 2012 (CEAA, 2012)*, as well as earlier versions of the legislation.

From 1992 to 2012, CN undertook 12 screening level environmental assessments that were triggered by the need for regulatory approval from the Canadian Transportation Agency. As well, CN undertook approximately 50 screening level assessments per year triggered by the *Fisheries Act* and one comprehensive study for the Fairview Terminal in Prince Rupert, British Columbia. Since *CEAA, 2012* came into effect, CN has had one development project—the Milton Logistics Hub—undergo an assessment, which is currently being assessed by a review panel.

CN understands that concerns have been raised regarding *CEAA 2012*, and that the Government of Canada has assembled this Expert Panel to review those changes. As an organization that has federal environmental assessment responsibilities, CN appreciates the opportunity to share its views with the Expert Panel, as a supplement to our presentation to the Panel in Prince Rupert, British Columbia on December 8, 2016.

Key Considerations

Addressing environmental and economic imperatives

The economy and the environment continue to be main drivers of public policy. As outlined in the 2015 Speech from the Throne, protecting the environment and growing the economy are not incompatible goals, and our future success demands that we do both. CN is committed to achieving these goals.

CN recognizes that minimizing our environmental footprint is fundamental to achieving sustainable business success. We are focused on conducting our operations in a manner that protects the natural environment, and we are committed to respecting applicable laws and regulations. We take the necessary measures to prevent pollution, reduce our GHG emissions, conserve natural resources and protect ecosystems.

Climate change continues to dominate international concerns about the environment. In 2015, the Prime Minister confirmed his commitment to making climate change a priority, both in the Speech from the Throne and in his mandate letter to the Minister of the Environment, whom he asked to “take the lead in implementing the government’s plan for a clean environment and a sustainable economy.”

In October 2016, Canada was among 191 signatories to the Paris Climate Change Agreement, which was subsequently ratified by more than 90 countries. As part of its commitment under this agreement, Canada must now look for ways to keep GHG emissions in check, and identify ways to promote sustainable land use. CN, and the

railway industry more broadly, is a natural partner to support Canada's efforts in this regard. CN looks forward to being part of the solution in each of these areas.

Responsibility of Federally Regulated Railways

Federally regulated railways like CN have specific legal obligations and a unique operating environment that need to be considered when deciding how to integrate railway projects into the federal environmental assessment (EA) framework.

Under sections 113 and 114 of the *Canada Transportation Act*, railways must carry all traffic offered by shippers, and are obliged to provide adequate facilities located near users to accommodate that traffic. In this regard, it is important to note that railways must react to demand in order to meet the evolving needs of shippers.

Accordingly, CN continues to support having a federal EA process that applies to federal undertakings and that recognizes our legal responsibilities.

Recommendations

What Is Working Well

Having a single agency responsible for administering CEAA

CN believes that any revisions to the *Canadian Environmental Assessment Act* should maintain the Canadian Environmental Assessment Agency as the independent regulatory body responsible for the federal EA process, and believes that the CEA Agency decision should remain separate from the issuance of permits.

Unlike other federal regulatory agencies, the CEA Agency is not responsible for the issuance of project specific permits. Rather, it remains focused on the comprehensive analysis of impacts and is not influenced by permit-specific concerns that other agencies may have. This independence allows a more objective and balanced evaluation of impacts and mitigation measures, based on science, evidence and fact.

To maintain this independence and ensure that the EA process balances all components of the environment and public consultation, the final EA decision should continue to remain separate from project-specific permits. This allows the project to be considered in its entirety, while any permitting components can be addressed by the individual regulators responsible for those decisions.

If CEAA reverted to a system in which regulatory agencies managed the EA process, we feel that credibility, independence and defensible decision-making may be lost, and that such a move could create a cumbersome process that might also generate conflict between the various agencies.

The Project List

CN fully supports the Regulations Designating Physical Activities List. It is critical that railways remain nimble in the face of changing demands, both within Canada and in the global marketplace. To achieve this, railways must be able to expand and adjust existing infrastructure in a timely manner.

Typical railway projects involve modest expansions of the rail network, such as adding new sidings, expanding rail yards, and expanding service by twinning rail tracks within existing railway rights-of-way. Larger projects have included the construction of new railway yards and intermodal terminals, as well as new railway lines. Most railway projects take place on existing railway property, on lands that have been designated for industrial purposes.

By maintaining the Regulations Designating Physical Activities List, we are able to understand which projects will require longer planning horizons and which will not, allowing us to plan and address customer needs. This certainty in understanding the process, and the associated timelines, enables better and more informed decision-making, not only for CN, but also for the customers we serve.

Focusing the environmental assessment process on larger projects

The implementation of the Regulations Designating Physical Activities List refocused CEAA by applying the federal EA process to larger projects that have the potential for unique impacts that need to be considered on a case-by-case and site-specific basis. CN supports this philosophy.

Whether or not the project list approach continues to be used, there are certain railway projects that CN believes should not be subject to the federal EA process. Prior to *CEAA, 2012*, the Exclusion List Regulations exempted certain small, routine railway projects from the federal EA process. This exemption helped ensure that projects with minimal or easily mitigated environmental effects could proceed efficiently.

Specifically, the exclusion allows Canadian railway companies to build trackage within existing rights-of-way or within 100m of an existing line for a length up to 3 km, without triggering the need for an assessment (provided there are no other federal triggers, such as a *Fisheries Act* authorization). This exclusion was in place prior to 2012 and was maintained under the *CEAA, 2012*. It acknowledges that a right-of-way is already a significant industrial footprint, and that trackage built within that footprint does not change its impact.

Public and Indigenous Consultation

We believe in listening to our neighbours, including Indigenous communities, when developing and implementing projects. Under the current process, CN believes that all Canadians and all levels of government are given ample opportunities to express their views and meaningfully participate. This is a critical tenet of the current EA process and should be maintained in its current form.

What Needs Improvement

Scoping projects involving federally regulated railways

The scope of federal EAs for railway projects should more clearly recognize railways' legal obligations to provide service. The assessment of railway projects should focus on the potential for railway-related project impacts, and not include upstream or downstream activities undertaken by potential CN customers such as mines, petroleum producers, etc.

Concerns related to federal policy decisions, such as resource extraction, are better examined separately through regional or strategic EAs rather than high-level discussions that cannot be sufficiently addressed within individual project assessments. Likewise, it should be clear that variations in volumes moved (in light of customers' demand) should not trigger the need for an EA.

Factors to be assessed

Establishing the scope of an assessment is a complex task. Project proponents would benefit by having Environmental Impact Statement (EIS) Guidelines that are project-specific and clearly scoped. Currently, the EIS Guidelines are too generic; in CN's experience, this has led to many follow-up Information Requests and additional assessment requirements that could have been handled more efficiently if the requirements were explicit at the outset. Changes to the EIS Guidelines after they have been issued to a proponent causes lengthy delays, and should not occur if the Guidelines are properly developed at the beginning.

Finally, the assessment of project-related effects should also consider economics in the overall evaluation. Consistent with the Prime Minister's mandate letter to the Minister of the Environment, CN agrees that decisions should be based on science, facts and evidence, and serve the overall public interest. To fairly weigh the benefits of a project against any potential environmental impacts, the EA process needs to expand to give economics on a local, regional and national level fair weight in the overall evaluation. After all, economics is the driving factor in whether a project, if approved, is ultimately realized.

Certainty and predictability

The predictability and timeliness of the EA process are of critical importance to CN and the Canadian customers we serve. The timelines introduced in *CEAA, 2012* improved the predictability of the process; however, the elastic nature of these timelines still makes it challenging for proponents. CN believes that ensuring the EIS Guidelines are developed with appropriate scope and project-specific components, and enabling better access to regulatory agencies during the process, will help to clarify EIS requirements and address any early concerns prior to the proponent's filing. Stricter adherence to defined timelines would not only allow proponents to better manage projects, but would also minimize the impact to the Canadian economy by limiting uncertainty for industries upstream and downstream of the project.

In addition, under *CEAA, 2012*, the Minister of the Environment has the authority to refer a project to a review panel at any point in the process. The lack of certainty surrounding which projects may require an assessment by a review panel instead of by the Agency compromises effective planning. We would like to see the factors that determine whether a project will be reviewed by the Agency or by a Review Panel be more clearly defined by science-based environmental risk, rather than the current discretionary process.

Conclusion

CN believes with some minor revisions, the EA process can be improved with respect to its functionality, defensibility and the science-based objectiveness it owes Canadians. In summary, we request that the Expert Panel consider the following key recommendations from CN:

- Maintain the Canadian Environmental Assessment Agency as the EA administrator, and the separation of the EA and permitting processes
- Maintain the Regulations Designating Physical Activities List, and the focus on larger projects with the potential for significant effects
- Maintain existing opportunities for public and Indigenous consultation
- Ensure that project scoping for railway projects remains focused on the federal railway undertaking, and does not extend to upstream or downstream activities outside of the railway's control
- Provide for more consideration of economic benefits in the EA decision-making process
- Improve adherence to defined timelines
- Provide clearer EIS Guidelines at the outset of the EA process
- Clearly define the factors that guide whether a project requires a Panel Review

We thank you for your consideration.