

Opening remarks by the Chairman

January 29, 2019

Vancouver, BC

(PROCEEDINGS COMMENCED AT 9:02 A.M.)

THE REGISTRAR: Order, please. All rise. Please be seated.

THE CHAIRMAN: Good morning, ladies and gentlemen. My name is Scott Streiner. I'm chair and CEO of the Canadian Transportation Agency and chair of the panel of Agency members that is conducting this investigation. I'm joined today by members Lenore Duff and Gerald Dickie.

The CTA is Canada's longest standing independent expert tribunal and regulator. One of its core mandates is to help ensure that the National Transportation System runs smoothly and efficiently. The CTA has in respect of all matters necessary for the exercise of its jurisdiction all the powers of a superior court. Canada's rail system is the backbone of the national economy. And Vancouver, of course, is one of this country's most important trade gateways. For these reasons efficient freight transportation services in the Vancouver area are critical for the producers and the shippers who rely on them and for the prosperity of the country as a whole.

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This investigation was launched by the CTA on January the 14th on its own initiative with the authorization of the Minister of Transport pursuant to a new provision that came into force in May 2018. This is the first time that the CTA has used this new authority.

By its nature an investigation of this sort proceeds step by step. The hearing that we're holding today and tomorrow together with the report of the inquiry officer appointed when the investigation was launched constitute the initial information gathering phase of the investigation.

Once that information is before us we'll begin to concentrate on matters that warrant further attention and direct more specific questions to relevant participants. Participants will then have 20 days to answer those questions and an additional 10 days to reply to the answers of other participants.

Now, we recognize that the investigation is moving at a fairly quick pace and that this has required railway companies and other parties to respond promptly to the agency's information requests. This pace reflects not only the significance of the matters before us, but also the

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fact that the provision giving us the power to launch investigations on our own motion includes directory language indicating that these investigations should be completed in 90 days. The structure of today's and tomorrow's hearing was outlined in an order of proceedings issued last Thursday and updated yesterday. Today we'll hear first from the three railway companies and then from a terminal operator and from a number of shipping associations.

Tomorrow we'll hear from additional shipping associations in the Port of Vancouver, and finally the railway companies will have an opportunity to make reply remarks before we wrap up tomorrow afternoon.

Participants are permitted to use their presentation time to provide evidence that substantiates or supplements information submitted to the inquiry officer and to respond to any aspect of the submissions and presentations of other participants. In addition the panel may pose questions to the various presenters.

We would ask that the various participants endeavour to use about two-thirds to three-quarters of their allotted time to make their presentations at which point the panel will exit the room, confer

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privately for a few minutes and return with any questions that we wish to pose.

The expectation is that this hearing will be held entirely or almost entirely in public. However, the panel retains the ability to shift to an in-camera format if a party persuades it that information the party intends to present would cause it direct specific harm if publicly released.

Should that be the case anyone who is not a participant in these proceedings, a CTA official or a contractor providing interpretation or transcription services, would be asked to leave the room.

While we don't intend for this hearing to be unnecessarily formal, the agency expects all observers and all participants to conduct themselves in a manner consistent with the statutory investigation process.

Only CTA members, the registrar and council, and scheduled participants are permitted to speak in the course of the hearing. Cellphones should be turned off or switched to silent mode. And once I've completed my opening remarks in just a moment, no video or audio recordings are permitted. Finally, any exit from or re-entry to the room should be kept

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to a minimum and be done quietly.

Any reporters who have questions about the hearing process or want to receive copies of any of the documents on the public record should speak to the communications liaison who is here with us today.

We will proceed in a moment with our first presenters from BNSF. Before I invite them forward to make their presentation are there any procedural questions regarding this hearing that any parties wish to raise?

Okay. Seeing no indication of the desire to raise procedural matters we will begin with the first party BNSF Railway Company. Please come forward.

I'm pleased to report that we're already slightly ahead of schedule. It's 9:10. We have set aside for each of the railway companies an hour, up to an hour and 20 minutes.

Consistent with what I said a moment ago, we would ask to the extent possible that you keep your presentation to 50, 55 minutes so that we have time to formally place any questions before you. Over to you.

PRESENTATION BY BNSF RAILWAY:

MR. ALMAGUER: Chairman Streiner and members of the panel, good morning and thank you for inviting us to speak at today's hearing.

I'm Dustin Almaguer senior general counsel for BNSF, and I'm joined today by Courtney Wallace regional director of public affairs and Ian MacKay our outside counsel from Ottawa.

We are here today at the request of the Agency. I plan to make a short statement regarding BNSF's footprint in British Columbia and our operations during the last several months. We worked closely with our operations team on these facts and this statement reflects their experiences over the last several months.

At the conclusion of my statement we'd be happy to take questions from the panel, and we'd be happy to supplement with written requests for any questions we're unable to answer today.

BNSF Railway is proud of our reliable service to customers in British Columbia and across our entire network. Operating safely and providing service that meets our customers' expectations are the foundation of our business. It is important

to note that BNSF is not aware of any customer complaints whether raised directly or through the Agency regarding our service. In fact we work closely with customers and any connecting railways to resolve customer service problems as they occur.

I'll highlight some of the ways in which we communicate with our customers later in my remarks, but I'd first like to start with some background of BNSF's roots in British Columbia.

BNSF and our predecessors have continuously owned and operated the rail line along the Semiahmoo Bay in British Columbia and around the Semiahmoo Peninsula since 1909. That line is what we call our New Westminster subdivision which is our main line between the Canadian US border at Blaine, Washington, and connection up to Vancouver, British Columbia.

We serve customers in the Vancouver area both directly and through regulated interswitching. In addition we serve customers at Roberts Bank through a long-term running rights agreement with BC Rail.

As you've seen in the data we've provided and as outlined in the investigator's report we move a variety of products in and out of British Columbia that include forest products, agricultural goods, chemicals and coal.

Although we operate just 30 kilometres of track in the Vancouver area, and we account for approximately 5 to 10 percent of the total rail volume through the gateway, we play an important role for Canadian shippers.

Our main line is the only direct route between British Columbia and the US Pacific Northwest allowing British Columbia customers to reach important markets and destinations and origins in the US and Mexico.

As I mentioned customer service is critical to our business. We understand the importance of communicating with our customers frequently and with transparency as well as providing insights in terms of how the BNSF network is performing and how specific customer shipments are moving across our network.

We make a significant amount of data reporting and other communications available to our customers. In addition to regular interactions with BNSF team members, all of our customers have access to online shipping tools that allow them to manage and trace shipments, their individual shipments on BNSF.

Through these tools they can determine the current location of any shipment en route including estimated times for departures and arrivals at a

destination or interchange.

This approach to customer service and communication was critical as we worked with other railways who issued embargoes in the fall of 2018 in the Vancouver area. For clarity note that BNSF did not issue an embargo during that time period.

Now, as the Agency is aware Vancouver experienced congestion-related challenges from mid-November to mid-December of 2018. During this time CN communicated an embargo of customer interchange to traffic through its Thornton yard located in Surrey, British Columbia. While again we did not issue an embargo, we took extensive measures to alleviate congestion and restore the fluidity of the BNSF, CN interchange in Vancouver. Our efforts began with initiating and facilitating three conference calls a day between BNSF's local operations and CN's local operations in the area. This allowed them to coordinate operating plans and address circumstances rapidly as they developed even throughout the occurrence of a single day.

We also sought to identify and implement creative solutions to help manage customer traffic and assist CN. For example, we took over a dozen unblocked trains from CN which means that these

trains had cars going to a variety of destinations mixed throughout the train. These trains then after received by BNSF had to be blocked or organized at our BNSF facilities throughout the Pacific Northwest at extra expense to us before ultimate delivery to customers.

At the same time we continued to block traffic that we interchange to CN in order to reduce handling events that would be required of them in that Thornton yard. We also built a dozen bypass trains to move through Thornton yard without requiring any switching to assist those trains.

During the period we generally worked to manage train flow in and out of the Thornton yard, including holding trains when necessary on BNSF's network to allow space within the Thornton yard for CN to perform its operations, as well as pulling our trains coming our direction as quickly as possible to ensure we're moving things off of their network. Finally we also supplemented additional power for CN to help run their extras when needed.

These and other efforts helped to soften impacts for ours customers and was a coordinated approach with the connecting railway.

While we didn't necessarily experience the

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same issues in Vancouver as others, we put our customers first and worked with our other rail partners to ensure service was as fluid as possible during this time.

Thank you, and we would be happy to answer any questions.

THE CHAIRMAN: You have come in under the 15-minute mark. So the panel will -- we have a number of questions ready to go for BNSF and other railway companies. But I think just given that you've made a statement, we'll take a few minutes. We will come back with a number of questions for you.

And of course if we finish a little ahead of schedule then CP and after them CN will come forward. So we'll be back in about five to ten minutes. Thank you.

Question and answer session with BNSF Railway

THE REGISTRAR: All rise.

(PROCEEDINGS ADJOURNED AT 9:16 A.M.)

(PROCEEDINGS RECONVENED AT 9:32 A.M.)

THE REGISTRAR: All rise. Please be seated.

QUESTIONS AND ANSWER SESSION WITH BNSF RAILWAY:

THE CHAIRMAN: Thank you, BNSF representatives, for your presentation. The agency has four or five questions for you. I think I'll give you all of them and then you can respond. And if anything isn't clear, please feel free to request clarification.

So we'll start with sort of the general situation. You've noted that there were congestion issues in the Vancouver area in late 2018, and you noted that BNSF did not impose any embargoes during this period. The evidence in the inquiry officer's report suggests that you did impose one in 2017. So if you could speak to why embargoes weren't used in 2018. That's the first question.

Second question concerns your movement of various commodities. The inquiry officer's report indicates some fluctuation that certain commodities we've seen increases in the volumes moved, other commodities we've seen decreases. Could you speak to the reasons for these changes over time of the

various commodities. Is this simply a function of request for service from shippers or are there other factors at play in terms of the variability in the movement of the various commodities?

The third question concerns your online tool, the way that you share information with your customers or one of the lines. Could you describe a little bit more how you would share or what information you would share on the situation in Vancouver, and in particular if there were embargoes imposed by other railway companies that had an impact on your customers how that was communicated to BNSF's clients.

Fourth, you talked about bypass trains and having -- if we recall correctly -- run 12 of those. Could you describe how the decision was made on when to construct a bypass train, which customers benefitted from this arrangement, and whether more were possible, and if so why more weren't run.

Two more questions: You also talk in your presentation about providing CN with some additional power. I assume you mean that you would lend CN some locomotives. Could you quantify that for us: How many? Under what circumstances? For how long?

And the last question is you talked about

holding conference calls during the period of congestion with I believe you said CN around the interswitching that you do with them. Could you describe for the panel in a little more detail the sorts of information that was shared during those conference calls. And again just a few more specifics. You said three times a day. Are they still happening? How long did they go on for? What sorts of issues were addressed and resolved through those calls?

So that's a significant number of questions. It's over to you.

MR. ALMAGUER: Thank you. We will take them in order, do our best to answer everything we can today. And as I said in my opening statement we'll provide follow-up with anything we can't answer today.

It will be a bit of a collaborative effort here from the folks at the table. I'll offer notes on where I can and then look to Courtney and look to Ian for other things where they can fill in.

So starting with the first question: Why embargoes were not used in 2018. We can follow up with specific factors we look at, but the general answer is that we look at multiple factors and in traffic flows, pipelines, how customer processing

facilities are handling their traffic, how we are able to handle the traffic congestion, forecasts and otherwise to make those types of decisions.

The individuals making those decisions for BNSF apparently did not see the need to issue an embargo in 2018 given the factors that were on our network.

Notably the embargo in 2017, sometimes these can be done at a receiver or shipper request to help them manage flows into their own facilities. Sometimes these are done at the railroads' initiative to help manage those flows. The one in '17 based on the embargo context was very likely done at a customer-type request.

There are several factors and a lot of input that can go into those. And so the weighing of all those factors is the reason for no embargo in 2018 for BNSF. Anybody want to add additional to that? Okay.

The next one you asked about commodity fluctuations, reasons for why those, the volumes change in different quantities over time and whether that was a function of shipper requests or other factors at play.

At a very high level -- again we'll have to

supplement on this one -- at a very high level commodities moving across our network and across our railway are largely a function of market demand and shipper requests. I would hesitate to say much more than that or offer much more than that in my area of expertise.

The third question you asked about our online tools and our customer communications about the information we share, how that's shared and what we share. If there was an embargo by another railroad how we communicate that to our BNSF customers.

So we have a variety of customer tools, a variety of email-based communications and website-based communications where our customers can log in through using their own customized account through which they have selected the types of information that they're interested in receiving, the types of things they would like to know about geographically, product based or otherwise.

That provides a vast amount of information as far as we put out geographic customer notifications, we might put out product specific customer notifications or otherwise, a recurring theme of information that we push out.

In addition individual customers would have

marketing and sales-type representatives that they deal with on a day-to-day basis and it would not be uncommon for specific facilities to have contacts with local operations' individuals as well where they would be getting information on more tactical operational concerns.

So all of that goes together from individual touch points, local touch points, to a much more broader network flow to getting that information to customers.

As I noted there is individual tools where you can track specific shipments things of that nature to forecast delivery times or to be aware of issues that might be arising en route.

Embargoes imposed by other railroads would not necessarily be at the outset the responsibility of our railroad if it was another railroad imposing embargo, we wouldn't necessarily know about it first. We would hear about it at the same time as the market knows about it.

As part of our submission we provided the AAR website by which embargoes are published and tracked and information is published on them. We might hear about it through customers; we might hear about it through other roads; we might hear about it through

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that website. A bunch of different ways in which that information could be delivered to us. And then we would of course reach out to customers as those discussions that I noted earlier to make sure communications are happening throughout our customer base.

MS. WALLACE: I would also add that we also have publicly available information on our website bnsf.com. We have service advisories, service interruption information that goes out to customers, so we make that information available.

So if you are a member of the general public or have questions about that, you're able to go on the bnsf.com on that customer information. So there is also a history there too that customers if they want a one-stop shop, bnsf.com is a good resource for them as well.

So it really is a multi-pronged approach to make sure that they get the information from their own local points of contact regionally, online tools, as well as those touch points.

THE CHAIRMAN: Thanks to both of you. If I could just ask a bit of a follow-up. I just want to probe on this a little bit more.

So a customer is expecting their cargo to be

delivered on date X at a terminal. They can see from what you're describing on your website exactly where the cargo is and maybe they can start to anticipate some delay. But how would they know or understand what the length of that delay might be or the issues underlying it?

In other words to get that information would they need to proactively reach out to their sales rep, their liaison at BNSF? Would somebody call them? Would it be made available to them through some of these emails? How would they find out if there were a delay in their cargo, what the situation was and when they could expect a resolution?

MR. ALMAGUER: The communication of that delay and the extent of it and the nature of it would depend on the cause of the delay. We have had service advisories that come out on a daily basis that might speak to a specific outage caused by weather, caused by a maintenance event, caused by some sort of extreme event like that that would be noted. They would push out a directed email to people in that area, and so they would then have a feel for that.

Other more routine issues might be just through the website and through keeping up to speed on that as well as just that personal relationship with their

sales and marketing representatives.

So the remaining three questions I might take as a group. You asked as far as a little more detail around the bypass trains, how those decisions were made, if the customers benefitted, and why more than the dozen or so we spoke to weren't attempted; providing additional power to CN, details around that; and you also asked for details around the conference calls.

I do not have further details on those operating specifics. As we talked about in our opening those events happened in realtime with our local operations team coordinating directly with CN's local operation team in this instance.

These are the types of things that when congestion happens or when service interruptions happen across our network whether they're BNSF specific these are the types of events that are the types of relief initiatives we might put into place.

Or if it's an interchange issue, the types of things we would look to whoever that other service partner was, that other connecting railway, the types of things we would look to do in the usual course to help accommodate each other.

In this case these were the sorts of things we

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were able to do to provide some relief for CN. As far as specific details as to how those operational decisions were made, what went into those decisions, how those phone calls worked and so on, I would have to get further details from the people who participated in those calls and made those decisions.

THE CHAIRMAN: Okay. I think it would be helpful to the Agency to get those further details including, as you said, who made the decisions, pursuant to whose request, how were they triggered.

I think it's important for us to understand when a situation of congestion emerges that starts to affect customers, what are the steps that are taken and how are they taken in order to try to minimize the impact as much as possible.

So you've pointed to a number of steps that BNSF took, and I think what would be helpful to the Agency as we conduct this investigation is to get more specifics along the lines that I've described.

And I think that if you can also indicate the extent to which these sorts of measures have been taken historically. Because in your response you said, "these are the sorts of things in a sense one does in these circumstances."

So are these actions that you've taken in

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previous years? Are these actions you've taken in other locations? Are they more specific to this year and to Vancouver? All of that would be helpful to us to understanding what are some of the contingency measures that railway companies take in a situation where there is significant congestion affecting service levels.

I think I'm going to look to my colleagues. I think that's it by way of follow-through with BNSF. Anything else? No. Okay.

All right. Thank you very much for your presentation and for your responses to our questions. You can return to your table. We'll invite CP to step forward and make their presentation. Thank you.

We'll invite CP to make their presentation. After CP's presentation we will take a dual-purpose break where the panel will both confer on questions and it will be a bit of a coffee break for everybody in the room.

But given that we're ahead of schedule we'll invite CP to make their presentation first. Please come forward.

Good morning. Welcome.

The floor is yours.

PRESENTATION BY CANADIAN PACIFIC RAILWAY:

MS. QUACH: Good morning. My name is Cassandra Quach. I'm currently the general counsel regulatory and chief privacy officer at Canadian Pacific. I have the pleasure of introducing CP's representatives comprising the panel today. I'm going to introduce them to the order as they are seated in front of you.

To my immediate right is Pam Arpin, AVP customer and corporate services. Next to her is Mr. Ray Elphick, AVP service and product design.

And then next to him is Mr. Greg Squires, GM operations specific division. Also assisting me is CP's external counsel Mr. Simon Coval of Fasken Martineau Dumoulin who is seated at our table.

We would like to start by saying that CP of course recognizes the importance of the Port of Vancouver located within CP's specific region as a key component of our national transportation system as noted by you, sir, Chairman Streiner.

We recognize that this is an extremely busy port within a dense metropolitan area which creates challenges for all stakeholders. We recognize the importance of providing safe, economic, efficient, and adequate services to the shippers and other stakeholders in around this region.

As you will hear from our representatives we are committed to providing that service, and we're confident that based on the objective data in our experience that we are doing so.

However, before we begin to delve into CP's service performance, with due respect I wish to reiterate CP's concern regarding the lack of foundation, evidentiary or otherwise, upon which this investigation has been initiated. CP continues to adopt the initial submission made as it pertains

to procedural fairness.

The scope of the investigation framed as "Possible freight service issues in the Vancouver area," remains so broadly stated so as to being meaningless to inform CP of the case it has to meet.

We've been given no visibility into the actual communications, information, or allegations which caused the Agency to launch this investigation. No disclosure of the evidence if any on which the allegations are based have been provided thus far. We are unaware of any accusations or evidence to suggest that we have not fulfilled our service level obligations with respect to any traffic or shipper in the Vancouver area. And even with the assistance of the inquiry officer's report, we're in the dark regarding what the actual specific complaints if any against CP exist regarding it's freight rail service, again, in the referenced Vancouver area.

With all due respect CP hopes that you can appreciate that from its perspective that it is perplexing and concerning that CP is being part of an investigation without actually knowing where CP stands.

This is all exasperated by the national attention the investigation has already received and

the multiple questions that have been asked of CP for which we are finding it quite difficult to answer.

As you are aware CP learned of this investigation on January 21st, 2019. We were directed to provide an enormous amount of data within three days, as well as answers to numerous additional requests for information right up until this past weekend.

We as with all other participants received the inquiry officer's report this past Thursday afternoon. And while we've organized senior representatives to attend at these hearings only some five calendar days later, unfortunately a fuller and proper response likely will have to follow in terms of further written submissions by CP, which we anticipate we're going to have to provide given that there are still some outstanding questions that were asked of us even into late yesterday. As well as seeing how this panel will likely have questions that we will have to take away and undertake to provide full answer to.

So with all of that we've made our best effort to prepare for today's public hearing. We do intend to provide you with all of the information that we have readily available save of course any information

for which we have sought protection in terms of confidentiality.

We're here to listen; we're here to answer questions; and we're here to cooperate to the fullest extent that is expected of us.

Other than that, I think I will then turn it over to the rest of my panel to really start to set out for the Agency some of the nature of our network, how we operate. We'll talk about some of our key performance achievements, and as well we'll specifically address how CP uses embargoes and the communication channels that we've established with shippers as well as with other stakeholders in the supply chain.

Together CP's panel will address the themes that are identified in the inquiry officer's report which we are confident will show that there was no systemic service issue particularly none involving CP. That there were operational challenges. They were temporary and isolated, and in any case have been resolved. And that at no time was there any preferential treatment of any shipper, classes of shipper, or commodities.

With that I'm just going to turn it over to Mr. Greg Squires.

MR. SQUIRES: Thank you. First off, I would like to thank everybody for taking time out of their schedules to attend today. My name is Greg Squires. I've been with CP Rail for 26 years. I have oversaw operations in Winnipeg; Brandon, Manitoba; Calgary; Medicine Hat; Edmonton; Moose Jaw; Toronto. And I've been here in the Vancouver area for the last 27 months.

Of our 12,000 miles of track serving nine ports, the network in our Pacific region of British Columbia is the most important. It serves our largest and busiest port as everyone is well aware. Within CP's region, the most important focal point for CP is its service to the Port of Vancouver where mainly speaking CP delivers traffic to the South Shore of the Burrard Inlet and they interchange traffic with CN for delivery to the North Shore. CP's Port Coquitlam yard is our main processing yard.

In my 27 months here, we have seen a steady growth and record-breaking volumes for many of our customers. This can be directly attributed to capital investments that increased capacity in the Port Coquitlam yard as well as the South Shore; track realignment; process changes in collaboration with our customers, CN, and the Port of Vancouver.

For example, as reported in our 2017 annual

report, CP developed a new transload facility to connect our pulp and lumber customers to new export markets in Asia. And incoming finished goods are transloaded for more efficient transportation to our domestic markets.

From a service-level perspective, we did not see any systemic issues. Our performance over the last two years has specifically proven this. We are unaware of any issues of inadequate staffing, locomotive power planning, or car shipment.

In 2018 we added 100 locomotives to our fleet of 1,000. And we've hired 312 employees in BC alone to man our trains. With the full contingent of crews and locomotive power we are able to move most if not all shipments that are destined to CP's serve destination. And in a position to interchange most if not all traffic served by a connecting carrier. The performance metrics of our co-pro terminal suggest proper resources are being implemented. We have grown all facets of our business year over year.

While we do recognize that shippers did experience some delays, we attribute this to multiple issues including weather, surge in seasonal volumes, and terminals not hitting the full capacity due to lack of a 24/7 operation.

When service delays started to increase in this corridor during the November to December period we worked diligently with CN to the fullest extent to keep our customer cars moving to and returning from interchange by taking extraordinary steps such as blocking traffic on behalf of CN to reduce switching demand.

The three blocks we built for CN on our network were for North Vancouver, Fraser Surrey Docks, and Thornton. We do this to reduce congestion and keep our customer cars moving to destination for unload so we can return the cars for more loading. We work closely with daily planning calls, pipeline management, and interchanging traffic at various locations to expedite traffic and expedite recovery for the Vancouver corridor which we felt was not only in CP's customers' best interest, but the Canadian commerce for this critical port.

We were forced to take action for a short period of time where the surge of traffic or congestion was greatest in large part for cars destined to North Shore destinations. In order to ease congestion and reset corridor fluidity and free up resources or in contrary avoid trapping resources that could not make it to destination we would have otherwise used to move

shipper goods. These actions were not taken lightly and as our record indicates we have not historically used embargoes in this corridor. We were forced to take them for track fluidity in the Vancouver corridor, otherwise all traffic would have been adversely impacted for all commodities due to reduced throughput in velocity in the Vancouver corridor.

These are actions that while we recognize unfortunately some customers were affected for a short time, CP as well forfeited revenue. We otherwise would have been able to earn providing service to our customers had this operating condition not developed.

We were very upfront with your customers during the period of congestion prior to our embargoes and after while normal fluidity and service was restored. Therefore we had no choice for the benefit of all customers using this pool of cars to not allow more cars to be trapped in the corridor.

The corridor in the system has since returned to normal and there are no CP embargoes currently in place. CP continues to invest heavily in expanding capacity on CP infrastructure in the Vancouver corridor to benefit all parties to include

collaborating with the Port of Vancouver, CN and their customers to ensure continued success in Vancouver.

As an industry we are continually striving to look for ways to improve fluidity. For example, CP and CN have voluntarily collaborated to optimize capacity with the directional running zone agreement and co-pro agreement with CN to efficiently deliver rail traffic to and from the Vancouver area.

We've had numerous successes in the last 18 months with many of our customers including Columbia Containers' record year, no missed loading days; Pacific Terminals, increased unloads; and Cascadia Terminals as well with record volumes. Thank you.

MS. QUACH: I will now ask Mr. Ray Elphick to speak more about some of CP's key performance records.

MR. ELPHICK: Good morning. My name is Ray Elphick and I am assistant vice-president of service and product design. As my title conveys, I sit between or I support both operations and commercial. Teams that report to me build the train design; they review line capacity; they do simulations to understand line capacity where capital is required; they manage tariffs; they manage interline agreements; and review new business opportunities with commercial.

And last but not least I have a team that reports to me that works closely with information technology to build operations reports.

So Canadian Pacific finished 2018 with a very strong quarter, capped off a very strong year. As a result showed in Q4 our train speed was up 3 per cent, our train weights were up 3 per cent, our fuel efficiency improved by 3 per cent. What else. Our terminal dwell was down 6 per cent, and our train safety measured in train accidents was actually down 31 per cent.

The western region carries two-thirds of CP's volume, and so it's absolutely critical to these results. And the Vancouver terminal is arguably the most important terminal to our western region.

This terminal performs so well that it has recently been given the CEO award for terminal of the year, and it's their second year for receiving that award.

So why do we have a terminal of the year and why has Vancouver won it a second time? Terminals are a strong barometer to the health of our network. They're like a canary in the coal mine. If processing falls behind and dwell increases and inventory builds we're in trouble. And this can lead

to longer car cycles and reduced service for our customers.

So Vancouver won the terminal award in part because of that measure of dwell, that important measure dropped for the full year. And in fact when you look at Vancouver terminal as an aggregate and Coquitlam yard specifically as we reported our dwell in Coquitlam yard dropped 21 per cent in Q4 versus the prior year. And Greg's team accomplished that with significant growth.

So we're here today in part to examine railway operating issues. And my colleague Greg spoke to how CN and CP work together. I've touched on our level of performance, but I want to communicate our operations remain quite fluid in Vancouver. And that Vancouver continues to anchor this network for Canadian Pacific.

So before I turn it over to my colleague Pam who will discuss embargoes and how they're managed and permits at CP, I'm going to end by saying that CP has worked very hard over the last two years to improve the operations in Vancouver, and we are quite proud of our service that we provide in that area.

MS. ARPIN: Good morning. I'm Pam Arpin, assistant vice-president of customer and corporate services.

I have the responsibility for customer service and all transactional functions at CP including our operational support and embargo process. I've been with CP over 21 years and have worked in operations, finance, customer service, and commercial capacity.

I'm going to touch on three areas today: One being the embargo process and CP application; two, our customer service process in particular to manifest traffic; and, three, communication efforts with our customers and other key stakeholders.

So to start with, CP's practice for the use of embargoes and permits. So the embargoes are administered through the AAR and Railinc. Railroads cannot arbitrarily apply embargoes, they must be approved by the AAR. The intent with these embargoes is to control traffic movements where there is actual or threatened operational impairment that is temporary in nature. For CP in the last several years we have only implemented three embargoes in this area, and that was in December of 2018.

For us I want to reiterate this is a tool of last resort. It is used as a temporary measure to manage the network to the benefit of all of our customers. We have only put in place after many attempts described by Greg and Ray to help deal with

congestion and delayed interchange over a period of two to three weeks failed to produce the intended results.

If we allow a single facility to back up to three times its normal inventory, the backlogged cars in the queue are consuming other customers' capacity and track space required to service their business which impedes our ability to successfully provide fluid service to all customers in this specific instance on the South Shore. And, again, we only issued three embargoes during the time periods in question.

I'm going to speak now about each of these embargoes. So CP's three embargoes, and again a reminder when I speak about the timeframe that it includes the 48 hour notice period that it's subject to.

So starting with 2318, which was a pulp embargo from December 10th to December 19th. CP exactly replicated CN's embargo that was in place first. We were still being flooded with cars sitting for days at the interchange thus we had to impose our own embargo. Once CN started to limit the permits to align with unload capabilities and were able to accept our cars at the interchange, CP lifted its

embargo.

Embargo 2418: This was North Shore from December 10th to January 10th. This was as a direct result of the backlog of shipments again described by Greg and Ray as well as supported by our TOL records, so transfer of liability, which I'll discuss a little later.

We needed to ensure that we did not become a bottleneck in CP's yard for all customers given our inability to deliver cars over to the carriers servicing the final destination.

Our third embargo 2518 which was particular to Columbia which is on the South Shore from December 21st to January 14. We imposed this embargo because the North Shore congestion was causing shippers to redirect traffic to Columbia. Our inventory went up to six days supply on hand. At one point as an example there were 210 cars in our yard with another 171 cars in the pipeline. Unload capacity for this facility is 35 cars per day, thus our embargo. For context usually less than 70 cars are on hand and this would be considered reasonable and normal.

We had to protect the South Shore infrastructure for all parties that jointly use and are served by it. Again these embargoes were used

as a last resort. Two to two and a half days of traffic is the most that we can have on hand in the yard to remain fluid. Once that is surpassed it is very difficult to manoeuvre due to congestion.

To avoid this we work with customers where we have direct line of sight and relationship with the shipper to logistically plan and avoid congestion.

All of these embargoes were communicated to our customers through our bulletin process. And again I'll speak a little bit further around our communication process. And also I would point out that we encourage our customers to register to the Railinc embargoes site by which they would also receive notifications of any embargoes.

I also at this point before we leave embargoes wanted to point out an oversight in the report and an adjustment to the table in the inquiry report on page 8. So in table 9 we did have 993 permits issued, and in table 10, 100 per cent of those permits that were issued or requested we did provide access to.

I'll now move on to our CP customer service process. And I'll focus primarily on what we call local operating planning as well as urgent shipping reporting and notification.

So for local operating planning we have a

process where we have a central team located within my preview where we pre-build local operating trains for our operating team. This looks at both the customer spot and lift requests. We then audit the actual train build from the operating team against the initial customer request to confirm the level of success in delivering to our customer requirements.

These reports are produced daily and we also have a monthly summary report and it goes to our most senior operating members.

For 2017 our success rate was 99 per cent on average. In 2018, 97 per cent. The outlier in 2018 was December, that dropped to 91 per cent. And this is where we started to look at the fact that we needed to implement embargoes to address congestion issues that we were seeing across the interchange.

Urgent shipment notifications. Now I'll speak to our urgent shipment notification process. This is also a daily email to our operating team that highlights potential plant shut-downs, vessel leak concerns, and dwell brought forward by customers inquiring about the status or delays of their shipments. This notification tracks these urgent shipments until they are rectified. And this is another method of ensuring visibility to customer

concerns realtime.

As an example, CP started seeing a pattern of CN being unable to accept interchange at the end of November slash beginning of December. To put this in perspective we had over 1,500 cars that were TOL'd, this is transfer of liability, with an average dwell of over five days or 120 hours until these cars were accepted at interchange. Transfer of liability occurs where another road cannot take our cars but we are able to transfer the car at higher liability.

I'll now move onto the last section which is communication with our customers and other key stakeholders.

CP maintains efforts around open lines of communication with various stakeholders. There are a number of efforts I'll speak to. For example, our customer portal, similar to BN, we have the ability for our customers to go online and track and trace loaded and empty equipment, also to view our bulletins and notifications. As well as we have a customer service group and sales group that interacts directly with our customers on a daily basis.

In terms of further communication, our customer bulletins we do produce a weekly bulletin that alternates between carload and intermodal which

talks to our service, our key metrics, and any updates of relevance. As well as that, we do have bulletins for emerging issues and we did issue bulletins directly related to the embargoes. From a higher level perspective we also have a customer advisory council. This initiative started in early 2018 to pull various customers together from all lines of business to discuss fluidity, technology, and communication. Touch points throughout the year with specific customer focus groups on key areas to develop multi-area road map for customer experience with our customers. The next session that we'll be holding with our customers will be in February.

We also have customer surveys as well as others that survey the rail industry. And I will point directly to RBC North American Railroad Shipper's survey in which there were 55 shippers representing eight industries with a combined annual spend of more than 12.2 billion dollars on freight transportation, and they target specifically shippers that use the railroads.

I will point to the comments made directly about CP. "CP is setting the standard in Canada; CP takes a commanding lead in Canada in terms of rail service due to the improvements put in place by

Mr. Keith Creel and his team and are widening their lead over CN from a service perspective; CP is establishing itself as the leader in Canada; CP's service has improved immensely since 2015. The company identified service as a way to make customers stickier and highlighted this as a core focus during their 2018 investor date," the company being CP. "Many shippers are not experiencing as many capacity issues and that is consistent with our view that CP has available capacity on their network."

The next section around communication I'll talk to industry level meetings. So for example with FPAC there is an annual meeting such as one that was attended last week on January 23rd, 2019. It's an opportunity to have focused discussions with the shippers' association on matters of importance to them.

We also have the Greater Vancouver Gateway Council. CP is one of the founding members of this council and continues to actively participate. The Gateway Council is an industry-led organization of senior executives from seaports, airport carriers, and other companies engaged directly in the gateway transportation business on a quarterly basis. It was formed in 1994 to build and act on a vision

for Greater Vancouver as a world transportation gateway able to meet global challenges and capitalize on opportunities for growth. The council is highly regarded by governments for its ability to overcome modal and sector biases. Council priorities have directly translated to government investment and infrastructure.

Another area is that we have a Port of Vancouver luncheon so we participate at various functions to support end to end logistics for our customers. As well monthly increasing to weekly calls during the winter months between CP's senior management with the office of the Minister of Transport to share realtime key performance, information support, supported by operating performance data and to answer any other questions of concerns to the Minister.

Also participation in Transport Canada led Commodity Supply Chain Table, a collaboration to help improve efficiency, effectiveness, and reliability of the rail base supply chain for bulk commodities. This initiative began in 2014 and is now in phase 2. Phase 1 identified a range of challenges and information gaps. And now phase 2 will convene small work groups to tackle eight themes identified to be of importance.

In closing we are working very hard on both a tactical and a strategic level with our customers to ensure that we are providing the best service both now and into the future. This means at times we do have to take measures to ensure this success such as imposing tactical embargoes to protect the overall integrity of the supply chain and do what is best for all customers.

We do not take these measures lightly, and that is reflected in how we are administering this process. With that I will turn it back over to Cassandra.

MS. QUACH: Thank you, Pam. In closing CP submits that the evidence clearly demonstrates that there was no material freight service issues particularly none that was caused by CP's operations. There was no differential treatment of any shipper, classes of shippers, for certain commodities by CP. The imposition of embargo was necessary, it was measured, and it was reasonable.

CP operations in so far as serving its line haul shippers were met, and in most cases exceeded historical levels.

And, again, when there were operational challenges they were temporary and CP accommodated

by providing extra work such as blocking of traffic for CN as discussed by Mr. Squires to increase fluidity, and that fluidity remains in place today.

CP is optimizing its existing infrastructure and has made and will continue to make responsible and sustainable investments to accommodate projected growth and demand.

CP is engaged with the shippers, terminal operators, and others in the supply chain including our connecting railroad carriers as well as throughout all different levels of CP's organization with all other stakeholders to ensure that there is good information being shared and that there is collaboration throughout.

CP has met its level of service obligation providing the highest level of service in respect of those obligations that CP can reasonably provide in the circumstances. And that we submit is in keeping with the National Transportation Policy the main aim of which is to ensure that we have a cost-effective transportation system.

I think it's trite to note it's been declared in section 5 of the *Canada Transportation Act*:

"It is declared that the competitive economic and efficient national

transportation system that meets the highest practical safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada."

CP has and will continue to make investments that are sustainable, responsible, thoughtful, and deliberate in order to ensure that we can achieve the stated National Transportation Policy.

As stated by CP's president and CEO, Mr. Keith Creel, CP is not 100 per cent perfect at all times; however, as a railway guided singularly by the industry leading precision scheduled railroading operation model executed by experienced and dedicated railroaders who understand the intricacies of railway operations and its dependencies on the rest of the supply chain, CP is delivering consistent and high level freight service that is aligned with the shippers' needs so far as reasonable in the circumstances. And to boot, doing so while

maintaining our enviable stature of being the safest class 1 railway in North America again as Ray mentioned measured by train accident frequency 13 years running.

Summed up by Mr. Creel in CP's fourth quarter release last Wednesday January 23rd, the power of the CP operating model is evident in the strong performance across the company. We set records across many lines of business in 2018 including grain, potash, and domestic intermodal. With that we would be pleased to take any questions that you have.

THE CHAIRMAN: All right. Thanks to the four of you for your presentations and for the information provided.

We have no immediate questions. We're going to break, confer and return with some questions.

Question and answer session with CP Rail

It is now 10:20. We'll break until 10:40, so people that want to stretch their legs or get a coffee can do so. Reconvene at 10:40 with questions for CP, and then we will turn to CN for their presentation before our lunch break.

Thank you.

(PROCEEDINGS ADJOURNED AT 10:21 A.M.)

(PROCEEDINGS RECONVENED AT 10:50 A.M.)

THE REGISTRAR: All rise. Please be seated.

QUESTION AND ANSWER SESSION WITH CANADIAN PACIFIC RAILWAY:

THE CHAIRMAN: Thanks folks. So we have a fair number of questions for the presenters from CP, so I don't think we will as we did with BNSF list them all off. I think we'll go sort of in chunks.

Some of the questions are for individuals specifically based on your presentations. Some of them are more general in nature. So I think we'll start with the more general ones. You can decide among yourselves who wants to respond, and then we'll get into some of the more specific questions.

So three or four general questions. The first is we understand from the record and from the first two presentations today I think it's clear that there were congestion issues and may still be some

congestion issues but in the Vancouver area late 2018 early 2019.

Can you speak to what you understand to be the primary causes of that congestion, and the extent to which any of those causes was specific to this year versus recurrent, something that we see every year.

The second question is similar to one that was posed to the previous presenters, the relative volumes of different commodities. You present and you stated quite clearly in your presentations that from your perspective CP doesn't discriminate among commodities, but there are differences. There is ups and downs. Is that driven exclusively by request for service or are other factors at play?

The third question concerns a matter that was raised in some of the information that was provided to us. I don't think any of you touched on it, but it's the question of high velocity trains. Can you tell us what percentage or at least roughly what proportion of the cargo moved, the freight moved by CP into the Vancouver area is on high velocity trains, and how the treatment of high velocity trains versus the remaining business varies.

And then the last question is one that's a little more operational. But we're wondering

whether there were any train swaps between different terminals as part of the effort to deal with demands to do with congestion issues, and if so whether CP played any role in arranging those train swaps.

So those are the four questions that are at a more general level. We weren't sure which of the presenters would want to respond to them. I'll pause there and let you respond to those, and then we'll go through the more specific questions for the different presenters.

MS. QUACH: Thank you, Mr. Chairman. I hope I've taken really good notes of the questions you've asked and we will address them in turn to the best that we can today. But before we do that, perhaps if I can take this opportunity to correct the record. We did misspeak during one portion of our presentation. You will have heard Ms. Arpin reference the monthly which also increased to weekly calls with I think for the record we stated it was the office of the minister, and it's been brought to our attention that that's not quite accurate. So if the record can be corrected, the telephone conference call is had with the economic analysis branch of Transport Canada. They in turn would then brief the office of the minister. So it's a little bit more indirect and

second-hand as opposed to direct communication.

THE CHAIRMAN: That's fair. Noted. Thank you.

MS. QUACH: Then in terms of the general question you've asked, again we'll just paraphrase just to make sure that we've understood your question exactly right.

My notes suggest that the question asks obviously premised on the fact that the Agency sees there was clear congestion issues and the question is what from CP's perspective did we see as the primary causes and whether or not those causes were specific to just the 2018, 2019 years or if it was recurring.

What I'll do is I'll start with a general answer to your general question. I'm going to then open it up to the rest of the panelists to see whether or not they can offer you any more details. But I suspect that this is going to be a question where the details will have to be provided to you in our further subsequent submission.

Again you will have heard from Mr. Squires and Ms. Arpin describing the issue being traffic that we had for interchange and could not be accepted for interchange by the connecting rail carrier.

We are downstream in that logistic chain. The root cause of that is somewhat beyond our purview.

We've spoken to other challenges in the general Pacific region. We've touched on that.

And so right now I'll just turn it over to the panel. I'm looking at Mr. Squires. If he has anything else to add, but that I think is probably the best we can do at this time. Mr. Squires?

MR. SQUIRES: Just from general congestion, and we will do a deep dive into the exact -- get true numbers before we speak to them, but to speak in general when we see weather that affects unloading, weather affects train operations. In general we saw some congestion in the fall with customers, they don't operate -- like we're 24/7, 365 days a year, so we like to see 20 cars a day, 20 cars a day, 20 cars a day on every train, and sometimes we don't see that.

If the supply chain is broken whether -- it's not broken, but we don't get consistent unloads at the facilities. So without being able to look at all the numbers. I'm not sure if I answered your question. If there is more.

THE CHAIRMAN: Thank you. I guess what would be -- and we'll come back to the terminals in a moment, and you may want to do this subsequently. But I think what we're trying to understand is some of the underlying factors that would account for the congestion the

folks have pointed to. So something like weather might be recurrent or it might be more specific to a particular year if it's particularly severe.

Other issues might be more specific to a certain year because for example there is a dramatic jump in demand from one sector. I think one of the things we're trying to understand is what are some of the underlying factors that would contribute to this congestion and is it the sort of congestion you would expect to see every year because of recurring factors or was something else in place.

So if you've offered everything you can at the moment on that that's okay, but we would appreciate your getting back to you with more on that issue.

MR. SQUIRES: Yes, in fairness to you we will definitely get back to you with a solid answer on that absolutely.

MS. QUACH: Your second question, Mr. Chairman, was really around the relative fluctuation in volume between the different commodities.

It's interesting in terms of the question because as borne out by CP's data we saw increases in a lot of the commodities. I think the only one noted by the Agency was the decline in the forest products commodities. As Ms. Pam Arpin spoke about the embargoes that were in place primarily impacted

forest products.

There are also as far as we understand, although we are not certain since we're not in the industry itself, but just from our general knowledge certainly the market demand, the global market demand is going to have an impact in terms of what the shippers' rail transportation demands are going to be. It could be that they require less of that shipment, or it could be that they require that those shipments to actually go to other destinations.

So those are second-hand information that we have. Again the shipping associations probably are better poised to give you specifics with respect to the market conditions that they operate within.

From our perspective we ordinarily have only limited visibility in terms of long-term demand and what's causing or driving some of that fluctuation. Again, as we note obviously the embargo will have played a role. We don't know how much of that is attributable to just the embargo, or it could have been other factors that were striving out.

I'll just pause for a moment. I have other subject matter experts with me today, so if anybody else thinks that there is further clarity that could be added. I'm seeing lots of shaking of the heads,

sir.

The next question, sir, unfortunately I do not have much background on to provide you even with a general preliminary answer. Your question relates to high velocity trains, and I believe your question is what proportion of CP's traffic in the Vancouver area are high velocity trains? How are they treated? And any difference in terms of how they may be treated compared to other train lineups?

If that's a correct summary of your question. I'm just going to look now to the rest of my panel members. If anybody is familiar with high velocity trains.

Perhaps, sir, if I perhaps could ask you for your definition of "high velocity trains." Perhaps it's just a matter of different definitions.

THE CHAIRMAN: So in using that expression what I'm referring to, and it appears in some of the submissions or in some of the notes in the inquiry officer's report, is trains which are usually dedicated trains, typically unit trains and that they tend to go in and out quickly which as a rule railway companies find to be higher velocity or efficient than trains that have to be broken up or manifested. So the shorthand that I'm using is "high velocity."

MS. QUACH: Thank you. Then with that I think I can offer a very high level general answer. And this is because I've got my instructor in the room, he's going to have to correct me when I get it wrong. In terms of unit trains the one feature obviously is that the entire train is comprised of one commodity coming from one origin to one destination. The importance of the Port Coquitlam yard as an operating yard is less so when it comes to unit because they don't need the extra handling. They do not need to be broken down, to be sorted. They generally have a planned schedule operating plan, and generally speaking those are -- they require less handling. So that's about the level of expertise I have. So I'm going to turn you over to the real expert in the house, Mr. Squires.

MR. SQUIRES: Thank you. Well put, Cassandra, there. So I don't have the actual percentage on what traffic travels on what train. What I can tell you is that all our manifest travels on a schedule. So everything is scheduled out. It's scheduled to arrive at a certain time; it's scheduled to go down to the port at a certain time; to be served at a certain time. So versus the bulk high velocity stuff which is not as scheduled. When it's ready we go get it and take it.

But the level of detail that we have in our scheduled railroad is so finite that we encourage it actually when it's in manifest to ride, to get to my terminal at a certain time, get to the port at a certain time. We'll have to do a deep dive into the numbers to find out what percentage of traffic rides on manifest versus bulk.

THE CHAIRMAN: So just a quick follow-up on that. Thank you. When there is a period of heightened congestion which may be affecting the ability to move cargo through the gateway, would cargo on one versus the other type of train be more affected?

MR. SQUIRES: It shouldn't be. I'll just take a minute to formulate a response.

So in the example of manifest cars coming in and going down to the Port of Vancouver or the only place that we would get affected is if we had to go through an interchange and there was congestion in one area, then yes, traffic, but both traffic would be affected, bulk or manifest. So from a manifest perspective I don't think -- I don't believe that it would be affected.

And I just wanted a clarification for the next -- for the question on train swaps. What are you referring to?

THE CHAIRMAN: So where terminals or where in the past where there have been issues with congestion terminals might agree among themselves to swap trains basically to keep things moving to send certain things to the South Shore versus the North Shore vice versa in order to keep things moving.

So the question is are you aware of that having happened at all over the course of the more recent period, and if so was CP involved in any way working that out between the terminals?

MR. ELPHICK: Again, I would like to go away and work up the data on that. We'd like to work out the data on that. You know, coal for example can go to the West Shore and tech can direct some to the North Shore and vice versa. We have, you know, there is an opportunity to work with customers on how its directed through the port and so I would really like to get the data on that.

THE CHAIRMAN: Okay. That's fine. And again what we're trying to get at is what are all of the options that are available under conditions of congestion in order to deal with it.

Okay. So with that if there are no other comments on those four general questions I'll direct some specifically to the different presenters.

Mr. Squires, we'll start with you. A couple of questions:

You talked about significant infrastructure investments by CP in the Vancouver area. You gave some information. Could you give us a little more detail on where that investment is taking place and how do you think it's affected the level of service. And also whether any further investment, infrastructure investment is planned. So that's a couple of questions around the infrastructure investments.

Now, one more specific question: You talked about the new transloading facility, built -- I think you said it came on stream in 2017. Can you speak to impacts that you think that may have on any issues around congestion. Do you think it's going to ease some of those issues? How do you think it may affect any potential future challenges with congestion?

The third question relates to a comment that you and one of your colleagues made regarding terminals. And you talked about what I think you presented as some challenges around the terminal's hours of operation and more specifically that some don't operate 24/7. Again can you offer any more specifics? Are there particular terminals,

particular commodities where that's an issue? How do you deal with it if there is a terminal that's not operating 24/7, how does CP deal with it?

And finally in your comments you talked about the co-pro calls between CP and CN, similar question. Can you offer more specifics on what both the purpose of those calls is, and what impact they had during the period that we're looking at in late 2018 and early 2019.

And I should add of course that anybody on the panel can respond to these questions for CP but these are the ones that were sparked by Mr. Squires' presentation.

MS. SQUIRES: So in 2016, December of 2016 I arrived in November of '16, December 31st of '16 we undertook a major, when the port went down for about three days we spent -- we put hundreds of engineering people in there and we redesigned the number of leads to allow us more fluid access to a lot of the customers on South Shore.

That, we put in crossovers, we put in independent leads to allow us dual service so we weren't -- it alleviated a lot of congestion down there and allowed us to take the numbers from the service level where they were to record numbers in

2017 and then again we broke them in 2018. And I directly attribute that to the -- land is at a premium, but there is always the ability to change the way we work with crossovers, taking out old track, putting in new track.

When we move that to the next question, we're always looking at future opportunities that I'd have to talk to Cassandra about and we will get back to you on that answer what our future expansion plans are. I may be able to answer that later, but I will share that with her.

The transload that you asked about, sir, is right outside my main line, so when the cars come in to Coquitlam I basically can grab them and put them into the facility immediately. There is very little dwell on them.

Will it alleviate congestion issues?
Absolutely one hundred per cent. Any time that you can have a facility that's right within your -- a stone's throw away it makes for obviously quicker transit time which is last mile first mile cars out on the train and gone. So I think that was -- I hope I answered that correctly.

Terminals 24/7. Some ramp up during peak grain season, some choose not to work through the

weekends, that -- when you have trains running 24/7 and they're coming in at the same time every day, every day, and if we don't have -- if something happens and they don't get the unloads the one day and then the next day they don't work or, you know, it's not working at night, it does pose -- like we find that our biggest volumes and our best producers are the 24/7 operation that mirrors ours, and it's been very successful for us. I think it's been very successful for them when we speak to the customers on the South Shore that have broken records in October and then tell us again that they've done it again in November, that tells us that we're doing I think what we need to do.

With reference to the co-pro calls. With CN and CP we talked daily, more than daily. The conversations are around accruing of trains, the co-production at the Boston Bar and North Bend, what's going on in Coquitlam, what's going on in Thornton, who's going to man which train, when they're going to go.

We try to obviously expedite them, so if there is not a crew available in Boston Bar we'll put one of ours on to get it, you know, quicker. We talk about interchange, what am I bringing to you, what

have you got for me, and we deal in volumes and numbers. So then we know what to expect, what we have to process, what we have to get out on the train.

So those calls are obviously when there is areas of congestion, times of congestion, we -- the calls are heightened. You know, on a good day there might only be one or two conversations or three, and on a bad day there might be six, "Are you coming?" Or "What do we need to do differently?" That sort of -- I hope that answers the question, maybe not.

THE COURT: I think it does in part. And this may be a little difficult for you to answer, but we asked about the goals but also about the results. So I guess the question is in a sense how effectively is that mechanism working? Is it an effective mechanism for managing the traffic in the area and for dealing with some of the challenges of things like handoffs and different tracks?

MS. QUACH: As Mr. Squires ponders the proper and more detailed answer to your question, sir, perhaps if I could just offer an observant view.

I spent a day with Mr. Squires after learning that we had to be available for this public hearing to learn a little about operations. As somebody who was with Mr. Squires for an entire day I saw how very

frequent he was on the phone. And as he describes it is constant. It is very dynamic, very fluid. You're dealing -- I heard him dealing with issues as they arise by the hour, and in the moment decision had to be made.

Again as he talks about what are we going to do with that one train now that we've discovered that it's perhaps a little delayed. There is a few cars I remember that we couldn't get to, okay, what's the next plan? It is very extremely fluid. So that's just it was an eye-opening experience for me. I learned lots. Mr. Squires, perhaps I'll turn it back to you.

MR. SQUIRES: So to follow up. How effective are they? I believe that they're very effective because we are where we are today with our customer service levels of 97 to 99 per cent. Are there hiccups in the operation? Absolutely. And when those do occur between all facets, whether it's a customer-related issue, whether it's a CP issue, whether it's a CN issue, the job of the operation is to make the most effective quick decision between -- it might be myself and it might be the other carrier in order to alleviate congestion or it might be to move something faster to make room for something else.

I truly believe that what we do on a day-to-day basis when we get in trouble for that brief amount of time gets us out quicker. And the days are longer, but they're ultimately fewer and farther between because of those calls.

THE CHAIRMAN: Thank you. Just one more follow-up for you and then questions for the other panelists. Just back to the issue of the 24/7 operations in the terminals. So you said things go better when they're on a 24/7 schedule. Have you seen a change in terms of the number of terminals that operate on a 24/7 basis versus the numbers that did so in the past?

MR. SQUIRES: Yes. We have certain terminals that have come on board that are ramping up to go 24/7. Some have increased the use from one locomotive to full cars to two. And the example, one of our customers just recently, you know, record unloads for last week, like a huge number, 926 and they're ramping up to a 24/7 operation. The 24/7 operations that we currently have are very successful and we have -- to your question, we have seen success in that, yes, and we are seeing some change.

THE CHAIRMAN: All right. Thank you. I'll move onto the next presenter. Mr. Elphick, am I correct in the last name?

Question and answer session with CP Rail

MR. ELPHICK: Very good.

THE CHAIRMAN: All right. Just one question for you on dwell times. So you talked about the changes in numbers and the decrease in dwell times, including 6 per cent I think you said in the Vancouver area. Do you have the actual number, the absolute number in terms of number of days in the average dwell time as opposed to just a percentage change?

MR. ELPHICK: Yes. I don't have it with me, but I can provide a breakdown of the dwell data.

THE CHAIRMAN: Okay. That would be appreciated, and I'll note now that we would make the same request of the other two railway companies. So we would like to see if you have the data of average dwell times in the Vancouver area for cargo that you're transporting.

Finally, Ms. Arpin, and I think that your -- so two questions. Your colleagues have outlined some of the other things you do. Could you briefly describe to us what the other tools are that you would use to try to deal with congestion issues before turning to this tool of last resort. And more specifically on embargoes, your presentation seemed to suggest that the three embargoes that you imposed this year all stemmed from some issues -- some operational issues that CN was facing. Could you

confirm if we've understood you correctly. Were any embargoes imposed by CP this year for issues related specifically to its own network?

And then two more questions for you. One is a point of clarification. You talked about AAR. I think you said approval when you impose embargoes. Could you explain what that approval process is. Are there specific criteria or is it more pro forma? To what extent does the railway company need to get signoff from the AAR for the purposes of any embargoes?

And finally perhaps related a little to the first question. We heard from BNSF that they lent some power, some locomotive power to CN during the period of congestion. Did CP take any similar steps?

MS. ARPIN: For question number 1 around tool of last resort and are there other tools around congestion if I understood correctly.

So in terms of, and I think we all collectively talked about this, is that we have a lot of different mechanisms with our customers in terms of communication from our customer service team to our sales team as well as the ability for customers to see data through our portal and a mechanism for communication through our portal, so we do work

directly with our customers where we're seeing concerns particularly regarding specific pipelines, and we do try to work that first through our customer connections.

THE CHAIRMAN: So I just ask by way of clarification, so you talk about communicating with customers. So what would that look like? Would that look like actually talking to a customer about maybe slowing some of their traffic for a while, while the congestion clears?

MS. ARPIN: I don't know if anyone else wants to comment more specifically because I would be a little bit removed from that in my role, but there are direct conversations between the operating team, the commercial team, and the customers where issues are occurring.

MR. SQUIRES: So if we see an issue start to develop because we're watching it -- I can see what's coming at me for a day and a half -- if we see those we'll call the sales and marketing representative and say, "Hey, tell your customer we've got three or four days worth of supply here, slow it down a little bit so we can get it offloaded," for, you know, whatever reason. That's the first line of defence for us, yes.

MS. ARPIN: And maybe just to add a little bit further is first

mile last mile communication with customers happens directly with our operating team.

For the next question around the three embargoes, that is correct in terms of your question. They were directly related to concerns that we were starting to see around the interchange.

In terms of AAR approval, again we have very limited use of embargoes, so I know that when we are using them we are asked to provide an explanation of why the embargo is going in place. If they do have questions they will come back to us. But given our limited use, I can't talk directly around when they would decline them, for example, because they have approved our embargoes.

MS. QUACH: Perhaps the one colour I will add to that is our experience has been limited use but sometimes the shoe is on the other foot. We've actually had other occasions asked the AAR to review their approval of a certain embargo because we wanted to challenge the basis for them.

So there is a process available should a railway wish to challenge an embargo that one feels is improperly placed and the AAR is the final arbiter in terms of whether or not it remains.

MS. ARPIN: And then for your last question, I'm actually going

to direct that to our operating, and that was Greg, in terms of BNSF commented on providing power to CN, a power swap, and if we have done similar.

MR. SQUIRES: I don't believe that on a formal basis -- what happens with the way it works in Vancouver is when we have trains that go to the North Shore they have trains that come to the South Shore. When we end up with their power and CN ends up with our power, we'll typically we either take it back or put it on one of their trains or one of our trains to get back.

From somebody calling me or me asking if you need my power, I will validate that with our locomotive group and get back to you.

MS. QUACH: Again perhaps a little bit of assistance here.

The inquiry officer's report did note for example CP's directional running zone agreement with CN as well as the co-production agreement.

What Mr. Squires is speaking to is just so -- it's become so natural in the process between CP and CN in terms of how horsepower is dealt with under those agreements. It allows for again a very fluid and effective determinations in terms of the right amount of horsepower when needed.

And so what generally happens again as Mr. Squires spoke about, daily they're having these

calls, they're trying to determine what crews are available for the two respective railroads, what trains are in the pipelines, what's coming, what's needed to come out, and then again what power do we have.

And at the end we don't worry on a day-to-day basis the number. At the end there is a mechanism that we reconcile differences, but that allows the two railways to really optimize capacity in a very fluid and dynamic fashion.

THE CHAIRMAN: Thank you. The point is taken. I mean, if this all happens kind of through the co-pro agreement and on a day-to-day basis that's helpful. It would be good to get a little bit more detail just to understand.

Okay. I just want to confer briefly with my colleagues and we'll let you know if we have any more questions.

Just one final question. It may be something that you need to come back to us on. You talked about with respect to AAR approvals that you have from time to time asked AAR to review one of its approvals. Could you provide the Agency with some more detail. How many times have you challenged or questioned approvals given to other railway companies' embargo

requests. If so were any of those embargoes in the Vancouver area? We're not really interested in outside of Vancouver, but were any of those challenges or those requests for reviews in the Vancouver area? If so, how many? When? And how many of the embargoes were subsequent to your challenge reversed or denied?

MS. QUACH: We certainly will undertake to provide you with the detailed information, but to my knowledge during the time in question in the Vancouver none to my knowledge, but we'll validate that.

THE CHAIRMAN: Okay. Thank you to the CP presenters. Of course we will hear again from both BNSF and CP as well as CN tomorrow afternoon. So if any of the information that we've requested is available you could provide it in your reply remarks tomorrow or subsequent to this hearing. Okay. Thank you. So you can return to your table. Thank you very much.

It is now 11:30. It is CN's turn at the microphone. I think we'll have you come forward and make your presentation. After your presentation which as I noted in my introductory remarks could take up to 50 minutes we will break for lunch, and we will come back with questions from the panel after lunch.

PRESENTATION BY CANADIAN NATIONAL RAILWAY:

MS. MURRAY: Good morning. And thank you Mr. Chairman and panel members for the opportunity to appear before you today.

My name is Fiona Murray. I'm the vice-president of public and government affairs for CN. Until mid-November, sorry, mid-October I was CN's vice-president of industrial products. That's the business unit at CN which among other things is responsible for forest products customers. I have 26 years in the rail industry. Many of which is spent

working directly with some of the CN customers represented here today.

With me today is Eric Harvey my colleague from CN who is senior counsel regulatory, and Mr. Doug Hodson outside counsel for CN from MLT Aikins.

Before I get started I would just like to take the opportunity to emphasize the importance of Vancouver to CN and indeed to Canada's trade. CN is after all as we've said here already an economic backbone of this country. Thirty per cent of our annual loaded carloads arrive or leave from the West Coast of Canada, and of that traffic Vancouver represents 65 per cent. And that's not counting the empty railcars that return to us through this gateway back to our customers who will reload them.

That Greater Vancouver is a complex logistics hub cannot be understated. There are three class 1 railways, one class 2 railway, 27 port terminals and a multitude of warehouses, transloads, and container stuffing facilities in the Greater Vancouver area. The port is a complex web of tracks, trucking routes, and vessel births. This is by far the busiest port on our network, and one of the highest concentrations of multiple commodities on our network.

I'd like to begin my remarks today by stating

a few important points. First our rail operations in the Vancouver area are fluid. Second, our operations across the network are fluid. Please note, I did not say perfect; I said fluid. Third, during the months of November and December there was a 10 per cent increase in rail traffic in the Greater Vancouver area. This increase created some temporary congestion which if no action had been taken could have led to significant slowing of the traffic across the Greater Vancouver supply chain, and possibly into other parts of the Canadian and US supply chain. Such is the importance of the role of the Port of Vancouver to Canadian trade.

And lastly, this notion that we discriminate against certain commodities is incorrect and misunderstands how and why we manage traffic under exceptional circumstances. There is no evidence in support of the allegation of discrimination.

In addressing the issue of congestion in Vancouver in November and December, much has been said about the permitting process and about how permits are used. I suspect outside of the railways there are few who really understand the process.

The permitting process is not a penalty system, rather it is a tool that ensures there is capacity

at the destination terminal or at the interchange before the shipment is put in motion. I often use air travel as an analogy for this to explain it to non-railway folks. So no airplane flying from say Toronto to Vancouver is granted permission by air traffic control to take off if it does not have the authorization to land at that destination. Just as airlines strive to transport passengers efficiently from point A to point B, so do railways when it comes to their freight. When freight departs from point A, a fluid supply chain requires point B to be available to receive it, all of it.

To ensure a fluid supply chain CN implemented two separate permitting processes. The first permit process was put in place as it was last year to proactively control the flow of traffic destined into pulp unloading terminals. The second permit process was put in place to manage the traffic moving to interchange. Neither of these permitting process was the cause of the congestion. These decisions were made as part of a series of measures we implemented to better manage the traffic volume and to avoid a potentially worsening situation. In other words permitting did not cause the problem. That was one of the many steps we took to fix the

problem by enabling rail traffic to move efficiently and to continue moving efficiently.

It was the responsible thing to do in a supply chain system where no one player is in charge of the whole end to end chain. Despite our efforts to encourage better coordination between other players of the supply chain, namely our customers and the terminals, it is our experience that these measures are still required because some of our customers and the terminals are not managing the supply chain to maintain a balance between origin volumes and destination capacity.

Since the beginning of this investigation two weeks ago CN has confirmed its willingness to participate in the process which will lead to a determination by the Agency of whether the railway companies serving the Port of Vancouver have complied with their service obligations. We have acted on this commitment by providing over 5.8 million records on January 17th and responded to all subsequent requests from the Agency staff and supplementary questions in a timely manner and to the best of our abilities. It required us to have deployed significant resources, and it was accomplished in only three days and in compliance with Agency

direction.

On January 24th we received copies of the inquiry officer's report. We were both surprised and disappointed by the report because it indicates that shipping associations whose complaints prompted this investigation provided very little in the way of evidence to substantiate their claims. The absence of any evidence aside from anecdotes and qualitative comments leaves us a little bit at a loss.

We are also concerned about recent media statements that undermine Canada's supply chain in the eyes of our global trading partners. We should not let a short period of temporary congestion undue all the hard work by members of the supply chain to sell Canada as a reliable source of natural resources and goods to the world.

The Port of Vancouver is the motion active trade gateway in this country and its reputation should be at the forefront of everyone whose businesses and livelihoods depend on it. I find the criticisms to be irresponsible and potentially damaging. The health of the Vancouver gateway is of prime importance to all of us who participate in global markets. Railways, ports, terminals, shipping lines, truckers, and the workers and

families whose livelihood depends on it.

We cannot forget that all of us are interconnected and have the same common goal, to bring prosperity to Canadians through trade.

I would now like to turn to the five themes that the report sets out. I'll just wet my whistle if you'll give me a minute.

The first theme is the differential treatment of certain commodities. The report notes that no empirical evidence was provided by any shipper associations with the exception of agriculture.

As for agricultural products, we also note the report confirms that CN fulfilled 95 per cent of the grain car orders, an improvement of 9 per cent over 2017. We also moved in the same period 2,716 more grain cars than in 2017. And as there is no empirical evidence that we're aware of on this item, we will not comment further at this time.

The second theme is permits. I would like you to view permits as the only available tool for railroads to proactively manage inbound oversubscribed supply chains to match the destination terminal capacity.

The inevitable result is an imbalance between rail shipments and finite destination capacity if not

managed otherwise. In other words permits are used by railroads to meter traffic into specific locations at times of congestion or higher traffic volume.

You'll hear the word "embargo" a lot over the next two days. And while the word embargo can have a negative connotation as it is used to describe a halt to movement. We call this a full embargo. An embargo with permits is something quite different.

An embargo with permits is an effective and commonly used tool to maintain network fluidity. This Sunday evening I checked the AAR website and found there were 174 active embargoes in place on the North American rail network. Of those 174, 111 are in place without permits. However on CN there are no embargoes in the Greater Vancouver area, only embargoes with permits applied specifically to deal with the temporary congestion. I can assure you that when we apply an embargo with permits, it is not our intention to impede traffic flow but rather it is our intention to enable traffic flow.

Mr. Chairman and panel members, I really want to stress the importance of the next point. That the number of shipments to terminals requiring permits has been below the number of permits requested and issued. This certainly confirms that the lower

volumes moved from those origins to those destinations is caused by something other than rail service.

Also, I would point out that while associations only had qualitative comments the report says that other relevant stakeholders confirm that rail transportation service has been better this fall 2018 and early 2019 period than the similar period in past years.

I'll move now to the third theme which is railway operational issues. Again for this theme there was no empirical evidence provided by the associations. In other words allegations of inadequate staffing or insufficient locomotives are unsubstantiated. CN provided information to the Agency on this topic, but for confidentiality reasons it was not shown in the report. Regardless of our request to hold this confidential, we believe it is important for you to know that our data showed that for the Greater Vancouver area in November and December of this year CN had 16 per cent more crews and 18 per cent more locomotives than the last year for the same period.

Moving to the fourth theme which is infrastructure. On this theme the report accurately

reflects the efforts of CN and CP on the directional running and co-production agreements. These two initiatives have increased the capacity of the Port of Vancouver by streamlining the movements of railcars. In addition as the report indicates CN and BN are working collaboratively to provide fluidity by interchanging traffic right in CN's Thornton yard rather than at the physical CN BN New Westminster interchange. Both of these are examples of the railways working collaboratively to bring greater fluidity to the Greater Vancouver area. Again the report does not disclose any specific evidence from the associations on this point.

On the question of infrastructure, CN continues to invest approximately 20 per cent of our annual revenues to maintain and expand our physical plant. We've invested about 20 billion over the last ten years. As we are only one member of the supply chain, I would suggest that others in the supply chain must also consider how they can invest to expand their footprints and respond to the needs of their customers.

The fifth theme is quality of communications. This is actually a new theme as the decision of the Agency on January 14th does not mention this

question. Again the associations have supplied only anecdotal evidence.

CN disagrees with the suggestion that it did not communicate with its customers. We provided regular updates and informed our customers at all stages. CN issued notices to all concerned customers in the fall to identify the reasons to implement the supply change management process. Similarly we mass emailed our customers five times during the time period of this investigation to explain the measures we were taking to return the Vancouver area to normal fluidity.

I also want to stress that communication at CN are not limited to written notices. We also participate in weekly conference calls, in person and on telephone discussions and presentations, and we provide direct and daily customer engagement through our dedicated customer service delivery and account managers, whose roles include advising our customers on the status of our operations. This attempt to discredit CN was simply unfounded.

As I hope I have outlined today as a company we are very proud of our record investment levels, we are very proud of our critical role in the supply chain and getting our customers' goods to market.

Just like our customers we want to get their goods to market as efficiently as possible, that is why we work 24/7, 365, and when there is a surge we work to ensure all our customers are served.

Question and answer session with CN Railway

Above all we are proud of the men and women who worked tirelessly over the holidays and weekends to deliver very strong results under challenging circumstances. I thank you Mr. Chairman and panel members for your attention. This concludes CN's comments for today.

THE CHAIRMAN: Thank you, Ms. Murray. We'll just confer quickly to see if we have any immediate questions of clarification before we break for lunch.

Okay. Thank you. There is no sort of short questions of clarification. There are a number of issues that we'll want to delve into, but we'll do that after the lunch break. Thank you for your presentation.

It is quarter to 12:00. We will reconvene at one o'clock after lunch, direct some questions to CN, and then after that we will turn to a terminal operator and shipping associations for the rest of the day.

Okay. Thank you very much.

(PROCEEDINGS ADJOURNED AT 11:46 A.M.)

(PROCEEDINGS RECONVENED AT 1:08 P.M.)

THE REGISTRAR: All rise. Please be seated.

QUESTION AND ANSWER SESSION WITH CANADIAN NATIONAL RAILWAY:

Question and answer session with CN Railway

THE CHAIRMAN: Welcome back everybody. I hope everyone is well fed. We have a series of questions for CN. We'll ask them in a couple of chunks in order to make it a little easier for you to respond. We'll do our best to organize them logically.

The first question we'll start with the same question we posed to CP at the outset but ask you sort of something that picks up on a specific point made in the presentation.

So what does CN understand to be the primary cause of the congestion or the oversupply of inbound traffic as you put it in the Vancouver area during the late 2018 early 2019 period?

In the presentation you talked about a 10 per cent increase in traffic and appeared to suggest that that was a key cause, so is that the only cause? Are there other causes? Is such an increase in traffic at this time of year typical? Has it happened in other years? So that's the first set of questions around the sources of the congestion or the traffic issues.

The second more general question is the same as we posed to the previous two railway companies, the movement in the transportation levels of different commodities, is that a function only of

demand, shifting demand for the different commodities? Is anything else at play?

And the third more general question again more similar to a question we posed to CP, does the type of train, high velocity, non-high velocity, unit, non-unit, does the type of train affect service levels provided and if so how?

So let's start with those three questions and then we'll move through the remaining questions once you've had a chance to reply.

MS. MURRAY: Mr. Chairman and the panel, thank you for your questions. Obviously CN will be happy to answer them but very respectfully we request that this take place tomorrow when we've had a chance and a proper opportunity to review as a team and give you the fulsome and factual answers that you deserve and you're entitled to. I don't want to wing it. I have a whole team of people here that flew in, came to support me. CN takes this very seriously. And this investigation is not something we want to make up as we go along.

So if you're okay with that, I'd like to make sure you get quality answers and we would answer tomorrow.

THE CHAIRMAN: That's fine. I just note that there may be some

time constraints tomorrow in the reply remarks, so certainly we want you to come back with factual information as opposed to as you say "winging it," Ms. Murray.

I'll go through the other questions, if there are some that you can respond to now so much the better. But of course we place more emphasis on accuracy and getting accurate and full answers than getting immediate answers.

I would also say that there will be an opportunity for all participants as I said to the previous participants to provide any information that they're not able to provide at this hearing subsequently, and I'll talk tomorrow a little bit about the timelines for that. But as much as we can we want to get information before us at this hearing.

So a number of other questions. What I'll do is I'll still go through them maybe in two chunks so we'll see whether or not you're able to respond to some of them now.

The next cluster of questions relates in part to the permitting process which you spent a bit of time on. So a couple of questions around embargoes and permitting.

First of all, is there any practice which is

either termed "permitting" or is analogous to permitting that uses a different name that's used outside embargoes to limit or manage inbound traffic flows? And if the answer to that question is yes, then the supplemental question would be, does this other system of permitting or of management of traffic flows, does it apply to all types of shippers and commodities or is it specific to certain commodities?

The second question is you indicated, Ms. Murray, in your remarks that permits are a necessary tool to -- and I'm paraphrasing what you said here -- but to reconcile shippers' demands for transportation services with capacity at destination at the terminal. And you emphasized that CN doesn't see it as a penalty system.

But then the question that we would ask is, so when in fact are embargoes and permits used under what circumstances, because they're not used all the time. So if in fact they're just a traffic reconciliation tool or something along those lines, when do they come into play?

The third question is in terms of, again using your words, what you refer to as "inbound oversupply of traffic." Are there tools other than embargoes

and permits that you can use to deal with that?

And on this you talked a little bit about customers managing their supply chain and you seemed to suggest that you were -- that CN sometimes had to turn to permits because that didn't happen as much as you thought it should. Could you elaborate? What do you think customers could do better in this regard? Are there some who in fact from your perspective do a better job of matching demand for transportation services to capacity at destination? Practices that you think others should learn from?

And the final question around permits relates to the point that you emphasized you would like us to take particular note of. You indicated that there were situations where CN in fact issued permits but shipments weren't in fact made pursuant to those permits. So could you expand on this? Under what circumstances did this happen? Do you have numbers? What percentage of permits were issued but not taken advantage of?

So again I'll pause there because that's a set of questions that relate to embargoes and permits, ask if you have any responses to those now, and then we'll turn to the final set of questions.

MS. MURRAY: Respectfully we'll leave it until tomorrow. Thank

you.

THE CHAIRMAN: Okay. Then the final set of questions. I'll start with one that relates a bit more generally to permits. You talked about two key circumstances, pulp and interchange traffic. So I think we again would like to hear some more specifics. Why pulp? What's sort of the underlying cause there? And pulp is quite specific. And then interchange traffic seems quite general. So could you explain what you mean. What are the specific issues around interchange traffic? What types of traffic are we talking about? Why was that a source of challenges that required a turn to embargoes and permits? Would anything related to interchange traffic, would that affect all interchange customers, all customers that are taking advantage of interchange opportunities or only some?

Now, I'd like to turn sort of shifting a little bit to a different area. The 16 and 18 per cent respectively increases in crew and power that you referred to from the November 2017 to the November 2018 levels, do these sorts of increases happen every year? Is this regular surge capacity that CN would bring on? Is it a response to cyclical increases and demands that can be anticipated late in the calendar

year and early in the following calendar year, or was it unusual? If it's a response to something that's recurrent, that's cyclical, is it something that you plan for? So would these sorts of increases in crew and power in fact be part of CN's operating plans?

When CN increased crew and power, how much of the challenges that were being faced at that time in the Vancouver area did it address? Did it fix most of the problem? Did it fix some of the problem? Was it enough ultimately to meet the demand for your services?

And finally still related to crew and power, in what context was additional power received from BNSF?

And the final set of questions. I'll just pause for a moment. I see you writing. Occasionally some counsel in the room will recall having asked me to slow down in my questioning in past proceedings, so I will take note of when you lift your pen up.

MS. MURRAY: I might not read it until tomorrow or later this evening, but I've got it. Thank you.

THE CHAIRMAN: The transcripts are available in ten days.

That's a little late for you I'm afraid .

The last set of questions relates to

infrastructure. So from CN's perspective, what are the key infrastructure challenges pinch points in the Vancouver area? A more specific question but not intended to limit the scope of the question I just posed is: Do you feel that the Fraser River Bridge, which has come up in both your submissions and others, is that particular infrastructure being used, being optimized, being used to the greatest extent possible.

In terms of your own infrastructure, are there congestion or operational issues or were there during the surge period specifically in the New Westminster interchange?

And finally to return to something a little broader and more general, a question similar to that that we posed to CP. Does CN have infrastructure investment plans intended to respond to some of the issues around infrastructure that may be contributing to some of the matters that we're discussing today?

So any of those that you'd like to respond to today?

MS. MURRAY: It probably doesn't come as a surprise that I'd like to leave them until tomorrow. But thank you. We'll do a good job tomorrow and make sure it was worth

waiting for.

THE CHAIRMAN: Okay. Thank you very much. While the CN presenters are returning to their table I'll just outline for the room kind of what the plan is for this afternoon and who else we're expecting to hear from.

So we have on the agenda between now and the end of the day a presentation from one terminal operator, that will be the next presentation.

And we will again this afternoon follow the pattern of hearing the presentation, pausing, stepping out, and coming back with any questions we may have. That may happen a little more quickly when there is a single presenter, but we'll see.

We'll then have a presentation from one ship association, the Freight Management Association FMA, and then we'll conclude the day with a presentation from three shipper associations in the agriculture space broadly speaking who will present to us and be questioned by us as a panel. We expect to wind up at or around 5 o'clock depending on how long those presentations go and how much questioning we have. So that's the balance of the day.

If there is not an opportunity to grab coffee in one of those breaks we take to formulate questions then we'll make sure to build in a bit of a mid-afternoon break for everybody as well. Okay with that?

Welcome. If you could please introduce yourself, and then the floor is yours.

PRESENTATION BY RAY-MONT LOGISTICS:

MR. RAYMOND: Welcome, thanks. Merci de m'avoir accueilli aujourd'hui. I could actually do it in English, but just to make sure I'm saying the right things at the right time I will propose or ask if I can do French. I can just switch from here to there. But if you're okay with that I would appreciate it.

LE PRÉSIDENT: Si vous présentez ça en français, c'est pas un problème.

And for the others in the room we have simultaneous interpretation, donc dans la langue de votre choix. Oui. Bienvenue.

MR. RAYMOND: Merci. C'est très apprécié. I can also answer questions in English if you want, but it's just easier for me in French.

I'm Charles Raymond, president and CEO of

Ray-Mont Logistics. I've been in business for almost 15 years. The company is based out of Montreal. I was there when it was founded in 1992. I was young, but I was still involved. I grew up in this business from A to Z.

Vancouver is a gateway for us. We opened our terminal here in 2008. And at that time the capacity, and I'll come back to that later, was about 500 containers per day. Over the last 10, 12 years we've invested significantly -- des montants significatifs d'investissements dans le terminal. On parle, dans l'ensemble du terminal, presque 35 millions de dollars en 11 ans pour une capacité théorique aujourd'hui de 5 000 contenants par mois. Donc on a triplé la capacité du service du terminal juste à Vancouver.

We have about 300 employees overall in North America. We are by far the biggest, largest shipper, exporter, freight forwarder, transloader of agricultural products in North America. This year alone we'll be close to 2.5 million tonnes all containerized from different terminals, Vancouver being one of our big ones.

And just to put it in perspective, the last three months, avec le mois de janvier actuel, va être

notre meilleur trimestre à vie à Vancouver en terme de volume. On va avoir environ 9 000 contenants juste en janvier.

Ce que je veux faire aujourd'hui c'est d'essayer de démontrer l'envers de la médaille sur ce que j'ai compris qui se passait présentement dans l'industrie avec le CTA, l'Agence. Je voulais vous amener mon côté de l'histoire, sans les shippers, les associations, les rails. C'est pour moi, du côté terminal et vous amener l'industrie, comment moi je la vois pour vous donner une opportunité à vous de poser des questions sur ça, parce que je crois qu'il manque un gros, gros élément à votre analyse présentement, qui est la composante internationale de l'équation.

Vancouver se veut un "international gateway". J'ai pas les chiffres, mais je vous amène le point pour que vous puissiez regarder. La majeure partie... une grosse proportion de ce qui se fait exporter via CN, CP, BN à Vancouver est pour l'international. Ça n'a rien à voir avec le mouvement domestique qui va rester dans le coin. C'est littéralement pour l'export et pour l'analyser à un niveau beaucoup plus élevé, le composant majeur qui manque dans l'équation présentement c'est la partie internationale

justement, puis la partie maritime.

Dans les années qui ont... dans les 10, 15, 20 ans, l'industrie a évolué. Je vais parler pour moi. J'ai entendu Columbia tantôt, qui est un compétiteur, mais je vais m'en remettre à Ray-Mont Logistics sur la manière dont on élimine la friction entre le mouvement des wagons de chemin de fer, CN, CP et BNSF aux contenants maritimes. Je ne parle pas pour les "grain elevators". Je parle vraiment pour l'industrie qu'on a visée. Je parlerai pas pour l'industrie forestrière, bien que sur la Côte est on fait beaucoup de forestier aussi. Mais c'est facile de faire des parallèles pour le reste de l'industrie.

Le plus gros... la plus grosse problématique... là je parle, juste pour pas me tromper dans mes notes... mais la plus grosse problématique que je considère être présente dans l'analyse que vous faites présentement c'est que si moi j'ai une capacité théorique de 40 wagons par jour, 30 à 50, peu importe le cargo mixte, c'est vrai seulement si j'ai un endroit pour mettre le cargo dedans.

Moi, depuis trois mois, c'est nos plus gros mois à Vancouver qu'on a eus. On a eu... c'est sûr que c'est pas facile. C'est plus tough parce que les wagons bougent beaucoup plus tranquillement. C'est

difficile à organiser et puis à les faire rentrer chez nous, mais c'est pas notre plus gros problème. Le plus gros problème c'est les équipements, des conteneurs des lignes maritimes.

Présentement, je pourrais en parler juste pour cette semaine, notre plus grosse problématique, on est loin de la capacité théorique sur le déchargement des wagons, mais on n'est pas en mesure de décharger tous les wagons qu'on veut parce qu'à tous les jours, à toutes les heures, on se bat pour aller ramasser des contenants vides pour le maritime.

Puis ce que ça fait, ça fait que quand les wagons sont chez nous, si jamais je pouvais faire 50 wagons aujourd'hui mais j'en ai fait juste 40, le 10 wagons que j'ai perdu c'est "compoundé". Donc, moi, quand j'émetts mes autorisations aux terminaux pour recevoir des wagons à travers le réseau en Amérique du nord, on prend compte de notre capacité à nous, mais en fonction de ce qui se passe sur l'eau, tous les bateaux, l'import, l'export international. Puis il y a toujours un décalage d'une à deux semaines en fonction de l'origination des wagons. C'est pratiquement impossible de prédire à 100 pourcent les équipements qui vont être disponibles. Puis ça c'est notre réalité à nous, les opérateurs de

terminaux.

Donc ça c'est un statement que je veux faire. C'est que présentement, notre plus gros problème depuis deux à trois mois c'est pas le rail, c'est pas les terminaux, c'est-à-dire nous, c'est le manque d'équipement qu'on a vide pour remplir.

Une réalité que nous, on a, c'est qu'on n'est pas juste un opérateur. On est une solution logistique. On a notre bureau, notre siège social à Montréal, mais on intègre la solution avec du "freight forwarding". On achète des conteneurs sur l'eau pour s'assurer de rendre le service qu'on fait à toute l'industrie, puis aux clients, aux shippers, disons, de Vancouver à la Chine, à l'Inde, à la Malaisie. Donc, notre "scope", nous, notre portée est beaucoup plus grande que nos compétiteurs, qui eux se font dire quels conteneurs prendre.

Je vais répéter... c'est important, parce que nous, il n'y a pas de "freight forwarder" ou de transitaire qui va nous dire quel conteneur prendre. Donc, si jamais j'ai des clients qui veulent aller en Chine demain matin, moi, je décide pour nous quelle compagnie maritime a des conteneurs disponibles pour remplir. Je peux avoir trois ou quatre choix; ça dépend des lignes maritimes, versus l'industrie, qui

elle fonctionne avec une tierce partie qui vient dire 'J'ai besoin de ces conteneurs-là parce que j'ai un bon taux sur l'eau.'

Ce que ça fait, ça fait des trucs parce que la compagnie d'opération, les terminaux... puis là je parle de l'industrie en général... sont pris avec cette contrainte-là d'aller chercher ces conteneurs-là, même s'il n'y en n'a pas de disponibles. La conséquence directe le lendemain, s'ils étaient pour faire 10, 15, 20, 30 wagons et ils n'ont pas réussi à les faire, ça se ramasse à ton trainyard, à Coquitlam, peu importe les yards principale et ça congestionne tout le monde comme ça. Parce que si eux manquent de conteneurs, j'en manque aussi et c'est systémique. C'est pas juste un endroit.

Donc, je me ramasse à chaque jour... littéralement à chaque jour; on travaille sept jours par semaine... à se battre pour ramasser chaque "single container in the area" pour s'assurer d'avoir les conteneurs pour vider les wagons.

Je pense que c'est important parce que ce que ça fait, ça fait que les gens qui prennent une capacité théorique, moi, je peux décharger 30 wagons ou 40 wagons, 50 wagons, et ultimement, le composant manquant, qui est sur l'eau, les contenants

maritimes, si eux n'ont pas les équipements, c'est purement théorique. C'est ça qui est probablement, depuis trois mois, notre plus gros problème.

Puis je vous dirais qu'on a été en embargo sur permis pendant quelques semaines nous aussi, puis je vais en parler après. C'est un autre point que je voulais faire aussi.

Puis là, si je parle trop vite, vous me le dites. Des fois j'ai tendance... pour les traducteurs.

Depuis deux ou trois jours, en fait, on a de la misère. Ça fait trois jours de suite qu'on n'arrive pas à prendre notre capacité théorique de déchargement. D'ici demain ou en fin de semaine, on va juste fermer nous-mêmes. On va refuser de prendre des cargos à l'origine pour s'assurer que la prochaine semaine on va juste ramasser des conteneurs et pendant ce temps-là on met de la pression sur les lignes maritimes. C'est comme ça qu'on fonctionne depuis presque sept à huit ans. C'est une composante d'affaires qu'on a, nous, le "leap", c'est-à-dire on va devenir maître de notre destinée dans le contexte où on remplit les conteneurs qu'on veut remplir. C'est unique au Canada.

Il y a d'autres gens qui font ce qu'on fait mais

pas à 100 pourcent. Il n'y a personne qui va remplir tous ses conteneurs avec les compagnies maritimes qu'il veut avoir. Ç'a été un truc qui a été difficile à faire, mais c'est un truc qui nous affecte aujourd'hui énormément, parce que ma compétition, quand ils ne le font pas, ça affecte mon opération. Ça c'est un point.

Ceci dit, on a investi énormément de technologie depuis 10 ans aussi et une des avances qu'on a c'est de synchroniser le mouvement de cargaison de l'origine sur les chemins de fer jusqu'à destination et la passation du cargo d'un mode de transport à un autre, de ferroviaire à maritime.

Puis en investissant et puis en bâtissant nos propres systèmes technologiques à nous, un truc qu'on a rajouté c'est qu'on a créé un système d'autorisation de terminaux qu'on gère via une base de données centrale à travers tout ce qui bouge dans notre écosystème, à travers l'Amérique du nord, des États-Unis jusqu'au Canada. Puis, notre système de "terminal authorization" qu'on a génère des numéros en fonction de demandes de clients.

Ça fonctionne puis ça fonctionne pas. Une des problématiques qu'on rencontre quand ça ne fonctionne pas c'est que les gens vont me dire 'J'ai

besoin de 10 wagons d'espace dans deux semaines, ou 20 wagons, ou 100 wagons, ' peu importe, mais n'arrivent pas toujours à exécuter leurs 10 ou 20 wagons. Donc, ce qu'ils font, dans le jargon à l'interne chez nous, on appelle ça des "ghost bookings" ou des "ghost TAs" où les gens vont bloquer l'espace de terminal seulement pour s'assurer de pouvoir relâcher les wagons.

Donc, nous, on le sait. On a des stats historiques sur ça. Donc on gère en fonction d'eux et puis on s'assure de dire si on a une capacité théorique de, on va gérer le maximum terminal authorization qu'on peut avoir pour s'assurer de maximiser aux terminaux.

Une des conséquences, quand il y a un truc où tout le monde devient... cherche une place où aller, c'est que si tout le monde se met à exécuter leur "terminal operation", ça nous remplit, donc on doit rapidement ralentir le rythme.

Pourquoi je dis ça? Parce que ça fait des années qu'on fait ça. Puis les embargos, on en a eu plusieurs dans les dernières années. Je dis pas ça avec fierté. Au contraire, je dis que ça arrive. C'est des éléments qui sont... il y en a eu un il n'y pas très, très longtemps. Mais à chaque fois qu'on

a des embargos, c'est des embargos avec permis. Puis ça, je veux emphaser là-dessus parce que la grosse nuance c'est que le permis... puis c'est là que ça devient intéressant... c'est le terminal qui décide c'est qui qui a les wagons à l'origination.

Pourquoi je dis ça? Parce que du côté des producteurs qui disent 'Moi, je veux mes cinq ou dix wagons,' bien, ultimement, si le producteur n'a pas l'autorisation de nous, parce que nous on a un lien commercial avec quelqu'un d'autre, il ne peut pas faire comme avec... juste les envoyer quand même et puis bloquer mon propre... ça lui prend un permis que CN ou CP nous ont émis à nous pour dire 'T'as tant de capacité cette semaine. Tu les distribues à qui tu veux.' C'est comme notre "terminal operations system" à nous, mais qui nous permet de vraiment contrôler ce qui se fait originer, parce qu'il n'y a pas de "ghost booking" dans l'équation parce que c'est du vrai cargo que les clients veulent vraiment laisser aller.

Donc, je disais qu'on en a eu quelques-uns dans les 10 dernières années, ou 15... en tout cas, plusieurs années... depuis une dizaine d'années certain, où est-ce qu'à chaque fois qu'il y avait un système en place, le seul "downside" que nous on considère dans

l'équation c'est que c'est une étape de plus de "red tape" pour les clients parce qu'il faut qu'ils passent plus d'administration. Par contre, pour la fluidité de nos opérations, c'est fantastique.

Si on peut trouver une façon d'enlever ou d'éliminer la portion administrative qui est de trop dans l'équation, nos opérations à nous sont de loin améliorées parce que c'est une façon beaucoup plus concrète de contrôler les autorisations qu'on arrive à faire mais qui n'ont pas la même profondeur que les systèmes de permis. C'est ça.

Je voulais juste le mentionner parce que pour nous, à chaque fois que c'est arrivé, on l'a demandé aux chemins de fer, 'Écoutez, si vous pouvez garder le système en place, le mot embargo on trouve que c'est très péjoratif, très condescendant. C'est pas l'idée. L'idée c'est de justement rendre le travail le plus vite que possible, puis nous, on s'assure de le faire en ayant l'origination "inland" sur... avec les processeurs jusqu'aux terminaux. Mais notre réalité d'affaires à Ray-Mont c'est qu'on s'assure d'avoir des contenants vides également. Puis présentement, c'est problématique. Ça sent encore la catastrophe dans la prochaine semaine dans le monde des contenants. Je parle pas des "grain

elevators".

Donc, on est en train de le gérer présentement et puis on s'assure d'être proactif le plus possible, mais la réalité c'est que les maritimes, les bateaux, ceux qui ont des contenants, leur réalité est complètement différente. C'est pas juste une commodité ou deux commodités. C'est tous les types de "goods" à travers le monde, dans un paquet de ports différents. Donc, ils ont une autre réalité à gérer que la portion commerciale qui embarque, de la portion allocation sur les bateaux. Il y a beaucoup d'autres contraintes à l'international qui ne sont juste pas amenées dans l'équation, moi, depuis que j'écoutais ce matin, les différents... les présentations passées.

Donc, je voulais faire un... je pense que j'ai dit ce que je voulais dire, mais je crois que ça donne une perspective différente parce qu'il n'y a pas de terminaux dans la salle.

LE PRÉSIDENT: Juste toi.

M. RAYMOND: Puis c'est pas que c'est négatif, c'est juste que ça fait littéralement des années que je grandis dans l'industrie, puis je crois que littéralement à chaque fois qu'il y a un embargo, la plupart du temps dans notre monde, c'est lié au contenant dans lequel

on met le cargo... il n'y en n'a pas assez... et non pas la capacité théorique des terminaux combinées ensemble. Puis c'est ce qui se passe dans le moment.

Et donc ce que ça fait, que ce soit moi ou nos compétiteurs dans le monde des terminaux, dès que quelqu'un se met à retarder un peu dans son opération, surtout quand il commence à manquer des contenants vides, c'est un catastrophe, ça l'a un effet de boule de neige rapide parce que s'il en manque, moi aussi j'en manque. Donc, toutes les capacités théoriques combinées ensemble font que dans le fond, s'il n'y a pas les équipements pour vider les conteneurs... pour vider les wagons, pardon, les conteneurs, c'est une question de temps avant que ça congestionne les cours de triage de CN, CP et BN, peu importe dans lesquelles, puis là ça a un impact sur le reste de l'écosystème au complet du "Greater Vancouver Area".

THE CHAIRMAN: Merci.

On va prendre une pause de cinq minutes, jusqu'à 10 minutes pour préparer quelques questions et on revient pour poser des questions pour cinq minutes. Merci.

THE REGISTRAR: All rise.

(PROCEEDINGS ADJOURNED AT 1:38 P.M.)

(PROCEEDINGS RECONVENED AT 1:52 P.M.)

Presentation by Ray-Mont Logistics

THE REGISTRAR: Order, please. All rise. Please be seated.

QUESTION AND ANSWER SESSION WITH RAY-MONT LOGISTICS:

LE PRÉSIDENT: Merci pour votre présentation. La Commission demande deux questions.

La première question c'est : est-ce qu'il y a des alternatives aux embargos et permis pour régler le défi que vous avez identifié, c'est-à-dire, si nous bien comprenons, le manque des contenants vides? C'est la première question.

La deuxième question concerne le "ghost bookings". Quelle est, selon vous, l'étendue du problème de "ghost bookings", avez-vous des pourcentages ou des chiffres qui peuvent nous aider à comprendre l'étendue? Merci.

M. RAYMOND: Pour la portion alternative aux embargos et permis, du côté rail, pour affecter le manque d'équipement, de conteneurs vides du côté maritime, les lignes maritimes, comme je disais tantôt, nous, on vit avec elles à tous les jours, à toutes les heures pour avoir plus de conteneurs et des espaces sur les bateaux. Leur but c'est des entités privées, indépendantes, internationales qui veulent faire plus d'argent dans leur "trade", donc ce qu'ils me disent c'est : "Écoutez, si tu veux payer 50 \$, 100 \$, 150 \$, 1 000 \$ de plus par conteneur, on va

vous en trouver des équipements."

Ça fait que la réalité c'est que c'est "not commercially driven". Les clients, les exportateurs veulent avoir le meilleur prix possible, puis les lignes maritimes veulent avoir le plus haut prix possible. Donc, ce qu'on fait c'est qu'on essaie de trouver le "fine line" pour dire on va trouver un prix, mais si on donne un prix, pour exécuter le prix, il faut qu'il soit là. Sinon, tu tu vas moins cher, il n'y aura pas d'équipement, ou si on va plus cher, là c'est eux qui disent "Ben, t'auras pas la business."

Ça fait que c'est cet angle-là pour trouver une façon autre que des permis. Comme je disais, embargo, j'aime pas le terme. C'est trop condescendant, mais pour les permis, pour régler le problème des conteneurs vides, je crois pas... le but rêvé des lignes maritimes c'est d'avoir la balance... "a perfect balance between inbound and outbound, import/export" puis avoir zéro conteneurs vides. Donc, eux, leur but c'est que quand il y a un conteneur vide, ils ont une erreur. Donc, ils veulent s'arranger de ne pas en avoir, puis ils veulent maximiser leurs dollars par conteneur, ce qui est à l'antipode de ce que les "shippers" veulent avoir.

Donc, je ne crois pas qu'il y ait de solution directe à ce problème-là. Nous, ce qu'on fait c'est qu'on maximise justement nos allocations de terminaux, qui m'amène à la deuxième question.

Vous voulez avoir des chiffres, mais je ne les ai pas ici, par contre. Par contre, il y a des chiffres très, très confidentiels par rapport à qui, quoi, comment. Donc, en fonction de qu'est-ce qu'on peut faire, on trouvera une solution d'en discuter de façon confidentielle. Mais un ordre de grandeur que je peux vous donner c'est qu'en fonction des TA demandés, des "requested terminal authorizations" avec des "executed terminal authorizations", il y a quand même un gap de plusieurs pourcentages. Ça oscille en fonction des périodes de l'année. Quand c'est occupé, c'est plus gros, mais quand c'est pas occupé, c'est moins important. Puis dès qu'on tombe en embargo avec des permis puis qu'on se met à considérer le gap "between" les permis et les "executed TAs", il y a à peu près le même "gap" ici en pourcentage.

Donc juste la notion de dire... d'avoir un permis en place où la décision de qui vient... je parle pas juste de Ray-Mont dans les terminaux, ceux qui ressortent de la marchandise, pour dire "On a besoin

de ces 300 wagons-là cette semaine et puis ces personnes qui viennent" versus des gens qui "trade", qui commercialisent les capacités de chemins de fer, de terminaux et de lignes maritimes enlèverait une grosse partie du problème.

En fait, je l'ai dit tantôt rapidement, mais systématiquement, quand on a eu des embargos avec permis, notre facilité de gérer le trafic explose. La problématique des permis c'est la couche administrative de plus. Nous, on gère nos propres systèmes chez nous à l'interne. Donc, c'est sûr qu'avec un peu de travail, on pense qu'on pourrait améliorer ça beaucoup pour ne pas avoir plus de friction dans le trade qu'il y en a présentement.

Mais la notion de dire qu'on est en mesure de gérer ce qui vient dans nos terminaux enlève une grosse partie des problèmes parce que quand il manque de conteneurs vides, nous, on le voit. La journée même ou la semaine même, on peut raptisser le pipeline et non pas trois ou quatre semaines après.

LE PRÉSIDENT: Et juste une dernière question en suivi. Est-ce que le problème, le problème de "ghost booking", le problème d'où est le "mismatch", le manque d'équilibre en terme de demande de service, est-ce que c'est pire ici à Vancouver en comparaison avec

d'autres ports ou est-ce que c'est la même chose?
Est-ce que c'est meilleur ici? Si vous avez
l'information.

M. RAYMOND: Je dirais que ça évolue. C'est circonstanciel.
Il y a eu des équivalents à Montréal dans les
dernières années. Depuis cinq ans, il y en a un petit
peu moins, mais c'est très complexe. Ça diffèrent
des différentes lignes maritimes qui viennent
s'installer. À Prince Rupert, le marché est
différent aussi là-bas. Vancouver, c'est la
"gateway" au Canada, donc tout est juste plus gros.
Quand la boule de neige part et puis ça devient gros,
ça fait juste débouler plus vite que les autres
places, mais Montréal a le même problème à plus petite
échelle.

LE PRÉSIDENT: Donc la différence est une différence de
grandeur, mais c'est la même dynamique, le même
problème?

M. RAYMOND: Oui.

LE PRÉSIDENT: O.k. Parfait. Merci pour votre présentation et
de vos réponses à nos questions. Merci.

We will now proceed directly to the
presentation from the Freight Management
Association, FMA. Depending on the length of the
presentation, we will likely break both to develop

any questions that we have for you and at the same time allow people to stretch their legs and grab a coffee if they wish.

So in terms of timing we had, just to give you a bit of a sense, notionally we were planning for something in the range of 40, 45 minutes per shipping association including questions, so if you're able to complete your presentation in approximately the next 25 to 30 minutes that would be ideal depending on what you have planned.

PRESENTATION BY FREIGHT MANAGEMENT ASSOCIATION:

MS. EVANS: My name is Monique Evans. I'm here with Forrest Hume, my colleague. We're from the law firm DLA Piper (Canada) on behalf of the Freight Management Association of Canada.

First I'll note that due to the short notice of this hearing the FMA was not able to collect and organize data from its member companies. The FMA doesn't hold member information on its own; it has to be submitted by members. However the FMA understands that this hearing is only part of the inquiry process and that it will have an opportunity it hopes to submit more information with its written submission following the hearing. Today what we would like to do is discuss the legal framework for evaluating a level of service issue, and elaborate on each step of the Agency's evaluation approach for the panels' consideration in advance of written submissions. I will also comment on the utility of the data that's been presented to the Agency to date, and my colleague Forrest Hume will provide specific background on the use of embargoes and whether embargoes can ever be justified.

The Agency is conducting this inquiry to

determine whether railway companies are fulfilling their level of service obligations under the *Canada Transportation Act*. The Agency has leading authorities on that subject, on the determination of level of service complaints, those are the *Louis Dreyfus* and Emerson Milling cases.

In *Louis Dreyfus* the Agency set out its three-step evaluation approach for determining level of service complaints, and that approach has been upheld by the Federal Court of Appeal on two occasions.

Under this approach the Agency asks three questions: First, is the shipper's request for service reasonable? Second, did the railway company fulfil that request? And, third, if not, are there reasons that could justify the railway's service failure?

If there is a reasonable justification then the Agency will find that the railway has not breached its level of service obligations. If there is no reasonable justification for the failure, then the railway company is in breach and the Agency will then look to that question of remedy.

The first step typically requires that a shipper demonstrate a legitimate demand for service,

that it has properly triggered the level of service provisions of the Act by making a request for rail service. But that is in the context of a shipper-initiated complaint.

In this case which was not triggered by any particular shipper but initiated by the Agency on its own motion, there hasn't been any suggestion to date that shippers have made groundless or outlandish requests.

With respect to phantom ordering or evidence that shippers are making unreasonable requests from CN or CP, we don't have any evidence. And I will speak to the type of data that the Agency should be looking for in that regard later in my submission.

What we do have is that the Agency has held that rail transportation is a derived demand. Railways exist to serve the needs of shippers not the other way around. This is a quote from LDC or from *Louis Dreyfus*. "Freight railway companies do not operate except to carry the goods that are produced by other economic actors and it is the financial health of these primary economic actors that is protected by sections 113 to 115 of the Act."

Under the circumstances where there is no evidence that Canadian shippers are making

unreasonable requests, it must be assumed that shippers have been requesting rail service to Vancouver because they have a legitimate need for that service and not for some ulterior purpose.

And that takes us to the second part of the evaluation approach. Where the Agency finds that requests are reasonable it turns its attention to the second question: Have railways fulfilled their respective service requests?

To this end the Agency has confirmed in *Emerson Milling* that a railway company must accommodate 100 per cent of a shippers' reasonable rail service needs. And that is even if shippers' service requirements are unexpected or differ from historical patterns or where some delay may be justified. In the end 100 per cent of origin must be filled.

If a railway has failed to meet the reasonable requests of shippers, it has not fulfilled the shippers' requests.

We know that in the case of this inquiry that CN and CP have failed to meet the reasonable requests of shippers by the simple fact that embargoes have been put in place.

CN and CP have expressly refused to carry

specific traffic into Vancouver this year and in years prior. Mr. Hume will discuss the use of embargoes in greater detail, but the necessary answer to that second question of the evaluation approach has been answered: No, CN and CP have not fulfilled their respective service requests.

In a level of service complaint, the third step of the evaluation approach shifts the onus to the railway companies to justify their service failures. The Agency must assess where the railway companies were reasonably justified in failing to provide service to the shipper. And to do so the Agency has said that a railway company must show that it was not reasonably possible for it to furnish adequate and suitable accommodations despite its effort to do so and based on factors clearly not under its control.

Just a quick procedural note: Typically the shippers would reply to the railways' response, and in this situation it's the reverse. Although I suppose through written submissions we'll be able to rectify that. But typically there is a reply option for the shipper.

The Agency has said that a railway company may not invoke the limited size of its mode of power fleet to justify service failures as this would allow a

railway company to solely determine whether or not they've breached their level of service obligations or to refuse or delay traffic in a manner contrary to the Act.

The level of service obligations are intended to ensure that railway companies do not set their level of service solely on the basis of those companies' own interests and preferences at the expense of shippers' interests.

It is obviously in the railways' interest to run a lean operation that is not in the interest of all shippers. Perhaps not as lean as railway companies would like.

To do this railway companies must act proactively and secure sufficient resources to meet shippers' rail service requirements.

The Agency has said "a railway company may be required to hire additional staff or increase the frequency of its service to fulfil its statutory service obligations," and further that "Railway companies are free to make business decisions with respect to asset acquisition and utilization, but a railway company cannot do so at the expense of service. Business decisions must not result in a railway company breaching its obligations to

shippers."

The Agency does not consider a railway companies' failure to fulfil a service request to be justified when equipment rationing is sustained over long periods or where peak demand periods are predictable.

With that legal background, I'd like to briefly address the application of the third step of the approach and the data that's been provided in this proceeding to date.

Starting first with the data provided by railway companies in this proceeding. The Agency asked the railway companies to provide waybill level data indicating origins and destinations in and out of Vancouver, for all movements in and out of Vancouver over a particular period of time; train segment and shipment data; details for all permits issued, requested, and denied, interswitching data, and details of any traffic rerouted around the Vancouver corridor due to embargoes.

The inquiry report of January 24th provides tables summarizing that railway company data, but due to confidentiality orders in the proceeding shipper associations are only able to review this aggregated summarized data and not the raw data provided by the

railway companies. I can therefore only comment on that data that I have seen, those tables that are provided in the inquiry report.

Regardless the data that has been provided to the Agency to date is insufficient to properly evaluate shipper performance, or sorry, railway performance. The data as sought and summarized cannot on its own support a finding that the railway companies are meeting their level of service obligations to shippers.

Regarding tables 1 through 3 which detail the number of carloads delivered into Vancouver, the number of carloads moved for a particular commodity is meaningless without data regarding the number of cars ordered by individual shippers and when those cars were delivered, were spotted to those shippers.

Part of a railway company's service obligation is the carriage of traffic without delay. If certain shippers have experienced extreme delay at origin that will not be reflected in data provided by these tables.

As well if particular shippers have been subject to embargoes, those shippers will have had to reduce their traffic into Vancouver as a result. The context of a particular shipper's car orders also

bears on whether a railway is meeting its level of service obligations.

Similarly regarding tables 4 through 7, the number of cars ordered versus the number of cars delivered means nothing without information about when cars were ordered and when those cars were spotted to shipper facilities. Even with that data you have to understand the railway's particular car ordering systems. That's crucial to dissecting that information.

For example, in at least the 2014, '15 crop year, grain shippers on CN were restricted to ordering no more than two times the capacity of their railway siding. If cars were ordered but not planned for supply and service, those cars would then have to be reordered and that reorder would count toward that shipper's maximum car order entitlement for the week.

As you can imagine, if there is accumulated shortfall a shipper will not be able to make that up using its maximum car order in a given week. The shipper would have had to reduce the amount of traffic that it sought to ship contrary to its service entitlement under the Act which is delivery of all traffic that it offers for carriage on the railway.

It is crucial that the Agency consider more than just waybill level data when analyzing service levels. That's why we provide the particular data that we do when we're doing complaints at the shipper specific level and shipper specific information is so important in this proceeding.

The FMA acknowledges that it has not been able to provide shipper information specific to date. There was some suggestion that it's the shipper association complaints that have prompted this proceeding. I can only speak for the FMA but it was not an FMA complaint that initiated this particular proceeding. And the FMA learned about this particular proceeding at the same time as the railways. However, the railways are the custodians of a great deal of very granular data which is not the same for a shipper association.

The FMA hopes that it can bring more data to the Agency in the coming weeks. Understanding that specific shipper data has to be kept confidential, and this brings me to a few final comments before I turn this to Mr. Hume.

Shippers do not want to identify themselves as opponents or challengers of the railways, and why would they? Captive shippers rely on CN or CP to get

their product to market. If CN or CP delays service, it is the shipper that pays not the railways, literally. CN and CP get paid for every carload moved, no matter what. Railways act in their own economic self-interest, are able to download many of their costs to the shippers, but if traffic is delayed the railway still gets paid so long as those cars move eventually.

If a shipper misses a vessel or is unable to load cars within their allotted time due to bunching at the origin, or cannot get enough cars to move its goods, the shipper pays demurrage; the shipper may breach its supply contracts; the shipper may lose business. The railways always get paid.

I would ask the Agency to seriously consider how it can engage shippers in this process in a way that will protect shippers from retribution as we fear that shippers will not meaningfully participate in this proceeding if individuals are forced to out themselves for the benefit of their industry competitors and potentially to their own detriment.

I don't know what specific complaints have happened behind the scenes that have prompted this proceeding, but I would suggest that if you look to the identity of those shippers and then look at a map

and see what their service options are, that may give you some indication of why they're here or not.

Subject to any specific questions to me, I'll turn it to Mr. Hume.

MR. HUME: Thank you. Members of the Agency, the news release that the Agency issued on January the 14th indicated that the matters covered by the investigation would include whether there is evidence of discriminatory treatment of certain commodities, how freight rail permits and or embargoes are being used, and whether railway companies operating in the Vancouver area are fulfilling their service obligations.

I would like to address the issue of freight rail permits and embargoes and how they are being used and comment perhaps on the issue of discrimination by railways in favour of certain shippers.

I'd like to pass up a binder that I've prepared for that purpose containing information relating to rail permits and embargoes.

THE CHAIRMAN: We're happy to receive the binder, but I trust then that this information can be placed on the public record and shared with all parties.

MR. HUME: It certainly can. It's from the website of the Association of American Railroads.

THE CHAIRMAN: Okay. And have you brought copies for the

railway companies among others, because we're going to want to make sure they have it in order to consider it in the reply remarks tomorrow.

MR. HUME: Yes. I have brought four copies only in the short time that we had in order to put it together. I put together these copies yesterday, but I am prepared to distribute those four copies and have other copies available in the morning.

THE CHAIRMAN: Well, I think what we'll ask you to do is actually to provide one copy to the Agency. We can arrange to have other copies made for the other panel members so that the remaining three can go to the railway companies.

MR. HUME: Now, included in this binder, and I refer you to tab 8, there is an example of a network update from CN advising certain things. If you could please have reference to that tab.

This is a document issued by CN December 12th, 2018, and it starts out by saying, "As previously communicated due to the unprecedented volume of railcars in Vancouver we have to implement a permit process to control the flow of traffic to this highly congested area."

Now, also included in the binder at tab 9, and I'll be coming back to this tab 8, but at tab 9 just

for completeness, there is an example of a customer stationed bulletin from CP advising that "Due to congestion at the CN interchange serving the North Shore and Vancouver and the interchange at New Westminster, BC, CP will be issuing an embargo application for specific consignees and commodities in manifest service in an effort to proactively manage the traffic into this congested area."

Now members of the Agency I ask the following question: By what authority were these actions taken? As a matter of interest there was a regulation in effect with the Canadian Transport Commission in 1978 called "Railway Embargoes Regulations." That was CRC 1978, chapter 1221. It was also by the commission known as general order number T-17. That regulation has been repealed and the repealing instrument was the miscellaneous amendments regulations of the National Transportation Agency 1994-1, and it's SOR94379. There is no such regulation in effect today.

I think the railways are convinced or at least they're trying to convince you that the authority for permits and embargoes is the Association of American Railroads, the AAR. You will see in the binder that I've passed up, tabs 1 to 7 provide information

contained on the website of the Association of American Railroads taken from their website yesterday.

Now the AAR is a railway industry association based in Washington, DC. It includes the seven major class 1 freight railroads in North America, two of which are CN and CP.

The AAR is many things and conducts many activities, but it is not a neutral body. It's neither government nor regulator. It advances the interests of its members, and CN and CP are major funders of the AAR.

Just looking for a moment at the materials in the binder. Tab 1 contains information on embargoes and permits. Tabs 2 to 6 are subsets of tab 1 and provide a system overview of embargoes, a user guide which is some 131 pages in length, facts and questions, error codes and descriptions, and embargo and permit management and open pay and prepay station lists.

The controlling document of the AAR is circular TD-1, and that's known as the revised circular TD-1 of the Association of American Railroads. It's found at tab 7. And I would ask you please to turn to that document.

On page 1 of this document you will find the following, after the effective date. It say "The following instructions shall govern the placing and handling of embargoes. This circular provides instructions for the placing of embargoes and for the handling of embargo traffic. It does not establish standards for determining whether an embargo is lawful or unlawful." And incidentally that is necessarily so, since the AAR is not the judge of whether an embargo complies with the law, and that's particularly not the judge as to whether an embargo complies with Canadian law. The instruction goes on to say that "The party placing the embargo is responsible for compliance with all applicable laws and regulations." And this is a reference to the fact that a railway such as CN or CP placing an embargo must comply with the law. The law in Canada that applies being the level of service provisions of the *Canada Transportation Act*.

Item 2 on that page 1 of the circular specifies the significant number of prohibitions or instances where the placing of an embargo is prohibited. I would like to highlight a few of these for you.

Prohibition no. 3. "It is prohibited to you to issue embargoes as a commercial measure to control

the routing of traffic to or via any particular gateway, railroad, or destination which is not related to the existence of the impairment."

If you look at prohibition no. 5. "It is prohibited to issue embargoes limiting the amount of traffic to be accepted daily or periodically."

Prohibition no. 9, "It is prohibited to issue embargoes to de-market traffic."

And prohibition no. 10, "It is prohibited to issue embargoes that restrict business growth." That is exactly what CN and CP's embargoes do. They limit business growth.

Item 6 of the circular deals with permits. Section A of that item is instructive. It specifies in part, "An embargo may contain provision for a permit system to provide controlled movement of traffic."

I'd ask you to note that there is no qualifier here as was with item 2 that I've already read. At least item 2 requires that the embargo controlling the routing of traffic not be to or via any particular gateway, railroad, or destination which is not related to the existence of the impairment.

Now, members of the Agency, embolden by their association's embargo and permit system, CN and CP

have imposed these schemes to differentiate amongst their customers and to target certain customers for special embargo and permit treatment.

If you look for instance at tab 8 of the binder which contains CN's imposed permit system, notice CN's selection of customers for permitting. In other words, those customers whose traffic is handled in manifest trains. CN states, "Unit train traffic will be regulated by CN's bulk operations team."

Now I've read that a few times. I'm not sure what it means. I know and I'm sure that it can't mean that CN is the regulator because that's your job. You're the regulator.

It goes on to say, "There will be no impact on intermodal business in Vancouver with this process." So CN apparently doesn't want to discriminate with respect to intermodal traffic and it spares them in this process.

If you look at tab 9 once more, that's the CP customer station bulletin customer advisory. It states, "This embargo applies to:" And they have three bullets there. The first bullet is "Ray-Mont Logistics, Vancouver; Global Agricultural Transloading, Lynn Terminals Eastgate, KM Canada marine terminal, EuroAsia Transload, and Fibrico

Exports receiving the following commodities:
canola, canola meal, flaxseed, special crops, and
pulp products."

The next bullet explains when the embargo will be in effect. It indicates that the embargo can be rescinded at any time without giving a time. And then it says in the third bullet, "Please note, this will not impact unit train service."

In other words, we're not going to work diligently to reduce service impacts on all of our customers; we're going to pick winners and losers from among our customers.

And you will recall that in making their presentations CP quoted from Canada's National Transportation Policy. I'm going to suggest to you that picking and choosing winners and losers among your customers is inconsistent with National Transportation Policy.

Now, Agency members, despite the air of legitimacy provided by the appearance of these AAR impressive embargo and permits documentation, railway embargoes and permits, the imposition of permits do not automatically become law. And that's true in the United States as well as in Canada. They are subject to challenge by proper authority.

In Canada, the proper authority is the Agency. It's you. You are the ones to determine whether a unilaterally imposed embargo is lawful, whether a particular embargo or permit scheme complies with the railway's level of service obligation under the *Canada Transportation Act*.

Now, ordinarily that would be done by a complaint. Shippers are reluctant to make complaints for obvious reasons, and I can tell you in my practice that's a very real factor.

But here you're acting on your own motion pursuant to the new law. In making these kind of decisions on whether embargoes and permits are lawful, the Agency draws on its home statute and its jurisprudence and the jurisprudence of the courts. There are many cases that have outlined the statutory level of service requirements and the process by which the Agency determines level of service complaints. My colleague Ms. Evans has taken you through some of those.

These cases include of course not only the seminal 1959 level of service case which is Patchett decided by Justice Rand in the Supreme Court of Canada. But also this Agency's clarification of Patchett in two leading cases *Louis Dreyfus*

Commodities Canada Ltd., which was challenged by the railway, your decision was challenged by the railway but sustained by the Federal Court of Appeal. And the Agency's further clarification of the law in the *Emerson Milling* cases, two of them, again challenged by the railway, but sustained by the Federal Court of Appeal with the Supreme Court of Canada denying leave.

Now, I've been involved in a lot of level of service cases over the years. Such as the *Louis Dreyfus* case and the *Emerson Milling* cases.

In those cases and in the other cases that I've tried, we hear the same kind of things from the railways: There is weather problems; there is congestion problems; it's caused by too much traffic; it's caused by problems at terminals; traffic has increased. All of those things sound really good when you say them fast.

When you drill down on them, which the Agency does when it's faced with a level of service complaint by an individual shipper, the Agency starts to ask awkward questions. Like for instance: What happens at the origin? What actually caused the congestion at the destinations? Were there delays? Were there delays en route? Was there inordinate

dwelling time in yards? Were cars that were ordered for a particular day not delivered on that day or not delivered on that week, or perhaps even during that month? Did the shipper all of a sudden get three or four trains all at once, had trouble handling them? Did it cause bunching? Was there bunching caused en route?

All of those things the Agency looks at in detail, in detail. And when it does, the Agency finds that there has been a breach of the level of service obligations in the vast majority of the cases that the Agency hears.

But it's important to be able to drill down, not take a snapshot of aggregated information at one particular point in the supply chain. Drilling down uncovers the real problems that exist.

Now, my point in saying all of this is pretty simple. Don't let the railway's AAR embargo regime distract you from or have any impact whatsoever on your jurisdiction under the *Canada Transportation Act*. You are the authority, not CN, not CP, and not a US railway lobby organization. You are the authority.

In this investigation require and gather specific granular evidence that will allow you to

investigate the issues thoroughly and assess them. Allow stakeholders to have that evidence so that they can provide you with cogent evidence for your deliberations.

An embargo on a shipper's traffic means that a shipper's traffic is not delivered period. An embargo on a terminal means that the terminal receives no traffic from any shipper, and that all of those shippers' traffic is not delivered period. A shipper who is told that his or her permit is denied can ship no traffic, period. The use of embargoes and permits to deny service and frustrate business growth is unlawful.

I implore you to find that under any circumstances embargoes and permit denials are discriminatory treatment, and I think that basic truth goes without saying and is obvious on its face. I implore you to find that under any circumstances embargoes and permit denials are a breach of the level of service obligations.

There is no effort being made when this happens to try to diligently assess and determine how all of the traffic can be reasonably handled in the circumstance. Some traffic gets service, some traffic gets none. And based on the law, and I'm

talking about the statute law and the case law. I implore you to find that under any circumstances such behaviours could never constitute compliance under the *Canada Transportation Act* and the National Transportation Policy enacted by our parliament.

Question and answer session with FMA

It can never be reasonable for a railway to refuse to deliver a shipper's traffic at all, period, which is exactly what embargoes and permit denials do. And I thank you for listening.

THE CHAIRMAN: Okay. Thank you both for your presentations. We will take a 15-minute break, reconvene at five minutes to 2:00, pose some questions to counsel, and then from there move on to the Agricultural Shippers Associations panel. Thank you.

THE REGISTRAR: All rise.

(PROCEEDINGS ADJOURNED AT 2:36 P.M.)

(PROCEEDINGS RECONVENED AT 2:56 P.M.)

THE REGISTRAR: All rise. Please be seated.

QUESTION AND ANSWER SESSION WITH FREIGHT MANAGEMENT ASSN:

THE CHAIRMAN: Thank you. Ms. Evans and Mr. Hume, just two questions for you.

Ms. Evans, from your presentation you noted that the inquiry officer's report lacks demand data. You suggested that there is a lot of supply data, not as much or no demand data you indicated. I think the Agency would agree that those data would be useful in the context of conducting this investigation. Do you have, does the FMA have any specific suggestions on the circumstances under

Question and answer session with FMA

which the FMA and its members would provide the Agency with such data as part of this investigation?

MS. EVANS: I'd have to go back to the FMA and its membership, but my understanding is the greatest concern is confidentiality. No individual shipper wants to stand up and say, "Well, here is what I wanted and here is what I got, and here are the problems that I'm having with my sole supplier." And so confidentiality is a major concern and that's something that I can communicate.

To the extent that individual members are able to produce specific data, I'm not entirely sure. I'd have to go back to the membership about what is available. In part because not all shippers keep the same type of records. So I have in my mind a beautiful spreadsheet that would be very helpful, but I don't know that I can get that in 20 days or if it even exists.

MR. CHAIRMAN: Okay. So I would just note in that context first of all of course nothing precludes the FMA in providing data in an aggregated form. While I can't prejudge what the Agency would decide if a confidentiality request were made if this aggregated data were provided. You have already noted in the context of the current proceeding we did aggregate

the data provided by the railway companies and grant confidentiality in respect of the specific data. So we would leave that with you to discuss with your clients. But as I said we would welcome demand data from the FMA and other shipper associations.

MS. EVANS: If I could just add, information about the entire supply chain is necessary also as Mr. Hume indicated. It's not just about demand, it's about how that demand has been met. And that includes whether cars were delivered in the week that they were ordered, in the following week, or three weeks later. And if three weeks later, was one train provided or two trains, or what? All of those supply issues at origin create logistical issues for shippers that then affect the entire supply chain.

So to the extent that that type of data is available, I do think it's important if it could be got.

THE CHAIRMAN: So in that context I'll reiterate that again to the extent that the FMA and its members are able to provide those data, that is one potential source. And of course the more information we have, the more helpful it will be in terms of conducting the inquiry.

Mr. Hume, I just want to come to sort of your summation point at the end where you seem to indicate

that around embargoes, I think what you said was essentially an embargo is a denial of service and therefore in your eyes would always constitute a breach.

So are there any circumstances in your eyes under which measures to manage traffic volumes on a temporary basis would not constitute a breach of the *Canada Transportation Act*?

MR. HUME: Yes. Thank you. Absolutely there are measures that can be taken. The measures, though, have to have a goal in my respectful submission. The goal has to be how to maximize the opportunity that all shippers' traffic has a reasonable share of the resources that are available to provide the maximum amount of service necessary.

Picking up winners and losers is something I can see as being definitely *ab initio* a breach of the level of service provisions of the Act, because I don't think the Agency would ever agree with a railway that refusing service to a shipper is reasonable.

And I think too, measures need to be taken with the interests of the fluidity of the pipeline in mind. And those kind of measures include things railways in my observation are very reluctant to do. And that

is invest in infrastructure and other measures that will make the pipeline more fluid when it might not be justified on the basis of the return that might be had by the railway as a result of the investment.

One of the problems I see in traffic fluidity problems and congestion problems is self-interested decisions being made, particularly by railways. When you look at the bottom of line of what the railways are making, we have two of the most profitable industries in this country being CN and CP. And to a large extent the tail is wagging the dog.

It's great to have railways that are earning tons of money, thousands of millions of dollars a year net after taxes and expenses. That's wonderful. I don't begrudge them that at all. But I do begrudge it if that's being done at the expense of measures that could be taken to alleviate real problems that they see every day. I mean they see the problems. Both of these railways have conceded that there were big congestion problems. I don't buy the claims that, you know, the traffic has been increased this year; the weather has been harsh this year; we've delivered more cars than we did last year. All of that. We hear that all the time.

But like I say, when you drill down to the granular level on the level of service investigation, you find out that things could have been done.

I know the Agency has been very reluctant to interfere with management decisions of railways, but when those management decisions are affecting the ability of Canadian shippers to get their product to market and compete in the international marketplace, then I think the railways are playing a bit of a dangerous game, because that begins to cry out for the Agency to micromanage or at least get involved in issues like car supply, the allocation of crews, the allocation of power.

You know, a railway can always point to certain statistics, and claim that they've done a marvellous job, but the congestion issues speak for themselves.

So I see things being done, but the blunt instrument of an embargo and denying permits, it necessarily puts railways in the position of being the regulator of National Transportation Policy. They should be the compliers of National Transportation Policy. And they should be doing everything they can to make sure that that system works.

THE CHAIRMAN: Okay. Thank you.

Question and answer session with FMA

MR. HUME: I should add something. I've been remiss. I should have indicated that Mr. Ballantyne, the president of FMA, is regrettably unable to attend today because of a conflict and he's asked us to represent the association and sends his regrets.

THE CHAIRMAN: Okay. Thank you. We assumed you were here upon instruction, but thank you. It would have been a little unusual otherwise.

MR. HUME: Lawyers always act on instructions.

THE CHAIRMAN: Lawyers always act on instructions so say the lawyers. Thank you, counsel for the FMA.

We will now move as Ms. Evans and Mr. Hume clear the table to the final presentations of the day. We have three shipper associations working in the agriculture space that will be presenting as a panel, so you can come forward as our colleagues leave the table.

And the panel will of course leave it to the presenters to divide up the time, but consistent with the way we've been running the day, I think what we'll do. We have about two hours left on the clock. I don't know how long you're planning to present collectively, but if you could to the extent you were planning to go that long keep it to about an hour and a half between the three of you, that will give us time to confer one last time and prepare questions for you. Go ahead.

PRESENTATION BY WGEA, COPA, AND PULSE CANADA:

MR. SOBKOWICH: Thanks members of the Agency. Thanks for inviting us to speak before you. I'm Wade Sobkowich with the Western Grain Elevator Association. And to my right, to my immediate right is Chris Vervaet with

the Canadian Oilseed Processors Association, and to my far right is Greg Northey with Pulse Canada. And to my left is Casey McCawley with Parrish & Heimbecker.

Casey is here to help us answer questions as a member of the Western Grain Elevator Association, a member of Pulse Canada, and a member of the affiliate organization to COPA, The Canola Council.

So with your permission I'll begin. I think the combined total of our opening comments is close to 25, 30 minutes, and then we'll be available for your questions. Thanks.

Since approximately the end of October rail service to the North Shore and Vancouver has been problematic. It ebbed and flowed but generally worsened until the end of December 2018 beginning of January 2019. Terminals on the North Shore were out of cars much of the time. When I speak about "terminals" in my presentation I'm speaking about grain terminals.

In many instances they received only partial trains and were often congested with empties, not being lifted in a timely way. For the month of December average vessel wait time in Vancouver was 19 and a half days which was higher than every other

month since the beginning of the 2014, '15 crop year, other than February of 2018 which averaged 19 point 6 days, so average vessel days is about 14. So we were seeing them up in the 19 and a half days on average.

Average daily costs for a Panamax vessel on demurrage is approximately 13 and a half thousand dollars per day. Costs incurred by WGEA members for vessel demurrage, contract extension penalties, and railway hold charges in the last part of October, November, and December totalled 2.825 [verbatim] million dollars. In light of the significant accumulative penalties, lost opportunities, market damage, and demurrage caused by North Shore service failures, certain grain companies have had no choice but to restrict and reduce otherwise available export sales.

Sorry did I say 2 million? I meant 7.825 million.

While those most severely impacted were shippers serviced by CN on the North Shore, there have been some last mile service issues with CP on the South Shore. We believe many of these challenges were consequences related to interchanges from CN to CP. However the South Shore has not been impacted

to the degree experienced on the North Shore.

Average grain unloads for the Port of Vancouver through this time frame are above last year's total, representing an incremental 6,066 hopper cars; however, we would caution the Agency against using past volume the absolute numbers of unloads as a benchmark of acceptable service levels. Grain companies base their businesses on railcars ordered, committed, and confirmed. And market factors are different from year to year. In addition all port terminals have moved to seven-day operations in Vancouver with the expectation that service levels would improve. As a result historical grain tonnes moved in and of itself is not the proper measure of adequacy and service.

It should be also emphasized that the issue is not on the vessel loading side and has nothing to do with grain terminals' inability to load vessels in the wind or the rain. Vancouver bulk grain terminal operators state unequivocally that there has not been one instance in the last three months and indeed in many years that we can recall where they have ceased the unloading of railcars because the facility was too full of grain due to inability to load in the rain.

In fact the opposite is true as of shipping week

number 24, Vancouver terminals are 79 per cent full to working capacity and 55 per cent full to licensed capacity. North Shore terminals have been operating hand to mouth and getting the right grain to the right vessels.

While loading in the rain remains an issue it's not connected to railcar unloading. Most Vancouver terminals have invested heavily in new vessel loading equipment that allows them the ability to load more grain on vessels when the weather is favourable.

The issue is not 24/7 operations at port terminals, at least not port grain terminals. All five terminals represented by the WGEA have staffed seven days per week since the beginning of October 2018 and some for much longer. Not all terminals are currently staffing for the graveyard shift, however some are. And all terminals have worked whatever overtime has been required for unloading railcars and loading vessels including four-hour work extensions and working on weekends. This was done to ensure all spotted railcars are unloaded and to ensure they are not contributing to the backlog in the grain supply chain.

We reviewed the average daily loads on CN not moving for 48 plus hours for the period of August to

December this year versus last year. The data shows that while 2018, '19 performance was similar to last year through the first three and a half months, it began to diverge in mid-November reaching as high as 1,400 average daily loads not moving for 48 plus hours. That's 1,400 average daily loads not moving for 48 plus hours.

In some cases grain cars have been sitting in Thornton yard for up to 20 or more days before they ultimately make their way to the terminal for unloading. Normally when a country elevator loads a train and it gets picked up by a railway they expect it -- depending on where the elevator is in the Prairies -- they expect it to be spotted for unloading within three to five days. So a 20-day timeline where cars are sitting in Thornton yard is extreme.

Port terminals out of car time represents the total number of hours terminal elevator facilities are open and staffed and the corresponding number of hours that terminals have no railcars available to load expressed as a percentage.

On average port grain terminals have been out of cars 11.84 per cent of the time over October, November, December, and January. However in

shipping weeks 18 to 24 out of car time on the North Shore was closer to 20 per cent and was as high as 33 per cent for one terminal in particular. This is time where they are staffed, they are waiting for railcars, and the railcars are not arriving.

Origin dwell times tell a similar story. Dwell performance for CN was much the same this year as last year until mid-November when dwell times began to increase significantly peaking in early-December at materially higher levels than what were seen last year.

For instance, CN's average origin dwell time in the month of December this year was 67 hours compared to 45 hours last year which is a 50 per cent increase.

Dwell times have declined through December and are now below that of last year. Although January of 2018 saw some of CN's worst service performance of the year which lasted until March, so it's difficult to compare last year's performance when we're talking about dwell times versus this year since last year's performance was very poor.

Interchange issues. There continues to be congestions with the BN and CN interchanges and traffic routing over the New Westminster or SRY

located container reload facilities. Furthermore we understand that the CN event over the past two months has put stress on the co-production agreement in the Vancouver corridor, an agreement which normally does create significant efficiencies for grain shippers and both railways.

In looking a little further back in the logistics chain, we believe the continuation of the historical practise of breaking up trains is part of the issue. CN will break up a hundred car trains from the country elevator networks to assemble longer 150 to 170 car trains from two or more stations.

It's important to note that grain companies source and ship grain from the country aligned to a specific sale and hence to a specific vessel to be loaded at port. The problem with the breaking up of trains is that components of shipments are left at various locations between origin and destination. When train segments are left in CN's rail yards, shipments then arrive out of sequence, grain grades and quality blends arrive in the wrong order, and the terminal facility is forced to hold product and vessels while waiting for the rest of the product to arrive.

The issue is compounded when they hand over a

manifest train to CP that cannot be fully accommodated by the interchange, and the manifest train then needs to be broken up again differently further compounding the logistical issues when trying to bring in the right grain at the right time in the right order for the right vessel.

The embargo process is not transparent and in the WGEA's submission the use of embargoes is a device to deny rail service to shippers, is a violation by the railways of their common carrier obligations under the *Canada Transportation Act*. The common carrier obligations are the foundation of shipper protection against monopolistic and self-interested behaviour wielded as a result of the fundamental imbalance of the power between shipper and railways.

Moreover we believe the Agency should utilize the mandated contingency plan reports for winter service provided by the railways in the fall of 2018 and determine if any of the railways have provided false or misleading information regarding their intended contingency plans in the event of winter service problems.

So I have a concluding statement. Although CN service in the Vancouver area has improved within the month of January it remains shy of meeting planned

service and customer needs. This is the second year in a row that CN service has been reported by shippers as being insufficient. With significant negative impacts with shipper operations directly resulting in costs and penalties. Data from the 2017, '18 crop year shows that CN's failure last year was in many respects comparable to the rail transportation crisis of 2013, '14. While we can speculate on the causes behind service failures and report on what grain shippers experience and observe, the reality is that there is a lack of clarity for shippers on what exactly is causing the issue. For example, a shipper doesn't know the reason a train was broken up in Edmonton and then half the railcars were left behind. We just know that it happened and the cars did not make it in time to hit a vessel that had been planned and expected.

Canada's grain industry relies on efficient rail service to maintain its position in global agricultural markets. Failure to meet our contractual commitments harms Canada's reputation with international buyers.

Almost every sector wants to increase exports through the Port of Vancouver. And the grain sector will have G3 Terminal and Fraser Grain Terminal

coming online as early as 2020. Vancouver is such a key part of the system and capacity is so tight that it needs to have much better overall oversight and management to ensure fluidity and to ensure that decisions on movement are not made based on self-serving commercial interests.

We believe this investigation is consistent with the rationale for the inclusion of an own motion option in the recently passed legislation and we have confidence that the Agency has access to the right tools to identify the causes of the problem which we hope will in turn both identify solutions for the current circumstance and provide experience for inclusion in future contingency planning.

The WGEA encourages the Agency to actively engage with the AG Transport Coalition and the Grain Monitoring Program in its spectrum of sources.

Thanks

THE CHAIRMAN: Thank you.

MR. VERVAET: Thanks very much. My name is Chris Vervaet. I am the executive director of the Canadian Oilseed Processors Association. My remarks will be relatively brief.

On behalf of COPA I welcome the opportunity to present at this oral hearing and contribute to the

CTA's investigation into possible freight rail service issues in the Vancouver area.

As Wade said in his introduction COPA works in partnership and is a sister organization of the Canola Council of Canada, and we represent the interests of the oilseed processors in the country. We represent the companies that own and operate 14 processing facilities, spanning every province from Alberta through Quebec.

So essentially in many of my remarks and my presentations we are the value added segments or one of the main value added segments of the grains and oilseed sector.

The facilities across the country process canola and soy beans grown by Canadian farmers into value-added products for the food processing industry, which is vegetable oil; into the animal feed industry, which is the protein meal, the canola meal what was mentioned in some of the embargoes; and also biofuels, which is we have our vegetable oil used for biodiesel production.

Our industry's success is predicated on the ability to trade into the global marketplace. In fact we have over 80 per cent of our processed products, the oil and the meal, that are moved by rail

to access continental and offshore market. Efficient rail logistic are paramount to get our products to these markets in a reliable and timely fashion.

So I just want to provide a bit of an introduction in terms of COPA and our supply chain and our business.

During the November, December 2018 time period poor and inconsistent rail service in the Vancouver area did create logistical challenges for oilseed processors. The most significant service challenges were caused by congestion at interchange locations, specifically where CN originating traffic switches to other carriers which COPA members rely upon to move products to market destinations in the United States or to final unload positions in Vancouver.

Asper the testimony from many of the other shippers here today, Vancouver is one of the most important interchange locations for oilseed processors, with combined oil and meal shipments exceeding 4,000 cars in recent years.

In particular, switching traffic in Vancouver is critical to access the lucrative California market whose commercial dairy operations consume more than

1 million tonnes of canola meal each year. To put this into context this represents approximately 25 per cent of our industry's total canola meal production every year, which is valued at nearly 500 million dollars.

Disruptions in rail service such as congestion and delays in switching cars at Vancouver places this important market at risk. By way of example one COPA member reported a significant rail service disruption in early December 2018 concerning a unit train of canola meal shipped from the crush facility to a buyer in California.

The shipment originated on CN utilizing the New Westminster interchange to switch traffic onto BNSF for movement to California. Issues at the New Westminster interchange resulted in the following: There was a seven day delay or dwell in cars being lifted from the crush facility from the processing facility which is six days more than the original commitment to lift. Typically in what was committed to lift was 24 to 36 hours, but we didn't get that car lifted until seven days later.

It also resulted in 16 day total outbound transit time, which represents a hundred per cent increase from normal transit time to final

destination. This large variability in cycle time poses a risk of needing to increase the size of the hopper fleet in order to maintain production at the plant and meet contract obligations. Adding a hundred cars to the hopper fleet would cost approximately \$600,000 a year.

So maybe just a point of clarity. Oilseed processors lease or own nearly a hundred per cent of their hopper fleets and do own a hundred per cent of their fleet to ship vegetable oil.

Risks of other indirect and future costs must also be considered when railcars are added to the fleet due to poor and inconsistent transit times including extra track space and storage should service change or improve going forward.

The member took immediate measures to avoid the New Westminster interchange on future shipments where possible due to the expectation of these increased transit and cycle times.

Probably the most significant long-term cost to any member and really the entire industry when there is inconsistent rail service is the risk of losing customers due to an inability to supply products in a consistent and timely manner.

In conclusion recently we have heard from

members that service in the Vancouver area is starting to improve, but we also continue to hear concerns about consistency and reliability. Our level of concern is heightened with the knowledge that this is the second year in a row that service has been reported by shippers as being insufficient, not to mention the rail transportation crisis of 2013, '14.

These events cost our industry 120 million dollars and 250 million dollars in lost production respectively. These are simply costs that our industry cannot continue to absorb. Thank you.

MR. NORTHEY: Thank you. Mr. Chair and members of the panel for the opportunity to participate in this hearing. My apologies, I'm battling a bit of a cold so I may be a bit nasally.

Pulse Canada is the national industry association that represents over 35,000 growers and 132 processors and exporters and shippers of peas, lentils, beans, chickpeas, and specialty crops.

So our markets are approximately 3.5 billion dollars a year and we represent -- we're the largest exporter of peas and lentils in the world. We have a one-third global trade in those products. A lot of our products go through Vancouver, the majority

in fact, and we use facilities such as Ray-Mont. You heard from Mr. Raymond.

Although we didn't ask for this investigation, Pulse Canada strongly supported the amendment to the *Canada Transportation Act* that provided the Agency with the ability to investigate possible freight rail service issues of its own motion.

It has consistently been our belief that to respond to emerging issues in the rail network in a timely and effective way while also alleviating the burden from individual shippers to make complaints the Agency should carry out its regulatory responsibilities of its own motion.

In addition to that Pulse Canada's view is that systemic rail service investigations must be data driven and evidence based. Effective decision making is best facilitated by having access to the best available information on the overall performance of the rail network in times of disruption. In addition to information related to specific commodities or shippers, a full picture of the network is necessary at a granular level.

Equally important is ensuring that expert and technical advice is available to analyze what is and what has happened in the network to ensure the

questions being imposed by an investigation are effectively answered.

As you are aware through the submission from WGEA the grain sector has two important sources of detailed information on the grain handling and transportation system through the Grain Monitoring Program and the Ag Transport Coalition.

The Grain Monitoring Program has been in place for close to 20 years. It came in place when the maximum revenue entitlement was brought in. And the Ag Transport Coalition was an industry initiative that started after the winter of 2013, '14 to provide additional oversight on the performance of the rail system. As you remember that was a particularly difficult year for rail service.

During that particularly difficult winter the grain industry realized that it was necessary to supplement qualitative descriptions of rail service issues with quantitative numbers in analysis. This experience made it clear that knowing when and why the rail network was beginning to experience an issue would allow our sector to better understand and communicate what was happening and ideally allow all supply chain partners to better manage issues before they resulted in a crisis.

I will now attempt to utilize some of that data and if you'll indulge me I'll have some graphs to show you to utilize the data our sector collects through the Ag Transport Coalition to enhance your view of network performance during the time period in question and to provide some insight that may be relevant to your investigation into possible rail service issues in the Vancouver area.

First I will focus on what the grain sector was experiencing with the rail networking near realtime through the metrics contained in the daily pipeline report that we publish. It's a public report and we measure these metrics on a daily basis. They provide information and data on the status of the rail network, the grain pipelines for the ATC shipper members as of midnight the previous day.

It is important to note that these numbers represent the movement of grain for shippers participating in the Ag Transport Coalition, which represents approximately 90 per cent of grain movement in Western Canada.

As Wade mentioned, and I'll just move through this briefly because Wade did mention them, a key metric we track on a daily basis -- and so we would have been seeing these numbers as they were happening

through the fall, although we have them through early January -- is the loaded cars not moving for 48 plus hours.

And now we use this as a key measure of whether congestion is happening in our pipelines. So it's a comparison of average daily loads on CN for the period August to December versus last year specifically for the Vancouver corridor. You'll see that last year the numbers were also tracking up, and then it hit the peak and then it dropped last year because CN reset their network at that point last year.

But you can see that we were seeing a spike in congestion, and it was sort of raising flags that there could be -- a spike in 48 plus hours not moving -- and it was raising some red flags that congestion may have been happening.

The next one just to give an idea of what we were seeing at the time was origin dwell time. The chart you see here is visualization of what Wade described earlier for higher dwell times for shipments in the Vancouver pipeline. It was clear in mid to late November that congestion was building or at least that origin dwell time was building, so it gave some sense that there was potentially

congestion building. And it was -- that congestion was impacting metrics like this that are important for our sector.

Eventually what we were seeing was confirmed by CN when they stated on December 4th that they were "experiencing service issues in the Greater Vancouver area because of high levels of railcars, loads and empties for local customers/terminals as well as for the New Westminster interchange."

It was also the time that CN stated, "The number of railcars has reached unprecedented levels that are preventing us from providing local and interchange service."

So I know Forrest mentioned this, but I'll just get it on the record again, and that "This situation has forced us to take extreme measures such as shutting down the pipeline to New Westminster interchange with the use of permits starting December 5th, as well as the use of permits to a few local terminals as of December 1st."

This statement provided increased clarity of what we were seeing in the metrics and were hearing qualitatively from members. It was also at this point where further embargoes were placed on specific transloaders by CP.

In a statement to shippers CP said, "Due to congestion in the CN interchange serving the North Shore in Vancouver at the interchange of New Westminster, BC, CP will be issuing an embargo application for specific consignees and commodities in manifest service in an effort to proactively manage the traffic into this congested area."

This congestion and the response it had, had a very specific impact on Pulse and special crop shippers. Pulse and special crops are the most multi-modal grain crop in Western Canada. Forty per cent of the sector's exports through Vancouver are containerized.

Pulse crops predominantly move through manifest service and small car blocks to Vancouver where they're transloaded in a facility like Ray-Mont's and then others from hopper cars or domestic containers into 20 foot ocean containers and placed on a container ship for export.

This supply chain can be complicated, and I think you heard that from Charles earlier, to coordinate due to the various equipment types and ocean carriers and booking of 20 foot containers and officially managing the logistics of this supply chain drives the competitiveness of our sector.

It's absolutely a hundred per cent key to our competitiveness of getting crops to market.

Predictable and reliable rail service is central to ensuring that these supply chains run smoothly. Some of the transloaders that shippers rely on to make sure we can run smoothly were directly embargoed and from statements from the railways the congestion in general appeared to be specifically impacting manifest service and specific rail yards that handle it.

Through the Ag Transport Coalition information was collected for the Vancouver corridor for traffic destined for these transloaders and local receivers. And I'm going to go through some charts. They'll give a view on some key metrics for those movements to provide you with insight on what shippers sending product to these destinations experienced in the Vancouver corridor since November.

And so there is various views of all these things, but I'm just going to take a few and we can provide more for written submission if you desire.

The first chart shows the destination dwell times for traffic to non-bulk terminals at Vancouver for all railways. It's shown for the past three years. The following is notable from this chart:

Dwell times for this traffic have been on a consistent upward trajectory since early November 2018. Dwell times in January 2019 have reached a three-year high for all serving railways averaging 124 hours 5.25 days. Performance is generally as bad or worse than seen in '17, '18, which was characterized by extremely poor service at least from this metric. Obviously one year measuring the health of a network you need to look at a broader view.

The next metric I will look at is transit time for traffic destined for transloaders. Within the ATC data there are four principal corridors for ATC shippers that account for the majority of railcar movements by shippers moving Pulse and special crops to Vancouver for transloading operations. I will not specify the regions for the sake of confidentiality, but as you can see in this sample region here, and I have the other ones available to see but I won't go through them now, December and January saw an increase in transit times. And again this is compared against the previous two years. And so the variability was quite or at least the reliability and predictability within the supply chains the shippers were seeing was quite high this year over that time period.

And I'll just quickly show you a table that shows the other regions and what we saw. So this table shows all the regions and the pattern is consistent for all regions with traffic destined to CN-served facilities whether originated by CN or CP. There were increased transit times in November to January period and they were significant. So managing these transit times was obviously one of the biggest challenges for shippers during that time.

The last metric I will present is railcar trip time. So trip time, which includes origin dwell, transit time, and destination dwell in a single metric. One of the interesting features of trip time is that it allows us to see how trip time varies depending on the combination of origin and destination railway. So that can obviously change depending on what's happening in Vancouver and the performance being changed.

Now trip time is also an important metric for shippers as it represents the total time of their shipment which is a key to planning logistics. So it's not just origin, dwell time, or transit time, for instance. You need to know how long that shipment is going to take because you've booked your vessel, you need to get it there on time.

So these are average trip times. To start, the following chart shows trip times from CN and CP to non-bulk terminals to Vancouver for the months August to January.

Some key points to note here: Average trip times for both CN and CP originated traffic to Vancouver non-bulk terminals have risen steadily since the beginning of the grain year. CP trip times average 14 to 15 days in the August to October time period and have risen steadily since November beginning of January, nearly 25 days on average.

CN trip times average 10 to 11 days in the August, September time period and have risen consistently each month peaking in January at 19.3 days, nearly double performance in the early part of the year.

The next chart looks at CN specifically and I would note the following points: Trip time increases have been seen equally for traffic terminated by CN and traffic interchanged to SRY for delivery to receivers. This appears to be consistent with an environment where congestion exists in CN's Thornton yard and the inability to switch traffic arriving on manifest trains in a timely manner.

So we're not making necessarily judgments on why this was happening, just giving you a sense of what was happening.

So we have a series of slides for CP originated traffic. I'll just do this one in the interest of time. For CP originated traffic the story is much the same. Performances deteriorated through the year regardless of who the traffic was destined to in Vancouver.

So I'll conclude. I'd like to reiterate that just a summation that predictable and reliable rail service is central to ensuring the competitiveness and economic growth of our sector. As many of these metrics have demonstrated many shippers have faced and continue to face significant variability and uncertainty shipping through the Vancouver corridor in the period in question. The embargoes and permitting systems add an extra layer of unpredictability for these shippers who already work with transloaders as Charles had mentioned to manage their traffic flows through a terminal authorization process that is specific to those transloaders.

The congestion in Vancouver and the systems put in place by the railways to manage it have had very real consequences for shippers resulting in the

voiding of sales contracts due to shipments not making it to container vessels on time, contract non-performance claims when the buyer didn't get their product, and demurrage costs across the supply chain can vary depending on equipment and what's happening.

We look forward to a result from this investigation that addresses any systematic issues that have caused service to deteriorate and the identification of long-term solutions that will ensure predictable and reliable service for shippers utilizing manifest service and transloaders in Vancouver going forward. Thank you.

THE CHAIRMAN: Am I to understand that concludes the presentations? Okay. Thank you. It is 20 to 4:00. We will reconvene right at 4:00. That gives people a bit of a chance to stretch their legs, pose questions, and that will be the last part of the day.

MR. HODSON: Mr. Chairman, if I may.

THE CHAIRMAN: Mr. Hodson, yes.

MR. HODSON: I presume these slides were not provided to the inquiry officer. We certainly haven't. And I'm wondering in fairness if we could get a copy of a full set as well as where they're from and what else is with them and the supporting information and data.

THE CHAIRMAN: So of course you'll get a copy of all the slides, and I'll just say more generally any information which is on the record and considered by the Agency in making its decision will be provided to all participants. That's the way that we're approaching this. If information is provided in an aggregated format, for example, in the report then that's what's made public.

But of course you will get copies of these slides if they are placed before -- well they've been placed before the Agency in this hearing so you'll get copies of these slides and any other information that the shipper association want to place before us.

MR. HODSON: And we will get those now or I'm just wondering about timing.

THE CHAIRMAN: Let me turn that back to our presenters. Do you have copies of the slides with you that you can share? Or can you share them electronically? If you can share them electronically with the registrar they'll be provided to the railway companies and other participants. Can you do that?

MR. NORTHEY: Yes.

THE CHAIRMAN: Thank you. That's it, Mr. Hodson?

MR. HODSON: Yes.

THE CHAIRMAN: Thank you. We'll be back at 4 o'clock.

THE REGISTRAR: All rise.

(PROCEEDINGS ADJOURNED AT 3:42 P.M.)

(PROCEEDINGS RECONVENED AT 4:08 P.M.)

THE REGISTRAR: All rise. Please be seated.

QUESTION AND ANSWER SESSION WITH WGEA, COPA, & PULSE CANADA:

THE CHAIRMAN: Yes. So a few questions for each of you. What I'm going to do is go through all of the questions and some of you may want to contribute to questions posed to others, so I'll go through the full list then we'll turn to you to respond. Mr. Sobkowich, I want to talk to you a little bit about your comment on the terminals. You indicated that the terminals

that are members of the WGEA are now operating on seven days a week, some are on a 24-hour schedule, others aren't but may be moving towards it. Could you clarify. Are they all in fact moving towards a 24/7 schedule?

The second clarification concerns a reference you made to what you understood to be stress on the co-production agreement between CN and CP. So the Agency would be interested in understanding what leads you to that conclusion, if that agreement is under stress, and what the impact of that purported stress is on WGEA members.

And then the third question stemming from your presentation relates to communication between the railway companies and the terminals who are members of your association. Could you elaborate for us a little bit on the sort of information that the terminal operators receive, when they receive it, when there are issues potentially around congestion and the delivery of traffic. Mr.

Vervaeet, from your presentation you have provided information -- provided some broad information and then some fairly specific information in respect of one particular shipper. So I guess the question would be two questions really related to shippers'

experiences.

One is, is there to your knowledge a difference in the experience of your members who are shipping meal versus oil? And secondly, do you have additional information on the experiences of your members either at an individual member level or in the aggregate that you could provide in the context of this investigation?

And then Mr. Northey, a couple of questions largely related to the graphics that you provided. You provided a graphic on origin dwell time, so the question would be, you know, is the suggestion, is the implication that any increases in origin dwell time stem primarily from issues in Vancouver since that's the focus of this particular investigation?

You provided some information on increases in the average trip time. The panel recalls that the graphed out with increases this year from the summer through -- last year from the summer through December or perhaps through January, do you have similar data, can you speak to similar data through previous years? So did the pattern tend to be similar in previous years?

And finally in your presentation you pointed to issues around congestion as you understand it at

Thornton yard. So a bit of a similar question for you on that to the one I posed earlier with respect to the co-production agreement. What leads you to the understanding that there are congestion issues at Thornton yard and what has been the impact of that congestion on your members? And are you aware of any similar issues in other parts of the rail network in the Vancouver area?

So those are our questions. Over to the four of you to respond.

MR. SOBKOWICH: Okay. Thanks very much for those questions, and I'll start by answering them in the order that you asked them, and I'll ask Casey or any of the other fellows up here to help me if I've missed anything.

Your first question on clarifying 24/7 operations, terminals are working seven days but they're not working 24 hours necessarily, what's actually going on there.

The terminals are prepared to staff 24/7 if they're getting railcars 24/7. And so every terminal has made the commitment in principle that they will staff 24/7 if it becomes necessary. It's not always necessary if you're not getting railcars for the graveyard shift, for example, if you're not expecting any railcars.

Communications happen between the railway and the terminal on a daily basis, so you ask are you bringing, you know, that train in? No, it's not coming in until tomorrow. So in that case you're not going to staff the graveyard shift just to spend money not to unload railcars, right? So, but that being said, terminals want to unload cars when they're presented. So there isn't one instance that we're aware of where the railway has said, "We're bringing you railcars. Yeah, I know you're not planning on staffing the graveyard shift, but they're coming in." The terminal will staff that and they will be there to unload those cars.

So whether they're technically staffing 24 hours on that particular day or not, the important point we wanted to communicate is that they're all prepared to staff if the railcars are there. And with proper advanced communication from the railway on bringing in the railcars, they will be there to unload the cars. They need to unload those cars. They have vessels that are waiting and that they're paying demurrage on.

THE CHAIRMAN: Just a quick follow-up on that, and then any elaboration. Can you be a little more specific on what proper advance notice would look like for the

terminals in order to be able to staff up in response to a planned delivery?

MR. VERVAET: Sure. I think as Wade was saying there is daily communication with the railways, so if there is going to be cars delivered on a weekend there is a plan, you know, for the weekend. We'll have -- I cannot think of an example speaking strictly for our terminal where the railways wanted to deliver cars and we did not have labour to unload the cars.

THE CHAIRMAN: How long would you need to know in advance though. Assuming, I mean I don't know whether or not your terminal is staffed 24/7 or if it's --

Sorry, when mine is on you can't turn yours on. I'll be done in a sec. It's an extra little feature I get.

So when we hear that with proper notice you can have folks available, you can have workers ready to unload even if normally you're not staffed at that time, how long in advance would you need to know in order to be able to be staffed and receive the cars?

MR. VERVAET: A day.

THE CHAIRMAN: Okay. Thank you.

MR. SOBKOWICH: Just a follow-up on that. We have workers that want to work. They want the overtime. They want to get there. It's not difficult to rally up the

workers to get them to unload the cars.

Your second question was stress on the co-pro agreement and what impact that seems to have had from our perspective. This is anecdotal because we don't really know other than what we've been hearing. But the co-pro agreement is supposed to allow the fluidity of movement from CN to CP, CP to CN, servicing the North Shore, servicing the South Shore. And, however, if one railway wants to turn their assets quicker and they want to get those empty cars pulled and they want to get, you know, maybe they have more of their own originated traffic that's waiting in their own yard they may give preferential treatment to their own railcars when it comes to bringing them into terminals either on the North Shore on the South Shore, in this case the North Shore.

So then what ends up happening is you end up with a little bit of -- so now you have the South Shore situation and you may have CN that is missing the windows that they have to interchange traffic on the South Shore, so you end up with more CP traffic originated traffic going to the South Shore. So optically it ends up looking like the co-pro isn't working very good because you end up with more of

CN -- more CN cars going to the North Shore terminals and more CP cars going to the South Shore terminals even though each company has a network of grain elevators in the Prairies and they originate grain both from CN and CP. I think that's what I mean.

THE CHAIRMAN: Okay. So thank you. So I just want to be clear though that we're understanding. So your suggestion is that the co-pro agreement which is intended to improve fluidity that sometimes each railway company's interest in providing service first and foremost to their own cars may be intention with the co-pro agreement, am I understanding you correctly?

MR. SOBKOWICH: That's what it appears to be like sometimes.

And then the third question you had was on communication, information that terminals receive. Could you just repeat that question one more time if you don't mind.

THE CHAIRMAN: Sure. So generally I think we're interested in the communication between the railway companies and the terminals. It's come up several times. Specifically could you describe how often that communication takes place, what sort of information the terminal operators get, and when they receive information regarding things like congestion issues and potential impact on service.

MR. SOBKOWICH: I'm going to ask Casey to answer that.

MR. MCCAWLEY: Maybe I'll start to answer that question, sir, at the higher end of the food chain.

I think most terminal operators make their sales program based on their weekly unloads of what we expect to be weekly unloads. For us I know that would be sort of the limiting factor for our sales program. It isn't buying grain in the country, it is how many railcars are we going to be receiving each week. We set our sales program three months in advance around the world faces that. So there is a lot of dialogue at a high level with the railways, what does that weekly program look like? So that becomes sort of the target. We all sort of agree that we're going to strive to get there.

So the judgment that we make as a grain company is we have to go out there and sell to that target. And when we make those sales now we're committed. We're scheduling vessels; we're chartering vessels; we have contractual arrangements with buyers around the world.

Now what happens when we fall behind that sales program? You know, it becomes very difficult. There is a lot of penalties associated with being unable to get the grain there. So we work, you know,

in partnership with the railways to try and solve these problems, but if we set the bar, you know, we both sort of agree is attainable, and then we're unable to get those weekly unloads. How do we manage that?

And throughout this process at an operations level it's daily phone calls several times a day with the operations people to know what's happening with this train. Why this train is coming out of sequence. Why that train was split up. And, you know, what does it look like for the week?

So it's a high level target is set and then it's managed daily.

THE CHAIRMAN: Thank you.

MR. VERVAET: So your question was in regards to shippers' experience and whether there was a difference between oil and meal shipments. So our key issue in Vancouver is the New Westminster interchange. That's really where the issues for oilseed processors resulted. That interchange is predominantly used for moving our meal traffic and our meal traffic specifically to that California market that I was describing. We don't move a lot of oil through that interchange. There is some shipments that do move through that interchange to access those market

destinations in the Western US, but it is predominantly a meal issue.

We do ship considerable amounts of oil, though, to Vancouver to access offshore markets primarily the China market and hopefully in the future the Japanese market with the new trade agreement signed and the Trans-Pacific Partnership. We have not heard anything from our members when it comes to oil movements to access our FOBing and terminal locations to access the offshore markets. So the answer is it's primarily meal issue when it comes to the interchange location.

Regarding your other question on other data, I'm still in contact with members, so I will have to defer, and if there is other information that I do receive I'm more than happy to provide in a supplemental submission to the CTA.

MR. NORTHEY: So your first question it was around origin, correct, and whether it was related to an issue in Vancouver.

So the chart I showed was for origins that were destined for Vancouver. So, you know, there are several things that can impact origin dwell, it can be a track out, it could be anything. The railways will manage it depending on how they manage their

pipelines, and both railways may manage it slightly different. And whether they allow things to dwell longer in the country to make sure they get a straight shot into Vancouver and not have it dwell in Vancouver.

So we just use it as a lead indicator of sort of network health. So if origin dwell is not at the state that you would expect, you know, that you would expect through average or whatever, it triggers to us that okay, maybe something is going on. So but you need more -- you need to do more analysis, more data to actually figure out why is that happening.

So the second question was related to trip time, correct, trip time graph where I just had the one year? So yeah, we have that -- just to clarify, all the charts that I was showing were based on railway data. We purchase railway data from Railinc which is a subsidiary of the AAR in the United States, so it's all railway car location messaging data, and we've developed systems to be able to analyze it. So we have data going back to essentially in full data sets to '15, '16. So we produced that. So, yeah, we do have all those trip time measurements for various corridors, very origin-destination pairs in aggregate.

And the third question --

THE CHAIRMAN: Sorry, just on that one. I just have a second question. Do you know offhand -- I mean we'll be interested in seeing it when you submit it, but do you know offhand if the pattern is similar to the pattern you showed us, namely that trip times tend to go up from the summer to December January?

MR. NORTHEY: Yes. So I just have it here. So they're higher than they were last year. And it depends on the railway. But the pattern of them increasing as you move into the winter months holds the same. I mean that's generally with any measures we collect. You tend to see -- you know, everyone is expecting problems as winter comes to manage your pipelines.

So the pattern is the same but there are some differences but we'll do an analysis of that and have that submitted to you.

And a third one was around Thornton yard and sort of the -- so obviously CN would be able to comment much more clearly on what Thornton yard means to them as far as their operations in the Vancouver area, but, you know, when their bulletins came out and they focused on this idea that they were seeing issues around manifest service and CP sort of added that in their statements. The assumption is that

because Thornton yard seems to be an important yard for them in the Vancouver area to take blocks and move trains and manifest and start to move them around Vancouver, the assumption was that that was a particular area where a lot of the congestion problems that they had flagged in their bulletin were happening, and that's why we would make that assumption to the Thornton yard.

Obviously it could spread to other parts of other areas where they were marshalling trains or whatever in the Vancouver area, but Thornton yard at least in our assumption, it's just an assumption, was that that was where some problems were occurring.

THE CHAIRMAN: Okay. Thank you very much. You've responded to all of our questions.

So ladies and gentleman this brings us to the conclusion of the first day of this oral hearing. We will reconvene tomorrow morning at 9:00 a.m.

Again tomorrow we'll hear from one additional shipper association, we'll then hear from the Port of Vancouver. And then each of the three railway companies in the same order that they appeared today will have an opportunity to make reply remarks and to respond to questions that we posed today where they've been able to gather information that allows

Question and answer session with WGEA, COPA, and Pulse Canada

them to reply tomorrow.

So we will see most of you if not all of you tomorrow morning at 9:00 a.m.

Thank you very much.

(PROCEEDINGS ADJOURNED AT 4:27 P.M.)

I, **Sue Olsen**, Official Reporter in the Province
of British Columbia, Canada, **BCSRA No.354**
do hereby certify:

Reporter's Certification

That the proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed, and the same is a true and correct and complete transcript of said proceedings to the best of my skill and ability.

IN WITNESS WHEREOF, I have hereunto subscribed my name and seal this 5th day of February, 2019.

Sue Olsen, Official Reporter,
All-Star Reporting Inc.