

January 30, 2019

Vancouver, B.C.

(PROCEEDINGS COMMENCED AT 9:00 AM)

MS. DESNOYERS: Good morning everyone. The hearing will begin shortly. Just a few administrative things before we begin.

Interpretation services will be

available throughout the duration of the hearing.

We would like to remind participants that during their oral presentations they should provide a reasonable delay for the interpretation while respecting their allotted presentation time.

Please turn off your cell phones during the proceedings, and please no food in the hearing room. Water and coffee is fine.

Thank you.

MS. DESNOYERS: Order please. All rise.

Please be seated.

## **OPENING REMARKS BY THE CHAIRMAN:**

THE CHAIRMAN: Good morning, ladies and gentlemen. And welcome to the second day of this two-day oral hearing.

This hearing, as I noted yesterday in my opening remarks, constitutes part of the initial information-gathering phase of the Canadian

1                   Transportation Agency's investigation into  
2                   possible rail service issues in the Vancouver  
3                   area.

4                   As we did yesterday, we will be hearing  
5                   from a number of different participants.

6                   Participants will be invited to come forward to  
7                   the presenters' table. We will indicate for each  
8                   of the participants how long, approximately, we  
9                   would like their presentation to be. At the end  
10                  of each presentation the panel will confer  
11                  privately and return with any questions for the  
12                  participant that they'll be invited to respond to  
13                  before we move on to the next participant in the  
14                  hearing.

15                  We, the Agency, would appreciate  
16                  receiving as much information as possible in  
17                  response to our questions here today, but to the  
18                  extent that a participant prefers to offer an  
19                  undertaking to provide information subsequent to  
20                  this hearing because they're not able to provide  
21                  that information today, that's acceptable too. At  
22                  the conclusion of the hearing today I'll indicate  
23                  some timelines for the submission of any of that  
24                  supplemental information and the next steps in the  
25                  investigation process.

1                   In terms of the agenda for today, we'll  
2                   be hearing first from FPAC, the Forest Products  
3                   Association of Canada. The Association will have  
4                   approximately half an hour to make its  
5                   presentation, after which, as I said, we'll step  
6                   out for a few minutes and come back with  
7                   questions. After FPAC we'll be hearing from the  
8                   Port of Vancouver. And following the Port of  
9                   Vancouver we will hear from each of the three  
10                  railway companies, who will have an opportunity to  
11                  provide reply remarks to information and  
12                  submissions that they have heard over the course  
13                  of the last two days, and also to provide any  
14                  information in response to questions posed  
15                  yesterday by the panel that they wish to provide  
16                  today. We'll hear from the railway companies in  
17                  the same order that we heard from them yesterday,  
18                  BNSF, followed by Canadian Pacific, followed by  
19                  CN.

20                  So are there any questions about today's  
21                  agenda before I invite FPAC to come forward?

22                  Good. All right. The representatives  
23                  from FPAC are invited to come and make their  
24                  presentation.

25                  Good morning. If you could just please

1                   indicate for the record, introduce yourselves for  
2                   the record, and then the microphone is yours, the  
3                   floor is yours.

4                   **PRESENTATION BY FOREST PRODUCTS ASSOCIATION OF CANADA:**

5                   MR. NEUHEIMER: Good morning members of the Agency, and  
6                   thanks very much for the opportunity to  
7                   participate in this hearing with you today.

8                   My name is Joel Neuheimer. I'm the vice  
9                   president of international trade, transportation,  
10                  human resources and the corporate secretary at  
11                  FPAC. And I'm joined today by our transportation  
12                  legal counsel, Lucia Stuhldreier, who is with  
13                  McMillan.

14                  We come in search of solutions this  
15                  morning in response to the many FPAC members'  
16                  operations that are being significantly harmed by  
17                  Vancouver area supply chain failures for a second  
18                  year in a row. FPAC is asking the Agency to  
19                  provide a diagnostic of the root causes underlying  
20                  these issues.

21                  For the second year in a row, from early  
22                  December onwards, our members, primarily those  
23                  with operations in Western Canada, have faced  
24                  persistent and extremely difficult circumstances  
25                  getting their products into and through the Port

1                   of Vancouver portion of Canada's supply chain.

2                   They have been told by their rail  
3                   service providers that there is severe congestion  
4                   in this area.

5                   The following types of measures have  
6                   been imposed on our members: Embargoes, with and  
7                   without the possibility of permits; an inadequate  
8                   number of permits, when allowed; restrictions on  
9                   destinations to which they can ship (for example,  
10                  whether they can ship to certain regions in the  
11                  United States. This only happens on certain days  
12                  in these circumstances); and car allocation based  
13                  on high velocity and low velocity lanes.

14                  These measures have had costly impacts  
15                  on our affected members' businesses.

16                  Other challenges identified by our  
17                  membership include: No response or late responses  
18                  to communications; failure to meet car orders or  
19                  permit requests needed to move railcars; and being  
20                  charged demurrage on the cars they cannot ship as  
21                  a result of this.

22                  FPAC members have operations across  
23                  Canada, typically in rural and remote areas  
24                  located hundreds of kilometres away from the  
25                  nearest competing railway. They ship by rail to

1                   destinations across Canada and the United States  
2                   and to ports to go to overseas customers.

3                   Our members manufacture and ship  
4                   primarily pulp, which is a highly perishable  
5                   product, it cannot be stored outside; paper,  
6                   another highly perishable product which cannot be  
7                   stored outside; and wood products.

8                   Forest products move in box cars,  
9                   including pulp and paper, or centrebeams, which is  
10                  the case for most wood products, in manifest  
11                  trains.

12                  In 2017 forest products represented  
13                  10 percent of all goods transported by rail.  
14                  That's over 30 million tonnes, according to the  
15                  Statistics Canada. Our members would like to move  
16                  even more by rail but have not been able to obtain  
17                  rail capacity to do so in many cases.

18                  Given the volumes our members produce  
19                  and need to ship, and the destinations they need  
20                  to ship to, they are dependent on rail. The truck  
21                  mode cannot fill the rail service gap that  
22                  currently exists.

23                  A 350,000 tonne pulp mill would require  
24                  14,000 truck loads annually, or close to 40 empty  
25                  trucks each and every day at the mill, assuming

1                   the mill operates 365 days a year. A 500 million  
2                   board feet sawmill would require some 9,600 empty  
3                   trucks per year, or 40 trucks per day, assuming  
4                   the mill operates five days a week.

5                   While many of our members can and do use  
6                   trucking for some portion of their transportation  
7                   requirements, their businesses remain dependent on  
8                   rail.

9                   The Port of Vancouver has told us that  
10                  it is expecting shipments of containerized lumber,  
11                  pulp and grain to grow in 2019. For breakbulk  
12                  pulp, grain, coal and potash, they're also  
13                  expecting shipments of those products to grow in  
14                  2019. And for lumber they're expecting lumber  
15                  shipments to remain steady.

16                  According to Natural Resources Canada  
17                  and Transport Canada, via their Commodity Supply  
18                  Chain process and discussions that took place as  
19                  part of that process in October and December of  
20                  2018, they are expecting production and shipments  
21                  of forest products to remain steady in the next  
22                  five years, but will slip over time.

23                  FPAC provides regular updates of the  
24                  Commodity Supply Chain Table process on expected  
25                  shipments, and on a request basis, on the trends

1           our members are expecting. Our members forecast  
2           their specific requirements based on mill  
3           production plans, supply and customer demand.

4           We do not understand why there should be  
5           a decrease in the number of forest products  
6           carloads reported by the railways as shown in the  
7           Inquiry Report.

8           A few words now on embargoes and  
9           permits.

10           One of the challenges the permit system  
11           represents for our members is that applications  
12           for permits seem to be managed completely  
13           separately from car orders. The number of permits  
14           issued frequently does not match the number of  
15           cars supplied, with the result that cars are  
16           sitting idle at origin and incurring demurrage.

17           Cars without permits that cannot be shipped to the  
18           Vancouver area and are left at origin incur  
19           diversion charges when shippers attempt to  
20           designate a different destination.

21           We are not certain what commodities are  
22           included in the 73 percent permit request  
23           fulfilment rate noted in the Inquiry Report. Our  
24           understanding is that the percentage of permits  
25           issued ranges widely with some shippers receiving

1                   significantly less than this, closer to  
2                   50 percent.

3                   One mill went multiple days without the  
4                   ability to move anything to the port due to the  
5                   lack of permits.

6                   While permitting has recently improved  
7                   in some cases, car supply has now become an issue.  
8                   In other cases car supply is adequate, but permits  
9                   are lacking.

10                  The majority of terminals in the  
11                  Vancouver area that handle forest products are  
12                  located on CN lines. Mills located on CP lines  
13                  shipping to these facilities by way of regulated  
14                  interswitching have been adversely affected not  
15                  only by their inability to obtain the required  
16                  number of permits from CN, but also by the actions  
17                  taken by CP in response to congestion issues.

18                  Shippers would have permits from CN for the final  
19                  delivery but not be able to get authorization from  
20                  CP.

21                  In response to public announcements that  
22                  fluidity has been restored, we have heard from  
23                  members that permitting is still in place. We  
24                  understand that permits into at least one terminal  
25                  this week continued to be significantly rationed.

1           In at least one case, the percentage of permits  
2           being granted this week is less than what was  
3           being issued last week.

4                         Car-order fulfilment.

5                         Car-order fulfilment has trended  
6            downward in the winter months, and a number of  
7            members are experiencing an increase in missed  
8            switches at origin. Missed rail service at one  
9            mill required trucking the equivalent of 57  
10          railcars in a single week. From what we  
11          understand, between October and December 2018 car  
12          orders did not significantly increase.

13                         Terminal unloading capacity.

14                         We believe that the Agency should seek  
15          to verify relevant information with Vancouver area  
16          terminals including Lynnterm, Westran, Coast 2000  
17          and Squamish. Terminals should be asked to  
18          provide information regarding track capacity,  
19          daily unloading capacity, number of railcars  
20          delivered for unloading versus unload capacity,  
21          and about the rail delivery window compliance.  
22          That is, do cars arrive at the terminal within the  
23          scheduled service window for which the terminal  
24          arranges unloading crews.

25                         With respect to the scheduling of unload

1           crews, it may be constructive to look at how this  
2           is handled at the railway-operated terminals.

3           Under Other Considerations, we see that  
4           record shipments of crude are now moving by rail.  
5           We would encourage the Agency to consider whether  
6           this is a factor in this case.

7           Now some impacts on our members.

8           Some members experience great  
9           difficulties meeting their commitments to shipping  
10          vessels for overseas destinations. Shippers are  
11          exposed to dead-freight penalties from marine  
12          carriers for missing scheduled vessel loadings and  
13          additional warehousing and handling expenses for  
14          product awaiting dismissal.

15          Significant additional costs due to  
16          required workarounds. Since the beginning of  
17          December 2018 these costs are in the millions of  
18          dollars across affected operations, ranging from  
19          several hundred thousand to over a million dollars  
20          per mill. These costs include additional  
21          warehousing, trucking where available and viable,  
22          and other administrative costs such as overtime.

23          Our members deal with rail service  
24          shortfalls by maximizing internal inventory  
25          storage and, where possible, using trucks and in

1 some cases container loading opportunities.

2 Sustained or severe shortages require them to  
3 attempt to source external warehouse space for  
4 inventory backlogs in order to avoid forced mill  
5 shutdowns.

6 These issues have created an increasing  
7 lack of certainty for companies about their  
8 ability to get their products to market. I think  
9 we heard that message yesterday as well, if I  
10 recall.

11 We are especially concerned that  
12 embargoes and other traffic restrictions are now  
13 recurring annually. This cannot be permitted to  
14 become the new normal.

15 FPAC believes this has become a systemic  
16 issue. If one part of the supply chain in the  
17 B.C. Lower Mainland fails, it has a domino effect  
18 through the rest of the system. We believe this  
19 Canadian Transportation Agency investigation into  
20 failures in the Vancouver portion of the supply  
21 chain provides an opportunity for a diagnostic of  
22 these systemic issues. Are we lacking the  
23 necessary infrastructure? Are supply chain  
24 members adequately staffed for the operations that  
25 are necessary?

1                   We need to diagnose what the underlying  
2                   problems are here and get to the best possible  
3                   short-term and long-term solutions to eliminate  
4                   them.

5                   FPAC is not able to provide  
6                   comprehensive data and statistics on its members'  
7                   experience because of concerns about negative  
8                   impacts on contract negotiations with the rail  
9                   service providers or on their ability to access  
10                  the kinds of ad hoc discussions with the railway  
11                  operational staff and account representatives that  
12                  we heard about yesterday. They do not want to  
13                  receive phone calls questioning what their  
14                  association is doing, and they do not want to put  
15                  their association in a position where it could  
16                  potentially be compelled to produce or disclose  
17                  information that would trigger such calls.

18                  So in summary, a few ideas on next steps  
19                  here.

20                  After two years in a row, we need to  
21                  find the underlying causes of the issues that have  
22                  been identified and identify solutions to  
23                  eliminate them.

24                  Our hope is that this investigation will  
25                  provide a comprehensive diagnostic of the

1 Vancouver area supply chain with the involvement  
2 of key stakeholders, including shippers, terminals  
3 and rail carriers, to identify capacity  
4 constraints, including things like infrastructure,  
5 labour and operational decisions, to meet current  
6 volumes as well as future growth plans. We hope  
7 that the Agency will be able to identify specific  
8 actions to resolve these systemic issues. We  
9 recognize that many things are necessary to ensure  
10 that this important gateway functions and  
11 continues to function in a way that allows Canada  
12 to fully take advantage of its international trade  
13 opportunities. We also recognize that many of  
14 these things are outside the Agency's mandate.  
15 Government can and should contribute to solutions  
16 by investing and facilitating investment in  
17 infrastructure via programmes such as the National  
18 Trade Corridors Fund and through policies and  
19 legislation that support initiatives by other  
20 components of the supply chain and expanding  
21 capacity and becoming more efficient. This  
22 includes things like the ongoing truck driver  
23 shortage across Canada and supporting ideas like  
24 short sea shipping. I'd be very curious to know  
25 how thoroughly the short sea shipping as a

1                   possible alternative to some of these issues has  
2                   actually been analyzed.

3                   Specific points in the supply chain that  
4                   appear to need attention include examples such as:  
5                   Thornton yard (what changes have been and will be  
6                   made there to improve flow), the New Westminster  
7                   bridge, Lynn Creek yard, the North Shore of  
8                   Vancouver. Improvements to these aspects of the  
9                   supply chain need to be fast tracked.

10                  We are not looking for one single  
11                  measure to resolve the issues that are affecting  
12                  our members, nor do we expect the railways alone  
13                  to take responsibility for resolving them.

14                  The Agency's mandate, however, is to  
15                  examine the rail component of this supply chain  
16                  and to ensure that railways are providing the  
17                  highest level of service that is reasonable in the  
18                  circumstances.

19                  One of the government's greatest  
20                  priorities is to diversify Canada's trade. Unless  
21                  we fix whatever is wrong with the Vancouver  
22                  portion of the supply chain, we will not get  
23                  there.

24                  In the interests of our members and the  
25                  230,000 men and women that are directly employed

1           by our industry across Canada, we are committed to  
2           working to resolve these reoccurring supply chain  
3           challenges. This could include things like joint  
4           support for federal funding infrastructure  
5           initiatives in the region, in partnership with  
6           government and supply chain members.

7                 This investigation offers an opportunity  
8           for an important and much-needed independent  
9           diagnostic.

10               Hopefully coming out of this we and all  
11           shipping groups can turn our focus to working on  
12           concrete solutions with our railway and port  
13           partners.

14               Thank you very much.

15       THE CHAIRMAN: Thank you for your remarks. I assume that  
16           you are speaking on behalf of both of you? No  
17           further remarks? Okay.

18               In that case, as I noted, we'll take  
19           five minutes, ten minutes, we'll confer privately,  
20           and we'll come back with a couple of questions for  
21           you. Thank you very much.

22       MS. DESNOYERS: All rise.

23               **(PROCEEDINGS ADJOURNED AT 9:21 AM PURSUANT TO SHORT  
24           RECESS)**

25               **(PROCEEDINGS RESUMED AT 9:36 AM)**

1 MS. DESNOYERS: Order please. All rise.

2 Please be seated.

3 **QUESTION AND ANSWER SESSION WITH FPAC:**

4 THE CHAIRMAN: Thank you for your presentation again.

5 A number of questions for you, largely  
6 points of clarification around comments that you  
7 made in your presentation or that appear in your  
8 submission.

9 So I'll go through all of them and then  
10 give you a chance to answer.

11 The first is that you referenced  
12 embargoes with and without permits in your  
13 remarks. We understood from at least one of the  
14 railway companies yesterday that all of the  
15 embargoes issued in the Vancouver area were with  
16 permits. So if you could clarify, to your  
17 knowledge, and if you could elaborate on whether  
18 there are, in fact, embargoes without permits and  
19 provide any additional details, that would be  
20 helpful.

21 The second point, the second question,  
22 concerns two comments that you made. One was a  
23 reference to restrictions on where your member  
24 companies can ship to. And the other was a  
25 reference to diversion charges where your member

1                   companies want to redirect cargo, presumably in  
2                   this case away from Vancouver into other  
3                   destinations. So the Agency would be interested  
4                   in knowing, first of all, if in those two remarks  
5                   you're referring to the same thing or two distinct  
6                   practices. If those practices are distinct, could  
7                   you explain what you mean by restrictions on the  
8                   destinations to which members can ship? And with  
9                   respect to the diversion charges that you  
10                  reference, if you could describe a little more the  
11                  circumstances in which members might wish to  
12                  divert to redirect traffic to a different  
13                  destination, when such charges would, to the best  
14                  of your understanding, be applied, and, if you  
15                  know, what the level of those charges would be.  
16                  So that's a second set of questions.

17                  The third question relates to your  
18                  reference to cars being spotted to your member  
19                  companies in situations where they don't have  
20                  permits and then your members being charged  
21                  demurrage fees for the fact that those cars don't  
22                  move. So again, it's a request for elaboration.  
23                  Do you know in what circumstances this has  
24                  happened? How often?

25                  The fourth question relates to your

1 reference to the different service provided for  
2 high velocity versus low velocity trains. Again,  
3 could you provide more specifics, more  
4 information, which products, what quantities of  
5 products are moving on these different types of  
6 trains, how do the service levels vary?

7 And the last set of questions relates to  
8 what you seem to suggest is a gap between the  
9 demands for service from your members, or the  
10 request for service from your member companies,  
11 and the service available. You suggested that  
12 members aren't getting enough rail service. You  
13 said that you're not sure why the numbers are  
14 down, in terms of the movement of forest products  
15 relative to other commodities. And I think you  
16 also talked about car order fulfilment being down.

17 All of these suggest that there is some gap  
18 between your members' requests, demand for  
19 service, and the services being provided. So can  
20 you provide further information, further evidence?

21 That question of, you know, whether and to what  
22 extent there is a difference between service  
23 requests and service provision is obviously  
24 important to understanding the nature of any  
25 possible rail service issues in the Vancouver

1 area.

2 And sorry, I said that was the last one,  
3 but one more, as I go through my notes. You seem  
4 to suggest that in situations of interswitching  
5 that there might be a requirement for double  
6 permitting. At least that's what we thought you  
7 understood was implied by one of your comments.  
8 So is this, in fact, the case? And if so, does  
9 this entail any additional challenges or issues  
10 for your members?

11 And I promise this is the last one. My  
12 colleague has reminded me that there was one more  
13 we discussed. It's a little bit like the Lord of  
14 the Rings. Every time you think you're at the end  
15 of the film there's a little more.

16 The final question is your submission  
17 talks about CN distribution centres and issues in  
18 CN distribution centres. We were wondering -- and  
19 the issues that you suggested exist relate to  
20 operating hours. Could you explain what you mean  
21 by CN distribution centres? We weren't sure  
22 whether those were referring to yards or something  
23 else. So if you could just clarify that point in  
24 your submission.

25 And that is the end of the questions

1                   from the panel. Thank you.

2    MR. NEUHEIMER: Lucia's going to answer the first question  
3                   here.

4    MS. STUHLDREIER: With respect to the question of embargoes  
5                   with and without permits, it is our understanding  
6                   that there was a stretch of time in December, and  
7                   I don't have the exact dates at my fingertips,  
8                   when permitting was suspended. And so permits  
9                   were not available.

10                  I think a lot of these questions are  
11                  things where we will need to go back and consider  
12                  what information is available or could be made  
13                  available.

14                  With respect to the high velocity/low  
15                  velocity question, our understanding is it's not a  
16                  question of high velocity trains and low velocity  
17                  trains and how fast those trains move, but it's a  
18                  question of car allocation, and a question of  
19                  priority being given to car orders that are  
20                  destined to be moved in high-velocity lanes that  
21                  are designated as such, and that traffic destined  
22                  to destinations that don't fall into those  
23                  categories are being given secondary priority.

24                  And then lastly, with respect to CN  
25                  distribution centres, the question really is there

1                   are some terminals that we understand are, in  
2                   fact, operated by CN. And so when the question  
3                   arises as to whether there is adequate staffing  
4                   and adequate unloading capability at terminals,  
5                   all terminals should be looked at. And if there  
6                   is a general practice across all terminals,  
7                   including terminals operated by the railways, that  
8                   should be considered.

9                   MR. NEUHEIMER: I can add a little bit here to the response  
10                  that Lucia gave for question one. You asked  
11                  about, you know, embargoes, you know, with and  
12                  without permits. So basically from what I  
13                  understand, you know, an embargo is put in place,  
14                  and you are told you'll need a permit to ship in  
15                  the context of this embargo. And then you  
16                  actually get to the point where you've received  
17                  your cars. Let's say hypothetically you receive  
18                  15 cars. When you ask for the permits, you may  
19                  only receive five permits. So you're stuck in a  
20                  situation where you've still got ten cars you want  
21                  to move, but you don't have permits to move those  
22                  ten cars. And so now they're sitting at your  
23                  facility, and they're incurring demurrage. That's  
24                  what I was trying to say there.

25                   On question two, the restrictions about

1                   where they can ship, the example, you know, that  
2                   I -- that I'm aware of is -- let's say you want to  
3                   ship to Texas. Well, there's an embargo, you  
4                   know, that's put in place saying that we're only  
5                   going to move -- we're only going to be able to  
6                   move your traffic that needs to go to Texas once a  
7                   week, and it's going to be -- pick a day of the  
8                   week. It's going to be that day. So, I mean,  
9                   that's -- that's not -- that's not an ideal  
10                  situation. That seems to be an extraordinary  
11                  situation to have to put that kind of restriction  
12                  in place.

13                  Sorry. One second.

14                  All right. I have conferred here with  
15                  legal counsel, and the recommendation is on any  
16                  additional detail that we provide it that in our  
17                  written submission. And so, unfortunately, we  
18                  won't be able to provide any more information in  
19                  response to those questions at this time, but we  
20                  will do so in the written submission.

21 THE CHAIRMAN: Thank you. Just a couple of observations.

22                  So there will be a period of time, as I  
23                  said at the outset, for parties to provide  
24                  information specifically in relation to  
25                  undertakings made or offers to provide additional

1                   information at this hearing. Again, I'll speak at  
2                   the end of the day about specific timelines as we  
3                   review the process. And then after that there  
4                   will be a process whereby the Agency will direct  
5                   some specific questions to parties, and they'll  
6                   have a chance to submit then. So we would ask of  
7                   you, and of other parties in the room, that any  
8                   follow-up information in this hearing be provided  
9                   in that initial phase, in the period of time  
10                  immediately after the hearing.

11                  I'd also emphasize, in respect of our  
12                  question around demand numbers, something that I  
13                  said yesterday to other shipper associations,  
14                  which is several of you have expressed concern  
15                  about providing disaggregated data at sort of the  
16                  shipper level. You can certainly provide the data  
17                  in aggregated form, or you can provide it in  
18                  disaggregated form and we'll aggregate it and will  
19                  consider any confidentiality requests. But  
20                  needless to say, if the association is suggesting  
21                  that there is a gap between supply and demand, it  
22                  would be helpful to have some specifics on that.

23                  Thank you very much for your  
24                  presentation.

25                  MR. NEUHEIMER: Thank you.

1 MS. STUHLDREIER: Thank you.

2 THE CHAIRMAN: So we will hear now from the Port of  
3 Vancouver, who will have similarly about a half an  
4 hour to make their presentation. We will then  
5 take a break, which will both provide the panel  
6 with a chance to formulate its questions, and it  
7 will be a bit of a coffee break, a mid-morning  
8 coffee break, for everybody. So we'll take a  
9 slightly longer coffee break.

10 Gentlemen.

11 **PRESENTATION BY VANCOUVER FRASER PORT AUTHORITY:**

12 MR. XOTTA: Good morning. I want to thank the panel for  
13 providing the Vancouver Fraser Port Authority, or  
14 VFPA as I'll be referring to us, with the  
15 opportunity to comment this morning.

16 My name is Peter Xotta. I am vice  
17 president of planning and operations at VFPA. My  
18 responsibility at the VFPA, amongst other duties,  
19 includes land and marine operations, and as such,  
20 I have had considerable experience with local  
21 supply chain issues at the port and, as Canada's  
22 trade continues to grow, albeit typically at a  
23 fairly aggregated and high level with respect to  
24 how the port uses these matters.

25 The Port Authority is responsible for

1                   the stewardship of the Port of Vancouver, Canada's  
2                   largest port. Our mandate, as set out in the  
3                   *Canada Marine Act*, is to ensure port  
4                   infrastructure is in place to meet Canada's trade  
5                   objectives, protect the environment, and consider  
6                   the impact of port operations on local  
7                   communities.

8                   Like all Canadian port authorities,  
9                   we're a non-shareholder, financially  
10                  self-sufficient entity, established by the  
11                  Government of Canada in 2008. We are accountable  
12                  to the federal Minister of Transport.

13                  The Port borders 16 municipalities and  
14                  manages the lands that intersect with the asserted  
15                  and established territories and treaty lands of  
16                  several Coast Salish First Nations.

17                  One dollar in three in Canada's trade in  
18                  goods outside of North America happens through  
19                  this gateway, as well as significant volumes of  
20                  regional and North American trade.

21                  Significant tax benefit, it goes without  
22                  saying, but most importantly, and I think relevant  
23                  to the discussion here today, is that in the last  
24                  10 years the Port of Vancouver has seen a  
25                  36 percent increase in foreign cargo handled,

1                   essentially rising from 82 million tonnes in 2008  
2                   to 112 million last year, an increase of over  
3                   30 million metric tonnes of trade that are placing  
4                   demands on the supply chains into and out of the  
5                   port.

6                   The current port authority system of  
7                   arm's length, commercially self-sufficient agents  
8                   of the Crown has worked well to meet Canada's  
9                   trade needs. Since the *Canada Marine Act* came  
10                  into effect, Canada's trade with Asia through the  
11                  Port of Vancouver has grown significantly, as I  
12                  mentioned.

13                  The *Canada Marine Act* is one of the key  
14                  factors that has enabled the Port of Vancouver to  
15                  become one of the leading ports in North America.  
16                  This is primarily by being able to meet commercial  
17                  needs by raising capital and conducting project  
18                  reviews to facilitate infrastructure development.

19                  The CTA announced earlier this month  
20                  that it had initiated an investigation into  
21                  possible freight rail service issues in the  
22                  Vancouver area based on information it received  
23                  from shipper associations and other parties.

24                  I'm here today to discuss supply chain  
25                  transparency and the importance of continued

1                   investment in the infrastructure needed to handle  
2                   Canada's growing trade demands.

3                   The supply chain in the Vancouver area  
4                   is a complex, integrated, multi-player system,  
5                   where many entities have a role in ensuring the  
6                   safe and efficient movement of goods to the  
7                   benefit of the national economy.

8                   As a Canada port authority, we lease the  
9                   rights to use federal lands within the Port of  
10                  Vancouver to independent terminal operators to  
11                  manage, who are responsible for on-site  
12                  operations.

13                  Customers, shippers and shipping lines  
14                  contract with terminal operators, railways,  
15                  trucking companies and others to move their cargo.

16                  The Vancouver Fraser Port Authority has  
17                  taken a leadership role in advancing collaborative  
18                  projects that benefit the gateway, such as  
19                  integrated transportation infrastructure planning  
20                  through the National Trade Corridor Fund and  
21                  previously through the Asia Pacific Gateway and  
22                  Corridor Initiative.

23                  Another initiative related to the supply  
24                  chain performance and relevant to today's  
25                  conversation is the VFPA Supply Chain Visibility

1 Project. In 2018 the VFPA and Transport Canada  
2 jointly sponsored this project, the Supply Chain  
3 Visibility Project, with direct support from CN  
4 and CP. The objective of the pilot was to develop  
5 a performance dashboard to provide end-to-end  
6 visibility into bulk centre supply chain  
7 performance, determine the benefits of such a  
8 dashboard, and to collect data to support  
9 infrastructure decision-making.

10 The pilot brought together data from CN  
11 and CP, grain terminals (Alliance Grain Terminal,  
12 Cascadia, Pacific, Cargill, Vancouver Wharves and  
13 Richardson in North Vancouver), fertilizer  
14 terminals (Pacific Coast, Neptune and Vancouver  
15 Wharves), and coal terminals (Neptune and  
16 Westshore), and also information associated with  
17 labour from the British Columbia Maritime  
18 Employers Association.

19 A working group made up of industry  
20 representatives developed key performance  
21 indicators for the dashboard reporting tool.  
22 Using participants' data we developed performance  
23 dashboards with a near realtime view of  
24 performance.

25 The railways, terminal participants, and

1                   the BCMEA were provided access to the dashboard,  
2                   which gives the only consolidated view of Western  
3                   Canadian bulk sector performance.

4                   Based on the information collected by  
5                   the port authority using this tool, we have  
6                   reached a number of observations about overall  
7                   performance of the Port of Vancouver supply chain  
8                   thus far in winter 2018.

9                   So one of the metrics that we're  
10                  tracking is overall cycle time of railcars, albeit  
11                  for bulk commodities, at this stage of the pilot.

12                  Gateway cycle times for grain, for  
13                  example, rose through the period, peaking in  
14                  December at an average turn time of approximately  
15                  134 hours from the point that -- measurement point  
16                  that we -- that we start from. So basically  
17                  Kamloops, back to Kamloops, it's about 134 hours.  
18                  This represents an increase of about 30 percent  
19                  from normal. This increase in cycle times  
20                  suggests, obviously, that there were areas of  
21                  congestion within the gateway late in 2018.

22                  We were also able to observe the number  
23                  of bulk grain railcars in the system increasing  
24                  also by about 30 percent heading into the peak  
25                  winter months, to an average of approximately 6800

1           cars in the system.

2           Despite this strong car supply there  
3           were noticeable weaknesses in car delivery, with  
4           terminals receiving approximately 80 percent of  
5           their unloading capability.

6           So, observations.

7           This data would appear to confirm  
8           localized congestion issues, in other words, cars  
9           were arriving, not being spotted at the terminals.

10          This has been acknowledged, I think, by the  
11         railways, particularly CN, has identified that  
12         they had some challenges. But clearly it also  
13         demonstrates that there were impacts to other  
14         commodities, not just the manifest traffic, but  
15         also bulk traffic was being impacted.

16          The reporting suggests that performance  
17         returned to normal levels in January and has  
18         continued to remain stable. So there is a peak in  
19         December.

20          The Supply Chain Visibility Project is  
21         now moving into its second phase. In Phase 2 the  
22         tool is intended to extend beyond the pilot of  
23         grain, coal and fertilizers and incorporate data  
24         for all cargo types. The aim of this phase is to  
25         bring full visibility to cargo movement through

1                   Vancouver and as close to realtime as possible.

2                   We are bringing representatives on board the  
3                   Project Steering Committee so that we have  
4                   representation from the forest products and other  
5                   sectors as the project evolves.

6                   By collecting and reporting on the data  
7                   for all cargo movement, we'll all be better  
8                   prepared heading into the next challenging period,  
9                   and we also set a foundation for future-looking  
10                  initiatives which we think are critical, like  
11                  predictive analytics and other network  
12                  optimization initiatives.

13                  Maybe switching briefly to containers.  
14                  The overarching theme has been vessel arrival  
15                  irregularity during this same period. This has  
16                  had a negative impact on terminals and other  
17                  supply chain partners.

18                  During the winter, winter will often,  
19                  and this year was no exception, have wind events  
20                  shutting down some of the terminals that has meant  
21                  some lost production, which in turn has caused  
22                  higher than normal dwell of containers. This is  
23                  also now returning to normal.

24                  As trade volumes grow in Canada, many  
25                  major gateway ports experience challenges

1                   associated with the availability of industrial  
2                   land. Canada's international success in  
3                   developing markets best served from the West Coast  
4                   has resulted in this tremendous volume growth  
5                   through the Port of Vancouver, as mentioned  
6                   previously.

7                   In order to accommodate this growth, new  
8                   investments have occurred at many terminals within  
9                   the port. Additionally, investments have  
10                  occurred, as I mentioned, through the previous  
11                  Asia Pacific Gateway and Corridor Initiative, have  
12                  occurred in the road and rail network servicing  
13                  the port facility to add capacity and increase  
14                  operational flexibility.

15                  With the increasing scarcity of  
16                  additional industrial land, intensity of use must  
17                  increase to extract latent supply chain capacity.  
18                  A good example of this, in our view, is the  
19                  leadership provided by Vancouver container  
20                  terminals in truck gate reservation systems, night  
21                  gate availability, and the resulting industry  
22                  leading turn-around time for truckers.

23                  We anticipate that cargo volumes in 2018  
24                  will show another record in aggregate cargo  
25                  volume, surpassing the 142 million tonnes handled

1           in 2017. Those results will be released next  
2           month. Therefore, continued focus on supply chain  
3           performance and investment is necessary to support  
4           cargo growth.

5                         Ensuring the sustainability of Canada's  
6           major trade and transportation corridors and  
7           overall goods movement through strategic  
8           infrastructure and innovation is vital to  
9           maintaining and enhancing the competitiveness of  
10          the gateway and the Canadian economy.

11                  In 2018 the port authority received more  
12          than \$200 million from the National Trade Corridor  
13          Fund for projects that will address bottlenecks in  
14          the road and rail network and promote fluidity and  
15          efficiency of the supply chain, particularly rail,  
16          to support Canada's trade.

17                  These projects -- delivery of this  
18          project is just now getting under way, and the  
19          200 million represents about, what is it, about  
20          40 percent, I suppose, of the -- the total value  
21          of those projects will be about \$500 million worth  
22          of projects. This investment will both support  
23          Canada's growing transpacific trade and protect  
24          the livability of local communities.

25                  So in summary, cargo volume through

1           Canada's western port is anticipated to grow for  
2           the foreseeable future. Public and private  
3           investments are necessary to deliver a reliable  
4           capacity for port users. Supply chain  
5           transparency is an important part of the solution.  
6           The initiative being undertaken by the VFPA, along  
7           with CP, CN, and Transport Canada, and supported  
8           by shippers, provides one tool to assess these  
9           types of challenges sooner and hopefully help us  
10          build the analytics necessary to avoid future  
11          events.

12           With strong demand and high supply chain  
13          utilization this requirement will continue and  
14          likely occur more frequently.

15           The VFPA will be seeking funding from  
16          the National Trade Corridor Fund to continue the  
17          development of the Supply Chain Visibility tool  
18          functionality in the upcoming intake and will be  
19          seeking shipper and stakeholder support for our  
20          application.

21           The same analytics capability is  
22          necessary to inform and prioritize supply chain  
23          improvement projects.

24           We will be working with local and  
25          regional planning agencies, as we have in the

Question and answer session with VFPA

1                   past, to develop and submit infrastructure funding  
2                   applications for priority projects and will be  
3                   seeking shipper and stakeholder support for our  
4                   applications, again in the upcoming National Trade  
5                   Corridor Fund intake.

6                   Thank you for the opportunity to present  
7                   to you today.

8 THE CHAIRMAN: Thank you, Mr. Xotta, for your presentation.

9                   We will, as I indicated, take a break now. It is  
10                  just after 10:00. So we'll take -- we'll  
11                  reconvene at 10:20, this will be a coffee break as  
12                  well, at that point pose some questions to you.  
13                  And then turn to the railway companies for the  
14                  reply remarks. Thank you.

15 MS. DESNOYERS: All rise.

16                   **(PROCEEDINGS ADJOURNED AT 10:02 AM PURSUANT TO SHORT  
17                   RECESS)**

18                   **(PROCEEDINGS RESUMED AT 10:24 AM)**

19 MS. DESNOYERS: Order please. All rise.

20                   Please be seated.

21                   **QUESTION AND ANSWER SESSION WITH VFPA**

22 THE CHAIRMAN: All right. So we have five questions for  
23 VFPA following on your presentation. I'll go  
24 through all five.

25                   The first relates to the figures that

1                   you offered on the increased cycle times at the  
2                   end of 2018. So two questions on this. You  
3                   talked about an increase of 30 percent in the  
4                   Kamloops to Kamloops turn. So our questions are,  
5                   first of all, this is a 30 percent increase  
6                   relative to what? What's the baseline? Is it  
7                   previous years? Is it previous months during  
8                   2018?

9                   And then secondly, a bit related to the  
10                  first, is whether this reflects -- whether this is  
11                  consistent with patterns in previous years. So do  
12                  you see a similar increase in previous years? You  
13                  may not have the same sources of data, but even  
14                  anecdotally, or based upon other sources of data,  
15                  would there be a similar increase in cycle times  
16                  at the end of the calendar year observed in  
17                  previous years?

18                  The second question relates to your  
19                  reference to the \$500 million that's going to be  
20                  going to new projects. Could you indicate --  
21                  could you give us a sense of which projects are  
22                  being funded, what sort of infrastructure is going  
23                  to be built pursuant to this funding, the  
24                  anticipated impact on fluidity in the gateway, and  
25                  then looking forward, because you suggested that

1           this was only going to address part of the  
2           infrastructure issues as VFPA understands them,  
3           where you think the key infrastructure issues are  
4           likely to be that require some funding or some  
5           action moving forward.

6                 The third question: You started to  
7           touch on this a bit in your presentation, but the  
8           third question just relates to congestion as  
9           observed or increased turn times in respect of  
10          different types of commodities. Do you have  
11          anything more to offer by way of information on  
12          whether some of those challenges that were  
13          observed in late 2018, whether those were  
14          consistent across different types of cargo,  
15          different commodities, or whether you saw some  
16          variation?

17                 The fourth question picks up more on  
18          some information we received during presentations  
19          yesterday, and it concerns terminal operating  
20          hours. We understand that some terminals have  
21          moved or are moving to 24/7 operations, or  
22          extended hours, longer than in the past. Is this  
23          a trend that the port has observed, that the  
24          authority has observed? And then -- that's just a  
25          question of fact. And then maybe a little more

1 analytically, do you think that -- does VFPA think  
2 that extended operating hours or 24/7 operations  
3 in the terminals could be -- could contribute to  
4 addressing some of the issues that have been  
5 discussed over the last day and a half?

6 And the final question concerns the  
7 Visibility Project which you spoke about and drew  
8 upon during your presentation. So you talked  
9 about the next phase. The questions here would  
10 sort of be twofold. One is do you have data, will  
11 that project make data available in terms of the  
12 demand levels in different sectors? So basically,  
13 how much -- what is the level of transportation  
14 services being sought? And then more specifically  
15 in the context of this investigation, is it  
16 possible for the Agency or its inquiry officer to  
17 have access to whatever data are available through  
18 the Visibility Project so that we can draw upon it  
19 for objective evidence in the context of  
20 addressing the questions that are before us?

21 Over to you.

22 MR. XOTTA: I'll say at the outset, I'll offer some  
23 observations. There is likely some information  
24 that we would need to follow through on and submit  
25 as per your guidance before my comments.

1                   In terms of the first question, the  
2                   figures that we offered, the increase of  
3                   30 percent is really on the basis of data that's  
4                   collected within the Supply Chain Visibility tool  
5                   since the pilot -- since the inception, which is  
6                   really just months in 2018. Do we have a similar  
7                   increase or challenges associated with supply  
8                   chain performance? Clearly, I'd say, historically  
9                   the latter part of the calendar year, i.e. winter,  
10                  is when we would most normally see the types of  
11                  challenges that have ensued, particularly those  
12                  that I have referred to with regard to  
13                  weather-related events, whether that's supply  
14                  chain events in Western Canada impacting rail --  
15                  rail service, or wind and other related events  
16                  impacting terminals. And in 2018 what we  
17                  experienced was a significant schedule  
18                  irregularity in the container vessels, for  
19                  example, because of weather in Asia throwing, you  
20                  know, lots of vessels off schedule. So it can be  
21                  a variety of things, but predominantly it's in the  
22                  November, December, January timeframe.

23                  In terms of your second question, the  
24                  \$500 million worth of projects are -- and we'll  
25                  follow up with the specifics of those that are

1                   moving forward, but they are essentially all  
2                   debottlenecking projects.

3                   So one of the primary and, I'd say, most  
4                   urgent projects, is a track and tunnel ventilation  
5                   project for the approaches to the Second Narrows  
6                   Rail Bridge to North Vancouver. That project  
7                   would reduce -- in summary, would reduce the  
8                   amount of delay time when a train can follow a  
9                   previous train through the tunnel and would  
10                  effectively maximize the available bridge  
11                  capacity. It also provides for an overpass and  
12                  additional track in the vicinity of the tunnel so  
13                  that trains can be as close to the tunnel as  
14                  possible waiting for those slots to open up.

15                  So that's an example of a project that  
16                  we think is really important, given the growth in  
17                  coal and grain activity, particularly with new  
18                  facilities that are being developed in North  
19                  Vancouver.

20                  I could go on at length about the other  
21                  projects, but they're all essentially similar:  
22                  Eliminating level crossings and providing either  
23                  capacity or flexibility in the rail network on  
24                  either the north or south side of whichever bridge  
25                  you want to look at, the North Vancouver bridge or

1                   the New Westminster rail bridge, to provide  
2                   operating flexibility for the longer trains that  
3                   we are typically receiving and accommodating in  
4                   the gateway.

5                   Those projects, based on the modelling  
6                   that we've done with input from the railways, is  
7                   intended to achieve the capacity necessary to  
8                   accommodate the forecast volumes that we have  
9                   aggregated from all of the terminals in each of  
10                  the terminal precincts, North Vancouver, South  
11                  Shore, and Roberts Bank.

12                  Those forecasts, of course, are just as  
13                  good as the information that we receive. It's a  
14                  bit of guess work from those proponents. And what  
15                  we try and do is look for duplication where, you  
16                  know, competing terminals may be assuming that  
17                  they're going to be handling the same project, if  
18                  there's general awareness of those things. So  
19                  it's typically like a P80 assessment of the rail  
20                  network.

21                  And, I'd say, generally speaking, we  
22                  are -- we continue because of the timeline  
23                  associated with delivery of these projects to --  
24                  we anticipate continuing to have a fairly high  
25                  level of utilization. So moving these projects

1 forward as swiftly as possible is important.

2                   The third question about congestion as  
3 observed, is there a variation amongst  
4 commodities. Certainly from a year-to-year basis  
5 it will differ. Some of the wind and other  
6 associated events that impact terminals, some may  
7 be impacted, others not, depending on where in the  
8 port -- the port jurisdiction they are located.

9 So it is, I'd say, generally speaking, highly  
10 variable incident to incident.

11                  With regard to terminal operating hours,  
12 once again, we can provide more detail around  
13 this. The trend, obviously, with -- I mentioned  
14 industrial land availability. It really just  
15 speaks to the intensity of use of the corridors  
16 and of the terminal facility. So I mentioned that  
17 truck gate hours at intermodal facilities  
18 essentially have been doubled in the last three or  
19 four years. We used to have five day gates, or  
20 day shifts, at our marine terminals during the  
21 week. Those now -- all of those terminals offer  
22 10 shifts, a day shift and an afternoon. That has  
23 the consequence of allowing some flexibility on an  
24 hour-to-hour basis in not trying to achieve the  
25 maximum throughput if all goes well. The impact

1                   of that, of course, is neighbouring communities or  
2                   residences experience an additional eight hours of  
3                   what they perceive to be a nuisance.

4                   So it's absolutely going to be critical  
5                   that operating hours are extended, in my view, to  
6                   extract that latent supply chain capacity, but it  
7                   won't be without some hiccup and some concern  
8                   expressed by the broader community.

9                   The visibility project: We're -- as you  
10                  can tell, we're very enthusiastic about this tool,  
11                  because we think it has utility for all manner of  
12                  conversations. With regard to the availability of  
13                  demand information, as I mentioned, that is  
14                  currently not part of the project. We're tracking  
15                  what is happening, hopefully, as I mentioned, in  
16                  realtime. We're doing the other work on demand  
17                  forecasting with input from industry. Is it  
18                  possible to draw on the information? I mentioned  
19                  that the visibility project is effectively a  
20                  partnership of those entities that are  
21                  contributing information are able to extract from  
22                  it. I would need to take that back to those  
23                  members and, depending on the nature of what  
24                  was -- what the interest was of the panel, get,  
25                  you know, authorization to release it. But we

1           certainly are happy to demonstrate and provide  
2           information subject to that confirmation.

3 THE CHAIRMAN: Okay. Thank you very much. No further  
4           questions from the panel. Thank you very much.

5           Ladies and gentlemen, this brings us to  
6           the point in the proceeding where we now turn the  
7           floor back to each of the three railway companies  
8           and provide them with an opportunity to make reply  
9           remarks. Again, this is an opportunity to comment  
10          upon anything that you have heard over the course  
11          of the hearing to date, and also to provide any  
12          information that you have that you weren't able to  
13          provide yesterday in response to panel questions  
14          at this time.

15           So with that, we will invite BNSF to  
16          step forward.

17 **REPLY BY BNSF RAILWAY:**

18 MR. ALMAGUER: So yes. Thank you again for inviting us to  
19           participate in this hearing and in this broader  
20          proceeding.

21           We listened to the various presentations  
22          over the last day and a half with interest and,  
23          based upon the content of those presentations and  
24          the evidence submitted, we believe that the  
25          statement we made at the opening fully responds to

1                   all of the issues raised, specifically as they  
2                   relate to BNSF.

3                   As you noted, there were a couple of  
4                   questions that we had not as yet answered, and we  
5                   are still working on answers for those. And so in  
6                   the next coming days we will provide written  
7                   responses on that data. As well, we'll continue  
8                   to participate as the proceeding goes forward with  
9                   any additional requests that come out of the panel  
10                  or come out of the proceeding.

11                  So with that, thank you again, and we  
12                  are open for any questions or otherwise.

13 THE CHAIRMAN: Very efficient use of the reply remarks time.

14 MR. ALMAGUER: Thank you.

15 THE CHAIRMAN: The hint was when he stepped forward by  
16                  himself. The panel has no additional questions  
17                  for BNSF. And as I said, we'll explain at the  
18                  close of the hearing what the timelines are for  
19                  providing that follow-up information to  
20                  yesterday's exchanges.

21                  With that, the next opportunity for  
22                  reply remarks goes to CP.

23 **REPLY BY CANADIAN PACIFIC RAILWAY:**

24 MS. QUACH: Good morning. Thank you, Mr. Chairman and  
25 Agency members for this opportunity to provide a

1 reply and concluding remarks.

2 I came aided and abetted by my entire  
3 team. However, I will be brief.

4 As indicated, we will need some time to  
5 fully and properly answer the questions that  
6 you've posed to us yesterday as well as others  
7 that I think remain to be clarified, given the  
8 questions that we received over the weekend. Of  
9 course, we will undertake to do that, and we're in  
10 your hands in terms of your timing requests.  
11 We'll certainly put our best efforts.

12 At this point in time we would state  
13 that our position remains as it was at the  
14 beginning of this hearing. We're of the view that  
15 there is no basis to suggest that CP has not  
16 fulfilled its level of service obligations to the  
17 shippers in the Vancouver area. We steadfastly  
18 believe that we've done exactly what is expected  
19 and is required of us. We have provided safe,  
20 economic, efficient and adequate service.

21 We believe the issues that you've heard  
22 about relates to lack of availability of empty  
23 marine containers due to inadequate supply of  
24 marine operators. This is not something that was  
25 caused by CP.

1                    You've also heard that there was a surge  
2                    of inbound railcars by shippers coming on to and  
3                    then from our connecting carrier which needs to be  
4                    managed. Again, not a situation caused by CP.

5                    You've heard about increase in dwell and  
6                    cycle time for traffic destined to the North  
7                    Shore. Again, not caused by CP.

8                    I expect that now is probably not the  
9                    appropriate time for a long debate, again I did  
10                  promise to be brief, about the legal principles  
11                  governing the level of service obligations. I  
12                  would, however, like to make some brief comments  
13                  in response to Mr. Hume's arguments that embargoes  
14                  and permits denied are by definition a breach of  
15                  level of service. He argued that where -- my  
16                  apologies. He argued they were a breach because  
17                  they were, by definition, a refusal to provide  
18                  service. They were discriminatory because they  
19                  involved choosing winners and losers between  
20                  customers.

21                  Just briefly on the first point, the law  
22                  regarding the level of service from the Supreme  
23                  Court of Canada, from the Federal Court of Appeal  
24                  and from this very Agency and the words of the Act  
25                  are clear and are to the same effect. As common

1                   carriers, railways are not under any obligation --  
2                   my apologies -- not under an obligation to provide  
3                   whatever service the customers desire, whatever  
4                   the cost or circumstance. Just because a  
5                   customer's service desires are not being met does  
6                   not mean that level of service is being breached.  
7                   Any decision -- as the decision says over and over  
8                   again, the duty to provide service is not  
9                   absolute. We find that deeply rooted back in the  
10                  days of the *Patchett* decision. That has not  
11                  changed. The level of service obligation is to  
12                  provide reasonable service in the particular  
13                  circumstances, based on what is commercially fair  
14                  and reasonable to both the railway and its  
15                  customers.

16                  On the second point, when embargo is  
17                  imposed because it is appropriate operational  
18                  response in all the circumstances to avoid  
19                  problems becoming much worse on network, this is  
20                  not an unfair picking of winners and losers  
21                  between customers. CP must decide, based on the  
22                  specific circumstances we face at the time, which  
23                  shipments needs to be managed. In this case you  
24                  heard from Ms. Arpin that the embargo CP  
25                  ultimately issued were in response to the specific

1                   circumstances of certain terminals, commodities,  
2                   and interchange issues. 100 percent of the  
3                   permits requested of CP were issued by CP. There  
4                   was no denial. And even if there was any  
5                   denial -- again, there was no denial. 100 percent  
6                   of the permits requested were issued. But even if  
7                   there was, it does not cancel the waybill. It  
8                   merely postpones the processing of it until the  
9                   respective embargo is lifted.

10                  What CP did to identify and isolate the  
11                  cause of the congestion, we reacted to only the  
12                  extent necessary. To do as Mr. Hume suggests  
13                  would be to take a localized and isolated cause of  
14                  congestion and to spread the problem equally  
15                  across all commodities, all shippers, in all  
16                  lanes. That would be unreasonable, if not  
17                  irresponsible. It would create more problems than  
18                  it solves. Embargoes only suspend the acceptance  
19                  of a waybill, not the denial of the service. And  
20                  during CP's embargoes terminals served by CP  
21                  continued to receive their daily allotment of cars  
22                  according to their capacity. Nothing stopped. No  
23                  one wins when traffic does not move, including the  
24                  railway.

25                  CP also wishes to address the

1 submissions about the role of the AAR in relations  
2 to the embargoes and permits.

3 Founded in 1934, and this is stated on  
4 the AAR website, the AAR is the world's leading  
5 railroad policy, research, standard-setting and  
6 technology organization that focuses on the safety  
7 and productivity of the U.S. railway -- of the  
8 U.S. freight rail industry. And by U.S. here, the  
9 point needs to be made that commerce between  
10 Canada, U.S. and Mexico has been enabled because  
11 of the international reach of the AAR, due to the  
12 harmonization that occurs between the countries.

13 So when the AAR establishes rules, standards,  
14 oftentimes there is a harmonization of that, a  
15 recognition or an adoption of that, in Canada, in  
16 order to enhance the flow of traffic between  
17 countries.

18 The AAR full members includes major  
19 freight railroads in the United States, in Canada  
20 and Mexico, as well as passenger rail such as  
21 Amtrak. Affiliates and associates includes the  
22 non-Class I, the communal railroads, rail supply  
23 companies, engineering firms, signals and  
24 communication firms, and railcar owners. That  
25 is -- while it is the American Railroad

Association, its membership expands beyond just the railroads.

They are a highly respected and recognized association and trusted and dealt with -- delegated authority to set certain standards and rules and procedures that ensures that railroads continue to operate the safest, most efficient, cost-effective and environmentally sound freight transportation system in the world.

One last point to address is the notion that embargoes are not a lawful instrument and that there is no authority for railways to use them. That is not correct. On this point, to be sure that the Agency is assisted with the most current version of TD-1, CP is pleased to provide a copy of TD-1 that has been in effect since July 1st, 2010. The reason that we're providing this to you today, Mr. Chairman and Agency members, is because you were referred to it, to a prior version of it, under tab 7 in the binder of documents that was provided by Mr. Hume yesterday. I'll hand that up to you now.

I'm not sure if you have the binder from yesterday in front of you, but perhaps if you can take note we can lead you to it. Again, at tab 7

1                   there was a prior version of this very same  
2                   circular, AAR Circular TD-1. The version that's  
3                   in that binder is the one that was made effective  
4                   February 15th, 2007. That was replaced on  
5                   July 1st of 2010 with the version that I've just  
6                   provided to you now. And that is the version that  
7                   is currently in effect. The main difference there  
8                   is just the passage that you were directed to  
9                   yesterday does not appear in the current version.

10                  But our point is not that embargoes and  
11                  permits is a statutory instrument. Our point is  
12                  that embargoes and permits are longstanding tools  
13                  developed by the industry and has been long  
14                  accepted as an effective mechanism to  
15                  systematically manage traffic. It even appears  
16                  that it is not only used by railways but by  
17                  terminal operators as well, such as you hearing  
18                  about Ray-Mont's use of them to manage their flow  
19                  of traffic.

20                  In the context of the railway level of  
21                  service obligation, their legitimacy is not  
22                  founded in statute. We have never made such  
23                  claim. But are founded on the reasonableness of  
24                  their use in appropriate circumstances.

25                  I apologize. I'm just going to have to

1 reorganize my notes for just a moment.

2 We heard earlier today from both FPAC  
3 and the Port of Vancouver. And there what we  
4 heard was that what is being requested is a  
5 diagnostic of the supply chain of which the  
6 railway service is a component.

7 The point we would like to make is that  
8 indeed we do recognize that the -- we do recognize  
9 the importance of the supply chain, and the  
10 railway component ought not to be considered in  
11 isolation. We would, of course, assist and  
12 participate as the Agency directs, but in our view  
13 the issues identified thus far in this proceeding  
14 does not indicate that there is a service issue  
15 with CP.

16 We are extremely proud, and the "we"  
17 that I speak of here actually extends beyond the  
18 four members that you see before you. The "we"  
19 that I refer to here is the men and women  
20 comprising CP's family of 13,000 railroaders. We  
21 are extremely proud, and we take our service  
22 obligation very seriously, and we deliver to that.  
23 Our successes are measured by the service that we  
24 provide.

25 Those are our remarks, subject to any

1                   questions you may have for us at this time.

2       THE CHAIRMAN: Thank you. We'll just confer here for a  
3                   moment, and we'll see if we need to take a break.

4                   Okay. Thank you. We won't be needing  
5                   to step out to confer, because you already have a  
6                   number of followups that we discussed yesterday.

7                   There is one question that emerges from  
8                   the remarks that you made, which you can respond  
9                   to now and/or deal with in your subsequent  
10                  submission.

11                  You talked, Ms. Quach, about the fact  
12                  that embargoes are only imposed by CP, I think you  
13                  said, not in a manner to choose winners or losers,  
14                  but only when there is some compelling reason,  
15                  when it's focused on some particular issue in the  
16                  supply chain. I'm paraphrasing a bit what you  
17                  said. So the Agency would be interested in  
18                  hearing a little more about how that decision is  
19                  made, how the decision on where and when to impose  
20                  an embargo is made. You've talked in a fairly  
21                  general way, but I think it would be helpful to us  
22                  to understand what factors, what criteria, what  
23                  circumstances would be considered when choosing to  
24                  impose an embargo.

25       MS. QUACH: Thank you for the question. We've been

1           deliberating. We've done a lot of research  
2           analysis, but in order to make sure that we  
3           provide you with a coherent, full and proper  
4           explanation, it will be best, and we promise it  
5           will be fully explained, in our submission.

6 THE CHAIRMAN: Okay. With that, thank you very much for  
7           your reply remarks.

8                 The time is just shy of 11:00 o'clock,  
9                 so I think that we'll continue to CN, as CP wraps  
10                up and returns to their table. We will invite the  
11                representatives of CN to step forward.

12 MS. MURRAY: We would request the opportunity to regroup as  
13                a team in light of what we heard from some of the  
14                submissions this morning, just so that we can fit  
15                that into our comments. We probably need an hour.

16 THE CHAIRMAN: We'll confer momentarily, but I do take  
17                into -- I do understand that you anticipated  
18                having a lunch break in between the presentations  
19                and your reply. Just one second.

20                 So just a question to CN. How long do  
21                you anticipate that your presentation would be  
22                when you return? You know, sort of in general  
23                terms.

24 MS. MURRAY: We were anticipating -- we intended to stay  
25                within the time allotted, including, you know,

1                   leaving questions for the Chairman and the panel.

2     THE CHAIRMAN: Okay. So in that case, just for the benefit  
3                   of others, the time that was notionally allotted  
4                   per railway company was, if I recall, about an  
5                   hour, I can't remember, an hour, an hour and a  
6                   quarter, for both presentation up to and response  
7                   to questions. So notwithstanding the fact that  
8                   this is a little early we will, in fact, take a  
9                   break now, return, hear from CN, impose any  
10                  questions, and wrap the hearing up at that point.

11                  It is 11:00 o'clock now. So we will  
12                  reconvene at noon. And we will probably, in that  
13                  case, be wrapping up the hearing, just so that  
14                  people can plan for their day, I would expect by  
15                  2:00 o'clock. Okay. Thank you. We'll see you  
16                  all at noon.

17     MS. DESNOYERS: All rise.

18                  **(PROCEEDINGS ADJOURNED AT 10:59 AM PURSUANT TO SHORT  
19                  RECESS)**

20                  **(PROCEEDINGS RESUMED AT 12:04 PM)**

21     MS. DESNOYERS: All rise.

22                  Please be seated.

23     THE CHAIRMAN: All right. Ms. Murray, colleagues, the floor  
24                  is yours for your reply remarks and follow-up  
25                  information to yesterday's exchange.

1 MS. QUACH: Mr. Chairman, if I may, and members of the  
2 panel. My apologies for the interruption. I have  
3 begged my friends in advance for their indulgence,  
4 if I just may ask for just a moment to have the  
5 floor.

6 It's been brought to my attention, and I  
7 got a request, to just clarify for the record the  
8 document we provided to you today, being the  
9 current version of TD-1. I just wanted to make  
10 sure that it's clear on the record that there is  
11 the one provision at the top. And again, because  
12 you don't have the tab 7 in front of you, when you  
13 look at it, I draw your attention to that  
14 beginning -- it's almost like a preamble. That is  
15 not there. Other provisions that Mr. Hume  
16 directed you to do remain in the current draft.

17 That's the clarification. Thank you  
18 very much.

19 THE CHAIRMAN: Noted and thank you. The floor is yours,  
20 Ms. Murray.

21 **REPLY BY CANADIAN NATIONAL RAILWAY:**

22 MS. MURRAY:

23 1 Q Okay. Well, good afternoon Chairman and panel  
24 members.

25 I think, as you all know by now, my name

1                   is Fiona Murray. I am the vice president of  
2                   public and government affairs at CN. I am joined  
3                   today by two of my CN colleagues: Shauntelle  
4                   Paul, vice president of network operations and  
5                   supply chain on my far right; Mr. Doug Ryhorchuk,  
6                   vice president of western region beside me; and on  
7                   my left by our outside counsel Doug Hodson of MLT  
8                   Aikins.

9                   We have prepared a presentation that  
10                  will answer your questions from yesterday as well  
11                  as provide greater detail on the five themes upon  
12                  which the Inquiry Report has focused this hearing.

13                  But before starting the presentation  
14                  Mr. Hodson will address you. And after, we will  
15                  address some of the comments made this morning by  
16                  the representatives from FPAC. We've also taken  
17                  the liberty to type up yesterday's questions as we  
18                  heard them and have indicated the slides that will  
19                  answer them. And we've also made our presentation  
20                  available on a stick drive for the other  
21                  participants.

22                  May I approach and give you the  
23                  questions?

24                  THE CHAIRMAN: Please do.

25                  MS. MURRAY: Simply to guide you through our slide

1 presentation a bit.

2 So without further adieu, I'll hand it  
3 over to Mr. Hodson.

4 MR. HODSON: Thank you very much.

5 Mr. Chairman and panel members, before  
6 turning it over to the CN group to deal with some  
7 substantive issues I'd like to make a few remarks  
8 regarding the submissions we heard yesterday and  
9 this morning from the shipper organizations and to  
10 reiterate CN's concerns on the record regarding  
11 the procedural fairness of this investigation and  
12 hearing and the unfair position CN has been placed  
13 in.

14 CN has already raised the fact that the  
15 railways have a fundamental right to know the case  
16 being levelled against them and that CN be  
17 provided a fair, proper and timely opportunity to  
18 test that case and respond before any decision is  
19 made by the Agency regarding CN's service  
20 obligation compliance.

21 This means two things: First, there  
22 must be a particularized allegation of breach,  
23 including the shipper at issue, the specific  
24 movement or movements at issue, and full  
25 particulars as to why the shipper or the Agency

1 claims CN has breached its service obligation.

2 Secondly, and of equal importance, CN must also be  
3 provided with all of the evidence in support of  
4 the allegation and be provided a fair opportunity  
5 to test the allegation and lead its own evidence  
6 in response. Those principles we don't think can  
7 be disputed. Notwithstanding this, we heard for  
8 the first time yesterday and this morning a number  
9 of items that are concerning and to which we wish  
10 to state our concerns on the record.

11 We now know that on January 14, 2019,  
12 when the Agency initiated this investigation, it  
13 served direction orders on the eight parties that  
14 you chose to be participants: The three railways  
15 and the five shipper associations.

16 In the case of CN and the other railways  
17 the Agency sought significant data and  
18 information, which it specified in some detail.  
19 CN and the other railways complied under very  
20 tight timelines. CN provided over 5.8 million  
21 records in three days and answered every follow-up  
22 request by the Agency for information.

23 We learned from the inquiry officer  
24 report on January 24th the nature of the direction  
25 order to the shipper organizations. These too

1                   were also quite detailed and sought very specific  
2                   shipper information which you, the Agency,  
3                   determined it needed for its investigation. We  
4                   also learned that with the exception of the WGEA  
5                   none of the other shipper organizations provided  
6                   the information and data they were ordered to  
7                   produce. The direction from the Agency was not a  
8                   voluntary request. Rather, it was an order to be  
9                   complied with. However, it appears to have been  
10                  ignored by the majority of the shipper  
11                  organizations.

12                  Now, the next step in the Agency  
13                  proceeding is this oral hearing. And the stated  
14                  purpose of this oral hearing is in the Agency's  
15                  hearing order, and I quote, "To contribute to the  
16                  evidentiary record that the Agency will rely upon  
17                  when rendering a decision at the end of the  
18                  investigation."

19                  We arrived yesterday expecting to hear  
20                  just that: Evidence. Once again, the shipper  
21                  organizations failed to provide the evidence  
22                  initially requested by the Agency in its  
23                  January 14th direction. Instead, we listened  
24                  again to anecdotal evidence and generalized  
25                  criticism of railway performance.

1                   To date, CN has not seen any of the  
2                   communications to the Agency that prompted this  
3                   investigation. CN has not seen the information  
4                   provided by the associations to the Agency on  
5                   January 17, 2019. And I want to address, in  
6                   particular, the FPAC written submission.

7                   In your January 21 letter, the preceding  
8                   letter, it indicated that the record for this  
9                   proceeding would consist of the inquiry officer  
10                  report, the oral hearing, and then, following  
11                  directions, written submissions. And we  
12                  understood from that letter or that decision that  
13                  all of the information gathered by the inquiry  
14                  officer, namely, the submissions and the data,  
15                  would not be part of the record, rather, it's only  
16                  summarized in the inquiry officer report. CN had  
17                  requested copies of what the associations provided  
18                  to the Agency and the inquiry officer. That was  
19                  not provided.

20                  In the January 24th letter from the  
21                  Agency on confidentiality requests we learned that  
22                  FPAC made a written submission, presumably to the  
23                  Agency officer. The request for confidentiality  
24                  was denied. However, that report was not provided  
25                  to us, and we understood that it's not part of the

1                   Agency record.

2                   This morning we heard a question from  
3                   the panel in the course of the FPAC presentation  
4                   regarding what I believe to be FPAC's written  
5                   submission, and a question on CN's distribution  
6                   centre. And accordingly, we don't have -- and  
7                   here's our concern. If the FPAC written  
8                   submission is part of the Agency record, it has  
9                   not been provided to CN despite our request. And  
10                  if it's part of the record, we request that it be  
11                  provided to CN and we be given an opportunity to  
12                  respond, obviously not this afternoon. However,  
13                  if the FPAC written submission is not part of the  
14                  Agency record, then we are concerned that it now,  
15                  or at least parts of it, appear to be.

16                  And again, I'll state clearly for the  
17                  record, CN doesn't know what is in that report,  
18                  has not been provided that -- or that submission,  
19                  nor provided an opportunity to respond.

20                  I also want to reply to the submissions  
21                  of counsel on behalf of the Freight Management  
22                  Association, or FMA, as I would submit their  
23                  position yesterday clearly demonstrates the  
24                  unfairness caused to CN due to the failure of  
25                  shipper organizations to provide evidence rather

1 than rhetoric to assist the Agency process. The  
2 FMA, like every other shipper association, was  
3 directed by you on January 14 to produce documents  
4 that were necessary in the Agency's view to  
5 conduct this investigation. The FMA appears not  
6 to have -- well, they didn't comply with this  
7 direction. Those documents are not in the Inquiry  
8 Report, because they were not provided. Then  
9 yesterday, instead of hearing evidence from the  
10 FMA, we received their closing legal argument from  
11 its counsel.

12 I remind the FMA that there has not yet  
13 been an allegation of breach made against CN by  
14 any shipper, nor the Agency. More importantly,  
15 there has been no evidence provided of any breach  
16 of CN's service obligation owed to a shipper.  
17 Finally -- nor has CN been provided an opportunity  
18 to respond once it knows that there is a case  
19 being advanced against them. If and when all that  
20 happens, I assure you CN will respond to the FMA's  
21 recitation of the legal principles to be applied.  
22 However, the reference by FMA counsel to, I think  
23 these were his words, the granular level of detail  
24 needed to determine matters of level of service,  
25 is particularly ironic given the FMA's failure to

1 provide any detail whatsoever.

2 As I understand their submission, they  
3 are saying that you cannot determine whether CN  
4 has breached its service obligations without  
5 getting detailed shipper specific information,  
6 which they say you don't have, in part, because  
7 they didn't give it to you. They say you cannot  
8 decide the issue based on the current record. We  
9 don't agree. The Agency can make a finding that  
10 based on the fact that there is no evidence from  
11 any shipper of a breach by CN of its service  
12 obligation, the matter is concluded. Your  
13 decision must be based on the evidence and on the  
14 record, and there is none, despite two clear  
15 opportunities to provide it.

16 Now, you'll recall yesterday that FMA  
17 took you through the evaluation approach. I  
18 promise you I won't spend much time on it. I know  
19 you're very familiar with it. But they advised  
20 you that the first step is for the Agency to  
21 consider whether a shipper has made a reasonable  
22 request. You'll recall that. Counsel then went  
23 on to suggest that you should simply assume that  
24 the shippers' requests were reasonable, because  
25 the railways have not proved otherwise. Those

1                   were her submissions. How can we? There's no  
2                   allegation of breach, let alone evidence to  
3                   support it.

4                   With respect, the submission from FMA is  
5                   circular and contradictory, to suggest that  
6                   despite there is no allegation and no evidence we  
7                   be faulted for not proving that a shipper's  
8                   request was unreasonable. Again -- and this is  
9                   precisely the type of prejudice we warned the  
10                  Agency we would face, given this process.

11                  The truly concerning part, though, about  
12                  the FMA's closing argument was the allusion to the  
13                  fact that the FMA expects to be allowed to let its  
14                  case trickle in over the coming weeks. The FMA  
15                  and other shipper organizations had its chance to  
16                  submit its case. And it missed it. Twice. Once  
17                  when it was ordered to work with the inquiry  
18                  officer prior to the summary report, and a second  
19                  time when it failed to provide anything at this  
20                  oral hearing.

21                  It would be extremely unfair and  
22                  prejudicial to the railways to allow the FMA or  
23                  any other association to continue to hide its case  
24                  from the railways that have been subjected to this  
25                  investigation. Every day they do is one day less

1           in the 90-day investigation period that CN has to  
2           understand this investigation and respond. CN and  
3           the railways have played by the rules, and the  
4           shipper associations have not.

5           Yesterday counsel for the FMA stated  
6           that the FMA had not asked for this investigation  
7           and that it only learned about it when the  
8           railways did, suggesting that it caught them off  
9           guard and thus may have led to their inability to  
10          respond to the Agency direction order. With  
11          respect, that is not accurate. I would like to  
12          refer to a few documents, if I may.

13          The first -- can we get some tech  
14          support to zoom this in? That's fine. And we'll  
15          file paper copies of this. This is a letter dated  
16          January 14, 2019 from Mr. Ballantyne on behalf of  
17          Freight Management Association to the Minister of  
18          Transport and to you, Mr. Chairman. If you look  
19          down at the bottom that's highlighted, it says:

20           "By this letter, FMA is formally  
21           requesting that the Minister  
22           authorize, and the Agency undertake,  
23           an investigation of rail service in  
24           the Greater Vancouver area pursuant  
25           to section 116 (1.11) of the Canada

*Transportation Act.*"

In fact, the very investigation that you launched the same day.

This letter, by the way, was not part of the Inquiry Report, nor was this letter part of the information provided to CN in this proceeding. Rather, the FMA sent this letter out on a public tweet on or about January -- on January 21, 2019, a tweet that included a link to a website with this letter. Again, it was obtained on the public domain. Now, I can only assume that this letter was sent by the FMA to the Minister and the Agency.

And this is confirmed by a second document, again, obtained in the same source. And this is from the Freight Management Association. I'll read.

"This is further to previous messages on rail service problems and congestion in the Greater Vancouver area. Our thanks to those FMA members that provided information on their recent service experiences in Vancouver.

## FMA and other industry

associations have requested that the Canadian Transportation Agency initiate an investigation of the chronic and widespread service problems," et cetera, "and has confirmed this morning that such an investigation has been authorized."

8 So with all due respect, I think the FMA  
9 did request this investigation, and it appears the  
10 FMA also received information regarding their  
11 members' recent service experiences, which it  
12 appears they have not shared with you or with us.  
13 The suggestion that the FMA did not request this  
14 investigation or was unprepared for this  
15 investigation and has been precluded from  
16 providing its evidence is simply not true. The  
17 association's conduct is prejudicial to the  
18 fairness of this proceeding against CN.

23 CN moves approximately 10,000 trains a  
24 month. Yesterday and this morning we heard  
25 various stories about specific shipments that had

1                   some trouble, completely without detail or  
2                   context. One example was a shipper with a  
3                   seven-day dwell at origin. Again, we don't know  
4                   which shipper, what commodity, what day, what  
5                   destination, or even what railway. There were  
6                   other anecdotal complaints, but again, no details  
7                   to allow CN to respond. As I said, CN operates  
8                   approximately 10,000 trains a month. The five or  
9                   six examples given over the course of a few days  
10                  of service problems were over a three-month  
11                  reference period, so five or six trains out of  
12                  30,000. It's neither fair nor possible to ask CN  
13                  to deal with these types of allegations. And  
14                  quite frankly, it's unfair to pose and then put  
15                  them there without the backup detail to allow CN  
16                  and the other railways to respond.

17                   Our panel today consists of three senior  
18                  CN people who are here in the middle of winter.  
19                  They will address the inquiry officer report and  
20                  some of what we heard yesterday and today. And I  
21                  will turn it over to Ms. Murray.

22                  MS. MURRAY: Thank you, Doug.

23                   So before we get rolling on the  
24                  presentation -- and maybe you can just go to the  
25                  next slide. Just leave it there. That's good.

1                   We'd like to address some of the things  
2                   that FPAC's representatives raised today. There  
3                   may be others, but we thought it would be useful  
4                   at this point to touch on some of them.

5                   On the topic of crude oil: Crude oil  
6                   represents 2 percent of CN's total annual  
7                   carloadings. So all the cars that move on CN in a  
8                   year, 2 percent. Crude oil represents 1 percent  
9                   of CN's total annual carloadings through  
10                  Vancouver.

11                  Forest products represents 9 percent of  
12                  CN's total annual carloadings. So all the  
13                  carloads on CN. And forest products represents  
14                  10 percent of CN's total annual carloadings  
15                  through Vancouver.

16                  We do not believe crude oil has any  
17                  bearing on the discussion of the volumes of forest  
18                  products which moved during the period an under  
19                  investigation here today.

20                  Chairman, FPAC also alluded to high  
21                  velocity/low velocity programme. I want to  
22                  explain what this means. This programme allows CN  
23                  to maximize our fleet to our shippers at times  
24                  when cars -- car orders demands -- sorry, when car  
25                  demand exceeds car supply. It has nothing to do

1           with velocity or speed of our trains or the kind  
2           of service supplied. It has everything to do with  
3           the velocity at which CN-supplied equipment is  
4           delivered and unloaded offline at destination in  
5           order to return to CN and to our origin customers  
6           for reloading with more of their products to ship  
7           to market. CN generously allows seven full days,  
8           one week, of unloading time at these offline  
9           onloaders for our equipment. Most important for  
10          you to understand, in the case of Vancouver,  
11          Vancouver is considered a high velocity location,  
12          meaning faster turnaround times, and therefore  
13          this topic has no place in the scope of this  
14          investigation.

15           I will also state for the record that at  
16          today there are both centrebeam cars and box cars  
17          used by the forest products' customers in storage  
18          in Western Canada, unused, unordered. So there  
19          are no car shortages of this car type in Western  
20          Canada, and therefore the HVP/LVP programme is not  
21          relevant to this investigation.

22           We are now going to take you through our  
23          presentation. Again, I've given you a list of the  
24          questions, as we understood them, from yesterday.  
25          And I would like to just maybe tee it up a bit.

1                           So Shauntelle will kick things off for  
2 us. She is going to take the themes of  
3 differential treatment of certain commodities and  
4 permits. Doug will follow, Doug Ryhorchuk will  
5 follow, and take the themes of railroad -- or  
6 railway operational issues and infrastructure.  
7 We'll go back to Shauntelle for communications.

8                           And I'll wrap it up at the end. We'll do our best  
9 to do all of this in the time period allocated to  
10 us, of course, leaving room for questions from you  
11 at the end.

12                           So let's get started. Shauntelle.

13 MS. PAUL: Before I go into my presentation, I do want to  
14 address one thing from FPAC. There were no  
15 demurrage or diversion charges assessed to any  
16 Western Canada pulp or paper shipper. Sorry, I  
17 just wanted to get that in before I started.

18                           Thank you, Mr. Chairman, Ms. Duff, and  
19 Mr. Dickie. I very much appreciate the  
20 opportunity to speak this afternoon.

21                           The first theme of the Inquiry Report is  
22 the differential treatment of the commodities.  
23 The allegation from some shipper organizations is  
24 that railways are moving certain commodities in  
25 preference to others. We don't know which shipper

1                   associations allege this, and there's no evidence  
2                   to support it. There was no empirical data filed  
3                   by any shipper association, except for  
4                   agriculture. The agriculture data shows from  
5                   October to December 2018 CN provided 95 percent of  
6                   the cars ordered by grain shippers, and CN moved  
7                   10 percent more grain in these three months in  
8                   2018 than it did in 2017. Clearly, CN was not  
9                   discriminating against grain customers. And in  
10                  fact, we are just two days away from a record  
11                  January grain movement. This industry is very  
12                  well served. We are completely current on grain  
13                  orders, and we actually have grain cars in  
14                  storage, so we were surprised to hear  
15                  Mr. Sobkowich's comments on this yesterday, given  
16                  we talk to our grain customers every day and have  
17                  not heard that.

18                   There is no evidence to support the  
19                  complaints by shippers, in particular forest  
20                  products, who seem to be the loudest. It is  
21                  irresponsible for the associations to make these  
22                  allegations and then not back them up with any  
23                  real evidence.

24                   Table 1 in the Inquiry Report sets out  
25                  CN carload movements for specific commodities.

1           Now, I appreciate the inquiry officer only had  
2           three days to compile the data, but the totals do  
3           not add up for either CN or CP.

4           However, our data does show that forest  
5           products was down by about 1.8 percent in 2018.

6           Shippers and the report suggests CN discriminated  
7           against forest products. This is false.

8           Commodities rise and fall constantly, based on  
9           market dynamics. We live in a global economy with  
10          many different inputs. We will explain the permit  
11          process shortly, but there was no discrimination  
12          against forest products. The reasons their  
13          shipments were down was not due to railway conduct  
14          but rather other forces, presumably market. It is  
15          not my job to explain their business, but here are  
16          a couple of industry articles which provides an  
17          explanation in the downturn of forest products'  
18          business.

19           So this is the first one. It's from  
20          Random Lengths, which is the North American Border  
21          Products Association. And I will just -- I'll  
22          read a little bit.

23           "But sales expectations plummet,  
24           while inventories grow. Continuing a  
25           trend that began in the fall,

1                           retailers have sharply reduced their  
2                           lumber and panel sales expectations  
3                           to levels not seen in two or three  
4                           years."

5                           And we also just heard this morning that  
6                           Canfor is temporarily idling three of their B.C.  
7                           sawmills.

8                           We currently have almost 2,000  
9                           centrebeams in storage, and at one time this  
10                          amounted to 35 miles of track that was used up  
11                          storing these cars.

12                         This is the second article that I'll  
13                         bring up, came from ERA, Equity Research  
14                         Associates. I won't read the whole thing, but,  
15                         "Pulp prices have come crashing down at 2018 -  
16                         end on an abrupt halt in Chinese buying."

17                         The second theme of the Inquiry Report  
18                         was the imposition of embargoes and permits. FPAC  
19                         has raised concerns regarding CN's use of  
20                         embargoes and permits, in particular a suggestion  
21                         that CN is harming forest products commodities  
22                         more than others. On page 10 of the Inquiry  
23                         Report shippers associations suggested that the  
24                         embargo and permit process is a traffic control  
25                         mechanism. We agree. To be used only under

1 exception circumstances, which we also agree.

2 During the time period in question CN  
3 implemented two primary categories of embargoes.

4 The first was the BNSF interchange embargo, and  
5 the second was the pulp unloading terminal  
6 embargo. I am going to deal with the BNSF embargo  
7 first.

8 So we had a BNSF embargo with permits.

9 CN hands off traffic to the BN in Thornton. What  
10 happened was we saw a 20 percent increase in  
11 traffic over this interchange versus the same time  
12 period last year. There was no advance warning or  
13 forecast of this volume. On top of that we dealt  
14 with weather impacts with heavy rain, slides and  
15 washouts. We worked with the BN, and the embargo  
16 was lifted on January 15th.

17 I'm now going to turn to the traffic  
18 management for pulp, the circumstances that we  
19 faced, what we did about it, and why. Our role in  
20 the supply chain is to take traffic from a  
21 customer and deliver it to a chosen -- deliver it  
22 to a terminal chosen by that customer. The  
23 customer selects the terminal, when to release the  
24 traffic to go to the terminal. Terminals in  
25 Vancouver have both physical capacity limits and

1                   operational limits to when they work. Everyone in  
2                   this room would agree it is not good for the  
3                   supply chain if when we arrive in Vancouver we are  
4                   prevented from taking the traffic to the  
5                   customer's terminal. It's back to Fiona's analogy  
6                   from yesterday. It would be like taking a flight  
7                   from Toronto to Vancouver and not being able to  
8                   land for a week. So you can circle the airport  
9                   for a week, or you can decide not to allow the  
10                  plane to take off from Toronto.

11                  Now, let me tell you how all the other  
12                  commodities make sure this does not happen in  
13                  Vancouver. For grain and unit train shipments,  
14                  which would be coal, potash, frac sand and crude,  
15                  they self-regulate. Customers place unit train  
16                  requests with both origin and destination  
17                  information, including when unit trains are  
18                  required at destination. And destination  
19                  terminals provide advance authorization, what we  
20                  call terminal authorization, of what can be  
21                  shipped into them. They make sure there is space  
22                  at their terminal for the acceptance of the  
23                  shipment delivery.

24                  Some customers, however, do not do this.  
25                  And this is the merchandising carload type

1 traffic, which would be pulp, paper, lumber,  
2 propane, chemicals, aluminum. These customers and  
3 terminals have not and will not take the steps to  
4 make sure the inbound flows match the unload  
5 capacity before they release their traffic. For  
6 example, one pulp terminal had daily requests for  
7 shipments that were double their daily unload  
8 capacity. So CN is forced to take on the role of  
9 pipeline manager to make sure there is space at  
10 the terminal to receive the cars. If we take no  
11 steps, a multitude of traffic flows into the  
12 destination terminal and sits waiting to unload,  
13 transforming our operating yards into parking  
14 lots. And this is important. As the traffic sits  
15 in our serving yards, it impedes our ability to  
16 service other traffic and reduces empty cars  
17 available to move back for loading at other  
18 customers.

19 CN would prefer that shippers and  
20 terminals in this sector manage their own flows  
21 like the other commodities. Our experience is  
22 this does not happen. Therefore, the only  
23 mechanism available to manage these types of flows  
24 is a use of an industry process, an AER embargo  
25 with permits.

1                   So on this slide I want to give an  
2                   example of what happens when you have seven day  
3                   terminal unloading performance and when you do  
4                   not. So you'll see seven days, which is the train  
5                   smoothed coming into Vancouver, which would be  
6                   very much the pulp loaders that load seven days a  
7                   week. And that is the top graph. Very smooth,  
8                   like a conveyor belt coming in. When you do not  
9                   have that returning seven day unloading and  
10                  opportunity for empties returned back, you get the  
11                  five day wave of the returning part. And you will  
12                  see on Saturday, Sunday how that dips down. There  
13                  is a 20 to 30 percent loss in capacity when you  
14                  don't have consistent seven day a week unloading.  
15                  It creates waves, peaks and valleys of the car  
16                  supply returning back into the country origins or  
17                  to the mills for loading. And it sets up a very  
18                  fragile system for any types of disruptions, if  
19                  something's going to happen back on those two days  
20                  when you don't get the unloads.

21       THE CHAIRMAN: Just a quick question. Are the bars in those  
22                  graphs, do those reflect -- is that notional or do  
23                  those reflect actual data?

24       MS. PAUL: This is notional data, but I will come to some  
25                  real data coming up.

1                   So to your point, Mr. Chairman, this is  
2                   real data. So for pulp into the Greater Vancouver  
3                   terminal to the seven unloading terminals. Pulp  
4                   mills operate seven days a week. Railways operate  
5                   seven days a week. We have some pulp terminals in  
6                   Vancouver that operate seven days a week but do  
7                   not do all of the same unloading on the weekends.  
8                   And we have other pulp terminals that do not  
9                   operate seven days a week. And in fact, our data  
10                  shows that terminal unloads for pulp drop  
11                  34 percent from weekdays to weekends. This is a  
12                  significant loss of capacity in the supply chain.

13                  As we move towards year end, on top of  
14                  the lower weekend unloading performance, the  
15                  unload capacity at the terminals becomes even more  
16                  constrained with the number of holiday shutdowns.

17                  Our experience is that doing nothing,  
18                  hoping the shippers will self-regulate, leads to  
19                  the necessity of imposing a full embargo. Not an  
20                  embargo with permits, but a full embargo. Heading  
21                  into 2018 and 2019 we tried to be more proactive  
22                  with this well-known constraint of shipper demand  
23                  exceeding terminal capacity. Hence, the embargo  
24                  with permits.

25                  So Mr. Chairman, you asked an important

1 question about the under-utilization of permits.

2 I would like to just walk you through this slide,  
3 because I know there's a lot of information on it.

4 The blue bars that you see start from  
5 August and go all the way to the end of the year.

6 These are the number of pulp loads that are  
7 released out of our system coming into Vancouver.

8 The dotted black line is the four-year average of  
9 what this -- of pulp loads being released into

10 Vancouver. What is important to note is there is  
11 virtually, except for one week, there is no

12 difference in loaded pulp flowing into Vancouver  
13 pre- and post-permit timeframe, that the pulp

14 loads are completely consistent. The other thing  
15 I'd like to point out is this is the request for

16 permits up here, and these are the permits that we  
17 granted down here. So the permit requests far

18 exceeded the historical shipment levels, almost  
19 double the run rate of what was asked for. And

20 volumes shipped, what you'll see here, were  
21 substantially lower than the permits that we

22 issued.

23 So coming back to the permits,  
24 30 percent of the permits that we issued were not  
25 used by the pulp shippers. So you will see that

1                   there was just over 9,900 permits requested. We  
2                   issued just over 5,700 permits. And there were  
3                   3,900 permits that were used. So 30 percent of  
4                   the capacity was not used.

5                   So what does this tell us? Requests for  
6                   permits for pulp shipments far exceeded their true  
7                   demand. Permits were provided -- the permits we  
8                   provided were more than what pulp customers  
9                   needed. And the shippers left on the table 1,800  
10                  carloads of pulp that could have moved to  
11                  Vancouver. The suggestion that the railways were  
12                  at fault for the pulp shippers not getting their  
13                  product to market is simply false.

14                  I'd like to take you to page 18 of the  
15                  Inquiry Report. When you launched the inquiry you  
16                  directed the shippers to provide the impact of the  
17                  embargoes and the permits, highlighted in red on  
18                  the screen. And they didn't provide it to you.  
19                  And I'm going to tell you why. Because it didn't  
20                  substantiate their case.

21                  I'll now pass it over to Doug to speak  
22                  about railway operations.

23                  MR. RYHORCHUK: Mr. Chairman and panel, I'm here to speak to  
24                  the theme of railway operations in Vancouver.

25                  The first point I'd like to speak to is

1                   to the allegations that possible rail freight  
2                   service issues in Vancouver are a result of  
3                   insufficient locomotives and inadequate crew  
4                   staffing. As we communicated yesterday, there was  
5                   absolutely no evidence in the inquiry provided by  
6                   the shipper organizations to support the  
7                   allegations regarding inadequate resources.  
8                   However, I'm going to do my best to respond.

9                   I'd like to start with locomotives here.  
10                  As we previously stated, you heard yesterday and  
11                  today, volumes were up 10 percent in Vancouver  
12                  terminals in the month of November and December  
13                  year over year. The way the traffic comes to  
14                  Vancouver is by locomotives. Locomotives follow  
15                  the flow of traffic. If you have additional  
16                  traffic coming in, you're going to have additional  
17                  locomotives coming in.

18                  As we were directed by the inquiry  
19                  officer, CN provided data of its locomotive supply  
20                  in Vancouver. CN requested that this information  
21                  remain confidential. However, we think that in an  
22                  attempt to maintain the requested confidentiality,  
23                  Table 11 of the report does not accurately  
24                  represent the data provided by CN.

25                  I'd like to take you to a slide on the

1                   screen. The data CN submitted showed the increase  
2                   of locomotives sent in November -- to Vancouver  
3                   for November and December, year over year, there  
4                   was a 17 percent increase in October of  
5                   locomotives. There was a 25 percent increase in  
6                   locomotives in November, year over year, and  
7                   11 percent more locomotives in December, year over  
8                   year. As there is 10 percent more traffic coming  
9                   into Vancouver, there was actually 18 percent more  
10                  locomotives in November and December. Clearly  
11                  there is no shortage of locomotives, and the  
12                  number of locomotives available was not the cause  
13                  of the congestion. In fact, you can see we had  
14                  extra resources compared to traffic volume  
15                  increases.

16                   One of the questions yesterday posed was  
17                  related to the locomotives that BNSF lent to us.  
18                  I'd like to add some clarification to that right  
19                  now, if I could, please.

20                   We have used BN power -- BNSF power in a  
21                  limited exception basis. In fact, over a  
22                  four-month period from October, November,  
23                  December, up to January, including January, we've  
24                  used 44 locomotives from the BNSF. I'd also like  
25                  to clarify in that same time period we have given

1                   to BNSF 165 locomotives to pull their traffic,  
2                   their south interchange traffic, from Thornton  
3                   yard to the border. That's a difference of 121  
4                   locomotives. We work collaboratively with the  
5                   BNSF to make sure that we have power in place to  
6                   support each other's business here.

7                   Now I'd like to take a -- now I'd like  
8                   to have the opportunity to speak on the crew  
9                   availability.

10                  Similarly, CN provided data to the  
11                  inquiry officer upon the request showing CN's crew  
12                  availability in Vancouver and requested that the  
13                  data remain confidential. Once again, CN believes  
14                  that the efforts to maintain the confidentiality  
15                  of the information resulted in the data being  
16                  presented in Table 12 in a manner that was not  
17                  accurately representative to the CN data. To  
18                  address this forecast, up on the right-hand side  
19                  of the screen, and in consideration of a  
20                  10 percent increase, you can see year over year in  
21                  October there was 8 percent more crews; November,  
22                  10 percent more crews; and December, 22 percent.  
23                  The crew base was significantly increased. It was  
24                  not the cause of congestion. 10 percent more  
25                  traffic, there was actually 16 percent more crews

1                   here in Vancouver.

2                   Yesterday you asked about the 18 percent  
3                   increase in locomotives and 16 percent increase in  
4                   crews. The increases do not happen year over  
5                   year. Only in those -- in years when the volume  
6                   is up and we need more resources and crews. This  
7                   is not a regular surge capacity that CN typically  
8                   brings on. It's not part of CN's operating  
9                   plans -- it is part of CN's operating plan when  
10                  needed. If volumes go up again, we'll have the  
11                  resources to address the issue.

12                  You asked about holiday, increased crews  
13                  and locomotives help the congestion. We had  
14                  adequate resources in place. The numbers show  
15                  that. The data shows that. It did not cause a  
16                  congestion. There was no lack of resources.

17                  I'd also like to now talk about the  
18                  breaking up of unit trains that was raised in the  
19                  inquiry yesterday.

20                  When I read the inquiry this was a  
21                  surprise. Furthermore, when Mr. Sobkowich brought  
22                  this to the inquiry yesterday I was further  
23                  surprised. We have constant communications. I am  
24                  in constant contact with our customers, with the  
25                  grain shippers, grain customers, and not once has

1                   this been brought to my attention.

2                   In fact, on January 22nd, eight days  
3                   ago, I met with senior executives from Cargill and  
4                   Richardson, who are part of the Western Grain  
5                   Elevators Association, and not once during that  
6                   meeting did they bring up this concern about  
7                   breaking up trains or the sequencing of this.

8                   You've heard from them we have daily calls. It's  
9                   not brought up on there. This is obviously an  
10                  exception, and we do discuss grain that's to be  
11                  brought into the terminal on a regular basis.

12                  Mr. Chairman, yesterday you asked about  
13                  dwell, to explain dwell. I have a slide on the  
14                  projector here. I'd like to walk through it. As  
15                  you can see -- I want to explain the slide here  
16                  first a bit. Maybe if I can use the pointer here.

17                  So we have cars arriving per day. And  
18                  that's these lines here. Cars on hand. Inbound  
19                  dwell is a red line, four-year average of dwell,  
20                  and 80 percentile dwell. You can see, we've  
21                  noticed it and it's been explained, that cars on  
22                  hand and the dwell were creeping up here. This is  
23                  when we took action with the permits and embargoes  
24                  that you heard. There's obviously a lag, because  
25                  the cars are already in the system moving. Once

1                   the cars came down, and action started to take  
2                   effect, the dwell dropped. What's more important  
3                   is you see, although the dwell is dropping, and  
4                   the cars on hand are dropping, the volume of  
5                   traffic through Thornton yard in Greater Vancouver  
6                   continued to increase. It is critical, and it was  
7                   necessary, that we took the action when we did so  
8                   we continued to move the traffic through  
9                   Vancouver.

10                  Mr. Chairman, Vancouver remains to be a  
11                  fluid operation. The Vancouver gateway is vital  
12                  to CN, its partners and the Canadian economy.  
13                  You've heard from my colleagues action was needed  
14                  and was taken to address the congestion. This was  
15                  not caused or prolonged by the lack of crew or  
16                  locomotive resources in the area. We saw a growth  
17                  in the last two years. We heard this from  
18                  Mr. Xotta over the previous years. CN has  
19                  invested in locomotives. They've invested in  
20                  cars. You've heard about how we've purchased  
21                  grain hoppers. We purchased centrebeams. We  
22                  purchased box cars. We recruited employees. And  
23                  we invested in our infrastructure, which you'll  
24                  hear more of, and you did a little bit earlier  
25                  this morning. We need all supply chain partners

1                   to have a consistent investment in terminal  
2                   capacity.

3                   I would now like to answer a few other  
4                   questions that were raised yesterday, although  
5                   they were not pertaining to railway operations  
6                   here.

7                   First -- the first question I'd like to  
8                   ask is the primary cause of the congestion in  
9                   Vancouver -- you asked. It's been noted here  
10                  there was a 10 percent increase in traffic in  
11                  towards Vancouver. Included in that was a  
12                  20 percent increase in BNSF interchange traffic.  
13                  We had weather. There was washouts, slides  
14                  impacted, and there was wind. We had a terminal  
15                  that was shut down seven times in the month of  
16                  December due to wind.

17                  Terminal capacity constraint. Hours of  
18                  servicing worked, we've seen it from Shauntelle,  
19                  the days of the week, the statutory holidays they  
20                  take off, and their capacity to accept their  
21                  traffic on site, which I'll talk about more here.

22                  Increase in traffic at this time of year  
23                  is exceptional. Nothing happened in -- it never  
24                  happened in other years the amount of record  
25                  traffic we had. We moved -- December -- November,

1                   December has been a record for traffic coming  
2                   through here.

3                   Yesterday you were also asking about the  
4                   type of train, a high velocity/non-velocity unit,  
5                   non-unit. I expect that all meant the same. I  
6                   just want to clarify. And affects the service  
7                   level provided. The type of train does not affect  
8                   the service level. Velocity is speed. Velocity  
9                   is what railways gear their operation to. We  
10                  don't run trains faster than any other trains,  
11                  however, because the terminals receiving the  
12                  trains, they may feel -- receiving a full train,  
13                  it may appear on the last mile that the trains are  
14                  moving faster. This is seen with coal trains when  
15                  they arrive into a Neptune or a Roberts Bank, when  
16                  they can take the complete train, they may be  
17                  considered high velocity. However, it comes down  
18                  to the final mile, the destination, and that the  
19                  terminal can receive the full train.

20                  Mr. Chairman and panel, I'd now like to  
21                  take the opportunity to speak on the theme of  
22                  infrastructure. I am going to try to cover the  
23                  four questions that were posed yesterday.

24                  First, you asked what are the key  
25                  infrastructure challenges in Vancouver. Terminal

1 capacity. And it's not one terminal, it's many  
2 different terminals. CN's business has developed  
3 rapidly and significantly. Terminals that have  
4 been around for years have not equipped to handle  
5 the traffic directed towards their terminal.

6 There is a new terminal that's being built on the  
7 North Shore that I am sure you are aware about.

8 This terminal can handle three trains at once with  
9 120 cars on each train. If all trains had this --  
10 if all terminals had this capacity, we would not  
11 even be here today. We'd be out working.

12 Pulp, physical size and operating plans,  
13 pulp terminals. We cannot -- we continuously have  
14 to hold off pulp, and when they can't take them in  
15 on the weekend, we need a place to put the pulp  
16 cars. This creates capacity.

17 Grain. We heard from Mr. Sobkowich  
18 yesterday that he did not say there's any grain  
19 terminal capacity issues. However, we have a  
20 terminal on the North Shore that regularly  
21 departs -- regularly loads a hundred car unit  
22 trains in the country. This terminal can only  
23 accept 80 cars. How is that not a capacity issue,  
24 when you depart a hundred cars, and they only  
25 accept 80 cars. Furthermore, those 20 cars are

1           then put into the yard, at either Thornton yard or  
2           North Vancouver, and then they go out of sequence.

3                         I'd also like to mention about grain, on  
4           that meeting that I had on January 22nd with  
5           Richardson and Cargill, amongst ourselves was the  
6           senior operations people. We also had  
7           engineering, senior engineering people, from both  
8           Cargill, Richardson and CN there. One of the main  
9           topics discussed at that meeting was to discuss  
10          how can Richardson and Cargill expand their  
11          facility so they can take a direct unit train  
12          right into their facility. What did they need to  
13          do to realign their tracks, work together, and how  
14          they can arrive a full train into their facility.

15                         We heard about pulse crops yesterday.  
16           Pulse crops continue to see traffic coming towards  
17           them. Right now we have a terminal in the Greater  
18           Vancouver terminal here that takes 21 cars a day.

19                         As of this morning I have 120 cars in Thornton  
20           yard. That's six days of traffic. We have  
21           serviced -- provided service flawlessly for the  
22           last five weeks at this terminal. How can this --  
23           creating 120 cars is one of the reasons that  
24           causes congestion.

25                         We have a terminal in Greater Vancouver

1                   where they offload intermodal and grain. When we  
2                   don't have grain we can hold 10,000 feet of  
3                   intermodal cars there, and they load 7 to 8,000  
4                   feet a day. When we have a loaded grain train  
5                   there we're down to 4,000 feet. I think it's  
6                   great that we're expanding the type of traffic  
7                   going in there. We need to make sure the  
8                   terminals can handle all the traffic.

9                   We heard it from Mr. Xotta today about  
10                  some of the infrastructure, the Second Narrows  
11                  Bridge and the Thornton tunnel.

12                  The Second Narrows Bridge is a lift  
13                  bridge for deep sea. For every deep sea vessel,  
14                  the bridge is out for 45 minutes. There is no  
15                  schedule to the vessel. There is no determination  
16                  how many you're going to have a day. And if you  
17                  have them back to back, you could be out for a  
18                  couple hours. The amount of notice that we get  
19                  ahead is about 30 to 40 minutes.

20                  The tunnel adjacent to the Second  
21                  Narrows Bridge is 11,000 feet long. Due to the  
22                  exhaust that ruminates in the tunnel after the  
23                  trains we do have to keep the -- we do have to  
24                  wait for 20 minutes before we have another train  
25                  go through there. That's perishable capacity that

1           we're working on. And we have an agreement with  
2           the Port of Metro Vancouver and the federal  
3           government about changing the ventilation system  
4           and another track to have a train ready to go out  
5           right there at the entrance of the tunnel.

6                           Mr. Chairman, yesterday you asked about  
7                           the Fraser River Bridge and if it's used optimally  
8                           and to the greatest extent of possibility. CN has  
9                           done a lot of work collaboratively with the BNSF.  
10                  Years prior, the interchange for the BNSF used to  
11                  be -- and I'm going to just bring up -- I should  
12                  have put that up earlier. Sorry. Years prior,  
13                  the BNSF interchange used to be at the BNSF new  
14                  yard. That is on the joint section in between  
15                  Fraser River Bridge and North Vancouver. Right  
16                  there. We used to interchange traffic daily with  
17                  the BNSF there. Working collaboratively with the  
18                  BNSF we have moved the interchange to Thornton  
19                  yard. This itself has taken, in today's volumes,  
20                  it's taken 600 cars off the Fraser River Bridge  
21                  and the New Westminster joint section.

22                           In conjunction with this we've also  
23                           worked with the CP Rail, and we used to have the  
24                           interchange at the New Westminster yard. We have  
25                           now changed it to Thornton yard and Coquitlam

1                   yard: CP's Coquitlam yard and CN's Thornton yard,  
2                   where we run direct trains in and out of each  
3                   other's yards. This has also taken traffic off  
4                   the Fraser River Bridge. To supplement that we  
5                   also have the directional running agreement with  
6                   CP Rail. The directional running agreement allows  
7                   us to bring the westbounds through Thornton yard  
8                   across the Fraser River Bridge over to North  
9                   Vancouver. Respectfully, then, we come back with  
10                  eastbound empty cars down to New Westminster and  
11                  through Sapperton over to Coquitlam and up the  
12                  DRZ. This keeps those cars, empty trains, off the  
13                  Fraser River Bridge. A lot of work has been done  
14                  with the railways to optimize the Fraser River  
15                  Bridge.

16                  Yesterday there was concerns and  
17                  questions regarding the Thornton yard and  
18                  infrastructure. Thornton yard is landlocked  
19                  between the Fraser River and Highway 7 to the  
20                  south and Highway 17 to the north. There is no  
21                  more room to build tracks. We need to be able to  
22                  take the traffic to the destination at the  
23                  customers. Thornton yard can no longer continue  
24                  to take -- become a buffer for terminals that do  
25                  not work seven days a week and cannot handle their

1 traffic.

2 Yesterday you asked about operational  
3 issues related to the New Westminster interchange.

4 The yard became congested, because terminals were  
5 unable to accept their cars at destinations. I've  
6 talked about it. I gave an example about the  
7 pulse crop that we're dealing with right now.

8 We've talked about -- Shauntelle's talked about  
9 the pulp. We talked about the interchange, the  
10 work that we did with the BNSF. The Thornton yard  
11 is the last place for this traffic to be set off.  
12 It was being used as a parking lot, and we need to  
13 continue to drive traffic through Thornton yard.

14 Operational issues that would have  
15 resolved the direct train concept. This is  
16 obviously what we need to go towards. The G3  
17 model on the North Vancouver is going to make a  
18 difference. When we can drive a train, a unit  
19 train, right into the destination, it removes the  
20 congestion and helps out all the customers.

21 Your final question on infrastructure  
22 related to future plans. That's already been  
23 discussed with the Port of Metro Vancouver. And  
24 that's where I'd like to leave at.

25 Thank you. Over to you, Shauntelle.

1 MS. PAUL: I'll come back to the fifth theme in the Inquiry  
2 Report, which was the quality of customer  
3 communications.

4                   The shipper associations have raised  
5 concerns regarding lack of communication by  
6 railway companies, particularly CN. CN was not  
7 directed to provide any information on this theme,  
8 nor did we volunteer it. We have two concerns  
9 with this suggestion in the report.

10                  Shippers did not file anything on this  
11 point, despite being directed to do so. They are  
12 in possession of all CN's communications. The  
13 Inquiry Report notes the allegation is based on  
14 purely anecdotal information. If CN had been  
15 asked, or even been informed, that this had  
16 been -- was an issue being investigated, we have  
17 several communications from CN to our customers  
18 that CN would have happily provided. We're  
19 disappointed we were not made aware that this  
20 might have been an issue, and yet the report makes  
21 this unsubstantiated suggestion against CN.  
22 Despite never being asked to provide these  
23 communications, let us give you a sample of CN's  
24 communication efforts.

25                  So here we're -- this is a timeline of

1 communication that we had to the wood pulp  
2 shippers, in terms of putting the permits in place  
3 and the permit process. We actually started on  
4 September 21st. From our vice president of  
5 industrial products, new vice president Kelly  
6 Levis, there is a letter coming up, and then from  
7 there various communications we had. On top of  
8 that my team and the marketing team hosts a call  
9 twice a week with the pulp shippers on the permits  
10 and what's happening in Vancouver.

11 This is Kelly's letter that went out in  
12 September, just a snapshot. This also went out  
13 with the letter, the process of how we would deal  
14 with the permits and the pipeline management.  
15 Again, more around this communication that went  
16 out to the customers. Here's where some of the  
17 network updates that we provide around the  
18 Vancouver area. This would go out to all of our  
19 customers. Again, just more examples. I'm just,  
20 you know, trying to give you a flavour of some of  
21 the things we put out that happen daily, weekly,  
22 this kind of thing.

23 And we have a multitude of ways we  
24 connect with customers. Customers have direct  
25 access to both service delivery representatives

1 and sales account managers. As I said, we host  
2 bi-weekly and weekly calls, whether that's on  
3 permitting or car supply. There are direct emails  
4 and phone calls between individual customers and  
5 account managers and their reps, and we also have  
6 web-based tools to track and trace car  
7 information.

8 What you may find surprising,  
9 Mr. Chairman, is that FPAC asked us to come to  
10 meet with their customers on December 6th, in  
11 Vancouver, to talk about winter preparedness. We  
12 showed up. FPAC showed up. But none of the  
13 customers did. And you can now understand our  
14 disappointment in the shipper associations'  
15 criticism that we did not communicate.

16 MS. MURRAY: Mr. Chairman, I'd like to answer your question  
17 about CN's capital investment plans for 2019, the  
18 last of your questions from yesterday.

19 CN announced yesterday as part of our  
20 quarterly results we are planning to invest  
21 3.9 billion in cap ex in 2019. 3.9 billion.  
22 Another record year. Of this amount we anticipate  
23 spending a full 3 billion on maintaining our  
24 infrastructure and increasing our capacity.

25 I can offer you some additional details.

1           We're planning to invest up to 1.6 billion on  
2           maintenance and upgrading of our existing  
3           infrastructure, including rail yards and main  
4           line. We plan to invest 400 million on new  
5           tracks, primarily in Western Canada. Of this,  
6           80 miles of additional double tracking will be  
7           added. This is over and above the 60 miles of  
8           double track and new sidings and expansions that  
9           were completed in 2018 at the price of  
10          400 million. 18 miles of this new double track  
11          will be located between Edmonton and Vancouver,  
12          directly supporting growth and fluidity through  
13          the Vancouver gateway. For rolling stock and  
14          equipment we expect to spend 700 million on 140  
15          new locomotives. Please note that these are the  
16          2019 tranche of the 260 locomotive acquisition we  
17          announced last year. 100 million will be spent on  
18          500 new grain hoppers. Please note, these are the  
19          2019 tranche of the thousand grain hoppers we  
20          announced last year. A hundred million on  
21          expanding intermodal terminals. Another hundred  
22          million on intermodal equipment such as cranes,  
23          chassis, containers and tractors. If nothing  
24          else, the level of this investment should send a  
25          clear message to everyone here today that CN takes

1                   very seriously our role as a backbone of the  
2                   Canadian economy.

3                   Mr. Chairman, we've thrown a lot at you  
4                   this afternoon in an attempt to fully answer your  
5                   questions with facts. I also hope we have  
6                   properly imparted to you the following points:

7                   CN moved record levels of traffic in  
8                   Vancouver in both November and December. Without  
9                   the actions we took, including but not limited to  
10                  permits, we would not have moved as much traffic  
11                  as we did. We want to move more traffic. That is  
12                  why we are continuing to invest at record levels.

13                  We believe we will once again be the -- this will  
14                  be the highest level of capital investment as a  
15                  percentage of annual revenues among all of the  
16                  North American Class 1 railroads. We value our  
17                  customers, and we support their growth and help  
18                  them win in their markets every day.

19                  You have just heard how our supply chain  
20                  partner, the Port of Vancouver, is investing and  
21                  doing their part to bring increased capacity to  
22                  this critical gateway. We call upon all the other  
23                  members of the supply chain to do their part to  
24                  increase capacity, whether it is adding capacity  
25                  at the origin mills and plants, adding capacity at

1                   the waterfront. This does not necessarily mean  
2                   building tracks, although that may be the case.  
3                   Adding capacity can also come from running an  
4                   extra shift, loading and unloading, and releasing  
5                   on weekends. The point is that making the  
6                   operation truly 24/7 365 makes full use of the  
7                   existing capacity that we have to move Canada's  
8                   products to market.

9                   Logistics issues in the Greater  
10                  Vancouver area are, to say the very least,  
11                  complex. I think everyone in the room can agree  
12                  on that point. An investigation which focuses  
13                  solely on the railroads will never provide the  
14                  best environment to assess all aspects of the  
15                  supply chain for a complete end-to-end solution  
16                  which, again, I think we can all agree is what we  
17                  really are all here about.

18                  I'm not a lawyer. In fact, I'm a  
19                  commercial person turned public affairs -- public  
20                  and government affairs, but it strikes me that  
21                  perhaps the participants would have been better  
22                  served to have sat down around a table with the  
23                  assistance of the CTA mediators to have a  
24                  solution-based conversation. CN would certainly  
25                  be willing to do this.

Closing remarks by the Chairman

I will close on this final note. And I sincerely hope it is heeded by the customers, the supply chain partners, and indeed all the shipping associations in the room and on the phone.

Despite our occasional differences, I encourage all the supply chain partners to please not lose sight of the fact that we need each other, that we are connected to each other, and that together we are the engine of Canadian trade. We will only be stronger as a supply chain when we live by this.

I thank you, Mr. Chairman and the members of the panel. This concludes CN's comments for the day.

THE CHAIRMAN: Thank you, Ms. Murray. Thank you to all of the presenters. The panel will confer for a couple of minutes, it was a fairly extensive presentation, to see if we have any follow-up questions for you now. We'll return. If we do, we'll pose them, and then there will be a few closing remarks. Thank you.

MS. DESNOYERS: All rise.

**(PROCEEDINGS ADJOURNED AT 1:09 PM PURSUANT TO SHORT RECESS)**

**(PROCEEDINGS RESUMED AT 1:19 PM)**

MS. DESNOYERS: Order please.

1                   All rise.

2   THE CHAIRMAN: So the short answer from us is that we do not  
3                   have any follow-up questions for you at this  
4                   stage. You have provided a significant amount of  
5                   information in response to the questions asked.  
6                   So that will suffice for today. And what I'll do  
7                   is speak about the next stages of the  
8                   investigation process. So you can return to your  
9                   table. If there's enough space for you there.

10                  It's getting a little crowded.

11   **CLOSING REMARKS BY THE CHAIRMAN:**

12   THE CHAIRMAN: So ladies and gentlemen, this brings us just  
13                  to a few concluding remarks from the panel that is  
14                  looking at this case.

15                  I do want to begin, on behalf of the  
16                  Canadian Transportation Agency, by thanking all of  
17                  the participants who came today, who have  
18                  presented information to the agency in the context  
19                  of this investigation, which I noted in my opening  
20                  remarks yesterday morning is, we understand,  
21                  proceeding at a fairly fast pace. So thank you to  
22                  all of you for joining us and for your  
23                  presentations before us.

24                  I'll spend just a moment talking a  
25                  little bit about the legal framework which applies

1                   to this case, a bit of a reminder for everybody,  
2                   as we look forward to the next steps of this  
3                   process, which I'll outline in a moment.

4                   This investigation, of course, is  
5                   being -- was initiated and is being carried out in  
6                   the context of Part III Division IV of the *Canada*  
7                   *Transportation Act*, and specifically the level of  
8                   service provisions within that Act. And the  
9                   question that the Agency will ultimately need to  
10                  answer is whether there have been any instances  
11                  where railway companies have not respected, not  
12                  met their level of service obligations under those  
13                  provisions.

14                  Now, for some of the people in the room,  
15                  those are familiar provisions and familiar  
16                  questions because they are dealt with, for  
17                  example, through dispute proceedings, dispute  
18                  adjudication proceedings. This, of course, is a  
19                  slightly different process. It is an own motion  
20                  investigation, launched under a new provision of  
21                  the Act. And as I said in my opening remarks, by  
22                  its nature such an investigation proceeds step by  
23                  step.

24                  The phase that the investigation is  
25                  currently in, the phase that started with the work

Closing remarks by the Chairman

1                   of the inquiry officer and has continued through  
2                   this hearing and will continue a little longer, is  
3                   the initial information-gathering phase of the  
4                   investigation. That information-gathering phase  
5                   will continue after this hearing for a short  
6                   additional period to give the opportunity to  
7                   various parties that committed to provide the  
8                   Agency with additional information and responses  
9                   to its questions during this hearing to do so.

10                  All parties who have outstanding  
11                  commitments to provide information evidence to the  
12                  Agency stemming from this hearing are asked to do  
13                  so by close of business on February the 8th. That  
14                  information should be provided to the Agency  
15                  through the inquiry officer assigned to this case.

16                  Once that's done, the Agency will  
17                  consider all of the evidence that it has gathered  
18                  through those various steps, through the initial  
19                  work of the inquiry officer, this oral hearing,  
20                  and any subsequent information and evidence that  
21                  is provided to the Agency. We will then issue a  
22                  decision.

23                  We will endeavour to do so by the end of  
24                  February, but it will depend in part upon the  
25                  scope of the record before us. But we will then

1 issue a decision that will identify in much more  
2 specific terms the particular issues that the  
3 Agency is looking into and the specific questions  
4 or issues to which we would like responses from  
5 the various participants. So that's the point at  
6 which we will zero in and make it clear exactly  
7 what the balance of the investigation will focus  
8 on. Parties will then have 20 days to respond to  
9 those questions, to those issues, and an  
10 additional 10 days to review and reply to the  
11 responses of other parties.

12 Once that's completed, the Agency will  
13 render a final decision in this investigation, and  
14 that decision, needless to say, like every other  
15 decision that this organization issues, will be  
16 informed by the law, meaning what's written in the  
17 statute and relevant jurisprudence, and by the  
18 record of this proceeding, by the evidence before  
19 us. And that's it. The law and the evidence.

20 With that, I will conclude. We are  
21 finishing a little ahead of schedule, which I am  
22 sure is welcomed by everybody in the room. It has  
23 been a fairly intense day and a half. We've all  
24 had a lot of information to take in and have been  
25 working hard to follow the various submissions.

## Closing remarks by the Chairman

So thank you again for your presence.

Thank you for your efforts. And we look forward to receiving the final tranche of information and to concluding this investigation ultimately within the 90 days laid out in the directory language of the statute. Have a good day.

MS. DESNOYERS: All rise.

(PROCEEDINGS CONCLUDED AT 1:26 PM)