

1 **January 30, 2019**

2 **Vancouver, B.C.**

3 **(PROCEEDINGS COMMENCED AT 9:00 AM)**

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

7 Interpretation services will be
8 available throughout the duration of the hearing.
9 We would like to remind participants that during
10 their oral presentations they should provide a
11 reasonable delay for the interpretation while
12 respecting their allotted presentation time.
13 Please turn off your cell phones during the
14 proceedings, and please no food in the hearing
15 room. Water and coffee is fine.

16 Thank you.

17 MS. DESNOYERS: Order please. All rise.

18 Please be seated.

19 **OPENING REMARKS BY THE CHAIRMAN:**

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

23 This hearing, as I noted yesterday in my
24 opening remarks, constitutes part of the initial
25 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 a 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. STUHLREIER: 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. STUHLBREIER: 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

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

1 Association, its membership expands beyond just
2 the railroads.

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

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

23 I'm not sure if you have the binder from
24 yesterday in front of you, but perhaps if you can
25 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*

1 *Transportation Act."*

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

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

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

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

25 FMA and other industry

1 associations have requested that the
2 Canadian Transportation Agency
3 initiate an investigation of the
4 chronic and widespread service
5 problems," et cetera, "and has
6 confirmed this morning that such an
7 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.

19 The second point I want to address from
20 yesterday and this morning are some of the
21 submissions provided by the agricultural group and
22 FPAC.

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 are 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.

1 I will close on this final note. And I
2 sincerely hope it is heeded by the customers, the
3 supply chain partners, and indeed all the shipping
4 associations in the room and on the phone.
5 Despite our occasional differences, I encourage
6 all the supply chain partners to please not lose
7 sight of the fact that we need each other, that we
8 are connected to each other, and that together we
9 are the engine of Canadian trade. We will only be
10 stronger as a supply chain when we live by this.

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

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

21 MS. DESNOYERS: All rise.

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

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

25 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

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.

1 So thank you again for your presence.

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

7 MS. DESNOYERS: All rise.

8 **(PROCEEDINGS CONCLUDED AT 1:26 PM)**

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