

Reply to the Attention of: Lucia Stuhldreier
Direct Line: 604.691.7431
Email Address: lucia.stuhldreier@mcmillan.ca
Our File No.: 248156
Date: April 8, 2019

EMAIL

Vancouver Freight Rail Investigation
Canadian Transportation Agency

Re: Vancouver Freight Rail Investigation – Case No. 19-00189

In accordance with the Agency's directions in LET-R-29-2019, we are hereby submitting comments on behalf of the Forest Products Association of Canada ("FPAC") on the Responses filed by CN and CP.

CN SUBMISSION

Embargoes as a response to "unexpected" increase in traffic volumes

In paragraph 11 of its Response, CN refers to an "unexpected" increase in traffic of over 10% in the Vancouver area during October 2018 to January 2019 "as compared to the same timeframe in the previous year." CN then notes that no participant has challenged this assertion.

In paragraph 75 of its Response, CN cites the Second Inquiry Report as confirming that in October to December of 2018, Thornton Yard was subjected to an unprecedented and unanticipated surge in traffic destined for the North Shore and to be interchanged. The terms "unprecedented" and "unanticipated" do not appear in the Second Inquiry Report. The dramatic increase to which the Second Inquiry Report refers was in the number of cars *dwelling* in Thornton Yard, not the number of cars *arriving* in Thornton Yard.

None of the data that CN has included in its public submissions in this proceeding support a finding that there was a sudden increase in shipments in Vancouver *within* the October 2018 to January 2019 time period. The type of information that would be required to assess the validity of CN's assertion is not publicly available. Shippers have no means of ascertaining, for example, whether traffic volumes in the Vancouver area

during the preceding three month period (July to September 2018) were *also* higher than during the corresponding timeframe in 2017. No conclusion should be drawn from the fact that shippers have not submitted comprehensive evidence to challenge CN's claim of unprecedented and unanticipated increases in traffic.

CN formally communicated to its pulp customers in September 2018 that it would be implementing embargoes with permits on pulp traffic destined to Vancouver area terminals effective December 1, 2018, and that it intended to keep these measures in place at least until the end of January 2019. That communication was not a response to anything that occurred unexpectedly in the period from October to December 2019.

Unused terminal unload capacity

In paragraphs 63 through 67 of its Response, CN criticizes the Agency for presuming that terminal unload capacity equals shipper demand. This criticism is misplaced.

During the oral the hearing held in Vancouver, CN's representatives repeatedly described CN's use of embargoes in relation to pulp and paper traffic as necessary to deal with "shipper demand exceeding terminal capacity". CN identified this as a key justification for its use of embargoes to "meter" inbound traffic, but now argues that the Agency has no basis for determining whether shippers even requested enough service to match unloading capacity.

The question of whether there was unused unloading capacity is highly relevant to the Agency's investigation - not because it is a stand-alone "proxy" for shipper demand, but because it goes directly to assessing the validity of CN's allegation that demand exceeded unloading capacity. The information gathered by the Inquiry Officer suggests that during the period at issue, there was unused terminal unloading capacity.

Terminal shutdowns and slow-downs affecting terminal unload capacity

In paragraph 89 of its Response, CN refers to information included in CP's Reply and Submission filed February 8, 2019, which purports to track terminal slowdowns and shutdowns during the October to December 2018 period. CN faults the Inquiry Officer for not seeking specific information regarding these matters from participants and states in paragraph 91 that "CN was dependent upon the Agency" to gather this information. It is unclear why CP was able to marshal this type of information independently but CN is not.

The public version of the CP Reply and Submission to which CN refers does not indicate which terminals are included in CP's analysis. FPAC accordingly is unable to determine whether any of them handle forest products.

The public version of the CP Reply and Submission to which CN refers also does not provide a fulsome explanation of what is included in the category of "other" causes of lost unloading capacity. For example, it is not clear from the document whether "port congestion" or "terminal congestion" or any other causes subsumed in this category include congestion in a CN yard or any circumstances attributable to CN.

Missed deliveries

FPAC understands that a number of questions were directed to CN on February 13, 2019, including questions seeking

- a. the number of railcars scheduled for delivery for each CN-served terminal in Vancouver during the periods of October 2017 to January 2018 and October 2018 to January 2019; and
- b. the number of railcars actually delivered to each terminal during those periods.

FPAC further understands that in response to these questions, CN referred to delivery data already provided in its January 19 filing. With respect to the number of deliveries scheduled during this period, CN indicated it would require additional time to review its records but that it would provide an answer in due course.

Given the fact that CN apparently maintains its own records of what was scheduled and what was delivered, CN's suggestion, in paragraph 96 of its Response, dated March 26, 2019, that it is unable to address the terminals' responses to similar questions because it does not know what is meant by "scheduled" or "requested" in relation to any given terminal is surprising. In paragraph 98 of its Response, CN objects to what it characterizes as double-counting of missed deliveries. CN argues that when a terminal receives 10 fewer cars than it ordered in for a given day and then requests the undelivered cars again the following day, each of the re-ordered cars should only be counted once in calculating the terminal's total "requested delivery" numbers. This argument misses the point. While the terminal will be forced to order those 10 cars again on a subsequent day, that second order potentially displaces 10 *new* cars the terminal could have handled on that subsequent day. If the daily unload capacity of the terminal in CN's example is

limited to 50 cars per day, the 10-car shortfall on the first day represents unloading capacity that is lost forever.

Terminal Authorization

In paragraph 131 of its Response, CN alleges that unlike unit train shippers, pulp shippers will order cars for delivery to Vancouver area terminals without “terminal authorization” and “despite the fact that terminals are not prepared to unload the traffic”.

Pulp shippers contract with terminal operators for handling and storage. They ship to terminals where they have the necessary arrangements in place for this to occur.

The only context in which the phrase “terminal authorization” appears on CN’s website is in relation to grain. It is unreasonable to compare the supply chain for pulp traffic which moves entirely in manifest trains to the grain supply chain where between 80 and 90% of traffic moves in 100-car trains.

It is equally unreasonable to expect unqualified unloading commitments from terminals or shippers without reciprocal railway commitments on time and frequency of delivery switches, as well as origin switches and transit times. FPAC understands that formal agreements have traditionally been used at some terminals but that CN has more recently declined to enter into or renew such agreements. Instead CN appears to be looking for ways to transition responsibility for allocating permits to terminals, which would impose a de facto “terminal authorization” system without making any commitments as to its own performance.

Lynnterm

In paragraph 119 of its Response, CN claims that in December 2018 Lynnterm’s terminals were full and unable to receive additional pulp shipments. In support of this claim, CN cites “evidence that the market for pulp dropped significantly in December”. CN fails to provide any evidence that Lynnterm’s efforts to obtain delivery of cars being held at CN yards abated during December or January.

CP SUBMISSION

Total inventory on CP for interchange to CN

In the graph on page 11 of its Response and the surrounding text, CP provides information regarding the change in "inventory" of cars on CP in the Vancouver area during the period from September 2018 through January 2019. While CP does not define the term "inventory" as used here, it would appear from the context that the figures shown in the graph indicate the total number of cars on CP tracks (that are to be interchanged to CN) on any given day rather than the number of cars *arriving* in the Vancouver area for interchange to CN.

All of which is respectfully submitted,



Lucia Stuhldreier*

*Law Corporation