



May 31, 2017

Secretary
Canadian Transportation Agency
15 Eddy Street
17th Floor, Mailroom
Gatineau, Quebec
J8X 4B3

Attention: Ms. Elizabeth C. Barker & Mr. Jason Tsang

Re: Consultation on the Guide on Applying for Approval to Construct a Railway Line (the “Guide”) and Indigenous Engagement Framework (the “Framework”) for Railway Line Construction

Dear Ms. Barker and Mr. Tsang,

Thank you for the opportunity to provide our comments on the Guide and the Framework. We welcomed the opportunity to provide these comments and remain interested to participate in any further dialogue going forward. We’ve had the opportunity to review the submissions of the Canadian National Railway Company and the Railway Association of Canada and are substantively in alignment with the issues they’ve raised. While we don’t take objection to those submissions, any views or opinions expressed therein are attributable to the relevant author.

Sharing Information

While CP supports the goal of establishing dialogue with the localities early in a project’s life cycle, in some cases the relevant input is unavailable, subject to confidentiality obligations or is corporately sensitive information. The Guide includes several broad statements as to what the Agency might request, notwithstanding relevant and contrary legal or corporate obligations to which the railway may be subject. In the case of a municipality, some details may not be available such as long term plans for surrounding land use or permitted development activity. Such information, as presently set out in the Guide, may be inaccessible to CP and therefore its required inclusion in a section 98 application is problematic. CP suggests the Guide further consider the scope of an application in light of these issues and clarify: (a) what the Agency is permitted to request; and (b) what a railway company may exclude from an application, before the necessary approval is granted. CP suggests that certain information could be excluded or aggregated in such a way that inappropriate disclosure is avoided. Similarly, CP suggests that the Guide make express reference to exceptions to access to information legislation.

While Appendix A of the Guide partially addresses this concern, section 3 of Appendix A should be deleted in its entirety.

CP objects to the suggestion that market data be included as part of a section 98 application package (excepting that information that has already been publically disclosed either in connection with a project or otherwise). The requested market data (i.e. growth projection, customer demand, market research and other studies and information) is considered by CP to be commercially sensitive and therefore likely to result in financial harm to CP or its customers if disclosed. As CP and many of its customers are subject to the disclosure requirements of existing securities legislation, the Agency might consider limiting the requested market data to that information which has already been publically disclosed, thus avoiding the potential for financial harm.

Page 10 of the Guide proposes that any submitted plans be signed by a qualified engineer. CP suggests that this be modified to permit a qualified engineer to “prepare” the plans. During the course of a typical project’s life cycle, the submission of a section 98 application often occurs well before the finalization of the construction plans, when such documents are typically signed. CP believes that no less due diligence would be applied by a professional engineer retained to prepare the project plans as opposed to the signing and stamping same. However, requiring the necessary drawings to be signed and stamped before they are included in a section 98 application could lead to unnecessary delays in the regulatory process without materially improving the quality of the information under consideration. CP is also concerned that the provision of “access and other security information” could be detrimental to CP’s wider security obligations and suggests same be excluded from a section 98 application as well as the Guide itself.

Consultation with localities

While consulting with localities helps to improve the overall design and ultimate operation of a facility, the scope of involved parties needs to be considered and measured. The Guide makes reference to “anyone interested in participating in the consultation process” as being invited to participate. CP suggests that mere “interest” is not sufficient to entitle a party to participate in the Agency’s regulatory process. Such wide involvement is unnecessary and places an undue burden on the railway. Transparency and other public policy objectives might be better accomplished in other ways, including public notices, websites or town hall meetings which already form part of the Guide. To that end, CP suggests that the Guide clarify: (a) who may provide input on a proposed railway’s construction; (b) reasonable limits on the railway’s public consultation obligations; and (c) the rights or obligations of the localities arising in connection with their involvement, each having due regard to operative legislation, existing jurisprudence and other regulatory processes where public involvement is possible.

Consultation with Aboriginals

While CP believes aboriginal consultation is an important part of a project's approval, CP suggests that the Framework include an express clarification that aboriginal consultation is a duty of the Crown. A significant body of jurisprudence exists on this subject which informs the Framework and the obligations and rights flowing to each party. CP suggests the Framework be further considered in light of the Crown's obligations and CP's involvement in same.

Regulatory Efficiency

It is in all parties' interest to have clarity as to the regulatory process required to approve a railway's location. To that end, the reconsideration of issues that have already been resolved has the potential to significantly delay matters and create uncertainty. CP suggests that the Guide contain a specific exemption from the reconsideration of matters that have been previously considered, resolved or addressed either by the Agency or another regulatory body. Further, the Guide and the Framework might be reconsidered in light of the Final Report of the Expert Panel for the Review of Environmental Assessment Processes, the changes proposed to the Canada Transportation Act as set out in Bill C-49, other operative legislation and jurisprudence, all with a view to creating regulatory efficiency.

Closing

Thank you for the opportunity to comment on the Guide and the Framework. As noted earlier, we would welcome any further opportunities to work with the Agency in the development of finalized guidance documents.

Sincerely,

Canadian Pacific Railway Company



 Joe Van Humbeck
System Manager Environmental Assessment

Copy to:
Cassandra Quach
Cameron Greaves
Lori Kennedy

