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consultations@otc-cta.gc.ca

Canada Transportation Agency
15 Eddy Street
Gatineau, Québec J8X 4B3

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

Introduction

The RAC welcomes the opportunity to comment on the two documents the Canadian Transportation Agency (Agency) posted on its website for consultation purposes: the Guide on Applying for Approval to Construct a Railway Line (Guide), and the Indigenous Engagement Framework for Railway Line Construction (Framework). These documents represent an opportunity to clarify the Agency's expectations regarding applications under section 98 of the *Canada Transportation Act* (CTA). It seems that more work is required to clarify and realize these expectations. The RAC's comments supplement those provided directly by our members, particularly CN and CP and VIA who might have been directly involved in applications to the Agency under Section 98 of the CTA.

Consultation and/or Engagement

As a general comment, we would like to mention the difference in wording used in the English and French versions of the Framework. Where the English version refers to engagement, the French version uses the word consultation. These expressions have different meanings. In the context of a railway line construction, the objective of communicating with localities, including aboriginal communities, is to inform them and consider their interests. If key stakeholders engage in the process and fully collaborate with railways, everyone benefits. Railways can initiate dialogue with stakeholders, but they cannot force them to engage in the consultation process.

Process vs. Results



Both documents imply that railways are responsible for getting everyone to participate fully in the consultations. That is a noble objective, but it is not realistic. The obligation must relate to the process taken to conduct a meaningful consultation aimed at engaging people, and not the potential result of such consultation. For example: the railways cannot identify on their own “conflicts with planned development in the area” (Guide, page 5) if municipalities or developers do not share information on their planned development. While it is reasonable to ask railways to identify “measures to address identified concerns and conflicts,” it is not realistic to expect railways to address them alone. Addressing these measures – for example, showing future land use and zoning on maps and plans (Guide, page 11) – requires collaboration from localities. For this reason, the scope of the consultation must be limited to best efforts to inform people who will be affected by the railway line.

The railways will collaborate with localities (Guide, page 6), but asking railways to consider “local community values” is realistic only to the extent that these values are clearly identified, shared by the members of the local community, and made known to the railways. Railways can inquire about the values of communities and their members, but cannot and should not be expected to speculate what they are.

When consulting with the localities, railways are asked to conduct technical studies, share them with the localities during the consultation process (Guide, page 5), and provide “materials that are easy to understand,” using a non-technical and plain-language approach (Guide, page 7). This approach has the potential to be unduly time consuming and costly. Most localities do not want or need technical studies. They simply want a plain-language description and explanation of the proposed construction’s impact. They rely on the Agency to process technical documents. Railways should only be required to share technical studies upon request from the localities. Finally, it is not realistic to expect railways to take into account all holidays, vacations and other times when individuals and representatives may not be available (Guide, page 6).

Environment

The Guide should aim to describe the process of obtaining the Agency’s approval to construct a railway line, not the process of obtaining an environmental evaluation. Since 2012, the authority to conduct an environmental assessment lies solely with the Canadian Environmental Assessment Agency not the Agency. For this reason, the description of environmental assessments required under other legislation (Guide, page 2) does not belong in this document. The panel mandated by the Minister of Environment and Climate Change to review federal environment processes recently released a report that proposes a new vision for Impact



Assessment in Canada. Under the suggested approach, a project's environmental impact would be assessed on five pillars of sustainability: environmental, social, economic, health and cultural. It is possible that under this approach, the interest of localities might be considered during an assessment. Will we have two agencies looking into the same issue?

The fact that we don't know which direction the government will take with this environment process is another reason why the Agency should refrain from referring to the environmental process, at this stage.

A similar comment applies to the section on "Other federal and territorial approvals." The Agency not being responsible for those other approvals, any reference to them should not be part of this document.

Location of the railway line

The Federal Court of Appeal clearly stated that Section 98 requires the Agency to focus on whether the location of the railway line is reasonableⁱ. Indicating whether alternative locations were considered, and providing the criteria and rationale for choosing its proposed locations, falls outside the Agency's mandate. Similarly, the Agency is not responsible for providing information about the proposed railway line's impact on existing customers and others. This is not related to community interests but to business decisions and relations.

It would be inefficient for a railway company to obtain, compile and provide maps and plans, particularly those dealing with ground alterations, in advance of the construction of a railway line. As mentioned above, it is unrealistic to require railways to provide information about future land use and zoning around the site (Guide, page 11).

Overall, the list of documents to be provided to the Agency, mentioned on pages 10 to 17, is too detailed. The requirements will likely unduly delay the process without bringing information essential to the identification of the interest of localities affected by the project.

Framework

Section 98 of the CTA refers to the "interest of localities", and does not state "including those of indigenous communities", contrary to the wording on page 1 of the Framework. Aboriginal Peoples should be consulted the same way as other localities. Reference to Canada's Aboriginal and Treaty Rights Information System might suggest to aboriginal communities or other stakeholders that railways are subject to the same obligations as Crown corporations, which is not the case.



Translating documents into the language of the community could pose serious problems with localities where aboriginal people live. The documents might have to be translated into many languages, including traditional languages that people no longer speak or for which there is no professional translator.

Conclusion

The RAC is pleased to have been given the opportunity to comment on these documents. As mentioned above, we strongly believe that the Agency should remove any reference to environmental assessment in these documents, and should not imply that railways have any obligation to successfully engage localities into a meaningful consultation.

Regards,

Gérald Gauthier
Vice President
The Railway Association of Canada

ⁱ Sharp v. Canada, 1999. 4 FCR 363