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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 36368

SOO LINE CORPORATION

—CONTROL—

CENTRAL MAINE & QUÉBEC RAILWAY US INC.

APPLICANTS' REPLY IN SUPPORT OF THEIR MINOR APPLICATION

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I. Introduction.

In this proceeding, Applicants Soo Line Corporation ("Soo Line Corp")[1] and Central Maine & Quebec Railway US Inc. ("CMQR US") seek approval from the Surface Transportation Board (the "Board") pursuant to 49 U.S.C. §§ 11323-11325 and 49 C.F.R. Part 1180 for Soo Line Corp to acquire control of CMQR US. As a result of the transaction, Soo Line Corp will (indirectly) control CMQR US, which owns and operates approximately 244.2 miles of rail lines in Vermont and Maine, as well as the right to operate on approximately 57.25 miles of rail line leased from the State of Maine's Department of Transportation, for a total of approximately 301.45 route miles in the United States (the "Transaction"). The Transaction closed on December 30, 2019 and the shares of CMQR US were immediately deposited in an independent voting trust to avoid unauthorized exercise of control by CP. Consistent with Canadian regulatory requirements, CP assumed control over CMQR Canada, which owns and operates approximately 236.81 route miles of rail lines in that country.

This is an end-to-end control transaction that will have no anti-competitive effects and will assure the continued efficient movement of interline traffic interchanged between CP and CMQR via those lines, including overhead and local traffic. CP intends to invest tens of millions of dollars in the CMQR system to upgrade the lines. This investment will enable more efficient service and ensure safe operations. The Transaction, which will result in faster, seamless, and more efficient service on Applicants' lines, improve access to eastern seaports, and expand market reach for

[1] Soo Line Corp is a wholly owned indirect subsidiary of Canadian Pacific Railway Company ("CPRC"). It is a United States holding company. The following U.S. railroads are direct or indirect subsidiaries of Soo Line Corp: Soo Line Railroad Company; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware and Hudson Railway Company, Inc. The US and Canadian railroads do business as "Canadian Pacific" or "CP."

Applicants' customers, enjoys the overwhelming support of shippers and other interested parties, including the State of Maine and Amtrak. Not a single shipper has objected to the Transaction.

Based on the evidence in the Application, the Board made the preliminary determination that the Transaction was a minor transaction because it "clearly will not have any anticompetitive effects" and that if any such anticompetitive effects were found to exist, they would "clearly be outweighed by the Transaction's anticipated contribution to the public interest in meeting significant transportation needs." Decision No. 1, slip op. at 5. The Board received two comments/requests for conditions. Neither identifies any anticompetitive effects, substantial or otherwise, that are likely to result from the Transaction. Accordingly, neither provides any basis for disturbing the Board's determination that this is a minor transaction. Both requests are beyond the Board's conditioning power, which is limited to addressing substantial harm to competition that is likely to result from the Transaction.

Springfield Terminal Railroad ("ST") filed comments that, while asserting potential harm to competition resulting from the Transaction, fail to provide evidence of either harm to competition or harm of any sort that would result from the Transaction. ST expresses unfounded concern regarding the possibility that CP might "downgrade" or close the interchange with CMQR at Northern Maine Junction and terminate the haulage arrangement between Northern Maine Junction and Brownville Junction, Maine. ST has no reason for concern, however, as Applicants intend to maintain existing interchanges and invest in upgrading rail facilities. Further, as virtually all of the interline traffic either originates or terminates on CMQR, the interchange with ST at Northern Maine Junction remains necessary for CMQR to meet its common carrier obligation. As to the haulage traffic, ST has an alternative route over its own line that would allow it to continue to provide rail service to the same origins and destinations that are currently served via haulage

over CMQR. Accordingly, no shipper would lose competitive service even if the haulage arrangement were terminated. If anything, ST's concerns relate merely to potential harm to ST and not harm to competition.

Nor would the supposed harm result from the Transaction. The haulage agreement is a private voluntary agreement that CMQR has the right to terminate according to its terms irrespective of the Transaction.

Even if ST established a likelihood of competitive harm, and it has not, imposing trackage rights as a condition would be disproportionate to any supposed harm. Trackage rights would create operational burdens and reduce capacity on CMQR, diminishing the value of the railroad. Further, because CMQR has the contractual right to terminate the haulage agreement irrespective of the Transaction and because Applicants have no immediate plans to terminate it, any such harm would not result from the Transaction. Finally, under Board rules, ST's request for trackage rights constitutes a responsive application that is prohibited in a minor transaction.

Robert Keach, the Estate Representative of the Montreal, Maine & Atlantic Railway, Ltd., ("MMA") filed a Comment, Protest and Request for Conditions, which also has no bearing on competition. Rather, it faults CP for not settling ongoing litigation arising from the Lac-Megantic rail disaster and effectively asks the Board to apply pressure on CP to settle by delaying the effectiveness of Board authority until such litigation has been resolved. The effort to hold CP responsible for an accident that MMA's own acts and omissions indisputably caused is without basis in law or fact, and constitutes an improper attempt to litigate these issues before the Board.

Indeed, although Keach purports to be acting out of a concern for safety, the Requests for Conditions are plainly contrary to the interests of safety. A key reason that the Transaction enjoys community support is that it places CP, *the Class I with the best safety record in North America*

for 13 years running,[2] in control of CMQR. Further, CP intends to invest tens of millions of dollars in upgrading of the CMQR lines to CP standards, which will help ensure safe operations. Keach's request for an indefinite stay would delay CP's ability to make these investments in CMQR US's lines.

Moreover, in asking the Board to impose new, but as yet unspecified, safety requirements on Canadian Pacific Railway Company in Canada and the Soo Line Railroad Company in the United States, Keach essentially invites the Board to overstep its jurisdiction in two ways. First, by standing in the shoes of the federal safety agencies responsible for rail safety and, second, by exercising its regulatory power extraterritorially. Keach's concerns are unfounded, the requests are beyond the scope of the Board's jurisdiction and conditioning powers, and the submission is immaterial to this proceeding and otherwise improper.

Accordingly, the Board should reject these requests for conditions and approve this minor Transaction.

II. Standard for Approval and Conditions in Minor Transactions.

This is a minor transaction subject to 49 U.S.C. § 11324(d), which requires that the Board approve the Transaction unless it finds both that the Transaction is likely to result in "substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation" and that "the anticompetitive effects of the transaction outweigh the public interest." 49 U.S.C. § 11324(d). Thus, in order to disapprove the transaction, at a minimum the Board must find that the competitive harm is both substantial and likely. However, even if the Board "were to find that there would be likely and substantial anticompetitive impacts, [the Board] may not disapprove the transaction unless the anticompetitive impacts outweigh the benefits and

[2] *See infra* at 16.

cannot be mitigated through conditions." *Norfolk S. Ry.—Acquisition & Operation—Certain Rail Lines of the Del. & Hudson Ry Co., Inc.,* ("*NS/D&H*"), Docket No. FD 35873, slip op. at 14 (STB served May 15, 2015). Accordingly, in assessing such transactions, the Board's "primary focus is on the anticipated competitive effects" and the Board's exercise of its conditioning power is generally limited to addressing such competitive harm. *Id.*; *see also Norfolk & W. Ry.—Purchase—Ill. Terminal R.R.*, 363 I.C.C. 882, 891-92 (1981) ("*N&W/Illinois Terminal*"), *aff'd sub nom. Illinois v. ICC*, 687 F.2d 1047 (7th Cir. 1982). As the Board explained in *N&W/Illinois Terminal*,

> we believe we should not attempt to impose a condition on our approval of a transaction related to a matter which we could not lawfully consider as a basis for withholding our approval of that transaction. In enacting new subsection 11344(d), Congress unambiguously stated its intent that 'the number of factors the Commission must consider in ruling on transactions other than merger would be reduced.' H. Rept. 96-1430, 96th Cong. 2d sess. 120 (1980). Any effort to review the purchase price (or any other issue unrelated to competition) would remove all limits on the 'number of issues' we must consider in approving a transaction; it would frustrate Congress' intent in enacting subsection 11344(d). To give effect to the congressional intent, we will exercise our conditioning power only where a condition bears on issues we may consider in deciding whether to approve a transaction.

Id. at 891-92.

The Board has "broad authority to impose conditions to ameliorate competitive harm that might result from the proposed transaction." *NS/D&H*, slip op. at 22. In exercising that authority,

> the harm caused by the transaction must be distinguished from pre-existing disadvantages that other railroads, shippers, or communities may have been experiencing . . . i.e., pre-existing disadvantages that will neither be caused nor exacerbated by the transaction. Furthermore, the harm must be to competition, not to a particular competitor. The Board's conditioning power is thus used to preserve competitive options (not to expand them).

Id., slip op. at 22-23 (citations omitted). However, the Board may not impose "conditions to remedy anticompetitive effects" unless it finds:

> (1) . . . that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market); (2) that the conditions to be imposed will ameliorate or eliminate the harmful effects; (3) that the conditions will be operationally feasible; and (4) that the conditions will

> produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger.

Can. Nat'l Ry.—Control—Ill. Cent. Corp., STB Finance Docket No. 33556, Decision No. 7, slip op. at 4 (STB served Sept. 18, 1998) (citing *Union Pac. Corp.—Control—Mo. Pac. Corp.*, 366 I.C.C. 462, 562-65 (1982)). *See also Can. Nat'l Ry.—Control—Duluth, M. & I.R. Ry.,* Finance Docket No. 34424, slip op. at 14 (STB served Apr. 9, 2004).

The burden is on the party seeking the condition to demonstrate that it is necessary. *CSX Corp.—Control—Chessie Sys., Inc*., 363 I.C.C. 521, 577 (1980) ("protestants have not demonstrated that any of the conditions sought are necessary"); *Rio Grande Indus., Inc.—Purchase & Trackage Rights— Chicago, M. & W. Ry. Line Between St. Louis, MO & Chicago, IL*, 5 I.C.C.2d 952, 968-69 (1989) ("*RGI/CMW*") (in a transaction subject to the predecessor statute of § 11324(d), the burden is on the opponents to submit evidence sufficient to overcome the agency's tentative conclusion that it would have no anticompetitive effects).

Board regulations define a request for "affirmative relief" that "requires an application, petition, notice, or any other filing to be submitted to the Board (such as trackage rights . . .)" as a responsive application. 49 C.F.R. § 1180.3(h). Responsive applications are not permitted in proceedings involving a minor transaction. 49 C.F.R. § 1180.4(d)(1); *see also NS/D&H*, slip op. at 25 (finding that comments requesting the assignment of trackage rights to "essentially constitute a responsive application that is prohibited in this minor transaction.").

III. ST Fails to Identify Competitive Harm and the Conditions It Seeks are Improper.

CMQR currently provides haulage to traffic moving between CMQR's connection with ST at Northern Maine Junction and Brownville Junction, Maine pursuant to a voluntarily agreed-upon haulage agreement. That agreement is among CMQR and NBM Railways ("NBM"). ST is not a party to the agreement. The agreement became effective on April 1, 2019 and replaced a 2014

haulage agreement between the same parties. The 2014 haulage agreement was canceled after ST rehabilitated its Mattawamkeag Line in the fall of 2016 and rerouted haulage traffic away from CMQR. Supplemental Verified Statement of Ryan Ratledge ("Ratledge Supp. V.S.") at 3.

In 2019, haulage traffic averaged {{[redacted]}} cars per month. CMQR also interchanges a relatively smaller amount of interline traffic with ST at Northern Maine Junction pursuant to a 2015 interchange agreement between CMQR and ST. In 2019, CMQR's interline traffic with ST averaged {{[redacted]}} cars per month. All of the interline traffic either originates or terminates on the CMQR, except for a small number of cars which originate on CP. This includes movements to and from Katahdin Rail Services repair facility located on CMQR in Derby, which accounted for more {{[redacted]}} of interline traffic interchanged with ST in 2019. Other traffic interchanged with ST include petroleum products {{([redacted]}}, chemicals and fertilizers {{[redacted]}} and forest products {{([redacted]}}. *Id.*

Purportedly based on its concern that the transaction might lead to the downgrading of facilities and termination of the interchange and haulage agreements, ST asks the Board to condition the Transaction on CMQR granting of trackage rights over the haulage route. Neither CMQR's downgrading of facilities nor the possibility of its closing the interchange are realistic concerns. As to haulage, termination of the haulage agreement would neither result from the Transaction nor would it harm competition. Moreover, the condition ST requests, converting a voluntary agreed-upon haulage agreement to a regulated trackage rights agreement, seeks only to protect and enhance ST's revenues and cost structure, would impose operating and capacity burdens on CMQR and is beyond the scope of the Board's conditioning power.

A. Applicants Intend to Maintain Current Interchanges, Including with ST, and Upgrade the CMQR System.

As stated in the Application, CP intends to maintain existing CMQR interchanges with other railroads. Application at 4. CP also intends to invest tens of millions of dollars in the next few years upgrading the CMQR system including between Northern Maine Junction and Brownville Junction. Further, as noted above, nearly all of the traffic interlined with ST in 2019 was traffic that originates or terminates on CMQR and the remainder originated on CP. Much of that traffic is non-exempt traffic including petrochemicals, subject to the common carrier obligation. Accordingly, CMQR will continue to interchange this traffic with ST absent the availability of an alternative more efficient routing. Thus, ST's concerns that CP might downgrade or close the interchange at Northern Maine Junction are nothing more than baseless speculation and, moreover, unlikely to occur.

B. Termination of the Haulage Agreement Would Have No Effect on Competition.

In its Comments, ST fails to demonstrate a likelihood of *any* harm to competition that would result from the termination of the haulage. Nor could ST demonstrate such harm, as ST readily admits that it has an alternative routing over its Mattawamkeag Line, which provides ST with access to the Canadian Maritimes origins/destinations that ST currently serves via haulage on CMQR. While ST might prefer the haulage arrangement or interline routing due to the condition of the Mattawamkeag Line or the haulage routing's efficiencies, if the haulage agreement were to terminate, ST could revert to the Mattawamkeag Line routing as it chose to do in 2016. The undisputed fact that ST has an alternative routing available to it means that ST will continue to be able to provide the same origin-destination rail service regardless of the fate of the haulage agreement. Thus, the possibility that CMQR US might terminate the haulage agreement does not

put at risk any shipper's access to competitive surface freight transportation and trackage rights would be both duplicative and unnecessary.[3]

Indeed, ST fails to identify a single shipper who would be harmed by the Transaction. Not surprisingly, no shipper has complained that it would lose competitive rail service as a result of the Transaction. *See NS/D&H*, slip op. at 26-27 (explaining why the Board had no need to take rare action of imposing a condition relating to the termination of a haulage agreement "particularly where no shipper has raised concerns about the termination"). In fact, shippers have uniformly supported the Transaction.

Further, the Board "has consistently rejected the notion that the creation of new single-line movements in an end-to-end acquisition necessarily would lead the acquiring carrier to vertically foreclose competition over efficient routes by refusing to cooperate with unaffiliated carriers." *Norfolk S. Ry. Co., Pan Am Rys., Inc.—Joint Control and Operating/Pooling Agreements—Pan Am S. LLC*, Finance Docket No. 35147, slip op. at 9 (STB served July 21, 2008) ("*NS/Pan Am*") (rejecting a request to impose conditions on an end-to-end transaction involving ST, including granting haulage and trackage rights). ST has provided no basis for concluding otherwise here.

ST's concern is not with harm to competition, but with preserving the advantages of the haulage agreement and enhancing those advantages through a mandated trackage rights agreement. However, as the Board has repeatedly observed, the Board's conditioning power is concerned with

[3] ST quotes from a 2015 Tiger Grant application extolling the efforts of CMQR, ST and the Irving Railroads to concentrate traffic on the line between Northern Maine Junction to Brownville. ST's purpose in quoting this language is unclear and the Tiger grant has no relevance here. Notably, neither the application, nor the project was premised on continuation of those efforts to concentrate traffic on the line, nor were the funds to be used solely for upgrading the Northern Maine Junction – Brownville Junction line. Ratledge Supp. V.S. at 4. Furthermore, subsequent to the application, ST decided that it would no longer participate in the efforts to concentrate traffic on this line. Instead, at the end of 2016, ST shifted all of the haulage traffic to the Mattawamkeag Line. The haulage traffic only recently returned as a result of CMQR's efforts.

protecting competition not competitors. *See CN/IC*, slip op. at 20 (stating that "[i]n assessing the probable impacts and determining whether to impose conditions, our concern is the preservation of competition and essential services, not the survival of particular carriers."); *NS/Pan Am*, slip op. at 4 ("It is well settled that harm to individual competitors is not the same as harm to competition, and it is the latter that the statute requires us to assess."). Accordingly, the Board cannot exercise its conditioning power to protect and advantage ST.

C. Potential Termination of a Voluntary Private Agreement is Not a Basis for Imposing Conditions.

In any event, the supposed harms would arise, if at all, only in the event CMQR terminates a private voluntary agreement that is outside the Board's jurisdiction. The Board has roundly rejected similar efforts to use the termination of a voluntary haulage agreement as a basis for imposing conditions on a transaction. *See NS/D&H,* slip op. at 17 ("The Board notes that these haulage, marketing, and rate agreements . . . were not subject to Board approval when the parties entered into them, and they will not be subject to Board approval if and when the parties decide to terminate them."). In *NS/D&H*, railroads owned by Genesee & Wyoming (the "GWI railroads") argued that NS and D&H's termination of certain haulage agreements would make the GWI railroads' operations more costly and less competitive. They asked the Board to impose conditions on the transaction, including requiring either that D&H and NS maintain the haulage arrangements or that NS be required to provide haulage for each of the GWI railroads. In rejecting the request for conditions, the Board explained,

> The haulage agreements NSR and D&H seek to terminate over the Southern Tier are entirely voluntary and not subject to Board approval. Because haulage agreements are not regulated by the Board, NSR and D&H could voluntarily terminate such agreements at any time, irrespective of this acquisition transaction. Moreover, no shipper on any of GWI's short lines—including the WCOR, which physically connects only to NSR's Southern Tier line—has opposed the proposed transaction or complained that it would

> make them a 2-to-1 shipper. While the Board has, on rare occasions, imposed conditions to preserve haulage arrangements in major transactions having a significant effect on national or regional rail competition, the Board does not find any need to do so here, particularly where no shipper has raised concerns about the termination of NSR haulage over the Southern Tier.

NS/D&H, slip op. at 26-27.

Here, CMQR voluntarily entered into the haulage agreement with NBM in 2014 and again in 2019 because CMQR had available capacity on its trains. Ratledge Supp. V.S. at 2. As CMQR CEO Ryan Ratledge explains in his Supplemental Verified Statement, CMQR intentionally chose haulage over trackage rights for three reasons. First, traffic on both CMQR and ST was modest and CMQR had sufficient capacity to handle ST's cars. Second, it was concerned that a trackage rights agreement would introduce unnecessary operational complexity and constraints. Third, a haulage arrangement allowed for flexibility to address future traffic flows and business levels. *Id.* Thus, it was also important to CMQR that in entering into the haulage arrangement "no regulatory rights and responsibilities [were] created that would require the carriers to keep the arrangement in place." *Del. & Hudson Ry. Co., Inc.—Discontinuance of Trackage Rights—in Susquehanna Cnty, Pa. & Broome, Tioga, Chemung, Steuben, Alleghany, Livingston, Wyoming, Erie, & Genesee Cntys, N.Y.,* AB 156 (Sub-No. 25X), slip op. at 11 (STB served Jan. 19, 2005). Had there been any concern that ST could use the haulage agreement as a springboard to Board imposed conditions on a future transaction, however, CMQR would most likely not have entered into the haulage agreement in the first place, particularly if those conditions might include trackage rights.

D. Trackage Rights Agreement Would Improperly Advantage ST at CMQR's Expense.

Unlike a haulage agreement, trackage rights are subject to STB entry and exit licensing authority. Trackage rights are also significantly more onerous and inflexible from an operational perspective. Under a trackage rights agreement, CMQR would be required to allow ST to operate

its own trains on the line, consuming capacity that CMQR may need to handle its own traffic. Trackage rights would give ST significantly more rights than it has today. As such, even assuming that ST had identified competitive harm—and it has not—ST's proposal to convert unregulated haulage to regulated trackage rights would be disproportionate to any such potential harm. *Wisc. Cent. Transp. Corp.—Continuance in Control—Fox Valley & W. Ltd.* (*Wisc. Cent/Fox Valley 1992*), 9 I.C.C.2d 233, 246 (ICC served Dec. 4, 1992) ("trackage rights extends beyond any likely harm to area shippers and that such a condition would be disproportionate to the competitive concerns expressed in this proceeding"). "Board-imposed conditions, however, are intended to preserve competitive options, not to expand them for a carrier seeking to enter the market or expand its current business." *NS/D&H*, slip op. at 24.

E. ST's Comments are a Prohibited Responsive Application.

A request for trackage rights in a consolidation proceeding must be made in a responsive application under the Board rules. 49 C.F.R. § 1180.3(h). However, the Board's rules prohibit responsive applications in minor transactions such as this. 49 C.F.R. § 1180.4(d)(1); *see also NS/D&H*, slip op. at 25. Accordingly, ST's request is barred.

IV. MMA's Allegations and Request for Conditions are Spurious, Immaterial, and Inappropriate and the Conditions MMA Seeks are Both Beyond the Board's Jurisdiction to Impose and Decidedly Not in the Interests of Safety.

The Estate Representative for MMA, Robert Keach, also filed comments seeking conditions. Specifically, Keach, while claiming to be acting in the interests of safety, asks the Board to stay the proceeding pending the outcome of Keach's litigation against CP arising out of the Lac-Megantic disaster and then to impose some as yet undefined conditions related to safety on both CP's Canadian operating company, CPRC, and Soo Line Railroad Company in the United States. Keach's allegations are baseless and the request for conditions are beyond the scope of the Board's conditioning power. Indeed, those requests are neither in the interests of safety nor are

they intended to address harm likely to be caused by the Transaction. Rather, they are a transparent attempt to gain leverage in ongoing litigation against CP and they are contrary to the interests of safety. Further, they contain several misstatements and mischaracterizations regarding matters that are entirely irrelevant to the Board's consideration of the Transaction. In light of the above, the Board should strike Keach's submission as "irrelevant, immaterial, impertinent, or scandalous matter." 49 C.F.R. § 1104.8.

A. The Conditions Requested Are Beyond the Scope of the Board's Conditioning Power.

As discussed above, the Board's conditioning power in this minor transaction is limited to addressing competitive harm that will result from the Transaction. Keach's concerns and requested conditions have nothing to do with transaction-related competitive harm and therefore must be rejected. They also are not concerns that are caused by the Transaction but to an event that occurred nearly seven years prior to the Transaction.

Moreover, even assuming there was a shred of validity to Keach's safety concerns—and there is not—such concerns fall under the jurisdiction of the Federal Railroad Administration in the United States and Transport Canada in Canada. It is beyond the Board's jurisdiction to regulate rail safety in the broad-brush manner that Keach requests. It is also beyond the Board's jurisdiction to impose conditions on the Canadian portions of the transaction as Keach requests. *See* 49 U.S.C. § 10501(2) (limiting the Board's jurisdiction "to transportation in the United States").

In asking for his as yet unspecified so-called safety and environmental conditions, Keach relies on *Village of Barrington* for the proposition that the Board has broad authority to impose such conditions in minor proceedings. Keach's reliance on *Village of Barrington* is misplaced. That case involved CN's acquisition of the lightly trafficked Elgin, Joliet, & Eastern railroad ("EJE") for the purpose of rerouting CN traffic over the EJE to avoid Chicago congestion. *See*

Village of Barrington, Illinois v. Surface Transportation Board, 636 F.3d 650, 655-56 (D.C. Cir. 2011). Because the rerouting was expected to result in a substantial increase in traffic levels on the EJE that would "significantly affect the quality of the human environment," the transaction was subject to environmental review under the Board's rules implementing its National Environmental Policy Act[4] ("NEPA") authority. *Id.* In imposing environmental conditions to mitigate specific environmental harms identified in the review, the Board relied on its conditioning authority under NEPA. *Id.* at 667.

In contrast to the transaction at issue in *Village of Barrington*, here the expected increases in traffic levels are not sufficient to require environmental review under NEPA. *See* Application at 20-22. The Transaction will not result in a significant increase in carrier operations and will not lead to operational changes exceeding the Board's thresholds for environmental analysis set forth in 49 C.F.R. §§ 1105.7(e)(4) and (5). Because the Transaction is covered by a "categorical exclusion" under the Board's environmental rules, it is not subject to the Board's review and conditioning authority under NEPA. *See, e.g., Wisc. & S. R.R. Co.—Lease and Operation Exemption—Soo Line R.R. Co. d/b/a Can. Pac. Ry.*, FD No. 35012, slip op. at 2 (STB served July 17, 2007) ("once a project is found to fit within a categorical exclusion, no further NEPA procedures are warranted").

B. CP's Control of CMQR Is In the Interests of Safety.

Although Keach's requests are plainly beyond the scope of the Board's review and conditioning power, given the accusatory nature of Keach's filing, Applicants believe it is important to respond to certain of Keach's unsupported and specious claims regarding CP and safety.

[4] 42 U.S.C. §§ 4321-4370m

An important benefit of the Transaction, and one of the reasons it has enjoyed so much support, is that it puts the CMQR Canada and CMQR US lines under the ownership of CP, a Class I carrier with an unshakeable commitment to safety and the capital resources necessary to upgrade the CMQR system and maintain the track in good operating condition. CP is the safest Class I railroad in North America and remains committed to safety as its highest priority. Indeed, for each of the past 13 years, CP has had the lowest train accident frequency of any Class I railroad in North America. In 2019, CP's accident frequency was one-third of that experienced by the rest of the industry.[5]

CP's ownership and control of CMQR will unquestionably increase the safety of rail operations on the CMQR system. In fact, CP intends to invest up to seventy-five million dollars in the CMQR system in the next three years to improve infrastructure including to upgrade track to FRA Class III track standards, *i.e.*, Class I railroad standards, on both sides of the border.[6] But CP can commence track work on the U.S. portion of the CMQR system only after the STB grants CP control authority. Thus, if Keach were truly concerned about safety, he would be urging the Board to expedite approval of CP's acquisition of control of CMQR US in order to facilitate the track improvements rather than asking for an indefinite delay.

Likewise, if Keach were truly concerned about safety, he should be asking the Board to act quickly on specific safety conditions. Instead, Keach asks the Board to delay a decision until the litigation against CP has concluded and then to impose some as yet unknown system-wide "safety" conditions that would be somehow informed by the litigation outcome. It is unclear what benefit,

[5] In 2019, CP experienced 1.06 FRA reportable accidents per million train miles. By comparison, based on FRA reported data, the industry averaged of 2.8 reportable accidents or—three times that of CP's. *See* https://safetydata.fra.dot.gov/OfficeofSafety/Default.aspx (CN's accident rate was calculated based on correspondence with the FRA).

[6] CP is waiting to begin track work on CMQR Canada until the ground thaws.

if any, Keach expects would be realized by waiting for a verdict on liability. If CP were to settle that litigation, it is a safe bet that Keach's professed concerns regarding safety would evaporate.

Keach's supposed concerns regarding CP's safety culture are based on two demonstrably false premises. First, Keach erroneously asserts that the U.S. Hazardous Materials Transportation Regulations ("HMR") require carriers to act affirmatively "to ensure the correct classification of hazardous materials" and to "exercise[] reasonable care to identify a misclassification of hazardous materials." ER-9. In fact, the plain text of the regulations and agency guidance make clear that a carrier's duty is of a more limited scope than what Keach contends. The regulation provides "that a carrier is entitled to rely on information provided by the offeror of the hazardous materials . . . *unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror . . . is incorrect*." 49 C.F.R. § 171.2(f) (emphasis added). Thus, according to the DOT, the carrier is entitled to rely on the shipper provided information unless it has either "actual or constructive knowledge" that the shipper provided information is incorrect, which means that, "a carrier *may not ignore readily apparent facts* that indicate that … a shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper." Hazardous Materials: Formal Interpretation of Regulations, 63 Fed. Reg. 30411-12 (June 4, 1998) (emphasis added).[7] Moreover, a carrier is not expected to open the shipper's closed containers to

[7] *See also In re M/V MSC Flaminia*, 339 F. Supp. 3d 185, 236 (S.D.N.Y. 2018) ("[W]hen receiving a cargo the dangerousness of which is not 'open and obvious,' a carrier may rely on the shipper's attestations as to the cargo's characteristics."); *In the matter of: Fed. Express Co*., 2018 WL 8049078, at *4 (D.O.T. 2018) (under 49 C.F.R. § 171.2(f), a carrier transporting hazardous material is entitled to "simply rely" on information provided by a shipper unless it is "readily apparent" or "obvious" that the shipment is improper in some manner); *In re LMD Integrated Logistic Servs., Inc*. v. *Pub. Utils. Comm'n*, 69 N.E.3d 1100 (Ohio Ct. App. 2016) (the constructive knowledge standard under 49 C.F.R. § 171.2(f) is whether the carrier is aware of "readily apparent facts" indicating that the shipping papers are incorrect.)

check their contents or perform tests to second-guess the shipper's classification of the cargo. Rather, under such circumstances, the carrier's obligation is only to inspect the exterior of the shipper's containers for any obvious problems. *See Borger v. CSX Transp., Inc.,* 571 F.3d 559 (6th Cir. 2009) (carrier's routine visual inspection of the exterior of a tank car containing hazardous materials was sufficient to satisfy the carrier's duties under 49 C.F.R. § 171.2(f), even if there was a leak from the tank of hazardous vapors and the carrier's employees smelled an odor.); *Leonard* v. *Bd. of Supervisors of Louisiana State Univ. & Agric. & Mech. Coll*., 2014 WL 2203875, at *2 (M.D. La. May 27, 2014) (rejecting the argument that a carrier has a legal duty to warn of the hazardous contents of rail cars being transported; "Union Pacific has adduced an abundance of both binding and persuasive precedent to support its contention that it only had a duty to inspect *the exterior* of its railcars to ensure that they were reasonably safe for use.") (emphasis added).

Having created this strawman of a duty, Keach next asserts that the fact that CP has no "policies or procedures aimed at discharging" this duty is evidence of a safety culture issue. Of course, CP has no policies or procedures aimed at discharging phantom duties. Instead, CP has policies and procedures to ensure compliance with its actual duties under hazardous goods transportation regulations and CP trains its employees accordingly. And what CP also has, as reflected by its industry leading safety record, is a robust safety culture.

Keach also identifies several incidents including some involving dangerous goods that have occurred since 2013. All of the incidents occurred in Canada. Several were determined to involve track or equipment failures that occurred notwithstanding CP's compliance with regulatory and company maintenance and inspection standards.[8] Several are pending investigation results and

[8] *See* Transportation Safety Board of Canada Investigation Report Nos. R18C0076, R18D0067, R17C0074; R17W0199, R17W0175, R15H0005, R14C0142, R14C0114, R13C0087.

were, or may have been, caused by third parties, defective shipper equipment, debris or ice accumulation on the track, or by a variety of other factors. None suggest a systemic safety concern, particularly when put in context of CP's longstanding place as best in class for overall accident frequency. In any event, any such safety concerns would fall under the jurisdiction of the Transportation Safety Board of Canada (the "Safety Board").

As to Keach's claims that CP is somehow liable for the tragic accident in Lac-Megantic, CP does not believe that it is appropriate to litigate that issue in this forum. CP reserves the right to submit additional information should the Board conclude that liability is somehow relevant to the issues in this proceeding. CP does believe, however, that it is important to put Keach's claims in context.

The Safety Board investigated the Lac-Megantic accident. Notwithstanding Keach's targeting of CP, the Safety Board's "Findings as to causes and contributing factors" makes no mention of CP whatsoever. *See* Railway Investigation Report R13D0054, at 129-130, Transportation Safety Board of Canada.[9] On the other hand, the Safety Board's findings cite MMA's numerous safety deficiencies which either caused or were contributing factors to the accident. The Safety Board's findings include the following:

- MMA parked the train "unattended on the main line, on a descending grade, with the securement of the train reliant on a locomotive that was not in proper operating condition." *Id.* at 129.
- MMA failed to set sufficient number of hand brakes, failed to conduct a handbrake effectiveness test, and failed to put in place "additional physical safety defences . . . to prevent uncontrolled movement of the train." *Id.*
- MMA relied on the lead locomotive to maintain air brake pressure "despite significant indications of mechanical problems." *Id.*

[9] Available at https://www.tsb.gc.ca/eng/rapports-reports/rail/2013/r13d0054/r13d0054.pdf

- MMA failed to provide effective training or oversight to ensure that its crews understood and complied with rules governing train securement. *Id.*
- MMA failed to "thoroughly identify and manage the risks to ensure safe operations." *Id.* at 130.
- MMA "did not have a fully functioning safety management system to effectively manage risk." *Id.*
- MMA's "weak safety culture contributed to the continuation of unsafe conditions and unsafe practices." *Id.*

Six MMA officers and employees pled guilty to statutory penal charges under, *inter alia,* Canada's Railway Safety Act for their failure to properly secure the train. Additionally, the company, Montreal, Maine and Atlantic Canada Co. was found guilty of violating Canada's Fisheries Act.

That the Safety Board's report did not fault CP is entirely unsurprising. CP's role was limited to originating the shipper-owned, shipper-loaded and shipper-sealed cars and delivering those cars to MMA at Montreal. From there, MMA was in full possession and control of the train. MMA crews operated the train using MMA locomotives. Moreover, although MMA contends that CP should have identified the shipper's mislabeling the commodity as in Packing Group III, rather than Packing Group I or II, MMA has acknowledged that the labeling made no difference to its handling of the train.[10] Regardless of the Packing Group classification, MMA would still have failed to comply with its basic operating rules. Hence, MMA would still have parked the loaded train on the main line, on an incline, unattended, with insufficient hand brakes, and the train still would have rolled downhill and derailed.

[10] In an October 18, 2013 internal MMA e-mail, then Director of Operating Practices, Kenneth Strout denied that MMA would have handled the train differently based on the correct classification. He explained that the "difference between packing groups of crude oil would not have changed the already in place requirement to expedite handling of dangerous goods" and "would not have required different handling of trains." *See* attached Exhibit A.

Additionally, Keach's concern regarding the specter of crude oil trains operating over the CMQR and through Lac-Megantic is overstated, if not entirely misplaced. No crude currently moves over the CMQR. Ratledge Supp. V.S. at 4. Nor did CP enter into the Transaction for purposes of moving crude over the CMQR, although Applicants will honor their common carrier obligation to move crude should a shipper request such service.[11] Supplemental Verified Statement of James Clements ("Clements Supp. V.S.") at 1. Significantly, any crude oil moving over the CMQR system in the future would most likely occur irrespective of the Transaction and not as an effect of the Transaction. Additionally, CMQR has an Agreement in Principle with the Canadian federal government, and an auxiliary agreement with Lac-Megantic, to build a rail bypass around the town. Ratledge Supp. V.S. at 4.

V. The Board Should Approve the Application Subject Only to New York Dock Employee Protective Conditions.

The now complete evidentiary record confirms the Board's preliminary determination that this end-to-end transaction is unlikely to raise anticompetitive concerns. No shippers will lose competitive rail service as a result of the Transaction and none oppose the Transaction. In fact, the Transaction enjoys the strong support of shippers located on the CMQR system, as well as the support of the Maine Department of Transportation, the Maine Port Authority, Amtrak, and various other stakeholders. The Board received 35 support letters in total.[12] Because the

[11] Notably, two energy companies recently announced a joint venture to construct and operate a diluent recovery unit in Hardesty, Alberta that would remove the hazardous diluent from the bitumen. The process is expected to create a heavy Canadian crude oil for rail transportation that is non-hazardous. *See* https://www.cpr.ca/en/media/gibson-energy-and-usd-announce-joint-venture-to-construct-dru-at-hardisty. Accordingly, CP expects improved safety in future movements of crude from the Alberta tar sands.

[12] In addition to the 31 letters listed in the Application, the Board received letters from National Railroad Passenger Corporation (Amtrak), Northern New England Passenger Rail Authority, Lake Utopia Paper, and Irving Pulp and Paper, Limited.

Transaction raises no anticompetitive concerns, approval of the Transaction is required under 49 U.S.C. § 11324(d).

Even if there were competition concerns, the public benefits of the Transaction described in the Application would clearly outweigh any such concerns requiring approval of the Transaction. Those public benefits include faster, seamless and more efficient service for the already substantial amount of CP and CMQR interline traffic. More efficient operations, as well as consolidation of back office functions, will reduce costs. Improved service will open new markets and extend market reach for CP and CMQR customers, providing them direct access to markets on each other's systems, including the import and export markets served by the deep water ports of Searsport, ME and (via haulage) Saint John, NB. Additionally, the Transaction will give CMQR access to CP capital and other Class I resources for capital projects including for maintenance to ensure the system is maintained good operating condition, and as much as $75 million over the next three years for upgrading the CMQR system, will enable faster speeds, efficient operations, improved service and ensure safety. Access to resources will also support CMQR's business development efforts.

As Applicants indicated in their Application, any employees adversely impacted by the Transaction would be entitled to employee protective conditions in accordance with *New York Dock Ry.–Control–Brooklyn E. Dist. Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States,* 609 F.2d 83 (2d Cir. 1979).[13]

[13] Decision No. 1 incorrectly states that the Applicants stated that adversely impacted employees would be subject to New York Dock as modified by Wilmington Terminal. The appropriate employee protective conditions for a control transaction as this are found in New York Dock. *See Ill. Cent. Corp. and Ill. Cent. R.R. Co.–Control–CCP Holdings, Inc., Chicago, Cent. & Pac. R.R. Co. and Cedar River R.R. Co.*, Finance Docket No. 32858 (STB served Nov. 13, 1996).

CONCLUSION

Soo Line Corp and CMQR US respectfully request that the Board grant their Application.

Dated: March 20, 2020

Respectfully submitted,

/s/ *David F. Rifkind*

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Counsel for Central Maine & Quebec Railway US Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of March, 2020, caused the foregoing Applicants' Reply in Support of Their Minor Application to be served by first class mail upon the parties of record listed below.

/s/ David F. Rifkind

Robert B. Culliford
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No. Billerica, MA 01862
United States

Peter F. Young
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Burlington, VT 05401

Tim Baade
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Dieppe, NB E1A 6R3
Canada

Ron Clow
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Bruce A. Van Note
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James A. Therriault
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Portsmouth, NH 03801

Richard Kim
1 Massachusetts Avenue, NW
Washington, DC 20001

Mark Mosher
300 Union Street
Saint John, NB E2L 5B6

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket FD 36368

SOO LINE CORPORATION—CONTROL—CENTRAL MAINE & QUEBEC RAILWAY US INC.

SUPPLEMENTAL VERIFIED STATEMENT OF JAMES D. CLEMENTS

My name is James D. Clements. I am the Senior Vice-President of Strategic Planning and Technology Transformation for Canadian Pacific ("CP").[1] I submitted a Verified Statement in support of the Minor Application in the above proceeding.

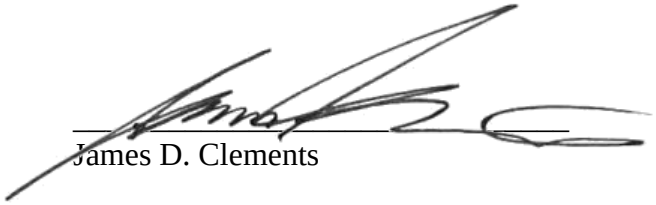
The purpose of this Supplemental Verified Statement is to address certain claims made in comments submitted by Robert Keach, the Estate Representative of the Montreal, Maine & Atlantic Railway, Ltd. regarding the current and future transportation of crude oil on CMQR.

It is our understanding that for several years, little to no crude oil has moved over the CMQR system and CP does not expect that to change as a result of the Transaction. In fact, the potential for crude oil movements was not a factor in CP's decision to acquire CMQR. That said, CP and CMQR each have a common carrier obligation which they intend to honor in the event either receives a request for transportation of crude oil over the CMQR lines.

[1] Canadian Pacific is a trade name under which Canadian Pacific Railway Company and its United States subsidiaries Soo Line Railroad Company, Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. operate.

VERIFICATION

I, James D. Clements, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Supplemental Verified Statement. Executed on this 20th day of March, 2020.



James D. Clements

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36368

SOO LINE CORPORATION – CONTROL –CENTRAL MAINE & QUEBEC RAILWAY US INC.

SUPPLEMENTAL VERIFIED STATEMENT OF RYAN RATLEDGE

My name is Ryan Ratledge. I am President and Chief Executive Officer of Central Maine & Quebec Railway US Inc. ("CMQR"). I previously submitted a verified statement in support of the Minor Application filed in this proceeding.

The purpose of this Supplemental Verified Statement is to provide the Board with background on the relationship between CMQR and Springfield Terminal Railroad ("ST") as it relates to the movement of railcars along the Northern Maine Junction – Brownville Junction, Maine route over which ST now seeks trackage rights. I am also providing context regarding the 2015 Tiger Grant application that ST referenced in its Comments as well as address certain supposed issues related to crude by rail raised by the Estate Representative of the Montreal, Maine & Atlantic Railway, Ltd. ("MMA")

In May 2014, CMQR acquired the rail assets of the MMA, which entered bankruptcy in the wake of the tragedy in Lac Megantic, Quebec. Until December 30, 2019, CMQR was owned by a subsidiary of Fortress Transportation & Infrastructure ("FTAI").

Around the time of the acquisition of MMA by CMQR in 2014, ST and CMQR senior management met in Bangor, Maine to discuss the possibility of a coproduction arrangement in

which both railways could utilize the CMQR route between Brownville Junction and Northern Maine Junction. During that meeting we discussed several possible arrangements that would provide ST access to CMQR track along this corridor and allow ST to abandon its well-established existing route to the Canadian Maritimes; its line running between Northern Maine Junction and Mattawamkeag, Maine (the "Mattawamkeag Line"). ST declined an option to enter into a Tri-Party agreement with NBM Railways ("NBM") and CMQR. CMQR and NBM ultimately entered into a commercial arrangement (a haulage agreement) that accomplished the goal of enabling ST to discontinue operating on the Mattawamkeag Line while utilizing the available capacity on the CMQR route between Northern Maine Junction and Brownville Junction.

CMQR chose this alternative to granting trackage rights for three reasons. First, traffic volumes on both lines (CMQR and ST) were modest enough that CMQR could move railcars for both CMQR and ST on the CMQR corridor. Second, introducing a second rail carrier through a trackage rights agreement would present operational complexity and constraints. There is no legitimate commercial reason to have two separate trains from two different railways operating between the same location when the same work could be accomplished with one CMQR train crew. Third, the haulage arrangement provides flexibility and can be modified over time to match traffic flows and business levels.

CMQR entered into a haulage agreement with NBM in October 2014. This arrangement shifted railcars away from the Mattawamkeag Line by utilizing the available capacity on the CMQR route between Northern Maine Junction and Brownville Junction.

In 2015, CMQR and ST entered into an interchange agreement for the interchange of all rail traffic at Northern Maine Junction. This agreement simply formalized in writing the historical interchange activities between ST and CMQR predecessors at Northern Maine Junction.

In the fall of 2016, ST rehabilitated its Mattawamkeag Line and CMQR noticed a reduction in railcar volume moving between Brownville Junction and the ST interchange at Northern Maine Junction. This shift from the CMQR corridor back to the Mattawamkeag Line fostered the cancellation of the haulage agreement between NBM and CMQR.

In April 2019, CMQR and NBM once again entered into a commercial agreement that provides shippers a route over CMQR between Brownville Junction and the ST interchange at Northern Maine Junction. This is a haulage agreement and the railcars move in the account of NBM, not ST. This arrangement remains in place today and, in my opinion, is serving the shippers well. The ST request for trackage rights over the CMQR corridor appears to be an attempt to nullify the viable commercial agreement already in place. ST has the ability today to work with shippers and NBM to route traffic over its Mattawamkeag Line. Trackage rights over CMQR would be duplicative and unnecessary.

Between April and December 2019 CMQR and ST traffic interchanged at Northern Maine Junctions averaged {{ }} cars per month of which {{ }} cars per month moved under the haulage agreement with NBM. CMQR also interchanges a relatively smaller amount of interline traffic with ST at Northern Maine Junction. In 2019, interline traffic averaged {{ }} cars per month. All of the interline traffic either originates or terminates on CMQR, except for a small number of cars which originate on CP. This interline traffic includes movements to and from the Katahdin Rail Services repair facility located on CMQR in Derby, which accounted for more {{ }} of interline traffic interchanged with ST. Other traffic interchanged with ST in 2019 included petroleum products {{ }}, chemicals and fertilizers {{ }} and forest products {{ }}.

In its Comments, ST quotes from a Tiger Grant application but provides no context or explanation regarding the grant. As context, in 2015, the U.S. DOT awarded the Tiger Grant in question to the Maine DOT for the Maine Regional Railways Project (the "Project"). The Project involved rehabilitation and improvements on CMQR, Maine Northern Railway, Eastern Maine Railway and Pan Am Railways (ST). Although the Maine DOT application references efforts by the railroads to concentrate traffic between Northern Maine Junction and Brownville Junction, neither the application, nor the Project, nor the Project benefits were premised on the continuation of those efforts. Rather, the application references that arrangement as what led to the four railroads' *joint* pursuit of the Tiger grant. The grant simply was intended to improve rail operations and increase capacity to support traffic growth generally.

Lastly, the MMA Estate Representative raises concerns regarding crude by rail moving on CMQR including through Lac Megantic. Currently, CMQR moves no crude by rail and I am aware of no basis for concluding that this might change due to the Transaction. In addition, Central Maine & Quebec Railway Canada Inc. is party to an Agreement in Principle with the Canadian federal government, and an auxiliary agreement with Lac-Megantic, to build a rail bypass around the town.

VERIFICATION

I, Ryan Ratledge, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Supplemental Verified Statement. Executed on this 20th day of March 2020.

Ryan Ratledge

EXHIBIT A

From: Strout, Kenneth I. <kistrout@mmarail.com>
Sent: Friday, October 18, 2013 3:38 PM
To: Caldwell, Chris M. <cmcaldwell@mmarail.com>; Scalia, Timothy A. <tascalia@mmarail.com>; Grindrod, Robert C. <rcgrindrod@mmarail.com>; McGonigle, Joseph R. <jrmcgonigle@mmarail.com>; Carr, Christopher R. <crcarr@mmarail.com>
Cc: Gardner, M. Donald <mdgardner@mmarail.com>; Osborne, Sara L. <slosborne@mmarail.com>
Subject: RE: Transport Canada Protective Direction No. 31 requires anyone who imports/transports crude oil to conduct classification tests on the crude [Transport Canada: 17 Oct. 2013]\

The difference between packing groups of crude oil would not have changed the already in place requirement to expedite handling of dangerous goods. In the US, AAR OT55 also would not have required different handling of trains based on packing group numbers. Maybe, packing group level I vs. III would have affected the shipping rates but I'm not sure of that.

In the US trains containing TIH/PIH, radioactive material or 20 or more loads of explosives, environmental sensitive chemicals, flammable gas 2.1 would have been elevated to a key train which requires some restrictions none of which contain live crew to crew requirements or over normal hazardous material expedited handling. In Canada, there are higher restrictions for environmental sensitive chemicals and special dangerous, i.e. TIH/PIH none of which contain live crew to crew requirements or over normal hazardous material expedited handling.

In summary, crude oil packing group differences would not change our already elevated priority to move dangerous goods.

From: Caldwell, Chris M.
Sent: Friday, October 18, 2013 11:45 AM
To: Scalia, Timothy A.; Grindrod, Robert C.; Strout, Kenneth I.; McGonigle, Joseph R.; Carr, Christopher R.
Cc: Gardner, M. Donald; Osborne, Sara L.
Subject: RE: Transport Canada Protective Direction No. 31 requires anyone who imports/transports crude oil to conduct classification tests on the crude [Transport Canada: 17 Oct. 2013]\

It certainly is in conflict with what World Fuels recently sent us for billing the loaded train in Farnham. They're listing the commodity as Packaging Group 2, not 1.

From: Scalia, Timothy A.
Sent: Friday, October 18, 2013 11:41 AM
To: Grindrod, Robert C.; Strout, Kenneth I.; McGonigle, Joseph R.; Caldwell, Chris M.; Carr, Christopher R.
Cc: Gardner, M. Donald; Osborne, Sara L.
Subject: RE: Transport Canada Protective Direction No. 31 requires anyone who imports/transports crude oil to conduct classification tests on the crude [Transport Canada: 17 Oct. 2013]\

Bob,

Does this information help us make a case the classification of the oil was wrong where we would have move the product differently?

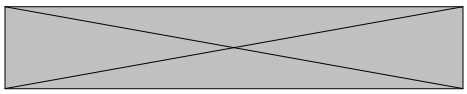
Tim

From: Grindrod, Robert C.
Sent: Friday, October 18, 2013 11:34 AM
To: Strout, Kenneth I.; McGonigle, Joseph R.; Caldwell, Chris M.; Carr, Christopher R.
Cc: Scalia, Timothy A.; Gardner, M. Donald; Osborne, Sara L.
Subject: FW: Transport Canada Protective Direction No. 31 requires anyone who imports/transports crude oil to conduct classification tests on the crude [Transport Canada: 17 Oct. 2013]\
Importance: High

FYI

Robert C. Grindrod
President & CEO
Montreal, Maine & Atlantic Railway

From: Cathy Aldana [mailto:cdaldana@railworld-inc.com]
Sent: Friday, October 18, 2013 11:02 AM
To: fwd_eaburkhardt
Cc: Grindrod, Robert C.; 'Brown, Henry'; 'Pierre.Legault@Gowlings.com'; 'YvesGBourdon@aol.com'; 'Gilbert, Alan S.'; 'Laurent.Nahmiash@Dentons.com'; 'Maxcy, Patrick C.'; Gardner, M. Donald; McGonigle, Joseph R.; Scalia, Timothy A.; Tardif, Tom N.; Osborne, Sara L.; Ryan, Gaynor L.; Glenn Kerbs; fwd_tntancula; John O'Hara; fwd_efvan; 'Daniel Josh'
Subject: MMA: Transport Canada Protective Direction No. 31 requires anyone who imports/transports crude oil to conduct classification tests on the crude [Transport Canada: 17 Oct. 2013]\
Importance: High



17 Oct. 2013 (Thurs.)

Protective Direction No. 31

I, Marie-France Dagenais, Director General of the Transport Dangerous Goods Directorate, being a person designated by the Minister of Transport to issue Protective Directions under section 32 of the *Transportation of Dangerous Goods Act, 1992* (Act), and considering it necessary to deal with an emergency that involves a danger to public safety, do hereby direct any person engaged in importing or offering crude oil for transport to immediately test the classification of crude oil being imported, handled, offered for transport or transported as UN 1267, or UN 1993, if the classification testing has not been conducted since July 7, 2013, and to provide those test results to Transport Canada upon request.

Moreover, following testing, any person who imports or offers for transport UN 1267 or UN 1993 must immediately provide a Safety Data Sheet (SDS) for the tested product to me, through the Canadian Transport Emergency Centre, also known as CANUTEC.

Finally, until such time as the person importing or offering for transport has completed the testing, any person who imports, handles, offers for transport, or transports crude oil classified as UN 1267 or UN 1993 by rail must ship all such crude oil as a Class 3 Flammable Liquid Packing Group (PG) I and meet the requirements established in the Act, regulations and standards regarding UN 1267 or UN 1993 classified as PG I. Classification testing must follow the requirements of the Act and its regulations.

This Protective Direction No. 31 shall take effect immediately upon receipt. It remains in effect indefinitely or until cancelled in writing by the Director General of the Transport Dangerous Goods Directorate, Transport Canada.

SIGNED AT OTTAWA, ONTARIO, this seventeenth day of October 2013
Marie-France Dagenais
Director General, Transport Dangerous Goods Directorate

Directrice générale, Direction générale du transport des marchandises dangereuses

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Harper government acts to increase safety in the transportation of dangerous goods

No. H137/13
For release - October 17, 2013

OTTAWA — Today, the Honourable Lisa Raitt, Minister of Transport, acted to further enhance safety in the transportation of dangerous goods by directing that a protective direction be issued requiring any person who imports or offers for transport crude oil to conduct classification tests on crude oil.

“As the Speech from the Throne reiterated yesterday, our government remains committed to taking action to protect public safety, and we will take targeted action to increase the safety of the transportation of dangerous goods,” said Minister Raitt. “We are continuing to do that today with the issuance of this protective direction.”

Effective immediately, any person who imports or offers for transport crude oil must:

- **Conduct classification testing of any crude oil being classified as UN 1267 or UN 1993, which has not undergone classification testing since July 7, 2013;**
- **Make those tests results available to Transport Canada upon request;**
- **Update their Safety Data Sheets and immediately provide them to Transport Canada's Canadian Transport Emergency Centre; and**
- **Until such testing is completed, ship all such crude oil as Class 3 Flammable Liquid Packing Group I, when shipping by rail.**

Transport Canada continues to work in cooperation with the Transportation Safety Board as it conducts its investigation into the tragic accident in Lac-Mégantic. Transport Canada is building upon the safety advisories received from the Transportation Safety Board and is further enhancing the safety of railway operations and dangerous goods transportation in Canada.
The Transport Canada investigation following the accident in Lac-Mégantic is ongoing. Any person who imports, handles, offers for transport or transports dangerous goods must comply with the *Transportation of Dangerous Goods Act*, its regulations and standards.

Oil and gas are routinely shipped safely across the country every day. There are over 30 million shipments of dangerous goods every year in Canada with 99.999 percent of them reaching their destinations without incident. Railway safety and transportation of dangerous goods regulations exist to ensure the safety and protection of the public. The protective direction was issued pursuant to section 32 of the *Transportation of Dangerous Goods Act, 1992*.
- 30 –

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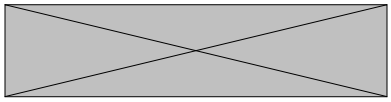
Minister of Transport
Ottawa
613-991-0700

Media Relations
Transport Canada, Ottawa
613-993-0055



Regulation: Canada issues order requiring crude classification tests

Friday, October 18, 2013: Progressive Railroading

The Canadian government has issued a protective order that requires anyone who imports or transports crude oil to conduct classification tests on the crude, Minister of Transport Lisa Raitt announced yesterday. The federal order was developed in response to the July 6 Montreal, Maine & Atlantic Railway derailment in Lac-Mégantic, Quebec.

Effective immediately, classification testing must be performed for any crude classified as "UN 1267" or "UN 1993." In addition, tests results must be made available to Transport Canada upon request, and safety data sheets must be updated and immediately provided to Transport Canada's Canadian Transport Emergency Centre.

Until such testing is completed, all impacted crude must be shipped as a "Class 3 Flammable Liquid Packing Group I" when transported by rail, said Raitt in a press release.

"Our government remains committed to taking action to protect public safety, and we will take targeted action to increase the safety of the transportation of dangerous goods," she said.

Transport Canada continues to work with the Transportation Safety Board of Canada (TSB) as it investigates the Lac-Mégantic accident. Transport Canada is building upon safety advisories received from the TSB to further enhance the safety of railway operations and transportation of hazardous materials in Canada, said Raitt.