



25 October, 2012

Krista Warnica
Senior Analyst
Rail, Air and Marine Disputes Directorate
Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec J8X 4B3

Re: Compliance with Agency Order in Decision 210-R-2012

1 Mobility Ottawa–Outaouais: Systems & Enterprises Inc. (Moose Inc.) is a federally incorporated commercial firm whose purpose is to organize a consortium to bring about and operate a region-wide private-sector passenger railway service on 400 km of existing railway infrastructure along three inter-provincial routes across the central Ottawa and Gatineau area, extending to six semi-rural towns of the region, and that would exchange passengers with other public and private sector transit services:

- Smiths Falls ON — Ottawa ON — Gatineau QC — La Pêche (Wakefield) QC;
- Arnprior ON — Ottawa ON — Gatineau QC — Montebello QC;
- Alexandria ON — Ottawa ON — Bristol QC.

Neither the company nor a related consortium member has yet submitted an application for a certificate of fitness, however our firm is preparing for the submission of an application.

2 Moose Inc. notes the following chronology:

- On 27 June 2011 Moose Inc. submitted to the Canadian Transportation Agency a complaint regarding apparent "Discontinuance of Prince of Wales Bridge" by the City of Ottawa;
- On 4 October 2011 the Agency initiated Complaint/File No. R 8150/063-1 (Prince of Wales Bridge);
- On 6 June, 2012, the Agency issued Decision No. 210-R-2012 which stated: "[31] The Agency finds that the City, since it took ownership of the railway line, has not discontinued operations. ... [34] The City has not reflected the railway line on its plan. The Agency, pursuant to section 141 of the CTA, therefore finds that the railway line should be included in the City's plan. ... [41] In light of these findings, the Agency orders the City to comply with section 141 of the CTA within 90 days from the date of this Decision."
- The 90-day response period, which began in the first week of June 2012, expired in the first week of September 2012.
- On 12 September, 2012 Moose Inc. sent an email to the Agency to ask if the CTA is satisfied that the City has fulfilled its obligations under Section 141.
- On 19 September, 2012, having received no acknowledgement or reply from the Agency, Moose Inc. sent a second email to ask whether the City of Ottawa has, or has not, complied with the Agency's order under Decision No. 210-R-2012. Moose Inc. also phoned John Corey to discuss.
- On 3 October, 2012 the Agency sent an email to Moose Inc. to state: "A copy of the most recent

Three-Year Plan for the City of Ottawa is available on OC Transpo's Website (http://www.octranspo1.com/images/files/routes/o_train/3_year_rail_plan.pdf). Agency staff has reviewed the City's Three-Year Plan and has determined that it is in compliance with the Agency's order under Decision No. 210-R-2012."

3 The Agency's Decision 210-R-2012 stated (emphasis added):

[8] The Bridge is made up of two bridges that span the Ottawa River, connected by a railway line on the Lemieux Island, from Gatineau, Quebec to Ottawa, Ontario. The Bridge runs from the Lachute Subdivision in Quebec to the Ellwood Subdivision in Ottawa.

and

[32] Section 141 of the CTA states that a railway company shall prepare and keep up to date a plan indicating for each of its railway lines whether it intends to continue to operate the line or whether, within the next three years, it intends to take steps to discontinue operating the line. The Agency finds that the railway line must be included in the railway company's plan as either:

a) a railway line that it intends to continue to operate, or

b) a railway line that it intends to discontinue in the next three years.

4 However Moose Inc. observes that in the Capital Railway Three-Year Plan 2012-2015, the asset of primary concern in Decision No. 210-R-2012 is not named as the "Prince of Wales Bridge", but rather as follows:

"Lemieux Island Spur

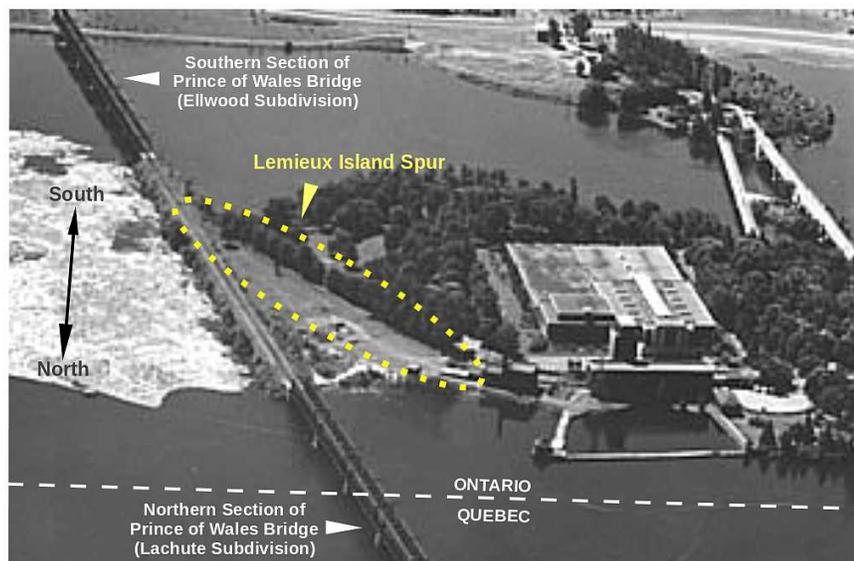
Between: Mileage 0.00 (connection with Mileage 4.65 (Km 7.49) Ellwood Subdivision)

And: Mileage 0.95 (connection with Mileage 119.12 Lachute Subdivision)

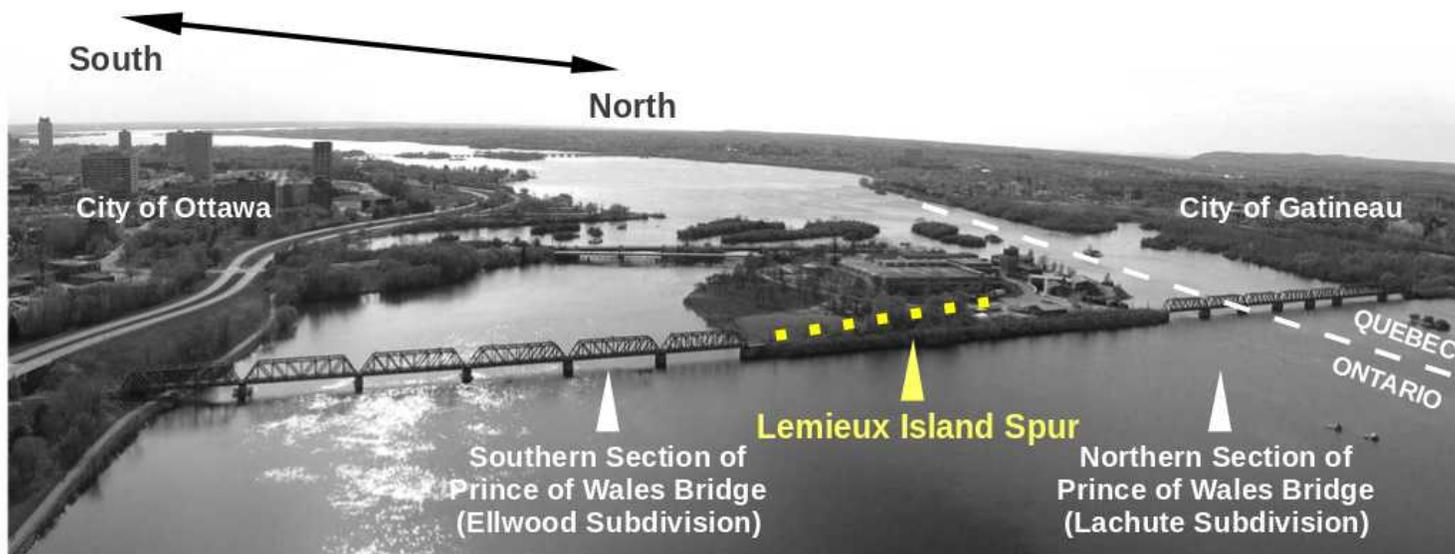
Distance: 0.95 miles (1.53 km)

Intention: Retain"

5 In fact, there does exist a Lemieux Island Spur, built in 1916 when the City of Ottawa constructed its water filtration plant on Lemieux Island in the Ottawa River, just south of the Quebec-Ontario border. To service this plant, Canadian Pacific Railway was authorized by BRC Order 25027, dated 30 May 1916, to lay a spur branching from the main line a few yards north of the northern abutment of the bridge which spans the southern channel of the River. This spur was extended by BRC Order 48335 of 18 March 1932. The Lemieux Island Spur is still in place, including the main line switch. As can be seen in the photo at right, the Prince of Wales Bridge carrying the main inter-provincial line is not the same physical railway asset as the Lemieux Island Spur. In fact, this short spur branches off the main track towards the City of Ottawa's water plant.



6 The photo below (adapted with permission from a photograph by Rob Huntley) illustrates the general layout of the two sections of the main line inter-provincial Prince of Wales Bridge, in relation to the Lemieux Island Spur.



7 Moose Inc. calls the Agency's attention to Section 140 of the Canada Transportation Act, which states that a spur is not considered to be part of a railway line:

Transferring and Discontinuing the Operation of Railway Lines
 Marginal note: Definition of "railway line"

140. (1) In this Division, "railway line" includes a portion of a railway line, but does not include
 (a) a yard track, siding or spur; or
 (b) other track auxiliary to a railway line.

Marginal note: Determination

(2) The Agency may determine as a question of fact what constitutes a yard track, siding, spur or other track auxiliary to a railway line.

8 Moose Inc. also calls the Agency's attention to Section 87 of the Canada Transportation Act which defines "railway" (« chemin de fer ») so as to include railway bridges:

"railway" means a railway within the legislative authority of Parliament and includes

- (a) branches, extensions, sidings, railway bridges, tunnels, stations, depots, wharfs, rolling stock, equipment, stores, or other things connected with the railway, and
- (b) communications or signalling systems and related facilities and equipment used for railway purposes;

9 In direct relation to the City of Ottawa's obligations under the order issued in Decision 210-R-210 (i.e. this present letter is not intended to initiate a separate case), Moose Inc. hereby requests that the Agency, under Section 140(2) of the Transportation Canada Act, determine as a question of fact whether the entire Prince of Wales Bridge constitutes a "spur", or another type of track auxiliary to a

railway line, or if it is considered to be an integral section of a railway line as defined in the Act. In this regard, Moose Inc. then further requests that the Agency re-assess whether the City of Ottawa has in good faith complied with paragraph [32] of Decision No. 210-R-2012 when listing the entire "Prince of Wales Bridge" in its Three-Year plan as the "Lemieux Island Spur". That Agency already (emphasis added) "finds that the railway line must be included in the railway company's plan as ... a railway line". Use of the terms "railway line" versus "spur" is a distinction of direct legal significance to the Agency's order under Decision 210-R-2012. The Agency's publication: "*Transfer and Discontinuance of Railway Line Operations and Railway Track Determinations: A Resource Tool*" <http://www.cta-otc.gc.ca/eng/publication/transfer-and-discontinuance-railway-line-operations-and-railway-track> explains the differences that apply to the transfer and discontinuance process for a "railway line", versus the transfer and discontinuance process for a "railway spur" (emphasis added):

"Railway track determinations

The railway line transfer and discontinuance process applies to all railway lines held by railway companies that are under the jurisdiction of the Parliament of Canada. Within this process, a railway line excludes yard trackage, sidings, spurs or other track auxiliary to a railway line. If the Agency determines that a particular trackage meets any of these criteria, it is excluded from the transfer and discontinuance process. Conversely, the Agency may determine that a particular trackage constitutes a line of railway and therefore is subject to the statutory transfer or discontinuance process.

If a railway company wishes to dismantle a siding or spur which is located in a metropolitan area or an area served by an urban transit authority, it must follow the transfer and discontinuance process outlined in sections 146.2 to 146.5 of the Act.

Transfer and discontinuance process

Sections 141 to 146.1 of Part III, Division V of the Act provide the steps that a railway company must take before it may formally transfer or discontinue a line."

10 According to Section 146.2(3) of the Transportation Canada

Act, a railway company may take steps for approval to dismantle a siding or a spur 12 months after it has been added to a list of such assets on its Internet site. But according to Section 141(1), a railway company may take steps for approval to dismantle a main line of railway only after a three-year notification process. Therefore the unilateral and unauthorized attempt by the City of Ottawa to re-classify a section of track from its original status as part of a main railway line, to an entirely different legal status as a spur, is a direct violation of the order given in Decision 210-R-2012, responding to a complaint about the apparent constructive "Discontinuance of Prince of Wales Bridge" by the City of Ottawa.

11 The Agency's Decision No. 745-R-2000 more than a decade ago, which authorize a Certificate of Fitness to the City of Ottawa operating as Capital Railway, was premised upon a submission by the City of Ottawa of a study that included options for use of the Prince of Wales Bridge for eventual through-service between the Ellwood Subdivision in Ontario, and the Lachute Subdivision in Quebec:

"In the case at hand, the Region's proposal includes the operation of a railway in both of the provinces of Ontario and Quebec. In support of this proposal, the Region has filed with the Agency a study in which various options regarding the operation of the Region's railway into the province of Quebec are detailed and analyzed. While the application

indicates that the initial construction and operation will take place only in the province of Ontario, it is clear that the Region intends, and has the capacity to ultimately operate an interprovincial passenger railway service. In these circumstances, the Agency finds that the preliminary requirement for an application under section 92 of the CTA has been met, that is, there is a bona fide proposal to operate a federal railway undertaking."

The study referred to above, submitted in the year 2000 to the Agency by the City of Ottawa, describes use of the Prince of Wales Bridge as an inter-provincial railway line. There has never been an application by the City to change the legal status of the Prince of Wales Bridge to a spur.

- 12 In 2009 the City of Ottawa disabled a switch on the Ellwood Subdivision at the location where the Bayview Station Spur (which was constructed in 2000-01) connects with the main railway line. Specifically the City removed a several-meter-long X-shaped device, referred to in railway terminology as a "frog" (shown in the photo at right), which is designed to ensure that train wheels crossing a gap in the rail do not drop into the gap. Moose Inc. met with Agency officials on 26 January 2011 to express our concern that the City's modification to the switch severed the operational main railway line connection between the Ellwood Subdivision in Ontario and the Lachute Subdivision in Quebec. Mr. John Corey, Manager, Rail Investigations, explained verbally that the City had disabled the switch only to reduce noise, and that this was an acceptable temporary modification because it could easily be replaced within two weeks if needed for inter-provincial traffic by any railway company between the Ellwood Subdivision in Ontario and the Lachute Subdivision in Quebec. An earlier Agency reply in 2009 to a letter from citizen Mike Kostiuk (25 August 2009, File R 8005/C6, Corr: 09-04414, signed by Paul Lacoste of the Rail, Air and Marine Disputes Directorate) explained that it is the Agency's understanding that the City of Ottawa's intention remains to eventually operate railway service over the Prince of Wales Bridge to Gatineau, Quebec. Specifically the Agency said in its letter:



"Although paragraph 93(1) of the CTA provides that the Agency may vary a certificate of fitness to reflect a change in railway operations or circumstances to those operations, the most recent Agency Decision (No. 283-R-2007) continues to show that the Certificate of Fitness for Capital Railway covers the operation of the light rail commuter service, also known as the O-Train, in the provinces of Ontario and Quebec... [and] the Agency has received no indication from the City that it no longer intends to ultimately operate an interprovincial passenger railway service"

- 13 The question of whether the track of the Prince of Wales Bridge exists as a railway line, a railway branch, or a railway spur requires explicit clarification. A railway "branch" and railway "spur" are treated differently under the Transportation Canada Act, although they have an identical appearance at the location where they depart from a main railway line. The Supreme Court of Canada in *Grand Trunk Railway Co. v. Hepworth Silica Pressed Brick Co.*, [1915] S.C.R. 81 refers to "a spur or branch line" and also refers to "the point at which the spur leaves the main line of the railway" <http://scc.lexum.org/en/1915/1915scr51-81/1915scr51-81.html> The Railway Costing Regulations under the Canada Transportation Act defines a "branch line" as follows:

"branch line"

"branch line" means a line of railway in Canada of a railway company that is subject to the jurisdiction of Parliament that, relative to a main line within the company's railway system in Canada of which it forms a part, is a subsidiary, secondary, local or feeder line of

railway, and includes a part of any such subsidiary, secondary, local or feeder line of railway; (embranchement)

Moose Inc. notes that the term "spur" is not defined in the Canadian Rail Operating Rules, the Railway Costing Regulations, nor in the Railway Safety Act. However the North American railway industry clearly distinguishes a railway "line" from a railway "branch" and a railway "spur":

“Dictionary of Railway Track Terms”

Spur Track: A generic term used to describe any light duty track that branches off a main track. Generally, the spur track serves the industrial customers of a railroad.

Branch or Branch line : A track diverging from a main track on which a variety of traffic from light to heavy is operated.

“Comprehensive Railroad Dictionary”

Spur Track: As distinguished from a side rack, a spur track is of indefinite length, extending out from main line.

Branch Line : A secondary line of a railway, as distinguished from the main line.

Union Pacific Glossary of Railroad Terms (US Terminology)

http://www.up.com/aboutup/reference/glossary/railroad_terms/index.htm

Spur: Short, usually dead-end section of track used to access a facility or loading/unloading ramp. It also can be used to temporarily store equipment.

Burlington Northern Santa Fe: Glossary (North American Terminology).

www.bnsf.com/customers/pdf/glossary.pdf

Spur: A track extending out from the main track that usually serves customers

Trains: The Magazine of Railroading. Kalmbach Publishing (US terminology).

<http://trn.trains.com/Railroad%20Reference/Railroading%20Glossary.aspx?letter=S>

Main line, or Main track: The principal running track of a railroad, as contrasted with sidings, spurs, and yard tracks.

Spur: Segment of track branching off the main, used to reach a customer or facility, or to store equipment.

Branch line: A secondary railway line as distinguished from the main line of a railroad

Webster's Online Dictionary

<http://www.websters-online-dictionary.org>

Rail Spur: A railroad track that typically connects to the main line at only one end and provides rail service to one or more railroad freight customers. A rail spur could also parallel the main line.

- 14 Given these clear distinctions, there is no logical interpretation of the material facts that would allow for the Prince of Wales Bridge to be called the "Lemieux Island Spur" in the City of Ottawa's Three-Year Plan 2012-2015. The City of Ottawa itself admits that the section of railway in question connects with Mileage 4.65 (Km 7.49) of the Ellwood Subdivision on one end, and with Mileage 119.12 of the Lachute Subdivision at the other end. In law, the southern section of the Prince of Wales Bridge exists under federal authority as the northernmost integral part of the entire Ellwood Subdivision, and the northern section exists under federal as the southernmost integral part of the entire Lachute Subdivision. The Bridge cannot be represented as a spur of any sort. The Prince of Wales Bridge has been misrepresented as the "Lemieux Island Spur", while in fact the Lemieux Island Spur is a distinct asset in material fact.
- 15 Misapplication of the name of the "Lemieux Island Spur" as if to portray the entire inter-provincial "Prince of Wales Bridge" as a dead-end section of track to access Lemieux Island in Ontario, is a denial of the bridge's true function and legal status under Section 92.10(a) of the Constitution of Canada, to connect the Ellwood Subdivision in Ontario with the Lachute Subdivision in Quebec.
- 16 Six years ago the Agency agreed with CPR (Decision No. 40-R-2006, Manitoba v. CPR) that until a line of railway is officially discontinued pursuant to Division V of the Transportation Canada Act, the railway company owning the work continues to have level of service obligations pursuant to the CTA, which could require the railway company to provide service on this line at any time to other operators. The Agency agreed with CPR that the absence of train movements over an extended period of time on a line does not mean the owner of the asset can unilaterally terminate its maintenance, inspections and testing, unless specific exemptions from these procedures are obtained from the Rail Safety Branch of Transport Canada.
- 17 Moose Inc. has time-sensitive commercial interests in using the Prince of Wales Bridge, and requires consistent and impartial application of federal laws and regulations. Therefore Moose Inc. asks the Agency to formally determine, without any further delay, that:
 - 17.1 The Prince of Wales Bridge is, in fact, an integral inter-provincial railway line, as defined by Section 92.10(a) of the Constitution Act and by the Transportation Canada Act, the transfer or discontinuance of which is subject to Sections 141 to 146.1 of Part III, Division V of the Transportation Canada Act, and that it is not a spur, the transfer or discontinuance of which would be subject to sections 146.2 to 146.5 of the Transportation Canada Act.
 - 17.2 The City of Ottawa has therefore not complied with the order given in Decision 210-R-2012, Paragraph [41] in terms of the clear requirements stated in Paragraph [32] of the Decision.
 - 17.3 The City of Ottawa is ordered to meet the same level of service obligations as apply to all active federal railways, pursuant to the CTA, and to guarantee normal service across the Prince of Wales Bridge from the Ellwood Subdivision through to the Lachute Subdivision to other operators by a firm date, taking account of our company's developmental plans, and those of other companies.
 - 17.4 Moose Inc. requests that the Agency order the City of Ottawa to immediately implement a normal railway maintenance, inspection and testing regimen across the Prince of Wales Bridge from the Ellwood Subdivision through to the Lachute Subdivision, unless and until the City obtains specific exemptions from these procedures from the Rail Safety Branch of Transport Canada.

18 Notwithstanding paragraph 17.3 above, if the Agency finds that the City of Ottawa has not complied with Decision 210-R-2012, and moreover if the Agency finds that the City of Ottawa inappropriately switched terminology in its Three-Year Plan 2012-2015 to misrepresent the "Prince of Wales Bridge" with the name of the "Lemieux Island Spur" in such a way as to achieve the apparent legal effect of making discontinuance of the bridge subject to a simpler and/or shorter process, then Moose Inc. asks the Agency, under Section 144 (6) of the Transportation Canada Act, find that the City of Ottawa is not acting in good faith in response to the order issued by the CTA in Decision 210-R-2012. Accordingly, Moose Inc. requests that the Agency order a date for the City of Ottawa to offer for sale or some other form of transfer, the Prince of Wales Bridge, or its operating interest in the Bridge, as follows:

18.1 To the National Capital Commission (NCC) which, under Section 13 of the *National Capital Act* may "enter into agreements with any railway company for the sole, joint or several use... maintenance... and... operation of the railway or facilities, or any portion thereof";

And, if the NCC would not acquire it,

18.2 To Public Works and Government Services Canada (PWGSC) which, under Section 1 of the *Act Respecting Certain Works on the Ottawa River*, is provided a mandate to control and manage any works "situated in or on the waters" of the Ottawa River, constructed "for any purpose of public utility", "no matter by whom constructed", and whether or not recognized as being for the general advantage of Canada;

And, if neither the NCC nor PWGSC would acquire it,

18.3 To Moose Inc. or to one or more members of a business consortium that Moose Inc. is assembling, on condition that we continue arrangements to bring about and operate by 2016 a region-wide private-sector passenger railway service that links the central Ottawa and Gatineau areas, and extending to six semi-rural towns of the region as follows:

- Smiths Falls ON — Ottawa ON — Gatineau QC — La Pêche (Wakefield) QC;
- Arnprior ON — Ottawa ON — Gatineau QC — Montebello QC;
- Alexandria ON — Ottawa ON — Bristol QC.

19 If the actions in paragraph 18 above are taken, Moose Inc. requests that, in conformance with the general principles expressed in Decision No. 40-R-2006 (*Manitoba v. CPR*), the Agency establish a schedule for the new owner to make all necessary repairs and provisions for returning the Prince of Wales Bridge to an equivalent operational condition as when the City of Ottawa purchased this fully functional asset from Canadian Pacific under their 2005 "Agreement for Purchase and Sale of Railway for Continued Railway Operations" (emphasis added). Also, the Agency should order the City of Ottawa to permit the new owner of the Bridge to promptly bring up to federal Class 3 standards all physical equipment, inspections and operating arrangements on any railway lines, corridors and auxiliary infrastructure owned by the City that are useful towards any railway company's interprovincial passenger or freight undertakings to and from the bridge. While the new owner would finance these repairs and upgrades, the City of Ottawa's portion of liability for all such capital repair and upgrade expenses, to be determined exclusively by the Agency, should be accounted for as a loan to the City from the new owner of the Prince of Wales Bridge, to be recompensed in-kind (with interest) through an arrangement under authority of the Agency whereby the City of Ottawa shall waive all lease fees for land use and/or running rights on any railway lines, corridors and auxiliary infrastructure owned by the City that are required for any railway company's interprovincial passenger or freight undertakings to and from the bridge. After this loan is paid off in this manner, all further interprovincial passenger and freight railway companies operating across the bridge would pay normal market fees for land use and/or running rights on such City of Ottawa railway properties, subject to any terms and conditions, including consideration, that may be specified by the Agency, and in a manner that will be commercially fair and reasonable to the parties;

20 Moose Inc. aligns its business objectives to Section 5 of the Transportation Canada Act, in particular:

"It is declared that a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas throughout Canada. Those objectives are most likely to be achieved when :

(a) competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services;

...

(e) governments and the private sector work together for an integrated transportation system.

21 Moose Inc. also aligns its business objectives to Section 3 of the Railway Safety Act, in particular:

"The objectives of this Act are to :

...

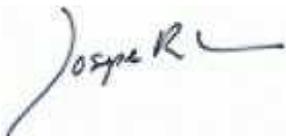
(b) encourage the collaboration and participation of interested parties in improving railway safety;

...

(d) facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety.

22 If the current position of the City of Ottawa is upheld by the Agency, then the federal public interest objectives stated in Section 5 of the Transportation Canada Act, and in Section 3 of the Railway Safety Act will be denied, with no offsetting public interest gain whatsoever by any party. However if the current position of Moose Inc. is upheld by the Agency, the public interest objectives motivating these two Acts will be advanced, and socio-economic development opportunities will be consistently and impartially protected for all potentially interested parties. Within that competitive scenario, if Moose Inc.'s commercial initiative succeeds in implementing the regional railway service that it has described, there would result enormous public interest benefits throughout the entire Greater National Capital Region, for residents, tourists, businesses and public sector operations, in a manner that is complementary with the public transit projects and goals of every affected municipality of this region.

All of which is respectfully submitted.



25 October, 2012

Mobility Ottawa-Outaouais: Systems and Enterprises Inc.
Joseph Potvin, President and General Manager

c.c. Geoffrey C Hare, Chairman and Chief Executive Officer, CTA