



Canadian
Transportation
Agency

Office
des transports
du Canada

LET-R-27-2017

June 7, 2017

Case No. 17-01156

BY E-MAIL: Rick.oconnor@ottawa.ca

City of Ottawa
carrying on business as Capital Railway
c/o Mr. Rick O'Connor, B.A., M.A., LL.B
City Clerk and Solicitor,
City Manager's Office, City of Ottawa

Dear Sir:

Re: Show cause pursuant to Part III, Division V of the *Canada Transportation Act, S.C., 1996, c. 10, as amended (CTA).*

SUMMARY

Staff of the Canadian Transportation Agency (Agency) received information on July 25, 2016 and August 15, 2016 from Moose Consortium Inc. (Moose) indicating that the City of Ottawa (City) had dismantled a section of the Ottawa River Line (ORL) approximately between mileage 0.62 and mileage 0.77, between Bayview Station and the Prince of Wales (POW) Bridge. The information received also indicates that the City is constructing a permanent structure on the railway right-of-way that would create an obstruction and prevent future railway operations over the POW Bridge into Quebec.

City staff confirmed in an e-mail to Agency staff dated February 17, 2017 that a portion of the ORL had been removed to construct the new west side entrance to the Bayview Station and therefore, the ORL is currently obstructed at Bayview Station.

For the reasons below, the Agency orders the City to show cause, by June 28, 2017, why the Agency should not find that the City has breached its statutory obligations under Division V of the CTA by failing to comply with the mandatory discontinuance process set out in that Division.

BACKGROUND

The Agency issued Certificate of Fitness No. 00002-3, dated June 6, 2007, to the City, authorizing "the improvements and operation of a railway for the purposes of operating a light rail commuter service, also known as the O-Train, in the provinces of Ontario and Quebec, serving five stations from Greenboro Station in the south to Bayview Station in the north."

In [Decision No. 210-R-2012](#), the Agency considered the *Agreement of Purchase and Sale of Railway for Continued Railway Operation*, signed March 21, 2005, between Canadian Pacific Railway Company (CP) and the City. Pursuant to this Agreement, the City purchased certain railway lines from CP, including the Ellwood and Prescott corridors as well as the railway line

across the POW Bridge. In the Decision, the Agency found that these railway lines had been acquired by the City for continued operation. The Agency also found that, for the purposes of the CTA, the City had not discontinued operating the railway line across the POW Bridge. The Agency ordered the City to comply with section 141 of the CTA and to prepare and keep up-to-date a plan for each of its railway lines indicating 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 City's [Three Year Plan](#) 2016-2018, dated December 31, 2015, ("Revision 1.0") indicates that the City intends to continue the "current operation" of all of its railway lines.

The City's Three Year Plan refers to six railway lines, including the ORL, Bayview Station Track, and Ellwood Subdivision. The northern end of the Ellwood Subdivision connects to the ORL and Bayview Station Track. The ORL continues north across the POW Bridge to Gatineau in the Province of Quebec. The Bayview Station Track ends at the Bayview Station.

ISSUE

Has the City contravened Division V of the CTA by effectively discontinuing the operation of the ORL without complying with the mandatory discontinuance process set out in Division V of the CTA?

THE LAW

Obligation to Operate the Railway Line

Until a railway line is discontinued, a railway company has obligations under the CTA in respect of the operation of the railway line. For example, section 138 of the CTA provides the Agency with the power to grant running rights on the line to another railway company. Operation of the railway line includes, pursuant to section 87 of the CTA, any act necessary for the maintenance of the railway line or the operation of a train. If a railway company wishes to be relieved of these statutory obligations, the CTA provides such a mechanism in the form of the transfer and discontinuance provisions under Division V. Once the railway company has complied with all steps of this mandatory statutory process, it may discontinue operating the line and has no further obligations in that regard.

In [Decision No. 445-R-1997](#), the Agency explained that

[t]he provisions of Division V of the CTA are intended to promote the normal business management of railway assets and operations by a railway company, as well as to encourage the continuation of railway services wherever possible through the takeover of railway lines by new operators in situations where the current railway operator does not wish to continue to provide service. [...]

In *Canadian National Railway Company v. Greenstone (Municipality)*, 2008 FCA 395, the Federal Court of Appeal held at para. 56 that Division V of the CTA is a complete and mandatory statutory code for discontinuance of a railway line:

In any event, Division V of the Act establishes a mandatory process for the discontinuance of railway lines. The appellant is under a clear and positive statutory duty to comply with the obligations therein that are imposed upon it. An interested or potentially interested buyer of the lines, such as the Municipality in the present instance, cannot through consent, its participation or its conduct in the process relieve a railway company of its statutory obligations...

Finally, this complete and mandatory process also applies to discontinuance of part of a railway line, as recognized by the Federal Court of Appeal at para. 41 of *Canadian National Railway Company v. Greenstone (Municipality)*, 2008 FCA 395:

The prohibition in subsection 142(2) to start the discontinuance process applies not only when there is discontinuance of a line, but also, as envisaged by the definition of “railway lines”, when there is discontinuance of “a portion of a railway line”....

ANALYSIS AND FINDINGS

The City, being a federally-regulated railway company as set out in its current Certificate of Fitness, falls under the jurisdiction of the CTA. The ORL, being a railway line owned by a federally-regulated railway company, also falls under the jurisdiction of the CTA.

In light of the information received by the Agency and confirmed by City staff – namely, that the City has dismantled a section of the ORL and is constructing a permanent structure on the railway right-of-way – it appears that the City has effectively discontinued a portion of a railway line without complying with the mandatory discontinuance process set out in Division V.

DIRECTION TO SHOW CAUSE

The Agency orders the City to show cause, by June 28, 2017, why the Agency should not find that the City has breached its obligations pursuant to Division V of the CTA.

In its response, the City is required to address the operability of the ORL, including over the POW Bridge, and its plans for the line's ongoing maintenance and eventual use.

The record for this matter, including Agency staff's communications with Moose and City staff, is provided to the City with this decision.

All correspondence and pleadings should refer to Case No. 17-01156 and be filed through the Agency's Secretariat e-mail address: secretariat@otc-cta.gc.ca.

BY THE AGENCY:

(signed)

Scott Streiner
Member

(signed)

Sam Barone
Member

(signed)

Stephen Campbell
Member