



11 May 2018

Hon. Marc Garneau, P.C., M.P.
Minister of Transport
Government of Canada
Suite 2958, 330 rue, Sparks Street
Ottawa ON K1A 0N5

Re: Request that Cabinet Uphold Decision No. 210-R-2012 (6 June 2012) and Determination No. R-2018-23 (16 February 2018) of the Canadian Transportation Agency

Dear Minister Garneau,

After the Canadian Transportation Agency issued its Determination No. R-2018-23 on 16 February 2018, City of Ottawa Mayor, Jim Watson, wrote to you on 6 March 2018 to ask that this determination be rescinded. More recently on 3 May 2018, City of Ottawa Council was informed in writing by their City Clerk and Solicitor, Rick O'Connor, as follows:

"I can advise that the Federal Minister of Transportation, the Honourable Marc Garneau, has invited the City to submit all of the relevant facts, information and evidence in support of the Mayor's petition asking Cabinet to exercise the supervisory authority set out in Section 40 of the Canada Transportation Act, and order that the CTA's decision in this instance be rescinded. Following consideration of those submissions, the Minister will be making a recommendation to the Governor in Council (i.e. Cabinet) on whether to uphold, vary or rescind the decision of the Agency."

The purpose of our present letter is to inform you that if Cabinet were to rescind the results of federal regulatory due process in this case, such an outcome would prejudice the legitimate business interests of Moose Consortium Inc. and of the companies that operate as "MOOSE Consortium". To override the order would wipe out significant tangible investment by the multiple companies involved, and would reward the City of Ottawa's persistent violations of central provisions of the Canada Transportation Act. Therefore we ask that you uphold Decision No. 210-R-2012 and Determination R-2018-23, and not permit any further delay in their enforcement.

Moose Consortium Inc. initiated this regulatory process on 9 June 2011 by submitting a complaint to the Canadian Transportation Agency about the City of Ottawa's documented steps towards effective (i.e. *de facto*) discontinuance of this section of railway, which resulted in Decision No. 210-R-2012 on 6 June 2012. Since that time we have found it necessary to commit additional time and effort to repeatedly notify the Agency of the City of Ottawa's violations of the 2012 order. On 26 October 2016, Moose Consortium Inc. promptly notified the Agency upon learning of several major new and compounding violations of the Act by the City of Ottawa, when they dismantled and permanently obstructed the railway without authorization. This has now resulted in the Agency Determination R-2018-23, albeit only after the unauthorized dismantling and permanent obstruction of the railway was complete. The Agency concluded "that the City has, for all intents and purposes, discontinued a portion of the ORL without complying with the discontinuance process set out in Division V of the CTA". In particular: "the Agency observes that the City has taken specific actions that render that portion inoperable and has linked any restoration of operability to the possibility of rail operations at an undefined time in the future".

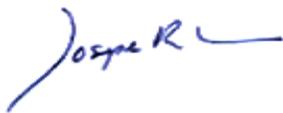
The companies that operate as “MOOSE Consortium” have invested multiple years of work and resources into system design and market preparations for our commercial development of a whole-region 400 km interprovincial passenger railway service. Our plan aligns with the “*Interprovincial Transit Strategy for Canada’s Capital Region: Connecting Communities*” prepared by Ottawa, Gatineau and the NCC (2013), and with the “*Plan for Canada’s Capital (2017-2067)*”. Our commercial investments have been premised upon a stable rules-based transportation business environment as framed by the National Transportation Policy described in Section 5 of the Act. We have maintained reasonable expectations that the Canadian Transportation Agency and the Rail Safety Branch of Transport Canada can and will exercise the mandates entrusted to them unambiguously by Parliament.

Shortly after Determination No. R-2018-23 on 16 February 2018, Moose Consortium Inc. wrote to Ottawa Mayor Jim Watson on 29 March 2018 to say: "The finance, engineering and railway operations companies of MOOSE Consortium would like to meet with you in mid-April to discuss our taking on responsibility for all repair and maintenance obligations, and for upgrades, that are associated with the Prince of Wales Bridge and its approach tracks." This request for a meeting was declined by the City in a letter to Moose Consortium Inc. dated 16 April 2018.

We ask that you uphold the Agency’s decisions to protect the integrity of this federal railway infrastructure in accordance with the Act. Decision 210-R-2012 and Determination R-2018-23 are each based upon well-established Parliamentary and court interpretation of federal prerogative in light of Section 92 of the Constitution, and they reflect Parliament’s intent in the Canada Transportation Act. The City of Ottawa’s resistance to federal regulatory jurisdiction in this case closely resembles its earlier 1983 Ontario Court of Appeals case in which the City of Ottawa (OC Transpo) unsuccessfully challenged the jurisdiction of the Canada Labour Relations Board (Ottawa-Carleton Regional Transit Commission v. Amalgamated Transit Union, Local 279, (1983) 44 O.R. (2d) 560).

The financial, engineering and rail operations principals of MOOSE Consortium request an opportunity to meet with you to discuss the public interest, public finance and commercial investment factors involved in this case. Such a meeting could include all the direct stakeholders copied below.

Respectfully,



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Director General
Moose Consortium Inc.
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c.c.

- Mayor, City of Ottawa (Jim Watson)
- City Solicitor, City of Ottawa (Mr. Rick O’Connor)
- Maire, Ville de Gatineau (Maxime Pedneaud-Jobin)
- Senior Legal Counsel, Canadian Transportation Agency (John Dodsworth)
- Chair, National Capital Commission (Mr. Marc Seaman) and Board Members

The following attachments are sent via a separate email. The sub-attachments that would go with them are not included here, but can be provided on request.

- 9 June 2011. "Complaint: Discontinuance of Prince of Wales Bridge" (7 pages)
- 25 October 2012. "Compliance with Agency Order in Decision 210-R-2012" (9 pages).
- 3 February 2015. "Compliance with Agency Order in Decision 210-R-2012" (6 pages, 5 attachments).
- 25 July 2016. "Request for Documentary Evidence" (17 pages, 10 attachments)
- 15 August 2016. "Request for Site Inspection, Determination and Order" (21 pages, 15 attachments)
 - 24 August 2016. "Addendum to Moose Submission ... Case #16-03784" (3 pages, 2 attachments)
 - 16 September 2016. "Second Addendum to Moose Submission ... Case #16-03784" (1 page)
 - 23 September 2016. "Third Addendum to Moose Submission ... Case #16-03784" (2 pages)
- 25 July 2016. Letter from the Shawn Pankow, Mayor of Smiths Falls to the Secretary of the Canadian Transportation Agency, addressing the issue in this case.
- 16 January 2017. Email from Moose Consortium Inc. to Jaime Kippen, Office of the Prime Minister.
- 6 February 2017. Email from Moose Consortium Inc. to Minister Garneau, Transport Canada, "Unwarranted Delay in Resolving Case #16-03784 of the Canadian Transportation Agency" (and related email thread).
- 29 March 2018. Letter from Joseph Potvin, Director General, Moose Consortium Inc. to Jim Watson, Major, City of Ottawa.