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Office des transports du Canada Canadian Transportation Agency  
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**TRANSMETTRE À - TRANSMIT TO**

Nom - Name: Greg Marshall  
Ministère - Department: Agricultural Producers Association of Saskatchewan  
Endroit - Location: Regina, Saskatchewan  
N° de téléphone - Telephone No.:  
N° de fac-similé - Facsimile No.: (306) 789-7779  
Nombre de pages à transmettre  
Number of Pages for Transmittal: 4 (incluant cette page - including this page)

**EXPÉDITEUR - ORIGINATOR**

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Direction - Directorate: Rail Investigations Division  
Étage - Floor: 15th Floor

**NOTA - NOTES**

Case # 09-08126 Producer Car Loading Sites,

**Canada**

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LET-R-196-2009

December 31, 2009

File No. T 7375-3/09-7

**BY FACSIMILE: 306-789-7779**

Agricultural Producers Association of Saskatchewan  
100-2400 College Avenue  
Regina, Saskatchewan  
S4P 1C8

Attention: Greg Marshall

**Re: Level of service application pursuant to section 116 of the *Canada Transportation Act*, S.C., 1996, c. 10 as amended, by Agricultural Producers Association of Saskatchewan with respect to producer car loading sites.**

This refers to an application filed with the Canadian Transportation Agency (Agency) by the Agricultural Producers Association of Saskatchewan (APAS) against the Canadian National Railway Company (CN) on December 23, 2009. APAS contends that by CN delisting producer car loading sites in western Canada it will greatly affect the western Canadian farmers' ability to access local rail transportation and will increase the cost of shipping.

APAS has requested the Agency to proceed with the formal adjudication process. In addition APAS appears to be making an application on behalf of unspecified users of sites which are being delisted. Before the Agency can consider any such extended application, the Agency will require APAS to file with the Agency information of the specific users and the relevant sites for which it is seeking relief.

### Interim relief

In its application, APAS requests a moratorium on the further delisting of any public producer car loading sites.

The Agency considers this to be a request for interim injunctive relief. Before it can grant such relief, the Agency must be satisfied that the applicant has met the following three part test set out by the Supreme Court of Canada in *RJR-Macdonald Inc. v. Canada (Attorney-General)*, [1994] 1 S.C.R. 311:

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The word "Canada" in a stylized, bold font with a small flag above the 'a'.

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- there is a serious issue to be tried;
- the applicant will suffer irreparable harm if the application is refused; and
- the applicant will suffer greater harm from the refusal to grant the interim injunctive relief pending a decision on the merits (balance of convenience) than the respondent would suffer if the Agency were to grant the relief.

Although APAS has requested a moratorium, its application does not provide the information, evidence and arguments necessary to support this request.

Should APAS wish to pursue this interim relief, it is to submit the request in a format which includes all the necessary information, evidence and arguments related to the test outlined above by 5:00 pm EST on January 6, 2010. At that time, the Agency will establish time frames for further related pleadings.

### Application

Before the Agency can proceed with APAS's application under section 116 of the *Canada Transportation Act (CTA)*, it requires the following additional information from APAS:

1. a list of the sites that APAS members currently use and the number of cars they have loaded at those sites each year for the past three years.

Once this information is filed with the Agency, it will be assessed and if it is determined that there is sufficient information for CN to respond to, CN will then be provided with timelines for filing its answer to the application.

In addition, it is noted the Agency may seek further information and/or clarifications from the parties and from third parties. The Agency may also ask parties to submit witness statements and/or affidavit evidence to complete the pleadings.

This application process is a quasi-judicial one carried out pursuant to the CTA and the *Canadian Transportation Agency General Rules (General Rules)*, which can both be accessed on line at <http://www.cta.gc.ca>.

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To ensure that Agency proceedings are effective, the Agency will only grant extensions of time in exceptional circumstances. The factors taken into consideration by the Agency for any extension request can be accessed on line at [http://www.cta-otc.gc.ca/publications/information/2007/2007-09-13\\_e.html](http://www.cta-otc.gc.ca/publications/information/2007/2007-09-13_e.html). Parties must provide clear and convincing evidence for any such request.

Should you have any questions regarding your application, you may contact Stephan Coqueux at 819-997-7702 or by e-mail at [Stephan.Coqueux@otc-cta.gc.ca](mailto:Stephan.Coqueux@otc-cta.gc.ca)

Sincerely,

  
Cathy Murphy  
Secretary

**BY THE AGENCY:**

RAYMON J KADUCK  
Member

JOHN SCOTT  
Member

c.c. Jean Patenaude, Canadian National Railway Company