

CANADIAN TRANSPORTATION AGENCY CLOSES RAILWAY CAPITAL STRUCTURE CONSULTATION

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Outcome Affects Regulatory Costing under the Maximum Revenue Entitlement Program, Regulated Interswitching and Final Offer Arbitration

The Canadian Transportation Agency recently invited submissions regarding a consultation on the methodology for determining the capital structure of Canadian Pacific Railway Company (CP) and Canadian National Railway Company (CN) under the maximum revenue entitlement (MRE) program. The purpose of the consultation was for the determination of CN's and CP's cost of capital, an important component in not only the MRE, but also interswitching rates and other specified regulatory purposes, such as calculating long run variable costs in final offer arbitration proceedings.

In order to determine the cost of capital of CP and CN for a given year, the Agency establishes their respective capital structures, which identifies what proportion of their total invested capital is financed from debt, equity, and deferred taxes and investment tax credits. As it explains, the Agency "determines a cost rate for each source of financing, and weights each cost rate by its proportion in the capital structure. The cost of capital rate is the sum of the weighted cost rates."

Submissions were invited on the specific items to be included in the determination of the capital structure and a methodology for determining the working capital allowance component of the capital structure.

McMillan made [initial submissions on October 14, 2016](#) and second [phase submissions on November 18, 2016](#) on behalf of Teck Resources (Canada's single largest rail shipper), as well as the Western Grain Elevator Association and the Canadian Canola Growers Association. These submissions were supported by renowned regulatory finance expert, Dr. Lawrence I. Gould, Ph.D., Professor of Finance and Senior Scholar at the Asper Business School, University of Manitoba.

Apart from the submissions of the two Class I federal railway companies, CP and CN, that were the object of the consultation, four other shipper associations made submissions, all found on the [Consultations Page](#) of the Canadian Transportation Agency website

Submissions are now closed. The results of the Agency's consultation process should appear in the Agency's next Volume Related Composite Price Index determination, expected in April 2017.

by François Tougas

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Strategy, Negotiations, Resolution

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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