



VIA EMAIL

June 24, 2015

Honourable David Emerson, P.C.
Chair, 2015 Canada Transportation Act Review Panel
330 - 350 Albert Street
Ottawa ON K1R 1A4

Dear Mr. Emerson:

Re: AREVA Resources Canada Inc. (AREVA) Submission to Canada Transportation Act Review Secretariat

AREVA understands that the submission period for the *Canada Transportation Act* (CTA) Review Panel is now closed, however, we are corresponding with you to ensure that you are aware of AREVA's position and difficulties with the CTA. Our correspondence focuses on the common carrier obligation in the CTA as it applies to the safe and reliable transport of our product, and more broadly the role the transportation system plays in supporting Canada's growth and prosperity.

Common Carrier Obligation

The National Transportation Policy in Section 5 of the CTA states that "...a competitive, economic, and efficient national transportation system...[that] 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...". Despite this overarching declaration and common carrier obligation (CTA Sections 112-115), there is an increasing resistance to shipping uranium concentrate and other nuclear products that have been approved for transport throughout Canada by responsible regulatory authorities. CN Rail has refused transport of Class 7 goods, including uranium ore concentrate, since 2010 and in late 2014 CP Rail has refused the transport of Class 7 goods.

The following sections of this submission provide some context and considerations for the review panel including:

- Safety
- Reliability and Competitiveness
- Governance and Remedy

Safety

Product Description and Packaging - Uranium Ore Concentrate (UOC) is a high density, metal powder. It is low-level radioactive, non-flammable, insoluble, and non-reactive in water. UOC is

packaged in 55-gallon (206-Litre) steel drums, sealed meeting IP-1 industrial package requirements set out in the International Atomic Energy Agency's *Regulations for the Safe Transport of Radioactive Material*. The drums are washed and tested after filling to confirm absence of residual contamination and are securely stowed in sea freight containers (i.e. no bulk loading/unloading) using a pre-approved and certified lashing plan.

Risk of Incident – A ground transport (i.e. road and rail) risk assessment, publically available as part of the Final Environmental Impact Statement for the Proposed Kiggavik Project¹, estimates that the frequency of a main-track rail incident along the proposed route was calculated at 1.3×10^{-4} per km per tonne UOC. It is important to note that the incident frequency for rail was predicted to be *lower* than that for road transport. In over 50 years of UOC transport by rail, prior to CN and CP Rail denial to transport, there have been no reportable incidents. Not only is the predicted incident frequency low, the magnitude of potential environmental effects is also low given the characteristics of UOC as described above and robust emergency response plans required and approved by responsible regulatory authorities.

Existing Regulatory Oversight – The packaging requirements for radioactive material is guided internationally by the International Atomic Energy Agency's *Regulations for the Safe Transport of Radioactive Material*, federally by the Canadian Nuclear Safety Commission's *Packaging and Transport of Nuclear Substances Regulations*, Transport Canada's *Transportation of Dangerous Goods Regulations*. Further, Emergency Response and Assistance Plans are required and approved by Transport Canada.

Reliability and Competitiveness

Consistent with the intent and vision of the Canadian transportation system, the ability to reliably and competitively serve customers is also a fundamental value of AREVA as a company. The CTA Review: Discussion Paper states that "... emerging economic powers such as Brazil, China, and India are driving competition and redefining business models that require restructuring of global supply chain strategies. Emerging economies are creating greater demand for raw material and energy and altering traditional international transportation patterns." For the uranium industry these emerging economic powers are shifting the required transport of UOC from northern mine sites to North American refineries by truck to a greater proportion of raw product (UOC) from northern mines to port

¹ Kiggavik Final Environmental Assessment Tier 3, Technical Appendix 10A, Attachment B: Assessment of Risk and Consequence of Transportation Incidents Involving Uranium Ore Concentrate Along Ground Transportation Routes in Canada. Available at: <ftp://ftp.nirb.ca/02-REVIEWS/ACTIVE%20REVIEWS/09MN003-AREVA%20KIGGAVIK/2-REVIEW/09-FINAL%20EIS/03-FEIS/03-TECH%20APPENDICES-Teir%203/141001-09MN003-Vol%2010-10A%20Transportation%20Risk%20Asmt-Att%20B-IA2E.pdf>



facilities, facilities most efficiently and safety transported to by rail – should rail fulfill its obligation to act as a common carrier.

Over the last 10 years AREVA has transported an average of 31% total product from mining operations overseas, with a maximum of 70% in 2012. Our business is expected to further evolve towards overseas markets and our ability to reliably and competitively provide overseas customers with uranium fuel requirements for the generation of clean energy will be best realized by, and will be a reflection of, an efficient and responsive national rail transportation system.

Not only is the transport of UOC to port by rail assessed to have a lower incident rate than transport by truck, it is also logistically superior. An entire consignment (i.e. load) can arrive at port simultaneously with rail therefore eliminating the demand for longer-term storage that would be required by truck transport. Pre-forwarding containers to ports by truck is not only a disadvantage logistically but can result in financial penalties should the entire consignment not arrive on time for shipping. For example, some sales contracts can contain late delivery penalties of 5% of the amount of the relevant delivery and a late delivery of 775,000 lbs. UOC at USD 42.00 per lbs to China could potentially result in a penalty of about USD 1.6 million. Both the higher cost of pre-forwarding containers to ports by truck and the penalties resulting from logistical constraints can result in higher in-country transport costs. With foreign markets having supply sources that are geographically closer than Canada these costs can create a disadvantage for Canadian material. AREVA agrees with the statement in the Discussion Paper that should the transportation system fail to deliver, Canada's reputation as a reliable source of products and trade is at stake.

Governance and Remedy

In summary, CN Rail and CP Rail have reasonable common carrier obligations, the transport of UOC by rail is the superior ground transportation method particularly with respect to safety and logistical considerations, growing overseas markets are expected to further drive demand and preference for rail transport in the uranium industry, the packaging and transport of UOC is highly regulated both federally and internationally, yet AREVA is essentially unable to transport UOC by rail within Canada. The determination by CN and CP Rail to not transport Class 7 goods is in AREVA's opinion 1- unfounded and 2 - not in the best interest of the public, the Canadian economy, or AREVA – a rail user to which the rail companies have an obligation to reasonably serve the needs of.

It is within this context that the following text from Section 4.1 of the Discussion Paper: CTA Review is of interest to AREVA “By the nature of rail systems there is an element of ‘natural monopoly’ and ‘captive shipping’ that gives rise to regulatory oversight and intervention. Accordingly, the CTA contains a number of “shipper protection” provisions to address concerns about potential abuse of market power by the railways.” For some users the issue is compounded as the remedies provided

under the CTA are somewhat impractical, ineffective and expensive². The need for shipper protection has been clearly observed and reported for a variety of users over numerous years with panel reviews and the tabling and passing of legislation in hopes of driving rail to adequately and successfully contribute to the Canadian transportation system as intended.

Acknowledging the general desire to deregulate we strongly believe that this situation justifies government regulation and intervention with strong “user-focused” amendments to the CTA in order to achieve satisfactory economic, safety, security, environmental, and social outcomes. AREVA echoes the need to achieve, strengthen, and then maintain a robust common carrier obligation as stated in numerous other submissions, including those from Cameco Corporation, the Mining Association of Canada, and the Saskatchewan Mining Association as follows:

Cameco Corporation Submission to the CTA Review Secretariat dated March 6, 2015:

- *“The common carrier obligation contained in s. 113 of the CTA should be amended to clarify that railways are not entitled to refuse carriage of products, including dangerous goods, approved for transport throughout Canada by a responsible regulatory authority.”*
- *“Section 137 of the CTA should be amended to prevent railways from unilaterally allocating third party liability onto shippers and imposing other unreasonable terms and conditions that effectively constitute an indirect breach of the common carrier obligation.”*
- *“Section 120.1 of the CTA should be amended to ensure the Canadian Transportation Agency has the mandate, authority and jurisdiction to assess the fairness of any term or condition presented by a railway to a shipper, and to compel corrective action if it is not.*

Mining Association of Canada Submission to the CTA Review Secretariat dated January 13, 2015

- *“Maintain the strength of the common carrier obligation, and disregard any recommendation to weaken or reduce it.”*
- *“Define “adequate and suitable accommodation” and “service obligations” as follows:
115. (2) For the purposes of sections 113 and 114, a railway company shall fulfill its service obligations in a manner that meets the rail transportation needs of the shipper.
Service Obligations
115.1 For the purposes of this Division, service obligations, without restricting the generality of the term, include obligations in respect of
(a) the timeliness and frequency of the receiving and delivery of traffic by the railway company;
(b) dwell times, estimated times of arrival, transit times and cycle times regarding the carriage of traffic;
(c) the quantity, condition and types of rolling stock to be provided by the railway company;*

² Refer to Mining Association of Canada submission to the CTA Review Secretariat dated January 13, 2015 for comment on CTA remedies, associated costs, and timelines.

*(d) accommodation and facilities for the exchange of information regarding the billing, receiving, carriage and delivery of traffic; and
(e) car order fulfillment, car spotting performance and car placement at destination.”*

Saskatchewan Mining Association Submission to the CTA Review Secretariat dated December 30, 2014

- “Recommendation: Common Carrier Obligation – Strengthen the common carrier obligation to ensure Canada’s continued competitiveness by allowing all goods, including class 7 materials (e.g. nuclear products) to be freely transported on its rail lines. Transport Canada should amend the Canadian Transportation Act to close the existing loophole that permits railways to impose unreasonable terms and conditions on shippers for the movement of their goods.*
- Recommendation: Port Access – The Canadian Transportation Act provide regulatory support to the nuclear energy sector (and other shippers) to transport uranium and nuclear products via Canada’s port system (comparable to a strengthened common carrier obligation).”*

Conclusion

AREVA acknowledges this imbalance (i.e. significant market power) in the commercial relationship between railways and the rail users is not new and the rail’s disregard to the application of common carrier obligation is not unique to the uranium industry. The issue has demonstrated itself as being systematic and chronic and, although AREVA will evaluate our independent options to address and remedy the transport of our Class 7 goods by rail, we are providing this submission to add our voice to a larger collective of rail users suffering from unaddressed rail service challenges.

It is AREVA’s request that this 2014/15 CTA review serve to strengthen the common carrier obligation as unfounded restrictions, in this case the transport of Class 7 goods by rail, is inconsistent with the vision of a safe, efficient, and competitive Canadian transportation system and service that supports economic growth and prosperity.

We would be pleased to provide additional information on our experience or submission to the review panel. Please contact the undersigned at (306) 343-4569 or tammy.vanlambalgen@areva.com.

Yours truly,



Tammy Van Lambalgen
Vice President, Regulatory, CSR & Legal