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**Submission to the  
Canadian Transportation Act Review**

**January 16, 2015**

Escalation Consultants is submitting the following comments regarding the Canada Transportation Act Review. We appreciate and support the review of the Act on a regular basis to assure the broader goal of a commercially based, market-driven multi-modal transportation system that delivers the best possible service in support of economic growth and prosperity in Canada as well as with all Canadian trading partners.

Escalation Consultants, although located in the United States, provides services to rail shippers on the North American continent. Many of our clients are Canadian rail shippers. We assist these clients on rail issues in Canada, the U.S. and Mexico. We have participated in formal proceedings in Canada before the National Energy Board (NEB) regarding pipeline and rail issues. In addition, we regularly assist Canadian businesses that ship product by rail both within Canada and exported from Canada by rail to the U.S. and Mexico. Our work activity on U.S. and Canadian movements gives us a broad overview of the strengths and weaknesses of the U.S. and Canadian rail regulations.

Our experience shows that there are some regulatory benefits enjoyed by Canadian shippers that U.S. shippers would like to have and some regulatory benefits enjoyed by U.S. shippers that Canadian shippers would like to have. One of the biggest concerns of rail shippers in Canada is a lack of rate transparency. Transparency is vital to shippers in controlling rail expenses because shippers need to know when a railroad's rates put them at a competitive disadvantage in markets. Railroads don't mind if a shipper believes it has high rates, but railroads do react to a shipper being able to show that a railroad's rates are causing it to be put at a competitive disadvantage in markets. This means that a shippers' ability to benchmark its rates against competitors is one of the most important things it can do to help get reasonable rail rates for its captive and competitive rail movements.

Rail shippers in Canada do not have viable alternatives for benchmarking their rail rates in the marketplace, while rail carriers know the rates they charge all shippers and this gives rail carriers an unfair advantage in negotiations and commercial dealings. A lack of market rate data can also impact shippers' ability to use existing Canadian regulations. For example, a rail shipper in Canada lacks the means of determining if Final Offer Arbitration is a reasonable or a viable option to pursue. The shipper has its rate, but there are no rate data available to readily compare it against, therefore, a shipper cannot determine if its rates are reasonable. This discounts what may be perceived as a shipper protection under the Canada Transportation Act.

There is a need to provide Canadian shippers with information that will be useful in benchmarking or comparing their rail rates to the rates in the marketplace. The U.S. Department of Transportation, Surface Transportation Board (STB) provides three tools, listed below, for this purpose. These may serve as a model for your consideration. Escalation Consultants uses these tools to assist Canadian clients in both negotiations and formal proceedings in both Canada and the U.S.:

1. Public Use Waybill Sample (Waybill);
2. Quarterly Commodity Statistics (QCS); and,
3. Uniform Rail Costing System (URCS).

The Appendix provides a brief description of items listed above and how they assist shippers in obtaining reasonable rates for their traffic.

It should be noted that Canadian rail carriers already supply the STB with data for all of these tools on their U.S. movements. Canadian rail carriers supply data to the STB for the:

- Waybill on cross border traffic and their U.S. business;
- Quarterly Commodity Statistics on CN and CP's U.S. business; and,
- Uniform Rail Costing System program on the U.S. portion of CN and CP's businesses.

The burden of supplying these types of data should be small as the carriers are already providing it to the STB on the U.S. portion of their business and for cross border traffic, which means there are already procedures in place at railroads for assembling these data and providing it to regulators.

Shippers use the data in these tools to determine:

- The profit a railroad makes from movements to see if the mark-up above cost is reasonable.
- How a shipper's rates stack up to competitors' rates in markets to see if its rates put it at a competitive disadvantage in markets.
- How a shipper's rates have increased overtime in relation to the average rate change for a commodity to determine if a rate increase proposed by a railroad is reasonable.
- If a shipper represents a larger portion of a carrier's revenue than it does of a carrier's volume for a particular commodity to determine if a shipper is being disadvantaged with the rates being charged by railroads.

It should be noted that Escalation Consultants has submitted testimony regarding market rail rates for Crude and Condensate to the NEB of Canada using U.S. Waybill and U.S. URCS analysis as no CTA data was available. This means that data Canadian railroads submit to the U.S. STB on Canadian rail movements are impacting the cost of moving products within Canada. In addition, Canadian shippers must use U.S. data:

- To support rate negotiations with rail carriers
- For strategic planning;
- To help control transportation costs; and,
- To help determine where production will take place and where capital investment will be made.

It would be good for the CTA to maintain and control the data that is being used to impact regulatory proceedings and economic decisions being made by Canadian shippers.

It is Escalation Consultants' experience that a lack of market price and cost data on Canadian rail movements contributes to higher rates for many Canadian shippers and ultimately determines where products are produced. This data could be supplied to the CTA at a low cost by Canadian railroads and would have a very large benefit to rail shippers and potentially to the Canadian economy.

## Appendix

### **Public Use Waybill Sample Description**

The Public Use Waybill (Waybill) file is a stratified sample of carload waybills for all U.S. rail traffic submitted by those rail carriers terminating 4,500 or more revenue carloads annually. The Contractor, RailInc, has collected and processed 641,193 waybills for inclusion in the 2013 Waybill, of these 30,377 waybills are for traffic originating in Canada which accounts for 1,286,001 carloads. These data contain the number of carloads, tonnage, interchanges, car type, revenue and other information for each waybill sampled.

### **Uses of the Waybill**

The Waybill is used for a variety of regulatory purposes and economic studies, in addition to these uses, shippers use the Waybill to determine:

- If their rail rates put them at a disadvantage in markets; and,
- Rail volumes they compete against in markets from different geographic areas.

Records are collected electronically on a random basis from the delivering carrier. The sampling rate is based on the number of rail cars per waybill:

<b>Public Use Waybill Sampling Scheme</b>	
<b>Carloads on Waybill</b>	<b>Sampling Rate</b>
1 to 2	1 in 40 Waybills
3 to 15	1 in 12 Waybills
16 to 60	1 in 4 Waybills
60 to 100	1 in 3 Waybills
101 and above	1 in 2 Waybills

Origin/Destination information is limited to Business Economic Areas (BEAs), regions surrounding economic activity centers that generally extend as far as home delivery of major metropolitan newspapers. Areas in the western U.S. are quite large. Movements' BEAs are assessed at the origin and destination individually and are only identified if they pass a test called the, rule of three. If there is one rail carrier handling a commodity within a BEA there must be a minimum of three origin or destination terminals handling the commodity within the BEA. Participating rail carriers are not identified.

Contract rates may be factored to protect confidentiality, but must be reasonable when judged in aggregate and masked rates give an accurate general overview of markets.

## **Quarterly Commodity Statistics Description**

This table shows the volume by commodity on each carrier by calendar quarter (tons or carloads) as well as the revenue received by the carrier for the commodity.

### **Uses for the QCS**

- Shows the average quarterly rate per ton and per carload by carrier;
- Allows shippers to track volumes and rate changes overtime by commodity for a railroad;
- Allows shippers to benchmark their rate changes for commodities against the average rate change of all shippers of the commodity on a rail carrier.

Since January 1964, all Class I line-haul railroads have been required to submit quarterly and annual freight commodity statistics reports to the STB, formerly known as the Interstate Commerce Commission (ICC). This report is referred to as the "QCS" or the Quarterly Commodity Statistics report. The following data are submitted to the STB at the 2-, 3-, 4-, or 5-digit Standard Transportation Commodity Code (STCC) level of detail:

- Freight originated and terminated (carloads/tons);
- Freight originated and delivered to another carrier (carloads/tons);
- Freight received and terminated (carloads/tons);
- Freight received and delivered to another carrier (carloads/tons);
- Total freight carrier (carloads/tons); and
- Total freight revenue (dollars)

## **Uniform Rail Costing System Description**

A rail costing program that computes a rail carrier's long-term variable cost for a movement given eight individual movement inputs: carrier, type of move, distance, car type, tons, commodity, number of cars and car ownership. The Revenue to Variable Cost Ratio will be computed if the rail rate is entered. Other movement parameters may be specified.

- The STB Costing Program is based on R-1 Annual Report data submitted to the STB by carriers and the data are auditable.
- Costing program relies on cost input and rail carrier output data.
- Costs are computed for individual segments of a rail movement based on regression analyses, e.g. fuel, tons carried, car type, switching characteristics, maintenance and way, etc.
- Variable costs are those which change as volumes change. Variable costs are long-term variable costs, costs which change over ten or twenty years and include Return on Investments and Depreciation expenses.

## **Uses for URCS**

The program is used in formal rate disputes and to support negotiations with railroads. It shows how profitable a move is to a railroad and whether a rate is reasonable. URCS data is used in rate proceedings to compute movement profitability, as well as, to establish benchmark rates for movements.