

Submission

to the

Canada Transportation Act Review Grain Logistics Issues

**Manitoba Infrastructure and Transportation
and
Manitoba Agriculture, Food and Rural Development**

Honourable Ron Kostyshyn, Minister

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Introduction

The Government of Manitoba welcomes the opportunity to share with the Canada Transportation Act Review (Review) our concerns and general recommendations for improving the rail-based grain and agricultural products logistics system. We have developed these recommendations after deliberation with our agricultural shipper community and other rail stakeholders. Manitoba intends to provide a larger submission on broader themes issued by the Review, later in the process.

Manitoba would like to acknowledge the importance of the Canada Transportation Act Review and support the objectives of the review chair and panel. Manitoba agrees with Mr. Emerson that the role of transportation as a developmental catalyst must be nurtured. For our province, we feel that the Review can support programs and investment to promote rural and northern development. Agriculture remains an important sector in our economy as well as an important source of employment for Manitobans. Continued success in providing access to efficient, timely and cost-effective transportation solutions can only provide benefit to Manitobans and Canadians.

Manitoba's Trade and Grain Export Context

Manitoba is a trading province, with two-way goods and services traded outside of our border valued at over \$60 billion. Agriculture is a major sector contributing to our economic growth, with the external trade of grains and oilseeds alone valued at more than \$3 billion. The economic success of Manitoba's grain sector depends on accessing external markets. As most of Manitoba's grain exports are moved via the rail mode, this means a competitive, service-oriented and cost-effective rail transportation system suited to the needs of our grain producers and shippers is critical to Manitoba.

The Underlying Problem

Unfortunately, poor rail service has been an endemic feature of the grain handling and transportation system (GHTS). Based on consistent complaints from railway shippers—including our grain shippers—Manitoba was the first province to formally and publicly raise the urgent requirement for a general rail freight service review, in 2006.

The federal research reports and stakeholder surveys that were commissioned as part of the 2010 Rail Freight Service Review (RFSR) painted a bleak picture of poor rail service and overall lack of accountability by Canadian National (CN) and Canadian Pacific Railway (CP) in the transportation supply chain. Manitoba's own in-house shipper survey and consultations at the time of the RFSR effectively mirrored the conclusions of the federal research reports.

In essence, poor railway service occurs because there is a lack of competition in rail transportation. Operating as regional monopolies, the national railways can exert market power over system participants and refuse their participation in activities designed to create a balanced market dynamic based on principles of mutual accountability. Industries which exhibit competitive market structures do not suffer from the same service concerns.

In many regions of Manitoba, agricultural shipping points are limited to one carrier. A railway which is the only provider of rail service to a shipper has a tremendous advantage in negotiating rates and conditions of service. The shipper must accept the service offered by the railway or, in practical effect, not ship at all.

The symptoms of a lack of railway competition are many, and they show up in basic ways. In our consultations, for example, a consistent concern of system users was the lack of basic customer service essentials from the railways—often in the form of no or very little communication, or a change in services offered without prior notification or explanation.

2013-14 Crop Year

2013-14 proved difficult for Manitoba producers and shippers from a grain logistics perspective. The prairie provinces produced a record crop in 2013—76 million tonnes or 29% above the five year average. Manitoba's yield was an estimated 12 million tonnes or 33% above the five year average.

An acute supply chain failure caused in large part by poor railway service prevented farmers from selling their grain. It is estimated that at the height of the logistics crisis, there were about 60,000 fewer rail cars allocated than needed—a capacity shortfall that translates into over 5 million tonnes of grain. The result was severe congestion at grain elevators across the prairies and exceptionally wide basis levels for Manitoba grain producers. Factoring in that farmers were not able to sell their grain at desired peak pricing points, the economic damage to producers and the rural Manitoba economy was significant.

Arguably, Manitoba shippers and producers suffered disproportionately. For example, Manitoba's grain elevators at the worst point were operating at 108% of working capacity, versus the prairie average of 96%. As well, Manitoba's traditional and growing grain export markets south and east were choked as the railways directed capacity to the west coast ports.

Recent federal actions, beginning in March with the 1,000,000+ weekly tonne volume threshold order, have now ameliorated the immediate grain logistics crisis.

Rail Service to the Grain Handling System

It is not Manitoba's intention to be exhaustive on all facets of rail-based grain logistics, but to speak to some of the macro and micro elements of the railway system that through our research, consultations and experience, we consider have relevancy on improving the rail-based grain supply chain to the ultimate benefit of those that grow the crops, our producers. In the preparation of this submission, Manitoba has directly consulted and spoken to a broad range of actors in the GHTS—agriculture-related associations, large and small shippers of various commodities, processors, rural community interests, shortlines and regional railways, the national railways, and producer car operators, to name a few.

Manitoba considers that the Review's report should address the grain logistics system and the concept of rail "service" to it on two fundamental levels. One element of service—the one that many of our producers and shippers will specifically raise—is micro-oriented, and is related to achieving balance in the shipper-railway contractual and commercial relationship.

The other element of service is macro-oriented, and is related to the basic ability of producers and shippers to "access" the rail network. It is premised on adequate provisions of basic infrastructure, equipment, corridor options, and other structural elements that support producer and shipper "reach" into the system for competitive service offerings.

Success in achieving the goals of the system requires attention to both. Measures at the shipper-railway commercial level to foster an environment of balanced mutual accountability, coupled with systemic measures to ensure adequate shipper access to and options within the rail network, will ultimately result in consistent, long-term improved service to our grain producers and shippers. Manitoba will treat each of these two fundamental levels in this submission.

Shipper-Railway Commercial Balance Measures

Within our submissions to varying national legislative review panels and parliamentary committees over the past 20 years, Manitoba has consistently posited that the railway legislative and regulatory framework must singularly focus on creating better competitive market-based behaviours and ethics of the two national railways.

The suite of amendments to the *Canada Transportation Act* (Act or CTA) between 2007-12 (Bills C-11, C-8, and C-52) collectively sought to achieve a better commercial balance of power between shippers and railways. They did so only partially by providing a more flexible basis for shippers to seek relief from the Canadian Transportation Agency (Agency)—for example, by removing "proof-of-harm" tests for shippers and codifying certain rights such as a shipper right to a service level agreement (SLA).

Accompanying measures enacted as part of the recent *Fair Rail for Grain Farmers Act* (FRGFA) such as operationalizing terms for SLA arbitrations continue to move the framework in the right direction. These were small, but hard won improvements for shippers. The expectation is that the Review should confirm them as a building block to further improvements to the Act—not as static ends unto themselves—and resist any overtures to have them rolled back.

Several concerns, however, persist. In short, these amendments have not gone far enough. They skirted direct measures to stimulate a genuine competitive and market-based behaviour of the national railways and failed to provide shippers with more robust tools to achieve a balanced commercial relationship with the railways. Therefore, it is imperative that the Review should treat within its report and recommendations additional such measures. Ultimately, unless these measures are directly institutionalized within the system by legislation and regulation, any other specific process recommendations are unlikely to result in sustained improvements to railway service for grain and other shippers.

In this regard, Manitoba is supportive of the breadth of recent recommendations submitted to the Review by the CTA Review Coalition, insofar as they touch on railway service obligations. The Coalition represents the gamut of major farm policy organizations, and agricultural shipper and producer interests across the west across a broad range of crop commodities and shipper sizes.¹

The focus of the Coalition submission and recommendations is to assert legislative and regulatory change to, in effect, better balance the commercial interactions between railways and shippers. In totality, they will help move the system to be defined more so by railway responsiveness to the market needs and demand signals of its users, than by the narrow interests of railway shareholders. We would like to re-emphasize the following as particularly important, based on our consultations.

Penalties for Railway Non-Performance

Grain shippers have been adamant that a priority to assure balanced accountability is reciprocity of penalties. Shippers are penalized heavily for missing loading windows and the like, while the railways suffer no financial consequences for poor service performance (ie, timely spotting). Shippers consider that including penalties for railway performance failures to be eligible within service level agreement arbitrations is one of the key actions that will bring about more balanced accountability. Regrettably, the Agency in the recent development of the *Regulation on Operational Terms for Rail Level of Service Arbitration* omitted their inclusion. This omission need be rectified.

- 1. Manitoba recommends that the Canada Transportation Act and related regulations be amended to ensure that financial consequences for railway non-performance are considered an operational term for the purposes of service level arbitrations.***

Level of Service Provisions

Currently, the foundation of the level of service provisions (that shippers rely on to access relief) are contained in Sections 113-116 of the Act. These provisions, unfortunately, are based on the vague notions of “adequate and suitable accommodation” to shippers. Shippers report that in functionality, the current level of service definition still accords too much leeway to the railways to supply such accommodation only relational to their narrow, corporate capacity supply interests, without true account of shipper needs. Agency decisions have not fully clarified the matter.

For certainty, the definition of railway level of service should be clearly based upon the strict needs and requirements of the shipper, who after all, generates the commodities that drive national economic activity and growth. The Review has received many specific examples of language that can be used to re-orient the service level definitions to be principled to user needs and demands. This will give the Agency better guidance and parameters in how to interpret the concept of level of service and in how to apply it to the Act’s varying complaint and relief provisions, and service level determinations.

¹ The CTA Review Coalition members are the Canadian Oilseed Processors Association, Manitoba Pulse Growers Association, Western Grain Elevators Association, Canadian Special Crops Association, Keystone Agricultural Producers, Inland Terminal Association of Canada, Animal Nutrition Association of Canada, Pulse Canada, Agricultural Producers Association of Saskatchewan, Canadian Federation of Agriculture, British Columbia Agriculture Council, and Alberta Federation of Agriculture.

- 2. *Manitoba recommends that the Section 113-116 level of service provisions of the Canada Transportation Act be amended to holistically re-focus the concept and definition of railway level of service to be centered around the primary needs of users and to the interests of the economy.***

Enhanced Role for the Canadian Transportation Agency

To give more practical effect to the level of service provisions—at both a micro/shipper specific level and at the macro/sectoral level—requires a wholesale revision to the mandate of the Agency. Manitoba considers a need to expand the powers and effectiveness of the Agency so that it operates in an independent and proactive fashion, as opposed to its current restricted, “reactive” fashion, where it must wait for a complaint. This would entail enhancing the Agency’s powers of independent investigation and performance monitoring.

- 3. *Manitoba recommends the Canadian Transportation Agency be empowered to monitor and investigate railway service independently, without formal complaints being initiated by shippers. As well, the Agency should be empowered to act upon both immediate and long-term solutions to common and/or urgent service failures, including those relating to the whole of the system.***

The Agency would naturally require the ability to extract better information from the railways and other grain industry players to support this enhanced level of pro-activity. Railway and shipper capacity, performance, operational plans, traffic forecasts, and railway revenue and cost factors—collected on a timely basis—are some of the baseline data that would be useful for a “renewed” Agency’s purposes.

- 4. *Manitoba recommends that the Canadian Transportation Agency be empowered to require the railways and other grain handling industry participants to furnish adequate and timely information to facilitate an enhanced Agency role to monitor, investigate and act on railway service issues independently.***

Shipper Network Access Measures

Branch-Line Preservation

Basic physical access to the rail network is a minimum requirement for shippers to be able to obtain any rail service at all. At an elemental level, the line rationalization initiatives of the mainline carriers since the passage of the CTA have geographically reduced rail service options for Manitoba shippers, while also negatively impacting local competitiveness and economic dynamics in a number of industries. Like other provinces, Manitoba has undergone significant rail network rationalization over the last 18 years, with a loss of over 750 miles of track, or over 20% of the network. As a result, rail network preservation is a fundamental issue that is consistently raised by Manitoba’s stakeholders and rural communities as an elemental “service” issue requiring attention by the Review. Those branchlines that have been preserved have made a positive contribution to rural development in Manitoba. More can be done for future success.

The legislated rail abandonment regime has a dual purpose: i) to allow the railways to exit markets that are not viable, but also, ii) to optimize ways for infrastructure to be reasonably preserved in the public interest. The abandonment process in the CTA can take 16 to 22 months for completion and requires railways to actively seek to convey such lines to shortline operators. Failing that, railways offer the lines to governments at net salvage value.

Manitoba considers the process has succeeded from the railways' perspective, as they have been able to shed lower-density trackage to concentrate on high-volume lines, much to their corporate bottom-line benefit. From the perspective of optimizing the public interest ability to preserve infrastructure on a reasonable basis, however, Manitoba considers the process has not been balanced enough.

Manitoba's experiences indicate that this process has left too much discretion in the hands of the railways to manage and control the rationalization process to their exclusive strategic benefit, and has given less balance than intended to the public interest requirement. Our communities' experiences indicate several means by which the national railways have undermined the public interest dimension of the legislated process:

- “demarketing” lines long before placing them for offer under the federal process, thereby assuring they are not viable for shortline possibilities;
- “mothballing” lines, achieved by demarketing and then leaving them inoperative, but not actually placed for sale offer under the legislated process;
- “segmenting” lines for abandonment, achieved by divesting the line in small or isolated segments that have little commercial value or chance of being viable as a stand-alone operation;
- “skeletonizing” lines, which occurs when Class 1 carriers remove auxiliary tracks and sidings and other real property necessary to the working of the branch line before discontinuance; and,
- by setting artificially extreme process requirements, negotiation, financial and operating terms that discourage a sale.

All of these practices, in Manitoba's estimation, have impeded the potential start-up of many short line opportunities, and in effect curtailed many service possibilities to shippers in parts of rural Manitoba.

The privilege railways have to manage this process carries with it an obligation and responsibility that the intent of the process will not be subverted nor abused. Given our experiences with the process over the past 18 years, Manitoba believes that government is fully justified in taking a more interventionist approach to prevent the loss of infrastructure that could have been maintained on a commercial or public interest basis.

As an initial step, Manitoba asserts the Review should assess the abandonment provisions in the CTA and offer specific recommendations to ensure that these provisions offer balance between the national railways' legitimate rights to independently manage their networks, and the right of the public to reasonably demonstrate their interests and pursue economic opportunities through infrastructure preservation.

At minimum, Manitoba supports empowering the Agency to more closely manage the process in the public interest. For example, in cases of intentional demarketing, forcing a railway to dispose of a line before it is made unattractive for potential buyers is not an extraordinary measure — rather, it should be perceived as a compliance provision designed to ensure that the reasonable and balanced public policy put forth in the CTA is respected.

- 5. *Manitoba recommends the Agency be empowered, within reasonable limits and at the requests of affected shippers and communities, to investigate demarketing and other such strategic de-facto abandonment activities of rail carriers that preclude reasonable opportunities for stakeholders to preserve infrastructure, and to compel a railway to undertake any steps necessary to ensure a reasonable opportunity is provided.***

Manitoba understands that this is an extraordinary power we propose for the Agency and that it should be qualified to ensure that the viability of the mainline carrier is not impacted, however, the alternative of losing infrastructure that could have been maintained on a commercial or community basis demands that government retain these residual compliance abilities.

Regulated Interswitching

Interswitching is a long entrenched right of shippers for encouraging competitive behaviour of railways and providing additional shipping options. It stands that measures to make regulated interswitching accessible to more grain shippers will help improve rates and service options to those shippers.

Having the interswitching regime in place, though, is not enough. Shippers have long observed that railways have tried to undermine this shipper tool in ways that decrease its potential efficiency and increase costs to its users. For example, shippers complain that interswitched shipments are given low yard movement priority and poor service by the originating carrier, adding to the unpredictability of railway service and reducing the use of this competitive tool. These practices reduce the effectiveness of regulated interswitching and may reduce the likelihood of their use among shippers.

- 6. *Manitoba recommends that clear performance standards or operating benchmarks should be established for regulated interswitching to ensure effective and non-discriminatory service by participating rail carriers.***

There is no strict mechanism in the Act to specifically report on and monitor operations at railway interchange locations. Manitoba believes that reporting and monitoring of interchange locations and restricting the ability of railways to arbitrarily close interchange locations or reduce switching capacity would assist shippers in accessing competitive rail options and alternative export locations.

- 7. *Manitoba recommends that the Canada Transportation Act be amended to require railways to list and provide notification for intended closures of rail interchange locations. As well, Manitoba recommends the Agency be empowered to review, and approve, proposed interchange closures, within the context of their impact on shipper options and competition.***

Manitoba has long supported the extension in principle of the interswitching distance requirements, and was supportive of the federal action to extend the interswitching distance in the prairies to 160 km.

- 8. *Manitoba recommends that the temporary 160 km interswitching limit as applied to the prairie provinces be made permanent, for all commodities.***

Small Shipper Access and Protection

Producer Car Service Opportunities and Networks

Producer cars are a fundamental right of grain farmers that are enshrined in the *Canada Grain Act* and administered by the Canadian Grain Commission (CGC). Producer cars are a means for grain farmers to have options to bypass the commercial elevator network and load rail cars directly. Although a traditionally small portion of the trading system, they are nonetheless an important mechanism for farmers to exercise control over grain handling costs and they provide some farmers with greater value than the commercial elevator network. Our consultations also reveal that producer cars are being used to service specific customers with unique product specifications, for example, millers and cereal makers. All told, producer cars represent a valuable, efficient option for both producers and buyers, and helps keep the economic value captured from crops in the western rural economy.

While producer car rights are enshrined in legislation, these rights are simply not upheld if the basic infrastructure needed to load cars is not offered and in place. Manitoba holds similar concerns to that of branchline abandonment, in that the CTA doesn't adequately protect the public interest in retaining producer car siding infrastructure.

The process railways must follow to discontinue a producer car loading site—the basic infrastructure upon which the producer car model depends—is regulated in the CTA. Section 151.1 legislates that producer car sidings must be identified in a publically available list and can only be discontinued after a 60 day public notice period. By comparison, railways that wish to discontinue sidings in urban areas must advertise the discontinuance for one year, which is followed by an opportunity for stakeholders to purchase the siding for Net Salvage Value. It is incongruous that stakeholders in urban areas are afforded greater opportunity than rural stakeholders in demonstrating their interest to preserve vital infrastructure.

Rural stakeholders have indicated that they require adequate time for meaningful consultation and analysis when faced with closure of rail sidings and loss of service. The situation is further aggravated when primary stakeholders are agricultural producers. The current 60-day notification period can overlap with the seasonal demands of agriculture making it difficult for producers to develop initiatives to address the issue appropriately.

- 9. *Manitoba recommends the Canada Transportation Act be amended to, at minimum, harmonize the closure process of producer car loadings sites with the process for metropolitan rail sidings and spurs (a one year notification period followed by an opportunity to purchase the asset at Net Salvage Value).***

The number of producer cars shipped in Manitoba has generally shown an upward trend in the past decade or so, but with high annual fluctuations. We are hoping that this upward trend continues, but it must be actively supported by regulatory measures. It holds that a reasonable network of sites within a suitable geographic delivery distance is required to maintain producer car rights and provide Manitoba and prairie grain farmers with competition for grain marketing. Removing one or more delivery options within a territory has significant impact on local pricing and market access. Producer cars cannot be a useful marketing tool without the necessary infrastructure within a reasonable distance and a commitment to spot cars at these sites.

10. Manitoba recommends the Agency and other involved federal agencies (Canadian Grain Commission) investigate and be empowered to require the railways to establish a network of producer car loading sites based on competitive access requirements and needed capacity standards, to ensure producers have adequate access to the rail network via producer car shipping.

Producer Car Shortlines & Allocation

In the past five years, two producer owned shortlines—Boundary Trails Railway and Lake Line Railway—have been formed in Manitoba. Their business success is partially predicated on the timely securement and marketing of producer cars. At the time of the formation of these shortline entities, the Canadian Wheat Board (CWB) single desk was a lynchpin of the GHTS. The CWB's role from a price pooling, marketing, grain car allocation and corridor allocation perspective provided confidence to the investors in these shortlines that a producer car model for shortlines was feasible.

With the elimination of the single desk, Manitoba remains concerned that the long-term foundation for producer cars and therefore producer car shortlines is more uncertain. Simply put, there is no longer within the GHTS system a major institutional champion for producer cars, as neither the grain majors or the railways have much corporate interest in producer car success.

Producer car shortlines are adjusting by, for example, forming partnerships with grain buyers with no real handling assets in the country. As the railways revise their car allocation schemes, upholding the principle that producer cars should be given priority allocation “off-the-top” remains critical. Consideration to a weekly percentage “reserve” for producer cars—an issue that was raised under the Crop Logistics Working Group (CLWG) process—could be further assessed.

This would give confidence to producer car agents and administrators to be able to market producer cars to buyers and also entice investment in loading efficiencies at shortline locations. This could include integrating such concepts into the broader mainline railway car allocation approaches. To mechanistically integrate these principles would require enhanced regulatory monitoring and oversight, which complements recommendations relating to an enhanced role for the Agency and other regulatory actors, such as the Canadian Grain Commission.

11. Manitoba recommends that producer car allocation be conducted in a fair and transparent fashion, to ensure priority allocation for producer car operators and dependent shortlines, within the overall evolution of the grain car allocation mechanisms of the railways.

Car Allocation & Small Shippers

It is in Canada's national interest to ensure a competitive domestic marketplace in grain handling. Like most sectors, the agricultural handling industry has seen a trend toward consolidation in the past 15 years, such that fewer and fewer independent and smaller agents exist as market options for producers, outside of the major grain companies. Similarly, the rail infrastructure, service and car allocation schemes of the railways have followed suit, being consolidated to focus on service to large shippers that can meet asset utilization thresholds set by, and for the benefit of, the railways. With concentrated industry structures on both the rail and grain handling side prevalent, and with the brunt of allocations already predetermined under confidential contracts or unit car incentives between these few major players, it is axiomatic that the smaller players in the GHTS will get the "leftovers" from an allocative perspective.

Increasingly, the stage is set for smaller shippers and actors to suffer under such an industry structure—those who, for example, may not be able to meet multiple car block incentives, tight unit train loading windows, or willing to move products in the desired asset-intensive corridors of the major supply chain players. This issue becomes doubly concerning as previous car allocation approaches based on common shared information and collaborative planning—for example, the old Grain Transportation Agency and Car Allocation Policy Group—have been replaced by railway-centric approaches. Car allocation now operates as an ill-understood "black box" to most industry stakeholders and system users.

There are no easy answers, except to suggest that the principle of distributive justice and equality of treatment must have a role in how rail service is provided and capacity allocated, particularly in peak demand/restricted supply periods.

Most small users of the system have expressed that they have limited means to judge how they are being treated relative to others in the system. They have expressed they need and want to know that they are being treated fairly and equally with their competitors, even in times of general car rationing such as has occurred in the past year.

A structural item to consider would be the creation of a neutral third-party institution with a mandate to help assess car allocation mechanisms and other logistics issues system-wide—again, principled on assuring equitable allocation treatment for smaller system participants. This dovetails well with recommendations to enhance the oversight and performance benchmarking role of the Agency, on a systems basis.

12. Manitoba recommends that a specific research and assessment focus of the Review should be to assess the future structural protection of smaller shippers to access car supply in the new grain handling and transportation system framework, principled on equitable treatment.

Re-Profiling of Federal Grain Cars to Shortlines

The bulk of the grain cars used in western Canadian grain movements represent the federally owned grain cars. Over the years, the fleet has been subject to attrition with thousands being pulled out of active service and effectively scrapped. Manitoba considers that every effort should

be explored to extend the use of these grain cars to support capacity within the GHTS, before they are scrapped.

In this regard, Manitoba is aware of the general interest of shortline and regional railways in securing additional grain car supply for intra-line uses. Shortlines and regional railways often have differing operating parameters than mainlines, such that grain cars no longer suitable for mainline unit train operations might still have an extended, safe use-of-life on shortlines and regional railways. In the case of Churchill, for example, the provision of more intra-line-only grain cars might support its greater use, and help drive an impetus for a strong producer car collection framework for the Port.

13. Manitoba recommends that the federal government assess the equitable, safe re-profiling of federal grain cars (stated for attrition) to shortline and regional railways' intra-line operational needs, so as to retain capacity in the grain transportation system.

Equitable Treatment of Corridors and Regions

Over the past year, Manitoba has received reports from shippers that, at the height of the logistics crisis, the railways were withdrawing capacity and narrowing operations to the United States/Mexico and east across the Great Lakes. This resulted at first in missed sales windows by shippers, and then as the matter became protracted, a withdrawal to even attempt potential sales opportunities in these markets.

It resulted in the railways concentrating car allocation to the west coast, at the expense of other export corridors. Given Manitoba's traditional markets to the east and south—only 20% of our grain moves through the west—this had the effect of being punitive to Manitoba's export interests, which was evidenced by the heightened elevator congestion levels relative to the rest of the prairies.

Manitoba believes an abiding principle that needs to be structurally implemented within the GHTS is for the shipper's destination-corridor of choice to predominate to determine train movement direction, as opposed to the railways' asset-driven operational interests. Manitoba is appreciative of the inherent tension between these two interests, especially during peak demand periods. However, the principle that user needs and markets demand signals should drive the performance of the rail-based system should be upheld. Some shipper organizations, such as the Western Grain Elevators Association (WGEA), have broached interesting concepts on car allocation approaches in peak periods that might get at this particularly vexing issue. This issue is worthy of research and examination by the Review.

Churchill Export Corridor

A large producer and rural constituency in the prairies believes it is in the best interest of the grain logistics system to ensure a continued strong role for the Port of Churchill export corridor and gateway. Manitoba strongly echoes and supports these views.

The Port of Churchill provides the closest ocean access to a large part of Canada's primary grain growing region. Manitoba's northern supply chain is the most cost-effective route for movements from many points on the Canadian prairies, making it of strategic importance to grain producers, particularly those located in the port's catchment area.

The CWB, before the ending of the single desk, recognized the role of Churchill in maximizing returns to farmers. Based on the logistics cost-savings the Churchill gateway provides, the CWB had specialized programs that provided additional returns to farmers. A Churchill Freight Advantage Program ran between 2000-2008, and returned about \$11 million directly into the pockets of farmers during that time. A subsequent farmer Churchill Storage Program provided up to \$12.50 a tonne in additional returns to farmers to store grain until the shipping season commenced. This was money that stayed in the rural prairie Canadian economy owing to the Churchill gateway.

Churchill's situation is unique in that it is Western Canada's only export corridor not directly linked into the corporate assets of the dominant grain supply chain players such as the grain companies and railways. This presents unique challenges with regard to assuring that the Churchill system is serviced adequately and can continue to play an optimal role in the grain logistics system to the direct benefit of producers.

Manitoba strongly believes service to the Port of Churchill gateway requires special attention and careful monitoring to ensure that this transportation corridor is utilized in a manner that optimizes and supports producer corridor choice.

14. Manitoba recommends that the federal government should adopt a pro-active stance and assess applying unique policy, programming and regulatory tools to uphold the beneficial role of the Churchill corridor in the grain handling and transportation system.

Manitoba was pleased that the federal government created the Churchill Port Utilization Program. The program is meant to allow a modicum of adjustment for Churchill in the new post single-desk "order"; however, it is clear that it may take several years for the GHTS to shakeout, and to adjust Churchill to its commercial role within it. In this scenario, Manitoba believes an extension of the program is warranted, so that Churchill can better see how to align itself within the evolving GHTS, from an investment attraction and partnership perspective. The uptake in this program by grain industry players in the past three seasons is proof of the benefits to the system users of the Churchill gateway.

15. Manitoba recommends that the federal government renew the Churchill Port Utilization Program beyond the 2016 shipping season.

Churchill Interswitching

There are other unique measures that can be considered. For example, the purported intent of the extended 160 km interswitching action was to give grain shippers captive to one railway, options to access another. The new distances, which are based from the point of officially mapped railway interchanges, now cover most elevators and processor facilities in most prairie regions. However, one anomaly and inefficiency remains. Many shippers (and therefore producers) in the

heart of the Churchill catchment remain outside of any 160 km interchange point. Maps for the expanded 160 km interswitching zone indicate 10 handling and processing facilities concentrated in the Nipawin-Tisdale, SK region that are still left without regulated interswitching options. In particular, it seems incongruous that producers and shippers in this region are precluded from regulated interswitching to the Hudson Bay Railway (HBR) at its interchange with CN in The Pas, Manitoba—the one interchange point that is naturally aligned geographically, and that stands to bring about the best cost and efficiency benefit to shippers in the area. In the interest of maximizing the benefits that each corridor might bring to the overall GHTS, and fair treatment of all regions, the federal government should be prepared to support a unique shipper access option for Churchill, utilizing regulated interswitching rights.

16. Manitoba recommends a special regulated interswitching distance zone be created for producers and shippers within the traditional Port of Churchill catchment area to access the regulated interchange between CN and HBR at The Pas, Manitoba.

Churchill Shipping Season Extension

The Churchill shipping season is traditionally 14 weeks, from mid-end July to the end of October. Manitoba considers that consistent extension of the Churchill shipping season to 16-17 weeks is very attainable. Season extension, however, remains a very complicated undertaking, involving an interplay of marine transit regulations, ship insurance costing, an understanding of the impacts of the warming climate, coordination of multiple supply chain interests, and port economics.

All told, however, there remain several tools at the federal level that should be immediately assessed to support an extension to the Churchill season. For example, emerging research by the climate scientific community, such as at the Centre for Earth Observation Sciences at University of Manitoba, directionally indicates that the ice free season in the Hudson Bay is expanding. Manitoba considers that based on emerging such research there should be a federal willingness to fully re-assess the set regulatory dates under the *Arctic Waters Pollution Prevention Act* that control the passage of ships into Churchill from a seasonal perspective. As well, consistent efforts to retain federal ice-breakers in the Hudson Bay region for an extra week at the back-end of the season would, for example, improve the “safe port” perception of Churchill to international shipowners on the shoulders of the seasonal shipping period. In the end, reasonable efforts should be made to an expanded capacity and use of this corridor, for the net benefit of the GHTS.

17. Manitoba recommends that the federal government assess its suite of available regulatory and program tools to support efforts at extending the Churchill shipping season.

Additional Measures and Other Issues

Federal Volume Threshold Orders

Manitoba supports a continued role for the Government of Canada to set minimum volume requirements going into the 2014-15 crop year and in the future, only as necessary.

Many stakeholders have spoken about unintended consequences of the recent federal orders. The inequity originally suffered by US and Eastern corridors at the beginning of the grain logistics crisis was seemingly exacerbated by the federal volume directive, which gave the railways freedom to meet the volume requirements without due regard to equitable export corridor treatment. Our consultations also reveal that many small actors—shippers, producer car agents, shortlines and the Port of Churchill—perceived a change in car allocation coinciding with the federal volume orders.

This leads us to assert that, going forward, any consideration of volume orders need be better frameworked through stringent criteria. Consideration need be given as to what criteria will be applied to the triggering of any volume order. Giving the Agency and other public information actors in the system, such as the Grain Monitor, better tools to investigate and extract real-time information about the planning and subsequent performance of the system will obviously help (as we have recommended). In principle, any trigger should be based on benchmarking desired system capacity and performance, and evidence of deviation from these benchmarks such that there is economic harm facing producers, shippers, and regions linked to poor rail service. Manitoba is cognizant that other rail-reliant sectors have rail service capacity needs as well. Their needs must be accounted for in any decision, in an equitable manner.

18. Manitoba recommends any future federal grain volume threshold directives set clear criteria for ensuring demand by region and by corridor is treated equitably.

19. Manitoba recommends any future federal grain volume threshold directives set clear guidelines for the protection of smaller stakeholders in the system, such as shortlines, producer car operators, small shippers, and the Churchill corridor.

Inclusion of Soybeans under Schedule II of the CTA

Schedule II of the CTA list the varieties of grains and crops that are afforded protection and treatment by the grain transportation provisions of the CTA—including qualifying for treatment within the Maximum Revenue Entitlement regime, and for the recent emergency volume orders.

Manitoba's crop mix has changed significantly in the past decade. Climate warming, advances in crop genetics and production practices, input cost considerations and emerging market opportunities have resulted in heretofore non-traditional crops commanding a larger and growing proportion of Manitoba's agricultural products. One such crop, for example, is soybeans. Soybean production in Manitoba has skyrocketed in the past several years, from less than 10,000 insured acres 15 years ago to over 1 million acres now, with expectations of further acreage share growth. There is no reason this important economic crop shouldn't be afforded the same supply chain protections as many of the traditional, major cash-producing crops.

20. Manitoba recommends that soybeans be added to Schedule II of the Canada Transportation Act.

21. Manitoba recommends the federal government periodically conduct a review of crops for inclusion in Schedule II of the Canada Transportation Act.

Information Sharing and Transparency

Earlier, Manitoba spoke of the need to empower the Agency to extract better information from the railways and other grain industry players to support an enhanced level of independent proactivity. Manitoba suggests the issue of performance information be taken a step further, from the perspective of transparency.

Manitoba believes an abiding feature of the GHTS going forward needs to be better, publicly shareable performance reporting on the working of the rail-based grain logistics system. The acrimony and confusion of the past year was tied partially to the fact that different players had different information, and there was not a unified source of information that all stakeholders could agree on for the purposes of good policy development (let alone constructive communication on the issues).

The United States has been much more proactive on this front than Canada, and there is a lot to be learned from recent decisions and activities of the Surface Transportation Board and US Department of Agriculture to compel weekly reporting from the railways on key performance metrics.

22. Manitoba recommends the Canadian Transportation Agency be required to publicly publish timely railway performance data, by corridor.

Provincial Access to Performance Information

Manitoba was frustrated in the past crop year insofar that apart from the Grain Monitor weekly reports, no further information was available to judge the service performance of the railways during the height of the logistics crisis. What information that came from the Grain Monitor was weak, and not of their fault. We are aware that the federal government collected additional information from the railways as enabled by the March volume order and then by amendments to the *Transportation Information Regulations*. We were subsequently told that they were prevented from sharing this information for confidentiality reasons. It is incongruous that the province is precluded from a better understanding of a critical sectoral situation that has resulted in economic damage to our jurisdiction.

The old *National Transportation Act* (NTA)—the predecessor to the CTA—recognized the strong role of the provinces in national transportation policy and service deliberations, insofar that it permitted data collected by federal carriers to be provided to the provinces through the federal Transport Minister. For reasons not well articulated at the time, this provision was not carried over to the CTA when it was introduced in 1996.

Manitoba recommends that such provisions be reinserted into national transportation legislation, as a critical foundation for better and more collaborative national transportation policy and planning development.

23. Manitoba recommends Section 51 of the Canada Transportation Act be amended to permit the Minister of Transport to request that national transportation carriers under federal jurisdiction provide confidential information provided to the Minister of Transport to provincial transportation ministers, upon their request.

Maximum Revenue Entitlement (MRE) for Grain

Manitoba is aware that there are certain stakeholders in the grain transportation system that are advocating the re-assessment of the MRE in this Review, largely on the basis that it purportedly limits additional capacity investment in the system.

Manitoba is not convinced of this assertion, and sees no obvious link between the MRE, the issue of the current rail service deficiencies and railway “interest” in capacity investment. The macro-capacity problems of the 2013-14 crop year should not be used as a pretext to undermine this critical foundation of the GHTS. The MRE is not a static revenue “cap”, as it has been popularized, but allows for an adequate annual return to railways based on complex calculations involving adjustments for annual inflation as applied to various cost inputs, annual grain volumes and average length of haul.

To be clear, capacity supply is currently restricted because, simply, the railways as regional monopolies are able to solely determine the supply that best matches their operational needs, which for them is best achieved where their asset offering to the system can be minimized, their asset use maximized, and the commodity still be “captive” at any point in time and over time.

The MRE is in place to protect producers and shippers of grain from excessive monopoly rates, simply because true competition (that would also otherwise ensure efficient rates, capacity and services) in the railway marketplace does not exist.

24. Manitoba recommends continued application of the Maximum Revenue Entitlement in its current basic form as a foundation of the grain transportation system.

Railway Costing Review

The revenue cap is calculated every year by the Agency and is derived by a complex series of calculations that are applied against the base 1999-2000 crop year. The initial revenue cap in the base year was estimated through a rail costing review that was completed in 1992. In place of a full grain costing review, the Agency used a system-wide productivity index to adjust prices from the 1992 to the base year in 1999-2000.

In each crop year the Agency determines the revenue cap by using the base year and applying complex calculations involving adjustments for annual inflation, as applied to various cost inputs, and actual volume and average length of haul. The estimate for inflation is determined by the Agency and includes a number of railway cost inputs such as labour, fuel, material, railway car leasing, depreciation and cost of capital. This inflation index is commonly referred to as the volume-related composite price index (VRCPI) and is a key factor in adjusting the revenue cap each year.

A major concern with the calculation of the VRCPI is that it does not incorporate productivity cost savings by the railway, which all parties in the system acknowledge have been significant. The cumulative affect of these productivity gains over more than 15 years could be very significant, and certainly, previous studies have pointed to the likelihood of excessive annual railway revenues in the hundreds of millions owing to the lack of a better costing basis.

One example of the need for a costing review is instructive. It took a cohesive lobby effort by grain stakeholders and provinces to convince the federal government to look specifically at embedded rail car maintenance charges by the railways in 2006. When the review of this issue was finally undertaken, it was found that the railways had long been applying excessive charges. The federal government subsequently ordered a one-time downward adjustment to the revenue entitlement, to the annual benefit of farmers in the hundreds of millions.

25. Manitoba recommends that the federal government direct the Canadian Transportation Agency to conduct a detailed rail costing review.

The purpose of this review will be to adjust the Agency's cost-based revenue determinations as they apply to the MRE to account for the extensive productivity gains of railways and changed market conditions in railway operating costs. Other cost-related assessment work of the Agency—interswitching, arbitrations, to name a few—may also benefit.

With each passing year that a costing review is not conducted, the MRE becomes more of a railway revenue-based calculation with little tethering to the railways' true cost-base, which was its original intention.

Conclusion

The task you have before you is important, as your recommendations will help shape railway service to our grain and agricultural shipping community for decades to come. We therefore trust that the recommendations and other general considerations in our submission will support the Review's deliberations.

SUMMARY OF RECOMMENDATIONS

Shipper-Railway Commercial Balance Measures

Penalties for Railway Non-Performance

1. *Manitoba recommends that the Canada Transportation Act and related regulations be amended to ensure that financial consequences for railway non-performance are considered an operational term for the purposes of service level arbitrations.*

Level of Service Provisions

2. *Manitoba recommends that the Section 113-116 level of service provisions of the Canada Transportation Act be amended to holistically re-focus the concept and definition of railway level of service to be centered around the primary needs of users and to the interests of the economy.*

Enhanced Role for the Canadian Transportation Agency

3. *Manitoba recommends the Canadian Transportation Agency be empowered to monitor and investigate railway service independently, without formal complaints being initiated by shippers. As well, the Agency should be empowered to act upon both immediate and long-term solutions to common and/or urgent service failures, including those relating to the whole of the system.*
4. *Manitoba recommends that the Canadian Transportation Agency be empowered to require the railways and other grain handling industry participants to furnish adequate and timely information to facilitate an enhanced Agency role to monitor, investigate and act on railway service issues independently.*

Shipper Network Access Measures

Branch-Line Preservation

5. *Manitoba recommends the Agency be empowered, within reasonable limits and at the requests of affected shippers and communities, to investigate demarketing and other such strategic de-facto abandonment activities of rail carriers that preclude reasonable opportunities for stakeholders to preserve infrastructure, and to compel a railway to undertake any steps necessary to ensure a reasonable opportunity is provided.*

Regulated Interswitching

6. *Manitoba recommends that clear performance standards or operating benchmarks should be established for regulated interswitching to ensure effective and non-discriminatory service by participating rail carriers.*

7. *Manitoba recommends that the Canada Transportation Act be amended to require railways to list and provide notification for intended closures of rail interchange locations. As well, Manitoba recommends the Agency be empowered to review, and approve, proposed interchange closures, within the context of their impact on shipper options and competition.*
8. *Manitoba recommends that the temporary 160 km interswitching limit as applied to the prairie provinces be made permanent, for all commodities.*

Small Shipper Access and Protection

Producer Car Service Opportunities and Networks

9. *Manitoba recommends the Canada Transportation Act be amended to, at minimum, harmonize the closure process of producer car loadings sites with the process for metropolitan rail sidings and spurs (a one year notification period followed by an opportunity to purchase the asset at Net Salvage Value).*
10. *Manitoba recommends the Agency and other involved federal agencies (Canadian Grain Commission) investigate and be empowered to require the railways to establish a network of producer car loading sites based on competitive access requirements and needed capacity standards, to ensure producers have adequate access to the rail network via producer car shipping.*

Producer Car Shortlines & Allocation

11. *Manitoba recommends that producer car allocation be conducted in a fair and transparent fashion, to ensure priority allocation for producer car operators and dependent shortlines, within the overall evolution of the grain car allocation mechanisms of the railways.*

Car Allocation & Small Shippers

12. *Manitoba recommends that a specific research and assessment focus of the Review should be to assess the future structural protection of smaller shippers to access car supply in the new grain handling and transportation system framework, principled on equitable treatment.*

Re-Profiling of Federal Grain Cars to Shortlines

13. *Manitoba recommends that the federal government assess the equitable, safe re-profiling of federal grain cars (slated for attrition) to shortline and regional railways' intra-line operational needs, so as to retain capacity in the grain transportation system.*

Equitable Treatment of Corridors and Regions

Churchill Export Corridor

- 14. Manitoba recommends that the federal government should adopt a pro-active stance and assess applying unique policy, programming and regulatory tools to uphold the beneficial role of the Churchill corridor in the grain handling and transportation system.*
- 15. Manitoba recommends that the federal government renew the Churchill Port Utilization Program beyond the 2016 shipping season.*

Churchill Interswitching

- 16. Manitoba recommends a special regulated interswitching distance zone be created for producers and shippers within the traditional Port of Churchill catchment area to access the regulated interchange between CN and HBR at The Pas, Manitoba.*

Churchill Shipping Season Extension

- 17. Manitoba recommends that the federal government assess its suite of available regulatory and program tools to support efforts at extending the Churchill shipping season.*

Additional Measures and Other Issues

Federal Volume Threshold Orders

- 18. Manitoba recommends any future federal grain volume threshold directives set clear criteria for ensuring demand by region and by corridor is treated equitably.*
- 19. Manitoba recommends any future federal grain volume threshold directives set clear guidelines for the protection of smaller stakeholders in the system, such as shortlines, producer car operators, small shippers, and the Churchill corridor.*

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