



Government  
— of —  
Saskatchewan

Minister of Agriculture

Legislative Building  
Regina, Canada S4S 0B3

November 28, 2014

Mr. Randall Meades  
Executive Director  
Canada Transportation Act Review Secretariat  
350 Albert Street, Suite 330  
OTTAWA ON K1A 0N5

Dear Mr. Meades:

Thank you for this opportunity to participate in the Review of the *Canada Transportation Act* (Act). Over the course of the last year, the Government of Saskatchewan has been very vocal on the issue of grain transportation. As detailed in our attached grain submission, our Government strongly believes shippers need either an effective, competitive rail market or an effective regulatory framework to ensure captive shippers receive fair and adequate rail service.

As regulations were developed as part of the Bill C-30 process, Saskatchewan provided the federal government with several recommendations the regulations should address. Our attached submission to the Review Panel builds upon our earlier recommendations.

Our Government is focused on ensuring the grain handling and transportation system can adapt to the growth we expect in the future. We believe that the points outlined in our submission will serve as an important step towards improving the long-term competitiveness, reliability and efficiency of the transportation system.

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Thank you for considering these recommendations, and we look forward to continuing to work with you as the review progresses and further changes to the Act are considered.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Stewart', with a stylized flourish at the end.

Lyle Stewart  
Minister of Agriculture

Attachment

cc: Honourable Gerry Ritz, Minister of Agriculture and Agri-Food Canada  
Honourable Lisa Raitt, Minister of Transport  
Honourable Bill Boyd, Minister of the Economy  
Honourable Nancy Heppner, Minister of Highways & Infrastructure

## **SASKATCHEWAN'S INTEREST**

Saskatchewan's economy relies heavily on rail transportation. Approximately half of our exports are products like wheat, canola, potash and a growing portion of oil shipments are rail dependent goods. The volumes of commodities shipped out of Saskatchewan by rail are significant and account for 15 per cent to 20 per cent of Saskatchewan's GDP. Due to our geographical location, these exports must travel long distances to reach either their final destination in North America or port positions.

Saskatchewan's competitiveness in the national and international marketplace is heavily influenced by the overall efficiency of the transportation supply chain. Other nations competing with Saskatchewan exporters have their production closer to tide water or the end customer and consequently, their significantly lower transportation costs provides them with a significant competitive advantage.

Any inefficiencies, failures or excessive cost within our supply chain has a large impact on the economic competitiveness of our export-oriented sectors. The logistical problems experienced last winter moving our products to export position emphasized the importance of the transportation system and highlighted the critical weaknesses. Under the Saskatchewan Plan for Growth, our province intends to produce and market increasing amounts of oil, potash, and agricultural products. A failure to address the transportation challenges and a continued inability of the transportation system, especially the rail portion, to move the growing volumes of non-agricultural and agricultural products will limit future investment and economic growth across the region.

An issue of particular concern to our government is that of railway competition. There are only two national railroads (CN and CP) that serve the province. At the local level the situation is exacerbated as a majority of shipping points have access to only one rail carrier. Bulky products such as grain and potash can only move long distance economically by rail, leaving many shippers captive. It is in the public interest that there is either more competition in the rail system or a more effective regulatory structure governing rail traffic. In considering how to achieve these outcomes, our Government encourages the Panel to give particular attention to competitive, market-based solutions while also recognizing that regulatory interventions may be necessary.

Any move to increase overall efficiency in the current system and build for the future must not lose sight of the fact that all shippers in Saskatchewan, both large and small, require access to rail services to be successful. We recognize that solutions will not be a one size fit all approach and we must have proper incentives in place to encourage innovation and reward improvements.

## GUIDING PRINCIPLES OF REVIEW

During the 2001 CTA Review, the principal of enhanced competition in the railway sector was at the forefront. The CTA Review Panel provided recommendations of measures required to make the National Transportation Policy an effective instrument for a viable and effective transportation service. Competition and market forces, whenever possible, became the prime agents in providing viable and effective transportation services. In the absence of competition and market forces, government intervention – in the form of regulation – was acknowledged as a viable mechanism for achieving competitive and productive outcomes.

The National Transportation Policy encapsulates these principles in section 5 of the CTA as:

*5. It is declared that a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards and contributes to a sustainable environment and 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 in both urban and rural areas throughout Canada. Those objectives are most likely to be achieved when*

- a) competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services;*
- b) regulation and strategic public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved satisfactorily by competition and market forces and do not unduly favour, or reduce the inherent advantages of, any particular mode of transportation;*
- c) rates and conditions do not constitute an undue obstacle to the movement of traffic within Canada or to the export of goods from Canada;*
- d) the transportation system is accessible without undue obstacle to the mobility of persons, including persons with disabilities; and*
- e) Governments and the private sector work together for an integrated transportation system.*

While the competitive principle and policy framework adopted in the 2001 CTA proved successful in stimulating railway investments and production efficiency, shippers still feared market abuse by railways. To address these concerns and protect shippers from railways exercising market power, several competitive access provisions, including running rights, interswitching, competitive line rates, final offer arbitration, and confidential contracts were included in the Act.

The principle of protecting shippers has continued with recent federal government CTA amendments, including Bill C-52: *The Fair Rail Freight Service Act*, the Order in Council *Imposing Measures to Address the Extraordinary Disruption to the National Transportation System in Relation to Grain Movement* and the emergency legislation Bill C-30: *The Fair Rail for Grain Farmers Act*. These recent amendments continue the approach of supporting the competitiveness principle in practice.

Bill C-30 in particular, sought to strengthen the competitive principle in the CTA with the expansion of the interswitching distance from 30 km to 160 km to provide more shipping alternatives and increase competition. Similarly, Bill C-52 sought to improve level of service negotiations between railways and shippers to improve system performance. The importance of the competitive principle in transportation is now firmly established in the CTA and its recent amendments.

Consistent with the objectives outlined in the National Transportation Policy, Saskatchewan continues to seek a transportation network that provides all shippers, regardless of size, with timely, efficient and effective services at a reasonable cost and that contributes to the economic and social development of the province. A viable, cost-effective and competitive transportation network is not merely essential for Saskatchewan's continued prosperity, but is critical in ensuring that Canadian exports can remain competitive in a global market. Further, a competitive transportation network ensures that investment decisions are not distorted and as a country we maximize our economic potential.

Canada needs a functional grain handling and transportation policy that encompasses a shared vision for the future and that promotes and maintains a high quality network while promoting innovation and competitiveness amongst all stakeholders operating within the supply chain. The grain supply chain must be responsive to adapt to existing and future challenges. A renewed grain handling and transportation network cannot occur through policies and infrastructure investments made in isolation by individual governments or firms.

Saskatchewan continues to maintain that principles established within the CTA support and achieve the following objectives for Canadians:

1. Promoting an integrated transportation system that lowers delivery costs for Saskatchewan business and improves the level of service with the goal of increasing exports and thus supporting the Saskatchewan Growth Plan;
2. Establishing a legislative and regulatory framework that promotes competition and customer-oriented systems;
3. Promoting competitive rates and services for shippers, while maintaining the ongoing viability of an efficient, low cost rail system and commercial viability of carriers;
4. Providing an opportunity for small and medium sized shippers to participate in the Canadian and international economy and provide consumers with competitive prices and product choices.

## SASKATCHEWAN RECOMMENDATIONS

Shippers need an effective and competitive rail market. Where conditions of a competitive market do not exist, our government believes an effective regulatory framework is required to ensure shippers receive fair and adequate rail service. To ensure competitive markets function, Saskatchewan's recommendations include:

1. Strengthening Service Level Agreements;
2. Improved Interswitching Conditions;
3. Enhanced Information and Reporting;
4. Volume Requirements;
5. Maximum Revenue Entitlement;
6. Addressing Ancillary Charges;
7. Effective Abandonment of Unused Rail Lines; and
8. Ministerial Powers.

### 1) Strengthening Service Level Agreements

Section 169.31 of the Act gives the Agency powers to develop a regulatory framework in regards to Service Level Agreements (SLA) and allows the Agency to define terms included in a Service Level Agreement.

Our government submits that it is necessary to rebalance the commercial relationship between shippers and railways towards the greater public interest. Saskatchewan asks that the Panel take into consideration the submission that the Coalition of Rail Shippers provided to the Standing Committee on Transport, Infrastructure, and Communities during the debate of Bill C-52. These previous recommendations remain relevant to the needs of shippers and include:

- Clearly defining the terms "adequate and suitable accommodation" and "service obligations";
- Ensuring service level agreements cover, and shippers have the ability to apply for, arbitration on matters beyond those defined as operational in nature;
- Providing shippers with a mechanism for determining a breach of a service agreement and more clearly defining the consequences flowing from such a breach;
- Provides the right for shippers to file complaints against a railway for penalty or ancillary charges where such charges are published in a tariff "that apply to only one shipper" as opposed to tariffs "that applies to more than one shipper;"
- Preventing rail companies from raising items during Final Offer Arbitration that a shipper did not include in their submission and allowing shippers to frame the matter(s) in dispute; and,
- Eliminating the requirement for an arbitrator to consider whether the railway company's commitments in that contract are hindered by network effects, including obligations to other shippers.

By incorporating the intent of these points into the regulations, the Service Level Agreements and arbitration process would strengthen shippers' interests considerably. The regulations need to make it easier for all shippers to enter into a service level agreement with the railways. They must also provide shippers with a more timely and cost effective means to enforce the provisions the SLA and ensure the railways are complying with the terms of the agreements.

## **2) Interswitching**

Bill C-30 expanded the interswitching distance from 30 kilometers to 160 kilometers. The legislation also gave the Agency the powers to develop a regulatory framework for interswitching that allows the Agency to prescribe different distances for the regions or goods that it specifies.

Although current interswitching regulations under the Act provide some clarity regarding interswitching zones and rates, Saskatchewan submits that more steps are required to address and improve the functionality of interswitching. These include:

- That increased interswitching distances are made a permanent part of the legislation;
- Requiring that the physical switches are operational and standardized;
- Providing a clear determination of who is responsible for crew maintenance and scheduling of the siding;
- Requiring publicly-available information on the physical size of interchange (Currently, all interchange switches are not standardized and can vary from ten to 120 cars. Where switches cannot handle unit trains, shippers face additional costs and delays);
- Publishing rates for accessing interswitching points, with fair and non-discriminating rates determined by zone and by car block size;
- Ensuring rate structures for commodities are standardized and predictable; and,
- Defining a minimum level of service, including provisions around timing to prevent unnecessary delays that may render an interswitch haul uneconomic.

## **3) Enhanced Information and Reporting**

While Section 50 (Transportation Information) of the Act provides broad and extensive powers to the Agency to demand information for the purposes of:

- a) national transportation policy development;
- b) reporting under section 52;
- c) operational planning;
- d) any safety, security or subsidy program;
- e) any infrastructure requirement;
- f) monitoring the grain transportation and handling system; or
- g) the administration of this Act.

In addition, the Agency can demand the information provided under Section 50 include the following:

- (a) financial data;
- (b) traffic and operating statistics; and
- (c) fitness and ownership information.

While these provisions have been applied extensively to the air transportation industry, this type of reporting has been virtually absent as a matter of policy in the grain handling and transportation sector. Timely information and reporting is essential for supply chain stakeholders making business decisions and enhances overall market function. Grain producers, grain handlers, traders, processors and end users rely on this information to market their product, mitigate risk, plan and execute other business decisions.

Saskatchewan believes the following statistical reporting on rail service performance and equipment availability will serve to increase transparency in the system and address the issues outlined above.

- a) Establish a publicly available tracking system for car orders, car order fulfillment, origin and destination dwell times, car cycle times, as well as inland loading and port unloading performance.
- b) Issuance of weekly public reports that summarize the metrics of supply chain performance.

From both a government and industry perspective, this type of timely information and reporting is necessary to develop performance benchmarks within the grain handling and transportation system. This information is also useful in the development of transportation policy aimed at improving the competitiveness, reliability and effectiveness of the grain handling and transportation system by guiding both public and private infrastructure investments. The Government of Saskatchewan submits that enhanced information and reporting requirements, as outlined above, are made mandatory in the legislation.

#### **4) Volume Requirements**

Bill C-30 required both CN and CP to increase rail shipments for a combined minimum movement of one million metric tonnes, or approximately 11,000 cars. The Government of Saskatchewan proposes that these targets have been effective to-date in addressing the grain backlog that occurred during the winter months of the 2013-14 crop year. However, the Government of Saskatchewan continues to hear from small and medium sized shippers, as well as commodity groups, about poor rail service and their inability to access the necessary cars to move their product.



The Government of Saskatchewan requests that the Act provides the Agency with the power to ensure that all shippers in all corridors receive fair and adequate service. In addition, we ask that the volume data is made publically available for review by all the stakeholders in the grain handling and transportation system to help evaluate railway grain shipment performance. This data must be made available in a timely manner. In instances where prescribed volumes are not met, we ask that meaningful penalties at levels sufficient to ensure compliance be imposed.

When establishing new minimum volume requirements, Saskatchewan also asks that the Agency consider developing a methodology that removes the disincentives for the railways to provide service for certain shippers, commodities and corridors with longer car cycle times. The CTA may want to consider a formula that provides additional weighting for deliveries out of certain corridors with larger cycle times.

Saskatchewan recognizes continual assessment and adjustments are needed throughout the year to properly determine minimum volume requirements. Saskatchewan proposes that the Agency conduct a consultation on grain volumes every three months to ensure that the necessary volume targets are in place to meet the needs of all shippers and appropriate carry-over levels are achieved.

While we recognize that different minimal volume requirements during the winter period should be considered, we believe that mechanisms should be included in those volume requirement targets to ensure that all customers and all corridors have access to adequate rail service throughout the year.

### **5) Maximum Revenue Entitlement**

Under the maximum revenue entitlement (MRE), CN and CP are able to set their own rates for services, provided the total amount collected remains below levels determined by the Agency. Under the MRE, rail firms are permitted to retain any profits they are able to extract from the market as long as their revenues do not exceed the maximum level. As opposed to the former rate cap system, the MRE was designed to provide the railways with an incentive to improve productivity, while giving the railways a greater degree of pricing flexibility while still offering producers regulatory protection against excessive pricing by the railways.

Given that average revenues are 'capped' under the MRE, there is an incentive for the railways to improve their overall productivity to reduce costs and increase their contribution margin. In turn, these contribution margins should allow the railways to reinvest in critical railway infrastructure and innovations designed to improve the overall rail network efficiency and profitability.

Under the Western Canadian Transportation Act (WGTA) a railway costing review was done every four years to determine the cost base for the railways. The cost base was used to determine the level of freight rates paid by Western grain producers and to ensure railway productivity gains were passed back to shippers/producers. With the passing of the CTA, the four-year costing review was eliminated, meaning that the mechanism for sharing railway productivity gains was also eliminated. As such, the railways are permitted to retain any profits earned through productivity gains.

In recent years, both CN and CP have undergone extensive cost cutting measures aimed at lowering their operating ratios and improving profitability. Some of these cost cutting measures, such as reductions in locomotive power and labour force, have had a significant impact on levels of service that shippers receive. Saskatchewan asks that the Review examine the MRE, as well as railway costs, to determine if the intent of the MRE regulation as a means protecting producers from excessive freight rates is still functioning as was its original intent. In addition, we ask that the Review determine if the MRE provides incentives for the railways to move grain and reinvest in their network and innovation, to ensure the approach is not coming at the expense of service levels and the public interest.

## **6) Ancillary Charges**

Ancillary services are those chargeable services provided by railways for activities beyond the movement of rail freight from origin to destination. Most ancillary charges are for the time spent by customers in loading and unloading of railway provided rail cars (demurrage). In addition, railways may impose ancillary charges for moving railcars (switching) from one location to another on shipper or railway property, at the request of the customer. Special charges may also be imposed if shippers wish to change the destination of a railcar while it is in transit to destination (diversion) or if the car is found to have been loaded improperly resulting in a safety hazard due to an unbalanced or overloaded car.

Saskatchewan shippers have indicated that ancillary charges are imposing additional and unfair transportation costs onto their business. The key issue raised by shippers was the tendency of the railways to charge shippers with ancillary charges for events that result directly from poor railway performance. For example, shippers indicated that ancillary charges are often applied to their accounts in instances where they are unable to load cars in the required 24 hour period, even though they were given virtually no notice prior to cars being spotted.

Another issue that was indirectly addressed in the Saskatchewan survey relates to the inaccuracy of the ancillary charges billed by the railways. This issue was more fully developed in the federal 'Analysis of Operating Practices,' which estimated error rates on demurrage invoices ranging from a low of 20 per cent to as high as 70 per cent. The consensus amongst stakeholders is that the high error rates on ancillary charges invoices is largely an administration problem related to the largely mechanized billing system used by both CN and CP.

Saskatchewan asks that the Review address the following issues:

- Railway ancillary charges that are applied outside of confidential contracts should be fully and publicly disclosed and be subject to review by the Agency.
- Require the railways to conduct a review of their billing system and make appropriate changes to ensure the accuracy of invoices.

## **7) Effective Abandonment of Unused Rail Lines**

Within the system there are several rail lines that that the railways have effectively abandoned. While these lines are no longer being provided with rail service, the railways have not listed them for discontinuance. This is preventing parties (i.e. - short lines, producer car groups) that may be interested in the track from acquiring it.

There has been a number of occurrences in the last decade where Class I carriers have refused to provide rail service to railway lines, but have not placed the lines up for abandonment. Two Saskatchewan examples include the Lewvan and Tisdale subdivisions.

In the case of the Lewvan subdivision, the railway curtailed maintenance on the line. By the time the line was eventually put up for abandonment, the costs associated with repairing the deficiencies on the line were prohibitively expensive for any short line to purchase and operate. This same process is being replicated on the Tisdale subdivision.

Saskatchewan submits that the following measures regarding railway discontinuance and effective abandonment be enacted to ensure that unused rail lines are required to go through the discontinuance process:

- A railway which has discontinued service to a specific line on their network should, at the request of the Agency, outline how it intends to solicit sufficient business to resume service to the line.
- If, after two-years of responding to the Agency's request, the railway is unable to develop sufficient business to resume service to the line, the Agency be empowered to declare the line effectively abandoned. The discontinuance process as established in Section 142 through 146.1 of the Act would then commence.

## **8) Ministerial Powers**

Within the existing Act, the Minister has tremendous powers to direct the Agency to undertake actions that support the National Transportation Policy outlined in Section 5 of the Act. While these powers can be exercised at the Minister's discretion, they have seldom been exercised in a meaningful manner.

To assist the Agency to undertake the intent, purpose and goals of the CTA it is proposed:

1. The Act is amended to provide the Agency with:
  - a. The ability to initiate independent investigations into level of service complaints, effectiveness of competitive provisions provided, competitiveness of market structures, transparency of information systems and benchmarking system and Act performances;
  - b. The ability to independently request information and data from railroads and participating transportation service suppliers required to carry out the Act mandate;
  - c. The ability to publically release meaningful information and data to enhance transparency and market function.
2. The Review Panel examine and analyze suitable institutional structures that support the Agency's role in meeting the CTA mandate.

## **Conclusion**

A recent focus of the current market for transportation of grain by rail has been balancing the need for effective competition with "commercial arrangements." The use of the term "commercial arrangements," which is simply defined as "a business relationship between two parties" represents a significant shift away from achieving the competitive "economic efficiencies" that benefit the economy as a whole towards "operational efficiencies" that serve only to benefit the company's providing transportation services. When applied to the grain industry, focusing on operational efficiency is akin to asking "Does the grain get to market?", while focusing on effective competition asks the question "Is the Saskatchewan economy better off as a result?"

Saskatchewan has clearly indicated that competition and market forces should be the key drivers that influence the behaviors of stakeholders operating within the grain handling and transportation system. From an economic perspective, effective competition always results in the best possible economic outcomes society as a whole. Effective competition spurs investment and innovation and drives efficiency at all levels. In instances where effective competition is not possible due to the structure of existing markets, regulations that simulate competitive market forces are warranted. We ask that the Agency consider the eight points raised in the Saskatchewan submission as a means of fostering or simulating effective competition in the grain transportation industry.

Saskatchewan will submit more comments to the CTA Review Panel that will address additional competitive and regulatory considerations and other modes of transportation at a later date. We are looking forward to receiving the research work and reporting that are currently being conducted by the Review Panel.

Thank you again for the opportunity to provide a submission for the CTA Review.