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Canada Transportation Act Review Secretariat
350 Albert Street, Suite 330
Ottawa, ON K1A 0N5

SUBJECT: Submission to the Canada Transportation Act Review

Dear Mr. Emerson and panel members:

Suncor Energy Inc. (Suncor) welcomes the opportunity to submit comments to the *Canada Transportation Act Review Panel* as part of the review of the Canada Transportation Act announced last year. We valued the chance to engage directly with the Secretariat and panel advisors on October 21, 2014 and have summarized our comments for your consideration.

As Canada's largest integrated energy company, Suncor is a producer of crude oil from conventional sources including Canada's offshore and the oil sands, located in northern Alberta. From these resources, we are a significant supplier of refined products globally. Suncor has also pioneered the development of renewable energy resources with six wind power projects currently operating in three provinces (Alberta, Saskatchewan and Ontario) and Canada's largest ethanol production facility, located in Mooretown, Ontario. In executing our business, we rely heavily on all transportation modes available. There needs to be a strong, viable transportation and logistics foundation which shippers can rely on to take advantage of international opportunities and be competitive, despite the logistical challenges they face.

As discussed with panel advisors last year, our comments will focus on three key modes of transportation: rail, marine and air. Within those areas, a number of themes emerge that are critical to our business:

1. Operational safety and Suncor's overall role as a user of the transportation infrastructure;
2. Competitive access to infrastructure and service transparency;
3. Harmonization of regulations with external markets (particularly the United States).

Rail Transportation

Suncor relies heavily on rail infrastructure for movement of crude oil, finished refined products and intermediate components. As crude oil production has outpaced pipeline growth and development over the last several years, railroads have reported an increase in overall traffic on their network and the number of railcars required to bridge that logistics gap has increased significantly. Combined North American rail volume for the first 35 weeks of 2014 totaled 13,448,861 car loads, up 3.1 percent compared to the same period in 2013, and 11,356,895 trailers and containers, up 5.9 percent compared with 2013.

Suncor and various other shippers' northern and remote operations have limited or no access to an existing rail network. Rail logistics infrastructure development will facilitate growth and provide improved market access to these accessibilitly challenged Canadian resources.

In order to improve safety, efficiency and reliability within Canada's railway network, Suncor would like to ensure that the following areas of concern are addressed and among the focus areas of the review.

<u>Improved Communication</u>
Transparency of rail capacity and communication between rail carriers and shippers needs improvement:

i. Railroads must provide timely and transparent network data outlining capacity and railroad performance statistics to industry

ii. The Agency must have the ability to analyze network capacity versus current demand and forecasted growth and continuously monitor to address capacity constraints ahead of bottlenecks impacting shippers

<u>Service Level Commitment</u>
Protection of the Common Carrier Obligation:

iii. The Common Carrier Obligation currently provided by the Canada Transportation Act (CTA) must be strengthened through:

    a. CTA's Level of Service Sections 113 to 116 must define "adequate and suitable accommodation" as well as "service obligation" to clearly provide the shipper with a means in which to tangibly measure service performance of the rail carrier

    b. Rail Carriers must be responsible to move all commodities by rail. Rail carriers must not be permitted to be selective of commodities moved. Without adequate rail logistics available commodities will either not be moved to market or will be transported by road thereby increasing cost of logistics and the risk of incidents. This would negatively affect the sustainability and growth of the Canadian economy

iv. Service Regularity:

    a. Lack of rateable services from the railroads results in operational inefficiencies that impact shippers. Non-ratable service creates instability in our business and additional cost in what is an already highly competitive marketplace

    b. Railroads must have sufficient infrastructure, equipment and staff to meet annual service demand and provide operational flexibility to recover from service interruptions

<u>Fair and Equitable Rates</u>

v. Protect shippers from railroad market power imbalance

    a. All commodities and shippers must be given the same service priority; the ability of railroads to "price majeure" shippers in lanes that are less desirable such as low traffic corridors, high risk commodities and seasonal traffic

vi. Improved remedies and CTA oversight:

a. The Agency must have the power to investigate service failures outside of official remedies. Remedies must be accessible, timely and effective; the lengthy and / or costly processes for contractual claims (Final Offer Arbitration), Commercial dispute resolution, level of service complaint and Bill C52 Fair Rail Freight Service Act remedies do not lend themselves to use in correcting day to day service interruptions and failures

b. Adequate incentives for railroads to reliably move all freight. Financial repercussions in the form of fines paid to the Agency or Transport Canada may result in increased focus on eliminating railway failures. The penalty must drive corrective action to avoid recurrence

Fair and Equitable Government Amendments

vii. Amendments to the Canada Transportation Act must be made swiftly allowing shippers to take advantage of the growth potential currently being hampered by railroad inefficiencies and market power

viii. The sunset clause for inter-switching regulation in Bill C30 must be removed and the regulation expanded to encompass all of Canada. Suncor believes this amendment will be effective in creating competition; however, the cost to build the required infrastructure to meet the new inter-switching radius cannot be justified without long term surety

Harmonization

Cross border shipments are an inherent part of Canada's role in the global economy:

ix. While considerable progress has been made with respect to testing protocols, classification, packaging and labeling, this work needs to continue

x. Directives regarding TDG, railcar safety and product classification must be aligned between Canada and the US to ensure all trading partners are subject to the same regulatory requirements

xi. Product testing protocols, which play a key role in determining volatility and are critical to overall safety such as handling, emergency response and means of containment, are being defined by industry advocacy associations working in conjunction with government bodies in both Canada and the US

Insurance and Liability

Considerable work has been undertaken by various industry advocacy committees in response to Transport Canada's consultation requests regarding the rail liability compensation regime.

xii. Suncor supports the current liability framework, wherein the carrier assumes liability for everything except explicit negligence of the shippers. Under this regime, the cost of addressing liability would be embedded in the freight charges paid by shippers. This approach ensures that rail carriers are held accountable for holding appropriate liability insurance commensurate with the nature of rail operations and the goods being transported. This reflects the principle described in the Canadian Transportation Agency's discussion paper, "Review of Railway Third Party Liability Insurance Coverage Regulations", which says "that railway companies are accountable for compensating for damages caused by their operations to people and to shipper and a polluter pay principle for damage to the environment."

Aviation

In order for Suncor, industry and Canada to compete in the global marketplace, it is essential that we have a safe and cost-effective air support system in place. Specifically for Suncor, and as a result of the remote location of many of our operations and the dynamic nature of the oil industry, long-term planning and integration with the government will play a pivotal role in achieving this goal.

Access to Airspace:

i. Suncor requires cost effective access to our remote locations, supported by safe and efficient airspace control. Currently, our air operations are focused around our airfield north of Fort McMurray (Firebag Aerodrome), but as projects expand to increasingly remote areas, cost escalation is a risk if industry and the government together are not anticipating and planning for the requirements to support those new locations.

ii. Suncor also operates its own fleet of aircraft, currently moving between 250,000 and 300,000 passengers per year. We believe that approval should be granted so that through coordinated efforts between Suncor and our joint venture companies and industry partners we can effectively utilize these transportation tools to minimize costs for each of us. This requires wise consideration for certification / licensing of the Suncor fleet in order to support this collaborative goal. It is not our goal to compete with commercial airlines that fly travelers for business and pleasure, but rather to focus on safe and efficient support to the development of Canada's natural resources.

Emerging Aviation Technology:

Finally, with the development of new technologies we are seeing the emergence of Unmanned Aerial Vehicles and their applicability to supporting safe, efficient, and environmental operations. While Suncor is new to this field, we see this technology as playing a role in our air operations and support the proper regulatory framework to ensure safety and flexibility.

Marine Transportation

Suncor is active in the movement of various petroleum products and dry commodities by marine vessel in Canadian waterways. Our comments on marine transportation will focus on two key areas: the regulatory regime as it relates to marine transportation safety; and access to infrastructure.

Regulatory Regime:

Suncor understands that marine transportation safety is integral to greater global market access for Canadian bitumen products. Canada has had a strong performance record on marine transportation on all coasts for several decades. This performance reflects the effectiveness of Canada's marine spill preparedness and response regime and government-industry efforts to continue to improve safety procedures, technology and spill prevention and response measures. Suncor supports the federal government's implementation of additional measures to further strengthen the current tanker safety regime and ensure our products continue to be shipped safely.

Marine Spill Preparedness and Response:

i. Liability and Compensation: Suncor's submission to the 2013 Tanker Safety Expert stated that "the regime applicable in Canada, which includes the international oil pollution regime, is sufficiently and effectively funded. Strict liability is channeled to the ship owner with a compulsory liability insurance and limited liability, above which international funds provide additional funding. Canada's own Ship-Source Oil Pollution Fund (SOPF) is available to provide additional funding. The total amount of funding available in Canada for persistent oil clean-up, at $1.3 billion, is higher than in any other country including the United States." Suncor maintains that the regime application in Canada is world-class and the limits of funding are designed under international conventions to increase as the cost of leaving and clean-up increases. Suncor believes that Canada should not withdraw from the international regime, as it has proven itself over the years as being quick and efficient with regard to the clean-up of large spills. Under the current regime, liability coverage is commensurate with the actual risk associated with marine movements in specific geographic areas within Canada. Proposals to withdraw from the international regime by abolishing liability limits of individual ship owners and collecting additional funds in trust would not be more effective than the international regime.

ii. Response Capacity: Suncor is aware of recommendations (from the expert panel) to increase the current regulated response capacity of response organizations from 10,000 tonnes to 20,000 tonnes and associated response times. Any regulatory change must be flexible, commensurate with risk and reflect the specific geographic needs and differences of Canada's coastal regions and water transportation routes. In this regard, some regulatory and legislative changes to the Canada Shipping Act may be required to accommodate and adapt to future trends in vessel traffic that are the result of oil export projects and new opportunities for market access.

iii. Fostering Public Confidence: As crude oil vessel traffic increases in our coastal waterways, Canada's ability to prevent and respond to oil spills has become a subject of renewed public interest. Canadians need to have confidence in government and industry that the marine spill preparedness and response regime is as effective as possible and addresses their concerns. In implementing the recommendations of the Federal Tanker Safety Panel, Transport Canada needs to ensure there are adequate resources to meet its commitments, to communicate with interested stakeholders, and complete this work within the established timeframe. Consistent with recommendations by the Canadian Association of Petroleum Producers, Suncor supports government-led and collaborative approaches to improve public awareness and demonstrate the strengths of Canada's oil spill response regime and the stringent practices and procedures in place within the public-private system.

Access to Infrastructure:

If Canadians are to maximize the benefits of our role as energy producers and exporters, we need to remove barriers to accessing markets worldwide. Access to Canada's marine infrastructure is critical to the competitiveness and future growth of our industry. A number of opportunities exist to improve the current environment for marine transportation:

iv. Cabotage Regulations: Current cabotage rules require Suncor to seek flag waivers for foreign flagged vessels it uses to import Grand Bank or Western Canadian crude oil to its refinery in Montreal. Currently, Suncor relies on foreign flagged vessels, as there are no suitable Canadian flagged vessels for our shipping purposes. The administrative process required to secure a flag waiver is cumbersome, increases costs and, most importantly, does not support the original intent of cabotage rules, which we believe was to encourage Canadian ship owners to invest in the ship-building industry and provide world-class shipping services. If Canada wants to be an international leader in shipping, we need to develop the infrastructure and expertise necessary to support a modern shipping fleet that can compete with international service providers.

v. Canal Infrastructure: The St. Lawrence Seaway vessel limitations have been maintained largely at levels established in the 1950's. Meanwhile, there has been significant investment by Panama and Suez canal authorities and by the governments of Nicaragua and China to provide new and expanded shipping lanes, which has improved the efficiency of marine transportation. For example, the maximum width of the Panama canal is 49 metres versus the St. Lawrence Seaway system of only 23.70 metres. As a result, modern vessels with greater capacity cannot be accommodated on the St. Lawrence Seaway. By failing to keep pace with global improvements in infrastructure and shipping fleets, Canadian shippers are penalized due to lower efficiency and higher transportation costs.

vi. Improved Operations and Service Delivery: Suncor recommends the following:

   a. Ice-Breaker Services: Users like Suncor pay for the ice management services of the Canadian Coast Guard. A lack of investment in equipment and inadequate staffing has resulted in delays and service interruptions, which have negatively affected refinery production and distribution schedules. This is a recurring challenge, whereby Suncor vessels are required to wait for extended periods for the services of ice-breaking vessels.

   b. Port and Waterway Maintenance: Adequate water level clearance is required for ports and berths to ensure the efficient use of marine vessels. Limited dredging activity has been undertaken over the past many years, resulting in the "silting up" of ports and berths, which then results in a reduced payload. Suncor recommends increased dredging of waterways and channels to maintain shipping efficiency and competiveness.

   c. Operating Costs: Fees charged for transiting the St. Lawrence Seaway and port call are uncompetitive, resulting in reduced vessel traffic in Canada. For example, a round-trip cost for a small tanker calling on the Great Lakes (including fees for tolls, pilots, tugboats) can be as high as US$180,000. The costs imposed on Canadian industry are too high and a more competitive cost structure is required.

d. Great Lakes Opening: Each year, much of the Great Lakes waterway remains closed for 90 days due to ice and maintenance issues. As a result, this waterway is unavailable for approximately 25 percent of the year, resulting in a complete halt is vessel traffic, thereby reducing Canada's ability to export and import goods. This situation needs to be addressed by increasing in the number of Canadian Coast Guard icebreakers to service the Great Lakes waterway.

Other Regulatory Issues:

Environmental limits: As of January 1, 2015, the North American Emissions Control Area (ECA) rules require vessels to use fuel containing a maximum of 0.1% sulfur. Both the lack of availability and costs of this type of fuel have resulted in increased costs to shippers. This impact could have been largely mitigated had the federal government explored and invested in alternate main fueling technologies and new enabling technologies, such as scrubbers and natural gas fueling, which would be beneficial in reducing GHG emissions, while keeping costs down. Industry engagement prior to making changes contributes to improved understanding of industry impacts and ensures Canada's continued competitiveness in today's shipping industry.

CONCLUSION

Thank you again for the opportunity to provide our thoughts to the review panel.

Suncor is committed to participating in the work of the CTA Review Panel and contributing our experience in those areas specific to our business including rail, air and marine transportation. For further discussion, please do not hesitate to contact either me directly or Suncor's Manager of Government Relations, Michael Southern at (905) 804-5986 / msouthern@suncor.com.

Sincerely,

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