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Rail Freight Service Review



INTERIM REPORT

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CHAPTER 1



1. INTRODUCTION

The Honourable Rob Merrifield, Minister of State (Transport) appointed the Rail Freight Service Review Panel in September 2009. (See Appendix A for biographies of Panel members.) The Panel was directed to conduct a review of service issues and problems related to the rail-based logistics system in Canada and to submit recommendations aimed at improving the efficiency, effectiveness and reliability of service within the system, facilitating economic growth and trade expansion and improving accountability among stakeholders.

This is the Panel's Interim Report, and it contains draft recommendations. The objective of the Interim Report is to provide an opportunity for interested parties to: comment on the proposed package of draft recommendations; provide a sense of prioritization of those recommendations; comment on the impact on stakeholders and on service in the system; and offer other solutions on rail service that may not have been reflected in the draft recommendations. The Panel will carefully consider information provided by stakeholders, in the context of the terms of reference, when it submits its final report to the Minister.

The Report consists of seven chapters as follows:

- **Chapter 1** contains a brief description of the rationale and scope of the review as well as the Panel's mandate and process;
- **Chapter 2** describes the so-called "shipper protection" provisions of the *Canada Transportation Act* (CTA);
- **Chapter 3** summarizes the research work in support of the review;
- **Chapter 4** discusses key issues and solutions identified by stakeholders;
- **Chapter 5** contains the considerations that the Panel used to guide the development of its draft recommendations;
- **Chapter 6** describes the draft recommendations to address key issues; and
- **Chapter 7** discusses other issues.

1.1 RATIONALE

The CTA is the framework for the economic regulation of railways in Canada. The CTA reflects the evolution of transportation policy, including rail transportation policy, over time. There was a comprehensive statutory review of the CTA in 2000-01. The CTA Review Panel concluded that "Canada's rail freight system works well for most users most of the time." Nonetheless, the Panel recommended some changes to the Act. Between 2001 and 2007, there were extensive consultations with railways¹, shippers and others on potential changes to the shipper protection provisions. A number of bills to amend the CTA died on the Order Paper when Parliament was prorogued between 2003 and 2007.

During this period, the government received increasing complaints from shippers and others about poor rail service. Stakeholders identified a number of chronic and widespread problems including poor railway performance (both overall car supply and spotting performance of cars, in particular cars supplied versus cars ordered) and the inability of railways to

¹ Please note that throughout this report, the reference to "the railways" generally means Canadian National Railway and Canadian Pacific Railway.

recover from service disruptions because of the railways' practice of aggressive asset utilization and balanced operations. When the government tabled amendments to the shipper protection provisions in May 2007, it announced that it would initiate a review of rail freight service once the proposed amendments had been passed. The amendments were passed and received Royal Assent in February 2008. After consultations with interested parties, the government released in August 2008, the terms of reference (Appendix B) for the Rail Freight Service Review.

The review has two phases:

- **Phase I** consisted of quantitative and qualitative analytical work (summarized in Chapter 3) carried out by independent consultants for Transport Canada. This research work was important input for the Panel portion of the review.
- **Phase II** is the Panel process with a mandate to develop recommendations to address service problems within the rail-based logistics system, based on the results of the analytical phase, stakeholder input and other relevant information.

1.2 PANEL MANDATE

The terms of reference for the review were established by the government following consultations with stakeholders. In accordance with the final terms of reference, the objectives of the Rail Freight Service Review are to:

- conduct a review of the rail-based logistics chain (including railways, shippers, terminal operators, ports and vessel operators) with a focus on service provided to Canadian shippers and customers by Canadian National Railway (CN) and Canadian Pacific Railway (CP) within Canada, including to and from ports and border crossings;
- identify problems and issues with respect to railway service, including those stemming from other elements of the logistics chain;
- determine if there are any problems with logistics for shippers located on shortlines and, if so, the source of the problem including service, operating, or marketing practices of the main-line carriers;
- identify best practices and how these can be expanded to address service issues; and
- make recommendations on how to address these problems and issues, including both commercial and, if necessary, regulatory solutions.

"The fact that we are moving forward with this review is good news for shippers of a broad range of commodity groups and will benefit grain farmers as well. Our priority is to have an effective, efficient, consistent and reliable rail transportation supply chain."

The Hon. Lawrence Cannon,
Minister of Transport, Infrastructure
and Communities, August 12, 2008,
Transport Canada press release.

The review is focused on the railways but is examining the full rail-based logistics system, including shippers, terminal operators, and ports since the performance of the system can be affected by any one of several stakeholders involved in the movement or handling of rail freight traffic.

The scope of the review is limited to service issues within the rail-based logistics chain.

1.2.1 THE PANEL'S TERMS OF REFERENCE

The Panel's terms of reference (Appendix C) describe the objectives and the approach to be followed.

1.2.1.1 Objectives

The Panel is required to develop recommendations to address problems and issues with respect to service within the rail-based logistics system. The recommendations may include both commercial and, if necessary, regulatory solutions. The recommendations will be aimed at improving the efficiency, effectiveness and reliability of service within the system, facilitating economic growth and trade expansion, and improving accountability among stakeholders.

In undertaking its work, the Panel has been guided by the terms of reference for the review as well as its own terms of reference. The Interim Report is based on the results of the work completed under Phase I plus the Panel's consideration of stakeholder submissions, consultations and other relevant information.

1.2.1.2 Approach

In conducting its work, the Panel was directed to:

- meet with the Phase I consultants to review and discuss their findings;
- undertake site visits of the rail transportation logistics operations in both western and eastern Canada;
- solicit comments from interested parties on issues, solutions, best practices, and factors the Panel should consider in developing its recommendations;
- conduct bilateral meetings with stakeholders, as required;
- develop draft recommendations based on the Phase I consultant reports, stakeholder input and other relevant information;
- release an interim report containing the draft recommendations and solicit comments from interested parties;
- conduct bilateral meetings with stakeholders following the release of the Interim Report, as required;
- finalize a set of recommendations after considering comments submitted by interested parties and other relevant information; and
- submit its final report and recommendations to the Minister by end of 2010.

The Panel has completed all of the steps leading up to the release of the Interim Report.

1.3 PANEL PROCESS

Shortly after being appointed in September 2009, the Panel held meetings with Transport Canada, the Canadian Transportation Agency (the Agency), CN and CP, and the Coalition of Rail Shippers² to discuss the review objectives and process.

The Panel conducted site visits in November and early December to observe rail-based logistics operations, including the interfaces between various stakeholders. It also discussed the approach to the review and heard preliminary stakeholder views on issues. Site visits took place across Canada, and included trips to various shipper locations, port and terminal operations in Vancouver, Prince Rupert, Montreal and Halifax, and a number of railway yard operations.

The Panel also met with Phase I research consultants to discuss their work and findings. Meetings were held with CPCS Transcom Limited, QGI Consulting Ltd. and NRG Research Group.

On November 9, 2009, the Panel called for submissions from interested parties, to be filed by February 26, 2010 (Appendix D). In its call letter³, the Panel requested stakeholders to:

- articulate the nature and extent of service issues;
- describe the nature and extent of adverse impacts;
- propose concrete and realistic solutions that can be implemented in a practical manner;

- explain how the recommended solutions address the identified issues or problems;
- highlight best practices that might be adopted to improve service; and
- identify key principles or factors the Panel should consider in developing its recommendations to improve service in the rail-based logistics system in Canada.

The Panel received submissions from 141 stakeholders – including 35 that were not posted on the Panel’s website⁴ at the request of the stakeholder. (See Appendix E for a list of stakeholders providing published submissions.) Most of the submissions focused on issues and often proposed solutions. The Panel met with many of the stakeholders to discuss their submissions. Since the Panel received a number of submissions from shipper associations it asked the associations how they involved their members in developing their submissions. The Panel is satisfied that the submissions from associations reflect the views of senior executives from their member organizations.

Appendix F lists the stakeholders with whom the Panel met during site visits and/or post-submission consultation sessions. In total, the Panel met with 85 stakeholders, including shippers, shipper organizations, ports, terminals, railways, shipping lines and others across the rail-based logistics chain.

The Panel has been supported by a small secretariat and has consulted legal counsel to discuss legal matters surrounding rail service issues.

2 The Coalition of Rail Shippers (CRS) represents a broad base of shipper associations. Many of the member associations attended the initial meeting with the Panel as well as subsequent meetings between the Panel and the CRS.

3 Subsequently, the Panel notified stakeholders, in a letter dated January 28, 2010, that since not all of the Phase I research reports had been released at that point, it was extending the deadline for submissions to allow time for stakeholders to consider all of the reports. In a letter dated March 31, 2010, by which time all the Phase I reports had been released, the Panel fixed April 30, 2010, as the due date for submissions.

4 <http://www.tc.gc.ca/eng/policy/acg-rfs-review-examen-sfm-rvw-eng-442.htm>

CHAPTER 2



2. CURRENT REGULATORY FRAMEWORK

The CTA is the framework for the economic regulation of railways in Canada and relies primarily on market forces to govern relationships between shippers and railways. Nonetheless, the CTA recognizes the market power of the railways, and contains a number of provisions designed to provide protection to shippers against the potential abuse of this market power by the railways. This chapter briefly describes the various “shipper protection” provisions⁵ – in particular those that could potentially be used to address railway service issues.

2.1 TRANSPORTATION POLICY STATEMENT

Section 5 of the CTA contains the statement on the National Transportation Policy that guides the development of transportation policy. This policy statement was considered by the Panel in the development of its recommendations. The statement reads as follows:

It is declared that a competitive, economic and efficient national transportation system that meets the highest practical 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.*

⁵ More information is available on the Agency’s website at <http://www.otc-cta.gc.ca>.

2.2 LEVEL OF SERVICE

In terms of addressing service issues, the main regulatory remedy is the level of service (LOS) provisions of the CTA. (See Appendix G.) These provisions⁶ impose LOS obligations on railways, authorize the Agency to investigate complaints, and provide broad authority for the Agency to order corrective action, if warranted. The railways' obligations are, however, subject to a reasonableness test. In other words, a shipper's right to rail service is not absolute.

On receipt of a complaint from a shipper, the Agency may investigate and determine whether the railway is fulfilling its LOS obligations. If the Agency concludes that a carrier has not fulfilled its service obligations, the Agency has wide-ranging powers to order the railway to remedy the situation.

Any regulatory intervention by the Agency, however, must respect the terms of service, if any, established by a confidential contract. Furthermore, the Agency does not have the authority to order a railway to pay damages if the railway is found in breach of its service obligations. The shipper must seek damages through the courts.

In summary, under the LOS provisions in the CTA, a railway company is required, in accordance with its powers, to:

1. furnish adequate and suitable accommodation for receiving and unloading all traffic offered for carriage;
2. furnish adequate and suitable accommodation for carriage, unloading and delivery of traffic;
3. receive, carry and deliver traffic without delay and with due care and diligence;

4. furnish and use all proper appliances, accommodations and means necessary for those functions; and
5. furnish any other customary or usual service incidental to railway transportation. Traffic must be taken, carried and delivered upon payment of the lawfully payable rate.

A railway company must afford all persons adequate and suitable accommodation for receiving, carrying and delivering traffic on and from its railway, for the transfer of traffic between railways, and for the return of rolling stock. Furthermore, railway companies are required to afford to abutting or intersecting railways all reasonable facilities for delivering to or receiving from, or carrying by its railway without unreasonable delay, all traffic of that other railway.

Any person may file a complaint with the Agency about railway service. The Agency has up to 120 days to investigate the complaint and determine whether the railway is fulfilling its obligations.

Agency powers

If the Agency finds that a railway company is not fulfilling its service obligations, it has extremely broad remedial powers. It may order that:

1. specific works be constructed or carried out;
2. property be acquired;
3. railway equipment be allotted or used as specified by the Agency; or
4. any specified steps, systems or methods be taken or followed by the railway.

The Agency may also specify maximum charges that may be made by the company, pursuant to an Agency Order, and order that the company fulfill the obligation in any manner and within any time or during any period that the Agency deems expedient.

⁶ Sections 113 to 116 of the *Canada Transportation Act*. A full copy of the Act can be found at <http://laws.justice.gc.ca/en/C-10.4/>.

“The Canada Transportation Act states that the railways must provide ‘adequate and suitable accommodation’ of traffic. The vagueness of this definition makes it difficult for either side to prove or defend their case in a Level of Service complaint. As a result, this complaint process tends to be long and drawn-out, and requires extensive time and money to follow it through to completion as the parties must prove their case in the context of this loose definition of service. The investment required in launching a Level of Service complaint is a significant deterrent for many shippers to utilize this tool provided in the Act.”

April 30, 2010, submission to the Panel from the Canadian Canola Growers Association, pages 1-2.

2.3 COMPETITIVE ACCESS PROVISIONS

There are two competitive access provisions aimed at encouraging rail competition for captive shippers, for the long haul portion of the movement. These provisions authorize the Agency to set rates for captive shippers for the movement of traffic to an interchange point, which is a point served by both CN and CP with a physical connection that allows traffic to be transferred from one railway to the other.

To the extent that railways use these provisions to compete for traffic, shippers should benefit from better service.

Interswitching

The interswitching provisions apply to movements from a point of origin within a radius of 30 kilometres of an interchange point. The Agency prescribes the interswitching rate, which is based on railway costs and is paid to the originating carrier for the movement to the interchange point, from which point the connecting carrier completes the movement of the traffic. The Agency establishes an interswitching rate scale that applies to all eligible movements. The Agency reviews the regulations at least every five years.

Competitive line rates

The competitive line rate (CLR) provisions⁷ apply to movements to an interchange point that are greater than 30 kilometres. The CLR rates, established by the Agency, are based on a formula that includes the interswitching rate for the first 30 kilometres plus an amount for the balance of the distance based on the originating carrier’s average revenue per tonne-kilometre for moving similar traffic over a similar distance.

There are two main differences between interswitching rates and CLRs:

- Unlike interswitching rates, which are prescribed in advance by the Agency and apply to all eligible movements, CLRs are calculated on a case-by-case basis. This creates uncertainty for the shipper and the “connecting” carrier, which may be trying to assess the costs and benefits of entering into a contract based on a CLR rate.
- Before a shipper can apply to the Agency for a CLR to the interchange point, the shipper must have an agreement with the “connecting” railway for the movement from the interchange point to destination.

⁷ Sections 129-136 of the *Canada Transportation Act*.

2.4 FINAL OFFER ARBITRATION

Final offer arbitration (FOA) is a process for resolving disputes between railways and a shipper (or, since 2008, a group of shippers) over rates or “with any of the conditions associated with the movement of goods,” in other words, service. It is triggered by an application from the shipper(s) to the Agency. (The FOA provisions of the CTA are attached as Appendix H.)

A carrier must receive written notice of a shipper’s intention to submit a matter to the Agency for FOA at least five days prior to the shipper doing so. A shipper’s submission for FOA must include the final offer of the shipper to the carrier, excluding any dollar amounts.

Within 10 days of submitting the issue to the Agency, the shipper and the carrier make their final offers, including the proposed rates.

An independent arbitrator receives and evaluates the offers made by the shipper and the carrier and must select one of the offers. The arbitrator is not allowed to amend the offers or to put forward his or her “compromise” offer. The arbitrator’s decision is binding on the parties.

Unless the parties agree to a different time frame, arbitration must be completed within 60 days, or 30 days for disputes involving freight charges of less than \$750,000. The arbitrator’s decision remains in effect for a period of up to one year, provided the parties did not previously agree on a shorter period.

Several stakeholders indicated to the Panel that shippers use FOA primarily for rates. They say that introducing service conditions significantly complicates the process, and shippers do not want to risk losing the rate issue based on a service complication. The Panel believes the requirement for the shipper to submit its final offer in advance of the railway’s final offer is a disincentive to use the FOA provisions for disputes that are limited to or focused on service.

2.5 ANCILLARY CHARGES

In addition to freight rates for moving cars, railways also apply charges for activities incidental to the movement of traffic and for other services they provide to customers. These are referred to as incidental, optional or ancillary charges. Examples include charges for demurrage, cleaning cars, storing cars and weighing product.

Railway ancillary charges have become an issue for shippers in recent years. The railways have increased charges and revised their associated conditions to encourage efficiencies and reduce costs. Shippers often find that these charges are not fair and do not reflect “balanced accountability” in that there are no comparable reciprocal penalties for poor railway performance.

The CTA was amended in 2008 to permit the Agency, upon complaint by a shipper or group of shippers, to investigate charges and conditions contained in a tariff and that are of general application (Section 120.1). The Agency may establish new charges or terms and conditions if it finds those in the tariff to be unreasonable. This provision is intended to give shippers leverage to challenge railway ancillary charges or conditions considered to be unfair.

A copy of this new provision is attached as Appendix I.

2.6 RUNNING RIGHTS

Running rights enable a railway to run over the tracks of a second railway. For example, most of VIA Rail's trains run over track owned by CN and CP under separate agreements. VIA pays an access fee for the use of the tracks. In addition, CN and CP have a number of commercial running rights agreements under which the two railways have negotiated the terms and conditions of access.

Railways cannot always negotiate commercial running rights agreements. The CTA provisions permit any federally regulated railway (including railways based in the United States) to apply to the Agency for "regulated" running rights.

The regulated running rights provisions are not currently used because of two Agency decisions in the early 2000s that placed restrictions on their application. In May 2001, the Agency decided it did not have the authority to grant running rights that included traffic solicitation. In a subsequent decision dated September 10, 2002 the Agency determined that a statutory running right is an "exceptional remedy" that can be granted only if there is evidence of market abuse or market failure.

2.7 COMMERCIAL MECHANISMS

Confidential contracts are commercial mechanisms to address service and/or rate issues under which both parties must agree to the terms and conditions. Other potential commercial mechanisms include commercial mediation and arbitration. Commercial dispute resolution solutions are often quicker and less expensive than the remedies available under the CTA.

While commercial contracts are common (CP reported in its submission that 75 percent of its business is covered in confidential contracts), a large number of shippers indicated that they do not have the leverage to negotiate effective service conditions. They also point to inclusion by reference provisions for ancillary/optional service charges that allow railways to unilaterally add or increase charges within established contracts.

In 2006, the Minister of Transport wrote to CN and CP to encourage the railways to work with shipper representatives on a package of commercial solutions to rail service issues. This eventually led to negotiations on a commercial dispute resolution (CDR) process. While some progress was made, consultations eventually broke down, in large part because there was no agreement on whether or not to include the United States portion of movements in the proposed CDR process.

CHAPTER 3



3. SUMMARY OF PHASE I RESEARCH

The research phase of the Rail Freight Service Review consisted of quantitative and analytical studies which became an important source of reference material for the Panel and others. The Panel organized its work program to ensure that all of the research reports were available to stakeholders before they had to file their submissions.

Transport Canada contracted with three consulting firms, which produced six separate reports and five technical appendices that were published on the Rail Freight Service Review website (Appendix G). The reports and key findings are briefly summarized in this chapter.

The six reports include:

- a quantitative analysis of railway fulfillment of shipper demand and transit times;
- a description of Canada's rail-based freight logistics system;
- an analysis of railway operating practices;
- a shipper survey;
- a survey of terminals, ports and shipping lines; and
- an assessment of how service issues are addressed in other transportation sectors in both Canada and the United States and in other regulated network industries.

3.1 ANALYSIS OF RAILWAY FULFILLMENT OF SHIPPER DEMAND AND TRANSIT TIMES

The report entitled *Analysis of Railway Fulfillment of Shipper Demand and Transit Times*, prepared by QGI Consulting, is a quantitative assessment of the extent to which railways meet shipper demand for service. It includes an assessment of railways' fulfillment of shipper demand (car supply) plus an analysis of the railways' transit time performance. The report examines railway service across various factors such as commodity, shipper size, size of order, length of haul and access to alternate transportation. Railways provided the consultant with sample data from October 1, 2006 to September 30, 2008, the two-year study period for Phase I of the review.

The report's **demand fulfillment** section analyzes the railways' performance in supplying empty cars primarily for merchandise and grain customers. The analysis compares the actual number of cars "spotted" at shipper locations to:

1. railway long-term forecasts;
2. shipper car orders; and
3. railway short-term car supply commitments to merchandise shippers.

In the Panel's view, key findings from the QGI demand fulfillment analysis are as follows:

1. Comparison to railway long-term forecasts.
 - When averaged over the entire two-year study period, the railways' forecasting processes were accurate in estimating traffic volumes within 10 percent, based on the performance of both CN and CP.
 - However, there was significant variance to forecast when analyzed over shorter time periods. For example, on a monthly basis at a commodity subgroup level, the average variance to forecast was 36 percent for the two railways over the study period.
2. Comparison to shipper car orders. (Only grain and merchandise shippers for whom the railways provide rail cars were analyzed.)
 - On a week-to-week basis, each railway provided grain shippers with at least 90 percent of cars ordered only 54 percent of the time. CN performance was 57 percent and CP performance was 51 percent.
 - Railway performance in meeting shipper demand on a weekly basis for merchandise traffic differed between the railways. CN provided at least 90 percent of the cars ordered only 68 percent of the time, while the figure for CP was 50 percent.

3. Comparison to short-term car supply commitments to merchandise shippers. (This was limited to CN shippers, as CP does not make car supply commitments to these shippers.)
 - On a weekly basis, CN provided at least 90 percent of the merchandise cars guaranteed under its Guaranteed Car Order Program 81 percent of the time.

The **transit times** analysis section measures (1) the time it takes loaded cars to move from origin to destination and (2) the consistency of transit times.

Transit times are a measure of system service quality, and the consistency in transit times reflects the reliability of rail service, which itself impacts logistics planning.

With respect to QGI's transit times analysis, there was considerable variability in individual shippers' transit times on a week-to-week basis.

In addition, service levels differed significantly across the movements of the three main groups of traffic examined (bulk/grain, carload and intermodal). Among these groups, intermodal traffic had the lowest and most consistent transit times. Table 1 below summarizes transit times by railway and by major commodity group.

Table 1: Transit Time Comparisons by Railway and Major Commodity Group

	Bulk/Grain		Carload		Intermodal	
	CN	CP	CN	CP	CN	CP
Average length of haul (miles)	1030	877	1078	754	1635	1739
Average transit times (hours)	101	106	117	140	68	83
Minimum and maximum range of transit times (75 percent of car trips)	73-130	69-142	76-159	85-194	54-83	64-102
Average CV (percent) ⁸	24.6	29.9	30.7	33.9	18.5	19.9

Note: CV = coefficient of variation is a statistical measure of consistency in transit times.

Source: *Analysis of Railway Fulfillment of Shipper Demand and Transit Times*, QGI Consulting, March 2010.

⁸ See pages 16 and 17 of the QGI report for an explanation of the measurement framework. For example, if transit time was 100 hours and the standard deviation was 20 hours, the coefficient of variation would be 20 percent. A lower coefficient of variation reflects a more consistent transit time.

For example, using the data from Table 1, a typical CP bulk or grain customer shipping rail cars a distance of 877 miles from a single origin to a single destination might expect their shipments to take anywhere from 69 to 142 hours (3 to 6 days), 75 percent of the time. For the remaining 25 percent of the time, shipments will fall outside this range of transit times.

There was little differentiation in transit times, when analyzed for a number of characteristics, such as shipper size, flow size, access to competition, core versus non-core railway origins and shortlines versus CN and CP origins.

QGI's other key findings for transit times are as follows:

- As expected, there was a significant deterioration of transit time performance during the winter months for both railways.
- At final destination, the average time to place loaded cars by the railways at receivers' sidings ranged from 10 hours for bulk traffic to over 40 hours for merchandize freight. Bulk traffic, particularly unit trains, often run through railway yards for direct delivery to destination terminals, while merchandise trains usually are received and sorted at railway yards prior to delivery of specific cars to receivers by local switch assignments. This different handling may explain much of the difference in placement time.
- Traffic arriving at destination towards the end of the week (Friday and Saturday) took 23 percent longer to be placed than traffic arriving all other days of the week. QGI notes that "it is highly likely that the majority of these delays are due to the railways needing to stage traffic on their own lines awaiting the opening of receiver facilities that do not accept railcars on weekends."
- Regarding cars released in blocks at origin by shippers, 42 percent of CN's and 38 percent of CP's cars did not arrive in a single block. The splitting of car blocks can cause logistical planning problems for shipper/receivers, especially if they are unplanned or occur without notice.

- Shipper and receiver loading and unloading times varied widely. Coal and grain had the lowest and most consistent loading and unloading times amongst bulk products. In merchandise, metal products, ores and concentrates had the highest transit times and most variable performance at origin and destination.

3.2 DESCRIPTION OF CANADA'S RAIL-BASED FREIGHT LOGISTICS SYSTEM

QGI Consulting prepared a report entitled *Canada's Rail Based Freight Logistics System*. It provides a profile of CN's and CP's rail systems and operations within a rail freight logistics setting. This includes a description of carload, intermodal and unit train services provided by railways to shippers. In terms of rail freight logistics, the report outlines key processes used to plan and provide rail service including: train planning and design; locomotive and car equipment; rail car order and distribution; shipment transaction processes; terminals; infrastructure; traffic control and interchanges.

The report describes the physical infrastructure and operational processes involved in planning and moving freight on railway networks and the relationships between railways and their customers in the efficient operation of the Canadian freight rail logistics system. The report notes that the interdependencies among railways, shippers and receivers require effective communication processes and collaboration.

The report describes critical interface activities at origin, in transit and at destination and the impacts that could result from system failures. At origin, problems mainly revolve around delivery of the right number of cars on a timely basis. While cars are in transit to destination, it is important for railways to communicate the estimated time of arrival (ETA) to receivers so they can plan receipt of the shipments. At destination, railways need to work closely with terminals to coordinate delivery and placement of

cars to ensure effective use of railway equipment and terminal facilities, avoid congestion and provide for effective and efficient port throughput.

3.3 ANALYSIS OF OPERATING PRACTICES

QGI Consulting prepared a report entitled *Analysis of Operating Practices* describing key operating issues, identified through a series of stakeholder interviews, that adversely impact service, system efficiencies and capacity. The consultant proposed solutions based

on the following pre-determined set of best practice supply chain characteristics that were used for the interview framework with stakeholders:

- mechanisms to communicate demand and capacity for planning operations;
- processes and communications to support day-to-day operations; and
- optimization of output at the most profitable level.

The issues identified and solutions proposed are summarized in Table 2 below:

Table 2: Summary of Key Operational Issues from Stakeholder Interviews and QGI's Recommendations to Address Issues

KEY OPERATIONAL ISSUE	QGI's RECOMMENDATIONS
1. Balanced accountability: Each supply chain partner should be responsible for the costs that its behaviour imposes on the system.	<ul style="list-style-type: none"> • The Agency should develop a set of rail service conditions to support balanced accountability. • Transport Canada should measure rail system logistics performance.
2. Operational cooperation and communications: Railways should do a better job of communicating the status of rail traffic and the ETA for local pick-up and delivery.	<ul style="list-style-type: none"> • CN and CP should measure their ETA accuracy so that both railways and customers can have a clearer picture of the accuracy of this important measure. • Interchange service agreements with shortlines should be subject to performance measurement. • CN and CP should measure performance of local switching services against planned day and switch windows for local service. • Railways should review and improve their ETA communication processes of loaded and empty cars/trains.
3. Customer service: Railways need improved processes for logging, escalating, responding to and resolving customer complaints.	<ul style="list-style-type: none"> • Transport Canada should institute an on-going railway stakeholder satisfaction survey. • CN should review how it responds to customer service complaints to improve its effectiveness in responding to customer service issues.
4. Ancillary charges: Railways need to improve administrative effectiveness and ensure fairness in calculating allowable free time for demurrage.	<ul style="list-style-type: none"> • Railways should implement processes to improve accuracy of demurrage administration. • Railways should consider revising demurrage systems to allow for more equitable calculation of free time to load empty cars.

Source: *Analysis of Operating Practices*, QGI Consulting, October 2009.

3.4 SURVEY OF SHIPPERS

NRG Research Group, in collaboration with the University of Manitoba Transport Institute, conducted a statistically representative survey of 262 shippers from across Canada during August-September 2009 through a combination of telephone calls and face-to-face interviews. The objective of the survey was to examine shipper satisfaction with the overall performance of the rail freight logistics system and to identify areas where service could be improved.

The overall results showed that shippers did not have a high level of satisfaction with service provided by CN and CP. Only 17 percent of the respondents rated their satisfaction as being a six or seven, based on a one-to-seven scale, with seven being very satisfied. Approximately 35 percent of shippers gave a rating of three or lower, while 45 percent of shippers indicated their satisfaction levels had decreased over the past three years. In terms of financial impact, 62 percent of shippers reported that they suffered financial consequences as a result of poor performance.

“It should be noted that customer satisfaction research usually encounters much higher top box frequencies in the range of 50% to 70%.”

NRG Research Group, *Survey of Shippers*, November 2009, page 3.

Most of the shipper dissatisfaction was linked to problems associated with:

1. reliability of car supply;
2. on-time delivery of cars at origin and destination;
3. timely pick-up of empty cars after unloading;
4. consistent transit times; and
5. responsiveness of railways to resolving operational problems.

As shown in Table 3 below, shippers served by multiple railways (43 percent of the survey population) have higher satisfaction levels than those served by one railway or with limited shipping alternatives. Approximately 23 percent of shippers with multiple rail options rate their service as very good. In contrast 14 percent of shippers with access to one railway with viable options (29 percent of respondents) rated their service as very good. For the remaining 28 percent of shippers served by one railway with limited or no transportation alternatives, only 11 percent reported being very satisfied with rail service.

Table 3: Comparison of Shippers' Satisfaction with Rail Service to Shipping Alternatives

SHIPPING ALTERNATIVES	Percent of respondents	Percent being very satisfied with rail service ⁽¹⁾
Access to more than one railway and having transportation alternatives	43	23
Served by one railway		
– With transportation options	29	14
– With limited or no transportation alternatives	28	11

⁽¹⁾ A rating by shippers of 6 or 7 on a 7-point rating scale.

Shippers in the survey were asked to provide suggestions for railways and other stakeholders that would improve customer satisfaction. For railways, suggestions included improved communications by providing more knowledgeable customer service representatives; greater consistency in transit times; and more rail cars to reflect demand. Approximately three-quarters of the shippers indicated that railways could improve the overall logistics system by increasing their infrastructure investments and hiring additional railway crews particularly for car switching. The shipper survey respondents indicated railways could provide better service if non-railway stakeholders expanded loading and unloading capacity, improved their infrastructure and provided better forecasts of their shipping needs.

3.5 SURVEY OF OTHER STAKEHOLDERS: TERMINAL OPERATORS, PORTS AND SHIPPING LINES

The survey of terminal operators, ports and shipping lines complemented the shipper survey by capturing views on similar rail service issues. This face-to-face survey was also conducted by NRG Research Group in collaboration with the University of Manitoba Transport Institute and involved a series of surveys and discussion guides. Senior staff members from 14 terminals, eight port authorities and six shipping lines operating in Canada were interviewed.

Satisfaction with rail service varies widely across and within these stakeholder groups. Terminal operators expressed some of the strongest opinions, both positive and negative, about their satisfaction with rail service. The terminal group rated rail service in

the three-to-five range (from a scale of one to seven, with seven being very satisfied). Port Authorities were the most satisfied group rating rail service from four to six. Of the six shipping lines interviewed, half were satisfied (rating of six) with the remainder giving scores of three or four.

Terminals reported that inconsistent rail service creates operational difficulties. Port authorities reported that poor cooperation between railways and other stakeholders, limits system efficiencies. All groups indicate there are no effective means to hold the railways to account when poor service results in adverse financial impacts for non-railway stakeholders.

Generally, this stakeholder group would like more timely delivery of the correct number of cars and better access to knowledgeable and helpful customer service representatives. They also suggest the need for more communications and transparency, including accurate and reliable information about railway operations, formal operating agreements with railways, and improved working relationships in a logistics system.

Other suggestions include the establishment of dedicated rail corridors to ports, particularly one in Vancouver similar to California's Alameda Rail Corridor; port-controlled railways to coordinate rail movements to and from ports; and an inland intermodal facility near the Greater Vancouver Area to alleviate congestion.

3.6 SERVICE ISSUES IN REGULATED INDUSTRIES OTHER THAN CANADIAN RAIL FREIGHT INDUSTRY

The report entitled *Service Issues in Regulated Industries Other than Canadian Freight Industry*, prepared by CPCS Transcom Limited, is based on a literature review supplemented by consultations with government officials in Canada and the United States, regulatory agencies, railways and stakeholder associations. The objectives of the research were to:

- describe the current LOS obligations contained in the *Canada Transportation Act* (sections 113-115) and how complaints about rail freight service are addressed in Canada (section 116);
- describe similar level of service obligations, if any, in the United States for rail carriers, Canadian air, water and pipeline (oil and gas) carriers and other regulated service providers in Canada including hydro, cable and satellite television and telephone companies; and
- assess whether service level obligations and remedies in other industries may be usefully applied to Canadian railways.

The terms of reference for the study did not require an examination of the effectiveness of the current LOS obligations, nor did it look at whether they were sufficient to ensure Canadian federal railways provide adequate and reasonable rail service.

In addition to the regulatory focus, the consultant discusses several commercial mechanisms used elsewhere to address service issues in rail freight.

The research compares level of service regimes in both Canada and the United States. In both instances, statutory provisions are in place to provide for formal filing of complaints with regulatory agencies and regulatory provisions for pursuing issues through mediation and arbitration. In Canada, shippers have access to regulated final offer arbitration, while in the United States, the mechanisms include an informal complaint process administered by the Surface Transportation Board.

Confidential contracts are permitted in both countries. In the United States, the Surface Transportation Board can exempt commodities from regulation if it believes it serves a public interest – that is to say, if the transportation market for certain commodities and types of traffic is sufficiently competitive that regulatory oversight is not necessary. Shippers exempt from regulation also have access to the Board's informal complaint process. In the United States, the National Grain and Feed Association has a unique arbitration agreement with the railway industry. In Canada, CN and CP have commercial dispute resolution processes available to their customers.

The consultant's main observation was that none of the regulatory regimes examined in Canada and the United States was found to be clearly superior to the regime of regulating level of service for Canadian freight services.

CHAPTER 4



4. KEY ISSUES AND SOLUTIONS IDENTIFIED BY STAKEHOLDERS

The Panel received submissions from 141 stakeholders, as summarized in Table 4.

Table 4: Stakeholders Providing Submissions

Stakeholder Group	Number of Stakeholders
Railways (Class I and shortlines)	4
Shippers	50
Associations and organizations	33
Terminals, ports and transloaders	18
Shipping lines	2
Governments (provincial and municipal)	29
Others	5
Total	141

The Panel also held face-to-face consultation meetings with 85 stakeholders from various sectors in Canada, including CN and CP, 30 rail shippers, 16 terminals/transloaders/ports, 15 shipping lines and 18 associations/organizations. As a result, the Panel was presented with a wide variety of issues and proposed solutions. Most of the issues raised clearly fell within the Panel's terms of reference, but some did not.

In this chapter, the Panel identifies and discusses key issues, impacts and proposed solutions raised by stakeholders that fall within its mandate. In this regard, the first part of this chapter deals with key issues and solutions raised by non-railway stakeholders.⁹ The second part deals with issues and solutions raised by the railways.

Other issues, including those the Panel considered outside its mandate, are addressed in Chapter 7.

4.1 KEY ISSUES IDENTIFIED BY NON-RAILWAY STAKEHOLDERS

The Panel has grouped key issues raised by non-railway stakeholders into the following categories:

- Competition/ railway market power;
- Railway resource levels;
- Railway service;
- Railway customer service (communications); and
- Sustainability.

⁹ These include shippers, terminals, transloaders, shortlines, ports, associations and governments that provided submissions.

4.1.1 COMPETITION/ RAILWAY MARKET POWER

Non-railway stakeholders argue that the rail freight industry in Canada is not a normally functioning competitive market, and that this often results in a significant imbalance in negotiating power between non-railway stakeholders and the railways. Furthermore, non-railway stakeholders believe the current shipper protection provisions in the CTA are insufficient to address service issues.

Stakeholders note that competition is lacking and, as a result, railways have:

- unilaterally imposed rate increases and/or new charges such as increasing freight rates beyond the rate of inflation during the recent economic slowdown;
- imposed fuel rate surcharges beyond fuel cost increases; and
- increased or implemented ancillary charges, often for services that were previously covered in the freight rate such as charges for temporary storage, movement of private cars and excessive rate surcharges for products shipped in tank cars.

With respect to rail service, shippers note that:

- service is often poor. For example, railways often fail to meet shipper demand on a timely basis;
- railways change switching service without notice;
- shippers have to adjust their operations to meet railway requirements, rather than vice-versa;
- shippers using private fleets have had to increase fleet sizes because of deterioration in railway car cycle times;
- railways are not subject to the consequences of poor service;
- the negotiation structure is not balanced; and
- rail and shipper records do not correspond, which leads to disputes over charges.

Shippers argue that if there were meaningful competition, railways would adjust their operations to meet customer demand, or at least negotiate service conditions to the mutual benefit of both parties. For these reasons, many shippers and other non-railway stakeholders are calling for more regulations to adjust the competitive balance between railways and their customers.

“Rail freight is not a normally functioning competitive market and this is the fundamental issue underlying all the price and service problems encountered by rail shippers.”

April 28, 2010 submission to the Panel from the Canadian Industrial Transportation Association, page 16.

Summary of impacts:

Railway market power and the lack of competition contribute to other major issues, such as inadequate resource levels, poor service and poor customer service/communications.

4.1.2 RAILWAY RESOURCE LEVELS

Railways are responsible for the critical task of determining the level of resources available to respond to shipper demand. This includes annual decisions and updates on resource planning to establish a “base” level of resources to move traffic – equipment, locomotives, crews and support staff. The base resource levels must take into consideration the need for contingency capacity to address short-term market surges and seasonal traffic, and to facilitate recovery from main-line disruptions. Unanticipated shipper volumes and poor planning by all parties can place extreme pressures on a railway system, especially when there are resource shortages. In addition to planning for base resource levels, railways also make short-term decisions on when to remove and re-deploy resources, such as when to store cars.

Railway decisions are based on commercial considerations. Some shippers believe there is a financial incentive for the railways to under-supply resources. This does not mean that all shippers expect the railways to respond to 100 percent of short-term demand at all times, since this could mean that significant volumes of railway assets would sit idle during off-peak periods. Nonetheless, shippers believe that the railways’ resource levels are lower than they would be if normal functioning markets existed.

Summary of impacts:

Inadequate resource levels can lead to poor service and a breakdown in communications (poor railway response to shipper concerns), the cost of which is often borne by the shipper.

“The railways have a natural incentive to keep car supply to their level of optimal utilization (minimum cost, maximum revenue). With the relative inelastic nature of car supply and the variable nature of demand for railcars (a function of the variable demand and highly competitive environment of world commodity markets) the railways currently pass on the risk of car supply beyond a minimal level onto shippers. Historically, the level of this car supply tended to be at only a portion of the shipper demand, given

- (a) the lack of competitive alternatives available to shippers,*
- (b) the consequential reality that the railways will get the business sooner or later,*
- (c) the accountability the railways have to shareholders to keep costs down and profits up in a system unencumbered by balanced legislation or effective competition, and*
- (d) because they can – there are no effective legal or financial consequences.”*

April 30, 2010 submission to the Panel from the Western Grain Elevator Association, page 3.

4.1.3 RAILWAY SERVICE

Shippers indicated that railway market power and resource levels ultimately lead to problems with railway service. Stakeholders identified a wide variety of service issues – mostly related to consistency, reliability and lost opportunity.

First mile / last mile

Throughout the review process, the most frequently raised concerns from shippers and other non-railway stakeholders were related to origin and destination activities, often referred to as “first mile / last mile” issues.

Examples of first mile issues include:

- poor order fulfillment – failure to spot the right number of cars at the right time in which shippers complain that not only do railways fail to supply the number of cars that shippers request, the railways fail to spot the number of cars they have committed;
- frequency of service that is inadequate;
- inconsistent and inadequate switching and inappropriate switch windows;
- failure to provide timely and accurate updates to ETAs, which limits the ability to mitigate adverse impacts from delays in train arrivals;
- equipment that is in poor condition or not the right type; and
- failure to pick up loaded cars on a timely basis.

Last mile issues include:

- failing to deliver cars on a timely basis;
- presenting the cars out of sequence;
- splitting cars that were loaded for delivery into bunches;
- failing to provide timely and accurate updates to ETAs (required to mitigate adverse impacts from delays in train arrivals); and
- failing to pickup empty cars on a timely basis.

Car movements between first mile and last mile are also an issue. Inconsistent transit times make it difficult for shippers to plan logistics, especially labour, and may require additional trackage or storage capacity at origin or destination locations.

Summary of impacts:

Poor service can have broad impacts, including lost sales, discounted pricing, ocean vessel demurrage, sales contract penalties, idle/underutilized labour and equipment, increased operational costs, additional capital costs for on-site sidings/storage requirements, and inefficiencies from reduced system fluidity.

Intermodal issues

Canada’s intermodal system is part of a very competitive global supply chain. Canadian ports and corridors compete with United States ports and corridors for traffic. Shipping lines can shift traffic volumes between ports of call based on relative changes in logistics costs or service. Canadian ports have been quite competitive in retaining and growing their share of domestic import and export traffic. It is essential that all players in the supply chain provide efficient and reliable services to preserve domestic inbound and outbound traffic and to grow other North American business.

While shipping lines, terminals and transload operators had similar first mile/last mile issues as discussed above, they also raised additional issues.

In order to optimize asset utilization, the railways prefer an even flow of intermodal cars to and from terminals. Shipping lines note that the import business does not operate at a constant level, with the result being that the flow of import containers is not compatible with the railways’ balanced operating model. Shipping line representatives have told the Panel the railway model needs to adapt to the import business to better match car supply with cargo demand. In addition, variability in vessel arrivals, due mainly to ocean weather conditions, creates

issues with car supply. This is compounded if vessels end up arriving in bunches. The railways' pursuit of "balance" is the root of the issue and one of the factors affecting container dwell times, a key metric for the railway/terminal/vessel interface at port.

Stakeholders also identified several issues with inland terminal operations. Exporters from inland locations can either source load (load containers at origin) or transload containers—ship product to a transload facility near the port and have the transload facility stuff and deliver containers to intermodal container terminals.

Source loading issues include:

- lack of available empty containers (particularly in Saskatchewan, Manitoba and the northern parts of Alberta and British Columbia);
- challenges in re-positioning empty containers from surplus locations (eastern Canada, for example) to where needed (in the Prairies, for example);
- the railways' practice of no longer storing empty containers at inland terminals shifts costs to ocean carriers for storing containers off-site and increases costs to shippers for additional drayage; and
- reduction in the hours of operation for inland terminals, which affects the number of daily truck hauls a shipper can make to deliver loaded containers.

Summary of impacts:

All three players – shipping lines, terminals and railways – can adversely affect dwell times which, in turn, can affect the competitiveness of the container business in Canada. Lack of access to containers in a timely manner also creates major problems for shippers. Issues related to source loading adversely affect the ability of some shippers to compete in certain markets. However, the Panel is convinced the source loading issue is a market-based problem and is not attributable directly to systemic problems within the rail-based logistics system.

4.1.4 RAILWAY CUSTOMER SERVICE (COMMUNICATIONS)

Most non-railway stakeholders raised issues related to customer service and, in particular, communications. Issues include: lack of notice regarding service changes; lack of notice in changes in ETAs; unfair application of demurrage charges and inaccurate billing; and generally poor responsiveness to customer complaints. Non-railway stakeholders claim the railways, especially CN, need to significantly improve their communications with shippers and other stakeholders. The railways have acknowledged this point, in particular CP with respect to small shippers.

"For both railways, many customers were frustrated with the railways' failure to provide feedback on the railways' available capacity and capability with respect to rail car supply, bulk train capacity, intermodal slot and train capacity and overall network capacity."

QGI Phase I Research Report dated October 2009 and entitled *Analysis of Operating Practices*, page 10.

Service changes

The railways' failure to provide notice and consult with shippers and receivers on significant service changes, such as changes in switching service, is a major issue for shippers and other non-railway stakeholders. These arbitrary changes by the railways ultimately affect the operations of non-railway stakeholders with consequential financial implications. Examples provided included the lack of consultation and notice when CN suspended rail service to container terminals in Vancouver and when CN provided no notification of late and missed switches in the North Vancouver area. Concern was also raised with the Panel regarding the lack of communication when CN reduced intermodal service to Halifax from two trains per day to one.

ETAs

Shippers and receivers generally plan operations and crews around the expected arrival of trains/cars. This can be based on usual railway service, or on ETAs provided by the railway. In either case, unexpected changes in service delivery frequently occur for a number of reasons, many of which are beyond control of the railway. Many non-railway stakeholders complained that the railways too often do not provide notice when the planned delivery is delayed. If the stakeholder had received sufficient notice, remedial action could have been taken, in most instances, to mitigate the impact of the service failure. This might include rescheduling crews, working other business, or making alternate transportation arrangements.

Demurrage, ancillary charges and inaccurate billing

CN's demurrage charges were a lightning rod for many shipper complaints early in the Panel's process. Demurrage charges are set out in railway tariffs that govern the use of rail cars beyond a specified free time. There were significant shipper complaints regarding how CN applied its demurrage charges and, in particular, the accuracy of CN's bills. Many stakeholders incurred additional staff costs to keep track of CN's demurrage and to challenge bills. Less significant complaints were also received on CP's demurrage practices.

General responsiveness to customer complaints

Shippers and other non-railway stakeholders also argue that railways are not as responsive as they should be when issues or concerns are raised. This includes providing non-railway stakeholders with clear points of contact with the authority to address issues, and an efficient escalation process to elevate issues that cannot be addressed at the first point of contact.

Improving communications should be a relatively low-cost and high-return remedy for addressing customer service issues. Most stakeholders believe it would go a long way to addressing communications issues if the railways hired and trained more people and empowered them to make decisions. Many of the other potential solutions put forward under the review would lead directly or indirectly to an overall improvement in service and a corresponding improvement in communications. More effective communications can facilitate discussion and resolution of day-to-day operational issues and minimize the number of problems that arise.

Summary of impacts:

Poor customer service and poor communications contribute to deterioration in relations, system inefficiencies and increased system costs.

4.1.5 SUSTAINABILITY

Throughout the submission and consultation process, the issue of sustainability was a concern for virtually every stakeholder. Stakeholders recognize that the railways have undertaken several key initiatives since the beginning of 2010 to address service issues. However, many are of the opinion that once the "light" of the Freight Service Review Panel is gone, there is no assurance the railways' current initiatives and recent service improvements will continue. Conversely, the railways argue that their recent initiatives are deep-rooted and, more importantly, consistent with their commercial interests going forward.

4.2 KEY SOLUTIONS IDENTIFIED BY NON-RAILWAY STAKEHOLDERS

Stakeholders submitted many proposed solutions to the issues they identified. The Panel has grouped the key solutions raised by non-railway stakeholders into the following categories:

- More competition;
- Service agreements;
- Performance measures, reporting, standards and penalties;
- Commercial dispute resolution (CDR); and
- Sustainability.

4.2.1 MORE COMPETITION

As discussed previously, many non-railway stakeholders identified the railways' market power as the primary reason for service issues within the rail-based logistics system. Nonetheless, there were only a few proposals to directly increase railway competition. Those proposals identified a number of ways of allowing more than one railway to operate over existing rights-of-way, including:

- implementing the 2001 recommendations of the CTA Review Panel on expanded running rights, including traffic solicitation rights;
- promoting public-private partnerships with regard to infrastructure or having the railways split their corporations into separate infrastructure and train-operating entities;
- establishing a Crown corporation to obtain control of tracks, which would open up the system to multiple users;
- encouraging public ownership (possibly through public/private partnership) of the low-volume lines, with running rights given to all railway companies; and
- extending interswitching zones and increasing the number of zones to ensure that a shipper captive to a single federal railway has access, at a regulated rate, to another railway at the interchange of the shipper's choice.

“Many other stakeholders, including some shippers, expressed concern about the adverse impacts of expanded running rights on railway investment, operational efficiency and safety, and the potential impact on traffic through major corridors such as the Asia-Pacific gateway and corridor.”

Extract from the February 2007 Issue Paper on Running Rights prepared for the House of Commons Standing Committee on Transportation, Infrastructure, and Communities when it considered Bill C-58, proposed amendments to the shipper protection provisions.

The Panel notes that most stakeholders suggested that service issues be addressed by less direct measures, such as penalties and commercial dispute resolution aimed at rebalancing the relationship between railways and others stakeholders, as discussed below.

4.2.2 SERVICE AGREEMENTS

Some stakeholders have suggested that poor service and the lack of railway accountability be addressed through service agreements that would establish roles, responsibilities and obligations between railways and stakeholders. Most of the suggestions came from terminals, ports and shipping lines, and most were focused on the rail services provided for import container traffic. Terminal operators and shipping lines interact operationally with railways, but do not have any formal mechanisms to clarify roles and responsibilities between themselves and the railways – except for shipping lines when they are shippers.

Ports and terminals suggested that railways, upon request, be required to enter into good faith negotiations with them to establish service agreements. Several submissions advocated service agreements between shippers and railways. Some stakeholders suggested that if agreements could not be reached and/or if there were no meaningful

improvements in rail service over a period of time (two years, for example), then government should amend the CTA to compel railways to enter into such agreements. Other stakeholders recommended that legislation be changed immediately.

Although there are subtle differences among submissions, the framework for service agreements includes:

- defining service obligations and expectations of each party, for example, switching frequency;
- establishing KPIs, including the possibility of performance standards or benchmarks;
- collaborating on data systems to improve accuracy and predictability;
- establishing communication protocols to share operational information;
- creating a framework/protocol for addressing service changes;
- prescribing an escalation process to resolve disputes; and
- specifying consequences, including financial penalties, for not meeting KPI benchmarks/standards.

Some submissions recommended bilateral agreements between railways and terminals should be supported by complementary agreements between shippers and railways to ensure consistency of service delivery among parties in the supply chain.

There was a suggestion that “boiler plate” service contracts be developed between small shippers and railways and between ocean carriers and railways. These would define relationships and include service standards against which performance on all sides could be measured. The shipping lines also recommended that the CTA be amended to provide for port/terminal service agreements with the railways that would be developed through a consultative process among the parties.

4.2.3 PERFORMANCE MEASURES, REPORTING, STANDARDS AND PENALTIES

A number of stakeholders believe that performance measures, reporting, standards and penalties are a means of improving transparency and accountability within the rail-based supply chain which would, in turn, lead to better system performance.

Performance measures and reporting

A large number of stakeholders have called for, as a minimum, improved reporting on performance measures, mostly by the railways. Improved performance reporting could be used to identify problems and solutions and could be used by shippers as input in determining whether or not to file LOS complaints.

Performance reporting can be at two levels. The first level is confidential reporting between two commercial partners. In the case of railways and individual shippers, confidential bilateral reporting would include basic KPIs related to such things as order fulfillment and switching performance at origin, transit times, ETAs and switching performance at destination. The second level is KPIs aggregated at a sector/commodity group, car type and/or regional level. The KPIs could include data related to car supply as well as aggregated data on order fulfillment, transit times, ETAs and performance at destination.

The KPIs would be used by individual shippers to track the performance of their traffic for operational reasons, to identify problems to be resolved bilaterally with railways, and to compare performance relative to all other shippers in their sector and to the overall performance of the railways. Furthermore, this type of data could also be used to support LOS complaints. The aggregated data would also enable the government and industry stakeholders to monitor changes in performance over time and could help identify problem areas from a policy perspective. Similar KPIs are being established for performance at terminals and ports through collaborative agreements and memorandums of understanding.

Some stakeholders have suggested that increased transparency regarding railway operations would also result in greater accountability by the railways, as they would be motivated to manage those KPIs.

Performance standards

Many non-railway stakeholders believe that performance measures and reporting should include pre-established standards to define responsibilities, expectations and consequences of non-performance.

These non-railway stakeholders recommended the establishment of service standards for all system participants, including the railways, ports and terminal operators. The standards would become benchmarks against which the performance of individual stakeholders and the overall system could be measured.

Ports and terminals generally recommended service agreements as a way to establish level of service standards. The service agreements could contain key performance metrics and standards.

Many stakeholders see standards as a way of making the railways and others more accountable, especially if penalties were to be applied for not meeting standards.

Monitoring

Many non-railway stakeholders who raised the need for high-level performance measures also felt that government should monitor rail service performance either directly or through a third-party monitor or ombudsman. Depending on the model selected, this oversight body could undertake a variety of roles, from collecting data and reporting on performance measures, to setting and/or monitoring standards or even to setting and/or monitoring penalties. The monitor could potentially give advice to the government or the Agency on level of service issues, conduct investigations of rail service and resolve disputes between parties.

Penalties

The establishment of a performance-based penalty system is seen by many non-railway stakeholders as an important tool for providing shippers more leverage in obtaining more consistent, reliable and predictable rail service. They point to the railway penalty tariffs that are designed to provide incentives for good shipper behaviour as a successful model.

A number of penalty-related notions have been raised:

- reciprocal penalties to offset demurrage or other ancillary charges;
- expanded Agency powers to launch investigations on its own motion, including the authority to award penalties and damages;
- a third-party monitor to set standards and administer penalties;
- penalties in service agreements; and
- administrative monetary penalties for major service failures.

4.2.4 COMMERCIAL DISPUTE RESOLUTION

In addition to the CTA shipper protection provisions, shippers and railways have the option of using commercial dispute resolution mechanisms. Commercial mechanisms can be quicker, less expensive and less confrontational than regulated remedies or court proceedings. As such, interest in the use of commercial dispute resolution mechanisms is growing within Canada.

In 2007, the CTA was amended to give the Agency the authority to conduct mediation and/or arbitration under commercial processes in order for parties to use the Agency's expertise under commercial dispute resolution processes, if they so decided.¹⁰

¹⁰ Sections 36.1 and 36.2 of the *Canada Transportation Act*.

In 2006, significant progress was made on developing a commercial dispute resolution (CDR) process between the railways and the Canadian Fertilizer Institute (CFI). The main goal of these discussions was to “develop an effective, balanced, timely and low-cost commercial dispute-resolution model that could be used by CFI member companies and the railways to resolve problems respecting both line-haul freight rates and the freight services provided by the railways...”¹¹ Although there was progress, some railway-specific differences did exist. CP initially agreed to apply CDR to service disputes on movements over CP lines between Canada and the United States, but did not want CDR applied to rates on those movements. CN initially agreed to allow CDR for line haul rates over all CN local and joint lines within Canada and over local CN lines within the United States. However, it refused to extend CDR to service disputes related to those movements. In the end, CP discontinued consultations and CN followed suit as a result of the proposed application of the process to movements into the United States.

“It is critical that any CDR be a voluntary process requiring the agreement of both parties. A truly neutral, effective and timely resolution process should have no difficulty attracting willing participants.”

April 30, 2010 submission to the Panel from the Coalition of Rail Shippers, page 6.

Notwithstanding the breakdown in negotiations on a CDR process, both railways unilaterally posted CDR “agreements” on their websites in early 2007. However, there was little, if any, interest from shippers, who did not believe the railways’ CDRs were appropriately balanced. The railways eventually removed the agreements from their websites. Both CN and CP have recently re-posted CDR agreements similar to those presented in 2007.

An effective CDR process requires broad acceptance both by railways and non-railway stakeholders. Some stakeholders suggested the government should encourage and facilitate discussions between the railways and shipper groups to negotiate a mutually acceptable framework to resolve disputes on service issues. Many stakeholders believe that a commercially negotiated solution will not be reached and have instead suggested regulations to establish a more effective, more timely and less expensive dispute resolution mechanism than the final offer arbitration process contained in the CTA.

4.2.5 SUSTAINABILITY

Non-railway stakeholders prefer that solutions be sustained through legislation and/or regulation. While legislation and regulations can be changed over time, this is generally viewed as the strongest approach to sustainability. The submissions from most non-railway stakeholders support, or imply support for, regulatory solutions. Many stakeholders have difficulty with a commercial approach that essentially relies on trusting the railways – unless there is some type of regulatory fallback.

¹¹ Larson, Roger. “CFI Submission to the Rail Service Review Panel,” April 30, 2010.

4.3 KEY ISSUES AND SOLUTIONS IDENTIFIED BY CN AND CP

Both railways feel that the current market-based policy framework works well and continues to achieve good results. Furthermore, CN and CP claim that based on the existing level of intermodal and intramodal transportation competition, the existing CTA provisions and current railway initiatives, there is no need for additional railway regulation.

The railways have admitted to service problems over the past several years, and have indicated they are addressing them. They also argue that service failures are not always the result of poor rail service, but can be attributed to the behaviour of other players in the system or circumstances beyond anyone's control. The railways believe they should not be solely responsible for acquiring, constructing and maintaining the freight logistics system's capacity to handle surges or contingency situations.

Examples of system failures, identified by the railways as beyond their control include:

- difficulty loading traffic onto vessels due to rain, high winds, or other weather-related factors;
- broken equipment – conveyors, for example – used for loading or unloading at origin or destination;
- labour shortages and/or issues at shipper or receiver facilities; and
- vessel delays/bunching.

System failures at ports can be particularly problematic, since they can lead to congestion and delays in returning empty cars for subsequent movements. In addition, some smaller receivers at port do not have sufficient business to warrant seven-day operations. This can contribute to inefficiencies, such as weekend congestion in railway yards.

The railways indicate that they continue to promote the development of agreements and contracts with key stakeholders, as demonstrated by the recent CN/TSI Terminal Systems Inc. service level agreement,

CN/Port Metro Vancouver collaboration agreement, CN/Halifax Port Authority supply chain agreement and the CP/TSI Terminal Systems Inc. productivity and performance agreement.

With respect to sustainability, the railways prefer an approach that relies on “commercial forces” rather than the implementation of new regulations. The commercial approach acknowledges that the railways are changing their policies and practices and will continue to change them to address service issues.

Variability in vessel arrival times for intermodal traffic

Both railways raised the variability in vessel arrival times for import containers as an issue that impacts railway operations and affects rail service. Railways noted that railway operations are affected by late vessel arrivals (due either to weather or, more recently, to slow-steaming) and by vessel bunching (caused by late vessel arrivals and/or vessel berth windows that tend to be concentrated during the week). In addition, the seasonality of the import business in containers creates the variable demand for railway equipment. This variability leads to challenges for the railways' operating model that attempts to balance the flow of inbound and outbound traffic for railway efficiency reasons.

A related issue for railways is the accuracy of freight container forecasts beyond two weeks. The railways believe improved forecasts would help them better manage their intermodal fleets. Railways have been working with port authorities and shipping lines to improve this forecasting element.

Summary of impacts:

Seasonality in demand is a known characteristic of the import business. This creates challenges in matching container volumes to rail resources. Variability of vessel arrivals related to operational factors of the shipping lines and the variability of rail car arrivals at port should be bilateral issues to be resolved between railways and shipping lines.

4.3.1 CN'S PERSPECTIVE ON ISSUES

CN believes that service-related issues are best dealt with on a commercial basis and that there is no need to increase regulations.

CN states that it has evolved significantly as a company since the early 1990s. Among other things, it has made significant acquisitions, as well as significant investments in infrastructure. It has also been a leader in innovative changes, such as precision railroading and the scheduled railway concept. These changes have resulted in major improvements in railway efficiency. CN acknowledges in its submission that changes were often implemented without adequate consultation or transition periods. This, in turn, "has been a significant source of customer dissatisfaction." CN also acknowledges that service improvements achieved over the last 10 years were not applied uniformly.

CN believes the QGI findings support the conclusion that there is no market structure issue that needs to be addressed, primarily because there is no evidence of discrimination in service delivery. CN also claims that two-thirds of its traffic originates at locations served by a second railway and that the majority of the remaining traffic benefits from competition provided or influenced by trucking alternatives.

CN states that "railways cannot be expected to provide the buffer required to fulfill all of the cars requested by customers at all times, as each participant's own performance has a direct impact on the availability of empty cars."

CN submission to the Panel, April 30, 2010, page 12.

4.3.2 CN'S PERSPECTIVE ON SOLUTIONS

CN believes that balanced accountability is key to the success of well-functioning supply chains, because the responsibility for performance rests with all participants, not just with railways. In CN's view, the logistics system is best served by relying on normal commercial incentives to drive discipline and innovation. Overall, CN believes the move to deregulate the rail sector has been highly successful and that there is no justification for re-regulation.

CN would like the Panel to encourage all players in the supply chain to work seven days a week, volumes permitting. CN believes this would be a good first step to improving customer service and system reliability. In addition, CN feels that penalties should not be imposed only on the railways, given the significant interdependence of stakeholders regarding effective service performance within the complex logistics supply chain.

"The bottom line is that with a robust regulatory regime already in place, the clear absence of discrimination across various traffic categories, and with CN's commitment to implement structural and lasting service improvements in the quality of the interface with its customers, there is no need to impose new regulations or to institute impractical oversight and penalty regimes that would arbitrarily target the railways in Canada."

CN submission to the Panel, April 30, 2010, page 3.

4.3.3 CN'S RECENT INITIATIVES

CN admits that some changes are required and is implementing a number of initiatives to improve service. CN's submission included the following major initiatives:

- *Improving empty car supply processes* through changes to its Guaranteed Car Order Program. This would aim to improve order fulfillment performance and allow customers more flexibility when placing car orders. When CN is unable to meet its guaranteed empty car supply, shippers will have the option of re-ordering the rail cars the following week. CN has implemented a scheduled grain service covering 95 percent of weekly grain traffic, and is phasing potash and other bulk products to a scheduled service plan. The scheduled grain service includes a strategic pool of empty cars at key locations to offset the variability of empty returns from ports.
- *Pursuing better first-mile and last-mile results* through improved switch window performance and better ETA accuracy at origin and destination. CN is developing a new performance scorecard with key metrics for customers, and improving notification processes for service changes (five day notice) as well as for planned service disruptions.
- *Improving demurrage rules and billing processes* through comprehensive rule changes to deal with bunching, placement outside the switch window and starting the demurrage clock only after cars have arrived at the serving yard at destination. CN is also improving reporting and billing accuracy through better audits and website developments.
- *Improving customer service and issues resolution* by conducting a complete review of customer service activities; developing a better process around issues escalation; improving its Customer Service Satisfaction Survey; and, implementing Marketing & Sales organizational changes to enhance customer relations and deploy senior people closer to customers.

4.3.4 CP'S PERSPECTIVE ON ISSUES

CP contends that the majority of shippers today have effective modal and intermodal competitive choices to address their shipping needs plus, as a fallback, remedies in the CTA to address rate and service issues.

CP asserts that confidential contracts govern more than 75 percent of its business. In addition to covering rates and charges, such contracts set out railway obligations including:

- routings;
- service parameters;
- commitments related to equipment; and
- first-mile and last-mile service.

The contracts also contain a CDR process if shippers want to contest service-related issues. Furthermore, CP indicates that a substantial portion of its tariff business is subject to joint accountabilities such as those set out for grain shippers, who account for the majority of its tariff traffic. CP argues that it would be very difficult, inefficient, time-consuming and inappropriate to implement a system of penalties to address non-weather-related operational failures, given the difficulty in determining fault in the complex logistics system.

CP indicates that it is committed to resolving disputes quickly, fairly and in an enduring fashion via its CDR program. CP commits to undertake a communications strategy to raise shipper awareness of its CDR program. CP contends that it is unrealistic to expect that terminal operators and railways should have contractual agreements to cover performance expectations/accountabilities, given the complexity caused by the multiple players involved. Nonetheless, CP commits to maintaining strong ongoing relationships with non-shipper supply chain members through the establishment of written accords with key players. These would set respective expectations, performance, monitoring and communication protocols.

CP indicates it is committed to improving the workings of the logistics supply chain and illustrates this through its involvement with the government-sponsored Asia-Pacific Gateway and Corridor Initiative.

4.3.5 CP's PERSPECTIVE ON SOLUTIONS

In its submission, CP indicates that the Panel should acknowledge/recognize/recommend the following:

- the importance of confidential contracts as a tool, where appropriate, to ensure that parties meet their respective obligations;
- the importance of other supply chain parties in the rail-based system and the role railways can play in entering into collaborative working accords that set out expectations, performance, monitoring and communications protocols for each party;
- that the strengths and successes of the collaborative best practices (assessment of supply chain processes and implementation of improvements, winter planning, performance tables, and infrastructure improvements) which are integral to the Asia-Pacific Gateway/Corridor Initiative should be extended to address other supply chain issues when they materialize; and
- that a collaborative effort be undertaken to more fully utilize supply chain capacity and that 24/7 operations should be the standard business practice for supply chain participants.

4.3.6 CP's RECENT INITIATIVES

CP noted that it is pursuing the following major initiatives to improve service:

- improving “last mile” performance by commencing selected yard reliability programs, starting with Winnipeg;
- enhancing supply chain collaboration by entering into working accords with supply chain partners, including terminals. These delineate respective expectations, performance, monitoring and communications, with the goal being to increase overall visibility on elements of active cooperation;
- expanding the use of regularly scheduled supply chain sessions with all major customer segments to discuss service parameters, performance and agreed-upon service improvements. These would take place on a semi-annual basis subject to agreement from other supply chain partners;
- ensuring qualified customer service representatives continue to be available to customers;
- developing a tailored communications approach for smaller customers to enable them to better communicate with CP and to meet the specific needs of employees in smaller organizations trying to effectively and efficiently deal with a large company like CP; and
- increasing the use of technology by staff, for example, the recent deployment of automatic inventory reporting tablets to increase the accuracy and timeliness of demurrage administration.

“Any proposals to increase regulation at this time would have a negative impact on the rail supply chain. In a competitive market, the revenues earned by a railway must be sufficient to attract the capital needs for operating expenses, replacement of existing infrastructure, and needed equipment, technology, and demand-driven capacity expansions.”

CP submission to the Panel, April 30, 2010, page 2.

4.4 CONCLUSION

In conclusion, most stakeholders have acknowledged that there have been some recent improvements in rail service, especially by CN. Some of these stakeholders, however, attribute the service improvements to the reduced demand for railway service relative to the booming economy of a few years ago as well as to the Panel's presence, which has motivated the railways to be on their best behaviour pending completion of the review. Most shippers also acknowledge that more needs to be done to address their service concerns. The vast majority of other stakeholders who have commented on this issue feel very strongly that legislative amendments are required to ensure rail service improvements continue and are sustainable.

Both CN and CP believe that, taking into consideration their recent service initiatives and plans for further improvements, there is no need for additional regulation.

CHAPTER 5



5. CONSIDERATIONS

The Panel received comments from stakeholders on a broad range of issues and potential solutions. This chapter describes the key considerations that guided the Panel in developing its draft recommendations.

5.1 IMPORTANCE OF EFFECTIVE SUPPLY CHAINS AND BALANCING STAKEHOLDER INTERESTS

An effective supply chain is critical to meeting the government's objectives related to strategic gateways and trade corridors and to help shippers compete in domestic, continental and international markets, thereby strengthening the country's economic performance. Most shippers face strong competition for their products in the markets they serve.

The sectors that use rail contribute significantly to the Canadian economy. For example, an October 2009 report, prepared by the Policy and Economic Analysis Program of the University of Toronto's Rotman School of Management, estimated that four key Canadian bulk shipping industries (oilseed & grain farming, coal mining, wood products manufacturing, and pulp & paper and paper products manufacturing) contribute over \$81 billion to Canadian gross domestic product each year and account for close to one million jobs. These and other sectors need efficient, effective and reliable rail service.

Railways are an important contributor to a healthy Canadian economy. In 2008, the railway industry employed over 34,000 people. The Class I railways (CN and CP) carried approximately 247 million tonnes of freight in 2008 and had revenues of \$9.9 billion. In 2009, CN and CP invested over \$2.1 billion in capital programs for track, signals, sidings, locomotives and railcars.

There is no disputing that financially viable railways are critical to the success of the Canadian economy. Railways need sufficient revenues to maintain and improve existing rail services and to invest in additional capacity (infrastructure, equipment and crews) in order to respond to the current and future needs of shippers. It is important that the railways' financial success be attributable to commercial factors and not dependent on government subsidies. At the same time, it is not healthy for the economy if the railways' success comes at the expense of shippers who suffer through poor and unreliable service.

In developing its recommendations, the Panel considered the need to balance the interests of various stakeholder groups, including the overall interests of the Canadian economy.

5.2 COMPLEXITY OF THE RAIL-BASED LOGISTICS SYSTEM

The rail-based logistics system is complex and involves a range of stakeholders, including shippers, railways, terminal operators, transloaders, ports, shipping lines and trucks. As a result, there is a broad range of variables affecting efficient and reliable service, some of which are under the control of railways and others under the control of shippers, receivers/terminals and shipping lines. There are also other factors beyond anyone's control such as disruptions related to severe weather or accidents.

The rail portion of the logistics system is, by itself, quite complex. For example, CN and CP operate nearly 1,300 trains a day. These serve hundreds of customers and their work involves the planning, scheduling and management of approximately 2,000 train crews, 3,000 locomotives, and 200,000 rail cars. In 2009, there were approximately 28,000 route-miles of track in Canada, about 75 percent of which were owned or leased by CN and CP. CN and CP have to coordinate their operations with other railways, including 49 shortline operators, with whom they interchange approximately 10,000 cars a day. In addition, the railways have to coordinate their activities with other logistics partners, including shippers and receivers, ports, terminals and transloaders.¹²

"...when cars are assembled in blocks and then into trains they can move efficiently according to the plan that placed them in these blocks. However, when an individual car falls behind schedule there are few meaningful opportunities for railways to recover the performance of that car."

November 2009 QGI report entitled *Description of Canada's Rail Based Freight Logistics System*, page 6.

In developing its recommendations, the Panel recognizes that in a complex supply chain, it is inevitable that operational problems will occur. The public policy challenge is to develop a policy framework that encourages good performance, keeps problems to a minimum and encourages quick and cost-effective solutions when problems do occur. This should be achieved with the least possible regulation in order to provide all parties, railways and others, with the flexibility they need to operate successfully on a day-to-day basis.

5.3 COMPETITION AND RAILWAY MARKET POWER

The Panel notes that, over the last few decades, transportation deregulation, including rail deregulation, has generally been a success. CN and CP are financially viable, have achieved significant productivity gains and are able to maintain and improve railway infrastructure and equipment with virtually no public subsidies – except where subsidies contribute to other broader public objectives, such as improving urban transit and expanding Canada's transportation gateways and corridors.

"Productivity has grown at an average annual rate of 3.6 per cent per year for rail freight ... By comparison, productivity in the overall business sector in Canada during the same period (1981–2006) grew by only 0.2 per cent per year."

June 2009 Conference Board of Canada report entitled *The Productivity Performance of Canada's Transportation Sector – Market Forces and Governance Matter*.

¹² QGI report entitled *Description of Canada's Rail Based Freight Logistics System* dated November 2009 (page 7).

While deregulation has been a success, the Panel heard opposing views in submissions and through consultations as to the degree of competition and captivity that exists in the rail-based supply chain. Many shippers have noted that they are generally reliant on rail to move their products to market, and even in cases where they have access to another railway, a “dual monopoly” does not provide them with the necessary leverage to achieve “adequate” service or to get relief when they experience service problems. In contrast, the railways claim that there is considerable competition for most rail traffic, even bulk commodity shipments from locations that are served by only one railway.

While the Panel did not do any research of its own on this issue, it considered the Competition Bureau’s guidelines¹³ in determining market dominance in merger cases and the findings from the 2001 review of the CTA. The Competition Bureau follows three steps to determine the presence or absence of competition:

1. product and geographic markets are defined;
2. market shares examined; and
3. barriers to entry assessed.

An assessment based on these criteria would confirm that CN and CP possess market power over their customers.

Possessing and using market power are two separate issues. The 2001 review of the CTA found that “Canada’s rail system is not inherently anti-competitive; nor is market abuse systemic or widespread. Indeed, by all indicators, most shippers in most markets in most parts of the country are well served.” QGI Consulting, in its report¹⁴ describing Canada’s rail-based freight logistics system, notes that the conclusion reached by the authors of the 2001 report that railway profits were not excessive, was reached using the 1990-2000 time period, when rates for all commodities except grain had declined and that all available indicators of competition revealed a “reasonably competitive” system. QGI notes that while railway rates declined during the 1990-2000 period, they have since stabilized, and operating income per 1,000 tonne-kilometres has been on a “strong upward trajectory”. According to data derived by the Panel from railway annual reports, both CN and CP increased their revenue yield by nearly 10 percent over the 2006-2008 study period.

The Panel concludes that railways continue to possess market power over many of their customers.

In the Panel’s view, the major cause of rail service problems is railway market power, which leads to an imbalance in the commercial relationships between the railways and other stakeholders. This, in turn, reduces the railways’ accountability for performance. As a result, railways do not always face the consequences that come from offering poor service that occur in other sectors in which competition is more prevalent. It has long been recognized in transportation law that regulations are required to address the potential abuse of market power by the railways.

13 *Enforcement Guidelines on the Abuse of Dominance Provisions*, Competition Bureau.

14 *Description of Canada’s Rail-Based Freight Logistics System*, QGI Consulting, November 2009.

This does not mean there is a complete absence of competition for all railway service. Competition can come from a variety of sources, including, as an example, United States ports and rail corridors and other modes. The Panel is satisfied, however, that there are sectors and regions where competitive alternatives are limited or lacking altogether.

The Panel believes that the results of the Phase I research work, and feedback from shippers and other stakeholders, would have been much different if more stakeholders had access to effective competition and/or effective regulatory tools. Indeed, if this had been the case, it is unlikely that the government would have felt the need to undertake the current service review. The fact the railways are undertaking a number of initiatives to improve service is also recognition that there were problems that needed to be addressed.

The Panel has also concluded that, based on the preceding factors, the effectiveness of the existing CTA shipper protection provisions is somewhat limited and, during the period leading up to the Review, did not ensure that service was reasonably adequate. For example, the LOS provisions address problems after the fact; the process is lengthy and can be very costly; and remedies are provided only on a go-forward basis. Problems have to be very significant for a non-railway stakeholder to file a complaint.

“The problems of balanced accountability were of particular interest to railway customers who do not have practical access to transportation alternatives. For these so-called “captive” customers, railway decisions which restrict their capacity or increase their costs cannot be offset through adjustments to logistics strategy. For these customers, the issue of balanced accountability is of strategic importance to their business. However, customers in all business segments, regardless of their access to alternative transportation, also expressed concerns that could be broadly grouped under this general heading.”

QGI Phase I Research Report, dated October 2009 and entitled *Analysis of Operating Practices*, page 8.

5.4 RECENT RAILWAY INITIATIVES

In developing its recommendations, the Panel notes that the railways are addressing service issues through a number of initiatives described in Section 4.3. Most stakeholders have acknowledged that there have been some recent improvements in rail service since the period covered in the Phase I reporting, but believe there is room for more progress. Customer service and communications are also better. However, many stakeholders attribute these improvements to the relatively low traffic volumes and to the Panel's presence, which has motivated the railways to be more responsive pending completion of the review. Many shippers suggest that more needs to be done to enhance their ability to deal with railway service concerns. The Panel concurs with shippers on this point.

Both CN and CP believe that, taking into consideration their recent service initiatives and plans for further improvements, there is no need for additional regulation. The vast majority of other stakeholders who have commented on this issue feel very strongly that legislative amendments are required to ensure rail service improvements continue and are sustainable.

Having acknowledged that the railways have recently made some progress, a fundamental issue facing the Panel is whether or not on-going commercial efforts by the railways will achieve an adequate level of service in the absence of further improvements to the shipper protection provisions of the Canada Transportation Act.

5.5 SUSTAINABILITY

Almost all stakeholders indicated that railways have the ability to arbitrarily change service levels. While recent service improvements are welcomed, non-railway stakeholders indicate they do not have sufficient leverage to hold the railways accountable and thereby ensure that improvements to service levels are sustained. They submit that the Panel's solutions must address this issue. The railways believe that regulatory changes are not required, since service improvements will be sustainable through a combination of commercial initiatives, market competition and existing CTA remedies.

5.6 IMPROVED PROCESSES TO DRIVE RESULTS

The Panel favours commercial processes that drive desired outcomes. In the absence of normal competitive markets, the Panel believes the best way to improve service within the rail-based logistics system is by fostering commercial processes that encourage bilateral negotiations between parties with balanced negotiating power. If relationships are balanced and effective processes are in place, then negotiations should produce results similar to those expected in a normal competitive market. The results should also reflect the unique commercial needs of the two parties. The Panel is wary of prescriptive regulatory solutions that focus on outcomes and are based on a one-size-fits-all approach that could lack flexibility and stifle innovation.

A number of stakeholders supported regulated performance standards, penalties and/or monitoring. The Panel believes this type of outcome-based oversight is not the right approach, preferring instead to set an environment (either commercial or regulatory) that fosters bilateral solutions. Further, a regulated approach to these solutions raises a number of challenging issues – such as who would set the standards and penalties and on what basis? In addition, the Panel is concerned that a broad-based approach would lack the flexibility required for stakeholders to address individual circumstances. An inflexible regulatory approach that prescribed solutions could inadvertently favour one side, discourage normal negotiations, and lead to unsatisfactory results. Finally, there are potentially significant administrative costs associated with a scheme of standards and penalties. Indeed, shippers have complained bitterly about the administrative cost of dealing with railway demurrage charges. A regulated system of general penalty charges levied against the railways would likely result in a similar administrative burden. The Panel is also concerned that sorting out these issues would cause unacceptable delays in implementing its key recommendations.

On the other hand, an approach based on bilateral negotiations would allow the parties to take into consideration their unique circumstances. The parties could decide what standards and penalties, if any, are appropriate. They could also agree on appropriate reporting requirements, which would significantly reduce, if not eliminate, the need for a costly and bureaucratic monitor's office.

In the absence of a normal functioning commercial market, the Panel believes its recommendations will encourage bilateral processes (either commercial or regulated) to drive outcomes that improve rail service.

5.7 OTHER CONSIDERATIONS

CN versus CP

During the consultations, many stakeholders commented that CN was generally more aggressive than CP in pursuing financial objectives, including cost-cutting and other efficiency measures. In addition, many shippers advised the Panel that CP was more responsive to stakeholder concerns and that this often mitigated impacts related to service issues. That being said, stakeholders have commented to the Panel that CN, out of necessity, has taken bigger steps to address rail service problems in recent months. The Panel believes that any regulatory remedy cannot be directed at one railway, but must apply equally to all federal railways.

Federal jurisdiction

The federal government clearly has the statutory authority to regulate federal railways. It does not necessarily have the authority to impose statutory obligations on other stakeholders within the rail-based logistics system. This is a consideration in developing potential regulatory solutions.

Railway tools

In addition to their market power, the railways have commercial tools to influence the behaviour of others. For example, the ability to charge demurrage encourages shippers and receivers to load and unload rail cars as quickly as possible. This helps to reduce railway costs and improve system efficiencies, if properly administered. The ability of other stakeholders to encourage good railway performance, or conversely discourage bad performance, is more constrained. The fact that railways have this ability to encourage efficiencies that benefit them reduces the need to regulate the behaviour of other stakeholders.

Transparency

As a general principle, the Panel supports more transparency within the rail-based logistics system. A better exchange of information should help stakeholders identify problems and facilitate solutions. It should also result in better operational decisions and increase the overall efficiency and reliability of the system.

Dispute resolution

As noted earlier, the rail-based logistics system is complicated and involves daily decisions by a range of industry stakeholders. It is inevitable that disputes will arise. It is in everyone's best interest to develop dispute resolution processes that are fair, timely and low-cost.

Railway resource levels

As discussed earlier, many stakeholders believe that the railways use their market power to manage service supply by limiting their overall resource levels and reducing capacity at times throughout the year, for example during slow periods when they park more cars than may be warranted. This is a very difficult issue to assess. However, the Panel expects that this issue can be resolved by rebalancing the relationship between railways and shippers and improving transparency.

Administrative burden

A number of stakeholders raised concerns about the administrative burden of existing processes such as the railways' billing systems. The railways have indicated they are trying to address this particular issue. It is important to the Panel that administrative costs and bureaucracy be minimized in considering options to address service issues. The rail-based logistics system is and will remain fundamentally a commercial system. Stakeholders need the flexibility to adjust to changing circumstances and should not be unnecessarily restricted by ineffective bureaucratic rules and red tape.

Relationships

It is understood that railways and shippers often have differences of opinion because they come at issues from different perspectives. However, the Panel was struck by how significant the gap is and how it is straining relationships, likely to the detriment of overall system performance. The Panel sees this as a very important issue and recognizes that it will take time to build the trust and confidence that are essential to maintaining effective relationships. The Panel strongly encourages both sides to address this issue and hopes that its recommendations are helpful in this regard.

Shipper size and location

Small shippers and shippers located on branch lines may sometimes be at a disadvantage with respect to those that ship high volumes and/or are located on railway main-lines. The Panel is sensitive to the needs of small shippers and shippers on branch lines and took their needs into consideration in developing its recommendations.

5.8 CONCLUSION: THE NEED FOR CHANGE

The Panel has concluded that there have been significant service problems within the system during the two-year study period examined in the Phase I work. Although the railways have taken steps to address service issues, problems still remain. Service problems impact not only individual shippers but also particular sectors and regions of the country. Indeed, problems with the rail-based logistics system can affect the overall performance of the Canadian economy by reducing efficiencies and creating doubts about the system's reliability to deliver goods to and from continental and international markets on a timely and effective basis. Such doubts can result in lost sales opportunities or the need to discount prices for Canadian goods in order to offset logistics risks.

Moreover, the Panel also concludes that many, but certainly not all, of the problems relate to the performance of CN and CP.

These conclusions are based on its assessment of the QGI analytical reports in the Phase I research program which, in the Panel's view, clearly demonstrate service problems during the 2006-2008 period. The NRG shipper survey also concluded there was a very low level of satisfaction with rail service.

The Panel also considered the comments contained in stakeholder submissions and those received during the various site visits and consultation sessions with stakeholders. There were complaints from a broad cross-section of stakeholders about a wide range of railway services issues, as discussed in Chapter 4. Finally, the Panel considered the railways' recent initiatives to improve service as an acknowledgement that something had to be done.

"CN acknowledges that there are a number of areas ripe for improvement in its service offering, in particular at the first and last legs of traffic movements, which are the ultimate customer touch points."

CN submission to the Panel dated April 30, 2010, page 2.

CHAPTER 6



6. KEY RECOMMENDATIONS

6.1 INTRODUCTION

The Panel carefully considered and evaluated all issues, impacts and solutions raised by stakeholders (Chapter 4) as well as the findings of the Phase I research (Chapter 3) to identify key rail service issues and solutions. The Panel then assessed the considerations (Chapter 5) in developing recommendations to address the key issues. This chapter contains the Panel's key recommendations, while Chapter 7 discusses other issues in the context of the Panel's mandate.

The Panel's mandate is to seek out commercial and, if necessary, regulatory solutions to rail service issues within the rail-based logistics chain, with a focus on service provided by CN and CP. The Panel believes the mandate gives it fairly broad discretion in developing its recommendations. In principle, the Panel favours commercial solutions over increased regulation. However, the Panel also recognizes that effective legislation and regulation may be necessary to foster an environment that encourages commercial solutions to service problems and disputes.

The Panel has developed an approach that emphasizes commercial solutions, but provides for a regulatory fallback in the event commercial solutions do not result in adequate service. The Panel's recommendations are based on the following conclusions:

- The rail-based logistics system has gone through a period during which rail service was less than adequate.
- While some of the service issues are attributable to non-railway stakeholders (these include poor forecasting and over-ordering of cars), most of the issues raised relate to railway behaviour. The Panel's aim is to encourage more customer-centric behaviour by the railways, either commercially or through regulation.
- There are no practical ways to directly increase rail competition.
- The railways have commenced a number of initiatives, which are generating service improvements to railway customers. These should continue.
- While there have been some positive results to date from the railways' initiatives, further improvement in rail service is required, and these changes need to be lasting.
- It will take some time for the railway initiatives to be fully implemented and for the benefits to be fully achieved. The Panel believes that these initiatives may have the potential to address rail service issues.
- When railways consult/negotiate with their stakeholders to implement their initiatives, they have an opportunity to address adverse impacts on rail service attributable to the behaviour of other stakeholders.
- Consistent with the preference for commercial solutions over regulation, the Panel believes the government should assess the success of the railway initiatives after a reasonable transition period.

- If the assessment concludes that the railways' initiatives have not resulted in adequate service, then regulatory solutions should be implemented.

In summary, the Panel's approach provides an opportunity for the railways to demonstrate commercially their ability to properly deal with service issues on a sustained basis. If adequate service is not achieved and sustained commercially, the Panel recommends that legislative remedies be implemented.

The Panel's recommendations form a comprehensive package aimed at rebalancing the relationship between the railways and other stakeholders, in particular shippers. The Panel believes improving shippers' leverage with the railways is the best way to achieve results that more closely resemble those that would be expected from competitive markets. This should lead to a more effective, accountable, and reliable rail-based logistics system.

The Panel's recommendations contain the following four key elements:

- consultation and notification of service changes;
- implementation of service agreements;
- establishment of a fair and balanced dispute resolution process; and
- enhanced performance reporting.

The principles underlying the key elements are described in the Panel's commercial approach below and are mirrored in the regulatory fallback approach which follows the description of the commercial approach.

The recommendations will require additional changes by the railways, over and above those they are implementing. The Panel notes that considerable concern was expressed by railways during previous legislative reforms when concepts such as final offer arbitration and competitive line rates were introduced. As it turned out, the impacts on the railways from these provisions have been manageable. The Panel is confident that the railways will also be able to manage impacts from the changes recommended herein.

6.2 GENERAL APPROACH

The Panel is recommending a two-phase strategy to address service issues – a commercial approach and an assessment of its impact, to be followed, if necessary, by the implementation of regulatory remedies. In doing so, the Panel acknowledges the railways' recent efforts to address service issues. Non-railway stakeholders have generally indicated that communications are more frequent, and that there is a renewed willingness to cooperate and rail service is improving in some sectors.

The Panel believes these measures need to be pursued in cooperation with all participants in the rail-based logistics system, with a common goal of continuous improvement in the supply chain.

The Panel has identified a number of additional complementary measures to improve service within the rail-based logistics system.

The Panel encourages the railways to implement these measures commercially and to provide a written commitment to the Panel that will specifically address the Panel's recommendations identified in the Commercial Phase (Section 6.3). The Panel intends to include the railways' commitment letters in its final report.

In order to ensure that these measures have been successful, the Panel recommends that the government undertake an assessment in 2013. The assessment would examine how the railways' commercial initiatives have addressed rail service issues. The assessment would take into consideration, as a minimum, the performance of the railways and other stakeholders, as well as the railway commitments made to the Panel. The framework for the 2013 assessment is described in Section 6.6.

If the government concludes, based on the assessment in 2013, that the railways have not adequately addressed service issues, then the Panel recommends that the government implement the regulatory proposals described in Section 6.4.

In order to minimize time delays in implementing the legislation, the Panel recommends that the legislative drafting and approval process for the regulatory fallback provisions begin immediately following the government's acceptance of the Panel's recommendations. The Panel recommends that a "trigger" be included in the legislation that would allow for the Governor in Council to bring the legislative fallback provisions into force in whole or in part, if necessary, following the completion of the 2013 assessment.

NOTE: One Panel member does not concur with this particular recommendation. He supports the regulatory package, but believes that advanced legislative drafting will be a disincentive for many stakeholders, particularly shippers, to enter into meaningful negotiations with the railroads prior to the 2013 assessment. These stakeholders prefer the legislative approach and will simply wait for the 2013 assessment in the expectation that the Governor in Council will trigger the amendments that are sitting on the shelf. Under the circumstances, he does not believe there is sufficient incentive for these stakeholders to expend the time, effort or money to reach commercial agreements relating to service agreements and a dispute resolution process. He further believes that:

- many stakeholders are seeking a return to railroad regulations and this recommendation would work in their favour;
- the continuing efforts of the railroads to improve service issues would be impeded by some stakeholders as they wait for legislation. One railway has indicated this is already happening; and
- the Panel's terms of reference encourage commercial resolutions and this recommendation bypasses that opportunity and steers the Report directly to regulatory measures.

Finally, the Panel urges the government, should it accept the Panel's recommendations, to send a strong signal that it expects stakeholders to work together in good faith to develop the details of the commercial approach. The Panel urges the government to consider the willingness of parties to work in good faith when it decides whether or not to proceed with implementation of legislation after the 2013 assessment.

6.3 COMMERCIAL PHASE

The Rail Freight Service Review Panel recommends four key elements that should be implemented commercially to complement current railway initiatives. The Panel's recommendations would be implemented by the railways in collaboration with supply chain stakeholders.

Recommendation 1

The Panel recommends that railways, in collaboration with their stakeholders, continue to develop commercial measures to improve rail service. These commercial initiatives would include the four key elements related to service changes, service agreements, dispute resolution and enhanced reporting.

6.3.1 CONSULTATION AND NOTIFICATION OF SERVICE CHANGES

Prior to implementing changes in local train service from established practice, the Panel encourages the railways to consult with affected stakeholders and to commit voluntarily to a minimum notice period of 10 working days. The Panel also encourages the railways to include this notification commitment in appropriate tariffs.

Notice should be provided to those stakeholders with operational and commercial relationships¹⁵ with railways at locations that will be impacted by the proposed change in service. Notice should be subject to force majeure. The notice period would be subject to change only upon mutual consent. The Panel also encourages railways to commit to resolving disputes related to service changes through an appropriate dispute resolution mechanism.

Recommendation 2

Prior to implementing changes in local train service, railways should consult affected stakeholders and provide a minimum notification period of 10 working days. Railways should commit to resolving service change disputes through an appropriate dispute resolution mechanism.

Rationale

Changes in local service by the railways can have significant impacts on other stakeholders. The Panel believes that consultation and an appropriate notice of rail service changes, plus an effective mechanism to challenge such changes, would improve service within the rail-based logistics system and provide a reasonable opportunity for affected stakeholders to minimize adverse impacts.

¹⁵ Parties who load, receive, unload and interchange traffic would be deemed to have an operational relationship with the railways. Stakeholders who are party to a bill of lading would be regarded as having a commercial relationship with the railways.

6.3.2 IMPLEMENTATION OF SERVICE AGREEMENTS

The Panel encourages the railways to negotiate service agreements at the request of stakeholders that have an operational or commercial relationship with them, including shippers, terminal operators and transloaders. Elements of service agreements may include:

- services and obligations of the railway and obligations of the other party;
- communication protocols and escalation;
- traffic volumes;
- key performance metrics;
- performance standards;
- consequences of non-performance (including penalties);
- dispute resolution; and
- force majeure.

Disputes related to the successful establishment of service agreements, including negotiation or implementation of the terms and conditions of service agreements, should be eligible for dispute resolution. Matters related to the terms and conditions of service that are covered explicitly in a confidential contract should not be eligible for inclusion in a service agreement. The Panel encourages the railways to work with small shippers to develop an acceptable “boiler plate” service agreement which could be used as a basis for individual small shippers to negotiate respective service agreements reflective of their unique needs.

Recommendation 3

Railways should enter into good faith negotiations to establish service agreements upon request by stakeholders who have an operational or commercial relationship with them.

Rationale

The Panel believes that agreements between railways and other parties that describe roles, clarify responsibilities and contain service elements would strengthen the relationships and contribute to better service within the rail-based logistics system.

6.3.3 ESTABLISHMENT OF A DISPUTE RESOLUTION PROCESS

The Panel encourages the railways to engage in negotiations on dispute resolution processes with stakeholders, including shortlines, with whom they have an operational or commercial relationship. The objective would be a process that is fair and balanced, timely and low-cost. To facilitate such negotiations, the Panel recommends that the Minister appoint a mediator, upon the release of the Panel’s Final Report, to work with railways and interested stakeholders to develop mutually agreeable terms and conditions for a dispute resolution process.

Additionally, the Panel recommends that Transport Canada review the implications of including the United States portion of cross-border traffic that originates/terminates in Canada on CP and CN lines and originates/terminates or is inter-lined from respective CP and CN lines in the United States.

Recommendation 4

The Panel recommends that railways, assisted by a facilitator appointed by Transport Canada, should engage in negotiations with stakeholders, including shortlines, with whom they have a commercial or operational relationship, on a fair and balanced dispute resolution process.

Rationale

The Panel believes that a dispute resolution process that is fair and balanced, timely and low-cost, can go a long way to addressing service issues within the rail-based logistics system and can immediately contribute to a rebalancing of relationships.

6.3.4 ENHANCED PERFORMANCE REPORTING

The Panel encourages the railways and perhaps others, where applicable, to expand performance reporting at two levels: confidential bilateral reporting and public reporting at a sector level.

Confidential bilateral reporting

The Panel encourages the railways to provide confidential performance measures, in real time, to individual shippers and receivers upon request. The railways should consult shippers and receivers to determine appropriate metrics (“scorecards,” for example) to be reported.

Public reporting at a sector level

The Panel encourages the railways and others, where applicable, to report publicly on aggregated sector level metrics. Table 5 below contains examples of the types of metrics for public reporting. Enhanced performance reporting is aimed at providing better visibility to individual shippers to help them in their preparation for negotiations with the railways. It will also provide better information for addressing systemic service and other public policy issues.

The Panel recommends that the metrics, including the frequency of reporting, be refined based on industry consultations.

Table 5: Representative Performance Indicators Public Reporting by Major Car Type, Sector and Region

SYSTEM COMPONENT	PERFORMANCE MEASURE
General Fleet Information (Weekly reporting)	Number of active cars (including private fleet) Number of cars off-line Number of cars in long-term storage Number of bad order cars
First Mile Order Fulfillment by day/week (Monthly/Quarterly reporting)	Cars ordered and percent of orders (cars) changed by customer Cars confirmed Cars delivered Origin switching performance (percent on time)
Car Movements From Origin to Destination (Monthly/Quarterly reporting)	Loaded car cycle times Variances to ETAs in average days Empty car cycle times (where applicable) Dwell times at origin (Loaded and Empty) Dwell times at destination (L & E)
Last Mile Destination Service (Monthly/Quarterly reporting)	Container dwell times (terminal/ports to provide) Percent of cars where there is no constructive placement or hold Destination switching (percent on time) On-time releases (percent of cars) Empty pull (percent on time) Performance of cars ordered in (if available)

Recommendation 5

Railways should provide improved supply chain visibility through enhanced reporting. The Panel encourages railways to consult with stakeholders to develop acceptable and meaningful reporting at a confidential bilateral level as well as public reporting at a sector level.

Rationale

The Panel believes that enhanced performance reporting will provide better visibility of the supply chain and can help improve accountability and service within the rail-based logistics system. Providing better information to stakeholders will help to identify problems and solutions.

6.3.5 SUSTAINABILITY

The Panel's recommendations form a comprehensive package. The Panel believes the package is sustainable on a commercial basis, provided the key elements remain in place and provided all parties agree to work cooperatively on their implementation. Critical to sustainability is maintaining the performance reporting element, which will enable the industry and government to track railway and overall system performance on an ongoing basis. The information will also be critical for the 2013 assessment that will determine whether policy and/or legislative changes are required.

6.4 RECOMMENDED REGULATORY FALLBACK PROVISIONS

The Rail Freight Service Review Panel recommends the federal government move to implement regulatory provisions in the event the 2013 assessment concludes that rail service remains inadequate. The Panel's recommendations for the regulatory "fallback" provisions are based on the same principles underlying the key elements from the commercial approach.

Recommendation 6

The Panel recommends that the legislative drafting and approval process for the regulatory fallback provisions begin immediately following the government's acceptance of the Panel's recommendations. The regulatory package mirrors the recommendations for the commercial package.

Note: *One Panel member dissents and recommends that the regulatory provisions not be drafted and approved until a determination is made as to whether they are required following completion of the 2013 assessment set out in Recommendation 7.*

Recommendation 7

The Panel recommends an assessment be undertaken in 2013 to determine how the railways' commercial initiatives have addressed rail service issues and to determine whether or not to trigger the regulatory fallback provisions.

Recommendation 8

The Panel recommends that a "trigger" be included in the legislation that would allow the Governor in Council to bring the legislative fallback provisions into force in whole or in part, if necessary, following the completion of the 2013 assessment.

Note: *One Panel member dissents on this recommendation, given his view regarding the timing of legislative drafting.*

6.4.1 NOTIFICATION OF SERVICE CHANGES

- Railways shall be required to consult with affected stakeholders and to provide in their ancillary tariffs, a minimum notice of 10 working days, regarding service changes.
- Service changes would be defined as changes to local train service from established practice.
- Notice to be provided to those stakeholders with operational and commercial relationships with railways at locations that will be impacted by the proposed change in service.
- Service change can only be implemented within the notice period by mutual consent.
- Obligation to provide notice to be subject to force majeure.
- Any disputes arising from a proposed service change shall be subject to the regulatory dispute resolution processes as described in Section 6.4.3 below.

6.4.2 IMPLEMENTATION OF SERVICE AGREEMENTS

- Stakeholders who have an operational or commercial relationship with railways shall have a statutory right to a service agreement with the railway.
- Elements of service agreements include:
 - » services and obligations of the railway and obligations of the other party;
 - » communication protocols and escalation;
 - » traffic volumes;
 - » key performance metrics;
 - » performance standards;
 - » consequences of non-performance (including penalties);
 - » dispute resolution; and
 - » force majeure.
- If parties cannot reach a commercial agreement, either party can refer the matter to the dispute resolution process as described in Section 6.4.3.
- Terms and conditions of service covered explicitly in a confidential contract shall not be eligible for inclusion in a regulated service agreement.

6.4.3 REGULATED DISPUTE RESOLUTION PROCESS

- Stakeholders, including shortlines, that have an operational or commercial relationship with federally regulated Class I railways, shall have access to a regulated dispute resolution process.
- Amendments to the CTA should be made to authorize the Governor in Council to establish terms and conditions for the regulatory process. Industry stakeholders are to be consulted on the development of the regulated process.
- The regulatory process shall be final offer, binding and non-appealable. Reasons are to be provided only upon mutual consent of parties, but are to remain confidential. The Panel believes final offer is a very effective form of arbitration since it provides an incentive for both sides to compromise or face the risk of losing the arbitration. This often leads to faster and more mutually acceptable resolution of disputes before the arbitrator has made a decision.
- Stakeholders may choose either the Agency (member or staff person) or an independent person to serve as the arbitrator for any disputes referred to regulated dispute resolution, including those related to the establishment of initial or renewal service agreements.
- Once stakeholders have applied to the Agency to use the regulatory dispute resolution process, they waive the right to access other shipper provisions in the CTA for that specific dispute.
- For the regulatory process, non-railway stakeholders and shortlines are to provide a five-day notice to railways of their intent to formally apply for arbitration. This is to be followed by a maximum of seven days to simultaneously file and exchange offers. The arbitrator's decision (including time for cross-examination) would then follow.

- The arbitrator's decision for rail service matters would be rendered within 21 days of the date upon which the matter is referred to the arbitrator. For disputes related to the establishment of service agreements and for disputes where there are no service agreements in place, the arbitrator's decision would be rendered within 45 days. The parties may extend deadlines by mutual consent.
- There is no ability to award damages as part of the dispute resolution process.
- Parties are to be advised simultaneously of the Arbitrator's decision.
- The arbitrator is to provide a non-confidential summary of the decision to the Agency within 14 days of advising the parties. The Agency is to publish a non-confidential high-level summary of arbitration decisions in its annual report.
- Pending the results of the Transport Canada review of cross-border traffic referenced in Section 6.3.3 (establishment of a dispute resolution process), the statutory process does not apply to the United States portion of cross-border traffic.

6.4.4 ENHANCED PERFORMANCE REPORTING

Recommendations on bilateral and sector level reporting by railways are to be implemented through legislation/regulation after consultations with stakeholders. Enhanced performance reporting is aimed at providing better visibility to individual shippers to help them prepare for negotiations with the railways. It will also provide better information for addressing systemic service and other public policy issues.

Confidential bilateral reporting

- The railways shall, upon request, provide confidential performance measures, in real time, to individual shippers and receivers.
- Railways shall consult shippers and receivers to determine appropriate metrics ("scorecards," for example) to be reported on.

Public reporting at a sector level

Railways shall report on aggregated sector level metrics. Table 5 above contains examples of the types of metrics for public reporting. The Panel recommends that the metrics be refined based on industry consultations.

6.5 IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

The Panel recommends that the government develop a strategy to implement the recommendations, in particular an approach to the proposed consultations with industry stakeholders regarding the establishment of the dispute resolution and enhanced performance reporting recommendations for both the commercial and regulatory fallback situations. The principles outlined in the section entitled "*Regulatory Fallback Provisions*" would form the basis of drafting instructions for legislation. Implementing legislation will ensure the remedies are sustainable.

6.6 THE FRAMEWORK FOR THE 2013 ASSESSMENT

The proposed 2013 assessment is an integral component of the Panel's package of recommendations. The objective of the assessment will be to determine the effectiveness of the railways' commercial initiatives, including an evaluation of stakeholder behaviour, in negotiating and implementing the commercial elements of the Panel's recommendations. The 2013 assessment will determine whether or not rail service is adequate and, depending on the outcome, could trigger implementation of the regulatory proposals contained in the Panel's package. One Panel member does not agree with the majority recommendation concerning the immediate drafting of enabling legislation. Under the dissenting Panel member's recommendation, it would take longer for the legislation to come into force, since drafting would only commence, if necessary, after the 2013 assessment.

The Panel proposes that the mandate of the person or persons appointed to carry out the assessment would consist of the following components:

- an assessment of the railways' initiatives and commitments to the Panel;
- a quantitative assessment of key performance indicators;
- stakeholder consultations; and
- an assessment of stakeholder behaviour in commercial negotiations.

The assessment would be conducted within a six-month period.

An assessment of the railways' initiatives and commitments to the Panel

As described earlier, the railways have a number of initiatives underway to improve service. In addition, the Panel expects to receive and publish in its final report, letters of commitment from CN and CP regarding the extent to which they will commit to the Panel's proposed commercial approach.

To assist the 2013 assessment, the railways should be required to report on their initiatives and commitments by confirming the extent to which these have been implemented. They should also comment on their success in achieving an adequate level of service. The report should also include information on the implementation of service agreements; the use of commercial dispute resolution processes; and the extent of confidential bilateral reporting and public reporting at a sector level. The railways' reports should be made public, to provide an opportunity for other stakeholders to respond.

A quantitative assessment of key performance indicators

The 2013 assessment should include an analysis of key performance indicators. The KPIs should be developed in consultation with industry stakeholders. It is suggested that Table 5 be used as a starting point. As noted earlier, enhanced performance reporting

is aimed at providing better visibility to individual shippers to help them prepare for their negotiations with the railways on establishing service levels and resolving service issues. It will also provide better information for addressing systemic service and other public policy issues.

Stakeholder consultations

The 2013 assessment process should include written submissions from all stakeholders, including the railways, on their views regarding the success of railway initiatives to improve service. Non-railway stakeholders could include any complaints they may have about service failures. The process would provide an opportunity, at the reviewer's discretion, for consultations.

Assessment of stakeholder cooperation

The 2013 assessment should take into consideration feedback from the minister appointed mediator regarding the dispute resolution negotiations and the willingness of stakeholders to find a common dispute resolution process. The 2013 assessment should also consider feedback from stakeholders on the general willingness of parties to work collaboratively on the Panel's proposed commercial approaches in relation to the other key recommendations. The assessment will need to take into consideration the potential legitimate and reasonable differences of opinion on how some issues should be addressed.

2013 assessment recommendations

The person or persons leading the 2013 assessment would be mandated to provide recommendations to the Minister on whether commercial solutions were successful or whether regulatory changes should be triggered.

CHAPTER 7



7. OTHER ISSUES IDENTIFIED BY NON-RAILWAY STAKEHOLDERS

Through the process, stakeholders raised a number of issues beyond the key issues discussed in Chapter 6. In this chapter, the Panel discusses these other issues and proposed solutions in two parts – those which fell within the Panel’s mandate and those considered outside the mandate.

7.1 OTHER ISSUES WITHIN THE PANEL’S MANDATE

Other issues raised by stakeholders and falling within the Panel’s mandate include:

- Shortlines;
- Producer car loading sites; and
- Stakeholders’ knowledge of current CTA provisions.

Shortlines

The terms of reference required the Panel “to examine the relationship between shortlines and main-line railways to determine whether any rail service problems being experienced by shortline shippers are attributable to service, operating, or marketing practices of the main-line carriers.” Submissions from shippers did not distinguish between service provided by shortlines versus main-line carriers. The Panel received very few submissions from shortline railways regarding shortline/main-line relations. Those submissions indicated most problems arise when the Class I railways fail to move rail cars from their yards to interchange with shortlines when scheduled. Other main-line/shortlines issues raised included car supply, high levels of rejected cars (poor condition), poor communications with

respect to changes in service, and poor coordination and cooperation by the Class I railways. There was also a discussion of shortline issues related to line abandonment and producer cars.

- *Given the relative lack of feedback, the Panel encourages stakeholders to provide further comments, if any, regarding the relationship between shortline and main-line railways and the impact on customer service in their submissions on the interim report.*

Producer car loading sites

Some stakeholders raised producer car loading sites as an important issue. More specifically, these stakeholders were concerned with the delisting of specific sites and the failure of the railways to negotiate these closures with the loading site users.

Solutions provided by non-railway stakeholders include implementing a moratorium on closures, regulating closures, establishing site standards, encouraging greater use of producer cars, and creating an agency to monitor practices related to producer cars and to resolve any related disputes.

- *The Panel recognizes that producer cars and loading sites are very important issues for producers. The Panel is aware that the current legislation exempts the closure of sidings and spurs from the legislated discontinuance process for railway lines. The Panel notes that the railways are required to keep a list of producer car sites on their website and are required to give a public 60-day notice before closing any sites.*

- *The Panel notes that the railways' justification for closing producer car-loading sites is lack of use and that the most effective way to ensure that loading sites are retained is for producers to use the sites on a continuous basis with a reasonable volume of cars.*
- *The Panel also notes the closure of producer car sites can be challenged using the LOS provisions of the CTA.*
- *The Panel encourages the railways to work more closely with affected producer car interests regarding plans to close producer car loading sites.*

Stakeholders' knowledge of CTA provisions

Throughout the course of the review process, it has become apparent that many stakeholders are not very well informed of the CTA provisions. The NRG shippers survey revealed that over half of the respondents (57 percent) had little or no familiarity with the CTA. From stakeholder submissions and consultation meetings, it also became apparent that many stakeholders are unfamiliar with the LOS and FOA remedies within the CTA.

- *The Panel encourages respective shipper associations and the Agency to promote CTA awareness sessions and provide or improve plain language summaries on websites so stakeholders can have a better understanding of options for dispute resolution, procedures related to the LOS and FOA remedies and, a general understanding of the various processes, including timelines and resources required to pursue these remedies.*

7.2 OTHER ISSUES BEYOND THE PANEL'S MANDATE

Stakeholders raised a number of issues that the Panel considers to be beyond its mandate. These include:

Rates

- Revenue cap
- Freight rates
- Ancillary charges
- Competitive access rates

Infrastructure

- Branch lines
- Other infrastructure

Labour-related

- 24/7 Operations
- Loading in inclement weather
- Essential services
- Port and rail labour

Other

- CN WorldWide
- Comprehensive review of the CTA
- Port of Churchill
- Canadian Wheat Board role in transportation

The nature of the issues raised and Panel's comments are provided below.

Rates

Revenue cap

Some stakeholders believe railways are earning excessive revenues from the regulated movement of western Canadian grain. They are proposing a costing review be conducted to bring revenues into line with levels under the former *Western Grain Transportation Act*. The Panel was also asked to consider the impact of the rail revenue cap on the level of service for producers, and it was suggested that a review of the regulations regarding the rail revenue cap be conducted.

Freight rates

Non-railway stakeholders argue that the lack of rail competition allows the railways to charge uncompetitive and unfair freight rates and leaves shippers with little room to negotiate rates. Shippers add that rates are generally high, inconsistent and regularly increase at a level greater than the rate of inflation even during periods of economic slowdowns, without a corresponding improvement in service.

Ancillary charges

Ancillary charges are charges/fees set out in railway tariffs for supplemental railway services other than for the hauling of freight. Examples include charges for demurrage, cleaning cars, storing cars, weighing product, special spotting requirements, rejected loads, equipment furnished but not used, and private car movements to or from maintenance shops.

Similar to the concerns raised regarding the application of demurrage charges, non-railway stakeholders also raised issues with respect to ancillary charges. Shippers contend that the railways are imposing ancillary charges for services previously covered by the freight rate without any corresponding reduction in the freight rate. Many shippers complained that ancillary charges have become a significant source of revenue for the railways and are creating additional and unfair transportation costs for shippers.

The Panel notes that the CTA amendments passed in 2008 include a new section, 120.1, that allows shippers to complain to the Agency about the reasonableness of ancillary charges and/or associated terms and conditions.

Competitive access rates (extended interswitching)

Some stakeholders proposed a new provision to increase railway competition. The competitive access rate proposal contemplates an extension to interswitching zones to ensure that a shipper captive to a single federal railway has access to another railway at an interchange of the shipper's choice.

The cost-based rate would be set by the Agency and be available to the shipper, who would then know in advance the regulated rate to move the traffic to a second rail carrier. The rate would include the variable costs incurred by the originating railway, plus a contribution to its fixed costs, in an amount to be determined by the Agency while recognizing that it is a pro-competitive remedy.

Infrastructure

Branch lines

A number of stakeholders raised issues related to branch lines, which they believe are an integral part of provincial transportation networks and critical to local/regional economic development particularly in Saskatchewan/Manitoba and the Peace River district of British Columbia/Alberta. Key issues raised include:

- inadequate track maintenance;
- need to upgrade track to main-line standards so that cars can be fully loaded;
- line abandonment;
- demarketing of some lines without putting them up for sale or transfer under the CTA provisions; and
- unreasonable financial and other sale/transfer conditions set by the main-line carriers that discourage the sale of lines to shortline operators.

Key solutions to address branch line concerns include:

- placing a moratorium on line abandonments;
- amending the CTA line transfer provisions to allow more time for entities to consider the railways' discontinuance plans;
- encouraging public/private ownership of low-volume rail lines with running rights given to all railway companies. Such actions would result in long-term planning of railway infrastructure acquisition of rights of way, upgrading and investment, all in the public interest;
- empowering the Agency to investigate demarketing and other strategic de-facto abandonment activities of rail carriers;
- transferring low-volume lines to shortline operators; and
- providing federal funding to assist in the establishment of shortline railways.

Other infrastructure

Stakeholders provided the Panel with a list of specific infrastructure issues that have financial, operational and/or policy implications.

Stakeholders identified the following infrastructure projects that require immediate investment:

- New Westminster Bridge;
- General upgrade and increase weight capacity of northern rail lines;
- Lines removed/abandoned/requiring improvement (for example in northern Alberta and northern British Columbia);
 - » Hythe to Dawson Creek;
 - » Minaret to Dease Lake;
- Watino Bridge; and
- A number of interchange locations.

Stakeholders provided the following as infrastructure projects requiring operational improvements and investment:

- Second Narrows Bridge – open to both CN and CP through legislative amendment to the CTA, in order to ensure CP access to the North Shore in the event of a labour disruption;
- Double stacking out of the Port of Montreal;
- Peace River container depot/intermodal hub;
- Prince George intermodal hub; and
- Resumption of service on the Tisdale-Hudson Bay Line (Churchill issue).

Some stakeholders raised two infrastructure-related issues having significant government policy implications, which would require further review:

- establishing rolling 25-year plans for railway infrastructure; and
- mandating infrastructure spending by the railways.

Labour-Related

24/7 operations

The railways argue that the Panel should recommend that 24/7 operations be the standard business practice for all participants in the supply chain in order to improve coordination and fluidity and to increase capacity. That being said, some non-railway stakeholders argue they still experience serious first mile/last mile service issues and incur financial losses even though they operate 24/7 at the request of the railway. Although there are exceptions, the Panel found that non-railway stakeholders are prepared to work weekends and extra shifts if justified by operational considerations and the volume of business.

Loading in inclement weather

In its submission, CP recommended that Transport Canada and the ports work with stakeholders to implement the results of studies on the inability of terminals to load vessels in inclement weather.

Essential services

In its submission, the Propane Gas Association of Canada argues that rail delivery of propane gas should be declared an essential service since rail is the only effective means of transportation and propane is essential to users for such purposes as heating homes and businesses.

Port and rail labour

Stakeholders noted that port and rail labour issues are very disruptive to the flow of goods in the logistic chain. Furthermore, it often takes several weeks for operations to recover when labour disruptions occur. Stakeholders also indicated that Canada's international reputation as a reliable supplier suffers as a result of these disruptions.

The solution provided to the Panel by stakeholders is that port and rail services should be deemed essential.

Other

CN WorldWide

Several non-railway stakeholders provided the Panel with examples of conflicts of interest related to the operations of CN WorldWide and CN's relationship with intermodal stakeholders. The Panel believes these are Competition Bureau issues, not rail service issues.

Comprehensive review of the CTA

The Panel heard from many shippers who argue that a statutory review of the CTA should be conducted every five years instead of every eight.

Port of Churchill

It has been suggested that the Government of Canada and the Agency should undertake a comprehensive review of the services provided to the Churchill Gateway System.

Some stakeholders claim the Churchill Gateway System is underutilized because:

1. stakeholders in the catchment area lack efficient access since there is no local shortline service and
2. there are issues related to car supply, line abandonment, refusal by the Class 1 railways to provide local interchange service and discriminatory/high freight rates.

Stakeholders feel that legislation should be amended to:

1. prohibit railways from refusing to move traffic over the most direct route;
2. prohibit railways from not operating a rail line without placing the line on the abandonment process; and
3. prevent the railways from implementing anti-competitive pricing against the Port of Churchill.

Canadian Wheat Board (CWB) role in transportation

The Panel received recommendations that the CWB's role in the transportation of grain from farm to terminal elevator should be eliminated as originally suggested in the Estey Report as a means of resolving many of the current problems in grain transportation.

- *The Panel feels that issues discussed in Section 7.2 are outside its mandate and therefore has not conducted any analysis of these issues or proposed solutions. Many of these issues are being addressed separately in other forums.*

APPENDIX A



APPENDIX A – RAIL FREIGHT SERVICE REVIEW PANEL MEMBERS' BIOGRAPHIES

WALTER PASZKOWSKI, Chair

Walter Paszkowski has had long and distinguished political and agri-business careers and has provided a significant contribution to his community, county and the province of Alberta.

Mr. Paszkowski's political career began as a school trustee, progressing to municipal councillor, to Mayor of Sexsmith and finally to member of the Alberta Legislature in 1989. Mr. Paszkowski served in the Alberta legislature until his retirement from provincial politics in March 2001.

During his political career, Mr. Paszkowski served as Minister of Agriculture and Rural Development and Minister responsible for the Land Compensation Board (1993-1997), Minister of Transportation and Utilities and Minister responsible for Public Safety Services (1997-1999) and Minister of Municipal Affairs (1999-2001). During this time, Mr. Paszkowski led or was involved in a number of international missions to promote trade with Canada.

Mr. Paszkowski has been involved in a vast number of agri-business and community interests. Of particular note was his contribution to the development and growth of the canola industry by serving as a Director and a Chair of the Canola Council of Canada, Director and President of the Alberta Canola Growers, and founding Director of the Northern Alberta Rapeseed Crushing Plant and Northern Lite Canola Ltd.

Mr. Paszkowski established an Economic Development Office for the County of Grande Prairie and serves as the County's Economic Development Officer.

Mr. Paszkowski is a Director of the Prince Rupert Port Authority where he chairs the Audit Committee and serves on the Human Resources Committee.

Among his numerous awards and recognitions, Mr. Paszkowski received a lifetime member and achievement award from the Canola Council of Canada, was awarded Canada's 125th Anniversary Medal as well as the Alberta Centennial Medal, and was recognized as one of the "50 Most Influential Albertans in 2006."

Mr. Paszkowski, in partnership with his son, is owner and operator of a family seed farm and retail seed outlet in Sexsmith, Alberta.

DAVID EDISON

David Edison has had 40 years of experience in rail operations and senior management with Canadian National Railway. During his career, Mr. Edison held progressively senior positions with the company in Newfoundland and Labrador, Nova Scotia, New Brunswick, Quebec, Manitoba and Alberta. Mr. Edison served as Vice President, Pacific Division, headquartered in Vancouver, overseeing Canadian National Railway's operations and sales activities in British Columbia and Alberta, including the ports of Vancouver and Prince Rupert.

Mr. Edison was appointed Vice-President, Corporate, in July 2003 and led Canadian National Railway's consolidation and integration of the Canadian National Railway and BC Rail partnership. These responsibilities included train service adjustment, realignment of rail yards in North Vancouver, Squamish and Prince George, reconnection of Canadian National's Hythe-Dawson Creek line and workforce planning.

Prior to his retirement in late 2004, Mr. Edison was active on the boards of the Western Transportation Advisory Council, the Greater Vancouver Gateway Council and the Business Council of British Columbia.

Mr. Edison resides in Surrey, British Columbia.

WILLIAM H. (BILL) LEGROW

William H. (Bill) LeGrow has significant industry experience in the rail freight industry spanning a 37-year career that included progressively senior positions with both Canadian National Railway and with West Fraser Mills Ltd. Most recently, Mr. LeGrow served as Vice-President of Transportation and Energy with West Fraser Mills Ltd., a position he held from 1999 until his retirement in 2008.

Mr. LeGrow has significant experience in both shipper and railway freight transportation environments. He has been involved in rate negotiations, regulatory reviews as an industry and a shipper association representative and in initiating and leading regulatory challenges as a shipper, under provisions of the *Canada Transportation Act*.

In the mid-80s, through several softwood lumber trade challenges and related disputes, Mr. LeGrow was an active industry participant providing technical advice on implementation, documentation and United States customs procedures, serving on several technical committees and providing policy advice to both the British Columbia and the federal governments.

Mr. LeGrow has extensive experience in regulatory filing procedures and hearings before the British Columbia Utilities Commission representing both West Fraser and as a representative of the Joint Industry Electricity Steering Committee of electrical consumers in British Columbia.

Mr. LeGrow resides in Coquitlam, British Columbia.

APPENDIX B



APPENDIX B – TERMS OF REFERENCE FOR A REVIEW OF RAIL FREIGHT SERVICE

BACKGROUND

The government tabled proposed amendments to the shipper protection provisions of the *Canada Transportation Act (CTA)* on May 30, 2007. At the same time, it announced a commitment to commence a review of railway service within 30 days of the passage of the amendments. Bill C-8 received Royal Assent on February 28, 2008.

The objective of this paper is to describe the scope and approach for conducting a review of the performance of the rail freight transportation supply chain and its impact on rail service to shippers in Canada.

CONSIDERATIONS

The review will take into consideration that:

- An effective supply chain is critical to meeting the government's objectives related to strategic gateways and trade corridors and to helping shippers compete in domestic, continental and international markets.
- Shippers need an effective, efficient, consistent, and reliable rail transportation supply chain in order to remain competitive and prosper in domestic, continental, and international markets.
- Some shippers, especially bulk commodity shippers, have few, if any, practical alternatives to rail.
- Railways need sufficient revenues to maintain and improve existing rail services and to invest in additional capacity (infrastructure, equipment and crews) in order to respond to the current and future needs of shippers.
- Commercial solutions are preferable to increased regulation, although effective legislation and regulation can foster an environment that will encourage commercial solutions to service problems and disputes.
- While the railways are a key component of the logistics system, other stakeholders (such as shippers and freight forwarders, terminal operators, vessel operators, and ports) also impact the efficiency, effectiveness, consistency and reliability of the supply chain. Many rail movements begin or end at a port or intermodal facility. Therefore, the total movement may involve other stakeholders besides the railways. The interface between elements is an important dimension of the overall effectiveness of the logistics system.
- There are a number of constraints that impact on railway capacity and operations including: availability of land to expand yards and facilities, especially in urban centres; geographical constraints in the busiest rail corridors; and the behaviour and expectations of municipalities and adjacent landowners.
- There is limited infrastructure, which serves a variety of commodities shipped by rail. Therefore, setting priorities can be important.

ISSUES

The review will address such issues as:

Shipper size – The review will address the needs of shippers of all sizes – small, medium, and large – across all sectors, including shippers with particular needs, e.g. dangerous commodities. The review will consider how shipper size impacts supply chain efficiency and capacity.

Car supply – Good service means 1) providing reasonably consistent, timely and reliable car supply, in terms of condition, type and numbers, to meet shipper demand; and 2) moving cars efficiently and effectively from origin to destination.

Demand forecasting – How do shippers and railways coordinate demand forecasting in both the short term (one year and less) and long term and the corresponding impact on service needs – fleet size, crews, locomotives – as well as infrastructure requirements of both railway and shipper? How are differences in demand forecasts and service/ infrastructure needs addressed?

Peak movements – Most shippers experience seasonal demand for their products and many experience cyclical demand. It is unreasonable for railways to provide sufficient resources to meet 100 percent of peak demand since it is expensive to “park” resources during off-peak or off-cycle periods. The challenge is to find a balance between the needs of shippers and railways that allows railways to provide effective service to shippers during peak periods while minimizing costs.

Operating practices – There may be railway service and operating practices that adversely impact the effectiveness and reliability of service to shippers. The review will identify and assess which practices are effective and which are adversely impacting service to shippers (e.g. co-production and scheduled railway service). The review will also consider the operating practices of others that may have an adverse impact on the logistics chain.

Shortline railways – Shortline railways originate approximately 25 percent of rail traffic in Canada. Where shippers served by shortlines are experiencing service problems, the review will examine the relationship between shortlines and the main-line carriers to determine whether such problems are attributable to service, operating, or marketing practices of the main-line carriers.

Surge capacity/recovery – Changes or surges in demand for capacity stem from two distinct causes. One driver for surge capacity is market demand that impacts the dynamics and/or timing of trade flows. The review will identify how such surges are taken into consideration during the forecasting process and what is considered an acceptable amount of surge capacity to ensure adequate service is provided and maintained in the event of a market driven surge in demand.

The second cause of a surge in demand for capacity is related to the interruption of the smooth flow of operations; alterations in capacity demand that come about because of system failures which may be attributable to a number of causes, some of which are within the railways’ control and others which are not (weather, labour disruptions, marine vessel arrival schedules and poor performance by shippers or terminals). The management of regular capacity must take into account both causes of surges in demand for service so as to allow for adequate service during market-driven surges and a rapid return to normal service when the demand surge related to operational problems is over. The review will identify best practices that facilitate quick recovery as well as the contingency and recovery plans that are deployed by the railways, shippers, and terminal operators; the effectiveness and adequacy of these plans; and additional cost-effective measures and resources (i.e. people, equipment, and facilities) that could be considered.

Transportation alternatives – The review will examine the extent to which service issues are a function of practical transportation alternatives, or lack thereof, that are available to shippers.

Communications – *Good* service requires effective communications so that shippers and railways are aware of issues that arise with respect to demand and traffic movement and can address them quickly. The review will survey stakeholders (shippers, railways and terminal operators) to identify best practices and flag where improvements may be required.

Financial impacts – Unreliable service can have significant financial implications for shippers including costs related to demurrage, performance penalties paid by shippers and railways, lost revenues due to missed sales opportunities/discounting, avoidable labour costs when cars are not spotted on time, etc. Railways may also experience adverse financial impacts including performance penalties, lost customers, and increased operating costs (e.g. idle labour and equipment). The review will attempt to quantify these impacts, even for a selected sector or group of shippers, to help demonstrate the cost to shippers, terminal operators, and railways of unreliable service or poor performance. This information would be essential to address issues such as reciprocal penalties and the need for investment.

Data acquisition and confidentiality – To conduct an objective review, significant amounts of confidential data will need to be collected from shippers, railways, and terminal operators. Transport Canada will need to assure all stakeholders that confidential data will be protected as part of the contracting process and that information released will be aggregated to protect the identity of shippers and carriers. This will be essential to ensure the full cooperation of all parties.

Dual railway/shipper accountability for

poor performance – The review will assess the degree to which performance penalties and incentives exist today for both shippers and railways and whether they are effective in ensuring reliable and consistent service.

Other issues – Any other issues that impact system efficiency and reliability may also be addressed as part of the review.

OBJECTIVES OF THE REVIEW

The objectives are to:

- Conduct a review of the rail-based logistics chain (including railways, shippers, terminal operators, ports, and vessel operators), with a focus on service provided to Canadian shippers and customers by Canadian National Railway (CN) and Canadian Pacific Railway (CP) within Canada, including to and from ports and border crossings;
- Identify problems and issues with respect to railway service including those stemming from other elements of the logistics chain;
- For shippers located on shortlines, determine if there are any problems with logistics and, if so, the source of the problem including service, operating, or marketing practices of the main-line carriers;
- Identify best practices and how these can be expanded to address service issues; and
- Make recommendations on how to address these problems and issues, including both commercial and, if necessary, regulatory solutions.

The review will examine the full logistics cycle from customer/railway demand forecasting; customer demand for service (e.g. car or train orders); railway acceptance and commitment to demand, to the spotting, loading, release and pickup of cars at origin; the movement of loaded cars to destination (including the switching of cars between CN, CP and shortlines); the spotting, emptying, release and pickup of cars at destination; and the return of empty cars for loading at origin. It will examine the interaction between railways and other logistics stakeholders (e.g. shippers and domestic end users, terminal operators, ports, and vessel operators) and the effect of third parties on operations and capacity.

APPROACH

The review will be conducted in two stages. The first stage will consist of quantitative and analytical work. In the second stage, draft recommendations will be developed by a Panel of three eminent persons based on the results of the analytical phase and any other relevant information that is available. The Panel will consult stakeholders on the draft recommendations and submit a final report to the Minister of Transport, Infrastructure and Communities.

PHASE 1: ANALYTICAL WORK

The analytical phase will consist of four projects:

1. Data gathering and analysis;
2. Assessment of logistics system operational issues;
3. Survey on railway best practices and issues; and
4. Assessment of how service issues are addressed in other transportation sectors and in regulated industries in Canada and the United States.

Consultants will be engaged to conduct the work under the first three projects. Transport Canada will undertake the work on the fourth one. This work is expected to take *a minimum of six months*, depending on the availability of required data and the extent of cooperation from railways, shippers, and terminal operators in providing such data.

1. Data Gathering and Analysis Project

This project is expected to be the most challenging, expensive, and time-consuming. The data phase is intended to help identify and quantify the magnitude of the problems with rail service and other elements of the logistics chain so that appropriate solutions can be developed. Good data analysis will be essential and will complement anecdotal information.

The intention is to assess historical information over a two to three year period for a broad range of commodities. (See proposed commodity list in Annex 1.) Sampling techniques will be used as appropriate to minimize costs, ensure data reliability, and address biases.

It is assumed that, from a shipper's perspective, good service consists of two main components – i) providing sufficient and consistent supply (track capacity, cars, locomotives, and crews) to meet shipper demand in a reasonable manner; and ii) moving traffic in an efficient, timely, orderly and reliable manner.

With respect to demand, key indicators include: number of cars required by shippers (i.e. car orders), number of cars committed by the railway, and number of cars actually delivered. The review will assess whether car order and allocation systems impact the railways' ability to meet shipper forecast demand in a reasonable manner.

There are a couple of demand-related issues that need to be addressed – “phantom” orders (ordering more cars than required in anticipation that less than 100 percent of the orders will be filled) and the availability of reliable and verifiable demand information.

Movement indicators are more readily available and will answer questions such as:

- Did shippers provide timely, reasonable and accurate forecasts of shipping requirements and did the railways accept and agree to such forecasts?
- Were cars spotted, loaded/unloaded, and picked up on a timely basis at origin and destination?
- Were transit times reasonable and consistent?
- Were dwell times reasonable and consistent?
- Were cars loaded in blocks at origin and delivered in the same blocks at destination?
- Did cars arrive in “bunches” at origin and/or destination, i.e. did several blocks of cars arrive unexpectedly at the same time and create congestion? What were the causes of such bunching?
- Were empty transit times reasonable and consistent?
- Do performance indicators vary by type of train, e.g. unit trains vs. manifest trains?

The analysis will indicate that problems occur from time to time. It would be unfair to assume that the railways are responsible for all problems in transit or that shippers and receivers, terminal operators, ports, or vessel operators are similarly responsible for all problems at the facilities where goods are loaded or unloaded. The analysis will have to include an assessment of the cause of the problems. This may be challenging since determining cause can be very subjective. However, it should be possible to identify disruption factors such as derailments, accidents, weather events, lack of vessels at port, strikes, and system outages that would have severe impacts on system performance.

A final report will indicate where there were service problems (nature, frequency and magnitude), causes (railway performance, weather, other stakeholder performance, etc.) and how they were addressed by the various parties.

The report will also describe the types of financial impacts that are experienced as the result of poor performance, including impacts on shippers, terminal operators, railways and others. Selective examples may be provided for illustrative purposes.

This information should be helpful in developing recommendations as part of the second phase related to the effectiveness of system recovery procedures.

This work will be conducted by consultants with experience in collecting and analyzing complex data from shippers and carriers and a thorough understanding of the supply chain from origin to destination.

2. Logistics System Operational Issues

A separate project will examine the operating practices of railways, shippers, vessel operators and terminal operators and assess the extent to which they create service problems. For example, while long block trains are assembled at origin, some trains are broken up on route and, as a result, some cars do not arrive at destination in the same block, as they were loaded. This can potentially create handling and operational problems within a port if all the cars in a block are required at the same time to meet a particular vessel.

The fact that CN and CP operate different lengths and configurations of trains can create problems in ensuring equitable treatment under their co-production agreements. This also creates operational problems at the port. However, co-production appears to have improved some operating efficiencies. How can these problems be addressed? Could this concept be expanded elsewhere? Are there labour implications associated with changing operational practices?

Railway and shipper/receiver resource levels have been changing over time, e.g. number of locomotives, storage capacity at destination, number of cars by category, and number of employees by category. How has this affected railway service?

Other questions that will be examined include:

- Are capacity constraints affecting service and operations, i.e. insufficient infrastructure, equipment, or crews?
- Should there be surge capacity to handle peak or unexpected demand and to facilitate recovery when there are system problems? Who decides and on what basis? Who should pay for surge capacity?
- Can port congestion be addressed through expansion of off-dock storage or off-dock marshalling facilities?
- Are railway practices related to traffic priorities reasonable, such as when service or capacity must be rationed?
- Are railway practices related to asset utilization and velocity reasonable?
- What practices, if any, of other parties such as shippers and terminals adversely affect system performance?
- How do railways determine and negotiate operational changes in their service levels? To what extent do railways consider shipper needs in establishing operational changes?
- How do community/proximity issues impact the efficiency and capacity of the logistics chain?
- Others?

This project will be conducted by consultants familiar with railway operations. The consultants will identify potential adverse impacts of operational practices within the logistics chain, in particular railway practices, on service to shippers and consult with shippers, railways, and terminals on the impacts and possible solutions. A report on findings and recommendations will be prepared for Transport Canada.

3. Survey of Railway Best Practices and Issues

A representative sample of shippers and terminal operators will be surveyed about their views on railway service and the performance of the logistics chain. This will include views on key service concerns as well as best practices of the railways and others who are part of the logistics chain. The survey will seek views on the nature and extent of accountability that exists for the various stakeholders within the logistics system. The survey will also seek views on the frequency that CTA remedies are contemplated and used and on their effectiveness, as well as commercial dispute resolution mechanisms.

Work will be done by a consultant and a report prepared for Transport Canada. The consultant will be asked to propose the best approach for obtaining this information.

This information will be instrumental for Phase 2 to help narrow down the key system issues that need to be addressed.

4. Service Issues in Other Regulated Industries

A review will be conducted on how complaints about service are addressed in other modes of transport, in regulated network industries such as telephone, television, gas, hydro-electricity, etc., and in the United States (rail). The study will look into the process/structure for handling complaints and the remedies that are available to determine if there is anything that may be applicable to railway service in Canada.

This study will be done by Transport Canada officials unless workload pressures require that a consultant be engaged.

PHASE 2: RECOMMENDATIONS STAGE

This stage will commence about one month before the data project report is submitted and will be led by a panel of three eminent persons, preferably consisting of one member with a railway background, one with a shipper background, and one member that is “neutral”. This phase will last about 6 months.

Draft recommendations will be developed based on the results of the analytical projects. In addition, interested parties will be invited to submit comments on railway service and other logistics chain issues, which the panel will also take into consideration.

The draft recommendations and reports from the analytical stage will be circulated to interested parties. The Panel will consult with stakeholders after these documents are circulated. A final report will be submitted to the Minister after the consultations were completed.

ANNEX 1 – COMMODITY GROUP

- Agriculture
- Coal
- Fertilizers including potash and sulphur
- Forest products including solid wood and pulp and paper
- Fuel and chemicals
- Grain
- Intermodal including retail
- Machinery and automotive
- Manufactured and miscellaneous
- Metals
- Minerals

APPENDIX C



APPENDIX C – RAIL FREIGHT SERVICE REVIEW PANEL TERMS OF REFERENCE

BACKGROUND

When the government tabled proposed amendments to the shipper protection provisions of the *Canada Transportation Act* (CTA) on May 30, 2007, it announced its commitment to begin a review of railway service (within 30 days of the Bill receiving Royal Assent) given significant concerns of railway shippers and other rail-based logistics stakeholders. Bill C-8 received Royal Assent on February 28, 2008. Following consultations with stakeholders, terms of reference for the Review of Rail Freight Service were released on August 12, 2008.

The objectives of the Review are:

- To conduct a review of the rail-based logistics chain (including shippers, terminal operators, ports, and vessels), with a focus on service provided to Canadian shippers and customers by Canadian National Railway (CN) and Canadian Pacific Railway (CP) within Canada, including to and from ports and border crossings;
- To identify problems and issues with respect to railway service including those stemming from other elements of the logistics chain;
- To examine the relationship between shortlines and main-line railways to determine whether any rail service problems being experienced by shortline shippers are attributable to service, operating, or marketing practices of the main-line carriers;

- To identify best practices and how these can be expanded to address service issues; and,
- To make recommendations on how to address these problems and issues, including both commercial and, if necessary, regulatory solutions.

The Review is being conducted in two phases.

- Phase I consists of quantitative and qualitative analytical work being carried out by independent consultants for Transport Canada.
- Phase II consists of the development of recommendations for the Minister by a Panel of three eminent persons based on the results of the analytical phase, any other relevant information, and consultations with stakeholders.

PANEL'S OBJECTIVE

The Panel will propose recommendations to address problems and issues with respect to service within the rail-based logistics system. The recommendations may include both commercial and, if necessary, regulatory solutions. The recommendations will be aimed at improving the efficiency, effectiveness, and reliability of service within the system, facilitating economic growth and trade expansion, and improving accountability among stakeholders.

In undertaking its work, the Panel will be guided by the general Terms of Reference for the review.

APPROACH

In conducting its work, the Panel will:

- meet with the Phase I consultants to review and discuss their findings;
- undertake site visits of the rail transportation logistics operations in both western and eastern Canada;
- solicit comments from interested parties on issues, solutions, best practices and factors the Panel should consider in developing its recommendations;
- conduct bilateral meetings with stakeholders, as required;
- develop draft recommendations based on the Phase I consultant reports, stakeholder input and other relevant information;
- release an interim report by May 31, 2010 containing the draft recommendations and solicit comments from interested parties;
- conduct bilateral meetings with stakeholders, as required;
- finalize a set of recommendations after considering comments submitted by interested parties and other relevant information; and
- submit its final report and recommendations to the Minister by August 31, 2010.

DRAFT REPORT

The Panel's draft report will cover the topics referenced in the *Panel's Objective* which are to be included in its final report. The draft report will be based on the results of the work completed under Phase I, stakeholder submissions and consultations, and any other information the Panel considers relevant.

In seeking comments on its draft report, the Panel will request stakeholders to:

- provide comments on the general acceptability of the draft recommendations;
- where recommendations are not acceptable, provide specific comments on how to improve the draft recommendations;
- provide a sense of prioritization of recommendations;
- comment on the impact of the Panel's recommendations on stakeholders and on service within the system; and
- provide other possible solutions to identified service-related problems that may not have been reflected in the draft recommendations.

FINAL REPORT AND RECOMMENDATIONS

The final report will:

- describe key problems and issues with the rail-based logistics system;
- summarize stakeholder positions on the key problems and issues;
- summarize solutions put forward to address the key problems and issues, including stakeholder positions on the solutions;
- identify key factors considered by the Panel in developing its recommendations; and
- set out recommendations to address the Panel's assessment of the key problems and issues within the system.



Transport
Canada

Transports
Canada

**Rail Freight Service
Review**

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**Examen des services de
transport ferroviaire des
marchandises**

November 9, 2009

Dear Stakeholder,

Call Letter for Submissions

The Honourable Rob Merrifield, Minister of State (Transport), announced on September 23, 2009, the appointment of a three-person Panel to conduct Phase II of the Rail Freight Service Review. The Panel is pleased to undertake this important review of Canada's rail-based freight logistics chain that will examine the performance of the rail freight transportation supply chain and its impact on rail service to shippers in Canada.

The objectives of the Rail Freight Service Review are to:

- conduct a review of the rail-based logistics chain (including railways, shippers, terminal operators, ports, and vessel operators), with a focus on service provided to Canadian shippers and customers by Canadian National and Canadian Pacific Railway within Canada, including to and from ports and border crossings;
- identify problems and issues with respect to railway service including those stemming from other elements of the logistics chain;
- determine if there are any problems with logistics for shippers located on shortlines and, if so, the source of the problem including service, operating, or marketing practices of the main line carriers;
- identify best practices and how these can be expanded to address service issues; and
- make recommendations on how to address these problems and issues, including both commercial and, if necessary, regulatory solutions.

The Review is being conducted in two phases. The first phase consists of qualitative and analytical work carried out by independent consultants for Transport Canada. That work is progressing well and once completed will be made available to stakeholders for consideration prior to the deadline for stakeholder submissions to the Panel. The final consultant's report from Phase I is expected to be released by January 29, 2010.

The Panel, representing the second phase of the Review, has been asked to propose recommendations to address problems and issues with respect to transportation service within the rail-based logistics system. The terms of reference require the Panel to:

- meet with the Phase I consultants to review and discuss their findings;
- undertake site visits of rail transportation logistics operations in both western and eastern Canada;
- solicit comments from interested parties on issues, solutions, best practices and factors the Panel should consider in developing its recommendations;
- conduct bilateral meetings with stakeholders, as required, prior to the interim report;
- develop draft recommendations based on the Phase I consultant reports, stakeholder input and other relevant information;
- release an interim report containing the draft recommendations and solicit comments from interested parties on the interim report;
- conduct bilateral meetings with stakeholders, as required, following release of the interim report;
- finalize a set of recommendations after considering comments submitted by interested parties and other relevant information; and
- submit its final report and recommendations to the Minister by end of Summer 2010.

The Panel is inviting all interested parties to provide written submissions by February 26, 2010. Unless an express request that a submission not be published is made to the Panel at the time a submission is provided, all submissions received by the Panel and all information contained therein, other than private information or information identified by the originator as commercially sensitive, will be published, as they are received, on the Rail Freight Service Review website at:

<http://www.tc.gc.ca/policy/acg/rfs-review-examen-sfm>. If you concur, it would be appreciated when you forward your submission that you indicate you have no objection to posting the full submission. This will facilitate the expeditious posting of submissions.

Information on how to make a submission is available on the Review website at <http://www.tc.gc.ca/policy/acg/rfs-review-examen-sfm/hw-eng.htm>. The terms of reference for the Review and Panel, the September 23, 2009 press release announcing the Panel and brief biographies of the Panel members can also be found on the website.

Interested parties are invited to forward their submissions electronically via the Review website or the following email address: rfsr-esmf@tc.gc.ca. Submissions may also be provided by fax to (613) 990-9026 or, by mail to the following address:

Rail Freight Service Review
Suite 808
180 Elgin Street
Ottawa, Ontario
K2P 2K3

The Panel is especially interested in receiving submissions for improving the rail-based logistics system that:

- articulate the nature and extent of service issues;
- describe the nature and extent of adverse impacts;
- propose concrete and realistic solutions that can be implemented in a practical manner;
- explain how the recommended solutions address the identified issues or problems;
- highlight best practices that might be adopted to improve service; and
- identify key principles or factors the Panel should consider in developing its recommendations to improve service in the rail-based logistics system in Canada.

The Panel is mindful of the strict timelines for the Review process that are dictated by the need to issue a final report by the end of Summer 2010. The Panel is seeking your cooperation in providing your submission by the February 26, 2010 deadline and working with the Panel, as required, on a timely basis through the balance of the Review process.

We look forward to your submission on improving the rail-based logistics system and encourage you to check the Panel's website from time to time for status reports and updates on the Panel's work, including the posting of the Phase I consultant reports.



Walter Paszkowski, Chair



David Edison, Member



Bill LeGrow, Member

APPENDIX E



APPENDIX E – LIST OF STAKEHOLDERS WHO PROVIDED SUBMISSIONS

- | | |
|--|---|
| 1. Agriculture Producers Association of Saskatchewan | 23. Cenovus Energy Inc. |
| 2. Ainsworth Lumber Co. Ltd. | 24. Chamber of Shipping of British Columbia |
| 3. Alberta Association of Municipal Districts and Counties | 25. Chemistry Industry Association of Canada |
| 4. Alberta, Government of | 26. Chetwynd, District of |
| 5. Alliance Pulse Processors Inc. | 27. Clear Hills County |
| 6. Alterna Biocarbon | 28. Coalition of Rail Shippers |
| 7. Archibald et al | 29. Développement Chibougamau (CETC Inc.) |
| 8. Armour Transportation Systems | 30. Enright, Matt |
| 9. Atlantic Container Line | 31. Euro Asia Transload Inc. |
| 10. Atlantic Gateway Advisory Council | 32. Farm West Holdings Inc. |
| 11. Battle River Railway | 33. Forage Exporters in Alberta and Saskatchewan |
| 12. British Columbia, Government of | 34. Forest Products Association of Canada |
| 13. British Columbia Wharf Operators' Association | 35. Fort St. John, City of |
| 14. Canadian Canola Growers Association | 36. Fraser Surrey Docks LP |
| 15. Canadian Federation of Agriculture | 37. GeoMetrix Empowered Logistics |
| 16. Canadian Fertilizer Institute | 38. Goff, Cameron |
| 17. Canadian Industrial Transportation Association | 39. Grain Growers of Canada |
| 18. Canadian International Freight Forwarders Association | 40. Grande Prairie & District Chamber of Commerce |
| 19. Canadian National Railway | 41. Grande Prairie No.1, County of |
| 20. Canadian Pacific Railway | 42. Graw, David |
| 21. Canadian Trucking Alliance | 43. Great Western Grain Co. Ltd. |
| 22. Canadian Wheat Board | 44. Halifax Chamber of Commerce |
| | 45. Halifax Port Authority |
| | 46. Halifax Shipping Association |
| | 47. High Level, Town of |

48. Hutton Forest Products
49. Inland Terminal Association of Canada
50. International Automobile Manufacturers of Canada, Association of
51. JM Longyear LLC
52. Keystone Agricultural Producers
53. Larson, Ken
54. Lemay Farms Inc.
55. Lesser Slave Lake Economic Alliance
56. London Agricultural Commodities
57. Mackenzie County
58. Maersk Canada Inc.
59. Maher Terminals LLC
60. Manitoba Municipalities, Association of
61. Manitoba, Government of
62. Mazda Canada Inc.
63. Montreal Port Authority
64. National Farmers Union
65. Navcor Transportation Services
66. New Brunswick Gateway Council
67. New Brunswick, Government of
68. Northern Alberta Development Council
69. Northern Sunrise County
70. Northgate Terminals
71. Northwest Corridor Development Corporation
72. Northwest Territories, Government of
73. NOVA Chemicals
74. Nova Scotia, Government of
75. Omineca Beetle Action Coalition
76. Peace No. 135 and the Town of Grimshaw, Municipal District of
77. Peace Region Economic Development Alliance
78. Peace River Regional District
79. Peace River, Town of
80. Petrogas Marketing Ltd.
81. Port Metro Vancouver
82. Potash Corporation
83. Prince Rupert Port Authority
84. Procor
85. Propane Gas Association of Canada
86. Provident Energy Ltd.
87. Quebec Port Authority
88. R.K. Agri Ltd.
89. Railway Association of Canada
90. Saint John Port Authority
91. Saskatchewan Association of Rural Municipalities
92. Saskatchewan Canola Growers Association
93. Saskatchewan, Government of
94. Sexsmith Coop Seed Cleaning Plant
95. Shipping Federation of Canada
96. South of Fraser Community Rail Task Force
97. Spirit River No. 133, Municipal District of
98. Teck Coal Limited
99. The International Group, Inc.
100. TSI Terminal Systems Inc.
101. Twin Rivers Plaster Rock
102. Vincett, Howard
103. Western Canadian Shippers' Coalition
104. Western Canadian Wheat Growers Association
105. Western Grain Elevators Association
106. Winslow Group

NOTE: 35 other stakeholders did not give consent for release of their submissions.

APPENDIX F



APPENDIX F – LIST OF STAKEHOLDERS CONSULTED

1. Ainsworth Lumber Co. Ltd.
2. Alberta Newsprint Company
3. Association of International Automobile Manufacturers of Canada
4. Canadian Canola Growers Association
5. Canadian Fertilizer Institute
6. Canadian Industrial Transportation Association
7. Canadian National Railway
8. Canadian Pacific Railway
9. Canadian Special Crops Association
10. Canadian Wheat Board
11. Canexus
12. Canfor
13. CanPulse Foods
14. Cargill
15. Casco
16. Centerm Container Terminal
17. Centre for Research & Innovation
18. Cerescorp Company
19. Chamber of Shipping of British Columbia
20. Chemistry Industry Association of Canada
21. China Shipping (Canada) Agency Co Ltd.
22. CMA-CGM
23. Coalition of Rail Shippers
24. COSCO Canada Inc.
25. Dow Chemical
26. Evergreen Shipping Agency
27. Forest Products Association of Canada
28. Grain Growers of Canada
29. Grande Cache Coal Corporation
30. Grande Prairie & District Chamber of Commerce
31. Great Western Railway
32. Grieg Star Shipping
33. Halifax Port Authority
34. Hanjin Shipping
35. Hapag-Lloyd
36. Inland Terminal Association of Canada
37. “K” Line Canada Ltd.
38. Kinetic Resources
39. Lantic Sugar Inc.
40. Maersk Canada Inc.
41. Maher Terminals (Prince Rupert)
42. Mining Association of Canada
43. Mitsui O.S.K. Lines Ltd. (MOL)
44. NGL Supply Co Ltd.
45. Norfalco
46. Northgate Terminal
47. Nova Chemicals
48. NYK Logistics
49. OOCL

50. Pacific BioEnergy
51. Parrish and Heimbecker
52. Paterson Global Foods
53. Port Metro Vancouver
54. Port of Montreal
55. Premium Pellet Ltd.
56. Prince Rupert Grain Terminals
57. Prince Rupert Port Authority
58. Propane Gas Association of Canada
59. Pulse Canada
60. Richardson International Ltd.
61. Rio Tinto
62. Shipping Federation of Canada
63. Spectra Energy
64. Teck
65. Tembec
66. TSI Terminal Systems Inc
67. Viterra
68. Viterra (Cascadia Terminal)
69. Walker Seeds
70. West Fraser Timber
71. Western Canadian Shippers Coalition
72. Western Grain Elevator Association
73. Westshore Terminals
74. Westward Shipping Ltd.
75. Westwood Shipping Lines
76. Weyburn Inland Terminal
77. Xstrata
78. Zim

Note: *The Panel consulted with 85 stakeholders. Appendix F excludes seven stakeholders whose names were withheld for confidentiality reasons.*

APPENDIX G



APPENDIX G – LEVEL OF SERVICES

Accommodation for traffic

113. (1) A railway company shall, according to its powers, in respect of a railway owned or operated by it,
- (a) furnish, at the point of origin, at the point of junction of the railway with another railway, and at all points of stopping established for that purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage on the railway;
 - (b) furnish adequate and suitable accommodation for the carriage, unloading and delivering of the traffic;
 - (c) without delay, and with due care and diligence, receive, carry and deliver the traffic;
 - (d) furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering the traffic; and
 - (e) furnish any other service incidental to transportation that is customary or usual in connection with the business of a railway company.

Carriage on payment of rates

- (2) Traffic must be taken, carried to and from, and delivered at the points referred to in paragraph 1.a) on the payment of the lawfully payable rate.

Compensation for provision of rolling stock

- (3) Where a shipper provides rolling stock for the carriage by the railway company of the shipper's traffic, the company shall, at the request of the shipper, establish specific reasonable compensation to the shipper in a tariff for the provision of the rolling stock.

Confidential contract between company and shipper

- (4) A shipper and a railway company may, by means of a confidential contract or other written agreement, agree on the manner in which the obligations under this section are to be fulfilled by the company.

Facilities for traffic

114. (1) A railway company shall, according to its powers, afford to all persons and other companies all adequate and suitable accommodation for receiving, carrying and delivering traffic on and from its railway, for the transfer of traffic between its railway and other railways and for the return of rolling stock.

Through traffic

- (2) For the purposes of subsection (1), adequate and suitable accommodation includes reasonable facilities for the receiving, carriage and delivery by the company
- (a) at the request of any other company, of through traffic and, in the case of goods shipped by carload, of the car with the goods shipped in it, to and from the railway of the other company, at a through rate; and
- (b) at the request of any person interested in through traffic, of such traffic at through rates.

Connecting railway to reasonable facilities

- (3) Every railway company that has or operates a railway forming part of a continuous line of railway with or that intersects any other railway, or that has any terminus, station or wharf near to any terminus, station or wharf of another railway, shall afford all reasonable facilities for delivering to that other railway, or for receiving from or carrying by its railway, all the traffic arriving by that other railway without any unreasonable delay, so that
- (a) no obstruction is offered to the public desirous of using those railways as a continuous line of communication; and
- (b) all reasonable accommodation, by means of the railways of those companies, is at all times afforded to the public for that purpose.

Similar facilities for truckers

- (4) If a railway company provides facilities for the transportation by rail of motor vehicles or trailers operated by any company under its control for the conveyance of goods for hire or reward,
- (a) the railway company shall offer to all companies operating motor vehicles or trailers for the conveyance of goods for hire or reward similar facilities at the same rates and on the same terms and conditions as those applicable to the motor vehicles or trailers operated by the company under its control; and

- (b) the Agency may disallow any rate or tariff that is not in compliance with this subsection and direct the company to substitute a rate or tariff that complies with this subsection.

Adequate and suitable accommodation

115. For the purposes of subsection 113(1) or 114(1), adequate and suitable accommodation includes reasonable facilities

- (a) for the junction of private sidings or private spurs with a railway owned or operated by a company referred to in that subsection; and
- (b) for receiving, carrying and delivering traffic on and from private sidings or private spurs and placing cars and moving them on and from those private sidings or private spurs.

Complaint and investigation concerning company's obligations

116. (1) On receipt of a complaint made by any person that a railway company is not fulfilling any of its service obligations, the Agency shall
- (a) conduct, as expeditiously as possible, an investigation of the complaint that, in its opinion, is warranted; and
- (b) within one hundred and twenty days after receipt of the complaint, determine whether the company is fulfilling that obligation.

Confidential contract binding on Agency

- (2) If a company and a shipper agree, by means of a confidential contract, on the manner in which service obligations under section 113 are to be fulfilled by the company, the terms of that agreement are binding on the Agency in making its determination.

Competitive line rate provisions binding on Agency

- (3) If a shipper and a company agree under subsection 136(4) on the manner in which the service obligations are to be fulfilled by the local carrier, the terms of the agreement are binding on the Agency in making its determination.

Orders of Agency

- (4) If the Agency determines that a company is not fulfilling any of its service obligations, the Agency may
- (a) order that
 - (i) specific works be constructed or carried out,
 - (ii) property be acquired,
 - (iii) cars, motive power or other equipment be allotted, distributed, used or moved as specified by the Agency, or
 - (iv) any specified steps, systems or methods be taken or followed by the company;
 - (b) specify in the order the maximum charges that may be made by the company in respect of the matter so ordered;
 - (c) order the company to fulfil that obligation in any manner and within any time or during any period that the Agency deems expedient, having regard to all proper interests, and specify the particulars of the obligation to be fulfilled;
 - (d) if the service obligation is in respect of a grain-dependent branch line listed in Schedule I, order the company to add to the plan it is required to prepare under subsection 141(1) an indication that it intends to take steps to discontinue operating the line; or
 - (e) if the service obligation is in respect of a grain-dependent branch line listed in Schedule I, order the company, on the terms and conditions that the Agency considers appropriate, to grant to another railway company the right
 - (i) to run and operate its trains over and on any portion of the line, and

- (ii) in so far as necessary to provide service to the line, to run and operate its trains over and on any portion of any other portion of the railway of the company against which the order is made but not to solicit traffic on that railway, to take possession of, use or occupy any land belonging to that company and to use the whole or any portion of that company's right-of-way, tracks, terminals, stations or station grounds.

Right of action on default

- (5) Every person aggrieved by any neglect or refusal of a company to fulfil its service obligations has, subject to this Act, an action for the neglect or refusal against the company.

Company not relieved

- (6) Subject to the terms of a confidential contract referred to in subsection 113(4) or a tariff setting out a competitive line rate referred to in subsection 136(4), a company is not relieved from an action taken under subsection (5) by any notice, condition or declaration if the damage claimed in the action arises from any negligence or omission of the company or any of its employees.

1996, c. 10, s. 116; 2000, c. 16, s. 4.

APPENDIX H



APPENDIX H – FINAL OFFER ARBITRATION

Application of sections 161 to 169

159. (1) Sections 161 to 169 apply only in respect of matters arising between shippers and carriers that involve
- (a) the carriage of goods by air to which Part II applies, other than their carriage internationally;
 - (b) the carriage of goods by railways to which this Act applies, other than the carriage of goods in trailers or containers on flat cars unless the containers arrive by water at a port in Canada, served by only one railway company, for further movement by rail or arrive by rail at such a port in Canada for further movement by water; or
 - (c) the carriage by water, for hire or reward, of goods required for the maintenance or development of a municipality or any permanent settlement for northern marine resupply purposes, other than goods required in relation to national defence or in relation to the exploration for or the development, extraction or processing of oil, gas or any mineral.

Scope of paragraph (1)(c)

- (2) Paragraph (1)(c) applies only to resupply services on
- (a) the rivers, streams, lakes and other waters within the watershed of the Mackenzie River;
 - (b) the territorial sea and internal waters of Canada that are adjacent to the coast of the mainland and islands of the Canadian Arctic and situated within the area bounded by the meridians of longitude 95° West and 141° West and the parallels of latitude 66°00'30" North and 74°00'20" North; and
 - (c) the internal waters of Canada comprised in Spence Bay and Shepherd Bay and situated east of the meridian of longitude 95° West.

Application

- (3) Paragraph (1)(c) applies only if
- (a) the total register tonnage of all ships used to provide the resupply service exceeds fifty register tons; or
 - (b) the resupply service originates from a point situated on the waters described in subsection (2).

Rail passenger services

160. Sections 161 to 169 also apply, with any modifications that the circumstances require, in respect of the rates charged or proposed to be charged by, and in respect of any of the conditions associated with the provision of services by, a railway company to any other railway company engaged in passenger rail services, except a public passenger service provider as defined in section 87.

Final Offer Arbitration

Submission for final offer arbitration

161. (1) A shipper who is dissatisfied with the rate or rates charged or proposed to be charged by a carrier for the movement of goods, or with any of the conditions associated with the movement of goods, may, if the matter cannot be resolved between the shipper and the carrier, submit the matter in writing to the Agency for a final offer arbitration to be conducted by one arbitrator or, if the shipper and the carrier agree, by a panel of three arbitrators.

Contents of submission

- (2) A copy of a submission under subsection (1) shall be served on the carrier by the shipper and the submission shall contain
 - (a) the final offer of the shipper to the carrier in the matter, excluding any dollar amounts;
 - (b) [Repealed, 2000, c. 16, s. 11]
 - (c) an undertaking by the shipper to ship the goods to which the arbitration relates in accordance with the decision of the arbitrator;
 - (d) an undertaking by the shipper to the Agency whereby the shipper agrees to pay to the arbitrator the fee for which the shipper is liable under section 166 as a party to the arbitration; and
 - (e) the name of the arbitrator, if any, that the shipper and the carrier agreed should conduct the arbitration or, if they agreed that the arbitration should be conducted by a panel of three arbitrators, the name of an arbitrator chosen by the shipper and the name of an arbitrator chosen by the carrier.

Arbitration precluded in certain cases

- (3) The Agency shall not have any matter submitted to it by a shipper under subsection (1) arbitrated if the shipper has not, at least five days before making the submission, served on the carrier a written notice indicating that the shipper intends to submit the matter to the Agency for a final offer arbitration.

Final offer arbitration not a proceeding

- (4) A final offer arbitration is not a proceeding before the Agency.

1996, c. 10, s. 161; 2000, c. 16, s. 11.

Submission of final offers

161. (1) Within 10 days after a submission is served under subsection 161(2), the shipper and the carrier shall submit to the Agency their final offers, including dollar amounts.

Copies to the parties

- (2) Without delay after final offers are submitted under subsection (1) by both the shipper and the carrier, the Agency shall provide the shipper and the carrier with copies of each other's final offer.

If no final offer from a party

- (3) If one party does not submit a final offer in accordance with subsection (1), the final offer submitted by the other party is deemed to be the final offer selected by the arbitrator under subsection 165(1).

2000, c. 16, s. 12.

Arbitration

- 162.** (1) Notwithstanding any application filed with the Agency by a carrier in respect of a matter, within five days after final offers are received under subsection 161.1(1), the Agency shall refer the matter for arbitration
- (a) if the parties did not agree that the arbitration should be conducted by a panel of three arbitrators, to the arbitrator, if any, named under paragraph 161(2)(e) or, if that arbitrator is not, in the opinion of the Agency, available to conduct the arbitration or no arbitrator is named, to an arbitrator on the list of arbitrators referred to in section 169 who the Agency chooses and determines is appropriate and available to conduct the arbitration; and
 - (b) if the parties agreed that the arbitration should be conducted by a panel of three arbitrators,
 - (i) to the arbitrators named by the parties under paragraph 161(2)(e) and to any arbitrator who those arbitrators have, within 10 days after the submission was served under subsection 161(2), notified the Agency that they have agreed on, or if those arbitrators did not so notify the Agency, to an arbitrator on the list of arbitrators referred to in section 169 who the Agency chooses and determines is appropriate and available to conduct the arbitration, or
 - (ii) if an arbitrator referred to in subparagraph (i) is not, in the opinion of the Agency, available to conduct the arbitration, to the arbitrators named in that subparagraph who are available and to an arbitrator chosen by the Agency from the list of arbitrators referred to in section 169 who the Agency determines is appropriate and available to conduct the arbitration.

Interpretation

- (1.1) If a matter was referred to a panel of arbitrators, every reference in subsections (1.2) and (2) and sections 163 to 169 to an arbitrator or the arbitrator shall be construed as a reference to a panel of arbitrators or the panel of arbitrators, as the case may be.

Delay in referral

- (1.2) If the shipper consents to an application referred to in subsection (1) being heard before the matter is referred to an arbitrator, the Agency shall defer referring the matter until the application is dealt with.

Assistance by Agency

- (2) The Agency may, at the request of the arbitrator, provide administrative, technical and legal assistance to the arbitrator on a cost recovery basis.

1996, c. 10, s. 162; 2000, c. 16, s. 13.

Decision or order affecting a matter being arbitrated

162.1 The Agency may, in addition to any other decision or order it may make, order that an arbitration be discontinued, that it be continued subject to the terms and conditions that the Agency may fix or that the decision of the arbitrator be set aside if

- (a) the Agency makes a decision or an order arising out of an application that is in respect of a matter submitted to the Agency for a final offer arbitration and that is filed by a carrier before the matter is referred to arbitration; and
- (b) the decision or order affects the arbitration.

2000, c. 16, s. 14.

Procedure

163. (1) In the absence of an agreement by the arbitrator and the parties as to the procedure to be followed, a final offer arbitration shall be governed by the rules of procedure made by the Agency.

Procedure generally

(2) The arbitrator shall conduct the arbitration proceedings as expeditiously as possible and, subject to the procedure referred to in subsection (1), in the manner the arbitrator considers appropriate having regard to the circumstances of the matter.

Exchange of information

(3) Within fifteen days after the Agency refers a matter for arbitration, the parties shall exchange the information that they intend to submit to the arbitrator in support of their final offers.

Interrogatories

(4) Within seven days after receipt of the information referred to in subsection (3), each party may direct interrogatories to the other, which shall be answered within fifteen days after their receipt.

Withholding of information

(5) If a party unreasonably withholds information that the arbitrator subsequently deems to be relevant, that withholding shall be taken into account by the arbitrator in making a decision.

Arbitration information

164. (1) The arbitrator shall, in conducting a final offer arbitration between a shipper and a carrier, have regard to the information provided to the arbitrator by the parties in support of their final offers and, unless the parties agree to limit the amount of information to be provided, to any additional information that is provided by the parties at the arbitrator's request.

Arbitration considerations

(2) Unless the parties agree otherwise, in rendering a decision the arbitrator shall have regard to whether there is available to the shipper an alternative, effective, adequate and competitive means of transporting the goods to which the matter relates and to all considerations that appear to the arbitrator to be relevant to the matter.

Summary process

164.1 If the Agency determines that a shipper's final offer submitted under subsection 161.1(1) involves freight charges in an amount of not more than \$750,000 and the shipper did not indicate a contrary intention when submitting the offer, sections 163 and 164 do not apply and the arbitration shall proceed as follows:

- (a) within seven days after a matter is referred to an arbitrator, the shipper and the carrier may file with the arbitrator a response to the final offer of the other party;
- (b) subject to paragraph (c), the arbitrator shall decide the matter on the basis of the final offers and any response filed under paragraph (a); and
- (c) if the arbitrator considers it necessary, the arbitrator may invite the parties to make oral representations or may ask the parties to appear before him or her to provide further information.

2000, c. 16, s. 15.

Decision of arbitrator

165. (1) The decision of the arbitrator in conducting a final offer arbitration shall be the selection by the arbitrator of the final offer of either the shipper or the carrier.

Requirements re decision

(2) The decision of the arbitrator shall

- (a) be in writing;
- (b) unless the parties agree otherwise, be rendered within 60 days or, in the case of an arbitration conducted in accordance with section 164.1, 30 days after the date on which the submission for the final offer arbitration was received by the Agency; and
- (c) unless the parties agree otherwise, be rendered so as to apply to the parties for a period of one year or any lesser period that may be appropriate, having regard to the negotiations between the parties that preceded the arbitration.

Incorporation in tariff

(3) The carrier shall, without delay after the arbitrator's decision, set out the rate or rates or the conditions associated with the movement of goods that have been selected by the arbitrator in a tariff of the carrier, unless, where the carrier is entitled to keep the rate or rates or conditions confidential, the parties to the arbitration agree to include the rate or rates or conditions in a contract that the parties agree to keep confidential.

Reasons not required

(4) No reasons shall be set out in the decision of the arbitrator.

Reasons may be requested

(5) The arbitrator shall, if requested by all of the parties to the arbitration within 30 days or, in the case of an arbitration conducted in accordance with section 164.1, seven days after the decision of the arbitrator, give written reasons for the decision.

Application of decision

- (6) Except where both parties agree otherwise,
 - (a) the decision of the arbitrator on a final offer arbitration shall be final and binding and be applicable to the parties as of the date on which the submission for the arbitration was received by the Agency from the shipper, and is enforceable as if it were an order of the Agency; and
 - (b) the arbitrator shall direct in the decision that interest at a reasonable rate specified by the arbitrator shall be paid to one of the parties by the other on moneys that, as a result of the application of paragraph (a), are owed by a party for the period between the date referred to in that paragraph and the date of the payment.

Payment by party

(7) Moneys and interest referred to in paragraph (6)(b) that are owed by a party pursuant to a decision of the arbitrator shall be paid without delay to the other party.

1996, c. 10, s. 165; 2000, c. 16, s. 16.

Arbitration fees

166. (1) The Agency may fix the fee to be paid to an arbitrator for the costs of, and the services provided by, the arbitrator in final offer arbitration proceedings.

Payment of fees and costs

- (2) The shipper and the carrier shall share equally, whether or not the proceedings are terminated pursuant to section 168, in the payment of the fee fixed under subsection (1) and in the cost
 - (a) borne by the Agency for administrative, technical and legal services provided to the arbitrator pursuant to subsection 162(2); and
 - (b) of the preparation of any reasons requested pursuant to subsection 165(5).

Confidentiality of information

167. Where the Agency is advised that a party to a final offer arbitration wishes to keep matters relating to the arbitration confidential,
- (a) the Agency and the arbitrator shall take all reasonably necessary measures to ensure that the matters are not disclosed by the Agency or the arbitrator or during the arbitration proceedings to any person other than the parties; and
 - (b) no reasons for the decision given pursuant to subsection 165(5) shall contain those matters or any information included in a contract that the parties agreed to keep confidential.

Termination of proceedings

168. Where, before the arbitrator renders a decision on a final offer arbitration, the parties advise the Agency or the arbitrator that they agree that the matter being arbitrated should be withdrawn from arbitration, the arbitration proceedings in respect of the matter shall be immediately terminated.

List of arbitrators

169. (1) The Agency shall, from time to time, in consultation with representatives of shippers and carriers, establish a list of persons who agree to act as arbitrators in final offer arbitrations. The list must state which of the persons have indicated that they have expertise that may assist them in conducting final offer arbitrations and the nature of that expertise.

List per mode

- (2) A separate list of persons may be established under subsection (1) in respect of each or any mode of transportation, as the Agency considers appropriate.

Publication of list

- (3) The Agency shall have the list of persons made known to representatives of shippers and carriers throughout Canada.

1996, c. 10, s. 169; 2000, c. 16, s. 17.

Mediation

- 169.1 (1) The parties to a final offer arbitration may, by agreement, refer to a mediator, which may be the Agency, a matter that has been submitted for a final offer arbitration under section 161.

Establishment of roster

- (2) The Agency may establish a roster of persons, which may include members and staff of the Agency, to act as mediators in any matter referred to it under subsection (1).

Confidentiality of mediation

- (3) All matters relating to the mediation shall be kept confidential, unless the parties otherwise agree, and information provided by a party for the purposes of the mediation shall not be used for any other purpose without the consent of that party.

Time limit for completion of mediation

- (4) Unless the parties otherwise agree, the mediation shall be completed within 30 days after the matter is referred for mediation.

Effect of mediation on final offer arbitration

- (5) The mediation has the effect of
- (a) staying the conduct of the final offer arbitration for the period of the mediation; and
 - (b) extending the time within which the arbitrator must make a decision in the matter of the final offer arbitration by the period of the mediation.

Mediator not to act in other proceedings

- (6) The person who acts as mediator may not act in any other proceedings in relation to any matter that was at issue in the mediation.

2008, c. 5, s. 7.

Joint offer of several shippers

169.2 (1) In the case where more than one shipper is dissatisfied with the rate or rates charged or proposed to be charged by a carrier for the movement of goods, or with any conditions associated with the movement of goods, those shippers may, if the matter cannot be resolved between them and the carrier, submit the matter jointly to the Agency for a final offer arbitration, in which case sections 161 to 169 apply, with any modifications that the circumstances require.

Common matter and application of the offer

(2) A matter submitted jointly to the Agency for a final offer arbitration shall be common to all the shippers and the shippers shall make a joint offer in respect of the matter, the terms of which apply to all of them.

Arbitration precluded in certain cases

(3) The Agency shall not have any matter submitted to it for a final offer arbitration under subsection (1) arbitrated unless the shippers demonstrate, to the satisfaction of the Agency, that an attempt has been made to mediate the matter.

Confidentiality of mediation

(4) All matters relating to a mediation shall be kept confidential, unless the parties otherwise agree, and information provided by a party for the purposes of the mediation shall not be used for any other purpose without the consent of that party.

Mediator not to act in other proceedings

(5) The person who acts as mediator may not act in any other proceedings in relation to any matter that was at issue in the mediation.

Matter submitted by more than one shipper

- (6) In the case of a matter that is submitted jointly under subsection (1),
 - (a) the period referred to in subsection 161.1(1) is 20 days;
 - (b) the arbitrator may, if he or she considers it necessary, extend any of the periods referred to in subsections 163(3) and (4) and paragraph 164.1(a); and
 - (c) the decision of the arbitrator shall, despite paragraph 165(2)(b), be rendered within 120 days or, in the case of an arbitration conducted in accordance with section 164.1, 90 days after the day on which the submission for the final offer arbitration is received by the Agency unless the parties agree otherwise.

2008, c. 5, s. 7.

Time limit — preliminary applications

169.3 (1) Despite sections 162 and 162.1, any application filed with the Agency by a carrier in respect of a matter submitted jointly to the Agency under subsection 169.2(1) shall be filed with the Agency no later than seven days after the day on which the joint submission is made.

Service of copy

(2) A copy of the application shall be served on each of the shippers making the joint submission no later than the day on which the application is required to be filed under subsection (1).

Joint answer

(3) The shippers, no later than five days after the day on which the last shipper was served under subsection (2), shall file with the Agency a joint answer to the application and serve a copy of it on the carrier.

Reply

(4) The carrier, no later than two days after the day on which it was served under subsection (3), shall file with the Agency a reply to the joint answer and serve a copy of it on each of the shippers.

Decision of Agency

(5) The Agency shall issue its decision on the application no later than the day on which the matter is required to be referred to arbitration under subsection 162(1).

Deemed conformity

(6) If no application referred to in subsection (1) is filed within the limit set out in that subsection, the matter submitted jointly is deemed to conform to the requirements of subsection 169.2(2).

2008, c. 5, s. 7.

APPENDIX I



APPENDIX I – ANCILLARY CHARGES

Unreasonable Charges or Terms

120.1 (1) If, on complaint in writing to the Agency by a shipper who is subject to any charges and associated terms and conditions for the movement of traffic or for the provision of incidental services that are found in a tariff that applies to more than one shipper other than a tariff referred to in subsection 165(3), the Agency finds that the charges or associated terms and conditions are unreasonable, the Agency may, by order, establish new charges or associated terms and conditions.

Period of validity

(2) An order made under subsection (1) remains in effect for the period, not exceeding one year, specified in the order.

Factors to be considered

(3) In deciding whether any charges or associated terms and conditions are unreasonable, the Agency shall take into account the following factors:

- (a) the objective of the charges or associated terms and conditions;
- (b) the industry practice in setting the charges or associated terms and conditions;
- (c) in the case of a complaint relating to the provision of any incidental service, the existence of an effective, adequate and competitive alternative to the provision of that service; and
- (d) any other factor that the Agency considers relevant.

Commercially fair and reasonable

(4) Any charges or associated terms and conditions established by the Agency shall be commercially fair and reasonable to the shippers who are subject to them as well as to the railway company that issued the tariff containing them.

Duty to vary tariff

(5) The railway company shall, without delay after the Agency establishes any charges or associated terms and conditions, vary its tariff to reflect those charges or associated terms and conditions.

No variation

(6) The railway company shall not vary its tariff with respect to any charges or associated terms and conditions established by the Agency until the period referred to in subsection (2) has expired.

Clarification

(7) For greater certainty, this section does not apply to rates for the movement of traffic.

2008, c. 5, s. 3.

APPENDIX J



APPENDIX J – PHASE I RESEARCH COMMISSIONED BY TRANSPORT CANADA

QGI Consulting

1. *Analysis of Railway Fulfillment of Shipper Demand and Transit Times*, March 2010.
2. *Description of Canada's Rail based Freight Logistics System*, November 2009.
3. *Analysis of Operating Practices*, October 2009.

QGI Technical Reports

- (a) Sampling Methodology, March 2009.
- (b) Railway Demand Forecasting and Service Planning, March 2010.
- (c) Railway Car Order and Car Supply Processes, March 2010.
- (d) Illustration of Financial Impacts on System Stakeholders, March, 2010.
- (e) Dual Railway/Shipper Accountability for Poor Performance, March 2010.

NRG Research Group

1. *Survey of Shippers*, November 30, 2009.
2. *Survey of Other Stakeholders – Terminal Operators, Ports and Shipping Lines*, January 18, 2010.

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Note: Copies of all reports are available on the Rail Freight Service Review website: <http://www.tc.gc.ca/eng/policy/acg-rfs-review-examen-sfm-rvw-eng-442.htm>.

APPENDIX K



APPENDIX K – GLOSSARY OF ACRONYMS

AGENCY.....	Canadian Transportation Agency
CDR	Commercial Dispute Resolution
CFI	Canadian Fertilizer Institute
CLR.....	Competitive Line Rates
CN.....	Canadian National Railway
CP	Canadian Pacific Railway
CTA	<i>Canada Transportation Act</i>
CV.....	Coefficient of Variation
CWB.....	Canadian Wheat Board
ETA.....	Estimated Time of Arrival
FOA	Final Offer Arbitration
KPI	Key Performance Indicators
LOS.....	Level of Service(s)

