



Canadian  
Transportation  
Agency

Office  
des transports  
du Canada



# Five-year review of interswitching regulations and rates: Consultation paper

Canadian Transportation Agency

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# Introduction

As required by the *Canada Transportation Act* (Act), every five years the Canadian Transportation Agency (CTA) reviews its [Railway Interswitching Regulations](#) (Regulations).

The purpose of this document is to consult interested Canadians on the Regulations, primarily for sidings within 30 km of an interchange at origin or destination. This review does not consider the appropriateness or use of the extended interswitching provision (160 km interswitching) under subsection 127(2.1) of the *Canada Transportation Act*.

This 2024 review focuses on issues that have emerged through ongoing analysis and discussions with shippers, railways, and other rail experts since the last five-year review in 2019, i.e. the definition of eligible traffic and the factors considered in setting the interswitching rate. The CTA is looking for stakeholder's perspectives on whether to modify the regulations, or the methodology the CTA uses to determine the interswitching rate. Comments on other issues are also welcome.

The specific questions of interest, and instructions on how to participate in the consultation are provided below. We invite railway companies, shippers, and other interested Canadians to submit comments by xx.

## Background

Interswitching is the transfer of traffic from one railway to another at a point where the lines of the two railways connect. It gives shippers more options for moving goods by rail. If a siding is served by only one railway, the shipper can have that railway take the traffic to the connection point (interchange) and transfer it to the other railway to complete the haul.

The CTA sets out rules for 30 km interswitching in the Regulations. Each year, the CTA sets the interswitching rate for each zone. The method the CTA uses results in rates that account for the total operating costs of the railway companies, including a cost of capital allowance.

For information on the CTA's authorities to make regulations affecting regulated interswitching rates, see the [Canada Transportation Act](#), section 128.

# Key Issues and Questions

## 1. Eligible traffic

The regulations use the general definition of rail traffic found in section 87 of the *Canada Transportation Act*, i.e. “the traffic of goods, including equipment required for their movement.”

The definition of “goods” is found in section 6 of the *Canada Transportation Act*, i.e., “includes rolling stock and mail.”

The regulations do not expand on this definition.

The CTA has heard that stakeholders have different understandings of the word “traffic.” For example, some believe that only loaded cars are eligible traffic for interswitching at the regulated rate. Others believe that anything that can be moved by rail – loaded cars, empty cars, and railway engines and equipment – is eligible traffic.

## Questions

1. What do you view as “eligible traffic” for interswitching? Are there types of traffic you believe are **not** eligible?
2. Are there sections in the regulations that require amending to provide more clarity on eligible traffic?

Please give reasons for your answers.

## 2. Factors in setting the interswitching rate

The CTA's responsibilities includes the setting of the interswitching rate.

Some stakeholders suggest adding new factors to the method, namely:

- the market rate for interswitching; and/or
- how much interswitching takes place in each zone (traffic density).

Below is a brief description of the current method for setting rates and the new factors some stakeholders have proposed.

### Current method

As mentioned in the Background, the CTA regulates interswitching in areas where shippers have access to only one railway at their siding. The law requires the CTA to set a commercially fair and reasonable rate to all parties. Specifically, the rate must cover at least the railway's variable costs. These costs, like wages and fuel, can be traced back to individual interswitching activities.

The CTA has a method for calculating a commercially fair and reasonable rate. It accounts for the variable costs and adds a fair contribution to the railway's fixed costs (general, business-wide costs such as insurance). Factors the method considers include, among others:

- The volume of cars each railway company is interswitching.
- Operating and administration costs related to interswitching. These include, for example, fuel and labour costs.
- Relevant infrastructure costs, including the amount to buy and upgrade it (capital costs) and the value it loses due to wear and tear (depreciation costs).

Once the CTA knows how much it costs the railways to provide interswitching services in each zone, it uses a weighted average to set zone rates that cover their costs and compensate them appropriately yet are fair to shippers. “Weighted average” means the CTA adjusts the rate to account for differences between each railway's costs. They have

different costs per car, and they each interswitch a different number of cars in each zone.

The mathematical formula the CTA uses to set the rate is in [Annex A](#). A more detailed version can be found in the CTA's [decision that set the 2019 interswitching rates](#).

## Market rates

In a letter sent to the CTA by CN (see Annex B), CN argued that the CTA should consider market rates in calculating the regulated interswitching rate. To date, the market rate has never been a factor in the formula the CTA uses to set the regulated interswitching rate.

CN argues that without consideration of market rates, the regulated rate is too low to be commercially fair to railways, as the law demands.

## Questions

1. Should the Agency consider market rates in the setting of the regulated interswitching rate?
2. Which market conditions should be reflected in a factor for market rates if one were introduced? How would the Agency implement this factor?
3. Do you have other suggestions for adjusting the rate-setting method? The result must always be rates that are commercially fair and reasonable for both railways and shippers.

Please give reasons for your answers.

## Traffic density

Some stakeholders believe that traffic density should also affect the zone rate. They argue that the zones with lower rail line volumes (density) should pay a higher contribution to fixed costs than zones with higher rail line densities.

The CTA currently multiplies the variable costs obtained by measuring the interswitching activities by a factor to account for each railway company's fixed costs, which do not

depend on the traffic volume moved. Currently, the CTA estimates this factor, called “contribution to fixed costs,” as the markup on system average variable costs required to equate them to the total economic costs of the system. We adopted this method to<sup>1</sup>:

- I. Provide total costs back to the railway companies when applied to the variable costs of every service.
- II. Respond to the requirement in section 112 of the *Canada Transportation Act*, in that it allows the railway companies to earn a reasonable return while protecting shippers from excessive fees.
- III. Be a reasonable estimate of the contribution to fixed costs since the railway's variable costs are estimated using system average unit costs for the activities performed.

## Questions

1. Should the CTA calculate contribution to fixed costs differently to account for differences in line density? If so, how and what data should be used?

Please give reasons for your answer.

## Providing your feedback

Thank you for participating in this consultation. **Please send your feedback to [ferroviaire-rail@otc-cta.gc.ca](mailto:ferroviaire-rail@otc-cta.gc.ca).**

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<sup>1</sup>[Canada Gazette Part II, Vol. 147 \(2013\)](#)

# Schedule

You are invited to submit your input to the questions posed in this discussion paper by February 10, 2025. You are invited to respond to all questions, or simply those questions that are of interest to you or your organization. Your answers will help the CTA decide whether to propose any changes to the regulations or rate-setting method.

Your initial public submissions will be posted on here on February 10, 2025 in the official language in which they were sent, along with your name or that of the organization represented.

Stakeholders can provide responses to initial submissions by April 11, 2025

Public versions of the responses will be posted here by April 25, 2025.

Submissions by mail can be sent to:

Secretariat, Canadian Transportation Agency  
60 Laval Street, Unit 1-117  
Gatineau, Quebec  
Canada J8X 3G9

Please note that these must be postdated no later than February 10, 2025.

If you wish to submit a video due to accessibility issues, please send an email to [ferroviaire-rail@otc-cta.gc.ca](mailto:ferroviaire-rail@otc-cta.gc.ca) with the subject line “Video”. We will contact you to coordinate your submission

If the CTA makes any formal proposals to change the regulations, these regulatory amendments would be introduced through the formal regulatory process in the Canada Gazette. The Agency anticipates any such formal process could begin in the Spring of 2025.

# Who can see your feedback

## Your feedback is public information

Your feedback will appear on the CTA website in the official language you used to write it, along with your name. If you believe part or all of your feedback should be treated as confidential, follow the steps below.

## Confidential Information

If a document you send has confidential information, you must send two copies of it, as follows:

1. One copy (the public version) from which the confidential information has been blacked out.
2. One copy (the confidential version) in which:
  - each page is marked “contains confidential information” at the top; and
  - you highlight or otherwise show on each page the confidential information that was blacked out in the first copy.

The CTA will post the public version on its website and keep the confidential one for internal use only.

However, all feedback is subject to the *Access to Information Act* and *Privacy Act*. The CTA will protect the confidentiality of your information following those Acts, but the Acts can require the CTA to release information if someone requests it and if it doesn't fall within the legislated exceptions.

# Annex A: Rate-setting formula

Below is the mathematical formula the CTA uses to set interswitching rates. A more detailed version is in the CTA's [decision on the 2019 interswitching rates](#).

$$\text{Interswitching rates} = (A \times B) \times C/D$$

Where:

- A is interswitching variable costs,
- B is contribution to fixed costs,
- C is a factor to account for price inflation, and
- D is a productivity adjustment factor.

A, the interswitching variable costs, is expressed as:

$$\text{Interswitching variable costs} = (E/F \times G) \times H$$

Where:

- E is system costs
- F is system service units
- G is variability of costs, and
- H is interswitching service units

# Annex B: CN letter

CN

[www.cn.ca](http://www.cn.ca)

October 18, 2020

Patrice Bellerose  
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## Re: Extended interswitching rates

We write further to Agency Determination R-2023-178 dated September 18, 2023 setting the regulated interswitching rates for Zone 5 until December 31, 2023 (the Determination). The Determination was made necessary to implement temporary amendments to the Canada Transportation Act (CTA) recently enacted by the Budget Implementation Act, 2023, No.1 (Bill C-47). The Determination also supplemented Agency Determination No. R-2022-164 which set interswitching rates for 2023 respecting Zones 1 to 4.

Our purpose is to comment on the rates established by the Determination for Zone 5 and document our position respecting the process leading to the determination by the Agency under subsection 127.1(1) of the CTA respecting Zones 1 to 5 for 2024.

## Legislative Framework

Parliament included the provisions about interswitching in Division IV of Part III of the CTA under the title “Rates, Tariffs and Services”. Critical to the mandate of the CTA, section 112 provides that rates set under that Division must be commercially fair and reasonable to all parties:

112. A rate or condition of service established by the Agency under this Division must be **commercially** fair and reasonable to **all parties**. (Emphasis added)

That rates must be commercially fair and reasonable to all parties is the only guiding principle the CTA directs the Agency to follow. By referring to rates that are commercially fair and reasonable, Parliament intended rates set by the Agency to be neutral in the market, that is not tipping the balance in favour of railways or in favour of shippers. The Oxford English Dictionary defines “commercially” as follows:

commercially, adv.

In a commercial manner; from a commercial point of view; as a matter of trade.

For the Agency, the benchmark against which rates must be set under section 112, are rates commercially charged, that is rates charged in the Canadian railway market. There cannot be any other source for the Agency to assess commercially fair and reasonable rates when acting under these provisions of the CTA.

Notwithstanding the clear direction from Parliament in section 112, the Agency is structuring its determinations about interswitching rates on a totally different basis: railway costs. This approach relies on subsection 127(3) which directs the Agency not to set interswitching rates below the variable costs of moving the traffic:

127. (3) In determining an interswitching rate, the Agency **shall consider the average variable costs** of all movements of traffic that are subject to the rate **and the rate shall not be less than the variable costs of moving the traffic**, as determined by the Agency. (Emphasis added)

Unlike section 112 which set the guiding principle for rate setting by the Agency (commercial), this provision is simply a safeguard clause which directs the Agency to consider the average variable cost of all movements to ensure that the rates it will set will not derive below cost contributions for railways. The words “shall not be less than...” makes clear that the sole purpose of the provision is to establish an ultimate floor for interswitching rates but without making cost the level the Agency must meet. This interpretation is also confirmed by the title of the provision “Limit on rate”.

The Agency is disregarding Parliament’s directions. Its decisions about interswitching rates elevates cost as the sole reference and determining factor. This is obvious from

the wording of annual decisions under subsection 127.1(1), including Agency Determination No. [R-2022-164](#) which set interswitching rates for 2023 respecting Zones 1 to 4:

- That decision refers only once to section 112 of the CTA (at paragraph 7) to state the requirement that rates must be commercially fair and reasonable;
- Paragraph 10 of the decision enumerates 7 data items which were used in the development of interswitching rates, none of which being commercial rates;
- Appendix A to the decision (9 pages) which explains the approach used by the Agency for calculating regulated interswitching rates, refers to “methodology that captures the economic costs of providing interswitching service” and is silent on the commercial fairness or reasonableness of the rates so derived;
- Appendix B to the decision (2 pages) provides the “Detailed interswitching rates calculation” which is composed of formulas referring to variable cost per shipper or zone; and
- Appendix C to the decision sets out the cost accounts “that factor into the 2023 interswitching rates”.

The Decision is in fact devoid of any assessment of the commercial fairness or reasonableness of the interswitching rates it sets. The same is true about the recent Determination No. R-2023-178 respecting Zone 5 rates which does not consider the commercial aspects of the rates:

- At paragraph 14, the Agency confirms that its approach for establishing Zone 5 rates is based on the same methodology used to calculate rates for the other four zones on an annual basis;
- Paragraphs 10 to 13 refer to costs;
- The Determination refers to section 112 in paragraph 6 to indicate that it provides the Agency with the authority to determine rates; and
- The Determination also refers in paragraph 14 to historical service units (costs) as providing a commercially fair and reasonable basis for setting Zone 5 rates.

Setting rates on costs alone is no guarantee of a commercially fair and reasonable outcome. In fact, comparing interswitching rates with commercial rates is the only

available approach to validly assess such a conclusion. The Agency however, does not proceed accordingly.

## **The Need for a Commercial Approach**

The Agency's failure to consider commercial rates when determining interswitching rates distorts market forces by providing a below market rate to shippers. This approach is not commercially fair and reasonable for railways. The Agency cannot perpetuate this practice, especially when considering that Zone 5 has the effect of extending more than 5 times the existing interswitching zone.

Interswitching traffic to 160 km (potential 320 km assignment) is a different service than local interswitching service within the 30 km limit. The traffic density at most regulated interchanges within that shorter distance provides a distinctive commercial environment than interswitching traffic over a 160 km limit where density is significantly reduced. Such a movement should be compensated in accordance with the added value provided by that service and in line with commercial rates charged in similar circumstances.

Another important consideration is the need for a commercial return on railway investments. It is a well documented fact that the rail industry is capital-intensive and requires very large initial and ongoing investments. Canadian railways invest each year approximately 20% of their revenues back into their network. Below market interswitching rates set on the basis of cost does not derive sufficient returns for railways to meet that necessary level of re-investments because interswitching traffic is transferred to another carrier which receives the benefits of the long-haul movements at commercial rates. The Agency must reconsider the methodology used for interswitching rate determinations to ensure that the necessary commercial contribution to this capital investment is provided by all shippers, including those using interswitching movements. Doing so would not only be consistent with section 112 of the CTA, it would also fall squarely within the directions to do so found in paragraph 127.1(2)(b).

## **The Interswitching Rate Determination for 2024**

Considering that the next decision of the Agency will determine interswitching rates for Zones 1-5 in 2024, we ask the Agency to use a different approach than costs to set interswitching rates. Our future submissions will be made accordingly and provide the commercial context and commercial rates available to CN. This will allow the Agency to derive rates that are commercially fair and reasonable to all parties, being consistent with prevailing market conditions.

We thank the Agency for its consideration of this letter and our subsequent submissions leading to the determination of interswitching rates for 2024. We remain available should more information be required from CN.

Yours truly,

Eric Harvey  
Senior Counsel - Regulatory