



Western Canadian Shippers' Coalition

*Representing Canadian-based companies and associations
that move mainly resource products through the supply
chain to domestic and international customers.*

Response to the *Canada Transportation Act* Review Report

**Submitted by the
Western Canadian Shippers' Coalition**

June 2016

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About Western Canadian Shippers' Coalition

Western Canadian Shippers' Coalition (WCSC) represents Canadian based companies that move mainly resource products through the supply chain to domestic and international customers. We are a cross-commodity organization comprised of 12 member companies from across western Canada. Our member companies provide tens of thousands of direct and indirect jobs for Canadians in communities across the west and ship billions of dollars' worth of product annually, including cement/aggregate, forestry, metals, mining, petroleum, potash and sulphur.

Introduction

We are pleased to provide our response to the recommendations put forward in the Canadian Transportation Act Review Report *Pathways: Connecting Canada's Transportation System to the World* (the Report).

As WCSC reviewed and discussed the Report, competitive access to rail, market power of railways, and service and information transparency remained our key focus areas. We approached the CTA Review with the general objective of preserving existing shipper rights and addressing concerns in these areas.

It is imperative that rail freight transportation be safe, efficient, environmentally sustainable and cost effective in order for Canadian shippers to prosper nationally and internationally. WCSC fully supports the Report's recommendation that the National Transportation Policy declaration in section 5 of the *Canada Transportation Act* be amended to include more explicit recognition of the importance of transportation to international trade and our ability to compete in global markets.¹

Canadian shippers rely on the rail freight system to help them succeed in global markets where they are price takers facing fierce competition. The railways' market power is therefore of significant concern to our members. Sensible measures to mitigate the railways' market power and to facilitate access to rail freight transportation on competitive terms are essential.

The decline of service reliability as rail capacity falls well short of the predictable demand from shippers is both an ongoing challenge for current shippers and a significant factor for firms contemplating greenfield/brownfield projects in evaluating investment opportunities in Canada. The result is lower levels of economic activity than would be experienced with more effective mitigation of railway market power.

In terms of transparency, aggregated rail service metrics should be made available not only for the transportation of grain, but for all traffic, to facilitate the efficient operation of the supply chain as a whole.

While WCSC's submissions to the CTA Review Panel² focused primarily on rail freight transportation, we are interested in the Report's recommendations regarding marine fees and charges, the future of Canadian ports and the promotion of short sea shipping.

¹ Report, Chapter 8.1, Recommendation 1.a.

² Copies of WCSC's Submissions to the CTA Review are attached as Appendix A.

Responses to Specific Recommendations

1. Metrics, Data and Supply Chain Evaluation

In WCSC's original submission, we recommended that aggregated rail service metrics be made available for not only the transportation of grain, but for all traffic, to facilitate the efficient operation of the supply chain as a whole. In WCSC's second submission to the CTA review panel, we recommended an independent expert study of current and potential pinch points as well as underutilized corridors as an essential preliminary step to inform any initiatives to encourage investment in infrastructure. The collection and publication of aggregated rail service metrics for all commodities is important to facilitate proper monitoring and ongoing identification of necessary investments and to inform evidence based decision-making by public and private sector stakeholders alike.

WCSC accordingly supports the Report's recommendations for more robust data collection and analysis³, including the recommendation that the Agency be provided with access to railway waybill records and any other data it requires in the exercise of its mandate. The Agency should make all relevant information available to arbitrators appointed in freight rate arbitrations (e.g., railway costing information and waybill information) or in arbitrations concerning the terms of a service level agreement (e.g., service performance metrics).

We also strongly believe that whenever possible, information should be made publicly available. While WCSC recognizes the importance of reasonable measures to protect confidential information, it is essential for stakeholders to have access to information they require to make informed market decisions. In the context of regulatory proceedings whether before the Agency or before an arbitrator appointed by the Agency, access to such information is a basic requirement of procedural fairness.

2. Competitive Rates and Service

As the CTA Review Report recognizes, imbalances in market power remain a significant challenge for rail shippers. For those who are able to shift a portion of their traffic to truck, this represents an obstacle to minimizing the environmental impact of their transportation requirements. For those who have no transportation option other than rail it represents a potential impediment to trade. Existing shipper remedies that facilitate access to a second carrier (regulated interswitching) or provide an opportunity to obtain competitive rates (Final Offer Arbitration - FOA) and service (level of service remedies) are essential to counter this imbalance. In WCSC's submissions to the CTA Review, we recommended:

- permanently raising the regulated interswitching limit to 160 km in British Columbia, Alberta, Saskatchewan and Manitoba;
- improving the FOA process by, among other things (i) eliminating the requirement that the arbitrator embark on a detailed analysis of whether effective and competitive alternatives exist, (ii) providing options for containing the cost of FOA proceedings and making it more accessible, and (iii) ensuring that all relevant information, including the cost of providing the transportation service, is available to the arbitrator;
- strengthening the level of service provisions.

³ Report, Chapter 8.1, Recommendation 4.

a. Regulated Interswitching

Regulated Interswitching has been widely recognized as a pro-competitive remedy that has worked well. It gives a shipper who might otherwise have no competitive alternatives the ability to access and negotiate with a second (and potentially competing) service provider. Even if the shipper does not physically use interswitching, the possibility of accessing a second carrier acts as a check on the local railway's disproportionate market power.

The predictability and transparency of interswitching rates (and the rate setting process) are key to the successful functioning of this remedy. Setting rates outside a consultative regulatory process⁴, without an opportunity for shippers as well as railway companies to be heard, could undermine this important aspect of the remedy. The implementation of the Report's suggestion that the regulated interswitching rates should take into account the local railway's "foregone contribution to fixed costs" as well as the "quality or competitiveness" of the local railway's service⁵ similarly would fundamentally alter the nature of this remedy and undermine its effectiveness. Increasing interswitching rates to reflect the rate premium that the local railway is able to extract when there is no competition, would undermine the pro-competitive nature of the remedy⁶. The quality and competitiveness of the service provided by the local carrier could only be considered on a case-by-case basis. This would require additional Agency proceedings and would undermine the effectiveness of the remedy by removing the predictability of interswitching rates.

WCSC supports the Government's decision to extend the temporary provisions allowing for interswitching within 160 km in the Prairie Provinces as a positive first step. In its current temporary form, this expanded limit is already being used by shippers in these Provinces who are benefitting from the increased competition it offers. Many others who would use the remedy are prevented from doing so by the temporary nature of the expanded limit.⁷ This includes, for example, shippers under annual or multi-year contracts, which commit all or substantially all volumes to the local carrier. It also includes those examining potential locations of greenfield developments who need to consider their transportation options over the long term. Making the 160 km limit permanent for British Columbia, Alberta, Saskatchewan and Manitoba would provide a basis for increased intra-modal railway competition throughout Western Canada.

It is essential, however, that such an extension not weaken other existing shipper remedies or make them more cumbersome. In particular, as noted in WCSC's supplementary Submission, the extension of the interswitching limit must be accompanied by the elimination of the mandatory consideration of alternative means of transport in the FOA process.

⁴ Report, Chapter 8.2, p. 164.

⁵ Report, Chapter 8.2, pp.163-164.

⁶ The ordinary practice between railway companies involved in interswitching is that the connecting carrier pays the interswitching rates to the local or terminal carrier and takes this cost into account in preparing its rate offer to the shipper. Increasing interswitching rates would effectively result in increasing the potential competitor's costs and discourage rather than, as suggested on page 164 of the Report, increase competition.

⁷ The rationale offered (on page 164) for the Report's recommendation that the 160 km limit be permitted to sunset because of reports that it has been used only by a handful of shippers, completely disregards this reality as well as the fact even when a shipper's traffic is not actually interswitched, the possibility of access to a competing carrier encourages more competitive service and rate setting by the local carrier.

b. Final Offer Arbitration

Final offer arbitration (FOA) is the only remedy in the CTA on which WCSC members are able to rely in conducting freight rate negotiations with CN and CP. While FOA has been found to work and promote commercial resolution, it is costly and often cumbersome.

In its original submission to the CTA Review, WCSC recommended, among other things, eliminating the requirement that the arbitrator embark on a detailed analysis of whether effective and competitive alternatives exist which adds unnecessary complexity and cost to FOA proceedings.

WCSC also recommended creating the option of having an FOA decision apply for up to 3 years (rather than the current maximum of 1 year). WCSC continues to support this change as a way for shippers to manage the considerable costs typically associated with an FOA and support's the Report's recommendation in this regard⁸.

In our supplementary submission, we also recommended removing the monetary cap that is currently applicable to the shorter and less complex summary process for FOA. While the CTA Review Report recommends raising the cap from \$750,000 to \$2 million⁹, WCSC continues to believe that removing the limit entirely is necessary to make the remedy more accessible for smaller shippers as well as for less complex cases generally.

WCSC does not support the addition of *mandatory* mediation or conciliation¹⁰ as a prerequisite to FOA. Shippers view FOA as a last resort when commercial negotiations have failed. Previous statutory reviews as well as jurisprudence arising from FOA have clearly indicated that the FOA process works precisely because of the dynamic created by the "either-or" nature of final offer selection and the tight timelines prescribed by the Act - forcing each party to temper its own final offer, leveling the playing field and frequently leading to a resumption of negotiations and a commercial resolution. The process itself promotes these outcomes. A prerequisite for mediation would remove the urgency that drives FOA's effectiveness in this respect. Mediation is currently available through the Agency for parties who voluntarily choose it. Mandating it will not turn anyone who no longer wishes to negotiate into a willing participant in further negotiations. Experience since 1988 has shown that the FOA dynamic frequently does.

c. Railway Level of Service

In its original submission to the CTA Review, WCSC recommended amending the statutory level of service provisions to clarify that rail service must meet the shipper's transportation needs. This recommendation is not concerned with optimizing or tailoring rail service to individual shippers' preferences. It proposes an objective measure to ensure that the rail transportation network meets the requirements of trade and the economy rather than constraining them.

While rail service problems can and do arise, not every level of service dispute raises issues that necessarily affect other shippers or other components of the rail network. In many instances, service shortfalls are highly localized and relate to operational matters involving the "first mile/last mile" of rail movement rather than to constraints in the system as a whole.

⁸ Report, Chapter 8.1, Recommendation 7.d.

⁹ Report, Chapter 8.1, Recommendation 7.c.

¹⁰ In its Supplemental Submission, WCSC proposed a form of conciliation as an option that could function both as an alternative to FOA and as a means of making FOA more accessible for smaller shippers. While WCSC's conciliation proposal garnered considerable interest in the context of the Review as well as in discussions with officials at Transport Canada and the Canadian Transportation Agency, WCSC does not believe the process lends itself to being made a mandatory pre-requisite to FOA.

Mandating a review of the system and of all shippers' needs in each and every service-related proceeding would add unnecessary complexity and expense to the process. The Agency needs to retain the ability to respond to service complaints in a timely fashion and on an individual basis in order for this remedy to remain relevant to shippers who experience concrete and often acute service shortfalls.

WCSC strongly believes that systemic problems are better addressed through an expansion of the Agency's mandate to include investigations of such broader issues on its own initiative.

3. Expanded Agency Role

In its original submission to the CTA Review, WCSC recommended expanding the Agency's role to include acting on its own initiative. We also recommended removing the current restrictions on the Agency's mandate to examine unreasonable or discriminatory railway tariff provisions under s. 120.1. We continue to support an expanded role for the Agency, within a context that ensures: fairness and transparency; efficient use of resources; clearly defined roles and expertise; and timely results.

WCSC accordingly supports the Report's recommendation for amending the *Canada Transportation Act* to confer upon the Agency investigative powers, and the authority to act on the Agency's own motion and on an *ex parte* basis, as well as to address issues on a systemic basis and to issue general orders.¹¹ This should include the ability to investigate railway practices such as coercing shippers into contracting out of the basic shipper protection provisions of the Act.

WCSC supports the Report's recommendations for the establishment of a specialized rail unit within the Agency¹² and for measures to ensure that the Agency has broader access to data and analysis relevant to its mandate¹³. It is essential, however, that Agency processes continue to be fair and transparent, providing meaningful opportunities for stakeholders who may be affected by the Agency's exercise of an expanded mandate to know and be heard on matters being investigated by the Agency as well as the information on which the Agency relies in its consideration of such matters.

In addition, WCSC believes that unless the Agency's resources match its mandate, its ability to act in a timely fashion will be compromised.

WCSC is opposed to making mediation or other forms of alternative dispute resolution mandatory.¹⁴ While we firmly believe that commercial solutions should continue to be encouraged wherever possible¹⁵, WCSC believes that the best way to increase the voluntary use of such processes offered through the Agency is to ensure the availability of strong expertise in rail transportation matters and, of equal or greater importance, specialized skills in alternative dispute resolution¹⁶.

¹¹ Report, Chapter 11, Recommendation 1.a.

¹² Report, Chapter 8.1, Recommendation 5 and Chapter 11, Recommendation 1.e.

¹³ Report, Chapter 8.1, Recommendations 4.a and 4.c

¹⁴ WCSC strongly disagrees with the Report's Recommendation 7.b in Chapter 8.1 in this regard.

¹⁵ It is not at all clear that the current uptake of Agency-sponsored alternative dispute resolution is inadequate. The dispute resolution statistics published by the Agency (<https://www.otc-cta.gc.ca/eng/statistics-2014-2015#resolved>) indicated that of 48 rail related disputes resolved by the Agency in 2014/15, a total of 31 or more than 60% were resolved through facilitation or mediation rather than formal adjudication.

¹⁶ including, for example, expertise in the "shuttle diplomacy" techniques used by the Surface Transportation Board in the US and referred to on page 250 of the Report.

4. Other Areas of Interest to WCSC Members

While WCSC's submissions in the CTA Review process focused on rail transportation issues, the Report contains a number of recommendations in relation to marine transportation that are of interest to our members.

In particular, WCSC supports the Report's recommendations for establishing a uniform and timely process for publicly filing rate and charge increases for all federally-mandated marine services and authorizing the Canadian Transportation Agency to review all of these on a regular basis in terms of their reasonableness and cost competitiveness, as well as in response to complaints.¹⁷ A considerable portion of the charges and costs incurred by port users do not fall within the category of "federally-mandated services", however. In many instances, port authorities are in a monopoly or near-monopoly position in relation to port users with respect to such other services and charges. WCSC accordingly supports the Report's recommendation for the introduction of light-handed regulation covering fees, charges, common use of the facilities, and unfair competition by the port against its tenants to protect users and conferring an oversight and enforcement on the Canadian Transportation Agency in respect of these matters.¹⁸

WCSC also welcomes the Report's recommendation for promoting short sea shipping as a mechanism to alleviate congestion in urban areas and reduce Canada's growing greenhouse gas and air pollutant emission levels.¹⁹ While the Report highlights potential benefits along the Great Lakes-St. Lawrence Seaway System, WCSC strongly believes that short sea shipping presents important opportunities for other gateways as well, most notably the Port of Vancouver. Forest products such as lumber and pulp represent a significant portion of export container traffic in Vancouver. Currently, much of this traffic arrives in the lower mainland on rail cars and is transferred into containers, which are then moved to ocean terminals by truck. Short sea shipping from currently underutilized facilities, for example along the Fraser River, could potentially remove hundreds of trucks from congested roads, significantly reduce greenhouse gas emissions associated with this traffic, and mitigate shippers' exposure to the volatility that has plagued trucking at the Port of Vancouver in recent years.

The Report recommends that periodic, formal reviews of the operation of the Act be replaced with an evergreen process of consultation, dialogue, and adaptation in a National Framework on Transportation and Logistics.²⁰ While WCSC does not disagree in principle with more frequent or ongoing consultations, the practice of holding periodic, formal reviews has provided all interested Canadians and stakeholders with clear terms of reference, an opportunity to bring forward their observations and recommendations and the ability to review and respond to recommendations and concerns put forward by others. These are important elements that must be preserved in any future process.

¹⁷ Report, Chapter 10, Recommendation 1.

¹⁸ Report, Chapter 10, Recommendations 3.c. and d.

¹⁹ Report, Chapter 10, Recommendation 4.a.

²⁰ Report, Chapter 2, Recommendation 1.b.

Conclusion

WCSC recommends that the Government take the following measures:

1. commission an independent expert operational/logistical study of current and potential pinch points in vital supply chains as well as underutilized corridors to inform decisions about strategic investments in infrastructure and incentives related to such investments;
2. provide for improved collection and publication of information concerning rail transportation of all commodities, including aggregated rail service metrics;
3. provide the Agency, as well as arbitrators appointed to deal with rate or service disputes, with access to all information relevant to their mandates, including performance metrics, rail costing information and waybill records;
4. amend the Act to raise the statutory interswitching limit to 160 km throughout Western Canada (in conjunction with recommendation 5(a) below), and ensuring that that interswitching rates continue to be set at pro-competitive levels in a transparent process;
5. amend the Act to make final offer arbitration more accessible by (a) eliminating the requirement that the arbitrator embark on a detailed analysis of whether effective and competitive alternatives exist, (b) giving shippers the option of having the arbitrator's decision to apply for up to 3 years, and (c) removing the monetary cap for summary process final offer arbitration;
6. amend the Act to enable the Agency to act on its own motion in all matters within its mandate;
7. amend the Act to broaden the Agency's ability to address unreasonable tariff provisions and unreasonable railway practices such as coercing shippers to contract out of basic shipper protections;
8. amend the level of service provisions in the Act to provide that a railway company must fulfil its statutory service obligations in a manner that meets the shipper's transportation needs;
9. continue the Agency's mandate to make mediation and other alternative dispute resolution mechanisms available to parties on a voluntary basis and strengthen its ability to fulfill this role through expertise in both subject matter and process, as well as appropriate resource levels;
10. provide for a more uniform regime of fees and charges for federally mandated marine services, subject to regulatory oversight by the Agency;
11. introduce light-handed regulation covering fees, charges, common use of the facilities, and unfair competition by the port against its tenants to protect users and conferring an oversight and enforcement role on the Agency;
12. support short sea shipping alternatives;

13. maintain a transparent process for reviewing the operation of the Act that allows full participation by all stakeholders.

WCSC thanks the Minister of Transport for the opportunity to provide a response to the recommendations made in the CTA Report and looks forward to further discussions as government makes decisions in the areas of interest to our membership.

A handwritten signature in black ink, appearing to read 'David Montpetit', with a long horizontal flourish extending to the right.

David Montpetit, Chairman
Western Canadian Shippers' Coalition

Appendix A

Please refer to the following pages to review WCSC's submissions to the CTA Review Panel:

1. WCSC Submission to the CTA Review Panel – December 15, 2014
2. WCSC Supplementary Information Submission to the CTA Review Panel – April 27, 2015



Western Canadian Shippers' Coalition

Presentation to the
Canada Transportation Act
Review Panel

Submitted by the
Western Canadian Shippers' Coalition

December 2014

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About the Western Canadian Shippers' Coalition

The Western Canadian Shippers' Coalition ("WCSC") represents Canadian-based companies and associations that move mainly resource products through the supply chain to domestic and international customers.

WCSC members:

- provide tens of thousands of direct and indirect jobs for Canadians in communities across the west; and
- transport and ship billions of dollars' worth of product annually.

The WCSC membership is comprised of shippers from a number of different commodity groups, including:

- forestry;
- metals;
- mining;
- petroleum;
- sulphur; and
- cement/aggregate.

The point of commonality for members of the WCSC is a reliance on market-dominant providers of rail freight, truck and port transportation services. WCSC member companies compete head-to-head in world commodity markets against producers from the United States, Asia, Europe, Scandinavia, Australia and South America. Rail freight transportation costs and service reliability are major factors in determining whether or not WCSC member companies prosper, simply endure, or struggle to meet the competitive pressures of their respective markets.

Introduction

WCSC members rely on rail freight transportation to help them succeed in global markets where they are price takers facing fierce competition. The WCSC is accordingly pleased that the Review Panel has been asked to provide an independent assessment of how federal policies and programs can ensure that the transportation system strengthens integration among regions while providing competitive international linkages.

Access to rail freight transportation on competitive terms and effective and sensible measures to mitigate the railways' market power are matters of significant concern to the members of the WCSC. A lack of competitive access to rail and the exercise of disproportionate market power by railway companies significantly hinder the ability of Canadian producers to compete effectively in international markets. The impacts of this market power include the erosion of shippers' cost competitiveness through annual freight rate increases that consistently far exceed inflation. They also include the decline of service reliability as rail capacity falls well short of the predictable demand from shippers. This is both an ongoing challenge for current shippers and a significant factor for firms contemplating greenfield/brownfield projects in evaluating investment opportunities in Canada. The result is lower levels of economic activity than would be experienced with more effective mitigation of railway market power.

In order for Canadian producers to prosper internationally, it is imperative that rail freight transportation be efficient and cost effective. Competition and means to mitigate the railways' market power are essential to the realization of each of these aims.

The National Transportation Policy

Section 5 of the *Canada Transportation Act* (the "CTA") sets out Canada's National Transportation Policy. The current National Transportation Policy declares that, "...a competitive, economic and efficient national transportation system..." is essential to advance the well-being of Canadians and enable competitiveness and economic growth in both urban and rural areas in Canada. The Policy goes further to state that this overall objective will most likely be achieved when, among other things:

- competition and market forces are the prime agents in providing viable and effective transportation services;
- regulation and strategic public intervention are used to achieve outcomes that cannot be achieved satisfactorily by competition and market forces alone; and
- rates and conditions do not constitute an undue obstacle to the movement of traffic within Canada or to the export of goods from Canada.

The National Transportation Policy recognizes that competition and protection against obstacles created by the railways' disproportionate market power are essential to ensure an efficient, competitive, and cost effective transportation system. These principles should inform the Panel's considerations throughout the course of its Review.

Competition in Rail Freight Transportation

There are situations in Canada where shippers are served by only one railway at origin and have no realistic alternative to rail transportation. This is a prevalent situation for the resource-based industries of Western Canada; in particular, the grain, sulphur, coal, forest products and, where pipelines are at capacity, petroleum industries, among others. The large volumes shipped and the long distances involved in transporting such commodities to tidewater or market destinations in North America preclude the utilization of truck transport. For all practical purposes, the resource-based industries of Western Canada are captive to rail transportation.

The inability to access a national transportation system that is truly competitive, economic and efficient has resulted in shippers seeing their international competitiveness decline in the face of tough international market competition and in the face of annual price increases set by the railways for their services at levels well in excess of general inflation. At the same time, and in spite of record cash flows and profits, railways have continually failed to make sufficient capital additions to meet the reasonable requirements of western shippers. Railway companies should be required to make investments to ensure that their networks can handle the additional capacity brought online in both the natural resource and consumer products sectors. This captivity and the lack of investment in the rail system in Canada will continue to seriously impair the international competitiveness of Canadian shippers to the detriment of the national economy.

To enhance competition in the railway sector, the National Transportation Policy must continue to recognize that competition and market forces are the prime agents in providing efficient and cost-effective transportation services. This intent should be given effect through the CTA in order to provide the practical, effective, and competitive rail transportation options shippers require to survive in the global marketplace. WCSC's submission sets out the legislative changes that are required to achieve this objective.

Railway Market Power

For most of their history, railways in Canada have been treated as regulated monopolies. Through various enactments from 1967 to date, railways have been deregulated to the point where they are now shareholder-owned, private sector, commercial entities with the right to make market choices and decisions involving capacity, service and pricing. However, what makes railway companies different from other private enterprises is that they continue to enjoy virtual monopoly power over large sectors of the economy. Significant segments of the railways' business in Canada are completely dependent on rail to meet their transportation needs and often have access to only one railway company.

The economic interests of shippers and railways, while in many aspects aligned, differ in important respects. Shippers, and the economy as a whole, benefit from an efficient railway system with sufficient railway capacity to move commodities quickly and in a manner responsive to the demands of shippers' end markets. Railway companies, on the other hand, benefit when capacity is constrained to minimize costs and to support higher pricing. Running a lean operation with fewer railway assets provides the best return to the railway company's shareholders, but it hampers the railway company's ability to provide the timely service required by shippers. Moreover, while access to cost-effective transportation is essential for Canadian shippers to compete internationally, the railway company's shareholders demand the highest possible revenue from operations. Where the shipper does not have the option of taking its business elsewhere, the interests of the railway company's shareholders typically trump those of the shipper. There is little incentive for any other result.

While shippers have generally supported the transition of federal railways from regulated entities to commercial enterprises, legislation continues to be required to temper the railways' market power and to ensure that they meet not only the expectations of their shareholders but also the responsibilities that come with the unique position they occupy in the national transportation system. WCSC's submission contains recommendations that are required to protect shippers and the Canadian economy from the disproportionate market power of railways.

Recommendations

WCSC's recommendations are as follows:

1. Make the expanded interswitching limit of 160 kilometres permanent and applicable to all shippers in Western Canada;
2. Make the final offer arbitration process more efficient, transparent and accessible by:
 - a. eliminating the requirement that the arbitrator embark on a detailed analysis of whether effective and competitive alternatives exist;
 - b. requiring the railway companies to provide access to the costing information underlying their final offers; and
 - c. at the option of the shipper, increasing the period for which an arbitrator's decision may be binding to a maximum of three years;
3. Strengthen the current level of services provisions while adding transparency to railway performance in key objective measures;
4. Limit railway companies' ability to contract out of the basic shipper protection provisions in the CTA and to impose undue liability on shippers; and
5. Provide a process under the CTA for challenging the reasonableness of all aspects of railway tariffs, analogous to the existing process for challenging the reasonableness of domestic air carrier tariffs which:
 - a. allows the Agency to act on its own initiative and on complaint by "any person";
 - b. clarifies that the Agency's jurisdiction extends to terms and conditions even if they are not directly related to "charges"
 - c. eliminates the mandatory factors which the Agency must consider; and
 - d. eliminates the requirement that the Agency's order must be of a specified (and limited) duration.

Each of these recommendations is discussed in more detail below.

Extended Interswitching Limit

Effective August 1, 2014, the *Railway Interswitching Regulations* were amended to increase interswitching distances, on a temporary basis, from 30 kilometres to 160 kilometres in Alberta, Saskatchewan and Manitoba. For the remainder of the country, the interswitching distance continues to be 30 kilometres. The extended interswitching distances in Alberta, Saskatchewan

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and Manitoba will be repealed on August 1, 2016 unless, before that date, their repeal is postponed by resolution passed by both Houses of Parliament.

Regulated interswitching is a well-established and effective means of promoting intra-modal railway competition. The *National Transportation Policy* states that “competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services”. The Regulatory Impact Analysis Statement published along with the *Regulations Amending the Railway Interswitching Regulations* states that, “[t]he objective of these Regulations is to increase the access that shippers have to the lines of competing carriers, which in turn will increase competition among railways for business, and thereby give shippers more transportation options.” The amendments to the *Railway Interswitching Regulations* were clearly intended to give effect to the *National Transportation Policy* by creating competition for shippers in Alberta, Saskatchewan and Manitoba.

Competition should not be temporary, nor should it be limited to shippers in the Prairie Provinces. Shippers throughout Western Canada, including B.C., should have a right to receive viable and effective transportation services through competition and market forces in accordance with the *National Transportation Policy*. WCSC supports making the extended interswitching limits permanent and applicable to all shippers in Western Canada, including those in B.C.

Final Offer Arbitration

The only remedy in the CTA on which WCSC members are able to rely in conducting freight rate negotiations with CN and CP is the final offer arbitration (FOA) process. While this process works and has been described as providing an incentive to reach a negotiated resolution, it is very costly and often cumbersome. WCSC supports making this process more accessible.

In particular, section 164(2) of the CTA requires an arbitrator, unless the parties agree otherwise, to “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”. This provision singles out one among many potentially relevant considerations and invariably requires the shipper to provide evidence with respect to each and every theoretically possible means of transport for its product, explaining why that means of transport is not “effective, adequate and competitive”. This includes evidence of the cost and impracticalities of each alternative mode of transport. Preparing and presenting this evidence significantly increases the complexity (and ultimately the cost) of the final offer arbitration process and discourages shippers from utilizing it.

WCSC supports streamlining the FOA process by deleting the requirement that the arbitrator have regard in each and every case to whether an effective and competitive alternative means of transporting the goods at issue exists. Doing so will focus the issue on the rates that ought to apply to the traffic and eliminate preliminary wrangling over other means of transport, such that the process will become more efficient and accessible for shippers.

The FOA process will also become more accessible for shippers if the railway companies are required to provide access to the costing information underlying their final offers. Not only will such information allow the arbitrator to come to a more informed decision, providing such information at an early stage in the proceeding would also be highly conducive to promoting settlement between the parties before reaching the arbitration stage.

Paragraph 165(1)(c) of the CTA provides that, unless the parties agree otherwise, the decision of the arbitrator is binding only for a period of up to one year. As a result, the shipper and the railway company may find themselves in an FOA on an annual basis. WCSC recommends giving shippers the option of increasing the period for which an arbitrator's decision may be binding to a maximum of three years.

Level of Services

Sections 113 to 115 of the CTA establish a railway company's statutory level of services obligations. WCSC supports maintaining and strengthening the current level of services provisions located in sections 113 to 115 of the CTA. These provisions represent an essential recourse for shippers who have suffered poor service in dealing with a railway that enjoys superior market power.

In January 2011, the final report of the Rail Freight Services Review found "significant service problems" within the rail transportation system. The Panel also found that the effectiveness of the shipper protection provisions in the CTA, including the level of service provisions, was "somewhat limited" and that the provisions "did not ensure that service was reasonably adequate". However, the Panel decided against recommending the strengthening of sections 113 to 115 of the CTA at that time. Instead, in response to the concerns raised in the Rail Freight Services Review, Bill C-52 amended the CTA to allow for level of service arbitration. While the level of service arbitration provisions may be of some benefit to some shippers, they have not resolved the "significant service problems" that continue to plague the rail transportation system.

WCSC believes that the level of service provisions should be strengthened to clarify that a railway company must fulfil its service obligations in a manner that meets the shipper's rail transportation requirements. Requiring the railway companies to provide only a "reasonable" level of service, as the CTA currently does, allows service levels below those required by shippers to become the status quo. That leaves the supply chain operating only at a "reasonable" level, assuming that the railway companies fulfill their statutory obligations. To compete internationally, the Canadian supply chain needs to be more efficient. While this will require investment by the railway companies in assets such as line capacity, cars, and manpower, it is in the interest of the economy and ultimately all Canadians to ensure that the railway companies provide efficient service that meets the requirements of all natural resource and commodity sectors and maintains a fluid supply chain.

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December 2014**

Currently, the CTA provides for the monitoring of the grain transportation and handling system. This includes regulations requiring railway companies engaged in transporting grain to provide detailed information regarding grain shipments to the Minister and regular reports by the Grain Monitor which include aggregated data relating to the performance of the railway companies in transporting grain. However, shippers of other commodities are unable to obtain metrics to quantify the performance of the railway companies and ensure that the supply chain as a whole is operating efficiently. WCSC recommends a broader monitoring system requiring the railway companies to provide aggregate regional metrics as they relate to all commodities, including:

- information about existing railway assets, including the number of cars, car types, locomotives, and the locations or areas in which those cars operate;
- employee and crewing information by province along with shortfalls;
- railway shipments by destination province or state, car type and origin province for each commodity;
- car cycle times by commodity;
- loaded transit time by commodity; and
- railway traffic density by commodity.

Contracts

As page 10 of the CTA Review Discussion Paper recognizes, the CTA “contains a number of ‘shipper protection’ provisions to address concerns about the potential abuse of market power by the railways” and the Agency is “empowered by the Act to enforce these provisions”. However, the CTA does not prevent a railway company from contracting out of these shipper protection provisions and thereby neutering the Agency’s ability to enforce them.

Railway companies attempt to force shippers to enter into confidential contracts that displace the railway company’s obligation to provide an adequate and suitable level of services, restrict the shipper’s statutory right to seek redress from the Agency through a level of services complaint, and preclude the shipper from asserting its statutory right to require the railway company to offer a service level agreement or to commence a service level agreement arbitration. Shippers who refuse to sign such contracts are prevented from negotiating specific rates, terms and conditions for their traffic and are instead forced to ship in accordance with the rates, terms and conditions unilaterally set by the railway company.

Railways should not be permitted to undermine the Agency’s authority by contracting out of the basic “shipper protection” remedies contained in the CTA. WCSC supports including in the CTA a provision expressly stating that no person may waive or contract out of any requirement in the CTA or its regulations, except as expressly permitted, and any attempt purporting to do so is void.

Railways also use their market power to force shippers to accept contracts that impose undue liability on the shipper with respect to third parties. The railway companies are required by the CTA to carry third party liability insurance with respect to their activities and are in a better position both to prevent railway accidents and to remedy the damage that such accidents

cause. WCSC believes that the CTA should prevent railway companies from using their market power to contractually require shippers to shoulder the full cost of third party liability claims.

Reasonableness of Tariffs

Subsection 67.2(1) of the CTA allows “any person” to file a complaint that a domestic air carrier has applied terms or conditions of carriage that are “unreasonable or unduly discriminatory” and allows the Agency to suspend or disallow those terms or conditions and substitute other terms or conditions in their place. In relation to air carriers providing international service, the Agency may, on its own motion, suspend or disallow unreasonable or unduly discriminatory tariff provisions. However, with respect to rail carriers, section 120.1 of the CTA:

- only allows “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” to file a complaint and does not permit the Agency to act on its own initiative;
- has been interpreted by the Agency not to apply to terms and conditions that are not directly related to “charges”, such as unreasonable liability and indemnity provisions;
- imposes a series of mandatory factors the Agency must consider (including, for example “industry practice”, suggesting that terms and conditions used by several carriers should not be determined to be unreasonable); and
- explicitly requires any relief from unreasonable tariff provisions to be of limited duration.

Section 120.1 is unnecessarily restrictive. The process for challenging the practices and tariffs of air carriers should also apply to those who wish to challenge the tariffs of rail carriers.

The *National Energy Board Act* gives the NEB a wider ability to disallow any tariff or portion thereof that it considers to be contrary to any provisions of the NEB Act or to any order of the NEB Board. As well, a company shall not make any unjust discrimination in tolls, service or facilities against any person or locality, and the burden of proving that the discrimination is not unjust lies on the company. We believe that legislation with respect to transportation should be consistent, therefore section 120.1 should be amended as discussed above.

Conclusion

Western Canadian resource-based commodity shippers need effective railway competition. There should be no further delay in removing the significant protection granted to the Canadian railways under the CTA. WCSC members are not protected in their domestic and international markets where vibrant competition exists. They are entitled to expect the same vibrant competition from rail service providers and, in some cases, their survival may depend on it.

**Presentation to the
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WCSC recommends that the CTA be amended in the following areas:

1. The interswitching limit of 160 km should be made the statutory limit applicable to all shippers in Western Canada in order to facilitate greater opportunities for intra-modal railway competition.
2. The FOA process should be made more efficient, transparent and accessible by:
 - a. removing the mandatory consideration of alternative means of transport;
 - b. providing the arbitrator with information regarding the cost to the railway of providing the service; and
 - c. giving shippers the option to have the arbitrator's decision apply for up to three years.
3. The level of service provisions should be strengthened to clarify that a railway company must fulfil its service obligations in a manner that meets the shipper's rail transportation requirements to ensure adequate capacity and service. Aggregated rail service metrics should be made available not only for the transportation of grain but for all traffic, to facilitate the efficient operation of the supply chain as a whole.
4. Railways should be prevented from using their market power to impose contractual terms that bar access to the basic shipper protections in the CTA or that require shippers to shoulder the full costs of third party liability claims.
5. The current restrictions on the Agency's mandate to examine railway tariff provisions under s. 120.1 should be removed, so that "any person" may file a complaint and so that the Agency may act on its own initiative in respect of unreasonable or unduly discriminatory terms or conditions.

WCSC is convinced that the implementation of its recommendations will improve competition in the rail sector and mitigate the railways' market power, thereby giving shippers the opportunity to negotiate rate and service agreements with railways on a fairer and more equitable basis. We ask the Advisory Panel to adopt these recommendations and recommend to the Minister of Transport that they be implemented as soon as possible. WCSC looks forward to further discussions on the contents of this document with both the appointed Chair and Members of the Advisory Panel of the CTA Review as well as with various departments within the Federal Government.



David Montpetit, Chairman
Western Canadian Shippers' Coalition



Western Canadian Shippers' Coalition

*Representing Canadian-based companies and associations
that move mainly resource products through the supply
chain to domestic and international customers.*

Supplementary Information

Canada Transportation Act Review Panel Submission

**Submitted by the
Western Canadian Shippers' Coalition**

April 2015

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Introduction

On March 11, 2015 members of the executive team of the Western Canadian Shippers' Coalition ("WCSC") met with the Honourable David Emerson, Chair of the *Canada Transportation Act* ("CTA") Review Panel (the "Panel"), together with Panel Advisors Murad Al-Katib and Marcella Szel and secretariat support staff Randall Meades, Mimi Sukhdeo and Lidija Lebar, at Transport Canada's offices in Vancouver, BC.

The purpose of the meeting was to discuss WCSC's CTA Review submission, a copy of which is attached for ease of reference. As the voice for western-Canadian shippers – for whom safe, effective, competitive and economic transportation is vital to their success – we were pleased to have had the opportunity to highlight the recommendations contained in our submission, as well as to provide examples of the issues faced by our members and respond to the Panel's questions.

The discussion focused mainly on three key areas – interswitching, shipper captivity and capacity issues. The Panel requested supplementary information from WCSC as follows:

1. appropriate interswitching distances to be considered in Manitoba, Saskatchewan, Alberta and British Columbia;
2. views on possible processes for small shippers for whom the Final Offer Arbitration ("FOA") process is expensive and not a viable option; and
3. thoughts about possible ways to encourage the railways to invest in more infrastructure and network capacity, with a focus on geographic areas that are currently and potentially under strain in the future.

The Panel was clear about its mandate – to consider how the national transportation system can best be leveraged to support Canada's continued economic growth in the decades ahead, not the needs of the shippers and/or the railways. WCSC believes that the recommendations contained in its original submission support the Panel's mandate to create a competitive and growth-oriented national transportation system and is pleased to provide the supplementary information requested to expand upon those recommendations.

Interswitching

Following its meeting with the Panel, WCSC approached its members for additional input with respect to the appropriate interswitching distance for each of the four western provinces. WCSC maintains its original recommendation that 160 km is an appropriate statutory interswitching limit for each of the four western Provinces, as it believes that the 160 km limit is large enough to meaningfully increase railway competition in the long term without being so large as to potentially upset the balance of interests between shippers and railways.

WCSC believes that the 160 km statutory interswitching limit for the four western provinces provides competition for significantly more traffic than the 30 km limit. The 160 km limit has been in place now for more than eight months and, despite the railways' initial objections, there has been no "free-for-all" and capital markets continue to view the railways as good businesses. If an issue does arise at some point in the future and evidence suggests that there is a requirement to revisit the 160 km limit, the problem can be addressed in a future review.

However, the appropriateness of a 160 km statutory interswitching limit for each of the four western Provinces is subject to two important conditions, both recommended in WCSC's original submission:

1. the existing sunset clause must be removed, such that the 160 km interswitching limit becomes permanent for Manitoba, Saskatchewan, Alberta and British Columbia. Adding permanency to the interswitching limit creates a level of certainty that encourages capital investment by both shippers and railways to take advantage of the 160 km limit; and
2. the mandatory consideration of alternative means of transport in the FOA process must be eliminated. If it is not, the 160 km interswitching limit will further impair the ability of shippers to access the FOA remedy.

If either or both of those conditions are not met, WCSC believes that the 160 km interswitching limit will not be fully effective and may further weaken the FOA process.

Final Offer Arbitration

The FOA process is expensive and is currently not a viable option for small shippers. WCSC believes that its original recommendations for changing the FOA process will assist in making the FOA remedy a more viable option for those shippers. However, other options may include:

1. further reducing the inefficiencies in the existing FOA process;
2. allowing greater access to the existing summary FOA process in section 164.1 of the CTA; and/or
3. introducing a conciliation process into the CTA.

Each of these options is discussed below.

1. Further Reducing Inefficiencies in the Existing FOA Process

WCSC's original submission suggested reducing inefficiencies in the existing FOA process by:

- removing the mandatory consideration of alternative means of transport;
- providing the arbitrator with information regarding the cost to the railway of providing the service; and
- giving shippers the option to have the arbitrator's decision apply for up to three years.

WCSC continues to support those recommendations and its belief that they will make the FOA process less expensive and a more viable option for all shippers, including small shippers.

In addition, WCSC recommends limiting interrogatories in the FOA process. In the experience of some of our members, interrogatories were primarily used by both the railway and the shipper as an expensive nuisance strategy in which each side was asked to answer several hundred questions within a very short period of time. The result was that the effort, time and resources spent on preparing and responding to those questions were entirely out of proportion to any benefit that may have been derived from the interrogatory process. If the volume of questions was more limited, WCSC believes that only the most useful questions would be asked and the parties would be in a position to provide (and could be required to provide) more useful responses.

Accordingly, WCSC recommends strictly limiting the interrogatories to, at most, two pages' worth of questions and including clear constraints against attempts to circumvent the intent of the page limit.¹

WCSC believes that limiting interrogatories in this manner will focus the parties and eliminate the abuses that can occur in the current interrogatory process, saving the parties both time and money and making the FOA process as a whole more viable.

2. *Allowing Greater Access to the Existing Summary FOA Process*

Section 164.1 of the CTA currently provides for a summary FOA process. The summary process eliminates the discovery portions of the full FOA process (i.e., exchange of information and interrogatories) and limits an oral hearing to circumstances in which the arbitrator "considers it necessary". In the usual case, section 164.1 contemplates that the parties would submit their final offers, submit a written response to the other party's final offer within seven days after the matter is referred to an arbitrator, and the arbitrator would make his or her decision based solely on that material. The existing summary FOA process eliminates many of the more expensive and time consuming portions of the full FOA process, such that it might be a more viable option for smaller shippers.

However, the existing summary FOA process is only available in situations in which the shipper's final offer involves freight charges in an amount of not more than \$750,000. WCSC believes that limiting the summary FOA process in this manner makes the process inaccessible to the majority of shippers, including small shippers, such that the process has been used sparingly. WCSC recommends eliminating the \$750,000 limitation and making both the full FOA process and the summary FOA process open to all shippers, at the shipper's discretion. Doing so would give all shippers, including small shippers, access to a more cost-efficient, less time consuming and potentially less antagonistic option that they may find more viable in their particular circumstances.

WCSC also believes that the summary FOA process would be a more realistic option for shippers to pursue if it included an opportunity to make a brief appearance before the arbitrator to explain the written evidence and conduct a limited cross examination of the railway's representative with respect to the railway's evidence. Instead of giving the arbitrator discretion to hold an oral hearing in the expedited FOA process, as paragraph 164.1(c) of the CTA currently does, WCSC recommends that a limited oral hearing be mandatory in order to provide the arbitrator with a more complete basis upon which to render a decision.

3. *Conciliation*

WCSC recommends including a conciliation process in the CTA, drawing on some of the elements of conciliation in labour disputes. Under the *Canada Labour Code*, R.S.C., 1985, c. L-2, where parties have negotiated but have been unable to reach a collective agreement, either party can initiate a conciliation process in which a conciliation officer, commissioner or board may be appointed by the Minister of Labour to assist the parties in reaching an agreement. If a commissioner or board is appointed, the commissioner or board must provide a report to the Minister

¹ For example, the pages could be required to follow the standards set out in section 65 of the Federal Courts Rules, SOR/98-106, for printed documents prepared for use in court proceedings, particularly:

- the print must be in 12-point Times New Roman, Arial or Tahoma font; and
- each page of the document must:
 - be 21.5 cm by 28 cm (8.5 inches by 11 inches);
 - have top and bottom margins of not less than 2.5 cm and left and right margins of not less than 3.5 cm;
 - be printed on one side of the paper only; and
 - have no more than 30 lines, exclusive of headings.

within a specified period of time detailing the commissioner or board's findings and recommendations with respect to the dispute.

WCSC recommends including a similar process, with modifications, in the CTA. In particular:

- Where there is an ongoing freight rate negotiation and the parties have negotiated but have been unable to come to an agreement, the shipper could apply to the Canadian Transportation Agency (the "Agency") to have a conciliator appointed.
- The conciliator would be an independent third party, similar to an FOA arbitrator.
- The parties would appear before the conciliator in a hearing of no more than two days to provide background evidence to the conciliator on the matters at issue. During the hearing, the conciliator would have the opportunity to actively ask questions of both parties to fully understand the issues in dispute and the parties' positions.
- Following the hearing, the conciliator would be required to meet with the parties and assist them in their attempt to reach an agreement.
- If, after 14 days, the parties are unable to reach an agreement with the assistance of the conciliator, the conciliator would have a further seven days to prepare a confidential report to the parties setting out his or her findings of fact with respect to the issues in dispute and his or her recommendations with respect to the final settlement of the dispute.
- After receiving the report, the parties could use the conciliator's recommendations to reach a commercial agreement between themselves.
- If the shipper wants to implement the conciliator's recommendations and the railway refuses to do so, the shipper would have the option of bringing the conciliator's report, including the conciliator's findings of fact and recommendations, before an arbitrator as the shipper's offer in the FOA process.
- If neither party wishes to implement the recommendations, the FOA processes would still remain open to resolve the dispute on the basis of the parties' separate offers. However, all aspects of the report of the conciliator would be inadmissible in that proceeding and would remain confidential between the parties.

WCSC believes that such a process could assist the parties to reach a negotiated agreement without the need for an arbitrator and, if an arbitrator is required, could limit the cost and formality of the fact-finding portion of the FOA process by having those facts largely determined and disclosed to the parties by the conciliator in advance of the FOA. WCSC believes that the result will be a more efficient, less costly and more viable dispute resolution process that small shippers will be able to take advantage of.

Railway Investment in Infrastructure

The Panel has asked WCSC to provide thoughts about possible ways to encourage the railway companies to invest in more infrastructure and network capacity, with a focus on geographic areas that are currently and potentially under strain in the future.

Pursuant to section 113 of the CTA, federal railway companies have an obligation to furnish adequate and suitable accommodation for the carriage, unloading and delivering of traffic. The railway companies must invest in the necessary infrastructure and network capacity to meet their statutory obligations. WCSC believes that the railway companies do not lack the financial capacity

and pricing power required to make such investments and that they should not need any further encouragement than their statutory obligations already provide.

In any event, before any encouragement or actual investment is considered, WCSC believes that the specific geographic areas of the national transportation system that are currently and potentially under strain need to be identified.

WCSC recommends that an independent expert, whether the Agency or a third party hired by the Agency, be commissioned to identify the current and potential pinch points for railway infrastructure and network capacity, as well as underutilized corridors that can be maximized in the future. Once the pinch points and underutilized corridors are identified, the question of investment to resolve those specific issues can be addressed, as can decisions about which forms of encouragement, if any, are required to assist the making of those particular investments.

WCSC reiterates its original recommendation that aggregated rail service metrics should be made available not only for the transportation of grain but for all traffic, to facilitate the efficient operation of the supply chain as a whole. Such ongoing monitoring would ensure that the transportation system continues to function properly going forward and necessary investments would continue to be identified.

WCSC also recommends giving the Agency the ability to investigate and address systemic shortfalls in rail service or capacity. Such shortfalls could be identified through the aggregated rail service metrics or through trends observed by the Agency in level of service complaints. Following its investigation, the Agency should have similar powers to those set out in section 116 of the CTA to address the shortfalls, if necessary, and correct them on a system-wide level. Decisions about potential encouragement, if any, for those capital investments identified pursuant to the ongoing monitoring and Agency investigation processes can be addressed as they arise and be tailored to the specific circumstances of the investment.

The capital investments required for the Canadian transportation sector are likely to be large and should not be undertaken without proper identification of where the investments are most needed. WCSC believes that only after the particular investments have been identified should measures to encourage those particular investments, if any, be considered, taking into account the specific circumstances of the investment.

Conclusion

WCSC reiterates each of the recommendations in its original submission, as it believes that they can each help leverage the national transportation system to support Canada's continued economic growth in the decades ahead, in accordance with the Panel's mandate. In addition, in response to the Panel's specific requests for supplemental information, WCSC recommends that:

1. the 160 km statutory interswitching limit is appropriate for each of the four western provinces, provided that the existing sunset clause is removed and mandatory consideration of alternative means of transport in the FOA process is eliminated;
2. processes such as:
 - a. a more efficient full FOA process;

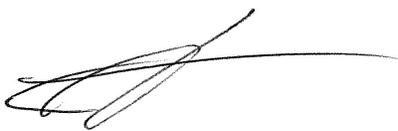
- b. a more accessible summary FOA process; and/or
- c. conciliation;

can assist small shippers for whom the current FOA process is expensive and not a viable option; and

3. consideration about possible ways to encourage the railways to invest more in infrastructure and network capacity should be deferred until the specific geographic areas that are currently and potentially under strain are identified. An independent expert should be commissioned to complete the original identification of those issues, pursuant to which decisions about potential encouragement, if any, for specific initial capital investments can be made based on the circumstances of the investments.

Following that initial report, aggregated rail metrics should be made publicly available for the ongoing monitoring of the transportation system, and the Agency should be given the ability to investigate and address systemic issues as they arise. Decisions about potential encouragement, if any, for those specific capital investments identified pursuant to the ongoing monitoring and Agency investigation can again be addressed based on the specific circumstances of those investments.

WCSC thanks the Panel for the opportunity to prepare a supplemental submission and looks forward to further discussions with the appointed chair and the members of the Panel on the contents of both WCSC's original submission and this supplemental submission.



David Montpetit, Chairman
Western Canadian Shippers' Coalition