April 28, 2010

Rail Freight Service Review Panel
Suite 808, 180, Elgin Street
Ottawa, Ontario K1A 0N5

Dear Sirs:

On behalf of the Shippers Committee of the Propane Gas Association of Canada (PGAC), I am pleased to present the attached submission to the Rail Freight Service Review Panel.

The PGAC is the national voice of the Canadian propane industry, a multi-billion dollar industry that affects the livelihood of tens of thousands of Canadians. The Association has over 300 members representing the full spectrum of propane operations, from producers and transporters to wholesalers, retail marketers and manufacturers and distributors of appliances, equipment and cylinders. The majority of our members either use or depend on rail service for servicing their customers and the efficient running of their businesses.

Propane plays an important role in the North American energy mix. In 2008, Canada produced 11.0 million cubic metres of propane of which 60% was exported to the United States. Available to end users from approximately 2,500 retail outlets across the country, the propane industry has a $9.6 billion economic impact in Canada, supports the livelihood of more than 20,000 Canadians and contributes over $910 million in annual taxes and royalties.

The PGAC Shippers Committee is a member of the Coalition of Rail Shippers, a coalition of industry associations whose members represent over 80% of the revenues of Canadian National and Canadian Pacific Railways. The Coalition provides input to the government and government agencies on railway matters affecting the large segment of Canadian industry that depends on effective, efficient and low-cost rail service to remain competitive in domestic and export markets.

Propane shippers welcome the opportunity to provide the eminent members of the Panel with recommendations we believe are aimed at improving the efficiency and effectiveness of the rail-based logistics transportation system in Canada. We would be pleased to provide you with additional information on request, and have no objection to this submission being published on the Rail Freight Service Review website.

Please do not hesitate to contact me by phone at 403-515-3960 or email at mgratton@nglsupply.com should you wish to discuss this submission further.

Yours truly,

MAURICE GRATTON
Chairperson
PGAC Shippers Committee

Attachment

Submission
to the Rail Freight Service Review Panel

From the Propane Gas Association of Canada's

Shippers committee

April 28, 2010

1. Canada's Propane Industry: Who We Are

The Propane Gas Association of Canada (PGAC) is the national voice of the Canadian propane industry, a multi-billion dollar industry that affects the livelihood of tens of thousands of Canadians. The PGAC supports its members in the growth and development of a safe, environmentally responsible Canadian propane industry through the provision of member driven services, such as industry related training and emergency response, and the active promotion of the interests of the industry. The Association is headquartered in Calgary, Alberta, and also maintains a presence in Ottawa, Ontario.

The Association has over 300 members representing the full spectrum of propane operations, from producers and transporters to wholesalers, retail marketers and manufacturers of appliances, equipment, cylinders and equipment. The majority of our members either use or depend on rail service for servicing their customers and/or the efficient running of their own businesses.

Propane is a widely available, cost-competitive, clean and portable fuel that plays an increasingly important role in the North American energy mix. In 2008, Canada produced 11.0 million cubic metres of propane of which 60% was exported to the United States.

Available to end users from approximately 2,500 retail outlets across the country, the propane industry has a $9.6 billion economic impact in Canada, supports the livelihood of more than 20,000 Canadians and contributes over $910 million in annual taxes and royalties.

The PGAC is a contributor to, and member of the Coalition of Rail Shippers, a coalition of industry associations whose members represent over 80% of the revenues of Canadian National and Canadian Pacific Railways. The Coalition provides input to the government and government agencies on railway matters affecting the large segment of Canadian industry that depends on effective, efficient and low-cost rail service to remain competitive in domestic and export markets.

2. Rail Freight Service Review Reports: OUR ASSESSMENT

The Rail Freight Service Review is being conducted in two phases. Phase I involves research and analysis on the Canadian rail system. Phase II, led by an independent Panel, will consult on recommended solutions prior to submitting a final report to the Minister of Transport, Infrastructure and Communities.

Phase I of the Review, the quantitative and analytical stage, which work is currently underway, involves 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 were retained by Transport Canada in advance of the formal appointment of the Panel to conduct the work under the first three projects, with Transport Canada undertaking the work on the fourth one. Phase II of the Review involves the development by the Review Panel of draft recommendations which will be published for comment prior to being finalized and submitted as a final report to the Minister of Transport, Infrastructure and Communities.

Consistent with the experience of propane industry shippers, the Phase 1 consultants' reports have confirmed that there are service issues and challenges and that these are wide-spread and chronic. In preparing this submission, the PGAC Shippers Committee reviewed the various Consultant reports prepared for the Panel and now offers the following observations:

Project 1 - Analysis of Railway Fulfillment of Shipper Demand and Transit Times

Project 1 quantifies the extent to which the railways meet shipper demand through order fulfillment and the extent to which traffic is moved through the system in a consistent manner (transit time); identifies problems related to meeting demand and to traffic movement; explains the causes of the problems; and proposes potential solutions to the problems.

The first part of the analysis on Order Fulfillment was limited to situations where railways supply cars as the report indicates that there is "no car order process that can be subjected to measurement in situations where shippers supply cars – such as in the petroleum and chemical industries." The report did not assess intermodal performance or performance in circumstances where shippers supply cars, as is the case for the propane industry. Overall, this is a serious shortcoming of this report and analysis. This notwithstanding, many of the conclusions reached in this report on the adequacy of the rail service levels are consistent with the propane industry's own experience.

This consultant report suggests that to run smoothly, shippers, railways and receivers must all plan carefully. Railways need to deliver the number and types of cars shippers require, and carry the freight to receivers as quickly and consistently as possible. Shippers need to load cars quickly to help achieve good transit times. Receivers need to unload cars quickly, so railways can use them to serve other shippers.

On Order Fulfillment, the report concludes that, when averaged over a year, railway forecasts are accurate in estimating traffic volumes to within 10% for all commodity groups. However, when assessed on a monthly basis or by commodity groups, forecasts are less accurate. The report also notes that certain shippers made many "last minute" changes to their car orders once the railways disclosed their detailed weekly operating plans. Depending on product type, railway performance in meeting shipper demand ranged from 73% to 98% of orders fulfilled. Performance was much poorer when examined on a weekly basis.

Regarding Transit Time, the report examines how long it took, in hours, for loaded cars to move from origin to destination and the consistency of transit time for individual movements over time. In general, there were big differences in transit times for hauling similar distances. Transit time performance varies widely among bulk/grain, carload and intermodal traffic, with intermodal traffic being the most consistent. Factors such as shipper size, size of shipments, access to rail competition, core versus non-core railway origins, and shortline versus CN and CP origins did not impact transit time consistency. Freight car traffic arriving at port destination on Friday and Saturday takes 23% longer for final placement. Of cars released in a block by shippers, 42% of CN's and 38% of CP's did not arrive at destination in a single block. Shipper loading and receiver unloading times varied greatly.

Regarding Delivery to Shippers at Final Destination, the report summarizes the average time between arrival and placement of railway cars by commodity group. While propane is not directly mentioned, the report does indicate that petroleum products have an Average Time to Placement of 76 hours for CN and of 108 hours for CP. The report further adds that it is likely that most of the time for the traffic delayed over 48 hours at destination can be attributed to customers' inability to accept for unloading all of the traffic arriving at destination. However, some of this time is a joint responsibility of the customer and the railways as inconsistency in transit times can create traffic bunching at destination which will contribute to congestion at destination terminals.

PGAC Shippers Commentary:

As noted above, the Project 1 report analysis did not report on intermodal and on leased/owned cars performance. This is a serious deficiency that misses much of our sector's traffic!

All along, the railways have been indicating that the service levels they provide are more than adequate to meet shippers' needs. Propane shippers have long taken exception to this position. So apparently do the consultants who completed this review.

Additional discussion on propane shippers' rail service level concerns is included later in this submission.

<u>Project 2 - Assessment of Railway Operational Practices</u>

The overall objectives of this project were to provide a narrative description of the rail-based logistics system and to identify operating practices of the railways, shippers/receivers, terminal operators, and shipping lines that adversely impact service, system efficiencies, and capacity. The project also identified best operating practices of all parties for possible extension to other parts of the system. This project was divided into two separate reports titled "Description of Canada's Rail Based Freight Logistics System" and "Analysis of Operating Practices".

The problems attributed to poor communications between shippers and receivers in the first report are very much consistent with the experience of PGAC shippers. The report specifically states that "(s)ince railways, shippers and receivers operate interdependently, they need to collaborate closely for the system to operate efficiently. If they don't establish effective communications between partners, they will all waste time and money."

Additionally, the report identifies the following challenges which are also consistent with the experience of PGAC shippers:

- <u>At Origin</u> — Railway delivers rail cars late or delivers too few rail cars to shippers for loading.
- <u>In Transit</u> — Railway does not give customer or terminal operators an accurate estimated time of arrival (ETA) at destination, or does not provide an ETA in a timely manner.
- <u>At Destination</u> — Railway does not deliver cars to customer facilities for unloading on time or in the proper sequence or in the requested number.

The second report assesses and analyzes the operating practices of rail system stakeholders using the supply chain logistics model. As a result of stakeholder consultations, the expertise of the research team and best practices in the Canadian rail freight logistics system, the report identifies the following key issues which are also consistent with the experience of PGAC shippers:

- Balanced Accountability - Each supply chain participant should be responsible for the costs that its behaviour imposes on other participants.
- Operational Cooperation and Communications - Railways should do a better job of communicating the status of rail traffic and the expected time of arrival (ETA) for local pick up and delivery.
- Customer service - Railways need improved processes for logging, escalating, responding to and resolving customers' complaints.

Ancillary service charges - Railways need to improve administrative effectiveness and ensure fairness in calculating allowable free time for demurrage.

Project 3A - Survey of Shippers

The survey of 262 shippers by the NRG Research Group states that: "overall satisfaction is low."

On a scale of 1 to 7 (with 7 being very satisfied):

- only 17 percent of shippers rated their satisfaction level a 6 or 7 (most customer satisfaction surveys aim for 50-70 percent in this range);
- 35 percent of shippers gave dissatisfaction scores of 3 or lower;
- 45 percent say their satisfaction level had decreased over the past three years; and
- 62 percent said they have suffered a serious financial impact as a result of poor rail freight service.

Additionally, and particularly worthy of noting here, over half of the shippers interviewed in this NRG survey believe "that there are no or very few measures in place to hold railways to account for their customer service performance" and that "there is no real recourse for them to hold the railways to account for breakdowns in service."

These survey results appear consistent with what PGAC shippers have experienced.

Project 3B – Survey of Other Logistics Operators

This survey is based on one-on-one interviews with senior staff from 14 terminals, eight port authorities and six shipping lines operating in Canada. On a scale of 1 to 7 (with 7 being very satisfied):

- Most terminals rated the rail freight services they receive in the 3 to 5 range. Only one gave a rating of 7.
- Port Authorities proved to be the least dissatisfied of the stakeholder groups. All but one rated the rail freight service they receive from 4 to 6.
- About half of the shipping lines surveyed are satisfied; rating the rail freight service they receive at 6. The rest gave much lower scores; rating the service they receive at only 3 or 4.

Three areas raised frequently in all interviews as very important factors contributing to a positive impression of the railways are:

- Getting cars delivered on time;
- Getting the correct number and type of cars; and
- Receiving knowledgeable and helpful customer service from the railways.

Respondents also indicated the following "Major Sources of Dissatisfaction", which are consistent with what PGAC shippers have experienced:

- terminals reported that inconsistent service creates operational difficulties;
- poor cooperation of railways with other stakeholders prevents having an efficient logistics system; and
- all agreed that no effective way exists to hold railways to account when poor rail service performance results in high costs for stakeholders.

Suggested improvements by survey respondents:

- receiving accurate and reliable information about railway operations;
- entering into formal operating agreements with the railways;
- working together, including the railways, as players in a logistics system, not independently from one another.

PGAC shippers concur with survey respondents on all of the above points.

Project 4 – Service Issues in Regulated Industries other than Canadian Rail Industry

This fourth report:

1. explains the Canadian Transportation Act (CTA) level of service (LOS) obligations of Canadian federal railway companies;
2. outlines the CTA and market-based means of resolving complaints about rail freight service in Canada;
3. identifies the U.S. federal LOS obligations that are similar to those in Canada;
4. identifies the law-based and market-based tools used in the U.S. to resolve rail service issues; and
5. compares changes to Canadian and U.S. rail LOS regulations over time.

The report further notes that Canada's rail Level of Service obligations are stricter than those that apply to federal air, water and pipeline carriers (where they exist at all)" and that "the ways to address service issues in rail shipping are much better than those available to shippers of freight by rail, water or pipeline. Yet the PGAC wishes to note that that unlike the most other shipping options considered in this report which offer access to competitive shipping alternatives, this is often not the case for rail service in many parts of Canada and as such, the PGAC respectfully submits that there should be "better" ways to address service problems in rail as compared to most other modes.

PGAC shippers support the recommendation that policy makers should further investigate “ways of addressing complaints related to confidential contracts”. As the railway bargaining position is generally so strong in negotiations, the railways are able to include “optional service tariffs” by reference in confidential contracts which has the effect of eliminating the possibility of complaint to the Agency in such cases.

Propane shippers do not support the recommendation to investigate the “exemption of many commodities from regulation. In the view of the propane industry, this recommendation appears inconsistent with the overall spirit and intent of the *Canada Transportation Act*. The size, scope and nature of Canadian transportation and the options that are open shippers, whether in urban or rural areas, is such that exemption by commodity would not be practical. There could be situations where a shipper might have a practical alternative to rail in one location and not at another location.

3. Propane Industry Submission

3.1 Shipper Survey

The essence of this submission is based on input provided to the PGAC Shippers Committee through a written survey of members conducted at the end of 2008. A detailed ‘level of service’ survey was distributed to PGAC members who shipped or received propane and butane at their facilities.

PGAC shippers were asked to identify and document any significant rail service problems they had experienced in the movement of their products throughout 2008 and to propose remedies to rectify any rail service problems they had highlighted in their responses to the survey.

The results are based on responses from PGAC members who represent movements of over 50,000 carloads of propane and butane over the lines of Canadian National Railway (“CN”), Canadian Pacific Railway (“CPR”) and their connecting partners from 31 facilities of PGAC members across Canada. The locations of the 31 reporting facilities represent every province from Quebec to British Columbia.

Rail shipments covered a multitude of destinations in both Canada and the United States encompassing seven provinces and eighteen U.S. states, which reflect the nature of propane and butane markets. The rail routes over which traffic was identified involved both CN and CPR direct routes as well as numerous interline movements involving the lines of CSX, NS, BNSF and UP at all major connecting gateways on CN’s and CPR’s systems including:

- North Vancouver, B.C.
- New Westminster, B.C.
- Kingsgate, B.C.
- Coutts, AB
- Regina, SK
- Montreal, PQ
- Noyes, MN
- St. Paul, MN
- Superior, WI
- Chicago, IL
- Sarnia, ON
- Buffalo, NY
- East Alburg, VT

3.2 THE ISSUES

As discussed below, the survey of PGAC shippers found that there are real and significant service problems in the railway industry that need to be addressed.

i) Service Perceptions:

According to PGAC's shippers, railways seem to believe that the service levels they provide are more than adequate to meet shippers' needs. But propane shippers take exception to this position, as the performance indicators used by the railways do not tell the whole story about the effectiveness of rail movements in this country.

PGAC shippers hold the view that CN and CP are too focussed on the straightforward movement of long trains and large blocks of cars between their major terminals and do not take into consideration what happens after the loaded or empty cars reach those terminals for ultimate placement at customers' facilities. It is the view of propane gas industry shippers that railways' performance measurements are inappropriately focussed on velocity and not on ultimate customer service levels.

An example of incomplete performance reporting is car cycle times. The railways measure cycle times from the time rail cars leave their yards, where the traffic originates, and arrive at the destination yards. Dwell times for cars held in rail yards awaiting marshalling into trains prior to departure, as well as at destination yards awaiting call-in or placement at customers' facilities, are not included in their cycle time formula.

Shippers believe that actual railway car cycle times are longer than reported by the railways and that car cycle times have actually increased overall. Evidence of this is seen in the increased size of car fleets utilized by shippers (increased 15% in the past 3 years), for which costs are fully borne by them as a direct consequence of deteriorated railway service.

ii) Rail Switching and Car Bunching:

<u>Rail Switching</u> - Many PGAC shippers noted that the railways have missed numerous switches at their origin facilities. Further, the cars delivered were not necessarily the specific cars containing the products requested or needed by the members when the switches were made. The railways often fail or refuse to pull the cars that are requested and needed by shippers from the pool of cars assigned by the railways. At times, the wrong cars are spotted at the facilities, or the cars are spotted in bunches, making it difficult to receive them, or the cars are simply spotted in the wrong order and/or at the wrong location at the facilities, requiring the cars to be turned or re-switched. This adds additional freight costs for shippers, who in turn have little choice but to pass these costs onto their customers.

<u>Car Bunching</u> - Bunching in transit has an immediate direct and negative impact on the service levels provided by CN and CP at shipper facilities. When bunching occurs in transit, it is felt by shippers in the form of more cars than were ordered or requested, or the wrong cars, arriving in numbers that are greater than what shippers can reasonably accommodate or handle at their facilities for loading or unloading. When more cars than are requested arrive, or that can be physically accommodated at a shipper's facility, they must be held on the railway's tracks or in the railway's yard until notice is received from the customer that the cars can be accommodated for loading or unloading.

Shippers go to considerable lengths to order cars that meet their customers' needs. The railways, in their desire to effectively fulfill their scheduled on-time 'hook and haul' train operations, and to resolve bunching problems, simply pull (from the assigned car pools) and drop the number of cars sufficient to fill the customer's siding, irrespective of the customer's specific car and product needs. Bunching is being done at the convenience and cost efficiency of the railways, which appear to have little regard for shippers' needs. The current approach is causing significant congestion problems on the rail lines, which supposedly the railways are trying to avoid and for which they are penalizing shippers.

iii) Rates / Demurrage:

As the main objective of the PGAC survey was to measure and assess railway service levels provided to members of the PGAC, changes in the levels of rail rates ('*line-haul*'), and ancillary service charges (such as for car demurrage, storage, switching etc.), did not initially form a part of our survey. This is because changes in rail rates are similarly not included in the terms of reference of the federal level of Railway Services Review. Rail rates nonetheless comprise the flip side of rail service and - stated in its simplest terms - shippers tendering products for carriage on railways should receive levels of services that reasonably reflect what they pay for in rates. That is not, however, the case for shippers of propane gas and related products.

Shipper line-haul and ancillary freight charges were found to have increased over 10% annually over the past 5-8 years. Additionally, PGAC shippers have indicated that while the propane industry represents approximately 3% of rail movement, it contributes an estimated 5% of revenues to the railways.

A representative sample of the survey respondents were asked in a follow-up interviews to provide data and information describing the changes that they have experienced in the levels of rates they have been charged over the past few years on movements of their products, as well as the impact those changes have had on their shipments. Their submissions revealed that most of their line-haul rates have increased dramatically in recent years to the point where, in some cases, it was no longer possible for the shipper to compete in the market where the product had moved by rail for many years.

Diverting the product from rail to truck was similarly determined not to be a viable economically feasible option, given the long distances over which the products were required to be moved, the availability of trucks and the volume of traffic involved. These markets simply dried up resulting in lost sales. The extent of the line-haul rate changes can be seen in the following tables. Line-haul rate increases imposed by CP and CN, in particular, have been dramatic:

Table 1

[redacted]

Table 2

[redacted]

Over the period 2001-2009, CN has imposed massive rate increases on shipments from Winnipeg and Regina on PGAC members. Between 2001 and 2009, CN's rates have increased over 60% (over 8% annually). BNSF's rates out of Winnipeg, on the other hand, have increased only 30% during this same period (3.7% annually).

CN's rates, measured from 2002, have similarly exhibited much larger increases than rates charged by other railways with increases ranging from 40%-85% over a six year period. CN's rate increases are actually understated in this analysis because CN introduced "tiered" winter vs. summer pricing in 2007, which imposed higher rates (5%-6%) over the winter months when most propane and butane moves. The rates detailed above for the period 2007-09 are those charged by CN in the lower rated April-October period.

Both CP's and CN's rates have increased by 50% (10% annually) over the past 5 years (2004-2009). CP's rates have increased by an average of 8%-13% annually since 2007.

While shippers are willing to pay their fair share of costs to move their products by rail, such increases are excessive and not at all reflective of similar increases in rail service levels.

iv) Demurrage, Storage Fees, and Additional Costs:

In addition to the service disruptions at their loading/unloading facilities, companies are further impacted and penalized by bunching in the form of excessive demurrage and/or car storage charges which are imposed on them by the railways for their inability and failure to load or unload the bunched cars within the strict time limits imposed by the rail carriers – notwithstanding the failure of the railways to deliver the cars in an un-bunched state in the first place.

Such ancillary charges have increased dramatically over the past eight years for services relating to car storage and car switching as well as in the form of penalty charges relating to car demurrage. As an example, CP's car demurrage charge on a loaded private rail car held on a CP track awaiting placement on a private track (e.g., owned by a PGAC member) has increased from $30 per car day to $55 per car day since April 2001, an increase of 83% or more than 10% per year! CN's demurrage charge for the same car has increased from $35 to $55 from November 2001 to the end of 2008, reflecting an increase of almost 60% over the same eight-year period.

Shippers are being unduly penalized for events that are fully beyond shippers' ability to control. And the railways are, in effect, fully compensated for their service breakdowns and failures which result in bunching of cars at the loading and unloading facilities of their customers through the charges they impose on their customers by way of their demurrage tariffs.

[redacted]

Many shippers incurred substantial additional costs as a result of having to invest in additional infrastructure or having to lease additional cars because of the failure of the railways to provide them with a consistent and adequate level of service over the past year.

About one third of respondents reported that they had invested a total of over $200,000 in new rail infrastructure at their facilities or were examining such investments.

In addition to increased fees, over 70% of survey respondents reported that railway service disruptions had also caused labour havoc at their facilities during the past year. Additional labour costs were incurred in the form of added administration costs disputing erroneous invoices, in the payment of overtime salaries, and for securing alternative transportation arrangements when the delivery of rail cars was delayed due to congestion, bunching, missed switches and from the shut down of railway operations over the busy Christmas period.

The additional transportation costs that have been incurred by PGAC member companies as a result of railway service deficiencies over the past year have been significant. Close to $150,000 in excess storage and demurrage costs were reported by one member as a result of service deficiencies beyond its control in 2008. Additional trucking costs were also reported but not quantified by other members. It is estimated that service failures have required PGAC members to increase their fleets by 10% -30%. Shortages of rail cars caused by these service breakdowns have also cost the industry dearly – the additional costs associated with the leasing of additional cars now totals close to $2,500,000.

In the past, base tariffs covered all costs to shippers for rail shipments. In more recent years, the railways have been imposing extra charges (e.g., demurrage) over and above the traditional tariffs, the applicability of which makes financial planning by shippers difficult, as they do not know when they will be hit with what charges and at what amounts.

v) Demurrage Rules Established without Consultation:

To address rail congestion problems of the past, shippers' groups worked with the railways to develop their demurrage programs, including the criteria to be followed in applying charges to problem shippers who were not managing their fleets appropriately. In the early days, the program worked well, and was fully transparent, with ongoing dialogue occurring with shippers. Such is not the case today as the rules respecting the application of car demurrage have been considerably tightened by both CN and CP without any input or dialogue with the shipping community, their customers. Demurrage rules imposed on shippers are now unilaterally established by the railways; there are no ongoing consultations or dialogue. The rules are designed to support the railways, with little regard for shippers' operational requirements.

vi) Impact on the End Consumer:

Service failures of the railways result in numerous additional costs to shippers, whom oftentimes have little choice but to pass on these costs to the consuming public. This sometimes makes for difficult customer relations, as shippers often do not know when the railways will levy additional costs on them.

vii) Impact on Shippers:

As described above, the additional costs that are passed on to shippers by the railways are significant and are reflected in the form of demurrage, car storage, and other ancillary charges, as well as by required investments in infrastructure (sidings and facilities), and car fleets that must be made by shippers. These service failures and added costs make the propane industry less competitive in both domestic and cross-border markets.

In summary, rail service deficiencies have resulted in the following business impacts for shippers:

- lost customers;
- lost or declined market sales;
- increased warehouse or production costs;
- additional labour costs;
- need to expand new rail infrastructure at facilities; and
- additional transportation, car acquisition and leasing costs.

4. PGAC Shippers' Position – Recommendations

Propane shippers believe railway service levels could be improved considerably if the railways had better contingency plans, better systems in place to communicate those plans with their customers, and if they paid more attention to the service needs of shippers and receivers at their loading and unloading facilities and less on their predominant focus on 'scheduled' line-haul operations. Simply stated, too little attention appears to be given to the service needs of shippers at their loading and unloading facilities and too much attention appears to be focussed on the railways' need for profitable line-haul operations.

The need for better planning, improved lines of communication between carriers and the shippers, combined with more crews and motive power, have been cited as a means of reducing bunching and making car fleet management more effective – this includes the establishment of contingency and/or action plans by the railways to prepare for, flag, and respond to, service problems before they become too serious.

Advising shippers and receivers of delays experienced at interchanges or in railway yards in advance of delivering the cars to shippers' facilities (often by then 'bunched') could alleviate the service disruptions that ultimately result at shippers' facilities when the loaded or empty cars are ultimately delivered.

The dramatic rate increases imposed on PGAC members by both CN and CP, in the form of both line-haul rates and ancillary charges, have considerably exceeded the inflation rate during the past five-eight years. Given the deficit service levels provided by CN and CP in recent years, such increases are unjustified.

It appears that the railways are not receptive to addressing these issues voluntarily. PGAC shippers are thus advocating that the following mechanisms be introduced:

A. Reciprocal Penalties - for service failures by both railways and other parties in the rail based supply chain. The application of penalty charges by railways against shippers for delaying release of cars (demurrage), for over-loading, and for improper securing of loads and other matters is well established and is permitted by the *Canada Transportation Act*. But no comparable reciprocal provision allows shippers or consignees to receive compensation from the railways for service failures on their part. To establish such a regime would require setting some criteria against which service performance would be measured and setting out penalties, probably by regulation administered by the *Canadian Transportation Agency*.

Of note is Bill S. 2889, currently before the U.S Senate. This Bill is focused on rail service and regulatory issues in the United States, particularly shipper protection provisions. One of the provisions of this Bill states:

> "The Board (the Surface Transportation Board) shall, by regulation, require rail carriers to publish reasonable common carrier service expectation ranges. These may include ranges for normal car cycle times, transit times, switching frequency, and other service components as determined by the Board to be appropriate."

The issue of reciprocal financial penalties would provide an appropriate incentive for railways to improve their service consistency and reliability, given the lack of competitive pressures that the carriers enjoy.

<u>B. Independent Monitoring of Railway Service</u> - Chronic and widespread service failures by the railways do not give confidence that these problems will disappear with a "one-time fix", even if changes to the Act result from the service review. For this reason, PGAC Shippers recommend that a continuing rail service monitoring function be established within the *Canadian Transportation Agency*. The existing federal government's Grain Monitoring Program may be a model that could provide some guidance and insight into the organization and operation of a Rail Service Monitor. The monitor would be responsible to:

- establish service standards;
- have the authority to collect data from the railways and others in the supply chain;
- issue periodic public reports (possibly annually);
- impose penalties and award compensation where appropriate;
- monitor (though not regulate) fees;
- have the authority to launch and undertake investigations on its own initiative.

The independent monitoring activity could be formally reviewed within five years. Composition of the monitoring entity could comprise representatives of the railways, industry, and government. The group could first be tasked with developing criteria to establish acceptable and reasonable railway service standards for shippers. This would be a good first step in an effort towards bringing more balance and accountability between shippers and carriers into the railway service arena.

<u>C. Statutory Review of the Canada Transportation Act</u> - In 2007 and 2008, the *Canada Transportation Act* was amended by two Bills passed by Parliament. As noted above, Bill C-8 dealt directly with amendments to the protection provisions for railway shippers. Bill C-11 dealt with other issues in the Act. One of the provisions of Bill C-11 extended the period for a statutory review of the Act to eight years from five years.

The shipper community had opposed that change and, as the Act is the enabling legislation for all commercial matters affecting the railway industry, and as technology, markets, and service needs evolve rapidly, it is the view of PGAC shippers that the oversight of railway service issues requires that the Act be subject to statutory review within a five year period. This would be consistent with ensuring that the Act is kept current for issues relating to service as well as for other commercial matters.

In addition to the above-referenced legislative changes, the PGAC shipping community suggests that shippers have access to federal Infrastructure Funds Programs. As railways can currently access government infrastructure funds for rail related infrastructure improvements, the PGAC respectfully suggests that ensuring shippers can also access and leverage federal infrastructure funds could in fact achieve the goals of the current "Canada Strategic Infrastructure Fund" related to rail improvements, which include:

- facilitating the movement of goods and people on Canada's National Highway System, or highways that connect to the National Highway System and mainline rail network;
- increasing the productivity, economic efficiency, and safety of Canada's surface transportation system;
- facilitating the safe and efficient movement of goods and people, ease congestion, or reduce the emission of greenhouse gases and airborne pollutants; and
- helping address priorities such as climate change.

Supporting shippers in their ability to safely and efficiently move rail cars while reducing rail congestion can contribute to each of the above stated goals.

D. Competitive Access Rate Proposal - The PGAC believes that an efficient and competitive rail system is needed to advance the productivity of Canada's commodity industries and boost the viability of our national economy. In addition to the recommendations put forth in this submission, the PGAC is also lending its support to the "Competitive Access Rate Proposal" of the Forest Products Association of Canada. This Proposal seeks legislative change to the Canada Transportation Act, which would create greater competition in the Canadian rail sector by allowing a shipper captive to a single federal railway access to another rail carrier at an interchange of the shipper's choice at established rates set in a published tariff.

The Competitive Access Rate Proposal contemplates an extension in the radius of the already established interswitching zones to some greater distance and would extend the number of zones to ensure that a shipper captive to a single federal railway has access to another railway at the interchange of the shipper's choice. This remedy would allow the shipper to access a second rail carrier and provide the shipper with the opportunity to obtain a more competitive rate from that second carrier through commercial negotiations. The Cost-Based Rate would be set by the Canadian Transportation Agency and be available to the shipper who would then know in advance the 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).

E. Designation of Propane Shipped by Rail as an Essential Service – In the last 3 years alone, both CN and CP have faced situations of labour unrest within their workforces. At CN alone, labour strikes forced the federal government each time to introduce return to work legislation. The repercussions from the strikes (as short as they were) for the propane industry quickly became far reaching, negatively impacting the safety and economic well-being of the individuals and businesses that rely on propane.

Many Canadians rely on propane as a sole energy source in the same way they rely on electricity, natural gas or oil. Railways are an integral part of the reliable and effective distribution of propane across the country, and the interruption of rail service creates an inability to deliver propane to propane-dependant Canadians, especially during the coldest weeks of the year, when propane demand is at its highest.

The individuals and businesses that rely on propane for heating, cooking, transportation, warehousing, building and construction heat, and various fundamental processes face critical situations when railways shut down due to strike action.

Accordingly, the propane industry suggests that the reliable transportation of propane by rail be recognized as an essential service, and afforded the appropriate priority.

5. CONCLUSION

There are some real and measurable rail service problems associated with the movement of propane and other liquefied petroleum gases (LPGs), which have resulted in additional costs and time to the industry and to its customers. Car bunching, occasioned by service disruptions which happened while the cars were in transit appear to be a root cause of the service deficiencies experienced by PGAC members at their loading and unloading facilities.

PGAC shippers are primarily wholesalers who are selling their products (primarily propane and butane), to the rural home heating services market and to the retail market. Ultimately, the service failures of the railways filter down in the form of additional costs to PGAC members, their customers, as well as in lost customer sales. As described earlier, the additional costs that are passed on to PGAC shippers by the railways (as a result of their service failures) are significant and are reflected in the form of demurrage, car storage and other ancillary charges as well as by required investments in infrastructure (sidings and facilities), and car fleets that must be made by PGAC shippers. These service failures and added costs make the propane industry less competitive in both domestic and cross-border markets and lead to lost sales.

The propane industry thanks the Panel for this opportunity to make this submission and to provide recommendations we believe are aimed at improving the efficiency and effectiveness of the rail-based logistics transportation system in Canada. We would be pleased to provide you with additional information on request, and have no objection to this submission being published on the Rail Freight Service Review website.