

**SUBMISSION TO THE RAIL FREIGHT SERVICE  
REVIEW PANEL**

**Canadian Pacific  
April 30<sup>th</sup>, 2010**



**CANADIAN  
PACIFIC**

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## **Letter from Mr. Fred Green, President and Chief Executive Officer, Canadian Pacific**

Dear Panel Members:

At the outset, I would like to make it clear that Canada, as a trade-dependent nation, must excel in the face of increasing competition in world markets. Our success will in no small measure derive from our willingness to ensure that we maximize the potential of all of the elements in the rail freight supply chain to Canada's ultimate advantage. My belief is that a review of Canada's rail freight supply chain can yield a number of outcomes that will benefit all of the components of the supply chain and improve Canada's overall productivity.

In thinking about CP's contribution to the Rail Freight Service Review, I made a decision to take advantage of this process by offering a number of constructive comments as well as specific suggestions for performance improvement. Later in this document, CP outlines eleven specific recommendations which we encourage you to consider for adoption in your report to Transport Canada. These build upon our current domestic and trans-border initiatives – all of which are aimed at improving supply chain performance. Supply chain performance is a key enabler of the productivity performance of a trading nation like Canada and all stakeholders need to recognize that if Canada is to excel, transportation public policy must promote investment, increased competitiveness and enhanced productivity growth. This challenge, which has been acknowledged by the federal government, is real and significant, and we in the freight rail business understand the critical role we play in enabling Canada's economic performance.

I also submit that any proposals to increase regulation at this time would have a negative impact on the rail supply chain. In a competitive market, the revenues earned by a railway must be sufficient to attract the capital needs for operating expenses, replacement of existing infrastructure, and needed equipment, technology, and demand-driven capacity expansions. Given rail is the most capital intensive industry, these demands are considerable and they have to be achieved over a multi-year time horizon. This is the reality we face. Regulatory instability, as illustrated by history, will erode the confidence of our investors, negatively impacting our ability to implement required capital projects going forward.

We have made our recommendations to you based upon a deep understanding of the complexities of the rail freight supply chain and our commitment to achieve continuous improvement. Only this will ensure that the Canadian rail freight industry remains a best-in-class performer.

Our recommendations address various matters including the identified need to develop better visibility regarding the accountabilities among the various parties in the supply chain. In meeting this concern, we recommend that you confirm the advantages of confidential contract commitments between railways and shippers. We also recommend that you acknowledge the strength and sufficiency of the current regulated shipper protection provisions, as well as the benefits that can be gained for all by the increased use of Commercial Dispute Resolution to facilitate the efficient and effective resolution of disputes.

I would like to take this opportunity to outline for the Panel a number of customer-focused initiatives that we are undertaking in order to improve the performance of the supply chain. The measures outlined below flow from items identified in the Rail Freight Service Review consultant reports and feedback the Panel has received. I am committed to:

- Improve our “last mile” performance by commencing selected Yard Reliability Programs. The first one, which will be a pilot program in Winnipeg this summer, is intended to improve the local service reliability, yard fluidity, and ancillary charge accuracy by adding a placement standard for customers, a process to remove excess yard inventory, adding new measurement capabilities and making appropriate policy changes;
- Enhance supply chain collaboration by entering into working accords with supply chain partners, including terminals, that delineate respective expectations, performance, monitoring and communication with the goal being to increase overall visibility on elements of active cooperation;
- Expand the use of regularly scheduled supply chain sessions with all major customer segments to discuss service parameters, performance and agreed upon service improvements, on a semi-annual basis subject to agreement from other supply chain partners;
- Ensure qualified customer service representatives continue to be available to our customers. In short, I am committed to ensuring that when a customer needs to communicate with CP, they be able to avail themselves of our industry leading problem resolution tools to deal with their concerns;
- Develop a tailored communications approach for our smaller customers to enable them to better communicate with CP; to meet the specific needs of employees in smaller organizations trying to effectively and efficiently deal with a large company like CP; and
- Increase the use of technology by our staff to improve overall data accuracy. For example, specific tools such as the recent deployment of Automatic Inventory Reporting (AIR) tablets improve the accuracy and timeliness of demurrage administration.

I am very proud of the role my company has played over the last decade in bringing system stakeholders together to improve overall railway supply chain performance

and collaboration. I am also very proud of my company's record when it comes to customer service. However, as noted in the Appendices, we do not agree with a number of the findings, of the shipper survey and of the QGI reports developed for this process. We recognize that the service performance of the rail supply chain is a complicated issue but in my view, while we disagree with certain conclusions in these reports, I do recognize there is always room for improvement, especially in our "first and last mile" performance. It is in that spirit that CP has made the suggestions it has in this submission.

A key initiative which we at CP have been very active in has been the Asia-Pacific Gateway and Corridor Initiative. Items developed as part of this initiative such as the performance table and winter planning have been very beneficial for supply chain participants in the lower mainland of British Columbia, as well as participants in other parts of Canada. It was clear in that case that supply chain stakeholders needed to work together to collaborate on continually improving supply chain efficiency and fluidity. This experience, as a 'best practice' example, can now be used to further improve critical areas of the Canadian rail freight supply chain.

We have set out in the submission which follows a number of recommendations that will improve overall supply chain performance. They will improve Canada's economic prospects. These are all productivity-enhancing initiatives and I challenge you to give them serious consideration.

We at CP know that your overall goal, as is ours, is to foster a strong, sustainable, economic and safe Canadian supply chain – of which the rail component is one integral part. We believe that our commitments when coupled with the specific policy recommendations which follow can be an important element as we work together to engage new market challenges. The customer is and always has been important at CP. In fact, customers – along with our operating safety – have always been the top priority at CP. I firmly believe that it is not what you say but rather what you do, that matters. These core values are over-arching at CP and form the basis of the commitments I have put forward under this process.

Sincerely,



Fred J. Green  
President and Chief Executive Officer  
Canadian Pacific

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## EXECUTIVE SUMMARY

Canadian Pacific (CP) is determined to remain an industry leader in its offering a safe, efficient and effective rail freight service. As such, CP appreciates the opportunity to participate in this review of railway freight service in Canada. We have closely examined our business approaches and have spent a great deal of time talking to our clients and supply chain partners. We have worked hard in developing with them solutions that will improve the overall performance of the Canadian rail freight supply chain.

To this end we have committed to undertaking a number of concrete and sustainable changes that we believe will go a long way to: improve our communication with shippers – large and small; develop better visibility regarding the accountabilities among various parties in the supply chain; and improve upon our “first and last mile” operating performance.

These commitments are set out clearly in the letter to the Panel from Mr. Fred Green, President and Chief Executive Officer, which forms part of this submission.

In order to address many of the concerns that have been raised before the Panel – either in the various consultant reports, in shipper submissions or during our conversations with shippers and supply chain participants – we have made eleven recommendations to the Panel for future action.

They are as follows:

1. The Panel should acknowledge the importance of the rail supply chain to Canada’s economic prosperity and should recommend that all supply chain partners continue to work together to ensure it remains best in class;
2. The Panel should acknowledge that the current regulatory regime is robust and working well and that no additional regulation is required;
3. The Panel should recognize the importance of confidential contracts as a tool, where appropriate, to ensure that the parties meet their respective obligations;
4. The Panel should direct that the established Commercial Dispute Resolution process be used for all commercial disputes related to railway rates and service;
5. The Panel should recognize the importance of other supply chain parties in the rail freight supply chain and where appropriate the value of railways entering into collaborative working accords that delineate respective expectations, performance, monitoring and communication protocols;
6. The Panel should acknowledge the strengths and successes of the collaborative best practices that are integral to the Asia-Pacific Gateway and Corridor Initiative. It is a proven process that can, where there is a real need, improve overall supply chain performance. These best practices include

- assessment of total supply chain processes, implementation of supply chain improvements, winter planning, performance tables and infrastructure improvements;
7. The Panel should acknowledge that demand visibility can be improved, and recommend that Transport Canada work with Port of Metro Vancouver stakeholders including railways, ocean carriers and their customers to develop a pilot to increase the visibility of medium term (7-14-21-28-30-60 day) container volumes;
  8. The Panel should recommend that Transport Canada and the ports work with stakeholders to implement recent studies that were commissioned to address known challenges in the supply chain; specifically, the ability of terminals to load vessels in inclement weather;
  9. The Panel should recommend that a collaborative effort be undertaken to more fully utilize existing supply chain capacity and that 24/7 operations, as required, should be the standard business practice for participants in the Canadian supply chain;
  10. The Panel should recommend to Transport Canada that they work with Canada Border Services Agency and US Customs and Border Protection to examine transportation issues pertaining to the US/Canadian border. The objective is to enhance fluidity at border crossings into the United States;
  11. The Panel should recommend to Transport Canada that they work with appropriate Federal Government Departments and other relevant stakeholders to implement an effective bargaining structure, like an Alternative Dispute Resolution (ADR) process, for BC maritime labour.

## A. INTRODUCTION

Canadian Pacific acknowledges the challenges facing the Rail Freight Service Review Panel and has been actively engaged in helping the Panel identify issues and develop solutions that will result in practical, sustainable improvements in the Canadian rail supply chain.

Our aim, consistent with all participants in the supply chain, is to ensure that our rail freight supply chain is safe, efficient and effective – in other words, that it remains as the best railway supply chain in the world, one which can, with investment-promoting policies, advance Canada’s productivity growth.

CP sees this review as an opportunity. The Panel has heard from many shippers and supply chain participants that CP is a high quality transportation provider over a large network meeting the needs of many customers.

In this submission we present recommendations that we believe will promote investment and continuous improvement in the rail freight supply chain. These recommendations are in addition to the commitments already provided to the Panel by Mr. Fred Green, President and Chief Executive Officer.

The Panel’s stated objectives in this review are very clear. They are: (i) to conduct a review of the rail-based logistics chain with a focus on service to Canadian shippers; (ii) to identify problems and issues with respect to railway service including those arising from other elements in the logistics chain and to identify best practices and how they might be expanded, and importantly (iii) to make recommendations to address the problems that will include commercial solutions and, if necessary, regulatory ones<sup>1</sup>.

CP believes that its existing practices and those that are being proposed in this submission will assist the Panel in its third task. In saying this, CP is mindful that many solutions that at first blush may appear to offer quick and effective remedies, may not do so when examined closely.

Other solutions, regulatory ones for example, can have the effect of circumventing market forces and curtailing capital investment from the railways. In addition, while system participants must carry the direct costs of regulation they also encounter the indirect ones, as in high costs of debt or equity which stem from regulatory uncertainty.

Finally, caution should also be expressed about solutions that are presented as being “one size fits all”. The Panel’s Terms of Reference and consultant reports acknowledge that there are differences in shipper or other stakeholder issues depending on a variety of matters like: size – small shippers versus large shippers; commodity – merchandise traffic versus bulk versus intermodal; geographic locations – transit in western Canada versus eastern Canada and so on<sup>2</sup>.

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<sup>1</sup> Rail Freight Service Review, *Final Terms of Reference*, Sept. 12, 2008 at page 2

<sup>2</sup> Described in more detail in: *Description of Canada’s Rail Based Freight Logistics System* by QGI Consulting, November 2009 and in the QGI Report entitled *Analysis of Railway Fulfillment of Shipper Demand and Transit Times*, March 2010

Within this context CP has developed a list of recommendations that we believe will be helpful to the Panel. Our solutions are realistic, concrete, immediate and enduring. These are the criteria that the Panel has stated it will be looking for in its development of the important recommendations.

## **ABOUT CANADIAN PACIFIC**

For just over 125 years, CP has provided an important artery connecting Canada from east to west and into the United States. A vital player in Canada's economy, CP moves approximately 239 billion gross ton miles annually, the majority of which are bulk commodities such as coal, potash, grain, sulphur and intermodal containers. With its head office located in Calgary, Alberta, CP operations cover an expanse of 24,885 kilometers and pass through thousands of communities. Approximately 15,000 employees work to ensure that CP's operations continue to run smoothly and profitably, but most importantly, that those operations run safely.



The present rail network in Canada is of world-class caliber. There is also consensus that we need to maintain the momentum for making improvements – so that Canada continues to offer a globally-competitive rail freight supply chain, despite the ever increasingly complex nature of the many and varied supply chain components that railways serve. Fundamentally, CP believes that achieving this will provide broad and lasting benefit to Canada's domestic and foreign trade.

The goal of this submission is to provide CP's recommendations on improvements that will improve the operations of the railway supply chain in Canada.

CP will also set out in an Appendix to this submission its comments on reports developed for the Panel.

## **B. GUIDING CONSIDERATIONS**

### **NATIONAL TRANSPORTATION POLICY**

This review is not aimed at amending Canada's National Transportation Policy. With limited exception, system participants agree that this Policy espouses an optimal balance.

Within this balance, Parliament has declared that our national transportation system must be safe, competitive, economic, efficient; keeping in mind principles of a sustainable environment as well as the use of varying transport modes at lowest cost – all toward advancing the well-being of Canadians. The statement goes on to declare among other matters: the need for regulation in certain areas; that rates and conditions of carriage should not constitute undue obstacles to the movement of traffic within Canada or for export ; and that governments and the private sector must work together toward an integrated transport system.

### **RAILWAY COMPETITION IN CANADA**

The Canadian railway transportation market is highly competitive. CP faces competition from CN, United States railroads, trucks, pipelines and water carriers operating on the Great Lakes. The majority of shippers have options to transport their goods by different combinations of carriers or their rates are subject to robust forms of competitive pressure<sup>3</sup>.

One of the most misunderstood and least appreciated facets about the railways is the nature and strength of competition in the industry. In many instances, the competition can be provided by a combination of modes. The major rail competitor to CP is CN. The networks of CP and CN are overlapping and both carriers serve most of the major points in the country, either directly or indirectly through interswitching.

Apart from direct rail competition, CP faces competition from other modes. Trucking is the most prevalent form of modal competition. The continual expansion and improvement of the highway network including the construction of four-lane highways combined with increases in the allowable gross vehicle weights and dimensions has significantly enhanced the competitive reach of the truck mode.

Although the strength of the competitive threat from trucking depends on the value, volume and physical characteristics of the commodity being shipped, trucking is a major force in the transportation market for semi-processed and finished goods, and even those shipped in substantial volumes over long distances.

Competition within the international marine container business is also intense. Here, the steamship companies are generally responsible for the door-to-door movement of marine containers. Each port is usually served by one or more steamship company and each steamship company has the option to call at any number of ports on a given

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<sup>3</sup> As reported in *Description of Canada's Rail Based Freight Logistics System* at pages 56-61

route. The relatively free market entry and exit conditions enjoyed by steamship companies is an important consideration when examining Canada's rail freight supply chain. It illustrates the itinerant nature of a key part of the supply chain – a part upon which shippers, ports, railways and others all rely. Because of this, CP must ensure that it remains a first class railway capable of providing a strong, innovative and efficient inland link to the overall movement of both loaded and unloaded containers.

The sum of the above is that almost all shippers to varying degrees have modal choice.

Competition surrogates also exist within the current regulatory regime. For example, *interswitching* and *competitive line rates* (CLR's) are forms of regulated competition that can be triggered by most shippers.

On top of the access measures and direct rail service by two or more carriers, shippers also have recourse to *final offer arbitration* (FOA). Within these statutory arbitrations shippers are able to demand that a railway company provide a transportation rate at terms and conditions of carriage that may direct, among other matters, the use of particular railway interchanges for furtherance at that point by third party rail carriers.

Furthermore, and there is general agreement on this, the complaint mechanisms that are embedded within the *Canada Transportation Act* (CTA) grant all rail freight shippers a strong and established complaint forum for resolution of their service disputes. Under these provisions shippers are able to seek redress against railway companies when the shipper feels that the rail freight service it has received is not adequate. The CTA Agency can direct a range of specific remedies if it finds the railway to be in breach of its statutory service obligations. This is a time-tested last resort remedy that shippers, both large and small, have used over the years.

CP's position on the efficacy of these regulatory mechanisms appears later in this submission. Suffice it to say that these legislative remedies are tools often referenced in the balance of negotiations between shippers and railway companies.

## **EVOLUTION OF THE RAILWAY SUPPLY CHAIN IN CANADA**

Over the last few decades the world economy has undergone major structural changes. One of the most significant developments has been the exceptional growth in trade and the emergence of Asia, especially China, as a major driver of world economic growth. The growth has not only added to the complexity of the supply chain but has also resulted in considerable growth in volumes especially through the Port of Metro Vancouver (PMV). From 2003 to 2008 bulk tonnage at PMV increased from 64 to 73 million tonnes, a 15% increase in five years. Container volumes have grown at a faster rate reaching 2.5 million TEUs in 2008, an increase of 39% from 2003. A significant portion of these volumes were moved by Canada's rail supply chain to an export position, or to final destination in Canada or the United States.

Expansion in world trade began in the 1950's following the removal of many pre-existing trade barriers. There began a significant improvement in transportation

services and productivity to meet this growing demand and with this came increases in specialization and concentration of production. The world's developed economies also began to geographically separate elements of their manufacturing process making transportation more important than ever. It goes without saying that as the demands on the world's supply chains have increased so too has their complexity. This, in part, can be attributed to the increased outsourcing of various supply chain components particularly in the area of information exchange and technology.

Within this complexity is the evolving role played by Canadian ports. They have been a critical link in our supply chain for our important U.S. and international customers and in recent years their growth has been exponential in terms of throughput.

With this growth in port throughput has come challenges which, in turn, have brought new meaning to the phrase "supply chain management". It is CP's position that this issue is now of paramount importance and is best described as follows by one of Canada's leading transportation experts:

*"The term 'supply chain management' reflects the heightened linkage and coordination between buyers and sellers and the various organizations including transport that are involved in creating value for customers. ... While great progress has been made in increasing coordination in supply chains, logistics in and related to ports remains particularly difficult. The need for effective coordination is reflected in greater reference to the "port community" of all the private and public enterprise contributing to the efficiency of gateways. The challenges for efficient gateway performance are common among ports. They are local problems found globally"<sup>4</sup> .*

There is a need for coordination among supply chain participants and ports. Professor Heaver cites as a best practice example CP's relationship with Viterra<sup>5</sup>, Canada's largest export grain company which attributes its record number of unloads over the recent past to improved internal and external communications with CP. This refers, in part, to the dramatic reduction in car cycle times arising out of our industry collaboration efforts. Cycle times have recently been reduced on average some 20%.

Another positive development in the rail freight supply chain in Canada has been the development of gateway strategies across the country. These collaborative initiatives have and will continue to strengthen Canada's position as a trading nation and enhance the capacity of our transportation system.

It is CP's position that this type of coordination enables Canada's trade advantage to remain strong and at the same time, flexible. To this end and where appropriate we have entered into memoranda-of-understanding with several supply chain participants, including ports and terminals. These accords detail expectations of the parties, formalize discussion links and go on to provide performance indicators, monitoring, compliance and update mechanisms. CP and our partners are proud of these initiatives and recognize that they are part of the solutions which the Panel may consider in its recommendations going forward.

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<sup>4</sup> *Coordination in multi-actor logistics operations: challenges at the port interface* (2009) by Prof Trevor D. Heaver, Professor Emeritus, Sauder School of Business, University of British Columbia

<sup>5</sup> Reference is to a Viterra News Release, October 29, 2008: "Viterra's Cascadia Terminal Sets Vancouver 24-hour Unload Record"

## C. CP'S RECOMMENDATIONS

### THE IMPORTANCE OF TRADE

Given the recent growth in emerging markets and new transport networks it is not surprising that the Canadian economy has grown and is the 10<sup>th</sup> largest in the world. Our gross domestic product (GDP) per capita makes us one of the world's wealthiest nations. As with other developed nations, the Canadian service sector employs a significant portion of Canadians. Yet, while a strong player on world markets Canada is unusual among developed countries in that it is more reliant on exports than the others.

Canadian merchandise exports in 2008 reached \$484 billion, while merchandise imports were \$434 billion. The nature of this balance is further reflected in the following chart<sup>6</sup>.



Currently trade accounts for 61% of Canada's GDP, and the U.S. accounts for roughly 77% per cent of Canada's exports and 55% per cent of its imports. This places Canada near the top of the world for large industrialized nations in regard to its dependency on trade for economic growth and well-being.

A number of factors flow out of this. Modern transportation systems rely on multi-modal and intermodal connections. The utility and value of the supply chain is more than the sum of its individual parts. An integrated supply chain is one that is able to make greater use of system capacity and is an alternative to costly expansion of congested systems. This begets increased coordination and effective utilization of existing capacity of the entire system.

In addition, the most fuel-intensive modes of freight transport (air and road) have been growing the most rapidly. Between 1995 and 2020, air freight tonne-kilometers

<sup>6</sup> Trade Data Online, Industry Canada, March 2010

are expected to grow 90% and truck freight by 61% followed by rail freight at 38%<sup>7</sup>. This growth will strain public infrastructure and increase emissions from the burning of fossil fuels. Increased reliance on rail is a solution to these problems given it is far more fuel-efficient than trucking. This comparative efficiency means that rail is not only the ‘greener’ option relative to trucking but also one that is more cost-effective over greater distances.

Our performance over the past two decades has been impressive. In this respect, the Transport Canada White Paper “Straight Ahead – a Vision for Transportation in Canada”<sup>8</sup> confirmed that:

*“... improved performance has allowed Canadian shippers and the Canadian economy to be more competitive in world markets ... of the relative performance of freight railways in 22 developed countries in the late 1990’s, Canadian freight railways had the lowest rail freight rates in the group, just ahead of the United States”.*

**Recommendation 1: The Panel should acknowledge the importance of the rail supply chain to Canada’s economic prosperity and should recommend that all supply chain partners continue to work together to ensure it remains best in class.**

#### **NO NEW REGULATION IS NEEDED**

The report entitled *Service Issues in Regulated Industries other than Canadian Rail Freight Industry*<sup>9</sup> published by the Panel as part of its review, presents a detailed assessment of regulatory regimes in other industries in Canada as well as those which exists in the United States in the federal transport sector. The Panel asked that this assessment be specifically directed at the nature and existence of level of service regulatory treatment in these other jurisdictions. CP submits that the report successfully accomplishes this task.

Fundamentally, the report concludes:

*“... we have found none of the legislative regimes reviewed, including the regulation of level of service(LOS) in the U.S. rail freight services industry as well as in the non-rail industries covered by this study, to be clearly superior in an overall sense to the regime for regulating LOS in the Canadian rail freight services industry”*<sup>10</sup>.

The Study went further to find that the statutory service obligations in the Canadian rail industry are, “*Vastly superior ... to those available to shippers of freight by air, water or pipeline*”<sup>11</sup>.

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<sup>7</sup> “*Developing a Continental Transportation Policy for Canada’s Future*”, RAC, March 2001

<sup>8</sup> Made public in 2003

<sup>9</sup> *Service Issues in Regulated Industries Other than Canadian Rail Freight Industry*, CPCS Transcom Limited, August 31, 2009

<sup>10</sup> Ibid, at page 39

<sup>11</sup> Ibid, Executive Summary

CP's view is that the service solution mechanisms embedded in the Canadian rail freight industry are significantly more useful to shippers than any that exist elsewhere. The CPCS Transcom Limited report acknowledges that the LOS protections set out in the CTA, when combined with those protections afforded by CP through its own commercial disputes program and mediation program, offer to shippers an array of remedies and recourses that are effective and efficient.

**Recommendation 2: The panel should acknowledge that the current regulatory regime is robust and working well and that no additional regulation is required.**

## COMMERCIAL RELATIONSHIPS

### a) The Rail Freight Supply Chain is Complex

During the course of the Rail Freight Service Review shipper interests have raised an issue around the perceived lack of balanced accountability between shippers and railways – because railways allegedly impose financial penalties on shippers for performance failure but shippers are not compensated for their additional costs due to performance failure by railways.

This issue illustrates a profound misunderstanding of the asymmetric relationship between railways and their shippers. Railways are a network industry that is required to serve the whole community of shippers, and is subject to numerous regulatory mechanisms. In contrast most shippers are not subject to economic regulation.

CP asks the Panel to treat with caution any assertion that there is an imbalance in favour of railways in the Canadian rail freight system. The balance which CP understands the Panel is now seeking to achieve is best referenced as an equation – between service to the shipper on the one hand and applicable rates or other conditions on the other.

Confidential contracts are used extensively at CP and govern more than 75% of our business. These contracts are designed to clearly lay-out the terms of sale or railway obligations and the shipper commitments. In essence, the contract establishes joint and balanced accountabilities that are negotiated relative to a clearly defined value proposition. Within contracts the shipper and railway may develop commitments on a wide variety of matters. A series of *quid pro quos* emerge from negotiations that in many cases tailor rail service to specific shipper needs. Thus, in return for specified customer commitments the railway may agree to specific rate levels, routings, service parameters, issues related to first and last mile service, industrial development, equipment, demurrage, ancillary fees, incentives, credit and insurance. In this manner, contracts can be used to establish and increase clarity and visibility on the commitments by the shipper and the railway.

Additionally, a substantial portion of our tariff or non-contract business is also underpinned by mechanisms that clearly establish the joint accountabilities essential to driving positive supply chain behavior. In grain, for example, which is the majority of our tariff traffic our product offerings include a menu of options with clearly

specified railway and shipper accountabilities covering the key elements of the transportation equation. This is a working model today.

The Review Panel has indicated that this review of freight service is not about rail rates. Yet, railway companies and shippers alike know that transportation services cannot be disassociated from the applicable rates.

Overall, Canadian shippers may use various legislated tools by which to demand and then challenge railway rates or conditions of carriage. The tools are within an evolving list<sup>12</sup> which upon independent assessment shows that our rail freight industry is one of the most regulated businesses in Canada. This is confirmed in the Panel's *Survey Service Issues in Regulated Industries other than Canadian Rail Industry*.

Confidential contracts and contract-like grain tariffs have evolved over many years to the point that a significant amount of rail freight in Canada moves under arrangements with specified and joint accountabilities. The legislated and other negotiation tools that are available to shippers; the opportunity to sit at the table to discuss transport goals; the mutual desire to do business together and over the long term leads to shipper/railway company relationships that are strong, enduring and positive for both parties. CP is very confident that agreement can be reached with shippers on mutually satisfactory terms. We do it all the time.

In terms of service monitoring, which is a matter raised in various submissions filed with the Panel, we submit that our service performance is covered within confidential contracts – to the point that in the event of a dispute over service matters with the contracting shipper there is usually recourse that is immediately available through commercial arbitration. This is an efficient and effective solution to resolving such disputes. This contrasts sharply with any regulated solution with the related bureaucracy and costs.

**Recommendation 3: The Panel should recognize the importance of confidential contracts as a tool, where appropriate, to ensure that the parties meet their respective obligations.**

In responding to the market, CP also provides a wide range of operational or ancillary services, including demurrage. Some have characterized ancillary services as punitive. This is incorrect. Rather, these charges are in place to provide shippers with optional choices in the execution of their business. Railways would be best served if demurrage generated no revenue at all, which would imply the highest level of asset utilization, rail operational efficiency and supply chain fluidity. Ancillary services include activities ranging from overloading cars to requesting a change in final destination. By way of analogy, fees for changing a destination on a rail shipment are not unlike those associated with requesting a flight change with an airline and fees assessed for overloads are very much like an excess baggage charge on an airline. Ancillary fees present shippers with simple choices and clear assessments that are triggered by conditions controlled by the shipper. These charges are set out visibly

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<sup>12</sup> The most recent additions arose in the legislative amendments to the *Canada Transportation Act* (CTA) in 2007

with an established price list as part of a tariff well known to shippers. Furthermore, an established regulatory process exists under which the reasonableness of these charges can be challenged.

By way of contrast, any suggestion that shippers should be compensated for performance failure by railways must address the complexities that such a regime would imply.

It is already well recognized and understood that rough seas can delay a vessel arriving at port, that rain can delay the loading or unloading of a grain vessel to avoid the spoilage of the grain product, and that snow in the passes of the Rocky mountains can delay the transit of trains. Weather events are a fact of transportation life and fault cannot be reasonably assigned.

It would therefore be a requisite of any shipper compensation scheme that some root causes, such as weather events and perhaps labour disruptions elsewhere in the supply chain, be excluded, otherwise all transportation costs would rise which would impede the flow of trade generally. A very practical problem then arises: how to determine root causes and which to compensate and which to exclude?

An example illustrates the problem. A railway fails to deliver cars to a country grain elevator as planned, resulting in additional costs to the grain company<sup>13</sup>. A careful investigation determines that an empty grain vessel was delayed by rough seas in arriving at the port of Vancouver, and that as a result the grain terminal – operated by a grain company competitor to the grain company operating the country elevator – was delayed in unloading its grain into the vessel. This in turn resulted in a delay in the unloading of loaded rail cars waiting at the terminal siding. It was these rail cars that were due to return empty to the Prairies to serve the country elevator.

Who is at fault? It is apparent here that the root cause was the weather event that delayed the vessel arrival. However, even if it was determined instead that the delay in vessel arrival was due to an unreasonable management failure by the shipping line, which would then be recognized as the root cause, what mechanism could be adopted to compensate the country grain company?

In the example above, either weather is the root cause and compensation unrealistic, or the shipping line is at fault and compensation unattainable. Any attempt to require compensation from the railway under a misguided principle of balanced accountability, would clearly be inappropriate in this example, or many other instances than can arise.

Any imposition of a simplistic scheme of penalties upon the railways regardless of a determination of fault, would not only be inappropriate but would imply increased costs to the railways that would eventually be passed on to all shippers through increased freight rates.

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<sup>13</sup> This is one of the examples used in the QGI report “*Illustration of Financial Impacts on System Stakeholders*”, March 2010.

## **b) Commercial Dispute Resolution (CDR)**

While the Canadian Transportation Agency (CTAgency) and its predecessors have a long and ample history of determining formal freight service complaints, CP believes that this is not – and ought not be – the preferred way to handle such matters. This is because complaints are always time sensitive. Also, and by definition, they are commercial in nature – arising out of long-standing business relationships between a supplier and a customer.

The formal complaint approach before the CTAgency suffers on both accounts – and this is something that all participants in the industry agree on. CP’s established philosophy over the past number of years is that it must be pro-active on service issues rather than being re-active, which is the stance it is asked to take as a respondent in a formal CTAgency complaint proceeding.

CP is committed to resolving service disputes early and based upon direct and transparent communication. The evidence of the seriousness by which CP takes this view is that over the past few years there have been no formal complaints determined by the CTAgency against CP. This contrasts with the number of complaints filed and determined by the CTAgency in the past several years for other shippers and carriers. Simply put, the absence of any regulatory intervention in CP matters is the best evidence of the CP policy—which is to resolve these commercial complaints quickly and in a business setting outside of the court or tribunal room.

In instances where after best efforts of everyone involved to resolve issues, including those that deal with the “first mile and last mile”, there is still no resolution, CP is often first to advocate the use of mediation. This mediation is assisted by capable CTAgency mediators or third party mediators. Again, when the dispute gets this far and outside help is needed to resolve matters, CP’s interest remains that the dispute be resolved quickly, fairly and, importantly, in an enduring fashion. This latter requirement is fundamental. Because of the ongoing nature of the relationships between CP and its shippers, it is necessary that any solution is jointly determined, where both sides effectively ‘buy into’ the solution as the best and only solution. CP’s Commercial Dispute Resolution (CDR) process structure is outlined overleaf.

In addition to this, CP will undertake a communications strategy that will make more shippers aware of this program. CP understands that CN is also engaged in developing this approach as well<sup>14</sup>.

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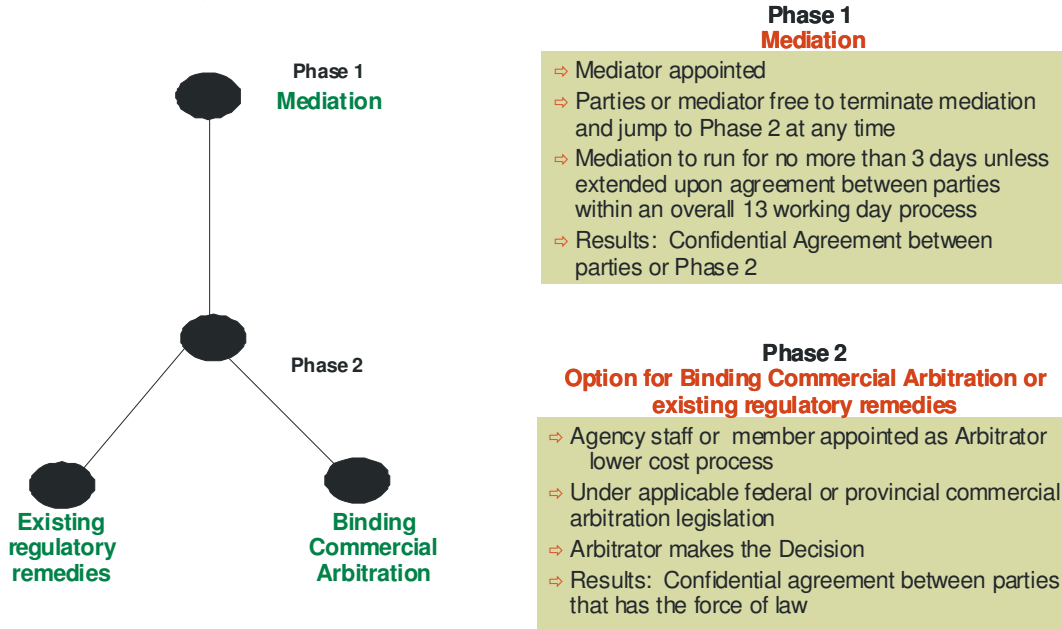
<sup>14</sup> As an adjunct to this, in 2007 the CTA was further amended by the addition of new provisions that expanded the scope for Alternative Dispute Resolution (ADR). These provisions built upon the CTAgency’s laudable mediation effort that had previously been conducted outside of the legislation.

New Sections 36.1 and 36.2 of the CTA now permit mediations or arbitrations on virtually any dispute that arises between a railway and a shipper. Again, Parliament has recognized the validity of this kind of ADR approach as opposed to expanding the court-like litigation model that is the premise of the formal level of service sections of the CTA.

## CDR PROCESS

### Two Phase Process

*Individual shipper would make an application for dispute resolution under the agreement and apply as a two phase process*



While final resort to the formal complaint mechanisms under the CTA is available to shippers, CP firmly believes that regulated remedies must always fall short in arriving at an appropriate solution. This is because it is virtually impossible for the CTAgency's formal complaint route to quickly and effectively accommodate complex railway/shipper relationships that require long term 'win-win' solutions.

**Recommendation 4: The Panel should direct that the established Commercial Dispute Resolution process be used for all commercial disputes related to railway rates and service.**

#### c) Role of Other Supply Chain Parties

Railway company relationships with other supply chain parties, like terminal operators, have been raised before the Panel by various participants. Unlike its relationships with shippers, CP does not have a contractual relationship with these parties and it is unrealistic to expect that formal accountabilities can somehow be clearly defined or otherwise established outside of such contracts. This is because the industry involves multiple players and ever-moving constituent parts. This complexity is beyond the scope of any workable contract between a terminal operator and a railway.

Other supply chain parties, like terminal operators are an important part of the rail supply chain in Canada. Many of these terminals are world class service providers

and CP is working closely with stakeholders to ensure this world class position is maintained.

Our commitment to these parties is that we will maintain strong ongoing working relationships. To this end we have developed written accords with key non-shipper supply chain members whereby we commit to a precise identification of our role and our responsibilities including performance indicators, monitoring, “first and last mile” issues, adjustment review and other commitments. We can assure the Panel that these formal accords are fully supported by the parties.

**Recommendation 5: The Panel should recognize the importance of other supply chain parties in the rail freight supply chain and where appropriate the value of railways entering into collaborative working accords that delineate the expectations, performance, monitoring and communication protocols for each party.**

#### **COLLABORATION, COMMUNICATION AND COORDINATION: BUILD ON THE SUCCESS OF THE ASIA-PACIFIC GATEWAY AND CORRIDOR INITIATIVE**

The Asia-Pacific Gateway and Corridor Initiative (APGCI) first announced in 2006 has been a very successful initiative engaging multiple supply chain components that will have a direct long-term and sustainable benefit on the rail freight supply in Canada.

This model has delivered positive results in the British Columbia lower mainland in a relatively short period. One of the key elements in this initiative is the collective identification of supply chain challenges by supply chain stakeholders. Supply chain partners are then mandated to work systemically together in addressing and then working out these challenges. The winter planning process and performance table forum, when needed, can improve the collaborative supply chain process. We feel that it is also important, however, to recognize that one size does not fit all and that need must exist, as it did in the case of the APGCI, before extending these processes on an over-arching basis.

We have been focusing a great deal of attention on our supply chain and performance monitoring and have found that other members of the supply chain are less engaged. Here, for example, we are speaking about Ocean Carriers(OCs) where often *ad hoc* arrivals create demand peaking. The outcome is that in order to cope with the surge CP must maintain expensive contingent capacity.

We believe that the emphasis needs to be placed on understanding the impacts of vessel congestion on the fluidity of the rail supply chain. Up until now we believe that from a rail perspective the system has been designed for failure. Railways cannot supply contingent capacity at their own expense to basically act as the ‘shock absorber’ for the supply chain.

Two issues need to be addressed here. First, there must be a better view of demand, inbound volumes and timing. Railways must establish a leveled resource plan that can meet this demand – but it is imperative that in doing so all stakeholders comprehend the tradeoffs that are involved. As far as rail service levels go there must be an

alignment of impacts, costs and expectations. The tradeoffs ought to be discussed, debated and then resolved. Second, if contingent capacity is required, whether due to congestion in vessel arrivals or inclement weather, there needs to be a clear acknowledgement by participants in the supply chain that this is costly to acquire, construct and maintain. Fundamentally, it must be treated as any other railway capital asset – where in our relationship with shippers there is negotiation on cost, benefit and return.

This sets the stage for CP's efforts to increase medium term visibility on traffic flows with the PMV. Part of the funding related to the APGCI has been aimed at the development of intelligent transportation systems for the gateway. We are working with the major shipping lines and PMV to provide inbound demand beyond the 7 day period. We will also align with beneficial owners and terminals in order to better understand how demand can be smoothed when faced with multiple ship arrivals.

**Recommendation 6: The Panel should acknowledge the strengths and successes of the collaborative best practices that are integral to the Asia-Pacific Gateway and Corridor Initiative. It is a proven process that can, where there is a real need, improve overall supply chain performance. These best practices include assessment of total supply chain processes, implementation of supply chain improvements, winter planning, performance tables and infrastructure improvements.**

## **IMPROVING DEMAND VISIBILITY**

Accurate, timely visibility on demand is an important characteristic of well functioning supply chains. Basically, visibility on demand for the supply chain permits appropriate sizing in terms of short and long term supply chain capacity, including railway requirements. Railways cannot turn on a dime, and in some cases the procurement of both labour and capital can have long time horizons.

CP acknowledges that it is challenging for OCs who serve Canada's ports to remove all demand variability. There are several reasons for this which include:

- Changes in the economy – in terms of timing, amount of changes in economic activity and duration all have critical impact on OC routings/offerings;
- Customers – OC customers are themselves limited in their forecast abilities;
- International Market Forces – OCs attempt to adapt their vessel resources, routes, ports of call based on maximizing use of vessel and container assets;
- Nature of their Contracts – while some OC's have longstanding relationships with some of their customers, their contracts are generally not more than a year in length on imports, and only a few months or less on exports, as customers leave their options open.

Not surprisingly, the OC's are hesitant to provide their estimates of supply chain demand longer than 2 weeks out, knowing that accuracy is suspect. Nonetheless, CP is treating this effort as a start that can be refined with experience. It will provide data on any trending, seasonality, directional impacts as well as the variability between actual-to-forecast levels over the short and medium term. CP has started work in this

area. It has sponsored a collaborative approach and most of the OCs are co-operating by giving us their preliminary figures.

**Recommendation 7: The Panel should acknowledge that demand visibility can be improved and recommend that Transport Canada work with Port of Metro Vancouver stakeholders including railways, ocean carriers and their customers to develop a pilot to increase the visibility of medium term (7-14-21-28-30-60 day) container volumes.**

## **IMPORTANT ISSUES AFFECTING THE FLUIDITY OF THE RAILWAY SUPPLY CHAIN IN CANADA**

### **a) Addressing Weather-Related Delays**

The incidence of rain and in some cases wind are factors that can dictate whether or not a ship can open its hatches to load moisture sensitive bulk products such as grain or other products. When ships cannot be loaded because of inclement weather there are consequences that affect the entire rail supply chain.

These consequences are magnified in congested areas where there is also significant rain fall such as the lower mainland of British Columbia. For example, the cascading negative impact of these delays has a direct bearing on the fluidity of CP's important Coquitlam Yard.

CP understands that Transport Canada, in conjunction with other supply chain stakeholders, is looking into this issue in order to identify options that will increase the ability of terminals to load in inclement weather, especially, rain.

**Recommendation 8: The Panel should recommend that Transport Canada and the Ports work with stakeholders to implement recent studies that were commissioned to address known challenges in the supply chain; specifically, the ability of terminals to load vessels in inclement weather.**

### **b) Fully utilizing existing capacity – the need for more 24/7 by 364 operations**

In respect of their activities, railways in North America have 24/7 by 364 day operations at major terminals. Yet, many shippers and other supply chain participants who are responsible for major components in the chain, have only five day operations. One cost effective way to improve overall supply chain productivity is to ensure the highest utilization of existing supply chain capacity by operating over the entire 7 day cycle. Accessing existing, underutilized capacity can help reduce costly capital investments. This fact is especially relevant in the case of major facilities such as large terminals.

The failure of many supply chain participants to operate on weekends often has a significant negative impact on the railways in Canada. Clearly, the lack of 24/7 operations at major load or unload points automatically requires use of 20% to 30% more supply chain assets.

CP also believes that the choices of operating behaviours (loading or unloading) exacerbates the peaks and valleys in the supply chain delivery and creates even more volatility in a system that is already prone to exaggerated supply/delivery swings. In many cases recovery times from outages can be significant which makes matters even worse in terms of ongoing volume commitments.

These are all issues that have been identified as challenges related to the Canadian supply chain especially in winter operations when, because of unforeseen events such as outages, capacity can be at a premium.

**Recommendation 9: The Panel should recommend that a collaborative effort be undertaken to more fully utilize existing supply chain capacity and that 24/7 operations, as required, should be the standard business practice for participants in the Canadian supply chain.**

**c) Addressing Border and Security Delays**

There are multiple parties involved in the successful execution of a transborder shipment. Success demands that each party fulfill their obligations in a correct and timely manner. Failure to do so can result in shipment delay. Even when these obligations are met, customs authorities can, at their discretion, hold shipments for further review based on regulatory or security related concerns.

CP would like to make the Panel aware that U.S. security and regulatory requirements as enforced by United States Customs and Border Protection (USCBP) affect the movement of both Canadian originated goods moving from Canada to the U.S., and overseas originated container traffic that moves in-transit through Canada to the U.S. Enforcement at the Canada / U.S. border has a larger impact on rail service than Canadian enforcement activities. USCBP efforts are primarily directed against overseas originated ocean containers moving in-transit by rail from Canadian ocean ports to U.S. destinations.

Containers targeted by USCBP are removed from trains, inspected, and ultimately released. The net result of these actions are train and shipment delays, and additional cost to support the management of these exceptions.

CP has taken steps to mitigate cross border security concerns by actively participating in both the USCBP's Customs Trade Partnership Against Terrorism (C-TPAT) program, and CBSA's Partners in Protection (PIP) program. As well, CP in conjunction with the Government of Canada, has taken considerable steps to improve the security of the rail traffic moving into the U.S. from Windsor, Ontario through the Detroit River Tunnel (DRT), North America's busiest rail border crossing.

**Recommendation 10: The Panel should recommend to Transport Canada that they work with Canada Border Services Agency and US Customs and Border Protection to examine transportation issues pertaining to the US/Canadian border. The objective is to enhance fluidity at border crossings into the United States.**

**d) Addressing Labour reliability at the Port of Metro Vancouver**

In the past, Canada's west coast ports have been negatively affected by their current labour bargaining structure. The consistent threat of strikes/lock-outs and work slow downs can have a significant negative impact on Canada's economy. Maritime employers estimate that the Canadian economy loses \$124 million per day when there is a work stoppage at west coast ports. Even the threat or rumour of a labour interruption frequently causes the diversion of millions of dollars worth of shipments to our U.S. west coast competitors.

Vancouver's negative reputation for labour reliability discourages significant private investment in the Gateway and obstructs the northward migration of large, complex supply chains which would provide tremendous economic benefit to British Columbia and Canada in general. For this reason, the British Columbia Maritime Employers Association (BCMEA) is urging the Government of Canada to create an effective bargaining structure between the employer and the International Longshore and Warehouse Union (ILWU). This model would be based on an Alternative Dispute Resolution (ADR) process with Terms of Reference and will provide labour stability while protecting the rights of workers.

**Recommendation 11: The Panel should recommend to Transport Canada that they work with appropriate Federal Government Departments and other relevant stakeholders to implement an effective bargaining structure, like an ADR process, for BC maritime labour.**

**APPENDICES**  
**COMMENTS ON PANEL'S INDEPENDENT REPORTS**

## I DESCRIPTION OF CANADA'S RAIL BASED LOGISTICS SYSTEM<sup>15</sup>.

This report presents an overview of the complexities of the Canadian rail freight supply chain. It also identifies a number of shipper concerns and offers insight on problem cause-and-effect within the system.

CP respectfully submits that the report is wrong when it concludes that railway profitability is presently sufficient to “*ensure their ongoing financial viability*”

CP's substantive submission addresses the capital side of the business and the imperative that funding issues be resolved especially if one of the solutions that is advocated by the Panel is increasing rail capacity at pinch areas in the supply chain. While CP is hopeful that global markets will improve, forecasts suggest that the economic rebound will be neither quick nor dramatic. Capital self-sufficiency in these circumstances is, therefore, not a guarantee.

What the report also fails to identify in its discussion of capital issues is that CP has generally not met its regulated cost of capital over the past 10 years. This rate, set annually by the CTA Agency for a number of regulatory purposes, including the transport of regulated export grains does not reflect actual financial market conditions. For example, for the upcoming year, the CTA Agency has set the CP cost of capital rate at 6.47%. The cost of equity to CP, arising out of its latest public offering conducted in the spring of 2009 was between 12 and 14%. In the circumstances, it is difficult to reconcile the regulated number with actual market results.

It is also unfortunate that this report addresses the capital intensity of railways in an unhelpful manner. The report's comparison of capital investment between railways and utilities is irrelevant. Unlike CP which is a private company, utilities are either public or quasi-public in nature and they are not customers of railways. Also, and despite the contention that “*most examinations of railway financial integrity emphasize the capital intensity of the railway industry*”, it is noteworthy that the Canadian Transportation Act Review (CTAR) panel did not use capital intensity as a metric, probably due to their recognition that there is some controversy associated with the use of this metric in economic circles.

Related to this question on profitability of Canadian railways is the perhaps rhetorical question posed by the authors of the report that since the time of the CTAR panel findings in 2001: “... (*railway rates and profitability*) have changed such that they may not provide unconditional support to the (panel's) conclusion on railway market power ...”<sup>16</sup>.

This question is posed in respect of the CTAR Panel's finding that the Canadian rail system at that time did not seem anti-competitive and there was no evidence of any “*systemic abuse of market power by railways*”.

CP cautions that there was no evidence then or now of it being guilty of any anti-competitive conduct. It is also wrong for the QGI report to suggest that the market is not a competitive one due to changes in railway rates or profitability measures,

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<sup>15</sup> *Description of Canada's Rail Based Freight Logistics System*, QGI Consulting, November 2009

<sup>16</sup> *Ibid*, at page 6

particularly without any offered measure of the nature, extent, location or durability of change in rates or profitability.

The Report also addresses, perhaps obliquely, the question of recent railway operating efficiencies. It suggests that the recent productivity gains that arise from these efficiencies have generally not been passed on to shippers<sup>17</sup>.

CP believes that this conclusion is ill-placed in a report that is to describe the Canadian rail freight system and it is ill-founded in any event. Firstly, on the question of operating efficiencies, this requires a detailed comparison of railway costs to railway rates. The next question is whether or not any productivity gains are being passed-on to shippers. Both of these questions require a manner of inquiry and sophistication that goes well beyond the terms of reference or presentation of this Report.

Accordingly, for all of the above reasons CP asks that the Report's conclusion on this point be taken with considerable caution.

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<sup>17</sup> Ibid, at page 61

## **II ANALYSIS OF OPERATING PRACTICES: KEY ISSUES FROM STAKEHOLDER INTERVIEWS, POTENTIAL SYSTEM-WIDE SOLUTIONS<sup>18</sup>:**

CP has the following comments in respect of the specific recommendations that appear in this Report:.

### **QGI -- Recommendation 1 – Need for Codifying Principles of Balanced Accountability**

*The (Canadian Transportation) Agency should consider the development of methodology that could be used to determine in specific cases whether a particular set of rail service conditions support the concept of balanced accountability. Once developed and applied in practice, policy makers may after consultation with system stakeholders wish to consider enshrining the principles of balanced accountability and supply chain optimization into the regulatory framework through changes to the Canada Transportation Act. On a day to day basis, the existence of these principles in the CTA would encourage each stakeholder to take into account the needs and constraints of the overall rail logistics system in the management of their own operations.*

**CP COMMENTS:** There is no need for such a methodology. Firstly, it is inconsistent with the current level of service obligations and the case-by-case precedent that has been built up over the years. It is also fundamentally at odds with the National Transportation Policy – which stipulates that market forces and competition should be the prime agents in providing viable and effective transportation services. Parliament has recognized that market forces and not cumbersome regulatory methodologies are the means to a healthy transportation system. Contrary to the intent of the Policy this recommendation advocates that regulation within the CTA be extended by prescribing performance standards across railway geographic and service markets and customers.

In terms of access to any legislated service obligation CP believes that only when there is a problem should the regulator step in. Thus, if there is a service problem that cannot be solved through negotiation or CDR (as commercial solutions) – then a level of service complaint or other action can be initiated. The jurisprudence developed by the CTA Agency and its predecessors on the railway level of service obligation establishes that cases are to be judged on a case by case basis - taking into account the specific circumstances of the case at hand. What this approach reflects is the understanding that pre-established methodologies and standards that are set out in a statute are not really warranted in the railway industry. This is due to the variabilities among railway customers, markets and needs. Basically, what is reasonable in one case may not be reasonable in another case.

In the CTA Agency there is a long standing, flexible service complaint process that is used and useable by shippers. Establishment of a new methodology will not aid that

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<sup>18</sup> Rail Freight Service Review: *Analysis of Operating Practices: Key Issues from Stakeholder Interviews, Potential system-wide Solutions*, QGI, October 2009

process and will likely harm it by eliminating accepted precedent and leading to protracted debate on the application, or not, of the legislated standards.

## **QGI -- Recommendation 2**

*Transport Canada should ensure that rail system logistics performance is subject to on-going measurement so that regulators can monitor changes in performance.*

**CP COMMENTS:** Any pervasive and ongoing regulatory measurement is unnecessary, wasteful and it will divert effort from the real job of transporting shippers' freight.

As reflected in the National Transportation Policy – the railway industry should be allowed to operate unless there is a problem. If there is a problem then there are various regulatory options open to the affected shipper.

Any ongoing measurement and monitoring process maintained by regulators, in addition to being inconsistent with allowing market forces and competition to determine what is required – may be misleading. That is, numbers as measures often do not tell the full story. In CP's experience, and this is confirmed by shippers, there are simply too many variables in the supply chain for a decision-maker to categorically conclude that meeting one measure is acceptable and not meeting it is not.

Also as noted in Recommendation 3, confidential contracts can be very helpful in improving clarity and visibility on performance criteria as measured with relevant metrics that are pertinent to the service and contract in question.

## **QGI -- Recommendation 5**

*CN and CP should ensure that rail car ETA accuracy is subject to measurement so that both railways and their customers have a clear picture of the accuracy of this important customer and railway planning information.*

**CP's COMMENTS:** Refer to Mr. Fred Green's letter included in this submission.

## **QGI -- Recommendation 6**

*Both CN and CP should ensure that the terms of interchange service agreements that are in place with each of their shortline railway partners are subject to performance measurement and that such measures are shared with their shortline partners.*

**CP COMMENTS:** Each shortline interchange agreement is a commercial document and reflects only what both parties are able to agree upon. The terms will vary depending upon the nature of the relationship, traffic, operating style and scale of a given operation. In the course of negotiating these agreements if CP's shortline partner wishes to include performance measures within the arrangement CP will be happy to discuss these.

### **QGI - - Recommendation 7**

*CN and CP should institute processes to measure the conformance of local switching performance against the planned day and eight hour window for local service.*

**CP COMMENTS:** CP is already doing this in that we closely measure our local service operating performance (LSOP) on an ongoing basis. This is a key input for us in terms of improving our overall service performance. CP has also extended this initiative by developing yard fluidity metrics in a pilot project at Winnipeg which will enhance local service reliability. This program is referenced in the letter to the Panel from Mr. Fred J. Green.

### **QGI -- Recommendation 8**

*Railways should review and improve their processes for communicating the expected time of arrival of loaded and empty trains at major facilities such as port terminals and bulk shipping facilities.*

**CP COMMENTS:** The communication of expected time of arrival is addressed in CP's recommendation 5 in this submission. The new technologies CP is introducing in this area are also described in the letter to the Panel from Mr. Fred J. Green.

CP is always working to improve its communications with shippers and other stakeholders. Communication by the railway is, however, only one part of the process. Forecasting and communication by shippers and other stakeholders is also important. All parties must continue to work together to improve communications so that everyone can plan and execute as well as possible.

### **QGI -- Recommendation 9**

*Transport Canada should institute an on-going survey of railway stakeholders' satisfaction.*

**CP COMMENTS:** While this issue is directed to CN, CP wishes to make some comments on this since it is characterized as a general railway survey.

If shippers are not satisfied with some aspect of railway service we would like to hear from them quickly and directly in order that the problems can be solved. CP has established a number of pathways to facilitate shipper communication of issues. This is being continually refined and strengthened as evidenced by the March 2010 e-mail directive CP sent out to its customers<sup>19</sup>. The Panel may also want to refer to the letter from Mr. Fred Green to the Panel where he offers a personal commitment to maintaining CP's strengths in the area of customer relationships and communication.

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<sup>19</sup> As an example of CP actions here Ian MacKay AVP Customer Services at CP provides ongoing electronic Customer Bulletins. In his March 29-10 communication he refers to continuous process improvement for problem resolution and alerts customers to available routes. Among these are toll free numbers, 24-7 availability and customer service account representative liaison.

### III SURVEY OF SHIPPERS<sup>20</sup>

In a document dated November 30, 2009, NRG Research Group reported on the findings of a Survey of Shippers as part of the Rail Freight Service Review. What follows are comments from CP on the methodology, impartiality, and the results of that survey.

#### a) Methodology

A population of some 8,000 rail shippers was compiled by Transport Canada and a random sample of 585 shippers was selected by QGI, consultants to Transport Canada.

Having been given the sample of 585 shippers, NRG proceeded to make contact with them and to conduct its survey. Interviewing was done by NRG through a combination of telephone contacts and face-to-face meetings and as indicated in the report “a great deal of effort was made to maximize the limited sample available”. However, it is noteworthy that of the 585 shippers in the original sample, only 262 shippers or 45% actually responded or participated in the survey – this is a non-response rate of 55%.

It is not unreasonable to assume *a priori* that shippers that are satisfied with their rail service are less likely to respond than shippers that are dissatisfied with their rail service. This would introduce a significant bias in the survey findings and the issue of non-response bias is well known and documented in the scholarly literature. For example, the US Office of Management and Budget has issued standards and guidelines for statistical surveys<sup>21</sup> in which it states:

*“Given a survey with an overall unit response rate of less than 80 percent, conduct an analysis of non-response bias.... As noted above, the degree of non-response bias is a function of not only the response rate but also how much the respondents and non-respondents differ on the survey variables of interest.”*

It does not appear from the NRG report that any attempt was made to address non-response bias in the shipper survey – despite such a high non-response rate – and therefore overall the findings must be viewed with a degree of caution.

When the issue of the 45% response rate was raised with the Review Secretariat, the Secretariat suggested that CP’s interpretation was incorrect and that the response rate was closer to 90%. As a consequence correspondence between CP and NRG/QGI through the Secretariat was untaken to clarify the details. NRG responded on March 16, 2010 as follows:

*“Of the 584 records provided, we initially called through the first 415 in order to set up appropriate company contacts and to determine possible interest in completing the survey. Of the 415 records, 16 indicated they no longer used rail service. Five records were confirmed to be out of business*

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<sup>20</sup> *Survey of Shippers*, prepared by NRG Research Group for the Rail Freight Service Review, November 30, 2009

<sup>21</sup> Office of Management and Budget, *Standards and Guidelines for Statistical Surveys*, September 2006, pages ii and 14-17.

*and for 13 records we were unable to find a working (in-service) phone number. This left 381 records which were eligible for the survey from which we completed 262 interviews.*

*“Of the 381 contacts, some of those we would have only made very preliminary contact - an initial phone call that would have confirmed they were still in operation, they were using rail freight service and that they may or may not be willing to do the survey. It was typical that an admin person or receptionist would have to check with senior management before proceeding to forward the phone call internally at the company. Some of these records would have not been pursued further given we reached the end of the data collection phase with the 262 completions.*

*I stand by the statement in the report that this represents a high response rate and the mark of a successful project.”*

The Secretariat drew a conclusion from this as follows:

*“NRG does not have a record of the actual number from the 381 referenced participants in the above comments that it took to complete the 262 surveys. You can see from NRG's comments that it was less than 381 so the participation rate would be higher than 69% (262/381).”*

It is unfortunate that a proper record of the precise response rate was not made, but as the above quote from the US Office of Management and Budget indicates, a response rate of less than 80% - which remains a possibility here – requires the conduct of an analysis of non-response bias. This was not done in this survey, and therefore potential non-response bias continues to raise concerns about the subsequent findings.

## **b) Impartiality**

The issue of impartiality arises in a number of areas.

Firstly, it arises in the way the authors of the report have summarized the survey results. On the overall level of satisfaction, the report states:

*“The shippers interviewed in this study do not have a high level of satisfaction with the performance of Canada’s two Class 1 railways in the movement of freight” ... “Less than 2 in 10 express a very satisfied rating”.*

**However, it could just as accurately have been stated that 64% of shippers were satisfied with rail service, while 35% were dissatisfied or somewhat dissatisfied.**

These two equally correct statements give an entirely different impression to the reader and suggest a bias in the presentation of the results.

On the change in level of satisfaction over the past three years, the report states:

*“Almost half of shippers say their satisfaction had decreased... Another third indicated their satisfaction is unchanged, suggesting that low satisfaction with the railways is not exclusively a recent phenomenon”.*

**Again, it could just as accurately have been stated that more than half the shippers say their satisfaction had increased or stayed the same. Moreover, the authors display their bias when they assume that shippers whose satisfaction is unchanged are dissatisfied – they might just as equally be satisfied.**

On the matter of meeting expectations, the report also states:

“Forty-four percent of respondents say the railways have met expectations, however, given the low satisfaction levels this may be hollow praise”.

**This unnecessary slight to the railways demonstrates a lack of professionalism in presenting quantitative findings, and goes some way to discrediting this report and its findings.**

A review of the survey questions themselves further raises the issue of the impartiality of the survey designers.

Before having conducted the survey, a number of the questions appear to have a in-built bias against the quality of rail service. In each of the examples below there are implied problems that exist with rail service:

SV7: “In order to improve its service...” rather than simply “What operational changes would you recommend, if any?”

SV 8: “...there have been a number of suggestions of how the railways could improve service...” a leading question if ever there was one

O11: “Who would you say is responsible for most of the shipping-related problems...” with no expectation that a shipper might be satisfied with rail service

A4: “One option to improve service would be to re-regulate the railways” here you have an implied problem with the solution provided – all as part of a question!

DC1 and 2: “Would you say any difficulties you have had with rail service are...” and none of the choices of response are that a shipper might not have had any difficulties.

FIN: “Do you have any further comments...to improve rail freight service?” again a leading question.

Other concerns about the questions are as follows:

SV5 and 6: “...how important is the railway’s accuracy in forecasting shipper needs to your company’s shipping activities”. Why would a concerned shipper not provide a railway with a forecast of its own needs?

SV9 and 10: “What changes could other stakeholders – or your company – make to improve the overall operation of rail service?” Surely the issue is one of improving the whole supply chain not just improving rail service –

otherwise an obvious and trite answer would be for all shippers to smooth out their demand by day, week and month throughout the year.

F3: "...over the past 18 months has your company incurred a serious financial cost as a result of poor service..." is an ambiguous question – what some shippers might consider serious others might consider trivial. A financial threshold should have been identified in the question.

### **c) Results**

Given the non-response bias and the lack of impartiality, the best that can be gleaned from the results of the survey is suggestions by shippers on how operational improvements can be achieved in the supply chain.

The top five suggestions for operational changes to be made by the railways were:

- Improve communications;
- Transit time consistency;
- Car supply – improve forecasting;
- Timely car spotting and pick-up; and
- More accurate scheduling of switches.

There was a poor response rate to the issue of other changes that might be made by shippers and other stakeholders, but the top three suggestions were:

- More loading and unloading capacity;
- Improvement in facilities and infrastructure; and
- Operate more efficiently.

CP has addressed operational improvement issues elsewhere in this submission.

As a final aside, 70% of the respondents to the survey indicate unfamiliarity with the CTA. This being so, and given the success of existing provisions within the Act to deal with service issues, suggestions of an increase in regulation should be taken under advisement. Furthermore, the top suggestion for holding the railways accountable is the need for commercial dispute resolution process. In line with their unfamiliarity with the Act, shippers appear unfamiliar with the fact that CP already advertises a commercial dispute resolution process freely available to shippers on its website since 2008.

#### **IV SERVICE ISSUES IN REGULATED INDUSTRIES OTHER THAN CANADIAN RAIL FREIGHT INDUSTRY<sup>22</sup>**

This report undertakes an in-depth assessment of LOS remedies, formal and informal, that exist in a variety of industries in Canada as well as in the federal transport sector in the US.

The report contains several recommendations for change or prospects for change but **fundamentally, the report acknowledges that the existing protections afforded to Canadian rail freight shippers are the strongest and the best available – anywhere. The report does not advocate re-regulation. In fact, it does just the opposite when it contemplates that aspects of the existing framework in the CTA be streamlined.**

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<sup>22</sup> *Service Issues in Regulated Industries Other than Canadian Rail Freight Industry*, by CPCS Transcon Ltd August 31, 2009

## V ANALYSIS OF RAILWAY FULFILLMENT OF DEMAND AND TRANSIT TIMES<sup>23</sup>

In a document dated March, 2010, QGI Consulting reported on the findings of an analysis of railway fulfillment of shipper demand and transit times. What follows are CP comments on that document in two parts:

- Part 1: Analysis of Railway Fulfillment of Shipper Demand
- Part 2: Analysis of Railway Transit Times

### a) Part 1

CP has only three comments to make concerning this part of the report.

First, in respect of the weekly supply of cars by CP to merchandise shippers, the QGI report states on page 59 that *“an average of only 50% of customers receive at least 90% of their car orders on a weekly basis”*. The report also indicates that *“in order to take account of cars that may have been spotted in advance of the service review period, it was assumed that the equivalent of 20% of the weekly demand was available at each location in addition to the cars that the railways reported as having been placed empty for a given week. This 20% of weekly demand is equivalent to one day of car supply for a customer that loads empty rail cars 5 days per week”*.

As indicated in the report this inclusion of one day of advanced spotting increased the average order fulfillment rate from 37% to the 50% rate quoted above. The issue of spotting cars in advance is very important – as the increase in performance from the inclusion of one day indicates. CP wishes to comment that the inclusion of only one day of early spotting of merchandise cars likely understates the amount of early spotting conducted by CP, and therefore understates the reasonable order fulfillment rate.

In the limited cases examined, the 20% of cars supplied on the planned service day increased to 80% when the early spotted cars were included. It is unfortunate shipper interests reported in the national media are quoted as saying *“What happens on an annual basis is of no value at all...For shippers and receivers it's what happens on a daily and a weekly basis that really counts. If a shipper says they need three cars, five days a week, that's what he needs. He doesn't need 15 cars once a week.”*

If a shipper can handle a 15-car spot, then an early delivery of 15 empties on a Monday with a pick-up of the 15 loads on a Friday can imply significant rail efficiencies – and conversely dropping off and picking up three cars on each day of the week, can imply significant rail inefficiencies. When viewed from the perspective of the whole supply chain, these gains or losses in rail efficiency should be weighed against the losses or gains in efficiency experienced by the shipper. This balance is

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<sup>23</sup> *Empty Car Supply and Analysis of Railway Transit Time and Fulfillment of Shipper Demand*, by QGI Consulting, March 2010

best achieved through commercial negotiations and rail freight rates, and any rigidities in shipper demand need to be paid for accordingly.

Second, in respect of the weekly supply of cars to merchandise shippers, the QGI report states on page 59 that “*CP customers located at competitive origins receive somewhat better car supply than customers without access to direct rail competition*” – fulfillment rates of 86% versus 70%. A detailed review of the data by CP indicates that: the sample of non-competitive origins was relatively small; that one quarter of those origins did have their orders fulfilled more than 86% of the time; and that of the remainder with poorer performance, they involved all four car types, a full range of commodities, and origins across Canada. CP has undertaken an internal review to establish the reasons for this performance level with a view to improving performance at these locations.

Thirdly, the QGI report indicates on page 59 that “*CP does not have an electronic formal process for communicating through its Merchandise products car order systems*”. However, as a correction, CP wishes to point out that it does have a communication process through a weekly Equipment Allocation Review process. This process enables CP's Account Management and Customer Service teams to discuss forecast quality, car supply updates and alternative equipment supply options with customers. Our customers are an integral part of the process with a high degree of involvement.

## **b) Part 2**

CP makes the following comments related to elements of this report:

- **Finding:** CP provides less consistency of transit time to intermodal traffic originating and terminating in Vancouver than the average of all its other originating and terminating intermodal traffic;

**CP Comments:** The complexity and the volume of traffic at Vancouver can affect transit time consistency. Considerable efforts have been made and continue to be made to improve overall supply chain consistency in the Vancouver region. Note that consistency of transit can also be impacted significantly by the actions of other supply chain partners in the Vancouver region;

- **Finding:** CP had an average dwell time at intermodal terminals – time from in-gate to train departure – of some 24 hours, with better than average times in BC, Ontario and Quebec;

**CP Comments:** CP's largest intermodal facilities are in BC, Ontario and Quebec. These are larger highly automated facilities which benefit from economies of scale;

- **Finding:** CP provides similar consistency in transit time to non-intermodal shippers regardless of their size, with the exception of very small shippers;

**CP Comments:** In the case of very small shippers there may be increased variability, due to the nature of the shipper and the service offering. CP is taking steps to improve how smaller shippers interface with the Company;

- **Finding:** CP provides similar consistency in transit time to non-intermodal traffic regardless of whether it originated on CP or a shortline – with the exception of grain traffic originating on shortlines in Saskatchewan;

**CP Comments:** Grain traffic originated at CP origins is frequently sourced in large blocks of cars – 112 car blocks are moved in solid trains directly to destination, 56 car blocks are matched with another, and then move directly to destination. Alternatively grain traffic originated on low-density shortlines in Saskatchewan and interchanged with CP is transferred to CP in relatively small blocks. These blocks must be moved to yards and wait for available space on passing manifest trains headed for the appropriate destination. This additional handling is the likely source of a relative lack of transit time consistency.

- **Finding:** CP provides better transit time consistency to bulk traffic terminating in Vancouver than to merchandise traffic terminating in Vancouver;

**CP Comments:** Bulk traffic in Vancouver moves in unit train operations terminating at major bulk terminal facilities. Merchandise is a very different type of operation which includes additional switching and lower volumes. These reasons explain the discrepancy;

- **Finding:** CP delivers non-intermodal traffic to final placement within 1 hour of arrival at destination, 80% of the time. However, CP delivers grain to final placement within 24 hours of arrival at destination only 58% of the time;

**CP Comments:** The final placement of grain is affected by many factors several of which are outside the railway's control and are in some cases at the request of the receiving grain terminal;

- **Finding:** CP provides more transit time consistency to the US mid-west, west, and north-east, where CP has its own rail network, and less transit time consistency to south-eastern and south-western US regions where traffic must be interlined with US railroads;

**CP Comments:** Clearly, business which is interlined with US railroads can have less transit-time consistency given the additional switching and car handling required. Service delivery by the interline partner can also impact the overall consistency of the transit time;

- **Finding:** CP provides similar transit time consistency for non-intermodal southbound traffic through border crossings – with the exception of the Buffalo/Fort Erie and Vancouver border crossings where service is poorer;

**CP Comments:** Buffalo/Fort Erie and Vancouver border crossings do not handle significant volumes of CP transborder traffic and involve interlining with other railroads.