Government of Saskatchewan

GOVERNMENT OF SASKATCHEWAN

SUBMISSION TO THE

FEDERAL LEVEL OF SERVICE REVIEW PANEL

April 2010

SYNOPSIS OF SUBMISSION RECOMMENDATIONS

DEFINE AND COMMUNICATE THE TERMS OF ADEQUATE SERVICE

Recommendations:

- **Based on industry consultation, the review panel should establish appropriate benchmarks for what constitutes an adequate level of rail service. If further consultation with shippers and railways is deemed necessary for this to occur, such consultations should be completed within a reasonable time frame (i.e. 30 to 60 day).**

- **These benchmarks must be broadly communicated to all rail users.**

- **The records systems used by railways and shippers should be sufficient to easily assess whether the benchmarks are being met.**

- **The benchmarks established should be reviewed every two years with the goal of increasing service level benchmarks to better meet shippers' needs.**

- **Establish yearly reporting on Railway Transit Time and Fulfillment of Shipper service orders.**

ENSURE TWO-WAY ACCOUNTABILITY FOR PERFORMANCE

Recommendations:

- **Establish enhanced communication procedures with reasonable minimum notification periods to ensure that both shippers and railways are made aware of and may appropriately respond to changes to agreed-upon scheduling.**

- **Establish comparable defined performance failure penalties for both shippers and railways.**

- **Establish a dispute resolution mechanism for cases where contractual agreements cannot be reached between a shipper and a Class 1 railway or Class 1 railway and a short line railway.**

DISPUTE RESOLUTION PROCESSES

Recommendations

- **Establish a dispute resolution process under the auspices of the Agency to resolve smaller disputes under a specified dollar value. Confidential binding arbitration or a small claims court type of process are examples of the kind of dispute resolution process which could be considered.**

- **Empower the Agency to undertake self-initiated investigations without receiving an official shipper complaint.**

- **Encourage the Agency to monitor service levels post-complaint to ensure compliance with orders continues.**

- **Undertake educational seminars/forums for shippers regarding the processes available for settling disputes.**

- **Establish a Shipper's Advocate Office to provide shippers with information about the dispute resolution mechanisms in place and assistance for their use.**

- **Ensure that Agency funding is adequate to meet its new responsibilities.**

CREATE INTERSWITCHING STANDARDS

Recommendations

- **Undertake a study to determine the interswitching distance required to ensure a specified (and suitably significant) percentage of all shippers are provided access to interswitching. Increase the interswitching distance to reflect the findings of the study.**

- **Identify and publish on the Agency web site an official map identifying all points at which rail cars have been interchanged between CN and CPR in the last five-years.**

- **Establishing a delisting process for interchange points which is similar to the abandonment provisions of the *Canada Transportation Act* (Act). This will provide shippers impacted by the delisting an opportunity to appear before the Agency and /or purchase the interchange point.**

- **On a regular basis examine interswitching car block rate categories with the goal of established categories which reflect existing and future industry car block size standards.**

CONDUCT AN ANCILLARY SERVICE CHARGES REVIEW

Recommendations:

- **Railway ancillary charges that are applied outside of confidential contracts should be fully and publicly disclosed and be subject to review by the Agency.**

- **Require the railways to conduct a review of their billing system and make appropriate changes to ensure the accuracy of invoices.**

DELISTING OF PRODUCER CAR LOADING SITES

Recommendations:

- **Standards should be established for the location of producer car loading sites which includes a maximum distance between sites. To encourage system efficiency, a minimum number of car spots should be established for each siding.**

- **The Act should be amended such that producer car loading sites go through the same abandonment process as urban sidings. (Section 146.2)**

CREATE GUIDELINES FOR EFFECTIVE ABANDONMENT

Recommendations:

- **A railway which has discontinued service to a specific line on their network should, at the request of the Agency outline how it intend to solicit sufficient business to resume service to the line.**

- **If after two-years of responding to the Agency's request the railway is unable to develop sufficient business to resume service to the line, the Agency could be empowered to declare the line effectively abandoned. The discontinuance process as established in Section 142 through 146.1 of the Act would then commence.**

INTRODUCTION

Economic activity in Saskatchewan has historically been export-based, with approximately 70% of all goods produced in the Province destined for locations in other provinces and outside Canada. In 2009, the total value of truck and rail based exports from Saskatchewan was valued at approximately $14.7 billion. Grain and potash exports shipped by rail constituted the largest share of these exports at 47.2% ($6.95 billion) and 23.8% ($3.5 billion), respectively. The remaining 29% of these exports were primarily made up by livestock, uranium, lumber and wood products.

One major challenge and expense facing Saskatchewan exporters is that due to our geographical position at the centre of the continent, Saskatchewan export products must travel long distances to reach either their final destination in North America or to port position. Most nations competing with Saskatchewan exporters have their production closer to tide water and as a result, the reduced transportation costs provide them with a significant competitive advantage in the world market.

As a result, Saskatchewan's ability to compete in the national and international marketplace is heavily influenced by the overall efficiency of the transportation supply chain that supports export activity. Poor rail service can have a large impact on the economic competitiveness of these export-oriented sectors. It is vitally important to the future economic growth of Saskatchewan to ensure that the transportation system is as efficient and effective as possible.

In the consideration of how this outcome may be attained, the Government of Saskatchewan would encourage the Panel to give particular attention to market based solutions, while recognizing that regulatory interventions may also be necessary. Regardless of the approach or approaches, there must be sufficient economic incentive that encourages the funding of rail infrastructure maintenance and its improvement as well as new rail system investment to meet the future needs of our economy.

One example of emerging and likely future needs in rail service is much greater capacity to handle container traffic and its intermodal requirements. Our rail system must be able to be at the forefront in responding to these and other trends if our transportation system and the shippers it serves are to remain globally competitive.

At the same time, moves to increase overall efficiency in the current system, as well as to build the system for the future must not lose sight of the fact that all shippers in Saskatchewan, both large and small need equitable access to rail services. In rail service, one size does not fit all. It is vitally important to the future prosperity of Saskatchewan that small and medium sized businesses have an equitable opportunity to access the rail service they need to maintain and grow their businesses.

GUIDING PRINCIPLES OF THIS SUBMISSION

To establish a rail transportation system in Saskatchewan that:

- Enhances the economic growth of the province.
- Meets the business needs of both large and growing Saskatchewan industries.
- Balances the needs for industry efficiency through the use of multiple car blocks with the needs of small shippers to have access to reliable and efficient rail transportation services.
- Have transparent processes, procedures and benchmarks for the provision of rail transportation services and effective, cost efficient, reliable and timely mechanisms to settle disputes.
- Is adequately and effectively regulated in the absence of competition.
- Is efficient, reliable and to the extent possible uses commercial processes.

SURVEY UNDERTAKEN

In the summer of 2009, the Province of Saskatchewan's Ministry of Agriculture and Ministry of Highways & Infrastructure (Ministries) commissioned Metropolitan Knowledge International (MKI) to conduct a Saskatchewan rail shippers' survey. The overall goal of the survey was to determine the satisfaction or dissatisfaction that Saskatchewan-based rail shippers have with their current level of rail service and to identify any potential implications that rail service issues may have with respect to the competitiveness of the provincial and national economies as a whole.

The Ministries' decision to commission a Saskatchewan shippers' survey was prompted by the federal government's railway level of service review. The Ministries determined that a Saskatchewan shippers' survey was the best approach for providing the Province with the information needed to develop an informed submission as input to the review.

SURVEY RESULTS

The vast majority of respondents to the survey were involved in and accounted for a significant percentage of the shipping that occurs in the agricultural sector (26 respondents), with the remainder of the respondents made up by forestry (three respondents), mining (one respondent) and manufacturing sectors (one respondent). It is of note that direct rail service to two shippers from the forestry sector ceased in March 2009 due to short line abandonment and one shipper no longer is a Saskatchewan rail user. It is also of note that the list of potential survey respondents included 28 manufacturing businesses that had not used rail over the past five-years, many of whom cited reasons of railway inefficiency and high cost of rail service.

Overall the findings of the Saskatchewan survey are consistent with the findings of the survey conducted by the federal government by NRG Research Group for the Level of Service Review Panel.

Small and large shippers expressed relatively high levels of dissatisfaction with railway service, both with the supply of equipment as well as the movement of railway traffic. The survey also indicated higher levels of dissatisfaction amongst smaller shippers, many of whom believed that the smaller size of their railcar orders was linked to consistently untimely or delayed delivery and spotting of railcars. Most comments from the respondents were related to the supply of equipment, including the ordering process and the actual provision of equipment at the shippers' sites. There were fewer comments related to the movement of traffic, partly because there seems to be a somewhat higher level of satisfaction with this aspect of rail service, and partly because some interviewees were not responsible for the product after it was loaded at their origin.

A clear theme of shippers' dissatisfaction that emerged from the survey is the lack of communications, together with poor or confusing communication, received from railways. Communication issues most especially involve ignorance of when railway cars would be spotted and changing plans by the railways regarding when cars would be spotted. Lack of communication regarding the movement and disposition of loaded shipments was also cited, although less frequently. This distinction is not necessarily indicative of the relatively better performance in this area but rather that the sales contract terms for some shippers mean the end of their responsibility for the product once the products are loaded.

As well, the survey identified a gap between small and large shippers' levels of familiarity with both the Shipper Protection Provisions under the CTA as well as the mediation processes available to resolve disputes with the railways. It was a general view however, that the existing dispute resolution mechanisms available to shippers are long, complex, expensive and unlikely to provide results that address the problem. As a result, these dispute resolution mechanisms are not viewed as viable options for settling disputes.

Many shippers also noted service improvements during the past six to twelve months compared to several years earlier. Shippers in this survey attributed this to the economic slowdown in other sectors of the economy, and the railways' resulting devotion of more assets and attention to the agricultural sector. Many shippers are concerned that as other economic sectors improve, the recent rail transportation improvements seen in the agricultural sector will disappear as the railways shift resources from agricultural service to other sectors.

According to the shippers surveyed, the lack of railway service predictability is associated with the timely arrival and spotting of railcars ordered, the number of railcars that could be expected (different from the number ordered), transit times to destination (often to the point of loading of a vessel at port) and to a lesser extent, the shortfall in container availability and the quality of railcars. The survey results indicate that this lack of predictability has resulted in:

- Lost sales opportunities (i.e., from the loss of purchase orders and/or sales contracts);

- An inability to plan for adequate staffing, scheduling, & processing programs for different commodities; inadequate storage capacity as commodities pile up waiting for cars to be delivered; and

- An overall inability to achieve potential levels of business activity (e.g., missing an optimal time-bound market opportunity to maximize profit margins when prices peak because of the risk of cars not being supplied on time).

In addition, delays in railcar movement and spotting are mentioned by many shippers in this survey to have pushed them outside the delivery terms of their contracts with customers, resulting in financial penalties and serious damage to reputation. Shippers who cite instances where they are faced with dearth of cars delivered and then a sudden surge in deliveries also identify financial impacts of the same – such as paying demurrage on some of the cars as they cannot load all of the cars delivered at once fast enough to avoid demurrage; or releasing some cars empty right away to avoid demurrage, but thereby not capitalizing on sales opportunities; or being forced to pay farmers to delay their deliveries if the shipper lacks adequate storage space while awaiting the delivery of cars.

SURVEY RESULTS SUMMARY

Movement of Railway Traffic				
	Poor or Very Poor	**Adequate**	**Good or Very Good**	**NA**
Movement of Empty cars to Origin	**60 %**	**29%**	**7%**	**4%**
Car Spotting at Origin	**54%**	**36%**	**7%**	**4%**
Movement to Destination	**61%**	**18%**	**14%**	**7%**
Car Spotting at Destination	**25%**	**36%**	**11%**	**29%**
Movement of Multiple Cars	**37%**	**30%**	**11%**	**22%**
Communication during Normal Circumstances	**25%**	**39%**	**32%**	**4%**
Communication during Exceptional Circumstances	**54%**	**25%**	**18%**	**4%**
Overall Movement of Railway Traffic	**57%**	**25%**	**14%**	**4%**

Based on these results of the survey, and extensive discussions with shipper groups, the Saskatchewan government has developed a series of recommendations for different aspects of the overall rail logistics system. These recommendations are made with the goal of improving the overall level of rail service in Saskatchewan.

RECOMMENDATIONS

DEFINE AND COMMUNICATE THE TERMS OF ADEQUATE SERVICE

Issue:

The survey results indicate that small and large shippers expressed relatively high levels of dissatisfaction with railway service, both with respect to the supply of equipment as well as with regard to the movement of railway traffic.

Discussion

Sections 113 and 114 of the *Canada Transportation Act* (the Act) mandate that railways governed by the Act must provide an adequate and suitable level of service for all traffic offered for carriage on the railway.

The Act however does not prescribe directly what constitutes a suitable level of service and has empowered the Canada Transportation Agency (the Agency) the responsibility for hearing and ruling on level of service complaints.

In decision No. 488-R-2008 issued on September 25, 2008, the Agency attempts to address the issue of what constitutes an adequate level of service and how it has been achieved. In this regard the Agency came to the conclusion that the use of performance benchmarks rather than a prescriptive approach was the best mechanism to assess service adequacy. The Agency decision states:

> *"Performance-based benchmarking is used increasingly in regulatory regimes. For example, Transport Canada and the National Energy Board use performance-based approaches. Performance-based approaches specify a required outcome but leave the means of achieving that outcome to the discretion of the industry and/or corporate entity being regulated. Performance-based approaches are not prescriptive as to how the outcome is to be achieved, rather it provides flexibility to industry and/or corporate entities to choose their own means to achieve the desired goals while selecting the most effective and efficient options. Performance benchmarks can also encourage innovation and continuous improvement. Therefore, the Agency has decided to use a performance-based approach in dealing with these level of service complaints."*

Based on this, in its decision the Agency established a set of general rules that it would use to assess whether or not a railway has breached its service obligations to a shipper. These are as follows:

- [137] In assessing whether CN is in breach of its level of service obligations to the Complainants, the Agency will first examine whether CN confirmed, at a minimum, 80% of the car requests. (Component 1)

- [138] The Agency will then examine whether 90% of those confirmed orders were received during the want week or the subsequent two weeks (three weeks total). (Component 2)

- [139] If both standards are achieved, there will be no breach of the railway company's level of service obligations.

- [140] As the Agency has already noted, it cannot find a breach based upon a limited period of substandard performance. If that substandard performance is caused by factors beyond the control of CN and is rectified so that the 12-week rolling average remains above the Component 1 and 2 standards, no breach will be found (Component 3).

- [141] However, if after considering the 12-week rolling average, the railway company still has not recovered to the standards set out above, CN may be found to be in breach of its level of service obligations, unless it can satisfactorily demonstrate that there were exceptional circumstances outside of its control that prevented it from meeting the performance standards.

As a result of this decision the Agency has determined that the railways are meeting their service requirements if they confirm a minimum of 80% of the cars requested and if 90% of the cars requested are delivered within 3 weeks of the actual date set for delivery (with latitude for special circumstances).

In general, we agree with the Agency's approach of establishing benchmarks for determining service adequacy for all the reasons stated by the Agency in its decision.

However, while setting performance standards is a positive development, the actual experience has had less than adequate results. By developing the benchmarks for service adequacy based on the past performance of the railways without making a determination on whether the past performance has met the business needs of the shippers served, the Agency has unintentionally institutionalized inadequate performance levels.

As a result, the current benchmarks do not adequately meet the needs of Saskatchewan shippers. This fact is borne out by the survey results which show that there is a general dissatisfaction with the service levels being provided by the railways. These service levels are impacting on the ability of Saskatchewan businesses to meet their customer demands and expand their business opportunities.

The process by which benchmarks are established should be driven substantially by the needs of rail shippers and the service levels which allow these shippers to meet their customer demands and to seize new business opportunities.

Service excellence should be the goal.

Recommendations:

- **Based on industry consultation, the review panel should establish appropriate benchmarks for what constitutes an adequate level of rail service. If further consultation with shippers and railways is deemed necessary for this to occur, such consultations should be completed within a reasonable time frame (i.e. 30 to 60 day).**

- **These benchmarks must be broadly communicated to all rail users.**

- **The records systems used by railways and shippers should be sufficient to easily assess whether the benchmarks are being met.**

- **The benchmarks established should be reviewed every two years with the goal of increasing service level benchmarks to better meet shippers' needs.**

- **Establish yearly reporting on Railway Transit Time and Fulfillment of Shipper service orders.**

ENSURE TWO-WAY ACCOUNTABILITY FOR PERFORMANCE

Issue:

Survey responses indicate business opportunities are being lost, and additional costs are incurred by shippers as a result of the railways failure to deliver equipment at the time it was committed. This is exacerbated by the fact that shippers are subject to penalties if they cannot receive or release rail cars at the agreed to time, yet there is no straight forward mechanism for a shipper to recoup costs incurred if the railway fails to drop off or deliver a rail car when agreed.

Discussion

Accountability for performance is a key feature in establishing a logistics chain that meets the needs of all system players and reduces excess costs. Generally this accountability is established through commercial contracts, which through a process of negotiation establish the roles and responsibilities of each party to the contract.

The survey results indicate numerous issues related to railway performance and accountability. These include;

- Failure to accept smaller rail car orders
- Inability to provide required car types and containers for specific products
- Inability to meet delivery times
- Poor condition of rail cars received
- Inconsistent transit cycle times

- Missed delivery times of products transported by rail to vessel at port
- Poor planning to recover from delays in transit
- Excessive rates set by railways (including ancillary charges); and
- Lack of information and communications on the part of the railways to allow shippers an opportunity to make alternate arrangements.

> *To some degree, all survey respondents believe that the quality of rail service they receive from either CN or CP Rail interferes with their ability to both carry out day-to-day operations as well as to optimize business activities. It is notable that approximately 80% of the sample (25 of 31 respondents) identified themselves as captive to the rail mode and only 2 of these 25 respondents did not identify themselves as captive to a single Class I railway. It is also of note that with the exception of 1 respondent, all larger shippers identified their business as captive to the rail mode. (Reference: page 34 of Survey)*

While the shipper survey did not directly examine the short line railways and their contractual arrangements with Class 1 carriers, in all cases in Saskatchewan every short line railway is captive to a single Class 1 carrier.

Recommendations:

- **Establish enhanced communication procedures with reasonable minimum notification periods to ensure that both shippers and railways are made aware of and may appropriately respond to changes to agreed-upon scheduling.**

- **Establish comparable defined performance failure penalties for both shippers and railways.**

- **Establish a dispute resolution mechanism for cases where contractual agreements cannot be reached between a shipper and a Class 1 railway or Class 1 railway and a short line railway.**

DISPUTE RESOLUTION PROCESSES

Issue:

The survey of Saskatchewan shippers found they generally view the current processes in place to handle disputes as long, complex, expensive and unlikely to provide results that address the problem. As a result, these dispute resolution mechanisms are not viewed as viable options for settling disputes. In addition, the survey results indicate that a perception exists among smaller shippers that even if a shipper wins a dispute adjudicated by the Canada Transportation Agency, that the railways will find a way to ensure that the shipper loses out over the long term.

Discussion

The survey indicates that shipper's view the level of service being received as inadequate to meet their business needs. However, the overall understanding of the shipper protection provisions and the mechanisms in the Act are poor, with over half the respondents (56%) indicating their understanding is low.

Smaller shippers (those that order less than 50 cars per movement) tend to have less familiarity with the shipper protection provisions, with 79% indicating their understanding is low.

Small and medium sized shippers lack the resources (both financial and human) to undertake many of the existing shipper remedies within the Act.
A few high profile level of service disputes have taken place in recent years in which shippers have won their cases before the Canada Transportation Agency and subsequently went bankrupt. The shipper survey has found that these cases have cast a chill over the shipping community and created the perception among rail shippers that using the shipper protection provisions of the Canada Transportation Act could potentially jeopardize the future of their business.

Recommendations

- **Establish a dispute resolution process under the auspices of the Agency to resolve smaller disputes under a specified dollar value. Confidential binding arbitration or a small claims court type of process are examples of the kind of dispute resolution process which could be considered.**

- **Empower the Agency to undertake self-initiated investigations without receiving an official shipper complaint.**

- **Encourage the Agency to monitor service levels post-complaint to ensure compliance with orders continues.**

- **Undertake educational seminars/forums for shippers regarding the processes available for settling disputes.**

- **Establish a Shipper's Advocate Office to provide shippers with information about the dispute resolution mechanisms in place and assistance for their use.**

- **Ensure that Agency funding is adequate to meet its new responsibilities.**

CREATE INTERSWITCHING STANDARDS

Issue

The survey results indicate that over 74% of shippers identify themselves as captive to one rail carrier. Under the current system, any rail shipper that is within a radius of 30 km of a railway other than the railway that directly serves a point of origin or destination can have access to the services of that non-serving railway. Prior to the rationalization of the grain handling system, the 30 km distance may have been appropriate. However, given the reduction in the number of grain elevators and delivery points, the interswitching distance is no longer applicable.

Discussion

Interswitching is an important tool available to shippers to ensure an adequate level of competition and service is maintained between Class 1 railways in Canada.

> *Section 127 and 128 of the CTA ensures that any rail shipper that is within a radius of 30 km of a railway other than the railway that directly serves a point of origin or destination can have access to the services of that non-serving railway. The services for movement of customers traffic by a serving carrier to a second carrier under these provisions in the CTA is known as interswitching. (Pg. 64 QGI Consulting Description of the Rail based Freight Logistics System)*

The use of Interswitching is however limited as a result of the 30 kilometer maximum radius distance set in the Act and a maximum of 45 kilometers travel to reach the interswitching point.

In a report prepared for the Saskatchewan Department of Agriculture in 1998 by Travacon Research Ltd entitled *Competitive Access Provisions of the Canada Transportation Act and the Grain Industry*, it was estimated that interswitching is used in about 4% of carloads. Since that time a significant consolidation of the grain delivery system has taken place. In 1999/2000 there were a total of 1004 grain elevators on the prairies at 685 delivery points. By 2007/2008 there were 378 grain elevators at 276 delivery points. (2007/2008 Quorum Report) This consolidation has reduced the number of facilities with access to an interchange point within a radius of 30 km.

In a paper published in 2008, entitled *Spatial Competition and Regulatory Change in the Grain Handling and Transportation System in Western Canada*, James Nolan and Jason Skotheim from the Department of Agricultural Economic, University of Saskatchewan, examine the percentage of the total elevator capacity covered by interswitching when the interswitching limits are expanded. They found that by expanding the interswitching limits to 100 kilometers, approximately 65% of all elevator capacity in Saskatchewan was covered by interswitching, if all interswitching points are used.

Shippers have raised the issue of interswitching points being deemed inactive by the railways on a day by day basis. Instances have been raised of shippers attempting to use interchange points that are being used by the railways for interchanging cars and being told that it is not an interswitching point.

Railroads and grain shippers have recognized that the use of multiple car blocks of 50 or 100 cars create efficiencies within the grain transportation system. The current interswitching regulations however have established two categories for pricing the interswitching of hopper cars. The first is a single car rate, and the second is a rate for car blocks of 60 cars or more. These interswitching pricing categories do not fit within the grain industry car block size standard.

Recommendations

- **Undertake a study to determine the interswitching distance required to ensure a specified (and suitably significant) percentage of all shippers are provided access to interswitching. Increase the interswitching distance to reflect the findings of the study.**

- **Identify and publish on the Agency web site an official map identifying all points at which rail cars have been interchanged between CN and CPR in the last five-years.**

- **Establishing a delisting process for interchange points which is similar to the abandonment provisions of the *Canada Transportation Act* (Act). This will provide shippers impacted by the delisting an opportunity to appear before the Agency and /or purchase the interchange point.**

- **On a regular basis examine interswitching car block rate categories with the goal of established categories which reflect existing and future industry car block size standards.**

CONDUCT AN ANCILLARY SERVICE CHARGES REVIEW

Issue:

The railways ability to charge shippers for activities beyond the movement of rail freight from origin to destination has become a significant source of revenue and is creating additional and unfair transportation costs for shippers.

Discussion

Ancillary services are those chargeable services provided by railways for activities beyond the movement of rail freight from origin to destination. Most ancillary charges are for the time spent by customers in loading and unloading of railway provided rail cars (demurrage). In addition, railways may impose ancillary charges for moving railcars

(switching) from one location to another on shipper or railway property, at the request of the customer. Special charges may also be imposed if shippers wish to change the destination of a railcar while it is enroute to destination (diversion) or if the car is found to have been loaded improperly resulting in a safety hazard due to an unbalanced or overloaded car.

From the survey results, shippers' believe that ancillary charges are imposing additional and unfair transportation costs onto their business. The key issue raised by shippers was the tendency of the railways to charge shippers with ancillary charges for events that result directly from poor railway performance. For example, shippers indicated that ancillary charges are often applied to their accounts in instances where they are unable to load cars in the required 24 hour period, even though they were given virtually no notice prior to cars being spotted.

Another issue that was indirectly addressed in the Saskatchewan survey relates to the inaccuracy of the ancillary charges billed by the railways. This issue was more fully developed in the federal 'Analysis of Operating Practices,' which estimated error rates on demurrage invoices ranging from a low of 20% to as high as 70%. The consensus amongst stakeholders is that the high error rates on ancillary charges invoices is largely an administration problem related to the largely mechanized billing system used by both CN and CP.

Recommendations:

- **Railway ancillary charges that are applied outside of confidential contracts should be fully and publicly disclosed and be subject to review by the Agency.**

- **Require the railways to conduct a review of their billing system and make appropriate changes to ensure the accuracy of invoices.**

DELISTING OF PRODUCER CAR LOADING SITES

Issue

Elimination of producer car loading sites.

Discussion

Section 87 of the *Canada Grains Act* gives producers the right to bypass the primary elevator system and load their own producer car. To load producer cars it is necessary to have loading sites available to spot cars for loading.

In July 2009, CN Railway announced its intention to close 53 producer car loading sites in Western Canada. Since that time the sites have been closed.

Under the provisions of the Act, railways must publish a public notice in a local newspaper at least 60 days prior to closure of a producer car site. The removal of producer car loading sites from the rail system effectively curtails a producer's right to load producer cars as enshrined in the *Canada Grains Act.*

Recommendations:

- **Standards should be established for the location of producer car loading sites which includes a maximum distance between sites. To encourage system efficiency, a minimum number of car spots should be established for each siding.**

- **The Act should be amended such that producer car loading sites go through the same abandonment process as urban sidings. (Section 146.2)**

CREATE GUIDELINES FOR EFFECTIVE ABANDONMENT

Issue

Within the system there are several rail lines that that the railways have effectively abandoned. While these lines are no longer being provided with rail service, the railways have not listed them for discontinuance. This is preventing parties (i.e. - short lines, producer car groups) that may be interested in the track, from acquiring it.

Discussion

There has been a number of instance in the last decade where Class I carriers have refused to provide rail service to railway lines, but have not placed the lines up for abandonment. (Lewvan and Tisdale subdivisions)

In the case of the Lewvan subdivision, the railway curtailed maintenance on the line. By the time the line was eventually put up for abandonment, the costs associated with repairing the deficiencies on the line were prohibitively expensive for any short line.

The Tisdale subdivision in Saskatchewan may be going through a similar process.

Recommendations:

- **A railway which has discontinued service to a specific line on their network should, at the request of the Agency outline how it intend to solicit sufficient business to resume service to the line.**

- **If after two-years of responding to the Agency's request the railway is unable to develop sufficient business to resume service to the line, the Agency could be empowered to declare the line effectively abandoned. The discontinuance process as established in Section 142 through 146.1 of the Act would then commence.**