



# **SUBMISSION**

**to the**

**Rail Freight Service Review Panel**

**Transport Canada**

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by

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# Submission to the Rail Freight Service Review Panel

## Introducing PREDA & the Peace Country

The Peace Country, with its abundant natural resources, is a key economic engine driving the Alberta economy. The region has large energy reserves in conventional oil and gas and oil sands, substantial forests, fertile farmland and unlimited water resources – and it has a high quality of life supported by natural scenic beauty, a clean environment, and safe and modern communities. The Peace Country encompasses the most northerly agricultural zone in the Americas. Other than the territorial capitals, our region has the most northerly cities in Canada.

The Peace Region Economic Development Alliance (PREDA) comprises 26 member municipal governments in Alberta's northwest and is dedicated to promoting sustainable economic growth in the Peace region.

As a major exporter of natural resources, efficient, cost effective and reliable rail service is essential to the economy of our region, its sustainability and growth potentials. The railways that run through the Peace Country are the most northerly in Canada, serving the communities and industries of northwest Alberta, southwest NWT and northeast BC.

## The Alberta Context

The Rail Freight Service Review is an important component in Alberta's efforts to increase its competitiveness and productivity. The Alberta Legislature recently passed the *Alberta Competitiveness Act* to lay the groundwork for the province to be among the most competitive jurisdictions in the world through enhanced government partnerships with industry, business and Albertans.

The *Competitiveness Act* increases the province's ability to compete by:

- advancing current Alberta competitiveness initiatives, such as the oil and gas competitiveness review and the Western Economic Partnership;
- developing strategies to encourage innovation, productivity and the adoption of technology;
- promoting effective policies and regulatory systems that deliver the positive economic, environmental and social outcomes Albertans expect; and
- Measuring progress and reporting to the public about how Alberta's competitiveness contributes to the province's prosperity, environment and quality of life.

*The Competitiveness Act* provides a framework to suggest initiatives and make recommendations to increase provincial, as well as national productivity and competitiveness.

## **The Rail Freight Service Review Process**

The railway lines that run through northern Alberta and into the NWT are the remotest extension of Canada's railway network. For this reason, the availability of service, and the management of costs, distances, times and schedules are of critical importance to us.

As a result, PREDA considers this an important submission. Research began in January, and included a survey of approximately 30 businesses, a literature review, et cetera. An indication of the importance of rail service to our region is that at least eight other submissions have been made from northwest Alberta. As of the date of writing, this represents the largest block of submissions from any region in the country.

## **Operational Issues**

The PREDA survey of businesses uncovered a plethora of operational concerns with rail service. These concerns are discussed in other submissions, including those from the Peace Country. Because they are thoroughly examined in other submissions, they are listed here for information purposes only:

- Canadian National Railway frequently spots fewer cars than ordered
- CN often spots cars in the wrong place
- CN often spots cars days or even weeks late
- CN's car ordering system is inefficient
- CN occasionally picks up loaded cars days or even weeks late
- CN rail cars are sometimes in poor condition, meaning they are not useable, or must be repaired by the shipper in order to be used
- Empty containers are no longer stored at railways' intermodal yards
- CN has reduced the shipping weights of its containers
- CN trucks are given preferential treatment at intermodal yards
- Multiple rail car shipments are getting separated on their way to port, resulting in loads being split between ocean going ships, resulting in increased costs
- CN aggressively adds ancillary charges when invoicing customers. These are often unsupported and inaccurate, requiring customers to incur costs to review and dispute these invoices.
- Communication with distant CN staff is often poor or non-existent. Communication with regional staff can be good.
- CN is not maintaining or removing its telegraph line infrastructure. There are also complaints that CN has abandoned old ties and tracks within municipal boundaries. In some areas the old poles and wires are becoming hazards; the ties and tracks are unsightly and could become environmental hazards.

## Strategic Issues

### 1. Service & Competitiveness

#### Issues:

- Shipping inquiries are not returned for months (issue raised by Peace Country businesses, Alterna BioCarbon, Atlantic Container Line)
- Unfair freight rates (issue raised by Peace Country businesses, Battle River Railway)
- Uncompetitive freight rates (issue raised by Peace Country businesses, Alterna BioCarbon, Lesser Slave Lake Economic Alliance, New Brunswick Department of Transportation)
- Slow delivery from place of loading to port (issue raised by Peace Country businesses, GeoMetrix Empowered Logistics, Cam Goff, Government of Alberta)

**Principles:** Freight rates should reflect actual costs plus a fair margin for profit. Rates should not be set to discourage use of rail service or a particular railway line, or to favour one customer over another. Inquiries should be addressed expeditiously with quotes valid for 90 days. Transit times must reflect industry benchmarks.

**Discussion:** CN's business culture and business model appear to discourage freight rate inquiries from small and medium sized shippers, and start ups. Freight rates quoted to such shippers are often inflated to match that of the nearest competitor, trucks. This can make business in remote parts of Canada uncompetitive, and provides excessive profits for the railway. It also places an added hurdle to the survival of smaller northern firms, due to excessive freight costs.

CN's rate quotes are often valid for a short duration. This can make the planning of shipments problematic if the whole shipping schedule cannot be put together before the quote expires.

Several Peace Country businesses, as well as several submitters, suggest that freight incentives for 50-car and 100-car trains are (1) predatory and disproportionate to the real difference in costs, (2) unfairly applied to provide producers with an economic disincentive to use producer cars and an incentive to use elevators, (3) unfairly applied because often the railway cannot itself make use of these spots because they do not deliver a correctly configured unit train, (4) unfairly provided to large customers even when that customer cannot deliver unit train loading, and (5) are calculated into the revenue cap which applies to railways that haul grain. This suggests, to some interviewees, that the payment of these incentives does not come from the railways, but from the producers. Although the foregoing represents the view of regional agricultural producers, Mazda Canada makes a related comment. They suggest that CN does not provide them with the required 74-car trains, despite the railway requiring them to build facilities to handle this number of cars.

**Regulatory Remedies:** Create an oversight organization to set performance standards based on benchmarks for railways operating in competitive circumstances. These standards could include responding to shipping inquiries, freight rates, transit and delivery times, track maintenance, capacity, et cetera. The organization could be empowered to collect data and to reward the railways when performance measures are exceeded and provide penalties when they are not met.

Some interviewees demand the retraction of unilateral changes made by CN to its operational policies.

**Market Based Remedies:** The service issues noted above are a result of insufficient competition in the industry. At this point in the Peace Country, CN will quote freight costs to some low volume shippers that approximate that cost of hiring trucks. Thus, these small businesses are unable to obtain the benefits of efficient rail service. It also suggests that a cap on the railway's non-agricultural freight rates is set by the trucking industry, which suggests a form of competitive, market based remedy. However, trucks are not in themselves competitive with railways for heavy, high volume shipments. This suggests that effective railway to railway competition is required. To undertake this option in a monopoly situation is problematic. However, running rights on tracks owned by different railway companies is a theoretical possibility. That they do not currently exist in practice suggests that there are impediments which need to be identified and remedied.

Based on experience in the Peace Country, another option to improve service includes transferring operation of lower volume rail lines to short line operators. Peace Country businesses overwhelmingly report that their service was better when the rail system in northwestern Alberta were operated by short line railways, as opposed to CN.

## 2. Accountability

### Issues:

- Demurrage is a charge levied by the railways to ensure that shippers use their rolling stock efficiently, thereby maximizing returns to the railway. Thus loading times are minimized and shippers encouraged to quickly release cars back to the custody of the railway. CNR appears to aggressively charge for demurrage. On the other hand, when CN fails to deliver or pick up cars on time, or fail to deliver them to port on schedule, the railway typically refuses to compensate for losses incurred by the shipper. (issue raised by Peace Country businesses, Atlantic Container Line, Matt Enright, GeoMetrix Empowered Logistics, Government of Alberta, Sexsmith Seed Cleaning Plant, Howard Vincett)
- Remedies for poor performance under the CTA are marginally effective because of their high cost, inability to enforce judgement against the railway, the lack of the required skill set to launch a complaint particularly by smaller shippers, and lack of knowledge of

available remedies by many shippers. (issues raised by Peace Country businesses, Government of Alberta, Northern Corridor Development Corporation)

- Some shippers express fear of pursuing remedies under the CTA, legal remedies under contract law, asserting shippers' rights, et cetera due to fear of retaliation by the railway. Retaliation could include denial or reduced service, more aggressive billing, rail line or siding abandonment, et cetera. (issues raised by Peace Country businesses, New Brunswick Department of Transportation, Lemay Farms)

**Principle:** All participants in the rail service supply chain should be accountable for their actions and performance. Where a participant causes financial loss to another, the party at fault should compensate the other for the full extent of the damages. As a monopoly provider, a railway cannot deny service without just cause, and must provide it on the same terms as other shippers in similar circumstances.

**Discussion:** Some Peace Country businesses expressed real fear in asserting their rights to the railway. Indeed some interviewees insisted on anonymity so CN could not deny them service for participating in the creation of this submission. There is significant frustration that CN's billing methods are unfair, aggressive and there is no meaningful third party process to which aggrieved shippers can appeal.

**Regulatory Remedies:** Encourage all stakeholders in the railway system to develop a dispute resolution mechanism. Alternatively, create an oversight body to adjudicate complaints by any party in the supply chain for losses caused by another participant in the chain. There are successful examples of such bodies in action, for example British Columbia's process for dealing with landlord/tenant disputes. The process is quick and low cost and the tribunal has the authority to award damages. Demurrage rates should reflect actual costs and not be punitive. In order to work well, it will be necessary to establish standards of service, key performance indicators, and to track these indicators.

**Market Based Remedies:** Increase competition by amending the CTA to make it easier for running rights applications. Inter-switching distances should be extended. CNR should consider partnering with short line railways to operate low volume lines.

### 3. Economic Development

#### Issues:

- Track maintenance (issue raised by Lesser Slave Lake Economic Alliance, Peace Country businesses)
- Track and siding abandonment (issue raised by Peace Country businesses, Cam Goff, Government of Alberta, Lesser Slave Lake Economic Alliance, Association of Manitoba Municipalities, Northern Corridor Development Corporation)
- Track capacity (issue raised by Peace Country businesses, Town of High Level, New Brunswick Department of Transportation)

- Track expansion to accommodate new resource development (issue raised by Omineca Beetle Action Coalition, Peace Country businesses)
- Investment diverted to other jurisdictions due to poor rail service (issues identified by the Government of Alberta, Mazda Canada)
- Indirect routing of railway traffic from the Peace Country to the west coast due to closure of some lines (issue raised by Peace Country businesses, Lesser Slave lake Economic Alliance)
- Lack of a container port in the Peace Country (issue examined by several economic development authorities in the Peace Country, and Lesser Slave Lake Economic Alliance)
- High cost of railway transportation where goods in transit must pass through multiple railway companies (issue raised by New Brunswick Department of Transportation, J.M. Longyear)

**Discussion:** Producer car use has substantially increased in recent years, whilst the number of sidings where the cars can be loaded has decreased. This has affected producers' ability to access the producer car system and move their product to market. Producers make the point that producer cars inject competition into the grain handling system by giving farmers an alternative to the elevator. It also provides a balance to consolidation in the grain handling industry.

Due to railway line and siding abandonment, shippers must truck their product longer distances to access an operational siding with sufficient cars. This transfers costs from the railway to the shipper. Railway abandonment can have other spin offs. This can include increased pressure on highways, loss of use of railway beds as dykes in flood control, and the transfer of unresolved environmental issues from the railway to the municipality.

It is apparent that low volume lines do not interest Canada's Class 1 railways. It is further apparent that the railways will continue to restrict service, increase prices and defer maintenance until the lines are beyond economic value and fallen into disuse. Several important lines in the Peace Country have been allowed to deteriorate (Grande Prairie to Dawson Creek), abandoned (Watino Bridge), or not upgraded to North American standards (most of the lines in the north Peace).

There is a lack of intra-regional connectivity within the Peace Country, and this is getting worse due to poor maintenance and the closing of important links. One Peace Country business has a potential to ship 200,000 tonnes of frac sand per annum from a location in the eastern Peace to the Fort Nelson area. However, the loss of the Watino link has precluded this opportunity.

A Peace regional container depot is required to move the region from a supplier of bulk commodities to differentiated goods.

Interviews were conducted with businesses in the north Peace Country. Several of these businesses indicated that they were uncertain about CN's long term commitment to the rail lines that serve their communities. Thus, they are reluctant to make long term investments in

expansions or businesses that are dependent upon rail service, where that service may be stopped before expiration of financing. Uncertainty about rail service also affects the value of a rail dependent business. Some business owners have been unable to sell their rail dependent assets as a result of uncertainty.

**Regulatory Remedies:** Governments, economic development authorities and railways need to create rolling 25-year plans for railway infrastructure. This will include planning around track capacities, abandonment and new construction.

To increase certainty for investors in rail dependent business, there is a requirement for the owners of rail lines to make multi-year commitments. Such long term commitments will increase the possibility of financing, reduce risk and interest rates.

Best Practices related to rail line abandonment should be researched and developed. Railways that abandon tracks should properly compensate municipalities and affected businesses.

The CTA can be amended to provide easier access to running rights. Inter-switching distances should be extended. Short line railways that operate only within a single province should be eligible for federal government funding programs (whereas currently they are not).

**Market Based Remedies:** Many of the problems uncovered by the Rail Freight Service Review Panel could be addressed by public ownership (possibly through public/private partnership) of the low volume lines, with running rights given to all railway companies. This would open the lower volume lines to competition, with resultant benefits to shippers and the public. Interviews with Peace Country businesses suggest that they were better served when the railway infrastructure in northwest Alberta was operated by short lines. Publicly owned lines could be maintained using the model developed for the maintenance of Alberta's highways. Public (or P3) ownership would then suggest a viable means for railway expansion as resources are developed and manufacturing plants are opened up that require the use of railways to move product.

Public ownership of low volume lines may be a cost effective option. CN has already sold and repurchased the northwest Alberta infrastructure, and may once again be interested in selling it because of the uncertainty of the Mackenzie Pipeline Project. The Class 1 railways have sold other lines to short line railways. Thus, there are prices available as a result of arms length transactions. Ideally, the public would be able to recover the cost through running rights and the spin offs from future economic development.

It is also apparent that railways are not a sunset industry where the network will continually contract. It is an efficient and environmentally sound method of transportation. However, in remote parts of Canada, lines are being abandoned or left to deteriorate based on low current usage. Despite this, these remoter areas may have economic development opportunities based on resource exploitation, manufacturing, et cetera. The development of these opportunities may require investment in rail infrastructure. In areas where rails have already been

abandoned, replacing these could be difficult. It is unlikely that CNR will make investments in resource railways, thus precluding the development of currently unexploited resources.

An example of this is the Clear Hills iron ore deposits in northwest Alberta. These deposits are alleged to contain some of the nation's largest reserves of iron and other ores. They will require railway service to develop. However, in recent years CN abandoned the tracks between Grimshaw and Hines Creek, which is relatively close to the ore. This action has made development of the Clear Hills deposits more problematic and costly. Public ownership of the low volume railway would result in long term planning of railway infrastructure, acquisition of rights of way, upgrading and investment, all in the public interest.<sup>1</sup>

In the event that some lines become underutilized, a process for abandonment could be determined based on Best Practices, including usage, cost/benefit, et cetera.

#### **4. Public's Interest vs. Shareholders' Interests vs. Shippers' Interests**

##### **Issues:**

- Shippers are required to conform to the scheduling priorities of the railways or face financial penalties. However, the benefits of these efficiencies incur only to the benefit of the railway. (Government of Alberta)
- CN moves grain first in those areas of the province where there is effective competition, and lastly in its captive markets. (issues identified by Peace Country businesses, David Graw)
- According to the Canadian International Freight Forwarders Association, "Containers destined to the United States are handled at the docks in Vancouver and loaded to rail on a priority basis – ahead of Canadian destined cargos, supporting the railroad's investment in the United States to the detriment of Canadian importers and exporters."
- CN uses its monopoly position at some locations to influence a shipper's choice of transcontinental service. (Mazda Canada)
- CN does not appear to care about community and regional viability. Municipalities and regional authorities report that CN does not participate in community and economic development debates and initiatives. The railway is critical to the economic well being of the Peace Country, yet it provides the region with limited useful information. By not participating, CN also loses significant opportunities to develop business and to plan their regional investments. In exasperation, the Executive Director of PREDA has been quoted "I am more concerned about the health of CN in the Peace than CN is!"
- CN is tardy in removing used railway ties and tracks within municipalities. Abandoned industrial waste denigrates the appearance of the community and can affect tourism.

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<sup>1</sup> In February 2010 Clear Hills County, the Municipal District of Peace, the Municipal District of Fairview, the Town of Fairview, the Village of Berwyn and the Village of Hines Creek created a committee to acquire the abandoned railway bed that links their communities from CNR. The abandoned bed runs from Hines Creek to a location just west of Grimshaw.

The ties may also pose an environmental hazard. There have also been complaints with abandoned telegraph poles and lack of weed suppression along unused CN rail beds.

**Discussion:**

Class 1 railways have a business model based on high volume movement of goods for large volume shippers. The model suggests that resources are funnelled from the hinterlands through corridors with the smallest number of high volume sidings. There is no consideration for traffic within the hinterlands. Ideally, railway operations are of a size that can accommodate the efficient scheduling of employees and utilization of rolling stock.

From their perspective, this model will maximize shareholder return. Any shipper that does not fit this model will be discouraged through a combination of high prices, demurrage charges, distant loading sites, and lower shipping priority. The railways can succeed with this model because of lack of competition, lack of viable remedies to make CN and CP financially accountable for the damages they cause their clients, and lack of regulatory oversight.

According to the submission of the Canadian International Freight Forwarders Association, “The rail carriers are not investing adequately in improving the aging intermodal infrastructure in this country. Compared to the billions of dollars being spent in the U.S., China and Europe, Canada is falling behind and is becoming less competitive internationally. Where a service, such as Canada’s rail industry, is in the national interest, profits must be reinvested into infrastructure for Canada’s future and not focused by private commercial ventures on short term profitability.”

The above suggests that the Class 1 railways are operating almost exclusively in the interests of their shareholders. And, they can achieve this situation due to lack of competition in the marketplace. The submission by the Government of Alberta suggests that lack of competition is the root cause of rail service concerns. “Despite reduced demand on railway shipments due to the recession and idle capacity, shippers have seen prices rise and ongoing service issues. This suggests the marketplace is not responding to competitive pressure, but to the financial targets of railways.”

Ominously, there is a suggestion by the Canadian International Freight Forwarders Association that after their shareholders’ interests, the railways may be placing the interests of the United States above that of Canada. If America-bound products are given priority at Vancouver Terminal, the implications are that the more competitive US market is causing the Canadian railways to improve service at the expense of Canadian customers. Interestingly, efficient transportation is a factor in productivity. Thus, American competitiveness may be a reason for their superior productivity, and why Canada lags in this indicator. The irony is that the Canadian railways are exacerbating this situation.

What the railways appear to ignore is the public interest. In addition to serving the interests of shareholders and shippers, the public depends on railways for economic development. The presence of a railway means that a mine can be developed or a factory built. When a railway

line is abandoned, these opportunities are lost to a community, a region, the province and the country.

The Association of Manitoba Municipalities has also suggested other public benefits from railways, including flood control.

**Regulatory Remedies:** Create an oversight body to determine performance standards, including the prioritization of cargo for shipment. Create regulations and performance standards to ensure that efficiency measures imposed by the railways on shippers are reciprocated, and that shippers can impose efficiency measures (and penalties) on the railways. Increase involvement of stakeholders from outlying regions.

### **PREDA's Recommendations:**

- There is an urgent requirement for the creation of an oversight body to develop key performance indicators related to railway transportation. The oversight body will be responsible for collecting data to measure how all stakeholders are performing. The body can impose penalties on those stakeholders who are underperforming or causing losses/damages to other participants in the supply chain.
- The oversight body should have representation from all major stakeholders, including a representative from the Peace Country. The Panel should encourage CP and CN to establish a permanent task force with authority to build a business model that addresses issues of customer service, infrastructure and the public interest. CN's task force should include representation from northern Alberta. CN should be receptive to this approach. CN's Vice President of Sales and Marketing, Peter Ladouceur, is recently quoted as saying "You're going to see a new CN. You're going to see CN come out in a more customer-centric manner. We won't be driving our agenda only, all the time, as we have done in the past 10 years."
- Pricing of rail services must reflect actual costs and not be predatory, discriminatory, unfair or uncompetitive. Requests for rail services and quotes must be provided expeditiously, according to performance measures, noted above.
- The Rail Freight Service Review Panel should request Statistics Canada to review inefficiencies and prioritization issues in the rail industry in order to measure their effects on productivity. Canada has consistently lagged the United States and other developed countries in productivity, and it should be determined how much of this is related to railway transportation service. Understanding of the link between railway service and productivity may have implications for public policy.
- To increase competition, the Panel can look at the following options:
  - Amend the CTA to make running rights an effective option
  - Amend the CTA to extend inter-switching distances
  - Permit provincially regulated short line railways to qualify for federal government grants
  - Encourage CN and CP to use short line railways for lesser volume lines

- Consider public ownership (or public/private partnership) of lesser volume lines.  
(This option corresponds with the intent of Alberta's *Competitiveness Act*.)
- Develop Best Practices for the abandonment of rail lines. Railways that abandon lines should compensate municipalities as well as affected businesses.
- As an integral part of Peace Country business, CN must help communities work together within a business model that has relevance to northwest Alberta. They should have the ability and insight to operate under multi-layered business models, from global to regional.

This submission may be publicly distributed, and posted on the Panel's website.