

**Kevin Archibald * William Cooper * Dr. Paul Earl
Keith Lewis * Paul Orsak * Curtis Sims * Albert Wagner**

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Walter Paszkowski (Chair)
Rail Freight Service Review
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Dear Mr. Paszkowski:

Although we are aware that the deadline for submissions to your panel is past, we are asking your leave to submit this letter for your consideration. The reasons for our late submission are two-fold. First, there have been some recent developments in grain transportation that we believe are germane to your inquiry, and second, we are concerned that a number of the recommendations that have been made to your panel are inordinately reliant on regulatory decrees, rather than commercial approaches, to achieve their proposed objectives.

We contend that these proposals follow the path of policies that began over a century ago with the Crow's Nest Pass Rates, were continued through the 1980s and 1990s under the Western Grain Transportation Act, and were finally perpetuated with the revenue cap. History has demonstrated over and over again that these approaches do not work for shippers, carriers, nor the country as a whole.

The signatories to this letter are all individuals who have had a long history of involvement in policy in grain handling and transportation. Most are, or have been, active commercial farmers. Some are former presidents and executive members of farm organisations. For example, Bill Cooper, Paul Orsak, and Keith Lewis were all heavily involved in the grain transportation reviews headed by Justice Estey and Arthur Kroeger, representing a coalition of farm commodity organizations. Bill Cooper was recognized for his work in grain transportation reform in 1998 by being named "Distribution Executive of the Year" by the Canadian Industrial Transportation Association. Paul Orsak was one of the members of the Government's Task Force that prepared the report on Implementing Marketing Choice for Wheat and Barley, Kevin Archibald is a former President of the Western Canadian Wheat Growers, and Curtis Sims is a former elected farmer representative to the Senior Grain Transportation Committee. Albert Wagner is a farmer from Stony Plain Alberta, and a former president of the Western Barley Growers Association. Paul Earl, formerly held senior positions in United Grain Growers and the Grain Transportation Agency, and was involved in almost all of the major studies of grain transportation and handling that were conducted over the last 30 years. He is currently a professor at the University of Manitoba specializing in transportation issues.

All of us are united by a basic understanding, born of long experience in the grain business, that commercial mechanisms to resolve grain handling and transportation problems are more effective than regulation. We acknowledge that sometimes market structures require that these commercial mechanisms be enabled through legislation and regulation. However, any regulatory regime must enhance basic market signals, not drown them out.

As your panel is no doubt aware, there have been recent calls to do a costing review in grain transportation. It was the growing pressure for such a review that first motivated our group to act, and on July 7 we sent a letter to the ministers of Agriculture and Transport, and to the Parliamentary Secretary to the Minister of Transport, opposing such a review. Our position was based on our lengthy experience with over-regulation of the grain handling and transportation system, and what we saw as the perverse results of those policies. During the last half of the 20th century, the regulation of both rates and grain logistics caused significant market distortions which in turn stifled efficiency and effectiveness. Over that time, the system remained 30 years out of date, rail car turnaround barely changed, and the system was subject to repeated operational failures. Those who favoured regulation were relentlessly opposed both to changes to the Crow Rate and to rationalisation of the branch line network, eventually forcing the federal government to buy close to 20,000 taxpayer-funded hopper cars to move grain, and to spend countless billions of dollars rehabilitating branch lines, the vast majority of which have subsequently been abandoned due to lack of use, or are operating today as cross subsidized shortlines which are unviable on their own.

The seemingly insoluble problems of the grain system culminated in the massive system breakdowns in 1993-94 and 1996-97. The latter led to the Estey inquiry. As the members of the panel are well aware, the central core of the recommendations from both Justice Estey and Mr. Kroeger was the creation of a more commercial system, incorporating real market signals, incentives and penalties for all participants, with the Canadian Wheat Board having no role in grain transportation operations – positions that we endorse, and would wish to see taken as the basis for a long-term solution to the persistent problems of the grain handling and transportation sector. Unfortunately, the implementation of Estey's recommendations was frustrated by opposition from those organisations that continued to support centralised control and regulation, and today, it is some of those same groups who are calling for the costing review – a backward step towards the same heavy regulation that led to these problems in the first place.

While we recognise that rail rates are not within the terms of reference of your panel, we suggest that this upsurge in support for a costing review is relevant to the panel's work. We contend that the issues of rates and level of service are inseparable: service costs money, and shippers must be prepared to pay higher rates if they want superior service. As both your recommendations and the positions put forward by the proponents of a costing review will form the basis on which the federal government can be expected to make policy proposals for changes in transportation, we strongly suggest that the two issues are linked, and that fact should be reflected in your final report.

To this end, we are prepared to put forward a proposal which we believe will go some way to addressing both level of service and rate issues in the grain sector. We start from section 5(a) of the Canada Transportation Act which states that Canada's transportation policy objectives "are most likely to be achieved when (a) competition and market forces, both within and among the various modes of transportation, are the prime agents in providing viable and effective transportation services." Our proposal stands within the spirit of this element of national transportation policy.

Our proposal

Our proposal recognises the reality, to which many of the submissions to the panel allude, namely the disparities in market power among the participants in the grain handling and transportation sector. It must be recognised that captivity to rail, and the consequent potential for abuse of market power, are the primary and legitimate concerns underlying the call for a return to past rate regulations – particularly in the grain industry. However, the solution to this problem will not come from the failed policies of the past.

Our proposal is based on the following principles:

- That, for grain transportation, the route to both improved service and improved efficiency is through commercial and contractual arrangements that specify both rate levels and conditions of carriage.
- That service level contracts must be complete and include performance standards, incentives and penalties, and dispute resolution mechanisms for all parties to the agreement.
- That a framework and set of arrangements is required that will bring contracting parties to the table and will tend to balance the negotiating power of the contracting parties.
- That the framework and arrangements to achieve this should, if possible, be voluntary, but must also possess sufficient presence and authority that will oblige the contracting parties to use it.
- That, in keeping with the recommendations of the Estey report, the Canadian Wheat Board have no role in grain transportation from farm to terminal elevator.

Before presenting the basic elements of our proposal, we wish to elaborate on the last bulleted point: the removal of the CWB from inland transportation. As noted, this was a recommendation made by Justice Estey after his intense review of the problems in grain transportation. Not only would this step be consistent with the recommendations of Justice Estey’s inquiry, it also follows logically from the long realisation – agreed to by former senior officials of the CWB – that it is almost impossible to accommodate both the central control used by the CWB to manage the movement of Board grains, and the more dispersed responsibility among grain companies for the movement of non-Board grains, in the same logistics system. Many attempts have been made to resolve the complexities of having two diametrically opposed systems share the same handling and transportation facilities, including the Bracken Commission in the 1950s, the Grain Transportation Authority (later called the Grain Transportation Agency (GTA), and then the Western Grain Transportation Office) in the 1980s and 1990s and the Car Allocation Policy Group (CAPG) in the early 2000s. The last of these, CAPG, while industry-driven and voluntary, was not a forum for negotiating commercial contracts, and had no authority to bring the parties to the table. Lacking the proper balance between commerciality and reciprocal obligations, all of these efforts failed to provide permanent solutions to the problems in grain transportation.

The only solution to this long-standing conundrum is to bring the logistical control of Board and non-Board grains into the same configuration, and to allow the shippers (farmers and grain companies) to ship Board grains to the CWB at port under commercial contracts in an identical manner to the way that they deliver non-Board grains to their customers. This in turn can only be accomplished by terminating the CWB’s current regulatory authority over transportation and, as was discussed during the Kroeger process, having the CWB take possession of its grain “at spout” – i.e., as the grain moves out of the terminal elevator to the vessel. Moving the CWB “to spout” would, we suggest, resolve many of the current problems in grain transportation. However, it would not address the matter of railway market power.

We propose, therefore, the imposition, either through legislation or regulation, of what we call “reciprocal obligations” between shippers and railways. Under this proposal, the railways would be required to adhere to the same kind of performance levels that they impose on their customers. As an illustrative example only, if the railways levy demurrage charges (as they should) on shippers, then shippers must be able to impose penalties on the railways for failure to spot or lift cars within specified time periods.

A mechanism to implement “reciprocal obligations,” and to ensure that they are applied fairly to both parties, will be necessary. We suggest that there are three possible approaches to resolving this issue:

1. Creating a new body, by legislation, under whose jurisdiction commercial contracts in grain transportation and handling would be developed. These contracts would incorporate the “reciprocal obligations” specified by the legislation, and would address both rail rates and service and performance standards. This body would be empowered to mediate disputes between the parties when they were unable to reach agreements.
2. Formating a voluntary industry association that would perform this role. We suggest that the National Grain and Feed Association in the United States might serve as the starting point to develop the charter and terms of reference for such a body.
3. Creating a new arm of the CTA that would be empowered to work with shippers and carriers to implement the new legislation and procedures.

Each of these has advantages and disadvantages. The advantages of each option respectively are: organisations would be forced to comply with the provisions if the body had legislated powers; a voluntary group would likely be efficient and avoid the bureaucratic problems that plagued the GTA; and the CTA already exists. Their respective disadvantages are: a legislated body is in jeopardy of being, like the GTA, hamstrung by bureaucracy; a voluntary body, like CAPG, may lack the necessary power and authority to implement the desired reciprocity; and the CTA is generally costly, especially for smaller players, and, being a court, tends to be adversarial. The means of implementing our proposal, therefore, would require careful attention.

The overall thrust of our proposals is to move the grain handling and transportation system to the position where commercial contracts, with specified rewards and penalties for performance, and away from the long-standing regulatory approach, while at the same time providing safeguards, through our proposed reciprocal obligations, against the abuse of power. We suggest that this approach would work for all players, including shortlines, producer car shippers, and other small players who have felt particularly vulnerable under commercial arrangements.

At the same time, we cannot stress too strongly that the effectiveness of this proposal would be contingent on our last bulleted point above. i.e., terminating the CWB’s regulatory control on transportation. Without this step being taken, the grain transportation system will continue to be plagued by the incompatibility between the CWB’s command and control system and the open market’s commercial and contractual approaches., and the long-standing difficulties will continue.

Note that if this recommendation is implemented, then the CWB, no longer being a shipper of grain, would not be part of any new organisation, nor would they participate in any of the new procedures.

Under any of the above three ways of implementing the proposed “reciprocal obligation,” if a commercial agreement cannot be reached between the shipper(s) and the carrier(s), the matter would be referred to the Canadian Transportation Agency, either for further mediation under sections 36.1 and 36.2 of the Canada Transportation Act, or, more likely, for “Final Offer Arbitration” under Part IV of the Act. (We consider the latter to be the more likely because, if this proposal were instituted, the mediation step should be pursued under the new provisions, and only the most intransigent of issues taken to the CTA.)

It is also absolutely essential for this proposal to be effective that the railways and shippers be committed to abiding by the new provisions. If either a shipper or carrier can walk away from the process or ignore the mandated procedures, the effectiveness of the proposal would be vitiated.

We are not, in this submission, proposing any further details either on the nature of the legislated terms of the “reciprocal obligations,” or on the three possible approaches to implementing them. The essential purpose of the proposal is to facilitate the development of commercial contracts between the parties, and to prevent the larger and more powerful players from abusing their position with their customers or suppliers. We are, however, willing to communicate further with the panel if you wish to explore these concepts in greater depth should you wish.

The undersigned urge you most strongly to resist pressures to return to past regulatory environments. We do not argue that the rail sector should be completely unregulated. However, legislation and regulation must be properly constructed to allow for commercially based incentives and penalties for all participants – shippers and railways alike.

Western Canadian agriculture has seen some of the benefits that were predicted when the Western Grain Transportation Act was repealed and freight rates were partially deregulated. For example, we have seen a dramatic increase in crop diversity with the explosion of the pulse and special crops industries. Now is the time to move forward and to build on the reforms that have shown promise, not to reinvigorate the old approaches whose results were so negative for the western grain industry.

Sincerely,



Kevin Archibald



Bill Cooper



Dr. Paul Earl



Keith Lewis



Paul Orsak



Curtis Sims



Albert Wagner