Manitoba Infrastructure and Transportation

Submission
to the
Railway Safety Act Advisory Panel

August 2007

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Introduction

The Province of Manitoba thanks the Railway Safety Act (RSA) Advisory Panel for the opportunity to share its comments and concerns regarding this important matter.

By way of background, Class I and Class II railways operate over 7,000 km of track in Manitoba. The Class I railways (Canadian National (CN), Canadian Pacific (CP) and Burlington Northern Santa Fe (BNSF)) operate close to 5,200 km of track, the Hudson Bay Railway (HBR) operates over 1,300 km, and the remaining shortline railways (Central Manitoba Railway (CEMR), Keewatin Railway Company (KRC), Greater Winnipeg Water District Railway (GWWD), and the Prairie Dog Central (PDC)) own and operate the remainder. CEMR, KRC and the PDC operate under the Provincial Railways Act. The GWWD operates under authority of the City of Winnipeg Act.

More than 13 million freight train kilometers pass through Manitoba on an annual basis and the railway industry directly employs nearly 9,000 people in Manitoba. It is also important to note that a significant portion of our railways operate in a unique northern environment, which translates into distinct operational, regulatory and safety challenges, including the impact of climate change on rail lines.

Manitoba’s submission will address our direct regulatory and operational experience with the RSA framework rules and regulations, and suggested improvements to the process of their development. Our broader concerns with respect to the interface between railway operations and citizens and communities in Manitoba, so-called “proximity” issues, is also addressed. It is based on our consultation with key identified stakeholders throughout the Province, and our provincial experience with the RSA framework as well.

RSA Regulatory Framework and Provincial Railways

The framework under which Manitoba regulates its shortline railways is closely linked with the federal Railway Safety Act, and follows from our signatory commitment in the Internal Trade Agreement to harmonize our rail regulatory practices with that of other jurisdictions across the nation.
Since 1996, when federal legislative changes permitted CN and CP to more flexibly accelerate their line rationalization initiatives, four lines have shortlined in Manitoba (one of them has since abandoned). Understanding that private industry was interested in purchasing and operating some of these lines within the boundaries of Manitoba at the time, the Government of Manitoba acted to put into place an administrative and regulatory framework under the *Provincial Railways Act* (PRA) to oversee intra-provincial railway safety. To this end, in February of 1999, Manitoba passed the Provincial Railways Fitness Criteria and Safety Regulation, which requires shortlines to comply with existing federal government railway safety standards that apply to operations, infrastructure and engineering aspects (save for those, such as occupational safety and health requirements, that are covered by other provincial statutes and requirements).

Manitoba has a working Memorandum of Understanding (MOU) with Transport Canada whereby Manitoba can solicit assistance from Transport Canada on a variety of issues involving the safety administration of shortline railways. Under the MOU, Transport Canada conducts annual inspections of Manitoba’s shortline railways and recommends remedial actions. While Transport Canada inspectors are named as inspectors under the PRA, ultimately, any remedial measures, and compliance and enforcement thereof remain within the purview of Manitoba.

By and large, the manner of integration of Manitoba’s regulatory safety framework with that of the federal one has proceeded very smoothly. Our shortline operators acknowledge the legitimacy of federal rules and regulations, and their reasonable application to shortlines. Indeed, given the close operational requirements between shortlines and mainlines—which often include movement or bridge rights over each others’ tracks—the harmonization of the federal and provincial regimes from a safety rules perspective simply makes sense. Manitoba has every intent to continue using the general framework of regulations and rules under the RSA, and values our relationship with Transport Canada and their expertise in rail safety.

**RSA Regulation and Rule Making Process**

That being said, Manitoba considers that there is still a fairly uneven process of consultation and communication from the federal government with respect to regulation and rule development. Although there have been varying “on-again-off-again” communication mechanisms over the years, such as the National Railway Safety Consultative Committee and the Federal-Provincial Working Group on Railway Safety, the current creation and amendment of regulations and rules is still a formal process that takes place largely between the national railways and Transport Canada. Manitoba recommends that some mechanism is required to involve jurisdictions that will have to apply the regulations and rules to their constituent railways earlier on in the process.

This will become more important as the federal regime—and resultantly provincial regimes that employ the federal framework and rely on federal support for compliance—become more and more audit-oriented and less “command-and-control” oriented. Going
forward, federal regulations and rules development will have to give better forethought to the safety management capacities and operational differences that shortlines represent as compared to mainlines. For example, it is our experience that the application of the Safety Management System Regulations—a regulation we very much support as progressive and have adopted—has taken more time and effort than expected to implement on the part of both the Province (as the regulator) and our shortlines. In our view the SMS regulation is largely tailored for the mainlines.

It should also be considered that provinces can bring to the table an interest in rule-making beyond the obvious element of pure railway operational, engineering and infrastructure safety. Manitoba values the contribution that railways provide to the economy, and believes railways have every right as private entities to make business and operational decisions within a market framework. However, railways are unlike most other industrial entities—their operations cover a wide geographic swath of land, and often impact in very real, tangible and immediate ways the course of everyday life of citizens and communities. Increasingly, the issue of the sustainability of railway operations as it pertains to the manner of railway interaction with citizens and communities—for example, noise pollution and blocked crossings—is one that governments cannot ignore. Provinces have a legitimate role to represent the concerns of their constituents within the regulation and rule making process of the RSA from this perspective.

Overall, a proper and formal consultative mechanism will be critical to ensuring that the needs of shortlines, their provincial regulators, and the reasonable needs of citizens and communities impacted by train operations are reflected in rule and regulatory making developments.

**Recommendation: Manitoba recommends that the federal government implement best consultative practices with respect to facilitating effective provincial input in the federal development of regulations and rules under the RSA, including a formal role for provinces earlier in the process.**

**Railway Operations and Infrastructure – Impact on Citizens and Communities**

Both the rail industry and Canadian communities have seen significant changes over the last number of years. Communities are expanding, and new road infrastructure and neighborhoods are being developed. With regards to the rail industry, we are seeing an ever increasing volume of rail traffic, and longer and heavier trains in Manitoba. The mainlines, most notably CPR, also express that many of their lines in the western part of Canada are at or near capacity. The result is greater public contact and exposure to train operations.

Statistics developed by the University of Manitoba Transport Institute for our department reveal that, of the Canadian-based rail traffic occurring in Manitoba, 83% is simply passing through the Province. This is a far higher proportion than other provinces, whose rail activities have more local origin-destination traffic. These statistics do not include the
US-bound traffic routed via our Manitoba rail gateway. In essence, Manitoba bears the higher risks associated with increased rail traffic passing through our jurisdiction, including Winnipeg and our other major urban centres. With the Prince Rupert container facility opening this fall (to further enhance west coast rail access to the Chicago-Memphis container distribution hubs), this problem will be exacerbated. The federal government has also stated that one of its objectives of the Asia-Pacific Gateway and Corridor Initiative is to increase Canada’s share of the Asia-North American container traffic market. Manitoba will feel the negative effects of this policy framework through increased rail traffic.

We predict that there will be greater interface between railway operations and the public, and the attendant risk and problems this brings, including the likelihood of more crossing accidents, derailments with a greater catastrophic potential, train collisions, noise complaints, road crossing blockages and so on.

Manitoba notes that the federal statutory framework overseeing the railway industry needs to take into account the collateral issue of sustainability with respect to regulatory oversight of our transportation industries (witness for example the current consideration of truck speed limiters to obviate against safety risks of speeding trucks and to mitigate against emissions and energy consumption). Recent accidents with tragic loss of life and environmental consequences in B.C. and Alberta (Lake Wabamun, Cheakamus River) have only heightened this citizen concern as it applies to railway operations.

Taken together, neither the Canada Transportation Act nor the RSA adequately deals with the sustainability dimension of railway operations—that is, what is reasonable from a railway operating and infrastructure planning and development perspective as it impacts on the quality of life of citizens and communities, and the environment.

One example of the issue we describe, which has been raised to us by several communities and citizens in Manitoba, is the issue of blocked road crossings. Section 103 of the Canadian Rail Operating Rules states that “… no part of a train or engine may be allowed to stand on any part of a public crossing at grade, for a longer period than five minutes, when vehicular or pedestrian traffic requires passage.”

In our consultations, some of our communities have sited delays in excess of 30 minutes at crossings. The result is environmental impacts due to idling vehicles over long periods of time, lost economic and social activity opportunity costs, and delays to emergency vehicle access. We are aware this is an issue in other jurisdictions as well. This problem will only worsen as train lengths continue to increase, and where the road and rail infrastructure are not adjusted to accommodate this development. To add to the frustration, there does not appear to be any strong measures under the RSA to be able to forcefully deal with the matter. For example, it is Manitoba’s understanding that the RSA does not give Transport Canada inspectors authority to issue penalties for violations of non-safety elements of rules, such as the crossing blockage rule.
In effect, a business decision by the railways for economic gain (longer, heavier trains) has had a very real negative public interest impact from a social sustainability perspective, and there is no process in place under the RSA—either in the rule development or compliance and enforcement stages—to assess the reasonableness of allowing such developments to take place.

That being said, Manitoba recognizes that some positive steps are being taken in regard to these so-called railway-community proximity issues. For example, the recently passed Bill C-11, which amended the Canada Transportation Act, contained new and stronger provision for the Canadian Transportation Agency to act in cases of noise complaints against railways. In some of its Asia-Pacific Gateway and Corridor Initiative program funding, a strong federal focus has been made on the development of grade separations (including one over a mainline that will be cost-shared by the federal and provincial government in Manitoba) to mitigate against the risks of increased rail-road interface.

But these ad-hoc approaches are simply not enough. There needs to be a strong systematic legislative and program approach to balance the issues of railway operational decisions and the interface with the public and communities, beginning with the assertion of sustainability principles in the policy statements of federal legislation overseeing the railway industry, including the Railway Safety Act.

Another example Manitoba would cite is our interest in exploring means to assess the relocation of the railway footprint and location of new railway activities in the City of Winnipeg. Both CN and CPR’s mainlines traverse the middle of the City and result in attendant negative livability and planning issues, such as the division of neighbourhoods and lack of access by citizens to waterfront land resources. Citing competitive reasons, the national railways have been reluctant to consider this matter, or to engage in discussions on possible track sharing arrangements within the city to alleviate the impact of the railway footprint. There appears to be little leverage for communities or jurisdictions to work on this element of community sustainability, and it may require a concerted federal policy and funding support to move forward.

Lastly, several of our urban communities have expressed a concern from a public safety perspective of the high speed of trains in urban centres, and lack of understanding on the movements of dangerous goods in high population density corridors, for risk mitigation and emergency measures planning. What this all points to is that in some manner, these public concerns must start to form a key part of the formal legislative, regulatory and rule-making dialogue and processes under the RSA.

**Recommendation:** Manitoba recommends that the Railway Safety Act policy objectives be amended to reflect the issue of the sustainability of railway operations as it impacts the public and community livability, the so-called proximity issues. Manitoba recommends that Transport Canada and the Canadian Transportation Agency should subsequently include such sustainability criteria in their railway safety programming and funding frameworks.
Railway Crossings

Manitoba is pleased to see that the general trend over the past 10 years has seen a decrease in the number of rail crossing accidents nationally and provincially. However, as both rail and road traffic continues to grow, the risk of at grade collisions will continue to increase. As such, safety at railway crossings is and will remain a significant concern for Manitoba. Manitoba feels strongly that reducing the number of collisions at grade level crossings should continue to be given high priority.

Manitoba has roughly 2,100 rail crossings—approximately 13% of all crossings in Canada. More than 60% of these crossing are in municipal or town boundaries, over 20% cross the provincial road network, and the remainder are either farm or private crossings. Close to 30% of all crossings along Manitoba’s provincial road network are passive crossings, with only cross-bucks or stop signs marking these crossings. 56% of crossings have automated signals, 12% have gates, and only 3% are grade separated.

Manitoba recognizes the support that the federal government makes towards crossing improvements through the Grade Crossing Improvement Program (GCIP), as well as funds administered under the GCIP for the Grade Crossing Closure Program. The GCIP funds up to 80% of the cost of upgrading eligible federal crossings (crossings along federally regulated crossings), including improvements such as the installation of lights and gates or other warning devices. The railways and road authorities share the remaining balance of the safety upgrades. Through the GCIP, the federal government has contributed roughly $7 million dollars for federal crossing improvements in Manitoba since 2000.

While these expenditures are welcome, Manitoba questions as to why crossings located along provincially regulated shortline tracks are excluded from GCIP funding. In Canada, shortlines under provincial jurisdiction comprise 19% of the national rail track stock. It seems unreasonable that the federal government, based solely on jurisdiction, should preclude a crossing from receiving funding if it so merits action based on safety risk priority.

In fact, Manitoba had one such example where federal GCIP funding that was slated for upgrading a crossing from passive to automated was withdrawn when the line was subsequently shortlined—even though the crossing obviously met the funding criteria as a high risk crossing when under federal jurisdiction. Manitoba subsequently decided to fund the whole of the crossing upgrade out of its own pocket. Nonetheless, this story illustrates the need for a national program to be just that—truly national in scope regardless of which jurisdiction a railway may fall under, so that funds are targeted to the most critical crossings.

**Recommendation:** Manitoba recommends that the Grade Crossing Improvement Program funding be made eligible for crossings located on provincially regulated railways.
For some years now, a new grade crossing safety regulation has been proposed by Transport Canada, known as RTD-10. As a matter of practice, Manitoba Infrastructure and Transportation—as a road authority with significant crossing safety responsibilities—has put a program into place to perform its crossing work functions to the new proposed standards. That being said, we are aware that many of our municipalities are constrained by the staff and monetary resources they can devote to crossing maintenance and upgrading. They have expressed a concern that the new RTD-10 requirements will impose even greater cost and other resource burdens. Other jurisdictions have echoed the same concern. We believe that the introduction of any new safety regulation for crossings by Transport Canada should be accompanied by a commensurate increase in the CGIP funding to reasonably offset the costs of compliance.

**Recommendation:** Manitoba recommends that Transport Canada improve the Grade Crossing Improvement Program to allow parties involved in crossing safety the means to reasonably deal with the cost of compliance of the proposed new federal grade crossing safety regulation.

Manitoba is also concerned to see that the number of accidents occurring at public automated crossings makes up the majority of crossing accidents across Canada. According to the Transportation Safety Board’s 2005 Accident Summary Report, 27% of crossing accidents occurred at public passive crossings, while 59% of accidents happened at automated crossings (even though there are more than twice as many public passive crossings as public automated ones). The higher proportion of accidents occurring at automated crossings is due in part to higher vehicle and train traffic volumes at these crossings and thus greater exposure.

Given that over half of vehicle/train collisions occur at active crossings, Manitoba is of the opinion that an assessment be made of the need for additional funding to be directed to increase the number of grade separated crossings as part of an overall road-rail at grade intersection safety improvement effort. Although the RSA makes provisions for funding for construction or alterations of grade separations, there is no program currently being administered or funded by the federal government for grade separated crossing projects. Manitoba has not received grade separation funding under this legislation within the last 10 years.

**Recommendation:** Manitoba recommends that a federal funding program for grade separated crossing projects be implemented under the RSA.

**Research and Data**

The ever changing environment in which Canada’s railways operate, and in which railways and communities co-exist, warrants a better understanding of the impacts, as well as how railways and communities can more sustainably co-exist with minimal safety risks and disruptions to either.
Manitoba feels that certain research assessments regarding railway activity should be undertaken under the Railway Safety Act Review and Transport Canada Railway Safety Directorate. The findings would serve to benefit all of Canada’s regions where railway activity is prevalent. Research areas that are of interest to Manitoba are: appropriate threshold criteria for grade separation development as opposed to crossing enhancement; understanding the impact of evolving rail industry and trade patterns on rail operations as they affect communities; and, research into benchmarking and measuring railway sustainability performance (crossing blockages, noise, dangerous goods routings, and other environmental degradation issues under RSA framework).

One further concern with respect to rail safety data is the lack of coordination between TC and the Transportation Safety Board (TSB) regarding data collection of an incident or accident. Following an incident/accident, regulated parties must submit information to both TC and TSB. The data requirement for both organizations is very different and complex, so much so that our shortlines have experienced difficulties in completing reports.

**Recommendation:** Manitoba recommends that, to the extent possible, Transport Canada and the Transportation Safety Board should seek to harmonize their accident/incident data reporting requirements, with an eye to assuring that data requirements satisfy their needs without being too onerous on the reporting body.

**Conclusion**

Manitoba wishes the Advisory Panel and Review Secretariat a successful review of the RSA and hopes that our recommendations are strongly considered.