

Pulse Canada

*Response to the Canada Transportation Act Review Report*

April 18, 2016

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## Executive Summary

Pulse Canada, as part of an agriculture industry coalition, prepared a submission proposing 10 recommendations (Appendix A) to the Canada Transportation Act review (CTA review). This submission identified a number of problems with Canada's rail freight system which are primarily caused by the significant market power that railways exercise over their customers. This economic dominance is particularly strong in the agriculture sector which has limited options to transport products other than by rail.

- This market power imbalance has given the railways the ability to optimize their network entirely for their economic benefit. The current system is characterized by three fundamental problems:
  - a lack of railway capacity due to underinvestment;
  - poor performance and a lack of responsiveness due to the absence of competitive pressure; and
  - inadequate shipper protection measures in the Canada Transportation Act.
  
- The recommendations in the CTAR report must therefore fulfill one or all of the following criteria:
  - off-set railway power;
  - improve the competitive environment; and
  - ensure that railways respond to their customers' needs in ways that simulate the operation of a market driven system.

### **Pulse Canada Assessment of the CTA review report**

- The report's proposed framework to better integrate policy across federal departments and with provinces and municipalities is good.
  - But the voice of the users of the system must be part of this initiative and users are not well represented on the proposed advisory committee.
  
- The recommendation to empower the Canadian Transportation Agency (the Agency) to act on its own motion to deal with systemic issues, is a good idea.
  - Legislation must give them access to data, authority to investigate systemic issues, and the resources to do the job.
  - The Agency is the right place to gather and publish data about the railway system. Shippers should be involved in this initiative to create a new Integrated Data Platform and ensure that it empowers both the Agency and other stakeholders with independent, comprehensive and timely information about railway performance and railway capacity.

- Changes to the Canada Transportation Act provisions such as section 5, National Transportation Policy and Section 113 – railway service obligations – should proceed in a manner that ensures there is a common understanding of objectives.
  - The goal of change must be to reinforce the primacy of the users of the system. The users create the wealth and the employment that fuels Canadian communities.
  - As currently worded, the proposal to change railway level of service obligations as laid out in section 113 to “recognize shippers and their collective needs, in the context of the optimal performance of the freight system” is problematic. It must be clear that the system should operate for the benefit of the users of the system, and not be optimized for lowest cost or highest railway profitability.
  
- The proposed changes to Dispute Resolution/Service level agreements do not directly address shippers’ desire to have financial consequences for railway non-performance included in railway service level arbitration under the Act.
  - Pulse Canada supports the proposal to create a dispute resolution unit within the Agency to support informal and formal dispute resolution but does not agree that mediation or conciliation be mandatory, as proposed in the report.
  - The addition of financial consequences for non-performance will enhance the current regulations published by the Agency governing service level arbitration.
  
- Encouraging railway investment through changes to the Income Tax Act, as is recommended in the report, should be accompanied by changes to the Canada Transportation Act that ensure such investments actually take place.
  
- Changes to MRE and Interswitching
  - The proposed changes which include the phasing out of the MRE, eliminating the recently introduced 160 km interswitching limit and significant changes to how interswitching charges are calculated, are not supported by detailed research on the impact of the current regimes nor on the likely impact of change.
  - In the interests of creating effective public policy, no changes to MRE nor Interswitching should be made without detailed and public quantitative analysis.
  - The suggestion in the report that current interswitching charges are not fully compensatory is incorrect.

In summary, while the report includes some positive recommendations and Pulse Canada looks forward to working with stakeholders and policy makers on the further development and implementation of these ideas, the report does not sufficiently address a number of issues raised by the agriculture industry and there are recommendations, particularly around railway service level obligations and grain transportation regulation, that should not proceed without considerable further discussion with stakeholders.

## 1. The CTA Review Philosophy and Vision - Points of Departure

The Review panel's report focuses upon important principles "that should resonate for Canadians everywhere" - that the performance of the transportation system underpins:

- the country's trade performance,
- the performance of the economy, and,
- the health and sustainability of communities

The report further emphasizes that the transportation system is the "supply chain upon which all other supply chains depend" and that policy that is developed should respect its "far reaching role as a key driver of the performance of all Canadian industries". It is also made clear that "the goal should be to embed these policies in a national framework that builds and optimizes the transportation system over the next 20 to 30 years."

The review recognizes that transportation is a large, complex system that is not amenable to quick fixes narrowly conceived. The framework for change that it proposes is far reaching. These changes are intended to ensure continuous investment in infrastructure, improve overall system performance (particularly ensuring superior shock-absorbing capability) and provide effective governance structures including renewed regulatory capacity.

To meet these outcomes, the report offers recommendations in two primary areas:

- Changes to the transportation governance framework that better integrate policy and planning across federal departments and between federal, provincial, and municipal jurisdictions.
- Legislative and regulatory change guided by a renewed vision and philosophy and supported by a renewed and strengthened Canadian Transportation Agency.

### Pulse Canada Position

Pulse Canada supports the review panel's focus on the importance of transportation, particularly rail transportation, to Canadian competitiveness in global markets. Pulse Canada also agrees the development of an improved public policy framework for dialogue on transportation issues should be developed.

It is essential that the framework for dialogue fully incorporate the voices of the users of the transportation networks and ensure full participation by user groups in any forums created to facilitate the development and review of policy. For the rail freight system, the users are the shippers, receivers, terminals, exporters and importers who generate the economic activity that creates wealth and security for Canadian communities and Canadian families.

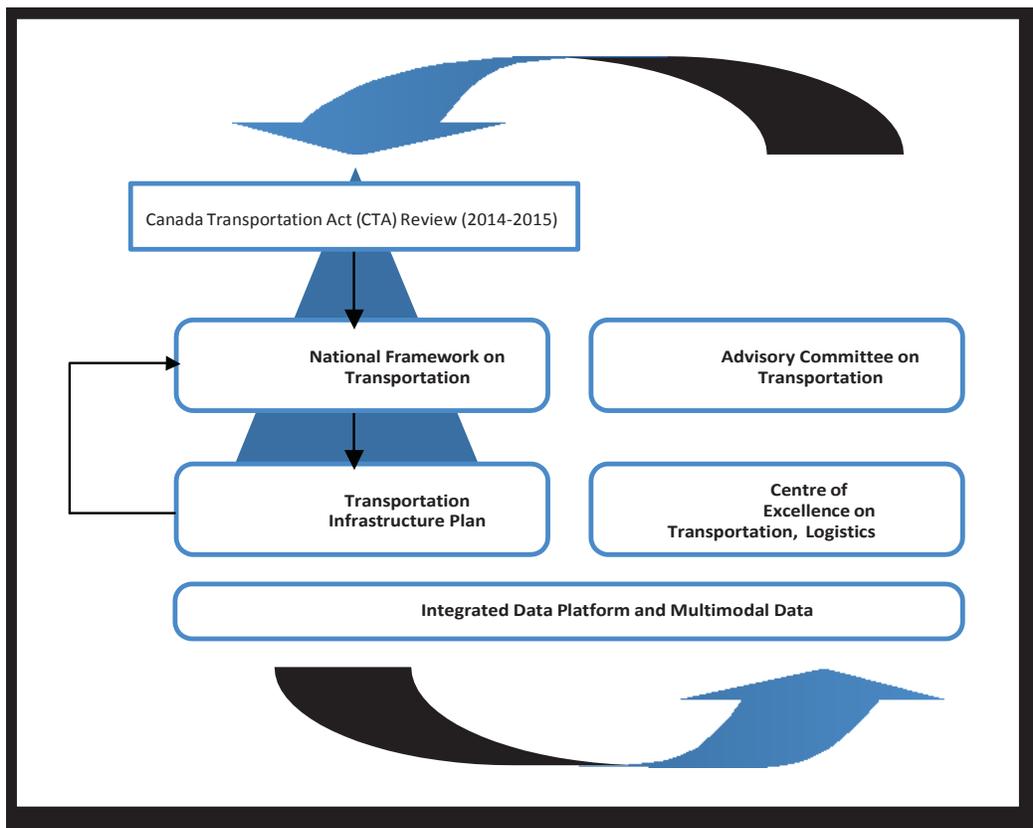
Pulse Canada fully supports the empowerment of the Canadian Transportation Agency with the authority, resources and information to improve its effectiveness.

## 2. Proposed Governance Framework

A key element introduced in the report is the requirement to introduce transportation governance that fully links the private and public sectors and all levels of government across federal, provincial and municipal jurisdictions. Citing examples from Australia, the UK and the EU, it is suggested that integrating the breadth of interests across Canada who have an interest in transportation will ensure a national framework that “is geared to strengthening its contribution to economic prosperity.”

While Transport Canada is currently the main entity responsible for the sector, it is suggested that an expanded governance framework would provide greater opportunity to ensure a more global transportation system vision. It is suggested the governance framework would eliminate the need for periodic reviews of the legislation and provide a consistent and constant venue for all stakeholders to “identify investment needs in trade-enabling infrastructure, describe the proper regulatory and policy environment, and provide long-term stability for investments and investors in the system.”

Figure 1 Proposed National Framework on Transportation and Logistics



The core proposal is to utilize the report as catalyst to develop “National Framework on Transportation and Logistics.” The Report contains the following specific recommendations:

- The creation of the Framework should be enshrined in the Act, replacing the requirement to conduct a periodic statutory review of the Act.

- The National Framework on Transportation and Logistics should include intermodal and sector-specific strategies and investment plans, as well as defined infrastructure projects for the next 10 to 30 years in a Transportation Infrastructure Plan and Projects Pipeline.
- The Framework should make provision, through the creation of an Advisory Committee on Transportation and Logistics, for an ongoing dialogue on transportation that includes representation from the entirety of Canada’s multimodal transportation system. The Committee would be chaired by the Minister of Transport and vice-chaired by the Minister of International Trade.
  - The Commodity Supply Chain Table would be incorporated into the proposed Advisory Committee
- The Advisory Committee should be assisted in its work by a new Centre of Excellence in Transportation, Logistics and Innovation that provides expert policy advice aimed at enhancing the state of the transportation sector in Canada and marketing its position as an international hub.
- A new Integrated Data Platform and Multimodal Data Dashboard should be established, preferably within the Canadian Transportation Agency, to support evidence-based decision making, and a more efficient and responsive transportation network among public and private sector stakeholders.

### Pulse Canada Position

Pulse Canada supports the concept of improved dialogue regarding transportation policy issues across federal departments and between federal and other jurisdictions. Pulse Canada emphasizes that any bodies created to support this goal must include the users of the transportation system in the discussions.

Pulse Canada supports the development of an integrated data platform (IDP) and multimodal dashboard and agrees that it should be established within the Canadian Transportation Agency. Pulse Canada emphasizes that it is critical that such an initiative ensure that transparent, timely, independent and comprehensive information on the capacity and performance of the rail freight system be available to support policy development, regulatory activity and shipper and carrier commercial planning and operations. A strong shipper voice in the development of such capability is essential if the IDP is to reach its full potential.

It is Pulse Canada’s view that the Agency is the best place to create and publish regular public railway and supply chain performance metrics. Pulse Canada is aligned with the widely held view that the Agency can operate with more independence from stakeholder influence than can a government department.

## 3. Canadian Transportation Agency

The Review has recognized that while market-based solutions are the primary means of ensuring positive outcomes in the transportation system “imbalances in market power will continue to be a constant source of friction to be managed.”

Managing this has resulted in the Review developing a recommendation to modernize the Canadian Transportation Agency through strengthening its mandate, equipping it with better tools and the “legislative and regulatory capacity to work in the best interests of Canadians as they take on the challenges of the next 20 to 30 years of global change.”

Specifically the Review recommends that the Government of Canada modernize the mandate of the Canadian Transportation Agency, giving it greater legislative and regulatory authorities by:

- amending the Canada Transportation Act to confer upon the Agency investigative powers, and the authority to act on the Agency’s own motion and on an ex parte basis, as well as to address issues on a systemic basis and to issue general orders (these new powers would only be executed on reasonable grounds, on issues related to the Agency’s mandate);
- adding provisions to the Canada Transportation Act that better define the power for Ministers and the Governor in Council to direct Agency activities or override Agency decisions, establishing clear criteria for such action;
- amending the Canada Transportation Act to allow the Chair of the Agency to delegate identified, routine regulatory approvals to Agency staff;
- establishing the new Integrated Data Platform and Multimodal Data Dashboard within the Agency, in accordance with Chapter 2, Recommendations 1 and 7, and providing the legislative authority to access and obtain relevant and strategic data consistent with its mandate; this new authority would also bestow the responsibility to do research, analyze system-wide trends, provide expert advice to Ministers, and take action where necessary to ensure on-going system fluidity and protect the well-being of Canadians;
- in accordance with Recommendation 5 in Chapter 8.1: Freight Rail, establishing a specialized rail unit, staffed by Agency experts, to lead and advise on informal dispute resolution issues, including level of service issues, and to provide support, or lead, alternate dispute resolution focussed on level of service complaints;
- providing the Agency with adequate financial resources and expertise commensurate with its enhanced mandate and legislative authorities.

### Pulse Canada Position

The report’s lack of emphasis on the market power imbalance between shippers and railways and the impact that this has on investment in the railway network and the level of service provided is not consistent with the views of Pulse Canada. Railways exercise significant market power over their customers and this market power must be offset by appropriate legislative and regulatory measures.

Pulse Canada supports measures to improve the effectiveness of the Canadian Transportation Agency and is in general agreement with all of the specific proposals above. The Agency acts as an important counterbalance to railway market power and giving it the authority to act expeditiously, to address systemic issues in addition to its existing role in adjudicating shipper specific complaints should reduce the burden on shippers to take on the cost and risk of level of service complaints.

## 4. Legislative Change Affecting Rail Freight Service

The Review has recommended a series of legislative changes that will provide the necessary conditions for a “healthy, market-driven transportation system supporting important Canadian supply chains—one that is safe, nimble, logistically efficient, and national in scope.”

Unlike the governance recommendations, many of these changes are specific to the rail sector and some are specific to the agriculture sector.

The Review describes the unique requirements of the rail sector and its strong connection to trade in natural resources and raw resources:

“Just as trade in these raw materials is long-standing, so too is our reliance on railways to transport them, typically over longer distances than other countries. Railways are the most cost-effective means of transporting heavy bulk goods across long distances inland. Indeed, in most cases, shipping these goods by rail is realistically the only way to move them.”

For agriculture, the Review specifically notes that “the ability to access the global market and remain competitive depends on effective rail service.” This is primarily due to distance travelled as “the cost of transporting Canadian grain is, proportionately, the largest element in the overall cost of production.”

In the report, these concerns drive many of the recommendations, particularly the issue of rail service for shippers where “access to reliable and efficient rail service is critical for the economic health and growth of industries, communities, and cities across the country; it is also an important factor for businesses in deciding where to invest.”

For agriculture it is noted that “if service is unreliable or unpredictable, contract penalties, lost sales, and lost premiums ensue; the shippers bear the costs, which are significant, and pass them back to farmers.”

The legislative changes are therefore focussed on long term recommendations to address shippers’ service concerns and to ensure the transportation system can support the growth of exports and the economy in the next 20-30 years.

### 4.1 National Transportation Policy

Section 5 of the Canada Transportation Act lays out the National Transportation Policy which provides the overriding goals of the Act and provides context for interpreting its provisions. In recognition of the importance of transportation to competitiveness, the report recommends that:

- the National Transportation Policy declaration in Section 5 of the Canada Transportation Act be amended to include more explicit recognition of the importance of transportation to international trade and our ability to compete in global markets.

#### Pulse Canada Position

Pulse Canada supports the idea that National Transportation Policy should recognize the importance of transportation to the competitiveness of Canadian industry. Pulse Canada emphasizes that this section of the Act is of particular importance in the interpretation of other provisions of the Act and extensive consultation should precede any potential change to Section 5.

## 4.2 Encouraging Investment in the Railway system

The report recognizes that railways do not bear the sole responsibility for capital costs in railway networks and that shippers also make substantial investments in loading, unloading, storage and handling facilities. The report recognizes however that: “absent any changes, railways will likely continue to operate at or near capacity, with minimal buffers for unexpected demand.” As one mechanism for encouraging investment in rail handling facilities, the report recommends the following changes in the Income Tax Act or its regulations:

- Reducing the number of railway asset categories to three, grouping together (1) rolling stock (including locomotives and railcars), (2) fixed physical assets (track, ballast, bridges), and (3) technological assets (including traffic control or signalling equipment, and other technologies that reduce the industries’ environmental footprint); and
  - i. increasing the capital cost allowance of category 1, rail rolling stock, on a permanent basis, to levels comparable to those in the United States; and
  - ii. increasing the capital cost allowance for a period of five years for categories 2 and 3, fixed physical and technological assets, to levels comparable to those in the United States; following this period, and prior to considering more permanent changes, conducting an evaluation to assess whether the changes were successful in increasing investment.
- Increasing the CCA rates for a period of five years for loading- or unloading-related capital investments for rail customers and transload facilities, including storage, warehousing, and track investments; this too would be followed by an evaluation, prior to considering more permanent changes, to assess whether the rate hikes were successful in increasing investment;
- Implementing a tax-credit program for non-Class 1 railway operators to offset the costs of track rehabilitation, similar to the *45G Short line Railroad Track Credit Program* in the United States.

### Pulse Canada Position

Pulse Canada supports any reasonable measures that will result in increased railway, shipper and receiver investments in railway capacity. In the CTA review coalition submission to the review that was supported by Pulse Canada, it was noted that from the beginning of 2000 to the end of 2012, railway workload increased by 34% but railway net capital investment was negative for 10 of the 13 years of that period. However railway operating income measured in constant 2007 dollars increased by 46% to \$4.25 billion in those years and it grew an additional 13% in 2013 to \$4.8 billion.

To ensure that any changes to the Income Tax Act and associated regulations actually result in increased levels of investment, Pulse Canada recommends that the Canada Transportation Act be amended to ensure that railways invest at levels that are sufficient to meet their statutory level of service obligations. Pulse Canada proposed the following.

*Amend the Canada Transportation Act to add a new section 115.1 as follows:*

*115.1 (1) A railway company shall deploy sufficient resources to fulfill its obligations under ss.113-114.*

- (2) In determining whether a railway company has deployed sufficient resources under (1), consideration shall be given to, in addition to any other factor that may be taken into account:*
- a. the expected level of demand of all shippers as determined on a reasonable basis;*
  - b. the necessity to provide a reasonable contingency to fulfill unexpected demand;*
  - c. the necessity to deal with railway operational challenges arising from normal seasonal weather patterns; and,*
  - d. reasonably anticipated growth in railway traffic.*

### 4.3 Railway Level of Service Obligations

The review panel notes that many shippers have advocated for a clearer definition of rail service obligations and the report agrees that the level of service provisions should be amended to include a more clearly defined goal.

The report recommends that:

- the level of service provisions in the Canada Transportation Act section 113-116 be amended to recognize shippers and their collective needs, in the context of the optimal performance of the freight rail system.

#### Pulse Canada position

Pulse Canada had advocated for changes to the sections of the Act that deal with railway service obligations to align level of service provisions of the Act with current National Transportation Policy to stress that the needs of the users of the system are paramount. Pulse Canada believes that the suggestion in the report to improve the level of service provisions by recognizing shippers' needs can form the basis for changes in the Act that reinforce shippers existing rights.

Pulse Canada advises government to move carefully on any change to these critical sections of the Act. Railways have significant market power and any amendment to the Act that does not recognize this market power, either intentionally or unwittingly, under the guise of the "optimal performance of the freight rail system" could weaken current shipper protections under the Act. 'Optimal' for railways will be restricted capacity to enable full network utilization at maximum freight rate levels that do not reflect the conditions that would apply in competitive markets.

Pulse Canada believes that the panel's intention was that "optimal" performance presumes that the system operates for the benefit of users and will continue to advocate for change that reinforces this important principle.

### 4.4 Changes to Dispute Resolution / Service Level Agreements

The report recommends the establishment of a special unit within the Agency that can assist shippers and railways in finding solutions to disputes regarding railway service. The unit would be staffed with experts in rail transportation and mediation and arbitration of disputes. The Review recommends that:

- The Agency establish a dispute resolution unit and exercise its expertise on railway network operations within the organization in order to provide more effective and timely informal dispute resolution options that help to resolve operational issues between shippers and railways prior to them escalating into formal Agency proceedings;
- this unit include or advise Agency officials responsible for providing informal expert support, as noted above, when parties attempt to reach and conclude terms of negotiated arrangements;
- Agency officials providing alternative dispute resolution services (mediation, facilitation, arbitration) report within the new organizational unit noted above

Recommendations have also been made on the conduct of railway service level arbitrations under the current section 169.31 of the Act. These recommendations include the requirement for service level agreements to include “reciprocity” as one of the parameters of the agreement.

The report also makes a recommendation dealing with the use of mandatory mediation between shippers and railways before they embark on dispute resolution, presumably with regards to service level arbitration under section 169.31. They recommend that:

- Before they proceed to formal dispute resolution, shippers and railways be subject to conciliation or mediation.

### Pulse Canada Position

Pulse Canada supports the recommendation for the creation of a dispute resolution unit within the Agency that has a mandate to support alternative dispute resolution between shippers and railways.

On the recommendation that service level agreements provide for “reciprocity” between shippers and railways, Pulse Canada has always stressed that railways have extraordinary market power and the tariff making authority to impose conditions on shippers. Pulse Canada believes that shippers should have the ability to ask for financial consequences that railways would face if they fail to meet the conditions specified in a service level agreement.

Pulse Canada believes that it was the review panel’s intent that the inclusion of the term “reciprocity” was meant to confirm that financial consequences for railway non-performance should be a standard element of service level agreements.

Pulse Canada believes the addition of financial consequences for non-performance, enhances the current regulations published by the Agency governing the operational terms that are subject to negotiation in a service level agreement.

Pulse Canada does not support the recommendation that shippers should be subject to mandatory arbitration or conciliation prior to embarking on formal service level arbitration under 169.31. Shippers are already required to engage in good faith negotiations, and such negotiations can continue up to and during the arbitration process. Forcing shippers to embark on mandatory mediation may weaken their position in an arbitration by providing a free form of “discovery” to railways.

## 5. Measures specific to Agriculture

The review notes that the federal government has regulated grain freight rates, and other aspects of grain transportation in Western Canada since 1897. The report notes that for agricultural shippers in Canada, the ability to access the global market and remain competitive depends on effective rail service.

The report notes that past failures of the system have been caused in part by poor visibility of supply chain capacity and performance and by railways inability to deal with extreme seasonal weather effects and the pressures that they face in balancing service with financial pressures to achieve high levels of asset utilization.

### 5.1 The Maximum Revenue Entitlement

The review proposes that over time, the railway grain maximum revenue entitlement provisions (MRE) of the Act be phased out and that in the short term, changes be made to address a number of technical and policy related issues. The review recommends that:

The Maximum Revenue Entitlement Program be modernized, in anticipation of its total elimination within a seven-year time horizon, as the Western Canadian grain-handling-and-transportation system evolves to a more commercially grounded framework. Modernization should consider, but not be limited to, all of the following:

- Excluding the movement of containerized grain from Maximum Revenue Entitlement calculations;
- Allowing railways to set aside up to one-third of their respective railcar fleets, for which shippers may pay “freight premiums” to guarantee railcar supply and service. These “premiums” would be excluded from the railways’ respective Maximum Revenue Entitlements and charged under specific programs or conditions (e.g. winter premiums from December to March, or an auction program whereby a pool of grain hopper cars are set-aside for auction to the highest bidder, etc.); such programs should be designed to include the less than unit-train shippers;
- Excluding interswitching (i.e. revenues earned, costs, and tonnage moved) from the Maximum Revenue Entitlement calculations to prevent unfairness and financial harm to railways and to remove a barrier to the use of interswitching;
- Reforming the Maximum Revenue Entitlement methodology to allow for attribution of individual railway investments in capacity, and creating incentives for overall railway investment in new equipment and railcars for the benefit of all shippers;<sup>22</sup>
- Expanding the list of eligible crops subject to the Maximum Revenue Entitlement and listed in Schedule II of *Canada Transportation Act* to include chickpeas and soybeans, in recognition of their increased production in Western Canada.

## Pulse Canada Position

There is no evidence presented that would support the statement that that elimination of the MRE would result in a 'more commercially grounded framework' nor the implied assumption that the MRE elimination would lead to improved access to capacity and improved levels of service to the grain industry. Any changes that may be contemplated to this regime must be preceded by a thorough, transparent and independent review of: railway profitability on the movement of grain; the impact, if any, of the MRE on railways' investment in system capacity, and network efficiency. The goal of any changes in the regulation of grain transportation should be to ensure that grain shippers have access to railway service and freight rates that would exist in a rail freight market with effective competition between railways. Such a market does not exist due to economies of scale in railway transportation and the existing restrictions on competitive access to Canadian railway networks.

Proceeding to identify major changes to the MRE regime without a thorough quantitative analysis of the current system may result in public policy errors that would harm the grain industry.

Pulse Canada agrees with the panel that chickpeas and soybeans should be added to the list of crops in Schedule II.

## 5.2 Interswitching and Extended Interswitching

While included in section 8.2 of the report, recommendations are made for changes to Interswitching regulations that would presumably apply to all commodities shipped by rail. The report alleges that current interswitching rates which are established from time to time by the Canadian Transportation Agency, are not fully compensatory to railways and that they are not, as required by the Canada Transportation Act, "commercially fair and reasonable to all parties."

The review recommends that:

- the Canadian Transportation Agency review its methodology pertaining to interswitching rate setting methodology to make them compensatory. The Review further recommends that the Agency be permitted to set interswitching rates annually, to better reflect actual costs, and not only when the *Railway Interswitching Regulations* are reviewed and published.

In August of 2014, Parliament passed legislation that extends the interswitching distances for grain and all other commodities from a maximum of 30 km to 160 km for Alberta, Saskatchewan and Manitoba. This measure was intended to increase competition among Class 1 railways. This expanded the number of grain elevators that had access to competition between railways through interswitching from 14 to 150 locations. The review claims that "very few" shippers have availed themselves of the extended limits and they expect little impact if the rates are allowed to "sunset" as provided for under the Act.

The review recommends that:

- the Government of Canada allow the extended 160 km interswitching limits, as defined under the amended *Railway Interswitching Regulations* and related to the *Fair Rail for Grain Farmers Act* (Bill C-30), to sunset.

## Pulse Canada position

Pulse Canada does not agree with the report's contention that Interswitching rates are "not compensatory". Interswitching rates are based upon actual railway costs and provide for a full return to the railway for variable costs and a contribution to fixed costs including the cost of capital. These rates are a critical pro-competitive element of the current regulatory environment that were introduced specifically as a shipper protection measure to enhance competition between railways, in recognition of their considerable market power. While it may be sensible to allow the Agency to publish interswitching rates on a more frequent basis, no changes are required to the current regime to make rates compensatory.

Pulse Canada does not agree that the relatively infrequent formal use of extending interswitching to 160 km makes this feature of the regulatory regime of limited effectiveness or impact. The measure of success of extended interswitching is not in how many times it is used but rather its effectiveness in creating competitive forces. The existence of this pro-competitive shipper protection measure provides strength to shippers in negotiations with railways, regardless of whether or not the shipper actually decides to use the extended interswitching options. In that regard, success will mean the use of this particular provision is the exception to the rule.

The 160 km limit should be made a permanent feature of the regulatory regime - not allowed to sunset.

## Appendix A - Summary of Ag CTA Review Coalition Recommendations

**Recommendation 1**      **Restore the Canadian Transportation Agency's power to act on its own motion and ex parte<sup>1</sup>.**

**Recommendation 2**      **Improve the Agency's sources of information about the rail freight transportation system.**

2a      Enhance railway reporting to the Agency

2b      Provide in legislation for independent, detailed, comprehensive and timely monitoring and reporting on railway service performance for all commodities.

2c      Ensure that the Agency has the responsibility, authority and resources to engage on an on-going basis with stakeholders in the rail freight transportation system.

**Recommendation 3**      **Strengthen level of service provisions of Act.**

Make clear through amendment to the level of service provisions that railway services must meet the needs of the users of the system and promote competitiveness and economic growth and that the commercial needs of the users of the system are paramount in any consideration of railway service performance.

**Recommendation 4**      **Provide for financial consequences for non-performance in service level agreements and in Agency decisions on service level complaints.**

4a      Consistent with the recommendations of the Rail Freight Service Review Panel, amend the *Canada Transportation Act* to allow shippers to

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<sup>1</sup> An ex parte order is one made on the request of and for the benefit of one party only. This is an exception to the basic rule of legal procedure that both parties must be present at any argument before a decision is rendered. As a result, ex parte matters are usually temporary orders made to deal with urgent situations pending a formal hearing or investigation.

include financial consequences for railway performance failures in service level arbitrations.

- 4b Provide the Agency with power to award damages against the railway on a finding that the railway is in breach of its level of service obligations.

**Recommendation 5**      **Make the use of threats and intimidation by railway employees punishable by fines.**

**Recommendation 6**      **Amend Section 120.1 of the Act to allow review of all freight tariff charges and conditions (other than a rate for the movement of traffic) by the CTA, upon application by the shipper.**

**Recommendation 7**      **Make improvements to service level arbitration.**

- 7a Delete section 169.37(d) requiring the arbitrator to consider a railway's service obligations to other shippers and persons
- 7b Make the definitions of operational terms published pursuant to *Fair Rail for Grain Farmers Act* permanent and amend the wording of section 2(2)(j) make reference to Force Majeure and delete the itemized list of circumstances referred to in subsections (i) through (x).

**Recommendation 8**      **Improve the current pro-competitive measures in the *Canada Transportation Act*.**

- 8a. Amend section 138 of the Act to allow the Agency to grant running rights to a shipper or railway company without requiring as a precondition of relief, proof of a rate or service failure by the host railway
- 8b. Make permanent the changes to interswitching.

**Recommendation 9**      **Add soybeans and chickpeas to Schedule 2 of the Act to bring these crops under the definition of regulated grains.**

**Recommendation 10**    **Maintain the maximum grain revenue entitlement without change, while at the same time quantifying railway profitability on the export movement of regulated grain to demonstrate if and how it is a disincentive to investment.**