



Transportation of Coal: A Regulatory Perspective

Coaltrans – West Coast

Vancouver, BC

May 7/8, 2014

François Tougas

Context of Negotiations

- Coal mines are captive
- Negotiations for rail and port prone to bargaining power of service providers
- Statutory relief for rail shipments
- No statutory relief at terminals
- Results: uncompetitive rates and service at points of delivery

Rail Regulation & Dispute Resolution

- Final offer arbitration (FOA)
- Level of service (LOS) complaint
- Service level agreement (SLA) arbitration
- Interswitching
- Ancillary charges complaint
- Competitive line rates (CLR)
- Running Rights

Final Offer Arbitration

- FOA most common remedy
 - Initiated by shipper
 - Third party, independent arbitrator
 - Baseball style
 - 60 days from initiation to decision
 - Confidential
 - Limited rights of appeal

Level of Service Complaint

- LOS complaint
 - Two dozen cases since 1987
 - Canadian Transportation Agency
 - Statutory standard of service
 - “adequate and suitable accommodation”
 - Prospective relief for past conduct
 - Damages require further court proceeding
 - Public process/hearings less common

Service Level Agreements

- In 2013, a new right to a SLA was added to the Act
- Negotiated SLA
- Arbitrated SLA
 - 45 day process (can be extended to 65 days)
 - Agency and private arbitrators
 - Mandatory arbitral considerations (needs of shipper, captivity, network effects, operational requirements and restrictions, etc.)
 - Limited appeal rights, mostly confidential

Service Levels & Capacity Constraints

- Winter: shorter trains = reduced capacity
- Once in 100 year bumper crop for grain
- Grain shipper complaints: wasted crops, lost sales, discrimination
- Legislative response = Bill C-30
 - Allocates capacity to grain shippers at expense of other commodities

Bill C-30

- Minimum weekly grain volume requirements
 - Carrier penalties for performance failures
- Increased Agency powers
 - Expanded interswitching limits on Prairies (from 30 km to 160 km)
 - Define “operational terms” in SLA mechanism
 - “Expenses” of shippers for failures recoverable

Bill C-30 (cont.)

- Gov't pledges
 - Require more data from carriers
 - Accelerate statutory review of the Act
- Other impacts
 - Will carriers make up lost revenue at the expense of captive shippers?
 - Will carriers use Bill minimum grain volume requirements as reason to reduce service elsewhere?

Supply Chain Optimization

- Shipper volume forecasting to commitment
- Forecast adjustability is key
- Flex for recovery by carrier
- Data disclosure and performance metrics
 - Loading, Unloading
 - Carriage dwells and transits
- Consequences for failures and performance
- Adequate equipment
- Communication protocols

Questions?