



**Western Canadian Shippers' Coalition**

*Representing Canadian-based companies and associations  
that move mainly resource products through the supply  
chain to domestic and international customers.*

**The Senate of Canada**

**Standing Senate Committee on  
Transport and Communications**

**Speaking Notes submitted by  
Western Canadian Shippers' Coalition**

**February 6, 2018**

## **Introduction**

Good morning, Mr. Chair and honourable senators. On behalf of Western Canadian Shippers' Coalition – WCSC, I would like to thank you for the invitation to participate in this session. My name is David Montpetit. I am the President and CEO of WCSC.

## **About Western Canadian Shippers' Coalition**

WCSC represents companies based in Western Canada that move mainly resource products through the supply chain to domestic and international customers. A list of our members and additional information about WCSC's objectives and activities are included at the beginning of our written submission.

WCSC members represent a range of commodity sectors. Because they ship large volumes, typically from remote locations, they are completely dependent on rail, and, in most cases, on the single rail carrier that serves their facility. They cannot take their business elsewhere if they are not satisfied with the railways' rates or service. That creates a significant imbalance in the commercial relationship.

Our members prefer to resolve issues commercially, but to do so they require effective and accessible shipper remedies to counteract that imbalance.

## **Bill C-49: *Transportation Modernization Act***

WCSC has concerns with a number of the measures contained in Bill C-49. However, at this stage we are focused on two key areas where we believe the Bill misses the mark and where minor adjustments are necessary to help promote a more competitive, balanced and efficient transportation system.

### **1. Agency Own-Motion Powers**

The first concerns the inability of the Agency to exercise the authority it already has over certain aspects of rail transportation unless it receives a specific complaint.

This is especially problematic when it comes to rail service issues affecting broader areas of a rail network. A case in point was the service crisis of 2013-2014 that affected not only grain but also the sectors in which our members operate. The Agency did receive a handful of complaints that year, but it was forced to deal with each of them in isolation rather than being able to consider them together or as part of a systemic issue.

We are now seeing another rail service crisis in Western Canada. Service levels on CN deteriorated badly beginning last summer and have continued in a downward spiral into late fall, early winter affecting multiple sectors. A number of our members have been forced to operate at curtailed production rates. Some have come within hours of a forced shut down because they could not get rail service. There is every indication that this is a systemic issue on CN's Western network, and that it is still ongoing.

A complaint by one shipper might bring that shipper some relief, but it will not prevent the railway from robbing Peter to pay Paul. We saw that in 2014.

That is why we need the Agency to be able to trigger an investigation and seek input from all those involved or affected – as it was able to do in connection with the Air Transat tarmac delays last summer.

Our written submission explains why we do not believe this would result in shifting policy making from the department to the Agency, but if that remains a concern, we would be pleased to provide more narrowly focused wording to target the specific areas of the Agency's mandate where this is most needed.

## **2. Railway Costing in Final Offer Arbitration (FOA)**

Our second area of focus is final offer arbitration – FOA. It is the only remedy that allows a shipper to challenge directly the rates that are imposed unilaterally by the railway. So it is essential that it remain effective and accessible.

Our written submission provides additional background on FOA and on the amendment that WCSC is recommending. In essence, we want the arbitrator who is tasked with selecting the rates and conditions that will govern the traffic at issue to have access to all relevant information and the shipper to have an equal opportunity to properly present its case and challenge the railway's case. Access to rail costing information is essential for this.

Railway costing is a highly technical subject. The Agency maintains a regulatory rail costing model and has provided this type of assistance to arbitrators in the past. We are recommending that this be made available in every FOA.

I want to be clear about one thing: what we are advocating is not a return to “cost-plus” rate making. Our recommendation would make an Agency costing simply one of many factors the parties can rely on and the arbitrator can consider.

The amendment proposed by WCSC – as well as several other stakeholders – is necessary to help level the evidentiary playing field in FOA and streamline the process.

I would be pleased to address any questions you may have.