

# CONSEQUENCES OR CONJECTURES: THE IMPACT OF EXTENDING RAILWAY INTERSWITCHING LIMITS<sup>1</sup>

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## Introduction

The *Canada Transportation Act* (the “Act”) requires every federally regulated railway company to “afford to all persons and other companies all adequate and suitable accommodation for ... the transfer of traffic between its railway and other railways....”<sup>3</sup> When those transfers occur at an interchange located within a prescribed radial distance of the point of origin or destination of rail traffic, they are known as regulated interswitching (“RIS”) and subject to rates and conditions set by the Canadian Transportation Agency (the “Agency”).

In late March 2023, the federal Government introduced amendments to the Act that extended RIS limits in three Canadian Provinces from 30 km to 160 km. Extended regulated interswitching (“ERIS”)<sup>4</sup> took effect in Alberta, Saskatchewan and Manitoba in September 2023. Barring further legislative amendments, it will remain in place for eighteen months. In most respects, the current version of ERIS mirrors what was in effect from August 1, 2014, to July 31, 2017, under the *Fair Rail for Grain Farmers Act*. This earlier version of ERIS, originally intended to remain in place for only two years, was ultimately allowed to sunset after three years.

The reintroduction of ERIS has drawn intense debate and criticism.<sup>5</sup> Critics of ERIS claim it will result in operational inefficiencies, encourage the diversion of Canadian rail traffic to the United States and undermine the financial viability of Canadian railway companies. Most recently, the Railway Association of Canada (“RAC”) launched a campaign urging the federal Government to repeal ERIS, claiming, among other things that available data proves that the measure is “bad policy that will disadvantage Canadian companies, Canadian workers and all consumers.” In many – though not all - instances, critics of ERIS point to the experience from 2014 to 2017 as evidence supporting their predictions of harmful consequences.<sup>6</sup>

In this paper, we examine some of the recent predictions in the light of publicly available data related to the ERIS experience from 2014 to 2017 and conclude that the available data offers little if any evidence of the alleged threats posed by ERIS.

### **The underlying premise: ERIS will materially increase the volume of traffic that railways are required to transfer at interchanges**

Many of the criticisms levelled at ERIS are premised on the assumption that making RIS available over longer distances will materially increase the volume of traffic that railways must physically transfer at prescribed rates. This premise, sometimes explicit<sup>7</sup> but not always, underlies predictions that Canadian traffic will be diverted to rail carriers in the United States, that there will be more congestion and less network fluidity and that, ultimately, the financial viability of Canadian rail carriers will suffer.

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While comprehensive data regarding the frequency of RIS beyond the 30 km radial limit from 2014-2017 has not been made public, whether by RAC, Canadian National Railway Company (“CN”), Canadian Pacific Railway Company<sup>8</sup> (“CP”), the federal Government or anyone else, the information that is available does not support this premise.

According to information Agency staff provided to the House of Commons Standing Committee on Transport, Infrastructure and Communities (“TRAN”) in 2016,<sup>9</sup> only 600 carloads were interchanged using ERIS in the last five months of 2014, and that number grew to only 2900 carloads for the full year 2015. The latter figure represents less than 0.1% of the total number of carloads originated on Canadian railways in 2015, as reported by RAC.<sup>10</sup> In proceedings before the United States Surface Transportation Board (“STB”) concerning a proposed rule-making in relation to reciprocal switching, CN testified that interswitching beyond the 30 km radius (*i.e.*, traffic that moved under ERIS rates) accounted for less than 2% of all of CN interswitching during the currency of the 2014-2017 ERIS period,<sup>11</sup> which in turn represents only a portion of CN’s total traffic in Canada.

While carload origination figures by Province are not publicly available, Statistics Canada data provides insight into annual volumes in metric tonnes of rail freight originated in each Canadian Province.<sup>12</sup> For 2015, the combined total of traffic originated in the three Prairie Provinces was 123,363,023 metric tonnes. Assuming an average payload of 80 metric tonnes per car, this volume would translate to approximately 1.5 million carloads.<sup>13</sup> The 2900 carloads interchanged by CN and CP using ERIS in 2015 represent less than 0.2% of this figure.

Possible explanations for the limited use of ERIS to require actual transfers of traffic include the following:

*Shipper preference for single-carrier, direct routings*

First, shippers tend to prefer single-carrier, direct routings to more complex or circuitous routings that require the participation of multiple carriers. The use of ERIS does not necessarily add complexity, handling requirements or mileage. In those situations where it does, however, RAC’s comparison<sup>14</sup> of RIS to taking an indirect rather than a direct flight is apt. Adding a stop, requiring a longer routing or, worse, travel in the opposite direction from the intended destination, and adding waiting time en route are unlikely to be any more attractive to rail shippers than they are to air travellers.

*Shipper exposure to origin carrier rates*

Secondly, unless competitive access is available at both the origin and the destination of a particular movement, a shipper is unlikely to use ERIS to compel the physical transfer of its traffic. For example, transferring the traffic from carrier A to carrier B at origin is unlikely to produce net practical benefits for the shipper if the traffic must ultimately be transferred back to carrier A for the final leg of the movement where carrier A can recoup any reduction in revenue on the initial leg. Similarly, where ERIS is only an option for some of the origin-destination pairs or lanes for which the shipper requires rail transportation, the incumbent carrier may be able to impose rate increases on the shipper’s remaining traffic that offset or exceed any potential cost savings the shipper may realize on lanes where ERIS would otherwise be an option.

*Incentives offered by the incumbent line haul carrier*

Thirdly, as the Agency has noted, rail carriers “... can dissuade a shipper from availing itself of interswitching options by offering lower rates and/or equal or better service than the competing carrier.”<sup>15</sup> The low uptake of ERIS during 2014-2017 suggests that Canadian railways were largely able to do so.

An incumbent carrier’s ability to fend off those prospective competitors who could gain access to the line-haul of a shipper’s traffic via ERIS depends in part on the cost to the competitors of securing that access, *i.e.*, the ERIS rates. At a minimum, a connecting rail carrier wishing to compete with the incumbent must effectively absorb the ERIS rate and still offer the shipper a rate and service package that is more attractive to the shipper than that of the incumbent.

Under both the previous and the current ERIS regime, the applicable rates are composed of a base amount plus an additional charge per km of track distance beyond 40 km.<sup>16</sup> During the 2014-2017 ERIS period, the ERIS rate for transfers of single cars and blocks up to 59 cars (“Single Car Rate”) over a rail distance of 50 km was \$346 per railcar, and the ERIS rate for transfers of blocks of 60 cars or more (“Car Block Rate”) was \$134 per railcar. For movements of 160 km, the applicable rates were \$577 and \$310, respectively.

While line haul rates on individual lanes vary widely and are shaped by a multitude of factors, a comparison to the reported average revenues per carload of CN, CP and BNSF Railway Company (“BNSF”) can perhaps provide some sense of the order of magnitude of the ERIS rates. Figure 1 shows the average revenue per carload and the corresponding average length of haul for the three carriers in 2015. Percentage values shown represent the ERIS rates for 160 km and 50 km movements as a percentage of each railway’s average revenue per carload.

Figure 1 – Comparison of 2015 average revenues per carload to 2014-17 ERIS rates per railcar for movements of 50 km and 160 km

2015	Average revenue per car	Average length of haul	ERIS (Single Car)		ERIS (Car Block)	
			160 km	50 km	160 km	50 km
CN <sup>17</sup>	\$2,170	1,170 km	26.6%	15.9%	14.3%	6.2%
CP <sup>18</sup>	\$2,493	1,373 km	23.1%	13.9%	12.4%	5.4%
BNSF <sup>19</sup>	\$2,615	1,876 km	22.1%	13.2%	11.9%	5.1%

Figure 2 provides the same illustration for the fourth quarter of 2023 (the only period for which all three carriers have reported average revenue per carload and which coincides roughly with the time during which the 2023 ERIS rates were in effect). The 2023 ERIS rates for the same movements were considerably higher, as are the 2024 ERIS rates. For a 160km movement in 2023, the Single Car Rate was \$1,387 and the Car Block Rate was \$536 per railcar, representing increases of 140% and 73% from the 2014-2017 ERIS rates. For a 50km movement, the 2023 ERIS rates were \$894 and \$350 per railcar, respectively, representing increases of over 150% from the 2014-2017 ERIS rates.

Figure 2 – Comparison of 2023 (Q4) average revenues per carload to 2023 ERIS rates per railcar for movements of 50 km and 160 km

2023	Q4 Average revenue per car	Average length of haul (annual)	ERIS (Single Car)		ERIS (Car Block)	
			160 km	50 km	160 km	50 km
CN	\$3,100	~ 1,126 km	44.7%	28.8%	17.3%	11.3%
CPKC	\$3,168	1,405 km	43.8%	28.2%	16.9%	11.0%
BNSF	\$3,451	1,820 km	40.2%	25.9%	15.5%	10.1%

According to Agency staff’s 2016 testimony before TRAN, the use of ERIS in 2014 and 2015 was greater at shorter distances,<sup>20</sup> which may well reflect the higher ERIS rates that prospective competitors had to absorb for longer ERIS movements compared to the gross revenue they could hope to gain from the traffic. The current ERIS rates would likely require connecting carriers to pay out a greater portion of their potential revenue to the incumbent than in 2015. If the levels at which ERIS rates were set in 2015 contributed to deterring connecting carriers from competing for traffic using ERIS thereby enabling incumbents to retain most of their customers’ traffic on their own networks, the current rates may well exert a stronger influence in both respects. If anything, the data shows that current ERIS rates are far too high to do the job intended.

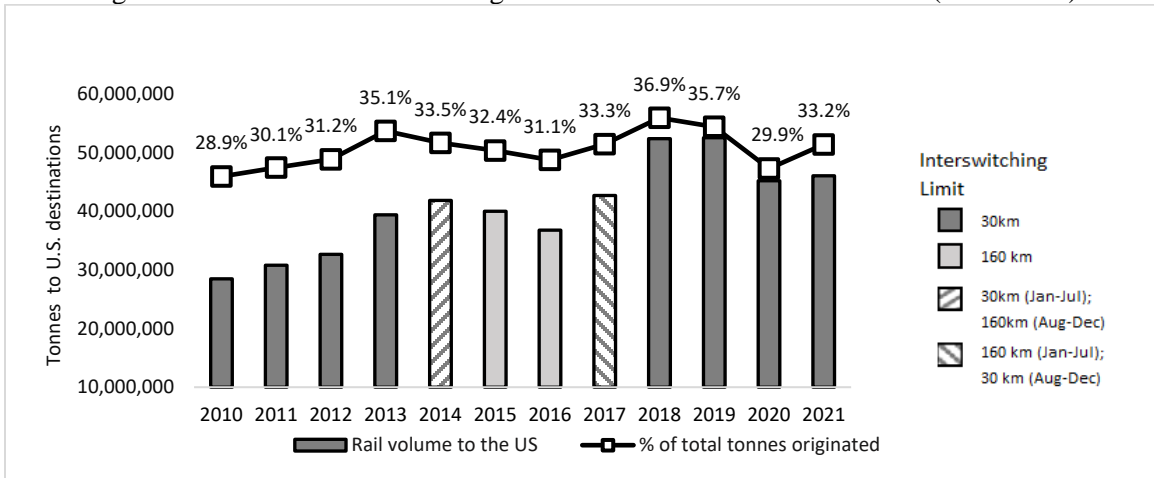
**Diversion of Canadian Traffic to the United States**

Predictions that ERIS will result in the diversion of Canadian rail traffic to U.S. carriers encompass not only claims that U.S. carriers with limited networks in Canada will be able to capture a greater portion of the line haul on existing cross-border traffic, but also the prospect that rail traffic that would otherwise move entirely within Canada will be diverted to destinations in the United States.<sup>21</sup>

Publicly available information demonstrates, however, that the previous three-year ERIS period did not result in a material shift of Canadian rail traffic to U.S. destinations or corridors. In a 2022 filing before the STB, CP testified its “real-world experience” in 2014-2017 was that “... the access of certain shippers to Regulated Interswitching over longer distances ... did not significantly alter transportation shipping patterns.”<sup>22</sup>

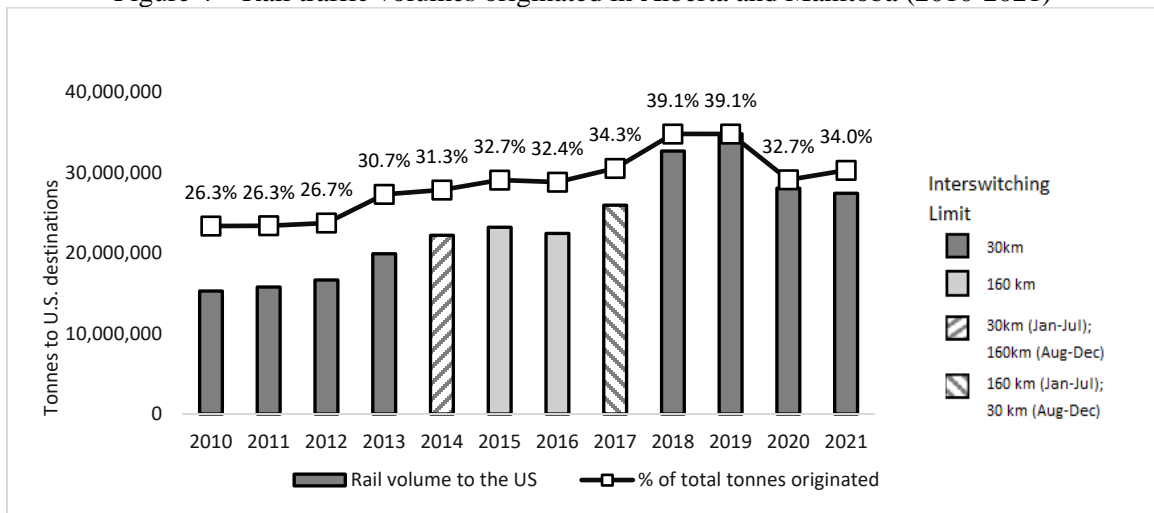
Rail shipment data published by Statistics Canada is consistent with this testimony and indicates that this experience was not limited to CP. Figure 3 shows the annual volumes of rail traffic in metric tonnes originated in Alberta, Saskatchewan and Manitoba from 2010 to 2021 to destinations in the United States.<sup>23</sup> These volumes did not increase during the 2014-2017 ERIS period, either in terms of total tonnage to U.S. destinations or as a percentage of total tonnage originated in those Provinces.

Figure 3 – Rail traffic volumes originated in the three Prairie Provinces (2010-2021)



Saskatchewan has no interchanges between Canadian and U.S. rail carriers, and the interchanges in Alberta and Manitoba accessible by U.S. carriers are outside the maximum ERIS radial distance of 160 km of any point in Saskatchewan. Even if one limits the analysis to rail traffic originated in Alberta and Manitoba, the data shows that the volume of U.S. bound shipments from these two Provinces stayed relatively flat while ERIS was in effect, and increased substantially after it was allowed to sunset, as shown in Figure 4 below.

Figure 4 – Rail traffic volumes originated in Alberta and Manitoba (2010-2021)



The available data suggests that, despite the availability of ERIS rates, U.S. rail carriers were not willing or able to offer freight rates sufficiently below the corresponding rates charged by Canadian railways to port terminals or other destinations in Canada to bring about a material shift of volumes of traffic to U.S. ports or other U.S. destinations. If that was the case in 2014 - 2017, the significantly higher current ERIS rates render the possibility of such a traffic shift that much less likely.

The sizeable capital investments that several large rail shippers in Western Canada have made in terminal capacity at Canadian ports<sup>24</sup> should also be considered in this context. It is not clear why these shippers would shift traffic away from Canadian gateways to ports or other destinations in the United States only to leave their own terminal assets underutilized.

The Statistics Canada data does not capture the extent to which shippers in Alberta and Manitoba availed themselves of ERIS for *existing* U.S. bound traffic during the 2014-2017 ERIS period. While there is some evidence of such use, the actual volumes, at least until September 2016, were quite small.

Before the House of Commons Standing Committee on Transport, Infrastructure and Communities, in its 2016 study of various provisions of the *Fair Rail for Grain Farmers Act*, a representative of CP testified that during the 16 months from May 2015 to August 2016, BNSF obtained 3,945 carloads from CP through the application of ERIS.<sup>25</sup> This represents less than 0.2% of CP’s total carloads during this period, based on CP’s quarterly financial reporting for 2015 and 2016,<sup>26</sup> and less than 0.5% of the total rail freight traffic that originated in Alberta and Manitoba in calendar year 2015.<sup>27</sup>

### Network Fluidity and Congestion

No one has provided any clear evidence that ERIS resulted in network delays or congestion in 2014 to 2017. Figure 5 below shows operating statistics reported by CN and CP in annual reports and investor factbooks covering the ten-year period from 2011 to 2020.

Figure 5 - CN and CP operating statistics 2011 - 2020

<b>STATISTICAL HIGHLIGHTS [CP]</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Average terminal dwell (hours)	8.9	7.5	7.1	8.7	7.2	6.7	6.6	6.8	6.4	6.5
Average train speed (miles per hour)	15.2	18	18.2	18.0	21.4	23.5	22.6	21.5	22.2	22.0

<b>OPERATING METRICS [CN]</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Car velocity (car miles per day)	197	205	205	199	224	236	200	184	194	185
Yard productivity (cars per yard switching hour)	36.1	38.3	42	44	48	51	51	49	47	46
AAR Terminal Dwell (hours)	16.5	15.6	15.8	16.9	15.0	14.0				
Through dwell (hours)				8.3	7.3	6.9	7.7	8.3	7.9	8.6
AAR Train velocity (miles per hour)	27.3	27.2	26.2	25.7	26.3	27.3				
Through network train speed (miles per hour)				20.3	21.5	22.5	20.3	18.0	18.5	19.2

If anything, these reported metrics point to improved system performance during 2015 and 2016, the two full calendar years during which ERIS was in effect. The allegation advanced by some that the 2014-2017 ERIS regime complicated supply chains and that the resulting “hit to productivity is largely what led to the elimination of the 2014-2017 policy,”<sup>28</sup> is clearly false.

The effect of ERIS on network fluidity in Canada from 2014 -2017 was one of the issues raised in the STB proceeding on reciprocal switching. In response to testimony highlighting improvements in cycle times for

grain transportation to the Western Canadian ports and reduced network congestion during this period, both CN and CP provided written comments noting that many pertinent variables that can significantly influence these metrics, such as length of haul, unit-train vs. single-car handling, the number of interchanges involved in each movement, extreme weather and traffic volumes, were not included in the analysis.<sup>29</sup> The same criticism can, however, be levelled against overly simplistic predictions that equate ERIS with more complex routings or a reduced ability on the part of the railways to control congestion and a deterioration in network fluidity. Clearly, a far more nuanced approach is required to assess the causal relationships between the availability of ERIS and material changes in network fluidity.

In this context, it is worth noting, as CN did in its comments filed with the STB, that “during high-volume periods CN consistently experiences less interest in regulated interswitching from shippers... [and that] ... customers reacted to CN’s service issues that happened to occur after the expiry of extended interswitching by using less regulated interswitching, not more.”<sup>30</sup>

### **Regulated vs. “market” rates**

Much of the criticism that arose in response to the 2023 amendments that re-introduced ERIS has focused on the fact that regulated rates set by the Agency are unlikely to be reflective of market rates that rail carriers would otherwise impose on captive traffic or negotiate among themselves for similar transfers of traffic. Some critics wrote of railways being forced to charge “less than marginal cost” for ERIS, others of ERIS rates that “likely won’t allow railway companies to break even.”<sup>31</sup> These pronouncements are remarkable for a variety of reasons, not the least of which is that they pre-date the Agency’s determination of actual ERIS rates by several months.<sup>32</sup>

Bald assertions that ERIS rates, and RIS rates generally, are or are likely to be non-compensatory echo concerns raised during the review of the Act in 2014-15 (“CTAR”). In his final report, David Emerson recommended a comprehensive review of the Agency’s interswitching rate methodology which would “... determine whether they are truly compensatory in all or most instances”<sup>33</sup> and further recommended that the Agency be permitted to set rates annually without requiring amendments to regulations in order to make rate-setting more responsive to changes in railway costs.<sup>34</sup> Since CTAR, a number of changes responsive to these recommendations have been implemented.

First, the Act was amended in 2018 to require the Agency to make annual determinations of RIS rates and to permit the Agency to require railway companies to provide any information or documents it considers necessary to exercise its rate setting mandate. Prior to these amendments, the Agency could only revise the rates by amending the *Railway Interswitching Regulations*. While the Act required the Agency to review the regulations at least once every five years, the formal requirements associated with making amendments to regulations frequently resulted in an even longer time lag between when the Agency reviewed the rates and when new rates took effect.<sup>35</sup> The rates in effect when stakeholders were making submissions to CTAR, for example, had been established by regulation in 2013, after a consultation period that began in 2012, and were developed on the basis of 2009 interswitching variable cost analyses.

The 2018 changes to the Act have eliminated much of the lag time by allowing the Agency to issue rate determinations without going through the formal process for amending regulations. In addition, the Agency has used its new power to compel the production of additional information it requires to determine the rates.<sup>36</sup>

Secondly, since the publication of the Final Report of CTAR, the Agency has conducted extensive and multifaceted reviews, including consultations with interested stakeholders, aimed at updating both its regulatory costing model and its methodology for setting RIS rates.<sup>37</sup>

Pursuant to its statutory mandate, the Agency estimates the average variable costs of all RIS movements<sup>38</sup> and applies a contribution to fixed costs equal to what the Agency determines the railways require on a system-wide basis to cover their total economic costs. For 2024 the Agency determined the necessary contribution at 71.51% of system variable costs. Put another way, the 2024 RIS rates, including the ERIS rates, are designed to generate an overall revenue to variable cost ratio on all interswitched traffic of 171.51%.<sup>39</sup>

The problem with the position that RIS rates should reflect “market rates” is that it ignores the very reality that RIS is intended to address, namely, that large segments of Canadian rail traffic are reliant on a single rail carrier. In the absence of a regulated rate, railways can and do seek to maintain their monopoly over such traffic by imposing freight rates for transportation to the interchange with a connecting rail carrier at a supra-competitive level that makes the shipper’s use of the interchange to a second carrier unattractive.

## Conclusions

The three-year experience with ERIS from 2014 to 2017 has not yielded any publicly available evidence of the harmful effects that are once again being ascribed to ERIS. Unlike the *Fair Rail for Grain Farmers Act*, the 2023 amendments to the Act made no allowance for extending the application of ERIS through an order of the Governor in Council. To breathe life into ERIS beyond March 2025, the end of the 18-month period contemplated by the 2023 amendments, would accordingly require further legislative amendments.

At the same time, that 18-month period is likely too short to permit a thorough assessment of the effects of ERIS, whether positive or negative. For a variety of reasons, the limited time frame will effectively preclude many shippers from benefitting from the availability of ERIS. For example, they may have entered confidential contracts before the coming into force of the 2023 amendments that extend well into or even beyond the 18-month period. If all or most of their traffic was ineligible for RIS at the time, they may have agreed or been compelled to agree to contractual restrictions on the use of any kind of interswitching. Even if a shipper has an opportunity to negotiate rates with its local carrier during the current ERIS period, the knowledge that, absent further statutory amendments, ERIS will be short-lived will almost certainly lessen or neutralize any potential incentive that ERIS creates for the local carrier to offer a more competitive rates and service package. While access to ERIS can in theory offer shippers an opportunity to reach new markets, the 18-month shelf life of the mechanism will in many cases leave insufficient time to develop the necessary customer relationships and logistical arrangements. Since the responsibility to supply railcars used for interswitched traffic rests with the connecting carrier or the shipper, and not the local carrier, availability of equipment leases may also prevent use of ERIS, since neither the connecting carrier nor the shipper may be willing to invest in acquiring railcars to support a shipping program of 18 months or less and prevailing lead times for manufacturing and procuring new equipment are in any event likely to extend well into or beyond the ERIS period.

RIS has repeatedly been recognized by government, courts and regulators as one of a series of remedies designed to reduce any shipper’s reliance on a single railway. Regardless of whether it applies over distances of 30km or 160km, RIS does not necessarily require a physical transfer of traffic in order to further this legislative intent. RIS works best – and as intended – when it encourages competitive behaviour by precluding the local carrier who has direct access to a shipper’s facility within the prescribed RIS limit from adopting exclusionary pricing that forecloses competition. Where it creates a credible risk of losing the line haul to another carrier, RIS provides the local carrier with added incentive to offer a rate and service package that will retain the traffic on its own line. ERIS potentially makes that benefit available to more shippers who do not currently have access to competitive alternatives. That alone provides ample rationale for continuing ERIS in some form. If anything, rates need to be reduced to levels that make ERIS



sufficiently attractive to increase competition with connecting carriers to achieve the objective of competitive access: lower rates and better service.

The arguments that are currently being advanced against ERIS bear a striking resemblance to those raised in the 1980s in relation to the competitive line rate (“CLR”) remedy under the *National Transportation Act, 1987* (NTA, 1987) and, more recently, in relation to long-haul interswitching (“LHI”) under the 2018 *Transportation Modernization Act* (“TMA”)<sup>40</sup>. Rather than simply giving in to calls for repealing ERIS or not making it permanent for fear of what it might do, the Government should consider a mechanism that was used to address concerns raised in relation to those remedies. Both the NTA 87 and the TMA included provisions permitting the Governor in Council to suspend the operation of the remedy in the event railway financial viability is seriously affected. As it turned out, the Governor in Council has not found it necessary to invoke either of those provisions.

## Endnotes

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<sup>3</sup> *Canada Transportation Act*, S.C. 1996, c. 10, s. 114(1).

<sup>4</sup> The Act has always provided for a form of extended interswitching on application, allowing the Agency to deem a point of origin or destination to be within the 30 km radial distance of an interchange if it is of the opinion that the point is “reasonably close” to the interchange. ERIS differs from this established form of extended interswitching in that it is available as of right, without the need to engage in contested regulatory proceedings.

<sup>5</sup> See, for example, Daniel Dufort, “Opinion: Ottawa’s extension of forced interswitching is no way to run the railways,” *Financial Post* (May 31, 2023) (<https://financialpost.com/opinion/ottawa-extension-forced-interswitching-no-way-run-railways>), Barry Prentice, “Regulatory changes for railways are a bad idea,” *Winnipeg Free Press* (June 19, 2023) (<https://www.winnipegfreepress.com/opinion/analysis/2023/06/19/regulatory-changes-for-railways-are-a-bad-idea>) and Benjamin Dachis, “Budget 2023 Interswitching Changes will Derail Supply Chains,” ([https://www.cdhowe.org/sites/default/files/2023-06/IM-Dachis\\_2023\\_0515\\_new.pdf](https://www.cdhowe.org/sites/default/files/2023-06/IM-Dachis_2023_0515_new.pdf)).

<sup>6</sup> See, for example, RAC, *Expanding regulated interswitching? Bad for supply chains. Bad for everyone*, (<https://www.railcan.ca/wp-content/uploads/2023/03/Interswitching-Leave-Behind-EN.pdf>): “Recalling the results of the 2014 experiment, revisiting Extended Regulated Interswitching would be deeply damaging to Canada’s competitiveness, disrupt supply chains and degrade service for all.”

<sup>7</sup> See, for example, Dachis (2023): “More traffic traveling at prices set by regulation... means congestion may result.”

<sup>8</sup> Since this paper deals predominantly with events preceding the acquisition of Kansas City Southern (“KCS”), we refer to CP rather than CPKC, except where the data cited is based on consolidated reporting.

<sup>9</sup> Evidence before the Standing Committee on Transport, Infrastructure and Communities, No. 21, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, (September 20, 2016, p. 4 and p. 8.

<sup>10</sup> Railway Association of Canada, *Rail Trends 2016*, p. 10.

<sup>11</sup> Post-Hearing Supplemental Comments of CN, STB EP 711(Sub-No. 1) *Reciprocal Switching* (April 4, 2022), p.3.

<sup>12</sup> Statistics Canada. Table 23-10-0062-01 Rail industry origin and destination of transported commodities.

<sup>13</sup> The assumption is likely conservative, since the Railway Association of Canada’s *Rail Trends 2016* provides an average payload per car of 68 tonnes for 2015.

<sup>14</sup> Railway Association of Canada, “Think of it like Taking a Flight,” at <https://www.railcan.ca/resources/interswitching/>, accessed on March 5, 2024.

<sup>15</sup> Canadian Transportation Agency Decision No. 62-R-2021 (*Richardson International Limited v. CN*), at paragraph 64.

<sup>16</sup> For 2015, the base amounts and additional charges were \$325 and \$2.10/km for the ERIS Single Car Rate and \$118 and \$1.60/km for the ERIS Car Block Rate. For 2023, the base amounts and additional charges were \$849 and \$4.48/km for the ERIS Single Car Rate and \$333 and \$1.60/km for the ERIS Car Block Rate.

<sup>17</sup> See CN Annual and Quarterly reports for average revenue per carload, CN Investor Fact Books for average length of haul.

<sup>18</sup> See CP Annual Report for 2015 and CPKC 4<sup>th</sup> Quarter Report for 2023 for average revenues per carload. For average length of haul, see CP 2016 Investor Factbook and 2021 Data Supplement, which is the most recent publicly available information on CP’s average length of haul. Consolidated reporting with KCS would drive a somewhat shorter average for 2023.

<sup>19</sup> See BNSF 2015 10-k (Railway) and BNSF’s 2023 Consolidated Financial Statements for revenue per carload. USD were converted to CAD using the Bank of Canada’s 2015 average annual exchange rate and the Bank of Canada’s 2023 average

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monthly exchange rates for Q4 of 2023, respectively. Average lengths of haul were calculated from total tons moved in revenue service and total revenue-ton-miles reported in form R-1 to the STB, with 2022 data (the most recent available) used for 2023.

<sup>20</sup> Evidence before the Standing Committee on Transport, Infrastructure and Communities, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, September 20, 2016, p 9.

<sup>21</sup> See, for example, Prentice (2023).

<sup>22</sup> Canadian Pacific Railway Limited, Further Supplemental Comments of Canadian Pacific, STB Ex Parte No. 711 (Sub-No. 1), *Reciprocal Switching*, (4 April, 2022), p. 4.

<sup>23</sup> Statistics Canada. Table 23-10-0062-01 Rail industry origin and destination of transported commodities.

<sup>24</sup> Recent examples of such investments at the Port of Vancouver include the G3 Terminal Vancouver, Teck Resources Limited's expansion of its Neptune Bulk Terminal and Parrish & Heimbecker Limited's Fraser Grain Terminal.

<sup>25</sup> House of Commons Standing Committee on Transport, Infrastructure and Communities, No. 023, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament (September 27, 2016), p. 10.

<sup>26</sup> For the 12 months from July 2015 through June 2016, CP reported a total of 2,546,000 carloads.

<sup>27</sup> Statistics Canada reports that in 2015 annual rail freight volumes originated in Manitoba and Alberta, the two Provinces where BNSF and CPKC have interchanges, were 11,805,473 metric tonnes and 59,143,305, respectively. Assuming an average payload of 80 metric tonnes, the combined volume of rail traffic originated in the two Provinces in 2015 represents the equivalent of 886,860 carloads.

<sup>28</sup> Dufort (2023).

<sup>29</sup> See STB Docket No. EP 711 (Sub-No. 1), *Reciprocal Switching*, Comments and Written Testimony of CN, (February 14, 2014), and Written Comments of Canadian Pacific (February 14, 2014).

<sup>30</sup> CN, Post-Hearing Supplemental Comments, STB Docket No. EP 711 (Sub-No. 1), April 4, 2014, p. 6.

<sup>31</sup> Dachis (2023).

<sup>32</sup> The Agency issued its initial rate determination for the current ERIS period (R-2023-178) in respect of 2023 ERIS rates, on September 18, 2023.

<sup>33</sup> *Pathways: Connecting Canada's Transportation System to the World*, Report of the Canada Transportation Act Review (2015), p. 164.

<sup>34</sup> *Pathways*, p. 164.

<sup>35</sup> Federal regulatory amendments generally follow a process whereby the proposed text is published in Part I of the *Canada Gazette*, followed by a comment period, before the final text is registered and takes effect. In the case of regulations made by the Agency, however, there are added requirements of prior notice to the Minister of Transport and approval from the Governor in Council (i.e., effectively, the federal cabinet).

<sup>36</sup> Agency staff also continue to conduct annual site visits to various interchange locations to verify each step involved in providing interswitching at those locations, and railways have the option of requesting that specific interchanges or a specific shipper's traffic be included in the visits. See Agency Determination R-2019-230, at paragraph 47.

<sup>37</sup> These include: *Consultation on the Agency's Regulatory Costing Model* (2016-17), *Consultation on the CTA Approach to Setting Regulated Interswitching Rates* (2019), *Regulated Interswitching: Proposed Changes to Rate-Setting and Billing* (2020); *Consultation on Cost of Capital Rates* (2020); *Consultation on General Purpose Debt* (2021).

<sup>38</sup> Variable costs are volume-weighted for each interchange, each zone, each shipment size and each railway. See Agency Determination No. R-2022-164, Appendix A.

<sup>39</sup> Agency Determination No. R-2023-237, Appendix A.

<sup>40</sup> See, for example, the testimony on behalf of CN and CP before TRAN on March 2, 1987 (Minutes of Proceedings and Evidence of the Standing Committee on Transport, Issue No. 12, 2d Session, 33<sup>rd</sup> Parliament) and again on September 12, 2017 (Evidence before the Standing Committee on Transport, Infrastructure and Communities, Number 068, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament).