



Agriculture is Everyone's Business

December 23, 2009

The Secretary
Canadian Transportation Agency
Ottawa ON
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Fax: 819-997-6727

Dear Sir or Madam:

I am writing on behalf of the Agricultural Producers Association of Saskatchewan (APAS), and the grain producers and rural communities we represent, to make an application for a Level of Service complaint against Canadian National Railways and its decision to delist 53 producer car loading sites, including 24 in Saskatchewan. In addition to direct contacts from grain producers with our organization, our complaint is prompted by the many expressions of concern and opposition that have been made to our elected representatives and, through them, to a resolution to act on their behalf that was passed at our recent Mid-term Meeting on December 4, which reads:

“Be it resolved that APAS immediately lobby the federal government to extend the moratorium on railway siding closures.”

The right of grain producers to have access to producer cars, first legislated at the turn of the century, is firmly embedded in the Canada Grain Act, 87(1/2). That right becomes practical through the Canadian Transportation Act, which requires railways to provide adequate and suitable service, which we understand to be covered in Sections 113 – 116 of Part III – Division IV of the Canada Transportation Act. By delisting these producer car loading sites, CN is contravening its obligations outlined in these sections of the Act. The definition of what is adequate and suitable service is being defined unilaterally by CN and implemented without any recourse to producers to keep the **public** facilities to which they are entitled by federal legislation.

There will be a direct negative impact on grain producers because of the CN delisting. Any producer that will have to haul further to an alternate site will incur greater costs and increase their risk of penalties associated with late or improper loading. The impact will be especially severe if the removal of proximate sites forces a producer to forego use of a producer car in favour of hauling to a commercial facility where the additional cost of shipping is typically in the range of \$800 to \$1,200 per car.

Beyond the direct impact of site delisting on producers, we see the CN decision will adversely affect the right of access to producer cars in general both now and in the future and possibly jeopardize rural development in the process. Indeed, here are some larger issues pertaining to producer cars that need to be addressed:



- The Act does not provide a meaningful process for handling delisting.
 - The 60 day notice is inadequate.
 - There is no provision for public discussions.
 - There is no provision for producer participation in the decision making.
- CN plans to physically remove the sites. While lack of use is an understandable rationale for delisting the sites, once they're removed, they are lost to the system.
- We believe that the costs for maintaining producer car sites are already covered by the Revenue Cap and, thus, the railways do not have a costing rationale for abandoning them.
 - Any 'commercial arrangements' that railways establish for delisted sites will result in them being paid twice.
 - The railways will continue to be paid under the Cap for any sites they abandon.
- The origin of the producer car list is quite vague and maintenance of the list is not transparent.
- There is no transparent process to collect, analyze, and share data about the usage of producer car sites.
- There are serious deficiencies in the level of service provided by the railways to producer car shippers, including errors in the timing of car placement, errors in the number of cars placed, restrictive loading schedules (one day to load regardless of weather, demurrage for late loading), cars in poor repair, big penalties for over or under weight.
- The CN decision and the lack of overall regulation of producer cars do not account for trends in grain handling and transportation.
 - Overall demand for producer cars has risen considerably in recent years as evidenced by the record number of producer car loadings of CWB grain in 2008-09. Despite the lack of use at some specific sites, the CN decision runs counter to the overall trend.
 - Rail line abandonment has increased the need for producer cars, especially for short line railways that are filling the void in access to rail lines.
 - Consolidation in the grain handling system continues to reduce producers' marketing points and increases the need for meaningful access to alternative loading sites.
 - Any future regulatory changes to Western grain marketing institutions will markedly increase the need for producer cars.
- There is no sector-wide process for making rational decisions about the overall configuration and management of producer car sites, i.e. how many, locations, responsibilities, maintenance, commercial arrangements, etc.
- The 'commercial arrangements' proposed by CN as negotiated solutions to individual cases of delisting ignores the need for a predictable process for producer cars in general and will create private contracts that destroy the legislated right of producers to **public** access.

In essence, the universally acknowledged right to producer cars is no right at all if there is no practical way for producers to access loading sites that not only meets their individual business needs but serve the system as a whole. This principle is become more and more important as rationalization of system continues through grain handling consolidation and unilateral decisions by the railways like the CN delisting, not to mention the potential impact of further grain marketing deregulation.



Please note that, prior to the current CN delisting, some 55 producer car sites were recently delisted by the two railways. The network of sites is being changed as we speak and the practical right of reasonable access is being eliminated by serial cuts to the system without consideration of the overall impact, especially potential future needs. Piecemeal changes to the overall configuration of producer car sites through ad hoc and self-interested decisions by the railways will not serve the future needs of all stakeholders, including non-agricultural businesses in rural areas.

We already have a commitment from the spokesperson of the Minister of State (Transport) (Manitoba Cooperator, September 17/09) that the Agriculture Committee will be asked to re-examine federal legislation to ensure it meets producer car shippers' needs. So we are acting on this commitment to ask the CTA to implement a moratorium on railway delisting of producer car loading sites. This will allow for the necessary consultations, including direct input from Saskatchewan grain producers, to develop the processes, mechanisms, or agencies that will safeguard producers' rights and properly account for the future role of producer cars. Since CN plans to begin removal of the sites within days, we are hoping you will consider our request immediately.

Yours truly,

Greg Marshall
President
APAS