



**National Farmers Union**  
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Submission to the  
**Senate Standing Committee on Transport and Communications**

regarding

**Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts Bill C-49**

February 27, 2018

The National Farmers Union (NFU) is a direct-membership voluntary organization made up of Canadian farm families who share common goals. NFU members believe that the problems facing farmers are common problems, and that farmers producing diverse products must work together to advance effective solutions. The NFU works toward the development of economic and social policies that will maintain the family farm as the primary food-producing unit in Canada. The NFU has been actively involved in grain transportation policy matters for more than four decades. The organization is pleased to provide the following brief in regard to the Bill C-49, the *Transportation Modernization Act*.

Our remarks will focus on the need for Bill C-49 to be amended in the following ways:

- ♦ to remove its changes to the Common Carrier obligation in the *Canada Transportation Act*;
- ♦ to retain the definition of government hopper cars in the *Canada Transportation Act*;
- ♦ to add the obligation for a full costing review under the Maximum Revenue Entitlement in the *Canada Transportation Act*;
- ♦ to retain the 15% maximum for any individual's share ownership of CN Rail under the *CN Commercialization Act*;
- ♦ to amend the *Canada Transportation Act* to reinstate the ability of a group of farmers to petition to have new producer car loading sites established; and
- ♦ to amend Section 5 of the *Canada Transportation Act* to update Canada's national transportation policy.

### **Common Carrier Obligation**

Since 1909 Canada's railways' common carrier obligation has required them to move a duly loaded car from its origin to its destination in a timely fashion. The common carrier obligation recognizes the vital role that rail transportation plays in the economy, particularly for bulk commodity shippers that have no alternative (captive shippers). Railways owe their existence to the State, which provides them with the physical and regulatory environment in which to operate. In return, railways are required to provide service to all of the country's shippers regardless of facility location or number of cars to be moved.

Currently the *Canada Transportation Act* states very clearly what the railway companies' common carrier obligations are (Sections 113 and 114) and, if a shipper makes a level of service complaint (Section 116), the

Canadian Transportation Agency is required to determine whether or not the common carrier obligation has been met. It is cut and dried.

Bill C-49 amends Section 116, allowing the Canadian Transportation Agency to diminish the railway companies' obligation. It says the CTA can rule that a railway is fulfilling its service obligations if it is providing "the highest level of service in respect of those obligations that it can reasonably provide in the circumstances." Bill C-49 lists factors the CTA should take into consideration, including the traffic to which the service obligations relate; the reasonableness of the shipper's requests with respect to the traffic; and any information that the Agency considers relevant. Thus, in the event of a level of service complaint, instead of ruling yes or no, Bill C-49 would give the CTA permission to rule "almost" or "no, but at least you tried". The railway company would then be off the hook for providing full service to all Canadians, and some shippers would have to put up with poor, or no service.

Our concern is that the leeway and discretion that Bill C-49 introduces will provide the railways with the opportunity to discriminate among shippers and locations. Failure to provide full service could be justified by claiming that the shipper's requirements were not reasonable or that circumstances prevented the railway from providing timely, or any service.

Captive shippers, including grain, would be the first to suffer as a result of this weakened obligation. Facilities in more remote locations and smaller shippers, such as producer car loading sites, would be most vulnerable to delays and uncertainty, and perhaps even complete abandonment. Both the farmers who deliver grain to these sites and the domestic customers supplied by these shippers (such as feed mills, crushing plants and flour mills) would be harmed to the detriment of the local economies at both ends.

If the proposed changes are enacted, no doubt CN and CP will test the new rules by reducing service to a level they believe is "reasonable". The difficulty and cost of bringing a level of service complaint is such that only larger shippers would be able to mount a challenge. Reduced service would cause the most harm to those least able to confront the railways. Thus a weakened common carrier obligation would lead not only to poorer service, but to physical reconfiguration of Canada's railway system to serve the private interests of CN and CP. We have already seen significant contraction of the system and consolidation of delivery points under the current, regulated system. Without rail service being guaranteed by the existing common carrier obligation, agricultural regions with higher transportation costs may well lose service altogether, leading to farms being abandoned and rural communities depopulated. Such an outcome is not in the public interest, nor should the fate of rural areas be left in the hands of the railways.

### **Reciprocal Penalties**

When considering the matter of reciprocal penalties for non-performance by railways and shippers, it is important to recognize that farmers do not have the status of shippers under the *Canadian Transportation Act*. When farmers deliver to a grain company's elevator, their control over, and interest in the grain ends. The grain company – not the farmer -- is the shipper for the purposes of the Act. Rights, benefits, penalties and obligations of shippers do not apply to individual farmers who sell to grain companies.

Bill C-47 brings in reciprocal penalties between the railways and grain companies, based on the rationale that the potential cost of penalties for non-performance would discipline both sides. We are less than optimistic about the effectiveness of these measures. Farmers depend on the elevator system and the railways to move their grain to market, and are the least powerful link in the value chain. The cost of any penalty charged to grain companies will ultimately be offloaded onto the farmer via basis (an unregulated discount charged against the

price of grain when purchased) by grain companies. The cost of any penalties charged against railway companies will be offloaded by means of car booking fees, reductions in incentive rates and other mechanisms available to railways. Thus, farmers will still be paying all the bills for non-performance by one party or the other. Since farmers ultimately bear the cost of transportation, freight rate regulation and full enforcement of the common carrier obligation is necessary in the public interest and to provide for fair treatment of farmers.

### **Maximum Revenue Entitlement**

We are happy to see that Bill C-49 does not propose any major changes to the Maximum Revenue Entitlement. Farmers are price-takers when selling grain, and grain companies are captive shippers. Any increase in freight rates is borne by farmers, as grain companies (the shippers) recover their costs by reducing grain prices paid to farmers. Regulated freight rates are necessary to prevent grain companies and railways from using their monopoly powers to extract more than their fair share from the value of the grain farmers produce.

We would urge the Committee to introduce amendments to Bill C-49 to require a full railway costing review, and that the MRE's costing formula be revised to allow for rates to drop if/when costs (such as fuel) go down.

A full costing review is needed to increase transparency and restore fairness to the MRE in light of the significant restructuring of the railway system since the previous costing review. Costing review formulae need to be redesigned to permit downward rate adjustments in situations where prices of cost components go down. An arbitration mechanism is needed to deal with price and service level discrepancies. Smaller shippers must have access to justice through a lower-cost alternative to the courts to effectively challenge unreasonable rate quotes that railroads use to unduly discriminate between locations and thereby reduce service for cost-cutting purposes.

We also note that Bill C-49 removes "government hopper cars" from the *Interpretation* section, and deletes the term from articles that cover the volume-related composite price index. Bill C-49 introduces the cost of obtaining privately owned cars and the cost of maintaining these cars into the index. Including these costs in the volume-related composite price index formula means they will be paid for by farmers in the form of increased freight rates. The farmer will pay, but will not have any decision-making power over the price of private cars purchased or leased by railway companies. This opens the door for railway companies and railcar manufacturers and rental companies to exploit their power by overcharging for hopper cars.

We recommend amending Bill C-49 so it does not remove "government hopper cars" from the Interpretation section, and that the federal government pursue renewal of the government hopper car fleet as a publicly funded public infrastructure project. This would maximize public benefit.

Other captive shippers, such as potash and oil, provide their own cars. These industries are centralized in terms of locations and control, which facilitates investment in, and administration of, their car fleets. Grain loading facilities are widely dispersed and there are a large enough number of shippers to make coordination of fleet renewal problematic. The MRE program currently covers hopper car maintenance. It would make sense to continue including car maintenance in the formula as long as government ownership of hopper cars exists. The use of public dollars, whether federal or provincial, to invest in fleet renewal also makes sense. This would promote equity among shippers using the system and avoid wasteful competition and hoarding of cars by private owners. The cost of new cars would be reduced under public ownership because governments can obtain credit at the best rates. Lease payments for the use of publicly owned railcars would be returned to government and could be directed towards appropriate initiatives in the interests of producers. Investment in

hopper car fleet renewal would be an appropriate investment in Canada's infrastructure, which is a priority of the federal government.

### **CN Commercialization Act**

Bill C-49 would increase the maximum voting shares of CN that can be held by one person from 15% to 25%. CN was publicly owned until it was privatized in 1995. This was controversial, as railways are essential infrastructure, and public ownership of CN had strategic value for the Canadian economy. Concern over who would control this vital asset was expressed at the time. Limiting concentration of ownership was intended to reduce these concerns. Now this limit is being relaxed.

CN is a successful company, and is not having difficulty attracting investors. The amendment allowing one person to control up to 25% of voting shares appears to be a response to lobbying by the American billionaire Bill Gates, whose company and foundation currently own nearly 15% of CN. It does not seem appropriate for this government to respond to lobbying efforts of one of the world's richest men by offering him the opportunity to increase his level of control over Canada's railway system.

We urge the Committee to amend Bill C-49 by deleting Section 60, thereby leaving the *CN Commercialization Act* as it currently stands.

### **Moratorium Producer car loading sites, ability to petition for new sites**

The right of producers to order and load railcars to ship grain to terminal or process elevators or other consignees was established as a necessary check on the power of grain companies and railways. Producer car shipping provisions ensure farmers have access to rail transportation and an alternative to delivering to grain elevators. This right must not only exist on paper, but must also be realized in practice.

***Thus, we ask the Committee to amend Bill C-49 to rescind the railways' authority to close producer car loading sites and to reinstate the right of any group of ten producers to petition to have a producer car loading site constructed.*** This would ensure that farmers, not railways, decide on the availability of the producer car loading option.

Timely allocation and spotting of railcars to producer car loading sites and the timely movement of producer cars to destination could be solved by reinstating the regulatory provision that producer cars are first in line for railcar allocation and levying progressively increasing fines to railways for failure to move cars to their destination in a timely fashion.

We would like the Committee to note that the NFU has also recommended the *Canada Grain Act* should be amended to establish an independent *Producer Car Receiver*. This body would have the authority to negotiate producer car sales with the receiving terminal and ensure unloading and grading is done promptly. It would be responsible for allocating the grain to the respective terminals, however ownership of the grain would not be transferred to the terminal until the *Producer Car Receiver* was satisfied with all aspects of the transaction, including weights, grade, and payment. With the independent *Producer Car Receiver* in place, the Producer Car option would become a more powerful disciplinary force for farmers to counter the power imbalance between farmers and both the grain companies and the railways, as it was intended when established.

### **National Transportation Policy**

The current National Transportation Policy unduly relies on "competition and market forces" and thereby abdicates the legitimate role of accountable, democratic governments to make critical decisions regarding the

framework under which the transportation system should operate to promote the public interest. As it is, the policy promotes and facilitates the most profitable use of railway company assets for private gain. Instead, it should be designed to promote the economic interests of the entire Canadian economy, including agricultural producers.

We urge the Committee to introduce amendments to Section 5 of the Canada Transportation Act to ensure the National Transportation Policy articulates the need to address climate change by reducing fossil fuel use in, and greenhouse gas emissions from, the transportation system, and that rail transportation should be prioritized as a way to increase the energy efficiency of Canada's economy. The trend to ever fewer, larger high-throughput loading sites for grain needs to be reversed. More nodes, producer loading sites, branch lines, and short lines are required to reduce trucking distances and promote the use of railways for both freight and passenger movement.

The railways should be actively governed and regulated as vital infrastructure to serve the larger interests of Canadian society. This approach would also benefit the railway companies. A healthy, diverse, vibrant society will provide a wide range of economic activities in communities distributed across the country which will all need to be connected to and supported by the transportation system.

Respectfully submitted by  
The National Farmers Union  
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