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Western Grain Elevator Association

Speaking Points to:

House of Commons Standing Committee
On Transport, Infrastructure and Communities

Bill C-49
An Act to amend the *Canada Transportation Act*
and other Acts respecting transportation

September 12, 2017

Madam Chair and members of the Committee, the Western Grain Elevator Association is pleased to contribute to your study on Bill C-49.

The WGEA represents Canada's six major grain handling companies. Collectively, we handle in excess of 90% of western Canada's bulk grain movements.

Effective rail transportation underpins our industry's ability to succeed in a globally competitive market. We recognize this Committee's comprehensive work last year. The report from this Committee published in December 2016 largely supported our points of view on the main issues.

In C-49 a few recommendations made by grain shippers were accepted, and a number were not:

1. We were asking the government to strengthen the definition of adequate and suitable accommodation to ensure that the railways' obligation to provide service was based on the demand and needs of the shipper, and not on what the railway was willing to supply. The definition proposed in C-49 for adequate and suitable isn't explicitly based on shipper demand. There are positives and negatives with the new definition.

2. We were seeking the ability to arbitrate penalties into Service Level Agreements for poor performance along with a dispute resolution mechanism to address disagreements in a signed SLA. We are pleased this is included in C-49. It will resolve many of our challenges on rail performance matters.

3. We were requesting that Extended Interswitching be made permanent, to allow for the continuation of one of the most effective competitive tools that we have ever seen in rail transportation. Extended Interswitching was not made permanent, a significant loss.

4. We were asking that the government maintain and improve on the Maximum Revenue Entitlement to protect farmers from monopolistic pricing. This protection was maintained, however, soybeans remain excluded from this protection.

5. The WGEA had also supported expanding the Canadian Transportation Agency's authority to unilaterally review and act on performance problems in the rail system, similar to what the US Surface Transportation Board enjoys in the US. C-49 includes the provision for the CTA to informally look into performance problems, however, it does not give the CTA added power to correct systemic issues.

6. Lastly, the WGEA was asking the government to improve the transparency and robustness of rail performance data. This has been improved in C-49, however, shipper related demand data is still not captured. Later this week, some of our colleagues in the grain industry will provide additional perspectives on use of the data, timelines, and reporting to the Minister. The WGEA shares their views.

To be clear, on balance, this bill is a significant improvement over the existing legislation and is a positive step forward for the grain industry.

As a result, we are choosing to only offer 4 technical amendments representing the bare minimum of changes where we think the proposed legislation would not be workable and would not result in what the government intended. The main area is on Long Haul Interswitching.

For your reference, **Annex A,** which we circulated to Committee Members in advance, contains our suggested legislative wording amendments.

The extended interswitching order had been in effect for the last three growing seasons and had evolved into an invaluable tool for western grain shippers. Instead, the new Long-Haul Interswitching provision is intended to create competitive alternatives. In that spirit, shippers need to be able to access interchanges that make the most logistical and economic sense, not necessarily the interchange that is closest.

I. Reasonable Direction of the Traffic and its Destination

The current wording in section 129(1) may give a shipper access to the nearest competing rail line, but this would be of little to no value if;

1. the nearest interswitch takes the traffic in the wrong direction of the shipment's final destination;

2. if the nearest interchange does not have the capacity to take on the size of the shipment; or

3. the nearest competing rail company does not have rail lines running the full distance to the shipment's final destination.

For the Committee's reference, we have circulated **Annex B,** which visually depicts real-world examples of where accessing the nearest interchange neither makes logistical nor economic sense. We believe that two clauses need to be amended to better reflect the spirit of creating competitive options.

If you go to Map 1 in the package we circulated, you will see an example of an elevator that has access to an interchange within 30km but it is in the wrong direction of traffic. Bill C-49 stipulates in section 129(3) (a), that a shipper **may not** obtain a Long-Haul Interswitch if a competing rail line is within a distance of 30km. Sending a shipment in the wrong direction, or to the wrong rail line, is cost prohibitive and in those cases, renders the interswitch useless. A shipper that happens to be within 30 km of an interswitch that is of no use to them, is excluded from accessing the Long Haul Interswitch option and is put at a competitive disadvantage.

A similar problem exists for dual served facilities given a prohibition in 129(1)a.
The solution to this problem is to add the wording "in the reasonable direction of the traffic and its destination" to section 129(1)(a) and to section 129(3)(a). This language already exists in the legislation in 136.1 for other purposes, but needs to be replicated in 129.

II. Long Haul Interswitching Rates

Section 135(1)(a) of the Bill directs the Agency to calculate the rate by referring to historical comparable rates. But most "comparable" rates to date have been set under monopolistic conditions. If the rates themselves are non-competitive (and the very reason a shipper would apply for an LHI), this process will not effectively address the heart of the problem.

135(2) directs the Agency to set a rate **not less** than the average of the ***revenue*** per tonne kilometre of comparable traffic. This enshrines monopoly rate setting. In any reasonable marketplace, profitability is set on how much it costs you to do the business, plus a margin to generate a profit. Simply being able to charge any amount, without regard to cost will result in rates divorced from the commercial reality of “cost plus.” We are seeking important changes to section 135(1)(b) and 135(2) to ensure the CTA has regard to the “cost” per tonne kilometre, not the “revenue,”, and that rates are based on “commercially” comparable traffic, and not just comparable traffic. If Long Haul Interswitching is to work, the rate has to be based on a reasonable margin to the railway, and not “at least as much and maybe more” than they can charge in a monopoly setting.

III. List of Interchanges

Section 136.9(2) sets out parameters for the railways to publish a list of interchanges as well as removing them from the list. The plain reading of the text suggests a rail company may choose, at its sole discretion, to decommission any interchange with no other check and balance but 60-days’ notice. Grain shippers are concerned that the railways would have unilateral discretion to take out of service any interchange they choose.

There is existing legislation already in play. Section 127(1) and (2) under interswitching has a process by which a party can apply to the Agency for the ability to use an interchange, and that

the Agency has the power to compel a railway to provide reasonable facilities to accommodate an interswitch at that interchange. This same language should apply to Long Haul Interswitching. From an interchange perspective, both interswitching and Long Haul Interswitching could apply to the same interchange.

IV. Soybeans and Soy Products

When the MRE was first established in 2000, soybeans were barely grown on the prairies and therefore it was not included in the original Schedule II listing the eligible crops. Since then, soy has become a major player in the prairies and a commodity that holds significant potential growth for oil, meal and food uses.

It must be pointed out that the Canadian portion of the movement of US crops into Canada is covered under the MRE. As a result, US corn, for example, is covered under the MRE while Canadian soybeans are not. Furthermore, we are seeing in some instances higher freight rates on soybeans than on crops with similar density. There is no reason why the Government should not take this opportunity to add soybeans and soy products to Schedule II.

In conclusion, C-49 is on balance an important step in the right direction. It is with restraint that we ask the Committee to make only 4 noninvasive technical amendments to ensure it accomplishes what was intended by the Minister. Thank you.

Annex A
Proposed Amendments

Technical Amendments on LHI

Issue: Address Nearest Interchange Unintended Restrictions to Include "In the reasonable direction of the traffic and its destination" (Concept taken from 136.1)

#1: No Entitlement among interchanges for dual serviced facilities if both railways are going in wrong direction

Proposal:

Change 129 (1) (a) to read:

A shipper may apply to the Agency for a long-haul interswitching order against a railway company that is a class 1 rail carrier if

(a) the shipper has access to the lines of only that railway company at the point of origin or destination of the movement of the shippers traffic in the reasonable direction of the traffic and its destination.

#2: No Entitlement if shipper has access to an interchange within 30km even if in wrong direction

Proposal:

Change 129 (3) (a) to read:

A shipper is not entitled to apply to the Agency for a long-haul interswitching order

(a) if the point of origin or destination that is served exclusively by the local carrier is within a radius of 30 km, or a prescribed greater distance, of an interchange in Canada, and is in the reasonable direction of the traffic and its destination;

Issue: Monopoly Abuse in Rate Setting Methodology

The calculation of the long-haul rate is based on historical comparable rates. But, if the rates themselves are non-competitive (and the very reason for applying for an LHI), this process will not address monopoly abuse on rate setting.

Proposal:

Change 135 (1) (b) to read:

for the remainder of the distance, the Agency shall determine a commercially competitive ~~the~~ rate by having regard to the ~~revenue~~cost per tonne kilometre for the movement by the local carrier of comparable traffic in respect of which no long-haul interswitching rate applies.

Change 135 (2) to read:

The Agency shall not determine the rate described in paragraph (1)(b) to be less than the average of the ~~revenue~~ cost per tonne kilometre for the movement by the local carrier of commercially comparable traffic in respect of which no longhaul interswitching rate applies.

Issue: Railways Removing Interchanges from their "List" Under LHI Without Any Check or Balance

Proposal: Additional language is required in Section 136 to reiterate the railways' general carrier obligations under the Act to maintain interchanges to avoid confusion that somehow the railways have full power, without any check or balance, to remove interchanges from service by simply providing 60 days notice.

In addition, we believe it should be made explicit that LHI is covered by the provision in interswitching 127(1) and (2) (cut and paste below) on determination of nearest interchange in the reasonable direction of the traffic and its destination, and ability to ensure railways provide adequate facilities to execute LHI orders on that interchange.

"Application to interswitch traffic between connecting lines
127 (1) If a railway line of one railway company connects with a railway line of another railway company, an application for an interswitching order may be made to the Agency by either company, by a municipal government or by any other interested person.
Order
(2) The Agency may order the railway companies to provide reasonable facilities for the convenient interswitching of traffic in both directions at an interchange between the lines of either railway and those of other railway companies connecting with them."

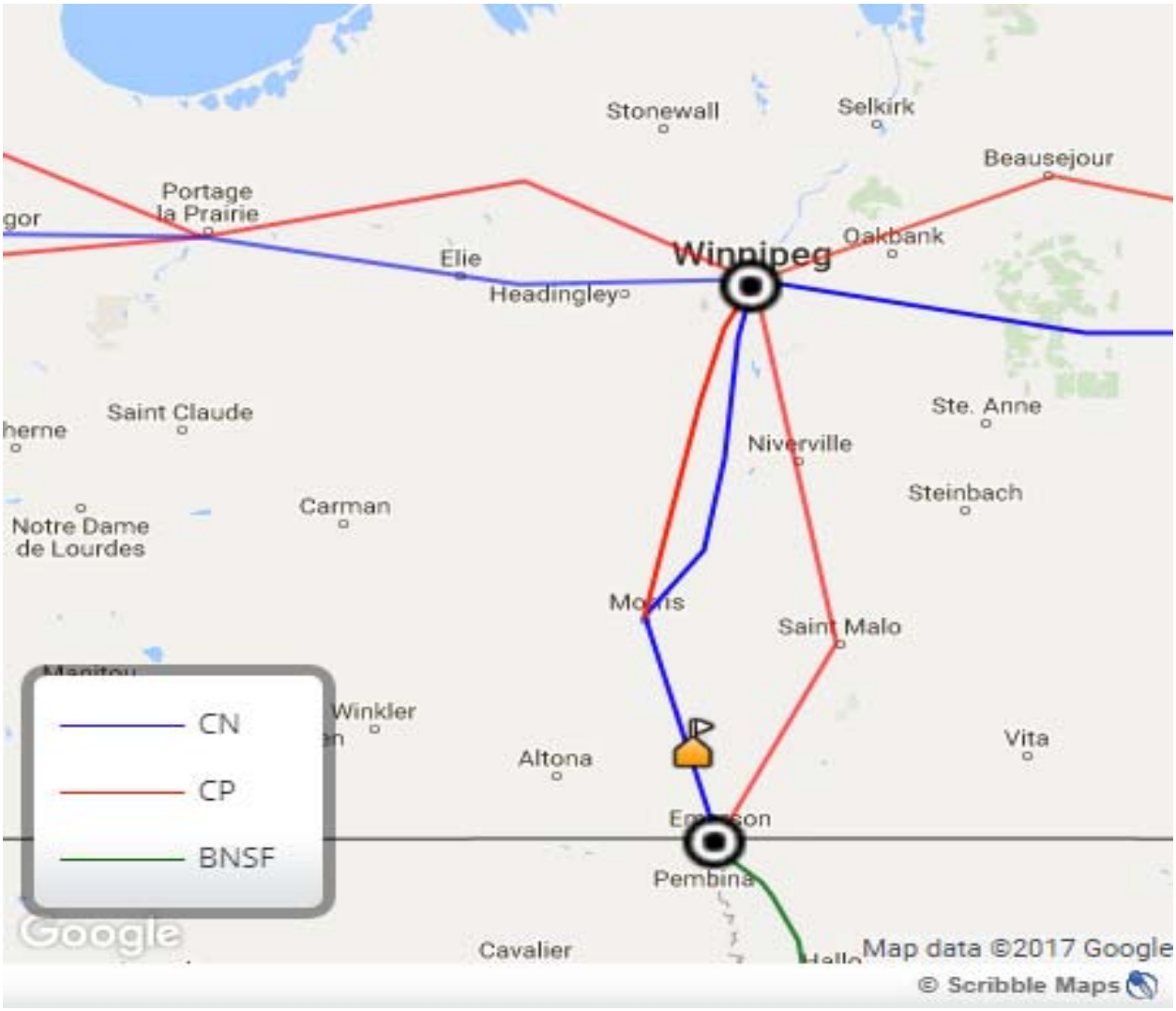
Soybeans and Soy Products

Issue: Add soybeans and soy products to Schedule II grains to be covered under the Maximum Revenue Entitlement

Soybeans represent 3.14 million acres in western Canada and production is growing in leaps and bounds year over year. In 2016 acreage was 1.88 million and in 2015 it was 1.66 million. Other commodities such as flax, canaryseed and buckwheat represent much smaller acreage, but are included in Schedule II. Soybeans and soy products should be included as well.

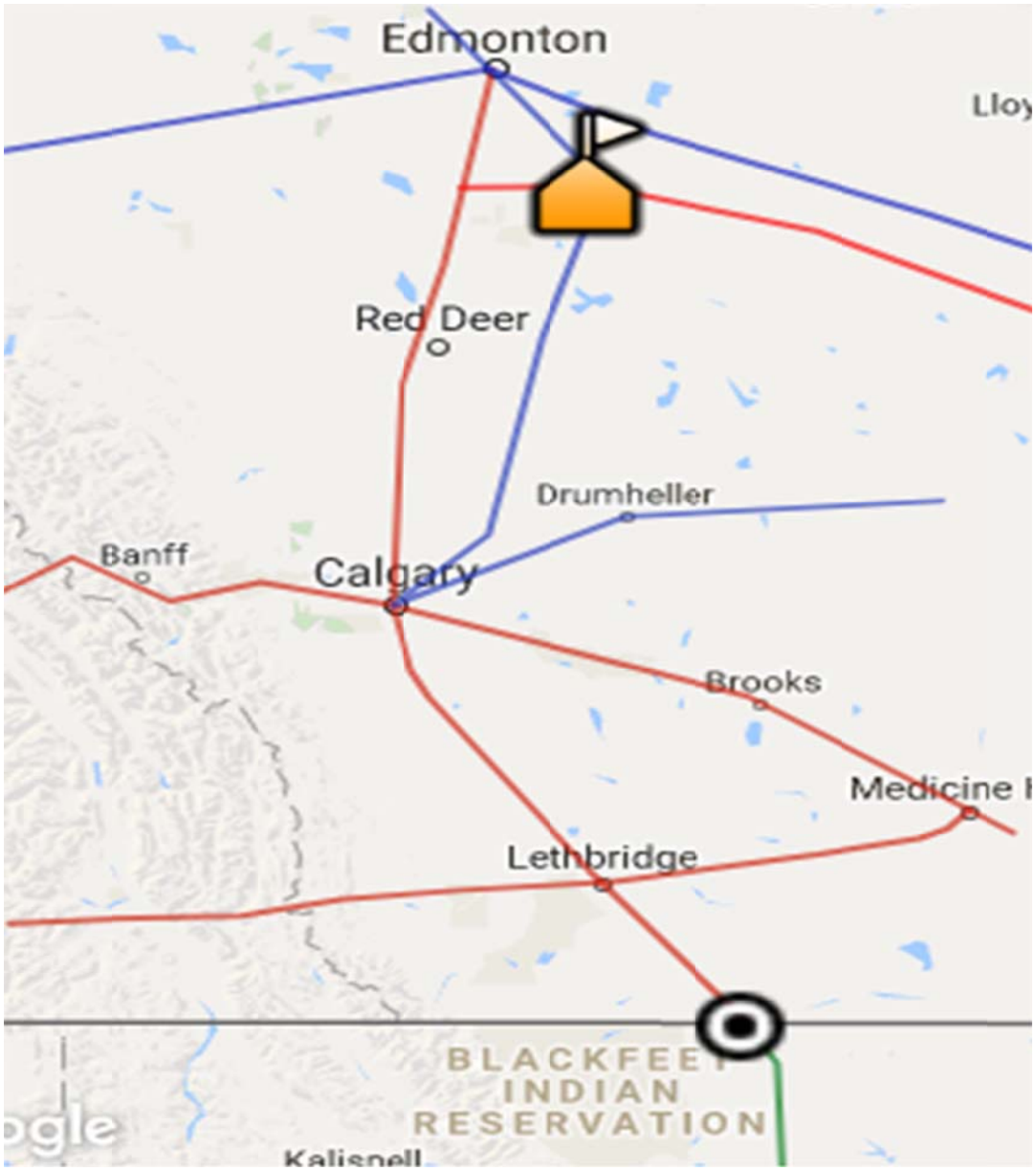
"Schedule II
"Grain, Crop or Product
…….
"Bean ~~(except soybean)~~ derivatives (flour, protein, isolates, fibre**,** oil, meal and other products)
"Beans ~~(except soybeans)~~, including soybeans, faba beans, splits and screenings"
…….

Annex B



<u>Limitations within 30Km of an interchange</u>

Over the past 3 years, 75% of shipments leaving this CN-served elevator at Red River South were headed to export position, either east to the Port of Thunder Bay or west to the port of Vancouver, routes which are serviced by CN and CP, but not by BNSF. The CN-BNSF interchange at Emerson is less than 30 km away from the elevator, but is in the wrong direction and with the wrong rail line for these exports moves. In order to have effective access, this elevator <u>also</u> needs access to the CN-CP interchange at Winnipeg.



Limitations on Dual Serviced

This value-added oilseed processing facility at Camrose, Alberta is dual serviced (CN and CP). The vast majority of product leaving this facility is destined for the lower US states serviced only by BNSF. Because this facility is dual serviced, it is not eligible for a long haul interswitch at Coutts.