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Tuesday, March 5, 2013

Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

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● (1530)

[*English*]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): I'll call the meeting to order. I want to start by thanking all of our witnesses for being here today.

With no further ado, we'll start off with the presentation from the Railway Association of Canada, and Mr. Bourque. You have 10 minutes, please.

Mr. Michael Bourque (President and Chief Executive Officer, Railway Association of Canada): Thank you, Mr. Chairman, and members of the committee.

My name is Michael Bourque and I am the president and CEO of the Railway Association of Canada. My colleagues, Gord Peters, Michael Murphy, Robert Taylor from CP, Sean Finn, and Shauntelle Paul, are here as well. Some will speak, and we'll all be here to answer questions.

Today, I've divided my presentation into three sections. First, as chief myth buster for the railway industry, I must address some of the statements made by witnesses in front of your committee these last couple of weeks. In the second section, I'll speak about some of the key service and productivity changes we have made and why we believe they are sustainable for the industry, for our employees, and for our customers. Third, I'd like to inform the committee about our proposed recommendation for this committee and to speak to the list of amendments we are seeking.

Let's start with the myths. I'll address the first myth, which is that the freight rail industry is made up of only two railways that don't compete for business. Nothing could be further from the truth. In fact, Canada has a vibrant railway industry, and our association represents 55 railroads, including CN and CP, and the Canadian operations of BNSF, Norfolk Southern, and CSX. These are all class 1 railroads.

We also represent over 30 short-line railroads. You'll hear from Gord, who is the president of a short-line railroad. These are small to medium-sized entrepreneurial Canadian railroads that are very close to the customer. Railroads, especially CN and CP, compete with each other, with other modes of transport, and as part of a globally competitive supply chain with various carriers in other countries. Railways are competing all the time, which is why they constantly work with customers to improve their productivity.

The second myth I would like to address is that somehow railways are failing the country; that our cars don't show up half the time; that they're broken, they don't work. Again, the reality is something else. Canadian freight railways own, maintain, and operate over 60,000 kilometres of track in North America, which is more than 35% larger than our national highway system. Last year we moved some 4 million originated carloads of freight goods in Canada alone. That's over 11,000 carloads per day, every day. However, this figure undermines the number of rail cars that are in transit at any one time. Class 1 railroads estimate that the number of rail cars in transit every day is approximately 140,000 cars, which is equivalent to a train that is 3,000 kilometres long, or about the distance from Vancouver to Thunder Bay. Our railways are serving. In fact, they have an obligation to serve a variety of customers from coast to coast every day.

This brings me to the third myth, which is that our service is lacking. More than one person here has said here that 80% of freight rail customers are unhappy with their service. This is simply untrue. This inaccurate number was taken from a survey done five years ago. It was based on 262 responses from a total of 8,000 shippers. The survey itself included many leading questions and its results were flawed.

A more credible and more recent survey was conducted for shippers themselves last year by Supply Chain Surveys Inc. This survey reports that 72.5% of shippers reported 95% or better on-time departures and on-time arrivals performance from their carriers, an upward trend that began a few years prior to that. There is also a very credible, publicly available survey from RBC Capital Markets, the 2012 North American Railroad Shipper Survey, which found that 69% of rail customers rated rail service as being good or excellent, up from 58% in the previous year. Notwithstanding a rough winter, today our service satisfaction is on par with other modes of transport such as shipping and trucking, reflecting our collaboration with other supply chain partners.

I think I've got time for a fourth myth, so I'll leave you with the one that bothers me the most. There seems to be an acceptance, and it's partially driven by all the rhetoric that we've heard, that railway transactions occur in what people are calling not a normally functioning market, and the inference is that railways exercise and abuse market power. So I'd like to know, what is a normally functioning market these days? Is it the stock market, defence procurement, automotive manufacturing, or how about grain elevators?

● (1535)

Railways are an asset-based business and it's not surprising therefore that that there are not a lot of railways in such a business. It is extremely expensive to build and maintain railroads, but once they're built, they must compete in the marketplace against seaways, trucking, pipelines, and other railroads. Railways aren't any different from pipelines or shipping, or even grain terminals for that matter. Just because there are few players doesn't mean there isn't competition, nor does it mean there is abuse of market power.

Our service is improving. We've put into place new initiatives and investments to make them sustainable. High prices could be a signal of market abuse, yet Canada enjoys the lowest freight rates in the world. In fact, commodity prices have risen significantly over the past 10 years while freight rates have remained largely flat.

Enough about myths, because they could really keep me here all day.

Let me turn to a second major point that I think needs to be addressed today and that is productivity. If we go back 30 years, successive governments realized that they couldn't run railways or contribute to the rail supply chain efficiently, nor could they afford the investment in infrastructure these required. In the late 1970s and early 1980s, the Government of Canada purchased 8,000 hopper cars for transporting grain. In 1981, the cost to repair the system in Canada was estimated at $3.2 billion, which is the equivalent of $9.3 billion in today's dollars. So how would you like to be sitting here debating how we're going to find the $9.3 billion to spend on infrastructure for rail? You don't because of what's happened.

By 1995, direct subsidies for the movement of grain to railways had peaked at $650 million. Since that time we've had a tremendous turnaround in the rail supply chain sector in Canada, thanks to good public policy. A commercial approach unleashed a range of market-based forces that allowed the rail supply chain to become efficient, competitive, and profitable over the next 15 years.

Railways are doing pretty much exactly what you would hope for. They're implementing innovative measures to operate the network more efficiently, passing savings on to their customers, and collaborating with their supply chain partners. Perhaps you have heard the term “precision railroading”. It's been in the news quite a lot these last couple of years. It's a catch-all term for improving the productivity of a railroad, based on customer demand. It focuses on asset utilization, velocity, and efficiency. These areas of focus are now widely accepted in other modes of transportation as the drivers of productivity.

We've heard a lot about the term “operating ratios”, which is interesting because railways have been driving these ratios down. What other industry can you think of that has succeeded not only in improving its productivity so demonstrably but also talked about it openly? I can't think of any other industry. You could name their indicator of productivity, but in railroads we talk about the operating ratio and we move it down. These improvements have led to efficient, competitive railways that enjoy significant investor confidence.

Again, railways are doing exactly what you would hope: increasing their productivity, keeping freight rates low, enabling the competitiveness of Canadian manufacturers and producers and, indeed, the whole supply chain, winning investor confidence, making money, and reinvesting in the network. In fact, last year Canadian railways invested more than $3 billion to enhance their infrastructure and equipment, and customer service programs. In doing so, they're helping the government achieve objectives related to job creation, economic growth, and long-term prosperity—and we're not sitting here debating how the government is going to do that infrastructure.

Let me turn to our recommendations for the bill, because I just got a signal that I've got a minute left. I would first say that we have been consistent in our message that we didn't think the bill was necessary. That is our position and our advice to this committee, that you recommend to the House of Commons that the bill not proceed.

However, the government has introduced a bill, and if we have to live with it, we would like to see some improvements. We have six amendments. We've circulated them. I believe the committee has them in both official languages.

● (1540)

Mr. Mongeau referred to three of those: mediation before arbitration, which is number 3; arbitration by the CTA, which is number 5; and limited recourse to customers who lack a competitive choice, which is number 1.

I'll take one second to explain number 6, which is that we would like to see clauses 12, 13, and 14 of Bill C-52 deleted. That is because a number of shippers have testified that they have not requested such a provision and that the provision is not required by them and would not assist them, nor did railways ask for penalties to be included in the bill.

Now I'm going to turn it over to Gord Peters from Cando on behalf of Canada's short-line railroad industry.

The Chair: Mr. Peters.

Mr. Gord Peters (President and Chief Executing Officer, Cando Contracting Limited): Thank you very much, ladies and gentlemen. Good afternoon.

My name is Gord Peters. I am the president and co-founder of Cando. For the past five years, I've also had the pleasure of sitting on the RAC board, a position that has given me a great seat to view the great improvements the railway industry has made in the past 15 years.

The Canada Transportation Act in 1996 allowed Canadian National and Canadian Pacific to reorganize their operations by selling or leasing some of their low-density segments. The result was exceptional growth in the number of short lines, from a mere 12 in 1996 to around 50 in 2010. This was part of the partial deregulation of the rail sector in Canada, and it has created a truly entrepreneurial industry within Canada, one that we believe is vital to the smooth functioning of the rail network. Our industry is very close to the rail customers and to the communities, and we're very close to the class 1 railroads; we hear them all.

Part of our short-line industry is partially regulated federally, because they are federal railroads, and therefore will be impacted directly by Bill C-52.

In 2011, Canadian short lines, to give you an indication of their scope and size, had revenues of more than $735 million, employed close to 3,000 people, and operated more than 8,500 kilometres of track, which is close to 20% of the track in Canada. Short-line and regional railroads face tough challenges because of high costs and, in our opinion, an under-appreciation of their benefits to the communities they serve. For example, short-line railroads reduce traffic congestion on roads, reduce greenhouse gases and other emissions, and reduce the need for road maintenance and construction.

Despite the comparative capital cost advantage of rail infrastructure versus highway, one of the main challenges facing the short lines today is the ability to meet their long-term capital requirements for line and yard upgrades. Short lines typically operate low-density feeder lines that connect to class 1 railroad networks, but this is only part of the story.

Let me speak to you a bit about Cando, as an example within the short-line industry in Canada today. Cando was created in 1978. Today, we're a Canadian employee-owned company with 300 employees, operating in five provinces and several U.S. states. Cando operates three short-line railways in Canada: the Central Manitoba Railway in Manitoba, the Orangeville Brampton Railway, and the Barrie Collingwood Railway in southern Ontario. Our head office is in Brandon, Manitoba, and we have regional offices in St. Thomas, Ontario, in Winnipeg, Manitoba, and in St. Albert, Alberta.

And we have a good MP.

The Central Manitoba Railway is a Cando-owned full-service railway located in Manitoba that services a mix of on-line industrial and agriculture customers. We also have an off-line service provided by Cando through our 34-acre transportation centre in Winnipeg. In addition to interchange traffic with partners CN and CP, we offer a full suite of auxiliary railway support services, including rail car and locomotive repair, rail car storage, as well as trans-loading and logistics support for many small shippers in the Winnipeg market.

The Orangeville Brampton Railway and the Barrie Collingwood Railway are community-owned short lines in southern Ontario that partner with Cando as the railway operator. We provide local railway services to on-line customers in these communities and interchange with CP. Orangeville Brampton Railway also features the Credit Valley Explorer, a railway excursion tour that offers unique views through the Credit Valley escarpment in the heart of Ontario's Greenbelt.

Cando's short-line railway operations and industrial switching ops philosophy is very simple. We run a highly disciplined and sustainable service, with emphasis on safety, community relations, and customer service, utilizing the operations as a base on which to offer auxiliary railway support services that add value to the on-line and off-line customers. Examples include trans-loading, logistics, rail car storage, rail car and locomotive repair, tourism excursions, and contract industrial track construction maintenance. Our success has been based on a great entrepreneurial spirit and a great team.

That's the story of Cando. I could spend a lot more of the committee's time, but I will move on to what impact we believe Bill C-52 will have on the short-line industry in Canada.

Today, I'm here on behalf of the vast majority of the short-line railroads represented by the RAC. Of the 30 short lines that are members of the RAC, there are 17 companies that will be regulated under this new provision, and many of them, just like Cando, are small to medium-sized companies whose services are sold by class 1 railroads to shippers as part of a larger quotation for services.

● (1545)

This situation raises two issues. If a shipper requests an arbitrated service agreement and receives a new price or service, we will have to implement this service, and yet it is not clear that our role, the costs, or even the feasibility of what is requested is realistic. In other words, in terms of the unintended consequences we have talked about, short-line railways, like other network and supply chain partners, could be negatively affected.

These companies will be subject to this provision directly, but many of us might also have a much more difficult time meeting the deadlines imposed in the bill and absorbing capital cost implications or reduced revenues, if forced to offer added services with no input into what those services cost our companies over the short or long term.

Short-line railways were created in Canada as part of a deliberate public policy towards commercialization. While it is not easy to be in this business, we all love it and do what we have to do to make it profitable, including offering a range of services, having a flexible workforce, training our own people, and cutting costs relentlessly. We still have a long way to go in most provinces to create a better understanding among policy-makers about the benefits to communities and to taxpayers of supporting the short-line railway industry.

The legislation here is perceived as a check and balance on an uncompetitive dual monopoly of CN Rail and CP Rail. The reality is that the railway industry has developed into a complex system of various carriers of various sizes, suppliers, and partners all playing an interconnected and complementary role. Legislation targeting part of the system could have unintended and serious impacts on a far wider scale than was intended.

The short-line railways considered whether it made sense to ask to be excluded from this bill, but it is just not practical. What makes the most sense to us is that the committee exercise its right to recommend that this bill not proceed. With our motivated entrepreneurial teams, we feel confident that we can continue to improve the rail system.

Thank you for hearing our concerns. I look forward to the committee's questions later.

Thank you.

The Chair: Thank you very much, Mr. Peters.

Now from Canadian Pacific Railway, we have Mr. Murphy and Mr. Taylor.

Mr. Michael Murphy (Vice-President, Government Affairs, Law and Risk Management, Canadian Pacific Railway): Thank you, Mr. Chairman.

On behalf of CP, it's my pleasure to be here today.

As you know, CP transports bulk commodities, merchandise, freight, and intermodal traffic. We are a core enabler of the Canadian economy, and we ship commodities worth about $135 million every day.

Up front, I would like to spend a little time outlining the significant traffic volumes moved by CP and the complexity of the network we optimize. Last year CP and its supply chain partners moved 40 million tonnes of grain, 23 million tonnes of coal, 11 million tonnes of potash, 2 million containers, and 162,000 carloads of finished autos. For 2013, you can add about 70,000 carloads of crude oil to the mix. In total last year, we moved 2.7 million carloads of traffic with an average length of haul of about 1,400 kilometres.

To accomplish this, we run a network that spans 22,000 route kilometres in 6 provinces and 13 U.S. states, which serves about 3,000 customers, originates 10,000 shipments a day, and interfaces with 5 other class 1 railroads and numerous short lines.

At CP, the importance of the supply chain is elevated further by the fact that over 70% of our traffic comes through or exits from a Canadian port or a border gateway. Our 3,000 customers are all served by the same set of expensive resources, including about 40,000 rail cars, 1,450 locomotives, and over 1,000 train crews.

As with any network or supply chain, service issues, vessel delays, labour shortages, port congestion, inclement weather, incidents, as well as other factors affect CP and its connections. Issues in any one area can often spread to negatively affect the network generally.

I would like to state that throughout the rail service review process, we maintained there was no need for additional regulation between railways and customers as it is the company's belief that reciprocal commercial arrangements, coupled with a stable, balanced regulatory regime as outlined by Mr. Dinning, remain the best approach to promote supply chain coordination, investment, and financial sustainability. Obviously, however, the government has decided to move forward on a different path.

Therefore, today I want to speak specifically to two amendments that would go a long way to bringing balance to the bill.

The first amendment would be to paragraph 169.31(1)(e) and would remove the ability for an arbitrator to determine if a railway can charge for a service in an imposed service agreement. We think that this change goes beyond service arbitration and could force us to provide a costly service at no charge.

The second amendment would be amending paragraph 169.31(3)(a) to clarify that movements subject to confidential contracts cannot be subject to arbitration under this new provision. This change in the wording of the bill would ensure that going forward, CP's approach to negotiating confidential contracts is protected. We are concerned that customers will be able to get an imposed service agreement after they have negotiated a confidential contract on commercial terms. This type of arrangement could allow some to abuse the process by not negotiating in good faith the first time and trying to get a premium service for a basic rate.

I would also like to take this opportunity to make it very clear that we think the rail service review panel's commentary in 2010 on railway market power was incorrect as well as unsubstantiated and, as we argued at the time, should have been withdrawn.

The panel's finding of market power was made on the basis of only a cursory discussion and without any research, or indeed reference to research. For example, the panel did not discuss what the relevant markets might be in respect of which railways allegedly enjoy market power. Nor did it discuss what direct or indirect evidence exists to support a finding of the existence of market power in the relevant markets. Nor did it consider constraints on the exercise of market power, including the countervailing market power of purchasers and the impact of the large suite of existing shipper remedies, including the grain revenue cap, interswitching, final offer arbitration, reasonableness of a charge, and running rights, that all of these have in the competitive marketplace. This is unfortunate, and it diminishes the overall utility of the report.

Since 1987, when confidential contracts were introduced, bilateral commercial negotiations have created a highly competitive rail supply chain that has resulted in the lowest transportation rates in the world. For example, system-wide at Canadian Pacific, we move a tonne of freight a mile for 4.1¢. That is truly remarkable. Compared to overall commodity values, the cost of rail transportation in fact compares very favourably.

The incredibly efficient rail supply chain in Canada is in part an enabler for Canadian exporters, who are highly successful in world and North American markets even though they sometimes are thousands of kilometres from tidewater or the marketplace. We must ensure that the regulatory regime is balanced and continues to support commercial undertakings first and foremost and is designed to provide a backstop that does not undercut all of what we have achieved to date, as well as support ongoing innovation that future success will require.

● (1550)

The current regime, with its commercial underpinnings, is also supporting significant levels of capital investment. This year at CP we will invest over $1 billion. In today's highly competitive global economy, customers, railways, and supply chain partners all have greater service expectations. Every car on CP has a plan before it is even loaded. A major input into these plans is a forecast of future traffic movements. The key is that as many movements as possible are forecast and predicted for a long enough period of time. This is because of the need to supply the crews, locomotives, rail cars, yard, and main-line capacity that I spoke of, all of which are expensive and not available on a moment's notice. We spend a lot of time, effort, and money to get assets to the right place at the right time to handle traffic. Getting those assets in the right place takes substantial lead time.

Furthermore, when forecasts are not accurate or customers do not have traffic to be moved, the cost is going to be borne by the railway. Everyone who rides a bus would like it to come at the time that most suits their individual needs, but bus routes are planned to provide the best possible service to the most people, rather than being tailored to reach each rider's specific desire. Service on a rail system is much the same: the system must perform for the benefit of all, not just one.

It terms of the sustainability of improved service, we are a strong supporter of working together with all of our supply chain partners and customers on improving reliability and predictability across all elements of the supply chain. This is why we have agreements in place with over 70% of our customers, by revenue, as well as our major ports and terminals. The only large part of CP's business not covered by agreements is grain, where the revenue is regulated by government.

The agreements we've put in place cover a range of best practices, including performance targets, performance indicators, dispute resolution, communication, and business development. They are delivering results. For example, container dwell at the port of metro Vancouver is consistently running at less than 2 days, and recently we announced a reduction of one full day on our transcontinental container service from Vancouver to Toronto.

The more recent improvements in the rail supply chain have come out of these collaborative efforts to improve reliability and predictability. Therefore we support the Dinning approach to service agreements, as it allows for the development of mutual accountability among customers and railways. That is why it's critical that if a regulator is going to impose service, that service cannot be considered from the perspective of any single customer in isolation; one must look at the overall network.

I have a couple of additional facts, Mr. Chairman, pass on. In fall 2012, the export grain supply chain through Vancouver set an all-time record, with extended periods of close to 5,000 rail car on-loads per week. Improvements of this magnitude are not easy, and we'll be happy to talk about that.

We also introduced a new remedy that allows for imposed service by a regulator. Any of that must be done very, very carefully. At a minimum, it must support commercial undertakings, as I've tried to stress. It should reflect the idea that visibility on the traffic offering is an important consideration, and service must be viewed from a perspective that looks at the entire network

In closing, I simply want to reiterate that throughout the service review we have maintained that there is no need for additional regulation among railways and customers. We're firmly of a view that continued improvement in our supply chain will be achieved through offsetting commercial undertakings—in particular, better traffic forecasting.

Thank you, Mr. Chairman.

● (1555)

The Chair: Thank you very much.

I just wanted to point out that we also have Mr. Sean Finn and Ms. Paul here from CN to answer questions.

Without further ado, we will now move to Mr. Sullivan for seven minutes.

Mr. Mike Sullivan (York South—Weston, NDP): Thank you, Mr. Chair.

Thank you all for coming.

It's a vastly different impression that you've left of the industry than the one I heard from the shippers.

Mr. Bourque, you suggest that this network is many, many competitors big, but that's not what we heard. This isn't like the telephone industry, is it, where I can have whomever I want connected to the wires to my house? If I am close to a CN line, that's whom I have to use. Is that not the case? I can't have CP driving my freight on CN's tracks?

Mr. Michael Bourque: That's a difficult comparison to make. To answer your question, if you are close to CP and CN, you have the right to interchange. You might have only one rail line close to you, but if you're close enough to the other one, then there's an obligation by the other one to quote you a price. Gord or Shauntelle will be able to describe that.

Mr. Mike Sullivan: But it's only if I'm close enough. Essentially for some places anyway, it's a monopoly situation.

Mr. Michael Bourque: The other point is that you have to look at it as a total network. There's an intense amount of competition that goes on because, typically for a customer, especially for very large shipments, such as coal or grain shipments to China, or shipments of merchandise from China to here, what they're doing—and Shauntelle can perhaps speak to this—is that they're quoting the total price. So the customer is looking at the cost of shipping, the time that it takes. They're looking at the whole supply chain. So it's a globally competitive market.

Ms. Shauntelle Paul (General Manager, Service Delivery, Canadian National Railway Company): If we come back to forest products as an example, 55% of the forest products that are moved in Canada today don't even go by rail. They go by another mode. Of the 45% that's left, you have 15% that both railways can interchange and compete for. You have another 10% that is truck competitive; it's less than 500 miles. When you really get down to it, that gives you somewhere between 10% and 15% that you could really say is captive.

Mr. Mike Sullivan: Monopolistic?

Ms. Shauntelle Paul: Exactly.

● (1600)

Mr. Mike Sullivan: We heard from the shippers associations that part of what they're looking for as amendments to the bill is the ability to put dispute resolution into all the agreements.

Mr. Murphy, you suggested that there are already dispute resolutions in some of your contracts, but they're looking for ways to put these into all agreements and, if necessary, through an arbitration system, so they wouldn't have to go to court. Nobody really wants to spend a lot of money on lawyers.

We've heard from the government that their position is that any dispute as to whether or not a service had been upheld in terms of whether or not there were damages payable to the shipper should be dealt with in court, not through this bill. I'm wondering if anybody has any comments about how fast and how often you want to go to court.

Mr. Gord Peters: There's one comment I'd make. We've run an industrial switching operation in St. Thomas, Ontario, for Formet—Magna International—since 1996. We're handling up to 5,000 car frames a day. We load them and hand them off to either CN or CP.

Of course, we were very concerned when we signed that contract. For example, who's at fault if we shut down GM? GM would take it pretty seriously if we shut them down. They made us sign a huge bond, and we made it very clear that we had a matrix in place, that we could point to faults, and that if it wasn't us but CN or CP, whoever it was, they were going to have to pay. If we were at fault, we were going to have to pay. Since 1996, we haven't had one default on the whole thing.

Mr. Mike Sullivan: But you've built it into—

Mr. Gord Peters: But they're in it, the contracting system.

Mr. Mike Sullivan: —your contracting system.

Mr. Gord Peters: Yes. They're in it.

Mr. Mike Sullivan: Nobody is going to go off to court on this.

Mr. Gord Peters: Yes, we would have to go to court if there were a dispute, because we wouldn't know how big the problem was or whatever it was.

Mr. Mike Sullivan: Right.

Mr. Gord Peters: If there were a dispute, I don't know how you could put a number on it. It might be $1,000 or it might be $1 million. How are you going to know?

Mr. Mike Sullivan: The other thing the shippers talked about was the ability of the railroads to apply extra fees for demurrage. That was one of the things they talked about, whereas there's no countervailing ability for the shippers to seek damages from or have some kind of penalty on the part of the railroads.

Essentially this bill creates a penalty, but the penalty is really a tax. If you have this agreement and you fail, you pay the government, and then you go off to court and decide how much between you. It's really a way for the government to tax the railroads for failing to live up to their agreements. It may be an incentive for the railroads to live up to their agreements, but it's not going to solve the whole problem, because you're still going to have a dispute between the shipper and the railroad. Can you comment on that?

Mr. Michael Bourque: Well, if you accept our amendment, there would be no tax, but I'll let Mike—

Voices: Oh, oh!

Mr. Mike Sullivan: I know that.

Ms. Shauntelle Paul: I'd like to comment about demurrage, because we don't really view that as a penalty. That, to us, is an extended asset use charge. It's like when you go to a budget car rental agency and you don't return your car on time: you're charged extra for showing up late.

The reason is that these fleets are shared amongst many shippers. If we're in a position where somebody is holding onto cars, it's a very valuable asset that has to get to somebody else. That's why those provisions are in place.

Mr. Mike Sullivan: I'm not suggesting they're wrong. I'm just suggesting that the shippers don't have a countervailing anti-demurrage. If you fail to show up with the car on time, if Budget rental car has no car and as a result you can't get from point A to B and you miss something, there's no.... You've still been charged for the car, but you didn't have a car, and there's no recourse.

That's I think what the shippers were saying to us. I'm not saying that I agree. I'm just asking what you think of that.

Mr. Michael Bourque: I'll point out one thing. In that freight rail service review, in the survey, they asked shippers how many of them knew about existing recourse, and 8% of them knew about the provisions that were already in existence for recourse, for example, going to the CTA. There was a great deal of misunderstanding and a lack of understanding from the get-go.

Maybe Robert or Mike want to add to that.

Mr. Michael Murphy: The only thing I would briefly make a quick comment on in terms of the kinds of charges you're talking about—and I think Shauntelle did a good job of explaining our view with respect to demurrage—is our understanding that we are operating a network business. It's complex and the assets aren't just dedicated to one customer in a particular instance like that, because the assets have value throughout the network.

But I would say that we also have situations where a customer is willing to make a commitment, and Mr. Dinning looked at this pretty extensively. Whether it's a commitment at a level that includes some kind of a forecast to us, or taking it to the next level, and bringing it up to an actual commitment for traffic, then we can talk about how we would deal with that in a situation where we don't meet our commitment once the customer has put his commitment into the agreement with us. So that's not an uncommon situation for us at all.

● (1605)

The Chair: Thank you.

Mr. Coderre, for seven minutes.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Thank you very much, Mr. Chair.

It is quite curious to see shippers on one side who are completely in favour of this bill and railway people on the other side who are completely opposed. There has to be a reality that will balance the two.

Basically, what you are saying is what the minister said.

[*English*]

I quote:

> We are not dealing with the normal free market. The reality is that many shippers have limited choices when it comes to shipping their products. It is therefore necessary to use the law to give shippers more leverage to negotiate service agreements with the railways.

So that's the issue.

Do you believe that the minister is out of touch, that he doesn't understand the business, and therefore that he's misleading us?

Mr. Michael Bourque: No, what I would say is that in fact the government did the right thing. The president of CN was here last week—

Hon. Denis Coderre: Except for the bill.

Mr. Michael Bourque:—except the bill, exactly.

The president of CN acknowledged that the service changes they had made in introducing precision railroading were done perhaps too fast, without enough customer communication, and that there were a lot of unhappy customers. Then they launched into the next phase of their evolution, which was really to be more customer-focused.

Both CN and CP are investing considerable dollars and effort and time into improving service. The government should really take credit for that because they had the rail freight service review, they had the Dinning process. Coming out of the Dinning report, what we would have expected, because Mr. Dinning acknowledged that service had improved, was that the government would keep monitoring and perhaps using the threat of legislation or the normal pressure that government can bring to bear, without actually introducing legislation and regulating.

[*Translation*]

Hon. Denis Coderre: My problem is that…

[*English*]

I'm a radical centrist. I'm looking for a balance. Do you believe in insurance policies, Mr. Murphy? Yes or no?

Mr. Michael Murphy: Certainly.

Hon. Denis Coderre: Don't you think that Bill C-52 is an insurance policy? What is the problem with having a kind of a process where at the same time you can say to the shipper, “Well, we're providing you with some more leverage, but on the other side with the railways, you have *l'arbitrage*, so at the end of the day, it can be on your side too.”

What's wrong with that?

Mr. Michael Murphy: Let me make a comment. Insurance is another example of something that would be negotiated. If it's personal or whatever type of insurance you're getting, you'd be negotiating that individually with maybe one or more carriers and deciding what you're going to do.

So for us everything comes back to a commercial negotiation between our company and a customer. Everything comes back to that. To the extent that you have a bill that takes away that commercial relationship or provides some opportunity for some third party, either the regulator or an appointed arbitrator to do that—and that's why we proposed some of the amendments we have—it is obviously a concern to us. Anything that takes away from that commercial relationship is a concern to us. To the extent that we have the opportunity to continue to negotiate.... As I mentioned in my remarks, we receive about 70% of our revenue through commercial arrangements with our customers.

So it's something we're comfortable with.

[*Translation*]

Hon. Denis Coderre: What actually bothers you is someone meddling in your affairs. You would rather…

● (1610)

Mr. Sean Finn (Executive Vice-President, Corporate Services and Chief Legal Officer, Canadian National): I would not say that. The concern, I feel, is that…

Hon. Denis Coderre: That is what it seems like.

Mr. Sean Finn: We want to negotiate contracts with customers in good faith. We feel that, if the parties sit down and negotiate these contracts, they will come to an agreement that will result in better service and a better understanding of each other’s needs. Show me an industry in Canada or North America where a third-party arbitrator determines the level of service to be provided after the parties have negotiated a price.

Hon. Denis Coderre: As my NDP colleague has said, railways are not like companies in other sectors. In this sector, customers do not have a lot of choice but to do business with you.

Mr. Sean Finn: I feel that we have explained to you that customers have a lot of choice. There is another railway company and there are other means of transportation.

Hon. Denis Coderre: We are “on division” about that; someone will explain to you what it means.

Mr. Murphy, given that I am from Montreal and that I only have seven minutes, let me take advantage of your presence to get you explain something to me. If you are in favour of deregulation, why is the City of Montreal forced to go to court to require you to install pedestrian crossings at CN lines? It can be organized and the city is ready to pay for it. What is the basic problem if everyone is in agreement?

[*English*]

Mr. Michael Murphy: Mr. Chair, I'll just take a minute to respond. It's not a question related to the legislation, but something going on in the city of Montreal today with respect to our right of way in Montreal on our main line. Our concern between the port and serving the port—and I mentioned the importance of ports and the port of Montreal is right up there in terms of importance to us—we worry not only about the efficiency and the fluidity of the movements coming out of there, but also about safety.

There's a proposal here to build half a dozen pedestrian crossways at grade across our right-of-way in Montreal. We've already got under-the-rail passageways today that pedestrians are choosing not to use. So I think that's a concern right off the bat. The idea that we would just sit there and say it's reasonable to go ahead and build these at-grade pedestrian crossings is, in our view, itself neither reasonable from the perspective of safety or our ability to move product on our main line like that.

[*Translation*]

Hon. Denis Coderre: But it can be proved to you that it is safe, given that it happens in other cities. It can be done every 500 m and every 250 m. There are engineers who have worked on these things. They can show you that it is indeed safe. It must be said that the tunnels are not. We know that a lot of things can happen at night.

Do people really have to go to court over this? Is there no way to come to an agreement?

[*English*]

Mr. Michael Murphy: I can assure you we're working very hard with the cities to try to come to a solution because several municipalities are involved here, but the idea that we should just build more of these at-grade pedestrian crossings is of great concern to us.

[*Translation*]

Hon. Denis Coderre: Can you fix it so that I do not have to ask you about it again?

Mr. Michael Murphy: We will try, sir.

Hon. Denis Coderre: Thank you.

[*English*]

The Chair: Your time has expired, Mr. Coderre.

We'll now move to Mr. Poilievre for seven minutes.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I has been alleged by a member of the opposition that “Around 80% of rail commitments between the rail companies and farmers and grain elevators are not fulfilled”. Is that an accurate statement?

Ms. Shauntelle Paul: Evidence does not support that, no. Mike Murphy spoke to it. We had record grain spotting and unloads for 2012. Yes, we've been in a hard winter here these last couple of months, but I think Mr. Mongeau also presented the point that our spotting to the day of the week.... If you go back three years, the grain industry looked at car fulfillment on a weekly basis. When we implemented our scheduled grain plan, we were able to ratchet that to a new level of precision, which was to the day that we committed to. We've had great success with the scheduled grain plan where, as I said, have hit record spotting and unloads at the port.

Mr. Pierre Poilievre: Since our government launched the rail freight service review panel has service improved?

Ms. Shauntelle Paul: I'm going to speak for CN, and I would say absolutely. I hear that all the time when I go out and meet with our customers one-on-one. I'm going to put aside that I think we've had —as I think even Mr. Mongeau said—a tough couple of months with winter. All of our metrics in the last three years, whether it's our order fulfillment, our switch window compliance, or our grain spotting, have improved.

I'd just like to add that I participated in the rail freight service review and I participated in the Dinning facilitation panel, and they were real catalysts for change at CN. We took a step back from the great movement that we had hub to hub and we listened to the feedback that came from the customers about where we needed to improve in the way we interact with them on a day-to-day basis.

One of the key initiatives we have as part of our strategic agenda is called our Customer First program. It's a suite of initiatives involving eight different programs about how we interact with our customers on a day-to-day basis and how we can improve that process. There are all these touch points with customers that we're working to retool and simplify to make doing business with CN easier.

I'll just talk about two of them quickly. One is called Car Management Excellence. You've probably heard how important it is for many of our shippers to get their empty car supply. Car Management Excellence puts our car-management team directly in contact with customers on a weekly basis. They have weekly structured calls in which they discuss the performance for last week's car orders and what they see for the upcoming week. The dialogue is very much a two-way street, so if we see any changes to car supply, we talk to customers about that. Customers can also tell us, “I've had production problems” or “Something is wrong”, and it gives customers a much greater ability to participate in our day-to-day distribution so we get the best spotting of our fleet.

The second initiative is called First Mile—Last Mile. I think it came out very clearly through the rail freight service review that we are very good hub to hub, but when we got into the local serving yards, this is where we needed much more visibility in terms of how we deliver traffic to our customer facilities. So we've done two things under this. One is to look at our switch window performance. Did we show up at the time we said we would be there? The second thing, just quickly, is that we also have implemented a new program called iAdvise, wherein if we're not going to deliver the cars that we said we would, we send an automatic e-mail notification to customers.

So again, it's more innovation. We're much further ahead than we were three years ago.

● (1615)

Mr. Pierre Poilievre: You say this process has improved customer service. Why is it that it took a process like this to impose customer service improvements? Should the companies not have been performing at their best without such external pressure?

Ms. Shauntelle Paul: Process is one thing, but we also had to make system changes too.

If I think back three years ago, we did not have the visibility at the local level to give that kind of information. We're talking about 140,000 shipments a day. So as we recognized how important this was to our customers, we started to invest in the infrastructure and our IT system as well as training for our local yard operating people so that they recognized how important this was and so we could deliver that information in real time.

Mr. Pierre Poilievre: Mr. Peters and Mr. Murphy.

Mr. Gord Peters: I have just a short comment. I think for some of that, that's where the short lines come into play. I know, for example, at CP, we handle their intermodal yard in Toronto. I'm the one who said that for CN and CP, it's the same thing. For the long and heavy, they do very well, but in the yards, they have trouble. That's where our “closer to the customer” smaller company, I think, can come and help out with that. We've seen lots of successes in the last three or four years on that type of thing, with us running on their lines and stuff like that, whereas 15 years ago or 10 years ago, we'd never even heard of that.

Mr. Pierre Poilievre: Sorry. Could you repeat that last part? You run on whose lines?

Mr. Gord Peters: Sometimes we run on their lines. We have to go out on their—

Mr. Pierre Poilievre: Whose lines?

Mr. Gord Peters: CN's or CP's—for a mile or two to help service or to get cars or do whatever, and we've been able to negotiate terms for how we do that.

Once again, lots of times industry is paying us—CN and CP are not paying us—to help improve their transportation systems.

Mr. Pierre Poilievre: Mr. Murphy.

Mr. Michael Murphy: Thank you.

I was just going to add two quick points to what's been said, because it's an important question. I think they both relate to the notion that we have a complex supply chain, so it wasn't—and rail is the easiest piece of it to target and look at and try to poke into, because there's a lot more opportunity, but we have other players in the supply chain. I'm thinking of people like ports and terminals. Part of what happened over the last several years was an outreach there, and we've collaborated with them a lot more efficiently and together we've come up with improvements in terms of the supply chain. So it hasn't just been rail, but part of it was that relationship-building.

The other thing that happened, I think significantly, is that we're starting.... We've been making a plea for some time now to give us more visibility in terms of the traffic that you as a customer or groups of customers want to deliver to us. When you do that, watch our service improve. The two are inextricably linked.

Those two things I spoke about have started to happen over the last four or five years. I think they're a big reason why, collectively, the supply chain is performing better.

Mr. Pierre Poilievre: Do you acknowledge that there are certain so-called captive markets in this country that do not have sufficient choice to give customers the bargaining power they would need in order to secure favourable terms?

● (1620)

Mr. Gord Peters: I'll just add a real quick one.

I came in from Winnipeg yesterday, in a two-hour drive. We don't have an airport, either, so we have to drive for two hours. That's not fair compared to the guys in Winnipeg, but that's life.

So I'm captive with no airport, either.

Mr. Pierre Poilievre: You have a highway, don't you?

Mr. Gord Peters: Oh, we have a highway, but in a blizzard and that, and the conditions to do it, how good is that compared to the railroad? We're all captive, to a certain degree, in the rural part of Canada to certain things.

These plants are put there because it's economical. The raw materials come from a certain area, so the plants are put in remote areas to produce things. It does pose a problem, but there are things in the railway industry to help them with that.

The Chair: Thank you.

Mr. Tweed, seven minutes.

Welcome to the committee.

Some hon. members: Hear, hear.

Mr. Merv Tweed (Brandon—Souris, CPC): Thank you, Mr. Chair. It's always nice to back.

If I may, just to address Mr. Coderre's comment, I think if you consult or ask rural Canadians, they would sooner have—

Hon. Denis Coderre: I was born in a rural area, brother.

Mr. Merv Tweed: —fewer grade crossings than more, even though it is a challenge, because that would improve service. It improves the quality of service. It's frustrating at times, but I think in the long term....

I'll use the example of cities on the west coast. They have crossings that delay traffic for hours. When you have it at the grade level, you're subject to this.

In Winnipeg we wait in line sometimes 90 minutes.

Hon. Denis Coderre: You're a great democrat: if everybody wants it, you're supporting it.

Mr. Merv Tweed: At any rate, what I would like to say in response, and to the railways, is that the agriculture committee has heard from a lot of the grain producers in western Canada. They have stated clearly that they've seen a tremendous improvement in service delivery.

I respect the fact that the last two months have been a challenge, but you don't necessarily base the whole year on a five-game losing streak kind of thing.

Gord, I do want to ask you just a couple of questions, because I'm trying to understand this. You take delivery of the machinery that comes into your working area. You have an agreement with CN and CP and other rails, or that's how I understand it.

What happens to you, or your agreements, when the rail companies strike agreements with the shippers? How are you impacted by that? Are you part of that equation, or are you part of that discussion?

Mr. Gord Peters: Part of it is that we are now. The question is whether we're part of it in the future. We're going to have to be, because we could be liable.

What's our part in this? We take a train, we break it apart, and we give it to five shippers. CN and CP have admitted that on those types of deliveries, they have problems. That's our forte—breaking trains apart and putting them back together again.

So if there's some area that we're concerned about, we wonder what it's impact will be on us because we are dealing with an integrated system here. We can see it being very negative, that it's beyond our control and there's nothing we can do. If CN and CP are negotiating with shippers and coming to different agreements and we're not in the loop, we've got a serious problem.

I think it's a red tape thing. I sit on the red tape commission with the federal government. You know, that was one of the things from your government, to try to get rid of red tape. Especially for small businesses like ours, red tape is a huge burden, and I really don't want any more burden on our company. We've been very successful, being Canadian-owned and surviving in this. We think we're doing a great job at working with shippers.

If you do your surveys and you go and talk to some of the shippers that are on our lines or that we work with industrially, I think you'll find there are some huge improvements.

Mr. Sean Finn: Perhaps I could just quickly add something, Mr. Tweed.

Mr. Merv Tweed: Please.

Mr. Sean Finn: As we talked about before, there's the issue also of unintended consequences. Under the bill, if an arbitrator were to impose service that wouldn't take into account, as the shippers would like to see, the network operations, you could be in a situation where a service is imposed by an arbitrator for one shipper: it might be possible for CN to meet that service level, but not our partner. All of a sudden, unfortunately, our partner or our supply chain partner will either be an impediment to serving, or, taken in isolation, that agreement and that level of service does not take into account the broader perspective of the network and the other players involved in the movement.

Mr. Gord Peters: One of the clear examples of that could be weights, loaded cars. We have all the light-density lines. Some of our lines don't have heavy rail on them. If somebody imposed on us that we had to take the heavy cars, we'd be out of business—just like that.

Mr. Merv Tweed: I've heard the expression First Mile—Last Mile.

Mr. Gord Peters: That's us.

Mr. Merv Tweed: That's you. So to not be included in those negotiations, or at least a part of the discussion, would be very damaging, I suspect, to all the short lines, or to all the people providing that service.

Mr. Gord Peters: It's more than just the short lines. I mean, we have 14 industrial clients and we work in their plants—potash mines, automotive plants, oil refineries. We have lots of people in a lot of those plants. That's what we're doing today. We're a liaison between the widget builder, the oil refinery or the automotive, and our partners here.

Typically we come up—we know these guys well—and when they move, if something's not right, we can approach them and get some movement on that on behalf of our customers. It's our industrial clients who pay us, not CN and CP. We're not working for.... We are working for the system, but we're working for the transportation system, and the industrial clients are paying us to improve their systems.

● (1625)

Mr. Merv Tweed: Would all or most of the companies that you represent, as far as the small rail association is concerned, agree with that?

Mr. Gord Peters: I think they would.

Mr. Merv Tweed: With the bill the way it is, I guess I would ask, does that suggest that you have to be a part of the discussion? Or is that just going to be an automatic?

Mr. Gord Peters: There are two problems. One, we're provincially regulated—Cando is. So ours wouldn't be affected. So, on the one hand, we could say we're not part of it. You guys promised something to your customer. Well, that's still not going to do anything for anybody if we're in the middle of this and we say, nobody talked to us. Nobody had to talk to us. We're out of it. I still don't see where that's going to improve the rail system. It's going to be one piece in the middle of that thing. It's like taking a mile of track out and saying okay, now figure it out. So I don't see it.

Now a bunch of our short lines are federally regulated and will fall under this. But it's a multiple move. There are lots of moves on which CN, CP, and we get together. This hits all three of us. So who imposed what, how, when? You're complicated. I just don't see....

If you look back at the improvements.... Like I said, we've been at this since 1978 and we're excited about it. We think we've done a lot of great work and I think we're getting recognition from both industry and our class 1 partners that the short-line industry is here to stay. It's had some ups and downs. We're really the first mile, last mile. Whether you call us a short-line operator or you call us an industrial switcher, I don't see a whole lot of differences. It's working on that first mile and last mile.

Mr. Merv Tweed: Do the provincial regulations prohibit you from entering into agreements as part of the bigger negotiation? What's their role then?

Mr. Gord Peters: Their number one role is probably safety more than anything else. So their role in the commercialization of this is with the commercial agreements that Mike talks about and stuff like that, where we try to get into the loop with our shippers and that—what's signed, what's not—and to get in while we're helping them to set priorities on who is going to do what. And if there are changes, what will we do? With some of the trains that we've set up, we air them up and get them ready to go, so that our partners CN and CP can come back on, hook on, and they're gone. It speeds up the whole system.

Mr. Merv Tweed: For all the witnesses, on the question of the ports and access to them, do they now have to be a part of that information chain? I assume that over the years they haven't been—or haven't been as active or as involved in it?

Mr. Sean Finn: One of the catalysts of the rail service review was, in our case, about the ability to enter into every port in Canada with a level of service agreement where we exchange information and try to get the details about line of sight, about how many boxes have been landed for more than 48 hours. All of us together realized that the supply chain through Vancouver, Rupert, or Halifax was only as strong as the players who were playing there. That's really been an impediment...for the rail service review to look at and say, historically they're not customers, they're not shippers, but they're an integral part of the supply chain.

So in the case of CN we have agreements with every port in Canada, wherein we regularly exchange information on what's going well, what the issues are, what terminals are loading and unloading, and try to adjust the supply chain to make sure that we meet the needs of the ultimate customer who is using these ports as gateways to Canada.

The Chair: Thank you.

We'll now move to Mr. Toone, five minutes.

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Thank you, Mr. Chair.

I've been listening to the testimony. It's been very enlightening and I thank you for it.

It is stunning to see how the shippers seem to have a completely opposite position to what you're proposing today. But, hopefully, a compromise is going to be found somewhere.

First, I just have a technical question. Ms. Paul, you were talking about logging, the forestry industry, and their percentage use of the rail lines. Certainly where I live there's a lot of intermodal transportation. Did I miss that? Did you mention anything about intermodal?

Ms. Shauntelle Paul: Intermodal is actually a great alternative that we've introduced in the last couple of years for a lot of our pulp and our paper customers. So that's another mode whereby many of our customers will ship into some of our intermodal terminals like Saskatoon and Prince George and we will rail from there. We call it our intermodal flex program. It's just another way of including the alternative modes of transport that are available in containers.

Mr. Philip Toone: Indeed. Do you have a percentage for that? Do you have a number on that?

Ms. Shauntelle Paul: Not with me, I'm sorry.

Mr. Philip Toone: Again in the regions, I think we're looking at seeing more and more short-line companies servicing them. You were mentioning earlier, Mr. Peters, that the larger railways are paying you to improve their systems.

Could you elaborate what you meant by that?

● (1630)

Mr. Gord Peters: There are a number of services we can give. We can take a train and break it apart and go to 10 customers. For example, in central Manitoba we handle 12,000 cars a year with about 15 customers. It's not a service at CN or CP in particular. There are short moves of small blocks of cars, which they are really suited to. They have big horsepower locomotives, and there's even a question of going on in some of the yards now with some of the equipment they have.

Can we do a better job? We focus on the smaller customer. We have a transload facility in our yard where any small shipper can come and unload two or three cars. They use us. That's typically how we help them. That car could be coming from Texas and going to Manitoba. We only get it for the last mile, but without us I think the supply of those services would be a problem.

I want to comment on forestry. That is where we get hit. We had a forestry line on ours that shipped about 20% of their product by rail, 80% by truck, and expected us to upgrade the line—which would cost multi-millions of dollars, with no commitments.

You can look at northern Saskatchewan. There are three or four of them that have been abandoned because the provincial government... nobody would up.... There's one by Manitoba where they put $40 million into the road and gave us nothing, absolutely nothing, to do anything on the rail.

Mr. Philip Toone: That's a good point. I think in a lot of places across this country, in the regions at least, when the railways aren't used the trucking is murder for the road network. Provinces are certainly very motivated to try to avoid seeing railways abandoned in their regions.

I'll give an example of something that's happening right now. In New Brunswick, CN announced that it wanted to abandon a rail line essentially between Moncton and Bathurst. It essentially told the provincial government, pay up $50 million or else we're walking away from this railway.

People in regions whether they are shippers or municipalities, or even provincial governments, often feel threatened by the railways. They feel that the railways have them over a barrel because otherwise they are going to have to spend a lot more provincial tax money or municipal tax money to be able to survive.

Mr. Gord Peters: They put $50 million in the road. It's provincial tax money.

Mr. Philip Toone: In fact, they probably would put more.

Mr. Sean Finn: As someone personally involved in that matter, to the contrary I think the process that's in your law today allows for the railway to indicate the fact that there's no traffic between Bathurst and Moncton on the Miramichi line.

Mr. Philip Toone: There's certainly more than no traffic; there is traffic. The mines might be closing, but other traffic is going to be.... That is why you're looking for new partners.

What you're probably going to do is sell it to some conglomerate of the municipalities. That's probably what's going to happen.

Mr. Sean Finn: I don't want to prejudge how the province is going to react, but my comment was the following. That process is to be transparent. We purposefully sat down with the province and said here's the issue about the carloads having gone from $16,000 down to $9,000.

The big issue is capital requirements, to put the capital into the line to maintain it at a level where we could serve the customers.

It becomes a vicious circle. If there's no capital, there are no customers. If there are no customers, there's no capital.

Mr. Philip Toone: But you're also obligated to disclose by law. That's one of the benefits of our actually having a regulatory process in this country. You have to disclose that before you abandon a line.

I think it's important that partners be found, because that region is going to suffer markedly if it doesn't have a railway.

Mr. Sean Finn: We are working extremely closely—and I'm involved in it personally—with the Province of New Brunswick.

Mr. Philip Toone: Are shippers....

The Chair: Wind up, please.

Mr. Philip Toone: Regarding CN's plans in New Brunswick at this point, are there any other lines you're planning on abandoning at this point?

Mr. Sean Finn: We have a list of lines that is posted on an ongoing basis. It's an ongoing process. We're a lot less than 10 years ago. As much as we can, we work with our colleagues in the short-line industry, with the provinces, and with the municipalities, but ultimately the issue is whether there is traffic to be served there. Depending on the answer to that, there's a process that we follow.

But we're not into the days of mass abandonment of short lines. We're very much at the margins looking at what can be done to make sure that lines are viable, because that's the issue. You don't want to have a line, as Gord said very well, that lacks capital and becomes a self-fulfilling prophecy, and all of a sudden there's no traffic because the line can't support it.

The Chair: Thank you.

Mr. Holder, for five minutes.

● (1635)

Mr. Ed Holder (London West, CPC): Thank you, Chair.

I'd like to thank our guests for coming today.

It's been rather interesting. A comment was made earlier that we've had some different perspectives from other guests who have been here. I'm not going to ask specifically about things that relate to my region, as some of our colleagues have. London, Ontario—

A voice: It's the tenth largest city.

Mr. Ed Holder: Yes, it is the tenth largest city. It has the CN and the CP lines that run through it for different purposes. I'm just wondering how we ever got to this point. I'm looking at the people here. I'm not sure what I want to say to all of you.

When Mr. Mongeau was there last week—and in our last meeting we had some shippers here—I thought it was healthy. I recall that some of my comments were to the effect, why didn't you just do this before? I want to give you a gentle boot. Frankly, I'm not necessarily a person who thinks that legislation is always the answer. But when you do have a different kind of marketplace—which you must admit, no matter what you call it—that has been supported, then I think it requires different obligations. You don't need a lecture from me, but it just strikes me as odd.

By the way, I found Mr. Mongeau's testimony at the last meeting to be credible, although I thought he was a little generous in his definition of competition. I also thought what several of the shippers' organizations said was credible as well. I also thought the shippers were more supportive than they might have let on. Once again, when I hear the shippers say that you're not doing enough, and I hear the railways say that they're doing too much, I'm almost at a point of thinking that we're getting pretty close to where it needs to be. That's just my personal reflection.

Mr. Sean Finn: If I may say, I think the railways deserve to get the boot once in a while. We're not perfect. I think that Claude Mongeau said that very well. To answer your question, in a nutshell, there were periods of time in late 2007-08 where our service was not where it should have been. We're making major changes in how we serve customers. We're not very good always at explaining why changes are necessary, but I think that led into the rail service review. We got the message and we said to ourselves, there's no way we're going to grow these businesses by not growing with our customers. To your point, I think very few industries in Canada can afford to do this.

Mr. Ed Holder: Mr. Finn, I appreciate that, although it was interesting when one of the representatives, Mr. Sobkowich, from the Coalition of Rail Shippers, and a couple of others, including Ian May, certainly took a different view than your perspective.

I want to talk about a couple of things. I'm going to start with capacity. I've heard you talk about the weather being an issue this winter, and certainly we had shippers say, but winter happens every winter, and we all know that. I'll leave that there. Let's go the other way. Let's say it's really good weather. With some of the things this government has done with the Wheat Board and so on, we're seeing more production and better times in what has been a challenging economy. How do you handle the issue of capacity when the land is strong, the production is better in all sectors of the economy that rail associates with, and you have so many cars?

I was surprised, Mr. Murphy, when you outlined some of the issues with the numbers of cars out there at any given point in time. But as the economy gets stronger—and we're optimistic as politicians, and we pray as politicians that it gets stronger—how do you handle that capacity issue without then potentially being in violation of an agreement? How do you produce enough cars to satisfy demand, and enough trained personnel to be able to handle it?

I'll stop there and get a response from the train folks, either Mr. Finn, Ms. Paul, or Mr. Murphy.

There's no disrespect, Mr. Bourque, because I think you know something about trains.

Perhaps I could just get some reaction, please.

Mr. Michael Murphy: If you want me to start, I'll give you a couple of comments on that. There are two things. It's the essence of planning to be able to do exactly what you described.

The first thing I have already talked about—the notion of working closely with enough customers to have a line of sight on visibility, in terms of the traffic that we're going to be presented with. The better job we do of working with our customers to do that, the better the service level is going to be. We've done a lot in dealing with how to improve that.

The other thing is to make sure that we have the capacity to spend capital in the right way. We spent between $1 billion and $1.1 billion last year. We're going to do the same this year . We do that on a number of things, some of which are related to technology. A lot of it's is just related to maintaining the system that we have, which is something you had better do every year, but it's also about planning for growth. Because we work with our customers, we understand what's going to happen in marketplaces.

I'll use a couple of examples of the amount of money we've spent over the last several years on upgrading our main lines in western Canada to be able to move product to the port of Vancouver. We've seen over the last several years tremendous growth there, not only on the intermodal side but also on the bulk commodity side in terms of grain, potash, and coal. You have to be able to handle that, and we're doing that. We're now seeing the same thing with respect to crude oil movements, for example.

● (1640)

Mr. Ed Holder: Ms. Paul.

Ms. Shauntelle Paul: I would just reiterate that as our network becomes more fluid and you can move cars faster and faster, that creates its own capacity.

I would just piggyback on what Mike said. Working with your customers to get an advance forecast or an advance commitment on traffic is really important because it takes nine months to train somebody to be a conductor on our railway. And it takes six months, if not longer, to get rail cars. The more closely we work with our customers and the longer term we do it in advance, that's how we're able, from a forward-planning perspective, to meet the needs that are coming.

As you've said, when we have a great winter and we can turn the fleet faster, that creates its own capacity in itself.

Mr. Ed Holder: Thank you. It's—

The Chair: Thank you.

I was very generous, Mr. Holder.

Mr. Aubin, five minutes.

[*Translation*]

Mr. Robert Aubin (Trois-Rivières, NDP): Thank you, Mr. Chair.

Thank you all for coming.

I must confess that, the more groups we meet, the more it seems to me that the problem this bill is causing is a profound one.

I thought I knew CN and CP. As for the Railway Association of Canada, I took a look at their website just so that I could get to know it better. So my first question goes to Mr. Bourque, although it is open to everyone.

As I was looking at your website, I found some words that I found a little harsh. Let me quickly read them to you, Mr. Bourque. You say that it seems that the only groups arguing in favour of a return to regulation are those who prefer a managed economy rather than a market economy. I confess that I still have a lot of hesitation in feeling that we in Canada, when we are talking about Canadian railways, are in a market economy.

So here is the first question I would like to ask. Do you really think that the objective of this bill, a bill introduced by the Conservative government, is to create a managed economy?

Mr. Michael Bourque: I am going to answer in English.

[*English*]

Mr. Robert Aubin: No problem.

Mr. Michael Bourque: What I was trying to communicate in the remarks of mine that you just cited is that many of the people whom I had spoken to about this potential legislation were frankly outraged that the government would step into an area that was working in a commercial context. In particular, if you look at it historically—and that's why I tried to refer to some of the history today—over the last 30 years, successive governments have made good public policy to ensure that railways and their customers are operating in a commercial context. That's why railways can invest as much money as we have in our infrastructure. That's why we've created a short-line industry, which has been able to pick up these pieces. I said the reverse of.... Really, most people were outraged that the government wanted to introduce new legislation, including the railroad industry, which didn't really want this provision to be introduced.

[*Translation*]

Mr. Robert Aubin: Thank you.

Still on the subject of a market economy versus a managed economy, I was wondering if you thought that there really is free competition between CN and CP.

As an example, for short lines, many customers, some of whom I have met personally, have a hard time pointing to any notable differences in the CN and CP rate structures when both are available. I am trying to understand it and I do not have the answer. Maybe you do. Perhaps when CP sells a stretch of rail line to another company, the profits could be a factor in the rates provided to future customers.

Is it your impression that there really is free competition between CN and CP and that, as a result, we really do have a market economy?

● (1645)

Mr. Sean Finn: We said this on Thursday, but let me repeat it today: there is no doubt that the competition between us for most of the traffic in Canada is fierce.

In western Canada, for example, grain leaves the farm by truck and there is a choice between going to the elevator served by CN and the elevator served by CP. That choice is clearly the farmer’s. In the places with the 30 km interchange zone, customers have the right to ask the prices at both places and choose the better one. But we do not have the choice of letting the other rail company use our tracks.

My experience at CN allows me to say that we compete fiercely, to the extent that our former president is now the president of CP. I can guarantee you that the competition is fierce.

Mr. Robert Aubin: In that case, why do you think the government has chosen to support fixed service agreements rather than the laws of commercial transactions?

Mr. Sean Finn: Until the act was introduced, I feel that the government’s intention was to strongly encourage the parties to find a solution. I sat on Mr. Dinning’s committee, after all. We had a couple of dozen meetings in which we tried to reach a business solution on the matter. The issue that some shippers had was that they preferred to wait for legislation that would impose a higher standard, rather than negotiating.

But you don’t have to worry. At the moment, we are inviting all our customers, big ones, small ones and medium-sized ones to sit down with us to come to a service agreement that will include hours of service, the number of switch windows per week, the number of cars and, if possible, a guaranteed minimum level of traffic. Then there will be discussions about the consequences if we do not meet our mutual obligations.

You can be sure that this is not being done in a vacuum. At the moment, we have a number of agreements with a number of customers. As I said earlier, all Canadian ports have information and service exchange agreements governing what is going through those ports.

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: Thank you very much.

Mr. Toet for five minutes.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, Mr. Chair.

And thank you to all our guests who are with us today.

It is interesting how we definitely hear some different aspects on this. One of the things I want to come back to, and it's been talked about a lot, is everybody's desire on the commercially negotiated contracts. I think we've also been very clear that this bill is actually what we want see it as, as a backstop, so that we can create commercially negotiated contracts. That's where it sits. When I look at it, I see some things in this bill that will actually be advantageous going forward in negotiating these contracts.

One of the things I look at is that the arbitrator is required to consider the full network implications when he is making decisions based on what has been brought forward. Mr. Peters' concern about the short-line aspect of it. Well, that is part of the network. The port is part of the network. All of that has to be looked at by the arbitrator when he comes forward with his final decision. To me, I think this also sets the precedent for when you're negotiating with the shipper: they now know that the network is part of it. From what they were saying initially in some of the hearings that we had, there was a sense that the network wasn't part of it or shouldn't be part of it. I think they're coming to understand that the network does have to be part of it, because we don't want to overburden the network and have it collapse on us. That would be advantageous to no one, neither them nor the railways.

I just wonder if you could comment on that aspect, that it actually sets up a good clear parameter that may help you not to have this backstop but to actually have the commercially negotiated contracts you're looking for.

Mr. Michael Murphy: I can start, if you'd like.

I fully agree with your commentary. I tried in my opening remarks to give a sense of the importance of this. I think it's one of the biggest issues that we've had throughout this process and that continues to be there, given what we've seen of the proposals by some of the associations who want to see the bill amended to take that away from the process. I think that would be right at the top of the list of mistakes that you'd make, because of the reasons you've just outlined.

On our ability to function, we just talked about the kind of collaboration agreements we've done with ports and terminals and the kind of work we do with other supply chain partners. When you think about moving any particular commodity, our average haul is about 1,400 kilometres. Think about the number of touch points that you're going to have there: two out of three cross a border, so you're into ports, you're into terminals, you're into terminals inland. You could be transloading, you could be interchanging traffic. There are just so many pieces that move here in order to finish a movement. From our standpoint it's absolutely critical. So I agree with you.

Robert, I don't know if you have anything add.

● (1650)

Mr. Robert Taylor (Director, Government Affairs, Law and Risk Management, Canadian Pacific Railway): Just very quickly, I think that the ability to optimize the network is why we have the lowest freight rates in the world. So when we're moving a tonne for $33 over 1,400 kilometres, it's because of the network. If you lose that, you've lost everything, really.

Mr. Sean Finn: Just to your point about the backstop, I think it's important through the process and our discussions with our customers today to have agreements. We always look to mediation. So, you're trying to negotiate commercially and you get to a point where there are a couple of outstanding issues. As you know, the railways are very much of the view that there should be a mediation process prior to imposed arbitration. That should be the ultimate backstop. We don't think it should be there. As you know, today there's no requirement in this bill to have the parties mediate before they arbitrate, and typically that would be the case. Most of our experience has been commercially. When you negotiate with the party and you can't arrive at an agreement, you go into mediation before you get to arbitration.

Mr. Lawrence Toet: One of the other things I heard about in the testimony today—and it sounds as though there has been progress in this too—was the railways' inability to receive a future commitment from clients and shippers and how having such a commitment would help you in addressing long-term things.

I look at the bill and see that a lot of that is going to be helped by the bill. Shippers do not have to come forward to the arbitrator with commitments, but the arbitrator does, according to the bill, have to take that into account. In other words, a shipper who has future commitments, including longer-term commitments, would be part of that process going forward. We have set a framework or parameter or mindset for the shipper saying that this is going to be part of what you need in order to be in the negotiation; that you can't go to the railway and say: “I don't want to make any commitments, but I want you to do this.”

I think the bill has actually helped you in the process of the commercial negotiations, because it has set the parameters for the shippers. There's a better understanding of what they're going to have to bring forward to the arbitrator to have their cases taken seriously. The reality is, we all know, that if they go to the arbitrator and say that they're making zero commitments, that nothing is going to happen, that they're not telling whether they're going to ship five cars or five million cars but that they want the arbitrator to side with them, chances are that the arbitrator is not going to do that.

So we've set that mindset. Maybe you could comment on how those things are actually helping you to create the atmosphere....

Mr. Murphy, you talked about 70% commercial negotiations now. I'm assuming you'd like to see them at 100%, when you would have these contracts with everybody. I think this bill will actually help to push that 70% to a higher level.

Maybe both of you could comment on how you see that going forward.

Mr. Robert Taylor: That's the essence of a commercial negotiation. If you want to get to 100% rail service and you want a penalty for non-performance, then there has to be a commitment on the other side. Without visibility on traffic or a hard commitment, it's impossible to get 100% rail service all the time.

So we agree. I think Mr. Dinning's report did a good job of putting additional definition around this.

The Chair: Thank you.

I'll move to Mr. Toone for five minutes.

Mr. Philip Toone: Thank you, Mr. Chair.

To start with the Dinning report, I think it would be very opportune that Mr. Dinning come here to testify. I think his testimony would be appreciated and very enlightening. I hope he'll be showing up at this committee some time soon.

[*Translation*]

But I have a question about the rates. We talked about it a little earlier, but I would just like to explore the matter a little more.

I assume that the rates are based on volume. The better the customer, the better the rate. That is sort of what one would expect. Can I assume that the rate would be adjusted if the volume decreased, even for a major customer? I assume the rail transport would cost more? Would that generally be true?

Mr. Sean Finn: Normally, a major customer will have a confidential contract. There will be a commitment for a certain volume and a business discussion will take place if the volume is not met, without anything being imposed on one side or the other.

Of course, you understand that major shippers often have their own fleet of cars. So the price of the cars is not a factor. When we have to supply the cars ourselves and the traffic changes, then, overnight, we have lost volume but have bought the assets we need to serve the customer. That is an issue.

I will not say that the link is a direct one. These are long-term confidential contracts. The rate does change depending on the volume. It is explained by the simple fact that the more we ship, the more cars we put on and the lower the costs. That is only normal, since they are being shared.

● (1655)

Mr. Philip Toone: Yes, as I asked the question, I was thinking of VIA , which has its own equipment, in general.

Nothing in the bill that we are studying today would prevent you from increasing rates. We know that VIA Rail is going to decrease its service, drastically at times and especially in the regions. In some cases, a route has been cut completely. In the Maritimes, for example, the service is being cut by 50%. So nothing in the bill prevents you from increasing the rates for VIA Rail.

Mr. Sean Finn: We have a contract with VIA Rail. The contract is negotiated by the parties for the entire network, not just for one section in particular. It is very difficult to predict what will happen if, to take your example, the service between Bathurst and Moncton goes from six days to three. But for us, the rates apply to the entire country, we do not apply them to individual lines as such.

The question that is asked a lot more in terms of VIA RAil is whether its fleet of trains and rolling stock are economical or not. I will let VIA Rail answer that question. It is not up to CN to do so.

[*English*]

Mr. Philip Toone: Mr. Peters, during your earlier testimony you talked about patchwork regulatory structures. Could you elaborate? What kind of impact does that have on short lines?

Mr. Gord Peters: As a small-business person, I think it's well known that for small business, red tape is a burden to understand and to deal with. If anybody has been in a small business helping mentor lots of young kids trying to get into business, with all of those things there's a huge weight of learning how to run the business.

Quite frankly, the bigger we get in business, the more the regulations. I rather like it, because it keeps a lot of people out.

Voices: Oh, oh!

Mr. Gord Peters: I didn't like it for 30 years when I was going into it, but now that we're there and are part of the team, we can work on it.

So if there's a patchwork and a question of whether or not it applies to you, in this case it's federally regulated, and there are provincially regulated railways. We are all just a bit different in how we operate under these regulations, and when there's a little bit of difference, we always get into an argument about who's right and who's wrong.

Mr. Philip Toone: Maybe I could ask for a better understanding of how there is coordination between your bodies. Do you solicit the governments to try to have coherence within the regulatory structure? When provinces come up with their own regulations for their provincially regulated railways, do you solicit them to try to be coherent among the provinces?

Mr. Gord Peters: We're trying more and more, but for the railway association, the reality is that it went from ground zero 10 years ago, or a little longer than that now. Many provinces didn't have any regulations at all relating to rail, so when it came to provincially regulated lines, they said, we don't know. Many of them just defaulted to the federal examples to try to do it. We find that some provinces are a little stronger than others. If we take some communities—Barrie, Collingwood, Orangeville—they step up to the plate.

To talk about the cost of infrastructure and so on, they have to pay us to operate those railroads every year, and these communities don't take in what they pay out for that; it costs them money to keep the railroad open. They've chosen to do it because they think it's important for their community, just as they do with their roads: they keep their roads open because they think it's a good deal.

But that is two communities out of, how many communities do we have in Canada that do it? I can name you literally 10 or 20 communities, examples in which we have tried to work for them and have said, if you'll support this, we'll operate the railroad; we'll buy it from Mr. Finn and we'll run it. But do you know what? They say no, not only will we not support it, but we're going to tax you on your railroad also.

I'll give you an example. On our railroad in Winnipeg we pay $400 a mile in taxes in the rural areas, outside the city of Winnipeg; we pay $10,000 a mile within the city of Winnipeg. It's a $150,000-per-year tax grab by the City of Winnipeg from our little short line for a couple of miles of tracks, because of some historical red tape years ago concerning how they figure out the tax system. We've been for seven or eight years trying to unravel it.

The Chair: You're out of time—

Mr. Philip Toone: What, already?

Some hon. members: Oh, oh!

The Chair: —and again I was very generous.

Mr. Adler, you have five minutes.

Mr. Mark Adler (York Centre, CPC): Thank you, Mr. Chair, and I want to thank all of the panellists for being here today. I have a couple of questions.

Ms. Paul, you mentioned earlier that until about 2007-08 the conditions were not great in terms of railway performance, on-time delivery, all that that sort of thing.

What were the conditions, what environment led to the change happening in 2007-08?

● (1700)

Ms. Shauntelle Paul: It was really before 2007-08. We implemented what we call our scheduled or our precision railway. So we had a lot of insular focus on ourselves in managing our traffic patterns, how we were going to move and block and marshal the traffic from our hub-to-hub. I think what came out of the rail freight service review was that we were very good from hub to hub; it was just, as we've been talking about, the first mile, last mile, and the intricate connection to our customers, that needed work.

Mr. Mark Adler: Can you talk about why you responded in the way you did? What led you to make that decision?

Ms. Shauntelle Paul: You can only cost-cut so much; we really needed to grow the business. Our strategic agenda is to grow our business and our revenues and to help our customers succeed in the markets.

Mr. Mark Adler: So was it bad business decisions that led to this...?

Ms. Shauntelle Paul: No, it was our transformation; it was our process. I guess I could link it to having a beautiful, shiny car: if the engine doesn't turn over, it doesn't matter that the windows roll down and that you have air conditioning and all those other things. We needed to get the engine of the car right first, and that's why we spent so much time.... As I said, it's a very complex supply chain type of business. So we got the car running, got the engine looking good, and now we can work on the other parts of it.

Mr. Mark Adler: Okay. So say from the period of 2007-08 to now, there's been a steady increase in productivity, technology, and performance. Was it those market conditions that led you to that better performance? Was it just the discipline of the market?

Ms. Shauntelle Paul: Are you asking if it was because we had a downturn that we were able to do all of these things?

Mr. Mark Adler: Well, from the downturn to where you are now, was it the discipline of the market that made you more competitive and productive?

Ms. Shauntelle Paul: I would say that we fight every day for traffic and to compete with CP, to compete with trucking, and to compete with pipelines. Our discipline in our operating model and how we deliver every day has certainly helped us in terms of the product we're delivering, but it's all of the other things as well—all of these customer connections and the ease of doing business with us. Those are all decisions people make when they come on our lines and move traffic with us.

Mr. Mark Adler: Earlier, Mr. Bourque was dispelling one of the myths about the marketplace not being a true marketplace, but more of a skewed marketplace. In your opinion, has it been a true marketplace for the last, say, half dozen years?

Mr. Bourque, do you want to...?

Mr. Michael Bourque: The way I look at it is that there was an evolution. It was only 18 years ago that CN was privatized from a crown corporation. We forget that. That's a tremendous transformation in less than 20 years.

As Shauny was saying, the focus on precision railroading was a focus on cutting costs and productivity, but you can only cut costs so long and then you have to start focusing. You guys heard all the customers scream and you started some processes. I think you deserve credit, because that focused our collective attention on the customer and then we started to have to invest more in the customer. By then, the trains were running pretty efficiently, and they continue to do so.

Mr. Mark Adler: As a government-run operation, then, CN.... I mean, you inherited what was this government-run operation, this big, lumbering, overweight beast.

Mr. Michael Bourque: Well, I love the term "precision railroading" because—

Mr. Gord Peters: It's called the pig that flew.

Voices: Oh, oh!

Mr. Sean Finn: A good example of an operating market would be grain. As I said before, up until 2010 we would measure our on-time grain performance to the week. For a grain elevator, we would say "We'll get you a car between Monday and Friday, give or take a couple of days." But because of market forces, with the Wheat Board being transformed and with CN and CP becoming a lot more efficient—we were fighting for every grain car we could get our hands on—in the case of CN, we started to measure our performance to the day, give or take hours of delivery. What did that do? It innovated the whole industry. Because the market played its role, with the business going to who was performing best, all of a sudden the whole industry—us, CP, the grain elevators—started to realize that this was a supply chain approach and the market was demanding that we get better at it, which we did.

The best example is that the market share moved a bit. CP then decided that they too thought it was important to have a scheduled railway approach for grain cars, which is a perfect example of the market forces playing out.

● (1705)

Mr. Mark Adler: So the marketplace was working.

Mr. Sean Finn: Absolutely.

Mr. Michael Murphy: Can I just add a quick comment?

I'll take it up one level. I think you have the right perspective in thinking about this in terms of the market. I agree with what's been said, but the only comment I would add is to think about the global marketplace that we're operating in and what has been going on over the last seven or eight years.

There are a number of examples I could use, but I'll talk about the Asia-Pacific environment and what we were faced with in terms of the growth of exports from Asia into North America and our capability to handle that kind of volume increase starting in the mid-2000s.

That was an eye-opener for a lot of people. The way we were able to do it, apart from the investments I talked about, was with the kind of collaboration we saw. Governments were a big part of this, whether it was the federal government or governments in western Canada, as well as communities, ports, and terminals. People came together to respond to that, but it was market driven. We were either going to be able to compete for that business on the west coast or U. S. ports were going to get it. That was the issue.

The Chair: Mr. Adler, your time is up.

Mr. Daniel for five minutes.

Mr. Joe Daniel (Don Valley East, CPC): Thank you, Chair.

Thank you for coming here. I apologize, as I'm not as familiar with all of these things here, so my questions may be a little naive. But let's see where we go with that.

Clearly, we've had a lot of responses from shippers about this bill, and that's why this bill has come about. But you've painted a picture that seems to be completely opposite to theirs, that everybody's happy, things are going well, etc. Why is there such a big contrast?

Mr. Michael Bourque: If you were to talk to most of the customers of the railways, you'd find that they would acknowledge that service has improved. I'm not saying that if we were sitting here five years ago, I wouldn't have an argument. But over the five years service has improved, and I provided some evidence of that in my opening statement, with third-party surveys that confirm that.

Mr. Joe Daniel: You also quoted a lot of statistics of all of that. Are they available, or have you made them available?

Mr. Michael Bourque: Yes, sure, they'll be on the record. Anything you want, statistics-wise—

Mr. Joe Daniel: Yes, but you quoted various reports and things like that. Have we seen them?

Mr. Michael Bourque: Yes, like freight rates, for example, they are available. We'd happily provide it. The RBC survey, yes....

Mr. Joe Daniel: When you have so many shippers who have asked you for service agreements, are you able to actually negotiate with all of them and get service contracts with anybody who wants one?

Ms. Shauntelle Paul: Yes, we've been able to negotiate with anybody who's come forward and wanted a service level agreement with us. So that has not been an issue.

Mr. Joe Daniel: What sorts of numbers are we talking of?

Ms. Shauntelle Paul: We have all of the ports that are under a service level agreement, and in terms of customers, I'd say around 55% of our revenues are covered by a service level agreement.

Mr. Sean Finn: And we've reached out to access smaller customers. Obviously, there's enough of a challenge for some of our smaller customers. Last year we reached out on two occasions to almost 1,500 of the smaller customers in Canada—I'm talking about CN here—inviting them to contact us and sit down and negotiate a level of service agreement. A lot of those customers don't want agreements; they want their goods moved. They say to us, don't spend time negotiating a level of service, just move my goods for me and I'll be a happy camper. But the idea is to make sure it's available to them. And in that context, when you have a level of service agreement with a small customer, we'll also have a commercial dispute resolution clause in case there's an issue between the customer and us. You can appreciate that smaller customers don't want to go to court; they don't want to spend time going back and forth in a court of law debating damages, or asking whether they got their box moved or not. That's something we pushed on quite a bit and we have not got as much take-up as we'd like, but we're not going to stop pursuing it, because there's real value there for us in doing that with our customers.

● (1710)

Mr. Robert Taylor: We have 2,500 agreements at CP right now with commercial dispute resolution embedded in them. So all our new agreements have commercial dispute resolution.

Mr. Joe Daniel: I'll come to your network. It's obviously quite a complex network with all of the different lines, etc., but I think we heard from some witnesses last week that there are groups you are dealing with that are government-associated. So, for example, there are people who are unloading your freight and they give you a particular rate for that. How many of these sorts of organizations are you interacting with that you don't control and that can have an impact your network, basically?

Mr. Gord Peters: The list is pretty long. If you think about various types of shipments, they're all a bit different. Somebody has been talking about grain. You have to get the grain to an elevator and that usually happens via truck. Then the elevator has to get it to us and so you're also interacting there at that level, and sometimes a short line is doing it as well or is in the middle of that process. Then you have to get it to the port, but in our case a lot of it would go to either Vancouver or Thunder Bay, as an example. Then when you get there, you have to unload the grain, so there's an elevator—

Mr. Joe Daniel: But you don't control the loading and unloading.

Mr. Gord Peters: No, that's correct. There are all kinds of issues that can come up there as well. Then, ultimately, it has to get into a vessel. For example, if it's at the port of Vancouver for export to Asia, something that we're heavily involved in, you have vessels to interact with as well. So there are a lot of moving pieces.

Mr. Michael Murphy: One aspect of it too is the fact that there are different types of grain. Back over the years they sent the wrong grain to the ports. The ships didn't want it. Now you have a real problem because it backlogs everything. That's why demurrage... there's rolling storage.

Mr. Joe Daniel: The performance of your network is dependent on these loadings and unloadings, over which you have no control.

Ms. Shauntelle Paul: Absolutely.

Mr. Sean Finn: You can't get the grain onto the ships coming into port. You can get the grain to the grain elevator and they're ready to unload and you can't blame them if the ship's just not there. So we end up waiting for the ship and the unloaders are ready. Again, our competitive advantage in Canada depends on the strength of our supply chain network. The weak link will make us all suffer. There's no doubt about that.

Mr. Joe Daniel: So what other areas of risk are there that you don't control that actually determine the performance and efficiency of your network?

Ms. Shauntelle Paul: There's weather.

Mr. Robert Taylor: The border would be very important. A lot of our traffic is interchange traffic with class 1 railways in the U.S., for example. There is the state of manufacturing plants, labour shortages.... There is a long list.

Mr. Michael Bourque: The other related issue that was brought up is the condition of cars. The rail company doesn't load the car; the customer does. Often there is damage done to the car, and then it goes to the next destination and the railway is responsible for it but it didn't do or know about the damage, because it happened in loading.

Mr. Joe Daniel: It's not beyond the wit of man to be able to check it somewhere along the way before it goes to the next customer, right?

Mr. Sean Finn: But of course up here it would be a first nations blockade in Sarnia. We don't control that and our customers in Sarnia suffer from that. But it's a good example.

Mr. Joe Daniel: How much time do I have?

The Chair: You are out of time.

I'd like to have just a couple of clarifications if I could.

There was Mr. Daniel's question and, Mr. Taylor, you also mentioned delays at borders. How are those measured? Can you give us any figures? Is it man-hours lost or how do you calculate it? Are there any figures you can give us so we have an idea of how big a problem that is?

Mr. Robert Taylor: Knock on wood—and right now it's very pertinent with what's going on in the U.S.—but we do a pretty good job at the border. We have full electronic data interchange. We installed VACIS machines right across our networks at both CN and CP. So everything that goes into the U.S. is scanned by a gamma ray machine, which really helps our profile. We have invested a lot of money in providing advanced data to CBP, but we do have issues pop up from time to time. Wood packaging material, for example, has been a bit of an issue for us over the last year or so. U.S. CBP has brought FDA within their shop so there's more scrutiny around some of the wood pests, for example. So that has impacted some of our fluidity, but all in all we do pretty well.

● (1715)

Mr. Sean Finn: Another good example is the fact that every rail car that travels over the border goes through this X-ray machine, which is a lot compared to what happens for trucks. But to give you an example, at CN, a big portion of our business is cross-border coming in and going out. We'll measure the delays by the hour. So any of our trains that is delayed by more than an hour at a border crossing will get flagged. What makes it important to us and successful is that we track it very, very closely and we develop relationships with both Canada and U.S. customs to make sure that when that train delay is over an hour at the border a phone call is made to ask what the issue is and what happened, and then we try to fix it.

So both CN and CP realize that the thickness of the border is crucial to our competitiveness in North America and if Canada wants to be the gateway to North America that border's got to be kept as seamless as possible. We've spent a lot of time working at it.

As we speak today, as Robert said, it's not a big issue, because we manage it and follow it so closely.

The Chair: There is just one other issue I want to bring up and it's really not to do with the bill, but this came up quite a bit today. It's the closing down of lines. I don't have a rail line in my own riding anymore, but there was one that used to go to my hometown before my time, before I remember. I guess it came twice a day, and then it was once a day when I was growing up, and then it was reduced to once a week. But the bottom line is the reason it isn't there is that it wasn't financially viable. It's unfortunate, but things change. I see you all nodding in agreement, and I think that needed to be brought up.

Mr. Sean Finn: They're not being used. That's the issue. If there is no traffic on it we still have to maintain it to a certain level just in case there is traffic, and we have to do snow removal. I think previous governments came to the point of view that ultimately if the asset is not being used we have to find a way to make sure there is some exit that is respectful of both parties' interests.

The Chair: We have actually made our first round here, but a couple members have asked for one more question.

Mr. Sullivan and Mr. Tweed, you can have one question each, gentlemen, but try to make it brief. And Mr. Coderre will have one to be fair.

Mr. Sullivan, be brief.

Mr. Mike Sullivan: The minister told us that he hopes this bill would never be used. In other words, it's creating a fail-safe if the railways don't behave. But from what you've told us today, you're already behaving. So it shouldn't be a worry to you, this arbitration mechanism, because you're already able to do what you weren't able to do five years ago.

I know you'd rather it weren't there. I think it's going to be there. Is it something you should worry about anyway? I understand that there are some tweaks that you've proposed.

What do you say to that?

Mr. Sean Finn: There are tweaks, but there are also unintended consequences. So we have a customer with whom we're negotiating in good faith, and we're going back and forth—and we had that today when it comes to rates for an FOA. I don't want to give any false impressions to anybody across the table, but if you have two kicks at the can, I'll negotiate with you as far as I can. What do I have to lose to go to arbitration? Maybe with an arbitrator there's a 50-50 chance he'll impose something that I think I'm entitled to ultimately, which might impact other shippers. Those are the unintended consequences. There's the risk of providing leverage that bypasses the commercial negotiations between the parties, where you'd sit down and negotiate and try to settle the problem, because if you can go to court or to the CTA or somewhere else and get somebody to impose an agreement on you, you have nothing to lose if you're a customer who wants to do that.

The Chair: Thank you.

Mr. Coderre, very quickly, one question.

[*Translation*]

Hon. Denis Coderre: Mr. Chair, as we listen to the people from the railways, the problem is as if the Conservatives now had a socialist block making regulations and everything. Like the NDP or the Bloc Québecois. But I have no block in front of me.

I just want to understand. Basically, you do not believe the arbitrators. You feel that the arbitrators will take the shippers' side. If you cannot trust a judge, why can you not trust an arbitrator? If you come to an agreement, the legislation will only be enforced when it is needed. Is there no way to find that more acceptable? Would you prefer no legislation at all?

What do you think, Mr. Bourque?

[*English*]

Mr. Michael Bourque: I would rather just proceed [*Technical Difficulty—Editor*], if it's okay with you.

[*Translation*]

Mr. Sean Finn: The answer is quite simple. We have a complex North-American network with a number of players involved. It is asking a lot for an arbitrator, in 30 or 45 days, to understand a service problem that may not be related to the system.

There might be an advantage to having someone from the CTA, but you know as well as I do that judges can be unpredictable. We are dealing with a complex industry with complex players. Asking an arbitrator to take a short amount of time to decide on a service problem with repercussions on a network stretching over 15,000 miles that serves a number of customers, that is quite a challenge.

● (1720)

Hon. Denis Coderre: Okay.

Thank you.

[*English*]

The Chair: Thank you.

Mr. Tweed, you have the last question.

Mr. Merv Tweed: Thank you, Mr. Chair.

You mentioned that in a lot of your new contracts you have a dispute mechanism in place. If you have those in place, does the bill still have a role to play?

Mr. Robert Taylor: Our CDR really overlays the existing robust regulatory regime, so you can CDR as opposed to going to the agency if you feel we're not meeting our level of service obligations and the like. We find that embedding a CDR into a piece of legislation is an oxymoron, really. A CDR is a commercial dispute resolution process. We have that, so instead of FOA you can use the CDR.

I don't know if that answers your question, but that's available to all of our customers right now, and our customers use it.

The Chair: Thank you very much.

We've had some great presentations and questions today. Thank you to our witnesses for being here. Thanks again.

The meeting is adjourned.