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Moving Forward

Response to recommendations by the *Canada Transportation Act Review Panel*

Submission by Fertilizer Canada

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Introduction

Fertilizer Canada would like to acknowledge and commend the initiative undertaken to review the *Canada Transportation Act* (CTA) by the panel and its chair. The economic future of our sector and the communities in which they operate depend on a strong and responsive transportation system, and a modern legislative framework is critical to ensuring Canadian-based companies can continue to compete successfully in domestic and international markets.

Fertilizer keeps soils productive, accounting for roughly 50 per cent of food production, improving both the quantity and quality of food, fibre and fuel. To feed a projected world population of nine billion by 2050, crop production must increase its per acre intensity by 70 per cent.

Canada's fertilizer industry stands ready to meet this challenge. Saskatchewan is the world's largest supplier of potash, accounting for 46 per cent of global trade. Additionally, Canada is home to the world's largest fertilizer company and the world's largest agri-retailer. Shipments of fertilizer by our members comprise the third largest customer group of Canada's Class I railways: Canadian National Railway (CN) and Canadian Pacific Railway (CP). We are heavily dependent on the railways given the large quantity of products produced, the specialized handling required of those products and the long distances to ship our products to domestic, continental and international markets.

The fertilizer industry's relationship with Canada's rail system is critically important to the economic benefits our members generate in communities from coast-to-coast-to-coast. We are a natural resource industry, with value-added manufacturing, and are proud that our members' products help farmers feed communities here in Canada and around the world. In fact, three quarters of fertilizer produced by our members is exported to 80 countries, representing 12 per cent of global fertilizer supply.

The growth and expansion of the fertilizer sector has been driven by our members' investments and productivity gains. Our members, however, are concerned over deteriorating rail service and infrastructure levels.

We are encouraged to be working with a Minister who has demonstrated a personal commitment to modernizing Canada's transport system and capacity. In particular, Fertilizer Canada is pleased that the Minister has been empowered by a mandate letter to reinforce railway safety, promote investments that help manufacturers bring their goods to market, and contribute to an infrastructure strategy that promotes a transportation system that supports local communities, improves data collection, and promotes better asset management.



The one-size-fits-all railway models employed in the past no longer serve the best interests of Canada's economy or our sector. At the current critical juncture, a rebalancing of the relationship between railways and shippers is in the best interests of both the fertilizer industry and Canada's transportation network.

Reinforcing Strength

To begin, we will highlight recommendations from the CTA report that will reinforce the strength of our sector and its interaction with Canada's rail transportation system.

Modernizing dispute resolution mechanisms in the North American context

Fertilizer Canada is encouraged by feedback in the Panel's report on dispute resolution, which accurately portrays current outdated mechanisms as ineffective, time-consuming, inaccessible, and aggravating to the relationship between railways and shippers.

The Panel has encouraged the Canadian Transportation Agency (the Agency) to provide guidance and undertake improvements to make the Act's shipper dispute resolution mechanisms more efficient, effective, predictable, and accessible. For several years now the Agency has been offering voluntary facilitation and mediation services to rail shippers and railways and other stakeholders in an effort to assist parties in the informal and inexpensive resolution of rail rate and service problems before resorting to the more formal, legalistic, confrontational and costly adjudication or arbitration of disputes.

Since the Panel's report, the Agency has undertaken a significant internal restructuring of its operations including the establishment of an outreach program in an effort to become more proactive in its relationships with shippers and carriers and to better assist its stakeholders. They have also since announced a full regulatory review.

We commend the Agency for this work. Fertilizer Canada encourages the Agency to meet more often and proactively with industry, deliver hearings and rulings quickly and effectively, and monitor and manage data actively in order to maintain a high level of system awareness. A modern, proactive, and engaged Agency can best propel export-driven and value-added manufacturing industries such as fertilizer.

Fertilizer Canada believes these measures can only be leveraged effectively if Canada can find a way to integrate dispute resolution into the North American, cross-border context. Freight rail has grown into an overwhelmingly North American system through shifting market dynamics and industry consolidation. The Government of Canada can provide leadership in establishing a truly cross-border dispute resolution framework that serves the economy and communities. Fertilizer



Canada encourages the government to consider how it may go beyond the Panel's recommendations in order to deliver a cross-border dispute resolution model that demonstrates its commitment to working with and not against the current integrated railway system.

Safety and prosperity through common carrier protection

Common carrier principles and provisions are a foundational force that keeps Canada's economy moving forward. Fertilizer Canada members understand the responsibilities they carry under those provisions, and operate in a safe, ethical and responsible manner. We are supportive of the Panel's recommendation to maintain and reinforce common carrier obligations as a foundational provision of rail service in Canada.

To this point, our members invest significantly to insure operations under their care and control. Our members fundamentally pay the railways' costs to transport dangerous goods, such as anhydrous ammonia, through freight rates which are significantly higher than those for products not designated as dangerous goods. In addition, it should be noted that our industry owns and leases rail cars that are considerably advanced for transporting anhydrous ammonia, and we work with regulators and railways to maintain best practices.

Fertilizer Canada and our members look forward to working with the government to deliver on its mandate to reinforce railway safety. Tragic rail accidents such as the disaster in Lac-Mégantic, Quebec and other derailments are unacceptable and underscore the responsibilities that weigh upon every level of our transportation system, and Fertilizer Canada unequivocally supports the need to avoid future tragedies through the enforcement of responsible, evidence-based policy.

Stimulating capital investments

Canada's fertilizer industry is investing significantly to meet current and expected growth in demand. Though commodity prices have faced challenges this year, in the potash sector alone producers have invested more than \$15 billion in major capital projects from 2003 to 2015. The economic benefits that should be expected from such significant levels of investment in research and development, innovation and productivity improvements should not be stifled by inadequate rail capacity. Fertilizer Canada is encouraged by the Panel's acknowledgment of the partnerships the federal government can establish with provinces, territories and the private sector in order to address these foundational challenges.

As demonstrated in the Minister's mandate letter, this government understands and acknowledges the importance of competitively moving Canadian goods to domestic and global markets. In order to meet the growth requirements of the fertilizer sector, capital investments must be made in Canada's rail system. The responsiveness of the rail system to the growth of our sector is critical to its continued success. The



Government of Canada is pivotal in ensuring capital investments are made in the mix of public and private-owned assets in Canada's rail system. Fertilizer Canada encourages the government to consider the benefits of strategic investments in rail as it prepares its medium and long-term infrastructure spending plans, including the New Building Canada Plan and public-private partnerships. Beyond those investments, the Government of Canada can encourage railways to make necessary capital investment decisions by building a stable regulatory system.

Data drives better business and safety decisions

Progressive data management strengthens Canada's rail transportation sector, and allows industries such as the fertilizer sector to be more productive and competitive. Real-time information is extremely valuable, and helps companies make business decisions that generate greater benefits to Canada's economy and communities. Canada has fallen behind the United States and other leading industrial nations in terms of its ability to provide accessible rail data. This concerning trend undermines the integrity of the information available to shippers and diminishes the strength of industries such as fertilizer.

The following statement from page 161 of the Review appropriately captures the opportunities presented by harnessing data collection and sharing in the rail sector: *"A more transparent railway network and an Agency empowered to collect and/or possess real-time, system-wide data, analyze trends, and enact change will be better positioned to understand how the system is operating as a whole."*

The Government of Canada can take a meaningful step toward rebalancing the relationship between shippers and railways by taking steps to ensure railway data is monitored and reported in real-time. This would empower shippers to be able to make better business decisions, and improve the operating environment for both railways and shippers.

Unlocking New Growth Potential

The Panel has brought forward positive measures that will reinforce the rail sector in Canada and help bring value-added products such as fertilizer to domestic and global markets, and Fertilizer Canada envisions more opportunities to accelerate the growth of our sector, unleash opportunities for job creation, and enhance community benefits.

Rethinking the sunset clause on interswitching

Our members consider interswitching to be an essential ingredient to encourage and enhance competition for the movement of our products. Fertilizer Canada members caution against the Panel's recommendation to sunset the extended interswitching limit of 160 km. The opinion our members have formed through practical experience is that moving forward on the recommendation would



represent a missed opportunity to enhance competition, railway performance, and economic benefits in the Western provinces where the extended limit currently applies. While the amendment may have been developed with a focus on the grain industry, it has benefitted other sectors including fertilizer. Furthermore, it is important to note that Western Canada's freight rail landscape has not changed in any fundamental way since extended interswitching was introduced, and therefore the guiding principles that prompted its introduction remain intact. There is a clear need to provide captive shippers with opportunities to operate more competitively and extended interswitching is a mechanism that enhances the fertilizer sector's ability to meet business imperatives and meet growing demand.

While Fertilizer Canada continues to work to make the case for how public and private investments in rail infrastructure are necessary to improve safety performance and bolster economic growth, we suggest extended interswitching provides government with a no-cost lever by which it can continue to stimulate economic benefits in value-added resource and manufacturing sectors such as fertilizer.

Service levels focused on commerce and growth

The rate at which rail service levels are deteriorating is accelerating rapidly according to internal surveys undertaken by Fertilizer Canada, and this trend has been confirmed by independent surveys such as the RBC Capital Markets Survey.

Fertilizer Canada's extensive experience and practical knowledge suggests that the current system fails to place users and their commercial needs at its centre, when in fact this is where we believe they must be prioritized in order for the system to serve Canada's economy most responsively.

As government considers the Report, Fertilizer Canada must reiterate its initial recommendations to the Panel that called on level of service provisions that consider the commercial needs of users, which includes their ability to compete and create economic benefits. The provisions should also be focused on rewarding efficiency, and take into consideration both system capacity and commensurate investments.

Government can also help solve long-standing failures in the level of service provided to shippers, who drive the Canadian economy, by providing more clarity in defining the level of service provisions set out in sections 113-115 of the Act. The current wording requiring our railways to "furnish [...] adequate and suitable accommodation" for the pickup, carriage and delivery of traffic has remained essentially unchanged since the turn of the last century. The wording is vague and sets a low standard when addressing services determined to be unreasonable or unsatisfactory.



Finally, without the introduction of financial consequences for level of service failures, it is difficult to see how the uneven relationship between railways and shippers will change in a manner which serves the Canadian economy. As stated previously, the balance of power between railways and shippers continues to be weighed heavily toward the former, which has the ability to unilaterally issue tariffs for non-performance of a shipper. Meanwhile, our members are unable to impose balanced financial consequences on the railway when service fails to meet standards. Fertilizer Canada believes this situation must be remedied in order for the relationship between shippers and railways to be recalibrated to enable shippers to compete more effectively markets and enhance Canada's economy.

An evidence-based approach to improving safety and liability

Fertilizer Canada and our members fully recognize our responsibilities in shipping dangerous goods, and we support the Minister of Transport's mandate to improve rail safety. As noted earlier, the fertilizer sector is fully insured for operations under its care and control, and we employ the most secure technologies and best practices under our industry's mandatory Codes of Practice. Fertilizer Canada members pay very high freight rates that fundamentally cover the insurance costs of railways for the transportation of dangerous goods. There is therefore no reason the fertilizer industry should be called to pay these same liability costs in duplicate, as the Panel has suggested in its recommendation to extend the revised liability and compensation regimes beyond crude oil to other dangerous goods.

The regime was specifically created to address sector under a very different risk profile, and it would not be appropriate to apply it across other sectors in the absence of an evidence-based risk assessment. Indeed, the safety protocols, equipment, technical properties of dangerous goods under the care and control of the fertilizer sector, such as ammonia, are unique, and require an evidence-based management approach.

While we agree all efforts should be undertaken to improve safety protocols and risk-management at every step of the supply chain, there is no reason to believe a one-size-fits-all approach to managing liability will offer any greater protection to Canadians. Fertilizer Canada and our members stand by our safety record, and we are committed to strengthening our safety performance each and every day. For these reasons, Fertilizer Canada and our members do not support extending the regime beyond crude oil, the sector for which it was designed and intended. Fertilizer Canada members will continue to invest in Canada at each opportunity for growth and success.



Conclusion

The challenge of building a stronger freight rail transportation system that will serve Canada's economy and promotes the well-being of its communities over the next century will be determined by how effectively the relationship between railways and shippers can be rebalanced for the benefit of the entire system. The Government of Canada has an opportunity to demonstrate a progressive vision for rail that places safety, the well-being of communities, and the national economy at the heart of the system.

By leveraging the most advanced data monitoring and reporting techniques available, the Government of Canada can access new solutions to long-standing challenges facing the sector, including better dispute resolution processes, a better use of precious railway capacity, and more informed risk-management and safety procedures.

The National Transportation Policy set out in the *Canada Transportation Act* states:

"[...] a competitive, economic and efficient national transportation system that meets the highest ...safety and security standards and ...makes the best use of all modes of transportation at the lowest total cost is essential to serve the needs of its users, advance the well-being of Canadians and enable competitiveness and economic growth."

We strongly support this policy statement. Competition and competitive access will continue to drive the economic growth of railways, shippers and the national economy, and this is why it is important for the government to independently reconsider the Panel's recommendation to sunset the 160 km extended interswitching limit, and to strengthen the principles of common carrier obligations under which our national railways have operated for over one hundred years.

Finally, as rail freight volumes recover from the recent dip and inevitably return to the overarching trajectory of growth that is being experienced in Canada's industrial sector, the importance of meaningful public and private capital investments must be acknowledged and supported by each level of government. The fertilizer sector is a proud partner in Canada's freight rail system, and we are eager to work with the Government of Canada and other railway partners to achieve the most progressive vision for our shared future.

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