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Chair

The Honourable Judy A. Sgro

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● (0940)

[*English*]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I call to order meeting number 68 of the Standing Committee on Transport, Infrastructure and Communities. Pursuant to the order of reference of Monday, June 19, 2017, we are studying BillC-49, an act to amend the Canada Transportation Act and other acts respecting transportation and to make related and consequential amendments to other acts.

Committee members, welcome. I'm glad to see that you all came back for a second day, a week ahead of everybody else.

To our witnesses, thank you for coming this morning. We appreciate it very much.

We will open with the Railway Association of Canada, if you'd like to take the lead.

Mr. Michael Bourque (President and Chief Executive Officer, Railway Association of Canada): Thank you, Madam Chair.

[*Translation*]

The Railway Association of Canada represents more than 50 freight and passenger railway operators composed of the six class I rail carriers identified in this bill, and 40 local and regional railways, known as shortlines, from coast to coast, as well as many passenger and commuter rail providers, including VIA Rail, GO Transit and RMT, and tourist railways, such as the Charlevoix Railway.

[*English*]

I should mention at the outset that Bill C-49 potentially affects all of our members, including provincial and commuter railways, because of the proposed safety measures included in the bill.

When I appeared before you last year to comment on the Fair Rail for Grain Farmers Act, I mentioned the negative effect that extended interswitching could have on the short-line rail sector and suggested letting these provisions sunset. We were relieved to see that Bill C-49, by creating the concept of class I rail carriers in its clause 2, has made clear that long-haul interswitching does not apply to short-line railways.

In your report you recommended:

> That the Minister of Transport request the Canadian Transportation Agency to examine the railway interswitching rates it prescribes to ensure that they are compensatory for railway companies.

Bill C-49 does not request the agency to review interswitching rates but goes one step in the right direction with respect to LHI, by specifying that the rates set by the agency shall be based on comparable commercial rates.

In addition to setting this average as a minimum, the act says that the agency must consider the traffic density on the line and the need for long-term investments, which, if applied properly, should lead to rates above the minimum, which is the average rate. That is good news, but the devil will be in the details of future decisions from the agency.

There are more experienced people from CN and CP with me to speak to the impact of long-haul interswitching and related service provisions on their businesses. Instead, I thought it would be useful to speak to the recent history of the railway industry, the success of Canadian railways in a public policy context, and some important and hard-won lessons from the past three decades of rail regulation and deregulation.

Successive governments, and indeed this committee, have enabled the positive accomplishments of Canada's railway industry by introducing and improving a regulatory regime that prioritizes commercial freedom and reliance on market forces over government intervention.

Before the introduction of the National Transportation Act in 1967, railway economic regulation in Canada involved increasingly restrictive regulation focused on freight rate control and uniformity. This approach led to inefficient railways that had difficulty undertaking much-needed capital investments to maintain and grow their networks.

Railways in the United States faced similar challenges, leading to the adoption of the Staggers Act and, as a result, significant deregulation in the U.S. rail industry. Canada's National Transportation Act represented the beginning of a dramatic shift in the regulatory environment for Canada's railways. Rigid regulatory constraints on pricing were removed, allowing railways to compete more effectively.

By the 1990s, decades of incremental deregulation placed an increasing emphasis on market and commercial forces, while maintaining a number of protections to ensure balance between railways and shippers. The passage of the Canada Transportation Act in 1996 introduced additional changes that reduced market exit barriers, allowing railways to discontinue or transfer portions of their networks to other carriers so as to become more efficient. This gave railways greater freedom to control costs and generate efficiencies. It also fostered sharp growth in Canada's short-line rail industry. Around the same time, CN was privatized, creating competition between two privately held, publicly traded national systems.

As a result of these policies, Canadian railways evolved into highly productive companies capable of providing low-cost service while generating revenues needed to reinvest into their respective networks. Shippers meanwhile gained access to a world-class railway system and today benefit from freight rates that are among the lowest in the world. Canadian railway performance, in terms of rates charged, productivity, and capital investment, greatly improved under these regulatory freedoms.

Since 1999, Canada's railways have invested more than $24 billion in their infrastructure, which has resulted in a safer and more efficient rail network that benefits customers directly.

Despite this record of public policy success, and a national transportation policy that clearly recognizes that competition and market forces are the most effective way of providing viable and effective transportation services, we are here today debating a bill that adds recourse mechanisms for the sole benefit of shippers.

Three weeks ago, the president of the Canadian Transportation Agency gave a speech in Vancouver in which he stated that existing mechanisms—including mediation services, final offer arbitration on rates, arbitration on service levels that allow the agency to craft service-level agreements, and adjudication on the adequacy and suitability of services provided by railways—are not used very often, and that in fact the agency is planning outreach to stakeholders who are not taking advantage of existing provisions. Yet we're here today to discuss new provisions on top of existing recourse mechanisms that are currently underutilized.

Under this bill, long-haul interswitching is available to a rail customer even if they have access to trucking or marine transport, which are competitive services. It is an example of how we can lose sight of the need to recognize competition and move backwards toward regulation.

● (0945)

[*Translation*]

Let me now turn to safety, and to the locomotive voice and video recording, or LVVR, provisions of the bill.

[*English*]

Yesterday, I sent all members of this committee an article outlining the reasons for our support of LVVR for both accident investigation and accident prevention. For a long time, railways have advocated the right to use this technology as another safety defence within railway companies' safety management systems. It has always been the industry's belief that LVVR will, simply by its presence, help to prevent accidents by discouraging unsafe behaviours and unauthorized activities that may distract crew members from their duties.

We believe that this technology will increase safety and that it can be introduced in a thoughtful way and used responsibly. Even with significant investments, there are still accidents that can be prevented. The record of class I railways in North America is excellent, but it is not perfect. Until we have full automation of both freight and passenger trains, we are going to see accidents that can be traced to human error.

LVVR is not a silver bullet. Rather, it is an important, proven tool that can help identify dangers and act as a deterrent for the very small percentage of employees who might be tempted to use their smart phone or read a book when they should be alert and working. In this respect, it will help to change the culture of the workplace in a positive way. This has been the experience of companies such as Phoenix Heli-Flight, a Canadian helicopter company that today uses voice and video recorders in their aircraft. In addition, it is expected that in most cases the LVVR evidence would corroborate the statements and explanations provided by the crew members themselves.

Let me talk about privacy versus safety. Some have expressed concern about privacy, but we already know from the introduction of other technologies and from video in the workplace that there are tests imposed by the Privacy Commissioner to guide us on the responsible implementation of LVVR. We are anxious to work with you and with the department on the creation of these regulations.

LVVR is a technology that will prevent accidents. Investigative bodies such as the TSB and the U.S. NTSB have called for its use. When there is an accident, investigators from the Transportation Safety Board will better understand what happened, and everyone will learn from it.

Thank you very much.

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

On to the Canadian Pacific Railway and Mr. Ellis.

Mr. Jeff Ellis (Chief Legal Officer and Corporate Secretary, Canadian Pacific Railway): Thank you, Madam Chair, and good morning.

I'm Jeff Ellis, chief legal officer for Canadian Pacific. I am joined by James Clements, our vice-president for strategic planning, and Keith Shearer, our general manager of regulatory.

Thank you for the opportunity to speak with you today. In the interest of time, we will focus our remarks this morning on just two issues, LVVR and long-haul interswitching.

As one of Canada's two class I railways, we operate a 22,000-kilometre network throughout Canada and the United States. We link thousands of communities with the North American economy and with international markets. CP has made and continues to make significant levels of capital investment to improve safety and grow the capacity of our network. Since 2011 we've invested more than $7.7 billion on railway infrastructure. In 2017 we plan to invest an additional $1.25 billion. Should the changes to the maximum revenue entitlement come into effect in their current form, CP will likely make a major investment in new covered hopper cars, creating new supply chain capacity.

CP has been recognized as the safest railway in North America by the Federal Railroad Administration in the U.S. We've achieved the lowest frequency of train accidents in each of the past 11 years. That being said, safety is a journey and not a destination. One incident is too many. LVVR technology is essential if we are to materially improve railway safety in Canada, because human factors continue to be the leading cause of railway incidents. Since 2007 we've had a 50% reduction in safety incidents caused by equipment failures. Similarly, track failures are down 39%. However, human-caused incidents have seen little change over the same time period. According to data published by the TSB, 53.9% of railway incidents in 2016 were caused by human factors. It's clear that we must take action to tackle this category of rail safety incidents.

The evidence is also clear. One example is that since the implementation of DriveCam in New Jersey, New Jersey Transit saw a 68% reduction in bus collisions from 2007 through 2010. The number of passenger injuries fell 71% in the same period. Rail commuter Metrolink in California similarly saw a significant reduction in red-signal violations and station platform overruns.

It's imperative, however, that these regulations allow for safety issues to be exposed before an incident occurs. That would enable us to proactively develop effective and appropriate corrective action. It would be a mistake to amend Bill C-49 to prevent any kind of proactive use of LVVR data by railway companies. It would negate a key safety benefit of adopting the technology. CP recognizes the need to use this technology in a way that is respectful of our operating employees, in accordance with Canadian privacy laws, and we are committed to working closely with Transport Canada and our unions over the coming months to do so.

I'll now turn it over to James.

● (0950)

Mr. James Clements (Vice-President, Strategic Planning and Transportation Services, Canadian Pacific Railway): The rail supply chain is the backbone of our economy. Not only is the Canadian freight rail system the safest, most efficient, and environmentally friendly means of transporting goods and commodities, it achieves these goals while maintaining the lowest freight rates in the world. This is a key point. A healthy rail system is critical to Canada's international competitiveness, given our vast geography. Without a competitive, economic, and efficient rail system that can move products thousands of kilometres to ports for export, at the lowest cost in the world, much of what Canadians sell on international markets could not be priced competitively.

Canada's freight transportation system has been successful because the legal and regulatory environment, particularly in recent decades, has recognized that competition and market forces are the most effective organizing principles. These principles are articulated in Canada's national transportation policy declaration, contained in section 5 of the Canada Transportation Act.

It is important not to lose sight of these principles when reflecting upon legislative changes to the framework that has been proven to be so successful in delivering economic benefit to Canadians. CP is pleased that the government has decided to allow the extended interswitching regime of the previous government's Bill C-30 to sunset, as it was based on what we saw as a deeply flawed rationale, and it generated a number of harmful public policy consequences that ultimately disadvantaged the Canadian supply chain.

Similarly, however, the proposed new long-haul interswitching, LHI, regime contains a number of problematic elements. Most fundamentally, the LHI regime, like the extended interswitching regime it is replacing, is non-reciprocal with the U.S. As such, American railroads would be granted significant reach into Canada, up to 1,200 kilometres, to access Canadian rail traffic, but Canadian railways will not have the same reciprocal ability under American law.

The LHI regime is constructed in such a way that it is asymmetrical in its impact, both in terms of non-reciprocal access for American railroads vis-à-vis CP and in terms of CP and CN, because CP's exposure to American railroads under this regime is much greater than is CN's, given the geographical location of our respective networks, further compounded by the two excluded corridors.

The LHI regime could undermine the competitiveness and efficiency of the Canadian supply chain by incentivizing the movement of Canadian traffic to American railroads and supply chains, thereby eroding traffic density for Canadian supply chains.

The negative consequences to the Canadian economy will not be limited to the rail industry. If Canadian rail traffic is diverted to American trade corridors, it will also dampen shipping volumes at Canadian ports. For CP alone, there is a significant amount of our annual revenue that could potentially be moved to American railways and trade corridors under this proposed LHI regime.

A decision to allow non-reciprocal access for American railroads represents a significant concession by Canada to the U.S. while NAFTA is being renegotiated. This strikes us as an unwise public policy choice for the Canadian economy. The proposed LHI regime ought to be reconsidered in that context.

As drafted, Bill C-49 also imposes an obligation on connecting carriers to provide rail cars to the shippers in addition to their other service obligations. It has been well understood that as part of its common carrier obligation, a railway is required to furnish adequate and suitable accommodation for traffic. However, in some cases, the provision of railcars by a connecting carrier is not practical. For example, tank cars are typically owned by the customer, not the railway. The Canada Transportation Act already addresses a railway's car supply obligation, so it is important to clarify that the railway does not have a higher standard to provide car supply under LHI than already exists.

Since the LHI rate is to be determined by the agency, based on the commercial rates charged for comparable traffic, it follows that traffic moving under an LHI rate or any other regulated rate, such as grain under the MRE, should be excluded from the LHI rate determination since those rates cannot be considered commercial.

Further, American railways operating in Canada and regulated by the federal government should also be compelled to provide rate data to be used by the agency in determining LHI rates.

● (0955)

We will conclude our opening remarks there. I know there are many other elements of Bill C-49 that we have not discussed this morning. Our letter highlights some considerations on those points, and, of course, we are happy to take questions on any element.

Thank you, Madam Chair.

The Chair: Thank you very much.

Now we go to Mr. Finn, from the Canadian National Railway Company.

Mr. Sean Finn (Executive Vice-President, Corporate Services, Canadian National Railway Company): Madam Chair, good morning, and thank you very much.

This morning I'm joined by two of my colleagues, first of all Janet Drysdale, who's vice-president of corporate development and sustainability at CN; and also, Mike Farkouh, who is vice-president of operations, Eastern Canada. I'm the chief legal officer and executive vice-president of corporate services at CN.

We appreciate very much the opportunity to meet with you today to discuss Bill C-49, which has significant implications for the rail sector in Canada. CN participated very actively in the statutory review of the Canada Transportation Act by the Honourable David Emerson. We believe the panel did a good job in the review of the act, identifying the sorts of policy changes that are necessary to enable Canada to meet its goals for growing trade in the coming decades. Mr. Emerson and his colleagues commissioned a number of useful studies. With regard to rail we recognize that, unlike some past reviews, the panel based their recommendation on evidence and data and less on anecdotes. The panel also accepted the clear evidence that deregulation of the rail sector supported innovation, which derived benefits to shippers, customers and the Canadian economy. We are somewhat disappointed that not more of the panel's recommendations are included in Bill C-49.

[*Translation*]

After the report of the review panel was published, we participated in the consultation process undertaken by Minister Garneau, specifically in a number of roundtables held across the country.

[*English*]

We have also been encouraged by the work of the government's advisory council on economic growth chaired by Dominic Barton. We are particularly pleased with their first report's focus on the importance of growing trade and the need to strengthen and grow our infrastructure in order to achieve this. The council also stressed the importance of having a regulatory system that encourages investment in infrastructure and enables the transportation sector to attract the capital needed to invest in growing capacity.

[*Translation*]

I am sure that you are familiar with CN, but I would like to remind you of some important aspects.

CN operates its own 19,600-mile network, serving three coasts, the Atlantic, the Pacific and the Gulf of Mexico, as well as the port of Trois-Rivières. In Canada, our network extends over 13,500 miles, linking all main centres and access points. This makes CN a strategic partner in Canada's logistics chain.

We have an extremely diversified commercial portfolio. Our biggest sector is intermodal transportation, or import and export container traffic. Container transportation is the fastest growing and most competitive sector in the rail industry.

[*English*]

More broadly, I think it's imperative for the committee to know that deregulation and market-driven forces over the last 20 years have been the key underpinnings enabling investment and innovation in Canada's rail sector. According to the OECD, Canadian shippers today benefit from rail rates that are the lowest in the industrialized world, lower even than in the United States. In addressing Bill C-49, we acknowledge the minister's attempt to design a package that addresses the interests of both railways and shippers; however, we are concerned with the failure to recognize the degree to which deregulation has led to an environment of both lower prices and more reliable services for shippers and the degree to which deregulation has enabled railways to invest heavily in maintaining and growing our network. CN's capital investment over the last 10 years has totalled approximately $20 billion.

I'd like to turn the microphone over to my colleague, Janet Drysdale.

● (1000)

Ms. Janet Drysdale (Vice-President, Corporate Development, Canadian National Railway Company): Thank you, Sean.

There are a number of provisions in Bill C-49 that run a high risk of unintended consequences. The part of the bill with the greatest risk potential is long-haul interswitching, which I'll subsequently refer to as LHI. LHI is a remedy which, until it appeared in this bill, had never been recommended, discussed, or considered. No assessment of this remedy on the rail industry has been performed and we believe that significant unforeseen and adverse consequences could result from its implementation.

CN has an extensive network of branch lines serving remote communities in all regions of the country. Those branch lines present a challenge, as they are expensive to service and maintain while at the same time handling low volumes of traffic. In many cases, the reason we are able to justify keeping those lines in operation is the long-haul business they generate. LHI makes it possible for a customer to require us to take the traffic to an interchange point and hand it to a competitor, who would then get the majority of the move and its associated revenue.

Under this remedy, the other railway is in a good position to offer lower rates, as it bears none of the cost of maintaining the remote branch line where the shipper is located. Needless to say, if this were to become a common occurrence, it would be difficult for us to justify the ongoing investments required to keep those remote lines operational.

During second reading debate, LHI was identified as an option to captive shippers that would “introduce competitive alternatives for their traffic and better position them in negotiations for service, options and rates”.

Let me start with the notion of captivity. The bill defines captive as having access to only one railroad, completely ignoring the shipper's access to alternative modes of transportation. So if a customer ships product today using both rail and truck, Bill C-49 considers them captive to rail. We are proposing an amendment to clarify the definition of captive such that if a shipper uses an alternative means of transportation for at least 25% of its total shipment, that shipper must be considered to have competitive options and therefore should not have access to LHI.

With respect to negotiating service options and rates, Bill C-49 maintains the shipper's access to all of the existing remedies respecting rates and service, including final offer arbitration, group final offer arbitration, complaints against railway charges, level of service complaints, and arbitration on service-level agreements. Consistent with Canada's national transportation policy and that LHI provides a competitive option, we are proposing an amendment whereby a shipper that can access LHI should not have access to the other rate and service remedies.

LHI also provides a non-reciprocal competitive advantage to U.S.-based railroads. Railways in the U.S. already have a significant advantage because of the much higher density of traffic on their lines. They simply have much more traffic per mile of railway. That higher density means more traffic over which to spread the high fixed cost of maintaining the network. Railways are most profitable on long-haul moves. Under LHI we can be required to move goods a short distance and then transfer them to a U.S. railway that would get the long-haul move and most of the revenue. That is revenue that then becomes available for investment into the U.S. network at the expense of Canada.

We don't understand, particularly at a time when NAFTA is being renegotiated, why Canada would give away this provision with nothing in return. Providing such an advantage to U.S. railways creates a risk to the integrity and sustainability of Canada's transportation network, ports, and railways, which depend on a certain volume of traffic to generate the capital necessary to keep Canadian infrastructure safe and fluid and to keep good, middle-class jobs in Canada.

We acknowledge that the exclusions in the act limit the areas where this new remedy is available, but those exclusions are insufficient, especially near the Canada-U.S. border in all three prairie provinces. If we had access to similar provisions in the U.S., we would not be objecting. However, there is no right to interswitching in the U.S., and this absence of reciprocity is prejudicial to the Canadian rail industry. We are therefore proposing an amendment that would create an additional exclusion to provide that a shipper not be entitled to apply to the agency for an LHI order if the shipper is located within 250 kilometres of the Canada-U.S. border.

Another area where we do not understand the need for intervention is the attempt to define the level of service requirement. The current provisions have been in place and effective for a long period of time. In our view, the current provisions are balanced and do not require the proposed amendment. We are also proposing an amendment respecting the provisions of Bill C-49 that introduce penalties when railways fail to meet service obligations.

● (1005)

In 2012, Jim Dinning, a facilitator appointed by government, recommended that penalties of this type should only be introduced when penalties also apply to shippers that commit volumes and fail to meet their commitment. BillC-49 has no such reciprocity. We are proposing amendments that better balance penalties between shippers and railways by making railway penalties contingent on shippers having similar obligations.

We would like to commend the minister for his decision to move forward with legislation making the use of locomotive voice and video recording devices compulsory. This is an important step in our collective goal to increase rail safety. While it is important to have the information provided by these devices available when determining the cause of an accident after it has occurred, they are even more valuable in our ongoing efforts to prevent accidents.

We want to say a word about the provision of the bill that increases the ceiling for the percentage of CN shares that can be held by a single shareholder. The current limit of 15%, a limit no other railway has, impedes CN in attracting the kind of patient, long-term investors that we require in our extremely capital-intensive industry. This change is a good first step to correcting the uneven playing field vis-à-vis our competitors. We will be asking members to consider a minor amendment to ensure that this change takes effect immediately upon royal assent.

Finally, we have a word about grain shipments. In the crop year that just ended, CN moved 21.8 million metric tonnes of grain, the most we have ever moved in a year. We beat the previous record set in 2014-15 by 2% and exceeded the three-year average by 7%. I'm also pleased to be able to tell you that, in advance of the start of the crop year, grain shippers secured approximately 70% of CN's car supply under innovative commercial agreements that provide shippers with guaranteed car supply and that include reciprocal penalties for performance.

We have entered into a period of dramatically increased service, innovation, and collaboration with our customers. We have achieved this through commercial negotiation, improved communication, and a better understanding of the challenges we each face. If the Canadian supply chain is going to move the increased volume of trade that we all support and that we all believe can be achieved, it can only happen with collaboration across the supply chain. Regulation has its place, but experience shows that we reach our goals when it is the exception.

We appreciate the opportunity to speak with you today and look forward to your questions.

The Chair: Thank you, Ms. Drysdale. You referenced some amendments. Have you submitted a brief to the clerk?

Ms. Janet Drysdale: We have.

The Chair: Is it in both official languages?

Ms. Janet Drysdale: Yes.

The Chair: Thank you very much.

We go on to questioners.

Ms. Block.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): Thank you very much, Madam Chair.

Thank you to our witnesses for being here today, day two of a four-day study on this issue. We're very interested in hearing your testimony.

I will start by saying that it goes without saying that we understand the importance of our railways to our country and our economy and recognize that there needs to be a balance struck between the railways and the customers they serve. Certainly, looking at the legislation that's before us today, I think we're all committed to doing that and ensuring that this legislation does that.

I'm a little confused by some of what I've heard today in relation to Mr. Bourque's comments around Bill,C-49 describing this legislation as creating additional measures on top of measures that are rarely used. I want to then look at the testimony that was given by Mr. Ellis and Mr. Clements in regard to long-haul interswitching. I think those were the measures that Mr. Bourque may have been referring to, I'm not sure, where you defined the extended interswitching regime as being deeply flawed and generating a number of harmful public policy consequences that ultimately disadvantage the Canadian supply chain.

I want to reflect back on some of the testimony that we heard when we were studying the Fair Rail for Grain Farmers Act. The stats that were provided to our committee during our study demonstrated that extended interswitching was, in fact, rarely used. Our shippers acknowledged that, while that was the case, it was seen as a very helpful tool in negotiating contracts with the railways.

We have folks saying that this was a remedy that was rarely used, but that it created harmful public policy consequences and ultimately disadvantaged the Canadian supply chain. I'm trying to reconcile those comments and would give you an opportunity to speak to that.

● (1010)

Mr. Michael Bourque: I'll maybe start and then hand it over to James.

My simple point was that there are additional provisions in this bill for recourse to the agency by shippers, yet there are already significant recourse mechanisms available to shippers. As stated by the president of the CTA a few weeks ago, these services are essentially not being used very much, to the point where they need to try to drum up business by doing outreach to various customer groups to make them aware of these provisions. My belief is that the reason they are not used is because most of these things are negotiated, commercially, between the companies and their customers. If you have a number of recourse mechanisms already and those are not being fully utilized, then where's the evidence that shows we need even more recourse mechanisms?

I really tried to frame that in the context of the last 30 years of progressive public policy, which has led to a more commercial framework and to the success of North American railways, because of essentially the same thing happening in the United States. It's to the point now where we have the best railways in the world represented in this room, in terms of productivity, low rates, safety, and the ability to pass on these productivity and efficiency gains to customers, which is proven in rates.

Mrs. Kelly Block: Thank you.

Mr. James Clements: I'll make a couple of comments first on where we saw some of the flaws in extended interswitching, and then bring it across to where LHI has flaws.

Extended interswitching was done at a regulatory costing at a prescribed rate, which didn't necessarily give us an adequate return. You were effectively giving a regulated, below-cost rate to an American shipper or carrier to gain access to our networks. So that was one of them.

Another component was that it was very regional, which I think the government has acknowledged in some of the amendments it has made.

Then, what's carried over—the final flaw—was this lack of reciprocity. Today let's say that the Burlington Northern has a downturn in crude oil going to the Pacific northwest. It can now choose to fill that vacant capacity and try to cover its fixed cost of that capacity by potentially getting the shipper to get an LHI rate down to the border, and then pricing the rest of the move very cheaply and attracting that volume to be incremental on the top to fill the density.

As you've heard, that takes revenue away from the Canadian railways, takes jobs away from Canadians, and it also takes the density out of the other components in our supply chain, such as the ports. That's the third component that we see is the flaw.

Mrs. Kelly Block: Okay, I'm—

The Chair: That is your time.

Mr. Sikand.

● (1015)

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): Good morning.

My first question is for CP.

In a letter provided to us, CP stated that it was a leader in the space of LVVRs. I want to get your opinion or position on the argument that LVVRs infringe on privacy or are perhaps overly invasive.

Mr. Jeff Ellis: Thank you for the question from the member. I'll refer the question to Keith Shearer.

Mr. Keith Shearer (General Manager, Regulatory and Operating Practices, Canadian Pacific Railway): We know there are privacy concerns, but we also know there's a process for that. You probably know we have recording devices in locomotives today for conversations that occur between rail traffic controllers and the train crews, so those occur. We have black boxes, if you will, that were introduced in the early 1980s after the tragic Hinton accident, so those record information as well.

We know that the minister and department will work closely with the Privacy Commissioner on the privacy issues and work through that process. We also know, through consultation with the minister, that those processes will be developed in the regulation to follow.

Mr. Gagan Sikand: Thank you.

My second question is for CN.

Again, in a letter provided to us, CN's position was that changing the maximum revenue entitlement actually allows you to purchase new cars. Could you please speak to this?

Ms. Janet Drysdale: I think that actually might have been a comment from CP.

I think the changes to the maximum revenue entitlement improve the situation with respect to getting the investment credited to the railway that actually makes the investment. It is a rather complex formula, and we feel that there is an opportunity to simplify it further. Railway cars we have to pay for 12 months a year. It's no different than leasing an automobile. You have a monthly payment.

In the context of the way the MRE works, we only earn revenue on the actual amount of tonnage we ship over the mileage we ship. We still feel that there is some disincentive left in the MRE, although the splitting of the index certainly is helpful in that if CN makes an investment in the cars, we no longer have to share 50% of the credit of that investment with CP.

Mr. Gagan Sikand: Thank you.

Ms. Drysdale, you mentioned in your remarks that you've offered amendments with regard to LHI and reciprocity within the 250 kilometres. Could you elaborate on that point, please?

Ms. Janet Drysdale: While the existing exclusions included in the bill we think are very important and need to be maintained, they do not address the issue of U.S. reciprocity in the three prairie provinces. To the point made earlier by my colleague at CP, there is still an opportunity for railroads to come into those three prairie provinces and to take business away from the Canadian rail network. I want to make the point that if a shipper wants to ship to the U.S., we do that day in and day out, and we're prepared to continue to do that, but the rate we do that at should be commercially negotiated with BN in the very same way we negotiate with BN, for example, when we want to access a customer in Chicago. It's this notion of disparity between the two regulatory regimes that concerns us, and the fact that we're giving an unfair advantage to U.S. railways to come in and take Canadian traffic at a prescribed regulated rate, when we don't have the same right to do so in the United States.

Mr. Gagan Sikand: Okay.

Do you feel that you were adequately consulted on the minister's transportation 2030 strategy and in regard to Bill C-49?

Ms. Janet Drysdale: We certainly participated extensively in the consultation process. Clearly, we're dissatisfied with some of the outcomes that remain in the existing bill.

Mr. Gagan Sikand: Thank you.

I'll ask the same question to CP.

Mr. Jeff Ellis: Similarly, we participated, and we respect the process and the fact that we were consulted. Nonetheless, we do have the issues we've set out.

The Chair: Thank you.

Mr. Aubin.

[*Translation*]

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

Gentlemen, madam, welcome. Thank you for joining us.

I would like to start with a question for all the witnesses about safety.

I certainly heard your comments about the importance you place on audio and video recorders. However, my gut asks whether a voice and video recorder is going to help the TSB draw any conclusions on an unfortunate event that has already happened. I was rather looking to find out about the measures you plan to implement, or that Bill C-49 should implement, in order to prevent accidents.

As Mr. Ellis said, we know that most incidents are linked to human factors.

There are two major questions about the frequency with which the human factor is at play in accidents. First, there is the level of fatigue of locomotive operators. Then there are the repeated demands from the TSB pointing to the need to instal additional means of physical defence. This can mean alarms. or even technological mechanisms that can make a train stop when the driver has missed a warning he should have noticed. It seems repetitive.

In the major companies, what measures are in place, first to achieve better management of fatigue, and second to move towards these means of physical defence?

Perhaps, Mr. Ellis can start, but I invite everyone to respond.

● (1020)

Mr. Sean Finn: Well, maybe I can start.

There are two things. For the industry, and for CN, safety is clearly an essential value. We cannot be successful in our industry without safe practices. Without them, it is impossible to succeed.

You can ask my colleague, Michael Farkouh, a vice-president involved in operations, to explain a little about how it works, what measures are in place so that we always feel comfortable with safety matters and that we always have the assurance that safety is a daily value for all our employees.

[*English*]

Mr. Michael Farkouh (Vice-President, Eastern Region, Canadian National Railway Company): To address the question with regard to the locomotive voice and video recording as well as fatigue, our pursuit, of course, is always to reduce any accidents and injuries and to prevent them. Prevention is one of the key elements that we focus in on. When we are looking at our safety management system, we are always building on lines of defence. When we address locomotive voice and video recording, this is a tool that complements our efforts to further reduce that.

Earlier we talked about privacy. We don't take that lightly. We want to be very pinpointed from a risk assessment base as to how best we should use—

[*Translation*]

Mr. Robert Aubin: Allow me to interrupt you. I certainly heard your remarks about the recorders. Now I would like you to tell us about driver fatigue and the means of physical defence.

[*English*]

Mr. Michael Farkouh: With regard to fatigue, it's definitely an area that we are actively working on very closely with our unions. It's not so much fatigue but the healthy rest of individuals.

When we look at safety, we're not necessarily looking at the situation that has arisen but at how to prevent the situation from occurring. When we get to fatigue, it's really about addressing proper scheduling. It's addressing healthy sleep habits. It's an education process. As well, at work, when the individual is already fatigued, we have to look prior to that, and that's what we are currently doing and we are working very closely with our unions. We are not necessarily having to wait for regulations. We are really trying to address these issues as we see there's a level of importance to doing so. We're working closely with our unions on that.

[*Translation*]

Mr. Robert Aubin: Thank you.

Mr. Ellis, do you have anything to add about fatigue and the means of physical defence?

Mr. Jeff Ellis: Yes, I understood your question completely, but I will answer in English, if I may.

[*English*]

With regard to fatigue, we take fatigue quite seriously. Our company has been advocating, for example, for a 12-hour maximum workday, as opposed to the current 18 hours. We hope that's going to be a change that will come into effect eventually.

In the meantime, as my colleague Sean said, we're working closely with the unions, because some of the issues around rest are tied up in collective agreements. But we don't dismiss the fatigue issue at all.

That said, it's one lever among several that we need to pull. In our view, LVVR is a critical tool and it has been proven in other realms in transport that it is extremely effective, particularly when you can have proactive use respecting privacy. We have absolute respect for privacy, Canadian privacy laws, and we think that we can address it in a balanced manner that balances risk with privacy protection.

[*Translation*]

Mr. Robert Aubin: You did not talk about physical means of defence. Is that because providing additional tools is not part of your short-term or medium-term plans?

Mr. Sean Finn: At the moment, for example, we are conducting a pilot project with our employees. They are wearing a gadget like a Fitbit, which allows us to find out about their daily habits, when they are both working and resting. It is allowing us to get baseline information that we can rely on. Fatigue is not just a subjective concept; it's also a scientific one.

I think that is a good example. It's not a question of regulations, but of pilot projects to which our unions are contributing. Through them, we want to be able to observe the balance between the requirements at work and the practices at rest. Thanks to that physical application, we can jointly determine what can be done so that drivers are more rested when they arrive. We can also determine which habits in their lives mean that they are less rested than they should be when they get to work.

● (1025)

[*English*]

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

Mr. Badawey.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Madam Chair.

I'm going to dig a bit deeper for you folks and give you an opportunity to explain how Bill C-49 can actually become an enabler for you versus a disabler and, with that said, enable you to basically recognize the returns established by your strategic business plans.

My question to all of you—and I'm going to give you the time to answer this in depth—is to explain how Bill C-49 can in fact contribute to satisfying the established objectives that you've recognized for your strategic and/or business plans and how it can become an enabler for your organization to then execute those action plans that are contained within your business plan.

Ms. Janet Drysdale: I'll jump in on that one. In fact, our biggest concern regarding Bill C-49 is that it does just the opposite. One of the greatest challenges we're facing as we look ahead to increasing Canada's trade, export-import activity, is that we need investment in the Canadian rail system that underpins Canada's economy. In order to earn that investment, first of all, we need to ensure that we protect the existing traffic on Canadian rail lines and that we don't give the U.S. an unfair opportunity to come in and take the traffic and increase the density on their rail lines so they can then reinvest it in the U.S. network.

We are a highly capital-intensive business. We spend about 50% of our operating income every year in the context of ongoing maintenance and capital improvements to the physical infrastructure. Our biggest concern about Bill C-49 is the ability to continue to earn an adequate return in order to be able to make those investments that we require to keep the system robust.

At CN we have a particular concern about our remote branch-line networks, as I mentioned, which typically have a lower density of freight, and I think you've heard Michael Bourque speak about some of the challenges that short lines face. The reality is that rail is not particularly competitive when you're talking about distances under 500 miles. A piece of legislation that forces us to have these short-haul movements actually impairs our ability to earn an adequate return on a given movement, which we need to actually reinvest, particularly in those branch lines.

We've seen this happen before. We've had cases where we've actually had to abandon some of our networks in the more remote regions of Canada. Basically what ends up happening is that it encourages more trucking: the truckers have to step in and bring the truck to the more densely populated mainline network of railway. That's not good for our climate change agenda and it's not good for Canadian shippers. These are our concerns about Bill C-49, that in fact it makes it ever more difficult for us to achieve our business plan and to be able to earn those returns that we need in order to reinvest in our infrastructure.

Mr. Jeff Ellis: I'll refer the question to my colleague James Clements.

Mr. James Clements: I'm going to make a couple of comments. We have five pillars around our business plan, on what Bill C-49 does to help us enable our business plan.

Around safety, we would agree that the LVVR amendments, as proposed, are ones that would allow us to move forward and improve the safety. That's the first focus of our organization in anything we do, to operate safely in the communities we serve across the country.

We always talk about providing service as one of the core components of our business plan. We haven't had much commentary around the level of service amendment that has been proposed. One area that we would comment on around this is that we run a network. When we think about providing service, we're providing that service on a network basis and we have to juggle all the push and tug of what every individual shipper would like with the realities of serving everybody across that network. We think there needs to be some consideration in the regulation or the bill around looking at the entire impact of a service agreement or a service arbitration award on the network itself, not just on an individual shipper, because if you give the priority to one shipper, it could subordinate everybody else and have negative repercussions. That would be one additional comment I would make.

● (1030)

Mr. Vance Badawey: I'd like to go back to Ms. Drysdale with respect to the branch lines.

You mentioned abandoning the branch lines because of the fact that it's just not feasible for you. Is there dialogue happening with the short-line operators that may be in the areas, or a short-line operator, to actually take on some of these branch lines, therefore creating some more revenue for you to offset the revenues that you need for your asset management plan?

Ms. Janet Drysdale: I think our experience with short lines has shown us that if it's not economically viable for us to operate, the likelihood that it's economically viable for a short line is very unlikely. It's not a matter of having a short-line operator come in to operate in those remote regions. The base level of traffic won't be there for them either.

Our experience with some of the short lines is that, over time, they haven't had enough capital in order to reinvest in their network. Certainly in the U.S. we see the same situation, but the U.S. regulatory framework gives them some different incentives and things such as accelerated depreciation, or even government grants, to help them make investments in their network. We don't have that in Canada.

In the context of a line being viable, if it's not viable for us, it's not going to be viable for a short line. In the context of short-haul moves, it would be more likely that the shippers would have to relocate, go out of business, or use trucking in order to get to the nearest major rail location.

Mr. Vance Badawey: Thank you.

The Chair: Mr. Hardie.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): I wanted to start with Canadian Pacific. This has to do with the LVVRs. I'm looking at your letter. There are a couple of comments in it that I would like you to comment on for me. One line is: “It is simply unjustifiable to tolerate unsafe behaviour by a crew operating a locomotive, without taking appropriate corrective measures.” If I were one of your bargaining unit members, I would take that as a threat.

Can you comment on that?

Mr. Keith Shearer: I'll start with our operating employees. They are very talented, well trained, well motivated. They know their jobs extremely well. I've had the pleasure of working with many of them myself.

But they are humans, and humans make mistakes. Furthermore, things such as electronic devices are, I would argue, a problem in society. You see that in society today. Their use is a strong detractor from safe behaviour. Certainly in the railroad operating environment, we have rules and procedures that say they must be turned off, stowed, and not on their person; we simply do not allow them in the environment. Without a means to actually monitor on an ad hoc basis, however, we have really no ability to know that this rule, this procedure, is actually being followed.

That's just one example.

Mr. Ken Hardie: What would you do in a situation such as that? There's obviously corrective action, and then there's punitive action. Where would you go with it?

Mr. Keith Shearer: If it's egregious, if it's willful, then punitive options absolutely should be there. The minister and the public hold us accountable for safe operations. We take that accountability very seriously, and there's no reason that this shouldn't extend to our employees. For the most part, they understand that, and that's the way they operate.

Mr. Ken Hardie: I want to shift gears to the LHI. I hear a lot of contradictions. On the one hand, I hear that we have one of the most efficient low-cost providers of service in the world. That being the case, why would there be any threat from LHI, particularly given that even in the previous regimes the extended interswitching limits were rarely used. What, then, is the threat?

Go ahead, Ms. Drysdale.

Ms. Janet Drysdale: I think LHI is significantly broader than what was in place in the context of extended interswitching. The fact that extended interswitching was somewhat a temporary measure may have also played into the fact that shippers perhaps limited their use.

Our point with respect to both of those remedies is that if the shipper has rate and/or service issues, there are significant existing remedies the shipper can use, and we see them used. Shippers use the final offer arbitration remedy; they have used level of service remedies. Those remedies exist to help the captive shipper deal with the nature of being captive.

Long-haul interswitching is a far extension from what we saw with extended interswitching; it could be in excess of 1,200 kilometres. We thus have deep concerns, to the extent that shippers use it and/or that U.S. railways encourage shippers to use it, about the impact it may have on the overall network business.

● (1035)

Mr. Ken Hardie: I look at the service map, and what I see is that both your railways have extensive operations down into the United States. I don't see, other than perhaps in the case of the Burlington Northern Santa Fe line up to Metro Vancouver, a lot of incursion by American railroads into British Columbia.

Do you ever in the course of your business actually buy services from American lines?

Ms. Janet Drysdale: We do indeed. In fact about 30% of our business is interchange business with other railroads.

Mr. Ken Hardie: What, then, is the difference?

Ms. Janet Drysdale: The difference is in the way the rates are negotiated. In the U.S. it's done on a commercial basis. What's being proposed here in Canada is to have those rates all fall under a regulated regime. That's the key difference.

Mr. Ken Hardie: Would you not say—and I'll turn this to CP, because you have taken the first few questions—that in fact the reason the interswitching wasn't used under the old regime very much is that when faced with the competition, you guys lowered your rates?

Mr. Jeff Ellis: I'll refer to James.

Mr. James Clements: I'll make a couple of comments. I'll answer that last question first.

The interesting scenario that happened is that we had negotiated commercial rates. I'm going to use the Burlington Northern into Lethbridge as an example. There were products moving in and out of Lethbridge under the bilateral agreements on creating through rates that Janet referred to. What happened is that when extended interswitching came in at a prescribed rate, the shipper paid essentially the same amount, we got paid less, and the revenue for the U.S. portion of the haul went up as a result of the application for interswitching.

Mr. Ken Hardie: Did you lose a lot of business?

Mr. James Clements: In the Lethbridge area, we saw an impact. If you looked at the whole of the system, it was relatively small. However, in the Lethbridge area where you had Coutts, where the Burlington Northern connects, if you took that as a percentage, it was more significant than elsewhere. Again, that's one of the few locations where the 160-kilometre interswitching limit with the BN really applied. The other area was around Winnipeg.

Mr. Ken Hardie: However, I think we can count on the finger of one finger the number of times anybody went to the maximum limit.

Mr. James Clements: To 160 kilometres, but I can follow up with statistics.

Mr. Ken Hardie: That would be worthwhile.

Mr. James Clements: We saw a significant percentage in that localized region move over. It was a regular occurrence, with traffic moving on a regular basis in and out of there.

We have moved a little away from that. The first comment I wanted to make overall—

The Chair: I'm sorry, I'm going to have to cut you off. Perhaps you can find a way of answering Mr. Hardie's question among some of the other questions.

Mr. Shields, please.

Mr. Martin Shields (Bow River, CPC): Thank you, Madam Chair.

I appreciate the expertise here in the room today. Obviously, I have very little compared to the knowledge sitting here at the end of the table. Listening to some of the comments made, I say, well, we have the lowest rates, so why are you worried about the competition from the U.S. side? If you have the lowest rates, if you're selling shoes the cheapest, you're going to sell more than the guy next door. When you say that and then the rest of the argument, there's an oxymoron here somewhere.

Back in 2013 when oil was selling for $100 plus, you could make more money hauling oil than you could the wheat out of the Peace country. I understand what you were doing. Then you had intervention and you didn't like the intervention. Somebody stepped in and put a regional thing in to take care of that so you could move wheat that had been piled up for a year.

However, the real thing that gets to me is the consolidation in North America, and you mentioned it. Both CP and CN, can you talk to me about how railroads are consolidating in North America?

Mr. James Clements: I'll answer your competition question first, and then take the opportunity, as the honourable member suggested, to answer the previous question as well.

Mr. Martin Shields: No, I want to know about consolidation.

Mr. James Clements: I'll get there. You asked about—

Mr. Martin Shields: No, I don't want to go there. I want to talk about consolidation. That's what I asked about. I made a comment.

● (1040)

Mr. James Clements: All right. We haven't seen any major rail line consolidation in North America since the late 1990s. As a company, we have attempted a couple of consolidations with eastern U.S. carriers. In the long term, we think consolidation is something that is likely to happen, given the competitive pressures, when you start looking at, let's say, autonomous trucks and the ability for them to provide service. For us to compete, we're going to have to have end-to-end North American solutions to compete with the changing transportation environment and also address congestion issues and troubles we have building infrastructure. Because of the not-in-my-backyard syndrome, we have to maximize all the existing infrastructure, and consolidation is a path to that.

Mr. Martin Shields: Okay.

Ms. Janet Drysdale: I would echo Mr. Clements' comments. Certainly as it exists today, there are six major railroads in North America. Two operate in Canada, two operate in the western United States, and two operate in the eastern United States. It appears unlikely in the context of recent actions that the U.S. regulatory environment would proceed with any type of consolidation scenario. That said, as we think about the future and the longer term, the potential competitive threat from things such as autonomous trucking and the difficulties that the U.S. eastern railroads are facing with respect to significant declines in their coal business, over time there may be economic and regulatory justification for the U.S. railroads to combine.

Mr. Martin Shields: Trucking, in a sense, is a cost to municipalities. Trucking is huge, and that's an unknown cost that you're not talking about, a competitor that the municipalities pay huge costs for. How critical is reciprocity in negotiations here as we go forward? As we consolidate the industry north and south, how critical is reciprocity?

Ms. Janet Drysdale: In any competitive industry, we want to be on an even playing field with our competitors, and we aren't today. When we look at the U.S. regulatory framework, there's no common carrier obligation. They're not obliged to carry traffic. There's no final offer arbitration, no group final offer arbitration. There's no level of service arbitration. There's no interswitching. There's no extended interswitching, and there's no long-haul interswitching.

Mr. Martin Shields: How critical is it for you to have in order to survive?

Ms. Janet Drysdale: It's imperative that we have a level playing field with our competitors if we want to remain competitive in an industry that might eventually consolidate.

Mr. Martin Shields: Does it threaten our industry?

Ms. Janet Drysdale: Yes, it does.

Mr. James Clements: I would argue the question this way. If I were looking at it from a U.S. carrier's chair—if I were the strategic planning individual at the Norfolk Southern—I wouldn't be interested in a Canadian carrier; I'd be looking west. You could have transcontinental mergers in the U.S. Then I could just pick the traffic I want off the border points because of extended interswitching, and I know I have no threat there.

A consolidation scenario, then, might leave the Canadian carriers out in the cold.

Mr. Martin Shields: Is it a threat to your existence?

Mr. James Clements: I think it would increase the density and competitiveness of the U.S. network, if they could combine and our regulatory environment didn't prevent that.

Mr. Michael Bourque: Madam Chair, I could add a few comments, if that's all right. I'm the chief myth-buster for the railway industry, and there was a significant myth that was perpetuated here, and I must address it.

During 2013-14, there was additional grain—20 million metric tonnes of additional grain—produced by the agriculture industry. Yes, a lot of it was on farm; that's where they store it. We also had the worst winter in 75 years. In June, the ground was frozen in Winnipeg and pipes were frozen, so it was a significant winter. Nevertheless, we moved that grain. It required 2,000 additional trains of 100 cars each just to move the extra grain that was produced that year.

The industry moved the grain. It was a very anomalous situation of a bad winter; it had nothing to do with the movement of oil. There was no oil moved to the west coast, which is primarily where all of that grain moved, to the Port of Vancouver.

I just wanted to address that. Thank you.

Mr. Martin Shields: There were no trains in [*Inaudible—Editor*] country for a year.

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

We go on to Mr. Fraser.

Mr. Sean Fraser (Central Nova, Lib.): Thank you very much.

I appreciate the feedback. I can start by saying that I appreciate the strategic role that the rail industry plays in the economy. I accept in general terms the notion that deregulation over the course of the last 30 years has led to prosperous circumstances for the economy and of course for the rail industry as well.

I think we might part ways to a degree on whether there was somewhat of a market failure involving captive shippers and on what "captive" really means. I think it was Mr. Clements who said that we have the safest, most efficient, environmentally friendly, and low-cost transportation system in rail, potentially in the world. I forget the way you phrased it.

From the government's perspective, if I want to encourage more people to use a safe, cost-effective, environmentally friendly way to transport goods at a low cost, I'm wondering why trucking, for example, is the right comparator group.

● (1045)

Ms. Janet Drysdale: Maybe I can take that with an example.

We have an existing customer today located in a remote region that ships lumber, and they ship all of that lumber today by truck. In coming together on a commercial basis, we made a decision to make some investment in order to bring rail to that customer, which supports our climate change agenda and supports the low-cost enabling of the infrastructure and the shipping of freight. But by bringing rail to that customer who today ships all by truck, once we make that connection this bill now considers that customer to be captive to rail.

Our issue in terms of captivity really concerns the way in which captivity is defined. Particularly on short-haul movements, truck is a viable competitor. We also can't lose sight of other competition, such as the St. Lawrence Seaway, for example.

In the case of other shippers, including very much the petroleum business, there are actually options for swapping: producers will actually change the location from which they are sourcing product. We face competition from product sourcing, we face competition from trucking, in some cases from pipeline, and certainly in the context of the Great Lakes St. Lawrence Seaway.

We're very competitive in terms of the CN/CP dynamic. Our issue is with defining "captive" as only having access to one railroad, when the shipper actually may have access to other modes of transportation that are viable.

Mr. Sean Fraser: I think, Ms. Drysdale, it was you who commented that the interswitching regime generally requires you to essentially drop off someone's goods at an interchange point so that somebody else can pick them up.

When we went through a study of Bill C-30 previously in this committee, the widespread testimony that we heard—and there were comments to this effect today—was that in fact that's not really what's happening. The vast majority of circumstances are really impacting the negotiation, and it is creating a sort of pseudo-competition, whereas there is none in the rail industry.

Is that incorrect? Is a change taking place at the negotiating table, as was the intention, or is it actually causing rail carriers to lose business to competitors?

Ms. Janet Drysdale: We certainly have lost business to BN, as an example. In the context of negotiation, you have to remember that the vast majority of our customers are very large shippers. The top 150 customers of CN represent about 80% of our revenue. These are large multinational companies that have many means of exerting influence and pressure in the negotiation.

Even if we look at grain companies as an example, and we think about the amount of capital they're investing in new elevator capacity or in waterfront terminals, whether or not that elevator capacity comes on CN or CP is a huge amount of leverage in the context of commercial negotiations. When we look at a lot of the existing regulation, such as the final offer arbitration process or the level of service agreements, to suggest that shippers don't have various means of exerting pressure in the negotiation.... Some of these customers also, by the way, have extensive operations in the U. S., where the regulatory framework is different, but again, it gives them another means of exerting pressure. I think that pressure existed before this regulation. I think it's a nice way of saying “we need even more because shippers need even more leverage”.

I don't find that to be true in our case. I think our concern is that having that legislation and, with long-haul interswitching, broadening it even further, risks the sustainability and integrity of the Canadian rail network. We view that as a significant problem in the context of it really being the backbone of the Canadian economy.

Mr. Sean Fraser: If I can interject, I take your point that a major multinational corporation based in Canada isn't necessarily the weak partner at the bargaining table that some would have you believe.

I come from a very rural part of our country in Nova Scotia. If we ship east, it's going on a boat; if we ship west, it's going on a train. My concern is folks within the rail industry who really are captive to a single shipper. There's really one rail line in Nova Scotia. They do face a lack of an ability.... Realistically, they have to accept terms or reject them.

If I take a step back and look globally at what's in Bill C-49, this is about providing service to all kinds of shippers, those in rural areas and in smaller businesses as well. Do you see that Bill C-49's intent would be to increase service to these shippers, and do you think it will achieve an enhanced service to some of these rural shippers in particular?

● (1050)

Ms. Janet Drysdale: My concern with the rural shippers in those remote locations in particular is that it may actually be harmful to them, because to the extent it encourages that movement—those cars to be off the CN network, let's say—it will be very difficult for us to justify the investments required to keep remote lines operational. We've certainly seen that in Nova Scotia, where some of the lines have been abandoned.

The Chair: Thank you very much.

Mr. Lauzon, you have five minutes.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you very much, Madam Chair.

This is my first visit to the transportation committee. It's a very interesting subject matter that we're dealing with. From the get-go here—I might ask whoever wants to answer this question—we're into NAFTA negotiations as we speak. I'm wondering if you folks feel that transportation should be a priority in these NAFTA negotiations. What do you think of that?

Mr. Sean Finn: Maybe I'll start off. There's no doubt that as you negotiate free trade agreements, you have to move the goods to be a free trader, and there's no doubt that transportation plays a key role. Evidence has shown that because of NAFTA, over the last 20 years in Canada both railways have grown, both in Canada and also in cross-border movement. There's no doubt that transportation is an issue.

I don't think we'll find it at the forefront of the table, but we are monitoring it very closely. You can appreciate that many of our customers are in states that are the big traders with Canada. We've been successful in talking to state reps and state governors to make them realize—and to make sure Washington realizes—how important the flow of goods going north-south is, and then south-north when it comes to a lot of the Midwest states. To answer your question, there's no doubt that it's an important issue. There is I believe a reference to it in negotiating terms on the U.S. side, but we don't think it's going to be at the table other than to make sure of the free flow of goods.

I will repeat my comment that you cannot have a free trade agreement and you cannot trade goods without having very effective transportation. That allows us to also say that we've done a great job in Canada—both CN and CP—in moving goods to the U.S. Our concern, as I said earlier this morning, is that we don't want to be in a situation where U.S. railways have access to our network in Canada and we don't have the same type of access to the network in the U.S. That's a preoccupation of ours.

Mr. James Clements: I would echo those comments that transportation can play a role in NAFTA. Why are we giving up concessions on market access to the Canadian rail network in the middle of a negotiation with somebody who is a tough negotiator?

Mr. Guy Lauzon: Thank you very much.

Does anyone else want to make a comment about that?

Mr. Jeff Ellis: If I may, I can say as well—and Sean may have heard similar comments when we were in the U.S. meeting with the American roads in the context of the AAR—that the U.S. roads are also quite concerned with protecting what's already there in terms of NAFTA and volumes to their businesses. With any luck, that will remain a priority on both sides of the border.

Mr. Guy Lauzon: Since I am a visitor here, some of these questions might be naive, but Ms. Drysdale, you mentioned truck and rail. Can you just give me an idea of how competitive rail is with trucking? In this incident you talked about, putting a line into a certain area, how would those compare?

Ms. Janet Drysdale: Rail is most competitive when we're talking about long-haul shipments. The number that we use often in the industry is about 500 miles. So if it's shorter than 500 miles, it will be very difficult for rail to compete with truck. In the instance I referred to, the shipper was actually using truck to get onto the rail network, but at a point much further down than their actual physical location.

Mr. Guy Lauzon: Another thing you mentioned and I've heard about is how much business we're losing to the U.S. How much is that of your total business? How much are we losing—5%, 2%, 9%?

Ms. Janet Drysdale: In CN's context, in the context of business law specifically related to the extended interswitching under Bill C-30, it's probably in the order of a couple of thousand carloads.

Mr. Guy Lauzon: What would it be percentage-wise?

Ms. Janet Drysdale: Percentage-wise it would be very small. Our concern is the potential going forward particularly with the long-haul interswitching.

Mr. Guy Lauzon: Okay.

● (1055)

Mr. James Clements: We would say that on long-haul interswitching—I'm doing rough numbers in my head—over 20% of our revenue is at least exposed to the potential to connect to a U.S. carrier.

Mr. Guy Lauzon: I think CN invested $20 billion recently in infrastructure, and CP $7.7 billion or something. I think those were the figures. How much of that money went into safety? Could somebody give me a ballpark figure?

Mr. James Clements: A large portion of it goes into safety, because even if you're putting in new rail or ties, it is improving the quality of the basic infrastructure.

Mr. Guy Lauzon: How much was directly earmarked for improvement in safety?

Mr. James Clements: I would look to my colleague.

Mr. Keith Shearer: I'm stretching here a bit, but I would say probably in the order of 70% goes into safety in terms of technology investment and, as James said, rail ties, ballast, cars, and locomotives.

Mr. Guy Lauzon: So 70% is earmarked for safety and 30% is for profit making.

Mr. Keith Shearer: It would be capacity expansion.

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

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair,

I would like to talk about the same thing, interswitching. As I listen to you, it seems that long-haul interswitching is the devil incarnate.

My question has two parts.

First, does that mean that the concept of interswitching as provided for in Bill C-30 would be acceptable from now on as a way to try to re-establish the negotiation power between producers and carriers?

Second, we have been talking for some time about long-haul interswitching along a north to south axis. I come from Trois-Rivières, Quebec, a city that ships grain, among other things. Can I assume that the principle of long-haul interswitching must also apply along an east to west access? Do the same problems exist in that direction?

Mr. Sean Finn: I would not say that it is the devil incarnate, but you have to understand that the intent of Bill C-30 was to establish temporary measures to deal with quite an exceptional problem. There had been a major grain harvest, almost a record harvest, as well as a very difficult winter. In terms of the effect of Bill C-30, I could show that, once the winter was over, in March 2014, the rail companies shipped all the grain that needed to be delivered. You cannot really establish that the measures in Bill C-30 helped with the transportation of grain. With Bill C-30, once the winter was over, we managed to clear the backlog caused by the hard winter and by the record grain harvest.

It is important to understand that, in situations where shippers claim to be captive according to the definition in the proposal, that is, when shippers have access to one railway only, they can actually use trucks or other means of transportation. That allows shippers to make choices.

We gave you the example of the Americans who have access to the Canadian network at internetwork interchange points in Canada. We do not have the same access to internetwork interchange points in the United States. That is especially the case with CN, for example, which goes from Chicago to Louisiana. We cannot get access in the same way.

Mr. Robert Aubin: I completely understood the problem on the north-south access. I would like to know the situation on the east-west axis.

Mr. Sean Finn: On the east-west access, there is no doubt that a lot of competition exists between CN and CP. When the interswitching distance was 30 km, it was in urban areas, especially industrial areas. It’s important to state that the exceptions established so that American railway companies do not have access to the entire network are the same as those on the north-south axis.

So rest assured; it is possible for a shipper in Trois-Rivières to have access to the CN or the CP network using shortlines. That exists today.

The 30-km interswitching distance has been very good for a number of years. The 160-km distance was a temporary measure. There is no doubt that an interswitching distance of 1,200 km will create major problems.

[*English*]

Ms. Janet Drysdale: If I could just add to clarify, I want to make —

The Chair: I'm sorry. We've gone beyond 11 o'clock.

I want to thank the panel members so very much for coming today. You've given us a lot of really good information.

We will suspend momentarily while we exchange for a new panel.

● (1055)

(Pause)

● (1115)

The Chair: I will reconvene the meeting.

For this panel, we have the Western Grain Elevator Association, the Canadian Oilseed Processors Association, as well as the Canadian Federation of Agriculture.

I'll turn to the Western Grain Elevator Association to lead off.

Mr. Wade Sobkowich (Executive Director, Western Grain Elevator Association): Thank you very much, Madam Chair and members of the committee.

The Western Grain Elevator Association is pleased to contribute to your study on Bill C-49. The WGEA represents Canada's six major grain-handling companies. Collectively, we handle in excess of 90% of western Canada's bulk grain movements.

Effective rail transportation underpins our industry's ability to succeed in a globally competitive market. We recognize this committee's comprehensive work last year. That was a very important report that this committee completed. The one published in December 2016 largely supported our points of view on the main issues.

In Bill C-49, a number of recommendations made by grain shippers were accepted and a number were not. We were asking the government to strengthen the definition of “adequate and suitable accommodation” to ensure that the railways' obligation to provide service was based on the demands and needs of the shipper, and not on what the railway was willing to supply. The definition proposed in Bill C-49 isn't explicitly based on shipper demand. There are positives and negatives with this new definition.

We were seeking the ability to arbitrate penalties into service-level agreements for poor performance, along with a dispute resolution mechanism to address disagreements in a signed service-level agreement. We are pleased that this is included in Bill C-49. It will resolve many of our challenges on rail performance matters.

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

We were asking that the government maintain and improve on the maximum revenue entitlement to protect farmers from monopolistic pricing. This protection was maintained; however, soybeans remain excluded from this protection.

The WGEA had also supported expanding the agency's authority to unilaterally review and act on performance problems in the rail system, similar to what the U.S. Surface Transportation Board enjoys in the U.S. Bill C-49 includes the provision for the agency to informally look into performance problems, but it doesn't give the agency added power to correct systemic issues.

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

To be clear, on balance, this bill is a significant improvement over the existing legislation and is a positive step forward for the grain industry. As a result, we are choosing to offer only four technical amendments, representing the bare minimum of changes, where the proposed legislation would not be workable and would not result in what the government intended. The main area is long-haul interswitching.

For your reference, annex A, which we circulated to committee members in advance, contains our suggested legislative wording amendments. The extended interswitching order had been in effect for the last three growing seasons and had evolved into an invaluable tool for western grain shippers. Instead, the new long-haul interswitching provision is intended to create these competitive options. In that spirit, shippers need to be able to access interchanges that make the most logistical and economic sense, not necessarily the interchange that's closest.

In terms of reasonable direction of the traffic and its destination, the current wording in proposed subsection 129(1) may give a shipper access to the nearest competing rail line, but this would be of little or no value if the nearest interswitch takes the traffic in the wrong direction for the shipment's final destination, if the nearest interchange does not have the capacity to take on the size of the shipment, or if the nearest competing rail company does not have rail lines running the full distance to the shipment's destination. For the committee's reference, we've circulated annex B, which visually depicts real-world examples of where accessing the nearest interchange makes neither logistical nor economic sense.

● (1120)

Two clauses need to be amended to better reflect the spirit of creating competitive options. If you go to map 1 in the package we circulated, you will see an example of an elevator that has access to an interchange within 30 kilometres, but that interchange takes the traffic in the wrong direction. Bill C-49 stipulates in proposed paragraph 129(3)(a) that a shipper may not obtain a long-haul interswitch if a competing rail line is within a distance of 30 kilometres.

Sending a shipment in the wrong direction or to the wrong rail line is cost prohibitive and in those cases renders the interswitch useless. A shipper that happens to be within 30 kilometres of an interswitch that is of no use to them is excluded from long-haul interswitching and is put at a competitive disadvantage.

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

On long-haul interswitching rates, proposed paragraph 135(1)(a) of the bill directs the agency to calculate the rate by referring to historical comparable rates, but most comparable rates to date have been set under monopolistic conditions. If the rates themselves are non-competitive and may be the very reason a shipper wants to apply for a long-haul interswitch in the first place, this process would not effectively address the heart of the problem. We're concerned that without an amendment of the nature that we're proposing, LHI will become like CLRs.

Proposed subsection 135(2) directs the agency to set a rate not less than the average revenue per tonne kilometre of comparable traffic. This enshrines monopoly rate setting. In any reasonable marketplace, profitability is set on how much it costs you to do the business, plus a margin to generate a profit. Simply being able to charge any amount without regard to costs will result in rates divorced from the commercial reality of cost-plus.

We're seeking important changes to proposed paragraph 135(1)(b) and proposed subsection 135(2) to ensure the agency has regard to the cost per tonne kilometre, not the revenue, and that the rates are based on commercially comparable traffic, not just comparable traffic. If long-haul interswitching is to work, the rate has to be based on a reasonable margin to the railway, and not at least as much and maybe more than they can charge in a monopoly setting.

The third area where we have a concern is the list of interchanges. Proposed subsection 136.9(2) sets out the parameters for the railways to publish a list of interchanges as well as removing interchanges from the list. Grain shippers are concerned that the railways would have unilateral discretion to take out of service any interchange they choose.

There is existing legislation already in play: sections 127(1) and (2) under "Interswitching" have a process by which a party can apply to the agency for the ability to use an interchange, and the agency has the power to compel a railway to provide "reasonable facilities" to accommodate an interswitch for that interchange. This same language should apply to long-haul interswitching. From an interchange perspective, both interswitching and long-haul interswitching could apply to the same interchange.

On soybeans and soy production, when the MRE was first established in 2000, soybeans were barely grown on the Prairies, and therefore were not included in the original list of schedule II eligible crops. Since then, soy has become a major player in the Prairies and a commodity that holds significant potential growth for oil, meal, and food uses.

It must be pointed out that the Canadian portion of the U.S. movement of crops into Canada is covered under the MRE. As a result, U.S. corn, for example, that happens to be travelling in Canada is covered under the MRE, while Canadian soybeans are not. There is no reason why the government should not take this opportunity to add soybeans and soy products to schedule II.

In conclusion, Bill C-49 is, on balance, an important step in the right direction.

● (1125)

It's with restraint that we ask the committee to make only four non-invasive technical amendments to ensure it accomplishes what was intended.

Thank you very much.

The Chair: Thank you very much.

We'll now move on to the Canadian Oilseed Processors.

Mr. Chris Vervaet (Executive Director, Canadian Oilseed Processors Association): Thank you very much.

Madame Chair and members of the committee, on behalf of the Canadian Oilseed Processors Association, or COPA, I would like to extend our thanks to the committee for the opportunity to contribute to this important study of Bill C-49.

COPA works in partnership with the Canola Council of Canada to represent the interests of oilseed processors in this country. We represent the companies that own and operate 14 processing facilities spanning every province from Alberta through to Quebec. These facilities process canola and soybeans grown by Canadian farmers into value-added products for the food processing, animal feed, and biofuels sectors. This not only creates incredible demand for oilseeds grown by Canadian grain farmers but also injects stable, high-paying jobs into the rural areas where we operate.

Our industry's success is predicated on the ability to access foreign markets. Indeed, 85% of our processed canola products are exported to continental and offshore markets. Efficient rail logistics are paramount to getting our products to these markets in a reliable and timely fashion. To put this into perspective, about 75% of our processed products are moved by rail.

Given the importance of rail to the success of our industry, COPA has been working closely with the WGEA over the last couple of years to advocate for key policy recommendations that we believe are fundamental to creating a more competitive rail transportation environment. In our view, Bill C-49 is, on balance, a good bill. It is not a perfect bill but it contains several critical components that value-added processors feel will improve the commercial balance between shipper and railway. These include the ability to arbitrate poor performance penalties into service-level agreements, along with a dispute resolution mechanism to address disagreements in the application of a signed SLA. We also feel that data transparency and its robustness have been significantly improved in the bill, and we have seen a strengthened definition of "adequate and suitable".

This being said, our concerns with the bill's proposed changes to essentially convert the former extended interswitch provisions to long-haul interswitching are especially noteworthy. To be very clear, extended interswitching was an incredibly important tool for value-added processors. For the first time, interswitching breathed a semblance of real competition into rail logistics for our sector where there had never been any before, giving previously captive facilities access to a second carrier for U.S.-bound product in particular. Our industry saw a dramatic improvement in rail service to the U.S. while extended interswitching was available.

Extended interswitching was an extremely simple and effective tool. It put all interchanges into scope and involved no application or bureaucratic red tape to access. Rates were clearly published for set distances, giving shippers the certainty and predictability needed to book freight over a longer term. Moreover, it was also a highly effective negotiating tool with the local carrier, which we found to be much more service oriented and likely to enter into a conversation about better service or rates with the leverage of the extended interswitching.

By contrast, the long-haul interswitch mechanism contained in Bill C-49 presents a number of challenges and removes the key characteristics that we were leveraging in extended interswitching. Most notably, LHI proposes a multitude of complicated parameters and conditions to determine how and which interchanges are accessible for shippers. LHI also proposes setting rates based on historical comparable rates. All comparable rates, to date, have been set under monopolistic conditions. If the rates themselves are not competitive, there is no incentive for my members to apply for long-haul interswitch.

Left unaddressed, both of these provisions as currently drafted would render the LHI to be of little to no use. Therefore, we are interested in working with members of this committee to find solutions to put long-haul interswitch to work as a competitive tool for our industry, as we believe the government has intended in this bill. Similar to WGEA, we see three key areas of concern that need to be addressed to make LHI an effective tool.

You will find some of our technical amendments—again, similar to those of the WGEA—in annex A, which we circulated to the committee members prior to this meeting.

● (1130)

Number one in terms of our list of technical amendments is to clarify that access to the nearest interchange means an interchange that is in the reasonable direction of the traffic and its destination, whether or not a facility is dual served or if there is another interchange within 30 kilometres. Prescribing access that is simply based on shipper access to the nearest competing rail line without taking into account other considerations would limit the value of LHI. Practically speaking, when determining the nearest interchange, consideration needs to be given to whether, one, it is in the right direction of the shipment's final destination; two, it is serviced by the right rail company to move the shipment to the desired destination; and three, it is the right size with the necessary infrastructure to execute the interswitch.

The intended spirit of the LHI mechanism is to give shippers competitive options. These have to be options that we can actually use and are applied equally among shippers. Proposed paragraph 129 (1)(a) of the bill stipulates that a dual-served shipper may not apply for a long-haul interswitch, for example. Excluding dual-served shippers simply on the assumption that they have competitive options is a false premise. In many instances, both rail lines do not service the traffic's final destination. As well, restricting access to long-haul interswitch places dual-served facilities at a competitive disadvantage to those who do have access to the long-haul interswitch.

Let me give you a quick example of what that means in practical terms. In annex B we have attached map 2. In Alberta, in the town of Camrose, we have a member operating a processing facility that is dual served by CN and CP. Currently under the long-haul interswitch they do not have access to apply for long-haul interswitch, even though there is an interswitch opportunity at Coutts in Alberta, at the border, where they could have access to BNSF. This not only limits their access to markets served by BNSF in the United States but also puts them at a competitive disadvantage in terms of other members or other facilities that do have access to that long-haul interswitch because they are not dual served.

Two, in terms of the key technical amendments we're looking to propose, we are also very concerned about the ability of the long-haul interswitch provision to address shipper concerns over rate-setting. In other words, the way that Bill C-49 is currently written, it places a floor on LHI rates, indicating that a rate cannot be less than the average of per-tonne kilometre revenue of comparable traffic. The bill needs language that gives the CTA the ability to consider commercially comparable competitive rates when determining the interswitching rates. Looking to historical and comparable rates as a reference to determine interswitching rates ignores the fact that these rates have been determined under monopolistic conditions. The CTA should also give regard to the actual cost to move the shipment, not what the railways have managed to charge in the past when monopolistic powers were at play. In this way, the agency can ensure that a railway gets a reasonable rate of return for conducting LHI business, on the one hand, and also guard against perpetuating excessive rates set under circumstances where competition does not exist.

The third amendment that we're looking to propose is that we are concerned about the ability of a rail company to take unilateral decisions to stop serving an interchange or tear it up altogether without any further check and balance. Again, this runs directly against the original spirit of the new LHI to give shippers more competitive options. We believe the bill requires tighter controls around decommissioning interchanges and in fact recognition of the other common carrier obligations that seem to already limit the ability for this to happen.

Finally, we just would like to add our voice to the growing number of grower groups and associations raising concern over the fact that soybeans and soy products have been excluded from the MRE. The MRE is a viable tool to protect farmers from exorbitant rate hikes. We know that the government and members of the committee share this concern for farmers, thus the decision to keep the MRE in this new iteration of the CTA. It is therefore surprising that soybeans and soy products would be excluded. As Wade mentioned, soy is now one of the major commodities grown in Manitoba and is expected to see similar growth in seeded acreage in the other two prairie provinces. With this growth in acres, there is increasing potential for value-added processing to expand into soybeans in western Canada, where there is currently no large commercial value-added processing for soy. There is no logical policy rationale to exclude soy over any other crop already under the MRE. COPA members and our farmer customers are asking that soybeans and soy products be added to schedule II.

In conclusion, oilseed processors are of the view that Bill C-49 is an important step in the right direction. Our suggested technical amendments on LHI would provide shippers an opportunity to access alternate carriers, which strengthens the overarching intent of the bill to provide a more competitive system.

Thank you.

● (1135)

The Chair: Thank you very much.

We'll now go to the Canadian Federation of Agriculture.

Mr. Hall.

Mr. Norm Hall (Vice-President, Canadian Federation of Agriculture): Thank you, Madam Chair.

As introduced, I am Norm Hall. I'm the first vice-president of the Canadian Federation of Agriculture, but more importantly, I sit here as a farmer from western Canada, east-central Saskatchewan, Wynyard, on the largest saltwater lakes in Canada, which are rising. Thank you for the invitation to appear before this committee.

As you know, CFA has been a strong proponent of advocating for a review of the regulations and legislation that govern and manage the movement of grain for export and the review of transportation. The government's advisory council on economic growth had coined the phrase “unleashing Canadian agriculture”. An important component of unleashing agriculture is building an efficient export corridor through sound legislative and regulatory process, up-to-date infrastructure, and information systems with the full accountability of all transportation and grain-handling participants. It is very important in order for the industry to confidently develop new and larger export markets. The primary stakeholder in all of this is the producer of the product, the farmer.

In 2014-15, Canadian farmers paid $1.4 billion in freight charges to the railways under the MRE. This was not paid by shippers. Grain companies are cost plus brokers. Any charges from the railways get passed through to the producers. They pay the bill. The railways are basically cost plus facilitators. Under the MRE, they are guaranteed a 27% return. A recent study by one of our members, APAS in Saskatchewan, saw that the number was closer to 60% or 65% return to the railroads in profit. It is the farmers who take all the risk in the production stage and the farmers who pay all the costs of production, the cost of freight from farm gate to the inland terminals and transload sites, the freight to export position, and the cost of any disruptions or delays.

Canada's railways and an efficient, low-cost grain rail transportation system are critical to the country's agricultural economy and the financial health of grains and oilseed producers. To ensure that the system works overall, decision-makers must recognize that farmers pay the entire bill for transportation of export grain from farm gate to port. Western Canadian financial livelihoods are captive to the railway monopoly that is trying to maximize profits for its shareholders.

Between 35 million and 40 million tonnes annually are captive to the railway monopoly. Since transportation costs represent one of the highest input costs in grain farm operation, the importance of ensuring competitive environment through regulation and legislation can never be understated. As Emerson so aptly stated, transportation costs, for example, often represent a more significant hurdle to expanded trade than do the costs associated with international tariffs or trade barriers. This was all brought to a head with the failure of the 2013-14 crop year. Twenty million additional tonnes, as was stated by the previous presenters, could have been alleviated if they had contacted the industry and were able to plan that way instead of leasing 400 of their engines into the States and shorting themselves of power for the winter.

While Bill C-49 takes great steps in the right direction, it almost seems as if they are meant to look like improvements without involving real change, leaving railways with far too much room to not comply with the intent and ending up with far short of a competitive environment: requesting more information while restricting the agency's use of that data; institutionalizing long-term interswitching but with historical revenue-based freight rates and not actual costs; avoiding giving the agency powers to pre-empt problems and requiring formal complaints; regulating interswitch options without giving the shipper flexibility to choose interswitches that would really help the shippers and result in higher levels of competition amongst the railroads; continuing to allow the railways to randomly or arbitrarily close producer car-loading sites and interchange facilities; continuing to allow the railways to use 1990s costing data when they've implemented savings on the backs of farmers; and giving railways a full year post-implementation to comply with new information data requirements.

• (1140)

I also want to say that while my comments focus on general policy positions, the CFA fully supports the more detailed technical legislative amendments proposed by the Crop Logistics Working Group, which will be in a letter to your minister.

Under transparency, since 40 million tonnes of grain are annually slated to move by rail, it's absolutely imperative that the railways comply with new regulations for additional data and information to allow proactive logistics and marketing and planning by the entire industry. Real-time data is required to achieve this objective, and timelines for the release of data and information have to be short enough to allow for proactive planning. There is no justification to allow the one year after legislation to come into force before they have to comply.

The use of data information by the agency should not be restricted and should be fully utilized to facilitate and manage the flow of traffic and grain volumes to pre-empt delays, backlogs, and disruptions. For example, if information or data is used for LHI administration, it can be used in other areas and for other purposes. The agency should have the freedom to do so, not for public release, but just for their own use. Further, the agency must be given the authority to find solutions to problems proactively, without waiting for industry to file complaints. The legislation must be amended to give the CTA the added powers to correct service performance failures through their own volition.

Under reciprocal penalties, while this is a contractual agreement between grain companies and railways, I've already told you that any problems arising between these two parties eventually get charged back to the farmers. The CTA must have the mandate and the resources to monitor, regulate, and ensure compliance. Level of service and compliance mechanisms have to prevent the railways, with their monopolistic powers, from becoming nonchalant about service provided, since shippers/farmers have no other options. Producer car loading sites are a good example, and I'll talk about them soon.

The minister must monitor the railways' overall level of service and service availability, and cannot allow the railways to arbitrarily and randomly withdraw services that are required to efficiently and expeditiously transport grain to export markets that provide farmers and shippers with the opportunity to improve their competitive position in the market. Since we're going to be looking at the MRE penalties imposed as a result of this service deficiency or contract, non-compliance must not be allowed to be included in the cost calculations of the MRE.

Under the long-haul interswitch, LHI, railways are concerned about losing market share. Welcome to competition. In one voice, they want to talk about having market-driven agreements, yet as soon as that threatens their monopoly by allowing LHI and U.S. carriers to come up here, they don't want it. They want to have regulation in place.

Under the current interswitch, 30 kilometres, there are four points in western Canada that are naturally served by the two railroads. The 30-kilometre interswitch takes that up to a whole 14 out of 368. Under the 160 kilometres, that extended to 85% of all points, which allowed grain companies to use interswitch if needed, if service was poor.

• (1145)

That is why interswitch is there. It's because of poor service. It gives the opportunity for one company to search for another company for better service. It's supposed to be for competition.

The Chair: Thank you very much, Mr. Hall. Have you completed your testimony?

Mr. Norm Hall: Just about. I have just a short bit on the MRE.

While maintaining the MRE is a must, individualizing the railway investment is a good move, but it defies logic that the legislation does not call for regular costing reviews. Tolerating a rail monopoly comes with an obligatory responsibility on the part of government to monitor actual costs to prevent the railways from abusing their monopoly. Efficiency improvements by railways have reduced their costs and have largely come on the backs of farmers. Closing down of inland terminals and forcing farmers to truck their grain further have increased costs for roads for provincial governments and municipalities to the tune of about $600 million of added freight costs for producers from farm gate to elevator.

Thank you, Madam Chair.

The Chair: Thank you, Mr. Hall.

On to our questions, we'll go to Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair.

I want to thank our witnesses for being here. We have quite a diverse representation of witnesses today, which is good when we're talking about providing a balanced approach to ensuring that the needs of our shippers are balanced with those of our railways, which are providing a service to our shippers. I made the observation during our last panel that we definitely understand the importance of our railway system to the economy of our country and the importance of our producers within that environment.

I had the opportunity of asking a question of a previous panel in regard to what I think has been a somewhat confusing message that perhaps has come from our railway companies in terms of comments made in a study done a year ago, when we were reviewing the Fair Rail for Grain Farmers Act. As I mentioned earlier, stats were provided to our committee during that study that demonstrated that extended interswitching was not used frequently. What we heard from our producer groups was that while it wasn't used frequently, and I think you mentioned it today, it was an effective tool used in negotiating contracts. If the legislation before us is meant to ensure market access and a competitive environment for our producers, what I would like to hear from you is a comment on that confusion. We were told that it wasn't used extensively and that it was an effective tool in negotiating contracts but that there's strong push-back on the long-haul interswitching that's included in this legislation. I'm wondering if you could provide a little more insight on that.

Mr. Wade Sobkowich: Thanks for the great question. It's something that we're a bit confused about ourselves.

On one hand, we have a situation where both railways have said that they're concerned about extended interswitching because of poaching from the U.S. carriers into the Canadian marketplace. On the other hand, we have Canadian rail carriers that already have extensive networks in the U.S. Those are two elements, I guess, to this discussion.

We found that initially the rail companies were objecting to the extended interswitching provisions when they were coming into play, but they began using the extended interswitching. They began soliciting business under extended interswitching and using it as it was intended to be used, which was as a competitive tool. That's what we're after here. I mean, how many times.... This is the fourth time I've personally appeared before the transport committee on different bills to amend the Canada Transportation Act. The recurring theme is, how do we get the rail freight market to behave like a competitive marketplace?

That seems to be a well-accepted premise, yet when we get close to doing that, people seem to get scared and want to pull back. We are after a competitive environment. If the railways are providing good service at good rates to the locations they serve, then they will not find that shippers are looking for other competitive options. It's only when rates are too high or service isn't there that shippers begin looking for other alternatives to get product to the marketplace.

The railways, for reasons I understand, prefer to move product east and west because of the cycle times on the railcars. They prefer to move to Vancouver and to Thunder Bay because of the cycle times; they can get their assets back in the system quicker. When they go down to the United States, it takes a lot longer for them to get the railcars back—maybe 30 days—so they're not that interested in serving the U.S. markets that we find. When extended interswitching was brought into play, it allowed for Burlington Northern, primarily, to come in, fill that void, and take that traffic down to the United States.

Shippers were using it both actively and passively. If you look at the straight statistics on the use of extended interswitching, it seems that maybe it's not a lot of usage. That's active usage. Passively, what would happen is that a shipper would go to the railway and say, “I need service, and these are the rates that I think are reasonable.” The railway might say that it can't do that, it can't provide that service to the U.S., and that it's giving priority to shipments in other corridors, or whatever it is. Then the shipper would say that they're going to talk to Burlington Northern to see if they can get traffic switched over there, after which time the primary carrier would come back and say, okay, let's be reasonable here. They would give you a better rate, or they would provide you with that service.

The benefit of extended interswitching can't be measured just based on how much it was used.

● (1150)

The Chair: Thank you.

Mr. Hardie.

Mr. Ken Hardie: For 100 years, this room has been hearing these stories—for 100 years—and if these walls could talk, they'd say, “God, we haven't heard anything new for 100 years.”

We're now at a point with a new piece of legislation where we're going to try to do something very ticklish, and that is to define what we mean by “adequate and suitable” service. If I listen to you guys, it's, “Let's lean toward the demand side: that's adequate and suitable.” If we listen to the railroads, it's, “Let's lean towards supply, towards what we've got available.” I didn't challenge them—and I know this is unfair—but I'm going to challenge you. What does a win-win definition look like, where you get something good and the railways get something good?

Mr. Sobkowich.

Mr. Wade Sobkowich: Thanks. That's also a really good question. To us, it's based on the premise that we have to take a look at what's best for the Canadian economy, and what's best for the Canadian economy is to get products to the customers we have throughout the world. That's going to return as much value as possible to Canadians.

Therefore, the premise of balancing the views of the railways and the shippers, we believe, is slightly flawed in the sense that the railways are a derivative market. They exist because shippers have products they need to get to somewhere else in the world. Shippers are drivers of the economy in that regard, so we need to make sure the definition of adequate and suitable provides the tools and the motivation the railways need to bring on as much capacity as possible to meet the demands of shippers, just as you would see in a competitive environment. In a competitive environment, if you went to a courier company and it wouldn't provide you with the service you needed in order to get your package to where it needed to go, you would go to someone else and you would get that service, and the package would get where it needed to go.

We need to try to simulate that here. If we had regular and normal competition in the rail freight market, that would just happen, but because we don't have that and because it's not really achievable, given the extensive cost barriers to entry of bringing in new railways and that sort of thing, we have to make the rail freight market behave as though it was a competitive marketplace. That requires legislation.

● (1155)

Mr. Ken Hardie: You could go on for a long time, I'm sure, but the fact is, at the end of the day, what the government would like to achieve is something where you're getting what you need, the railways are getting what they need, and there's no need for government to come in and subsidize anyone. It's kind of a net loss for the country when that has to happen.

Let's look at this as a network. We probed the railroads on the fact that they have extensive networks into the United States. I want to get a better picture of the origin and destination, where you would look at what would be going out of Canada and where it's going, and where the railways, with their current networks and what they could actually organize with American carriers, could actually serve the markets in Canada.

One of the things we heard in the fair rail for grain study was that the real attraction of interswitching, where they're actually going to use it, which was rare, was to get the product down to the States so it too could move to the west. That's what we heard there, but are there other considerations? Where's the product actually going and what role can our Canadian operations in the States actually play to fulfill this to make the whole discussion of interswitching almost moot?

Mr. Wade Sobkowich: To answer your question about where the product is going, it goes to most states. Most states in the U.S. receive shipments of Canadian grains and oilseeds. Some of the more notable ones would be the southern California dairy market, for example. The benefit of the interswitching is that you could get onto Burlington Northern and they would take it down to that marketplace for you, and because you have increased capacity to the United States, you could therefore make more sales to the United States.

Mr. Ken Hardie: What's to stop CN or CP from contracting with Burlington Northern to offer you a seamless service?

Mr. Wade Sobkowich: I don't believe there's anything stopping them from doing that.

Mr. Ken Hardie: Does it matter then that we could be in a situation where the U.S. rail lines, if they find themselves with extra capacity, basically dump their product on Canada?

Mr. Wade Sobkowich: I don't know the answer to that question. It's a good question.

Mr. Ken Hardie: Okay.

The Chair: You have 45 seconds.

Mr. Ken Hardie: I'll leave it at that.

The Chair: Thank you.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I apologize to Mr. Hardie in advance if I am asking a question that has been asked for the last hundred years. I haven't been here quite that long.

Joking aside, we have often been told that the interswitching measures, and all the other measures in Bill C-30, were designed to respond to the problems caused by an exceptional harvest, followed by a very harsh winter.

Am I wrong to say that agricultural techniques are advancing so rapidly that what was once an exceptional harvest has become the norm?

[*English*]

Mr. Wade Sobkowich: I could take this one, and then maybe Norm could.

We've definitely seen an increase in harvest volumes year over year. We have an upward trend. If you take a look at the last five years, we're now talking about a crop of 65-million tonnes being an average crop. Man, if we'd gotten that number 10 years ago, we would have been busting the rafters of our elevators. We definitely have more and more grain coming off the fields during harvest time. That's attributable to changes in agronomic practices and changes in technology. Farmers are operating with better practices and that sort of thing.

If your question is what has changed to give us comfort that we won't end up with a similar situation to what we had when we started seeing some of these big crop volumes, from our perspective nothing has changed. We don't have a change in the competitive environment. When we had Bill C-30 and we had extended interswitching, we had a glimpse of a change in the competitive environment, but that has sunsetted. We don't have Bill C-49 passed yet, so really, nothing has changed in the competitive environment and nothing has changed in the legislative environment to give us comfort that if we don't get something passed here, with tools we can use like reciprocal penalties, we won't go back to the situation we had in the past.

Does that answer your question?

● (1200)

[*Translation*]

Mr. Robert Aubin: Yes, thank you.

So your producers are concerned about being in a situation where the measures in Bill C-30 have been abandoned and Bill C-49 will not be passed for a number of months. Yet harvest time is almost upon us.

Do your producers have serious concerns about the coming weeks and months?

[*English*]

Mr. Norm Hall: With the harvest that we're seeing right now in western Canada.... Maybe I'll back up just a little bit. Wade talked about the higher volumes of harvest that we've had over the last five to 10 years. A lot of that is because we actually had moisture. We had rainfalls over the last 10 years that were higher than normal. He's right that technological advances and genetic advances in crops have increased our crop yields, but the current year we're in, a lot of the prairies are in a drought cycle again. We're going to see a much lower number than we've had in the past.

We still have concerns. You heard in the last panel that CN moved a record amount of grain last year, but CP's grain movement was worse than what they did in 2013-14. If CN had worked like that last year as well, we would have been in a worse predicament this past year than we were in 2013-14.

[*Translation*]

Mr. Robert Aubin: Thank you.

I would like to bring up something else with you.

Progress over 100 years has resulted in bigger harvests, but also in a greater variety of agricultural products. Should Bill C-49 contain a mechanism to specifically review schedule II on a regular basis? For example, I don't understand why soya is not in that schedule.

What is the mechanism to add a product to that schedule? Has it been explained to you at all? If not, do you have a solution to propose?

[*English*]

Mr. Chris Vervaet: I can take that one.

I think that's a good question and a very good point. We're also a little bit miffed in terms of why soybeans and soy products weren't included in schedule II. To your point about an opportunity for a regular review of that schedule, I think that's a fair proposal and a good proposal, because we do see a shifting agricultural landscape in western Canada.

Using canola as a primary example, 20 years ago we saw almost no canola planted in western Canada. Now we're up to 20 million acres at 20 million tonnes. It's a real success story. We need to have flexible policies and opportunities in place to address issues when they arise, and I think there's an opportunity to review schedule II to include soy. Right now with soy in particular, but I'm sure there are other examples down the road as well, we see a tremendous opportunity for expansion in acres and movement of that particular commodity.

[*Translation*]

Mr. Robert Aubin: Thank you.

Do I still have a minute, Madam Chair?

[*English*]

The Chair: No, you don't.

The questions and answers sometimes become very interesting.

We'll go to Mr. Sikand.

Mr. Gagan Sikand: Thank you, Madam Chair.

To follow up on Mr. Aubin's question, Mr. Sobkowich, you mentioned soy in your opening remarks. I'd like to understand the rationale behind excluding it. Could you describe the product volumes to give us a better understanding?

● (1205)

Mr. Wade Sobkowich: I have some statistics on soy. In our package of technical amendments, we say that soybeans represent 3.14 million acres in western Canada. Production is growing in leaps and bounds year over year. In 2016, acreage was 1.88 million. In 2015, it was 1.66 million. Other commodities, such as flax, canary seed, and buckwheat, represent a smaller acreage but are included in schedule II. Soybeans and soy products should be included as well.

Soybeans started in Ontario. They were a growing crop there, and they've since migrated to Manitoba. They've surpassed the volume of other crops. We have a certain amount of arable land in Canada. If you're growing more soybeans, it means you're growing less of something else. That something else is covered under the MRE. When you have expanded soybean acres, you have reduced acreage of other crops. Therefore, the MRE is becoming less effective for farmers because they're growing soybeans instead of these other products.

There are many uses for soybeans. They're looking at it for crushing, for turning into oil here in Canada. They're looking at doing the same for abroad. It's probably the fastest-growing crop right now in Canada and the one that holds the most potential for us. We definitely see a need to have this added to schedule II or to have some sort of process by which it can be added by regulation.

Mr. Gagan Sikand: I'm going to share my time.

Forgive my ignorance, but is soy a pulse? Is it a grain? What's the classification for that?

Mr. Wade Sobkowich: It's a good question. Some people consider it a pulse. We consider it an oilseed.

Mr. Gagan Sikand: Okay.

Madam Chair, I'd like to give the remainder of my time to Mr. Graham.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

The railways talked to us about what a captive client is and suggested that if you have access to a road, if you have access to trucks, you would not be captive. How do you feel about that?

Mr. Wade Sobkowich: I suppose you can come up with a solution to anything that doesn't have the railways involved. It's going to sound silly, but you could load grain into backpacks and carry them across the mountains with Sherpas. It's not a viable alternative. When it comes to the cost of trucking grain and all the implications for our roads and everything like that.... Farmers truck grain from their farms to the elevators, but when it comes to shipping grain over long distances from the elevator network to the port terminal facilities, railways are really the only viable solution economically.

Mr. David de Burgh Graham: How has the loss of the Canadian Wheat Board affected your movement?

Mr. Wade Sobkowich: The Canadian Wheat Board was a third entity involved in grain logistics. It was difficult. It made it really cloudy. You couldn't tell where the problem lay. Was it the grain company? Was it the railway? Was it the Canadian Wheat Board? Now that it's been removed, it's allowed each grain company to plan its logistics for its entire pipeline.

The Canadian Wheat Board would plan logistics for wheat. The grain company would plan logistics for canola and flax. It made it more complicated. Now, with the removal of the Wheat Board, it's really revealed where the problems in the system lie. We have the shipper and we have the railway. It's created efficiencies for the grain shippers to manage their own pipelines. We need to de-bottleneck the system and make sure we have adequate service and capacity on the rail side of things.

Mr. David de Burgh Graham: You also talked about better access to the U.S. markets being created through the interswitch rules. The large railways both claim to have lost traffic because of these rules. Do you agree that you send fewer cars overall via CN and CP as a result of the U.S. interswitches, as you have described them? Would you ever send domestic traffic across the U.S.? Would that ever happen?

Mr. Wade Sobkowich: When you say domestic traffic...?

Mr. David de Burgh Graham: Would you send Canada-to-Canada traffic through the U.S.? Would that ever happen?

Mr. Wade Sobkowich: I don't know. Chris, has that ever happened?

Mr. Chris Vervaet: Not to my knowledge.

Mr. Wade Sobkowich: Not to my knowledge.

The only point I'd like to make is that they only lose business when they're non-competitive. If they're competitive with rates and service, in each and every case the grain elevator is going to want to stick with the primary carrier.

● (1210)

Mr. David de Burgh Graham: Okay, am I out of time?

The Chair: Yes, that's it.

Mr. Badawey.

Mr. Vance Badawey: I'm going to take the opportunity to ask the same question I asked the last panel. I expected the answer I received from the last panel. I'm not expecting the same answer from you folks, so I'm going to move on with the intent...as you had mentioned.

We came a week early to the Hill to get this job done, and I'm sure you're anxious to get it done as well. Our intent is to listen and learn, and with that, respond accordingly.

Bills like C-49 are expected to be an enabler for folks like yourselves to work in an environment that, quite frankly, is going to provide the stakeholder the returns they're expecting. With that said, we're trying to create a balance. That balance we're trying to create between the shippers, the providers of the service in terms of transport, was mentioned earlier. You mentioned that you want to ensure you have that value established for all Canadians, in terms of their returns.

Again, being an enabler, we're expecting our GDP to keep rising, as it has in the last few months, and to continue to rise. By utilizing the movement of product, which contributes to our overall enhancement of global economic performance, a lot of that is done by integrating our distribution logistics systems. Bill C-49 is being put forward to provide a platform for good and fair service.

My question is very simple, and I'm going to open up the floor for all three of you to dive in, as I did with the last panel. How can Bill C-49 ultimately contribute to satisfying the objectives contained within your business plans?

Mr. Chris Vervaet: I'll start with that.

That's a good question. Really, for Bill C-49 to work for processors in particular it's the long-haul interswitch. Out of all the grain shippers in western Canada, processors were probably the biggest utilizers of the extended interswitch.

Again, similar to my testimony, it breathed some semblance of competition into the marketplace and provided an opportunity for many of my members, not just to leverage better service but also to access markets that we previously weren't able to access, primarily into the United States. Seventy per cent of our vegetable oil and protein meal produced in western Canada ends up in the United States. To have a level of competition and access to carriers that can move our products to markets that were previously untapped has generated invaluable benefits to our member companies, but also down the value chain to our growers as well.

Access to new markets means new growth potential for our processing facilities as well. That competitive element drives business, profitability, and it drives value throughout the entire value chain.

Mr. Vance Badawey: If I can just interject, you made a point that access to carriers obviously makes your margins more robust and, therefore, that's reinvested back for growth in your area.

Mr. Chris Vervaet: Yes, that's right.

It's not necessarily a question of more robust margins all the time. It's being able to grow and to sell more, maybe if not the same margin, to continue to produce more and add more value throughout.

Mr. Vance Badawey: Great.

Mr. Wade Sobkowich: One of the main opportunities we see in Bill C-49 is the reciprocal penalties piece. We have long been after the ability to get commercial contracts with railways. Every other link in the chain has commercial contracts. We have contracts with farmers, with penalties on both sides for failure to perform. There are contracts with the vessel owners, with the end-use buyer. That's the way business is conducted.

Until now, we've been operating primarily on railway tariffs, so that's a unilateral set of rules and penalties imposed by the railways, supported by statute. Bill C-52 introduced the ability for service-level agreements, but it lacked teeth. There was no ability to include penalties for non-performance in those service-level agreements.

We think that this will go a long way, because now shippers have the ability to try to negotiate penalties. We're talking about balanced penalties here. With regard to the same types of penalties they charge us for certain things, we want to be able to charge them for failure to do certain things. If we can have that in place in something that resembles a normal service contract that you would find in a competitive marketplace, we think that will go a long way.

● (1215)

Mr. Norm Hall: Thank you for the question.

Farmers are not considered shippers under the act, so we're in a unique position. We pay all the costs, but we have no rights when it comes to shipping.

Monsieur Aubin asked about larger production. We are continually improving our production methods and producing larger crops, and therefore, we need larger markets. Without an efficient transportation system, all of that is for naught.

We have the right to order producer cars just in case Wade's members don't perform. We have a safety valve, but we have no right to service those producer cars from the railroads. The years 2013-14 and 2014-15 were some of the largest orders of producer cars in history, but because of poor service, a lot of those orders were cancelled, and those producers are not using producer cars again. Therefore, the railways are saying those sidings aren't being used, and they're going to shut some more down, which exacerbates the problem.

What we're looking for is a more efficient system to get our crops to export position, not always to the ports but to the U.S., to Mexico, and to the Canadian domestic users.

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

Mr. Shields.

Mr. Martin Shields: Thank you, Madam Chair.

We appreciate the witnesses being here, and again, hearing a variety of opinions from one panel to the next makes it an interesting morning.

Mr. Hall, in the sense of you as the producer, when costs increase, you're in a situation where you have nowhere to pass those costs on other than to just absorb them.

When we talk about soybeans hopefully being added, when you look at that list, is there any direction in the sense of producers out there? Are they going to touch crops that aren't on that list, or does it sort of dictate where you may go as the producer?

Mr. Norm Hall: It can. In the case of soybeans versus other crops, we're seeing that one railway will haul soybeans at the MRE rate, where the other railway hauls it at MRE plus $10 per tonne. In some cases that will affect where you haul your soybeans once you have produced them. Soybeans, canola, and crops like that are higher-value crops that produce more profit. Guys are going to continue to grow them, and they will run them to the other railway as opposed to the one that's charging more.

You're right. We have no way of getting it from the marketplace other than the cost that's offered by Wade's members and Chris's members.

Mr. Martin Shields: We have a regulation in place that may prohibit us from growing new industries where there is a market.

Mr. Norm Hall: Yes. Wade's right. Canola was a small crop 30 and 40 years ago, and it has become huge. Soybean is expanding exponentially every year. What's going to be the next one? We need a flexible way of getting new crops put under schedule II.

Mr. Martin Shields: It may be hemp if we can get it out of the Health Act and under agriculture where it should belong, because hemp's going to be a growing one.

You as the producer, in the sense of market competition going to your neighbour sitting beside you, do you have access to different places to market your grain through brokers? Is there competition for you to go to different brokers? Is it there?

Mr. Norm Hall: We have that opportunity. It's all on where they are going to market it and who they are going to get to ship it to, so you shop around just like you do if you're looking for a pair of shoes. You look for the best deal.

Mr. Martin Shields: That's what you want to continue through to the other end to facilitate your broker for your product.

Mr. Norm Hall: Yes. Also Wade talked about service. Many times we'll have a contract with one of his members for an October delivery, and if there is not the proper service, we could be waiting for January. We have financial commitments to meet yet we have no recourse because they have no recourse, so that reciprocal penalty is a huge benefit to producers, even though we are not the shippers directly.

● (1220)

Mr. Martin Shields: We've heard about the arbitration resolution process. You're a producer. Have you availed yourself of any of those services that are out there? Have you heard of them? Do you understand them?

Mr. Norm Hall: I understand them because I've been in this policy game for far too long, but as far as using them goes, I'm not a shipper. I can't use them unless I'm shipping a producer car directly.

Mr. Martin Shields: For you, in terms of the regulation, you have amendments out there. You have four of them. Which one of those four would you say is critical to have changed?

Mr. Wade Sobkowich: I'd like to put that into perspective. We started with about 80. Really, we did. We went through them and said what was not the way it's supposed to be, and we did an assessment of what we think the likelihood of success is. We whittled it down to the bare minimum of technical amendments in order to make long-haul interswitching work, for example, and those are the three. If any one of those three isn't there, then it will become like CLR. We've really done that work and have come down to those three from something that was a much larger list. Then, of course, there's the addition of soybeans, because we just don't understand why that's not there.

Mr. Martin Shields: You're saying that it's a package? If they don't go as three, it doesn't work?

Mr. Wade Sobkowich: Yes, it could fall apart on any one of them.

Mr. Martin Shields: Okay.

Mr. Chris Vervaet: I'll echo Wade's comments. It really is a package deal. We did work in partnership to whittle down to those four the 80 amendments that we first identified. If we don't get the amendment on rates but we do get something in terms of nearest interchange, it still wouldn't work. We need them all together.

Mr. Martin Shields: You need them all to get effect.

Thank you, Madam Chair.

The Chair: Mr. Fraser.

Mr. Sean Fraser: Thanks very much.

I appreciate your testimony. You're willing to step back and look at the bigger picture, which I find very helpful. I particularly enjoyed your comment about hiring a Sherpa with a backpack. I used to put in hay as a kid at my neighbour's cattle farm, and you'd certainly not want a train to move hay 20 metres from one place to another.

During the last panel, I had a question for the railways about why this is an appropriate comparator group. They talked about the capital investment, and it later came out that in the 500-mile range they can't even compete with trucks. From your perspective, at what point is it no longer competitive to consider trucking?

Mr. Wade Sobkowich: It would definitely be for the short haul. Sometimes grain companies will truck grain from one facility to another. Trucking might be a viable option somewhere in the range of 100 or 200 miles, but when we're talking about the vast majority of the crop that's being exported through Vancouver, Prince Rupert, Thunder Bay, or the St. Lawrence, or into the United States, trucking isn't a viable option in the vast majority of those cases.

Mr. Sean Fraser: To shift gears a bit, under the previous model of extended interswitching in western Canada, being an eastern Canadian, I couldn't help realizing that certain regions of the country got this. I know, of course, that your interests might have been fine with extended interswitching, but do you see any reason not to extend a similar model to allow this sort of pseudo-competition where there is none to apply to different industries in different regions across Canada?

Mr. Wade Sobkowich: Personally, I don't see a reason. I can't get my head past the notion that it will be used only if the primary carrier isn't competitive. All they have to do is be competitive and it's not going to be used. I personally think that we should be able to apply it across Canada without reservation, but I do know that there were some concerns about some of the more densely populated areas in eastern Canada, where you have a large number of shippers in tight proximity and it would create some issues. It could potentially create issues if everybody is applying for an extended interswitch to that interchange. It could be a sort of backdoor way of regulating rates.

● (1225)

Mr. Sean Fraser: I think that's why in high-traffic areas like the Quebec to Windsor corridor you see an excluded corridor: because competition exists already.

If I turn my mind to reciprocal penalties, which you brought up, where the railway fails to meet its service obligations, you seem to be fairly happy with this—

Mr. Wade Sobkowich: Yes.

Mr. Sean Fraser: —unless I'm misreading you. Yesterday we had a witness from I think the Saskatchewan Association of Rural Municipalities who was quite worried that there wasn't a reciprocal penalty provision in the act. We heard discussions about whether they were mistaken. From the perspective of producers, you are happy with the reciprocal penalty mechanism built into this legislation. Is that fair to say?

Mr. Wade Sobkowich: We are. It's pretty well the way we asked for it. I read SARM's brief and I think they just were mistaken about where it's included and how.

Mr. Sean Fraser: I just wanted to make sure because I don't want to entertain amendments that may be based on misinformation.

Is your experience under the previous model, which has some similarities to long-haul interswitching, that in fact the real impact that it had was at the negotiating table? Rather than causing one railway to give up business to a competitor, is the real impact here that you achieve a competitive rate where there is no competition?

Mr. Wade Sobkowich: Yes, it's both. It was used both actively and passively. Something is only good as a threat, to be used as a threat, if you actually use it. It was used in both ways and a shipper would decide, I don't like the rate, I don't like the terms of service, I'm going to do an extended interswitch. They didn't have to apply to the agency. They didn't have to use the nearest interswitch as long as it was within 160 kilometres. It was what we would characterize as a competitive tool, whereas long-haul interswitching we would characterize more as a protection against abuse of monopoly powers. You have to go to the primary carrier first. You have to demonstrate that you couldn't reach an agreement with them before you go and use something else.

Mr. Sean Fraser: You mentioned during one of your responses to an earlier question that it's not really necessarily about balance but about getting goods to market for the sake of the Canadian economy, with which I agree. That being said, at a certain point in time I have to acknowledge that if the system is going to work railways also need to make money. Is there any threat that you see here with introducing competition where the rates become so low that the railways can't possibly profit?

Mr. Wade Sobkowich: I don't see that scenario. We're still talking about, in many, cases turning a monopoly into a duopoly, which ain't that great. We're talking about putting in place a small measure of competition. We're not talking about wild competition like you might see in the retail sector, for example, so I don't see that's the case. What's a fair return? That's why we talk about a cost-plus. In any competitive marketplace, somebody is looking at a 10% return, maybe a 15% return if you're being generous. That's reasonable and that's why we're talking about asking for amendments to the rates section of long-haul interswitching to be cost-plus.

The Chair: Thank you, Mr. Fraser.

Mr. Lauzon.

Mr. Guy Lauzon: Thank you very much. I'd like to address this question to Chris. The railways are asking us to amend Bill C-49 so that facilities within 250 kilometres of the border can't access the long-haul interswitching. What would that do for your members for the value-added processors? What effect would that have on their business?

Mr. Chris Vervaet: That's a good question.

Again, I mentioned in my response to a previous question that oilseed processors in particular have been using the interswitch quite extensively under the extended interswitch provision. If that were to be something that would be put forth, we'd certainly see a lot of limited access for our facilities that are located in southern parts of the provinces of Alberta and in Manitoba. It would preclude us in terms of having access to the interswitch locations that are located at the border between the U.S. and Canada, where my members anyway have had access to BNSF in particular to—as I mentioned in one of my previous responses as well—access to new markets. That's really what happens when we do have that access to an alternate carrier through the extended interswitch. Limiting it to 250 kilometres from the border certainly would preclude our members from making use of these interswitch locations.

Mr. Guy Lauzon: I'm not sure who I want to address this to. I'm a visitor to this committee and I'm very intrigued by this discussion.

You mentioned, Wade, that interswitching isn't used that often but the threat is very valuable. That perplexes me. I would think that the railroad companies would have some pretty good negotiators there and they would be able to deal with that. You say that it's active and it's passive. How do you explain that? You're negotiating with me, and you say, if you don't give me the deal that I want I'm going to go to the competitor. That's business, but it seems that you get away with that bluff every time.

● (1230)

Mr. Wade Sobkowich: No, it's not a bluff. You'd be prepared to move your business to the competitor. You will go to the primary carrier and say, “What can you do for me for rates on service?” The primary carrier would say, “This is what I can do for you.” You would say, “That's not good enough. I need to meet a time window for my customer in the U.S. and you're not providing service that allows me to get product within that contract window.”

Mr. Guy Lauzon: Is that time or money, in terms of costs?

Mr. Wade Sobkowich: It's both.

It could be rates or it could be service, or it could be both together. You would say, “Your rates are too high and you can't provide service, or you can't provide service in the time that I need it, so I'm going to a competitor” and then I'm going to get an interchange to move traffic from CN to CP, for example, or from CN to Burlington Northern.

Mr. Guy Lauzon: Is that always available, to go with a competitor?

Mr. Wade Sobkowich: It's available with a competitor as long as there's an interswitch or interchange within 160 kilometres that can accommodate that track.

Mr. Guy Lauzon: You can get a better deal from the competitors.

Mr. Wade Sobkowich: Exactly.

You don't need permission from the agency or anything like that. That would or would not prompt the primary carrier to take a second look at that and say, “Gee, that's a loss of business for me. That's a loss of traffic. Can I sharpen my pencil in any way here?”

Mr. Guy Lauzon: One of the railway folks mentioned that it's cost-prohibitive to deal with anything.... If trucking works, they can't compete with trucking up to 500 miles. That's where they break even or where they are most cost-effective.

Why can't you do this? Does trucking not work? If they charge as much as truck transport for the first 500 miles—that's where their break-even point is—why would you not use trucking for the first 500 miles?

Mr. Wade Sobkowich: You mean to get to the interswitch?

Mr. Guy Lauzon: Yes.

Mr. Wade Sobkowich: That's a good question. There's an answer to that, but it—

Mr. Guy Lauzon: The railway people tell us that truckers can do it cheaper than they can. That would be the competitive way to handle that, wouldn't it? Or maybe they can't deal with the volume?

Mr. Wade Sobkowich: Chris, do you want to answer that?

Mr. Chris Vervaet: I'll do my best to maybe indirectly answer the question.

When in 2013-14 we had a service meltdown when it came to rail performance, we as oilseed processors were forced to use trucks. We would usually prefer to use the rail. We needed to do that to service our customers, but the rates weren't competitive rates. I don't have the rates in front of me. I don't have exact numbers. Anecdotally, my members told me it was a last resort to use the trucks because we were risking shutting down our operations otherwise.

To move things a longer distance, rail service is the most efficient and cost-effective.

Mr. Guy Lauzon: Yes, but only up to 500 miles, supposedly. We were told that by the railway people.

Mr. Wade Sobkowich: My memory is being jogged. Back in 2013-14, there were situations in which we were trucking grain from one elevator to another because one elevator was getting good service and the other elevator wasn't getting good service. We were doing it in limited circumstances. There were some heavy costs associated with it, and it was being done under desperate circumstances.

Mr. Norm Hall: If I might, there aren't enough trucks on the road in the Prairies to handle what would be needed under that 500 kilometres.

Mr. Guy Lauzon: It's supply and demand.

Mr. Norm Hall: Exactly. For the 250 kilometres from the border, that would mean between half and two-thirds of the prairie grain would not be eligible for interswitch, which is unacceptable.

The Chair: Thank you.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I don't know if I will be referring to one of the 76 amendments you have submitted to us, but I would like you to provide me with some explanations.

Interswitching seems almost to be a cornerstone of Bill C-49. But while the rail companies tell us that it is absolutely not needed any more, you are telling us that it is practically vital.

According to Bill C-49, a rail company has to provide grain producers with 60 days notice before an interswitching interchange is removed. Theoretically, companies can remove themselves from an interswitching point. But last week, I read on Transport Canada's site that rail companies are still supposed to honour certain general obligations. That was all they said about it.

Do you know what those general obligations are? Should Bill C-49 be more specific about what would happen if a rail company were to issue a 60-day removal notice?

● (1235)

[*English*]

Mr. Wade Sobkowich: That's an excellent question and it gets to the heart of one of our four amendments, actually, which is the list of interchanges. With the introduction of Bill C-49, there will be two different sets of instructions or requirements under publishing a list of interchanges.

For long-haul interswitching, it would say the railways have to publish a list and they can remove anything from that list with 60 days' notice. Proposed subsection 136.9(2) sets out the parameters for the railways to publish a list of interchanges as well as removing them from the list. This is a new provision that goes along with long-haul interswitching. It says railways have to publish a list. They can take something off that list with 60 days' notice. We're worried that a long-haul interswitching order is going to go against them. They're not going to like it. They're going to remove an interchange.

However, we were told that there's already existing legislation that covers interchanges in the act—subsections 127(1) and (2) under “Interswitching”. It says that a party can apply to the agency for the ability to use an interchange and that the agency has the power to compel a railway to provide reasonable facilities to accommodate an interswitch at that interchange.

These are contradictory. One says one thing about interchanges and the other says something about long-haul interswitches, but a long-haul interswitch for one shipper could be an interchange for another shipper, so it doesn't make sense to have two different and potentially divergent sets of instructions on what happens with the interchanges and how they can be decommissioned by the railway.

What we are saying is that you can remove the provision in Bill C-49 on the railways' publishing a list and being able to remove it with 60 days' notice. The existing provisions that talk about the agency's powers to instruct the railways to keep or install an interchange—all this is already in the act and should apply equally to interchanges and long-haul interswitching. Does that make sense?

[*Translation*]

Mr. Robert Aubin: Yes.

[*English*]

The Chair: We've finished our first round. Does the committee have any further questions?

Mr. Badawey, go ahead.

Mr. Vance Badawey: Thank you.

I'm trying to get this balanced between all of the participants in the discussions we're having. The railways mentioned reciprocal agreements—reciprocity with our American counterparts. They stated, if I understood correctly, that because this doesn't currently exist, first, the asset management requirements cannot be satisfied. Second, they are forced to shut down and abandon lines that, because of the service requirements in some areas, would then be picked up by short-line operators, which, I might add, have limited capital resources. Finally, their competitiveness is affected, and this is something I'll leave open for interpretation.

When it comes to reciprocity, what are your thoughts? Keep in mind that we're trying to get a balance here. This goes to Mr. Fraser's question about trying to establish a balance between the railways, the shippers, and those who rely on the service. What are your comments on the reciprocity?

● (1240)

Mr. Wade Sobkowich: We see the shippers entering into discussions with railways and negotiations on what a service contract would look like after Bill C-49 passes, presuming that it passes in a similar form to what it is today. We see them entering into negotiations, and then if and when those negotiations fail, the parties would each submit their best offer to an arbitrator and the arbitrator would decide.

We would be looking to the arbitrator to decide that penalties would apply to the shipper and would apply to the railway for similar functions of the same magnitude of a penalty.

For example, if the railways say they're going to.... When grain companies don't load a train of railcars within 24 hours, we pay a penalty of, say, $150 a car. If the railways say they're bringing the cars on a Tuesday and they don't come on a Tuesday, we would see a penalty of $150 a car applied. We're looking for balance in the service contract, something that clearly identifies what the railways' obligations are and what the financial consequences are to them for failure to do so, and the same thing with shippers, and that they be reciprocal. The spirit of it is that you would have penalties of the magnitude that reflect each other's obligations.

That has nothing to do with damages, I might add. We still have issues with damages. If you don't receive the train and you can't get your product to the customer and there are contract extension penalties, or maybe you've had to default on a contract, as we saw in 2013-14, those are still issues that would need to be addressed on the heels of a level-of-service complaint or through the courts. We're just talking about the speeding tickets, if you will, in the system to provide those penalties as discipline to motivate the right behaviour.

Mr. Vance Badawey: Great.

Are there any further comments?

Mr. Norm Hall: Yes.

I'm afraid that the railways have been monopolies for too long. They don't know how to compete.

In the last panel they talked about losing about 2,000 cars. That's 200,000 tonnes. How many millions of tonnes do they move on an annual basis? The question from over here was what percentage of their business were they actually losing. I would suggest it's far under 1% that they would be in fear of losing.

Mr. Shields brought the question up to them before. Mr. Finn talked about the OECD numbers—the lowest rates in the world, even compared with the U.S.—yet are they worried about losing business to them? I don't see it. They may lose some, they may gain some, but it's not going to hurt them, especially when they're guaranteed profits under the MRE.

The Chair: Go ahead, Ms. Block.

Mrs. Kelly Block: Thank you very much.

I have just one last question and it's in regard to a measure that's included in Bill C-49 that hasn't been mentioned yet, except in the last panel. I recognize you've indicated that you had numerous amendments, 80, and you've boiled them down to just a few that you believe are technical amendments that would truly address the spirit of what was intended.

It's actually that the act is amended by adding the following after section 127, and I'm going to read it. It's under interswitching rate and it says:

> 127.1(1) The Agency shall, no later than December 1 of every year, determine the rate per car to be charged for interswitching traffic for the following calendar year.

Then it has the considerations, and it states:

> (2) In determining an interswitching rate, the Agency shall take into consideration
>
> (a) any reduction in costs that, in the opinion of the Agency, results from moving a greater number of cars or from transferring several cars at the same time; and

Here's the one that I'm really interested in:

> (b) any long-term investment needed in the railways.

I'm just wondering if you could comment on that. If you have any comments, was that something you were looking at when you were looking at amendments, or how does this fit in terms of addressing competitiveness?

Also, are you very aware that this is a consideration when looking at an interswitching rate, and how will long-term investment be monitored? Do you know the answer to that?

● (1245)

Mr. Wade Sobkowich: Those are all awesome questions, and I don't know the answer to any of them. We've never been against a reasonable rate of return to the railways for proper investment in the system. The devil is in the detail on those types of things. We would want to spend a lot of time working with the agency to understand how it plans on doing it and to try to provide our perspectives as we get into the meat on this. However, in terms of providing you with an on-the-spot comment on that, I don't know the answer. It's a great question, though.

Mrs. Kelly Block: Thank you.

The Chair: Thank you all very much.

As you can see, all of the members are very interested in how we're doing with Bill C-49. They want to ensure that we've heard all the voices that are necessary and that it's reflective. Thank you all very much for coming.

We will now suspend for a short period of time.

● (1245)

(Pause)

● (1345)

The Chair: We will resume our afternoon session.

Welcome to all of our witnesses. We are pleased to have you here with us.

We have the Western Canadian Shippers' Coalition, the Western Canadian Short Line Railway Association, and the Alberta Wheat Commission.

Would the Western Canadian Shippers' Coalition like to go first?

Mr. David Montpetit (President and Chief Executive Officer, Western Canadian Shippers' Coalition): Thank you.

Good afternoon, Madam Chair and members of the committee. On behalf of the Western Canadian Shippers' Coalition, WCSC, I would like to thank you for the invitation to participate in this session. My name is David Montpetit, and I'm the president and CEO of WCSC. With me today is Lucia Stuhldreier, our legal adviser.

WCSC represents companies based in western Canada that move mainly resource products through the supply chain to both domestic and international customers. Our organization focuses exclusively on issues related to transportation. Since its inception, WCSC has been actively involved in providing shipper perspective on numerous amendments to legislation. Most recently, we participated in a 2015 review of the act, led by David Emerson, as well as subsequent consultations initiated by Minister Garneau.

WCSC's goal is a competitive, economic, efficient, and safe transportation system in Canada that permits our members to compete both domestically and internationally. Our members represent a wide variety of commodities, including forest products, oil and gas, cement and aggregates, and sulphur, just to name a few. A list of current members is included in the brief if you'd like to take a look further.

One thing they have in common is that they are all users of rail transportation. Their facilities are located where the natural resources are. Their remote locations and the large volumes they ship make them completely dependent on rail to move their products to market. In the vast majority of cases, our members have access to only one rail carrier at origin. That creates a significant imbalance in the commercial relationship, even for very large shippers, which the majority of mine are. Being able to move a small portion—as indicated this morning, something like 25%—of product by another mode does not change that in any significant way.

Our members do try to negotiate commercial agreements for rail freight rates and service, and their preference is to resolve disputes commercially. However, the market in which they have to do this is not competitive. The option of taking their business to a competing railway when faced with excessive freight rates, large price increases, and non-performance or substandard performance simply does not exist. Effective shipper remedies act as a kind of backstop in commercial negotiations carried out in a non-competitive market. The fact that such remedies exist and can be used helps introduce a measure of balance to the shippers.

With respect to Bill C-49, WCSC is focusing on the following key areas: railway data reporting; railway service obligations; more accurate, timely, and effective remedies; agency powers; a mandatory review of the rail-related provisions of the act; and finally, access to competing railways.

Lucia Stuhldreier, my colleague, will walk you through the concerns and specific recommendations in this area.

Ms. Lucia Stuhldreier (Senior Legal Advisor, Western Canadian Shippers' Coalition): Good afternoon.

With respect to the data reporting requirements in Bill C-49, our comments are focused on railway service and performance data. Policy-makers, regulators, and users of the transportation system need this information in order to make evidence-based decisions. They need it to be detailed and they need it as close to real time as possible.

WCSC has two main concerns regarding the interim requirements in the bill. First, the information is too highly aggregated to be of any use. For example, the railways will need to report, on a weekly basis, the average number of boxcars online anywhere in their system in Canada. Those cars could contain refined metals originating in the Montreal area, pulp from a mill north of Edmonton, newsprint from the Maritimes, or any number of other things.

The published data will not tell us that because, unlike in the U.S. where CN and CP have to report separately for 23 separate commodity groups, all of this is going to be aggregated in Canada. There has been a suggestion also that rather than publishing this information separately for each of the railways as is done in the U.S., it might need to be aggregated for CN and CP, and that would further mask what's actually happening in the system. In short, as it stands, this will produce general high-level statistics that are not of any practical value.

Secondly, the information is not going to be available on a timely basis. First, as you've probably heard already, the bill defers any of these requirements for a full year. Once they do kick in, there will be a three-week delay in the publication process. Just for the sake of comparison, that's three times as long as it takes in the U.S. to put this information in front of the public. Historical information is probably useful in tracking overall trends and maybe in assessing past service failures, but when it comes to day-to-day decision-making, it's of very limited usefulness. So we have recommended some changes to those provisions.

The second area I want to talk about is adequate and suitable service. There's a proposed new subsection 116(1.2) in Bill C-49 that states that the agency has to dismiss a shipper complaint if it is satisfied that the railway is providing “the highest level of service...it can reasonably provide in the circumstances”. I was looking for an appropriate example, but this is really a bit like a teacher telling students, “If you get 95% on the final exam, you cannot possibly fail this course.” That doesn't tell the student what happens at 90%, at 85%, or at 65%.

What shippers and railways need to know is when service is no longer adequate and suitable. If the intent is to require the railways to provide the highest level of service they can reasonably provide in the circumstances of the case, we believe the bill should say that, and it should say it clearly. If it doesn't, we expect unnecessary litigation, preliminary objections, and ultimately it may very well be that the Federal Court of Appeal agrees with our interpretation, but we will have spent extra time and money to get there when it can be fixed at this early stage.

Another aspect of the service-related provisions in Bill C-49 has to do with timely access and timely relief. The bill would shorten the time period the agency has to issue a decision from 120 days to 90 days. When you're dealing as a shipper with serious acute shortfalls, waiting three months instead of four months for a fix is really only a marginal improvement. In those cases, it's crucial that the agency continue to have the ability to expedite the process and to make interim protective orders that keep a modicum of service in place while the complaint carries through the process. That can mean the difference between continuing to operate and shutting down, at least on a temporary basis, with all that entails in terms of personnel, cost of restarting major equipment, and loss of business.

As with most administrative tribunals, the agency has the ability to control its own process. What Bill C-49 would do is mandate minimum time frames that the agency has to allow in a level-of-service complaint for the railway and the shipper to present their case. That means the agency will not be able to expedite that process, and it also calls into question whether the agency will be able to issue interim relief on a timely basis. We've made some recommendations to deal with that.

● (1350)

The fourth area I want to touch on is more broadly the agency's authority. One of the things the WCSC has advocated for some time is giving the agency the ability to investigate matters within its jurisdiction on its own initiative. You've heard in the earlier part of these meetings about the investigation the agency initiated into the Air Transat tarmac delays. A similar initiative was taken by the U.S. Surface Transportation Board in the case of CSX and widespread complaints about deteriorating rail service that affected a broad range of their customers. Giving the agency that ability will allow them to better address those kinds of systemic issues.

The second point in this area relates to final-offer arbitration in freight rate disputes. A crucial piece of information that's normally not available to the arbitrator in those cases is how each of the final offers stack up in terms of covering the railways' costs and providing a sufficient return above those costs, and you heard this morning from the railway witnesses how significant that issue is to them.

The agency is an independent body. It has the requisite expertise to make cost determinations and to provide them to the arbitrator, and we're recommending that an agency determination of costs be part of what is provided to an arbitrator in every final-offer arbitration.

Before I get into long-haul interswitching, there is one area that WCSC noticed was missing in this act and in this bill that has historically been part of every major amendment to the railway legislation, and that's the provision requiring the minister to initiate a review of how those amendments are faring. We are suggesting that this would be appropriate here.

● (1355)

The Chair: All right.

Next is Mr. Pellerin from Western Canadian Short Line Railway Association.

Mr. Perry Pellerin (President, Western Canadian Short Line Railway Association): Good afternoon, Madam Chair and committee. Thank you for inviting me to speak today, and for giving the western Canadian association our opportunity to input into the transportation modernization act.

First, I'm thinking after listening this morning that this might be my last trip to Ottawa. According to CN, we're dead in the water—all our members. We don't operate over 500 miles of track. Some are as little as 23 miles, to as high as about 247 miles.

Let me start by saying we've just done a bit of an update on the western Canada association. On a positive note, we've been encouraged by Transport Canada's willingness and interest in working with us in short lines. Our relationship over the past couple of years has grown very strong, and we appreciate being consulted with and included in discussions surrounding direction of both policy and regulatory changes. This co-operation with Transport Canada is making us safer and better-informed short-line partners.

We've also been encouraged by some inroads with, believe it or not, CN. There's a renewed sense of co-operation on such efforts as our safety training program in Saskatchewan. There are some joint efforts where CN has allowed short-line partners to do intercompany switching, or switching at terminals where maybe they weren't very good and the short-line partners got in and supplied some excellent service. There were discussions this morning about where there is a win-win. I think that is one of them. They've also allowed one of our short-line partners to operate on their track into one of their mainline terminals and set off cars and take out their own cars. Again, that's a very efficient operation and cost-effective way of doing business, and a win-win for both.

The Western Canadian Short Line Railway Association, previously the Saskatchewan Short Line Railway Association, is a not-for-profit, membership-based organization that represents the interests of 14 short lines in western Canada. This morning I think CN talked a bit about its having 70% of its customers locked up in service agreements. The WGEA mentioned that it has about 90% of its farmers involved in its organization. I'd venture to guess that the other 10% to 30% are customers of ours, and we're here today to talk on their behalf.

While present in all western provinces, Saskatchewan has the most extensive network of short-line railways. Saskatchewan short lines own and operate 24% of Saskatchewan's 8,722 kilometres of track. We employ about 183 residents. When I say “residents”, these are folks who have grown up and live in the area where we work.

It should also be noted that we serve 72 small and medium-sized businesses and transport approximately 500 million dollars' worth of commodities each year. Every one of our head offices is within one mile of our own track. Also, I think it should be important to know that all of these small and medium-sized businesses that we support are also some of the bigger businesses that CN supports today. Not everybody starts as a corporate company. Some people have to start as single-point shippers and build their business from there. I think short lines are a great place to do that, because we're able to help them get that leg off the ground without a huge expense at the start.

Our members, our railways, and our customers depend on competitive rates and rail transportation options. We believe that the future of transportation should improve competitive choice for farmers, shippers, and small business. It is our fear in the proposed legislation that it will further deter competition. The newly introduced long-haul interswitching rate mechanism is designed in such a way as to be inaccessible to our shipper customers. Using commercial short-haul rates, which are currently higher than that of trucks, makes competing virtually impossible for us.

The legislation is prescriptive, and small shippers are not capable of spending years in litigation with class 1s, meaning that they will not bother to apply some of the mechanisms available to them, as was discussed this morning. It's inconceivable for a producer to take on a class 1. They're not only scared, but financially it does not make sense.

● (1400)

Paired with the sunsetting of the 160-kilometre interswitching mechanism and the rapid disappearance of the producer car, this risks putting shippers and short lines in a worse position should the legislation be passed as it is. We believed that the intent of this legislation was not to put small business or short lines out of business, but that appears to be the direction we're going.

I will begin with a quick discussion on the current rate structure for short haul and single car movements to provide some context to what I have been saying. Short-line railways have a variety of customers. Many shippers are single car shippers or, what we refer to as, producer car shippers. We would like to assist all of our customers with their transportation needs and movements. This is not feasible because of excessively high short-haul and single car rates imposed by the class 1s. These goods are often forced or shipped by truck and add significantly to greenhouse gas emissions, destroying our provincial highways and roads, and decentralizing small business economic growth.

Shipping by truck, for distances less than 500 kilometres, is typically more affordable than shipping by rail. The only point to add to that is the fact that, on a short line, we are cheaper than a truck. We can compete with the truck. The problem is that when they give that car over to our class 1 partners, they are unable to compete at that rate, as you heard from them this morning.

To give you an example, we have a line we run from Leader to Swift Current. We go 120 kilometres. We can run in there for about $650, which would be about half of what a truck would be, but if he wanted to move that car to Moose Jaw, which is another 122 kilometres away, we've been quoted rates from CP of about $2,600. All of a sudden, we can't compete anymore. What does the producer do? He puts his grain in his truck, turns on Fox News, and heads off to a distant large terminal or shipper.

As was mentioned this morning, the WGEA members supply competition, but some of that competition is increasing the number of trucks we're putting on the highway. That creates another problem and there will be another committee to decide what to do with our highway infrastructure in the future. Please keep in mind that it is important we understand that we are dealing with the current situation, but what will the future be?

We do need the capacity to move grain. There were discussions the other day about truck driver shortages. Rail is still going to be an option to do that and rail to mainline terminal points doesn't necessarily have to be to the export position. It could be to an inland terminal, which in turn, cleans that grain up and readies it for shipments in those larger trains, which CN and CP do a very good job of hauling.

The other challenge for us is that there is getting to be quite a spread between single and multiple car rates. Right now, even between single and 25-car rates going to the U.S., we see a difference of about $1,000 a car. If a shipper wants to ship 15 cars, he is probably looking at a $15,000 added expense and there is just no way he can justify doing that. Again, he is putting that grain in a truck and not always sending it to the most local inland terminal. He is sending it to where, in his mind, he is getting a better deal and that's a whole other discussion.

The other thing that we want to talk about is interswitching, of course. It is a major part of the legislation. The loss of the 160-kilometre interswitching option is very disappointing to our members. While not available to shippers on our entire network or short lines, it did provide a strengthened bargaining position in most locations. The return to a 30-kilometre switching zone will only make that available to the two of our 14 members that can make it cost effective, while the rest will be outside of that.

● (1405)

This affects our ability to attract new customers. Without access to multiple rail lines, businesses recognize that they will be captive to the class 1 that connects to our short lines. This decreases our ability to build new business on our lines.

Unfortunately, the proposed long-haul interswitching is not a good alternative to the 160-kilometre interswitching that has sunset. It is our understanding that the intent of the long-haul interswitching was to increase competition by providing expanded transportation options to shippers. We do not feel that proposed long-haul interswitching will achieve that goal.

The Chair: We thank you very much, Mr. Pellerin, for your time. Whatever you have left, maybe you can fit it in with some answers to some questions there.

From the Alberta Wheat Commission, we'll have Mr. Auch, please, for 10 minutes.

Mr. Kevin Auch (Chair, Alberta Wheat Commission): Thank you, Madam Chair.

My name is Kevin Auch, and I am pleased to appear before this committee this afternoon alongside our industry partners from the Western Canadian Shippers' Coalition and the Western Canadian Short Line Railway Association to provide a producer perspective as part of this committee's review of Bill C-49, the transportation modernization act.

I am chair of the Alberta Wheat Commission, an organization dedicated to improving the profitability of over 14,000 wheat farmers in the province of Alberta. I also farm in southern Alberta near the town of Carmangay.

I am here today because rail transportation has been one of the commission's top priorities since its inception in 2012. Costs associated with railway failures are ultimately passed down the supply chain to producers. As a price-taker, I cannot adjust the price of my product, so ultimately, these increased costs reduce my profitability. They also negatively impact my cash flow, making timely bill payments an issue.

These challenges are not unique to my operation. They are widespread and that is because when it comes to rail transportation in Canada, the agriculture sector operates in a monopoly environment. Most of the elevators where farmers in western Canada deliver their grain have only access to one railway, leaving both shippers and farmers captive to monopoly carriers.

This is a significant problem because wheat is a crop that relies heavily on export markets and rail transportation to ship our product from the Prairies to port terminal facilities along the west coast and Thunder Bay, as well as our neighbours to the south of the border. While we appreciate this government's efforts to increase market access for farmers through the establishment of free trade agreements, we will lose credibility with international buyers if we are unable to fulfill their orders due to railway failures. We experienced this in 2013 and 2014 when buyers simply sourced their grain from other countries. Canada's reputation as a reliable supplier to global markets is at risk.

Canada's grain supply chain is making significant investments in order to take advantage of new and growing market opportunities. We are seeing major expansion both in port terminal and country elevator capacity. Grain companies have invested hundreds of millions of dollars to ensure they are ready to service growing international markets, and farmers are preparing to take advantage of these opportunities as well. Farmers' significant investments in research as well as new and innovative technology have led to significant yield increases over the years. In fact, just last month CN Rail announced this growth when they implored the Canadian government to invest in new rail infrastructure in order to accommodate the influx of grain. In 2017, CN moved a record 21.8 million metric tons of grain.

My point is that ensuring adequate rail service is paramount to the growth of our sector and Canada's reputation as a reliable supplier of grain to international markets.

AWC appreciates the government's commitment to legislation that will ensure a more responsive, competitive, and accountable rail system in Canada. We believe that Bill C-49 is in fact an historic piece of legislation that paves the way for permanent long-term solutions to the rail transportation challenges that Canadian farmers have faced for decades.

That is why AWC is pleased to see the inclusion of provisions aimed at improving railway accountability, including shippers' ability to seek reciprocal financial penalties, a clear definition of adequate and suitable service, and enhanced interswitching—all measures that AWC has long advocated for. Bill C-49 also contains important provisions that will enhance the inquiry powers of the Canadian Transportation Agency and require that data on rail system performance be made available to the public.

Furthermore, AWC supports the decision to retain the maximum revenue entitlement with modifications that will reflect individual railway investments, incentivizing innovation and efficiency.

With respect to the role that reciprocal penalties play in this legislation, railways have always had a variety of measures that govern shipper efficiencies, including asset use tariffs. These tariffs are used to penalize shipper failures through monetary fines in order to gain shipper efficiencies. For example, when the railway spots cars at my local elevator and the grain company fails to load them within 24 hours, the grain company faces automatic monetary penalties. On the other hand, if the railway shows up two weeks late, there are no penalties. Therefore, the railways are the only link in the grain logistics supply chain that are not held to account.

● (1410)

In order to create an efficient supply chain, one with balanced commercial accountability, railways need to be held accountable for service failures.

We were recently made aware that CN Rail has included a form of shipper tariffs in about 70% of their service-level agreements. On the surface this seems like good news, but these tariffs are limited to a failure to spot cars and still neglect to address common challenges, including timely delivery or the provision of accurate information. We are encouraged to see that CN has taken some steps to increase railway accountability, and we are confident that the provisions outlined in Bill C-49 will ensure that, going forward, penalties are truly fair and reciprocal.

In addition to increasing accountability, reciprocal penalties will create the incentive needed for railways to focus on performance and invest in the assets that can improve efficiencies. This recommendation positions railways to compete in order to drive efficiencies, lower shipper risks, and ultimately better serve foreign markets for Canadian exports.

Under Bill C-30, which expired on August 1 of this year, extended interswitching provisions proved to be a powerful competitive tool for grain companies. Bill C-49 proposes that, under some circumstances, interswitching distances will be increased to 1,200 kilometres, but unlike the previous extended interswitching option, there are conditions within the new provisions that seem to contradict the true intentions of the legislation, making them less effective than the provisions under Bill C-30.

For example, the previous interswitching provisions allowed shippers to access any interchange within 160 kilometres without the need to obtain a permit from the Canadian Transportation Agency. The provision outlined in Bill C-49 stipulates that shippers must seek permission from the originating carrier or obtain an order from the agency to access the interchange, and it must be the interchange that is closest to them. Not only do these changes make interchanging more onerous and complicated, they can essentially render the provision useless in a variety of scenarios, including if the interchange in question does not service the appropriate corridor. In other words, if it moves the product in the wrong direction, if the nearest interchange cannot accommodate the size of the car load, or if it is serviced by the wrong rail company, the nearest competing line does not necessarily have lines running the full distance to the shipment's final destination.

To address these challenges we would ask the committee to consider the amendments put forward by the crop logistics working group, of which AWC is a member, that would allow shippers to access the nearest interchange that can accommodate their requirements with respect to the direction, size, and preferred carrier.

Costs incurred by shippers are ultimately passed down the line and on to producers. That is why our members are also concerned about the formula outlined in Bill C-49 to determine the rates associated with long-haul interswitching. Proposed subsection 135(2) directs the agency to set a rate not less than the average of the revenue per tonne kilometre of comparable traffic. In our view this encourages monopoly rate setting as it is based on revenue as opposed to a cost-plus model. Rates should allow for a reasonable profit, but should not reflect those previously charged in a monopolistic environment.

In closing, the Alberta Wheat Commission strongly supports the quick passage of Bill C-49 because we believe it will help to correct the imbalance between the market power of railways and captive shippers. We encourage the federal government to continue the conversation with Canada's agriculture sector as it works to develop the regulations to support the spirit and intention of the legislation, which seeks to create a more responsive, competitive, and accountable rail system in Canada.

With that, I would like to thank the committee for the opportunity to share the producers' perspective with you today, and I invite any questions you may have with respect to the comments I've made.

● (1415)

The Chair: Thank you, all, very much.

We'll go on to questions.

Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair.

I want to thank our witnesses for being here today.

Six minutes isn't a lot of time, and I do have a number of questions. I'm going to direct my first question to Mr. Pellerin.

I'm glad to see that you are alive and well, and here representing our short lines. I have a very direct question for you. You stated that the long-haul interswitching is inaccessible to your members. Can you clarify why that is the case?

Mr. Perry Pellerin: I sure can, yes. What it means, as I think other people have discussed, is that the rate will be determined by the commercial rates in place for that similar move today. If that similar move, as I discussed earlier, is $2,600 to go 100-and-some kilometres, the average of $2,600 will still be $2,600. The rate that will be determined will be cost-prohibitive for any type of interswitching distance, which effectively puts us out of the game, especially for our short-line members.

Mrs. Kelly Block: Just as a quick follow-up, what would you recommend needs to be put in place that would be helpful to short-line railways?

Mr. Perry Pellerin: You know, I think the encouraging part about today was that there was a lot of good discussion that, hey, everybody has to make a profit, but let's look at a cost-plus system that sets what that should be. There's the idea that “commercial rate” is sometimes short for “expensive”. If we had a mechanism where we would at least know ahead of time what it would cost, it would help us a lot.

Mrs. Kelly Block: Thank you.

To the Western Canadian Shippers' Coalition, I noted that you did not get the chance to speak to long-haul interswitching. I note as well that you have a recommendation in your presentation with regard to extended interswitching, so I'd like to turn over the rest of the time to you so that you can share it with us.

Mr. David Montpetit: Sure. I'll start off, I guess, and briefly touch on long-haul interswitching. Thank you for that.

For my specific members, this remedy and tool will not be very useful, just based on geography. If you look at the map in front of you, the exclusion zone is basically B.C. and parts of northwestern Alberta. When you look at the western Canadian map, a significant area where my shippers are present or have facilities in is exempted. It's one of the several exemptions that have been presented within the amendments. We're struggling with how useful this will be for my members.

Lucia, you may want to comment further.

● (1420)

Ms. Lucia Stuhldreier: This map will look different from the description of the excluded corridors, but realistically any shipper in that area that's shipping traffic to the Vancouver area, to terminate on a rail siding there, would not be able to use this. We can draw a very similar map for Quebec to show that some of the most captive shippers in the northern part of that province will have exactly the same problem, because their only connection to any other carrier will be in that Quebec-Windsor corridor.

Quite apart from these things, though, one of the underlying issues that WCSC has with this remedy is that it will fundamentally succeed or fail with the willingness of any one of the railways to act as a connecting carrier and to compete for that traffic using long-haul interswitching. Just like its predecessor the CLR, that can make or break that remedy. We haven't seen any willingness to do that, to compete using CLR since the early 1990s, and we don't see anything in the long-haul interswitching remedy that changes that dynamic.

On top of that, the scope of traffic that's eligible for long-haul interswitching, geographically as well as in other respects, is much narrower than what could theoretically take advantage of competitive line rates.

Third, there are a number of hurdles built into this remedy that don't currently exist with CLR.

From that perspective, and given the experience with CLR, even though we may have seen some willingness to compete up to 160 kilometres under the Bill C-30 regime, we haven't seen anything beyond that. CLR has been on the books that entire time. We're concerned that we're not going to see what is really required, which is a willingness to compete on the part of CN and CP—certainly in western Canada the majority of interchanges is between those two carriers—that is necessary to make a remedy like this work.

Yes, the requirement for an agreement with the connecting carrier is taken away, but the fact that people haven't been able to get that agreement is really just a symptom of that underlying, more fundamental issue, which is that CN and CP have “declined to compete”. Those, I want to make sure you know, are not my words. Those are the words of the statutory review report that was issued in 1992. They were repeated in 2001, and I think there was also something along those lines in the most recent report.

The Chair: Thank you very much.

Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair.

In my first question, I want to dig a bit deeper on the remedies. We can look at some of the documents in front of us from the different presenters.

My first question—and I'm not sure who I can direct it to—is in terms of investigative powers. What are your thoughts on the investigative powers of the CTA?

Mr. David Montpetit: I'll start on this one.

In my opinion, it has been a bit of a miss in Bill C-49. I think Mr. Emerson touched upon this yesterday, and it has been brought up in some of the discussions thus far.

I think it's an area that should be looked at again. If you have investigative powers, you can be proactive versus reactive to these problems, especially with regard to systemic problems within the transportation system and the transportation corridors. That's why we highly encourage this. In every submission and at every chance we've had in meetings with the minister's office, Transport Canada, and even the agency, we're encouraging having more ability and more power to do this.

Mr. Vance Badawey: Mr. Emerson talked a lot yesterday and spoke in great depth on governance, and of course on good governance. Do you feel that the investigative powers of the CTA will promote better governance with respect to our trade corridors?

Mr. David Montpetit: I do, yes. Especially if you are looking at long-term sustainability and enhancement of these trade corridors, I think it's important.

Also, from a competitive standpoint, not just domestically but internationally, I think it's important to make sure that our trade corridors are fluid, active, and competitive, and that ongoing issues in some areas we face.... Don't forget that some of these issues do ebb and flow based on weather and on commodity movement. Some commodities are softer at some points, and sometimes there is heavy movement. We've seen that with grain, with coal, and with different commodity groups. You want to ensure that you can address any issues or ongoing issues within those corridors in giving the agency that ability to look into that and find remedies for it.

Again, however they want to structure that or how it should be structured, or whether it's an order to improve it, that's left up to them. But I think it's an area that does need to be focused on.

● (1425)

Mr. Vance Badawey: Would it be your opinion that you would add to the accountability credibility of the capital side when it comes to maintaining the infrastructure, whether it be a rail line, a canal, or an airport and things of that nature? Do you feel as well that it would move away from self-interest and agendas more to the value and ultimately the return to the Canadian consumer? As well, thirdly, it would add to our overall enhancement of our economic global performance.

Mr. David Montpetit: I can direct my comments more to the rail area, since we focus more on the rail and trucking area, but from an overall perspective, without having expertise in air, etc., I think the overall perspective is that anything you can do to enhance, without an agenda such as that, would be beneficial, because there are agendas. Everyone is going to have their own agenda—the whole bit. Organizations will. An unbiased look at it would most likely be preferred and beneficial.

Mr. Vance Badawey: Thank you.

I'm going to switch to the short lines, something that was near and dear to my heart in my former life. I brought a short line into our area. The reason was that we were somewhat abandoned—no pun intended—by the mainline operators. With that, I want to open up the floor to you to address three things.

One is why you exist; I think I just touched on that. The second is what you do. You are one group that attaches yourself directly to the customer. That's done directly. There's no middle person. You're it. To some extent, you're depended upon with respect to their viability. My last question, of course, would be, where do you get your funding from?

Mr. Perry Pellerin: We could start with that. When the meeting's over, we're going to go around and take a small collection to get us going.

First, I'll start with why. I thought CN did a good job this morning of outlining why they want to get off some lines. I'm not convinced that those lines they want off of are still not productive, and I think short lines have demonstrated right across Canada that, given the opportunity, we can make a go of it. Part of our problem has been that maybe we overpaid for these lines nobody wants, and that put us in a hole at the beginning. Then we get into trying to finance a loan and trying to maintain the railway.

I think, given the opportunity, short-line operators are very innovative. They're very customer-focused. They do a very good job, and they allow our customers to expand. I always said to the folks there when we bought our short line that the key to it is this: if you allow your line to disappear, be it a short line, a producer car site, or a siding, it'll never come back; it's gone. That is the key. We have some stories, especially in Saskatchewan, of where short lines were given up on. However, at the far end of the line they discovered that was a great place to load oil or to do that type of industry, or some grain customer came in there and put in there. Those lines are very valuable and viable now and will be for the conceivable future. What we have to do is figure out how to do that with the other lines.

With regard to your last point, we are very customer-focused. I think our customers really like the idea that they can phone and somebody answers. That's kind of unique. We listen to what our customers need. We're able to be a little more nimble than maybe the class 1 railroads and are able to help them out. This is especially true when we're trying to entice new business to Canada. I think it's critical that we are the points that really could get them off on a good start with good service and a low-cost start-up compared with some of the requirements on the class 1s.

The Chair: Thank you very much.

Again, I'm sorry I have to cut you off, but....

● (1430)

Mr. Perry Pellerin: If I could just comment on the funding, we are on our own. We don't get a dime from nobody.

The Chair: Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

My thanks to our guests for joining us and for sharing their expertise with us.

When we do this kind of study, consensus is relatively rare. But we seem to be getting one on long-haul interswitching. Some people don't want it just because it's not competitive and others don't want it because it's not effective.

It is occurring to me that Bill C-49 is not achieving that objective at all. If we were to rethink the objectives of interswitching, where should we start from? Should we go back to what was proposed in Bill C-30 or should we correct Bill C-49 so that it includes a provision on interswitching that favours those who need it?

[*English*]

Ms. Lucia Stuhldreier: I didn't actually get to our recommendation in the last go-round. Because of where WCSC's members are located—outside, typically, that 160-kilometre radius—some of them have facilities within the 160-kilometre radius or the potential to develop facilities in that radius. From that perspective, the 160-kilometre regulated interswitching rate is much preferable because you can actually use it in planning purposes. A one-year rate that will change every year depending on factors that you have no control over.... You can't use that in a business plan. You can't use that to attract investment.

A regulated interswitching rate, one that everybody sees, that's transparent, and that people know as they're planning their business and negotiating how they participate in this with the local and connecting carriers and everybody else involved, is much more user-friendly. Beyond that radius, though, as I said, it all depends on whether or not the connecting carriers are prepared to compete. From that perspective, CLR, LHI.... CLR has less restrictions than LHI does. My personal perspective is that it's a bit of an academic debate because I don't see a huge uptake on either one of those in the current environment.

[*Translation*]

Mr. Robert Aubin: Do the other witnesses share that opinion?

Do you want to add anything else about the issue?

[*English*]

Mr. Perry Pellerin: In Saskatchewan, especially with some of the short-line grain shippers, access to what was in Bill C-30 would allow some new businesses to take a look at our short lines as an opportunity to build on to give them access to other class 1s. The way it's structured right now, I think new business would be reluctant to build on the short line, because you might as well at least get within that 30-kilometre zone to give you those options.

To be honest with you, I think my answer would have been that if we didn't have Bill C-30, this one's worse. I'd rather not have it at all compared with what we had before, if that makes sense.

[*Translation*]

Mr. Robert Aubin: Thank you.

I was also struck by a statement you made in your opening. Every time the minister has come to meet with us, he has talked to us about the importance of harmonizing our operations and our legislation with those in the American market, because the USA is our biggest exporter, but sometimes also with those in the European market. Now you are telling me that data reporting is being completely ignored. What I understood from your comments was that we see to be light years away from what the Americans are doing, because our data is aggregated and not broken down.

If that is the case, what would you propose in order to make the data useful?

● (1435)

[*English*]

Ms. Lucia Stuhldreier: Yes. The differences really had to do with the performance reporting of the railways in the U.S. system, and that includes CN and CP in respect of their U.S. operations. It is the data they report on a weekly basis and on a monthly basis. Within the space of a week, that information is on the website of the Surface Transportation Board and is visible on a railway-by-railway basis, and it shows a breakdown of 23 different commodities. It has a different car count for pulp and paper, for forest products, for coal, for potash, for you name it. There are 23 different categories.

To us, that is really the minimum level of detail we need to see, and because of how large the country is and the fact that CN and CP operate pretty much across it, we would like to see that on a railway-specific basis as well as on some kind of geographic granular level. Otherwise, it's not useful.

The Chair: Thank you very much.

Mr. Graham.

Mr. David de Burgh Graham: I understand that you mostly all watched the evidence earlier today. I'm going to go to my first question on captive customers. The larger railways suggested that if you have access to trucks, then you're not captive. I was wondering what your thoughts are on that.

Mr. Kevin Auch: We also have access to airplanes, but that would be a very ineffective way of shipping. Rail is still by far the cheapest way to move a bulk commodity. Speaking for grains, it's not an option to truck grain to the coast. It would be far more expensive. In a monopolistic environment with no competitors, the only way to stop a monopoly carrier from charging the very maximum price they can is through regulation. In a perfect world, there would be competition, so efficiencies would be bred into the system.

Speaking for grain farmers, it's not an option to truck grain to the coast.

Mr. David Montpetit: The same thing applies to all other commodity groups. If you have a mine, for example, and I'll hypothetically pick a coal mine that is producing two million tonnes a year, you're taking a truck down a road to the coast, I'm going to guess every 30 seconds, 24 hours a day, 365 days a year, from a mine that is probably located either in British Columbia or northwestern Alberta. Practically speaking, you have to give your head a shake. It just doesn't make sense.

Mr. David de Burgh Graham: How many trucks would the average railcar replace?

Mr. David Montpetit: Depending on the size of the railcar, it could be, I'm going to guess, depending on the commodity type, two to three trucks. I can be corrected if I'm wrong. You might get 40 or 45 metric tons per truck. You may get 100 to 108 in a car, perhaps.

Mr. David de Burgh Graham: Unless you have a Schnabel; then you can take a lot.

These rules are for federally regulated railways. I'm assuming, Mr. Pellerin, that most of your railways are not federally regulated. How does this impact your railways in that respect?

Mr. Perry Pellerin: All our short lines are still connected to those federally regulated railways. That's the reason for our interest in rate structure. If that rate spread gets higher between our short lines and the class 1s, it's harder for us to compete. All we're looking at is this. The decisions that the government makes today will impact us even though we're not federally regulated.

Mr. David de Burgh Graham: Mr. Pellerin, have you ever worked in the running trades?

Mr. Perry Pellerin: Yes, I started with CN and was there for 22 years.

Mr. David de Burgh Graham: In your opinion—you have the experience in the cab—should LVVR rules, the option we're discussing, apply to short-line operators?

Mr. Perry Pellerin: No. What I would suggest on the short line is.... I think we've been working with transport. I think it should be really based on.... A lot of our short lines do 10 miles an hour. We can draw pictures going that slow, never mind having a camera.

The other point I would like to quickly make on that is that I think some stats were brought out this morning about 53% being human failure. On the short line, at least for the ones I represent, in any of our incidents, 100% were track and zero were human. We don't really see that need for the short lines, especially at our speeds and way we handle our traffic.

● (1440)

Mr. David de Burgh Graham: Fair enough.

CN and CP both have operating ratios in the mid-50%. What's a typical operating ratio for one of your short lines?

Mr. Perry Pellerin: It's probably about 98%. I'm embarrassed to say that out loud.

The thing about our short lines is that our shareholders are the municipalities and the farmers we represent. That money is put right back into it. We don't worry too much about share price and profit margin. We worry about being safe and supplying service.

Mr. David de Burgh Graham: Fair enough.

CN has been buying back a lot of short lines across the country over the last few years. How do you take that?

Mr. Perry Pellerin: In some cases we've seen where maybe initially the short line bought into places. The oil boom caused a lot of people to change their minds. I think the class 1s had a couple of railways they wish they had hung on to. There are a couple in Saskatchewan that I think they would want back if they could get them.

Mr. David de Burgh Graham: If they took them back, do you think they would actually keep them running the way they are running now?

Mr. Perry Pellerin: One thing about it is that, if they took them back, they'd have more capital to put into them, but then the customer on that line would have to deal with, let's say, service.

Mr. David de Burgh Graham: Fair enough.

I have one last question. I think I'm almost out of time. Can you go a little more in depth into why short lines are able to run a carload for $650 dollars when the main lines charge $2,000 for the same car, less efficiently, and don't want to do it.

Mr. Perry Pellerin: Part of it was, I guess, because we try to keep our customers competitive. We really do what our costs are.

The interesting part of that was that some of these rates that we're charging were originally set by our class 1 partners as our division, so that's all we ever got. Our customers were used to that portion. If we went to increase it, then we'd look like the bad person in this. When we look at it, our issue on a lot of short lines is the fact that we could make money. We just have to figure out how to do volume. That's what we have to work on. We've taken quite a hit on the producer car side. Right now, you can't send a producer car to western Canada. That's not good. That's to export position.

Mr. David de Burgh Graham: Thank you.

Mr. Perry Pellerin: I knew you were going to do that.

The Chair: Go ahead, Mr. Fraser.

Mr. Sean Fraser: Thank you very much,

I'll start with WCSC.

You spoke a bit in your opening remarks about the need for disaggregated data, whether it's by commodity, to make day-to-day decisions. I think my ears are a little bit slow. You had a lot of information densely packed together, which was very helpful. Could you perhaps walk me through the practicalities? How would it help the negotiations if you actually had the transparency in data that you're looking for in order to make sure you're negotiating effective rates and that the railway is operating efficiently?

Ms. Lucia Stuhldreier: I will answer part of that. Let's say you're a forest products shipper and you're negotiating with the railway. Perhaps you're not happy with the service you're getting. You're shipping pulp or paper in boxcars and you're getting global information about how many cars are online on the entire system for your product, similar products being shipped from the opposite end of the country, other kinds of products altogether, so you have no sense of whether or not the supply of cars generally available in the system has been reduced. That industry, in particular, is seeing shortage of railcars, and we have a number of members in WCSC that are in that industry.

There is no transparency in terms of whether there has been a reduction in capacity that the railways have implemented, because you can't see that. You can't see whether your shortage is peculiar to you, or whether that's something that is happening across the system. You can't tell whether the metal producers are getting more of these cars and your particular industry is not. None of that is there. You don't see where those cars are.

If you have a time sequence of cars in a particular area, you see cars that don't seem to be moving there. To the extent that you can, that may influence your decision to ship somewhere else where it may be more fluid. None of that granularity is available.

● (1445)

Mr. David Montpetit: You don't necessarily have a view of the overall network. We don't have that ability. We don't have the tools and everything else involved. That is our tool. There is no other way that we can really investigate or check for ourselves. If service has been transferred to one side and is taken away from another, we have no way of determining that. This helps determine that. This helps give us a better overall global outlook of how the network looks.

Mr. Sean Fraser: Sure.

I'm curious, as well, about the dispute resolution mechanism contemplated in the event that service obligations are breached. Do you think that the final-offer arbitration is an effective way to deal with these kinds of disputes? Is there a better way to do this, or is this an improvement over what we've had historically?

Ms. Lucia Stuhldreier: Final-offer arbitration typically is a forward-looking thing. It doesn't really directly deal with a past service problem. Most often final-offer arbitration is focused very much on rates. You can include other conditions, but the more conditions you layer in, the more complicated the process gets, and it's fairly tight to begin with. You can use that going forward to establish some terms, just as you could in the service-level agreement provisions.

But in terms of dealing with things that have already happened and addressing those, it really is only the complaint process, the level-of-service complaint process under section 116.

Mr. Sean Fraser: Sure.

If I can jump around conceptually for a moment, the bulk of the testimony that we heard today really was about interswitching, and of course the class 1 railways were saying this was something that we were going to complicate, and that it's going to force them to give their business away to competitors, essentially.

Do you agree that's the case, or is the real impact here introducing competition at the negotiation table, where it's actually going to cause them to be flexible in their price to the point at which you're offering reasonably realistic market rates?

Ms. Lucia Stuhldreier: I don't know any shipper whose first instinct is to start a complaint process or use a regulatory process. These are business people, and their preference is always to try to negotiate something.

Part of the usefulness of these remedies is that they provide, as David mentioned earlier, a kind of backstop in an environment where you don't have the option of saying, “Fine, I don't want to deal with you. I don't like your terms. I'm going to go to your competitor.” That doesn't exist, or it only exists for a small portion of your traffic. The fact that this is out there, that there is a remedy and that it is usable, performs that same function for a lot of shippers. It's as important for that negotiating function that the remedy work and be usable as it is for somebody actually wanting to ship traffic under an interswitching order.

Mr. Sean Fraser: That's whether it's used or not.

Ms. Lucia Stuhldreier: Exactly.

Mr. Sean Fraser: Mr. Auch, you spoke—

The Chair: You have 20 seconds.

Thank you very much.

Mr. Shields.

Mr. Martin Shields: Thank you, Madam Chair.

To the Alberta Wheat Commission, you briefly mentioned cash flow. Could you expand on the issue of cash flow in this, since you mentioned it?

Mr. Kevin Auch: For example, in 2013, when the level of service was basically deplorable, we had a very large crop that year. Farmers had contracts for a harvest delivery, and because of the rail backup, some of these contracts weren't realized or weren't deliverable until months later. It was six months or eight months later before their contracts were delivered.

Even though we have a contract, the grain company does not issue us a cheque until we deliver it. That disrupts our cash flow. We have a contract. We are planning our cash flow. We have payments to make. We have to pay for our inputs that we've put in the ground, and we make these contracts in order to make revenue. The timeliness was terrible that year.

Mr. Martin Shields: Even though that happened in 2013, the possibility of it happening again is still there?

Mr. Kevin Auch: We're not growing less than we did then. The trend in agricultural production has been up. We've been producing more and more efficiently. If you look at the real price of grain, we're selling grain right now this year for about the same price we did in 1981. The only way we can make money is by doing it more efficiently and producing more.

There's not going to be less grain in the system in the future if we keep following the current trends.

● (1450)

Mr. Martin Shields: So you can get caught in that cash flow at any given time?

Mr. Kevin Auch: Yes.

Mr. Martin Shields: That leads to income showing up in different years at different times, bills having to be paid without it and cash flow in another year. You have a challenge there.

Data has been mentioned a number of times already. For your organization, is that something of an issue?

Mr. Kevin Auch: It helps the people we sell to. We've heard their testimony. The grain elevators buy our grain and they ship to our exporting customers. So, if it's important to them, it's important to us.

Mr. Martin Shields: Okay. I'll go back to the data one more time. I know you've answered this a number of times. Going through the process with municipalities provincially and with FCM federally and trying to get the railways to let us know on time what's in their cars as they go through our communities—because it's our firefighters who are dealing with what's coming through—has been one arduous process. We'd like to know in time, when it goes through, but of course they want to tell us a month later what went through our community.

So data to you, when you talk about businesses, is time, inventory, and shipping: that's how the world has moved. I bring in the inventory today; I don't have it stacked up here for a month, but I also must have it leave on time. Is that the business end you're talking about? Our business world is changing, so that's a critical piece then.

Mr. David Montpetit: You're asking for something, actually, that's even more accelerated than what we're asking for. We're asking for data and we're recommending or are trying to improve on a three-week delay to be a seven-day delay. You're asking for something that's immediate; it's fluid data.

Ultimately, we would love to have that available. For us at this point it's crawl, walk, run, sprint, and we're probably at the crawl stage. We do want to get to walk before we can sprint, but I would ultimately like to see that, because we would have real-time information on, for example, what's important to us going through our community. We would have real-time information on where our cars are, where they're located. There are whole different sets of useful data that we would love to have available to our group, but we need to take one step at a time.

Using what the U.S. currently has as a base model for our area, we think, would be beneficial just to start off. Ultimately, I agree with you.

Mr. Martin Shields: But if you're building an economy and you want to advance our economy, as wide and big as we are, isn't that where we should be going?

Mr. David Montpetit: Absolutely. I wouldn't argue with you for one moment.

Mr. Martin Shields: If we want to compete with what's coming across the ocean in the Pacific, how are we going to do it if we don't do this?

Mr. David Montpetit: Several other countries and several other modes of transportation do provide real-time data. So, it's there and that's what we're competing with.

I always stress with our group that we have to think about competing internationally, not just globally and not just locally. We have to look at a larger perspective. I agree with you.

Mr. Martin Shields: You talked about what was missing, the minister's review of amendments, which had been there before. You're saying it is absent this time.

Mr. David Montpetit: I'm sorry, are you speaking about investigative abilities, those types of things?

Mr. Martin Shields: No, I'm talking about the review of the amendments, which you mentioned as being absent.

Mr. David Montpetit: Okay.

Ms. Lucia Stuhldreier: I can address that.

In 1996, when the CTA first came in, there was a provision requiring a mandatory review of the act within a certain amount of time. I can't recall exactly what that time frame was, but subsequent to that, whenever major amendments to the act were made, that was updated. So there was another deadline set for a review of how the act was working.

This time around, there seem to be some very widely diverging views, particularly on the long-haul interswitching. We feel that it is not going to be terribly useful to our members. The railways are apparently very concerned about it. There might be some shippers who will use it. We think it would be very useful to policy-makers to see who is using it, if anybody, how it's working, and—

Mr. Martin Shields: But it's not there.

Ms. Lucia Stuhldreier: It's not there.

Mr. Martin Shields: Do you know if it was used in the past and if corrections were maybe made then, or anything in the past when this process was there?

Ms. Lucia Stuhldreier: The latest review that Mr. Emerson conducted was one of those reviews. He's recommending something more ongoing and evergreening, but at a minimum we think there should be a requirement or commitment for this act to be reviewed again, to see how it's actually working, if at all.

● (1455)

The Chair: Thank you very much.

Mr. Hardie.

Mr. Ken Hardie: I want to talk about the CTA's decision cycle. Mr. Montpetit mentioned, or perhaps it was you, Ms. Stuhldreier, that the time it takes to get a decision out of the CTA on an issue could result in some bad outcomes for the shipper. Do you have an example of how a CTA delay created an adverse result?

Ms. Lucia Stuhldreier: There are always many factors playing into things. There are certainly examples in the past of a shipper who went on a number of occasions to complain to the agency about the service it was getting and whether it was getting a sufficient number of cars to move, I believe it was, specialty crops from Saskatchewan. Each one of those went through the full process, and ultimately that shipper did not stay in business. There were probably lots of factors contributing to that.

While the process is going on, which takes a few months, you might end up in a situation where the railway beefs up what it's doing because it's under scrutiny, but you might also end up in a situation where there are multiple origin destination pairs. It all depends on the shipper. There are lots of things that can go wrong and negatively affect the shipper's ability to get its goods to market.

Mr. Ken Hardie: Similarly, you mentioned examples or situations where, because of the non-competitive nature that has been portrayed to us between the two railways in Canada, there have been large increases in shipping costs. Can you give me an egregious example of huge increase in prices because of non-competition?

Ms. Lucia Stuhldreier: For obvious reasons, I can't mention any names. Let me think how I'll put this.

It would not be out of the realm of the possible for a railway with market power to say to a shipper, "You can either have a five-year contract with increases of 15%, 15%, 5%, 9%, or something in that range, or you can ship without a contract and we're going to ding you 50% from one year to the next."

Mr. Ken Hardie: Has that happened?

Ms. Lucia Stuhldreier: Yes, it has happened.

Mr. Ken Hardie: Okay. It would be nice to get a specific example.

Ms. Lucia Stuhldreier: I am sorry, but I cannot disclose those.

Mr. Ken Hardie: Okay, then, let's talk about the long-haul interswitching. On the surface it would seem that not only are we opening it up to greater distances, we're also opening it up to more customers who could potentially make use of it.

What I've heard is that, because they have to go to the nearest competing line, you could end up sending your goods in the wrong direction, or sending them to a line that's going to the wrong place, or sending goods to a nearby point that may not have the capacity. These are three issues I heard.

In that situation, though, could you really define that as a competing option if it's simply not working? I'm just wondering if the subjective definition of the word “competing” might be tangling us up here. That doesn't sound like a competing option to me.

Mr. David Montpetit: It's not.

Ms. Lucia Stuhldreier: It's not.

Mr. Ken Hardie: So the competing option may in fact be the one that exactly fits the bill even though it's not the closest. All right.

I have one other question here—on data. You mentioned that Canadian operators in the U.S. have different data requirements, which they are able to meet within much tighter time periods than are being anticipated here. We know they can do it.

Are there other things that Canadian operators are required to do in the States that they are not doing here but that you would like to see them do in Canada?

● (1500)

Mr. David Montpetit: I can't honestly answer that one. What I can say, though, is if they can provide data in the U.S., there's no reason why they can't provide it here.

Mr. Ken Hardie: Right. You're just using that as one example of something they are doing. I just wondered if there were other things, not necessarily things to do with data.

Mr. David Montpetit: Okay.

Ms. Lucia Stuhldreier: There are other things. We've limited our remarks to service and performance metrics. There's a great deal more financial information available in the U.S. than in Canada. We have information on those types of things.

The Chair: Mr. Blaney.

[*Translation*]

Hon. Steven Blaney (Bellechasse—Les Etchemins—Lévis, CPC): Thank you very much, Madam Chair.

Good afternoon. I am just passing through the committee.

One thing struck me in Mr. Pellerin's comments. The Conservatives introduced a good bill, Bill C-30, specifically about what you call interswitching. Now we have a Liberal mish-mash that is going to have consequences for small businesses and to threaten jobs.

[*English*]

My first question would be for Madam Stuhldreier. I hope I pronounced her name right.

Ms. Lucia Stuhldreier: That was very good.

Hon. Steven Blaney: You mentioned that the Liberal bill would have a negative impact on Quebec regarding exemptions in the corridors. Can you explain in a little more detail what that sounds like.

Ms. Lucia Stuhldreier: I didn't bring my railway atlas with me; I should have. There are some rail lines in northern Quebec where, in order to come off that line and really go anywhere, the traffic has to move through a corridor that's excluded under the long-haul interswitching provisions. CN lines that connect with the main CN system, or with other carriers in the Montreal or Quebec area, are the only ones where a connection exists. Some parts of Quebec could connect through Rouyn-Noranda or Val-d'Or, but there are significant lines in northern Quebec that don't have that option. Really, the only place they connect with a second carrier would be in the corridor and so long-haul interswitching as drafted is out.

Mr. David Montpetit: It's very similar to the scenario we're facing in British Columbia.

Hon. Steven Blaney: Is there any way we can fix this or amend the bill?

Mr. David Montpetit: You would have to take out these exemptions.

Hon. Steven Blaney: Should we recommend that we take out the exemptions?

Ms. Lucia Stuhldreier: To deal with a specific issue of interchanges in those corridors, you could simply delete the reference to interchanges in the description of those corridors.

Mr. David Montpetit: That would make it more effective, possibly.

Hon. Steven Blaney: Thank you.

Mr. Pellerin, you are representing small businesses. You are working with small and medium businesses. In your introduction, you say that this mechanism in the bill would negatively impact those businesses.

Can you expand on this? It's a little bit scary when you say that this could even run some of your members out of business.

Mr. Perry Pellerin: Really, the theme of today from the get-go has been competition. For at least 12 of the 14 short-lines, this reduces that competition. In essence, it makes it more difficult for our customers to compete, and that makes it hard for the short-line.

As I mentioned several times, our issue isn't our ability to operate. We have to work on our ability to increase volumes. Along with our customers, we need to be competitive.

Hon. Steven Blaney: Do you feel this bill would help you to increase your volume?

Mr. Perry Pellerin: No. As this bill as written right now, if you look at it from the straight, short-line perspective, there's nothing in it that helps.

Hon. Steven Blaney: It's disappointing. This government claims that it wants to create jobs for the middle class. You come here and say that this will reduce competition, this will increase greenhouse gas, and this is not good for the economy.

Is there any way we can fix this at this time?

● (1505)

Mr. Perry Pellerin: I think what we need to do is go back and look at—

Hon. Steven Blaney: Bill C-30, the Conservative bill.

Mr. Perry Pellerin: There were some issues. We were also here discussing that a couple of times. It wasn't perfect.

The point we're trying to make in our visit here is that this does nothing for us. We have come here to Ottawa several times saying that we need some help. We're in very tough shape. We need help, and this isn't helping us. We need to continue to talk if we want to help short-lines and our customers who are on the short-lines.

Hon. Steven Blaney: If you have any recommendations about amending the bill, show them to us, and we'll do our best. As you know, we're not a majority, but we'll do our best for you.

Mr. Perry Pellerin: Thank you, sir.

Hon. Steven Blaney: I'm done.

Thank you.

The Chair: Thank you.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you.

I am going to continue along the lines of the person who said that we have to continue the discussion.

My question is very clear. What we have here is an omnibus bill that goes off in all directions. I imagine the passengers' bill of rights does not interest you a great deal, except on a personal level, as a consumer. We could also talk about coasting trade, but we fully understand that it is not your favourite subject either.

In terms of the provisions that are of particular concern to you, I would like to know if, in your opinion, Bill C-49 is too fast, or too vague, to provide a viable solution for your problems. Let me put the question another way. Could you accept Bill C-49 if a few amendments were made, or do you feel that there is many a slip twixt cup and lip?

[*English*]

Mr. David Montpetit: I'll just speak for WCSC.

We have made some suggested amendments to tweak language in the proposed bill. Based on what is in the bill right now, if some of the suggested tweaks, plus some of the other areas that we had expressed to the government to look into, are adopted we think we can enhance the bill to make it a better bill than what was presented to us.

Mr. Perry Pellerin: We walk a bit of a fine line because there are some positive things in it for our customers away from the short-line.

It was mentioned earlier that there's some concern even this year because the bill is not passed, and we're kind of sitting out there in the open. We want to be careful not to bog this down either. What we're saying is that this is strictly from a short-line perspective. There's nothing here that helps us survive, and we need to change that. Can we do that, and does that have to be part of this bill? I don't even think so.

I think we need to recognize the fact that I don't want anybody in government to think that this is helping short-lines. That's for sure. If we can do it outside of this bill or we can do it within it, we're willing to do either way, but we have to do something to help us out here.

Mr. Kevin Auch: Alberta Wheat is a member of the crop logistics working group. We had some recommendations that we had made to improve the bill. I think if we had those, it would work very well. There are some good provisions in this bill, as I said before, and with a few little tweaks like that, I think it could be very workable and would bring some balance back into the system.

We have two monopolies that operate in rail transport. I understand why you can't have multiple railways. There is a large infrastructure investment. What we're looking for is some way to approximate a competitive system. I think this bill does go towards doing that.

The Chair: We do have a couple of minutes left on the clock. Do any members have additional questions or do you want to do another round? We don't have enough time for another round.

Ms. Block, are there any questions on your side?

Mr. Blaney?

Mr. Badawey is interested. He has a question.

Mr. Vance Badawey: Thank you, Madam Chair.

I would comment first off that the session that we've been having this past week has been very non-political and today that changed, which is giving me the opportunity to respond. I want to make three points based on Mr. Blaney's comments.

If in fact Bill C-30 was good legislation, why did the previous government also introduce the sunset clause? The second point is why did we hear loud and clear from the witnesses criticizing long-haul interswitching during the fair rail for grain farmers study? Lastly, why did the previous government also take it upon itself to commission David Emerson to review the system, as well as propose long-term solutions as seen in Bill C-30?

My apologies, but I had to correct the record.

● (1510)

The Chair: Your question is?

Mr. Vance Badawey: My question is, Madam Chair, as I just responded.

Mrs. Kelly Block: Do you want us to answer?

Mr. Vance Badawey: I didn't start it.

The Chair: I'm watching the clock very carefully.

Mr. Vance Badawey: To get back to the productive dialogue that we have been having, I'm really interested, Mr. Pellerin, in hearing your comments. Again, the reason why we're here is that, quite frankly, we do want to strike that balance. We want to ensure that balance—albeit we heard a lot of the challenges from the main lines, from the class 1s earlier, some of which I would agree with, but most of which I wouldn't.

Your situation is something that fills that void. It fills the void for those who are most important, those who are our priority, the customers, and, of course, adds value for Canadians.

I'm going to ask the same question that Mr. Blaney asked and that is, what can we do to this bill? What can we do Bill C-49 to make it a better and more conducive for you to be a part of the ultimate performance that we have globally with respect for our economy, which is to make our transportation system more robust, which you're a part of?

Mr. Perry Pellerin: A point that we didn't make today was the fact that the short-lines don't have some of the opportunities available to shippers through the CTA. I've got to convince one of our shippers to take on that issue, and they're not always very happy to do that on our behalf. So that might be a good start, to allow short-line railways some of the same opportunities and avenues through the CTA. I think the CTA has a very good handle on the system and would be able to help us out in really short order on certain terms, especially issues like the service issues we have.

We give our customers traffic to the class 1 carrier and they sit there for 10 days. That's not right and we have to get that fixed. We need that opportunity ourselves. It would be a good start.

Mr. Vance Badawey: Thank you.

The Chair: Thank you very much to our witnesses again. Each one of these panels has so much valuable information. It's amazing. We'll know Bill C-49 in and out by the time it gets back into the House.

Thank you very much.

We will suspend until the next group comes to the table.

● (1510)

(Pause)

● (1530)

The Chair: Okay, we're reconvening our meeting.

We have several representatives with us. I am going to ask them all to introduce themselves and the organization they represent.

Mr. Audet, would you like to start, please? Introduce yourself.

[*Translation*]

Mr. Béland Audet (President, Institut en Culture Sécurité Industrielle Mégantic): My name is Béland Audet and I am the President of the Institut en Culture Sécurité Industrielle Mégantic, or ICSIM. This is an organization that we set up following the tragedy in 2013. We want the organization to be dedicated to the training of first responders in railway safety, and to instilling a culture of safety in rail companies, particularly shortlines, which actually have no training on the culture of safety. We also want to have a section on the culture of safety for the general public in Lac Mégantic.

[*English*]

The Chair: Would you like to go on? You have 10 minutes, Mr. Audet. We're very interested in Lac-Mégantic, given that the only travel that the committee has done since we convened has been a trip to Lac-Mégantic. We're familiar with your organization and your desires as well. We're happy to have you here with us today.

If you would like to, go ahead and speak to the initiative.

[*Translation*]

Mr. Béland Audet: As I was saying earlier, we created the organization in the aftermath of the tragedy of 2013. Local business people decided to take charge of the situation and try to make something positive out of this tragedy. We therefore have partnered with institutions such as Université de Sherbrooke, CEGEP Beauce-Appalaches, which is in our region, and the Commission scolaire des Hauts-Cantons. This partnership will enable us to work with people who are at three different levels of education. We are also partners with CN rail and Desjardins.

As you know, there's only one training centre for first responders in Canada: the Justice Institute of British Columbia (JIBC). This institute is in Vancouver, more specifically in Maple Ridge, and provides services in English only. We want to create a similar training centre in Lac-Mégantic, in eastern Canada, and provide those services to francophones and anglophones on our territory. Since Canada is so vast, it is very expensive for people from Quebec, Ontario and the eastern provinces to attend training in the west, for instance in Vancouver. After the tragedy, we felt the desire to create a centre like that in Lac-Mégantic.

As you said earlier, Madam Chair, some members of the Standing Committee on Transport, Infrastructure and Communities came to Lac-Mégantic in June 2016. One of the committee's recommendations was for Transport Canada to work with the City of Lac-Mégantic to create a training centre. We are here today to talk about it again and to draw attention to the project.

We are asking that Transport Canada standardize and enforce the training for conductors and that the training be provided by accredited organizations. We are also asking that Transport Canada standardize and enforce specific training on risks associated with railway operations for first responders in railway communities. As we know, 1,200 cities in Canada have a railway. However, people there do not receive the necessary railway training. So that's what we are working on.

We have shared a brief with you. I'm not sure whether everyone has seen it, but we can answer any questions you may have about that document.

● (1535)

[*English*]

The Chair: Unfortunately, the clerk did not receive the brief. If you would, please resend it so that the committee has the information.

[*Translation*]

Mr. Béland Audet: Okay, I'll resend the document.

[*English*]

The Chair: Thank you very much.

Mr. Johnston.

Mr. Brad Johnston (General Manager, Logistics and Planning, Teck Resources Limited): Thank you very much.

Chair, members of the standing committee, clerk and witnesses, good afternoon everyone.

My name is Brad Johnston. I'm the general manager of logistics and planning for Teck Resources. Today I'm joined by my colleague, Alexa Young, head of federal government affairs.

Thank you very much for the opportunity to discuss Teck's view on Bill C-49. Teck is a proudly Canadian diversified resource company. We employ over 7,000 people across the nation. As the country's single largest rail user, and with exports to Asia and other markets totalling close to $5 billion annually, ensuring that this bill enables a transparent, fair and safe rail regime, and one that meets the needs of users and Canadians is of critical importance to Teck.

Throughout the consultation process leading up to this bill's development, Teck has sought to advance balanced solutions to address the significant rail service issues that all sectors have regularly experienced. Perennial rail service challenges have impacted our competitiveness, our national supply chains' long-term economic sustainability, and Canada's global reputation as a trading nation. To put this into perspective, the direct costs attributable to rail service failures incurred by Teck alone have amounted to as much as $50 million to $200 million over 18-month periods in the past decade. These are added costs, of course, that our global competitors do not incur. Foundationally, we believe the solution is a legislative regime that inspires commercial relations in our non-competitive market, while maintaining the railways' abilities to be profitable and operationally flexible. This solution would benefit railways, shippers, and all Canadians.

At the heart of our recommended solution has been the need for a meaningful, granular, and accessible rail freight data regime. We've also advanced a definition of adequate and suitable service that acknowledges the unique monopoly context in which we operate. Teck has offered what we believe to be the only long-term and sustainable solution to addressing the acute imbalance in the railway-shipper relationship, and that is for allowing for real competition in Canada's rail freight market by extending running rights to all persons, including shippers.

What do we mean by “running rights”? Similar to when competition was enabled in the telecommunications sector in Canada, we mean opening the door to competition in the rail sector—in other words, allowing new entrants who meet specific criteria to run a railway. While disappointed that the introduction of real competition isn't addressed in the bill, more so than in any past legislative review, we're strongly encouraged by the bold vision Bill C-49 represents in many of its provisions. These include new reporting requirements for railways on rate, service and performance; a new definition of adequate and suitable rail service; enhanced accessibility to remedies by shippers on both rates and service; and a prohibition on railways from unilaterally shifting liability onto shippers through tariffs.

We also believe that Bill C-49 achieves the right balance in reflecting the needs of various stakeholders, including both shippers and railways. However, it's our view that to meaningfully realize the bill's intent and to strike the balance we believe it seeks to achieve, some minor adjustments will be required. The amendments we propose are meant to address design challenges that will have unintended consequences or that will simply not fulfill the bill's objectives. Our proposed amendments also address the reality that, due to having to rely on one rail carrier for all of the movement of our steelmaking coal and/or because of geographical limitations, some of the major provisions in Bill C-49 aimed at rebalancing the shipper-railway relationship won't apply to certain shippers, including Teck. For instance, the long-haul interswitching provisions aren't an option for our five southeast B.C. steelmaking coal mines, because this region is amongst the vast geographical areas that the provisions simply do not cover. Further, our recommended adjustments reflect Teck's actual experience with existing processes within the act.

On transparency, Bill C-49 goes a long way to addressing service level data deficiencies in our national rail transportation system, deficiencies that have led to business and policy decisions being made in an evidence vacuum. However, we're concerned that, as written, certain transparency provisions will not achieve the objective of enabling meaningful data on supply chain performance to be made available. Of specific concern is the design of the data-reporting vehicle outlined in clause 77(2).

● (1540)

The U.S. model that is being relied on is flawed and doesn't provide the level of reliability, granularity, or transparency required for the Canadian context. First, as the U.S. model is based on internal railway data that is only partially reported, it doesn't represent shipments accurately or completely.

Further, the U.S. model was created when the storage and transmittal of large amounts of data wasn't technologically possible. With the data storage capabilities that exist in 2017, there's no need for such a restriction in either the waybill system for long-haul interswitching outlined in clause 76 or the system for service performance outlined in clause 77. Note that railways are already collecting the required data.

To ensure the right level of service level data granularity is struck to make it meaningful, and to ensure it reflects the unique Canadian rail freight context we operate in, we recommend an amendment that ensures all waybills are provided by the railways rather than limiting reporting to what is outlined in 77(2).

For the ability of the agency to collect and process railway costing data, we believe the bill will significantly improve the Canadian Transportation Agency's ability to collect and process this costing data, enabling it to arrive at costing determinations to ensure the rates shippers pay are fair and justifiable. This is critical to maintaining the integrity of the final offer arbitration process as a shipper remedy to deal with the railways' market power. However, we're concerned that as written, a shipper won't have access to that costing determination, which defeats one of its purposes.

Under the current FOA model, it's the practice of an arbitrator to request an agency costing determination only when the railway and the shipper agree to do so. However, we witness the railways routinely declining to cooperate with shippers in agreeing to make such a request. Bill C-49must limit a railway's ability to decline this request. To ensure the right level of transparency and accessibility is struck so that remedies are meaningful and usable, we recommend that shippers also be given access to the agency costing determination that comes out of this process.

On level of service, we're concerned that the language offered in Bill C-49 for determining whether a railway has fulfilled its service obligations doesn't reflect the reality of the railway-shipper imbalance, given the monopoly context in which we operate in Canada. In proposed subsection 116(1)(1.2), Bill C-49 would require the agency to determine whether a railway company is fulfilling its service obligations by taking into account the railway company's and the shipper's operational requirements and restrictions. The same language is also proposed for how an arbitrator would oversee the level of service arbitrations. This language doesn't reflect the reality that in connection with the service a railway may offer its customers, it's the railway that decides the resources it'll provide. Those decisions include the purchasing of assets, hiring of labour, and building of infrastructure. Any of these decisions could result in one or more restrictions.

As those restrictions are determined unilaterally by the rail carrier, it's not appropriate for those restrictions to then become a goal post in an agency determination. As such, we recommend either striking out the provision or making the restrictions themselves subject to review.

In conclusion, as the failures of past rail freight legislative reviews have demonstrated, despite good intentions, legislative design is critical to enabling those intentions to come to fruition. Getting this bill's design right with a few minor amendments will help Canada shift away from a status quo that has resulted in continued rail freight service failures and led to a proliferation of quick-fix solutions that have picked winners and losers across industries over the past years.

Again, as the biggest rail user in Canada, we believe this is the opportunity to be bold and to set a new course in building a truly world-class rail freight regime in Canada to the benefit of shippers, railways, and all Canadians. Thank you very much, and I look forward to your questions.

The Chair: Thank you very much.

Now we go to Mr. Ballantyne from the Freight Management Association of Canada.

Mr. Robert Ballantyne (President, Freight Management Association of Canada): Thank you for the opportunity to appear.

FMA has been representing the freight transportation concerns of Canadian industry, including rail, truck, marine, and air cargo, to various levels of government and international agencies since 1916. We're now in our 101st year, and, despite appearances, I was not at the first meeting.

In our remarks today, we will focus primarily on Bill C-49's amendments to the rail shipper sections of the Canada Transportation Act, but we will make brief comments on the proposed amendments to the Railway Safety Act and the Coasting Trade Act.

There are approximately 50 railways in Canada, but the rail freight industry is dominated by the two class 1 carriers, and these two companies account for approximately 90% of Canadian rail freight revenues. The fundamental problem is that there is not effective competition within the railways, and the barriers to new entrants are so high that this situation will not be rectified through market forces.

The best that can be done, therefore, is to provide a legal and regulatory regime that is a surrogate for real competition and that rebalances the bargaining power between the buyers and sellers in the freight market.

While there is limited competition between CN and CP in a few markets, primarily intermodal, for many shippers the rail market can best be characterized as being a dual monopoly rather than even a duopoly; that is, each of CN and CP is the only railway available to shippers at many locations. It should be noted that this is not just a western Canadian problem. I'd like to stress that. This is not just a western Canadian problem, but it exists in the east as well, including in the Quebec-Windsor corridor. Rail freight is not a normally functioning competitive market, and this fact has been acknowledged in railway law in Canada for over 100 years.

The minister, in introducing Bill C-49, stated the objectives of the bill, as follows:

> The Government of Canada...introduced legislation to provide a better experience for travellers and a transparent, fair, efficient and safer freight rail system to facilitate trade and economic growth.

Bill C-49 contains a number of provisions that will go some distance to meeting that objective. In its review of the bill, FMA has analyzed the changes that are proposed in Bill C-49 and how well they will play out in practice when shippers attempt to use them. Our recommendations address the places in the bill where our experience indicates that the provisions, as drafted, will not meet the government's stated objectives.

My colleague, Mr. Hume, will refer to the 10 recommendations that we're making on the rail shipper provisions and comment on the policy basis for Bill C-49.

I should mention that Mr. Hume has worked in the law departments of both CN and CP in his career, and for the past 23 years has built a successful practice representing rail shippers before not only the Canadian Transportation Agency, using all the provisions of the act that are in place now, but in the courts, up to and including the Supreme Court of Canada. He has important insights that are somewhat unique, in that he is one of the few people who has been using these provisions over his career.

At the conclusion of Mr. Hume's remarks, unless we run out of time, Madam Chair, I'll comment very briefly on the proposed changes to the Railway Safety Act and to the Coasting Trade Act.

Forrest.

● (1545)

Mr. Forrest Hume (Legal Advisor, and Partner, DLA Piper (Canada) LLP, Freight Management Association of Canada): Thank you, Bob.

The recommendations we're making on the rail shipper provisions are summarized in our submissions beginning on page 25. As Mr. Ballantyne has indicated, the recommendations that FMA is making have been designed to give effect to what we believe to be the goals of the transportation modernization act.

Our recommendations deal with the proposed changes to the level of service provisions; the proposed creation of a long-haul interswitching remedy; the need for enhancing the powers of the agency over interswitching; providing the agency with adequate funding and the ability to act on its own motion, and on an *ex parte* basis where necessary, authorizing the agency to share reasonable railway-provided costs and rate information with shippers, and I stress “with shippers”; clarifying the proposed change requiring the filing of a list of interchanges; and suggesting changes to the service level agreement arbitration and summary process FOA amendments.

Following the filing of our submission with this committee, we received a copy of a Transport Canada document entitled “FAQs—Trade Corridors to Global Markets”, which provides insight as to the issues in Bill C-49 that the bill seeks to address. Unfortunately, the document contains a number of misconceptions that need to be addressed.

For instance, on page 11, the FAQ document claims that various factors help ensure that the LHI rate will be competitive. However, the bill has a provision that ensures that it will not be competitive. For instance, proposed subsection 135(2) requires that the agency not determine the LHI rate to be less than the average of the revenue per tonne kilometre for the movement by the local carrier of comparable traffic. What that means is that an LHI rate will necessarily be uncompetitive with other comparable traffic revenues that are below the average.

The document states in a number of places that the LHI provisions give the agency discretion in defining what traffic is comparable. However, when the agency does that, it is restricted in setting a competitive rate by the operation of subsection 135(2).

Our recommendation to fix the problem is twofold. First, specify in subsection 135(2) that the agency shall not determine an LHI rate that is more than—not less than—the average of the revenue per tonne kilometre for the movement by the local carrier of comparable traffic.

Second, amend the section to require the agency to determine the LHI rate from among rates where shippers have access to two or more railways at origin. If there are no competitive rates, i.e. rates where a shipper has access to two or more railways at origin, the agency should be required to set the LHI rate on a cost-plus basis. Thus, LHI rates would be determined from competitive rates, not from a menu of captive rates. I'll be talking a little more about “cost plus” later, because I understand that to be an issue before you that's somewhat controversial.

On page 11, the FAQ document refers to the many LHI exclusions in the bill, and attempts to justify them by citing possible congestion issues and the difficulty in allocating liability for certain hazardous materials. With great respect, Madam Chair, and members of the committee, these concerns have no merit whatsoever.

● (1550)

Why should the LHI remedy, a competitive remedy, be unavailable to large groups of shippers? Why should the remedy discriminate against shippers because of location or the type of commodity shipped? How does all of that comport with our national transportation policy?

In summing up on the exclusions, the FAQ document at page 12 refers the excluded shippers to other remedies since access to LHI is being withheld from them. This provides little comfort and doesn't say much about the efficacy of the remedy. Our recommendation is to eliminate the exclusions for LHI.

At page 7, the FAQ document states that extended interswitching demonstrated that railways can and will compete for traffic from each other's networks, providing shippers with leverage in negotiations. Similarly, it is expected that LHI will stimulate this kind of competition.

However, the comparison between extended interswitching and LHI is not an apt comparison. Extended interswitching rates—

The Chair: I'm sorry to interrupt, but the committee has a lot of questions, and each member is restricted to just 10 minutes. I'm sure that the valuable information you have there will get passed on through the questions that will be asked by many of the members. We have to go on to our questioners, starting with Ms. Block.

● (1555)

Mrs. Kelly Block: Thank you very much, Madam Chair.

I want to thank all of our witnesses for being here today. It's been a long day, and it's only going to get longer, but I certainly do appreciate everything we've heard today.

I want to start with some questions for you, Mr. Johnston, and for you, Ms. Young, in regard to your presentation. I did look at the document that you circulated. In your conclusion you state that getting the design right on Bill C-49 will help Canada shift away from a status quo that has resulted in continued rail service failures, has damaged Canada's global reputation as a trading nation, has led to the proliferation of quick-fix policy solutions that have not been based on evidence, and has picked winners and losers across industries over the years.

I'm not sure if you suggested that Bill C-49 was the result of a bold vision. I want to give you an opportunity to perhaps speak to some of the areas in Bill C-49 where you see there being that bold vision. Also, I want you to comment on the creation of the corridors in Bill C-49. I'm not sure if that was what you were referring to when you talked about the five areas that weren't going to be able to access long-haul interswitching or that weren't going to be able to use these remedies. I'm wondering if you could speak to that as well.

Mr. Brad Johnston: I was taking notes as you were asking your question, because you touched on a great many points. If I overlook any of them, please remind me.

Mrs. Kelly Block: Sure.

Mr. Brad Johnston: First, I'll talk about the exclusion, because you referenced that. Teck is the second-largest exporter of steelmaking coal in the world. Our main competitor is in Australia. We service customers all over the world, including in China, Asia, North and South America, and Europe. It's basically just a fact that the geographic exclusions for long-haul interswitching will bar our five southeast B.C. steelmaking coal mines from utilizing that remedy. Under the current draft, it just won't be an option for us.

In fact, it is our view that will serve to further cement our captivity to the rail carrier, which in this case happens to be CP, for those mines. They export approximately 28 million tonnes a year. I referenced that we're the largest user of rail in the country as a company, not as a commodity but as a company.

So yes, long-haul interswitching under the current drafted legislation will not be a remedy for us. We will continue to rely on things like final-offer arbitration.

Does that answer that part of the question?

Mrs. Kelly Block: Yes, it does. Thank you.

Mr. Brad Johnston: I guess it would be our view that currently policy-makers or users are trying to carry out their different activities in an evidence vacuum. That's basically due to the fact that a coherent or rational system for measuring the movement of goods in Canada—like the waybill system—just simply does not exist.

Moving towards a data regime is part of that whole vision, and we welcome that step and think that we're moving in the right direction, but as it is currently drafted, it's not quite there yet. As for some simple changes to the legislation, ensuring that all data is accounted for is a very easy thing to do. Being a bit of a data-wonk myself, I'll say that we want to look at data. We want to look at raw data, not aggregated data.

On clause 76, the data piece on long-haul interswitching, our concern is that if we mimic the U.S. system, not all data is reported by the railways. It's all collected by the railways, but it's not reported by the railways. This we understand from our subject matter experts who also practise in the United States. That would be a concern. There's no point in collecting data and not getting all the data. That would quite likely lead to imperfect assessments or conclusions, whether that has to do with service failures or infrastructure investment.

On clause 77 on performance indicators, if we're going to measure the performance of the rail system with data, once again we have to look at all the data. I talked about the waybill system. It's not addressed in clause 77, but the waybill system is in essence a record. It's a record of movement of a good from a particular origin to a particular destination. It's a very easy way to document the movement of goods in our system. The two class 1 railways are doing it in the United States. They can do it in Canada.

I'm sorry. It was a lengthy question and—

● (1600)

The Chair: I know, and I was trying to give you as much time as possible—

Mr. Brad Johnston: Yes. Thank you.

The Chair: —to get out the answer that Ms. Block was looking for.

Mr. Brad Johnston: Thank you, Madam Chair.

Hopefully, that answers it.

The Chair: Thank you very much.

Mr. Graham.

[*Translation*]

Mr. David de Burgh Graham: Thank you, Madam Chair.

Mr. Audet, thank you for taking the time to meet with us.

Since you have more experience than others in rail safety issues in your region, could you tell us about the plan to establish a training centre specialized in rail safety. We don't often hear about something like that.

Mr. Béland Audet: There is no training in rail safety or the culture of safety.

The national railway companies, the CN and CP, provide training on safety, specifically to operators, but that training is not recognized from company to company. In other words, a CN employee who is going to work at CP has to redo the training.

Shortlines provide no training. CN or CP retirees are often the ones providing the training.

There is no common training whatsoever, whether in terms of operations or the culture of safety. We have been talking about the culture of rail safety since the 2013 accident, but that did not use to be the case in the industry in general. That said, I think that's a very important point.

The bill talks about voice and video recorders only. It is a useful type of technology, but the fact remains that it is used after a tragedy happens. But what is being done to ensure tragedies no longer happen? We want to make sure that no one ever has to go through a disaster like the one we experienced in Lac-Mégantic.

We want to work with Transport Canada and the Canadian government to improve this aspect of training, which is very important.

The second aspect that we are addressing is the training of first responders. In eastern Canada, they receive no training on rail safety. Not all the cities can afford to send their first responders to the training courses in Vancouver or Pueblo, in the United States. So a centre for francophones, a bilingual centre, needs to be established in eastern Canada. In my view, that's very important. The bill is silent on training like that. It only talks about voice and video recorders.

Mr. David de Burgh Graham: Does Lac-Mégantic itself have a new way of training regional firefighters and first responders?

Mr. Béland Audet: We have organized training with the folks from TRANSCAER, who came to Lac-Mégantic to provide training to the people in the region. In fact, people from New Brunswick, Nova Scotia, Montreal and Quebec City also came for the training on rail issues. The event was on a weekend with an eight-hour training session one day, but that was just an overview. More in-depth training is needed.

As I said in my presentation, in Canada, 1,200 cities have a railway, but there is no training on rail issues. So there is great urgency to have something for that. However, since Lac-Mégantic, nothing suggests that the Canadian government wants to head in that direction.

● (1605)

Mr. David de Burgh Graham: Thank you for coming to tell us about that.

[*English*]

I want to go now to Teck and Mr. Johnston.

I was interested in your comments about universal running rights. I think it's an interesting concept. It would separate the infrastructure from the operations on railways. How would you see it working? By having the infrastructure in private hands, would there be a risk, to smaller lines, that nobody would be interested in operating a line they don't own?

I'm curious to hear your thoughts on that. You had suggested that allowing running rights on a much more widespread basis would increase competition. I like the theory, but I'm trying to see how it would work in practice.

Mr. Brad Johnston: I guess the best example would be our competition in Australia, where they have what's called an above-rail and below-rail freight regime. Having more than one carrier operate on rail lines is something that's done throughout the world.

Just a month ago I was in Poland visiting our customers in eastern Europe. Certainly in Poland they have such a regime. I believe they have as many as five carriers on the rail network there. How it would work, I would say, would be pretty similar to air traffic, with one centralized rail traffic control and many carriers.

Mr. David de Burgh Graham: You're taking the infrastructure away from the private companies to make a national system. To accomplish what you're saying, you're not talking about running rights on a CN track; you're talking about changing the whole nature of the infrastructure, which is a fairly significant paradigm shift.

Mr. Brad Johnston: I don't see it that way. To us it answers a question we've faced in the past: what happens when the rail carrier either can't or won't move your traffic? For us, moving 25 million tonnes a year, this is a significant problem. What do you do? Is it a significant step? Of course. For a new entrant, there would be very high barriers on things like operational capability, safety, and insurance. Nevertheless, it's something that's done quite efficiently and safely in different jurisdictions, including Australia. If a company such as Teck simply can't get its goods moved to market, then this could be a potential remedy.

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

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I would first like to turn to Mr. Ballantyne.

In your opening remarks, you drew my attention to a topic that you did not have time to address, namely coasting. I'm ready to give you two of my six minutes to summarize your position. I will then probably have one or two questions for you about it.

[*English*]

Mr. Robert Ballantyne: Thank you very much.

What I wanted to say is this. In our formal submission we did indicate that we support the proposed changes to the Coasting Trade Act that are included in Bill C-49. These give effect to a requirement of the Canada-European Union Comprehensive Economic and Trade Agreement. While it's a relatively minor element in terms of improving global supply chain efficiency, the requirement does do that for Canadian importers and exporters using containers. That is, what it's proposing to do is to allow foreign-flag ships to move empty containers between Canadian ports. That is, if containers were emptied in Halifax, the foreign-flag carrier could move them to the Port of Montreal, for example.

This is something we support. It is something that will slightly improve global supply chains for Canadian shippers, and for importers as well. There is a complication with regard to the large shipping alliances, where there are three or four shipping lines that come together in alliance. We think that the regulations should make sure that this provision would be able to be used within the full alliance, so all the member shipping companies within that alliance could access this provision.

● (1610)

[*Translation*]

Mr. Robert Aubin: Thank you very much for the summary.

This brings me to my question.

I understand that it's better to do a route with empty containers than with a completely empty vessel. However, as you so rightly said, the proposal in the agreement with the European Union does not give Canadian-flag ships the possibility to do the same thing and to fly the Canadian flag on European territory.

Is that an irritant for you?

[*English*]

Mr. Robert Ballantyne: No, actually, I haven't read the CETA, or haven't committed it to memory. My recollection is that it is reciprocal, that it would allow Canadian-flagged ships the same privilege within Europe. However, the number of Canadian-flagged shipping lines operating internationally is either very small or not existent at all. While I think that within the agreement it is reciprocal, the practicalities are that it would be used mostly in Canada.

I support it. I think it is a good thing. It's good thing for Canadian exporters and for Canadian importers that use containers. This really has to do with the movement only of empty containers between Canadian ports by foreign-flagged ships. I think it's a good move.

[*Translation*]

Mr. Robert Aubin: Thank you.

I don't want to contradict you, but I will check my sources, because my understanding was that there was no reciprocity. Based on what you said, I gather that it would be acceptable as long as there is a reciprocity.

[*English*]

Mr. Robert Ballantyne: Yes, it would.

[*Translation*]

Mr. Robert Aubin: Thank you.

I have a question for Mr. Audet.

First, we have just received your documents. Thank you. We will read them carefully.

In light of your tragic experience, how do you explain Canada's delay in rail safety? I would say that Bill C-49 is pretty much silent on the issue, although it's supposed to be the bill that will take us to 2030. It talks at length about voice and video recorders, which can allow the TSB to draw better conclusions after the incident. However, preventive measures are needed instead. I completely agree with you on that.

To your knowledge, does the absence of safety or security regulations fly in the face of international standards?

Mr. Béland Audet: Not to my knowledge.

The U.S. has what is known as the Positive Train Control. I'm not sure what the French equivalent is.

Mr. Robert Aubin: It doesn't matter.

Mr. Béland Audet: We have examined the technology and the type of reports it can do. It is really wonderful. Of course, the cost of the system implemented in the United States is huge. At any rate, 60% of CN's locomotives have this system, since they operate in the U.S. They therefore must have those systems, which are really amazing in terms of safety. That is a big step forward.

In terms of voice and video recorders, let me draw a parallel with the Beta recorders back in the day. If those were sold in stores today, we would miss the mark, which is to increase safety.

That's more or less what I think.

Mr. Robert Aubin: You spoke at length about the importance of training for first responders, and I entirely agree with you on that. My concern is not about the fact that this training is necessary, but the fact that municipalities are not familiar with the content of the hazardous products on the trains crossing their roads.

How can first responders react effectively if Bill C-49 has no measures enabling municipalities to find out what products are being carried across their territory?

Mr. Béland Audet: There's a new application, AskRail, that makes it possible to obtain all that information, but it is certainly not in line with the bill that was just introduced. Positive Train Control provides that sort of information very quickly.

● (1615)

[*English*]

The Chair: Thank you very much.

Mr. Fraser.

Mr. Sean Fraser: Excellent.

I'll begin by saying thank you to Monsieur Aubin for asking my planned first question to my intended witness and saving me two minutes of my life. It allows me to follow up on the Coasting Trade Act.

One of the things I'm curious about that you mentioned would be more efficient, and I agree with you, was to have European vessels carrying empty containers. I think that's fairly obvious. Today, are Canadian shipping companies moving empty containers? My understanding is that the bulk of the empty containers were being moved by truck to new ports.

Mr. Robert Ballantyne: It's probably true that they are. This provision is included in the CETA agreement. I suspect it may be something that the Europeans wanted, though I'm not certain of that.

What happens now under the Coasting Trade Act is that any movements between Canadian ports have to be done in Canadian flagged ships. Essentially, the Canadian shipping lines are big, either in the coasting trade or in the Great Lakes and St. Lawrence Seaway. Canada Steamship Lines and Algoma, some of those companies, are the obvious ones.

Mr. Sean Fraser: Perhaps I can jump in for a moment. Reciprocity or not, the added efficiency probably doesn't come at great cost to Canadian business if most of the empty containers aren't being shipped anyway.

Mr. Robert Ballantyne: That's right. This is a relatively minor provision, and it seemed to make sense to me. My point here today is that the hundred companies that are in our membership support this.

Mr. Sean Fraser: Perhaps I can jump to Teck. You mentioned that five of your steel-producing coal facilities aren't going to have access because of the excluded corridor in British Columbia. My understanding—and maybe you'll correct me if I'm wrong, and Mr. Ballantyne alluded to this as well—is that the two excluded corridors at issue had competition to some degree, and the rest of the country did not have that level of competition. This justifies introducing some sort of mechanism. The Canadian and American freight rates were a little better, but they're roughly comparable. I'm curious to know how the rates of your competitors in the U.S., for example, or companies of a similar size, compare to the rates you get with Canadian rail service providers.

Mr. Brad Johnston: With respect to the rates my competitors pay in the United States, it would be variable—some are lower, some higher.

Mr. Sean Fraser: I very much got the vibe from your responses earlier that you feel there's a lack of competition, but it seems as though, just from this line of questioning, that you're in the middle of the pack of what competition might provide if it existed fully. Is that not accurate?

Mr. Brad Johnston: I'm not exactly sure what you mean by that question. Let me simply say that our five southeast B.C. steelmaking coal mines are all captive to a single rail service provider. They're captive for a significant portion of the movement of the material from the mines through to Vancouver. There is no competition for those mines at their origin, and there is limited competition for a portion of the movement through the Fraser River corridor. It is our view that those mines are very much captive to the rail service provider and that they do not have competition. Some of the elements we've suggested in our submission, including the provision for data, or enhancing the costing determination, or the access to it under FOA, we view will help us balance that lack of a competitive reality in which we operate.

Mr. Sean Fraser: My perspective is informed a bit by representing an area that mostly has smaller operators than you guys have. I guess what I'm getting at is that at the bargaining table, you guys are no slouches; you know what you're doing. I sense that your ability to negotiate at the table, with the single service provider you have, is roughly.... I don't think the lack of competition has the same impact on you that it might have on smaller companies in captive regions.

Am I totally off-base here?

● (1620)

Mr. Brad Johnston: Speaking as someone who has experience in negotiating with railways, irrespective of the fact that I'm with Teck, I would say that it does have its challenges. As a consequence of that, we've used remedies under the act, just like anyone else. In some ways, our size is not as much of an advantage as you might think. We have had to use processes such as FOA under the act. It's very important to us to have a very robust remedy, because we have used it in the past and we see that it's quite possible we could use it in the future.

Mr. Sean Fraser: Let me move to follow up on my colleague Mr. Graham's line of questioning.

There was something I'm not sure I quite follow going on, but I was fascinated by it. It was something about running rights and the circumstances in which someone can't or won't ship your product.

Is what you were suggesting running railways almost as we do public highways? Subaru and Honda and Chrysler don't all have separate highways that only their cars can drive on.

Are you suggesting that the current infrastructure that is privately owned move to a public model that different operators could provide services on?

Mr. Brad Johnston: No, I'm not suggesting any such thing, not at all. But it is a fact that across North America there are literally hundreds of running rights arrangements in place today. Railways run on each other's lines all over North America and in Canada. The directional running zone in the Fraser Canyon is a prime example of that. That is a running rights arrangement. They do exist.

The Chair: Thank you, Mr. Fraser.

Mr. Hardie.

Mr. Ken Hardie: Thank you, Madam Chair.

I want to stick with the running rights issue a little bit, in the context of what has been described to us as a congestion issue in that corridor between Kamloops and Vancouver and offered as one of the reasons LHI wasn't considered.

Mr. Hume introduced himself to me a little earlier.

It occurs to me, sir, that you've actually had some experience in negotiating running rights on that corridor for West Coast Express, have you not?

Mr. Forrest Hume: It wasn't on that corridor. It was on the corridor between Waterfront and Mission City.

Mr. Ken Hardie: But that's still part of the—

Mr. Forrest Hume: It's a part, but only a small part of it.

Mr. Ken Hardie: Sure, but can you reflect on that experience and consider opening up that corridor for the long-haul interswitching system?

Mr. Forrest Hume: In my view, there is no reason to exclude shippers in that corridor or in the Windsor-Quebec corridor. There are shippers within those corridors who do not have competitive options and could avail themselves of that remedy. It's a competitive remedy, at least as the minister contemplates it. I think it should be altered from the way it is currently written, so that it will continue as a competitive remedy, available to all shippers who find themselves having a need to access that remedy.

Mr. Ken Hardie: The argument of the congestion currently on those corridors isn't material, then, as far as you're concerned?

Mr. Forrest Hume: I don't think congestion is the concern of the railways; I think reduced revenues is the concern of the railways. U. S. railways making incursions into Canada constitute competition from the shippers' perspective. The Canadian railways can retain the traffic: all they have to do is sharpen their pens and provide competitive service. Competition is what the remedy is about, and competition is what will prevail for Canadian railways, if in fact they choose to compete once the LHI remedy is injected into the negotiations.

Mr. Ken Hardie: Certainly the experience so far with the former interswitching regime suggested that they can sharpen their pencils, because they didn't really lose that much business to the American carriers.

Mr. Forrest Hume: Mr. Hardie, on that issue, if I may—

● (1625)

Mr. Ken Hardie: I have a limited amount of time and I really want to get to Mr. Ballantyne with a question as to who should be considered the shipper. We heard, for instance, from the short-lines a little while ago who had issues handing off cars to the main lines. Would we have a more efficient system if that short-line or the producer car user was considered a shipper with the shipper's rights?

Mr. Robert Ballantyne: I would say the simple answer to that is yes. The definition of a shipper should be quite broad. Usually the term that's used is the beneficial owner of the cargo as the real shipper, but it could be a freight forwarder. It could be a short-line railway, and I think that would make a lot of sense, actually, for the short-line railways to have some of those rights.

I think Mr. Pellerin's comment about the short-lines being able to take cases before the agency, similar to the way shippers can for service problems, for example, makes a lot of sense. So I would make it a very broad definition.

Mr. Ken Hardie: Mr. Johnston, I'll pose the same question to you as I have done to a few of the other panellists along the way. Could you define for me what, to you, constitutes adequate and suitable service?

Try to be magnanimous, fair about this. Enlightened self-interest is a beautiful thing, but everybody has to make money and it all has to work for everybody. What constitutes that, particularly with respect to a win-win outcome for people?

Mr. Brad Johnston: That's a great question. In terms of adequate and suitable service, I'll speak as a shipper. That's what I am. There are a multitude of ways in which a railway can ensure that it's profitable, whether through negotiating an agreement with a shipper such as me or issuing a tariff.

To me, “adequate and suitable” means that my goods will move through to their destination. It's not a debate about if, but about when. We cannot entertain any discussion about whether our goods will move. They must move. The common carrier obligation also dovetails into adequate and suitable service. The railways have an obligation to move our goods. It can't be a debate about if; it has to be a discussion about when.

Mr. Ken Hardie: What constitutes a good “when”?

The Chair: Mr. Hardie, you've run out of time again.

Mr. Shields.

Mr. Martin Shields: Thank you, Madam Chair.

I'll let you finish the answer.

Mr. Brad Johnston: I think I did. Did I overlook something?

Mr. Martin Shields: Yes. The question was about the “when”.

Mr. Brad Johnston: “When” is in a fashion that works for both the railway and the shipper. It is our view that the common carrier obligation and adequate and suitable does not mean I get what I want when I ask for it. That is not our view. However, it can't mean that the scheduling or the eventual provision of the service can be in a time frame that just does not work for the shipper. In our view, that does not fulfill the common carrier obligation.

Mr. Martin Shields: You were going to talk about the loss that we heard CP and CN might have to the U.S. market because of the TIH. You were starting into an answer about loss to the competitive U.S.

Mr. Forrest Hume: I want to point out that in the time that extended interswitching was in effect, from 2014 to 2017, the railways earned record profits and were able to provide extensive capital infusion to their infrastructure. In other words, there was no hit whatsoever. In my opinion, the idea that cost-based provisions or regulatory intervention is somehow damaging to the railway's ability to make money and to invest in infrastructure is a false claim.

● (1630)

Mr. Martin Shields: [*Inaudible—Editor*] indicators to you there. Thank you.

Going back to Teck, you described some amendments that you would make, and you talked about transparency, costing determination, and service definition. Those are the amendments you feel would be practical to this piece of legislation.

Mr. Brad Johnston: Yes, that's correct.

Mr. Martin Shields: Could you expand a little on those three, or pick one of them that's more critical than the other two?

Mr. Brad Johnston: Sure. We're data-driven people. We spend a lot of time trying to use facts to guide our supply chain. The fact there's really no such regime in Canada currently is a problem for shippers, railways, and policy-makers. Being called upon to enact legislation, being called upon to invest in infrastructure, in the absence of data, is a problem. Someone even made a reference to congestion. In our view, that's a conclusion one makes from assessing data. It's not just something that someone gets to state. You should have to prove it.

Data will allow us to do that. We'll be able, in a meaningful way, to make a whole bunch of very good decisions if we have the right data. That is why, in our submission on the draft bill, we spent a great deal of time talking about data and what we think would allow for that to improve and give everyone—shippers, railways, and policy-makers—a very clear understanding of what's happening in our supply chain.

Mr. Martin Shields: As a major supplier of steel or coal, that on-time delivery, do you think it would negotiate some strength for you, or for both parties be advantageous, if you had agreed-upon data?

Mr. Brad Johnston: Absolutely. Our supply chain might even then have an opportunity to become what we could call world class. If everyone had a very clear understanding as to what was taking place, absolutely.

Mr. Martin Shields: Thank you.

The Chair: You have a minute left.

Mr. Martin Shields: Sir, you had 10 recommendations. You got through some of them. Is there one out of those 10 that you would stick out and say it would really make a difference?

Mr. Forrest Hume: The recommendation we make with respect to the changes proposed to the level of service provisions is important. We believe there is no need for further clarification of those provisions.

In the last three years, there have been a number of cases that were litigated before the agency and the Federal Court of Appeal that clarified in detail the seminal Patchett case of 1959 and the agency's evaluation process for determining level of service complaints. The need for clarification no longer exists. In fact, putting mandatory considerations in place only gives the opportunity for the finality of the agency's decision to be disturbed through protracted litigation and appeals. I have level of service cases that are going on for two and three years without a final conclusion in the courts.

Mr. Martin Shields: That's a lot of wasted time and money.

Mr. Forrest Hume: Correct.

Mr. Martin Shields: Thank you.

Thank you, Madam Chair.

The Chair: Thank you very much.

Go ahead, Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair.

I want to give you folks an opportunity to think outside the box. Looking at a transportation vision 30 years down the road, 23 years down the road, the minister has put forward a transportation strategy 2030. With this bill, we are looking particularly at trying to establish balance and therefore return in value, in particular as it relates to future investments that support the overall transportation strategy.

That said, managing risks and creating value is of utmost importance. As business, shippers, and service providers, looking through a lens of contributing to economic environmental social strategies, what are your opinions on how we can utilize Bill C-49 to ultimately contribute to an overall transportation strategy and how it's going to help you be a global enabler and lead us to perform better economically on a global stage?

● (1635)

Mr. Robert Ballantyne: Goodness.

Mr. Brad Johnston: Mr. Hume will comment if you—

Mr. Robert Ballantyne: Yes, go ahead.

Mr. Brad Johnston: I would like to answer that question. I'm just going to collect my thoughts. It's quite a question.

Anyway by all means, please, Mr. Hume.

Mr. Forrest Hume: I'll start off, if I may.

It would be important that the bill comport with our existing national transportation policy, which highlights competition in market forces. If we can get these two railways to compete with each other in the manner that is contemplated by that policy, we will have a bright future in this country.

Mr. Vance Badawey: The time is ticking, guys.

Mr. Brad Johnston: All right.

There's no doubt about it that Canada is a trading nation and, in our particular case, our main competitor is Australia. The output for steelmaking coal mines in Canada has been more or less flat for a decade, and in Australia it has grown by, let's say, 60%. I reflect sometimes on why that is, and one of the reasons is supply chain.

In my view, there are different characteristics of what we might call a world-class supply chain, and that would include a platform for investing in infrastructure. That's well understood by the participants. It would include real-time measuring and monitoring of the supply chain. It would include a common platform for planning, and.... Well, let's just leave it at those three items.

It's a measure of how the participants control the supply chain. All those things are fact driven; they're data driven. It's why we spent so much time in our initial submission on data, on assessing the U.S. waybill system, and the main point of our response.

On the earlier question, I talked about the importance of getting the data right. We're not measuring what we're doing right now. There's nothing world class about that, and we can't improve. As a quality management system person, you have to measure what you're doing. The actual publishing of that measurement has to be transparent. Everyone has to have the same understanding of what's taking place. That's how people run supply chains.

Mr. Vance Badawey: Great.

Mr. Ballantyne.

Mr. Robert Ballantyne: I have a couple of other comments.

In April of last year, Mr. Garneau made the following statement: “I see transportation in Canada as a single, interconnected system that drives the Canadian economy.”

If the overall objective is to make our economy as competitive as possible on a global basis, then all the things in Bill C-49, and obviously other pieces of legislation and so on, and our trade agreements, whether NAFTA or CETA or whatever, should be geared towards that objective. One would hope, as we're talking about Bill C-49 today, that the various provisions would help lead to that objective.

I think in talking about it being an interconnected system, one of the inconsistencies that we have, and this is just an issue of a normal free market system, is that each of the players in effect is an island unto themself. They're all trying to maximize their own situation. That's, in a sense, a conundrum in terms of Mr. Garneau's view that it should be an interconnected system.

One of the governance problems, it seems to me, for the government, is how you reconcile the quite legitimate needs of private businesses to maximize the return for their shareholders on the one hand, but make sure that the system is working effectively for the whole economy on the other hand.

I think those are things that hopefully this bill will contribute to.

The Chair: Thank you very much.

Mr. Blaney.

[*Translation*]

Hon. Steven Blaney: Thank you very much.

I really liked the question from my colleague at 40,000 feet, but unfortunately the road to hell is paved with good intentions and the devil is in the details.

My question is for Mr. Hume, but before I ask it, let me stress how important it will be to consider the excellent recommendations made here when studying the bill. This bill will increase paperwork and it shows serious gaps in data collection. In addition, there are many comments about the interswitching system.

● (1640)

[*English*]

My question will be for you, Mr. Hume. At the beginning of this presentation you were cut short, and I would like to give you the opportunity to expand.

You were mentioning that you were recommending the elimination of the exclusions for long-haul interswitching. Could you elaborate a little more on how we could fix this bill, if I could put it that way, to at least reach the ultimate objective of making our country more effective in terms of this transportation supply chain?

Mr. Forrest Hume: Well, of course, our recommendation is to eliminate the exclusions, but one of the things that could be done to make the long-haul interswitching rate efficacious is to make its application automatic. Right now, a shipper would have to apply to the agency. I'm quite well aware of what happens when the shipper applies to the agency. There is protracted litigation. It's lengthy. It's costly. There are appeals to the courts. It takes months, and in some cases years, before the shipper actually knows what the final determination is.

The difference between extended interswitching and long-haul interswitching is that extended interswitching was automatic. The shippers knew what the rate was by simply referring to the regulation. The agency calculated the rates on a fair and commercially reasonably basis, it included a reasonable contribution above the railways' costs, and it was accepted.

The long-haul interswitching remedy is not automatic. It will be as litigious, in my view, as competitive line rates were. There were five cases of which I am aware of competitive line rates. One of them went to the Federal Court of Appeal. Eventually, the railways stopped competing with each other and rendered the remedy inoperative. I don't want that to happen to long-haul interswitching. If it's made automatic, it will work.

Hon. Steven Blaney: Yes, so extended is what you recommend. I would recall for my friend that it was in our Bill C-30, but let's forget that it was a Conservative measure. This is what people asked for, and it's what would help.

Is there any other recommendation or any other issue you would like to see addressed in this bill?

[*Translation*]

Mr. Audet, you talked about safety. Of course, there are the recordings that can be heard after the fact, but you think the focus needs to be on training. What would you like to see in Bill C-49 to that effect?

Mr. Béland Audet: In our view, it is clear that the training for conductors and first responders should be standardized and made compulsory. Those are our two recommendations.

[*English*]

Hon. Steven Blaney: My last question is for you, Mr. Johnston. In terms of data, you recognize that it is important that we collect the data, but you mentioned that the way it is proposed in the bill is not the way to move forward. How could we tweak it or make it more efficient?

Mr. Brad Johnston: Obviously, there's a great deal about the data that we like. It's certainly an improvement over what we have today, which is essentially nothing, so I don't want to give the wrong impression. Nevertheless, I think the biggest thing is just to ensure that all the data is collected and then submitted to the agency that will collate and publish it. It must be a complete dataset. Really, that would do it.

The Chair: Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

Mr. Audet, I would like to resume our conversation that was gently and fairly interrupted by our chair.

You mentioned Positive Train Control. Does the system exist in Canada or the United States?

● (1645)

Mr. Béland Audet: It's an American system. It sort of has to do with the supply chain you mentioned earlier, since it provides information about it. The system also provides information about mechanical issues, such as brakes and maintenance. You can obtain a lot of information with the system.

Mr. Robert Aubin: So I was not mistaken in saying that, right now, municipalities are unable to know what types of products cross their territory by rail.

Mr. Béland Audet: They are able to find out with the system—

Mr. Robert Aubin: After the fact.

Mr. Béland Audet: No, the municipalities can find out with the help of the AskRail application. We don't have access to it, but first responders can have the app on their phones and find out exactly what's on the train. However, they can only find out as the train goes by.

Mr. Robert Aubin: That's when the reaction time starts. I imagine that there's a specific type of intervention for each product.

Mr. Béland Audet: That's right.

Mr. Robert Aubin: This means that not even the application provides the time required to react.

Mr. Béland Audet: The fact remains that we know what a train contains in the event of an accident. That's still an excellent source of information. We know exactly what type of intervention will be needed. However, clearly—

Mr. Robert Aubin: Why can't the information be available at the outset?

Mr. Béland Audet: I'm not sure I can answer that. It may be possible to obtain the information sooner. In terms of the delay itself, I would not want to mislead you by answering inaccurately.

Mr. Robert Aubin: Okay.

Over the past few minutes, while listening to the comments with one ear, I have been trying to quickly scan through the documents you provided. Clearly, the institute you are in the process of setting up can only be beneficial for safety.

What is the status of the funding for the institute? Is Transport Canada contributing? Is this still being studied? Could the objectives outlined your document materialize quickly?

Mr. Béland Audet: We have obtained funding from private partners. We have the funds we need from that sector. The provincial governments' contribution is also very good, but we are still waiting for the federal government. For almost a year, we have been waiting for answers about funding for this project. We are still at the stage of discussions with Transport Canada.

Mr. Robert Aubin: Are you getting more specific answers than those we usually get about the rail bypass?

Mr. Béland Audet: Oh, oh!

I don't think I need to answer that.

Mr. Robert Aubin: I think you actually have. Thank you.

[*English*]

The Chair: Thank you, Monsieur Aubin.

We have about 10 minutes left. Do we want to do another round, starting with Ms. Block? Or does anyone have further questions?

Do you have a question, Mr. Hardie? Go ahead.

Mr. Ken Hardie: I wanted to go back to the issue of data, because it has come up a number of times in previous studies, including this one. Somebody in one of the earlier panels talked about the granularity of the data. In other words, what kind of detail is there in the data that would be helpful to shippers and in their negotiations with the rail companies?

Mr. Johnston, maybe you could speak to that. Data is one thing, but what kind of data? What do you really need to know that you would like to have, practically real time?

Mr. Brad Johnston: I think at the very end you referred to two different points. One is real-time data and the other is a reporting on what took place. Was that on purpose, or...?

Mr. Ken Hardie: Well, as I understand it, the need for data is all about getting your head around what the railways have available in any particular part of the country in terms of rolling stock, etc., and how it's being used. You would have a reasonable expectation, if you ordered up some rail service, of what they would be able to provide.

This is what I took away from some of the earlier comments, not just today but in previous studies. If I'm not headed down the right track on that one, tell me what kind of data would be most useful to you going forward.

Mr. Brad Johnston: That's a great question.

Let's start with time, time for, in our case, a train to go from an origin to a destination and to return. We measure that in hours. The quantity is moot.

There is time over a particular subdivision. When we talk about granularity, to us that means not measuring things in terms of the system-wide averages. In our particular case, from southeast B.C. to Vancouver, that's not that useful to us. In fact, it's not useful at all. We would want to know, for our specific good, the time, the quantity, the availability of locomotives, the availability of cars. Gosh, why locomotives? What is the redundant capacity? We don't plan to 100% perfection, so what's available to us, should we need it? What's the contingent capacity on cars? Are there some available? Are they all being utilized? We go into a great deal of detail on that in our submission. There is time across a particular subdivision.

When we talk about the issue of congestion for someone like Teck, we could aggregate it, but we want to know what's moving in the corridor in which our goods are travelling. You could aggregate the rest of the traffic. You could do it by car type. You could do it by length of train, and so on. But when our particular good now merges with the other goods, how are they behaving in conjunction with each other? We do that. How it's happening in January might be different from how it happens in August. There's a seasonality to it too.

There's labour capacity. How many additional crews do you have? You have to measure, on a very granular basis, the supply chain in order to understand whether you have adequate capacity—that's the denominator—and what's actually moving—that's the numerator.

● (1650)

Mr. Ken Hardie: The example was given of the reporting requirements in the United States by Canadian railways operating down there. To your knowledge, are those requirements sufficient to meet what you would like to see in Canada?

Mr. Brad Johnston: No, they're not. The main reason for that is that what's supplied in the United States under the waybill system is a sample. It's not a complete reporting on the actual material movements. As I said, in 2017 with data capabilities and transmission, there's no need for any restrictions on data. All the data created in Canada in a year for all our railways we could store on a laptop that we could buy at Best Buy. Data storage is fantastic compared to what it was 30 years ago.

The waybill itself is a satisfactory record. It includes subdivision information. It includes interchanges. It includes what we call the "STCC" codes, the material, itself. But you need to report all of them. You give it to the reporting agency, which then collates it and publishes it.

Mr. Ken Hardie: Thank you.

The Chair: Is everybody all right and satisfied?

Thank you very much to the witnesses. We appreciate your coming.

We are going to suspend until the next panel. The next panel will start at 5:30. I've cut half an hour off your dinner time so that we can move along a little bit faster.

Mrs. Kelly Block: Thank you.

The Chair: All right.

● (1650)

(Pause)

● (1730)

The Chair: We're reconvening for our last session of the day. As the witnesses know, this is our second full day of hearings. We have two more days to go. We welcome you all here this evening for our final panel. We look forward to hearing your comments.

We'd like to start with Pulse Canada. Introduce yourselves, please.

Mr. Greg Northey (Director, Industry Relations, Pulse Canada): Thank you, Madam Chair and members of the committee, for the opportunity to discuss Bill C-49 with you.

Pulse Canada appreciates your focus on this bill and your efforts to expedite the study prior to the return of Parliament. We submitted a brief to you, and I will touch on a few of the recommendations contained within it.

Pulse Canada is a national industry association that represents over 35,000 growers and 130 processors and exporters of peas, lentils, beans, chickpeas, and specialty crops like canary, sunflower, and mustard seeds. Since 1996 Canadian pulse and specialty crop production has quadrupled, and Canada is now the world's largest producer and exporter of peas and lentils, accounting for one-third of global trade. The value of the industry's exports exceeded $4 billion in 2016.

The market for pulse and specialty crops is highly competitive, and maintaining and growing Canada's market share in over 140 countries that the sector ships to is a top priority for the industry. Pulse and specialty crops are the most multimodal grain crops in western Canada; 40% of our sector's exports through Vancouver are containerized. Efficiently managing the logistics in these supply chains drives the competitiveness of our sector. As such, predictable and reliable rail service is central to ensuring this competitiveness and economic growth.

It is through this lens that Pulse Canada has assessed Bill C-49. Will it deliver improved service, increase rail capacity and competitive freight rates to the small and medium-sized shippers that constitute much of the pulse and specialty crops sector? Pulse Canada believes that Bill C-49 has the potential to deliver these outcomes, but we would like to offer some recommendations to ensure that the bill delivers the results that government intended, that shippers need, and that the overall Canadian economy expects.

Increased competition is the most effective way to deliver improved service capacity and rates, and this is where the proposed long-haul interswitching rate regime holds the most potential. The competitive forces that extended interswitching delivered to the rail market as a result of Bill C-30 were directly beneficial to pulse and specialty crop shippers, and the sector would like to see the long-haul interswitching deliver the same results.

You have heard significant and detailed recommendations on how to improve LHIR today. So I would only like to reiterate one point: excluding large groups of shippers from accessing the provision or limiting a shipper's access to the nearest rail competitor when the next competitor may offer the best combination of service, price, and routing, significantly decreases the potential impact of this provision. For LHIR to work as intended, by letting market forces and competition prevail—a point shippers and railways agree on—it should not be artificially limited through a list of exclusions that cuts out huge swaths of the economy. These exclusions should be removed to allow shippers and railways to operate under LHIR in as competitive an environment as possible. This will bring maximum benefit to shippers, railways, and the Canadian economy. This would also help reduce the differences in interpretation and intents as well as the expected legal challenges that will plague decisions with this remedy for years to come.

I will now focus on provisions of the bill that are intended to help increase supply chain transparency. Creating a competitive environment with balanced commercial relationships requires a transparent freight rail system so that all involved can make commercial decisions based on timely and accurate information. To achieve this, the bill proposes two significant new data regulations and a transitional provision that would require railways to provide service and performance data based on the model used by the U.S. Surface Transportation Board. This is a good start. However, Bill C-49 proposes that this data will not be available to the commercial market until a full year after royal assent. When the data does become available, the bill allows a three-week lag between collection and publication of this data.

In the U.S. case, the railways and regulator began publication of this data within three months after it was ordered, and it was available publicly one week after the railways provided it to the regulator. With a concerted effort by shippers, governments, and railways, and an amendment to Bill C-49, Pulse Canada believes Canada can match, at minimum, the timelines set in the United States and fulfill the intention of Bill C-49 to provide timely data to the commercial market.

As recommended by the committee in your report on Bill C-30 in December, Bill C-49 has introduced a significant new requirement for the railways to provide confidential, commercial, and proprietary data to the Canadian Transportation Agency.

● (1735)

As you identified, this data is important, as it would permit the agency to more effectively identify and investigate issues in the rail system and exercise its authority to issue orders to railway companies. This is the point that Scott Streiner identified yesterday as an important issue, and it's one that Pulse Canada believes in as well. However, Bill C-49 limits the use of this data by explicitly specifying that it can only be used by the agency to calculate long-haul interswitching rates. Requiring this data from railways, but narrowing its application, severely limits the impact of this new regulatory provision and does not fully achieve the intent for the data to support the agency's delivery of its statutory responsibilities. Equally important, this data could be used to fully measure the impact of Bill C-49 and allow for evidence-based assessments as the bill is implemented.

To conclude, I'd like to address the proposed changes in Bill C-49 that will remove containerized grain from the maximum revenue entitlement. Pulse Canada understands that the government's intent with respect to this policy change is to incent innovation in the container supply chain, increase container capacity, and improve levels of service. These are valuable outcomes, and we must collectively ensure they are achieved, as removing this traffic from the MRE could potentially negatively impact the Canadian pulse and special crop sectors' international competitiveness. The focus, then, must be to ensure that other provisions in Bill C-49 set the necessary conditions for this change to the MRE to be a success and to truly result in more service and capacity. The data recommendations I discussed earlier will help ensure that everyone can measure the policy outcome, but Pulse Canada has recommendations on other provisions within the bill that will ensure that the remedy suite available to shippers in the event of service failure or costing disputes is functional.

First, the reciprocal penalty provision and the accompanying dispute resolution process introduced for service level agreements is a valuable change that will establish commercial accountability between shippers and railways. We applaud the government for introducing this. To ensure that it functions effectively, Pulse Canada asked the committee to consider clarifying that the intent of these penalties is to be sufficient to encourage commercial accountability and performance while recognizing the differences in economic power of small shippers compared with that of the railways.

Second, for small and medium-sized shippers and containerized shippers no longer shipping under the MRE, it will be essential that the general strengthening of the agency's information and dispute resolution services introduced in this bill, Bill C-49, is effective. The agency having the ability to attempt to resolve an issue a shipper may have with the railway company in an informal manner provides shippers with a less confrontational, more cost-effective and timely way to resolve service issues without having to bring a formal level of service complaint to the agency. These are barriers facing shippers when considering accessing agency provisions, and this is why the agency has stated they will increase outreach to shippers. It has nothing to do with the agency "drumming up business".

To fully realize the potential of this provision, Pulse Canada requests the committee to consider clarifying what it means for the agency to take action on informal resolution. Our view is that taking action can include a wide variety of activities, including such things as questioning, site visits, requesting information, investigating, etc. Clarity on this issue would help during the implementation of this bill. Ultimately, however, Pulse Canada views agency own-motion powers, which has been discussed at length today, as the most efficient and effective way to address disputes and network issues and strongly urges the government to consider the agency's request to be granted these powers.

Finally, I'd like to briefly touch on a provision in Bill C-49 that is specifically focused on the grain sector. The requirement in clause 42 of the bill that railways self-assess their ability to move grain during a upcoming grain year and identify the steps they will take to enable grain to move can be an extremely powerful provision that can establish the basis for measuring railway activities against their plan both during and at the end of the grain year. To strengthen this provision and ensure it delivers the intended outcome, Pulse Canada offers recommendations in our brief to enhance that section to clearly set the parameters for the type of information railway companies must provide. For the pulse and special crops sector, better defining these parameters provides an additional platform for the monitoring and assessment of the impact of the decision to remove containerized grain from the MRE.

Thank you.

● (1740)

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

Now we go to the Teamsters Canada Rail Conference, Mr. Hackl and Phil Benson. Of course, Phil is well known to many of us on the Hill here.

Welcome to both of you.

Mr. Phil Benson (Lobbyist, Teamsters Canada): Thank you.

I'm Phil Benson, a lobbyist with Teamsters Canada. With me is brother Roland Hackl, the vice-president of the Teamsters Canada Rail Conference, who will be making our presentation today.

Mr. Roland Hackl (Vice-President, Teamsters Canada Rail Conference): Thank you, Madam Chair.

As vice-president, I represent members on every freight, commuter and passenger railway in this country. Prior to that, however, some 29 years ago, I was hired as a brakeman at CN Rail. I'm a qualified conductor and locomotive engineer, so I have spent a significant portion of my life cooped up in an 8' by 10' control cab of a locomotive, so I am very familiar with the conditions we're talking about with respect to live video and voice recording.

Bill C-49 would provide for potential relaxations of various pieces of legislation that cause extreme concern to Teamsters Rail. We believe that Bill C-49 would compromise our membership's privacy for what can be stated as questionable safety and public benefits. For example, many of you will recall that a few months ago there was a derailment in north Toronto. A locomotive consist crossed over into a train. There was little damage but a lot of publicity; it was in a very populated area. Immediately following that, senior management from CP Rail, who owned the equipment and the track, came out on record saying that live video and voice recording would have prevented the accident. That's impossible. Live video and voice recording is to be reviewed after the fact, so unless these employers are suggesting monitoring live video and voice at the time it happens, there is no prevention possible. It's a tool, at best, for studying incidents after the fact.

The TSB currently has access to LVVR equipment, so for the past several years both major freight carriers and VIA Rail have been receiving locomotives fully equipped with LVVR equipment. This is live equipment. It is recording to date. In the event of an accident or incident, current legislation provides the TSB with full access to the information or data collected through this process.

The proposed legislation would allow employer or third-party access to LVVR, and we believe that would create a chilling effect on communications within a locomotive. It's a 10' by 8' space, where a person is sitting for 10, 12, 14, or 16 hours, communicating with a fellow employee during that period of time, talking about a lot of things. The concern we have is with the the chilling effect—which has been discovered and was referred to by Parliament some time ago as a culture of fear—that was instilled and fostered and nurtured first by the management of CN Rail. That management all moved to CP Rail. The same type of effect is in place now, especially when I hear CP Rail speaking about using this type of information for disciplinary processes. And that's no secret to us, because they have approached the union to say, “We want to use this for discipline. We want to be able to discipline based on monitoring this equipment.”

We believe that open communication between the employees in the cab, much like that between a co-pilot and pilot in an aircraft, is essential to the safe operation of this equipment. If you stifle that for fear of employers reviewing video recording at their leisure for the sole purpose of disciplining an individual, whether or not something has happened, it's going to create a problem with open communications on a locomotive. The private information will no longer be private. People talk about a lot of things in the course of their daily work. This is a locomotive engineer and conductor's office for 10 or 12 hours a day, sometimes longer, and there are a lot of things discussed. Some of it is relevant to railway operations. Some of it is only the conversation that every one of us has with co-workers during the course of our day. Should employers have access to that for any reason?

We think the bill in its present form is contrary to our rights as Canadians. To exempt 16,000 railroaders from PIPEDA, we believe is not appropriate, and this legislation would call for a specific exemption for the purpose of our employers, the people who have been found to foster a culture of fear, to watch. We have a problem with that.

● (1745)

We think the bill is overly vague in how private information is accessed, collected, and used. What third parties are we talking about? What is the purpose of a third party looking at this information?

As you've heard earlier, at least from CP Rail, the LVVR recordings could be used for a disciplinary investigation and proceedings against employees. The employers already have significant means at their disposal to track. There are forward facing cameras called Silent Witness. These face outside a locomotive and track crossings. There are audio recordings of what's going on outside of the locomotive. In the event of a crossing accident, that information is used. There is a locomotive event recorder, commonly called a black box, that records all of the mechanical functions.

There are Wi-Tronix that track the speed and can be utilized to track cellular use. They will send an alarm to the employer to say when something is wrong. Currently, if a train stops in an emergency brake application, an alarm goes off, triggered by the Wi-Tronix, to tell the employer so. With the existing equipment, the employer can then remotely review the forward-facing camera. That exists today. That's what they're using today, without having the invasive technology that puts a camera squarely in my face for 10 or 12 hours, recording absolutely everything I do.

We believe the bill is contrary to the TSB recommendations in its report on the LVVR. The original TSB recommendations call for non-punitive, non-disciplinary, privileged recording of information. We're fine with that, and we're fine with the TSB having access to this information. There is no apparent limit to what data can be collected. We talked about safety-beneficial uses. It's a very vague term. What is a safety-beneficial use? As it stands right now, a recording is running, 24 hours a day, seven days a week. The TSB has full access to that today. Should an employer have access to that information as well?

Many levels of the legal system, including arbitration, judicial review, court of appeals, and all the way to the Supreme Court, have upheld our existing rights to privacy. This bill would exempt us from those rights. With respect to that, there are multiple cases. I brought two with me. Unfortunately, they're only available in English. In one case, an employer thought it necessary to purchase a camera from a local shop and to install it in a clock in the booking-in facility, where employees report for work, to surreptitiously monitor crews. The employer portrayed this as a rogue manager taking this action on his own, but what we have to keep in mind is that the actions of that rogue manager were defended by a multinational corporation to arbitration. Had those actions been upheld, that would be the law in Canada today.

With the other federal employer, we had an incident where there was some suspicion on the part of a manager that an employee was fraudulently claiming benefits from workers' compensation. The manager took it upon himself to retain a private investigator based on a hunch. There was no proof, no data. The video tape was entered into an investigation, and a manager testified that on the Monday following a hockey tournament, the manager became aware of this. I have to ask what this manager knew on the Friday such that he took it upon himself to hire private surveillance to surreptitiously monitor an employee, when he didn't become aware of the fact until Monday. Again, that is what the employers are doing today with the equipment they have at their disposal. Again, the company portrayed it as a rogue manager taking the law into his own hands, but a multinational corporation defended that to the point of arbitration, and again, had we not been successful at arbitration, that would be the law today.

● (1750)

We believe further that this bill is contrary to section 8 of the Charter of Rights and Freedoms, either because the state is allowing the collection of this private information without proper safeguards, or by virtue of allowing employers to collect this private information without proper safeguards. We do not believe there is an attempt to balance the safety benefits with the rights of employees to privacy, as protected by law.

The Chair: Mr. Hackl, I'm going to have to stop you there. I hope you don't have too much more to say.

Mr. Roland Hackl: Did I hit 10 minutes already? I'm sorry.

The Chair: Yes, you did. It's almost 11 minutes, and I let you go a little bit further.

Mr. Roland Hackl: Okay.

The Chair: Maybe you could try to get those last comments in through your answers to questions from the committee. Otherwise, it takes away from the committee's ability to ask you the questions they want to ask.

Mr. Roland Hackl: I'm here for your questions, to help.

The Chair: Thank you very much.

From Fertilizer Canada, we have Mr. Graham and Mr. MacKay.

Mr. Clyde Graham (Senior Vice-President, Fertilizer Canada): Good evening, Madam Chair and members of the committee.

Thank you for inviting Fertilizer Canada to speak with you today in relation to your study on the transportation modernization act. We are pleased to appear before you to provide the committee with information about our mandate, as well as to present our recommendations to help enhance the legislation's goal of furthering competition in the freight rail sector.

I will start with introductions. I am Clyde Graham, senior vice-president of Fertilizer Canada. I am joined by Ian MacKay, our legal adviser on rail issues.

Fertilizer Canada represents the manufacturers and wholesale and retail distributors of potash, nitrogen, phosphate and sulphur fertilizer, and related products. Collectively, our members employ more than 12,000 Canadians and contribute over $12 billion annually to the Canadian economy through advanced manufacturing, mining, and distribution facilities.

Our association, which includes companies such as PotashCorp, Koch Fertilizer Canada, the Mosaic Company, CF Industries, Agrium, and Yara Canada, amongst many more, is committed to the fertilizer sector's continued growth through innovative research, programming and advocacy.

Canada is one the world's leading producers of fertilizer. It is our products that help farmers produce bountiful, sustainable food in Canada and the United States and in more than 70 countries worldwide. We therefore play a crucial role in Canada's agrifood industry, an innovative industry identified by the Prime Minister's advisory council on economic growth.

To meet the demand of the world's farmers, we rely heavily on the railway system to move our products along our trade and transportation corridors to national, North American, and international markets. Fertilizer Canada is a proud partner of the Canadian rail system, and our reliance on rail is so extensive that our membership comprises one of the largest customer groups by volume for both CN and CP.

As key stakeholders, we are encouraged to be working with the government, which has demonstrated a commitment to modernizing Canada's transportation system and capacity. We commend the legislation's objectives regarding freight rail, and we are supportive of many of the proposed changes, including those clarifying third party liability, reinforcing rail safety, promoting competitiveness, and increasing data transparency.

In an increasingly globalized world, we appreciate the government's recognition that a nuanced approach to freight rail is necessary to meet the needs of the Canadian economy. We make our following recommendations understanding that the freight rail system should evolve to ensure that management of Canadian railways does not impair Canadian jobs, trade, or healthy competition.

I would like to begin by discussing the exclusions for long-haul interswitching.

Measures proposed in the legislation that would exclude certain materials and certain regions from accessing the benefits of long-haul interswitching are a serious concern for our members. Canada has long adhered to the common carrier principle as a foundation of our economy. This principle prevents shipping companies from discriminating against a particular type of good. It is what has kept the Canadian economy in motion despite our vast distances. Amending the legislation to exclude certain materials and regions from long-haul interswitching will have the negative effect of eroding the common carrier principle—a concerning precedent for all Canadians.

As most of our members operate in communities and regions captive to rail, denying access to long-haul interswitching based solely on their location increases their costs of doing business. From a safety perspective, I would also like to draw attention to measures excluding toxic inhalation hazard materials from long-haul interswitching. One such material, anhydrous ammonia, is a key building block of nitrogen fertilizer, and it is used extensively in Canada for direct application into the soil to grow healthy crops across Canada. It's a vital fertilizer for many farmers.

● (1755)

To date, there is no evidence to suggest that this material is not safely and securely transported by rail. Our members take transportation of their material seriously.

In support of that record, I'll add the following. Our members use purpose-built railcars for safe handling of ammonia. Our members invest significantly in the insurance coverage and safety measures necessary to safeguard the transportation of our products. Our members already pay significantly higher freight rates to transport dangerous material, and our association proactively develops safety codes and educational resources for our supply chain and for first responders to support the safe handling of fertilizer.

Tragedies such as Lac-Mégantic must never happen again. However, having said that, it is critical that we approach the transportation of dangerous goods through responsible, evidence-based policy decisions.

I reiterate that there are not and have not been any safety reasons to discriminate against the shipment of TIH material, such as ammonia, by long-haul interswitching. Our members already pay premium rates, which compensate the railways for their liability in handling it. When it comes to hauling ammonia, the rates are four to five times the rates we pay for other kinds of fertilizer. Any long-haul interswitching rate established by the agency will reflect this and adequately compensate the railways.

I would also like to briefly present two other recommendations relating to changes to extended interswitching and interchanges.

First, we caution against the provisions that would allow rail companies to remove interchanges from service simply by giving notice. We are concerned that the amendments strip the Canadian Transportation Agency of its authority to reinstate interchanges and strengthen the existing power imbalance between shippers and our railway companies. In the past, railways have denied that interchanges exist to avoid having to turn traffic over to connecting railways. We recommend this provision be removed from Bill C-49 to prevent inadvertent harm to captive shippers in the future.

Second, Fertilizer Canada and its members are disappointed in the government's decision to sunset extended interswitching up to 160 kilometres. I think you've heard this over and over again. We have found 160-kilometre interswitching has strengthened competition over greater distances, as Transport Canada has confirmed. Since western Canada's freight rail landscape has not changed in any fundamental manner since 160-kilometre interswitching regulations were introduced in 2014, we are disappointed by the government's decision to sunset extended interswitching.

The Canadian fertilizer sector is a proud partner of Canada's rail system. It is a system that works for all Canadian industries. It's a team approach to moving goods within Canada and to export markets. Together, we support Canada's global competitiveness in the agrifood sector through trade and transportation. Our $12 billion industry and our 12,000 jobs depend on a healthy, modernized, competitive rail system to survive and to thrive. Ensuring that our products are delivered to farmers safely and securely in places such as Niagara, the prairie grain fields, or the B.C. interior is of paramount importance to us, and we have a long proud record of success in that regard.

We are very supportive of much of what this bill proposes and commend its intentions. The captive shippers, who are on one rail line and captive to that railway, need to benefit from our national railway infrastructure. It's great to see the government act to support them. We do believe that more can be done, though, which is why we strongly encourage the members of the committee to consider our recommendations. We believe they can improve Bill C-49 through a considered, evidence-based policy approach.

Thank you. That's the end of our presentation. Ian and I will be happy to answer any questions that you have.

● (1800)

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

We'll move on to questions, starting with Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair, and thank you to our witnesses for joining us today. I do appreciate the testimony you have provided.

As you noted, Mr. Graham, there's a recurring theme that we are hearing throughout the testimony that I would highlight that. Many witnesses appreciate much of what's in this bill, but they have concerns around certain provisions, one of them being the long-haul interswitching.

You mentioned the measures to exclude the movement of toxic inhalation hazard material and I think that was raised with me in a meeting that we would have had. I'm wondering if you can comment on what the rationale may be. Have you been provided with any rationale for why this exclusion has been made in this act?

Mr. Clyde Graham: We have not been given any persuasive rationale by the government, and it appears from our point of view to have been an arbitrary decision. There's no safety reason to do this, and I don't know why our products would be discriminated on that basis.

Mrs. Kelly Block: You also commented on the common carrier obligations, or the common carrier principle, and the concern that this is foundational to the business that you do. Does your organization have any concern that it is somewhat of a slippery slope if this exclusion is made for long-haul interswitching? Could one assume that down the road these obligations will perhaps not be met?

Mr. Clyde Graham: That's what our brief says. We believe that this is a dangerous precedent. It could be applied to other aspects of the movement of our products, particularly ammonia, by rail. We don't think the railways should be allowed to pick and choose what they move. That's not their job. Their job is to move it safely.

● (1805)

Mrs. Kelly Block: Thank you very much.

Mr. Northey, I do want to ask you a question. Yesterday morning, the associate deputy minister stated that extended interswitching was allowed to lapse because it wasn't heavily used, but was having unintended consequences in terms of the competitiveness of our railways vis-à-vis the U.S. railways. I guess there has been some confusion in some of the testimony we've been given when witnesses have said it was a remedy that wasn't used very much, but then they go on to talk about the implications and consequences it's had in the marketplace. Could you comment on that?

Mr. Greg Northey: It's been well addressed that there's the usage of it, where people would actually use the provision, and then the ability to negotiate better. In our case, we have specific cases where traffic has moved. We would ship a lot of product in the U.S. What we've found is that CN and CP don't necessarily want to move our traffic to the U.S. because they'll often lose those cars for 30 days potentially. Generally, they price very high for those moves to discourage shippers from being able to access those markets. They have to structure their network however they think, and optimize and utilize their assets the way they feel.

What extended interswitching did was it to actually allow those shippers to access BNSF, which wants to move that traffic. When we really look at this and think about the whole network, having that competition is actually helping the entire network. Those who want to use those assets for another move or to go to the west coast or to Thunder Bay won't necessarily feel the pressure from the shippers who are complaining about a lack of service and the lack of adherence to common carrier obligations because another railway can pick it up. In fact, we're optimizing, in general, that provision. It optimizes the entire network, and it optimizes things as far as making economic decisions is concerned, both for the railways and shippers.

That's what competition does, and that's what we saw. When it was used, it had a huge impact. We have a small shipper, and it's able to save $1,500 per car. It's only moving 15 cars, and it has maybe five employees, so that has a huge impact for that shipper. It can invest that money in its business, and it can invest in the economy and grow its business.

As much as it may seem like small numbers for small or medium shippers, it has a huge impact.

Mrs. Kelly Block: Thank you.

The Chair: Mr. Sikand.

Mr. Gagan Sikand: Thank you, Madam Chair.

My question is for Mr. Hackl. I know that the issue of LVVRs is quite contentious, and I'm hoping that this dialogue will be productive and fruitful.

I was listening to your opening remarks without any prejudice or bias, but for this exercise, I'd like take some positions. The first is that there is no absolute right to privacy in the workplace. You shouldn't be discussing anything that is inappropriate or that you wouldn't mind hearing afterwards. For example, I don't mind shooting the breeze with my staff, and it's something I don't mind being recorded. The second position is that, in the interest of public safety and moving the safety yardstick further, LVVR is perhaps a component that's missing in all of the devices that you mentioned. Lastly, I guess, is that the legislation doesn't state that data from LVVRs can be used for punitive or disciplinary measures. Anybody who does that would be acting outside the legislation.

Could I have your comments, please.

Mr. Roland Hackl: Thank you for your question.

An absolute right is an oddity. I believe there is a reasonable expectation of privacy in the workplace. I'm not sure an employer would really want to hear the conversation that goes on in a locomotive after a crew that was contractually or legally required to be relieved from that train in 12 hours was still there 14 or 15 hours later. While entertaining, that may not be the most helpful, so I don't know why we'd want to record that.

I disagree, though, that the technology is not available. The technology is in place and active today. It is there for the TSB to use. Where our concerns lie is in who should be the custodians of this information, of this protected, private, privileged information? Should it be the TSB, which has a mandate and a responsibility to impartially investigate incidents and accidents, or should it be employers that have on many occasions been demonstrated to be.... I don't know if it was a finding of fact that they were malicious, but there was certainly "malintent" in some of the actions employers have used with respect to discipline and punitive actions against employees. That's the concern.

I'm not sure I read the legislation the same way when we say it's not punitive or disciplinary. The way our legal folks have looked at it might be a bit different, but we'll have to look into it and get back to you on that.

● (1810)

Mr. Phil Benson: Actually, to clarify that, if you read the transportation department's actual facts and questions and answers, they state quite specifically that yes, it can be used for discipline. This morning, you heard CPR state quite specifically that, yes, it will be used for discipline.

From Transport Canada itself, it has been answered, which is contrary to what madam Fox from the TSB said the other day that privacy rights had to be privileged and protected. Privilege belongs to the person whose privacy it is, so with all respect to you, I don't really care what you think about privacy rights. What I care about is what our members say about privacy rights, and what the Supreme Court arbitrators and the law of this country has said about privacy rights. It's easy for somebody else to give away another's privacy rights. The privilege stays with the person, not with the company or the government.

The second point madam Fox made was that it must be non-disciplinary and non-punitive. Based on the statement from Transport Canada, it's not going to be.

We have a third point if you want it, but go ahead.

Mr. Gagan Sikand: No, please go on.

Mr. Phil Benson: Third, madam Fox specifically said that they need a just culture. As I've said repeatedly before this, and brother Hackl has just stated, there isn't a just culture. We have a fantasy being developed about what an LVVR could or should be, but not what it will be.

Mr. Gagan Sikand: Quickly, because I want you to respond to my follow up. In regard to the just culture or what was said earlier, what I'm saying is that if those actions were outside the legislation, if you used it for a punitive or disciplinary measures, you would be doing it wrongly. You wouldn't be acting within the legislation. Does that change your viewpoint?

Mr. Phil Benson: That would address this somewhat, but to be clear, that is not what Transport Canada has told you in their response and facts, and it's not what the companies have stated to you. With all respect, we can't comment on what could be in a piece of legislation; all we can deal with is what is in that legislation at this moment.

Mr. Gagan Sikand: In your opinion, if that were to be in the legislation—that those actions would be outside of it—would your position be different?

Mr. Phil Benson: You're asking a hypothetical question, which is difficult to answer because the privilege of the person to have their privacy protected is an individual privilege. It's not something on which I, as a Teamsters Canada representative, or brother Hackl, as the vice-president, can say, "Oh, gosh darn, according to our legal opinion, it is a violation of section 8 of the charter and a violation of the Privacy Act."

Quite bluntly, you're saying that if we change a piece of legislation that, in all likelihood, is unconstitutional and a violation of the Privacy Act, then it will make this okay in our opinion. As you understand, Mr. Sikand, that puts us in a very difficult situation. It's a hypothetical question that we will not answer.

The Chair: Thank you very much. We are over time.

Monsieur Aubin.

● (1815)

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

Good afternoon, gentlemen. Thank you for being here.

A lot has been said about those voice and video recorders. I don't want to prolong the debate excessively, since I think you did a very good job of expressing your view, and we have heard it.

I just have one question: if Bill C-49 were to clearly and explicitly state that voice and video recorders can be used solely by the TSB and only after an accident, would your position change in any way whatsoever?

[*English*]

Mr. Roland Hackl: That is our position, that it should be Transportation Safety Board access only. It should not be shared with employers or third parties. That's been our position since the initial introduction of this equipment, and that would satisfy us.

[*Translation*]

Mr. Robert Aubin: This brings me to the topic of safety measures that, in my opinion, are even more important, and many witnesses have spoken about this. You can probably corroborate that. Most rail incidents tied to a human factor can be attributed to fatigue, yet Bill C-49 does nothing to address train operator fatigue.

Representatives of the railways tell us that they are in continuous discussions with the unions about this and that it is important, a priority even. However, it seems to me that the slowness with which the government and the railways are implementing measures to combat fatigue is a much more important safety aspect than installing a recorder or not, which will only help with the post-accident investigation.

Do you think there has been any progress and that measures can soon be in place for fatigue?

[*English*]

Mr. Roland Hackl: Happily, yes. First of all, LVVR would do nothing for fatigue.

As far back as 2010, CN Rail and our union started negotiating methods within the collective agreement for how to address fatigue. It didn't get a lot of steam and didn't get a lot of headway. The last collective agreement, which I believe was ratified with CN on August 4, contained a lot more on fatigue. As well, CN and the Teamsters have entered into a co-operative plan with the help of a fatigue specialist, a former TSB officer who specializes in sleep science, to work with us accumulating and tracking scientific information to ensure that the methods we're taking with respect to crew scheduling, rest, and work-life balance are having a positive and factual impact. It's one thing to say that we think this is going to help; it's another thing to measure how it's going to help.

I believe you heard a little bit from CN today about the Fitbit study, in which we actually.... I've worn them. We wouldn't put anything on our members that I wouldn't do myself. It tracks your waking and sleep habits. There were a few bugs at first. For instance, it recorded that during a two-hour period when I was at a pension meeting, I was asleep, so there is a little debate on that, but we worked out some of the bugs in that and our members are wearing them. The plan, and what we've done, is to put them in the non-scheduled environment without the enhancements that we've negotiated, track their information, transform their environment to a more scheduled, structured environment, and let them adjust to that. We're just now getting the data back with the follow-up information, and it's been very positive so far.

We are getting letters from members saying, “My goodness, I finally have a life and things are working well”.

Interestingly, last week—I'm not sure what CP said to you about this—we reached a tentative agreement with CP Rail, a one-year extension to the existing collective agreements for locomotive engineers and conductors at CP. That agreement expires this December. There is a tentative extension out for ratification now. The cornerstone of that agreement is provisions with respect to scheduling to try to address fatigue in a similar manner using the same sleep specialists we are using at CN to try to make improvements there as well.

We are seeing a lot of things, from better work-life balance and better retention to the employers benefiting from better attendance at work, and people aren't booking off unexpectedly.

We're working through the collective agreement process to get there, so there has been some good news. You may or not be aware of the agreement reached last week, but that's positive for everybody to try to get something done there.

● (1820)

The Chair: You have one minute.

[*Translation*]

Mr. Robert Aubin: My next question is for you, Mr. Graham. I have to say that I cannot explain the exclusion you're subject to any more than you can.

Should Bill C-49 contain specific conditions for transporting dangerous goods? Currently, the transportation of oil and the transportation of canola oil seem to be handled exactly the same way, which seems a little strange to me. I'm not saying that there is a connection between that and your exclusion, but do you acknowledge that dangerous goods should be handled differently? This isn't in Bill C-49.

Mr. Clyde Graham: Thank you for your question.

[*English*]

What we're talking about here, in this bill, is the exclusion for toxic inhalation goods, which includes ammonia. There's no safety reason for this. We're not sure what that exclusion was done for. Other dangerous goods are not excluded, so there can't be a safety reason for this. Obviously, our goods, when they're dangerous, we have to look after. We have to steward them. We work very closely with the railways and everyone else, including first responders, in doing that. But these provisions that we're talking about, interswitching, are economic provisions. They're not safety provisions.

I don't know if that gets to your question.

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

Mr. Hardie.

Mr. Ken Hardie: Thank you, Madam Chair.

Let's talk about the LVVR, because I can see that this is.... I'm torn on this one. I'll follow my colleague's thinking and give a little bit of a personal reflection on this. Traditionally, there have been some challenging labour relations issues between the companies and their workers. I understand that. You've just talked about a couple of agreements that have come across. It sounds like things are improving, but still, this could plunge the whole system back into a kind of toxic soup. You just don't want to go there.

I guess the question then, and I'll expect just a short answer, is that if LVVRs come in, who should own the data?

Mr. Roland Hackl: The short answer, as I said before, is that the custodians of the data should be the TSB in the event of an incident or accident. It should not go to an employer for whatever reason they want to use it, especially a vindictive employer, as we've seen over so long.

Mr. Ken Hardie: Okay. What would happen, though, if the TSB found, in reviewing the record that was captured, that one or both of the crew were on a cellphone? We all know that cellphone use in that operating environment is against the rules and should be against the law, just as it is for driving. Certainly, in my ex-life with the transportation authority in metro Vancouver, where we do have LVVRs, by the way, on the buses, we don't need that because passengers would be taking pictures of that operator on the cellphone.

But okay, so the TSB discovers that the crew was using cellphones. The right-thinking, average, reasonable person would expect there to be punitive action on that, would you not agree?

Mr. Roland Hackl: I would agree that people may expect that. The reality is that if I'm on a cellphone today, without LVVR, I'm fired. If I'm involved in a crossing accident and I'm on the cellphone, not only am I fired and never getting my job back, as the arbitral jurisprudence has upheld time and time again, but I'm also probably going to get charged with a criminal offence. The other thing that's going to happen is that I'm going to be charged civilly, so while I'm in jail my family is going to get booted out of their house.

There are extreme ramifications.

Mr. Ken Hardie: All this does is just put the nail in, in other words. If there's a record of this having happened, really nothing changes. The punishment would fit the crime, basically.

Mr. Roland Hackl: The record is not the issue. If the data is used responsibly by the TSB for the purposes of investigation, and cellphones are shown to be the problem....

We know that cellphones are a problem. If a guy's on a cellphone, that's an issue. The concern is not necessarily cellphones. Nobody wants that. We tell people, point-blank, “No cellphones. You are fired. Don't do it.” The concern is around the other things. For 12 hours I am being recorded, to be reviewed at my employer's leisure. This technology is live-streamed to my manager at his house at four o'clock in the morning, if he so desires. I don't think that is a situation that any employee should be subject to in this country.

● (1825)

Mr. Ken Hardie: I understand that.

What happened in the collision in Toronto? What was the cause of it?

Mr. Roland Hackl: The report just came out. I can't quote it verbatim. It was human error. I understand that fatigue may have been a factor, a piece of equipment.... There are a lot of other factors going on too. A light engine, which is a three-locomotive consist, crossed over into a freight train, as I recall.

What a lot of people didn't hear about, what didn't make the headlines, was that the crew was called immediately before and told to be on the lookout because there were trespassers in the yard. So they were watching for people running around and paying attention to a whole bunch of things. They hit a crossover, which is a very short piece of track that crosses them from one track into another, and they struck another movement.

Mr. Ken Hardie: I see.

Would there be some learning out of that, that perhaps a video record would provide to the company and to the employees alike, suggesting other ways of handling a situation like that, because it's bound to recur, right?

Mr. Roland Hackl: I don't know if it's bound to recur, but I would suggest that current legislation and what we are advocating TSB use in the event of an incident or accident would provide exactly what you're asking for. After that incident, the TSB would say, ”We have a problem; send us the footage, and let's have a look at it”. The TSB investigates and we go forward from there.

Mr. Ken Hardie: I think, and I'll comment, that your crews are operating multi-tonne units that are very difficult to stop, very difficult to adjust. I think there is a reasonable expectation among the public that things happen the right way, and I think obviously given the safety record, most of the time they do.

When something goes haywire, though, there is also a reasonable expectation that mechanisms should be in place to find out what happened, to remedy the situation on an operational basis; and if somebody has done the wrong thing, if the evidence is there of that, the public will expect some kind of punishment for that. That's just a comment of mine.

Mr. Phil Benson: I think Madame Fox of the TSB addressed that. The TSB, in its review, is to find out what and how, but what goes forward as to criminal and civil liability is something that happens after the TSB does a review. She was quite clear about that: privacy will not get you around violation of the Criminal Code.

There's a difference. When people make the statement, “If somebody violated the law, nothing saves you against a violation of law”, but what it does do is it brings that record into a court where a judge will review to decide whether or not it is probative, whether or not it will be public, whether or not it will be seen.

We personally do not want pictures of our membership eventually ending up in the press, because once the privilege and protection is broken from the TSB and it goes to third parties, it is going to get out. I really don't think it's appropriate to have, as in America, sort of a live streaming of what happened in the last 30 seconds of your loved one's life, over and over again.

The Chair: Thank you very much. Thanks, Mr. Benson.

Go ahead, Mr. Badawey.

Mr. Vance Badawey: Thank you, Madam Chair.

I'm going to continue with the theme that I've been sticking to for these past many hours. I'm going to direct my questions to Mr. Graham.

I'm very much interested in the overall vision. Let's face it: this is all about business. This is about business practice and, with that, trying to establish a balance based on value return on your investments, ultimately giving us, as you stated earlier, a better performance by your company and those you represent. Fertilizer Canada's members provide 12,000 jobs and contribute $12 billion annually in economic activity in Canada alone; 12% of the world's fertilizer supply comes from Canada, making a heavy contribution to GDP that we're counting on; and Canada exports fertilizer to 80-plus countries, with 95% of Canada's potash production being exported; and finally, fertilizer is the third biggest volume commodity shipped by Canadian railways. So with all of that, there is in fact something to be said about that.

What interests me most in this process this week of listening is ensuring that we inject the attributes of Bill C-49 into the overall bigger vision as it relates to proper business practice. It becomes an enabler for you, so that the vision of Minister Garneau with respect to ensuring that future infrastructure investment is aligned with a national transportation strategy commences, and that we don't find ourselves with the same problems and challenges we had going back to the early part of the century when we started building these pieces of infrastructure in silos, unfortunately.

How do we integrate our data, our distribution, our logistics systems? How do we ensure that we integrate not only our national transportation infrastructure but also our international transportation system, so that once again our GDP performs at a better rate well into the future, for 30 to 50 years? My question for you is this. How do we get better at that to become more of an enabler for you to do business?

● (1830)

Mr. Clyde Graham: I'm just a fertilizer guy.

The economy works together best when businesses collaborate, and there are a lot of players in the whole supply chain that moves products in and out of Canada. Obviously, having forecasts of what we're going to be doing with our business and where we're going is important, and we hope that the railways react to that. I think sometimes the railways have delayed making investments in infrastructure until the volume is there.

Our industy in potash, in particular in the province of Saskatchewan, has invested about $18 billion in increasing its capacity. That's an important signal to the marketplace, to the ports, to ocean freight, to the railways that our industry is growing and that we need more capacity in the system. We hope the railways would respond to that.

There are constraints in the system because of geography. We understand that. We know that there's an aggressive program of infrastructure improvements at the Port of Vancouver that's being proposed. We'd like to see the government get behind that, for example. I don't think there's a simple answer to that.

I'd just like to ask if the chair would allow Mr. MacKay to respond briefly regarding the North American network.

Mr. Ian MacKay (Legal Counsel, Fertilizer Canada): Just to address the member's question, one of the great things about this bill is it recognizes that rail-to-rail competition is important for shippers. In the absence of real rail-to-rail competition, we heard Mr. Johnston from Teck talking about running rights today. That's one version or possibility. But the measures that are proposed in Bill C-49 are crucial in substituting legislative prohibitions for real competition. To meet the goals that you've talked about, we want to make sure that those measures are effective in actually creating an appropriate substitute for competition.

Mr. Vance Badawey: How much time do I have left? Two minutes.

I'll go to Pulse Canada, Mr. Northey.

Can you add your two cents' worth to that question?

Mr. Greg Northey: I'll just build on what Ian said. We have the building blocks right now in Bill C-49. We've had a lot of shippers here today. There's been pretty strong unity on some key points. Bill C-49 adds a building block to your vision, and that's the intention. I think everyone can see that potential in this bill. It gets very close to what we want, and competition is a big part and long haul is a big part of that as well as the data.

Ultimately, if we're going to achieve those objectives, we need to be able to measure. We need to be able to measure it to see whether the policy is actually working. We have to be able to measure whether people are having success within the system we have.

Bill C-49 brings those data, this idea of data and evidence, into scope for one of the first times. It's just those really minor tweaks to make sure that we actually unlock that and allow it to become a platform to work towards. As well, Transport Canada is also in parallel doing their data and transportation systems. I think everything is there. We just need to bring it together.

Mr. Vance Badawey: Thank you.

The Chair: Mr. Shields.

Mr. Martin Shields: I appreciate your being here this evening. I have just a few questions. I haven't touched on this one: soybeans and pulse. Some people say soybeans are a pulse, and some say they aren't, but I believe they are. Are you working on that because it's not in here?

● (1835)

Mr. Greg Northey: Yes, our members also represent soybean growers in the west, the Manitoba group and the Saskatchewan group. Our initial position when Mr. Emerson's review was happening was that soybeans and chickpeas in fact should be in schedule II. Absolutely, and the cases made today make a lot of sense for including it. We're in a situation, though, as I mentioned in my opening statement, that we're getting all containerized grain removed from the MRE.

So we have both the desire to put those crops into it, but then we're also grappling with the situation of having a huge portion of our movement pulled out of the MRE.

Mr. Martin Shields: That's where I was going next. You've gotten there.

In the sense of regulatory, you didn't have any amendment in the sense of changing the regulatory to.... As more niche crops, I believe, will move into that, and some that are less are still in it, I think that's a piece that would be very important, the sense of how those ones that are in there....

Have you had any direction or information that says what the rationale is for excluding...which I believe is going to be growing more as intermodal container shipping.... Why? Have you been given any rationale?

Mr. Greg Northey: We've asked a lot about what the rationale is, and we've done our own study on what the impact of that would be. We haven't had been given a reason. One of the things that makes it complicated.... We love the outcome, the intent of it of more capacity, more service, and more innovation in containerized movement. That's great. There is not a shipper in Canada that wouldn't want that.

The issue with containerized movement is that the ocean containers are owned by the shipping lines, and so the railways don't necessarily control the capacity or where they're going, and a lot of decisions are made about those containers that are not in the railways' control. Just moving containerized grain from the MRE basically just gives the railways the ability to change rates because you don't have the MRE protection of the rates.

If rates increase, it will be great if it goes into the supply chain, if it goes into innovation, and if it goes into all these things that the goal is. We want to see that monitored. We want to see evidence that the policy decision, which is a big one, is going to work because we want to see those results. We want to be able to measure that and to be able to make sure it's happening. We will do everything we can to try to make that happen, if that's a policy decision, but we need to see it happen because otherwise there's no point.

Mr. Martin Shields: With those being built, we can go to the railway that you go to with the fertilizer. We see your railway going through our communities. They're your cars, you built them, you label them, and we see car after car. How many cars will you stack on a railway line these days?

Mr. Clyde Graham: There are around 200 in some trains of the Teamsters. There are unit trains in that magnitude.

Mr. Martin Shields: [*Inaudible—Editor*] cars, which is, with the containers that are already built, you don't want to have to move to that because you have a lot of small producers, and you referred to that earlier. You're in large where you can put 220 cars. You can't do that, so it penalizes those small producers for products that are in demand in the world for what you might believe you're saying is a profit because it can't control it.

Mr. Greg Northey: Yes.

It's already difficult now to get ocean containers in the country. Some of the larger shippers can control them because they will have an agreement with the shipping line that controls the containers. Shipping lines don't want to see containers languish and not be used, because they want to get them back to China as quickly as possible to bring them back with consumer goods, because that's where they make their money. They don't necessarily make it back hauling grain to Vancouver. There is a lot of complication in that supply chain.

Removing the MREs is a small piece of how to unlock the potential of that supply chain. If this is a policy decision that's going to be made, we want to use it as a platform to have a discussion and make that happen. Those small shippers need those containers. We want those containers.

Mr. Martin Shields: It think that's important because we've talked about supply chains today, and you want to make them as efficient and smooth as possible because we have the products that the world wants, and those small, niche crops that we're developing in Canada are really crucial to developing larger markets.

● (1840)

Mr. Greg Northey: Absolutely.

The Chair: Thank you very much.

Mr. Graham.

Mr. David de Burgh Graham: Mr. Sikand has a great question before I start.

Mr. Gagan Sikand: Greg, do you classify soy as a pulse?

Mr. Greg Northey: Technically, we wouldn't classify it as a pulse. We represent the growers of pulses, because it's grown, but it's not.... We wouldn't describe it as a pulse.

Mr. Gagan Sikand: Thank you.

Mr. David de Burgh Graham: Mr. Hackl, I'm going to come back to you. I'm sure you're not going to be surprised by that.

Nine years ago today, one of the worst railway accidents in North America happened at Chatsworth, California, when a Metrolink commuter train crashed into Union Pacific freight train. Twenty-five people were killed and 135 injured. The operator of the train was on his cellphone texting at the time. In your view, if he had known he'd be on an LVVR, would that accident have happened?

Mr. Roland Hackl: I don't know that. I know that since that time there's been technology in place, through the Wi-Tronix, that can evaluate whether there is a cellphone signal being received or transmitted from a locomotive. It can tell you if a cellphone is on in a locomotive. That technology exists. Most of it is already installed on a locomotive, so if they really wanted to go after cellphones they could flip the switch on that and tell you if a cellphone is on and could investigate that.

There is no need to have live video monitoring. It's something the airlines don't have, something that no other country has. This would be a first in the world. To institute this type of technology with employer access at this level would be a first in the world. I simply don't see a need for it when you have the technology that would do exactly what you ask.

Mr. David de Burgh Graham: You've already mentioned that many locomotives already have the technology in place. Are you already seeing abuse by employers of this technology?

Mr. Roland Hackl: Yes, I am. As I reported, there's been a couple fairly recently—I'd say within the last couple of years because it takes a while for an arbitration case to get through—showing abuse of video technology with respect to existing employees.

There are currently outstanding grievances with respect to the Silent Witness, the forward-facing camera. Those have not progressed through the arbitration process yet, so it's difficult for me to comment on the facts of those cases, but they would involve the company going and reviewing after the fact. These track data for 72 or 96 hours. A shop employee would be recorded in that data and then a manager reviews it, just to check and see if there's anything out of the ordinary. There was no incident to prompt an investigation, but the use of video technology in that manner we think is abusive and shouldn't be allowed. We don't see any need to open up the door further.

There are existing measures. The TSB and Transport Canada have both endorsed efficiency testing as a means of checking for crew activity and rule compliance. I don't see the need for the unprecedented use of this technology.

Mr. David de Burgh Graham: If the technology exists, which we know it does, should or could the equipment indicate to the operators of the train that they're being monitored actively, telling them when a light comes on that they are being watched by a manager right now?

Mr. Roland Hackl: I don't think it's appropriate that a manager does that, but the technology is live today.

Mr. David de Burgh Graham: That's what I'm asking you. Given that it already exists, is there any way of having feedback when you're under way saying that you are being watched right now?

Mr. Roland Hackl: That a manager is...?

Mr. David de Burgh Graham: You said you can tap into an engine and live-stream that. You just told us that, so can they go the other way?

Mr. Roland Hackl: The technology exists and it's currently for use by TSB only. That's what the law provides for today. What you're asking me, I guess the way I see it, is that if I know my rights are being violated, that's okay. I can't agree with that, I'm sorry.

Mr. David de Burgh Graham: That's a fair point.

Metrolinx was here yesterday and I'm sure you saw the testimony. They were very clear that in their view the LVVRs, which they already have in place and which I believe are already with the union members on those trains, are intended as preventive and they intend to review the tapes on a preventive basis rather than a disciplinary basis. How do you feel about that? If they're not listening to the conversations to hear what you're saying after 15 hours of service on a 12-hour shift, but to make sure you're calling the signals and clearly enforce whatever you're doing, do you see a role for it in a preventive capacity?

Mr. Roland Hackl: I'm not familiar with what Metrolinx said yesterday, but I can tell you that Metrolinx, the GO train, which is obviously the largest conveyor of passengers in the country, has an exhaustive LVVR policy that was negotiated with the Teamsters Union—and the Ministry of Transport, and I believe the federal ministry was involved as well, because the tracks that Metrolinx operates on are federal ones—that allows for TSB use only. This is what's in place today. It allows for TSB use only in the event of an incident or accident. There is a defined chain of command. There is one person, and the position is specifically named in the policy—who has access. It is put onto an encrypted key and hand delivered to the TSB for evaluation. That is the process in place today, and if they have advocated for something else, I'm not aware of it. I haven't seen any submissions from Metrolinx so I can't really comment on what they've said, but that's what's in place today at GO.

● (1845)

Mr. David de Burgh Graham: If the companies are to get access to this data, should the unions also get access to it?

Mr. Roland Hackl: I don't want access to this data and I don't think the employer should have access to this data.

If I could clarify one thing, Metrolinx does not employ any conductors or locomotive engineers.

Mr. David de Burgh Graham: No. They're using Bombardier, I know.

Mr. Roland Hackl: Bombardier, yes, is the employer. Metrolinx is the umbrella organization, so they do not have any actual employees, which was the subject of the arbitration case and how that policy came to be.

The Chair: Did you want to clarify that?

Mr. David de Burgh Graham: Yes. Are Bombardier crews Teamsters members?

Mr. Roland Hackl: That's correct.

Mr. David de Burgh Graham: Thank you.

The Chair: Ms. Block.

Mrs. Kelly Block: Thank you very much, Madam Chair.

I want to ask another question of you, Mr. Northey. I noted that in your response to the CTA review report, dated April 18, you had recommended that the 160-kilometre limit be made permanent. You've seen Bill C-49, and I know you made other recommendations.

How does Bill C-49 address the recommendations you made following the release of the CTA review?

Mr. Greg Northey: We wanted it to be made permanent because we were seeing real value for shippers. Service capacity at a fair cost comes from competition. Extended interswitching was providing that. It was very clean and simple, and it worked well.

We had an exhaustive list of other recommendations. At Pulse Canada, we focus heavily on data; we're very data-driven. We're evidence-driven: we don't want to use anecdotes to describe service failure; we want it measured. We have put lot of money into developing new data. Data is a big piece. Bill C-49 really moves the bar on data. It doesn't quite get to where we want it, but it's there.

As to own-motion powers for the agency, for small and medium-sized shippers there are serious roadblocks to being able to access level of service complaints, or FOAs. They have neither the time, the money, nor the desire really to go up against a railway when service is failing. Our view is that in those cases you need a strong regulatory backdrop, and we need an agency that has data and evidence, and that can monitor the network and intervene when service is failing.

As was discussed earlier today, own-motion powers are extremely important for us. We don't see provision for them in the bill, and it's one of our recommendations now. We would like to see such a provision in there.

Those, I think, are the key issues. Reciprocal penalties are also very important. We do see provision for these in this bill. All we really want is a clarification of intent, of what it means. When you talk about a balanced penalty or a balanced amount, what a shipper can pay versus what the railway can pay, and also what that number has to be set at to drive a change in behaviour are very different. If a shipper had to pay a fee of $100 for not loading a car in time, that has an impact, but a fee of $100 for the railway for not delivering cars to a shipper who's shipping 15 cars.... They're probably just going to pay that penalty, potentially.

What is it, then, that will drive a change in behaviour within a contract? That's really what we want. It's all there. It's not a change in the wording of the bill; it's just clarifying the intent of it. Balance needs to take into account the ability of a small shipper versus that of a large railway, and how you drive performance.

I would say, then, those three: data, reciprocal penalties, and creating a competitive option that extends interswitching. We want to make long-haul work. We don't really care what the name of it is or how it works; we want to see a result from it. We're concerned right now by all the exclusions.

As you heard today, the costing.... We support all of that. We really need it to work. It's a result. We're results-based. Shippers don't care what the names of these things are; it's the result.

● (1850)

Mrs. Kelly Block: I have one minute. I would just make an observation. I think our witnesses have been very gracious in extending to the authors of this legislation a belief that the intent is there in the bill.

It is my hope that the recommendations and the amendments that have been suggested and have come forward from so many witnesses will be seriously considered, to address the concerns that each of you has raised, and their implications for the industry.

Thank you very much.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I would like to speak to Mr. Northey for 30 seconds.

You said something that burns my ears every time I hear it, which is that Bill C-49 is a step in the right direction. If it's in the right direction, why aren't we going there? I find it difficult to understand this approach that makes many witnesses say that the bill is a step in the right direction.

Do we want to get the consent of the various lobbies to arrive at a bill that ultimately doesn't make anyone happy? For some, this is a step in the right direction, and for others it is a step in the wrong direction. Shouldn't Bill C-49 make a decision and go as far as possible in the areas where we can, be it in data or interswitching? I have the impression here that the positions are always neither here nor there.

[*English*]

Mr. Greg Northey: We've had a lot of rail legislation in the past few years. It has been about incremental improvement each step of the way. That's the nature of what happens. We've been discussing this for 100 years. Shippers carry on with what they get—restricted capacity, poor service, unreliable rail delivery. We just soldier on.

In legislation we've certainly seen these incremental steps, and Bill C-49 just adds to that. We would love it if it would really resolve the issues we have and the fact that there is not a functioning market in rail, but it's difficult. Legislation is clearly difficult. We really want to get there, and we think this step could be a big one. We just hope it can be. The intent is there. We're trying. We want to make this work this time to the extent we can.

I'm sorry. It does seem unsatisfactory, but I'll tell you what. When we talk to our stakeholders, they ask exactly the same question, because ultimately when it comes down to it, they are going to ask for results. Is this going to work for them? We look at it, and some of it likely won't work for smaller shippers.

[*Translation*]

Mr. Robert Aubin: Thank you all the same for making that distinction. We've gone from one step to a big step. I imagine we're ahead.

I'll now go back to Mr. Hackl and Mr. Benson.

As far as the recordings are concerned, which have created quite an uproar, I think we agree. The TSB asks for access to the recordings to conduct its investigations, and you are prepared to give them, as long as the recordings remain confidential. I think we agree on that. That said, it is a post-accident measure. You have given me a glimmer of hope as to possible measures to counter fatigue.

I would like to address one last point with you. For decades, Canada's rail industry has relied on a visual signal system to control traffic over a significant portion of the network. It has also been more than 15 years since the TSB has steadily emphasized the need for additional physical defence. We are talking here about alarms. It even asks that the train be automatically stopped if the driver misses a signal, for instance. Bill C-49 says nothing about all of these measures. In my opinion, these are genuine rail safety measures, since they allow pre-accident response, not post-accident analysis.

Where do you stand on these measures? I would like to hear your views on establishing additional physical defences on locomotives.

● (1855)

[*English*]

Mr. Roland Hackl: That's an interesting question, and I wish there were a short answer. Unfortunately, I think locomotives are currently equipped with LVVR. The only cost that the railways will see is for the maintenance of that and access to it. Positive train control or cab override systems or those types of things would involve a multi-billion dollar input on the part of the railways.

First of all, let me say that I hope we're not arguing about these things. We're discussing them. I think it's the line of least resistance right now. LVVR is something that exists, and the railway companies are seeking to exploit the legislation. Whether they are interested in putting billions of dollars into positive train control and those types of things, I don't know.

Whether that's the answer or not.... I don't know if that helps you, but that's the concern I have with respect to what you have asked.

Mr. Phil Benson: Taking away our privacy rights doesn't cost them any money. Quite often when I look at rail regulation, it involves a lot of smoke and mirrors, a lot of stuff, but we don't really want to spend any money.

One of our concerns here that Mr. Hackl has laid out quite eloquently relates to all of the features already in place that could be used currently. When you are going to take away somebody's privacy right, the first question the courts will ask you is whether there is an alternative way that could be used that would achieve the same ends or better without taking away that privacy right. The answer is yes. It already exists.

The question I have for all of you MPs to think about is that slippery slope, the fact that I think the bureaucracy has been pushing their agenda for a long time on this. It's something that we have been fighting them about. They are not particularly friendly to us or to labour. The point simply put is that they want this policy because they want it to happen. There are other ways of doing it, but they're just going to exempt somebody from privacy. They think, let's just exempt somebody from the Constitution. Let's just exempt somebody's rights.

I think every parliamentarian should have their back up about this and should be thinking seriously. Especially for the Liberal Party, this is the foundation of most of these rights. Just because a bureaucrat or somebody walks in and says this is something they would like to do.... Mr. Hackl has laid out quite eloquently what else already exists, and that slippery slope is something we should try to avoid at all costs.

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

Thank you to all the witnesses.

I think you can see by the questioning that we all care very much about Bill C-49. More importantly, we care about doing the right thing.

I thank you for sharing your thoughts with us. The committee will continue to grapple with this as parliamentarians always trying to do the right thing.

I move adjournment for today.

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