

Abridged CTA Testimony

December 6, 2000

## **Commuter Rail and the Canada Transportation Act** **Review**

Canadian commuter rail services share similar challenges in gaining access to rail corridors at reasonable rates. We also share the objective of providing environmentally safe, efficient public transportation for good taxpayer value.

The following commuter rail operators gave testimony at the Canada Transportation Act (CTA) Review Hearing: West Coast Express – British Columbia; Agence Métropolitaine de Transport -- Quebec; GO Transit – Ontario.

### **Benefits of Commuter Rail**

Each year in Canada, commuter trains provide 53 million rides to customers and taxpayers using only 500 kilometres of track. With 40 percent of greenhouse gases originating from urban transportation sources, especially private automobiles, providing alternatives to single occupant vehicles is clearly in the public interest.

With growing traffic congestion in urban corridors, more people will choose to commute by rail, but only if favourable economics will allow the expansion of services to occur. Rail-based transit has a key advantage over other forms of mass transit in that commuter rail usually operates on existing rail infrastructure. This transit option does not compete for space on roads and highways.

Canada has committed to reducing greenhouse gases to help minimize the impact of global warming. Commuter rail can play an important role in meeting this commitment, while protecting existing greenspace that might otherwise be lost to highway expansion.

### **Barriers to commuter rail access limit expansion**

Commuter rail operates in an environment dominated by monopoly service providers (Canadian Pacific Railway and Canadian National Railway) without recourse to legislation if railways refuse access to their tracks. This means that commuter rail services face unreasonably high rates, restrictive contract provisions and in some cases, controls over how commuter rail service is delivered.

Under the CTA, shippers of goods such as wood, potash or grain have more rights and dispute resolution processes available to them than commuter rail operators. Provincial commuter rail authorities lack such things as access to running rights – (Section 138) and level of service – (Sections 113 to 116).

Railways can arbitrarily stifle the growth of commuter rail operations, and often give preference to the expansion of freight traffic in lieu of commuter operations. Railways are able to resist public demands for commuter rail expansion because:

- there are no legislative remedies when railroads restrict access to their tracks,
- there is no independent assessment of the true capacity of rail corridors.

Commuter rail operations also face barriers to expansion because of the high cost of rail access. In a monopolistic market, railroads extract the highest price commuter rail customers can bear because there are no negotiating or competitive alternatives. Commuter rail could provide better value for taxpayer's dollars if railways charged provable and direct costs plus a reasonable margin. This is not the current situation.

High costs for services are compounded by the railways' demand that commuter rail operators assume all risks (including the railway's liability). This situation, places an unreasonable cost burden on commuter rail operations and consequently on the taxpayers.

The free market does not exist for commuter rail operators. Our agreements with the railways contain restrictive confidentiality clauses which effectively control the release of information to the exclusive benefit of railways. In fact, these restrictive clauses limit commuter rail operators from providing relevant information to the CTA hearing.

In summary, commuter rail has no legislative remedies if railways refuse access to their lines, charge excessive fees for services or impose restrictive confidentiality clauses in contracts. These circumstances create barriers to the viability and expansion of commuter rail that is contrary to the public interest.

### **Required Relief**

- Federal funding program to support urban transportation
- A national transportation policy that specifically recognizes commuter rail as an integral part of the solution for current urban transportation issues.
- A regulated mechanism for commuter rail similar to the 1986 Bill C-97 providing economic and other efficient protections for commuter rail and taxpayers to be developed by the CTA review panel.
- Amendments to the Act to provide access for commuter rail to the Canadian Transportation Agency for competitive reviews and, if needed, timely intervention on issues where normal market practices are not occurring. Until a more defined process can be implemented by the CTA Review, given the existence of long term commuter rail agreements, the legislation should provide a process for a one time review of all existing commuter rail agreements.

### **Rail Line Transfer and Discontinuance**

The transfer of ownership of a railway line can have huge implications for commuter rail, but under current legislation commuter rail has no voice in these decisions. Commuter

rail operators want the same rights as VIA Rail when railways wish to sell, lease, transfer or discontinue operations on a line.

Under the Act, government authorities can acquire a railway line for “net salvage value” if the railway company cannot sell the line on the open market. Commuter rail authorities should be entitled to receive separate notice and have the right to receive and respond to offers.

The Act also fails to contemplate situations where there may be little freight service on a rail line, but the line is required for rail passenger transportation. In this situation, the land will not be re-developed, so the highest and best value cannot be realized. The party acquiring the line would be expected to pay the high price without being able to recoup its real estate value.

To avoid a situation where railway companies have to absorb the “cost” of continued rail passenger service, the party that takes over the line may pay for its value for public transportation purposes while the railway company has the benefit for other uses, such as fibre optics or other public utility purposes. Another alternative is that the railway could obtain the full breakup value once the corridor is no longer needed for rail passenger transportation.

### **Final Offer Arbitration**

Commuter rail operators value the availability of final offer arbitration because it encourages reasonable negotiation by railway companies. With final offer arbitration, railways know that commuter rail authorities can take their negotiation position to an independent arbitrator if necessary. If accepted, that position becomes part of the arbitration award. The value of final offer arbitration is not in the number of times it has been used, but the fact that it exists.

### **Conclusion**

It is vital that commuter rail, as part of the fabric of regional economies, have access to rail infrastructure at fair market prices. We need to be able to expand our service, run counter-flow trains and obtain relief from extremely excessive costs and onerous contractual conditions. Commuter rail costs should be calculated by railways using directly related, provable costs plus a reasonable return, excluding overhead costs and general allocations.

It is important to note that all commuter rail operators want to “pay their way” in dealing with the railways but our operations need favourable economic and access treatment by the railways so that operations are sustainable over the long term.

In closing we would like to note that we all believe that our operational relationships with the railroads are solid, helping us to provide safe, reliable and efficient public transportation.