

**Public Transportation in Canadian Municipalities:  
Implications for the Canada Transportation Act  
And the Federal Role in Transit  
By Richard Soberman**

**CN Position and Recommendations**

April 12, 2001

**Recommendation 1. - Status of Commuter Rail Operators:** They should be considered “shippers” or “railway customers”, and have the same rights and treatment under the law as freight shippers.

**CN Position and Comments:**

- ✓ Not required, as commuters are already treated as shippers in the CTA.
- ✓ Commuter Agencies have access to Final Offer Arbitration under existing legislation.
- ✓ Consistent with CN’s submission to the CTA Panel on FOA, CN recommends that the FOA process be modified for commuters, as with freight shippers, as follows:
  1. Arbitrators should be chosen on the basis that they are “subject-matter experts” on the issue at hand. This is particularly relevant for commuter operations, as the compensation and service requirements are complex.
  2. The arbitrator should not be forced to chose one offer or the other. He should have the authority to award a decision that is between the offers presented, if appropriate.

**Recommendation 2. - Periodic Reviews:** The CTA should provide for periodic reviews of the agreements between the railways and the Commuter Agencies to ensure reasonableness and that they are in the public interest.

**CN Position and Comments:**

- ✓ Periodic reviews are superfluous with the availability of arbitration, given that both are remedies leading to the same end. With the arbitration procedure available to Commuter Agencies, it is CN's position that periodic reviews, or a one-time review, are not necessary.
- ✓ Periodic reviews are also inconsistent with basic business contractual principles, where two parties work to define the substance of an agreement, and then respect its terms & conditions for its duration. To have the agreement reviewed by the Agency, once the terms have been negotiated and agreed upon, would make the whole negotiation process pointless.
- ✓ The current process, where operating agreements are developed through commercial negotiation between the parties, is working. New services have been implemented and existing ones have expanded. At CN, we have a very good working relationship with the Commuter Agencies and VIA. We do not consider them a "nuisance", but treat them as valued customers. Having the operating contract reviewed and rates set by the Government could seriously impact this dynamic.

**Recommendation 3. - Treatment of Abandonments in Urban Areas:**

3.1 Commuter rail should have the same rights as other levels of government, regarding the purchase of abandoned corridors for which alternative railway companies make no proposal.

**CN Position and Comments:**

- ✓ We agree.
- ✓ It is already general practice at CN that, irrespective of legislation, we offer urban corridors to the Commuter Agencies. (GO Transit purchased 2 corridors from CN in December 2000.)
- ✓ Indirectly today, Commuter Agencies have the opportunity to purchase corridors since they generally report to municipal or provincial levels. However, we have no objections if they were to be listed formally in the legal process along with the other levels of governments.

3.2 Notification requirements regarding existing commitments to VIA Rail are extended to include commuter rail services.

**CN Position:**

- ✓ We agree that Section 143 "Advertisement of railway lines for continued operations" should also include commuter services.

3.3 Time frames for the corridor acquisition process are extended by a reasonable amount of time to permit Commuter Rail Agencies to develop their proposals.

**CN Position:**

- ✓ The current legal process has just been extended to 12 months (Article 142) in 2000 in the CTA. This brings the total process to a minimum of 19 months. We believe this time frame to be already too long and need not be further extended.

**Recommendation 4. - Confidentiality of Agreements:** Prohibit the practice of allowing agreements between Commuter Rail Authorities and the railways to be treated as confidential, on the basis that these operations are highly subsidized, and that the tax payers and public officials have the right to know.

**CN Position and Comment:**

- ✓ We have no objections for contracts between railways and Commuter Agencies to be deemed “public” in the new legislation. However, it should be applied to all commuter contracts in Canada, and it should not extend to freight contracts.

Potential Use of Abandoned Rail Corridors  
For Regional Rail Purposes  
By Bob Lehman

CN Position and Recommendations

April 12, 2001

**Recommendation 1.** - It would be in the public interest to ensure that all rail corridors proposed for abandonment in urban areas be retained under Federal Ownership, until Provincial or local governments request their use for transportation purposes.

**CN Position:**

- ✓ The current CTA process works well, and corridors are strongly protected under the existing law. It is up to the various levels of Government to take advantage of the CTA process to ensure that corridors with commuter or alternate use are protected. We don't know of any corridors abandoned by CN that were "lost" through the current process.
- ✓ Railways should be compensated for the corridor's fair market value. Net Salvage Value, as defined in the CTA, is not appropriate for corridors in urban areas. As per our submission to the CTA, we suggest an appropriate evaluation would be based on its value as a continuous corridor.