

Canadian
Transportation
Agency



Office
des transports
du Canada

Transfer and Discontinuance of Railway Line Operations and Railway Track Determinations



**Rail Infrastructure Directorate
Rail and Marine Branch**



INTRODUCTION

On July 1, 1996 the *Canada Transportation Act (CTA)* was passed creating the Canadian Transportation Agency (the Agency), a quasi-judicial body, to replace the National Transportation Agency. At the same time, the *Railway Act* was repealed and several provisions relating to rail transportation previously in the *Railway Act* were included in the *CTA*.

Under this law, the Agency is mandated to resolve various issues including disputes that may arise when railway companies under its jurisdiction implement the process to transfer or discontinue railway lines that affect such parties as municipalities, provincial governments, and shippers. In June 2000, this process changed with the passage of Bill C-34, *An Act to amend the Canada Transportation Act*.

This guide, which reflects the amendments of Bill C-34, explains the process contained in Division V, Part III of the *CTA*. Federal railway companies must follow this process when transferring or discontinuing portions of the operation of railway lines. This guide also explains the use of railway track determinations within the transfer and discontinuance process.

RAILWAY TRACK DETERMINATIONS

The railway line transfer and discontinuance process provided for in the *CTA*, applies to all railway lines held by railway companies that are under the jurisdiction of the Parliament of Canada. Within this process, a railway line excludes yard trackage, sidings, spurs or “other track auxiliary to a railway line.” The Agency may determine that a particular trackage meets any of these descriptions and thus is excluded from the transfer and discontinuance process. Conversely, the Agency may determine that particular trackage constitutes a line of railway and therefore is subject to the statutory transfer or discontinuance process.

TRANSFER AND DISCONTINUANCE PROCESS

Sections 141 to 146.1 of Division V, Part III of the *CTA* provide the steps that a railway company must take before it may formally transfer or discontinue a line.

Step 1 – The three-year plan

Every federal railway company must prepare and keep up to date a plan that indicates, for each of its railway lines, whether the railway intends to continue operating the line or to discontinue operating the line within the next three years. The railway company must make this three-year plan available for public inspection at designated offices.

A railway company may sell, lease or otherwise transfer a railway line at any time for continued railway operations. However, if it sells, leases or otherwise transfers only a portion of a grain-dependent branch line (lines listed on Schedule I of the *CTA*), the railway company must continue to operate the remaining portion of the line for three years unless the Minister of Transport determines that it is not in the public interest for the railway company to do so.

Step 2 – Advertisement

When the railway company wishes to discontinue operating a line of railway, it must first publicly advertise the availability of the line, or any operating interest that the railway company has in it, for sale, lease, or other transfer for continued operations. This advertisement must include the company’s intention to discontinue operating the line if it is not transferred.

A railway company cannot advertise the line until it has indicated its intention to discontinue the line in its three-year plan for at least 12 months. However, if any level of government, or any community-based group endorsed by such a government, expresses an interest in acquiring a grain-dependent branch line, or portion thereof, listed for discontinuance on the three-year plan, for the purpose of continuing the operation, the railway company shall not wait the required 12 months and shall proceed immediately to advertise the line.

The advertisement must include the following:

- I.** a description of the railway line and how it or the operating interest is to be transferred;
- II.** an outline of the steps that must be taken before the operation of the line may be discontinued;
- III.** a statement that the advertisement is directed to persons or railway companies interested in the line for the purpose of continuing railway operations;
- IV.** the date by which interested persons must make their interest known in writing to the railway company, a date that must be at least 60 days after the first publication of the advertisement; and
- V.** the existence of any agreement between the railway company and VIA Rail Canada in respect of passenger services on the line.

Step 3 – Expression of Interest and Negotiations

Should anyone be interested in acquiring the line, the railway company shall disclose the process it intends to follow for receiving and evaluating offers. In the event that it may assist negotiations, either party can, at any time during negotiations, apply to the Agency for a determination of the net salvage value of the assets offered for transfer. Any such determination could include any deductions from the net salvage value necessary to replace infrastructure that was, in the opinion of the Agency, removed by the railway company to reduce the traffic on the line. In this Step, applicants must reimburse the Agency its costs associated with the application. Further information on the determination of Net Salvage Value can be found in the Agency publication *Determining Net Salvage Value*.

The railway company has six months from the advertised deadline to reach an agreement with an interested person. If an agreement is not reached within six months, the railway company may decide to continue the operation of the railway line and amend its three-year plan.

If no interest is expressed in the line, or if no agreement is reached with an interested person, or a transfer is not completed in accordance with any agreement reached, the railway company may continue to Step 4 – Offer to Governments.

During Step 3, both the railway company and any interested person must negotiate in good faith. Should, upon complaint, the Agency find that the railway company is not negotiating in good faith and that the sale, lease, or transfer of the railway line, or the railway's operating interest in the line would be commercially fair and reasonable, it may order the railway company to enter into an agreement with the interested person to effect the transfer. The Agency may include in any such order, the terms and conditions, including considerations, with respect to the operating arrangements for the interchange of traffic. Also, if the Agency finds upon complaint that the interested person is not negotiating in good faith, it may order that the railway company is no longer required to continue negotiations.

Step 4 – Offer to Governments

The railway company shall offer to transfer all of its interest in the railway line simultaneously to the federal (where applicable), provincial or municipal governments through whose territory the railway line passes for no more than the net salvage value of the line. A government may purchase the railway line for any purpose. If a government cannot agree with the railway company on the net salvage value of the line within ninety days after the government acceptance of the offer, the Agency may, upon application by either party, determine the net salvage value of the line. Further information on the determination of Net Salvage Value can be found in the Agency publication *Determining Net Salvage Value*.

Step 5 – Notice of Discontinuance and Compensation

If there has been no agreement on the sale, lease or other transfer of the railway line to any person (under Step 3 above) or to a government (under Step 4 above) and if all steps of this process have been complied with, the railway

company may discontinue operating the line upon providing notice of that discontinuance to the Agency. The railway company then has no further obligations under the *CTA* with respect to the operation of the railway line. Nor does it have any obligations with respect to any operations by VIA Rail Canada over the line.

Under the *CTA* as amended by Bill C-34, railway companies are required to compensate municipalities or districts that have had their grain-dependent branch line (listed in Schedule I, *CTA*) discontinued. A railway company that discontinues a grain-dependent branch line shall make three annual payments to a municipality or district through whose territory the railway line passes in the amount of \$10,000 per mile for each mile of the line within the municipality or district. The first payment is due on the date the notice is provided to the Agency.

A list of discontinuance notices received from the railway companies is available on the Agency's Internet Web site <http://www.cta.gc.ca>

AGENCY DETERMINATIONS

The Agency can help interested persons, railways, governments or other parties in four areas related to the transfer and discontinuance provisions of the *CTA*. Upon application by a party the Agency can assist by:

- I. ensuring compliance with the transfer and discontinuance process,
- II. ensuring that the railway company and the interested party negotiate in good faith,
- III. making net salvage value determinations, and
- IV. making railway track determinations.

Applications must be made in writing, must be signed by the applicant and sent to the Agency at the following address:

Secretary
Canadian Transportation Agency
Ottawa, Ontario K1A 0N9

Persons wishing to hand deliver or use courier services should direct their application to the following address:

Secretary
Canadian Transportation Agency
15 Eddy Street
17th Floor, Mailroom
Gatineau, Quebec J8X 4B3
Fax: (819) 997-6727

In addition, you should send a copy of the application to each of the parties involved.

PROCESS

In accordance with its *General Rules*, after receiving an application the Agency ensures that each interested party has the opportunity to comment on the application and on any disputed issues. In general, the Agency reviews the application, invites the other interested parties to comment within thirty days, and then allows the applicant ten days to respond to comments. The Members of the Agency review all material submitted, make the final decision or determination, and issue the necessary decisions or orders.

The Agency must process all applications within 120 days of receiving the originating documents unless the parties to the application agree to an extension.

Parties are encouraged to continue their negotiations even though an application may be before the Agency.

DECISIONS AND APPEALS

Any Agency decision is subject to the following conditions:

- I. it is binding upon the parties and remains in effect until it is amended or rescinded,
- II. it may be reviewed by the Agency, if there are new facts or circumstances,
- III. it may be appealed to the Federal Court on a matter of law or jurisdiction, within 30 days of the order or decision, and
- IV. it may be appealed to the Governor in Council at any time.

CONFIDENTIALITY

All documents filed with the Agency become part of the public record and may be made available for public viewing. However, in accordance with the Agency's *General Rules*, a claim for confidentiality can be made.

OTHER AVAILABLE DOCUMENTS

- ◆ *Agency General Rules*
- ◆ *Environment Assessment Procedures*
- ◆ *Guidelines on Apportionment of Costs of Grade Separations*
- ◆ *Guide to Certificate of Fitness:*
 - ◆ *Guidelines on Railway Third Party Liability Insurance Coverage*
 - ◆ *Railway Third Party Liability Insurance Coverage Regulations*
- ◆ *Guide to Private (farm) Crossings of Railways*
- ◆ *Guide to Railway Crossings of Other Railways*
- ◆ *Guide to Railway Line Construction*
- ◆ *Guide to Railway Operation Compensation*
- ◆ *Guide to Railway Works Cost Apportionment*
- ◆ *Guide to Road Crossings of Railways*
- ◆ *Guide to Utility Crossings of Railways*
- ◆ *How to File Complaints Concerning Damage from Railway Construction or Operation: a Guide*
- ◆ *Determining Net Salvage Value*
- ◆ *Relocation of Railway Lines in Urban Areas*
- ◆ *Schedule "A" Directives – Railway Rates for Maintenance and Construction*
- ◆ *The Canada Transportation Act and the Rail and Marine Transportation Branch*
- ◆ *The Rail Infrastructure Directorate: a Guide*
- ◆ *Resolving Disputes Through Mediation*

The above is available in alternative formats.

FOR MORE INFORMATION

For more information or copies of the above documents, please contact one of the following staff members of the Rail Infrastructure Directorate.

Director
(819) 953-0327

Manager, Approvals and Determinations
(819) 953-0365

Manager, Engineering and
Environmental Services
(819) 953-2117

Fax: (819) 953-8353

In respect of Net Salvage Value determinations, contact the Director, Rail Rates and Cost Development (819) 997-4914 or the Manager, Financial and Costing Systems Analysis (819) 997-2036.



You can access the CTA and additional information about the Agency and its responsibilities, or Agency decisions and orders from our Web site on the Internet: <http://www.cta.gc.ca>

Minister of Public Works and Government
Services Canada

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