

March 23, 2007

Mr. Claude Jacques
Secretary
Canadian Transportation Agency
Ottawa, Ontario
K1A 0N9

Dear Mr. Jacques:

Re: Application by the Great Northern Grain Terminals Ltd. ("GNG") pursuant to section 26, section 37 and sections 113 to 116 inclusive of the *Canada Transportation Act*, S.C. 1996 c.10 as amended (the "Act")

The Canadian Wheat Board (the "CWB") has reviewed the GNG application dated March 8, 2007 to the Canadian Transportation Agency (the "Agency") alleging the failure of Canadian National Railway Company ("CN") to fulfill its level of service obligations under sections 113 to 116 of the Act. CWB has an interest in GNG's application and wishes by this letter, to intervene to support this application, pursuant to Rule 43 of the Agency's General Rules.

Background

1. The CWB is a producer-controlled marketing organization. A 15-member Board of Directors governs the CWB. Grain producers from the CWB designated area (the Provinces of Manitoba, Saskatchewan, and Alberta, and the Peace River district of British Columbia) elect 10 of the Directors and the Government of Canada appoints the remaining five (including the President

and Chief Executive Officer). The Board of Directors is responsible for the overall governance of the corporation and its strategic direction.

2. The CWB is a corporation incorporated pursuant to the provisions of the *Canadian Wheat Board Act*, R.S., and c. C-12 (the *CWB Act*). The statutory object of the corporation is to market grain grown in Western Canada in an orderly manner in interprovincial and export trade. Its mission is to market quality products and services in order to maximize returns to Western Canadian grain producers.

3. The *CWB Act* and the regulations passed under it give the CWB exclusive jurisdiction over the purchase and sale of wheat, durum and barley grown in Western Canada and intended for export or domestic human consumption ("CWB grains").

4. Approximately 75,000 farmers in western Canada, produce between 22 and 24 million tonnes of wheat and barley every year. This grain is consumed in Canada and in more than 70 other countries around the world.

5. Producers deliver their CWB grains over the course of the crop year to primary elevator companies in the country. Primary elevator operators can only purchase grain on behalf of CWB as its agent. CWB takes title to the grain once it is delivered to the primary elevator.

6. Pursuant to an operating agreement between primary elevators and CWB, when the producer delivers the grain, the primary elevator pays the producer the "initial payment" on behalf of CWB for the grain that each producer delivers. This payment reflects the CWB's initial price for the particular grain in question delivered instore Vancouver or St. Lawrence, less deductions made by the elevator agent for transportation related charges and handling charges (e.g., cleaning, primary elevation, weighing and inspection etc. The initial payment represents a substantial portion of the total payment that producers will receive for their grain. The balance is distributed through "adjustment" and "interim" payments as sales are made with a "final" payment being made generally within five or six months of the end of the crop year. The Canadian crop year runs from August 1st to July 31st. All payments are based on the particular tonnage, class, grade, and protein of the grain that the producer delivers.

7. To facilitate the movement of the grain from the farm to the primary elevator, CWB enters into delivery contracts with the producers. The CWB then calls the grain into the primary elevator system through a series of "contract calls".
8. The primary elevator advises CWB as to how much grain it has to ship to port each week. The CWB then allocates orders to the grain companies for the particular grain and grade required to meet CWB sales commitments. The CWB does this through one of two processes, "tendering" or "car awards", both of which will be explained in further detail in this submission.
9. Once grain is delivered by the producers to the primary elevators and once CWB has ordered the grain from the grain company, the grain is shipped to port where it is either unloaded into a terminal elevator or (occasionally) loaded directly onto a vessel.
10. Pursuant to the operating agreement between CWB and the primary elevators, the grain companies are paid for the grain once it is delivered to port position.
11. All of the money received from the sale of all CWB grain is pooled into one of four "pool accounts" (wheat, durum, barley, and designated or malt barley). After deducting the CWB's operating costs, all of the sales revenue earned by the CWB is returned to producers. This results in roughly 96 to 98 per cent or more of all sales proceeds being returned to producers. The amount that each producer ultimately receives for its CWB grain is the pooled price that the CWB is able to obtain during the year on sales of the particular class, grade and protein of the grain that the producer delivered, net of operating expenses.
12. Increases in the operating costs of the CWB results in a reduction in the return to producers. In addition, any impediment to moving and marketing grain creates additional obstacles to farmers which result in additional costs and risked sales opportunities.

Importance of Rail Transportation to the Grain Industry

13. Rail transportation is the only feasible way to move the majority of the grain produced on the western Canadian prairies to market. Nearly half of the grain grown in Western Canada is exported. Over the last five years average annual exports have been 22 million tonnes and production has been 45 million tonnes.

14. With the exception of small amounts of grain that can be trucked to markets in Western Canada and across the United States border, the vast majority of grain must be railed to either export ports on the west and east coast, located on average more than 1,000 miles or 1,600 kilometers from the production area, or railed to customers in Eastern Canada, the United States or Mexico, located up to 3,500 kilometers from the production area. Because the vast majority of grain is moved to market by rail, the service provided and the costs incurred for rail movement can define the profitability and competitiveness of both producers and grain handling companies.

15. CWB agrees with the description of the railway network in Western Canada as set out in GNG's application at paragraph 8. It is CWB's understanding that CN operates a fleet of approximately 10,000 to 12,000 grain service covered hopper cars for common use by all western Canadian grain customers for movement from points served by CN or partner shortlines. It is further CWB's understanding that CN is currently only utilizing 10,300 – 10,400 of its fleet for grain service, with a portion of their cars in storage.

16. CN and CP are largely geographically separated from each other. In Western Canada, there are currently 146 facilities on CN lines and only 23 stations facilities in western Canada (located on either CN or CPR) can access both railways either by having both CN and CPR tracks at their facility or by being able to inter-switch traffic from one railway to the other.¹ **Appendix 1** is a map detailing the grain locations in western Canada, as of March 2006, showing the CN, CP and shortline traffic networks.

17. In terms of logistics, a grain company must have rail track alongside its facilities where the railway can drop off or "spot" rail cars for loading. The number of rail cars that can fit on the track is known as the "car spot". Assuming service once in a day by the railways, the larger the

¹ Source: Canadian Grain Commission. Grain Elevators in Canada. January 30, 2007.

car spot, the more rail cars the grain company will be able to load in a day and generally the more grain they will be able to handle through their facility. Table 1 illustrates the break down of primary elevators by the size of their car spot. Only 22 per cent of primary grain elevators have a car spot of over 100-cars. **Appendix 2** lists these primary elevators and the number of car spots each has.²

Table 1:

Grain-handling facilities by car spot (W. Canada) CN and CP		
	100-car spot or greater	All facilities
Number of facilities	73	337
Percentage of total	22 per cent	100 per cent

18. Grain companies load the grain into the rail cars as required to meet the CWB's orders. The rail cars may come from car supply the CWB has secured from CN or from car supply the grain companies have secured from CN.

Capacity Constraints in the Canadian grain Handling System ("GHTS")

19. A key driver in the GHTS is the relatively constrained capacity in the system.

20. The bulk of Prairie grains and oilseeds are typically harvested from late August through to October (though there can be many exceptions). All of this production is a considerable distance from tidewater or from North American markets as the case may be, and virtually all is dependent on rail transportation to get to market. CWB grains generally make up about 60-70 per cent of the total volume of grains moving through the GHTS. Non-board and non administered crops make up the remainder.

21. The major Canadian ports that export grain are as follows: Thunder Bay, Vancouver, Prince Rupert, St. Lawrence ports and Churchill. In addition, grain is railed to the USA and Mexico.

² Source: Total number of grain handling facilities - Canadian Grain Commission. Grain Elevators in Canada. January 30, 2007. Number of facilities with a 100-car spot or greater, CWB estimate based on information provided by grain companies to CWB.

Appendix 3 shows rail car unloads for both Board and Non Board grains through the above ports for the period of 1997-98 to 2006-07 (weeks 1-30 only for 2006-07), with the exception of Churchill which shows rail car unloads for the period 2002-03 - to 2006-07.

22. CWB rails the largest volume of its grain to the West Coast. On average this amounts to more than 50% of the volume of CWB grain exported.

23. It is important to point out that in addition to moving grains to various ports through the various corridors; the transportation of grain is further complicated by the fact that there are numerous types of grain and within each type, many different grades, protein levels and other specifications. All of these differing specifications have to be taken into account in transporting the grain as the different grains and grades etc must be transported and stored separately at each stage in the system.

24. In addition, it is equally important to recognize that these various grains and grades are grown across a vast geographical area. **Appendix 4** shows the 5 year average production for Wheat, Barley, Durum, Winter Wheat and Spring Wheat, which are all CWB grains as well as Canola, a non-board grain. Together these grains represent 90% of the total grain production of the 6 major grains (wheat, barley, canola, oats, flax and rye).

25. The result of the above is that the GHTS cannot physically accommodate all of the grains and oilseeds that are produced on the Prairies in a typical year at one time. This means that for the peak shipping periods of October through March the demand for access to the GHTS exceeds its capacity, particularly the demand for access to railcars. This in turn means that during this peak period the CWB and the grain companies are competing for railcars as the grain companies seek to move their non-Board crops and the CWB seeks to move its many products.

Brief History of Rail Car Allocation for the Movement of Western Canadian Grain

26. As set out in GNG's application at paragraphs 12 and 13, prior to 2000, rail cars were distributed in accordance with a car distribution system that was developed by industry stakeholders, specifically the Car Allocation Policy Group (CAPG). This was a voluntary, non

legislated, industry funded and industry led group with participants from each of the following: Western Grain Elevator Association (WGEA), CWB, railways, and western Canadian producers.

27. One of the main responsibilities of CAPG was the division of the overall car supply for CWB, non Board and non administered grains by railway and corridor. The division was an industry negotiated number based on seeded acres, average yield, historical grain sales volumes, estimated production and demand etc. The split was used for weekly car allocation during periods of car rationing.

28. In the fall of 2000, as GNG points out at paragraph 14 of its application, CN unilaterally implemented its own grain car distribution process in western Canada. The new system introduced the concept of advance rail car bookings. CWB voiced its opposition to this new process, and has raised concerns regarding this process ever since. However, CN implemented the programs in any event and has made changes to the programs each and every year since implementation.

29. **Appendix 5** is a table that outlines CWB's analysis of the evolution of CN's programs since it was first instituted in 2000-01 to date, by corridor.

CN's Car Allocation and Rationalization System

30. As mentioned above, CN operates a fleet of grain service covered hopper railcars for common use by all Western Canada grain producers for movements from points served by CN or its partner shortlines.

31. CN earns revenue through freight rates and ancillary charges on these grain shipments. Its objective is to maximize revenue and reduce costs. It is the CWB's understanding that CN encourages using larger train units to support its objective of reducing costs.

32. CN has over the last number of years encouraged the use of larger car block movements through the use of two main tools: (a) incentive freight rates and (b) advance railway products.

a) *Incentive Freight Rates*

CN offers freight incentives to grain companies to encourage them to load larger rail units. In the 2006-07 crop year, CN is offering an incentive of \$3 per tonne to load 50-car units and \$7 per tonne to load 100-car units. The differential in incentive between smaller units and larger units has been steadily increasing. In fact, CN discontinued entirely the incentive of \$1 per tonne it offered for 25-car blocks in 2002-03. There is some discussion in the grain industry that the incentive rate for 100-car trains may be raised in 2007-08 to \$8.00 per tonne and the incentive for 50-car trains lowered to \$2.00 per tonne. This will further increase the competitive differential between 50 and 100 car trains.

b) Advance Railway Products

33. A portion of CN's car supply is offered in the form of advance products that shippers can book as a guarantee for future capacity or service. In the Vancouver corridor for 2006-07, for example, CN advised CWB that it would be offering 57 per cent of its weekly car supply through advance products. These products typically must be loaded in specific car block sizes within a 24-hour time period. If a company books cars through Advance Products and CN does not deliver, CN must pay a penalty to the shipper. If a shipper has booked cars and does not accept the cars from CN or does not load them in the required time frame required, the shipper must pay a penalty to the railway. The penalty is currently \$250 per car in both cases.

34. In the Vancouver corridor for 2006-07, CN offered 3 types of Advance Products starting in shipping week 10. CWB agrees with the description of these products as set out in GNG's application at paragraphs 15-18. In addition, CWB says:

- a. With respect to GT Pro's. The average the GT Pro minimum winning bid is \$413.39 per car, or \$4.59 per tonne, over tariff and has traded as high as \$829.00 per car or \$9.21 per tonne over tariff. From weeks 10-28, the GT Pro program has made up 16 per cent of CN's Vancouver car supply. Attached as **Appendix 6**, is a chart and a graph prepared by CWB (based on information obtained from CN's website) outlining the average bid for cars in this program for weeks 4- 32 of the current crop year.
- b. With respect to CN's GT Transload, CWB does not use or access this car supply and neither does any of the grain companies included in the CARS group as described below, because those companies operate licensed facilities.

35. For all Advance Products, penalties are assessed if the railway fails to provide the car or if the shipper fails to load it within the specific time frame. For the GX 100 cars, if the car is not spotted by CN, or if the shipper does not accept or load the cars within the required time frame, there is a penalty of \$250. This is true of bid cars as well, despite any premium that a grain company may have paid to secure the cars. If CN fails to provide a GT Pro, for which a company may have paid \$800 per car, for example, CN must pay the company only \$250 per car. Conversely, if the shipper does not load the car, it pays a \$250 per car penalty in addition to the \$800 per car bid.

36. As can be seen from the description of the CN programs, it can be very challenging for a grain company to access car supply. Two factors in obtaining car supply are critically important to a shipper. The first is having at least a 100 car spot at their facility. If a company does not have a facility with the necessary car spot to accept the minimum block size it will not be eligible for that product. The second factor is having the economic means to permit the shipper to bid on car supply. The fact that these two factors play such a prominent role in obtaining car supply is a direct result of the manner in which CN has structured its programs.

General Car Supply

37. Weekly car supply not offered through the Advance Products is known as general car supply. This residual car supply is offered on a weekly basis. That is, companies submit a request for general distribution car supply approximately 1½ weeks prior to the load week.

38. There are no restrictions on unit size and there are no additional charges for these cars above the posted tariff rate.

39. CN publishes the number of cars it intends to offer on its website as “CN Grain Capacity Outline and GT Offering”. The publication appears to give the industry an indication of how many cars CN intends to distribute over the course of the upcoming weeks in several corridors. Unfortunately, it often happens that the actual car supply offered by CN is less than that indicated in the capacity plan. When this occurs, the reduction in car supply always comes out of the general distribution car supply. This renders the publication largely unreliable as a

planning tool for shippers. Attached as **Appendix 7** are CN's Grain Capacity Outline and GT Offering plans for grain weeks 4-26 excluding, grain weeks 8 and 10.

40. As mentioned above, in the Vancouver corridor, at the beginning of the crop year CN advertised that it would be offering 57 per cent of its weekly car supply through Advance Products in 2006-07. The remaining 43 per cent was to be distributed through the general car supply. While CN's general distribution was higher this crop year than last, it is still insufficient and contrary to CN's advertised distribution for weeks 10-28, CN has offered only 31 per cent of its Vancouver car supply in general distribution car supply to Vancouver.

41. **Appendix 8** shows CWB's analysis of the actual number of General Cars distributed by CN for weeks 10-28 in the Vancouver corridor. As will be seen from the attached chart, general distribution in some of these weeks is as low as 18 rail cars or 2 per cent of CN's car supply.

42. The more cars that CN distributes in Advance Products the fewer that are available in general car supply. Because all grain companies compete for this car supply, the smaller grain companies are at a disadvantage as their participation is limited to either bid cars at a premium over tariff; or reliance on general car supply distribution.

CWB's Car Allocation Process

43. CN carries over half of the CWB grain that moves by rail to ports in Vancouver, Prince Rupert, the St. Lawrence, Churchill and Thunder Bay, as well as destinations in the United States and Mexico. CWB is one of CN's largest customers over the course of the crop year.

44. In order to fulfill its mandate of orderly marketing of grain and to maximize returns to producers, CWB has the responsibility of getting the grain from the farm to sales position. This process involves the coordination of several different factors and is the responsibility of the CWB Logistics department.

45. CWB Logistics ensures that the right grades and grain move through Canada's major ports at the right time so CWB can meet its domestic and export sales commitments. As mentioned above the grain is moved east through Thunder Bay and the ports in the St. Lawrence, west through the ports of Vancouver and Prince Rupert and north through the Port of Churchill.

46. CWB Logistics also manages the transportation of CWB grain from the farm to the export terminals, domestic processors or U.S destinations. In doing so, it strives to maintain fair delivery opportunities for producers in Western Canada and minimize transportation and handling costs.

47. CWB Logistics also determines, by grade and protein, the supplies of western Canadian grain available for sale. Information on grain supplies are analyzed from a number of sources such as CWB contracts and special questionnaires completed by county elevator managers. Factors such as railway and port capacities are taken into account in determining monthly export capacities for each port.

48. All of these factors must be considered when CWB is planning its logistics and sales movements.

49. CWB is allocated rail cars from CN in the same manner as other grain companies. That is, CWB participates in the advance programs as well as the general allocation process. CWB then allocates the cars it has obtained to grain companies in the industry pursuant to the Industry Rail Car Awards Policy ("CAP"). This policy was implemented after considerable industry consultation and negotiation and has both a "tendering" process and a "car awards" process based on entitlement calculated by each company's market share of CWB grain. Attached as **Appendix 9** is the Industry Rail Car Awards Policy.

50. In the Vancouver corridor for the 2006-07 crop year to shipping week 31, CWB has had on average 321 CN rail cars available weekly to allocate to grain companies. This includes GX 100's that CWB successfully bid on under CN's GX 100 advance program.

51. The tendering process involves CWB issuing tenders to the grain companies to obtain the delivery of a given product to a given location within a given time frame. CWB issues tenders that specify grain, grade, corridor, average minimum and maximum protein levels, shipping week, and of course quantity. This process allows CWB to match a particular grain type to be shipped to port with a particular sale. Unless otherwise stated in CWB's request for offers, upon being awarded a tender a company can either supply its own rail cars or request that CWB supply rail cars. Any such request must be made by the company before the earliest of six

business days from the date of the tender award and the Wednesday when that rail car supply is allocated for the shipping week for which the tender will be programmed.

52. CWB targets to tender 20 percent of total CWB grain volume over the course of the crop year. The grain companies submit their bids based on a premium or discount to the initial payment, and CWB accepts or rejects the tender after consideration.

53. As per CAP, CWB allocates the CWB cars for non-tendered CWB-Grain primarily through Advance Car Awards and General Car Awards, which are described below. The allocation of CWB cars is based on a process designed to generate competition in the country for farmers' grain because each company's entitlement to CWB car allocation is calculated based on the volume of CWB grain they have been able to entice farmers to deliver to them. To gain as much volume as possible, grain companies compete against one another for farmers' business using various price and service incentives, such as covering the cost of trucking to their facility, lowering the cost of inputs, or offering a higher payment for the producer's grain.

54. On a weekly basis, grain companies report to CWB the shippable stocks that are at their primary elevators. CWB considers this information and its shipping requirements to determine what grain and grade is needed at port position to meet sales commitments. If the shippable stocks at the primary elevators exceed the stocks needed at port, CWB uses the process set out below to award CWB car supply to the grain companies. CWB uses this process to award both CN cars and CP cars that CWB has been able to secure.

55. For the bulk of the grain shipping year, the Calculation of Car Awards for non-tendered CWB-Grain (both Advance Car Awards and General Car Awards), is comprised of two factors: 1) the most recent 18 weeks of Cash Purchase Tickets of CWB-Grain for the previous 18 weeks adjusted for tendered CWB-Grain, and 2) the balance of accepted contracts of CWB-Grain to be delivered. Prior to week 18, car awards are based on the volume of grain accumulated for the previous 18 weeks adjusted for tendered CWB Grain excluding Malt Barley.

56. . CWB Advance cars are awarded on the basis of market share, using the process described in paragraph 55. For example, if CWB has 100 cars available in Advance, it awards

on average 20 per cent, (20 cars), to a grain company with a 20 per cent market share, or 10 per cent (10 cars) to a grain company with 10 per cent market share and so on.

57. Each week the CWB advises the grain companies of the number of CWB Advance Car Awards they are entitled to ship by port, and the grain and grade that are available to ship. The grain company's respond to CWB as to what grain and grade they will ship by corridor and railway. If there are more requests for a particular grain or grade than was originally offered, the CWB will ration the cars on the basis of market share by corridor. Because the rationing is done on the basis of market share by corridor, there is no discrimination against companies who do not have a 100-car spot, or against companies without the economic means to outbid their competitors.

58. If the CWB is unable to secure enough rail car supply to provide rail cars against the CWB Advance Car Awards, the CWB will roll the orders forward one week. In the past, all CWB Advance Car Awards were tradable amongst the grain companies and the CARS group would hold a weekly conference call for the purpose of trading CWB Advance Car Awards. Companies would also attempt to build 50 and 100 car units, to qualify for railway incentives. While this practice continues with respect to rail cars that CWB has secured from CP, as explained in paragraph's 80-82, as of this crop year, trading does not generally occur on rail cars that CWB secures from CN.

59. A percentage of CWB total cars are allocated to the CWB General Car Awards Program on a weekly basis. Grain companies are notified of their CWB Advance car award one week prior to their being notified of their CWB General car awards. The CWB General Car Awards are based on the grain, grade and protein specifications that CWB requires for its sales for a particular shipping week, and are allocated according to the allocation described earlier under Calculation of Car Awards.

60. CWB allocation of car supply is based on market share. The market share of a particular company may result in that company being entitled to receive 16 cars, or 38 cars. Given CN's Advance programs and its requirements that shippers commit to 50 or 100 car trains to ensure rail supply, CWB must incorporate large train units into its allocation system, which results in many challenges in managing its grain supply to port.

61. There are also provisions for awarding cars to new elevators, which are defined to be a new structure, a structure that was not previously licensed as a primary elevator, or an existing structure to which additional capacity has been built (with restrictions). A grain company that is operating a new elevator is awarded cars up to 25 per cent capacity or to the average level within an 80 kilometer radius, whichever is greater, up to a maximum of 50 cars per week. In addition, New Elevator awards cannot exceed 40 per cent of CWB General Car Awards to a zone.

62. CWB also has an obligation to producers in terms of producer car loading. Producer cars are rail cars that producers load themselves at a rail siding, thereby avoiding the primary elevator and the associated costs. Producers submit an application to load a producer car to the Canadian Grain Commission (CGC). Each week the CGC advises the CWB of how many producer car applications they have received by grain, grade, railway and corridor. The CWB then allocates its confirmed car supply to the CGC by grain, grade, railway and corridor. The CGC determines which producer receives the cars based on a first in first out concept. These cars come out of general allocation as they are loaded in much smaller blocks than CN's advance products.

63. This program is important to producers and is supported by CWB. However, as these producer car groups often ship in small numbers, CN programs do not apply to them. Although CWB attempts to supply rail cars to these producer groups, given the limitations imposed by CN's programs, the CWB has a difficult time committing cars to these groups on a weekly basis. It is clear that CN's current programs hinder the ability of these producers to obtain the necessary rail cars for these movements.

64. CWB's Car Awards Policy is completely dependent on the ability of CWB to secure sufficient cars from the railways to move the right grain to the destination. If CN cannot or will not provide cars in small enough unit sizes to allow the CWB to provide cars to companies without a 100-car spot, or to provide cars for grain which require a smaller allocation of cars, the overall ability of CWB to achieve its statutory objective of marketing grain is impaired.

Submission

65. As noted above, CWB is the direct representative of the 75,000 Western Canadian Producers of wheat and barley. These producers depend on CWB to market their CWB grains every year. In addition it is a major, if not the largest rail customer of CN over the crop year and it has extensive involvement in the grain industry. Given this, it is particularly well placed to comment on the changes that have occurred with CN's rail programs and the implications of those changes. The CWB is directly affected as a result of CN's actions and as CWB faces commitments to its farmers in terms of marketing, delivery opportunity and producer car loading, it has a unique perspective on the effects of CN's actions.

66. In order to satisfy its statutory mandate, CWB requires the flexibility to manage the movement of its grain in a range of car block sizes, from 100-car trains down to single car loadings. The CWB ships a large number of products in terms of different classes and grades of grain, some of which are only available in less than 100-car lots given the geographic distribution of production.

Effect of CN Shorting Cars on Wheat Marketing:

67. CWB plans the execution of its sales strategy in such a way as to maximize sales revenue and reduce overall costs to the producer. In order to be successful, CWB must be able to move the specific type of grain through the right corridor at the right time. As the grain that CWB is sourcing is located at various elevators, large and small, throughout the prairies, CWB must coordinate the rail movement of that grain to port position. It attempts to have grain arrive at port as close to the time that the vessel loading that grain will arrive at port to make efficient use of terminal capacity, and to reduce storage costs at terminal position and to thereby save producers money.

68. There have been several instances where CWB was unable to secure sufficient car supply from CN to move the grain that it needed to port position in a timely manner. The result is, the mismatched grain that does arrive has to remain in storage; congestion occurs in the terminal, the vessel must wait for the correct grain, which may result in demurrage and the end customer

must wait. This results in damage to CWB's reputation. All of these negative factors result in additional costs which are ultimately borne by producers.

69. As mentioned above, impediments to grain movement can damage relationships with international grain buyers. This in turn reduces CWB's competitiveness against sellers of grain from other countries. CWB's ability to assure its customers that it will receive grain in a timely manner is critical to it remaining a reliable supplier of top quality grain that its customers can count on.

70. CWB supports GNG's application because CWB recognizes and supports the proposition that producers must have access to a viable and competitive primary elevator industry. The more grain companies that are competing for the producer's grain in the country, the better off the producer will be. In order to be viable and competitive GNG and similar grain companies need access to rail cars on an equal footing with all other grain companies so that they can move their grain to port and fulfill sales obligations. Additionally access to rail cars permits them to free up space in the primary elevator to accept more grain from the producers.

71. CWB has reviewed GNG's application and agrees with GNG's position that CN's policy is discriminatory as set out in paragraph 21-25 of its application.

72. In addition to GNG's concerns as stated in its application and in respect of CN's GX 100 Advance Program, it is CWB's position that CN has unilaterally implemented a program that fails in its service obligations to GNG and similar shippers, as well as CWB. Specifically:

- a. this program forces those shippers that can participate, to secure car supply that is inflexible given the variations in the demand for car supply in a crop year. There are many varieties of grain and grades that must be moved to various port positions over the course of the crop year. As nearly 80 per cent per cent of grain facilities do not have a 100-car spot, these 100 car trains are distributed among the few companies that have facilities with a large enough car spot and are able to book a 100-car train week and week after week. Companies who book GX 100's are then incited to load and ship grain each and every week grain that may or may not be required at port in order to avoid paying a penalty on the rail cars. This raises costs in terms of storage and demurrage at port and causes congestion in the grain pipeline;

- b. if a grain company forfeits a 100 car train, that train has effectively been taken out of the system unnecessarily as there is no guarantee that these cars will find their way back into general allocation or elsewhere in the system;
- c. in offering such a large program of GX 100 trains CN has reduced the number of cars available for general allocation and those that could be loaded on 50-car units;
- d. CWB strives to create a level playing field for grain companies delivering CWB grain and it attempts to provide equal opportunities for shippers to ship through ports that pay incentive payments. As GNG and similar companies without a 100 car spot cannot spot a 100 car train, it is very difficult for CWB to ensure this equal opportunity through the ports where incentives are paid.;
- e. CWB ships a large range of products of different classes and grades of grain throughout the crop year. These products are sometimes only available through grain handling facilities that have less than 50-car spots. CWB is hindered in its ability to source grain, fulfill its sales commitments and maximize returns to farmers; and
- f. in the event the shippable stocks at the primary elevators is greater than the number of rail cars that the CWB has to offer to the grain companies, CWB allocates its car supply on the basis of market share. Having to fit 100 car units into that system presents difficulties to CWB in administering the industry negotiated allocation policy.

Fundamentally, CWB takes the position that the GX 100 program offers too many large unit trains (six GX 100's) and too few smaller unit trains and as a result this affects CWB's ability to orderly market grain at a reasonable cost.

73. With respect to CN's GT Pro program, CWB says that this program also discriminates against GNG and similar grain companies as well as CWB. Specifically:

- a. this Program forces shippers to pay a premium above tariff to secure car supply. This puts those shippers with less than 100 car spots at a competitive disadvantage vis a vis grain companies with 100 car spots or larger. The shippers with a 100 car spot can book

the GX 100 at no cost above tariff. Those without, must pay bid amounts to secure any reliable car supply.

- b. there is no guarantee that a particular shippers bid will be accepted and if a bid is not accepted, there is no opportunity for GNG, or similar shippers to forward book car supply; and
- c. given the structure of CN's programs, CN can significantly influence the amount of the bids placed by a company. This is because CN has control of the car supply. If CN does not make cars available for a period of time, including its general distribution cars, shippers may well feel the need to increase their bids as they get more desperate to move their grain.

CWB submits that these factors clearly affect the competitive environment in the grain industry. CWB says that this is a concern to CWB and producers because if these grain companies cannot remain economically viable and competitive; it is producers who lose through reduced competition. Producers will lose in terms of delivery opportunities and choice of country elevators; lost trucking and other incentives; higher input costs etc. Producers will also lose because it is the producers ultimately pay the increased cost of shipping grain to port.

74. Attached as **Appendix 10** is a chart outlining the number of cars that CWB has booked as 100 and 50 car trains in the Vancouver and Prince Rupert corridors on CN. The 100 car units represent 31per cent of the grain moved by CWB in weeks 1-28 to Prince Rupert. Similarly the 50 car units represent 38per cent of the grain moved by CWB in weeks 1-28 to Prince Rupert. In comparison, in the Vancouver corridor, the 100 car units represent 41% of the CWB grain moved from weeks 1-28. Additional, the 50 car units represent 27% of the CWB grain moved from weeks 1-28.

75. CWB notes that in the Prince Rupert corridor, because the CWB did not secure any GX 100 products to Prince Rupert, there is no contractual requirement with CN for CWB to book trains in blocks of 50 or 100 car units. However, as can be seen, CWB grain continues to move in large units. CWB is aware of CN's position that using these larger train blocks drives efficiencies in the system. CWB however would argue that this is not the case. What drives the use of 50 or 100 car units is the promise of incentive payments. CWB submits that it is neither economical

nor efficient to use a 100 car train if a 100 car train is not needed. CWB and grain companies do use 100 car trains where possible in their programs to achieve the incentive payments, but only when this makes sense when weighed against the cost of attempting to execute a 100 car train out of a single station. CWB must have the flexibility to use smaller train units where necessary.

76. With respect to CN's general distribution program, CWB also submits that there are a number of difficulties with this program. Specifically:

- a. a shipper participating in the general car supply distribution process has no guarantee that it will get the rail cars that it requested as there is no guarantee from CN that it will provide the cars.
- b. the process by which these cars are distributed is not transparent. That is, CWB does not know how it or other shippers are entitled or disentitled to general allocation car supply;
- c. shippers forced to rely on this program cannot forward plan and cannot effectively manage their sales program;
- d. CN is using its general car distribution program to backstop the Advance programs. That is, CN prefers to supply cars to those parties that have booked Advance Products over parties who are forced to rely on and have requested car supply through CN's general distribution system. This is because if CN is short on providing the cars it has committed to provide under its Advance Programs, it will take cars from the general car distribution supply to fill the advance orders and avoid paying a penalty. **Appendix 11** outlines the cars requested and received by CWB through CN's general car distribution process for weeks 1-34 in the 2006-07 crop year.

On the whole CWB says CN's general distribution policy is unreliable, non transparent and there are not enough cars committed and delivered under this Program to permit shippers to effectively move grain at a reasonable cost.

77. In addition, as mentioned above, CWB is the largest grain customer of CN. Despite this fact, CWB was not notified of CN's changes to its car supply distribution process for the 2006-07

crop year until the information package was released publicly, within a day of meeting with CWB. This was despite numerous requests by CWB for information and advice from CN that the programs would see very little change.

78. In fact, as can be seen from **Appendix 5**, CN has been changing its programs each and every year and in doing so it has raised significant logistical challenges for shippers including CWB. The changes that CN has unilaterally implemented this crop year have made it exceptionally difficult for all shippers, but in particular grain companies with less than 100 car spots to get their grain to port and to remain competitive in the grain industry.

79. To highlight the change to CN programs, CWB has done a comparison of CN's programs in the 2005-06 crop year and the 2006-07 crop year. The comparison shows the following changes:

For Vancouver,

- a. the GX 100 shuttle increased to 600 cars from 400 cars;
- b. the GT Pro's (50 car blocks) were increased to 200 cars from 100 cars;
- c. the GT Secure Program was reduced from 500 cars to zero;
- d. general car distribution increased from 500 cars to 650; and
- e. 50 GT Transload cars were introduced in 2006-07.

For Prince Rupert:

- a. the GX 100 was increased to 600 from 100
- b. the GT Pro was increased from 50 to 100; and
- c. general car distribution was reduced from 950 to 500.

The changes for Thunder Bay and Canada/USA /Mexico are set out on **Appendix 12**.

80. In addition to the above, and as set out in GNG's application at paragraphs 26-28, prior to this crop year, members of the CARS group were able to trade CN rail cars to supplement their own supply.

81. Through the process of trading rail cars, the members of the CARS group were better able to secure car supply and forward plan their sales. For CWB, this process contributed to its ability

to source the various grade and quality of grain it required to meet its sales commitments. It also resulted in efficient use of available car supply.

82. In the 2006-07 crop years, CN's increase in the GX 100's and reduction in 50 car blocks has essentially eliminated the ability of the CARS group to implement this trading tool (for all but a small group as set out in GNG's application at paragraph 29) for CN rail cars. In particular and as a result of having to book CN's GX 100 car trains, which many companies cannot secure, CWB is left with only one company in the group with which to trade a CN GX 100 car train. This situation defeats the benefits that were gained when all members could participate.

83. CN has also eliminated the GT Secure Program that was in effect last year which has also caused a negative impact on shippers. This program had many advantages, including;

- a. many grain companies could load these 50 car units and as a result they and CWB could forward book car supply and plan their sales programs;
- b. CWB was better able to source the many types of grain it needed to fulfill its sales commitments;
- c. this program offered more flexibility in that CWB and other grain companies could take two 50-car trains and build them into a 100-car train as necessary;
- d. these cars were tradable amongst the CARS group; and
- e. neither CWB nor the grain companies had to pay bid amounts above tariff to obtain this car supply; and
- f. GT Secure 50 car units were allowed to be split into 25 car blocks after peak shipping period.

CN's cancellation of this product offering is having a severe negative economic impact on shippers.

84. As well, CWB has seen an increase in costs and negative effects on its sales as a result of not being able to access CN rail cars. The impact on the CWB's 2006-07 malting barley program provides a clear example of these negative effects.

85. The majority of the markets to which the CWB sells malting barley off the West Coast are serviced through Vancouver, rather than Prince Rupert. This is due to the need to manage this product delicately so as to reduce damage to the kernel that can come from handling the grain, and therefore keep the amount of "attrition" (essentially small particles of grain kernels) to acceptable levels. Vancouver terminals are best able to provide this service. A significant portion of malting barley is tendered to grain companies to a "free on board" sales position. This means that those companies manage the movement of the grain until it is loaded onto the vessel, including determining which port and terminal through which the grain moves. Because participating companies either own a terminal in Vancouver in whole or in part, or receive diversion payments from a terminal in Vancouver, they direct the malting barley through Vancouver. This means CWB requires CN car supply to get the malting barley to Vancouver.

86. In weeks 24, 25, and 26 of this crop year, the CWB's malt barley program to Vancouver required that all of the CWB's CN Vancouver car supply be used for malt barley. Because such a large portion of the CWB's Vancouver car supply is in GX 100's and malting barley cannot be sourced easily in 100-car units, the CWB was often forced to load wheat in cars to fill out the 100-car train simply to achieve the movement of malting barley. As a result, it took much longer than it should have to fill the vessels, which ultimately had to wait in the Port of Vancouver for a total of 40 days. This added costs to CWB and ultimately producers in vessel demurrage. In addition, CWB's reputation has been put at risk as buyers complained about the inefficiency of the Canadian system. Finally, this does not address the situation where grain has to be shipped to terminal position earlier than it was needed, potentially causing congestion at the terminal.

87. Further and in addition to the specific issues raised above, CWB submits that it has an obligation to give all producers the opportunity to deliver grain to an elevator. As CWB does not own grain elevators, it is dependant on its grain company's agents to take in producers' grain. If the producers deliver to a facility with less than a 100-car spot, or if the producers deliver a specific grain product that is not conducive to be shipped on a 100-car train through a single corridor, CWB has great difficulty moving that grain to the end user and difficulty meeting its obligation to western Canadian farmers. If CWB were able to access 50 or 25 rail car blocks,

rather than 100's, it would have a greater ability to get the required grain and grade to port position.

88. GNG's complaint is specific to the Vancouver corridor only. CWB ships grain in all corridors in Canada and therefore CWB is interested in the application of CN's Programs with respect to all corridors. CWB submits that the issues raised in GNG's application demonstrate a long term systemic problem that affects all shippers in all corridors and that therefore any solution must take into consideration these larger issues.

Conclusion

89. CWB supports GNG's application and agrees that CN's programs have caused negative economic effects on GNG as it has described in its application.

90. CN's Products programs clearly hinder CWB's ability to ensure movement of CWB grain. As the largest grain shipper on CN, CWB requires the flexibility, on a week to week basis to manage grain movement in a range of sizes over a vast geographic area.

91. CN's Advance Products Program puts all producers of grain who do not have a 100 car spot at a competitive disadvantage, thus discriminating against these grain companies.

92. CN's rationing criteria of taking into account the longest length of contract period offered by a shipper and giving preference to those shippers that commit to the longest number of weeks clearly has a negative effect on the majority of grain companies in Western Canada. This is particularly acute for the smaller grain companies who cannot afford to overextend themselves by making such a long commitment.

93. CN's allocation of cars to shippers on the basis of an auction clearly affects all grain companies both large and small in Western Canada. In particular, this policy discriminates unfairly against smaller grain companies who do not have the resources to outbid the larger grain companies while remaining economically viable.

94. CN's general car distribution program is not responsive to these concerns as it is not transparent, it is unreliable and there is no guarantee of securing cars through this program.

95. CN's programs are also a major concern to CWB and producers because the programs offered reduce overall flexibility in transporting their grain to market and port. This affects producers in terms of delivery opportunities and producer car loading opportunities. In addition and significantly, it costs producers money as it is the producers who pay for the transportation of their grain.

96. Impediments to grain movement also places CWB sales opportunities at risk; damage CWB's relationships with its international grain buyers and reduces CWB's competitiveness against sellers of grain from other countries.

97. CWB submits that CN's programs are causing serious issues for the transportation of grain, issues that are systemic. CWB submits that CN is not meeting its level of service obligations under the *Canadian Transportation Act*.

98. For all of the reasons set out above, CWB supports GNG's application, and requests that the Agency grant the relief requested by GNG in its application.

99. CWB is particularly concerned that CN's rail car rationing process be made fair, fully transparent and not discriminatory, and that shippers are permitted to trade cars among themselves without restriction.

100. As for the specific changes that might be ordered by the Agency to CN's current car distribution policy to provide needed relief to GNG and shippers that are equally affected by CN's programs, (including CWB), CWB requests that the Agency consider, in its deliberations, the changes outlined in the following chart

NR Products 2006-07 Capacity Offering	Proposed Remedy
<p>Vancouver (57% Advance / 43% General)</p> <ul style="list-style-type: none"> • 600 – GX 100 (100 car blocks) • 200 - GT Pro (50 car blocks – cash bid) • 0 - GT Secure (50 car blocks) • 650 General • 50 GT Transload 	<p>Vancouver (50% Advance / 50% General)</p> <ul style="list-style-type: none"> • Nil – GX 100 (100 car blocks) • Nil - GT Pro (50 car blocks – cash bid) • 750 GT Secure (50 car blocks*) • 800 General • 50 GT Transload
<p>Total 1500</p>	<p>Total 1500</p>
<p>Prince Rupert (58% Advance / 42% General)</p> <ul style="list-style-type: none"> • 600 - GX 100 (100 car blocks) • 100 – GT Pro (50 Car Blocks – cash bid) • 0 – GT Secure (50 car blocks) • 500 – General 	<p>Prince Rupert (50% Advance / 50% General)</p> <ul style="list-style-type: none"> • Nil – GX 100 (100 car blocks) • Nil – GT Pro (50 car blocks – cash bid) • 600 GT Secure (50 car blocks) • 600 General
<p>Total 1200 (Nobody Gets More Than Half)</p>	<p>Total 1200</p>
<p>Thunder Bay (14% Advance / 86% General)</p> <ul style="list-style-type: none"> • 0 – GX 100 (100 car blocks) • 100 – GT Pro (50 Car Blocks – cash bid) • 0 – GT Secure (50 car blocks) • 600 General 	<p>Thunder Bay (36% Advance / 64% General)</p> <ul style="list-style-type: none"> • 0 – GX 100 (100 car blocks) • 0 -GT Pro (50 car blocks – cash bid) • 250 - GT Secure (50 car blocks) • 450 General
<p>Total 700</p>	<p>Total 700</p>
<p>Canada USA/MX (48% Advance / 52% General)</p> <ul style="list-style-type: none"> • 550 – General Domestic Canada/USA • 0 – GX 100 (100 car blocks) • 250 – GT Secure NA (25 car blocks) • 100 – GT Pro NA (25 car blocks) • 25 –GT Secure MX (25 car blocks) • 25 GT Pro MX (25 car blocks) • 50 – GT Pro BC (10 car blocks) • 50 A Week – GT Gulf (ship 100 every 2nd week) – Must source out of 1 origin 	<p>Canada USA/MX (48% Advance / 52% General)</p> <ul style="list-style-type: none"> • 550 – General Domestic Canada/USA • 0 – GX 100 (100 car blocks) • 350 - GT Secure NA (25 car blocks) • 0 - GT Pro NA (25 car blocks) • 50 - GT Secure MX (25 car blocks) • 0 GT Pro MX (25 car blocks) • 50 – GT Pro BC (10 car blocks) (moved to general) • 50 a week – GT Gulf (ship 100 every 2nd week) – Must source out of 1 or 2 origins.
<p>Total 1050</p>	<p>Total 1050</p>
	<p>* shippers should be permitted to split GT Secure 50 car blocks after peak shipping season ends, at week 29</p>

All of which is respectfully submitted this 23rd day of March, 2007

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