

**Assessment of Railway Crossing Fees
and Impacts on Property Owners with Properties
adjacent to the Sydney Subdivision in Cape Breton**

September 2017

EXECUTIVE SUMMARY

This summary provides a review of the consultant's recommendations related to the issue of fees applied to property owners in Cape Breton with land adjacent to the Cape Breton & Central Nova Scotia Railway (CBNS), Sydney Subdivision, who require a private crossing to access their lands.

Property owners along highway 223, adjacent to the railway, who need to cross over the CBCNS rail line to enjoy their lands, believe that they have not received a fair hearing regarding the fees charged by the railway and Nova Scotia Power. Informal pleas have been made to the railway, NS Power, as well as municipal and provincial elected officials but a satisfactory resolution of the property owner's issues has not been achieved.

There are several avenues open to property owners adjacent to the CBNS rail line who believe fees are too high to achieve a private railway crossing.

With regard to installing new powerlines...

Through this study's consultation process, staff at Nova Scotia Power stressed their desire and willingness to assist in coming up with innovative solutions, highlighting that they would look at all options to reduce these costs in collaboration with the property owners. For example, NSP would like to actively pursue potential economy of scale solutions such as building a powerline across a railway once and then extending the line on the other side in order to serve multiple customers. NSP proposed that a meeting be scheduled as soon as possible to discuss these and other options.

With regard to the annual railway crossing fee charged by G&W ...

Several options exist to address concerns over the annual crossing fee.

Property owners could make a request to the Province of Nova Scotia, through the Department of Transportation and Infrastructure Renewal (TIR), to amend the regulations under the *Railways Act* which establishes the \$300 fee. A request could be made to reduce the fee or eliminate the fee until such time as railway activity is re-established or an abandonment application is received and approved.

If property owners are not satisfied with the outcome of the request to TIR, they could make application to the NSUARB, pursuant to Section 39 of the Nova Scotia *Railways Act*, to explain their concerns and request establishment of reasonable fees. Alternatively, pursuant to Section 83 of the *Public Utilities Act*, property owners could file a complaint with the NSUARB with supporting documentation that the fees are unreasonable or unjustly discriminatory.

Objective of the Study

This purpose of this project was to gather information about the specific concerns of property owners, to gain clarity on the fees charged by Genesee & Wyoming and for what purpose, to understand the federal and provincial policy and regulatory environment within which these fees are applied, to gain clarity on how these crossing fees compare with other crossing fees in similar situations across Canada and to consider options to help resolve or improve the perceived situation for property owners in Cape Breton whose properties are adjacent to the Sydney Subdivision rail line.

The Sydney Subdivision Rail Line

The Cape Breton and Central Nova Scotia Railway (CBNS) is a 395km railway operating in Nova Scotia between Truro and Sydney. The Sydney Subdivision is the 189 km section from Point Tupper to Sydney. CBNS has been wholly owned and operated by Genesee & Wyoming Inc. (G&W) since 2012.

The line had offered daily freight service between Truro and Point Tupper, with weekly service to Sydney Subdivision, or as required based on traffic volume. The Sydney Subdivision experienced declining rail activity over the last dozen years. In 2015, G&W was granted approval by the Nova Scotia Utility and Review Board to discontinue rail service and ceased rail operations on this subdivision. G&W has expressed its intent to apply for rail abandonment but has delayed their application for rail abandonment to allow additional time for the proponents of a new container terminal in Sydney harbour to develop their container terminal project.

Property Owners Concerns

Property owners along Route 223, adjacent to the Sydney Subdivision of CBNS, have witnessed limited rail activity for several years and no rail activity for the past two years. Some of the property owners have expressed concerns over the annual crossing fees charged by G&W. They feel these charges are not warranted given the lack of traffic on the line since discontinuance. In their view the prospect for rail operations returning in the near future are low.

In addition, some property owners expressed concern over the fees charged by utility companies, in particular, Nova Scotia Power, to provide new service over the railway track. Property owners have suggested they wish to invest substantially in developing their private properties but they are hampered by the high costs being charged by CBNS and Nova Scotia Power to access their land over the railway's right of way. The property owners believe that there is lost opportunity to the local economy in that construction activity is delayed and the municipality cannot realize increased municipal tax revenue under the current situation.

Fees Schedules

Genesee & Wyoming

The property on which the CBNS railway resides is largely owned by G&W. G&W determines when and how railway crossings will be permitted by users. To obtain approval to cross the CBNS railway G&W requires users to acquire a Grade Crossing Agreement (GCA). A GCA maybe granted through an application process. Fees are charged by G&W to assess and process an application. These fees support engineering approvals, sight line clearances, insurance, construction and maintenance of the crossing. Rail safety is at the core of G&W's processes. When making an application to G&W, users include photographs, identification of the railroad milepost location, and a plan showing the proposed crossing.

The website https://www.gwrr.com/real_estate/utility_occupancies outlines G&W's fee schedule for applying for a GCA. G&W charges \$1000 for reviewing an application review as well as \$1500 for an engineering review and a Right of Entry (for site access) of \$1500. In summary,

Non-refundable Application fee - \$1,000
Non-refundable Engineering Review fee - \$1,500
Non-refundable Right of Entry (ROE) fee - \$1,500
Total - \$4,000

The standard processing time for an application can take eight weeks. Processing can be expedited and completed within two weeks for an additional fee of \$1750.

It is within G&W's right to approve or not approve an application. Depending on the application, additional engineering reviews or more detailed construction plans may be required to conduct the assessment. If an application is approved, a GCA is provided by G&W. The GCA may outline insurance requirements of the user.

Once a GCA is granted, an annual fee of \$300 is charged to users. This fee level is regulated by the Department of Transportation and Infrastructure Renewal under the *Railways Act*, Private Railway Crossing Fees Regulation.

Nova Scotia Power

At the request of some property owners, Nova Scotia Power (NSP) provided estimates on the costs to install power lines across G&W the railway. A portion of the cost estimate is related to obtaining the CGA from G&W and a portion is related to the need for NSP to conduct assessments and build the new line.

To inform this review, a consultation was undertaken with NSP. For illustrative purposes, the following provide one example of a breakdown of cost elements leading to an overall estimated cost of \$16,300 (\$18,050 if expedited):

- \$4000 for approval to cross the G&W rail line (direct charges from G&W with no mark-up included from NSP) – average 6-8 week turnaround time
- \$10,000 for NSP engineering assessment to meet Grade 1 construction, required by the Canadian Electrical Code for all railway crossings (includes \$3,000 to complete a survey of the railway and \$7,000 for the assessment itself which is undertaken by external consultants at a rate of \$135/hr)
- \$900 for railway flaggers during railway survey
- \$900 for railway flaggers during construction
- \$500 for NSP processing fee

It should be noted that a sizeable portion the cost estimate of \$16,300 from NSP are pass-through costs and are required by regulation related to the GCA requirement.

It is important to note that the total cost estimate for a particular situation may vary depending on the complexity of the request or other unique factors. If the property owner requested the process to be expedited by G&W and reduce the 6-8 week turnaround time, the G&W fee of \$1750 would be an additional cost.

In addition to the fees outlined above, there may be additional costs associated with the actual power line installation depending on the distance. For all power line installations NSP will cover all of the costs for lines up to 92 metres. If more than 92 metres is required by the property owner, the cost is approximately \$37 and tax per additional metre. All railway crossing fees are in addition to these costs regardless if the power line is less than 92 metres or more.

Activities Undertaken by Property Owners to Address Their Concerns

Some property owners along Route 223 have indicated they have been in discussion with both G&W and NSP for several years to reach agreement on reasonable fees to permit private crossings over the rail line. Property owners remain concerned that the fees are too high to install electrical power over a discontinued rail line, and these costs prevent them from moving forward with their development plans.

Property owners have reached out to municipal leaders and the Nova Scotia Utility and Review Board (NSUARB) to discuss options but feel the issue has not been resolved to their satisfaction. To date, property owners have not applied to the NSUARB to seek a resolution nor have they initiated an application for power installation with NSP.

Federal and Provincial Policy and Regulatory Environment

For Class 1 railways, the *Canada Transportation Act* provides for railway companies, road authorities, utility companies and private landowners, a guide to assist in determining the costs in establishing a rail crossing. Private landowners are encouraged to negotiate contracts with the railway that incorporates rates, time frames, terms and conditions for the work to be done, as well as construction and sight specifications. Where agreements cannot be reached by any of the

parties involved, the Canada Transportation Agency, on application to the Agency, may resolve issues relating to the construction and settlement of costs regarding road or utility crossings. However, the CBNS railway is not a Class 1 railway, an appeal to the Canada Transportation Agency is not available.

There is no standard fee for a private crossing across the seven other Canadian provinces where short line rails operate; however, one example in Manitoba (OmniTrax) has similar fees to G&W for private grade crossing applications.

The approval to construct a safe private crossing rests with the landowner and the railway. If a dispute arises in negotiating a private grade crossing, there is generally an appeal mechanism available to both parties that involves the Minister of Transportation and or an independent body that will resolve the dispute. The railway and landowner negotiate a private arrangement based on factors such as the frequency of use, ownership of land on either side of the rail right of way, historical undertakings, etc.

In Nova Scotia, several pieces of legislation come into play in rail operations. These include the Railways Act, Utility and Review Board, Public Utilities Act, Railway Safety Act, Transportation of Dangerous Goods Act, Navigation Protection Act, and the Nova Scotia Planning Act.

In 2011, the Government of Nova Scotia issued an Order in Council to regulate the fee and the fee has not been changed since that time, nor has it been the subject of an appeal to the NSUARB.

It is important to note that other national Codes and standards apply, such as the Canada Electrical Code, when activity relates to railway crossings. Crossing a rail line that currently does not have rail operations does not exempt NSP or G&W from applying those standards.

Options for Property Owners to Seek Resolution

There are several avenues open to property owners adjacent to the CNS rail line who believe fees are too high to achieve a private railway crossing.

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