

In presenting its bills to VIA, the two operating railways have in the past produced essentially undifferentiated, and unitemized statements. This means that charges are not broken down into components. Thus, VIA, as CP and CN's best customer for this type of service, is in a position of having to pay these charges without knowing their constituent elements, and VIA can hardly take its business elsewhere as the roadbeds in this country are operated by the two major transcontinental rail companies.

In the voluminous contractual arrangements between CP Rail, CN Rail and VIA, there are no provisions for the supply or breakdown of detailed costing data. Component charges that go into an operating railway's monthly statement to VIA cannot, on a bilateral basis, be broken down into justifiable components. In other words, if a specific amount is charged for a particular service, VIA management wishes to determine what elements are being attributed to that charge. This information has been generally unavailable to the national passenger carrier. The mechanism available to VIA to obtain this data, which its senior management feels is essential in order to evaluate the service they are obtaining for the substantial amounts of money being paid, is through the Canadian Transport Commission.

The CTC can obtain such costing data. However, the CTC takes the position that based upon section 331 of the *Railway Act*,⁽¹⁾ this type of information must be treated confidentially. The CTC, in its legal opinion, cannot release this data except in the face of a formal request from VIA. Then sufficient time has to be given to the CTC to make inquiries as to the validity of VIA's need for the data. An opportunity for the operating railways, namely CN Rail and CP Rail, to make their cases as to why such information should not be made available to VIA or to any other entity interested in obtaining it would also have to be provided.

It must be noted the operating railways contend that the release of such data is generally unnecessary for effective management of VIA and that further, the release of this type of information could have detrimental consequences to the railways by providing competitors such as the highway carriers (i.e. buses, and trucking firms) with valuable commercial intelligence which would provide them with an unfair advantage. In the Committee's view, this argument against releasing information to VIA is exaggerated and unreasonable. The Committee doubts whether the provision of the type of data asked for by VIA could work to the detriment of CP Rail or CN Rail. However, if that is a cause of concern to the railways, surely VIA could provide an adequate undertaking to keep pertinent data confidential and for its own use alone.

There was considerable controversy in the testimony presented by senior counsel of the Railway Transport Committee of the CTC and the general counsel for VIA as to the course of events surrounding VIA's initial request for this information. This Committee does not intend to adjudicate on this significant dispute. However, the Committee does note that this argument has benefited no one—certainly not the users of passenger rail services in this country. The Committee believes that the current system, which is largely determined by certain provisions of the *Railway Act*, works to prevent VIA from obtaining vital costing information. VIA finds itself in the undesirable position of having to embark on an adversarial course of action to obtain data which the Committee feels is needed without the

⁽¹⁾ S. 331 of the *Railway Act* is reproduced in Appendix V.