

WESTERN CANADA COMMERCIAL ARBITRATION SOCIETY

FINAL OFFER ARBITRATION

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Background

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- FOIA introduced in 1988
- Regulatory remedies prior to 1988:
 1. Rate regulation by agency for “captive shipper”
 - Rate to be fixed by regulator at cost of movement + 150% mark up over variable cost
 2. Appeal to regulator for acts, omissions or rates of carriers that may prejudicially affect the “public interest”

FOA and *Freedom to Move*

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- Retained “Public Interest” recourse to regulator
- FOA part of 1988 deregulation exercise
- Replaces Agency rate-setting authority
 - described by Government at time as mechanism for resolving disputes of private or narrow interest

FOA: WHAT IT IS

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- Baseball-type arbitration
- Final offer selection more accurate
- All or nothing
- Recourse triggered by shipper only
- Rates and conditions of service

CTA FOA Process:

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- A sixty-day process
 - Submission of FOA (without dollars) - Day 1
 - Simultaneous submission (with dollars) – Day 10
 - Matter referred to Arbitrator – Day 15
 - Exchange of Information – Day 30
 - Exchange of Interrogatories – Day 37
 - Answers to Interrogatories – Day 52
 - Possible rebuttal information
 - Hearing
 - Decision – Day 60
 - Reasons

Issues:

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- Timelines
- Simultaneous submission and information
- Guidance criteria
- Previous offers (compare to C-52)
- No reasons

Observations:

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FOA was

- intended to be a fast and easy alternative to traditional economic regulation and rate-setting process
- Intended to better reflect commercial realities:
- Has it achieved its objectives?
 - Depends on perspective
- Alternatives?