

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Canadian Pacific Railway Company, *et al.* – Control - )  
Dakota, Minnesota & Eastern Railroad Corp., *et al.* ) Finance Docket No. 35081

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CANADIAN PACIFIC RAILWAY COMPANY'S REPLY TO THE  
PETITION OF THE STATE OF SOUTH DAKOTA TO ENFORCE  
INVESTMENT REPRESENTATIONS

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Table of Contents

	Page
STATEMENT OF FACTS.....	2
I. THE CP/DME CONTROL PROCEEDING.....	2
II. THE SIP PROCESS.....	7
III. CP’S CAPITAL INVESTMENT IN DME LINES.....	10
ARGUMENT.....	12
IV. CP HAS COMPLIED WITH THE CONDITIONS IMPOSED BY THE BOARD IN THE CP/DME CONTROL PROCEEDING.....	12
A. CP And DME Have Complied With The SIP Process.....	12
B. CP Has Adhered To All Of Its Representations In The <i>CP/DME Control</i> Proceeding.....	16
C. SDDOT Concern Regarding A Potential Sale Of DME Lines Is Premature.....	24
CONCLUSION.....	25

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Canadian Pacific Railway Company (“CP”) and its subsidiary, Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) submit this response to the Petition of the State of South Dakota Acting By and Through Its Department of Transportation to Enforce Canadian Pacific Railway Company’s Investment Representations, filed in the above-captioned proceeding on August 8, 2013 (the “SDDOT Petition”).<sup>1</sup>

The SDDOT Petition expresses concern regarding CP’s announcement in December 2012 that it intended to explore strategic options for (including a possible sale of) DME’s rail lines west of Tracy, MN.<sup>2</sup> SDDOT contends that CP’s announcement “call[s] into question” whether CP has honored the commitment it made to invest \$300 million to improve the safety of DME’s rail lines during the course of the Board’s proceedings on CP’s application to acquire DME, and in the related Safety Integration Plan (“SIP”).<sup>3</sup> SDDOT asks the Board to order CP to produce to SDDOT “detailed, verified capital investment information” regarding CP’s post-acquisition investments in DME, and to submit (what SDDOT refers to as) a “verified compliance statement.” SDDOT further proposes that, after CP fulfills those requirements, the Board afford

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<sup>1</sup> The Iowa, Chicago & Eastern Railroad Corporation (“IC&E”) was merged with and into DM&E following consummation of the CP/DME control transaction. In this Reply, DM&E and the former IC&E are referred to collectively as “DME.”

<sup>2</sup> SDDOT Petition at 3, 17.

<sup>3</sup> *See Id.* 3, 10–16.

SDDOT an opportunity to “provide comments on these materials” and that the Board then issue “an appropriate enforcement order” against CP.<sup>4</sup>

As this Reply demonstrates, CP has fully complied with the conditions imposed by the Board in connection with its approval of the *CP/DME Control* transaction. Accordingly, there is no basis for an “enforcement order” against CP, and SDDOT’s Petition should be denied..

## STATEMENT OF FACTS

### I. THE CP/DME CONTROL PROCEEDING

On October 5, 2007, CP filed an application pursuant to 49 U.S.C. §§ 11321 *et seq.*, seeking STB authorization to control DME (the “CP/DME Application”).<sup>5</sup> The CP/DME Application and accompanying testimony demonstrated that CP’s acquisition of DME would not result in a substantial lessening of competition, and otherwise satisfied the statutory criteria for approval. Among the significant public benefits of the transaction discussed in the CP/DME Application was a commitment by CP to assist DME in improving the safety and efficiency of its operations by investing in DME’s physical plant and introducing CP’s industry-leading safety practices on DME:

DME will gain access to the resources it needs to become a safer and more efficient railroad. CPR will make available to DME \$300 million over the next several years to repair and upgrade its track, bridges and other facilities. This investment will allow DME to address conditions that have contributed to safety concerns in recent years, and will improve the fluidity of train operations. Practices and technologies that have made CPR one of the safest railroads in North America (with the fewest reportable

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<sup>4</sup> *Id.* at 30.

<sup>5</sup> References to “DME” in the CP/DME Application and SIP referred collectively to both DM&E and the former IC&E. *See* CP/DME Application at 2; Applicants’ Safety Integration Plan Submitted to Federal Railroad Administration on February 4, 2008 (“SIP”) at 2.

train accidents of any major railroad over the past decade) will be introduced on DME.<sup>6</sup>

That commitment was echoed in the Verified Statement submitted by CP's then-President, Fred Green, in support of the Application :

Over the next several years, CPR will make available to DME \$300 million of capital to repair and upgrade its track, bridges and other rail facilities. This investment will allow DME to address conditions that have contributed to safety concerns, and inflated its casualty and insurance costs, in recent years.<sup>7</sup>

CP's plan to increase capital spending on DME's infrastructure was explained in the Operating Plan submitted as Exhibit 13 to the CP/DME Application. CP Witness Graham, who sponsored the Operating Plan, testified that:

[a]n important element of the CPR/DME operating plan is CPR's plan to make available to DME \$300 million in capital for needed improvements to DME's track, bridges and other facilities. Approximately \$100 million would be dedicated to this effort in each of the three years following approval of the transaction. This investment will enable DME to address deferred maintenance on its lines, and to upgrade its bridges and facilities.<sup>8</sup>

The Operating Plan further explained that the proposed \$100 million annual capital budget would "include an estimated \$70.2 million per year in improvement capital to reduce current operating restrictions on DM&E and IC&E core lines and \$29.8 million per year in replacement capital."<sup>9</sup> CP stated that the particular types (and locations) of capital improvements funded by its commitment would be determined after CP had an opportunity to conduct a more careful inspection of DME's physical plant:

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<sup>6</sup> CP/DME Application at 5 (emphasis added). *See also id.* at 23, n.7 ("As stated above, CPR will make available to DME \$300 million to upgrade and rehabilitate its tracks, structures (bridges) and rail facilities").

<sup>7</sup> CP/DME Application, V.S. Green at 5 (emphasis added).

<sup>8</sup> CP/DME Application, V.S. Graham at 4 (emphasis added).

<sup>9</sup> CP/DME Application, Exh. 13 (Operating Plan) at 36.

The specific projects, quantities and details by subdivision would be determined following detailed field inspection, assessment of Track Evaluation Car field measurements (e.g. laser rail, GRMS, GREX tie inspection and geometry measurements, and review of historical replacements). Similarly, priorities for specific bridge replacements and repairs will be established following completion of inspections and structural assessments. *Id.*

CP predicted that “[t]hose capital investments and improvements, in combination with implementation of CPR’s safety practices at DME, will substantially improve the safety of DME operations.”<sup>10</sup>

In response to issues raised by certain parties during the course of the proceeding, CP subsequently agreed to dedicate a portion of the \$300 million capital budget to two specific projects:

First, Mayo Clinic submitted comments expressing concern about the condition of the DM&E line through Rochester, MN and the alleged safety hazard posed by a possible increase in ethanol traffic over that line.<sup>11</sup> Citing similar concerns and the “amount of deferred maintenance on the DM&E System,” the City of Owatonna, MN requested clarification of “where the \$300 million [CP] intends to spend to rehabilitate the DM&E’s deteriorated track and facilities might be spent with specific reference to Owatonna.”<sup>12</sup> In response to those comments, CP advised the Board on Rebuttal that:

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<sup>10</sup> CP/DME Application, Exh. 13 (Operating Plan) at 40.

<sup>11</sup> See MAYO CLINIC-3, Argument and Request for Conditions, filed March 4, 2008.

<sup>12</sup> See OWATONNA-1, Comments of The City of Owatonna, MN, filed March 4, 2013 at 6.

Applicants have included in their capital plans for 2008 to 2010 (DME's existing plan for 2008 and CPR's plan for 2009-2010) funds to rehabilitate and upgrade the DM&E line from Owatonna through Rochester to FRA Class 3 track. This includes, among other improvements, the installation of approximately 30 miles of continuous welded rail ("CWR") in the vicinity of Rochester and 10 miles of CWR in and around Owatonna. Improvements scheduled to be completed in 2009 (and which DME plans to begin in 2008) will bring the DM&E track from Owatonna through and beyond Rochester up to Class 3 standards, enhancing the safety of that line and allowing greater train velocity.<sup>13</sup>

CP advanced to DM&E \$13.5 million of the \$100 million originally scheduled to be spent during 2009 to enable DM&E to begin work on rehabilitating the Owatonna-Rochester segment during the 2008 maintenance season.<sup>14</sup> The work required to bring the entire Owatonna-Rochester segment (which previously consisted of Class 2 track with a short segment of Class 1 track near Rochester) up to FRA Class 3 standards was completed during 2009.<sup>15</sup>

Second, in discussing the proposed transaction with Applicants, the Southern Minnesota and Northern Iowa Shippers Association ("SMNISA") expressed concern about the condition of IC&E's so-called "Corn Lines."<sup>16</sup> SMNISA's Comments supporting the transaction advised the Board that "CP has made a commitment to the Association that it will bring the Corn Lines up to a 25 MPH service standard by the end of 2013 provided that future traffic volume on those lines economically supports such an investment."<sup>17</sup> By the end of 2013, CP will have completed the rehabilitation of all but 31 miles of the Corn Lines to FRA Class 2 standards (permitting train

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<sup>13</sup> See CPR-14 DME-14, Applicants' Response to Comments and Requests for Conditions and Rebuttal in Support of Application (hereinafter "Applicants' Rebuttal") at 76. See also CPR-16 DME-16, Applicants' Brief, filed July 2, 2008 at 17-18.

<sup>14</sup> See Attachment 6, Letter dated March 25, 2009 from V. Graham (CP) to J. Strang (FRA) at 1.

<sup>15</sup> See Attachment 1, V.S. Wilson at 6-7.

<sup>16</sup> The "Corn Lines" consist of two east-west lines, one between Marquette and Sheldon, IA (via Mason City), and the other between Ramsey and Jackson, MN, as well as a north-south line between Mason City and Austin, IA that connects the two east-west lines. The total mileage of the Corn Lines is 402.8 miles. See Attachment 1, V.S. Wilson at 7.

<sup>17</sup> See Comments of the Southern Minnesota and Northern Iowa Shippers Association, filed March 4, 2013 at 2.

speeds of 25 MPH), at a cost of approximately {{ }}. Rehabilitation of the remaining 31-mile segment between Ruthven and Hartley, IA has been delayed due to the unavailability of a sufficient quantity of suitable relay rail. CP has budgeted an additional {{ }} to complete the upgrade of the Ruthven-Hartley segment during 2014.<sup>18</sup>

The Owatonna–Rochester and Corn Lines rehabilitation projects were the only location-specific capital investments in DME’s rail lines to which Applicants committed during the course of the *CP/DME Control* proceeding. Of particular relevance to SDDOT’s Petition, neither SDDOT nor any other party requested a condition, or solicited CP’s agreement, to undertake any track rehabilitation project involving DME rail lines in the State of South Dakota.<sup>19</sup> Indeed, while SDDOT filed a Notice of Intent to Participate and later asked the Board to modify the procedural schedule to provide an opportunity for parties to comment on the SIP (which the Board did by Decision served on February 5, 2008), neither SDDOT nor any other State agency filed comments regarding the CP/DME Application or the SIP, took a position in support of (or opposition to) the proposed transaction, or otherwise participated substantively in the CP/DME Control proceeding.<sup>20</sup>

The Board approved the proposed transaction by a Decision served on September 30, 2008 (the “*CP/DME Control Decision*”). In that Decision, the Board took notice of CP’s

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<sup>18</sup> See Attachment 1, V.S. Wilson at 7.

<sup>19</sup> The suggestion that South Dakota “supported CP’s application to purchase the DM&E railroad” on the basis of a pledge by CP to “mak[e] safety improvements acutely needed on the rail line west of Pierre” (see SDDOT Petition, Exh. DMD-2, Page 1 of 9, Letter dated February 5, 2013 from Hon. Dennis Daugaard to Hunter Harrison at 1) is simply not true. As the record makes clear, the State of South Dakota did not take any position before the Board regarding the CP/DME Application, nor did CP make (or the State request) any commitment regarding improvements to DME’s rail lines west of Pierre.

<sup>20</sup> See SDDOT Notice of Intent to Participate filed December 5, 2007; SDDOT Petition for Partial Reconsideration or for Clarification of Decision Served December 27, 2007, filed January 8, 2008. Applicants filed a response to SDDOT’s Petition for Partial Reconsideration, concurring with SDDOT’s suggestion that interested parties be permitted to file comments regarding the SIP on March 4, 2008. See CPR-8 DME-8, filed January 15, 2008.

representation that it “will make available \$300 million for repairs and upgrades to DM&E track, bridges, and other facilities.”<sup>21</sup> The Board also noted CP’s promise that “the line [from Owatonna] through Rochester will be upgraded to FRA Class 3 track,” and stated that “[w]e will hold applicants to their representation that the line through Rochester will be upgraded enough to permit the safe handling of the hazardous materials that will be routed over it.”<sup>22</sup> The Decision likewise acknowledged the voluntary agreement between Applicants and SMNISA regarding rehabilitation of the Corn Lines to permit 25 MPH train operations.<sup>23</sup>

As relevant to SDDOT’s Petition, the Board imposed the following two conditions on its approval of the transaction:

5. Approval of the CPRC/DM&E/IC&E control application in STB Finance Docket No. 35081 is subject to the condition that applicants shall comply with the SIP prepared under 49 CFR 1106, which may be updated as necessary, and continue to coordinate with FRA in implementing the SIP during the operations integration period. The ongoing safety integration process shall continue until FRA has informed the Board that the integration of applicants’ operations has been safely completed . . . .

8. Applicants are required to adhere to any and all of the representations they made on the record during the course of this proceeding, whether or not such representations are specifically referenced in this decision.<sup>24</sup>

## II. THE SIP PROCESS

As required by the Board’s regulations at 49 C.F.R. § 1106, CP and DME prepared a Safety Integration Plan detailing the actions they would take to ensure that integration of DME’s

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<sup>21</sup> *CP/DME Control Decision* at 7.

<sup>22</sup> *Id.* at 23 (emphasis added). The Board concluded that the other conditions sought by Mayo Clinic, which would have, *inter alia*, imposed speed restrictions on DME trains moving through Rochester, required DME to construct additional grade-separated crossings, and required DME to provide advance notice of all hazardous commodity shipments to local first responders, “have not been shown to be warranted.” *Id.*

<sup>23</sup> *Id.* at Appendix B, page 39.

<sup>24</sup> *CP/DME Control Decision* at 27.

operations with those of CP would be accomplished in a safe manner.<sup>25</sup> The 104-page SIP document identified a variety of measures designed to enhance the corporate safety culture at DME, to bring safety management processes that had been successful on CP to the DME network, and to take advantage of “best practices” to improve the safety performance of both DME and CP. CP and DME have worked in cooperation with FRA to implement those important safety initiatives.<sup>26</sup> As CP Witness Wilson explains, those efforts have resulted in substantial reductions in train accidents and workplace injuries on DME in the years following CP’s acquisition of DME.<sup>27</sup>

The SIP also addressed CP’s commitment to make capital investments in DME’s track, bridges and other facilities in order to improve the safety of DME’s train operations. The SIP contained the same representation that CP made in both the Application and Operating Plan:

CP projects that it will make available approximately \$300 million in capital for improvements to DME’s track and ties, bridges and other rail facilities and systems and processes. Following approval of the transaction, the planned expenditures include an estimated \$70.2 million per year in improvement capital to reduce current operating restrictions on DME core lines and for systems and processes, and \$29.8 million per year in basic replacement capital. Applicants believe the additional planned capital expenditures will make very important contributions to improved safety performance on the DME.”<sup>28</sup>

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<sup>25</sup> See Applicants’ Safety Integration Plan Submitted to Federal Railroad Administration on February 4, 2008.

<sup>26</sup> Attachment 9 to this Reply identifies more than 100 specific actions that CP and DME have undertaken, and completed, in implementing the SIP.

<sup>27</sup> See Attachment 1, V.S. Wilson at 11-14.

<sup>28</sup> SIP at 89–90. See also SIP at 2 (“The proposed control of DME by CP will facilitate DME’s continued safety improvement by making available to DME approximately \$300 million for capital investments necessary to repair and upgrade DME’s track, bridges and facilities and implement systems and processes.”); SIP at 4 (“CP projects that it will make available to DME approximately \$300 million for capital improvements to DME’s track, bridges, and other rail facilities and processes in the first three years following approval of the transaction . . . . Applicants will target capital expenditures to key locations and critical infrastructure in order to improve DME safety and increase system fluidity.”)

The SIP contained a table that identified the specific types of capital improvements (Track, Structures, Signals & Communications, etc.) that CP planned to fund with its \$300 million commitment.<sup>29</sup> Consistent with the Application and Operating Plan, that table outlined a “Total Engineering” budget of approximately \$100 million per year over a three year period, for a total investment of \$300 million. *Id.* The SIP likewise stated that determinations regarding specific types and locations of capital projects would be made following a detailed post-acquisition field inspection of DME’s physical plant.<sup>30</sup>

During the course of the SIP process, the SIP document was amended in two respects. First, as the Board noted in its *CP/DME Control Decision* (at 20), FRA requested that emergency response training exercises with local community groups commence within 60 days of the Board’s decision approving the transaction. Applicants agreed to that modification, and initiated those exercises during the 4th Quarter of 2008. Second, CP amended the capital budget for 2009 to \$77.1 million to account for (1) the fact that CP had already advanced to DME \$13.5 million of the funds budgeted for 2009 to enable DME to begin the Owatonna–Rochester line rehabilitation project during 2008, and (2) to reflect the deferral of \$9.5 million in capital spending to a future year on account of the severe economic downturn that affected CP (and other railroads) during 2009.<sup>31</sup> Neither CP, FRA nor any other party proposed other modifications to the SIP document.

On July 3, 2008, FRA notified the Board that “[t]o date, CP has responded satisfactorily to all of FRA’s safety concerns.” FRA indicated that it would “monitor CP’s implementation of

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<sup>29</sup> SIP at 89–90.

<sup>30</sup> SIP at 90.

<sup>31</sup> See Attachment 6, Letter dated March 25, 2009 from V. Graham (CP) to J. Strang (FRA) at 1.

the SIP during the operations integration period.”<sup>32</sup> CP has continued to cooperate with FRA to implement all elements of the SIP.

### III. CP’S CAPITAL INVESTMENT IN DME LINES

Over the past several years, CP has spent significantly more than the \$300 million that it promised to invest to repair and improve DME’s track, bridges and facilities. From 2008 through July 2013, CP’s total engineering capital investment in DME totaled more than \$405 million.<sup>33</sup> Details regarding CP’s engineering capital expenditures on DME are set forth in several Attachments to this Reply. Attachment 2 identifies the total engineering capital investment during the 2008–2013 period for each individual DME Property Section.<sup>34</sup> Attachment 3 identifies the total engineering capital spent by category and State. Attachment 4 sets forth the same information by category and Year. As those Attachments (and the Verified Statement of witness Wilson) show, the DME capital program has included major investments in DME’s tracks, bridges, yards and facilities, and improvements to DME’s technology and processes.

By far the largest amount has been dedicated to improving the safety and fluidity of DME’s track. To date, CP has spent approximately \$250 million to repair and upgrade DME’s rail, ties, ballast and other track material.<sup>35</sup> Approximately {{ }} million of that amount was dedicated to improving DME’s rail lines in the State of South Dakota.<sup>36</sup> As a result,

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<sup>32</sup> See Attachment 7, Letter dated July 3, 2008 from Hon. Joseph H. Boardman to Hon. Charles D. Nottingham at 1.

<sup>33</sup> That amount does not include amounts spent by CP/DME for other types of capital investments (e.g., mechanical) or for ordinary maintenance during the same period.

<sup>34</sup> DME’s “Property Sections” are similar to its Subdivisions, but (unlike Subdivisions) do not cross state lines.

<sup>35</sup> See Attachment 2.

<sup>36</sup> See Attachment 3. See also Attachment 1, V.S. Wilson at 7-10. CP’s investments in DME main lines in other states have also benefitted South Dakota shippers by promoting safer and more efficient rail service between South Dakota and points across the DME system and beyond.

approximately 57 miles of track within the State of South Dakota have been upgraded from FRA Class 1 or Class 2 to FRA Class 3 standards—indeed, by the end of 2013, virtually all 206 miles of DME main line track between the South Dakota/Minnesota border and Pierre, SD will be Class 3 track.<sup>37</sup> CP’s investment in South Dakota includes more than {{ }} to rehabilitate DME’s Pierre-Rapid City and Black Hills Subdivisions west of Pierre.

CP has also invested approximately \$65.5 million to repair and improve DME’s bridges and culverts. While the Operating Plan (at Exhibit L) projected that approximately 60% of the \$300 million committed by CP would be needed to repair and/or replace DME bridges, CP’s post-acquisition bridge inspections revealed that less costly repairs could extend the life of many bridges, thereby avoiding the need for immediate replacement. By reducing its initial budget for bridge replacements in that manner, CP was able to undertake a more extensive program to repair DME’s tracks which, CP discovered, were in significantly worse condition in some locations than was initially believed based upon their reported FRA Class. *See* Attachment 1, V.S. Wilson at 4-5.

CP’s post-acquisition capital investment in DME also included \$44.8 million for signals and communications facilities. This amount includes approximately {{ }} for upgraded wayside signals and other assets on DME lines that will be required to comply with the Congressional mandate to install PTC technology on all lines that handle TIH commodities.<sup>38</sup> Because DME handles significant volumes of anhydrous ammonia (which is used as a fertilizer by agricultural customers), CP was required to begin the process of installing PTC capability on portions of the DME network.

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<sup>37</sup> *See* Attachment 1, V.S. Wilson at 8. *See also* Attachment 2.

<sup>38</sup> *See* Rail Safety Improvements Act, Pub. L. 110-43, 122 Stat. 4848 (“RSIA”). The RSIA requires Class I railroads to install PTC technology on all main lines used to transport passengers or toxic-by-inhalation (“TIH”) materials no later than December 31, 2015.

As Attachments 2 through 4 demonstrate, CP has spent substantially more than the “approximately \$300 million” in engineering capital it promised to invest in DME’s infrastructure. As of July 2103, CP had spent a total of \$405 million to repair and upgrade DME’s tracks, bridges and culverts, communications systems and other facilities. Moreover, \$65.8 million of that capital investment has been dedicated to improving DME’s infrastructure in South Dakota, even though neither the State of South Dakota nor any other party requested that CP make any specific capital investments in South Dakota during the course of the *CP/DME Control* proceeding.<sup>39</sup>

#### ARGUMENT

#### IV. CP HAS COMPLIED WITH THE CONDITIONS IMPOSED BY THE BOARD IN THE CP/DME CONTROL PROCEEDING.

As the facts set forth above and in the attached Verified Statement of witness Wilson demonstrate, CP has complied with the conditions imposed by the Board in approving the CP/DME control transaction. The allegations in the SDDOT Petition implicate two of those conditions: (1) Condition #5, which required CP/DME to comply with the terms of the SIP and to coordinate with FRA in implementing the SIP during the operations integration period, and (2) Condition #8, which required CP/DME to adhere to the representations they made on the record during the course of the *CP/DME Control* proceeding.<sup>40</sup> SDDOT’s Petition proffers no facts or evidence that would support a finding that CP and DME have failed to satisfy either of those conditions.

##### A. CP And DME Have Complied With The SIP Process.

CP and DME have complied with their obligation to implement the safety measures set forth in the SIP, and have worked closely with FRA to integrate the operations of CP and DME

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<sup>39</sup> See Attachment 3, DME Engineering Capital Expenditures By State (2008 – July 2013).

<sup>40</sup> See *CP/DME Control Decision* at 27.

in a safe and efficient manner. The SIP process involved far more than spending money to repair and upgrade DME's physical plant. Attachment 9 to this Reply identifies more than 100 specific actions that CP and DME have taken pursuant to the SIP to introduce CP's highly successful safety culture on the DME system; to provide extensive safety training to DME personnel, shippers and communities; to enhance DME's operating practices, safety rules and work procedures; to improve the inspection and monitoring of DME's physical facilities; and to implement other safety-related "best practices" on DME.

CP has also fulfilled its commitment in the SIP (at 89-90) to "make available approximately \$300 million in capital for improvements to DME's track and ties, bridges and other rail facilities and systems and processes." Indeed, from 2008 through July 2013, CP and DME have invested more than \$405 million in engineering capital to improve the safety and efficiency of the DME network.<sup>41</sup> Those capital expenditures include approximately \$250 million for rail, ties, ballast and other track material; \$65.5 million to repair and upgrade bridges and culverts; and \$44.8 million for signals and communications facilities (including the wayside signals and other facilities necessary to comply with Congress' PTC mandate).<sup>42</sup>

The State of South Dakota has benefitted directly from those investments in DME (which are significantly more than what CP committed to in the Application and SIP). As Attachment 3 shows, CP has spent nearly \$66 million for engineering capital improvements to DME lines located in South Dakota. Capital expenditures in South Dakota include approximately {{ }} for rail, ties, ballast and other track material; {{ }} to repair and upgrade bridges and culverts; {{ }} for grading; and {{ }} for signals and

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<sup>41</sup> See Attachment 2, DME Capital Expenditures, 2008 – July 2013 (By Property Section); Attachment 3, DME Capital Expenditures, 2008 – July 2013 (By State); Attachment 4, DME Capital Expenditures, 2008 – July 2013 (By Year).

<sup>42</sup> See Attachment 2.

communications facilities.<sup>43</sup> As a result of those investments, approximately 57 miles of DME's Huron Subdivision within South Dakota have been upgraded from FRA Class 1 or Class 2 to FRA Class 3 standards. Upon completion of work scheduled for this year, virtually the entire 206-mile DME main line between the South Dakota/Minnesota border and Pierre, SD will consist of Class 3 track capable of supporting 40 MPH train operations.<sup>44</sup> CP's investment in South Dakota includes more than \$25 million to repair or replace rail, ties, ballast, bridges and culverts on DME's Pierre-Rapid City and Black Hills Subdivisions.<sup>45</sup>

Implementation of the capital expenditures and safety-related programs contemplated by the SIP has produced a major improvement in rail safety along the DME network. As Figure I below illustrates, FRA reportable train accidents on DME declined substantially between 2008 and 2012, building on the gains that DME achieved in the years prior to the CP/DME transaction.

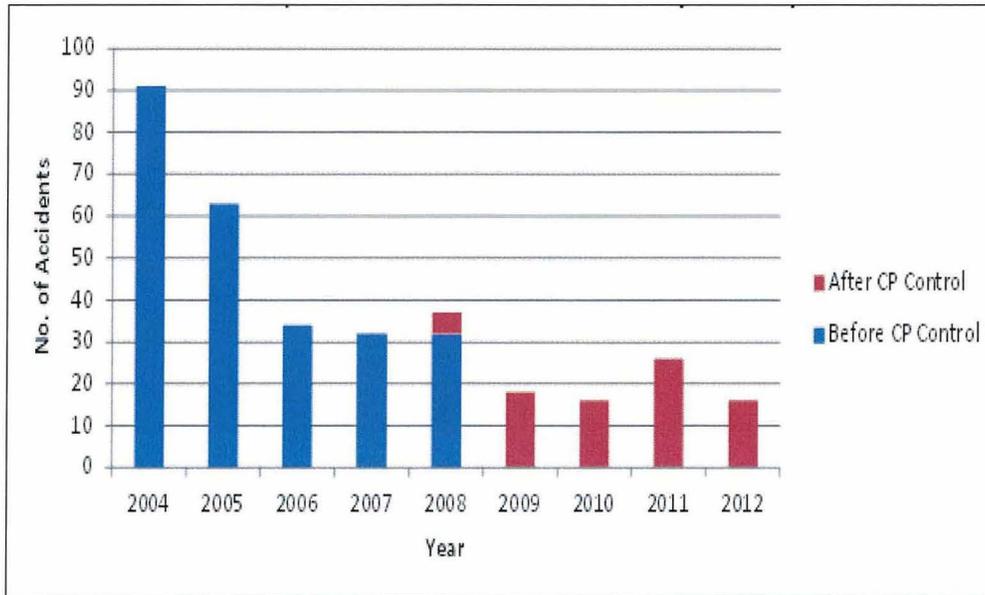
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<sup>43</sup> See Attachment 3.

<sup>44</sup> See Attachment 1, V.S. Wilson at 7-8; Attachment 5.

<sup>45</sup> See Attachment 2. As witness Wilson explains, the very low traffic density on DME's lines west of Pierre, and the service requirements of the commodities moving over those lines, do not justify the massive expenditure that would be required to upgrade those lines entirely to FRA Class 3 standards. Moreover, given the uncertainty regarding the future of DME's PRB expansion project, the fact that portions of DME's line west of Pierre would have to be relocated or rebuilt if that project were pursued, and competing capital needs on other segments of the DME network, it would not have been prudent for CP to spend a major share of DME's 2009-2012 capital budget to upgrade the lines west of Pierre. Nevertheless, as Attachment 5 shows, portions of DME's Pierre-Rapid City and Black Hills Subdivisions are maintained to Class 3 specifications. See Attachment 1, V.S. Wilson at 8-10.

**FIGURE 1**  
**FRA-Reportable Train Accidents on DME**



Implementation of the SIP has also enhanced worker safety on DME’s lines. Reportable injuries to DME employees declined by two-thirds, from 3.83 per 200,000 hours worked during 2006 to 1.38 per 200,000 hours worked last year.<sup>46</sup>

FRA recently reported that:

“[t]o evaluate the effectiveness of actions CP has taken under the SIP, FRA conducted a detailed review of the DM&E reporting data (and data reported by CP for the former DM&E territory) from 2008 to 2012. The safety data shows a marked reduction in personal injuries per 200,000 man-hours (a reduction of almost 69 percent) and total train accidents per million train-miles (a reduction of over 80 percent). Accordingly, it is clear that based on safety data since the merger, CP has greatly improved the overall safety of the former DM&E.”<sup>47</sup>

FRA indicated that it will “continue monitoring CP’s compliance with the SIP for the full 5-year period prescribed in 49 CFR Section 244.17(g)(1), and thereafter it will continue to monitor the

<sup>46</sup> See Attachment 1, V.S. Wilson at 13-14.

<sup>47</sup> See Attachment 8, Letter dated July 10, 2013 from Hon. Joseph Szabo to Hon. John Thune at 1 (emphasis added).

safety of CP (including the former DM&E territory), as it does all railroads, through the use of the agency’s inspection and enforcement authority.”<sup>48</sup>

As the foregoing demonstrates, CP and DME clearly have fulfilled their obligation to implement the SIP as required by Condition #5 to the Board’s *CP/DME Control Decision*. Accordingly, there is no legal or factual basis to support SDDOT’s request that the Board reopen that Decision to “enforce” Condition #5.

**B. CP Has Adhered To All Of Its Representations In The *CP/DME Control Proceeding*.**

Based solely on the December 2012 announcement that CP planned to explore a possible sale or other transaction involving DME lines west of Tracy, MN—and notwithstanding the fact that CP had already advised the State that it has made capital expenditures in excess of \$300 million to repair and upgrade DME’s track and facilities—the SDDOT Petition “call[s] into question whether CP has or would honor its capital investment representations.” SDDOT Petition at 3. SDDOT claims that CP may have violated the terms of the *CP/DME Control Decision* by “ignor[ing] its representation[s]” and “stat[ing] that it had no intention of upgrading all DME track to Class 3 standards.” SDDOT Petition at 4.

Specifically, SDDOT asserts that:

There were three different representations made to the Board about CP’s new capital investments: (i) CP represented it would invest \$300 million (including investment dollars previously budgeted by DME) in the first three post-acquisition years; (ii) CP represented it would invest \$300 million (in addition to investment dollars previously budgeted by DME) in the first few years following its acquisition of DME; and (iii) the Federal Railroad Administration (“FRA”) informed the Board that, as part of the Safety Integration Plan (“SIP”) process, CP had represented it would expend \$300 million in the first four post-acquisition years to upgrade all DME track to Class 3 standards.”<sup>49</sup>

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<sup>48</sup> *Id.* at 2.

<sup>49</sup> *See* SDDOT Petition at 2.

SDDOT’s claim that CP made “three different representations” regarding its intended level of capital investment in DME’s physical plant—each (according to SDDOT) constituting a separate and distinct commitment—is meritless. By parsing and mischaracterizing selected excerpts from the record, SDDOT attempts to multiply CP’s \$300 million commitment (like the proverbial loaves and fishes) into a pledge to transform DME’s entire 2,500-mile network into a Class 3 railroad. SDDOT’s claims are not supported—indeed, they are flatly contradicted—by the record evidence.

The reality is that CP made only one such representation to the Board—*i.e.*, that “over the next several years, CPR will make available to DME \$300 million of capital to repair and upgrade its track, bridges and other rail facilities.”<sup>50</sup> In fulfillment of that commitment, CP/DME have actually spent more than \$405 million in engineering capital on DME’s infrastructure since 2008.<sup>51</sup> Accordingly, CP has not only complied with what SDDOT characterizes as CP’s “First Investment Representation,”<sup>52</sup> but has clearly gone beyond what was pledged in that representation.

SDDOT’s assertion that CP also made a “Second Investment Representation”—that it would invest \$300 million over and above any amounts that DME might otherwise have spent if the CP/DME transaction had not taken place—is not supported by the record.<sup>53</sup> The only

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<sup>50</sup> See, e.g., CP/DME Application at 5, 13-14; V.S. Green at 5; V.S. Graham at 4; Exhibit 13 (Operating Plan) at 36; SIP at 89-90.

<sup>51</sup> The Attachments submitted by CP with this Reply render moot SDDOT’s request that the Board direct CP to disclose the details of its capital investment in DME (SDDOT Petition at 27-28). As suggested by SDDOT (*id.* at 29), CP has designated some of that information “Highly Confidential” pursuant to the Protective Order entered in this proceeding on September 21, 2007. The “Public” version of this Reply contains information sufficient to inform SDDOT (and the public) of the total dollars invested by State, by Year, and by DME Property Section.

<sup>52</sup> See SDDOT Petition at 20.

<sup>53</sup> See SDDOT Petition at 20, 23–24.

evidence of this (supposed) “Second Investment Representation” cited by SDDOT is the following excerpt from Applicants’ Rebuttal:

With respect to Mayo’s concern about DME track conditions, CPR has committed to invest at least \$300 million in additional capital (over and above DME’s projected capital budget) over the next several years to upgrade DME’s track and structures. *See* Graham Reply V.S. at 6-10; Application Operating Plan at 36-37; SIP at 89-90. This capital investment will be used to make significant improvements to DME infrastructure, which in turn will improve the efficiency of DME operations and the safety of the DME system, all in a relatively short period of time. One effect of this additional investment will be to increase total capital spending on improvements to the DME system (previously planned DME capital spending plus additional CPR capital spending) to approximately \$100 million annually in each of the first three years following approval of the transaction.<sup>54</sup>

SDDOT characterizes this excerpt as a “clarification” by CP that its \$300 million investment commitment actually “contained two component parts.”<sup>55</sup> SDDOT theorizes that CP offered this “clarification” in response to Mayo Clinic’s assertion that CP’s investment commitment represented an increase of only \$128 million over what DME might have spent anyway.<sup>56</sup>

SDDOT’s strained interpretation of this snippet from the record is not credible. As an initial matter, neither the cited excerpt—nor any other statement in Applicants’ Rebuttal—made any mention of (much less purported to respond to) Mayo’s calculations regarding the economic value of CP’s \$300 million investment commitment. To the contrary, the passage cited by SDDOT, on its face, responds to “Mayo’s concern about DME track conditions.” Moreover, the lone sentence upon which SDDOT relies (the first sentence of the paragraph) is followed by citations to the CP/DME Application, Operating Plan and SIP, which repeatedly and consistently stated that CP was committing to invest \$300 million—no more, no less—to repair and upgrade

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<sup>54</sup> SDDOT Petition at 11. *See* CPR-14 DME-14, Applicants’ Rebuttal at 75.

<sup>55</sup> *See* SDDOT Petition at 11.

<sup>56</sup> *Id.*

DME's track and facilities. Indeed, consistent with those prior statements, the last sentence of the very paragraph upon which SDDOT predicates its "Second Investment Representation" states unequivocally that the "effect" of CP's investment representation would be to "increase total capital spending on improvements to the DME system (previously planned DME capital spending plus additional CPR capital spending) to approximately \$100 million annually in each of the first three years following approval of the transaction." That sentence fatally undermines SDDOT's attempt to conjure a "Second Investment Representation" requiring CP to spend more than the \$300 million referenced throughout the CP/DME Application, Operating Plan and SIP.<sup>57</sup>

The record makes clear that FRA, other interested parties and the Board itself understood CP's capital investment representation as a commitment to spend a total of \$300 million to repair and upgrade DME's track and facilities. In a recent letter to Senator Thune, FRA stated that "in the SIP, CP projected the need to invest approximately \$300 million in capital for improvements to DME's track and ties, bridges and other rail facilities and systems and processes."<sup>58</sup> (FRA's letter went on to describe several of capital improvements that CP has made to the rail infrastructure in South Dakota.) Shippers and communities that filed comments in the *CP/DME Control* proceeding—both at the time of the initial Application and during the rebuttal phase—likewise understood CP's representation as a total commitment of \$300 million. For example, the South Dakota Corn Growers Association told the Board that "[w]e are excited by Canadian Pacific's pledge to invest \$300 million in capital improvements to the IC&E and DM&E over the next several years, and believe that those improvements are essential to maintaining quality rail service in a growing environment."<sup>59</sup> On rebuttal, The South Dakota Chamber of Commerce

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<sup>57</sup> SDDOT's suggestion that "the First Investment Representation was just one part of a larger pie" (SDDOT Petition at 24) is completely unsupported and utterly nonsensical.

<sup>58</sup> See Attachment 8, Letter dated July 10, 2013 from Hon. Joseph Szabo to Hon. John Thune at 2.

<sup>59</sup> See CP/DME Application, V.S. South Dakota Corn Growers Assn. at 19.

observed that “Canadian Pacific has represented that it will invest \$300 million to rehabilitate and upgrade DM&E’s rail lines and infrastructure.”<sup>60</sup> The City of Aurora, SD’s statement in connection with CP’s rebuttal “support[ed] the proposed transaction because the Canadian Pacific has publicly stated that it will invest \$300 million in track rehabilitation and other upgrades.”<sup>61</sup> The comments filed by other shipper parties likewise confirm their understanding that CP’s commitment was to invest a total of \$300 million to repair and upgrade DME’s infrastructure.<sup>62</sup>

SDDOT’s further claim that CP proffered a “Third Investment Representation”—that it would “expend \$300 million in the first four post-acquisition years to upgrade all DME track to Class 3 standards”—is likewise contrary to the record evidence.<sup>63</sup> SDDOT seeks to impose this extraordinary obligation on CP based on a letter dated July 3, 2008 from FRA to the Board.<sup>64</sup> In that letter, FRA stated that “[t]o date, the CP has responded satisfactorily to all of FRA’s safety concerns.” *Id.* at 1. FRA indicated that it would “monitor CP’s implementation of the SIP . . . with a special focus on” certain items. Among the items listed by FRA was the following: “Track Improvements: CP has committed to investing approximately \$300 million over the next four years to upgrade all DM&E track to FRA Class III standards.”<sup>65</sup> SDDOT takes the position that this (inaccurate) statement by FRA constitutes a representation by CP that it would upgrade the entire DME network to Class 3 track. SDDOT is wrong.

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<sup>60</sup> See CPR-14 DME-14, Applicants’ Rebuttal, V.S. South Dakota Chamber of Commerce at 2.

<sup>61</sup> See CPR-14 DME-14, Applicants’ Rebuttal, V.S. City of Aurora, South Dakota at 1.

<sup>62</sup> See, e.g., CP/DME Application, V.S. Dakota Mill & Grain at 4 (same); V.S. IPSCO, Inc. at 11 (same); V.S. Southern [Minnesota] Grainbelt Shippers Association at 23 (same); CPR-7 DME-7, Supplement to Application, V.S. David McGirr (Mayor, Huron, SD) (same); CPR-14 DME-14, Applicants’ Rebuttal, V.S. Bentonite Materials at 2 (same).

<sup>63</sup> See SDDOT Petition at 2, 24–25.

<sup>64</sup> See Attachment 7, Letter dated July 3, 2008 from Hon. Joseph H. Boardman to Hon. Charles D. Nottingham at 1.

<sup>65</sup> *Id.* at 1 (emphasis added).

As an initial matter, the Board’s Condition #8 required Applicants to “adhere to any and all of the representations they made on the record during the course of this proceeding.”<sup>66</sup> The record is clear that CP never made such a representation to the Board at any time during the *CP/DME Control* proceeding—indeed, SDDOT does not even allege that CP made any such representation. Rather, SDDOT’s fictitious “Third Investment Representation” is predicated solely on a misstatement by FRA in a letter to the Board. As CP witness Wilson testifies, “CP never made such a representation to FRA. Nor has FRA ever notified CP that (in FRA’s view) CP’s obligations under the SIP include a requirement that CP make the capital investment necessary to bring the entire DME system up to Class 3 standards.”<sup>67</sup>

FRA itself appears to have recognized its misstatement. SDDOT’s Petition indicates that FRA responded on April 9, 2013 and July 10, 2013 to letters from Governor Daugaard and members of the South Dakota Congressional delegation inquiring about the status of CP’s compliance with the SIP. As SDDOT itself acknowledges “FRA did not address the amount of DME track that remained classified below Class 3 standards in either response.”<sup>68</sup> If FRA believed that the SIP obligated CP to bring all DME tracks up to Class 3 standards, it presumably would have commented on CP’s failure to comply with that requirement. Indeed, if CP had actually committed to upgrade the entire DME system to Class 3 track, FRA surely would have proposed to amend the SIP to incorporate such an important pledge. However, the SIP document provides (as it has from Day 1) only that “CP projects that it will make available approximately

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<sup>66</sup> See *CP/DME Control Decision* at 27 (emphasis added).

<sup>67</sup> See Attachment 1, V.S. Wilson at 10. It appears that FRA may have mistakenly interpreted CP’s commitment to upgrade the Owatonna–Rochester segment to Class 3 standards—a topic that attracted significant attention during the proceeding—as a promise to bring the entire DME network up to that track speed level. As discussed below, such an assumption would have been inconsistent with other location-specific track investment commitments made by CP on the record.

<sup>68</sup> See SDDOT Petition at 19, Exh. DMD-3, page 2 of 17 and pages 16-17 of 17.

\$300 million in capital for improvements to DME’s track and ties, bridges and other rail facilities and systems and processes.”<sup>69</sup>

Moreover, SDDOT’s supposed “Third Investment Representation” is utterly inconsistent with the location-specific track investment representations that CP did make, and the Board took notice of, during the *CP/DME Control* proceeding. As discussed above, CP responded to concerns raised by the Mayo Clinic and the City of Owatonna, MN regarding the condition of DM&E tracks serving their communities by agreeing to upgrade the line from Owatonna through Rochester to FRA Class 3 track.<sup>70</sup> In response to SMNISA’s concerns regarding future service on the “Corn Lines,” CP also pledged to make capital investments to bring the Corn Lines up to a Class 2 (25 MPH) service standard. Those location-specific representations belie the notion that CP had agreed to upgrade the entire DME network to Class 3 status—indeed, such a commitment would be facially inconsistent with CP’s promise to rehabilitate the Corn Lines to Class 2 standards. Contrary to SDDOT’s claim, CP made clear that its capital program would “focus on upgrading specific portions of the DM&E system.”<sup>71</sup>

The notion that CP would promise to “expend \$300 million in the first four post-acquisition years to upgrade all DME track to Class 3 standards” makes no sense. The record reflects the obvious reality that rehabilitating the entire 2,500-mile DME network would cost far more than \$300 million. For example, Mayo Clinic pointed out that the \$300 million promised by CP, “while laudable and an increase over current spending,” would “fall far short of what the DM&E has previously testified would be needed to rehabilitate its main line from Wasta, South

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<sup>69</sup> SIP at 89–90.

<sup>70</sup> See CPR-14 DME-14, Applicants’ Rebuttal at 76; CPR-16 DME-16, Applicants’ Brief, filed July 2, 2008 at 17-18. US DOT’s Brief, filed on July 7, 2008 (at 6), acknowledged that “Applicants have agreed to make additional improvements in their track and infrastructure that further enhance safety in the Rochester area. Track in that vicinity will be upgraded to FRA Class 3.” (Emphasis added)

<sup>71</sup> See CPR-14, DME-14, Applicants’ Rebuttal, V.S. Graham at 9 (emphasis added).

Dakota to Winona, Minnesota.”<sup>72</sup> Iowa DOT expressed concern that \$300 million would be insufficient even to upgrade the Corn Lines to 25 MPH.<sup>73</sup> Indeed, while CP’s post-acquisition capital expenditures (which significantly exceed \$300 million) have enabled it to increase the number of FRA Class 3 track miles on DME by nearly 40% (from 866 miles in 2007 to 1,190 miles today), more than 750 miles of DME track remain below Class 3 specifications.<sup>74</sup> Attempting to comply with the “Third Investment Representation” posited by SDDOT on a capital budget of \$300 million would literally be impossible.

Finally, SDDOT’s suggestion that the Board “denied all shipper requests for specific track upgrade conditions based on CP’s general representation that it would upgrade all DME track to Class 3 standards” (SDDOT Petition at 3) is simply not true. Other than the requests by Mayo Clinic and the City of Owatonna regarding the Owatonna—Rochester segment, and CP’s voluntary agreement with SMNISA regarding the Corn Lines, no party sought (or was denied) any condition relating to the repair or upgrade of DME’s tracks. While the Board denied conditions proposed by the Minnesota and Wisconsin Departments of Transportation, those conditions did not relate to the condition of DME’s tracks, but rather sought to impose on Applicants a variety of obligations relating to grade crossings and train speeds. The Board held that those conditions were unnecessary in light of existing Federal regulations and programs governing such issues.

In short, CP has more than satisfied its commitment to invest a total of \$300 million to repair and upgrade DME’s tracks and other facilities. SDDOT’s request that the Board “enforce” additional representations requiring CP to spend more than \$300 million (which CP has, in any event, already done) and to upgrade the entire 2,500-mile DME rail system to FRA

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<sup>72</sup> See MAYO CLINIC -3, Argument and Request for Conditions, filed March 4, 2008 at 3–4, 14.

<sup>73</sup> See Comments of Iowa DOT, filed March 4, 2008 at 2.

<sup>74</sup> See Attachment 1, V.S. Wilson at 10–11.

Class 3 standards should be rejected on the grounds that the record evidence does not support a finding that CP ever made such representations.

**C. SDDOT Concern Regarding A Potential Sale Of DME Lines Is Premature.**

SDDOT candidly acknowledges that the State’s recent interest in CP’s investment in DME was motivated by the announcement in December 2012 that CP planned to consider strategic options for DME’s lines west of Tracy, MN.<sup>75</sup> SDDOT expresses concern that a sale or other disposition of the lines might cause South Dakota shippers to lose access to single-line service or reduce their competitive options. *Id.*

SDDOT’s concern regarding the potential impact of a hypothetical transaction involving DME’s line west of Tracy is premature. It is by no means clear that CP will, in fact, transfer all or a portion of that line to a third party—much less who that party might be, the form of such a transfer, or the specific business terms upon which such a transaction might be proposed. Indeed, as SDDOT knows, CP has made clear that “it is possible that CP will continue to own and operate the line.”<sup>76</sup>

If CP were ultimately to decide to enter into a transaction involving the sale or disposition of DME track, the transaction would, in all likelihood, be subject to the Board’s jurisdiction under either 49 U.S.C. § 10901 or § 11323 (depending on the identity of the acquiring party and the form of the transaction). At this juncture, any conclusions regarding the competitive or other effects of such a transaction are purely speculative. If, and when, CP proposes a transaction involving DME’s lines, SDDOT will have an opportunity to express its views regarding that transaction during the course of such Board proceedings.

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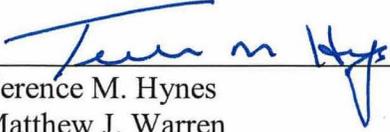
<sup>75</sup> See SDDOT Petition at 3, 17–20.

<sup>76</sup> See SDDOT Petition, Exhibit DMD-2, page 4 of 9 (Letter dated February 21, 2013 from Douglas McFarlane (CP) to Hon. Dennis Daugaard, Hon. Tim Johnson, Hon. John Thune, Hon. Kristi Noem) at 1.

**CONCLUSION**

For all of the foregoing reasons, CP respectfully requests that the Board deny the SDDOT Petition in its entirety.

Respectfully submitted,



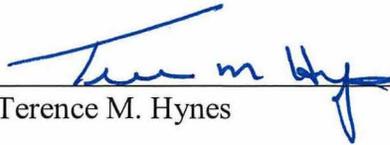
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Dated: August 28, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing Applicants' Response to Petition of the State of South Dakota to be served by first class mail, postage prepaid, this 28th day of August 2013, on all parties of record:

  
Terence M. Hynes

**ATTACHMENT 1**  
**REDACTED – PUBLIC VERSION**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Canadian Pacific Railway Company, *et al.* – Control – )  
Dakota, Minnesota & Eastern Railroad Corp., *et al.* ) Finance Docket No. 35081

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CANADIAN PACIFIC RAILWAY COMPANY’S RESPONSE TO THE  
PETITION OF THE STATE OF SOUTH DAKOTA TO ENFORCE  
INVESTMENT REPRESENTATIONS

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VERIFIED STATEMENT OF GLEN WILSON

My name is Glen Wilson. I am Vice President-Safety, Environment & Regulatory Affairs at Canadian Pacific Railway Company (“CP”). My business address is Suite 700, 401 9th Avenue SW, Calgary, AB, T2P 4Z4 Canada. I was appointed to my current position in September 2010. I began my career with CP as an articling student in 1992, and worked as a lawyer in CP’s Legal Department for approximately 13 years. During that period, I also served for four years as a Government appointee to Canada’s Federal Labour Relations Board. In 2006, I became a General Manager in CP’s Operations Department, with responsibility for safety and regulatory matters. Prior to assuming my present duties, I served as General Manager-Strategy, Planning & Regulatory Affairs. In my current position, I have overall responsibility for safety and environmental strategies, standards and programs for CP’s operations in both the United States and Canada. I earned Bachelor of Arts and LLB degrees from the University of Manitoba.

I participated actively in CP’s acquisition of the Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) and Iowa, Chicago & Eastern Railroad Corporation (“IC&E”) (referred to collectively herein as “DME”), and the subsequent integration of the rail operations of CP and DME. I was also involved in developing the Safety Integration Plan (“SIP”) filed with the Board

and the Federal Railroad Administration (“FRA”) in February 2008. In particular, I was responsible for providing input on the SIP and leading CP’s discussions with FRA during the implementation period. Since the time of the acquisition, I have monitored the implementation of the safety-related measures contemplated by the SIP, and worked with other CP employees (and FRA) to track the successful completion of those tasks.

The purpose of this Verified Statement is to describe the steps that CP has taken to comply with the safety-related conditions imposed by the Board in approving CP’s acquisition of DME. In particular, I will discuss (i) the actions that CP has taken to implement the SIP; (ii) the substantial investment that CP has made in DME’s tracks, bridges and other rail facilities pursuant to its commitment in the *CP/DME Control* proceeding and as part of the SIP process; and (iii) CP’s compliance with its promise to upgrade certain portions of the DME system in response to issues raised by Mayo Clinic, the City of Owatonna, MN and shippers on DME’s so-called “Corn Lines.” CP/DME have invested more than \$400 million dollars in DME’s infrastructure since 2008—significantly more than CP committed to invest during the course of the *CP/DME Control* case. Finally, my testimony will describe the major improvement in DME’s safety record in the years since CP acquired control of DME. As a result of the capital investments and safety-related actions and programs set forth in the SIP, DME’s accident rate has been cut in half.

In approving the CP/DME control transaction, the Board imposed two conditions that are relevant to the issues raised in SDDOT’s Petition. First, the Board required that CP comply with the terms of the SIP, and coordinate with FRA in implementing the SIP during the operations integration period. Second, the Board required CP and DME to adhere to the representations

they made on the record during the course of this proceeding.<sup>1</sup> CP and DME have complied fully with both of those conditions.

**I. CP'S COMPLIANCE WITH THE SIP**

As required by the Board's regulations, CP and DME prepared a Safety Integration Plan that identified a variety of actions that they would take to ensure a safe integration of DME's operations with those of CP.<sup>2</sup> The 104-page SIP document covered (among other topics) CP's plans to enhance the corporate safety culture at DME, to introduce on the DME network various safety management processes that had been successful on CP, and to take advantage of "best practices" to improve the safety performance of both DME and CP. Over the past 4 1/2 years, CP and DME have worked in cooperation with FRA to implement those important safety initiatives. Attachment 9 to this Reply identifies more than 100 specific safety-related actions contemplated by the SIP, and demonstrates that CP/DME have completed each of those tasks. Implementation of the SIP has contributed to a substantial reduction in train accidents and personal injuries on DME.

**II. CP'S INVESTMENT IN DME TRACK, BRIDGES AND FACILITIES.**

CP has spent significantly more than the \$300 million that it promised to invest to repair and improve DME's track, bridges and facilities. Indeed, from 2008 through July 2013, CP's total engineering capital investment in DME stands at \$405 million. That amount does not include other types of capital investment (*e.g.*, mechanical) or ordinary maintenance expenses incurred during that period. As promised in the CP/DME Application, CP targeted that

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<sup>1</sup> *CP/DME Control Decision* at 27.

<sup>2</sup> *See Applicants' Safety Integration Plan Submitted to Federal Railroad Administration, dated February 4, 2008 ("SIP").*

investment to key locations and critical infrastructure in order to improve DME's safety and service reliability.

The engineering capital invested by CP in DME's physical plant from 2008 through July 2013 is detailed in Attachments 2, 3 and 4 to this Reply. Attachment 2 breaks down CP's total investment geographically by DME Property Section. Attachment 3 identifies the total engineering capital spent by asset category and State, and Attachment 4 sets forth the same information by asset category and year. As those Attachments show, the DME capital program has included major investments to repair and upgrade DME's tracks, bridges, yards and facilities, and to improve DME's technology and processes. Substantial amounts have been invested in each of the states in which DME operates, including South Dakota.<sup>3</sup>

CP's capital expenditures in DME fall into several categories. The largest amounts have been spent on rail, ties, ballast and other track materials; bridges and culverts; and signals and communications. To date, CP has spent approximately \$250 million to repair and improve DME's tracks. CP has invested approximately \$65.5 million to repair and upgrade bridges and culverts along the DME network, and \$44.8 million for signals and communications facilities, including wayside signals and other assets that DME will need to comply with Congress' PTC mandate. As Attachments 2 through 4 show, CP has invested substantially more than the "approximately \$300 million" in improvement and replacement capital contemplated by the SIP.

When CP filed its Operating Plan and SIP, it made clear that "specific projects, quantities and details by subdivision will be determined following detailed field inspection." SIP at 90. Upon conducting detailed inspections of the DME property following completion of the transaction, it became clear that, in order to maximize the safety benefits of its capital

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<sup>3</sup> See Attachment 3, DME Engineering Capital Expenditures By State (2008 – July 2013).

investments, CP would need to adjust its initial budget allocations. For example, CP's Operating Plan (at Exhibit L) projected that approximately 60% of CP's investment would be spent to repair and replace bridges. However, post-acquisition bridge inspections indicated that the life of many DME bridges could be extended by performing more limited repairs, thereby avoiding the need for immediate replacement. This adjustment in CP's original budget made more capital available to address the condition of DME's tracks which, CP discovered, were in significantly worse condition in some locations than was initially understood based upon the reported FRA Class of track. By adjusting its initial list of priorities, CP was able to invest more than \$250 million to improve and rehabilitate DME's track structure.

Other events dictated further adjustments to CP's investment plan for DME:

First, CP amended the SIP capital budget for 2009 to \$77.1 million to account for (1) the fact that CP had already advanced to DME \$13.5 million of the funds budgeted for 2009 to enable DME to begin the rehabilitation of DME's line between Owatonna and Rochester, MN during 2008, and (2) deferral of \$9.5 million of the planned 2009 spending on account of the severe economic downturn of that year, which affected the capital budgets of all Class I railroads.<sup>4</sup> Despite the economic events of 2009, CP still invested more than \$65 million dollars in DME in that year.

Second, in October 2008, Congress enacted the Rail Safety Improvements Act, Pub. L. 110-43, 122 Stat. 4848 ("RSIA"). The RSIA requires all Class I railroads to develop and implement Positive Train Control ("PTC") systems on main lines used to transport passengers or toxic-by-inhalation ("TIH") materials no later than December 31, 2015. Because DME handles TIH commodities such as anhydrous ammonia, CP was required to begin the process of

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<sup>4</sup> See Attachment 6, Letter dated March 25, 2009 from V. Graham (CP) to J. Strang (FRA).

installing PTC capability on portions of the DME network. CP has spent more than {{ }} over the past several years to enable DME to comply with Congress' PTC mandate.

Total engineering capital invested during 2008-2011 (including DME's budgeted capital for 2008 and the \$13.5 million advanced by CP in that year) exceeded \$288 million. While CP did not reach its target of \$300 million in capital improvements to DME's lines by the end of 2011 (due primarily to economic conditions during 2009-2010), CP's total expenditure exceeded \$300 million during 2012, and CP continued to invest in DME even after reaching its stated commitment. Overall, the total engineering capital spent on DME's lines from January 1, 2008 through July 31, 2013 has exceeded \$405 million. As these figures demonstrate, CP has complied in all material respects with its pledge to "make available approximately \$300 million in capital for improvements to DME's track and ties, bridges and other rail facilities and systems and processes." SIP at 89-90.

**A. CP Has Complied With Its Pledge To Make Certain Location-Specific Capital Investments.**

While CP advised the Board that most decisions regarding how and where to invest in DME's infrastructure would be made post-acquisition, CP did make two location-specific investment commitments on the record in the *CP/DME Control* proceeding. CP has complied with both of those commitments.

Mayo Clinic expressed concern in their comments regarding the condition of the DM&E line through Rochester, MN (where the Mayo Clinic is located). In particular, Mayo Clinic cited the alleged threat to public safety that might result from an increase in ethanol shipments over that line. Expressing similar concerns, the City of Owatonna, MN requested that CP specify how it intended to spend the \$300 million, and in particular what track maintenance and rehabilitation

CP planned to undertake in and around Owatonna. Responding to those concerns, CP represented that it would rehabilitate and upgrade a 39-mile segment of DME's main line between Owatonna through Rochester, MN to FRA Class 3 standards. This major track improvement project, which DME started during 2008 (with funds advanced by CP) was completed in 2009.

CP's second location-specific capital investment commitment was made in response to concerns expressed by the Southern Minnesota and Northern Iowa Shippers Association ("SMNISA") regarding the condition of the former IC&E's "Corn Lines." The "Corn Lines" consist of two east-west lines, one between Marquette and Sheldon, IA (via Mason City), and the other between Ramsey and Jackson, MN, as well as a north-south line between Mason City and Austin, IA that connects the two east-west lines. The Corn Lines include a total of 402.8 miles of track. SMNISA and CP agreed that CP would invest in those lines to bring them up to FRA Class 2 standards, permitting train speeds of 25 MPH. By the end of 2013, CP will have completed the upgrade of all but 31 miles of the Corn Lines to FRA Class 2, at a cost of approximately {{ }}. Rehabilitation of the remaining 31-mile segment between Ruthven and Hartley, IA has been deferred to 2014 due to the unavailability of a sufficient quantity of suitable relay rail. CP has identified the necessary assets, and has budgeted {{ }} to complete the upgrade of the Ruthven-Hartley segment next year.

**B. CP Has Invested Heavily In DME's Lines Serving South Dakota.**

During the comment period in the *CP/DME Control* proceeding, neither the State of South Dakota nor any other party sought a condition or requested that CP make any specific investment commitment with respect to any portion DME's lines in State of South Dakota. Nevertheless, between 2008 and July 2013, CP/DME have spent \$65.8 million for engineering capital improvements to DME lines located in South Dakota. (Of course, CP's investment in

DME main lines in other states has also benefitted South Dakota shippers by enabling faster and more reliable service between South Dakota and points across the DME system and beyond.)

CP's capital expenditures in South Dakota include approximately {{ }} for rail, ties, ballast and other track material; {{ }} to repair and upgrade bridges and culverts; {{ }} for grading; and {{ }} for signals and communications facilities.

*See Attachment 3.* As a result of those investments, approximately 57 miles of track within the State of South Dakota have been upgraded from FRA Class 1 or Class 2 to FRA Class 3 standards. As the map submitted as Attachment 5 to this Reply shows, upon completion of the work scheduled in 2013, virtually all of the 206 miles of DME main line track between the South Dakota/Minnesota border and Pierre, SD will be Class 3 track capable of supporting 40 MPH train operations. CP has invested more than \$25 million in DME's lines west of Pierre, including both the Pierre-Rapid City and Black Hills Subdivisions. *See Attachment 2.* That capital has been used, among other things, to rehabilitate track, improve grading and repair bridges and culverts on both subdivisions.

As these figures show, SDDOT's suggestion that CP has failed to live up to its investment commitment is incorrect. CP's investments in South Dakota have raised virtually the entire DME main line east of Pierre to Class 3 standards. While CP also invested more than \$25 million in the DME's lines west of Pierre, it has not upgraded all of those lines to Class 3 status, for several reasons.

Like all railroads, CP allocates investment dollars to various portions of the network based on a variety of factors, including track condition and safety, the relative demand for rail service (reflected in traffic volume and line density), the service requirements (including time-sensitivity) of traffic moving over a particular segment, and competing investment priorities.

DME's lines west of Pierre are, and have always been, characterized by very light traffic density. As shown in the CP/DME Operating Plan, density on DME's 165-mile Pierre–Rapid City Subdivision is less than 3 million Gross Tons Per Mile (“GTM”). DME's Black Hills Subdivision has a density of 2.3 million GTM between Bentonite, WY and Rapid City, SD, and only 0.6 GTM between Rapid City and Crawford, NE. *See* CP/DME Application, Exhibit 13 at 21–22. The traffic volume and commodity mix on those lines simply do not justify the massive expenditure that would be required to upgrade them entirely to Class 3 standards.<sup>5</sup> Indeed, those lines were slated for abandonment in the 1980s, until DM&E was created as a short-line carrier to own and operate them. By contrast, DME's lines east of Pierre are characterized by significantly higher traffic densities (including 4.6 million GTM between Blunt and Wolsey, SD, 5.4 million GTM between Wolsey and Huron, SD; and 5.8 million GTM between Huron, SD and Tracy, MN). CP made the prudent business decision to invest capital dollars in the State of South Dakota where they would do the most good—*i.e.*, where the demand for rail service is greatest and track improvements would be most beneficial in the long run.

In addition, DME holds authority to build 282 miles of new track to access coal origins in the Powder River Basin (“PRB”). CP acquired that option when it purchased the DME. As the Board noted in its decision approving the PRB Construction project, the physical characteristics of DME's main line west of Pierre would require that, as part of the PRB project, that segment either be relocated (at an estimated cost of \$97-125 million) or, at a minimum, that approximately 18 miles in the vicinity of Pierre be reconstructed (at an estimated cost of

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<sup>5</sup> Nevertheless, as Attachment 5 shows, certain segments of DME's Pierre–Rapid City and Black Hills Subdivisions are maintained to Class 3 specifications.

\$50.4 million).<sup>6</sup> Given CP's stated uncertainty regarding whether it would proceed with the PRB project, it would not have been prudent to commit a major portion of DME's \$300 million capital budget to upgrading the main line west of Pierre.

**C. CP Did Not Represent That It Would Upgrade The Entire DME Network To FRA Class 3 Track Standards.**

SDDOT claims that CP made a "Third Investment Representation" that it would spend \$300 million to improve the entire 2,500-mile DME network to FRA Class 3 track standards. The apparent source of this "commitment" is a statement by FRA in a letter to the Board.<sup>7</sup> CP does not know why that statement appeared in FRA's letter. It is possible that the person that drafted the letter mistakenly interpreted CP's pledge to upgrade the Rochester-Owatonna segment—which was the topic of considerable discussion during the *CP/DME Control* case—as a commitment to upgrade the entire DME network. Based on my direct involvement in the SIP process and, in particular, CP's discussions with FRA regarding implementation of the SIP, I can state unequivocally that CP never made such a representation to FRA. Nor has FRA ever notified CP that (in FRA's view) CP's obligations under the SIP include a requirement that CP make the capital investment necessary to bring the entire DME system up to Class 3 standards.

Indeed, it would not be possible to accomplish that objective with a budget of \$300 million. As described above, CP has already spent approximately \$250 million to repair and upgrade significant portions of DME's track. As a result of that investment, the number of Class 3 track miles on DME has grown from 866 miles in 2007 to 1,190 miles in 2013 today.

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<sup>6</sup> See *Dakota, Minnesota & Eastern Railroad Corp. Construction into the Powder River Basin*, STB Docket No. 33407 (Dec. 9, 1998) at 40-41 ("*PRB Construction*") (acknowledging arguments that unstable soil would be an obstacle both to new construction and to rehabilitation of sections of the line). See also Final Environmental Impact Statement, Powder River Basin Expansion Project, STB Docket No. 33407 (Nov. 2001) at 5-70.

<sup>7</sup> See Attachment 7, Letter dated July 3, 2008 from Hon. Joseph Boardman to Hon. Charles D. Nottingham.

The vast majority of DME's main line network between Pierre and Minnesota City, Marquette and Chicago, and Chicago and Kansas City now meet or exceed Class 3 standards. However, DME still has more than 750 miles of track that are classified as FRA Class 2 or lower. It would require a multiple of \$300 million for CP to upgrade those other lines to the same standard.

Moreover, incurring the additional expense required to raise the entire DME system to Class 3 track standards would not be economically justified. Class 3 track—which permits trains to operate at speeds up to 40 MPH—is not required to provide safe and adequate service on all rail lines (particularly light density branches). As an example, CP's agreement with SMNISA to rehabilitate the Corn Lines to Class 2 track standards (permitting 25 MPH operations) was based on the service requirements of SMNISA shippers, the type of traffic (primarily grain) carried, and the anticipated future volume of business generated along those lines. Just as all roads are not built to freeway standards, every rail line need not meet Class 3 specifications in order to support an appropriate level of service. Indeed, portions of the networks operated by all Class I railroads are maintained to less than FRA Class 3 standards.

In summary, SDDOT's claim that CP represented that it would upgrade all DME tracks to Class 3 status is simply not true.

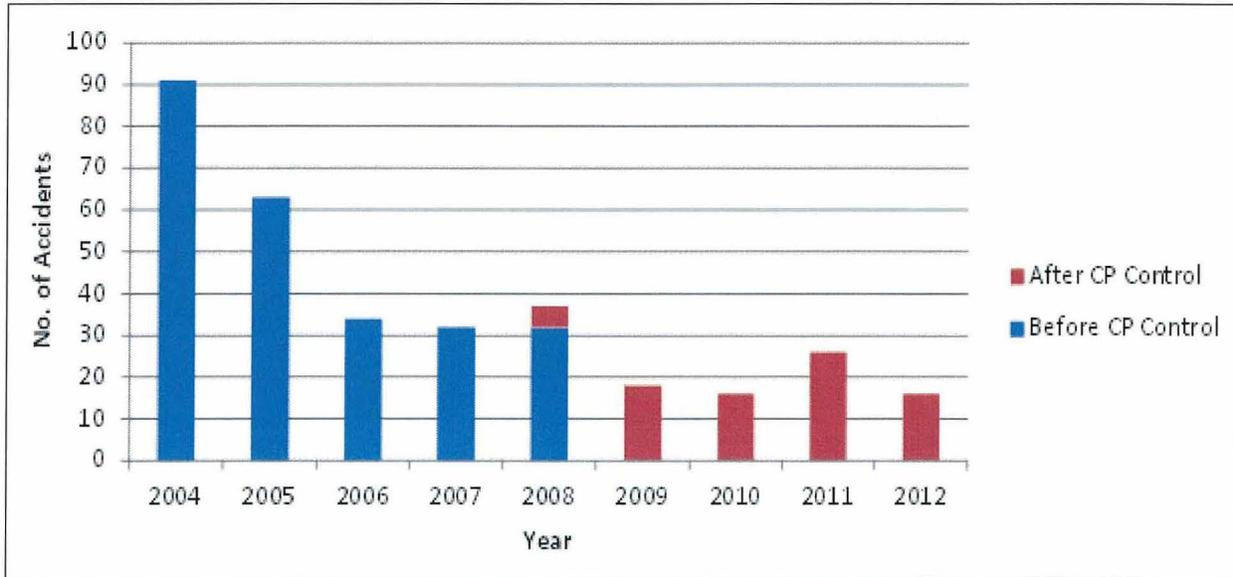
### **III. CANADIAN PACIFIC'S COMMITMENT TO SAFETY.**

CP's top priority is safety. CP's vision is to become "the safest, most fluid railway in North America." To that end, CP made a commitment to improve DME's safety record not only by investing in improved tracks and other physical facilities, but also by introducing on DME the corporate safety culture and safety-related programs and practices that have enabled CP to achieve industry-leading safety performance. The numerous steps that CP and DME have taken pursuant to the SIP to improve safety on DME are described in Attachment 9 to this Reply.

In addition to spending hundreds of millions of dollars to repair and improve DME's rail lines, CP has invested considerable time, money and resources to align DME's safety culture and practices with the standards that CP applies on its other lines in the United States and Canada. As discussed above, CP developed a detailed SIP that outlined numerous measures that CP and DME would take to implement the control transaction and improve safety on the DME property. Some of the more tangible items in the SIP included the introduction of CP's rigorous employee training courses across all levels at DME. DME management were trained in safety integration while groups of employees were provided numerous days of training in areas relevant to their everyday tasks, including Hazardous Materials Handling, Emergency Response, Security, Train and Locomotive Handling, Track Maintenance and other topics. As Attachment 9 indicates, CP's safety culture, programs and practices have been successfully introduced on DME, and DME now follows the same safety rules, practices and procedures as other portions of the CP system.

Safety data for the DME system show that these initiatives have been highly successful. For example, train accidents on DME have declined dramatically since CP assumed control of DME on October 30, 2008. Indeed, in 2009—the first year of CP control—reportable train accidents were cut in half, from 37 incidents in 2008 to only 18 during 2009. This improvement in train safety was in addition to the 57% decline in reportable accidents between 2004 and 2007 pursuant to the 2005 Safety Compliance Agreement (“SCA”) between DME and FRA. Figure 1 illustrates both the marked decline in accidents that resulted from DME's 2005 agreement with FRA, and the dramatic further improvement that CP and DME have achieved over the past several years.

**FIGURE 1**  
**FRA-Reportable Train Accidents on DME**



Of particular relevance to the issues raised by SDDOT, the number of train accidents on DME attributable to rail defects declined from 11 accidents in 2008 to only two during 2012, while the number of all track-related accidents declined by 65%, from 20 accidents in 2008 to seven in 2012.

Implementation of the safety measures contemplated by the SIP has also produced a substantial improvement in worker safety on DME’s lines. As Figure 2 shows, reportable injuries to DME employees have declined by 65%, from 3.83 per 200,000 hours worked during 2006 to 1.38 per 200,000 hours worked last year.

FIGURE 2

<b>DME FRA REPORTABLE PERSONAL INJURIES (2006-2012)*</b>	
<b>Year</b>	<b>DME Total</b>
2006	3.83
2007	3.54
2008	3.50
2009	2.38
2010	1.38
2011	1.69
2012	1.38

\*Rates per 200,000 Hours Worked

As Figure 2 indicates, the introduction of CP's safety culture and practices on DME has enabled DME to achieve a major improvement in worker safety.

The significant improvement in DME's safety record over the past several years is directly attributable to the massive investment that CP made in DME's infrastructure, as well as the introduction of CP's safety culture and practices on the DME property. DME's dramatically improved safety record has not gone unnoticed. In July of this year, FRA Administrator Szabo stated that "it is clear that based on safety data since the merger, CP has greatly improved the overall safety of the former DM&E."<sup>8</sup>

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<sup>8</sup> See Attachment 8, Letter dated July 10, 2013 from Hon Joseph Szabo to Hon. John Thune at 1.

**VERIFICATION**

I, Glen Wilson, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed on this 26<sup>th</sup> day of August, 2013.

  
\_\_\_\_\_  
Glen Wilson

**ATTACHMENT 2**  
**REDACTED – PUBLIC VERSION**

**DME Engineering Capital Investment  
By Property Section (2008 - July 2013)**

Property Section	Bldg - Power Systems	Bldg Office & Common	Bridges Culverts	Computer Hardware/ Software	Equip. Rep. Shop & Shop Equip	Fuel/Water Stations	Grading	Land	Other	Public Improvements	Roadway Machines	Signals & Communication	Track (rail, Otm, ties, ballast)	Truck/ Autos	Work Equipment	Grand Total
BLACK HILLS SUB - NEB (0.0 - 13.1)																1,459,625
BLACK HILLS SUB - SD (13.1 - 168.2)																8,585,253
BLACK HILLS SUB - WY (168.2 - 174.7)																228,365
CHICAGO SUB (40.3 - 141.6)																36,832,757
DAVENPORT SUB (141.6 - 195.7)																17,776,516
ELDRIDGE SPUR (0.0 - 9.7)																184,446
HARTLAND (MP 87.5 - 106.3)																1,067
HURON SUB MN (226.6 - 274.2)																5,016,493
HURON SUB SD (274.2 - 362.8)																34,199,047
HURON YARD (360.8 - 366.3)																172,948
JACKSON SUB (43 - 149.4)																5,432,095
KANSAS CITY SUB MO (405.1 - 498.8)																21,260,154
LAREDO SUB IA (302.8-364.0)																8,048,998
LAREDO SUB MO (364.0-405.1)																4,008,610
MANSFIELD SUB (39.7 - 66.9, 376.1)																176,518
MARQUETTE SUB IA (0.0 - 136.3)																36,703,487
MARQUETTE SUB MN (136.3 - 159)																3,538,058
MASON CITY SUB (0.0 - 116.7)																17,477,489
NITRIN SUB IL (1.74 - 20.31)																896,465
ONIDA SUB (98.3 - 115.1)																1,646,280
OTTUMWA SUB (195.7 - 302.8)																27,477,817
OWATONNA SUB IA (0.0 - 29.1)																2,628,455
OWATONNA SUB MN (29.1 - 123.8)																2,731,008
PIERRE SUB (362.8 - 480.5)																4,078,966
PIERRE YARD (478.3 - 486)																19,926
PIERRE>RAPID CITY SUB (480.5 - 649.2)																16,528,664
ROCKFORD SUB IL (12.9 - 30.9)																784,929
ROCKFORD SUB WI (30.9 - 45.8)																1,223,088
ROCKFORD SUB WI (30.9 - 45.8) B2897																70,481
ROLLING STOCK AND EQUIP																3,253,433
SHELDON SUB (116.7-253.4)																44,558,813
SYSTEM																40,870,655
TRACY SUB (MP 102.5 - 226.6)																17,524,737
TRACY YARD (224.8 - 228)																182,501
VARIOUS ILLINOIS SUBS																17,357
VARIOUS IOWA SUBS																213,088
VARIOUS MINNESOTA SUBS																267,333
VARIOUS MISSOURI SUBS																372,535
VARIOUS NEBRASKA SUBS																2,089
VARIOUS SOUTH DAKOTA SUBS																314,584
WASECA SUB (MP 2 - 102.5)																38,507,036
YALE SPUR (148.5 - 160.3)																13,475
Grand Total	209,890	2,609,289	65,463,780	2,594,036	2,053,848	1,438,589	8,175,746	54,780	156,236	10,541,736	7,745,523	44,805,048	249,916,114	8,899,993	621,032	405,285,640

(1) Includes assets under construction

**ATTACHMENT 3**  
**REDACTED – PUBLIC VERSION**

**DME Engineering Capital Investment  
By State (2008 - July 2013)**

	Iowa	Illinois	Minnesota	Missouri	Nebraska	South Dakota	Wisconsin	System	Grand Total
Bldg - Power Systems									209,890
Bldg Office&Common									2,609,289
Bridges Culverts									65,463,780
Computer Hardware/Software									2,594,036
Equip.Rep.Shop & Shop Equip									2,053,848
Fuel/Water Stations									1,438,589
Grading									8,175,746
Land									54,780
Other									156,236
Public Improvements									10,541,736
Roadway Machines									7,745,523
Signals & Communication									44,805,048
Track (rail, Otm, ties, ballast)									249,916,114
Truck/Autos									8,899,993
Work Equipment									621,032
<b>Grand Total</b>	<b>155,069,110</b>	<b>38,531,507</b>	<b>73,200,327</b>	<b>25,817,816</b>	<b>1,461,714</b>	<b>65,787,509</b>	<b>1,293,569</b>	<b>44,124,088</b>	<b>405,285,640</b>

(1) Includes assets under construction

**ATTACHMENT 3  
PUBLIC VERSION**

**ATTACHMENT 4**  
**REDACTED – PUBLIC VERSION**

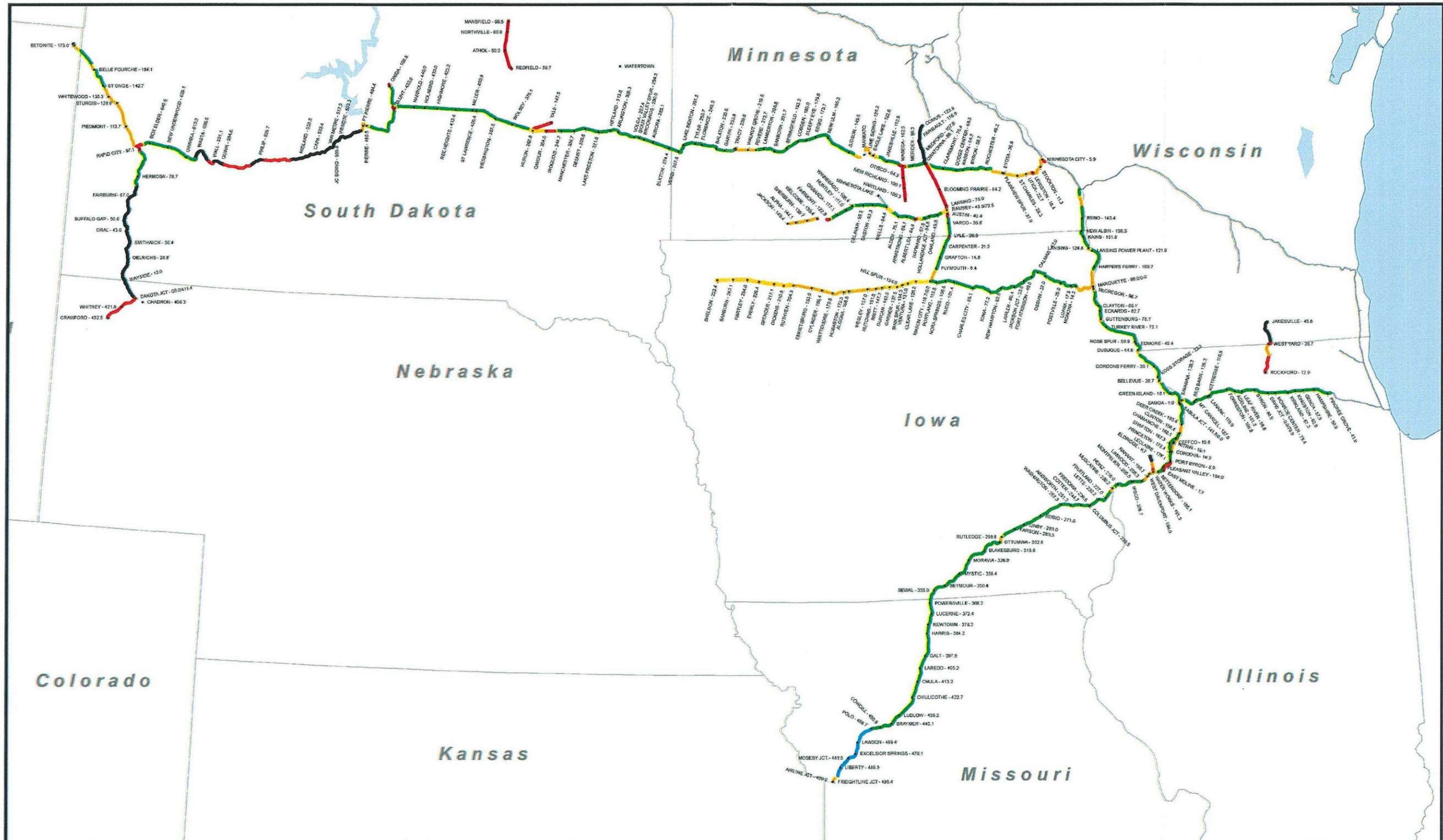
**DME Engineering Capital Investment  
By Year (2008 - July 2013)**

	2008	2009	2010	2011	2012	2013	Grand Total
Bldg - Power Systems							209,890
Bldg Office&Common							2,609,289
Bridges Culverts							65,463,780
Computer Hardware/Software							2,594,036
Equip.Rep.Shop & Shop Equip							2,053,848
Fuel/Water Stations							1,438,589
Grading							8,175,746
Land							54,780
Other							156,236
Public Improvements							10,541,736
Roadway Machines							7,745,523
Signals & Communication							44,805,048
Track (rail, Otm, ties, ballast)							249,916,114
Truck/Autos							8,899,993
Work Equipment							621,032
<b>Grand Total</b>	<b>75,437,564*</b>	<b>65,019,899</b>	<b>62,160,150</b>	<b>86,112,521</b>	<b>84,116,716</b>	<b>32,438,791</b>	<b>405,285,640</b>

(1) Includes assets under construction

\*Includes \$13.5 million from 2009 capital budget advanced by CP to DME for work to be performed in 2008

**ATTACHMENT 5**



Data is to be used for Reference only.  
 Sources:  
 USGS NED Dataset 1:150M  
 ESRI Data and Maps 2005  
 North\_America\_Albers\_Equal\_Area\_Conic  
 Path: F:\Project\working\UCaskey\system.mxd\System\_Map\_Class\_of\_Track2013.mxd  
 Author: JCC Date: 2/19/2014

**Legend**

- DM&E Stations
- CPR MAINLINE
- EXCEPTED TRACK

- CLASS 1
- CLASS 2
- CLASS 3
- CLASS 4



**SYSTEM OVERVIEW**  
**2013 CLASS OF TRACK**  
 Includes completion of Corn Lines capital program in 2014



**ATTACHMENT 6**



March 25, 2009

Federal Railroad Administration  
1200 New Jersey Avenue  
Washington, DC  
20590

Attention: Jo Strang  
Acting Deputy Administrator

Dear Jo;

**RE: Amendment to CP/DM&E Safety Integration Plan (SIP) filed February 2008**

In reference to the SIP filed in February 2008, in support of the CP/DM&E transaction, we would like to amend section *J. 2. Proposed Annual Capital Expenditures on DME*. The purpose of this amendment is to provide an explanation for: changes in the timing of capital allocation versus the 2009 plan. Since these changes do not impact the deliverables outlined in the supporting Safety Integration Plan Accountability (SIPA), that document would not require an amendment.

In the original SIP filing, we stated that for 2009 the total capital budget for Engineering would be \$100M. The revised capital budget for 2009 now sits at \$77.1M. The difference breaks down as follows:

- \$13.5M was advanced in 2008 and allocated accordingly:
  - Rail .....\$ 9.71M
  - Surfacing ..... \$ 0.51M
  - Bridge & Drainage.....\$ 1.42M
  - Turnouts .....\$ 1.23M
  - Cross & Signals .....\$ 0.63M
  
- \$ 9.5M was deferred from the 2009 budget in response to economic conditions

The capital budget for 2010 and 2011 remains as previously documented in the SIP.

If you have any questions or wish to discuss further, please call me at 605-782-1220.

Sincerely,

Vern Graham  
President DM&E

**ATTACHMENT 7**



U.S. Department  
of Transportation  
  
Federal Railroad  
Administration

Administrator

1200 New Jersey Avenue, SE  
Washington, DC 20590

JUL 3 2008

223035

NOT IN CHARGE

2008 JUL 14 P 4:45

The Honorable Charles D Nottingham  
Chairman  
Surface Transportation Board  
1925 K Street, N.W.  
Washington DC 20423-0001

Re: Filing of Canadian Pacific Safety Integration Plan, STB Finance Docket No. 35081

Dear Chairman Nottingham:

The Federal Railroad Administration (FRA) is filing its preliminary findings and conclusions on the proposed Canadian Pacific Railway Company (CP) acquisition of the Dakota, Minnesota and Eastern Railroad Corporation (DM&E) and its wholly-owned subsidiary, the Iowa, Chicago and Eastern Railroad Corporation (IC&E)<sup>1</sup>. On December 14, 2007, CP formally presented a proposed Safety Integration Plan (SIP) detailing the process and timetable for the merger of its operations with those of the DM&E. FRA has met with CP several times since then as the SIP has continued to evolve.

To date, the CP has responded satisfactorily to all of FRA's safety concerns. Assuming that CP's acquisition of the DM&E is approved, FRA will monitor CP's implementation of the SIP during the operations integration period, with a special focus on the following significant items:

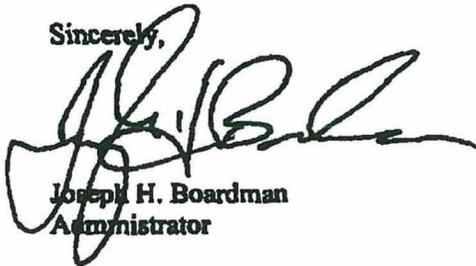
- Track improvements. CP has committed to investing approximately \$300 million over the next four years to upgrade all DM&E track to FRA Class III standards.
- Wayside detectors. CP has committed to installing additional defective equipment detectors to the east and west of the city limits of Rochester, Minnesota;
- Hazardous material traffic. Currently, the DM&E transports extremely low volumes of anhydrous ammonia and ethanol. CP projects that any likely increase in hazardous materials volume will be primarily in ethanol at levels below those which would trigger Department of Transportation routing requirements for hazardous materials;

<sup>1</sup> From this point on references to the DM&E include both the DM&E and the IC&E

- **Highway-rail grade crossings.** CP has committed to working with the Minnesota Department of Transportation and other government agencies to explore opportunities to enhance safety at highway-rail grade crossings, and
- **Emergency preparedness.** CP has committed to conducting emergency response training to appropriate community groups within 60 days of approval of its acquisition of the DM&E.

As stated above, should CP's acquisition of the DM&E be approved, FRA will periodically review the status and timeliness of CP's implementation of the above commitments and others contained in the SIP, to include special field audits and safety reviews as required. FRA will, of course, submit summaries of these findings to the Surface Transportation Board during the acquisition implementation period

Sincerely,



Joseph H. Boardman  
Administrator

## ATTACHMENT 8



U.S. Department  
of Transportation  
Federal Railroad  
Administration

Administrator

1200 New Jersey Avenue, SE  
Washington, DC 20590

**JUL 10 2013**

The Honorable John Thune  
United States Senate  
Washington, DC 20510

Dear Senator Thune:

Thank you for your March 21 and July 3, 2013, letters inquiring about Canadian Pacific Railway's (CP) compliance with the Safety Integration Plan (SIP) filed in connection with CP's 2008 purchase of the Dakota, Minnesota and Eastern Railroad (DM&E). In your March 21 letter, you requested an update on CP's implementation of the SIP and asked which requirements of the SIP have been met and the dates of completion for each. You also asked which requirements have not been met, for an update on the status of CP's efforts to complete those requirements, and for a detailed breakdown of the annual capital expenditures made by CP since the transaction.

Since approval of the transaction by the Surface Transportation Board in 2008, FRA has worked closely with CP to monitor the railroad's compliance with the SIP. To date, among other improvements, CP has installed additional defective equipment detectors, particularly to the east and west of the city limits of Rochester, Minnesota; worked extensively with State transportation agencies to enhance safety at highway-rail grade crossings along the DM&E; and conducted emergency response training with community groups. FRA continues to verify and monitor CP's compliance with all the requirements of the SIP, and expects to continue this monitoring for the full 5-year period (i.e., until September 29, 2013) that is anticipated by the applicable regulation. See Title 49 Code of Federal Regulations (CFR) Part 244, Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control. To evaluate the effectiveness of actions CP has taken under the SIP, FRA conducted a detailed review of the DM&E reporting data (and data reported by CP for the former DM&E territory) from 2008 to 2012. The safety data shows a marked reduction in personal injuries per 200,000 man-hours (a reduction of almost 69 percent) and total train accidents per million train-miles (a reduction of over 80 percent). Accordingly, it is clear that based on safety data since the merger, CP has greatly improved the overall safety of the former DM&E.

One area of concern that FRA noted during its monitoring of the SIP's implementation is the apparent increase of miles of track that CP classifies as "excepted track" under FRA's Track Safety Standards. Although such classification can indicate that track is being maintained for slower train speeds and other operational limitations, further investigation showed that a

large portion of the track classified by CP as "excepted track" is being maintained at higher levels. Ultimately, the administrative classification of that track as "excepted" has not caused a safety concern.

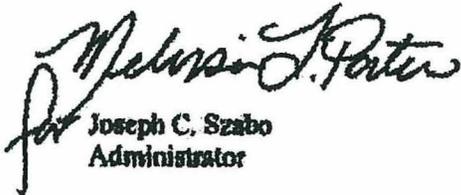
In your March letter, you also requested detailed financial information about CP's annual capital expenditures. Presumably, your request relates to CP's expenditures related to implementation of the SIP, and in the SIP, CP projected the need to invest approximately \$300 million in capital for improvements to DME's "track and ties, bridges and other rail facilities and systems and processes." (See page 89 of the SIP). So far, CP has invested just over \$300 million in the DM&E line, in part to replace existing infrastructure, reduce or eliminate temporary slow orders previously in place at a number of key locations, and in an effort to ultimately remove the 286,000 pound restrictions on certain routes, as well as to make overall safety improvements. These capital investments are reflected in improvements that were made, to include (1) installing significant mileage of continuous welded rail between Philip and Midland, South Dakota; (2) replacing six switches near Brookings, South Dakota; (3) performing substantial bridge work near Rapid Cities, South Dakota; (4) and major tie replacement between Fairburn, South Dakota, and Dakota Junction, Nebraska, in the last 2 years. Unfortunately, FRA does not have a detailed financial breakdown of CP's annual capital expenditures and suggests that CP itself would be the best source for that information.

FRA certainly understands the importance of the DM&E line to the State of South Dakota and to that end, as noted above, FRA expects to continue monitoring CP's compliance with the SIP for the full 5-year period prescribed in 49 CFR Section 244.17(g)(1). After that time, FRA will continue to monitor the safety of CP (including the former DM&E territory), as it does all railroads, through the use of the agency's inspection and enforcement authority.

I appreciate your interest in this important transportation matter and should you have any questions or concerns regarding CP's compliance with the SIP, I would be glad to meet with you upon request. We look forward to working with you on this and other transportation issues of importance to you and your constituents. If you have further questions, please feel free to contact Mr. Nathan Robinson, FRA's Associate Director for Congressional Affairs, at (202) 493-6022 or [Nathan.Robinson@dot.gov](mailto:Nathan.Robinson@dot.gov).

An identical copy of this letter has been sent to Governor Dennis Daugaard, Senator Tim Johnson, and Representative Kristi Noem.

Sincerely,

  
for Joseph C. Szabo  
Administrator

**ATTACHMENT 9**  
**REDACTED – PUBLIC VERSION**