



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

General Counsel

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

September 30, 2013

234920

ENTERED

Office of Proceedings

September 30, 2013

Part of Public

Record

FILED ELECTRONICALLY

The Honorable Daniel R. Elliott III
Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

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

Dear Chairman Elliott:

The United States Department of Transportation (DOT or Department) and the Federal Railroad Administration (FRA), an operating administration of DOT, write in support of the State of South Dakota's (State) request for full disclosure by the Canadian Pacific Railway Company (CP) of documents that demonstrate that CP has met the financial investment commitments CP made on the record during the course of this proceeding. The Department also wishes to clarify a statement made in a July 3, 2008 letter to the Board from former FRA Administrator Joseph Boardman in connection with the Safety Integration Plan (SIP) filed by CP in the 2008 transaction.

CP made representations in the SIP and on the record outside of the SIP regarding the capital investments CP intended to make in the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) should CP acquire control of DM&E. The Department understands and supports the State's desire for full disclosure to the Board of CP's capital expenditures in DM&E so that the Board and the parties to the proceeding may verify that CP has met each of its financial commitments. In the Department's view, the information that CP has submitted to the Board thus far does not permit such verification and should be supplemented.

In the SIP that CP filed during the course of this proceeding, CP made a general commitment to expend approximately \$300 million to repair and upgrade DM&E's 2,500 miles of track, bridges, and facilities, and to take specific steps to ensure that the operations of DM&E were effectively integrated into CP's.¹ We note that in a letter to the Board dated July 3, 2008, FRA indicated that it would monitor CP's implementation of the SIP with a "special focus" on track improvements, wayside detectors, hazardous materials traffic, highway-rail grade crossings, and

¹ Applicants' SIP Submitted to FRA at 89 (Feb. 4, 2008).

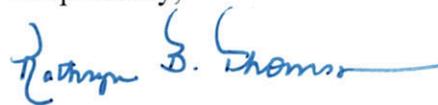
emergency preparedness. In that letter, FRA also indicated that CP had committed to investing approximately \$300 million over the next four years to upgrade “all” DM&E track to FRA Class 3 standards.² The Board took note of this representation in its Decision approving the transaction, and in footnotes, specifically cited FRA’s explanation of CP’s alleged commitment to invest approximately \$300 million over 4 years to upgrade all DM&E track to Class 3 standards.³ However, the SIP contained no representation about upgrading all DM&E track to Class 3 standards. Furthermore, CP has filed a verified statement from Glen Wilson stating that CP “never” made a representation to FRA that it would upgrade all DM&E track to Class 3 standards, and indicating that the only representation CP made to FRA in the SIP process regarding the upgrading of DM&E track to Class 3 standards was a pledge to upgrade the Rochester-Owatonna segment to Class 3 standards.⁴ FRA’s review of its records supports CP’s assertion in this regard, and FRA regrets the overgeneralization in its July 3, 2008 letter related to the track upgrades contemplated by CP.

Furthermore, the Department wishes to inform the Board that FRA has monitored CP’s compliance with the safety components of the SIP through physical inspections, analysis of safety data, and consultations with CP. As a result of these efforts, FRA has concluded that CP has fulfilled its safety commitments under the SIP, including the integration of the railroads’ operating practices, engineering, hazardous materials, dispatching and highway-rail grade crossing systems and processes.

In conclusion, the Department supports the State’s request for full disclosure of CP’s capital expenditures in the DM&E. The Department also agrees with CP in its assertion in this proceeding that it did not commit to upgrade the entirety of DM&E’s trackage to FRA Class 3 standards.

We hope that the Board finds this information helpful. If DOT and FRA can be of any further assistance in this proceeding, please let us know.

Respectfully,



Kathryn B. Thomson
Acting General Counsel

² FRA’s track safety regulations divide track into separate classes, depending on the quality of the track, and also specify inspection and maintenance requirements dependent on the class and type of track. Each of FRA’s track classes is essentially based on the same foundation, with a set of progressively stricter safety limits as operating speeds increase. The class of track determines the train speed limit on that track (e.g., Class 1 track allows freight trains to operate a maximum speed of 10 mph; Class 2, 25 mph; and Class 3, 40 mph). Track geometry, turnout specifications, and other factors can limit train speeds well below what would be allowed on Class 3 track.

³ Decision at 20 n.33, 21 n.35 (served Sept. 30, 2008).

⁴ CP Reply, Verified Statement of Glen Wilson at 10 (Aug. 28, 2013).

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing to be served upon all Parties of Record to this proceeding.

Christopher S. Rev

United States Department of
Transportation