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BEFORE THE
SURFACE TRANSPORTATION BOARD

FEB 4 2009

STB Ex Parte No. 681

CLASS I RAILROAD ACCOUNTING AND FINANCIAL REPORTING-TRANSPORTATION OF HAZARDOUS MATERIALS

COMMENTS OF CANADIAN PACIFIC RAILWAY COMPANY

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Dated February 4, 2009

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COMMENTS OF CANADIAN PACIFIC RAILWAY COMPANY

Pursuant to the Advance Notice of Proposed Rulemaking served in the above-captioned proceeding on January 5, 2009 (the "*ANPR Decision*"), Canadian Pacific Railway Company and its U.S. subsidiaries, Soo Line Railroad Company, Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively "CP"), submit these Comments in response to the Board's request for comments addressing whether (and how) it should modify its regulations governing accounting and financial reporting by Class I railroads, and refine URCS, to better capture the operating costs incurred by carriers in transporting hazardous commodities.[1]

CP is a major participant in the rail transportation of hazardous materials (including TIH/PIH commodities such as anhydrous ammonia and chlorine) in both the United States and Canada. In 2008, CP transported approximately 116,000 carloads, and 50,000 intermodal units, of hazardous commodities. These shipments accounted for approximately 8 percent of all CP carload traffic, and 3 percent of all CP intermodal traffic, in that year. Approximately 80 percent of CP's hazardous commodity carload traffic both originates and terminates within the United

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[1] CP endorses the Comments filed by the Association of American Railroads ("AAR"). CP submits these additional Comments to provide the Board factual information and perspective relating to CP's experience in handling hazardous commodities, and the shortcomings in URCS (as currently designed) in capturing and assigning costs associated with such shipments to the customers responsible for those costs.

States or moves cross-border between a point in the United States and a point in Canada TIH/PIH commodities account for approximately 15 percent of CP's hazardous carload shipments Approximately 45 percent of the hazardous commodities that CP handles in intermodal service are cross-border shipments (with the remaining intermodal shipments being Canadian domestic movements) *See* Attachment 1, V S Ekbote at 2-3

CP would prefer not to handle certain hazardous shipments, particularly TIH/PIH commodities While the vast majority of such shipments move by rail today without incident, the potential for a catastrophic release from even a single TIH/PIH car as a result of an accident, derailment or act of terrorism imposes an enormous risk on CP and other rail carriers The potential liability stemming from such an incident far exceeds the maximum insurance coverage available in today's marketplace

As these Comments and the Verified Statement of Deepak D Ekbote (set forth in Attachment 1) demonstrate, the methods by which cost data are currently reported in the Uniform System of Accounts ("USOA"), and utilized by URCS, result in a significant understatement of the costs that railroads actually incur in transporting hazardous shipments This occurs because URCS allocates such costs across a railroad's entire traffic base as part of its "system-average" costs, rather than assigning them specifically to the traffic that generates those costs. *See ANPR Decision* at 2; Attachment 1, V S Ekbote at 2 Moreover, certain costs related to the transportation of hazardous commodities – most notably the risk of catastrophic loss inherent in the handling of TIH/PIH shipments – cannot be accounted for at all by URCS As a result, the costs generated by URCS for many hazardous materials shipments do not reflect the true "variable" cost of handling that traffic

The Board's proposal to consider modifications to its financial reporting regulations, and changes to URCS, to improve the attribution of operating costs incurred by carriers in transporting hazardous commodities is consistent with both statutory policy and longstanding Board precedent Congress has stated explicitly that it is the policy of the United States Government "to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information." 49 U S C § 10101(13) Revising URCS to reflect more accurately costs associated with hazardous materials transportation would serve the twin goals embodied in this policy statement

The Board and its predecessor have long held that railroads should "recover costs from those that generate them " *See* Docket No 42060 (Sub-No. 1), *North American Freight Car Ass'n v BNSF Ry Co*, 2007 WL 201203 (served Jan 26, 2007) at *4, *aff'd sub nom N Am Freight Car Ass'n v S T B*, 529 F 3d 1166 (D C Cir 2008) In *North American Freight Car*, the Board made clear that costs generated by specific shippers should be paid by those shippers, rather than being subsidized by the shipping public as a whole *Id* at *5 ("[I]t does not follow that all shippers should pay for the problems or costs generated by a relative few ") *See also Mr Sprout, Inc v United States*, 8 F 3d 118, 127 (2d Cir 1993) ("railroad accounting principles generally provide that costs should be recovered from the party that generates them") Consistent with this principle, the Board's Stand-Alone Cost ("SAC") test governing large rate cases is designed to ensure that shippers are not forced to cross-subsidize other traffic *See, e g*, Ex Parte No 657 (Sub-No 1), *Major Issues in Rail Rate Cases*, (Decision served October 30, 2006) at 7 However, the Three-Benchmark methodology adopted by the Board for small rate disputes utilizes Revenue/Variable Cost ("R/VC") ratios based solely upon "system average" variable costs generated by URCS. In a Three-Benchmark case involving hazardous commodities, use of such system-average URCS costs understates substantially the actual cost of handling the issue traffic As discussed below, the Board should revisit its determination in

Ex Parte No 646 prohibiting movement-specific evidence relating to the actual cost of transporting hazardous shipments in future rate proceedings

More recently, during the public hearings in Ex Parte No 677 (Sub-No 1), *In the Matter of Common Carrier Obligation of Railroads*, the Board again expressed concern that unique costs generated by hazardous materials shipments may be imposed on non-hazardous commodity shippers:

> CHAIRMAN NOTTINGHAM. Are you able to basically sit down only with your chemical shippers who are the driving force in those cost increases or do you basically have to pass them off onto everybody including grain farmers and other shippers who've got nothing to do with TIH?
>
> MR REEVES (Kansas City Southern Railroad) In general I would say that some component of those costs is probably allocated throughout the network Some portion of the cost bleeds over into all of the traffic
>
> MR HEMMER (Union Pacific Railroad) I would point out that a simplified stand-alone method that you have developed does not appear to allow us to allocate those costs to the shipments that cause them
>
> MR WEICHER (BNSF Railway) [T]his is an area where our shippers in general and our system and network in general are being forced to bear or try to spread a risk you may not be able to spread across other commodities of the shippers to keep our system going There is no mechanism out there now that deals with it

See Ex Parte No 677, April 24, 2008, Hearing Tr at 145-47 *See also id* at 162-63 (Vice Chairman Mulvey) ("I do think having good data and good information and good models are critical to doing our job correctly "), April 25, 2008, Hearing Tr at 70 (Chairman Nottingham) ("So, broadly speaking, all shippers are paying for part of this problem ")

The Board's proposal to consider changes to the USOA and URCS is a positive step that would assist carriers in recovering costs unique to hazardous commodities from those shippers whose traffic is responsible for generating such costs As the testimony of CP witness Ekbote demonstrates, the proliferation of safety and security – related regulations applicable to the rail transportation of toxic commodities, and measures that CP has implemented voluntarily to enhance the safety and security of hazardous commodities shipments, impose substantial additional costs on CP in handling such traffic The unique costs associated with the rail transportation of hazardous commodity shipments include the following.

Operating Expenses The transportation of hazardous commodities is subject to extensive regulation in both the United States and Canada Cars containing hazardous commodities may require special placement within a train Regulations promulgated by USDOT and the Transportation Safety Administration ("TSA") require, *inter alia*, that trains carrying TIH/PIH cars operate at speeds no greater than 50 MPH,[2] that railroads develop the capability to locate such cars on short notice,[3] that TIH/PIH cars interchanged in a "High Threat Urban Area" not be left unattended at any time during the interchange process,[4] and that rail carriers conduct annual "route assessments" of all routes that are used to transport TIH/PIH commodities [5] These regulations impose significant additional operating costs, including increased locomotive, labor and fuel expenses, in handling covered shipments CP estimates that handling requirements unique to hazardous commodity shipments have increased CP's annual system wide yard expenses alone by approximately 2 percent. V S Ekbote at 3 However, URCS currently does not assign such service units and costs to the hazardous movements that generate them

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[2] *See* Final Rule, *Hazardous Materials Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials*, Docket No FRA-2006-25169, 74 Fed Reg. 1770 (Jan 13, 2009)

[3] *See* Final Rule, *Rail Transportation Security*, Docket No TSA-2006-26514, 73 Fed Reg 72130 (Nov 26, 2008), *amended by* 73 Fed Reg 77531 (Dec 19, 2008) (postponing effective date to April 1, 2009)

[4] *See* 49 C F R §§ 1580 101 – 1580 107

[5] *See* Final Rule, *Hazardous Materials Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments*, Docket No PHMSA-RSPA-2004-18730, 73 Fed Reg 72182 (Nov 26, 2008)

The obligation to accept hazardous materials for transportation also imposes significant employee training costs on rail carriers CP employees engaged in the transportation of hazardous commodities are required to participate in periodic training sessions relating to the proper handling of such shipments, and to have a copy of CP's "Emergency Response Guide Book" at all times while on duty V S. Ekbote at 4

<u>Insurance</u>· CP purchases substantial additional insurance coverage to mitigate the enormous risk associated with handling hazardous materials, particularly TIH/PIH commodities Absent a common carrier obligation to accept ultra-hazardous traffic, such coverage, which costs millions of dollars annually, would not be necessary (Like other carriers, CP "self-insures" for costs associated with ordinary derailments and other accidents) V S Ekbote at 4 As the *ANPR Decision* recognizes, these insurance expenses are currently allocated by URCS across all traffic as part of a carrier's system-average unit costs, rather than being assigned to the ultra-hazardous shipments that necessitate the purchase of such insurance

Even the maximum amount of insurance coverage currently available in the marketplace would not be sufficient to cover the cost of a major hazardous materials incident While the Board's proposal to modify URCS might allocate the cost of such extraordinary insurance more equitably to those shippers whose traffic necessitates the additional coverage, it will not eliminate the risk that carriers face each time they accept an ultra-hazardous shipment for transportation on their lines.

<u>Emergency Preparedness/Response</u> CP maintains a network of emergency responders that enable it to respond to a hazardous materials incident anywhere on the CP system, 24 hours per day, 7 days per week CP also employs three full-time Field Managers to oversee the proper handling of hazardous shipments on CP's lines In order to improve its ability to respond to a hazardous materials emergency, CP regularly conducts community awareness sessions, "table-

top" exercises and full-scale incident simulations in conjunction with emergency responders across the CP system V.S. Ekbote at 5. The cost of these emergency preparedness measures are currently distributed by URCS across CP's entire traffic base, rather than being allocated specifically to CP's hazardous commodities traffic *Id*

Regulatory Compliance· Monitoring of, and compliance with, the plethora of existing and proposed statutes and regulations governing the movement of hazardous rail shipments imposes significant costs on CP and other railroads CP has established several full-time positions to ensure compliance with the maze of regulatory requirements associated with hazardous commodities The proliferation of laws and regulations affected hazardous materials traffic also requires CP representatives to meet frequently with I RA and other government agencies CP employs two Managers of Regulatory Affairs and a dedicated "Dangerous Goods Officer" to perform these duties. These regulatory compliance costs are currently distributed by URCS across a carrier's entire traffic base as part of its system-average unit costs, rather than being allocated specifically to hazardous commodities shipments V S Ekbote at 6 Several additional rules addressing the movement of TIH/PIH commodities have recently been issued but have not yet gone into effect While it is too early to estimate the cost of complying with these new regulations, it is likely that they will impose both one-time information technology costs and ongoing operating expenses V S Ekbote at 7-8

As the foregoing discussion shows, URCS does not accurately assign costs that rail carriers incur in handling TIH/PIH commodities and other hazardous materials to movements of those commodities Changes to the USOA and URCS may assist carriers in recovering costs associated with hazardous shipments from those shippers whose traffic is responsible for generating such costs However, modification of the Board's accounting and financial reporting processes to reflect such costs more accurately would be a substantial undertaking At a minimum, the Board would need to revise its regulations to obtain more detailed reporting of expenses, investments and operating statistics that are unique to hazardous shipments (As the comments filed by AAR indicate, the data collection capabilities of individual Class I railroads must be considered in determining the most efficient and cost-effective means of gathering and reporting such cost information.) In order to isolate those costs resulting specifically from the more stringent regulations governing the handling of TIH/PIH and other ultra-hazardous commodities, the Board's regulations might need to distinguish between costs generated by such commodities and those associated with other commodities that, while classified as "hazardous," do not pose as great a safety and security threat In order to assure that costs unique to the carriage of hazardous commodities are properly assigned to the traffic that generates them, URCS would have to be modified to make such attribution

Based upon past experience, it is likely to require several years for the Board to develop, propose and issue final rules to enhance the costing of hazardous commodities by URCS *See, e g*, *Review of the General Purpose Costing System*, 2 S T B 659 (1997) (prior agency review of URCS costing system took more than seven years) Even after such rules are promulgated, it will be several more years before refined URCS costs for hazardous shipments are fully developed and those costs can be applied to the Board's Carload Waybill Sample for purposes of calculating R/VC ratios in rate cases under the Three-Benchmark methodology In the interim, application of the Three-Benchmark methodology in cases involving hazardous commodities shipments is likely to generate results based upon a substantial understatement of the variable costs associated with such traffic Moreover, even with modifications of the type discussed above, URCS cannot capture the full "cost" of handling TIH/PIH and other dangerous commodity shipments In particular, "the risk associated with transporting such shipments cannot be reduced to a precise 'unit cost' " V S Ekbote at 8

For these reasons, CP urges the Board to revisit its prior decision in *Ex Parte No 646*, which prohibited any evidence regarding movement-specific adjustments to the system-average variable costs generated by URCS even in cases involving TIH/PIH and other ultra-hazardous commodities In order to promote the strong Congressional and STB policy favoring recovery by rail carriers of extraordinary costs from those shippers whose traffic is responsible for such costs, the Board should provide a mechanism by which carriers are permitted to demonstrate the actual cost of handling hazardous shipments in future rate proceedings

CONCLUSION

For the reasons set forth above, CP supports the Board's proposal to consider modifications to its regulations governing accounting and financial reporting by Class I railroads, and refinements to URCS, that would enable carriers (and the Board) to capture more accurately the costs incurred in transporting hazardous commodities

Respectfully submitted,

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Dated February 4, 2009

Attachment 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 681

CLASS I RAILROAD ACCOUNTING AND FINANCIAL REPORTING – TRANSPORTATION OF HAZARDOUS MATERIALS

VERIFIED STATEMENT OF DEEPAK D. EKBOTE

My name is Deepak D. Ekbote. I am Director, Cost Research and Analysis of Canadian Pacific Railway Company ("CP") My business address is Gulf Canada Square, 401 9th Avenue S W , Calgary, Alberta, T2P 4Z4 Canada I have been employed by CP for more than 35 years During my career, I have held a variety of positions in which I have gained significant experience in all aspects of CP's operations, finances, strategies, cost research and analysis, and overall business practices I have presented testimony on behalf of CP in a variety of regulatory proceedings in both Canada and the United States

I earned Bachelor of Science and Master of Science degrees in Mathematics and Physics from the University of Bombay, India, and a Ph D degree in Physics from the University of Saskatchewan, Canada. I also hold an M.B A degree from McGill University in Montreal, Quebec, Canada In the past I have been a member of the Cost Analysis Organization of the Association of American Railroads ("AAR") In that capacity, I participated in the cost research that led to the development of the cost models that form the basis of the Board's Uniform Railroad Costing System ("URCS") I am familiar with the financial and statistical data submitted by CP's subsidiary, Soo Line Railroad Company ("Soo"), in connection with its annual R-1 Report to the STB

The purpose of this Verified Statement is to respond to the Board's request for comments addressing whether (and how) it should modify its regulations governing accounting and financial reporting by Class I railroads, and refine URCS, to capture more accurately the operating costs incurred by carriers in transporting hazardous commodities. As my testimony demonstrates, the data currently reported in the Uniform System of Accounts ("USOA"), and utilized by URCS, significantly understate the costs that railroads actually incur in transporting hazardous shipments, especially TIH/PIH commodities. This occurs because many costs that are uniquely attributable to the handling of hazardous commodities are allocated by URCS across a railroad's entire traffic base, rather than being assigned specifically to the traffic that gives rise to those costs Additional locomotive hours, switch minutes, labor costs and other operating expenses incurred by railroads in complying with regulations governing the handling of cars containing hazardous materials are incorporated by URCS into a carrier's overall operating statistics and expenses, rather than being assigned to the hazardous shipments that generate them Moreover, the risk of catastrophic loss inherent in the handling of TIH/PIH shipments is not accounted for at all in URCS As a result, the variable costs generated by URCS for hazardous commodities shipments do not accurately reflect the true cost of handling such traffic.

CP and its U.S affiliates, Soo, Dakota, Minnesota & Eastern Railroad Corporation ("DME") and Delaware & Hudson Railway Company, Inc ("D&H"), handle a large volume of hazardous materials traffic, including a substantial number of carloads of TIH/PIH commodities such as anhydrous ammonia and chlorine [1] Specifically, CP transports approximately 116,000 carloads (representing approximately 8 percent of CP's carload traffic), and 50,000 intermodal units (representing approximately 3 percent of CP's intermodal traffic), of hazardous commodities each year Approximately 80 percent of CP's hazardous materials carload traffic both originates and terminates within the United States or moves cross-border between points in the United States and Canada Approximately 15 percent of those carload shipments involve

[1] For convenience, I will refer to Canadian Pacific Railway, Soo, DME and D&H collectively as "CP"

TIH/PIH commodities Approximately 55 percent of the hazardous commodities that move in intermodal service are Canadian domestic shipments, and most of the remaining 45 percent are cross-border traffic. As these figures show, CP is a major participant in the transportation of hazardous commodities by rail in both the United States and Canada

The increasing number of safety and security–related regulations governing the movement of toxic commodities, and various measures that CP has implemented on a voluntary basis to improve the safety and security of hazardous shipments on its lines, have dramatically increased the costs that CP incurs in transporting such traffic The unique costs associated with the rail transportation of hazardous commodity shipments include the following

A. Operating Expenses

CP's operations in both the United States and Canada are subject to numerous rules and regulations governing the transportation of hazardous commodities For example, cars containing hazardous commodities may require special placement within a train Regulations also prescribe special treatment of hazardous shipments during the process of blocking, switching and interchanging cars in terminal areas. These requirements generate significant additional operating costs, including but not limited to increased locomotive, crew and fuel expenses CP estimates that the handling requirements unique to hazardous commodity shipments increase CP's annual system wide yard expenses by approximately 2 percent However, URCS currently does not assign such unique service units and costs to the hazardous movements that generate them

All CP employees engaged in the transportation of hazardous commodities are required to participate in training sessions that focus on the proper handling of such shipments U S yard and road crews receive such training once every two years, while CP's Canadian crews receive such training every 2 5 years Employees involved in the transportation of hazardous commodities – including all yard and road crews, railway traffic controllers and signalmen – are also required to have a copy of CP's "Emergency Response Guide Book" while on duty Updated guide books are purchased and distributed by CP every four years These expenses are currently recorded in R-1 Schedule 410, Lines 402, 403 and 421, and their variable portions are distributed by URCS across all traffic as part of a carrier's system-average unit costs

CP also participates in the chemical industry's "Responsible Care" initiative, which is designed to improve the safety of hazardous chemical shipments Costs associated with participation in Responsible Care include annual dues and the cost of annual verification of CP's compliance with the program's directives These expenses are currently recorded in R-1 Schedule 410, Line 518, and their variable portions are distributed by URCS across all traffic as part of a carrier's system-average unit costs

B. Insurance

The enormous risk associated with a potential release of a TIH/PIH commodity moving by rail requires CP to purchase substantial additional insurance coverage that would not otherwise be necessary Like other carriers, CP "self-insures" for the costs associated with ordinary derailments and other accidents However, the potential liability associated with an incident involving hazardous materials (and, in particular, a TIH/PIH commodity) is far greater than CP can self-insure For that reason, CP purchases several layers of insurance to cover a potential claim involving a hazardous materials incident The cost of such insurance coverage amounts to millions of dollars annually. These insurance expenses are currently recorded in the Casualty and Insurance categories of various lines in Schedule 410 of the R-1 Report, and their variable portions are distributed by URCS across all traffic as part of a carrier's system-average unit costs, rather than being assigned to the TIH/PIH and other dangerous shipments that necessitate the purchase of such additional layers of insurance coverage Moreover, in the current marketplace, even the maximum amount of available insurance coverage would not likely be sufficient to cover the cost of a major hazardous materials incident, especially one that occurred in an urban area

C. Emergency Preparedness and Response Capability

CP has established a network of emergency responders covering its entire rail system in both the United States and Canada This network gives CP the ability to react quickly, 24 hours per day, 7 days a week, to a hazardous materials incident anywhere on the CP system CP's contractors, who are headquartered in four U S and six Canadian cities, make annual verification visits to ensure their readiness and ability to respond to any type of incident that may arise In addition to the cost of services provided, CP must pay each contractor an annual retainer

CP also employs three full-time Field Managers in connection with its handling of hazardous materials – two located in Canada and one in the US In 2007, CP acquired an emergency response trailer for Soo to enhance the ability of internal railroad personnel to respond quickly to emergency situations As part of its ongoing emergency response program for hazardous shipments, CP conducts a variety of exercises – ranging from community awareness sessions and "table-top" exercises to full-scale simulations – with emergency responders and other governmental agencies in the communities that we serve These expenses are currently recorded in R-1 Schedule 410, Line 401, and their variable portions are distributed by URCS across all traffic as part of a carrier's system-average unit costs

D. Regulatory Compliance

The plethora of new statutes and regulations governing the movement of hazardous rail shipments imposes significant costs on CP (and other railroads) CP employs several full-time officers to design and administer programs to ensure the proper documentation and handling of hazardous shipments on our system, and to administer emergency response procedures and training Within the Customer Service Group one full-time equivalent ("FTE") officer has responsibility for ensuring CP's compliance with waybilling and regulatory reporting requirements for hazardous commodity shipments These expenses are currently recorded in R-1 Schedule 410, Lines 603 and 604, and their variable portions are distributed by URCS across all traffic as part of a carrier's system-average unit costs Another FTE officer in the Risk Management Department is assigned responsibility for risk management activities related to the handling of hazardous commodities These expenses are currently recorded in R-1 Schedule 410, Line 602 and their variable portions are likewise reflected in a carrier's system-average unit costs

The increase in laws and regulations affected hazardous materials traffic requires CP representatives to meet more frequently with FRA and other government agencies in both the United States and Canada to ensure that CP is complying with all applicable reporting and security regulations CP employs two Managers of Regulatory Affairs, as well as a dedicated "Dangerous Goods Officer," to perform these duties The proliferation of regulatory requirements related to the transportation of hazardous commodities (particularly TIH/PIH) also generates significant additional workload for CP's Legal Department These expenses are currently recorded in R-1 Schedule 410, Line 608, and their variable portions are distributed by URCS across all traffic as part of a carrier's system-average unit costs

Regulations recently promulgated by FRA require rail carriers to conduct annual "route assessments" of all routes that are used to transport TIH/PIH commodities *See* Final Rule, *Hazardous Materials Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments*, Docket No PHMSA-RSPA-2004-18730, 73 Fed Reg 72182 (Nov 26, 2008) This new requirement will impose significant additional costs on CP's Product Design and Information Technology departments Such costs will include one-time information technology costs (to establish programs for assessing the routing of TIH/PIH shipments) as well as ongoing operating costs These expenses will be recorded in R-1 Schedule 410, Line 401 and thus their variable portions will be distributed by URCS across all traffic as part of a carrier's system-average unit costs

E. Other Proposed Regulations

In addition to the regulatory requirements discussed above, several other new rules addressing the movement of TIH/PIH commodities have recently been issued, but have not yet gone into effect For example, the U S Transportation Security Administration ("TSA") recently issued final rules governing the establishment of a positive chain of custody for shipments of TIH, explosives and radioactive materials The same new TSA regulations also require carriers to develop the ability to report promptly the location of covered hazardous materials cars *See* Final Rule, *Rail Transportation Security*, Docket No TSA-2006-26514, 73 Fed Reg 72130 (Nov 26, 2008), *amended by* 73 Fed Reg 77531 (Dec 19, 2008) (postponing effective date to April 1, 2009) FRA and PHMSA recently issued new regulations governing standards for the construction of tank cars used to carry TIH/PIH commodities, and restricting the maximum speed of trains carrying TIH/PIH shipments to 50 MPH *See* Final Rule, *Hazardous Materials Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials*, Docket No FRA-2006-25169, 74 Fed Reg 1770 (Jan 13, 2009) While it is too early to predict with certainty the cost of complying with these regulations, it is likely that the new rules will impose both one-time information technology costs and ongoing operating costs on railroads that handle covered traffic.

As the foregoing discussion demonstrates, URCS, as presently constituted, does not accurately capture the costs that rail carriers incur in handing TIH/PIH commodities and other hazardous materials Modification of the Board's accounting and financial reporting processes to reflect such costs more accurately would be a substantial undertaking At a minimum, the Board would need to revise the USOA to obtain more detailed reporting of expenses, investments and operating statistics that are unique to hazardous shipments Moreover, in order to isolate those costs resulting specifically from the more stringent regulations governing the handling of TIH/PIH commodities, the USOA might need to distinguish between cost drivers (e.g., loaded/empty car miles, switch minutes, crew expenses) generated by TIH/PIH and other ultra-hazardous commodities, on the one hand, and those commodities that, while deemed "hazardous" for various regulatory purposes, do not pose as great a safety threat The schedules prescribed by the Board's regulations governing the preparation of annual R-1 Reports by Class I railroads would need to be revised to accommodate the hazardous commodity-specific data captured in the updated USOA In order to assure that such hazardous (or TIH/PIH) commodity-specific expenses are properly assigned to the traffic that generates them, URCS would have to be modified to treat such costs as fully variable

Even with such modifications, URCS cannot fully capture the true "cost" of handling TIH/PIH and other dangerous commodity shipments In particular, the risk associated with transporting such shipments cannot be reduced to a precise "unit cost" Nor is the cost of additional layers of insurance a proxy for the risk that CP (and other railroads) undertake every time they accept such a shipment, because the cost of a catastrophic event could easily exceed by a wide margin the limits of available insurance coverage

VERIFICATION

I, Deepak D Ekbote, declare that the foregoing statement is true and correct Further, I certify that I am qualified and authorized to file this statement

Deepak D Ekbote

Executed on February 3, 2009 at the City of Calgary, Alberta, Canada