

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35081

CANADIAN PACIFIC RAILWAY COMPANY, ET AL. ó CONTROL ó DAKOTA,
MINNESOTA & EASTERN RAILROAD CORP., ET AL.

COMMENTS OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION
and
NORTH DAKOTA WHEAT COMMISSION
INCLUDING REQUEST FOR IMPOSITION OF CONDITIONS

Pursuant to Decision No. 4 of December 27, 2007, North Dakota Grain Dealers Association (ñNDGDAö) and North Dakota Wheat Commission (ñNDWCö) hereby file their comments, including their request that approval of the transaction be conditioned upon certain service standards designed to protect grain shippers in North Dakota from deterioration in service by Applicant Canadian Pacific Railway Company (ñCPö).

NDGDA is an association of 150 companies that operate over 300 grain elevators in North Dakota. These grain elevators are the first point of sale for nearly all grain produced in the state. These businesses receive clean, condition, blend and ship grain on to domestic and worldwide markets. Grain production remains the mainstay of North Dakota's economy and rail service is essential to move grain from points of production to points of consumption. More than 80 percent of North Dakota's grain shipments occur by railroad.

The NDWC is a quasi-public agency created by the ND legislature in 1959 to promote domestically and internationally the state's biggest crop, wheat. It is funded through a checkoff on each bushel sold, paid by approximately 20,000 farmers and collected by grain elevators. Its interests parallel those of NDGDA because without adequate affordable rail transportation, much of the wheat produced by those farmers can't get to markets here and abroad. Clean, modern, functional railcars are a must to get a quality product to increasingly quality-conscious end-users.

Rail service in North Dakota is dominated by two carriers: BNSF Railway Company (BNSF) and CP. CP has two short line affiliates, the Dakota, Missouri Valley and Western (DMVW) and Northern Plains Railroad (NP). Approximately 70 elevators of NDGDA members are located on CP, DMVW or NP lines, originating wheat, corn, soybeans and other crops. DMVW, NP, and their grain shipper customers are dependent on CP for railcar supply.

For the past several years, CP car supply, and car condition for grain shipments has been problematic. Many NDGDA shipper members served by CP, DMVW and NP have seen more than their fair share of covered hopper cars placed for loading that are in inferior condition. The bottom gates on some CP cars are damaged to the point that crowbars must be used to pry them shut. Instances of using baling wire to secure the gates from leakage are reported. Spray foam sealants are often used to seal cracks so grain will not leak out. These extra steps require more hours of labor provided by the shippers. Shippers make these repairs rather than reject the cars because that would mean waiting longer, and with no guarantee replacements cars will be any better. Shippers want to ship the full complement of carloads to fulfill their sale contracts. Rejecting (bad ordering) cars means having to designate to the consignee that number of cars to fol-

lowö. Replacement empties (stragglers) may or may not come. Either way, this complicates matters for the shipper, the receiver and the railroad. CP car supply has not been abundant. During the most recent harvest, grain was stored on the ground at several CP-served elevators in North Dakota due to lack of equipment and/or power. Even today, March 4, 2008, shippers report December and January car orders unfilled.

The application states (p. 13) that CP plans to make \$300 million of capital available over the next several years to upgrade the tracks and other rail facilities of Dakota, Minnesota & Eastern Railroad (öDMEö). Unfortunately, no similar commitment appears on behalf of the Applicants to make capital improvements in CP's own, existing facilities, including its car fleet. The shippers who have indicated their support for the application pretty clearly expect that the \$300 million of proposed infrastructure investments by CP will be aimed at improvements to the DME properties. See, e.g., Verified Statement on behalf of the South Dakota Grain Growers Association, Verified Statement on behalf of South Dakota Grain and Feed Association, Verified Statement on behalf of Southern Grain Belt Shippers Association contained in Volume II of the application.

Our concern regarding the allocation of CP resources to DME customers at the expense of CP grain shippers is highlighted by the Verified Statement of Ray Foot, CP's Vice President ö Marketing & Sales, who stated:

DME and its customers will also benefit from access to CPR's large modern car fleet í We anticipate DME's on-line traffic will continue to increase í the ability to draw upon CPR's fleet of almost 70,000 cars í will enable DME to meet the challenge of supplying cars to handle its growing traffic base. Application, Vol. II, Foot V.S., p. 2.

The prospect of improved service to DME customers as a result of the proposed merger is no doubt welcome news to those customers, but it also makes CP's existing grain shippers wonder if they will experience an offsetting deterioration of service. If

new customers are to get better service, where will the additional cars come from to provide the same level of service to CP shippers that CP apparently intends to provide to its new DME customer base? Grain elevators that cannot get reliable car service in effect will be bypassed by any benefits the merger has to offer.

The application also says "DME will have access to the full CPR car fleet of approximately 69,200 cars, which may provide additional capacity for peak demand periods." Application, Ex. 13, p. 33. There is typically some overlap in harvest time periods between the South Dakota territory currently served by DME and the North Dakota territory served by CP. Likewise there is overlap in harvest time periods between North Dakota and Canada. Thus there will be concurrent demands on the car fleet. In the case of car supply the whole is not more than the sum of its parts and so giving access to the existing fleet to more customers will likely mean a reduction in service to existing customers. Without an adequate supply of serviceable cars, North Dakota elevators will be at a handicap in competing with elevators located on the lines CP wants to acquire and benefit with \$300 million in new investment, and that would be a merger-related result that is not in the public interest.

Another concern of CP shippers is locomotives. The application states:

Access to surplus CPR locomotives for growth requirements may enable DME to avoid purchasing new units.
Application, Vol. I, Exhibit 13, p. 33.

CP shippers are skeptical about CP having "surplus" locomotives. These shippers report loaded and billed trains sitting for days waiting for locomotive power.

Besides, car supply and condition, and locomotive power, another concern raised by some shortline shippers is adequate rail yard capacity at points connecting with CP. They believe this to be the constraining service factor in some cases.

NDGDA accordingly proposes that the Board condition approval of the application on the following:

1. CP making no fewer cars available for grain loading at North Dakota elevators than it maintained on average over the past three years to service those elevators, and
2. CP making a commitment to utilize some substantial part of the \$300 million it says it will spend on post-acquisition infrastructure, including rail yards and locomotives, and to make the grain car fleet it uses to serve North Dakota elevators serviceable and adequate.

There is precedent for STB monitoring and reporting on such matters in FD 34000, Canadian National Railway - Control - Wisconsin Central Transportation, served September 7, 2001, specifically Service Assurance and Operational Monitoring Conditions at page 11 of the slip opinion and Equipment Allocation and Distribution Report at page 12.

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CERTIFICATE OF SERVICE

Steven D. Strege hereby certifies that on March 4, 2008 a copy of this document was sent by first class mail to all parties of record as of this date.

/s/Steven D. Strege