

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Canadian Pacific Railway Company, *et al.* – Control –
Dakota, Minnesota & Eastern Railroad Corp., *et al.*

)
)
) Finance Docket No. 35081
)
)

**APPLICANTS' RESPONSE TO COMMENTS
AND REQUESTS FOR CONDITIONS AND
REBUTTAL IN SUPPORT OF APPLICATION**

APPENDIX

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Dated: April 18, 2007

APPENDIX

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Appendix A

This Appendix contains information designated as Highly Confidential pursuant to the Protective Order issued by the STB in Finance Docket No. 35081.

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Appendix B

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CANADIAN PACIFIC RAILWAY Ingenuity

2006 corporate profile + fact book



Interline management

CPR's agreements and commercial arrangements with other rail carriers – short line, regional and Class 1 railways – extend our market reach to virtually all of North America. This extension of our network reach will build value for CPR customers, partners and shareholders well into the future.

Through these agreements and commercial arrangements, we are providing our customers more services and improved access across Canada, the U.S. and Mexico. CPR is also offering shippers truck-competitive access, customer service, reliability and pricing.

By continuously improving operating efficiencies between rail carriers, alliances are able to develop new business by extending rail services into markets that previously were beyond the reach of individual railways. As a result, rail carriers are shipping goods to new markets and moving goods that had traditionally been carried by trucks. Approximately half of CPR's business is either received from or handed off to other railways.

Our Interline Management group is dedicated to building our relations with other rail carriers and strives to make CPR their preferred business partner. The group is a cross-functional team working with both the operational and marketing parts of the CPR organization. The group is responsible for strategic and on-going interline matters that cut across commodity lines and train services, as well as for managing the Company's many inter-railway agreements.

We have working partnerships with all the major Class 1 railroads in the U.S. and with Transportacion Ferroviana Mexicana and Ferrocarril Mexicano in Mexico.

One successful alliance, with UP, operates under the "Can-Am" name. CPR and UP jointly design, market and operate the Can-Am corridors as a seamless service to our customers. These services dramatically reduce transit times through integrated operations and corridor-specific initiatives. Joint CPR/UP teams oversee the operations of the Can-Am corridors and make strategic decisions with respect to operations, marketing, technology and investment. Dedicated locomotives are custom equipped to operate in

Canada and the U.S. Co-production facilities and joint marketing and processes improve flow-through operations and allow for car-fleet optimization.

The Pacific Can-Am service provides rail transit for customers shipping between western Canada and North Dakota and the Pacific Northwest, California, the U.S. Southwest and Mexico. Commodities shipped under this service include grain, fertilizers and forest products. The Pacific Can-Am traffic volumes have significantly increased CPR's interchange traffic with UP since its introduction in 1999. In recognition of this ongoing traffic growth, in 2004 CPR and UP added additional capacity in this corridor through infrastructure investments and process enhancements.

We further expanded the Can-Am model in 2001 when CPR and UP launched the Midwest Can-Am service. This corridor transports goods and materials between western Canada and central and south-central U.S. and Mexico. Major commodities shipped in this corridor include industrial/chemical products, grain products and forest products. Growth has been very strong in this corridor, dramatically boosting interchange traffic with UP.

In late 2001, CPR and UP introduced Eastern Can-Am. This service moves goods and materials such as automotive, industrial products, forest products and intermodal traffic between eastern Canada and the U.S. Northeast and the U.S. western and southern regions and Mexico. Eastern CanAm traffic has also grown since the introduction of this service.

co-production

In 2004 and 2005, CPR entered into several new co-production agreements with other carriers as part of our strategy to increase capacity utilization. The participating railways achieve significant value by sharing selected routes and trackage.

The key co-production agreements developed in 2004 and 2005 were:

U.S. NORTHEAST OPERATIONS

In 2004, CPR and NS announced that both railways would be exchanging trackage rights, freight haulage and yard services to increase operational efficiency and enhance rail service to customers.

Under the arrangement, CPR and NS agreed to consolidate freight marshalling at yards in Buffalo and Binghamton, whereby CPR ceases yard operations in Buffalo, shifting all freight marshalling to the NS yard; similarly, NS shifts its yard operations in Binghamton to CPR's East Binghamton yard.

Under the terms of the new trackage rights and freight haulage arrangements:

- CPR acquires the ability to move NS freight traffic between Rouses Point and Saratoga Springs, New York, under a haulage arrangement. NS operates its own trains over CPR's line between Saratoga Springs and Binghamton under a trackage rights arrangement. The arrangements will generate higher revenue for CPR and provide NS with a substantially shorter route to Quebec and the Maritime provinces.
- CPR's freight traffic between Binghamton and Buffalo moves in NS trains under a haulage arrangement, replacing a trackage rights agreement under which CPR operated its own trains between the two cities. The arrangement reduces CPR's operating costs and generates additional revenue for NS.
- CPR operates over a new NS route using existing rail lines between Detroit and Chicago under a trackage rights agreement. It is the shortest rail route between the two cities and provides CPR with a faster, lower-cost lane.

In the same year, CPR, NS and CN also announced an agreement to significantly improve freight service between eastern Canada and the eastern U.S.

The three-party arrangement gives CN and NS a seamless, direct north-south routing over CPR's lines south of Montreal that slice as much as two days' transit time off some 20,000 annual shipments. It also increases freight traffic density and revenues on the D&H, CPR's wholly-owned subsidiary.

CN-NS traffic destined for the eastern U.S. moves in CPR trains on CPR's line between Rouses Point and Saratoga Springs under a freight haulage arrangement between CPR and NS. This CN-NS traffic then moves in NS trains over CPR's line between Saratoga Springs and the NS connection near Harrisburg under a trackage rights agreement between CPR and NS.

The new agreement cuts 330 miles off the old routing, which saw freight traffic handled more circuitously through the Buffalo gateway.

This initiative takes costs out of the rail industry by placing freight traffic on the most efficient routing without regard to ownership. It also creates a significant source of new earnings for the D&H and is another major milestone in improving the profitability and value of this part of CPR's network.

BRITISH COLUMBIA, ALBERTA AND ONTARIO OPERATIONS

In late 2004, CPR and CN announced three additional network initiatives that improve railway transit times and asset utilization in British Columbia, Alberta and Ontario.

These provide for:

- A slot-sharing arrangement allowing CPR to move eight trains a week of bulk commodities over CN's line between Edmonton and CPR's network at Coho, British Columbia, near Kamloops, a distance of about 550 miles. Under the arrangement, trains are equipped with CPR locomotives and operated by CN crews. At Coho, CPR trains enter already-established directional running trackage that sees all westbound trains of both railways move through the Fraser Valley on CN's line and all eastbound trains move on CPR's line.
- Directional running over about 100 miles of parallel CPR and CN track in Ontario between Waterfall, near Sudbury, and Parry Sound. The two railways operate eastbound trains over the CN line and westbound trains over CPR's line, improving network fluidity in this corridor.

- A haulage arrangement, with CN freight moving over about 300 miles of CPR track in Ontario between Thunder Bay and a junction with CN at Franz using CPR's route north of Lake Superior.

PORT OF VANCOUVER OPERATIONS

In 2004, CN and CPR also announced a series of agreements to make rail operations more efficient for Port of Vancouver freight traffic.

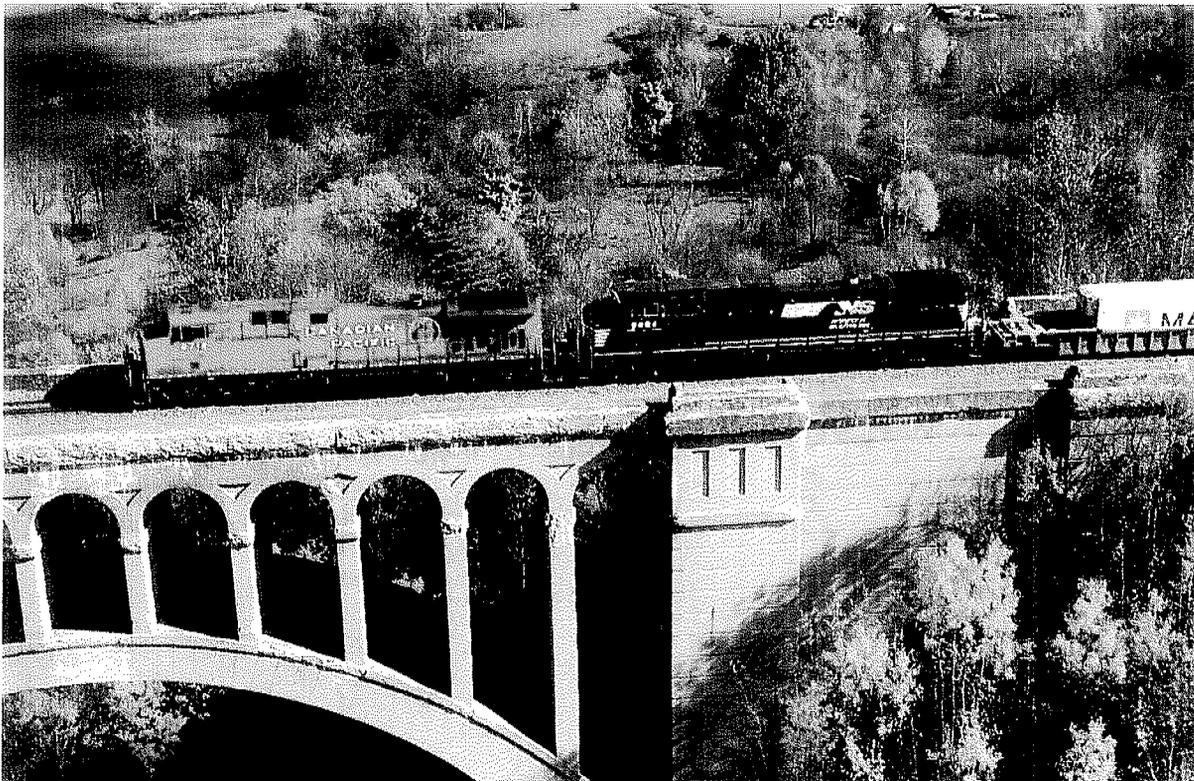
The agreements jointly increase capacity on key sections of track in the Vancouver area to improve the fluidity of rail operations over existing infrastructure, thereby improving service to shippers using Canada's largest, busiest and most diversified port.

The agreements provide:

- improved access for CPR to intermodal facilities at Fraser Surrey Docks using a shorter route over CN's main line;
- reciprocal access to the North and South shores, with CPR potash trains having direct access to Neptune Terminals and CN sulphur trains having direct access to Pacific Coast Terminals;

- the option for CPR to operate longer, heavier trains to Vancouver's North Shore under existing access agreements;
- a reciprocal interchange at CN's Thornton Yard and CPR's Coquitlam Yard that replaces a less efficient interchange arrangement; and
- further interchange enhancements for North Shore freight traffic that include BC Rail traffic.

These agreements demonstrate our commitment to provide the level of service and efficiency that will help shippers take advantage of the significant growth in trade with Pacific Rim nations, strengthen Canada's vital import-export economy and bolster the competitiveness of our key British Columbia port. By working cooperatively to make rail service more efficient, we also improve network and equipment utilization and increase productivity on existing infrastructure.

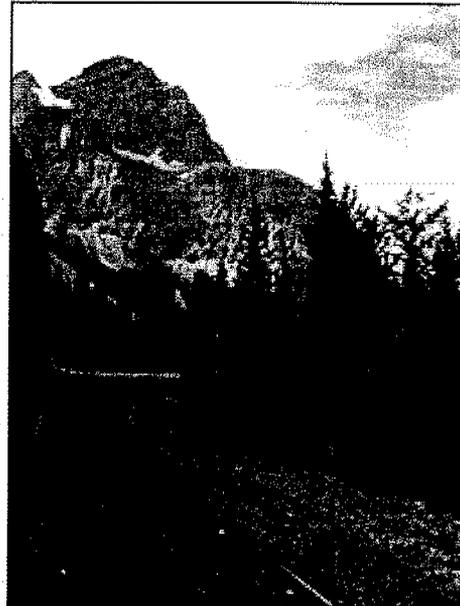


Turning a Corner

Canadian Pacific Rail's new alliance with UP is a pivotal point in its existence as a newly independent company.

By Christopher Ytuarte, Associate Editor

The Pacific Can-Am train tour pulled into a station a few miles from Portland, Ore, and its passengers strolled casually toward the 900-foot waterfall spilling down the side of the mountain before them. Canadian Pacific Railway President and CEO Robert Ritchie, clad in shorts, sneakers, and collared shirt, passed by most of his colleagues and walked briskly up a steep trail that zig-zagged to the top of the peak. After two days of business presentations and networking aboard the train, Ritchie had decided it was time to climb a mountain. Apparently, with a new alliance and a corporate spinoff on the horizon, a 1,000-foot uphill hike didn't seem like much of an obstacle for the head of CP Rail.



The UP/CP Pacific Can-Am route snakes through the Canadian Rockies.

Photo by Chris Ytuarte

CP Rail and Union Pacific are the latest players in a new age of Class I alliances with the introduction of the Pacific Can-Am Corridor, a combination of CP Rail trackage from Calgary to Kingsgate, Canada and UP trackage to Portland, Ore. and south. As the rail industry continues to move toward more strategic alliances and give the merger movement a rest, CP Rail and UP are more than willing to comply. Their Pacific Can-Am Corridor provides not only some impressive scenery, but the prospect of a healthy bottom line as well.

"We are two railroads thinking of ourselves as one," says UP Executive Vice President-Marketing and Sales John Koraleski. "We looked at all the advantages a merger might present, then applied them to an alliance, and went from there."

According to Union Pacific Corp. Chairman and CEO Dick Davidson, an alliance between two such powerful companies benefits customers and railroads. He points out that expanded market opportunities and easy, seamlessly expedited business keep customers happy. An alliance promotes

<http://www.railwayage.com/oct01/cprail.html> (1 of 4)4/14/2008 8:33:09 PM

revenue growth and operating efficiency among the railroads involved while bringing trucking business to rail.

Designed with a simple concept in mind—to accelerate and grow the exchange of traffic for the two railroads between the U.S. and Canada—the alliance should be profitable for both companies. In 1999, only 18% of rail traffic in western Canada and the western U.S. was hauled by a UP/CP Rail combination. Now, according to CP Rail Vice President-Marketing and Yield Fred Green, CP Rail and UP will be "preferred partners" in future business ventures, though CP Rail will not stop working with CN or other railroads, nor will UP.

Since NAFTA was signed in 1994, two-way trade between Canada and Mexico has increased by 13%. Paramount in CP Rail's decision to take part in a strategic alliance with UP is the need to open up its north-south traffic from Canada to Mexico and boost the business it is generating along its current CPR-Mex corridor. "We're working on the Mexican involvement right now, testing commodities for the best fits, and analyzing the market," says Koraleski.

The still-developing state of the Mexican rail system may slow immediate progress CP Rail hopes to make in expediting its Canada-to-Mexico shipments. "Culturally, Mexico's railroads aren't up to speed with their decision making processes," says Green. "But that will improve as privatization takes hold down there."

Above all, both teams of executives emphasized the value that such an alliance brings customers in terms of improved service. Certain car trip times will be dramatically reduced. Calgary to Roseville, Calif., which would normally take ten days, will now only take six, and a typical 12-day trip from Edmonton to California's Bay Area will only take seven days.

An important factor in the success of the alliance and better transit performance times is the one-call solution to international shipping it provides. Customers reap the benefits of dual railroad service, and enjoy personal services such as online tracking, and a "one price/one bill" approach to quoting and paying.

All along the corridor, both companies have taken initiatives to enhance infrastructure for improved transit times, and EMD SD90 locomotives are now custom equipped to operate in both the U.S. and Canada. Crew lodging facilities were created for members of both workforces, and joint customer inspection platforms help to speed border crossings. But not all border issues went smoothly during the alliance's early days.

UP Vice President-Manifest Services Woody Sutton and CP Rail Manager-Service Design Rick Poznikoff worked extensively together as leaders of a joint task team, and were responsible for organizing and running the early meetings between the two companies. They faced immediate challenges in forming the alliance, including some language barriers and business communication problems.

"Semantics between the countries, and companies, was an initial roadblock in forging the alliance," says Poznikoff. "But those things were taken care of through informal meetings and mutual respect for those involved. A lot of friendships were formed."

Poznikoff and Sutton also addressed several customs issues that were concerns for both companies, and an expert in such matters was brought in to help guide the team through the early problems. Now, pre-arranged customs checks can be completed before trains even arrive at the border, making the Pacific Can-Am's dwell time at border checkpoints a bare minimum.

The Pacific Can-Am Tour 2001 saw executives from both companies and several members of the media spend nearly three days aboard UP business cars, hauled by CP Rail locomotives, travelling along part of the corridor. It was a time for the two railroads to flex their collaborative muscle, and for some, to get a first-hand glimpse of the breathtakingly scenic route. And amidst all that, discussion of CP Rail's pending spinoff from parent Canadian Pacific Corporation.

CP Rail has a lot on its plate. But climbing that mountain must have made Rob Ritchie hungry. "It is quite an interesting time, to say the least," he says. "We're looking for that sweet spot that is going to make customers happy."

As it prepared for its first public offering independent of Canadian Pacific Corp., and aiming to maximize its efficiency within its new alliance, CP Rail announced in a recent quarterly report that it would be "proactive in eliminating discretionary spending." Aboard the Can-Am Tour, Ritchie outlined several specific steps toward such goals, including a 20% reduction of CP Rail's road fleet, and a 15% workload increase.

With fuel efficiency improved by 18% and maintenance costs reduced, the company closed two major running shops, downsized two others, and outsourced one backshop. All the while, train operation productivity is up 14%. A Morgan Stanley research report compiled in May, 2001 showed CP Rail's ontime performance is the highest among all Class I railroads. According to Ritchie, the company is targeting a 73% operating ratio for 2004.

"Over the years, Canadian Pacific has owned over 20 companies, from airlines to steel mills to power mills," says Ritchie. "We're now down to five, and all of those really had their seeds in the railroad business."

One of the keys for CP Rail's successful spinoff from CP Corp. is to establish more LCL business to challenge the trucking industry in Canada. An alliance with UP can only help, since according to Koraleski, UP has taken approximately 63,000 trucks off the road in 2001, nearly \$52 million worth of new business.

Just days before it was scheduled to go public, CP Rail announced another venture, this with Norfolk

Southern Corp., for joint intermodal service between New York/New Jersey and Eastern Canada that will cut the standard trip time by more than 30%.

Needless to say, CP Rail has a new and alien stretch of track ahead of it as an independent entity, even with strong alliances in its corner.

"What you don't see is the customers really being concerned," says Ritchie. "This a big, big change for a railway company, and even with all the sensitive customer issues this industry has been hearing about the last five years, I still haven't heard a peep."

At the top of that 900-foot waterfall, Rob Ritchie may have looked down and seen the world at his feet, or he may have seen it changing beneath him. As CP Rail turns a corner, we'll all know what he saw soon enough.

Appendix E

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Appendix I

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U.S. Department
of Transportation

Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

**Federal Railroad
Administration**

FEB 15 2008

Mr. Kevin V. Schieffer
President and Chief Executive Officer
Dakota, Minnesota and Eastern Railroad
140 North Phillips Avenue
Sioux Falls, South Dakota 57104

Dear Mr. Schieffer:

On October 17, 2005, the Dakota Minnesota & Eastern Railroad Corporation (DME), a railroad owned by Cedar American Rail Holdings, Inc., entered into a Safety Compliance Agreement with the Federal Railroad Administration (FRA). The impetus for this agreement was FRA's continued concerns over the lack of compliance with Federal regulations involving track, bridges, the accountable injury rate, and grade crossing system safety. Track and bridges were the areas of utmost concern.

As a result of this agreement, DME implemented an FRA-approved track maintenance program, which provided for improvements in the track infrastructure and training for DME's track inspectors. DME also agreed to provide FRA with copies of its reports from track geometry inspections, regular reports on the improvements made to its track, and reports from DME Roadmasters and the Vice President of Engineering, who audited DME track inspector records. In addition, DME made significant improvements to their bridges, made the necessary changes in grade crossing system safety, and properly addressed the accountable injury rate.

The Safety Compliance Agreement states that it will remain in effect for at least 3 years after its execution. From the beginning of the agreement to the present, DME's track structure has significantly improved. Because of this, FRA is terminating the agreement, effective immediately. DME is thus relieved from complying with the specific obligations of the agreement that are in addition to Federal regulatory requirements. Certain concerns about DME track, however, still remain. These concerns will be communicated later to DME at a scheduled meeting between FRA officials and officials from DME.

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The termination of the agreement in no way diminishes FRA's authority to enforce railroad safety laws, nor does it immunize DME for failing to comply with the agreement before October 17, 2008.

Sincerely,

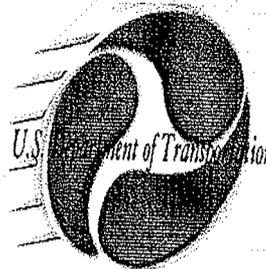
A handwritten signature in cursive script, appearing to read "Joseph H. Boardman".

Joseph H. Boardman
Administrator

Enclosure

Federal Railroad Administration

Regions 8 & 4



Dakota, Minnesota, & Eastern Railroad Safety Compliance Agreement Report

January 10, 2008

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Executive Summary

The Dakota, Minnesota & Eastern Railroad Corporation (DME), entered into a Safety Compliance Agreement and agreed to the terms and conditions set forth therein. DME is a railroad carrier held by Cedar American Rail Holdings, Inc. The agreement started in October 2005 for a term of 3 years, and is scheduled to end in October 2008. The Federal Railroad Administration (FRA) has the option of extending the agreement if the conditions of the agreement have not been met.

Background

DME is subject to the jurisdiction of FRA, which is under the purview of the U.S. Department of Transportation. See 49 U.S.C. §§ 20102, 20103; 49 CFR Part 209, Appendix A. DME was created as an alternative to abandonments initiated in the early 1980s. It started operations in 1986 and is one of the largest regional (Class II) railroads in the United States, with 1,103 miles of track located principally in South Dakota and Minnesota. The DME's mainline extends from the Mississippi River at Winona, MN, across southern Minnesota and central South Dakota to Rapid City, SD. In 1996, DME acquired more than 200 miles of track from Union Pacific, extending from Colony, WY, through Rapid City to Crawford, NE. In 2002, DME was joined with the Iowa, Chicago and Eastern Railroad (ICE) under Cedar American Rail Holdings, Inc., to bridge the operations and administration of the two railroads. Of the 1,103 miles on the DME system, 908 miles (82 percent) are owned by the DME and the remainder is operated under long-term trackage right agreements. Of its total miles, DME currently has 262.6 miles, or 24 percent, designated as excepted track. DME attributes the condition of the excepted track to deferred maintenance practices under former Class I ownership.

According to FRA's records, between April 2004 and August 2005, there were 33 track-caused derailments and 41 on-duty employee injuries that occurred solely on the DME system (this does not include the ICE, which reports accidents and injuries separately to FRA). The majority of the derailments occurred on excepted track. The employee-on-duty injuries on the DME system increased by 93 percent from 2003 to 2004, and increased 11.1 percent from 2004 to 2005.

In response, FRA initiated a series of systemwide, onsite inspections to determine the level of DME's compliance with FRA safety regulations regarding Railroad Operating Rules and Federal Track Safety Standards. In addition, FRA conducted inspections of DME's highway-rail grade crossing warning systems and related records to determine DME's compliance with FRA's Grade Crossing Signal System Safety Standards. FRA also completed bridge evaluations to determine whether DME's bridge inspection and management practices meet the recommendations in FRA's Statement of Agency Policy on the Safety of Railroad Bridges (Bridge Policy) in Appendix C to 49 CFR Part 213.

FRA found several systemic deficiencies, including several gage, crosstic, and defective rail joint conditions. Based on these findings, FRA concluded that DME track inspectors have not performed quality inspections and that DME did not provide enough oversight to ensure that inspections and recordkeeping were properly done.

FRA has the authority to issue a compliance order against DME to enforce 49 CFR Part 213. As an alternative in ensuring DME's future compliance with the Track Safety Standards, FRA offered to enter into a Safety Compliance Agreement ("Agreement") with DME. The terms were agreed upon and the agreement was signed by DME's President and Chief Executive Officer on October 17, 2005.

Major Terms and Conditions of the Agreement

The Agreement included the following terms to ensure compliance with the Federal Track Safety Standards:

- DME shall develop a formal program to re-instruct all of the railroad's operational testing managers on the entire contents and requirements of the program required by 49 CFR Part 217 (Part 217 Program). The focus of the re-instruction effort shall include, but not be limited to, the requirements contained in DME's Part 217 Program.
- DME shall conduct a monthly analysis of its respective accident/incident data and other pertinent DME data required to determine compliance, such as discipline records and historical efficiency testing data, and shall formulate a detailed monthly plan that takes into account all of these factors so as to ensure that operational tests and inspections focus on these types of rules noncompliance. DME shall then conduct operational tests and inspections based on this plan.
- DME shall conduct an internal audit of the program testing results on a quarterly basis to ensure that monthly plans are being utilized as intended and that DME's testing officers are appropriately directing their efforts and capturing the required data as reflected in their monthly plans.
- DME shall designate an officer to be directly responsible for overseeing the implementation of the program, commensurate with the above-stated requirements. Management officials involved with preparing the monthly plan, those officers actually conducting operational tests and inspections in accordance with it, and the designated DME officer responsible for the program oversight, shall certify in writing, on a monthly basis, that these records are accurate and complete, and have been prepared and carried out in accordance with the requirements of the DME Part 217 Program and those requirements contained in this Agreement. Such certifications shall be retained for the duration of this Agreement and made available to FRA upon request.
- The DME shall develop and implement a track maintenance plan, which shall include all remedial measures to be taken over the next 3 calendar years to eliminate systemic track defects under 49 CFR Part 213. The track maintenance plan shall include, at a minimum, the following provisions, requiring: (1) walking inspections of all main track joint bars at least semiannually; (2) walking inspection or electronic testing of all 80-pound (or less) rail segments at least semiannually; (3) a walking inspection of non-main track at least once each year, and/or each time each track is surfaced; and (4) auditing of track inspection records to ensure records accurately reflect the conditions of the track. The track maintenance plan shall also contain a provision requiring that, at a minimum, DME (1) install 30,000 ties on its excepted track per year, and (2) correct or repair all crosslevel deviations, wide-gage conditions, defective joint bars, and other severe track geometry defects over at least 30 miles of excepted track per year, or at least 50 miles of excepted

track per year, should DME's application for a Railroad Rehabilitation and Improvement Financing loan be approved during the duration of this Agreement.

- The DME shall notify the Regional Administrator of its designation of track segments as excepted track under 49 CFR 213.4 within 10 calendar days of such designation. DME shall also notify the Regional Administrator of its designation of track from excepted track standards to Class 1 track standards, as required by 49 CFR 213.4(f), within 10 calendar days after operations commence under Class 1 track standards. The notification may be made by via e-mail, facsimile, or overnight delivery.
- The DME shall file a monthly report with the Regional Administrator describing the measures DME has taken in the previous month to repair and reduce the number of: (1) center cracked joint bars; (2) less-than-allowable bolts per rail at each joint for conventional rail in Classes 1 and 2 track; (3) defective rails; and (4) other noncomplying track conditions. The report should also include: (1) the number of crossties installed in previous month; (2) the location and extent of rail surfacing completed in the previous month; (3) the location and extent of rail replacement in the previous month; and (4) the schedule for the upcoming month for implementation of the provisions of the track maintenance plan described in Section III A.
- Each DME Roadmaster shall accompany each track inspector across his or her entire assigned territory(s) at least once each quarter to assess actual track conditions and to evaluate the track inspector's quality of inspections. Each Roadmaster shall review each track inspector's inspection record(s) at least once each quarter for compliance with the Track Safety Standards. DME shall submit a quarterly report to the Regional Administrator wherein each Roadmaster summarizes these accomplishment(s) and review(s) of inspection records and assessing any further measures that DME track inspectors may need to take to achieve compliance with the Track Safety Standards.
- The DME Chief Engineer or Assistant Chief Engineer shall accompany each Roadmaster on at least one inspection on each subdivision semiannually. DME will submit a semiannual report to the Regional Administrator wherein the Chief and/or Assistant Chief Engineer summarize these accomplishment(s) and review of record(s) and assessing any further measures that DME may need to take to achieve compliance with the Track Safety Standards in 49 CFR Part 213.
- The DME shall develop and implement a track inspection training program regarding the Track Safety Standards. The program will contain elements to ensure that (1) its employees that are performing inspections, maintenance, and repair work are qualified in accordance with 49 CFR Section 213.7; and (2) that these employees possess the knowledge, skills, and other qualifications necessary to ensure the railroad's compliance with Part 213.

- The DME shall develop and implement procedures to ensure prompt investigation of credible reports of a grade crossing warning system malfunction to determine the nature of the malfunction. The procedures shall also describe how to take appropriate action by 49 CFR Sections 234.107, 234.105, 234.106, and 234.207.
- The DME shall develop and implement a plan to accurately record and track credible reports of malfunctions of grade crossing warning systems as required by 49 CFR Section 234.109.
- The DME shall review Safety Advisories 2002-1 and 2004-3 and develop safety procedures that fulfill, at minimum, the advisories' recommended actions.
- DME shall review its signal and grade crossing inspections, and test and maintenance resources, including staffing levels, to determine whether they are adequate for properly and timely completing the inspections, tests, and maintenance required by Federal regulations. At a minimum, DME shall review its records to determine if tests are currently being timely completed, the number of signal(s) and grade crossing(s) assigned to existing signal department employees, and the extent of the physical territory assigned to each signal department employee. DME shall make the necessary revisions to the allocation of its signal and grade crossing resources to ensure regulatory inspections, tests, and maintenance are in compliance with Federal laws and regulations, including those governing hours of service limitations.
- DME shall develop and implement a bridge inspection and management plan, which shall include provisions to address the recommendations in FRA's Bridge Policy in Appendix C of 49 CFR Part 213. The bridge inspection and management plan shall provide for, at a minimum, comprehensive annual inspection of all track-carrying bridges by qualified inspectors, complete accurate reports of all bridge inspections, and provisions for increased frequency of inspection of bridges found to be in less-than-fully-serviceable condition.
- DME shall provide FRA with a complete list of its track-carrying bridges and a proposed schedule for the inspection of each bridge. The bridge list shall indicate for each bridge, at a minimum: a unique bridge identification number, its location by mileage and subdivision, the type of construction of the superstructure, the number of spans, and the total length of bridge. The inspection schedule shall indicate a planned date for the inspection of each bridge.

Chronological Events

During the term of the Agreement, the following events occurred chronologically.

Monthly discussions were held with DME management.

2006

- Replaced 144,450 track ties.
- Replaced 10 miles new 136# rail
- Replaced 17 miles new 115# rail.
- Surfaced 435 miles of track.
- Replaced 3 turnouts in the track switches.

2007

- Replaced 61,771 track ties.
- Replaced 39 miles new 136# rail.
- Replaced 55 miles new 115# rail.
- Surfaced 465 miles of track.
- Replaced 54 turnouts in track switches.
- New positions added for signal technician.
- New signal maintainer position added at Pierre, SD.
- Signal supervisor position added.

Action Taken by DME

- All DME employees were notified of the Compliance Agreement. This component was terminated on October 17, 2006.
- The railroad retrained all of their managers who conduct operational testing. The railroad also hired a training manager, who created a process to educate future managers.
- The Manager of Safety focuses testing requirements based on safety data analysis to each manager monthly. The operational plan varies each month.
- DME is conducting quarterly audits of their operational testing program and certification of accurate and complete testing records.
- DME has developed and implemented an annual track maintenance plan, which includes all remedial action to be taken.
- DME provided FRA with results of geometry and internal rail inspections.
- DME provided FRA with notice of all its track in "excepted track" status.
- DME has provided monthly reports to FRA describing its previous month's track repairs.
- DME Roadmasters have accompanied each track inspector at least once each quarter; DME has supplied FRA's Regional Administrator with quarterly reports summarizing these activities.
- DME Roadmasters have reviewed each assigned track inspector's records quarterly.
- The Chief Engineer and Assistant Engineer have accompanied each Roadmaster semiannually and provided FRA with required reports.
- DME has developed a track inspector's training program.
- DME provided FRA with the locations of the track inspector's training programs and the names of the participants.
- DME has implemented procedures to investigate credible reports to determine the nature of grade crossing warning system malfunctions.
- DME has developed and implemented a system that accurately records and tracks credible reports of malfunctioning grade crossing warning systems.

- DME spent more than \$100,000 to crib fouled ballast from the track section on 15 grade crossings.
- DME added two signal positions. One position was a technician to handle communication-type issues that maintainers were handling. The other position was the establishment of a signal maintainer at Pierre, SD. DME is also adding a full-time signal supervisor.
- The DME has implemented a new bridge inspection form and has improved the bridge inspection process.
- DME has supplied updates on DME's current bridge repairs and bridge inspection schedule.
- DME has provided FRA with dates each bridge was inspected.

Monitoring by FRA

- FRA concluded that employees of DME were notified of the Compliance Agreement in 10 days. This component was terminated on October 17, 2006.
- FRA conducted operational testing with company officers and found that officers had been retrained and a training manager was hired to provide ongoing training regarding operational testing. This component was terminated on October 17, 2006.
- FRA inspections concluded that the Manager of Safety was distributing testing requirements based on safety data analysis to each manager monthly. This component was terminated on October 17, 2006.
- FRA inspections revealed that the Manager of Safety performed and documented internal audits. This component was terminated on January 17, 2007.
- Inspections revealed that DME has produced written certification on a monthly basis that testing records are accurate and complete. This component was terminated on January 17, 2007.
- The FRA Regional Administrator for Region 8 was provided a copy of the DME annual track plan.
- FRA provided DME with an assessment of their annual track maintenance plan.
- An FRA inspector looked at the data from geometry and internal rail inspections.
- FRA has reviewed DME notice of all its track in "excepted track" status and closed this component October 17, 2006.
- FRA has reviewed monthly reports describing DME's previous month's track repairs. This component was terminated on October 17, 2006.
- FRA has determined Roadmasters have accompanied each track inspector assigned to them at least once each quarter. This component was terminated on October 17, 2006.
- FRA has determined Roadmasters have reviewed each track inspector's records at least once each quarter. This component was terminated on October 17, 2006.
- FRA's Region 8 Administrator has received quarterly reports summarizing the Roadmasters' accomplishments. This component was terminated on October 17, 2006.
- FRA determined the Chief Engineer and Assistant Engineer have accompanied Roadmasters semiannually and provided FRA with the required reports. This component

was terminated on October 17, 2006.

- FRA determined DME has developed a track inspector's training program. This component was terminated on October 17, 2006.
- DME has implemented the track inspector's training program. This component was terminated on October 17, 2006.
- FRA received a list of locations for track inspector's training and the names of each participant. FRA monitored the training and determined it met the guidelines set forth in the compliance agreement. This component was terminated on October 17, 2006.
- FRA reviewed the credible reporting requirements with DME train dispatching and signal employees. The procedures met the requirements outlined by FRA, and this component was terminated on October 17, 2006.
- FRA inspections determined that DME has implemented a system that accurately records and tracks credible reports of malfunctioning grade crossing warning systems. This component was terminated on October 17, 2006.
- A review by an FRA signal inspector revealed that DME developed procedures that fulfill the Safety Advisories 2002-01 and 2004-03. DME developed a spreadsheet to monitor responses and will use it to identify crossings with repeated occurrences. This component of the compliance agreement was terminated January 17, 2007.
- A review by an FRA signal inspector revealed that DME created a full-time technician to handle communication-type issues. This was a new full-time position previously filled by a part-time employee. The review also revealed DME established a signal maintenance employee at Pierre, SD. The DME also added a full-time signal supervisor. The review also revealed DME established a formal training program for all their signal employees. This component of the compliance agreement terminated on January 17, 2007.
- FRA's review revealed DME has implemented a new bridge inspection form. FRA inspected several bridges that had been inspected by a DME bridge inspector and noted that the inspection process and documentation were favorable. This component was terminated on October 17, 2006.
- FRA has received updates on DME's current bridge inspection program and bridge repairs. This component was terminated on October 17, 2006.
- FRA has received documentation from the DME with the dates each bridge was inspected. This component was terminated on October 17, 2006.
- A review of DME bridges revealed no imminent hazard of bridge conditions. FRA has not removed any bridge from service. This component was terminated on October 17, 2006.

DME Safety Compliance Agreement Recommendation Open Items

On October 17, 2005, DME signed a compliance agreement with FRA that focused on four issues: operating practices, signal, track, and bridges. This agreement had a total of 30 components that were to remain in effect from 1 to 3 years. Since the inception of the agreement, FRA has conducted audits and inspections of the issues contained in the agreement in Regions 4, 6, and 8. FRA has terminated 26 components of the compliance agreement, with 4 items to remain open. They are as follows:

- Develop and implement a track maintenance plan to remain open until October 17, 2008.
- FRA will provide an assessment of DME's track maintenance plan until October 17, 2008.
- DME shall provide FRA with revisions of their track maintenance program until October 2008.
- DME shall provide FRA with geometry or internal rail inspections until October 17, 2008.

Inspection Comparisons

All Disciplines

In 2005, FRA performed inspections 364 days, resulting in 467 reports, 19,323 units inspected, 3,546 defects, and 142 recommendations for civil penalty.

In 2006, FRA performed inspections 437 days, resulting in 524 reports, 25,670 units inspected, 4,962 defects, and 71 recommendations for civil penalty.

In 2007, FRA performed inspections 317 days, resulting in 383 reports, 21,979 units inspected, 2,056 defects, and 26 recommendations for civil penalty.

Track Discipline

In 2005, FRA performed track inspections 182 days, resulting in 241 reports, 9,881 units inspected, 2,540 defects, and 101 recommendations for civil penalty.

In 2006, FRA performed track inspections 209 days, resulting in 263 reports, 9,610 units inspected, 3,490 defects, and 35 recommendations for civil penalty.

In 2007, FRA performed track inspections 174 days, resulting in 218 reports, 8,233 units inspected, 1,365 defects, and 13 recommendations for civil penalty.

Operating Practices (OP) Discipline

In 2005, FRA performed OP inspections 158 days, resulting in 188 reports, 6,699 units inspected, 1,110 defects, and 38 recommendations for civil penalty.

In 2006, FRA performed OP inspections 226 days, resulting in 254 reports, 11,502 units inspected, 1,910 defects, and 14 recommendations for civil penalty.

In 2007, FRA performed OP inspections 144 days, resulting in 173 reports, 9,899 units inspected, 941 defects, and 9 recommendations for civil penalty.

Signal Discipline

In 2005, FRA performed signal inspections 32 days, resulting in 40 reports, 1,824 units inspected, 257 defects, and 7 recommendations for civil penalty.

In 2006, FRA performed signal inspections 74 days, resulting in 84 reports, 3,900 units inspected, 813 defects, and 18 recommendations for civil penalty.

In 2007, FRA performed signal inspections 39 days resulting in 42 reports, 733 units inspected, 232 defects, and 3 recommendations for civil penalty.

DME's Track Improvement Proposal for 2008

Installation of 31,000 ties.

38 miles of new 136# rail.

Surface 350 miles of rail.

Turnouts:

- 16 new 136#, number 10 spring frog turnouts.
- 2 new 136#, number 20 rail bound manganese turnouts.
- 2 new 115# number 10, rail bound manganese turnouts.

Conclusion

As a result of track inspectors performing walking inspections of DME rail, the number of loose and center cracked bars has been reduced.

The reportable employee-on-duty casualty rate has been significantly reduced. In 2004, the ratio was 8.07, and in 2007, the ratio was 2.03.

The ratio of reportable train accidents decreased from 63.14 in 2004 to 13.76 in 2007.

During 2004, DME had 262 miles of excepted track. To date, they have removed 103 miles of excepted track, leaving 159 miles still in excepted status.

DME upgraded 186 miles of its 100-pound jointed rail by laying 115 miles of 136-pound continuous welded rail and 71 miles of 115-pound continuous welded rail.

DME tested 1,083 miles of rail and removed 3,193 rail defects. This was not a requirement of the compliance agreement.

The DME installed 53 new turnouts during 2007.

DME spent \$4,467,519 on bridge expenditures.

DME conducted geometry testing of 644.9 miles of their track during 2007.

This entire project and report have been a joint effort between FRA Regions 4 and 8. The actions, recommendations, conclusions, and contents of this report have been agreed upon by all.

Recommendation

The compliance agreement has resulted in the DME changing its maintenance procedures, resulting in significant improvements in their track structure. It appears that with these new policies in effect, their procedures regarding track maintenance and capital expenditures will continue well beyond the compliance agreement. There is no further benefit to FRA or DME to continue the four less-important components of the compliance agreement. Therefore, it is the recommendation of all FRA participants in this project that the compliance agreement should be terminated immediately.

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February 6, 2008

Mr. Jim Bender
Director Interline Management - Chicago/Detroit and West
CANADIAN PACIFIC RAILWAY
1200 Jorie Boulevard, Suite 225
Oak Brook, Illinois 60523

RE: OPERATION OF WISCONSIN & SOUTHERN OVER THE JOINT LINE

Dear Mr. ^{Jim}Bender:

As discussed previously, Wisconsin & Southern Railroad (WSOR) has a restricted trackage rights agreement with Metra to operate one round trip between Fox Lake and Cragin each day. As CP dispatches and controls train movements over this route, Metra looks to CP to control this restriction.

CP recently granted WSOR trackage rights between North Milwaukee and Rondout, but no agreement was made between Metra and WSOR for the tracks south of Rondout and the one round trip per day restriction still applies.

Metra has reason to believe that WSOR exceeded their daily train limit and operated an additional train or trains on February 9, 2008. Please provide a copy of the dispatcher's records for that day for the North Line and the West Line for our review.

In the future, Metra will require the CP dispatcher to restrict WSOR to one round trip per day and notify Metra immediately if WSOR seeks to exceed this limit.

Sincerely,

Jack Bauer
Manager, Operations Administration
Office of the Deputy Executive Director

cc: Bill Gardner - WSOR

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Applicants' Reply
Appendix
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Appendix L

This Appendix contains information designated as Highly Confidential pursuant to the Protective Order issued by the STB in Finance Docket No. 35081.

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Appendix M

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Appendix N

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Appendix O

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REDACTED



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Appendix R

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Appendix S

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