

BEFORE THE SURFACE TRANSPORTATION BOARD
FINANCE DOCKET 35081
CANADIAN PACIFIC RAILWAY CO, *ET AL.* -- CONTROL --
DAKOTA, MINNESOTA & EASTERN RAILROAD, *ET AL.*

Rebuttal of

North Dakota Grain Dealers Association and North Dakota Wheat Commission
to applicant's response to comments and requests for conditions

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On page 10 of his Reply Verified Statement, Don Smith of CP states that since 2004 CP has invested \$160 million in its western Canada lines. We acknowledge and appreciate that it is important to grain shippers on CP and its DMVW and NP short lines. Prior to that, these shippers were seriously hindered due to inadequate capacity. They had pointed out the problems to CP management and requested more capacity. Shippers said CP had to increase capacity westbound to keep its present business and gain new business. Without shipper provocation there might not have been the improvements and the growth in business that CP now cites as reasons to deny the NDGDA/NDWC request for conditions.

But while the capacity situation has improved, the condition of CP grain hopper cars has deteriorated. On page 10 of his Reply Verified Statement Don Smith says the CP car fleet is "in good condition for its age". CP shippers will dispute the "good condition" and the "for its age" appears to acknowledge a quality deficiency. At recent meetings with grain shippers, CP has been less complimentary of the condition of its grain car fleet.

In its March 4 comments, NDGDA/NDWC had raised the issue of damaged bottom gates on many grain hopper cars. Smith says less than 1% of CP grain cars placed for loading are rejected on account of gate issues. That may be true, but it is only a small part of the story. The rest of the story is that shippers repair many CP cars. In a quick poll conducted by NDGDA, a dozen CP, DMVW and NP shippers in ND estimated they repair bottom gates on 3-7% of CP cars placed for loading and make other repairs on 1-5%. Bottom gates are often wired shut because locking mechanisms don't work. Recent higher grain prices make this cargo more valuable, but protecting it from loss or damage is more difficult under these circumstances.

Shippers repair cars because rejecting them means waiting days or weeks for replacement cars. Shippers wish to stay in contract compliance with their grain sales. When 10 or 100

carloads of grain are sold for delivery in, for example the first half of June, that is what the buyer expects. not 9 or 95 on time or a week or two late and the others sometime in July or August "Stragglers" create inefficiencies for shipper, receiver and railroad CP shippers have sometimes been discounted on grain price because they are on the CP and the buyer anticipates late delivery That hurts not only CP shippers, but CP as well CP shippers are less competitive in the market and, if there is an option, the grain will go elsewhere and CP will forfeit the revenue

Another issue is that old cars with round top hatches that don't fit with today's loading procedures are still in service These cars are usually less cubic feet capacity and so shippers can't fill them to the normal weight When the freight rate is on a per car basis, this means paying more per bushel Cars in disrepair should be fixed and out-of-date ones replaced

On page 9 of his Reply Verified Statement Smith states CP added 500 new hopper cars in 2006 That may be true, but typically less than 40% of CP's grain hopper fleet is in the U S and only a portion of that in North Dakota specifically If CP retired some cars or lost them in accidents the net positive effect would be even less

We appreciate CP adding capacity and the car repairs it has done But more is needed Now when CP plans to spread its car and locomotive fleet over the DME we become even more concerned In CP's September 4, 2007 news release announcing the agreement to acquire the DMF, CP Chief Financial Officer Mike Lambert said, "'With our strong balance sheet, this investment represents the best use of our free cash " We beg to differ about the best use of all the "free cash" That is why we request the conditions that CP be required to invest for the benefit of its current grain customers while courting another railroad for merger

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CERTIFICATE OF SERVICE

Steven D Strege hereby certifies that on May 19, 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