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THOMAS F. MCFARLAND

January 8, 2008

By e-filing

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

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

Dear Mr. Williams:

Hereby transmitted is Petition For Partial Reconsideration Or For Clarification Of
Decision Served December 27, 2007, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland

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cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN PACIFIC RAILWAY	)	
COMPANY, ET AL. -- CONTROL --	)	FINANCE DOCKET
DAKOTA, MINNESOTA & EASTERN	)	NO. 35081
RAILROAD CORP., ET AL.	)	

**PETITION FOR PARTIAL RECONSIDERATION
OR FOR CLARIFICATION OF DECISION
SERVED DECEMBER 27, 2007**

STATE OF SOUTH DAKOTA,
DEPARTMENT OF TRANSPORTATION
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Petitioner

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Attorneys for Petitioner

DUE DATE: January 16, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN PACIFIC RAILWAY	)	
COMPANY, ET AL. -- CONTROL --	)	FINANCE DOCKET
DAKOTA, MINNESOTA & EASTERN	)	NO. 35081
RAILROAD CORP., ET AL.	)	

**PETITION FOR PARTIAL RECONSIDERATION
OR FOR CLARIFICATION OF DECISION
SERVED DECEMBER 27, 2007**

Pursuant to 49 C.F.R. § 1115.3, the STATE OF SOUTH DAKOTA, DEPARTMENT OF TRANSPORTATION ("SOUTH DAKOTA") hereby petitions for partial reconsideration of the Board's decision served December 27, 2007 insofar as the Board failed to provide an opportunity for public comment on the Safety Integration Plan (SIP) to be filed by Applicants on or before February 4, 2008, or for clarification that public comment on that SIP can be filed on or before the March 4, 2008 date for filing responsive applications, requests for conditions, and any other evidence and argument in opposition to the application.

ARGUMENT

Inasmuch as Canadian Pacific Railway Company (CP), a Class I railroad, proposes to acquire control of Dakota, Minnesota & Eastern Railroad Corp. (DM&E), a Class II railroad, and to amalgamate rail operations, Applicants are required to file a SIP with the Federal Railroad Administration (FRA). *See* 49 C.F.R. § 244.1(a). A SIP is a comprehensive written plan that demonstrates how an applicant will provide for safe railroad operations during and after such an acquisition of control, and will otherwise assure compliance with the Federal railroad safety

laws. *See* 49 C.F.R. § 244.9. The FRA is to file its findings and conclusions on a proposed SIP with the Board's Section of Environmental Analysis (SEA) at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case in order to permit incorporation in the draft environmental document. *See* 49 C.F.R. § 244.17(d).

A SIP is also required to be filed with the Board's SEA. *See* 49 C.F.R. § 1106.4(a). A SIP is part of the environmental record in the Board proceeding, and is to be dealt with in the ongoing environmental review process under 49 C.F.R. Part 1105. *See* 49 C.F.R. § 1106.4(b). The Board's draft environmental documentation incorporates a proposed SIP; the public may review and comment on that draft environmental documentation, including the proposed SIP, within time limits prescribed by SEA. *See* 49 C.F.R. § 1106.4(b)(2). SEA independently reviews a proposed SIP, addressing written comments thereon received during the time established for submitting comments on the draft environmental documentation; the Board then considers the full environmental record, including the information concerning the SIP, in arriving at its decision in the case. *See* 49 C.F.R. § 1106.4(b)(3). If a SIP is required in a transaction that would not be subject to environmental review under 49 C.F.R. Part 1105, the Board is to develop appropriate case-specific SIP procedures based on the facts and circumstances presented. *See* 49 C.F.R. Part 1105 (decision served December 27, 2007 at 14-16).

The Board has required that a proposed SIP be filed with the FRA and the SEA on or before February 4, 2008 (decision served December 27, 2007 at 18). The Board has also provided that the public can comment on the Board's proposed environmental findings in the proceeding (*id.* at 16). Those public comments are also required to be filed on or before February 4, 2008 (*id.* at 18). In view of the simultaneous filing of the proposed SIP and the public's

comments on the proposed environmental findings, it is apparent that there will not be an opportunity for public comment on the content of the proposed SIP (unless the Board clarifies or provides that public comments on the proposed SIP can be filed on or before the March 4, 2008 filing date for responsive applications, requests for conditions, and any other evidence and argument in opposition to the application).

The Board should reconsider that action because it is contrary to the explicit tenor of the Board's regulations that the public should have an opportunity to comment on a proposed SIP when such a SIP is required to be filed. *See* the underscored provisions of 49 C.F.R. § 1106.4(b)(2) and (3) cited above. There is nothing in any of the regulations to indicate that the public should be deprived of an opportunity to comment on a required SIP merely because environmental review otherwise may not be required. In other words, failure to provide an opportunity for public comment is not an appropriate case-specific SIP procedure where an explicit FRA regulation requires the filing of a SIP.

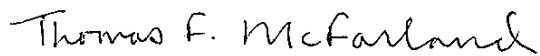
Consequently, on reconsideration, the Board should provide for adequate time for the filing of public comments on the proposed SIP following its filing on or before February 4, 2008. Alternatively, the Board should clarify or provide that public comments on the proposed

SIP can be filed on or before the March 4, 2008 filing date for responsive applications, requests for conditions, and any other evidence and argument in opposition to the application.

Respectfully submitted,

STATE OF SOUTH DAKOTA,
DEPARTMENT OF TRANSPORTATION
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Attorneys for Petitioner

DUE DATE: January 16, 2008

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2008, I served the foregoing document, Petition For Partial Reconsideration Or For Clarification Of Decision Served December 27, 2007, on all parties of record, by first-class, U.S. mail, postage prepaid.

Thomas F. McFarland

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