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The Honorable John Thune
Chairman, Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Thune:

This letter is in response to your letter of August 28, 2015 regarding the potential effects on rail transportation should Congress fail to modify the December 31, 2015 deadline for implementation of Positive Train Control (PTC). Canadian Pacific (CP) is grateful for the bipartisan actions that the Senate Commerce Committee has taken under your leadership in advancing legislation that provides for an extension of the deadline, and we are thankful for the opportunity to express our views on this critical subject.¹

When Congress enacted the Rail Safety Improvement Act of 2008 (RSIA) which requires Class I's to implement PTC on main lines carrying Poison Inhalation Hazard (PIH) traffic and intercity-passenger and commuter rail traffic, much of the necessary technology did not exist. Industry standards and protocols had to be established; hardware and software needed to be designed, tested, manufactured, and installed on thousands of track miles, on thousands of locomotives, and in back offices; suitable spectrum needed to be acquired on a nationwide basis; regulations needed to be promulgated, and regulatory authority had to be obtained. This massive endeavor required an industry-wide effort, and also required action by the relevant federal agencies.

CP, together with other carriers, fully committed to the goal of implementing PTC by the current statutory deadline. CP established an ambitious schedule, built a PTC laboratory, established an outdoor dedicated test track facility, invested in spectrum, and participated in the development of industry interoperability standards and protocols. To date, CP has expended more than CAD\$230 million and hundreds of thousands of man-hours toward PTC implementation. However, CP's ability to comply with the December 31, 2015 deadline has always been dependent on external factors including the timely development and availability of new technology and timely regulatory action.

Development of the new technology, particularly mission-critical software, has proven extremely challenging and taken longer than estimated. This is due in part to the unavailability of spectrum with ample bandwidth on a nationwide basis. The need to share the limited bandwidth available poses a significant hardware and software engineering challenge for the entire communications network, including wayside equipment, base-stations and on-board locomotive radios. Thus, although CP has been prepared to commence Revenue Service Demonstration (RSD) since March 2015, it only just received a version of the onboard locomotive software which, subject to verification, is RSD-capable. In addition, CP's installation of wayside communication equipment was halted by the Federal Communication Commission (FCC) for approximately 18 months while the industry, tribal leaders and the FCC hammered out a path forward. As a result of these and other challenges, and despite CP's best efforts, CP cannot and will not meet the current December 31, 2015 deadline.

¹ Canadian Pacific is a trade name under which Canadian Pacific Railway Company and its United States subsidiaries, Soo Line Railroad Company, Dakota, Minnesota and Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. operate.

Issues and challenges that could arise if Congress does not extend the statutory deadline.

Given the fact that implementation of PTC by December 31, 2015 is unattainable, the obvious and critical challenge facing CP if Congress does not extend this deadline is: how to continue to operate after December 31, 2015 in a manner that complies with federal law (including the RSIA and CP's common carrier obligation). Operations that do not comply with federal law are, to say the least, highly problematic.

Non-compliance with federal rail safety laws could expose CP to liability on several fronts. In addition to potential civil penalties that the FRA might impose, as a public company, we are accountable to our shareholders. Further, failure to comply with such laws might give rise to strict liability in the event of an accident while jeopardizing CP's insurance coverage. Non-compliance might also give rise to potential contractual liability as CP is party to countless contracts that require compliance with applicable laws and regulations.

Additionally, CP's business is driven by its employees – we are concerned about the implications on them if our operations might violate federal rail safety laws. We are also concerned about the implications for rail labor relations.

In light of the above, it is imperative that CP take action to ensure that its operations continue to comply with federal rail safety laws. Since the presence of intercity-passenger, commuter rail traffic and PIH traffic triggers the requirement to implement PTC on a rail line segment, CP is considering whether such operations may lawfully continue on its rail lines after December 31, 2015 and prior to PTC implementation. We are cognizant of the fact that curtailing such operations, which might include Amtrak service on the CP main line between Milwaukee and Minneapolis/St. Paul, would be enormously disruptive to passenger rail traffic. Likewise, PIH shippers that rely on CP rail service for fertilizer and other PIH products would be forced to use other modes of transportation, find replacement products, or do without. Accordingly, CP views these actions as options of last resort.

We are also cognizant that CP faces potential liability if, in order to comply with federal rail safety law, it were to curtail passenger traffic and PIH rail service. For example, PIH shippers might allege breach of the common carrier obligation and seek injunctive relief and monetary damages. Although we do not believe that the common carrier obligation can reasonably be construed as requiring that CP provide rail service that violates federal rail safety laws, the STB's September 3, 2015 letter to you creates uncertainty and places carriers in an untenable position.

We are also concerned that the current situation poses a risk of disruption to the national freight rail system. The national rail system is a complex and interdependent network. Carriers interchange tens of thousands of cars daily. If Congress does not act, actions that the individual rail carriers might take such as embargoing or rerouting traffic, have the potential to interfere with the fluid operation of the network. For example, if some carriers continue to move PIH traffic while others suspend service, PIH traffic may be refused at interchange locations. This could lead to congestion at critical rail hubs and negatively affect rail service across the network. Likewise, if PIH shippers seek to move more PIH ahead of a possible curtailment of service, this could also cause congestion at such hubs. Additionally, unusually large amounts of PIH moving on the rail system, stockpiled at or near destinations, or stalled at interchange locations, raise important safety and security concerns.

Another critical issue of concern if Congress does not act is the impact on the testing and validation of the PTC systems necessary to ensure safe implementation and operation. Defects must be identified prior to implementation to ensure that PTC improves and does not reduce safety on the nation's rail lines and that PTC issues do not disrupt rail operations. Components and systems must be tested extensively on each carrier's system to identify mission-critical defects, and results must be shared and corrected prior to implementation. This process is highly iterative, requires a high degree of cooperation and, most importantly, requires time for which the current implementation deadline does not allow.

Actions that CP is considering or analyzing as a result of these issues and challenges.

CP is evaluating a range of options at this time and has not settled on any particular course of action. Accordingly, it would be premature to speculate as to what actions CP might ultimately take in order to ensure compliance with its statutory obligations. That said, we cannot rule out the possibility that CP might curtail PIH as well as intercity-passenger and commuter rail service on its main lines in order to remain compliant. If CP determines that curtailment of PIH rail service is required by law, CP likely would need to begin that process several weeks prior to December 31, 2015 in order to ensure that no PIH is moving on CP main lines by that date. We are also reexamining our PTC Implementation Plan to determine whether any changes can be made to the plan to mitigate the potential impact on shippers and intercity-passenger and commuter rail services that utilize our rail lines.

Depending on the course of action CP takes, CP expects to provide notice to affected stakeholders in the near future.

CP remains fully committed to implementing PTC as soon as possible. We urge Congress to act quickly to establish a realistic time table that allows for the safe implementation of PTC.

Sincerely,

A handwritten signature in cursive script that reads "Keith Creel".

Keith Creel
President and Chief Operating Officer