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Cynthia T. Brown
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Re: Docket No. FD 35068, *Soo Line Railroad Company d/b/a Canadian Pacific Railway – Acquisition and Operation Exemption – BNSF Railway Company*

On behalf of New Century Ag (“NCA”), this is in response to the July 24, 2020 letter (“CP’s letter”) to the Board from counsel for Soo Line Railroad Company d/b/a Canadian Pacific. CP’s letter purports to update the Board with respect to the level of service it has been providing NCA, implying that NCA’s shipping needs are being satisfied so that the relief sought in NCA’s Petition to Reopen was no longer necessary. As discussed below, CP’s letter fails to provide important context for the 2019 car statistics it cites and glosses over the fact that it still precludes NCA from shipping to important BNSF-served markets even when CP cannot provide that service.

It is true that NCA shipped considerably more grain from its Noonan and Westby elevators in 2019 than it did in 2017 or 2018. But Noonan’s increased output in 2019 is attributable to the fact that grain production in that area for the two prior years was depressed due to a vomitoxin issue with durum wheat and drought. Moreover, corn and soybean production in this region has been reduced due to the heavy floods that hindered planting and harvest last year, leaving a significant amount of crop either not seeded or not marketable due to high moisture content. Consequently, Noonan had the benefit of CP’s temporary surplus of grain cars coupled with a bumper crop to move its durum wheat that year.

CP’s letter detailing the Westby elevator volumes is curious, because Westby is not involved in this proceeding and virtually all of that product moves for export to Italy, rather than



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to markets in the U.S. That elevator has always been served solely by CP or its predecessor (via the Dakota, Missouri Valley and Western Railroad, Inc. or “DMVW”), is not a location that was on the Joint Line that was owned by CP and BNSF, and accordingly was not a location involved in the Joint Petition of CP and the BNSF Railway Company (“BNSF”) or the Board’s order of September 7, 2007 in this docket.¹ Accordingly, volumes of grain moved out of that location cannot reasonably serve as a basis for concluding that CP is now affording competitive rail service for NCA at the Noonan and Crosby facilities. In any event, Westby’s increased car loadings are attributable to a record yield on durum wheat from farmers in that region of Montana and the large number of CP grain cars that were not being used due to the corn and soybean problems in the Dakotas and Minnesota, rather than due to any special treatment CP was providing NCA. Consequently, it is not surprising that there was an increase in the number of unit trains (what CP calls Dedicated Train Service) as CP had no other use for that equipment during that year.

CP’s letter notes that NCA “demolished a significant portion of its Crosby facility”, while pointing out that a small volume of grain still moves out of that elevator via BNSF through the haulage arrangement, suggesting that there is some reduced need for rail service at that location. CP neglects to state that there has been no demolition of the portion of the Crosby facility where NCA’s significant 2013-14 investment in rail infrastructure was made. Crosby remains an important part of NCA’s operations. The relatively minor volume of BNSF cars moving out of Crosby remains attributable to CP’s arbitrary limitation on the volume of BNSF cars it will accept and the blanket refusal to permit BNSF to provide unit trains or larger volume blocks of cars.

CP’s letter then states that, as part of its new pricing strategy, it moved to tariff rates for transparency. That is not a new phenomenon, as CP’s pricing to NCA has typically been tariff based. It is true that CP has become somewhat more price competitive to the BNSF recently with respect to corn, soybeans and wheat moving to eastern milling markets and certain locations in the PNW and NCA appreciates that. However, CP has done nothing to rectify the situation caused by its refusal to permit BNSF to provide competitive service or to work with its connections as an alternative. Consequently, NCA remains unable to ship grain to important markets, including Mexico and other locations in the PNW. Similarly, the arbitrary volume restrictions imposed on BNSF for NCA’s outbound movement of canola, for example, requires that NCA ship at significantly higher single car rates to BNSF locations, which places NCA at a price disadvantage vis-a-vis its nearby competitors that do have BNSF service (*i.e.*, the same service to which CP and BNSF committed in 2007).

CP’s letter touts that it has finally added new high efficiency cars (something that BNSF did years ago). But there is no guarantee that NCA or any other shipper will necessarily get to use them. Indeed, the unit trains currently being provided to NCA just get a sprinkling of those

¹ See Joint Petition for Exemption, filed July 16, 2007 and the Decision served September 7, 2007 (the “*Exemption Decision*”).

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cars, so it is not possible at the present time to rely that those new cars will be available. Nonetheless, NCA does appreciate CP's decision to make some investment in this equipment.

Although CP's letter doesn't mention the issue of inbound fertilizer, NCA's 2013-14 investment in rail loading facilities at Noonan also enabled it to receive 65-70 car unit trains of fertilizer at Noonan from BNSF. CP's continued refusal to accept BNSF cars of that length means that NCA still has to move this inbound product at single car rates in order access this product from preferred BNSF served origins, again placing NCA at a significant price disadvantage as compared to its local competitors that are served by BNSF.

Despite the development of a substantial record in this proceeding or the lengthy mediation held earlier this year, CP has made no discernable effort to mitigate, let alone repair, the damage caused NCA by the deprivation of the competitive service of BNSF to which NCA is entitled. Whatever CP believes 2019 grain car figures show, this is a one-year picture and does nothing to address the issues of long-term viability, access to markets that CP cannot reach, or obtaining competitive rail rates to existing and other markets. CP continues its refusal to allow BNSF to provide unit train or large block train service to the Noonan or Crosby elevators. CP has done nothing to ameliorate the situation it unilaterally caused by, for example, establishing routings with its connections, including BNSF, that might conceivably serve as a surrogate for competitive rail service. That it has not done so eloquently demonstrates the importance of requiring what CP and BNSF promised to the Board and NCA in 2007 – namely, the preservation of true rail competitive service by use of a workable haulage arrangement or direct BNSF service.

In closing, CP's letter is no basis for holding any decision in this matter in abeyance or otherwise determining not to grant the requested relief sought by NCA. NCA respectfully urges the Board to issue a decision remedying the long-term structural problem caused by the failure of both CP and BNSF to honor the terms of the 2007 *Exemption Decision*. If you have any questions, please let me know.

Very truly yours,



Edward D. Greenberg

cc: Parties of record