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DIRECT: 202.969.4218

OFFICE: 202.785.9100

David.Rifkind@stinson.com

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Via Electronic Filing

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

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

Dear Ms. Brown:

Soo Line Railroad Company d/b/a Canadian Pacific (“CP”) submits this letter in response to the July 29 and 30, 2020 letters filed by New Century Ag (“NCA”). NCA’s letters followed CP’s July 24, 2020 letter which provided the Board with data regarding CP’s service to NCA, including car volumes for the recent crop year—information in which the Board appeared interested at oral argument. Unfortunately, NCA took CP’s straight-forward letter as an opportunity to interject unwarranted and redundant argument, make unfounded accusations, and otherwise muddle the record before the Board.¹

Although NCA’s July 29 letter purports to be a response to CP’s July 24 letter, CP’s letter simply presented data; NCA’s letter does not dispute the figures CP provided. Instead, NCA presents argument and allegations without its own data. NCA downplays the fact that CP has moved record amounts of NCA traffic and reduced its rates to compete with BNSF (although even NCA acknowledges that CP has in fact been more competitive with BNSF and has invested in new and more efficient cars). According to NCA, this is all due to increased crop yields for NCA in 2019 and excess capacity on CP due to decreased crop yields for other producers in the region, and not due to any special treatment afforded NCA. NCA is correct that CP is not affording NCA special treatment. CP is providing NCA with the same great service and competitive rates that it seeks to provide to all of its customers. And contrary to NCA’s supposition, CP’s ability to meet NCA’s demand for

¹ Indeed, both of NCA’s letters contain irrelevant statements, along with unfounded accusations, and should be stricken under 49 C.F.R. § 1104.8.

service is not due to excess capacity due to decreased crop yields in the region. In fact, North American demand to move agricultural products was at record high levels this past crop year and CP moved a record amount of grain. CP was able to meet NCA's (and its other customers') demand for rail service in large part because of its investment in its grain fleet and its system—including the lines CP acquired sole ownership of in the 2007 transaction—and its successful execution of its Precision Scheduled Railroading operating model.

In its July 29 letter, NCA also questions CP's inclusion of data for Westby. The reason that CP included this data in its July 24 letter is simple. As previously discussed, in 2013-14, NCA invested in upgrading both Noonan and Westby (where it made a "\$17 million investment in capital improvements for the Westby grain elevator and fertilizer facility, including associated improvements in rail loading and unloading tracks"²) despite the fact that Westby was and is sole-served by CP. NCA's investment in Westby suggests that its decision to invest in upgrading its facilities did not depend on NCA access to BNSF service, unit or manifest; rather, the expected growth in CP-handled traffic and access to CP unit train rates justified the investment. The record 2019 volumes at NCA's facilities bear this out.

The remainder of NCA's July 29 letter is largely a rehashing of its prior arguments, none of which are supported by the record. For example, NCA continues to assert that CP places an "arbitrary limitation" on car volume and train length but, as previously explained, any limitation is consistent with the terms of the Haulage Agreement between CP and BNSF and is intended to ensure fluid and safe operations that do not interfere with downtown Minot or CP's mainline.³

The day after filing its July 29 letter, NCA hastily filed a second letter with the Board. In its July 30 letter, NCA asserts that CP arbitrarily refused 7 cars in interchange at Minot from BNSF that were destined for loading at NCA's facility, claiming "negligent mismanagement by CP of its obligations under the September 7, 2007 Exemption Decision in this docket, if not a willful refusal to work with BNSF under the terms of the Haulage Agreement." As NCA is well aware, however, CP regularly handles BNSF cars in haulage without incident. Although CP maintains regular communications with NCA, CP learned by way of NCA's July 30 letter to the Board that there was an interchange issue with a small

² See Petition to Reopen at p. 8, n. 3.

³ It is also, at the very least, inappropriate for NCA in its July 29 letter to characterize (or, in fact, mischaracterize) CP's conduct with respect to Board-ordered confidential mediation.

number of BNSF cars. As it turns out, the cars were not being properly billed as haulage and therefore were rejected by CP's system. As was communicated to counsel for NCA the week of August 3, CP promptly addressed this technical billing issue with BNSF. Fundamentally though, this was an issue that the customer should have addressed directly with the carriers. But instead NCA sought to use it to malign CP with unfounded accusations and interject into the record an anomalous service issue that has no bearing on this proceeding. NCA is not challenging whether CP is meeting its common carrier obligation on that line and in fact declined the Board's invitation to refile its petition as a complaint for breach of the common carrier obligation—not a surprising decision given the competitive rail service NCA receives.

Finally, it was not CP's intention to imply that this proceeding should be held in abeyance as NCA suggests. This proceeding involves NCA's petition to revoke and reopen an exemption of a 13-year old transaction—a transaction that was approved by the Board in a public proceeding without condition and with NCA's strong support, and which resulted in CP's investment in rehabilitating and maintaining the former Joint Line to NCA's immense and continuing benefit. The relief NCA now seeks—rewriting the essential and publicly disclosed terms of the transaction—violates principles of administrative finality and would undermine the integrity of the Board's exemption procedures. It would deprive CP of the benefits of the transaction and of its investment in the former Joint Line made in reliance on the administrative finality of the transaction. Further, interchanging BNSF unit trains in Minot would block multiple grade crossings in downtown Minot and shut down CP's busy mainline to Chicago for several hours at a time, substantially interfering with CP's ability to serve its other customers in Minot and beyond. At bottom, NCA has not met the standards for obtaining such extraordinary relief. Accordingly, CP believes that NCA's petition should be denied.

Sincerely,

Stinson LLP

/s/ David F. Rifkind

David F. Rifkind

cc: Edward D. Greenberg, Esq. (egreenberg@gkglaw.com), *counsel for NCA*
Peter W. Denton, Esq. (pdenton@step toe.com), *counsel for BNSF*