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August 21, 2020

Cynthia T. Brown
 Chief, Section of Administration
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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 reply to the letter dated August 17, 2020 (the “August 17 Letter”) filed by Soo Line Railroad Company d/b/a Canadian Pacific Railway (“CP”) in this docket. CP’s letter recounts the exchange of correspondence from NCA that was triggered by CP’s earlier letter of July 24, 2020, contends that both of NCA’s letters are unwarranted, redundant, contain unfounded accusations, muddle the record and are irrelevant.

While disagreeing with each of CP’s characterizations, NCA agrees that all of the letters exchanged by these parties are irrelevant. Stated simply, none of them have anything to do with the issues raised in this proceeding. The salient issue in this proceeding is whether CP and the BNSF Railway (“BNSF”) have honored the representations made to shippers and the Board that they would maintain and preserve the competitive rail service of both railroads to NCA. CP’s July 24, 2020 letter instead purported to tell the Board how much CP’s service had improved, implying that there was no reason for the Board to grant the requested relief.¹

¹ Precisely why CP felt it appropriate to submit its July 24, 2020 letter is unclear, as the evidentiary record in this matter closed February 21, 2019 and oral argument was held on August 20, 2019. Rather than move to strike, NCA’s responses of July 29 and 30, 2020, simply took issue with the rosy picture CP painted.

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Neither of the CP letters addressed the relevant issues in this proceeding of whether it had unilaterally imposed limits on the monthly number of cars BNSF could provide NCA, whether CP was free to terminate or modify the haulage agreement approved by the Board in its September 7, 2007 Decision in this docket, whether it could properly preclude NCA from receiving inbound fertilizer or outbound grain unittrain service from BNSF, or whether the two railroads could refuse to provide NCA with competitive service. The Board should issue its decision based upon the evidence and argument that is properly part of the record, not post-record correspondence of this nature.

Similarly, the representations of CP's severe operational problems with its interchange with BNSF alleged in the August 17 Letter have no evidentiary foundation.² CP submitted no evidence supporting this contention in its Reply to the NCA Petition to Reopen³ or in the four verified statements that accompanied its submission and, thus, provided no opportunity for NCA or BNSF to rebut those assertions with facts or operational analyses.

The August 17 Letter also fails to concede that any congestion occurring from this interchange would be episodic, not chronic. NCA does not need daily unittrain service from BNSF and the two railroads presumably are able to work together to minimize any congestion that might occur. In any event, even if the interchange is operationally complex, that is the arrangement to which the two carriers agreed in 2007. And, neither CP nor BNSF has explained why additional investment in additional track or related facilities, as contemplated in the Haulage Agreement approved by the Board, is not being made if necessary to live up to the carriers' joint representations to the shippers and the Board in 2007.

Finally, the August 17 Letter makes three other categorically inaccurate assertions. First, its contention that BNSF misbilled the cars CP rejected (as discussed in NCA's July 30, 2020 letter) is simply wrong; those cars were billed by BNSF to be delivered to NCA and evidence to that effect was provided to CP counsel on August 5, 2020. Second, it is of course wrong to characterize NCA's Petition to Reopen as seeking to rewrite "the essential and publicly disclosed terms of the transaction"; NCA seeks only to have both railroads honor those obligations they willingly assumed to reduce their operating costs. And, CP's contention that it would somehow be deprived of the benefits of the transaction and its investment if compelled to cooperate with

² That is also true of CP counsel's unsupported statement at the August 20, 2019 oral argument that any interchange of BNSF unittrains would block the CP mainline for "hours at a time." (See Tr. 69.) That contention was rebutted by BNSF counsel's response at the oral argument, who responded that the interchange was manageable and that CP had refused to even discuss any arrangement with BNSF by which it would accept unittrains. (Tr. 157-59).

³ This was filed February 4, 2019.

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BNSF is just hyperbole, unless CP contends that one of the benefits it sought was to prevent BNSF from providing competitive service to NCA.⁴

As neither of the CP letters of July 24 or August 17 have any bearing or relevance to the issues in this proceeding, it would be appropriate for the Board to ignore or even strike all four letters from CP and NCA and proceed to decide the issues presented based on the evidence that is properly in the record.

Respectfully submitted,



Edward D. Greenberg

cc: Parties of record

⁴ The increased NCA volume CP is receiving suggests that CP is fully realizing the benefits of its investment. On the other hand, NCA has not realized the benefit of the significant investment in rail infrastructure it made in 2012-13 due to CP's actions.