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March 1, 2021

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
U.S. Surface Transportation Board
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:

Please find enclosed for filing Soo Line Railroad Company d/b/a Canadian Pacific (“CP”)’s Proposal, which is being filed in accordance with the Board’s December 29, 2020 Decision in this proceeding.

CP’s filing includes both a Public Version and a Confidential Version and includes color maps.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ David F. Rifkind

Counsel for Soo Line Railroad Company

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35068

**SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY—
ACQUISITION AND OPERATION EXEMPTION—BNSF RAILWAY COMPANY**

PROPOSAL

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Dated: March 1, 2021

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Soo Line Railroad Company d/b/a Canadian Pacific (“CP”) submits this Proposal as required by the Board’s Decision served on December 29, 2020 (the “Reopening Decision”), which granted New Century Ag’s (“NCA’s”) Petition to Reopen this 2007 exemption proceeding.

I. INTRODUCTION

The Reopening Decision orders CP and BNSF to submit a proposal by March 1, 2021 to “fulfill the findings in [the] 2007 Decision,”¹ which granted the Joint Petition for Exemption filed jointly by CP and BNSF Railway Company (“BNSF”).² Since the Reopening Decision was served, CP has engaged in good faith efforts to develop a joint proposal to submit to the Board. CP’s efforts included separate discussions with BNSF and NCA aimed at reaching a reasonable solution for all stakeholders. Unfortunately, those discussions did not result in an agreement on a joint proposal. Nevertheless, and although CP has sought reconsideration of the Reopening Decision,³ CP remains eager to address the Board and NCA’s concerns. Accordingly, it is providing the Board with two alternative proposals whereby BNSF would have the ability to serve NCA for a longer period of time and via unit train service.

CP’s proposals do not involve the exchange of BNSF unit trains at Minot, ND. The Board has heard considerable evidence regarding the difficulties associated with exchanging such trains, and we provide additional context on these issues again below. In short, the exchange of unit trains in Minot would tie up CP’s crucial Portal-Twin Cities mainline, a line that has supported as many as 30 trains a day in recent years, for a minimum of two to three

¹ *Soo Line R.R.—Acquis. & Operation Exemption—BNSF Ry.*, FD 35068 (STB served Sept. 7, 2007) (the “2007 Decision”).

² Joint Petition for Exemption, *Soo Line R.R.—Acquis. & Operation Exemption—BNSF Ry.*, FD 35068, filed July 16, 2007 (the “Joint Petition” or “JP”).

³ CP’s Petition for Reconsideration (filed Feb. 8, 2021) (“CP Pet. for Reconsideration”).

hours in each direction – and longer during adverse weather and other conditions – and raises safety concerns. Further, BNSF’s control of the interlocking where CP’s mainline crosses BNSF’s in downtown Minot and BNSF’s incentive to protect its own operations would lead BNSF dispatchers to require that CP hold unit haulage trains on CP’s single-track mainline for even longer periods of time, further interfering with CP’s service to other shippers and, importantly, interfering with its head-to-head competition with BNSF. When CP granted BNSF haulage rights via Minot in 2007, CP took care to ensure that its obligation to handle BNSF haulage traffic would not interfere with its main line operations or with its ability to serve other customers – specifically limiting haulage to available capacity on existing CP trains, requiring BNSF to pay for infrastructure needed to add capacity to support additional haulage volumes, and ensuring that (as haulage) the arrangement could be ended after ten years and would not require STB authority to terminate. CP never would have agreed to a transaction that did not include such protections, and certainly would not have done so indefinitely.

CP’s new proposals avoid these problems by exchanging BNSF’s haulage traffic at closer and more convenient points of connection with BNSF’s network. Specifically, BNSF could reactivate service on the line from Niobe to Lignite Junction, which is how BNSF reached the Lignite-Crosby Line before 2007 and how BNSF told NCA that it could serve NCA when NCA was building its unit train facilities at Noonan. Alternatively, BNSF could build a siding and connecting track at Bowbells, North Dakota that would allow CP to exchange NCA unit train traffic there without risk to CP’s mainline operations. These options are in addition to the ability BNSF already has today to compete for unit train traffic – namely, by offering NCA unit train rates for smaller blocks of cars, or assembling unit trains from smaller blocks of cars at one of its yards in Minot for further movement to destinations on BNSF’s system.

CP's proposals account for the fact that BNSF elected to relinquish its ownership and common carrier obligations in the Lignite-Crosby Line because it did not wish to bear the burdens of capital and maintenance for the line for which it was responsible. CP's 2007 acquisition of the line from BNSF enabled it to invest millions of dollars to address BNSF's neglect and restore reliable service, in turn enabling NCA to ship { [REDACTED] } and supporting its investment in a unit train facility. Though CP is prepared to allow BNSF to have expanded commercial and competitive rights, it is not prepared to subsidize its principal rival, nor should the Board desire that BNSF's access be subsidized by CP. If BNSF now wishes to compete for NCA traffic by capitalizing on the improvements made by CP to the previously dilapidated lines, CP is prepared to work with BNSF, but only within a framework where BNSF bears the costs of activating its new service, and also shares the costs already borne by CP since 2007 to rehabilitate the line.

Each of CP's proposals is available to BNSF without further Board involvement, provided they bring this proceeding to a close. The Board has long favored voluntary market based agreements over Board-imposed regulatory resolutions. A privately negotiated outcome should be particularly desirable here given the lack of a predicate for imposing a regulatory solution; concerns for administrative finality, fairness and equity and the Board's exemption procedures; the potential impact on rail transactions and investment decisions; and the potential harm that such a prescription could have on rail operations and competition in North Dakota specifically and to the rail system more broadly.

II. CP'S PROPOSALS FOR AUGMENTING NCA'S ACCESS TO BNSF SERVICE OPTIONS FULLY ADDRESS THE BOARD'S OBJECTIVES.

CP is proposing two haulage options, both of which would enable BNSF to provide unit train service to NCA through 2032, for a total of 25 years beyond the 2007 transaction and 15

years beyond the 2007 Minot Haulage Agreement’s original termination date.⁴ CP’s proposals would build on the 2007 Agreement, either replacing or supplementing the rights provided for therein. BNSF may elect either option, provided that it does so promptly and as part of a final resolution of this matter. Both of the options would require certain investments by BNSF to effectuate, as well as BNSF’s contribution to CP’s investments since 2007 in restoring reliable service to the Lignite-Crosby Line that BNSF chose to depart, as well as CP’s ongoing expenditures to maintain the line. Full details of each proposal as presented for discussion to BNSF are described in detail in **Appendix A** hereto.⁵ **Appendix B** hereto includes maps comparing the current conditions (including CP’s proposal regarding new BNSF haulage rights) with the situation as it existed in 2007.

A. CP’s Proposals

1. Proposal 1: Niobe-Lignite Haulage

The first alternative would replicate the route that BNSF used to serve NCA’s Noonan and Crosby facilities prior to the 2007 transaction: *i.e.*, via BNSF’s branch line north of Niobe, ND. Under CP’s Proposal 1, CP would provide haulage service⁶ between NCA’s facilities and MP 47, the point where CP’s trackage connects with BNSF’s line north of Niobe. The haulage to MP 47 would replace BNSF’s Minot haulage rights and apply to both unit trains from NCA’s Noonan facility and NCA’s other BNSF traffic.

⁴ CP is not ruling out the possibility that it would continue to provide haulage beyond 2032, but whether CP and BNSF agree to do so should depend on the facts and circumstances that exist at that time.

⁵ The Proposals in Appendix A were and are intended as a basis for negotiation regarding certain specific details. CP remains open to such negotiation, including Board-sponsored mediation over such proposals.

⁶ Such service would likely be provided on CP’s behalf by the Dakota, Missouri Valley and Western Railroad, Inc. (“DMVW”) which currently operates the line for CP.

Not only would a BNSF route via MP 47 and Niobe replicate the manner in which BNSF previously served NCA, it is the shortest route between NCA's facilities and BNSF's network. In 2013 or early 2014, BNSF proposed to NCA that it was willing to serve NCA's new unit train facilities by reactivating precisely this route (though it lacked the right to do so after conveying the trackage beyond MP 47 to CP in 2007). That proposal is recounted in NCA's March 12, 2014 letter to the Board: "BNSF has said that they could access the branch line that splits off at Niobe and runs northwest towards Lignite to deliver NCA's BNSF railcars, they would work something out with the DMVW to interchange at Lignite. This would provide relief on interchange congestion at CP Minot and Flaxton yards."⁷

Reactivating this route would be feasible, though it would require some investment by BNSF. When BNSF conveyed its ownership in the Lignite-Crosby Line to CP in 2007, it also sold BNSF's solely-owned segment between MP 47 and Lignite Junction. CP acquired that segment in order to reach shippers on the north end of the line, and CP has not operated south of approximately MP 54.5 in several years. BNSF retained ownership of the portion from MP 47 to Niobe, and notably has not sought, nor received approval to, abandon it. And, so far as CP is aware, the trackage remains intact.

Thus, returning this route to a condition suitable for unit grain trains would require some investment on BNSF's part in (a) rehabilitating or upgrading the condition of CP's trackage from Lignite Junction to MP 47 and (b) rehabilitating BNSF's trackage south of MP 47. In addition, BNSF likely would need to add a siding at MP 47 to facilitate exchange of haulage traffic. Were it more efficient to exchange haulage traffic at Niobe, CP would be prepared to consider hauling

⁷ Petition of NCA to File Rebuttal to Reply of CP and Proposed Rebuttal (filed Feb. 21, 2019), V.S. Michelson, Ex. 3.

BNSF's traffic to that point instead, though there may still be a need for BNSF to build a new siding to allow CP's power to run around the cars being delivered to BNSF.

2. Proposal 2: Lignite-Bowbells Unit Train Haulage

The second alternative would grant BNSF new haulage rights over CP trackage for the movement of unit trains between NCA's Noonan and Crosby facilities and a connection with BNSF at Bowbells, ND, via a new connecting track that would link CP's Portal-Twin Cities mainline with BNSF's Niobe-Northgate branch.

This route would have the advantage of using trackage that is in active use by CP or BNSF, but would require investment in connecting trackage. BNSF unit trains originating at NCA's facilities would use the first part of the route currently used by BNSF haulage traffic: those trains would move onto CP's Portal-Twin Cities mainline at Flaxton and head southeast in the direction of Minot. But instead of proceeding all the way to Minot, they would be exchanged with BNSF at Bowbells, which is approximately 18 miles south of Flaxton and 77 miles short of Minot. BNSF's Niobe-Northport branch crosses CP's mainline at grade there, just 7 miles north of Niobe.

Currently, there are no railroad-owned facilities at Bowbells for exchanging traffic. To facilitate the efficient exchange of unit trains there, and in particular to allow for that exchange without tying up CP's busy mainline, BNSF would need to build a connection in the southwest quadrant of the crossing, and a siding sufficient to accommodate a unit train clear of CP's right of way that would be kept clear of other equipment, as illustrated in Appendix A. The siding would allow CP to deliver BNSF unit trains directly onto the siding without the need to await any dispatching authority from BNSF. In the empty direction, BNSF would spot empty unit trains on the connecting track for CP crews to operate towards Flaxton and Noonan/Crosby. For

efficiency and safety, trains would operate with BNSF run-through power distributed at both the head end and rear end.

The Bowbells option would be only for the exchange of unit trains. The limited facilities at Bowbells would not be sufficient to support safe or efficient spotting and pulling of other haulage traffic. Accordingly, CP would continue to exchange manifest haulage traffic in Minot, and as a result, volumes would be limited to the available capacity of CP's scheduled manifest trains and the physical capacity of the CP tracks in Minot where BNSF haulage traffic must be held pending its pick up by, or delivery to, BNSF.

3. Conditions Applicable to Both of CP's Proposals

Under both of CP's proposals, in exchange for the additional and valuable rights it would be receiving to serve NCA via trackage owned solely by CP (and indeed conveyed to CP by BNSF in 2007), BNSF would be required to agree to certain conditions including:

- BNSF would have to bear the cost of the new connecting tracks and other investment necessary to activate its new haulage rights: Under Proposal 1, the rehabilitation of the Lignite-Niobe line and a new siding sufficient to run around cars being delivered to BNSF; under Proposal 2, the new connecting track and siding at Bowbells. It is entirely appropriate for BNSF to bear the cost of these connections, which are needed solely to allow it to gain new and valuable commercial rights. Indeed, the 2007 Haulage Agreement embodied the same principle: expenditures in new trackage needed to serve BNSF haulage would be solely at BNSF expense. Haulage Agreement (JP, Ex. G) at § 2.05.
- BNSF would be required to contribute to the significant investments CP made in long-lived assets in the Lignite-Crosby Line after BNSF sold its interest in the line in

2007.⁸ Without CP's investment, which resulted in reliable service on the line, it would not have been possible, and NCA would not have invested in, its new unit train facility. Having sold the line to avoid the costs of maintaining it,⁹ BNSF may not now complain about this contribution, as it is the price for commercial access to traffic that CP's investments unlocked. CP is not seeking any separate contribution toward the ongoing maintenance of the line but rather would treat maintenance as a component of the haulage fee.

- Haulage traffic would be limited to NCA, and more specifically to its Crosby and Noonan facilities, and to the commodities currently handled by those facilities. It could not, for example, be used to interchange crude oil trains originating at a newly constructed facility on the line. It is, after all, CP who assumed the ownership obligations, risks, and rights in 2007 and made millions of dollars in investments in improving the line, unlocking potential new service opportunities.

⁸ Before 2007, the Lignite-Crosby Line was governed by a Coordination Agreement entered into between BNSF and CP's predecessors in 1959, pursuant to which BNSF was responsible for capital expenses required for joint use and for maintenance, while CP bore those obligations for the jointly owned Hankinson-Geneseo line. The 2007 transaction relieved BNSF of its obligations to invest and maintain the Crosby-Lignite line (obligations it was not fulfilling). While CP is not proposing that BNSF reimburse it for 100 percent of its capital expenses on the line that were otherwise BNSF's burden, CP is proposing that BNSF pay half of these costs which is more than equitable.

⁹ It is worth remembering that BNSF made clear to CP prior to the 2007 transaction that it wanted off the line once and for all:

"This will not be a lease, it will be a conveyance. We do not want Crosby-Lignite back. We do not want to own it anymore, much less maintain it, that's why we will explore our abandonment options if we cannot come to some kind of accommodation here."

CP Reply to NCA's Petition filed Feb. 4, 2019 ("CP Reply"), V.S. Hubbard at 3 (emphasis added).

B. CP's Proposals Avoid the Unacceptable Burdens that Would Be Imposed on CP and its Customers by Exchange of Unit Train Haulage Traffic at Minot.

As CP has previously explained, and again explains in the accompanying Verified Statement of Matthew Bailey, CP's Superintendent of Operations for North Dakota, exchange of large blocks of haulage traffic in Minot is impractical, would impair CP operations, and raises safety concerns. CP does not have sufficient capacity in its Minot Yard or nearby to accommodate large blocks of haulage cars, much less unit trains, as CP's yard in Minot has just two 60 car tracks that are in constant use serving multiple customers.¹⁰ There is simply nowhere to park a unit train awaiting an opportunity to deliver the train to one of BNSF's yards east of Minot except on CP's single-track mainline which has supported as many as 30 trains a day in recent years. V.S. Bailey at 3. There are no sidings large enough, and no alternative routes around Minot on CP's system.

Specifically, to reach BNSF's interchange tracks on the east side of Minot, a unit train coming from Noonan (via Flaxton) must first cross BNSF's busy east-west mainline at grade, then shove back onto that line, and then pull forward across CP's line. V.S. Bailey at 2-5, Appx. 1 and 2. BNSF controls this interlocking, and understandably would not permit any train to make this move if it might interfere with BNSF's own operations (or those of Amtrak, which also uses BNSF's mainline). *Id.* at 3. Even if CP delivered a BNSF haulage train when BNSF's track was idle (which is highly unlikely to occur), the operation would still take an unacceptably long two to three hours under ideal conditions, and could be far longer due to bad weather, crew issues including hours of service, mechanical issues, or problems initiating Positive Train Control ("PTC"). *Id.* at 2-5, Appx. 1 and 2. And of course, if BNSF's mainline was busy, or

¹⁰ See, e.g., V.S. Bailey at 2, Appx. 2 (map); CP Pet. for Reconsideration, n. 15, Appx. B (map); Aug. 20, 2019 Oral Arg. Tr. at 84-85, 180; CP Reply at 10-12, V.S. Hubbard at 6-9.

Amtrak or other BNSF priority trains were expected, a haulage train could be held by BNSF dispatchers on CP's mainline for many more hours. *Id.* at 3.

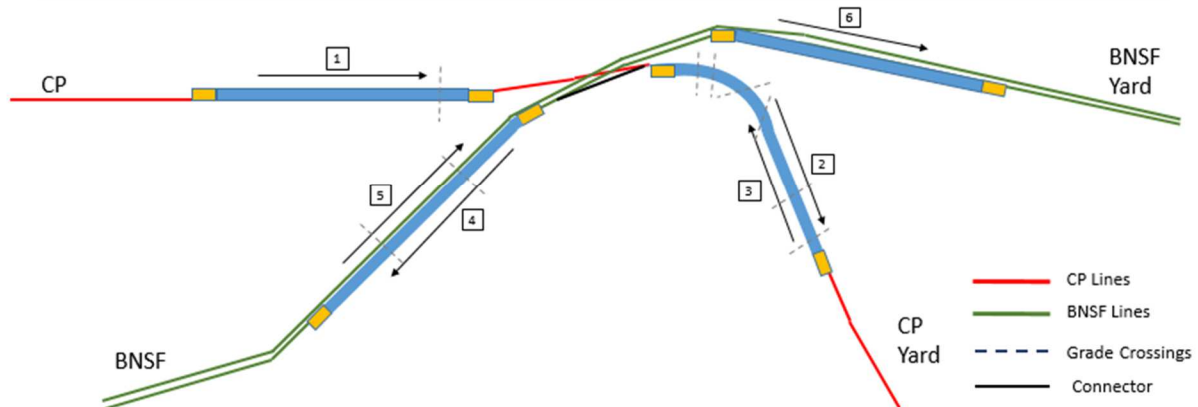
As Mr. Bailey further explains and as depicted below, to make the exchange in either the loaded or empty direction, the train must make three back and forth movements through downtown Minot – each of which would take approximately 20 to 30 minutes. *Id.* at 3-5, Appx. 1 and 2. In between each of these movements the train would be parked for 30 minutes or more, while the crew obtains authority to enter each track, lines and relines the connecting track switches, and initializes PTC. *Id.* Between at least one of the movements, the conductor would need to walk¹¹ approximately 1.5-miles for a unit train and board the rear locomotive or car to protect the shove movement. *Id.*¹² During much of this time, the train would be parked across six grade crossings in downtown. *Id.* at 2-5, Appx. 1 and 2 (showing grade crossings). In addition, one of the three movements would require a shove through downtown Minot, *i.e.*, the engineer would be controlling the train from the lead locomotive at the rear of the train, which adds safety concerns particularly when operating in an urban environment and across multiple grade crossings. *Id.* at 3-5, Appx. 1 and 2. Likewise, requiring crew to walk the length of the train raises safety concerns particularly in snow and ice, conditions common in Minot for about half the year. *Id.*

¹¹ Crew transportation availability in Minot is limited. Thus, more often than not the conductor would need to walk the length of the train which would take an estimated 25 to 40 minutes.

¹² In a “shove”, the train is controlled by the engineer operating the locomotive at the back of the train. The conductor rides point, either in the locomotive or hanging from the car at the head-end of the train, and radios any issues back to the engineer. On a train equipped with distributed power, the crew could avoid the shove movements by switching lead locomotives and then back again, but doing so would add two hours or more to the exchange operation.

Exchange Sequence at Minot-Loaded Train to BNSF

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Loaded train on CP arrives at crossing <ol style="list-style-type: none"> a. Obtains authority to cross/provide PTC info b. Pulls forward, drops conductor at switch, and continues 2. Train stops clear of interchange switch to BNSF (on 6 grade crossings) <ol style="list-style-type: none"> a. Obtains authority to enter BNSF line b. Initializes PTC c. Lines switches | <ol style="list-style-type: none"> 3. Train shoves on to BNSF with conductor on point (across 2 grade crossings) 4. Train stops clear of interchange switch to CP <ol style="list-style-type: none"> a. Conductor walks to head end locomotive b. Lines and lock switches c. Obtains routing direction from BNSF 5. Train pulls forward across CP main 6. Train proceeds to BNSF yard |
|--|---|



Moreover, no amount of cooperation could overcome these fundamental shortcomings with the physical infrastructure available to CP to effect an exchange at Minot. While CP and BNSF might be able to come to an agreement on operating protocols intended to hasten the exchange, such an agreement at best could help mitigate, but could not avoid, significant disruption to mainline operations and blocked grade crossings. The basic asymmetry here imposes unacceptable risks on CP's mainline operations. BNSF's dispatchers control the interlocking and understandably will not desire to interfere with BNSF's (or Amtrak's) own mainline operations. Thus, BNSF would never be in a position to guarantee that CP haulage trains do not plug CP's mainline for even longer periods of time.

Any disruption to CP's mainline operations in Minot could have a ripple effect on CP's network, affecting network fluidity and interfering with CP's ability to provide reliable rail service. This is especially concerning given the fact that CP competes based on service as well as

price. CP offers premium products to its customers that include fast and reliable transit times. Network disruptions interfere with CP's ability to make and keep such service commitments, to the detriment of competition and customers.

BNSF may prefer Minot as the point of exchange for NCA unit trains, but that preference is likely based on two factors that are entitled to no weight here: (1) BNSF's desire to avoid the need to make any investments in track or facilities needed to serve NCA (exactly the motivation that led to the deterioration of the Lignite-Crosby line in the first place) and (2) the lack of any operational burden or risk to BNSF associated with holding unit trains on CP's mainline. Far from being a risk to BNSF, the potential disruption to CP's mainline operations would be a competitive boon to BNSF, as CP is its only significant railroad rival in this region.

C. CP's Proposals Are Consistent with the Fundamental Terms of the 2007 Transaction and Would Ensure that BNSF's Competition Is Not Subsidized by CP.

A central tenet of CP's proposals is that their terms are designed to avoid creating an inappropriate subsidy of BNSF's competition with CP, or an inappropriate handicap of CP's competition with BNSF. Either situation would be inconsistent with the fundamentals of the 2007 transaction, inconsistent with Board policy, and grievously inequitable.

As CP has explained, the 2007 transaction achieved BNSF's goal of removing itself from the Lignite-Crosby Line, relinquishing the burdens of investing capital in and maintaining the line (which it had discharged poorly), eliminating its common carrier obligation, and avoiding the need to file for abandonment. At the same time, CP acquired full ownership of the Lignite-Crosby Line from BNSF and with it acquired full maintenance responsibility. One aspect of the transaction was the grant to BNSF of carefully delineated haulage rights, which CP is now proposing to expand in significant ways in response to the Board's concerns. CP is not, however, willing to—and the Board should not want it to—subsidize BNSF's competition with it

for NCA's traffic, or create opportunities for BNSF to handicap CP's own competition against BNSF. But any outcome that involved the exchange of unit trains at Minot or allowed BNSF to serve NCA without bearing the burdens of doing so, would have both consequences.

1. CP's Proposals Are Designed to Avoid Inappropriately Subsidizing BNSF's Competition.

CP's proposals ask nothing more than that BNSF bear the fair and equitable share of the full costs of serving NCA, including the investments CP made to unlock reliable rail service on the Lignite-Crosby Line after BNSF's exit. Though the terms of the 2007 Haulage Agreement do not explicitly govern in this proceeding, they do reflect that BNSF realized it would have to bear such costs. In Section 2.05 of the Haulage Agreement, CP and BNSF specifically addressed the situation in which BNSF haulage traffic might exceed CP's available capacity. It expressly gave CP discretion whether to accommodate the additional haulage traffic and spelled out that BNSF alone must pay for any infrastructure improvements that CP, based on its own current and future capacity needs, deemed necessary to handle BNSF haulage traffic.¹³

¹³ Section 2.05 provides as follows:

If BNSF develops further business for the Conveyed Line Industries, such that additional volume exceeds available capacity on CPR's existing train service which necessitate the operation of additional CPR trains to accommodate the increase in BNSF Haulage Cars, BNSF may request that CPR permit the operation of an additional train start. CPR shall consider such a request in good faith and may at its discretion permit the operation of BNSF Haulage Cars in excess of the existing train service capacity as specified by CPR. If CPR determines, in its sole judgment reasonably exercised (having regard to CPR's own present and future requirements and CPR's required reserve capacity), that facility changes, additions and betterments to the Haulage Route are necessary to accommodate the operation of additional trains to solely handle BNSF Haulage Cars ("Capacity Improvements"), CPR shall advise BNSF of the required Capacity Improvements and the number of Additional Trains that would be permitted if the Capacity Improvements were constructed. If BNSF is in agreement with the Capacity Improvements to be made then it shall request in writing that the Capacity Improvements be made by CPR at the sole cost and expense of BNSF. CPR shall construct the Capacity Improvements and upon

CP proposes to incorporate comparable terms into the new haulage rights it is proposing, and the importance of these provisions cannot be overstated. They ensure that CP, and not its chief competitor, remains in control of CP's own facilities and operations, including on its crucial mainline. They also ensure that BNSF, and not CP, pays for any facilities necessary to accommodate BNSF traffic. Obviously, if BNSF could commandeer CP's capacity and operations, or force CP to bear the costs of facilities necessary to expand BNSF service, this would give BNSF an unfair competitive advantage over CP. BNSF's competitive advantage would extend beyond NCA traffic, effecting CP's ability to serve all of its customers in the region. Ensuring that BNSF bear the actual costs of BNSF providing service to NCA is critical to maintaining a level competitive playing field and sound economics. Even where the Board has ordered trackage rights in merger cases to remedy clear competitive harm, it has consistently hewed to the principle that the landlord should not be required to subsidize the tenant.¹⁴ It should require no less here.

completion of the construction of the Capacity Improvements payment therefore will be made by BNSF.

Haulage Agreement (JP, Ex. G) at § 2.05.

¹⁴ See, e.g., *St. Louis Sw. Ry. Co.—Trackage Rights Over Mo. Pac. R.R. Co.—Kansas City to St. Louis*, 4 I.C.C.2d 668, 682 (1987) (trackage rights compensation methodology chosen to “ensure[] that the renting carrier is not subsidized by the owning road”); see also, e.g., *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 5 S.T.B. 388, 2000 WL 1844697, at *8 (2000) (unless tenant's compensation places it on an “equal footing with the landlord,” the landlord “would end up subsidizing the tenant, it would not receive an adequate return, and there would be no economic incentive for it to maintain or replace the line as necessary to continue efficient service”); *New England Cent. R.R., Inc.—Trackage Rights Order—Pan Am Southern LLC*, FD 35842, 2017 WL 5639660, at *7 (STB served Oct. 31, 2017) (“depressed level” of compensation would have “negative impact on competitive parity” in conflict with RTP); *Burlington Northern Inc. & Burlington Northern R.R.—Control & Merger—Santa Fe Pacific Corp. & The Atchison, Topeka & Santa Fe Ry.*, 10 I.C.C.2d 661, 1995 WL 528184, at *76 (1995) (trackage rights compensation should not “plac[e] the tenant carrier at a competitive advantage by dispensing with any requirement of investing in the fixed facilities it is using”); *Cent. R.R. Co. of Ind.—Acquis. and Operation Exemption—Lines of Consolidated Rail Corp.*, FD 31897, 1991 WL 257725 at *4 (I.C.C. Dec. 3, 1991) (subsidized trackage rights would go “well

2. CP's Proposals Are Designed to Avoid Giving BNSF the Ability to Disrupt CP's Ability to Compete.

As discussed, Minot does not have the infrastructure necessary to support the exchange of large blocks of haulage traffic without impairing CP's mainline operations, local service and capacity. An obligation to exchange unit trains with BNSF at Minot would in effect give BNSF's dispatchers a chokehold over the operations of its primary railroad competitor in the region on its busy Portal-Twin Cities mainline.

The potential impacts on CP's network fluidity of a potential Board-imposed solution should be a core concern for the STB. In approaching this proceeding, the STB is guided by the congressionally-established rail transportation policy (the "RTP"). The RTP directs the STB to minimize regulation and regulatory burdens while promoting safe and efficient rail transportation, ensuring the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, and fostering sound economic conditions. *See* 49 U.S.C. § 10101(2), (3), (4), (5). Board-forced exchange of large blocks of cars or unit trains in Minot undermines the RTP. By disrupting CP mainline and local operations, such an order would harm the rail transportation system, competition, and safety. To the extent such an order undermines CP's investments or fundamentally changes the terms of the 2007 transaction, such an order would foster unsound economic conditions. And any such action would impose unnecessary regulatory burdens.

Because Board-forced exchange of unit trains in Minot would impair CP's operations on CP's own mainline to the benefit of its competitor, it would effectively penalize CP for its

beyond the mere preservation of the status quo"); *St. Louis Sw. Ry. Co.—Trackage Rights Over Mo. Pac. R.R. Co.—Kansas City to St. Louis*, 5 I.C.C.2d 525, 536 (1989) ("To force UP to subsidize its competitor SP would frustrate its ability to obtain sufficient benefit from the merger.").

investment in restoring the ability to provide reliable rail service on a branch line. Far from promoting competition, such an action undermines competition by allowing CP's competitor to commandeer control of CP's mainline and local operations for significant periods of time.

III. FURTHER ACTION BY THE BOARD TO GRANT NCA RELIEF IS NEITHER NECESSARY NOR APPROPRIATE.

In its Reopening Decision, the Board states that it "will consider further action in a future decision, including imposing a service order should it be found necessary." Reopening Decision at 6. CP's proposals offer private market-based approaches that fully address the Board's concerns and obviate the need for further action in this docket.

A. Revocation of the Exemption and a Potential Need to Unwind the 2007 Transaction Is Not Warranted.

CP's Reply and its Petition for Reconsideration explain why there is no basis for revoking the 2007 exemption and CP's willingness to make expanded access available to BNSF on certain conditions further buttresses this conclusion.¹⁵ Indeed, as the Dissent aptly notes in the Reopening Decision, there is no authority for the Board to impose a condition on an exempt transaction. *See, e.g.*, Reopening Decision at 15-16. Nor is there any basis for revoking that exemption in order to impose a condition.

Both as a practical matter and as a matter of regulatory policy, revocation of the 2007 exemption would have potentially disastrous consequences. The Board cannot simply assume that any condition it imposes will be agreeable to CP or BNSF. If any proposed condition were not acceptable to both parties, the transaction likely would have to be unwound, with imponderable consequences for the parties, but more importantly calamitous consequences for

¹⁵ *See*, CP Reply at 27-31, CP Pet. for Reconsideration at 18-20. *See also* Reopening Decision at 7-17.

the incentives of future participants in exempt transactions. Almost fourteen years after the transaction has been consummated and CP has invested millions of dollars in the line, the proverbial egg cannot so easily be unscrambled. And even if it could be unscrambled, then what? A return to joint ownership with BNSF again assuming responsibility for capital and maintenance on the line and for resuming its own operations between Niobe and Crosby would set the stage for a renewed cycle of decline on this line.¹⁶

B. Service (or Competitive Access) Relief Is Unavailable Under the Governing Statute and Board Precedent.

Though the Board’s Reopening Decision alludes to “further action,” including a potential service order, any such action would be contrary to statute and governing precedent.

1. There Is No Service Emergency.

The Board’s authority to grant access by one carrier over property of another to address service issues is sharply constrained by statute and the Board’s regulations and precedents, and the conditions necessary to support such an order are absent here. First, there is certainly no service “emergency” of the sort addressed by 49 U.S.C. § 11123. The statute provides that the Board may impose a temporary service order if it finds that a “failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States.” *Id.* No matter how strong NCA’s desire for direct service by BNSF may be, there is simply no service emergency, and thus no predicate for a service order. Indeed, that NCA waited *four years* after it built its loop track and *11 years* after the 2007 transaction was authorized by the Board and consummated by the parties

¹⁶ Before the Board even considered revoking the 2007 exemption, it should allow CP to take discovery of BNSF and NCA and submit further evidence concerning the factual predicate for, and the likely adverse consequences of, such a step.

to file its 2018 Petition to Reopen demonstrates the lack of a “emergency situation of such magnitude” to warrant the extraordinary relief of a temporary service order.

There likewise is no predicate for a service order pursuant to 49 U.S.C. §§ 11102(a), 11102(c) or 10705(a). To prescribe alternative rail service under those statutes, the Board must determine “that, over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier.” 49 C.F.R. § 1147.1(a). But there is no such deterioration or inadequacy. After years of unreliable service on the Lignite-Crosby Line due to BNSF’s inadequate maintenance and capital investment, in 2007 CP stepped in and restored the line and has maintained the line in good operating condition. Reopening Decision at 13 (citing CP Reply 7; NCA Pet. 7-8) (“As a result of the transaction, the Joint Line was rehabilitated, and—as NCA concedes—there were no significant problems on the line for several years.”). In doing so, CP unlocked reliable rail service and effective competition for NCA traffic, neither of which existed prior to the transaction and enabled NCA to grow and invest in its own facilities. As a result, CP is { [REDACTED] } and NCA is continuing to receive rail service from BNSF via haulage.¹⁷

NCA can access any market that BNSF serves both via CP single-line and joint line routings (e.g., with movement to BNSF-served Pacific Northwest markets via CP-Kingsgate/Eastport-UP routings) and can also do so via BNSF service in manifest trains or in unit train service were BNSF willing to either assemble unit trains in its yards in Minot or agree to the terms of the expanded haulage rights CP has proposed. NCA can also request CP-BNSF

¹⁷ See July 24, 2020 Letter from CP to the Board.

interline rates for BNSF-served destinations that would utilize CP and BNSF's normal interchange locations.

2. There Is No Basis for Competitive Access Relief, Particularly Where CP Is Offering Access on Reasonable Terms.

Nor is there any conceivable basis for competitive access relief here, as NCA itself acknowledged in declining the Board's invitation to seek any such remedy.¹⁸ In limited circumstances not present here, the Board has statutory authority under 49 U.S.C. § 11102 to grant competitive access and, under § 10705, to order through routes. But the factual circumstances here do not meet the standards for granting such relief.

No terminal facilities. Under 49 U.S.C. § 11102(a), the Board may require a carrier to allow another carrier to use its terminal facilities "if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." 49 U.S.C. § 11102(a). The CP trackage serving NCA's facilities at Noonan and Crosby are not terminal facilities and are not in, or even near, any terminal area, and therefore are not subject to § 11102(a) relief under any circumstance. *See Golden Cat Division of Ralston Purina Co. v. St. Louis Sw. Ry. Co.*, NOR 41550, 1996 WL 197602, at *5 (STB served April 25, 1996) (shipper facility located on rural branch line miles from any major communities, switching, or classification yards, or shippers other than itself was not a terminal facility or in a terminal area). Like the facilities at issue in *Golden Cat*, NCA's facilities are located on a rural branch line miles from any major communities, switching, or classification yards, or shippers other than itself and therefore are not terminal facilities or in a terminal area.

¹⁸ See NCA's April 26, 2019 Letter to the Board.

No predicate for “reciprocal switching.” The Board’s authority to require “reciprocal switching” under 49 U.S.C. § 11102(c) is similarly limited to terminal areas, which are not present here. *See, e.g., Central States Enters., Inc. v. Seaboard Coast Line R.R.*, FD 38891 (I.C.C. served May 15, 1984), *aff’d sub nom. Central States Enters., Inc. v. I.C.C.*, 780 F.2d 664 (7th Cir. 1985). Even under the Board’s 2016 proposal to relax its reciprocal switching competitive access rules, NCA would not qualify for relief. *See Reciprocal Switching*, EP 711 (STB served July 27, 2016). That proposal would still require a showing that the relief sought is practicable and in the public interest, which requires that there be a working interchange within a reasonable distance from the customer facility. “[T]he Board would determine that there ‘is’ a working interchange if one already exists and is currently engaged in switching operations.” *Reciprocal Switching*, EP 711, slip. op. at 21. And “[t]he Board would determine that there ‘can be’ a working interchange only if the infrastructure currently exists to support switching, without the need for construction, regardless of whether switching operations are taking place or have taken place using that infrastructure.” *Id.*

There is no “working interchange” within a reasonable distance of NCA’s facilities (though CP’s voluntary proposals would create locations where cars could be exchanged between CP and BNSF were BNSF to invest to activate the proposed rights). The current location where CP and BNSF exchange haulage traffic in Minot does not meet this standard because it is located over 100 miles from Noonan, which is not a reasonable distance. And for the reasons addressed at length above, CP does not have the infrastructure at Minot to support switching of unit trains or large blocks of cars at Minot.

No anticompetitive conduct. The further predicate for any competitive access is the need for such access to address an abuse of market power. *Midtec Paper Corp. v. U.S.*, 857 F.2d 1487

(D.C. Cir. 1988); 49 C.F.R. § 1144. “In assessing anticompetitive conduct, the essential questions for the [Board are] whether the railroad had used its market power to extract unreasonable terms or had shown a disregard for the shipper’s needs by furnishing inadequate service.” *Reciprocal Switching*, EP 711, slip op. at 4.¹⁹

There is no basis for a finding that CP has any market power here, much less that it has abused any such power. CP competes directly with BNSF for grain originations in this part of North Dakota, and NCA benefits from that competition. CP has invested heavily to provide NCA and other shippers with reliable service, and NCA has responded by { [REDACTED] }²⁰

Fierce competition for NCA traffic, as well as for the traffic of other grain elevators in the region, already exists. Because grain can be trucked to other rail-served elevators in the region, geographic competition for NCA traffic is strong.²¹ Given the strength of geographic competition, CP’s investments improved competitive conditions not just for NCA but for all grain shippers in the region. This competition includes for critical grain markets such as the

¹⁹ The same lack of market power exploitation would preclude an order under 49 U.S.C. § 10705. The Board has explained that it “will apply this competitive remedy where a bottleneck carrier has been shown to have ‘exploited its market power by providing inadequate service over its own lines or foreclosing more efficient service over another carrier’s lines.’” *Entergy Arkansas, Inc. & Entergy Services, Inc. v. Union Pacific R.R. & Missouri & Northern Arkansas R.R.*, FD 32187 (STB served June 26, 2009), slip op. at 2 (quoting *Central Power & Light Co. v. Southern Pac., et al.*, 1 S.T.B. 1059, 1068 (1996), *aff’d sub nom. MidAmerican Energy Co. v. STB*, 169 F.3d 1099 (8th Cir. 1999)).

²⁰ See July 24, 2020 Letter from CP to the Board.

²¹ See *Union Pac. Corp., Union Pac. R.R. & Missouri Pac. R.R.—Control—Chicago & North Western Transp. Co. & Chicago & North Western Ry.*, FD 32133, 1995 WL 141757 at *59 (I.C.C. served Mar. 7, 1995) (source competition is effective “[b]ecause grain grown on the farm must necessarily be trucked somewhere, and because grain grown in Iowa competes with grain grown elsewhere (both in the United States and throughout the world)”).

Pacific Northwest where CP works both with its customers and receivers to advantage CP-served facilities such as NCA.

The continuing availability to NCA of BNSF service using CP's haulage rights,²² and CP's proposed expansion in those rights as set forth herein, further preclude any conclusion that CP has abused any market power.

IV. CONCLUSION

For the reasons stated above, the Board should endorse CP's reasonable alternative proposals, grant CP's Petition for Reconsideration, and take no further action in this matter other than to terminate the proceeding.

Dated: March 1, 2021

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Respectfully submitted,

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²² As CP has thoroughly demonstrated, the limits it placed on BNSF's haulage rights – including the original 10-year term, which CP voluntarily agreed to extend, and the restriction to volumes that could be accommodated on CP's existing manifest trains and Minot facilities – were not motivated by any desire to harm competition but, first, by the contractual bargain struck in 2007 and, second, legitimate operational concerns. See, e.g., CP Reply, V.S. Hubbard at 6-9, Ex. D; Oral Arg. Tr. 72-73, 84-86, 110-11, 171, 180; Reopening Decision at 2-3, 10-11, 14, 16.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 2021, copies of the foregoing Proposal, and the Appendices and Verified Statement thereto, were served by electronic mail on the following:

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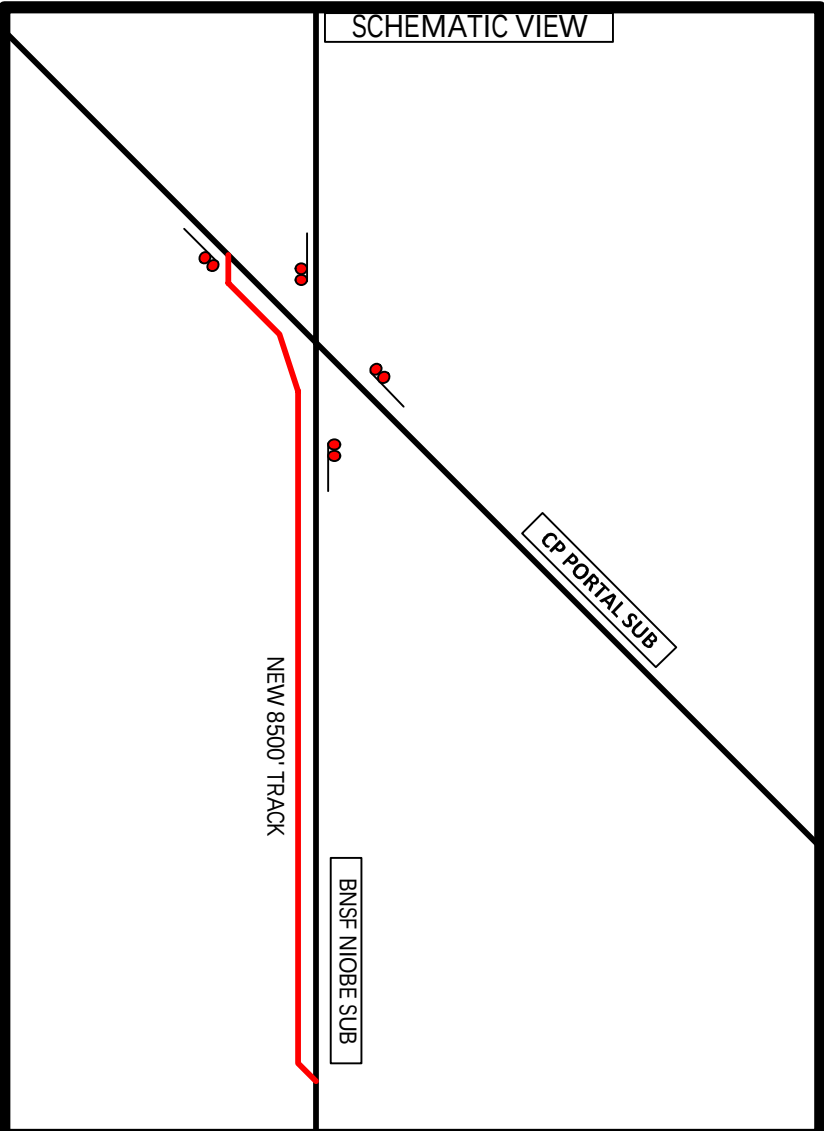
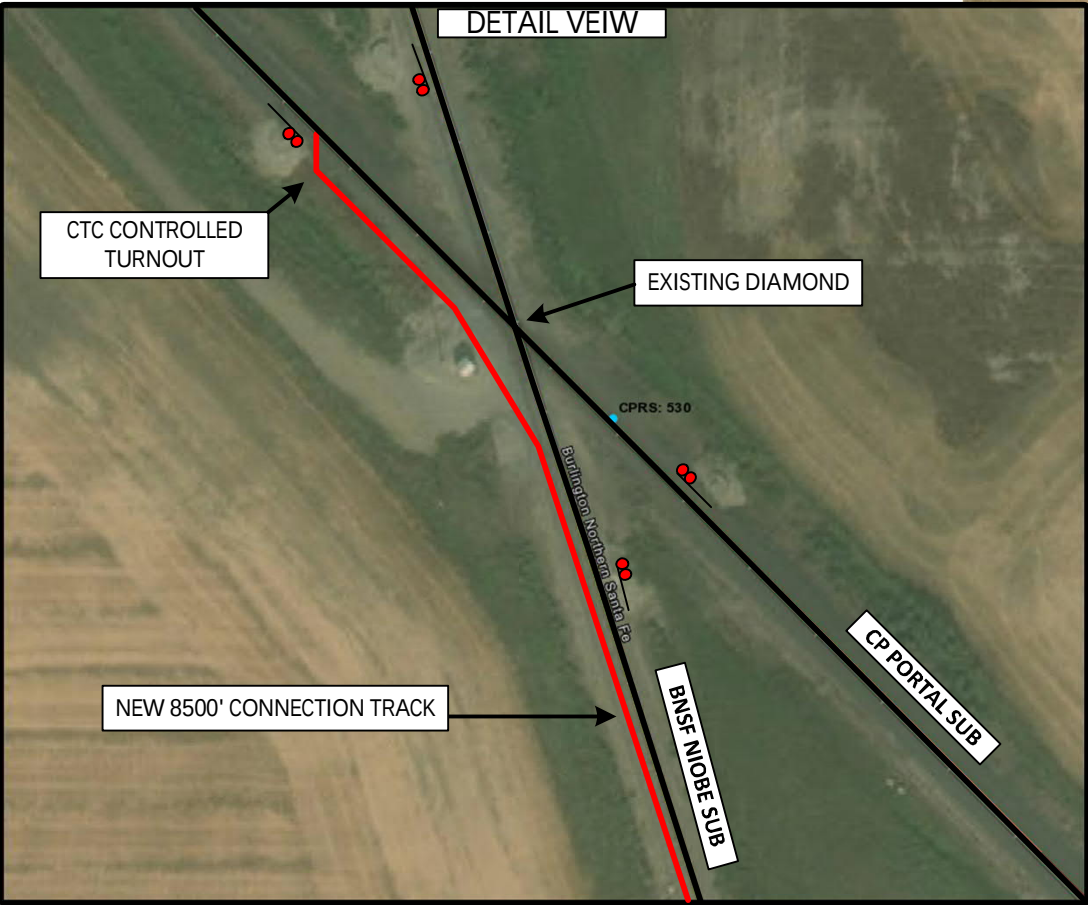
/s/ David F. Rifkind
David F. Rifkind

APPENDIX A

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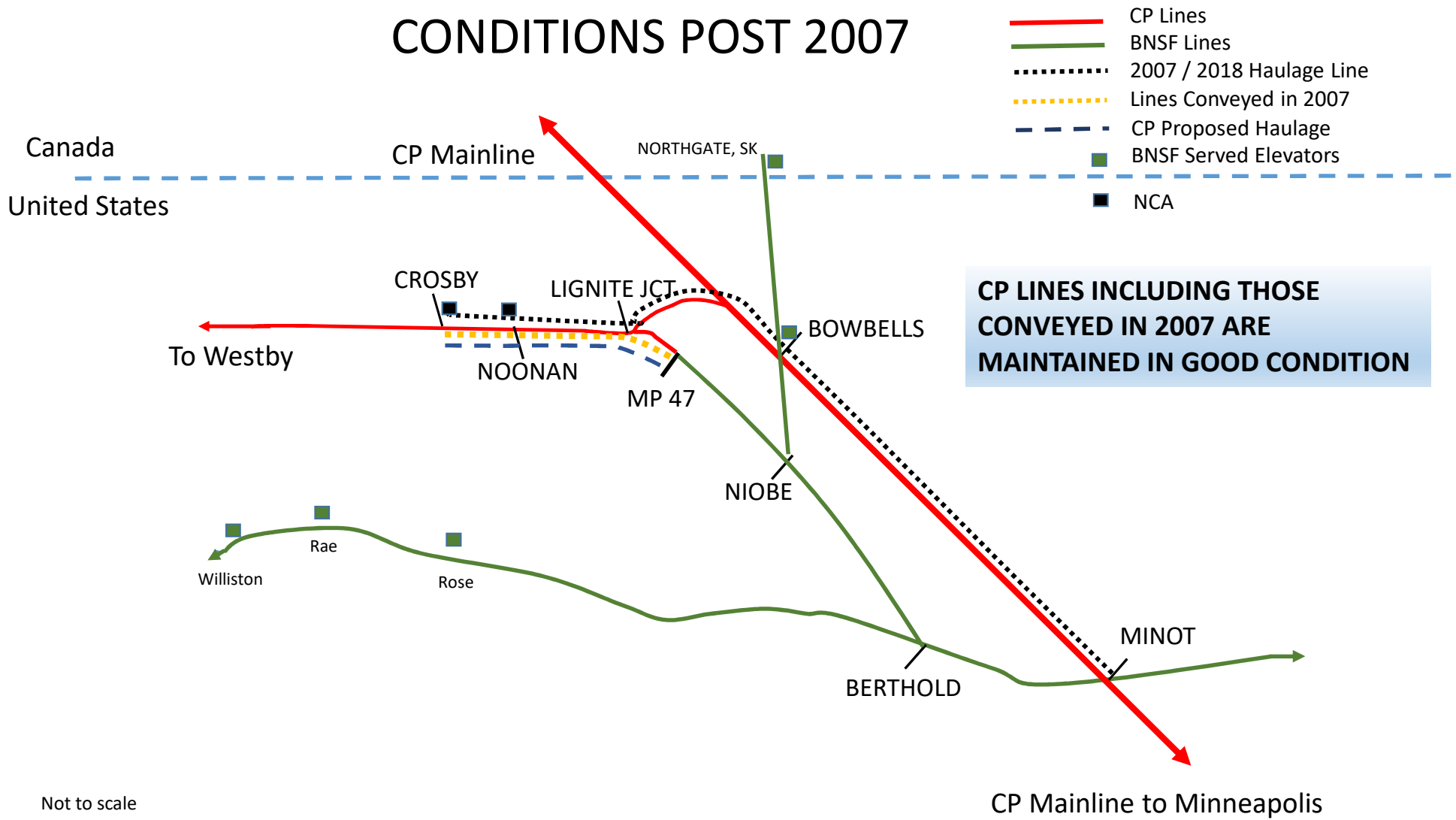
CP BOWBELLS CONNECTION TO BNSF NIOBE SUBDIVISION
MP 530 CP PORTAL SUB

(CONTAINS COLOR EXHIBITS)

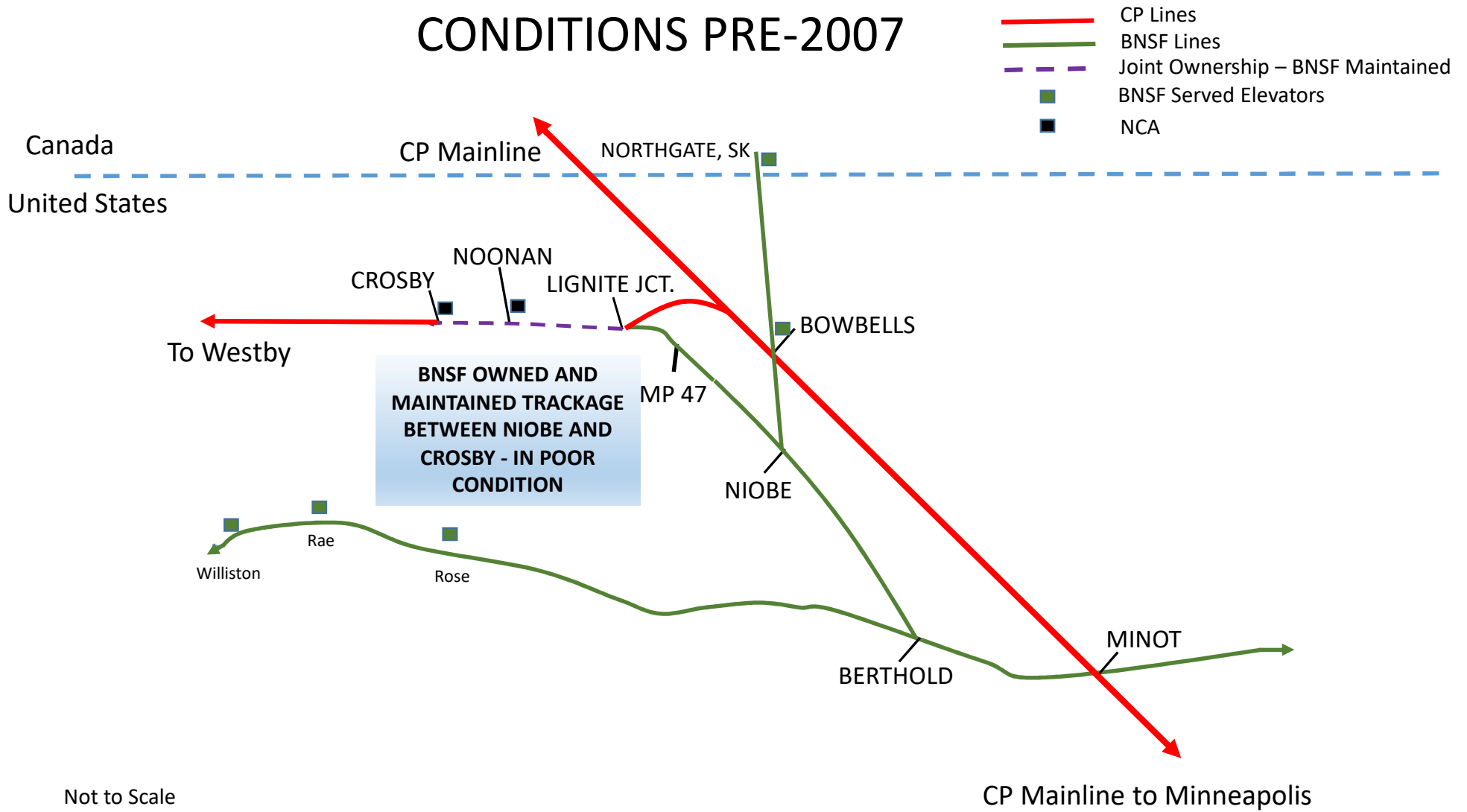


APPENDIX B

CONDITIONS POST 2007



CONDITIONS PRE-2007



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35068

**SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY –
ACQUISITION AND OPERATION EXEMPTION – BNSF RAILWAY COMPANY**

VERIFIED STATEMENT OF MATTHEW BAILEY

My name is Matthew Bailey. I am employed by the Soo Line Railroad Company d/b/a as Canadian Pacific (“CP”). I currently serve as Superintendent for Operations in North Dakota and have held this position since February 2019. Between November 2017 and February 2019, I served as Assistant Superintendent for Operations in Bensenville, Illinois. Prior to those positions, I was employed by BNSF Railway Company (“BNSF”) for 12 years, most recently as the Terminal Superintendent for Pasco, Washington.

I am submitting this Verified Statement in conjunction with CP’s proposal in response to the Board’s December 29, 2020 Decision. The purpose of this Verified Statement is to provide the Board with a description of the operations that would be required to exchange large blocks of cars or unit trains with BNSF in Minot, provide an estimate of the time associated with such operations, and describe the negative impacts that such operations would likely have on CP, on its employees, on its customers, and on the community. I have set out in table form in Appendix 1, and describe below, the steps and estimated amounts of time for exchanging unit train haulage traffic in Minot. Appendix 2 contains schematics of the exchange operations.

A. CP Haulage Operations are Subject to Capacity Constraints

Pursuant to its lease with CP, the Dakota, Missouri Valley and Western Railroad, Inc. (“DMVW”) provides local service to customers including New Century Ag (“NCA”) on CP’s Lignite-Crosby line. CP delivers to and receives from DMVW at CP’s interchange tracks at Flaxton, ND. This includes haulage traffic moving on BNSF’s account. In order to exchange haulage traffic with BNSF, the traffic first goes to Flaxton on the DMVW. From Flaxton—where CP has limited trackage—CP takes the traffic down in CP train service on CP’s single-tracked mainline to Minot, ND which is approximately 77 miles south of Flaxton and takes approximately 1 hour and 45 minutes to 2 hours to traverse.

In a typical haulage move, at Minot, CP pulls the loaded train completely across the double mainline of BNSF. Once across the BNSF mainline, the train would proceed to CP’s Minot Yard and spot haulage cars on the yard tracks. After receiving authority to enter BNSF’s mainline, a local assignment would then pull the haulage cars and initialize Positive Train Control (“PTC”) before operating over CP’s mainline directly on to the BNSF mainline. The train would then proceed to one of BNSF’s two yards in Minot where it would spot the haulage cars. BNSF and CP trade off responsibility for exchanging cars quarterly.

CP has limited facilities in Minot. Its Minot yard consists of just two yard tracks each approximately 3,600 feet in length and able to hold approximately 60 cars. These tracks are in constant use serving various customers within Minot. If the volume of haulage cars exceeds CP’s yard capacity in Minot, CP would be unable to yard the train. Instead, the train would sit on CP’s mainline until it can be delivered to BNSF. While it blocks CP’s mainline, it would also block up to six grade crossings in downtown Minot. Even if the yard could accommodate the haulage traffic, large volumes of haulage cars can cause congestion in the yard and take away capacity that CP needs to serve other customers thereby disrupting local service, which has happened.

B. Exchange of a Unit Train in Minot Would Block CP's Mainline for Several Hours

As described below, under the best of circumstances, exchange of large blocks of cars or unit trains in Minot would take 2 hours or more depending on the length of the train. This assumes BNSF grants immediate authority each time the train must cross or access BNSF's mainline, which has not been CP's experience. BNSF controls the interlocker in Minot. BNSF's double mainline is busy and BNSF often prioritizes its own traffic on the line. Amtrak traffic also runs on the line and is generally afforded priority. BNSF's dispatchers have several opportunities, including when CP first crosses the BNSF mainline and again when it must obtain authority to shove onto BNSF's mainline, where they could delay the movement of the haulage train in favor of BNSF mainline operations. In addition, there can be several other factors such as weather, mechanical issues, PTC initialization issues, or crew availability and crew hour of service issues that can contribute to a delay. The impact of such exchange operations on CP's mainline through Minot, a crucial single tracked artery for CP that has supported as many as 30 trains a day in recent years, could be substantial and has the potential to cause congestion and delays across CP's network. Trains operating on the mainline may have to be held either in yards, in which case they could cause congestion, or en route, which could lead to hours of service expiring en route creating additional costs and delays. Such exchange operations would also block six grade crossings in downtown Minot raising community safety and relations issues.

Coordination with BNSF might help minimize delays and the time to exchange, but would not avoid the substantial impact on CP operations and capacity. In any event, in CP's experience, agreements by other railroads to provide for equitable dispatch of shared facilities are often honored inconsistently and are difficult to enforce. This has been CP's experience with its agreement with BNSF in St. Paul on our shared mainlines, where CP train delay is periodically an issue despite the availability of monetary penalties.

To effect the exchange, a loaded unit train moving in haulage to Minot would first need to stop short of the BNSF interlocker where CP's single mainline crosses BNSF's double mainline. It would then provide PTC information to BNSF and obtain authority from BNSF, which controls the interlocker, to pull across BNSF's mainline. This would take 5 to 10 minutes. As it slowly crosses BNSF's mainline, the train would stop and drop the conductor at the switches next to the connecting track which is located in the southeast quadrant of the intersection. The train would then pull forward clear of the connecting track and stop. The total movement, which is approximately 2 miles and is conducted at well under 10 miles an hour, takes about 20 to 30 minutes to complete.

Once the train has stopped clear of the connecting track switch, the conductor would obtain authority from BNSF to reline the switches so that the train can access the connecting track to BNSF's mainline. The conductor would open the electric lock box and start the safety timer which ensures that all trains have cleared the track. Once the timer clears, the conductor would then reline the switch and repeat the process for the switch at the other end of the connecting track. Lining the switch at either end of the connecting track takes about 10 to 15 minutes per switch. The engineer must initialize PTC which can take up to 30 minutes, some of which time may overlap with the lining of the switches.

After lining the switches, the conductor then boards the rear locomotive to protect the shove back onto BNSF's mainline which would take approximately 20 to 30 minutes and cross two grade crossings. If the train is not equipped with power on both ends, then the conductor must hang on to the rear car while the train shoves back onto BNSF's mainline. Once on BNSF's mainline, the conductor must disembark the train and return to the front of the train. Crew transportation is limited in Minot and so the conductor likely would need to walk the length of the train. For a unit train, the walk would be approximately 1.5 miles and would take up to 40 minutes, particularly if there is snow or ice, as is generally the case in Minot for about six months of the year. Before boarding the

train, the conductor must then reline and lock both switches for the connecting track which would take 10 to 15 minutes per switch. The crew must then obtain route information from BNSF before pulling forward to BNSF's designated yard. During this process, the train is parked to allow the conductor to reach the front of the train and CP's mainline remains out of service waiting for the train to pull forward across its mainline on its way to BNSF's yard. The train would then pull forward across CP's mainline, taking about 20 to 30 minutes to clear CP's mainline.

C. Exchange of Empty Unit Trains in Minot Would Follow Similar Steps But Raise Additional Safety Concerns Due to Shove Through Downtown

CP would follow a similar set of steps for exchanging an empty unit train. However, the shove movement would be into downtown Minot, across several grade crossings, and around a significant curve. From a safety perspective, shoves are less desirable as the engineer controlling the train does not have a direct view of the track and must rely on the conductor who is riding the head-end of the train, to relay any safety concerns, *e.g.*, if there is a car or pedestrian on the track. While this is a safety concern for the shove movement on to the BNSF main for loaded trains, it is of even greater concern for the shove movement for the empty train as that movement is into downtown Minot and affects several more grade crossings. Additionally, the track curvature limits line of sight. If the train is equipped with power on each end, the crew could change lead locomotives for the move into downtown Minot and then change lead locomotives again for the move to Flaxton. However, it takes approximately 60 to 90 minutes to change lead locomotives on a unit train including the time to walk or cab to the other end of the train, the approximately 20 minutes to switch control to the new lead and perform required tests, and another 15 to 30 minutes to reinitialize PTC.

VERIFICATION

I, Matthew Bailey, declare under penalty of perjury that I am authorized to make this verified statement on behalf of Soo Line Railroad Company, and that the information included in the foregoing statement is true and correct to the best of my knowledge and belief.

A handwritten signature in blue ink, appearing to read 'Matthew Bailey', is written over a horizontal line.

Matthew Bailey
Superintendent of Operations for North Dakota
Soo Line Railroad Company

Dated: February 28, 2021

APPENDIX 1

Minot Exchange Operations for Loaded Unit Haulage Trains from Flaxton

1.	Operates train from Flaxton to Minot and stops short of BNSF mainline.	105-120 minutes
2.	Crew obtains authority to cross BNSF mainline and provide data for PTC initialization	5-10 minutes
3.	Train pulls across BNSF mainline stopping to drop conductor by connecting track and then pulls forward until clear of connecting track and comes to complete stop. Total move of about 2 miles at low speeds.	20-30 minutes
4.	Crew obtains authority to enter BNSF mainline and conducts PTC initialization	10-30 minutes*
5.	Conductor opens electric lock boxes, sets safety timer and waits for it to clear, relines switch, repeats process for switch at other end of connecting track then boards rear locomotive for shove back on to BNSF mainline.	20-30 minutes (10-15 minutes per switch)
6.	Train shoves back on to BNSF's mainline clear of connecting track and comes to a complete stop. Total move of about 2 miles at low speeds.	20-30 minutes
7.	Conductor walks or taxis to the head end of the train (the availability of crew transport is limited).	5-40 minutes
8.	Conductor relines and locks switches at either end of connecting track and boards train.	20-30 minutes (10-15 minutes per switch)
9.	Crew obtains routing direction from BNSF	Time likely minimal
10.	Train pulls forward clear of CP's mainline and proceeds to BNSF yard. Total move to clear CP mainline of about 2 miles at low speeds.	20-30 minutes
	TOTAL TIME (exclusive of mainline track time Flaxton to Minot)	120 – 230 minutes

* Lower end of range takes into account possible overlap with other activities.

Minot Exchange Operations for Empty Unit Haulage Trains to Flaxton

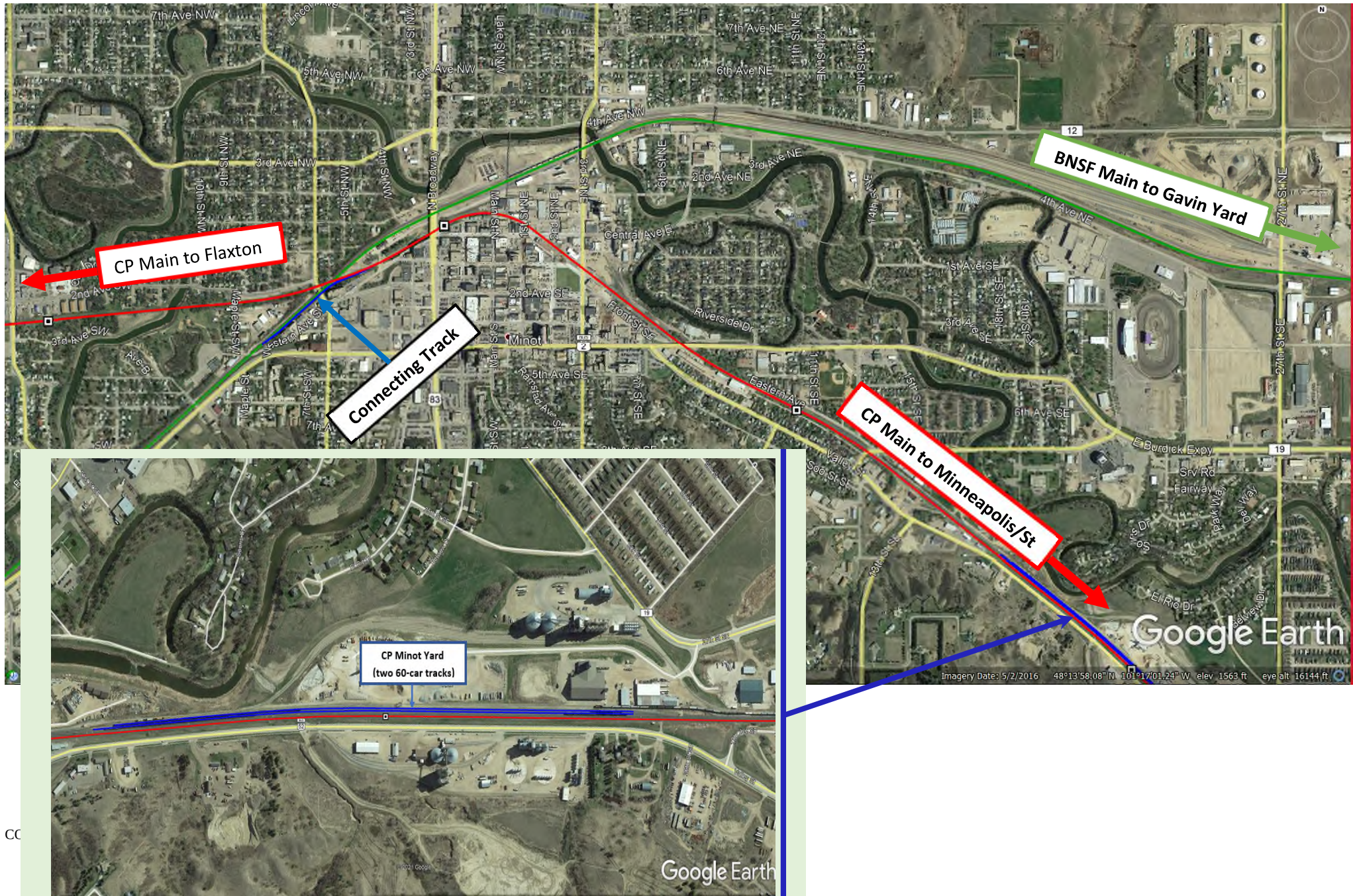
1.	CP crew operates train from BNSF yard, initializes PTC, and obtains authority to cross CP mainline	
2.	Train pulls across CP mainline stopping to drop conductor by connecting track and then pulls forward until clear of connecting track and comes to complete stop. Total move of about 2 miles at low speeds.	20-30 minutes
3.	Crew obtains authority from CP dispatch to reline switch to CP connecting track.	Time likely minimal
4.	Conductor opens electric lock boxes, sets safety timer, waits for it to clear, and relines switch, repeats process for switch at other end of connecting track then boards rear locomotive for shove back on to CP mainline (changing lead locomotives to avoid a shove through Minot and then again for move to Flaxton would add 60-90 minutes per change).	20-30 minutes (10-15 minutes per switch)
5.	Train shoves back on to CP's mainline clear of connecting track and shoves through downtown Minot across six grade crossings then comes to a complete stop. Total move of about 2 miles at low speeds.	20-30 minutes
6.	Conductor walks or taxis to the head end of the train.	5-40 minutes
7.	Conductor relines and locks switches at either end of connecting track and boards train.	20-30 minutes (10-15 minutes per switch)
8.	Crew obtains authority from BNSF dispatch to cross BNSF mainline	Time likely minimal
9.	Train pulls forward across BNSF mainline	20-30 minutes to clear diamond
10.	Train operates on to Flaxton on CP mainline	105-120 minutes
	TOTAL TIME (exclusive of mainline track time Minot to Flaxton)	105-190 minutes

APPENDIX 2

Minot

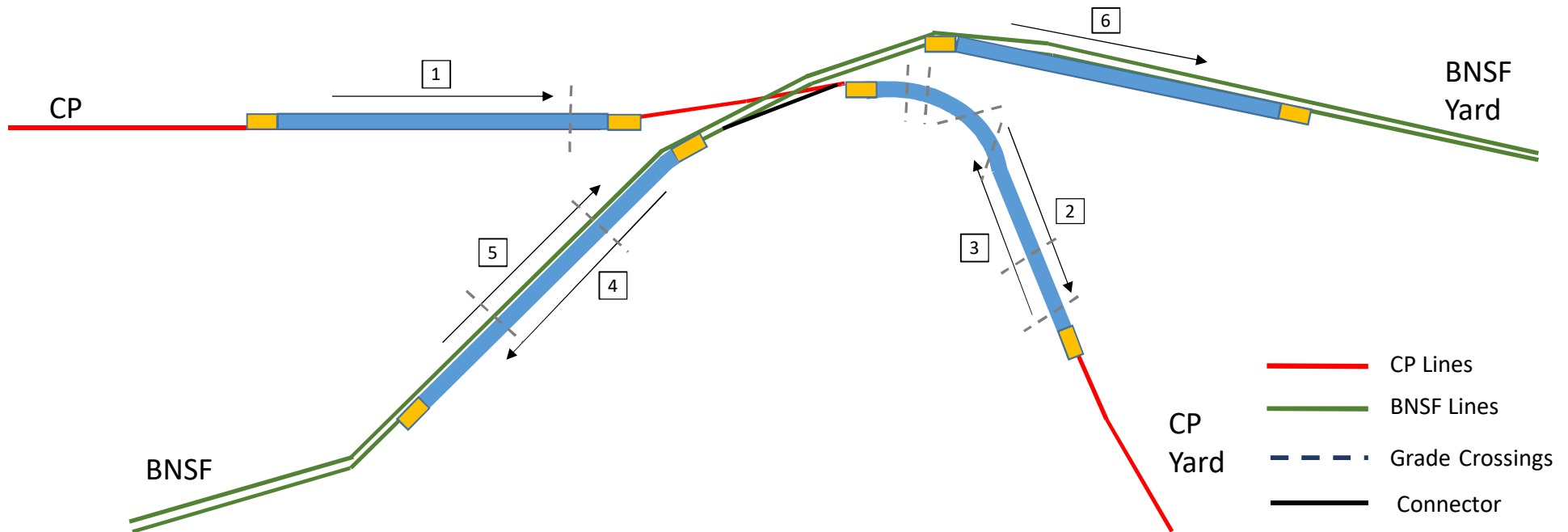
CP – BNSF Unit train Exchange

MINOT



Exchange Sequence at Minot-Loaded Train to BNSF

1. Loaded train on CP arrives at crossing
 - a. Obtains authority to cross/provide PTC info
 - b. Pulls forward, drops conductor at switch, and continues
2. Train stops clear of interchange switch to BNSF (on 6 grade crossings)
 - a. Obtains authority to enter BNSF line
 - b. Initializes PTC
 - c. Lines switches
3. Train shoves on to BNSF with conductor on point (across 2 grade crossings)
4. Train stops clear of interchange switch to CP
 - a. Conductor walks to head end locomotive
 - b. Lines and lock switches
 - c. Obtains routing direction from BNSF
5. Train pulls forward across CP main
6. Train proceeds to BNSF yard



Exchange Sequence at Minot-Empty Train to CP

1. Empty train on BNSF crosses CP mainline
 - a. Drops conductor at switch and pulls forward
2. Train stops tail end clear of the interchange switch to CP (on 2 grade crossings)
 - a. Obtains authority to enter CP main
 - b. Lines switches
3. Train shoves onto CP with conductor on point (on 6 grade crossings)
4. Train stops clear of interchange switch
 - a. Conductor walks to head end
 - b. Relines switches
 - c. Obtains authority to cross BNSF mainline
5. Train crosses BNSF mainline
6. Train proceeds to Flaxton on CP mainline

