

**BEFORE THE UNITED STATES  
SURFACE TRANSPORTATION BOARD**

ENTERED  
Office of Proceedings  
March 22, 2021  
Part of  
Public Record

---

**FINANCE DOCKET NO. 35068**

---

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

---

**COMMENTS OF NEW CENTURY AG ON RAILROAD PROPOSALS**

Pursuant to the Decision served in this proceeding on December 29, 2020 (the “Reopening Decision”), as supplemented by the Decision served March 5, 2021 extending the time period for submission of these comments, New Century Ag hereby files its comments on the respective proposals submitted in this docket by Soo Line Railroad Company d/b/a Canadian Pacific Railway (“CP”) and BNSF Railway Company (“BNSF”) on March 1, 2021.

**I. INTRODUCTION**

The Reopening Decision directed BNSF and CP to engage in negotiations “and inform the Board how NCA will be provided with a level of service commensurate with the broad representations underlying the Board’s 2007 Decision.”<sup>1</sup> As to “the broad representations” on which the commensurate level of service is to be based, the Board explained that it was referring to:

broad representations in the joint petition that competitive options would be preserved for the two active customers on the Joint Line (including NCA) and that competition would be enhanced for the active customers on the 9.96-mile BNSF line. The joint petition also asserted that ‘BNSF will continue to provide common carrier service to all shippers on the Conveyed Lines . . . and there will be no

---

<sup>1</sup> Reopening Decision at 6.

material change in the level or nature of service . . . . Existing customers . . . will retain the services of both BNSF and [CP] . . . .” (Joint Pet. 13-14 July 16, 2007). However, since the Board’s grant of authority, the record indicates that CP has limited the quantity of BNSF cars it would accept and it has entirely refused BNSF unit trains in interchange, which would enable NCA to reach markets not served by CP.<sup>2</sup>

The Board further explained that “[b]ased on the breadth of the representations made prior to the 2007 Decision, the Board could properly have expected that CP and BNSF would work to ensure shippers would continue to be served in an equitable manner as market conditions change.” The Board clearly determined that this continuing service as market conditions changed specifically encompassed the preservation of BNSF’s ability to “compete on a reasonable basis” with CP by being able to offer NCA unit train service and manifest service without limitations on the number of carloads.<sup>3</sup> The Board concluded that “[w]hen CP’s service restrictions are combined with the normal developments in market conditions . . . that have led to NCA’s request for a type of service that was not at issue at the time of the transaction [i.e. BNSF unit train service], the result is a change in circumstances sufficient to justify reopening this proceeding.”<sup>4</sup>

The Reopening Decision directed CP and BNSF, on or before March 1, 2021, to “either submit their proposal to the Board or notify the Board that no agreement could be reached.”<sup>5</sup> The decision also provided NCA with an opportunity to submit comments on “the proposal.”<sup>6</sup> The Reopening Decision further stated that if the railroads were “unable to reach an agreement, or if the proposed revisions would not adequately address the Board’s competitive concerns . . . the Board will consider further action in a future decision, including imposing a service order should

---

<sup>2</sup> *Id.* at 5, citations omitted.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

it be found necessary.”<sup>7</sup> On February 8, 2021 CP filed a Petition for Reconsideration of the Reopening Decision (“Petition”), to which NCA filed a reply in opposition on March 1, 2021 (“Reply”).

Subsequent to service of the Reopening Decision, NCA engaged in confidential discussions with each railroad with the goal of arriving at an overall commercial solution that would comply with the Board’s findings in the Reopening Decision and thereby alleviate NCA’s concerns with maintaining competition between BNSF and CP at this location. NCA also sought to offer input to each railroad on the elements of a plan they could jointly submit to the Board in response to the Board’s findings and directive. NCA cannot reveal the substance of its conversations with BNSF or CP, but it will note that CP’s statement in its Proposal - - viz., that the separate discussions CP had with NCA were about “develop[ing] a joint proposal to submit to the Board” that also involved BNSF<sup>8</sup> - - is not an accurate characterization of NCA’s discussions with CP.

On March 1, the railroads neither jointly informed the Board of a plan they had negotiated to implement the Reopening Decision, nor did they jointly notify the Board that they could not reach agreement. Instead, each railroad separately informed the Board that they could not reach agreement, and each submitted their own proposal. For the reasons set forth in these Comments, NCA believes that BNSF’s New Century Ag Service Proposal (“BNSF Proposal”) to utilize the haulage arrangement between CP and BNSF to include intact unit trains<sup>9</sup> interchanged between

---

<sup>7</sup> *Id.*

<sup>8</sup> CP Proposal at 1.

<sup>9</sup> NCA has defined “unit trains” to mean trains containing 100 or more railcars. CP has previously suggested that NCA could receive unit train service from Minot by “building” 100+ car unit trains in BNSF’s Minot Yard, as opposed to BNSF transporting intact 100+ car unit trains in empty and loaded service to and from the Noonan Terminal Facility Loop Track. *See* Petition at 3-4. NCA has explained in its Reply why this option is not consistent with CP’s and BNSF’s

the carriers in Minot, North Dakota more closely complies with the Board's directive in the Reopening Decision to address "how NCA will be provided with a level of service commensurate with the broad representations underlying the Board's 2007 Decision." In sharp contrast, CP's Proposal expressly does not even try to present a plan that complies with the findings and conclusions of the Reopening Decision. Instead, CP, presents two alternatives that are based on the same CP arguments and assertions that were rejected by the Reopening Decision.<sup>10</sup> And, CP improperly utilizes its Proposal as a vehicle to make *new* arguments in opposition to the substantive findings of the Reopening Decision in violation of the Board's rules and precedent.

## **II. COMMENTS ON BNSF AND CP PROPOSALS**

### **A. BNSF Proposal**

BNSF has proposed that the "level of service commensurate with the broad representations underlying the Board's 2007 Decision" may be provided in the "most efficient and cost-effective manner" by BNSF and CP "expand[ing] their current haulage arrangement to allow for interchange of unit trains at Minot, ND, in addition to the manifest traffic interchanged there today."<sup>11</sup> In making this proposal, BNSF states it "remains committed to the 2007 joint petition representations made by BNSF and CP: to preserve and enhance competitive service to NCA on the Conveyed Lines."<sup>12</sup> In support of the BNSF Proposal, BNSF has included detailed testimony of Olivia Power, the Director of Contracts and Joint Facilities at BNSF. Ms. Power oversees the

---

representations and how it would be extremely inefficient and incompatible with the short timelines demanded by today's grain market, where 100+ car trains are typically shipped on a 10-day schedule to meet customer contracts. Also, CP's suggestion would adversely impact elevator capacity and grain quality. Reply at 19.

<sup>10</sup> These arguments and assertions were also restated in CP's Petition.

<sup>11</sup> BNSF Proposal at 1.

<sup>12</sup> Verified Statement of Olivia Power (Power V.S.) at 1.

administration of BNSF's haulage agreements and she has been involved in issues relating to BNSF's haulage service to NCA for several years.<sup>13</sup> In her statement, Ms. Power describes in great detail how the interchange of unit trains between BNSF and CP at Minot could be accomplished operationally. In doing so, she specifically addresses the issues and alleged operational obstacles raised by CP in the record of this proceeding (usually without evidentiary support).

NCA concurs with BNSF that the interchange of unit trains at Minot would be the most efficient and cost-effective way to comply with the Reopening Decision in the short term (and perhaps the long term as well). Such service would ensure that NCA would continue to be served by both railroads "in an equitable manner as market conditions change."<sup>14</sup> It would also "preserve the ability of BNSF to compete on a reasonable basis," as opposed to CP's alternatives discussed below.

As summarized in its Reply, NCA believes the Minot unit train operation should, at a minimum, involve CP and BNSF interchanging 100+ car unit trains for both outbound grain and inbound fertilizer, in addition to the continued provision of manifest service under the Haulage Agreement. To demonstrate that this would not cause undue disruption to CP's other rail service, NCA stated that it is willing to initially limit its unit train requests to a maximum of two 100+ car trains per month that would be allowed to interchange empty in Minot and be pulled to the Noonan Terminal Facility loop track for loading and return back to Minot. If an allocated car train was not tendered during a month, NCA would agree that its ability to request the train would not carry over to the following month. Accordingly, this initial program would place a cap of 24 on the 100+ car

---

<sup>13</sup> *Id.*

<sup>14</sup> Reopening Decision at 6.

trains for the calendar year and would result in less than 24 trains if fewer than two are shipped in a given month. However, NCA also stated that the plan should clarify that if a 100+ car train is ordered for delivery in a certain month but does not arrive until the following month, it would count as a unit train for the month in which it was intended to be used. In addition to the 100+ car unit train component of the plan, manifest grain car traffic and fertilizer car traffic would continue to also be provided to NCA by CP and/or BNSF. In regard to fertilizer, NCA requests that its monthly unit train allocation could be used to substitute a fertilizer shuttle train in lieu of grain as necessary and after providing appropriate notice to the railroads, despite the fact that fertilizer shuttle trains are typically smaller than 100+ cars.

NCA believes from its discussions with BNSF that the foregoing plan would be acceptable to BNSF, and that therefore the BNSF Proposal as supplemented by NCA's individual traffic requirements would comply with the Reopening Decision's directive to CP and BNSF in the short term. Accordingly, NCA asks the Board to (1) accept the BNSF Proposal as complying with the Reopening Decision, (2) direct BNSF and CP to begin interchanging intact unit trains at Minot, and (3) require the parties to submit periodic status reports on the implementation of the interchange operations at Minot.

NCA also reiterates that, while this arrangement appears to be the most consistent with the broad representations made by BNSF and CP underlying the 2007 Decision and the conclusions and findings of the Reopening Decision in the short term, there may be other ways in the future for BNSF and CP to achieve this result. For this reason, the Board should retain jurisdiction over this overall matter to review and approve, as necessary, additional options for fulfilling the intent and purpose of the 2007 Decision and the Reopening Decision if they make sense operationally, such as adding sidings to existing joint line tracks, or other cost-effective measures.

## **B. CP Proposal**

As stated above, CP's Proposal does not make any attempt to satisfy the Board's direction for BNSF and CP to come up with a plan that would provide NCA "with a level of service commensurate with the broad representations underlying the Board's 2007 Decision," and otherwise follow the Board's findings of fact and law. Rather, CP's Proposal first attempts to eliminate the option preferred by NCA and BNSF of interchanging unit trains at Minot based on alleged operational obstacles but also on arguments and factual claims the Board considered and rejected in the Reopening Decision. It then presents two alternatives that CP alleges "whereby BNSF would have the ability to serve NCA for a longer period of time and via unit train service."<sup>15</sup> Under either of these proposals the carriers' haulage arrangement would be extended to 2032.<sup>16</sup> However, in addition to attempting to limit any competition to a short 10-year term, both alternatives again purport to limit these operations to CP's view about what it and BNSF intended in 2007, a position that has been rejected by the Board in the Reopening Decision.

### **a. Interchanging BNSF Unit Trains at Minot**

CP's Proposal pointedly states that its alternatives "do not involve the exchange of BNSF unit trains at Minot, ND."<sup>17</sup> As justification for this glaring omission of the most cost-effective, efficient and reasonable way for BNSF to compete with CP for unit train service to NCA, CP

---

<sup>15</sup> CP Proposal at 1.

<sup>16</sup> NCA does not object to extending the term of a haulage agreement to 2032, provided that the STB makes it clear that at the end of the extended period the agreement and BNSF service would not terminate, but would continue consistent with the 2007 Decision, the Reopening Decision, and any subsequent decision in this proceeding establishing the terms for service. The Board should clarify that going forward, CP and BNSF may seek to modify the terms of their service to NCA, subject to not taking action that contravenes the commitments made that underpinned the 2007 Decision, but that neither can terminate the haulage agreement without seeking and obtaining authority from the Board to do so.

<sup>17</sup> CP Proposal at 1.

claims alleged operational and other issues that have previously been refuted by NCA and BNSF, and which BNSF and Ms. Power have further addressed and countered in great detail in the BNSF Proposal. As stated above, the Board should reject CP's attempts to throw unjustified and speculative roadblocks into what appears to be a feasible, efficient, and cost-effective way to fulfill the Board's directive in the Reopening Decision. It should direct CP and BNSF to implement the interchange of unit trains at Minot and require the parties to submit status reports to the Board on the implementation of this service plan.

Also, CP's pleadings make it abundantly clear that CP's exclusion of the interchange of BNSF unit trains at Minot because of alleged "interference with CP's main line operations or with its ability to serve other customers" is not really based on alleged operational hurdles. To the contrary, CP is really upset because it maintains BNSF is allegedly not paying enough under the haulage arrangement to share the capital costs CP incurred in rehabilitating the track. Once again, CP contends that its intention back in 2007 was far more limited and that its representations about preserved and enhanced competitive rail service should not have been taken seriously. Indeed, CP now seems to imply it "never would have agreed" to enter into the overall transaction in 2007 if interchanging unit trains at Minot was a possibility.<sup>18</sup> CP's attempt to resurrect these allegations and claims again in response to the Reopening Decision's directive to BNSF and CP is improper and should be rejected.

**b. CP's Alternative Proposals**

Similarly, CP's two alternative proposals are not offered in an effort to comply with the Reopening Decision but are rather alternatives CP deems acceptable solely to it, notwithstanding

---

<sup>18</sup> *Id.* at 2. Of course, there was no mention by either CP or BNSF of any service limitations in the Joint Petition they filed in 2007.

the fact that the Board has already categorically rejected its contentions. For example, CP states its “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.”<sup>19</sup> The allegation that BNSF expressly intended to relinquish its common carrier obligations in 2007 was raised for the first time by CP in its Petition, is not supported by any evidence, is indeed contradicted by BNSF’s and CP’s behavior and their Joint Petition in 2007.

The two alternatives are also based on CP’s flawed and disputed claims in its Petition that BNSF’s alleged abdication of its obligations “enabled [CP] to invest millions of dollars to address BNSF’s neglect and restore reliable service,” which enabled NCA to ship increased volumes and support “investment in a unit train facility,” thereby supposedly justifying CP’s Proposal only containing alternatives that would require BNSF to make substantial capital investments and payments to CP.<sup>20</sup> NCA has pointed out the flaws of this position in its Reply to CP’s Petition, namely that CP has glossed over the fact it has been amply rewarded for its investment by the revenues it has received from hauling increased volumes from NCA, that it never sought to exercise section 2.05 of the Haulage Agreement, by which CP could have required BNSF to add any additional trackage that would be required to provide the desired quantum of service to NCA, and that NCA invested \$37 million in the Noonan Terminal Facility in reliance upon its reasonable expectation of receiving unit train service from BNSF.<sup>21</sup>

---

<sup>19</sup> CP Proposal at 3.

<sup>20</sup> *Id.* at 3,8.

<sup>21</sup> *See* Reply at 14.

Similarly, while the heading of Section II of the CP Proposal declares “CP’s Proposals for Augmenting NCA’s Access to BNSF Service Options Fully Address the Board’s Objectives,” the ensuing discussion contains no discussion or explanation of what the “Board’s objectives” are or how CP’s proposals have addressed them. Nor does that discussion explain how CP has addressed the Reopening Decision’s findings that CP and BNSF should “ensure shippers would continue to be served in an equitable manner as market conditions change,” or how what CP has proposed preserves BNSF’s ability to “compete on a reasonable basis” with CP by being able to offer NCA unit train service and manifest service without limitations on the number of carloads.<sup>22</sup>

Because the two options are not offered for the purpose of complying with the Reopening Decision’s directive but are rather based on CP’s rejected positions about BNSF’s and CP’s representations and intentions, it should not be surprising that neither of the proposals would enhance competition between BNSF and CP. Both in fact appear to be economically and operationally infeasible, and even if implemented both would have the opposite effect in at least the short term of placing BNSF at a distinct competitive disadvantage to CP for unit train service. NCA’s comments on the two options are as follows:

#### **1. Niobe-Lignite Haulage**

This option would entail the reconstruction of BNSF’s line of railroad from Niobe, North Dakota to Milepost 47, where CP’s tracks connect to BNSF trackage. It would also include the rehabilitation of CP’s line of railroad between Milepost 47 and Lignite, North Dakota. Pursuant to this proposal, once these tracks were put back into service BNSF would deliver to and receive unit trains at Milepost 47, and then CP and/or the Dakota, Missouri Valley and Western Railroad,

---

<sup>22</sup> Reopening Decision at 6.

Inc. (“DMVW”) would conduct haulage operations between Milepost 47 and NCA’s facilities.<sup>23</sup> This option was also described in CP’s Petition as a commercial solution palatable to CP.<sup>24</sup> While this alternative has the potential to be operationally feasible, it is not an economically realistic option. First, it would require BNSF to now construct essentially redundant trackage to serve a limited market, a cost that would likely be prohibitive given NCA’s current traffic levels. Second, this option also cannot be implemented within a reasonable time frame. In its Proposal BNSF “estimates that restoring BNSF’s portion of the out-of-service Lignite – Niobe line (south of MP 47) could cost in excess of \$20 million, and the requisite upgrades would take years to complete.”<sup>25</sup> Added to this high cost and lengthy time frame for upgrading the necessary track is CP’s condition that BNSF also pay CP unspecified additional amounts “to contribute to the significant investments CP made in long-lived assets in the Lignite-Crosby Line.”<sup>26</sup> As BNSF explains in the BNSF Proposal, and CP obviously knows full well, the one or two unit trains per month NCA anticipates it will ship in the short term do not justify “an eight figure capital investment” and other unspecified costs CP would assess BNSF.<sup>27</sup>

## **2. Lignite-Bowbells Unit Train Haulage**

CP’s 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

---

<sup>23</sup> CP Proposal at 4.

<sup>24</sup> Petition at 4.

<sup>25</sup> BNSF Proposal at 5, Power V.S. at 4.

<sup>26</sup> CP Proposal at 7.

<sup>27</sup> Power V.S. at 4. Moreover, the Board’s predecessor, the Interstate Commerce Commission, previously recognized the need to minimize unnecessarily duplicative rail track construction when the public interest can be served by a single, jointly operated rail line. *Chicago and Northwestern Trans. Co. – Construction and Operation of a Line of Railroad in Niobrara and Goshen Counties, Wyoming and in Sioux and Scotts Bluff Counties, Nebraska*, 363 I.C.C. 906 (served July 17, 1981), 1981 WL 22667.

BNSF at Bowbells, ND, via a new connecting track that would link CP's Portal-Twin Cities mainline with BNSF's Niobe-Northgate branch.”<sup>28</sup> This option was not included in CP's Petition and was apparently not discussed with BNSF since the BNSF Proposal does not address it. However, NCA sees several reasons why this option does not comply with the Reopening Decision's findings and directive to BNSF and CP. First, this option would also require significant capital investments by BNSF to construct connecting tracks and sidings to support the interchange of unit trains.<sup>29</sup> Second, BNSF would again have to pay CP unspecified sums “to contribute to the significant investments CP made in long-lived assets in the Lignite-Crosby Line.” Third, CP's proposal is very restrictive, limiting BNSF's use of the new Bowbells interchange to only unit trains and forcing all manifest traffic to continue to be transported through Minot.<sup>30</sup> Accordingly, it seems highly doubtful to NCA that CP's second proposal would make any economic sense and again would not present a viable solution in the short term due to the timeframe for new track construction. Moreover, the restrictive limitations on the movement of unit trains and manifest cars under this proposal raise logistical and operational issues that it appears neither CP nor BNSF have addressed, and so the operational viability of this option cannot be known at this time.

In short, both of CP's proposals, which are offered only as solutions palatable to CP based on its rejected views of the 2007 transaction and BNSF's and CP's representations underlying the 2007 Decision, appear to be illusory in the short term because the one, or two, unit trains per month offered by NCA would not justify the substantial capital expenditures and the other costs CP would impose on BNSF. To the extent BNSF even considered accepting either proposal, which seems to

---

<sup>28</sup> CP Proposal at 6-7.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.*

be highly unlikely, BNSF would no doubt seek to recover the capital costs and payments to CP through NCA's rail rates (in addition to paying CP a haulage fee), which would render BNSF's alternative service prohibitively expensive and place BNSF (and NCA compared to other BNSF customers it competes with for grain products) at a distinct competitive *disadvantage*, an outcome of which CP was no doubt cognizant of when it made the two proposals.

BNSF's proposal to interchange unit trains at Minot is clearly the most efficient and least costly way to comply with the railroads' representations underlying the 2007 Decision in the short term. NCA does not dispute that either of CP's proposals might provide a potentially viable *future* means to comply with the Reopening Decision and the railroads' representations, if traffic levels of NCA (and perhaps other shippers) increase after BNSF unit train service via interchange at Minot is established and the parties operate under the new arrangement for a period of time. It could be that future volumes and service needs justify the capital investment contemplated by the two scenarios. NCA's view is that neither option should be foreclosed from the potential ways to implement the railroads' representations over the life of the Noonan Terminal Facility and for the transportation of other traffic that might be added to the Joint Line.

**c. Other Aspects of CP's Proposal**

Section II.C of the CP Proposal essentially again reargues CP's rejected positions about its intention for entering into the 2007 transaction. CP also asserts (again) the disputed allegations concerning the inability of CP and BNSF to interchange unit trains at Minot without interfering with CP's mainline operations and giving "BNSF's dispatchers a chokehold over the operations of its primary railroad competitor in the region on its busy Portal-Twin Cities mainline."<sup>31</sup> NCA

---

<sup>31</sup> CP Proposal at 15.

responded to those arguments in its Reply, but the Board should again reject them when considering CP's Proposal.

Section III of CP's filing should either be stricken from the document or its contents not given any consideration by the Board because it is an untimely and improper expansion of CP's Petition for Reconsideration and a blatant violation of the Board's procedural rules. Specifically, this section contains new arguments and allegations belatedly attacking the substance of part of the Reopening Decision, namely the decision of the Board concerning potential further action it might take in the event the railroads were unable to reach agreement on a joint plan to serve NCA in accordance with the Board's findings. Section III is simply new arguments and allegations that could have been, and therefore should have been, raised in CP's Petition, and so they are time-barred. They are also barred because the Board's procedural rules expressly limit petitions for reconsideration to 20 pages.<sup>32</sup> By including new arguments attacking the substance of the Reopening Decision in 7 pages of a filing that was not even requested or authorized by the Board, CP has belatedly expanded its Petition to nearly 30 pages. This obvious and intentional abuse of the Board's procedural rules should not be countenanced, and NCA formally asks the Board to either strike this section of CP's filing or ignore it.<sup>33</sup>

---

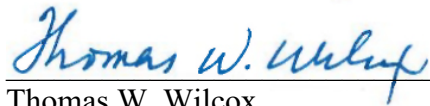
<sup>32</sup> 49 C.F.R. §1115.3(d).

<sup>33</sup> In addition to abusing the Board's rules and being contrary to basic fairness, CP's arguments are premature because the Board has not taken any action yet in response to the railroads' submissions, which action could be one (or more) of many available under the Board's authority to fashion appropriate relief. The Reopening Decision states one such action could include "imposing a service order." Reopening Decision at 6. On this point, NCA observes that CP cites no ICC or STB decisions or caselaw in support of its very narrow interpretation of 49 U.S.C. §11123 to preclude the Board from imposing a service order in this proceeding. In fact, the Board has interpreted its power to issue service orders under §11123 fairly broadly, even issuing such orders on its own initiative as allowed by §11123(b)(1). Docket No. FD 35524, *Canexus Chemicals Canada, L.P. v. BNSF Railway Company – Emergency Service Order* (served October 14, 2011).

### **III. CONCLUSION**

For all the reasons set forth above, the Board should (1) accept the BNSF Proposal as complying with the Reopening Decision, (2) direct BNSF and CP to begin interchanging unit trains at Minot, and (3) require the parties (BNSF, CP, and NCA) to submit periodic status reports on the implementation of the interchange operations at Minot. Further, the Decision implementing this solution should clarify that, while interchanging unit trains at Minot is the most cost efficient and operationally feasible way to implement the directive in the Reopening Decision based on current traffic levels and other current circumstances, there may be other ways in the future for BNSF and CP to comply with the findings and directives in the Reopening Decision. For this reason, the Board should retain jurisdiction over this matter to review and approve, as necessary, additional options for fulfilling the intent and purpose of the 2007 Decision, Haulage Agreement, and the Reopening Decision if they make sense operationally and are economically feasible. Finally, the NCA asks the Board to either strike Section III of CP's filing or disregard its arguments as untimely, violating the Board's rules governing petitions for reconsideration, and/or premature.

Respectfully submitted, .



Thomas W. Wilcox  
Kristine O. Little  
GKG Law, P.C.  
1055 Thomas Jefferson Street NW  
Suite 500  
Washington, D.C. 20007  
(202) 342-5248  
twilcox@gkglaw.com  
klittle@gkglaw.com

Attorneys for New Century Ag

March 22, 2021

### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 22nd day of March 2021, a copy of the foregoing Comments of New Century Ag on Railroad Proposals was served by email on all parties on the official Service List for Docket No. FD 35068.



---

Thomas W. Wilcox