

VIA ELECTRONIC FILING

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July 5, 2022

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

ENTERED
Office of Proceedings
July 5, 2022
Part of
Public Record

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:

On June 6, 2022 Soo Line Railroad Company d/b/a Canadian Pacific (“CP”) filed a Supplemental Proposal. On June 27, 2022, NCA filed a reply and BNSF filed a letter commenting on the Supplemental Proposal. In the interests of a complete record, CP respectfully request that the Board accept this letter.

NCA’s acceptance of the basic arrangement proposed by CP confirms that CP’s Supplemental Proposal would satisfy NCA’s demands for BNSF unit train service. NCA expresses concern that the trial period should include six trains (even if it takes longer than six months to achieve). CP agrees. Such a trial period should give the parties adequate experience with the arrangement to ensure that it is feasible in a variety of operating conditions and will not unduly interfere with CP mainline operations.

Notwithstanding the fact that CP’s Supplemental Proposal is based on BNSF’s representations in the BNSF Proposal regarding the obligations BNSF would have to avoid delays at Minot, BNSF opposes CP’s Supplemental Proposal because it includes a trial period and provisions that seek to hold BNSF accountable to its commitments. Instead, BNSF wants to lock in for the long term the untested arrangement with no consequences for BNSF, and no relief for CP, if the arrangement unduly interferes with CP’s operations. According to BNSF, the arrangement should not be tested because CP will be incentivized to sabotage the trial period. BNSF further argues that enforcement mechanisms are not necessary because, by entering into a long term arrangement, CP and BNSF’s interests will somehow magically align. BNSF’s own arguments highlight the inescapable fact that BNSF’s and CP’s interests here are not aligned and, without contractual enforcement mechanisms, will not be aligned.

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Without a trial period or enforcement mechanism, if the proposed unit train haulage arrangement proves infeasible or if BNSF fails to perform, CP, its customers, and Minot pay the price—BNSF pays nothing. It is CP's single-tracked mainline that would be disrupted with potentially catastrophic consequences for rail service and, it is downtown Minot's multiple grade crossings that would remain blocked. While it will always be in CP's interest to unclog the CP mainline as soon as possible—including during the trial period—BNSF has no such incentive. It faces no consequence for holding a BNSF unit train on CP's single-tracked mainline. In fact, it will frequently serve BNSF's commercial and operational interests to delay the exchange, e.g., if BNSF is short on crews, lacks available yard track to receive the train, or prioritizes other traffic (all of which are chronic occurrences with the exchange of manifest NCA haulage traffic in Minot). The trial period and enforcement mechanisms are essential to correcting this asymmetry in incentives and to protecting CP's mainline operations.

CP has now committed to enable NCA to receive precisely the BNSF unit train service it sought in this proceeding. BNSF now has multiple options in which to provide that service to NCA and to do so on reasonable commercial terms. If BNSF refuses to take advantage of any of these options to provide NCA service, that is an issue for another proceeding. This proceeding should be terminated.

Sincerely,

/s/ *David F. Rifkind*

Counsel for Soo Line Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2022, copies of the foregoing Letter were served by electronic mail on the following:

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