

SERVICE DATE – APRIL 11, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35068

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

Digest:¹ This decision removes this proceeding from abeyance and grants the petition of Soo Line Railroad Company d/b/a Canadian Pacific Railway to reconsider a 2020 Board decision that reopened this proceeding.

Decided: April 11, 2025

In 2007, the Board authorized Soo Line Railroad Company d/b/a Canadian Pacific Railway (CP) to acquire and operate the property interests of BNSF Railway Company (BNSF) in certain rail lines in North Dakota that were jointly owned by CP and BNSF. Soo Line R.R.—Acquis. & Operation Exemption—BNSF Ry. (2007 Decision), FD 35068 (STB served Sept. 7, 2007). In 2018, New Century Ag (NCA) filed a petition to reopen the exemption proceeding, which the Board granted. Soo Line R.R.—Acquis. & Operation Exemption—BNSF Ry. (2020 Decision), FD 35068 (STB served Dec. 29, 2020) (with Board Member Fuchs dissenting). On February 8, 2021, CP filed a petition to reconsider the 2020 Decision. For the reasons discussed below, CP's petition for reconsideration will be granted.

BACKGROUND

In the 2007 Decision, the Board granted the joint petition of CP and BNSF to allow CP to acquire full ownership of 35.26 miles of rail lines (the Joint Line) consisting of (1) a 32.54-mile rail line located between BNSF milepost 89.5 at Crosby, N.D., and BNSF milepost 56.96 at Lignite Junction, N.D.; (2) the 1.16-mile connecting track located between CP milepost 549.64 at Rival, N.D., and CP milepost 550.8 at Lignite Junction; (3) the 1.07-mile connecting track located between BNSF milepost 64.5 at Kincaid, N.D., and CP milepost 558.28 at Columbus, N.D.; and (4) the 0.49-mile connecting track at Crosby extending from CP milepost 582.35 to the original CP main line extending west to Whitetail, Mont. 2007 Decision, FD 35068, slip op. at 3. The 2007 Decision also authorized CP to acquire a 9.96-mile rail line located between milepost 56.96 at Lignite Junction and milepost 47.0 near Lignite (the Joint Line and this 9.96-mile rail line are collectively referred to as the Conveyed Lines).

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

The 2007 Decision stated that CP would continue to operate as it had been operating at the time of the decision, and that BNSF, through a Haulage Service Agreement with CP (Haulage Agreement), would retain the right to serve all customers on the Conveyed Lines.² Id. The 2007 Decision noted that there were four rail shippers located on the Conveyed Lines, one of which was NCA, a farmer-owned co-operative with grain elevator facilities located at Crosby and Noonan, N.D., that was jointly served by BNSF and by CP through Dakota, Missouri Valley and Western Railroad, Inc. (DMVW).³ As the decision explained, according to CP and BNSF, “[t]he rail options of [NCA] . . . will be unaffected by the proposed transaction. [NCA] will retain access to [CP] by way of DMVW and will retain its present access to BNSF through [CP] (via DMVW).” Id. at 2. The decision also explained that, according to CP and BNSF, the purpose of the proposed transaction was “to foster more efficient and economical operations on the Conveyed Lines and in the region while, at the same time, preserving competitive options for the active customers located on the Joint Line and enhancing competition for two active customers located on the [9.96-mile segment].” Id. at 3. Furthermore, the Joint Line tended to flood in the spring, which had caused BNSF to impose an embargo until repairs could be made. Id. at 4. And, as the 2007 Decision stated, upon completion of the proposed transaction, DMVW would make repairs to the Joint Line to enhance service. Id. The transaction was supported by NCA and the other shippers with facilities located on the Conveyed Lines. Id. at 2.

On December 21, 2018, NCA filed a petition to reopen, or in the alternative, to revoke under 49 U.S.C. § 10502 the exemption granted by the Board. NCA asserted that CP and BNSF made representations in their Joint Petition that the transaction would preserve competitive rail service on the Conveyed Lines, and that those representations had not been realized. (See NCA Pet. 6-8.) NCA claimed that rail service to NCA had been “seriously degraded by CP’s refusal to let BNSF provide badly needed rail service to NCA,” and that these service problems “threaten the viability of both the NCA and its farmer members.” (Id. at 3.) According to NCA, access to BNSF to provide service to various markets was necessary and, without unit train service from BNSF, NCA often did not have access to enough cars to move grain out of the Noonan and Crosby elevators. (Id. at 7, 10, V.S. Michelson 3.) NCA stated that, with the elevators filled to capacity, it could not purchase the supplies of grain harvested by local farmers, including members of the co-operative. (NCA Pet. 10.) NCA explained that the facilities at Noonan were expanded to accommodate unit train service and that, with insufficient cars to empty the elevator, NCA was unable to purchase the volume of grain for which the investment was made. (Id., V.S. Michelson 3, 17.)⁴

² An unredacted copy of the Haulage Agreement was included with the 2007 CP-BNSF joint petition for exemption, filed July 16, 2007 (Joint Petition). (See Joint Pet., Ex. G.)

³ DMVW is a short line railroad that operates over the Joint Line as part of DMVW’s lease and operation of other CP-owned rail lines in the region. (See Joint Pet. 6.)

⁴ By decision served on April 22, 2019, the Board held the proceeding in abeyance to allow NCA to consider options for relief under certain statutory provisions and asked the parties whether they were interested in participating in Board-sponsored mediation. The Board, noting the responses from the parties, removed the proceeding from abeyance and held an oral argument on August 20, 2019, where NCA, CP, and BNSF presented arguments. By decision served on November 27, 2019, the Board ordered the parties to participate in Board-sponsored mediation.

CP replied in opposition to NCA's petition, arguing that reopening an administratively final decision involving a minor transaction 11 years after consummation would be unprecedented. (CP Reply 2, Feb. 4, 2019.) CP stated that the Haulage Agreement that accompanied the petition for exemption provided that CP would handle BNSF cars in manifest service, which was the level of service NCA was receiving at the time of the transaction in 2007. (*Id.* at 2, 8, V.S. Hubbard 6.) CP asserted that, because of capacity constraints at the Minot Interchange, it requested that BNSF limit its haulage traffic to a weekly maximum of 50 cars in each direction and a daily volume of no more than 15 cars. (CP Reply 12, V.S. Hubbard 8 (citing Ex. E), Feb. 4, 2019.) CP argued that NCA was informed, while the facility expansion at Noonan was still in the planning stage, that NCA would not have access to BNSF unit trains. (CP Reply 15, Feb. 4, 2019.) CP also disputed NCA's allegations concerning the availability of CP unit train service and described its Dedicated Train Program, under which customers can contract with CP on a first-come, first-served basis to receive 100-car unit train service. (*Id.* at 15-16.) According to CP, NCA's goal was not "a return to the conditions that existed before the transaction," but rather to obtain "access to BNSF unit trains service." (*Id.* at 2.) Finally, CP stated that existing customers continue to enjoy access to both CP and BNSF through the Haulage Agreement, despite the fact that it expressly provided that the railroads would have the right to terminate that arrangement at the beginning of 2017. (*Id.* at 8.) CP explained that the Haulage Agreement was extended through a supplemental agreement executed by CP and BNSF on May 11, 2018. (*Id.* at 12.)

In the 2020 Decision, the Board granted NCA's petition to reopen the 2007 exemption proceeding, finding that NCA raised "serious concerns about the restrictions CP [had] placed on the type and level of service it provides as well as NCA's access to BNSF." 2020 Decision, FD 35068, slip op. at 1. Specifically, the Board found that "CP's exceedingly narrow application of the Haulage Agreement" and its actions after the 2007 Decision had limited competitive service by restricting BNSF carload service and refusing BNSF unit trains in interchange. 2020 Decision, FD 35068, slip op. at 5. The Board found these restrictions to be contrary to CP's "broad representations" on which the Board relied in its 2007 Decision, that competitive options would be preserved for shippers on the Joint Line, including NCA. 2020 Decision, FD 35068, slip op. at 5. The Board concluded that these restrictions, "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," amounted to changed circumstances sufficient to justify reopening. *Id.* at 6. The Board directed CP and BNSF to engage in negotiations and inform the Board how NCA would be provided with a level of service commensurate with the broad representations underlying the Board's 2007 Decision. 2020 Decision, FD 35068, slip op. at 6. The Board noted that, if CP and BNSF were unable to reach an agreement, or if the proposed revisions would not adequately address the Board's competitive concerns, the Board

By letter dated March 17, 2020, the mediators informed the Board that mediation ended without resolution of the issues in the case.

would consider further action in a future decision, including imposing a service order should it be found necessary. Id.⁵

On February 8, 2021, CP filed a petition for reconsideration of the 2020 Decision. CP argues that, in finding that limits on BNSF traffic were inconsistent with the “broad representations” made in the 2007 proceeding, the 2020 Decision ignores the context of such representations and the underlying scope of the transaction—that BNSF transferred ownership of the Conveyed Lines to CP, thereby extinguishing BNSF’s common carrier obligations “as well as its maintenance obligations on the then dilapidated lines.” (CP Pet. 1-2.) CP further argues that, in return, BNSF received a grant of limited haulage rights for ten years. (Id. at 2.) Upon acquiring the Conveyed Lines, CP states that it invested and upgraded the Conveyed Lines, “enabling far more reliable and efficient rail service.” (Id. at 3.) CP asserts that its investments in the Conveyed Lines and the grant to BNSF of limited haulage rights not only preserved but enhanced rail service for NCA traffic. (Id.)

CP asserts that, consistent with the plain language of the Haulage Agreement, it has restricted large blocks of cars and unit trains moving in haulage due to capacity constraints. (Id. at 13; see also id. at 6-7 (explaining that the Haulage Agreement’s volume and temporal limits account for facility constraints and potential congestion at Minot).) Moreover, CP argues that its representations in the Joint Petition regarding BNSF’s rights under the Haulage Agreement comported with the agreement’s limitations, namely that the terms addressed existing or present traffic and service in 2007, not “unit train traffic—a service that did not then exist on the line from a facility that also did not then exist.” (Id. at 13-14.)

CP further contends that the transaction would have met the exemption requirements of 49 U.S.C. § 10502 even without an expansion of BNSF’s rights. (CP Pet. 14-17.) CP asserts that requiring an expansion of BNSF rights now would be inequitable in light of the time elapsed since the 2007 Decision and CP’s reliance of the finality of the approved exemption in making significant investments on the lines. (CP Pet. 17-18.) Lastly, CP asserts that the 2020 Decision is inconsistent with the rail transportation policy (RTP) under 49 U.S.C. § 10101. (CP Pet. 18-20.)

On March 1, 2021, NCA filed in opposition to CP’s petition for reconsideration, asserting that CP has failed to allege any specific material error that the Board committed, and that CP’s arguments amount to general complaints that the Board did not reach the conclusions that CP wanted or are attempts to reargue positions that the Board previously rejected. (NCA Reply 4-6.) NCA contends that CP improperly raises a new argument that BNSF intended to surrender its common carrier rights and obligations in exchange for haulage rights as part of its “bargain” with CP, which NCA alleges is not supported by the record. (Id. at 6-8.) NCA argues that the 2020 Decision correctly held that the rights and obligations of CP and BNSF are not governed solely by the terms of the Haulage Agreement. (Id. at 9-13.) Lastly, NCA states that

⁵ Although the Board’s order directed CP and BNSF to submit a joint proposal, CP and BNSF were unable to reach agreement and filed separate service proposals on March 1, 2021. On June 6, 2022, CP filed a supplemental service proposal.

the interchange of 100+ cars between CP and BNSF at Minot is operationally and economically feasible, contrary to CP's claims. (Id. at 17-21.)⁶

DISCUSSION AND CONCLUSIONS

A party may seek reconsideration of a Board decision by submitting a timely petition that presents new evidence or substantially changed circumstances that would materially affect the case, or demonstrates material error in the prior decision. 49 U.S.C. § 1322(c); 49 C.F.R. § 1115.3(b). If a party has presented no new evidence, changed circumstances, or material error that “would mandate a different result,” then the Board will not grant reconsideration. Montezuma Grain Co. v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); see also Canadian Nat'l Ry.—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 5 (STB served Oct. 30, 2017). When asserting material error, “[a] party must do more than simply make a general allegation of material error and repeat its previous arguments; it must substantiate its claim of material error.” Reasonableness of BNSF Ry. Coal Dust Migration Tariff Provisions, FD 35557, slip op. at 4 (STB served May 15, 2015) (citing Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R., FD 35081, slip op. at 4 (STB served May 7, 2009)).

The Board finds that the 2020 Decision materially erred in determining that CP's restrictions on BNSF carloads and the resulting impact on NCA's rail options constituted a “change in circumstances” that warranted reopening. The 2020 Decision suggests that the service restrictions that CP imposed on BNSF were inconsistent with the “broad representations” made in the Joint Petition concerning the preservation of competitive options. 2020 Decision, FD 35068, slip op. at 5. But those restrictions are consistent with the service framework established by the Haulage Agreement, which was part of the record before the Board at the time of the 2007 Decision. Moreover, the record indicated that that Haulage Agreement would govern future access by BNSF. The Joint Petition explicitly stated several times that customers' access to BNSF would be “via,” “through,” pursuant to,” or “because of” the Haulage Agreement or the related haulage operations. (Joint Pet. 4, 6, 7, 11, 13.) Further, in support of the transaction, petitioners included a letter from NCA indicating its understanding that CP, via DMVW, would “handle existing BNSF traffic through a haulage agreement.” (Id., Ex. 5, Letter from NCA.) Representations regarding the preservation of rail options flowed from the Haulage Agreement and did not create additional service obligations outside those terms. And the Board did not impose any competition-related conditions in the 2007 Decision.

The 2007 Decision relied on the Haulage Agreement and the associated representations in approving the transaction and determining the transaction's preservation of competitive options. In finding that the transaction would promote the RTP under § 10101, the 2007 Decision noted that BNSF's traffic would move “in conjunction with [CP] pursuant to the Haulage Agreement,” thus “creating a greater efficiency” in operations and “improving service for customers on the

⁶ On December 14, 2021, the Board granted CP and NCA's joint request to place this proceeding in abeyance until January 31, 2022, to allow settlement negotiations. By a series of decisions, the abeyance period was extended until May 20, 2022. On June 6, 2022, CP and NCA filed a joint status report. The parties state that they were unable to reach a resolution, and they ask for the proceeding to be removed from abeyance. CP and NCA's request will be granted.

Conveyed Lines.” 2007 Decision, FD 35068, slip op. at 4. In determining whether regulation was necessary to protect shippers from the abuse of market power, the 2007 Decision found that the transaction would not result in a loss of rail competition because BNSF would retain its right to service customers “through the Haulage Agreement,” resulting in “no material change in the level or nature of service provided to those shippers.” Id.

Despite the Haulage Agreement underlying the Board’s understanding of the transaction and the 2007 Decision’s findings, the 2020 Decision ignores the provisions of the Haulage Agreement in finding that “the competitive rail options have been limited far more than the Board or affected shippers could have expected.” See 2020 Decision, FD 35068, slip op. at 6. Limitations on BNSF’s haulage volumes due to capacity constraints are consistent with and contemplated by the Haulage Agreement, which expressly conditions BNSF haulage service on CP’s existing train capacity. (See Tr. 164-67 (Aug. 20, 2019) (BNSF agreeing that the Haulage Agreement limited its traffic to existing train capacity).) Specifically, the Haulage Agreement states that CP would handle BNSF cars in “existing” CP train service and that BNSF’s purchase of haulage services would be “subject to [CP]’s existing available train capacity.” (Joint Pet., Ex. G, Haulage Agreement, §§ 2.01, 2.04.) The Haulage Agreement further provides CP discretion as to whether to handle BNSF traffic that “exceeds available capacity on [CP]’s existing train service,” stating that CP “may at its discretion permit the operation of BNSF Haulage Cars in excess of the existing train service capacity” and requiring BNSF to pay for “Capacity Improvements” deemed necessary by CP to accommodate additional trains. (Id., Ex. G, Haulage Agreement, § 2.05.) Moreover, at the time of the 2007 Decision, neither the Board nor the parties could have contemplated indefinite BNSF access. There was a potential time limit under the Haulage Agreement, which provided for a ten-year term with either party having the right to terminate after the initial term. (Id., Ex. G, Haulage Agreement, §§ 9.01, 9.02.)

According to CP, at the time of entering the Haulage Agreement, all traffic moving on the Joint Line, including NCA traffic, was manifest traffic, and CP and BNSF did not contemplate handling BNSF unit trains on the Joint Line. (CP Reply 8, Feb. 4, 2019.) CP states that the Haulage Agreement contained volume and temporal limits due to the facility constraints and potential congestion at Minot and that a “key rationale for the [H]aulage [A]greement was that the relatively small volumes of BNSF traffic” moving on the Joint Line could be handled in existing CP trains. (CP Pet. 5, 6-7.) Thus, when BNSF haulage volumes on the Joint Line “quickly exceeded the volumes that CP expected based on BNSF’s prior representations,” and overwhelmed CP’s capacity, (CP Reply 10-11, Feb. 4, 2019), the 2020 Decision’s finding that the restrictions that CP imposed—limiting BNSF weekly haulage to 50 cars in each direction and no more than 15 cars daily—were an “exceedingly narrow application” of the Haulage Agreement, is not supported by the agreement language itself. Likewise, the 2020 Decision failed to fully reckon with the fact that CP’s refusal to haul BNSF unit trains from NCA’s facilities—a “type of service that was not at issue at the time of the [2007] transaction,” 2020 Decision, FD 35068, slip op. at 6—could be read as consistent with the Haulage Agreement provisions, as traffic on the Joint Line in 2007 consisted only of manifest traffic. (See Tr. 195 (Aug. 20, 2019) (BNSF acknowledging that it was “not bringing in unit trains prior to 2007,” and that the service it provides now “via CP haulage” is similar to the service it provided then).)

The 2020 Decision's conclusion that restrictions contemplated by the Haulage Agreement, combined with "normal developments" in the market that have led to NCA service requests that were "not at issue at the time of the transaction," constituted substantially changed circumstances sufficient to justify reopening was material error. See 2020 Decision, FD 35068, slip op. at 6. These circumstances were compatible with the record before the Board at the time of the 2007 Decision. NCA itself supported the transaction and did not request any competition-related conditions beyond the 10-year Haulage Agreement. Although the Board recognizes the potential benefits to NCA regarding its ability to receive unit train service from BNSF, especially considering its substantial investment after the 2007 Decision, the Board maintains other potential avenues for shippers to pursue such relief in these circumstances.⁷ Without having imposed any competition-related conditions in the 2007 Decision, the 2020 Decision's underlying rationale does not provide a sufficient basis for requiring CP and BNSF to submit service proposals "to fulfill the findings in [the] 2007 Decision" with the prospect of "further action in a future decision, including imposing a service order should it be found necessary." 2020 Decision, FD 35068, slip op. at 6-7. The 2020 Decision premised that requirement on providing NCA "a level of service commensurate with the broad representations underlying the Board's 2007 Decision," 2020 Decision, FD 35068, slip op. at 6, but as discussed, these "broad representations" were firmly rooted in the Haulage Agreement terms, which do not guarantee NCA the level or type of service from BNSF it now seeks (i.e., unit train service).⁸

Further still, in considering the reopening of exemption proceedings, the Board has weighed "concerns for administrative finality, repose, and detrimental reliance" against "any benefits to be derived from reopening and revocation of the exemption." Ind. Hi-Rail Corp.—Lease & Operation Exemption—Norfolk & W. Ry. Line Between Rochester & Argos, Ind.—Exemption from 49 U.S.C. 10761, 10762, & 11144, FD 32162, slip op. at 5 (STB served Jan. 30, 1998); see also Tongue River R.R.—Constr. & Operation—in Custer, Powder River & Rosebud Cntys., Mont., FD 30186 (Sub-No. 3), slip op. at 5 (STB served June 15, 2011) (citing Ariz. Pub. Serv. Co. v. Atchison, Topeka & S.F. Ry., 3 S.T.B. 70, 75 (1998) ("[W]e must approach

⁷ To be clear, the Board is not prejudging any potential future case brought by NCA, which would be decided under applicable standards. The Board remains ready to consider any alternative claims seeking similar relief, should NCA choose to pursue them.

⁸ NCA argues that, regardless of the specific terms of an agreement between carriers, once the Board asserts jurisdiction, the terms of a private agreement, including provisions limiting the term of the agreement, are applied subject to the public interest. (NCA Reply 10 (citing Thompson v. Tex. Mexican Ry., 328 U.S. 134 (1946)).) In general, the Board has held that a rail carrier's operations that are licensed by the Board cannot be abandoned without Board authority, notwithstanding any contractual terms. See, e.g., Cent. R.R. of Indianapolis—Lease & Operation Exemption—Norfolk S. Ry., FD 36436, slip op. at 2 n.2 (STB served Oct. 8, 2020); Great Walton R.R.—Pet. for Declaratory Ord., AB 1242 (Sub-No. 1), slip op. at 8 (STB served June 23, 2020). Although the Board has considered the degree to which privately negotiated haulage agreements can resolve competitive concerns in licensing proceedings, here the Board did not impose the haulage agreement as a condition to this transaction and only considered the impact of the haulage agreement by its express terms. And haulage agreements otherwise are "not regulated by the Board." See, e.g., Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry., FD 35873 et al., slip op. at 26 (STB served May 15, 2015).

petitions to reopen . . . cautiously, on a case-by-case basis, striving to achieve an appropriate balance between the interests of fairness to all parties and of administrative finality and repose.”)). Concerns of detrimental reliance and the need for administrative repose become greater the longer the time between a Board decision in a case and the time a petition for reopening is filed. See Ind. Hi-Rail Corp., FD 32162, slip op. at 4. The 2020 Decision reopened a proceeding 13 years after the exemption took effect but did not consider the significant time that had elapsed nor CP’s reliance on the finality of the approved transaction and its significant investment since 2007 in rehabilitating the Conveyed Lines. (See CP Pet. 6; Tr. 198-99 (Aug. 20, 2019) (BNSF agreeing that “CP has made investments in the track to provide a higher level of service that would not have been made otherwise [but] for the transaction”).) Based on the record in this case, the significant impacts of disturbing a long-closed transaction to consider significant new conditions are not justified and would undermine RTP goals. See 49 U.S.C. §§ 10101(2) (minimizing the need for federal regulatory control over the rail transportation system); 10101(9) (encouraging honest and efficient management of railroads); 10101(15) (providing for the expeditious handling and resolution of Board proceedings).

The Board therefore finds that the 2020 Decision materially erred in finding CP’s service restrictions and the resulting impact on NCA’s service options to be substantial changes in circumstances that justified reopening. For the reasons given above, CP’s petition for reconsideration will be granted, and the 2020 Decision will be vacated. Moreover, because NCA’s petition to reopen the proceeding was based on the arguments addressed above regarding representations made at the time of the 2007 Decision,⁹ its request for reopening will also be denied. Because the Board is denying reopening, it need not address NCA’s arguments for revocation. See 2020 Decision, FD 35068, slip op. at 4 (“When, as in this proceeding, an exemption has become effective, a revocation request is treated as a petition to reopen and revoke and will be granted only if the petition presents new evidence, substantially changed circumstances, or material error in the decision being challenged.”). In any event, further regulation is not needed to carry out the RTP so as to justify revocation under 49 U.S.C. § 10502(d). The 2020 Decision did not make any findings regarding whether regulation was required to carry out the RTP. NCA supported the transaction in 2007, which only granted BNSF access under the Haulage Agreement. (See Joint Pet. Ex 5, July 16, 2007.) And CP has brought anticipated benefits to bear including substantial investment and rehabilitation of the Joint Line, growing online traffic. (CP Pet. 1-2.) Rather, as explained above, the RTP counsels in favor of not disturbing the exemption in this case.

⁹ As discussed, NCA argued that reopening was warranted because representations made in 2007 were “no longer accurate.” (NCA Pet. 12.) And although NCA complained generally about “CP’s non-competitive rates” and “artificial limits on the quantity of BNSF cars [CP] would accept,” (*id.* at 9-10), it nonetheless confirmed that this proceeding “is not a matter of rail rates or car supply,” (*id.* at 15). Any other “disputed factual issues and arguments presented by the parties,” 2020 Decision, FD 35068, slip op. at 5 n.4, are otherwise resolved by the Board’s decision to deny the petition to reopen and/or revoke the 2007 exemption, for the reasons given herein.

It is ordered:

1. This proceeding is removed from abeyance.
2. CP's petition for reconsideration is granted.
3. The 2020 Decision is vacated.
4. NCA's petition to reopen, or in the alternative, to revoke the exemption granted by the Board in this docket, is denied.
5. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.