



ATTORNEYS AT LAW
THE FOUNDRY BUILDING ♦ 1055 THOMAS JEFFERSON STREET, NW ♦ SUITE 500 ♦ WASHINGTON, D.C. 20007
TELEPHONE: 202-342-5200 ♦ FACSIMILE: 202-342-5299

RICHARD BAR
BRENDAN COLLINS
EDWARD D. GREENBERG
MATTHEW T. JOURNY
KATHARINE FOSTER MEYER
DAVID K. MONROE
TROY A. ROLF
KEITH G. SWIRSKY
THOMAS W. WILCOX
CHRISTOPHER B. YOUNGER

OLIVER KRISCHIK
KRISTINE O. LITTLE
RYAN D. SWIRSKY

OF COUNSEL:
STEVEN JOHN FELLMAN

MINNESOTA OFFICE:
114 FIRST STREET SOUTH
BUFFALO, MN 55313
(T) 763-682-6620 (F) 763-682-6261

WRITER'S DIRECT E-MAIL ADDRESS
EGREENBERG@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER
202-342-5277

January 25, 2019

246995

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
January 28, 2019
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 December 20, 2018, we filed confidential and public versions of a Petition to Reopen on behalf of New Century Ag. The purpose of this letter is to revise the confidential designations of material found on pages 8, 14 and 15 of the Verified Statement which accompanied the Petition. Specifically, we would like to make public the redacted material contained in paragraphs 16, 29 and 31.

We are accordingly enclosing corrected public versions of these pages and request that the original pages be replaced with the corrected pages.

Please let me know if you have any questions concerning this.

Very truly yours,



Edward D. Greenberg

cc: All Parties



An International Association of Independent Law Firms in Major World Centers

REDACTED VERSION

<u>Year</u>	<u>CP Cars</u>	<u>BNSF Cars</u>
2007	363	308
2008	230	298
2009	348	692
2010	105	1487
2011	43	480
2012	175	520
2013	154	422

17. Starting in 2011, in part in reliance upon the presence of competitive dual service from both BNSF and CP, NCA made substantial enhancements of the rail infrastructure to its grain elevators at Crosby and Noonan. Initially, NCA invested over \$4 million at Crosby in order to modernize the elevator and improve the railcar loading apparatus. Then, in 2014 NCA spent an additional \$37 million at the Noonan elevator and the fertilizer facility to make it a state-of-the-art facility that would accommodate unit train service. The two photos below show both a close-up of the grain elevator at Noonan and that NCA's construction included a significant amount of rail infrastructure, including a 1.5-mile long circle track that accommodate the movement of 110 car unit trains to the grain elevators and fertilizer facility.

18. The circle track at Noonan was constructed by an engineering firm which I understand was affiliated with the DMVW. The engineering plans were also shared with and approved by at least CP. I do not know whether CP in turn shared the plans with BNSF.

REDACTED VERSION

CP and BNSF working cooperatively and honoring the terms of the 2007 Exemption to provide competitive service from both railroads. In addition, NCA had no need for the extra shuttle train during the 2015-2017 period in view of a reduction in grain production in this region due to adverse weather conditions and crop issues that year.

29. Although the Noonan grain elevators can accommodate 2,800 cars per year since NCA made the infrastructure investment, and our member farmers and other producers can provide the necessary volumes, we are not getting anything close to that volume of cars. The following table reflects the number of CP and BNSF cars that NCA have received and used at both Noonan and Crosby since 2014.

<u>Year</u>	<u>CP Cars</u>	<u>BNSF Cars</u>
2014	824	1,219
2015	1,358	649
2016	1,559	614
2017	1,881	199
2018 (Jan-Sept)	1,014	183

30. The limitations CP has imposed on BNSF's ability to provide service to NCA is also reflected in the relative market shares these railroads have of our outbound grain business. The previous table, showing the period of 2014 through the third quarter of 2018, demonstrates BNSF went from a market share of almost 50% in 2014 to approximately 10% in 2017 and 15% for the 2018 period.

31. The BNSF reduction in market share has been even more evident when one reviews the entire post-exemption approval period. For the pre-2014 time period, the numbers of

REDACTED VERSION

cars NCA was able to load out of its Noonan and Crosby facilities are reflected in the following table:

<u>Year</u>	<u>CP Cars</u>	<u>BNSF Cars</u>
2004	680	1,162
2005	1,216	670
2006	1,111	647
2007	888	693
2008	582	891
2009	766	1,727
2010	358	2,607
2011	153	1,165
2012	690	1,296
2013	611	992

32. These car numbers show that BNSF had the dominant share of NCA's outbound business for many years, but that it was reduced sharply beginning in 2015.

33. Some of this fluctuation in market shares can be explained by car supply considerations during busy periods. But the predominant reason for the diminishing role BNSF has with respect to NCA's grain is the arbitrary and inappropriate limitation CP has imposed that limits our ability to access BNSF's service and the uncertainty CP caused by claiming the Haulage Agreement would expire. Despite the reduction in grain production during the 2015-2017 period, there was still ample grain to be purchased and shipped. But we were hamstrung in requesting BNSF service, as CP was rather explicit that we might only be able to receive service