

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

Decided: July 19, 2019

On December 21, 2018, New Century Ag (NCA) filed a petition to reopen this proceeding or, in the alternative, to revoke under 49 U.S.C. § 10502 the exemption authorizing Soo Line Railroad Company d/b/a Canadian Pacific Railway (CP) to acquire and operate the property interests of BNSF Railway Company (BNSF) in 35.26 miles of rail lines jointly owned by CP and BNSF and a contiguous 9.96-mile rail line solely owned by BNSF. By decision served on March 19, 2019, a proceeding was instituted under 49 U.S.C. § 10502(d).

By decision served on April 22, 2019, the Board, noting that NCA's allegations raise concerns that may implicate other statutory provisions, held the proceeding in abeyance to allow NCA to consider all options for relief.¹ Following that decision, NCA informed the Board that it does not seek to initiate a new proceeding under other statutory provisions. (NCA Letter 2-3, Apr. 26, 2019.)

In light of this submission and the parties' responses regarding their interest in participating in Board-sponsored mediation, the Board will remove this proceeding from abeyance and schedule an oral argument on August 20, 2019, in Washington, D.C. The Board expects NCA, CP, and BNSF to be prepared to discuss their respective arguments and evidence and to respond to questions from the Board. Each party will have 20 minutes of argument time. NCA, as petitioner, may reserve part of its time for rebuttal if it so chooses. Details and instructions for participation and attendance at the hearing, including the time and specific location, will be issued in a separate decision.

¹ The parties were also asked to inform the Board if they were interested in participating in Board-sponsored mediation. With respect to mediation, NCA and BNSF state that they are agreeable to Board-sponsored mediation. (*Id.* at 4; BNSF Letter 1, Apr. 26, 2019.) CP states that it is willing to engage with NCA either directly or through the Board's Rail Customer and Public Assistance program, but that it has no interest in reopening negotiations with BNSF. (CP Letter 3, May 15, 2019.) On June 27, 2019, NCA filed a letter objecting to CP's proposed exclusion of BNSF from mediation and requesting that the Board either order three-party mediation or issue a decision on the merits. (NCA Letter 2, June 27, 2019.) The Board has not ordered mediation at this time.

It is ordered:

1. This proceeding is removed from abeyance.
2. An oral argument will be held in this proceeding, as discussed above.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.