

RAILROAD WEEK IN REVIEW

February 23, 2024

“BNGR has, in its short time under current ownership, operated locomotives not safe for use under Federal law (49 U.S.C. 20701, 49 CFR part 229), allowed locomotives to be operated by persons not properly qualified as engineers in accordance with FRA regulations (49 CFR part 240), and failed to qualify any engineers or conductors under any qualification program in accordance with FRA regulations (49 CFR parts 240 and 242, respectively).” — FRA Emergency Order

“Given the challenged outlook facing NSC currently, we believe it is likely that the current Board will be under pressure. Though we acknowledge that the existing team at NSC has faced external shocks that exacerbated weak performance, shareholders could look past the uncontrollables in favor of a fresh slate and revised strategy.” — “NSC Activist Takes Another Step Forward,” Jason Seidl, Feb 20

“At Ancora's request, members of the board carefully evaluated and interviewed all of Ancora's nominees... The board will continue its careful review of Ancora's nominees with a focus on advancing our goal of building the safe, reliable, and resilient railroad. The board will present its formal recommendation on the nominees in the 2024 proxy statement. The date of the company's 2024 Annual Meeting has not yet been announced. Norfolk Southern shareholders are not required to take any action at this time.” — NS Press Release, Feb 20

Oklahoma’s Blackwell Northern Gateway Railroad (BNGR) is the kind of bad actor the shortline community really doesn’t need, based on the FRA’s shutting them down over a series of CFR violations. The 37-mile line is owned by the Oklahoma Department of Transportation (ODOT) and the Blackwell Industrial Authority (BIA). UP and BNSF are the Class I connections.

Previously the property operated as the Blackwell & Northern Railway (BNR), which began operations in November 2002, replacing the prior operator, South Kansas and Oklahoma RR. At some point the operator became US Rail Partners, Ltd., which appears from its website to be a very minor player in the shortline holding company space. According to *The Federal Register* ODOT stepped in last fall.

It hasn’t gone well. According to the documentation I’ve seen, the FRA became aware of “several serious incidents that have occurred following the change in BNGR ownership, including two derailments and a highly dangerous movement of on-track equipment

through an unprotected highway-rail grade crossing, narrowly missing a collision with a passenger vehicle.”

Then last December the FRA began investigating BNGR's operations following a recent derailment, finding that “BNGR is operating with a complete disregard for the safety of the public and has not taken corrective action to resolve safety issues identified by FRA as posing imminent risks of injury or death.”

Moreover, “BNGR has, in its short time under current ownership, operated locomotives not safe for use, allowed locomotives to be operated by persons not properly qualified as engineers in accordance with 49 CFR part 240, and failed to qualify any engineers or conductors under any qualification program in accordance with FRA regulations...

“BNGR has maintained no records of track safety inspections, no records of employees designated and qualified to perform track inspections, and no records that roadway workers have been trained to use roadway maintenance machines or perform safety-essential functions in accordance with FRA regulations.”

But wait. There’s more, citing appropriate 49 CFR regs. “BNGR has failed to report, at a minimum, the two derailments that FRA has discovered through its investigation. In both derailments, the individual operating the derailed train was not properly qualified as an engineer.” The loco in service was “several years past its required periodic inspection.”

Worse, “ There is evidence BNGR employees have been directed by BNGR ownership to provide FRA false information, including a false engineer certification card and false hours of service (HOS) records.” The FRA concludes, “BNGR has created a public safety emergency through a willful failure to undertake basic responsibilities” in track inspection, safety training, and errors of omission by “one or more individuals in positions of authority at this railroad.”

It all came together last month when the FRA found “no program for track inspection in compliance with FRA safety regulations (49 CFR part 213) and no inspection records for any month from the time the BNGR came under current ownership (October through December 2023).” As a result of its investigations, the FRA concluded, “that continued operation of any rail equipment by BNGR on any part of its line poses an imminent threat to safety...

“Accordingly, it is ordered that BNGR must discontinue, and may not permit under any circumstances, the operations of trains, locomotives, or any other on-track rail vehicles or

equipment on any part of the track that it owns or leases from ODOT or the BIA while this FRA investigation of this railroad is ongoing.”

And for the icing on the cake, the FRA has delivered a 14-point checklist actions BGNR must take before turning another wheel. It’s all there, chapter and verse, referencing the applicable 49 CFR parts. I mean, it takes work to earn an FRA violation list like this. A huge black mark on the resume of whatever operating company was the perpetrator.

Here is the complete slide deck Ancora has prepared to make its case for changes at NS. In it, you will read their executive summary, their view of the problems brought on by ineffective management and other things, why they think such things have happened, and the solutions they propose.

Their presentation contains a scathing commentary on the performance of CEO Alan Shaw and even of the board's choice of Shaw as CEO in the first place. See slide 6, existing leadership. Slide 8 lays out their three main reasons for wanting change.

Slides 16 and 17 restate the case for PSR; the first five bullet points on page 17 are the five basic principles of PSR, as originally laid out by Hunter Harrison. Slide 19 compares the proposed management team with what NS has in place today. Slide 23 lights into Shaw's "flawed strategy." Note the two analyst quotes at the bottom of the page.

Slides 29-42 offer an analysis of why so many short lines complain about irregular interchange times and inconsistent interchange volumes. The Appendix enumerating the shortcomings in the execution of the Thoroughbred Operating Plan (slide 21) is most revealing. Not every bullet point fits every reader's situation but there's something for everybody in here. Please read carefully and tick off the particular things you need fixed.

Regardless of the validity of Ancora’s proposed solutions and the outcome of their campaign, the issues they raise are overdue for an airing. Looks to me like the conversation has now begun in earnest.

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