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ENTERED
Office of Proceedings
November 6, 2013
Part of the Public
Record

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November 6, 2013

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

**RE: *Iowa Interstate Railroad, Ltd. – Acquisition Exemption – Line of BNSF
Railway Company, STB Docket No. FD 35751, and
BNSF Railway Company, CBEC Railway Inc., Iowa Interstate Railroad, Ltd.,
and Union Pacific Railroad Company – Joint Relocation Project Exemption –
In Council Bluffs, Iowa, STB Docket No. FD 35755***

Dear Ms. Brown:

The Kansas City Southern Railway Company (“KCS”) hereby files a Reply to the Supplement to Petition for Exemption of Iowa Interstate Railroad, Ltd. and Letter Filing of Iowa Department of Transportation in connection with the FD 35751 individual petition for exemption proceeding. KCS’s Reply also contains a Request for Housekeeping Stay seeking to stay the effective date of the Notice of Exemption recently issued in connection with the related FD 35755 joint line relocation class exemption proceeding.

Sincerely,



William A. Mullins
Attorney for The Kansas City Southern
Railway Company

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 35751

**IOWA INTERSTATE RAILROAD, LTD.
- ACQUISITION EXEMPTION -
LINE OF BNSF RAILWAY COMPANY**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S REPLY TO THE
SUPPLEMENT TO PETITION FOR EXEMPTION OF
IOWA INTERSTATE RAILROAD, LTD., AND LETTER FILING OF IOWA
DEPARTMENT OF TRANSPORTATION**

AND

STB DOCKET NO. FD 35755

**BNSF RAILWAY COMPANY, CBEC RAILWAY INC., IOWA INTERSTATE
RAILROAD LIMITED, AND UNION PACIFIC RAILROAD COMPANY
- JOINT RELOCATION PROJECT EXEMPTION -
IN COUNCIL BLUFFS, IOWA**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S REQUEST FOR A
HOUSEKEEPING STAY OF THE EFFECTIVE DATE OF THE
NOTICE OF EXEMPTION**

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Dated: November 6, 2013

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INTRODUCTION

In accordance with 49 C.F.R. § 1104.13, The Kansas City Southern Railway Company ("KCS") hereby replies to the Iowa Interstate Railroad, Ltd. ("IAIS") "Supplement to Petition for Exemption" (the "Supplement") and the letter filing of the Iowa Department of Transportation ("IDOT Letter"), both of which were filed in STB Docket No. FD 35751 on October 17, 2013.

The Board should not, at this time, expedite granting IAIS' petition for exemption, as requested in the Supplement and in the IDOT Letter. IAIS has failed to demonstrate that its acquisition of the track serving Bartlett Grain Company, L.P. ("Bartlett") won't harm Bartlett's access to the BNSF Railway Company ("BNSF")-KCS interline routing that the Bartlett elevator relies on. Until IAIS ensures that Bartlett's access to KCS is preserved in a non-discriminatory manner and under handling practices that BNSF provides to Bartlett today as part of the BNSF-KCS route, the Board should not grant the petition for exemption and should instead subject the BNSF-IAIS proposed line sale to careful scrutiny. The Board should not feel compelled to act hastily simply because the petitioner waited until nearly the last minute to seek exemption of a long-planned transaction.

The potential for harm to Bartlett arising from the IAIS line purchase exemption necessitates granting a housekeeping stay in the related joint line relocation notice of exemption filed in STB Docket No. FD 35755. The IDOT letter clearly shows that the IAIS exemption petition is part and parcel of the transaction sought to be exempted in FD 35755. Board precedent clearly establishes that the use of the joint relocation class exemption is only appropriate where the joint line relocations will not disrupt service to shippers. Because the integrally-related FD 35751 Petition/Supplement has not been shown not to harm Bartlett, it is not yet resolved whether the joint line relocation transaction, of which the FD 35751 transaction is really a part, would be disruptive of service to shippers. Accordingly, the Board should issue a housekeeping stay of the effective date of the FD 35755 notice of exemption proceeding until the Board issues a final decision in connection with the IAIS rail line acquisition that is the subject of the FD 35751 petition for exemption proceeding.

PRELIMINARY PROCEDURAL MATTER

IAIS originally filed the subject petition for exemption (the “Petition”) on August 7, 2013, and, within the customary 20-day response period, both KCS and Bartlett replied to the Petition. Explaining the basis of its concerns, KCS urged the Board to subject the proposed transaction to careful scrutiny, institute a formal proceeding in accordance with 49 U.S.C. § 10502(b), and, accordingly, resist IAIS’ request for expedited consideration.¹ At that point, under the Board’s procedural rules, no further filings would have been appropriate unless and until the Board requested public comment or began a formal proceeding and set forth a procedural schedule for discovery and the filing of additional comments. However, due to the expressions of concern by Bartlett and KCS, IAIS filed its Supplement and IDOT filed the IDOT Letter. As both the Supplement and IDOT Letter were filed on October 17,² pursuant to 49 C.F.R. § 1104.13, KCS hereby files this reply (“Reply”) and request for a housekeeping stay.³

ARGUMENT

I. IAIS’ Post-Transaction Service Commitments Do Not By Themselves Ensure That Bartlett Will Suffer No Adverse, Transaction-Related Impacts – IAIS Must Also Ensure That Bartlett Does Not Lose Effective Access To Rail Service Options It Currently Uses And Benefits From

Today, Bartlett takes advantage of a competitive, cost-effective service arrangement whereby grain originating at its south Council Bluffs facility is transported to KCS-served

¹ In that regard, KCS continues to question the need here for expedited consideration, as is discussed below.

² See New Filing Deadlines For Material Due To Be Submitted During The Federal Government Shutdown, Docket No. EP 721, served October 18, 2013 (“All submissions received by mail during the closure will be considered filed on October 17, 2013.”)

³ Since the Bartlett and KCS August 27, 2013 filings in this proceeding clearly were replies to the Petition, the October 17th Supplement could be viewed as an impermissible surreply conveniently entitled as a “Supplement.” KCS has no objection to the Board accepting the Supplement and the IDOT Letter into the record as long as KCS has the opportunity to file this Reply.

destinations and destinations in Mexico served by KCS affiliate Kansas City Southern de Mexico S.A. de C.V., via a BNSF/KCS interline connection at Kansas City, Missouri. Shipments on a minimum twenty-five car basis are treated as a trainload shipment and qualify for the trainload rate. A trainload shipment is considered a trainload throughout its handling by BNSF, even if multiple bills of lading apply to the train once it is loaded.

The proposed line sale transaction will insert a third carrier, IAIS, into the mix as an originating, "switching" carrier. IAIS would therefore be the only carrier serving the Bartlett grain facility, and it would switch Bartlett cars to IAIS' connecting carriers, including to BNSF for movement under the BNSF/KCS interline routing. The insertion of IAIS into the route will increase handoffs of Bartlett trains between carriers and will be less efficient than is the case today.

IAIS' Supplement insists that Bartlett has nothing to fear from the insertion of IAIS as a switching carrier. IAIS' Supplement states that Bartlett will not suffer deteriorated service levels post-transaction, a commitment which IAIS contends "largely addresses Bartlett's concerns," Supplement at 4. But Bartlett's Letter attached hereto as Exhibit A establishes that Bartlett's competitive concerns have not yet been fully addressed because if IAIS assesses switching charges on the basis of single cars or small blocks, rather than as a trainload/unit train, or discriminates against the BNSF-KCS routing in favor of itself or other IAIS connecting carriers, the economic viability of Bartlett's BNSF-KCS routing could be ruined, harming Bartlett's competitiveness.

Notwithstanding the good faith efforts of IAIS and BNSF to resolve Bartlett's concerns, IAIS hasn't yet committed to ensuring that Bartlett can continue to have access to the efficient, cost-effective BNSF- KCS interline trainload service on a non-discriminatory basis. IAIS also hasn't committed to treating the Bartlett traffic for switching and other purposes as trainload

shipments (as BNSF does). Simply put, discrimination against the BNSF-KCS routing or treating Bartlett's traffic moving via that routing as less than a trainload would harm Bartlett's access to the efficient, cost-effective trainload BNSF-KCS service on which Bartlett relies. For the Board to determine that the proposed line sale exemption, and the related joint relocation exemption, is not harmful to shippers, IAIS needs to provide certainty on these issues on this record.⁴

The IAIS Supplement, like the original Petition, is silent on the issue of Bartlett's future non-discriminatory access to KCS. Tersely, IAIS says it will "keep Bartlett open to BNSF and to KCS haulage traffic handled through BNSF," Supplement at 11, but says nothing about whether it will implement rate and service terms that will disfavor the KCS routing vis-à-vis other routings through other IAIS connections. Charging \$500/car for a switch to BNSF/KCS and \$200/car for a switch to UP is technically keeping "Bartlett open to BNSF and to KCS," but would clearly make the BNSF/KCS movement non-competitive and would result in Bartlett losing economic access to the principal service that it utilizes today.

IAIS attempts to resolve these concerns by explaining that it "*initially*" intends "to utilize switching rates that are *comparable* to the current BNSF switching rate 'allocation' under the relevant contracts." (Emphases added.) *Id.* at 7. But IAIS then quickly backtracks from even this qualified commitment and states that "[f]uture rates will depend, as they must, on traffic and market conditions." *Id.* This suggests that IAIS intends to raise rates shortly after the "initial" period, and of course contains no commitment whatsoever about maintaining Bartlett's access to the BNSF-KCS route vis-à-vis other connecting carriers.

⁴ As the Bartlett Letter indicates, Bartlett shares KCS's concerns and endorses KCS's request that the petition for exemption not be expedited unless or until Bartlett receives both rate and service assurances. Likewise, Bartlett supports a housekeeping stay of the FD 35755 notice of exemption.

IAIS then obscures these important competitive considerations by accusing Bartlett of making an “implied” demand that IAIS “guarantee or freeze future switching rates on the Bartlett Line.” To the best of KCS’ knowledge, neither Bartlett nor KCS has asked that. Rather, KCS only asks that Bartlett be assured that—(1) the switching charges that IAIS will assess in the future will neither discriminate against the BNSF-KCS service routings nor be designed to discourage Bartlett’s continued use of KCS service; and (2) IAIS will continue to regard KCS/Bartlett traffic as trainload traffic for purposes of future switching charges.⁵

IAIS attempts to resolve Bartlett’s service concerns in its letter attached as Exhibit 3 to the Supplement, where it discusses service issues at great length. However, that same letter assiduously avoids any meaningful discussion of future switching charges or non-discriminatory treatment of connecting carriers. It is unclear why IAIS has not been more forthcoming on its intent with respect to its relationship with KCS in the future, but, regardless, the absence of any assurances from IAIS on the economic terms of its future switching service make it impossible for the Board to determine that Bartlett will not be harmed by being foreclosed from traditional rail routes and services. The threat of such an outcome requires that the Board examine this transaction more carefully than IAIS would have the Board do.

The easiest way to ensure such a mutually satisfactory outcome here would be for IAIS to simply commit on this record to set its Bartlett switching rates in such a manner so as to not to favor non-KCS routings and not to discourage Bartlett’s continued use of KCS’s trainload rates and service. Barring that, IAIS could negotiate with Bartlett and KCS an arrangement that would govern by how much and pursuant to what circumstances IAIS would in the future adjust

⁵ As for BNSF, BNSF’s letter to Bartlett (included as part of IAIS’ Supplement Exhibit 1) clearly recognizes the importance of ensuring that Bartlett’s post-transaction switching charges preserve Bartlett’s market reach and use of KCS into the future, but, understandably, BNSF admits that it is in no position to guarantee IAIS’s post-transaction switching rates.

its Bartlett switching charges. Absent these actions, the Board should continue to hold open this proceeding for further discovery and comment, or if the Board believes it needs to act now (which it should not) the record fully supports the imposition of a condition to its approval of the proposed transaction that would require IAIS to establish non-discriminatory uniform switching charges for Bartlett traffic applicable to all line-haul connecting carriers in Council Bluffs (including KCS), and apply unit train/trainload switching charges to any KCS/Bartlett traffic.

II. Until The Potential Adverse Competitive Impacts To Bartlett Are Resolved, Board Precedent Requires The Board To Begin A Formal Proceeding And To Issue A Housekeeping Stay For The Related Joint Relocation Notice Of Exemption

IAIS' apparent reticence to offer the sort of reasonable assurance that KCS seeks to preserve Bartlett's cost-effective service options should appropriately trigger agency skepticism regarding transaction-related impacts. Indeed, such regulatory caution has been of recent years the hallmark of the Board's review of individual petitions for exemption. Specifically, the individual petition for exemption process is typically used and sanctioned only where the proposed transaction is not complex and raises no genuine controversy or concern of adverse competitive impact.⁶ KCS is not asking at this time that the Petition/Supplement be denied, because KCS is confident that IAIS is capable of offering the sort of modest assurances that would allay the concerns about Bartlett's continued access to cost-effective BNSF-KCS trainload service. But if IAIS does not take adequate steps – and assuming that the Board also does not

⁶ See, e.g., Swanson Rail Transfer LP – Operation Exemption – Olive Investors, Docket No. FD 35376 (STB served July 7, 2010) (even a transaction involving an agreement to operate 1,805 feet of railroad track may present sufficient controversy and complexity to necessitate the use of the Board's formal application processes, rather than a class exemption notice or individual petition for exemption processes); Rochester & Southern Railroad, Inc. – Abandonment Exemption – In Cattaraugus County, NY, STB Docket No. AB 354 (Sub-No. 2X) (STB served Sept. 18, 1998) (Board denied abandonment petition for exemption where shipper opposition raised serious questions not addressed by the petitioning railroad which had presented inadequate evidence in support of its requested petition).

intend to use its broad conditioning authority to protect Bartlett⁷ – then precedent suggests that the Board may, as it has done in the past, deny the subject petition for exemption so as to avoid injury to shippers and require the filing of a formal application.⁸

For the reasons set forth above, the subject rail line transaction as currently presented warrants additional scrutiny afforded through the initiation of a formal proceeding under section 10502(b) and, as appropriate, the further development of the record both to measure the transaction's potential adverse impact upon Bartlett, and to gauge the propriety of competition-protecting measures in aid of Bartlett. While such an examination of the proposed transaction's impacts will involve a longer regulatory review process than IAIS would have the Board undertake (the timing issue is addressed in the section immediately following), such detailed analysis and delay would not be necessary if IAIS would simply extend on the record the types of assurances and commitments requested in this Reply and the attached Bartlett Letter. Were IAIS to make such commitments on the record here, KCS would then agree that the record

⁷ The Board has in the past invoked its broad conditioning authority to protect shippers that face the prospect of losing access to established rail-served markets due to changes in the national rail system configuration, notwithstanding the possibility that the subject transaction could create access to new markets for the affected shippers, and notwithstanding the presence of the transaction's potential public benefits for others. See CSX Corp., et al. – Control – Conrail Inc., et al., 3 S.T.B. 196, 311-313 (1998) (Board uses conditioning authority in approving rail merger transaction to protect Ohio-based aggregate producers).

⁸ See, e.g., Union Pacific Railroad Company – Abandonment Exemption – In Pottawattamie County, IA, et al., STB Docket No. AB-33 (Sub-No. 274X), et al. (STB served Dec. 12, 2008) (joint abandonment petition involving a line in Council Bluffs denied because petitioners Union Pacific Railroad Company and IAIS failed to demonstrate that the interests of the two shippers utilizing the line would be protected under a “substitute [service] arrangement”); Keokuk Junction Railway Company d/b/a Peoria and Western Railway – Lease and Operation Exemption – BNSF Railway Company, et al., STB Docket No. FD 34974, et al. (STB served Dec. 6, 2007) (following the initiation of a proceeding to enable the Board to evaluate “issues that require consideration,” the Board denied the subject rail line lease petition for exemption on the basis that the transaction, though supported by some stakeholders, could reduce rail service competition for an electric utility).

would no longer reflect the potential competitive concerns that precedent requires this Board to further scrutinize petitions for exemption.

A. Petitioner's Desire To Speed The Review Process Under The Particular Circumstances Here Is An Inadequate Basis For The Board To Short-Circuit Its Competitive Impacts Review When As-Yet Unresolved Shipper Concerns Remain

KCS recognizes that a significant highway transportation project depends upon IAIS and BNSF consummating the proposed line sale transaction covered by the FD 35751 Petition in 2015, but the rush job that IAIS and IDOT have requested rings hollow in view of IAIS' own admission that the subject line sale transaction allegedly would not close "until sometime in 2015." Petition at 4 and 10. When one considers that the various elements of the highway project have been under consideration for several years, as recited in IDOT's Letter, KCS submits that the November 30, 2013 deadline to which IAIS pins its request is unnecessary. The various parties to the rail elements of the highway relocation project have known for quite some time that STB approval would be required for the various elements, and none of the parties are unfamiliar with STB procedures and the Board's mandate to protect against avoidable adverse competitive impacts of a transaction. As such, why did they wait until August and October to seek the necessary approvals, and then when objections are raised, cry foul and time is of the essence? The parties know that STB approvals or authorizations are permissive and not mandatory. As such, these exact approvals could have been submitted long in advance, especially as the parties have been in discussions for several years. Yet, there were not, for whatever reason.⁹

⁹ According to information conveyed in the record in these proceedings, the railroad parties to the highway project agreements and IDOT have known since August of 2011 that the rail elements of this project would require advance Board approval, yet they did not undertake the effort to obtain the necessary regulatory authority(ies) for two years.

KCS is concerned that IAIS has attempted here, with IDOT support, to obscure legitimate shipper impact concerns by waiting until the last minute to seek approval, then when objections are raised, take a questionable “time is of the essence” stance on agency review and approval all in attempt to pressure the Board to act expeditiously and without providing the effective protections and conditions needed to ensure that Bartlett does not suffer adverse competitive impacts, particularly where adequate protections are readily available.

And what is the basis for the “time is of the essence” claim? Allegedly, according to IDOT, if the regulatory approvals are not in place before a nominal November 30 deadline, the involved railroads “could” terminate the agreements. Even if it were true that the participating railroads “could” terminate the agreement(s) on November 30, there is no evidence to show that they would or have any interest in doing so. Why, after spending years of time, expense, and extensive planning, would the involved railroads walk away from an extensive highway project that they fully support? No explanation is given. While the IDOT agreements are not in the record, KCS suspects, like almost all major public/private agreements, that there is more than likely a provision in the contract that allows the parties to continue pending the necessary advance federal regulatory approvals are still pending. The project will not turn into a pumpkin at midnight on November 30.

Indeed, even the IDOT Letter offers to supply the Board with “additional information” concerning the highway project if it would be of aid. Such information, which may indeed be helpful, would likely be of little use if the Board hasn’t the time to consider it. But if the Board elects to institute a proceeding for the reasons supplied herein, then the Board and the interested parties will have a full and fair opportunity to take such additional information into account.¹⁰

¹⁰ The Board should keep in mind why IAIS decided to separate the Board’s examination of the BNSF-to-IAIS rail line sale under an individual petition for exemption process, from the Board’s licensing of the series of transactions that various railroad parties (led by BNSF) have presented

B. Until The Board Has Rendered A Final Decision In the 35751 Petition For Exemption Proceeding, The Board Should Issue A Housekeeping Stay Postponing The Effective Date In The FD 35755 Proceeding

The IDOT Letter makes clear that the IAIS line acquisition transaction is an integral component of a complex series of rail infrastructure undertakings (principally, line sales and track abandonments) and operational changes that will facilitate the Council Bluffs Interstate System Improvements Project (“CBISIP”). While Board approval of the discrete line sale is the subject of the IAIS’ FD 35751 petition for exemption proceeding, other rail elements of the CBISIP are covered by the FD 35755 notice of exemption proceeding. Yet, the relocation elements cannot be accomplished, at least not as currently proposed, without the line sale. Simply put, Board action on the IAIS line acquisition under FD 35751 (which was filed well before the notice in FD 35755) is necessarily a precursor to Board action on the related joint line relocation in FD 35755.

The proposed joint line relocation project presented under FD 35755 qualifies for the 49 C.F.R. § 1180.2(d)(5) class exemption if, and only if, the series of transactions covered by the notice will not disrupt service to shippers. But whether the FD 35755 transactions qualify for the class exemption depends upon whether the Board first finds that the line acquisition under FD 35751 that IAIS has purposely separated from the joint line relocation proceeding warrants approval and will not adversely impact Bartlett’s competitive options.

together as a “joint rail line relocation” under the class exemption procedures. Clearly, if the proposed IAIS line acquisition could be said to have no meaningful impact on any shipper, presumably the IAIS line acquisition would have been subsumed within the class exemption proceeding docketed as FD 35755. (BNSF, incidentally, suggests that it does not share IAIS’ view that the FD 35751 line sale transaction warrants separate handling under an individual petition for exemption, indicating that IAIS alone is of the view that the line sale so changes the rail service and competition landscape as to make it inappropriate for consideration within a joint rail line relocation class exemption proceeding. See FD 35755 Joint Notice of Exemption at 5 n. 3.) If removing the IAIS line acquisition from the joint line relocation notice filing has any meaning, it is that the impacts to shippers from the IAIS line acquisition should be identified, adequately measured, and, as appropriate, mitigated.

To allow the FD 35755 notice of exemption to become effective on November 13 as currently scheduled puts the cart before the horse. The notice of exemption is valid, and not void ab initio, only if the Board finds that Bartlett will suffer no disruption of rail service. But, the appropriate findings justifying the notice of exemption cannot be made before resolution of pending matters in the FD 35751 proceeding. By filing the notice of exemption before the petition for exemption is resolved, the parties want the Board to implicitly accept as fact that there is no adverse impact on shippers, but that is currently in dispute.¹¹

Given the current state of the record, the Board could be within its rights to reject the FD 35755 notice as void ab initio. KCS believes that such extreme Board action can be avoided here, but until it is established that the FD 35751 exemption petition will not harm Bartlett, a major Council Bluffs shipper, KCS would ask the Board to simply postpone the effective date of the FD 35755 notice pursuant to the agency's housekeeping stay authority until it has first resolved matters in the FD 35751 petition for exemption proceeding.¹² Such action will ensure an orderly and measured resolution of shipper impact issues in keeping with the Board's

¹¹ There are certain elements of the joint line relocation project that cannot reasonably be disputed, including that, under the rail infrastructure changes contemplated in the FD 35755 proceeding, Bartlett will lose direct rail service access to BNSF, the carrier that has handled much of Bartlett's traffic in conjunction with KCS for many years. It is also beyond dispute that the rail line relocation project will insert IAIS as Bartlett's switching carrier, necessarily complicating rail service issues for Bartlett and its customers, to say nothing of possible overall rail service cost increases resulting from the switching charges that IAIS may impose in the future.

¹² Housekeeping stays are common where the Board requires additional time to evaluate evidence and argument presented in a case coupled with the need to prevent otherwise applicable procedural deadlines or regulatory effective dates from nullifying or further complicating the scope of the Board's regulatory authority. See, e.g., Rail Switching Services, Inc. – Operation Exemption – Pemiscot County Port Authority, et al., STB Docket No. FD 35685, et al. (STB served Nov. 13, 2012); SteelRiver Infrastructure Partners LP, et al. – Control Exemption – Patriot Rail Corp., et al., STB Docket No. FD 35622 (STB served May 25, 2012); and BNSF Railway Company – Trackage Rights Exemption – Union Pacific Railroad Company, STB Docket No. FD 35601 (STB served Mar. 21, 2012) (housekeeping stay imposed to permit the Board to “consider together” contested legal issues arising in connection with, and bearing upon, two separate but interrelated agency proceedings).

statutory mandate to protect shippers from the adverse impacts of railroad transactions, and the Board's own policy to reserve the joint line relocation class exemption proceedings to transactions that can be shown not to have an impact upon area shippers.

CONCLUSION

Where a proposed transaction submitted for review under the individual petition for exemption procedures threatens adverse competitive impacts to a rail shipper, the Board may either initiate a formal procedure to better examine and address the transaction's possible negative impacts, or it may reject the petition outright (or, ultimately, it may do both). Here, the proposed rail line sale transaction threatens adverse competitive impacts to Bartlett. As the record stands, Bartlett has received no assurances that IAIS, will not in the future – (1) adopt switching charges that discriminate against the BNSF-KCS routing heavily used by Bartlett in favor of other connecting carriers so as to economically eliminate Bartlett's access to KCS; or (2) for similar effect, fail to treat the trainload volumes interchanged by KCS to BNSF at Kansas City for Bartlett as trainloads for switching purposes. If these concerns are not promptly addressed through voluntary mitigation and assurances on the record, then the Board should subject the FD 35751 transaction to appropriate regulatory scrutiny and begin a formal proceeding.¹³ In addition, as explained above, an orderly administrative handling of the interrelated transactions encompassed by the FD 35751 and FD 35755 proceedings requires that the Board stay its hand on the effective date of the FD 35755 exemption notice until it has first ruled upon the petition for exemption in FD 35751.

¹³ Alternatively, if the Board is concerned about the implications of such a delay on the CBISIP project, it could grant the petition for exemption but subject to the conditions requested by Bartlett and KCS.

Respectfully submitted,

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Railway Company

Dated: November 6, 2013

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– ACQUISITION EXEMPTION –
LINE OF BNSF RAILWAY COMPANY**

AND

STB DOCKET NO. FD 35755

**BNSF RAILWAY COMPANY, CBEC RAILWAY INC., IOWA INTERSTATE
RAILROAD LIMITED, AND UNION PACIFIC RAILROAD COMPANY
– JOINT RELOCATION PROJECT EXEMPTION –
IN COUNCIL BLUFFS, IOWA**

EXHIBIT A

NOVEMBER 6, 2013 LETTER FROM BARTLETT GRAIN COMPANY, L.P.



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November 6, 2013

VIA E-FILING

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RE: *Iowa Interstate Railroad, Ltd. – Acquisition Exemption – Line of BNSF Railway Company, STB Docket No. FD 35751, and*

BNSF Railway Company, CBEC Railway Inc., Iowa Interstate Railroad, Ltd., and Union Railroad Company -Joint Relocation Project Exemption – In Council Bluffs, IA, STB Docket No. FD 35755

Dear Ms. Brown:

Bartlett Grain Company, L.P. (“Bartlett Grain”) files this letter in reply to the Supplement to Petition for Exemption (“Supplement”) filed by the Iowa Interstate Railroad, Ltd (“IAIS”) in Docket No. FD 35751, and in support of the request of the Kansas City Southern Railway (“KCS”) for a “housekeeping stay” in related Docket No. FD 35755.¹

¹ Both the Supplement and the “Joint Relocation Project Exemption” in Docket No. FD 35755 were deemed to be filed on October 17, 2013. STB Docket No. EP 721, *New Filing Deadlines for Material Due to be Submitted During the Federal Government Shutdown*, (served October 18, 2013). Also on October 17, 2013, counsel for the Iowa Department of Transportation submitted a letter in Docket No. FD 35751. Without conceding in any way that the statements in the letter regarding Bartlett Grain’s positions and arguments in its Reply have any merit, Bartlett Grain does not object to the Board’s acceptance of this letter into the docket.

GKG Law, P.C.

Cynthia T. Brown, Chief
November 6, 2013
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A. Docket No. FD 35751

The Supplement was filed by IAIS in large part in response to the assertions in Bartlett Grain's Reply to the Petition for Exemption ("Reply") in Docket No. FD 35751 that the Board should invoke 49 C.F.R. §1121.4(c)(1) and order IAIS to provide more information about the proposed transaction at issue. Bartlett Grain does not object to the inclusion of this otherwise prohibited "reply to a reply" into the record of Docket No. FD 35751. However, while the Supplement provided much needed expansion and clarification of the meager facts set forth in IAIS's original Petition for Exemption concerning the common carrier status of the track that IAIS will use to provide rail service to Bartlett Grain's Council Bluffs South Facility ("CB South"),² the Supplement does not provide any information on, or an explanation of how, IAIS's "planned operations will not disrupt service to Bartlett Grain and other shippers by imposing additional costs or charges that could make rail service infeasible at this location." Reply at 9. Specifically, one of Bartlett Grain's concerns has been that IAIS may structure its future switching rates and policies to economically foreclose CB South's access to KCS service. Contrary to assertions made by IAIS, Bartlett Grain does not seek to "guarantee or freeze future switching rates on the Bartlett Line." Supplement at 7. Rather, Bartlett Grain merely has sought assurances from IAIS that Bartlett Grain's access to KCS will in the future be subject to non-discriminatory switching rates, and under unit train treatment such as BNSF today provides in serving CB South.

However, while IAIS has provided some assurances to Bartlett Grain concerning the continuation of the current unit train service, IAIS has not provided similar assurances regarding the structure and level of its switch charges after the transaction is consummated, stating instead only that its initial intention is to utilize switching rates that are "comparable to the current BNSF rate 'allocation' under the relevant contracts," but that "[f]uture rates will depend, as they must, on traffic and market conditions." Supplement at 7. Accordingly, Bartlett Grain submits that the Supplement has not addressed all of the additional information that is required to ascertain "the full impact of the proposed exemption," 49 C.F.R. §1121.4(c)(1), and that, therefore, IAIS should be directed to submit additional information into the record that assures the Board that the full impact of the transaction can be ascertained and that it will not disrupt the current service to Bartlett Grain by BNSF and KCS that IAIS will be replacing.

B. Docket No. FD 35755

In addition, Bartlett Grain supports KCS's request for a housekeeping stay to postpone the effective date of the exemption notice in Docket No. FD 35755, pending completion of the Docket No. FD 35751 proceeding. As Bartlett Grain noted in its Reply in Docket No. FD 35751, the applicability of the class exemption for joint line relocations under 49 C.F.R. §1180.2(d)(5) is questionable where, as

² Bartlett Grain expects that the Board will require IAIS to abide by its assurances concerning track configuration, track status, and operations as a condition to any final approval of its Petition for Exemption.

GKG Law, P.C.

Cynthia T. Brown, Chief

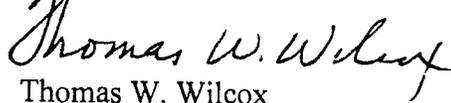
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here, there are unresolved questions of whether a component of a proposed joint relocation project will cause disruption service to existing shippers, and where the relocation would involve a change in service to shippers, expansion of the service of IAIS into new territory, and alter the current competitive situation. Reply at 8, note 4, *citing Denver & R.G.W.R. Co. – Jt. Project Relocation Over BN, 4 I.C.C. 2d 95 (1987)*. Since these unresolved questions are present in Docket No. FD 35751, the housekeeping stay in the related Docket No. FD 35755 requested by KCS would appear to be appropriate in these circumstances.

Please do not hesitate to contact the undersigned if you have any questions or desire additional information.

Sincerely,



Thomas W. Wilcox

Attorney for Bartlett Grain Company, L.P.

cc: Counsel for all Parties of Record in Docket No. FD 35751 and FD 35755

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing Reply and Response filing upon all parties of record in the subject FD 35751 and 35755 proceedings by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Dated: November 6, 2013



William A. Mullins
Attorney for The Kansas City Southern
Railway Company