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November 15, 2013

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ENTERED
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Record

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423

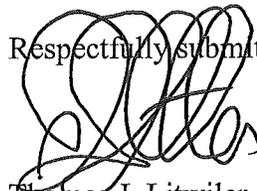
Re: **Finance Docket No. 35751**
Iowa Interstate Railroad, Ltd. -- Acquisition
Exemption -- Line of BNSF Railway Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Reply of Iowa Interstate Railroad, Ltd. to Replies of The Kansas City Southern Railway Company and Bartlett Grain Company, L.P.**, dated November 15, 2013.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Iowa Interstate Railroad, Ltd.

TJL:tl

Attachment

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35751

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

**REPLY OF IOWA INTERSTATE RAILROAD, LTD. TO
REPLIES OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY
AND BARTLETT GRAIN COMPANY, L.P.**

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**ATTORNEY FOR IOWA INTERSTATE
RAILROAD, LTD.**

Dated: November 15, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35751

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

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REPLIES OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY
AND BARTLETT GRAIN COMPANY, L.P.**

Iowa Interstate Railroad, Ltd. ("IAIS") hereby submits this reply to the reply of The Kansas City Southern Railway Company ("KCS") and the letter reply of Bartlett Grain Company, L.P. ("Bartlett"), both submitted in this proceeding on November 6, 2013. Offering a proverbial "moving target," KCS and Bartlett now contend that IAIS must provide assurances that, once it acquires a short BNSF Railway Company ("BNSF") line in Council Bluffs, Iowa (the "Bartlett Line"), IAIS will not apply switching charges in a "discriminatory" manner against BNSF/KCS routings or deny "trainload" rates for Bartlett traffic. Yet neither of these purported concerns was raised in any form in KCS's prior August 27, 2013 letter filing or Bartlett's prior August 27, 2013 reply. Indeed, KCS's prior filing never mentions the words "discriminate" or "trainload," or any variants thereof. With IAIS's September 30, 2013 Supplement having apparently satisfied their previous concerns, KCS and Bartlett now seek to invent additional issues to obstruct this proceeding and the important public works project that is dependent on its conclusion. But those issues are indeed invented, not real, and the Board has all the information required to promptly grant IAIS's pending petition for exemption.

In exemption proceedings under 49 U.S.C. § 10502, the Board, "absent good cause, allow[s] petitioner and those supporting the petitioner to close the record, as petitioner has the burden of proof." Wisconsin Central Ltd. -- Abandonment Exemption -- In Winnebago County, WI, Docket No. AB-303 (Sub-No. 2X) (ICC served March 9, 1990) at 1, n.1. Particularly given the introduction by KCS and Bartlett in their most recent pleadings of issues that were not previously raised, IAIS should be allowed to submit this brief reply to close the record in this proceeding.

KCS now insists that IAIS must provide identical per-car switching rates for KCS haulage traffic from Bartlett regardless of the size of the trains that IAIS receives for delivery and loading. Traffic is currently handled to and from Bartlett in approximately 80-car trainloads, and IAIS's discussions with Bartlett regarding future handling of Bartlett traffic have been based on continuation of that practice. See IAIS Supplement, Exhibit 3. KCS's reference to a 25-car trainload minimum, KCS Reply at 5, is the first that IAIS has heard of that type of smaller carload lots. But it should be obvious that the delivery of three 25-car trains to or from Bartlett has different service efficiencies and economies of scale than the delivery of one 80-car train, and that switching rates applicable to those very different kinds of traffic movements would be expected to vary accordingly.

IAIS does not intend to charge single-carload rates for unit train movements, nor does it intend to "discourage Bartlett's continued use" of trainloads rates and service. KCS Reply at 7. IAIS has indicated to KCS that IAIS will handle 50- to 81-car unit trains or blocks for Bartlett, subject to certain conditions,¹ at an initial rate of \$105/car, subject to a standard industry annual escalator. IAIS's intention is that, where (for example) two 25-car blocks of traffic are

¹ For grain traffic (STCC 01) using BNSF/KCS locomotive power and fuel.

received or delivered by IAIS together in the same train (regardless of how they are waybilled), IAIS would handle that traffic pursuant to a 50-car loaded unit train switching rate. But IAIS does not guarantee rate equalization between single carloads, 25-car trains and 80-car trains, and there is no conceivable basis to impose such a guarantee as a condition of granting IAIS's petition for exemption.

Even more perplexing is KCS's new claim that IAIS has not sufficiently disclaimed any intention to "discriminate" against KCS haulage traffic in favor of other connecting carriers. Why would IAIS do this? And why would IAIS have any greater economic incentive, motive or power to do so than BNSF does today? IAIS is a regional, Class II railroad with independent ownership that operates between Council Bluffs and Chicago. BNSF is a national Class I carrier that operates between Council Bluffs, Chicago and nearly every other location in the western United States. KCS and Bartlett have presented no evidence or even hypothesis as to why IAIS would unfairly prefer other connecting carriers in Council Bluffs to BNSF -- the railroad through which KCS receives haulage service to reach Bartlett, and indeed the very railroad from which IAIS is acquiring switching service for the Bartlett Line. Previously, KCS and Bartlett questioned whether the Bartlett Line transaction included a "paper barrier" that would limit IAIS's ability to interchange Bartlett Line traffic with other connecting carriers. Now, KCS complains about the exact opposite scenario -- that IAIS's acquisition of the Bartlett Line may actually open up traffic on that line to competitive service from connecting carriers. But the Board's well-established role is to preserve competition *for shippers*, not preserve the economic status quo for rail competitors. KCS's exaggerated and ungrounded concerns that IAIS will "favor non-KCS routings," KCS Reply at 7, simply do not present a cognizable claim for the Board's consideration.

Since literally the first year that the Board granted exemptions from 49 U.S.C. § 10902 for line acquisitions, the Board has recognized that transactions like the Bartlett Line sale do not give rise to competitive concerns:

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. The transaction merely substitutes FWWR for SSW for those services currently provided by SSW. Shippers on the North Fort Worth to Carrollton Line will retain all routing options which they have today.

Fort Worth & Western Railroad Company, Inc. -- Lease Exemption -- St. Louis Southwestern Railway Company, Finance Docket No. 32955 (STB served September 5, 1996) at 2. IAIS will simply "step into the shoes" of BNSF when it comes to the economic aspects of switching service on the Bartlett Line, and indeed it is likely that routing options for Bartlett Line shippers will be expanded as a result of the transaction. That is wholly consistent with the rail transportation policy of 49 U.S.C. § 10101 and the exemption criteria of 49 U.S.C. § 10502.

Ultimately, the "assurances" that KCS and, to a lesser degree, Bartlett now seek are inextricably tied to the level of the switching rates that Bartlett Line shippers will pay for IAIS's service. But as this agency has previously and clearly held, where a proposed transaction does not change the nature of a rail carrier's market power over switching rates, the regulatory "assurances" that KCS now demands are inappropriate:

The transaction here will not reduce the number of railroads that can provide switching service; it simply substitutes SPCSL for CMW. No new market power is created. Further, any ability that SPCSL may have to increase switching fees after the consolidation is also possessed by CMW today. Because the transaction will not result in any anticompetitive effect here, the requested condition is inappropriate.

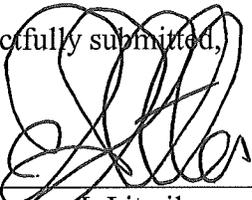
Rio Grande Industries, et al. -- Purchase & Trackage Rights -- CMW Ry. Co., 5 I.C.C.2d 952, 972 n.19 (1989).

IAIS has adequately addressed in its September 30th Supplement the operational and track configuration concerns that Bartlett and KCS raised in their earlier filings, and KCS and Bartlett do not claim otherwise. Indeed, Bartlett's relatively brief current letter filing even concedes that "IAIS has provided some assurances to Bartlett Grain concerning the continuation of the current unit train service," thus largely undercutting KCS's newfound concerns regarding "trainload" service. Bartlett November 6th Letter at 2. KCS itself acknowledges the "good faith efforts of IAIS and BNSF to resolve Bartlett's concerns" KCS Reply at 5. What is left is KCS's bare allegation that IAIS will "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." KCS Reply at 14. While IAIS acknowledges that it bears the burden of proof in this exemption proceeding, certainly something more than mere hypothesizing is required of KCS to substantiate its objection to a routine line sale transaction under Section 10902.

As the Iowa Department of Transportation outlined in its October 17, 2013 submission in this proceeding, approval of the Bartlett Line transaction is an important component of the Council Bluffs Interstate System Improvements Project, a large-scale public works undertaking with important transportation implications for the entire region. IAIS encourages the Board to act as quickly as possible to grant IAIS's petition for exemption and authorize the pro-competitive acquisition of the Bartlett Line by IAIS.

Respectfully submitted,

By:



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**ATTORNEY FOR IOWA INTERSTATE
RAILROAD, LTD.**

Dated: November 15, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2013, a copy of the foregoing **Reply of Iowa Interstate Railroad, Ltd. to Replies of The Kansas City Southern Railway Company and Bartlett Grain Company, L.P.** was served by electronic mail and first class mail, postage prepaid, upon:

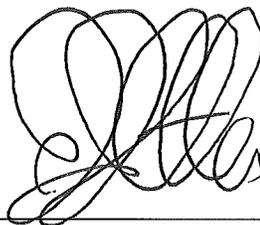
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and by first class mail, postage prepaid, upon:

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