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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***

Dear Ms. Brown:

The Kansas City Southern Railway Company (“KCSR”) hereby files preliminary comments in response to the proposed rail line acquisition transaction encompassed by the above-docketed individual petition for exemption (the “Petition”) filed by Iowa Interstate Railroad, Ltd. (“IAIS”) on August 7, 2013. As the Petition reflects, IAIS’ proposal in this docket to acquire 0.75 miles of main line owned by BNSF Railway Company (“BNSF”) is but a small part of a much larger transportation infrastructure undertaking (the “Project”) in Council Bluffs, Iowa. This larger Project involves much more than just BNSF and IAIS. It will affect service to rail shippers (including Bartlett Grain Company, L.P. – “Bartlett”), involves the Iowa Department of Transportation and the local communities, and could significantly impact KCSR’s service (and potentially Union Pacific’s service) to Bartlett and others. IAIS acknowledges that this transaction is just a small part of the larger Project, that the Project will affect rail-service in Council Bluffs, and that the Project may result in environmental impacts. Nevertheless, rather than present the Board with all of the STB-related elements of the Project simultaneously along with their collective impact, IAIS would have the Board rule on small parts, one at a time. Such a piecemeal approach should be rejected. The Board should – (a) require IAIS to present all-of the STB-related Project elements together for approval, (b) allow public comment, undertake a comprehensive environmental analysis, and (c) subsequently issue a ruling as appropriate based upon a fully-developed record.

Of particular concern to KCSR is the proposed Project’s impact upon long-time KCSR customer Bartlett. KCSR has for years been the predominant or exclusive transporter of grain

from Bartlett's South House elevator in Council Bluffs.¹ KCSR is concerned that IAIS hasn't made clear the steps it will take and commitments it will make to preserve Council Bluffs-area shipper access to the markets in which those shippers can and do participate today. As specifically concerns KCSR, IAIS has not clarified how it will handle Bartlett's grain movements via KCSR post-transaction (if, for example, they will be handled essentially as they are today, aside from certain obvious track and operating adjustments), whether IAIS intends to open or close facilities in Council Bluffs to switching as a result of the transaction (IAIS says that its contract with BNSF does not contain an interchange commitment, but that is not a commitment to keep affected facilities open to reciprocal switching), and whether or to what extent IAIS would seek to escalate switch charges on Council Bluffs traffic, including that moving from Bartlett. The Petition also does not clearly establish the future ownership of the tracks adjoining the main line that IAIS is purchasing or identify the other tracks that IAIS can or will use to serve Bartlett, or indicate whether Council Bluffs' ownership of the land underlying the main line and adjoining tracks will lead to removal of those rail facilities.

As the record reflects, Bartlett came forward quickly on August 8, 2013, in response to the Petition expressing dismay at the sudden filing of the Petition and concern that the Project would fundamentally alter the provision of rail common carrier service to Council Bluffs customers, including to itself. See Bartlett Letter at 1. Among Bartlett's concerns, shared by KCSR, is that the Project (of which the IAIS rail line acquisition transaction is but a part) does not assure Bartlett's continued access to KCSR line-haul service under arrangements that are both economically and operationally comparable to the current situation. KCSR is not aware of any written commitments by IAIS to Bartlett assuring that Bartlett will not be harmed by the Project. As KCSR sees it, absent appropriate written commitments, IAIS would be free to alter the switching charges and/or rail service to Bartlett to effectively foreclose Bartlett's access to KCSR and other carriers, and IAIS would be able to do the same to Bartlett's neighboring shippers.

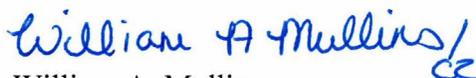
Because the entire Project is not expected to be completed until 2015, there is more than enough time for the Board to require that all elements of the Project be presented and analyzed together in the interest of a fully-developed record,² but as it stands now, the subject proceeding

¹ KCSR acquired Kansas City-Council Bluffs haulage rights over the Union Pacific Railroad Company in 1988. See Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company – Control – Missouri-Kansas-Texas Railroad Company, et al., ICC Finance Docket No. 30800 (ICC served Aug. 11, 1988). As a result of these rights and several other agreements, KCSR was able to obtain access to Bartlett's South House, whose industry tracks connect to BNSF trackage which trackage appears to be part of the subject transaction involving IAIS.

² Such a "holistic" approach to assessing the service and competitive impacts of two separate but substantially interrelated transactions/proceedings is consistent with such recent cases as Grand Trunk Western Railroad Company – Acquisition of Operating Easement – CSX Transportation, Inc., STB Docket No. FD 35661 (served Feb. 8, 2013) (in which the Board gave a comprehensive review to an "easement swap" between two railroads that was presented under separate proceedings so as to ensure that the transactions, when considered together, would not

lacks transparency, and IAIS' intentions and commitments are murky at best. Indeed, if the Board were to grant the Petition as IAIS would like, it appears that IAIS potentially could close on the subject BNSF line acquisition ahead of the other parts of the Project, thereby altering service to Bartlett and its neighboring shippers sooner than 2015. Such a lack of transparency, paired with as-yet-unresolved concerns over rail service impacts, clearly establish that the Project (not just the limited element of it encompassed by the instant proceeding) must be scrutinized as a whole, rather than in a piecemeal fashion. There must be adequate opportunity for public comment and a thorough Board examination of the effects of the entire Project's elements upon rail service and the environment.³

Respectfully submitted,



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cc: Parties of Record

have significant anticompetitive effects); and BNSF Railway Company – Trackage Rights Exemption – Union Pacific Railroad Company, STB Docket No. FD 35601 (served Mar. 21, 2012) (in which the Board imposed a housekeeping stay so that issues in dispute in the trackage rights proceeding could be considered alongside matters arising in a related Union Pacific rail line abandonment proceeding that BNSF alleged would impair BNSF's asserted operating-rights). Similarly, the Board consistently takes into account the cumulative environmental impacts of separate but related undertakings as is required of it under the National Environmental Policy Act at 42 U.S.C. §§ 4321-43. See, e.g., California High-Speed Rail Authority – Construction Exemption – In Merced, Madera and Fresno Counties, Cal., STB Docket No. FD 35724 (served Jun. 13, 2013) (noting that the proponent's "preferred build alternative" could result in cumulative environmental impacts when considered alongside past, present, and reasonably foreseeable projects); and Boston & Maine Corporation – Abandonment Exemption – In Worcester County, Mass., Docket No. AB 32 (Sub-No. 105X) (served July 13, 2012) (which includes a recent description of the agency's adherence to the Council on Environmental Quality's requirements for cumulative impacts analysis to include not only the project proposed, but also all actions that could contribute to cumulative impacts).

³ While the Board is in the best position to develop the appropriate procedural approach, the agency may want to consider requiring IAIS to supplement its Petition to include information on the yet-to-be-filed joint line relocation filing, and to require additional information concerning the steps IAIS has taken or will take to ensure that shippers such as Bartlett are not harmed. 49 C.F.R. § 1121.4(c)(i). The Board can then allow for discovery and the filing of public comment, and, if necessary, institute a formal proceeding.