

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

REPLY TO PETITION FOR EXEMPTION

Pursuant to the Surface Transportation Board's (the "Board") procedural rules, Bartlett Grain Company, L.P. ("Bartlett Grain"), hereby replies to the Petition for Exemption ("Petition") filed in this proceeding by Iowa Interstate Railroad, Ltd ("IAIS"). For the reasons set forth herein, "the full impact of the proposed exemption cannot be ascertained from the information contained in the petition or accompanying submissions." 49 C.F.R. §1121.4(c)(1). The Board should accordingly direct IAIS to submit certain additional information into the record of this proceeding prior to the Board deciding whether to grant the petition or to take other action on it.¹

¹ At page 6 of the Petition, IAIS states that it "believes both of the shippers on the Bartlett Line support the proposed acquisition." IAIS offers as evidence of Bartlett Grain's support the fact that Bartlett Grain has agreed to amend and restate an Industrial Track Agreement that is presently between BNSF and Bartlett Grain. Bartlett Grain does not yet have sufficient information to support or oppose this proposed transaction. Moreover, the agreement in question is to be assigned to IAIS by BNSF if the various transactions associated with the Council Bluffs Interstate System Improvements Project ("CBIS") go forward. Because of the fundamental changes to the rail lines and service to the Bartlett Grain Council Bluffs South grain elevator described herein, the agreement will have to be amended, restated, or replaced altogether. While Bartlett Grain has agreed to try to negotiate a mutually acceptable amended agreement, those negotiations have not been completed, and several key issues remain unresolved.

I.
IDENTITY AND INTEREST OF BARTLETT GRAIN COMPANY, L.P.

Bartlett Grain is a Missouri Limited Partnership headquartered in Kansas City, Missouri. It has twenty nine grain elevators and other facilities located throughout the United States. Bartlett Grain's Council Bluffs South Facility ("CB South") is located at 29th street in Council Bluffs, Iowa. This facility receives corn from local farming operations via truck, and outbound shipments are made in unit train rail service.

A. Current Rail Operations at Bartlett Grain's CB South Facility

The CB South facility is located along the BNSF Railway's ("BNSF") Council Bluffs Subdivision. Pursuant to haulage and other agreements arising out of previous rail mergers,² rail shippers in the Council Bluffs area may receive rail service from the Kansas City Southern Railway ("KCS") over this BNSF track via the two carriers' interchange in Kansas City, Missouri. Bartlett Grain has a confidential rail transportation agreement with KCS that will remain in effect for the foreseeable future. BNSF transports unit trains of railcars for the KCS directly to and from the CB South facility from the BNSF/KCS interchange in Kansas City.

Under the current rail operations at CB South, BNSF delivers the empty KCS unit trains of 80 cars over the Council Bluffs Subdivision from Kansas City to the BNSF rail yard in Council Bluffs. While BNSF can and has placed KCS unit trains in various ways at the CB South facility due to BNSF's yard and access to Bartlett Grain's tracks from both the north and south, the typical operating procedure for delivering the trains to CB South is for a BNSF road crew to initially place a portion of the railcars onto Bartlett Grain's industry track from the south (to minimize the amount of BNSF switches to be fouled while waiting for a local BNSF

² See *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control – Missouri-Kansas-Texas Railroad Company, et al*, Finance Docket No. 30800 (ICC Served August 11, 1988).

switching crew), and then hold the remaining empty railcars on the east mainline until a separate BNSF switching crew spots the rest of the train. The railcars are pulled north of the facility over the BNSF main line track that includes the “Bartlett Line” described in the Petition, and cars are shoved into five industry tracks utilized by the CB South facility and located west of the facility. Loaded and assembled unit trains are then picked up by BNSF crews and transported by BNSF either from the northern or southern ends of CB South’s siding track located west of the facility.

B. Changes to Rail Operations Contemplated by the CBIS Project

The Petition briefly mentions and describes the CBIS project, which Bartlett Grain agrees is a significant public works project undertaken by the Iowa Department of Transportation (“IDOT”). IDOT’s desired reconstruction and reconfiguration of Interstates 29 and 80 in Council Bluffs will affect existing railroad tracks and operations in the area, so the CBIS project entails numerous rail line relocations and related land transfers. Because some of these proposed line relocations and land transfers would significantly change the current rail operations at the CB South facility, Bartlett Grain has attempted, with some success, to be actively involved in discussions with IDOT and the affected railroads in order to ensure Bartlett Grain’s interests and existing rights are protected and that the CB South facility continues to remain a viable facility into the future. While many of the details of the railroad transactions remain unknown to Bartlett Grain despite its best efforts to learn them, Bartlett Grain’s understanding of the effect of the CBIS project and related rail transactions on the current rail operations at the CB South facility is as follows:

1. The current BNSF deliveries of KCS trains from the south will cease and BNSF will abandon that portion of its Council Bluffs Subdivision.
2. BNSF will terminate its current ability to provide common carrier service to the CB South facility by combining the abandonment of the southern portion of its

Council Bluffs Subdivision with the abandonment of its other tracks in the vicinity of the facility, and/or transfers of such tracks to the IAIS.

3. Whereas the CB South facility is now connected directly to common carrier lines at either end of its industry tracks, the *only* connection of the CB South industry track to the interstate rail system at the conclusion of the rail transactions associated with the CBIS project in 2015 will *not* be “the Bartlett Line” described in the Petition, but rather a newly constructed line of rail connecting the northern portion of Bartlett Grain’s industry tracks to a new connection between the tracks of IAIS and the CBEC Railway. It is Bartlett Grain’s further understanding that this track will be constructed by a contractor of IDOT, and will be owned and maintained by IAIS.
4. After consummation of the rail transactions contemplated by IDOT, BNSF, IAIS and CBEC Railway, the KCS trains destined for the CB South facility will henceforth be transported by BNSF from Kansas City in part over a relocated and newly constructed main line located several miles east of the to-be-abandoned portion of the Council Bluffs Subdivision, to yard tracks owned and operated by IAIS.
5. After the relocation of the BNSF main line and the related abandonments and conveyances, BNSF will take the KCS trains into the IAIS Council Bluffs rail yard and then IAIS will deliver unit trains to CB South via a switching movement from the north that will entail IAIS operating over the tracks of the CBEC Railway via the aforementioned connection and pursuant to operating rights granted by CBEC Railway, and then backing the trains into the Bartlett Grain facility over the newly constructed line of rail described in paragraph 3. Loaded unit trains would be switched out in the reverse direction over the same tracks.

II. ARGUMENT

The rail relocations and other transactions associated with the CBIS summarized above would fundamentally change the way rail service is currently provided to the CB South facility by (1) rerouting the KCS trains from Kansas City over the relocated BNSF main line; (2) BNSF delivering the trains to the IAIS Council Bluffs rail yard instead of directly to the Bartlett Grain industry track; (3) inserting the IAIS into the BNSF/KCS movement as a switching carrier; and (4) IAIS serving the CB South facility from the north by operating over its and the CBEC Railway’s lines, and backing the inbound trains on to the CB South industry tracks. As such, it

is not the case that “operations to be conducted by IAIS will simply replace those previously performed by BNSF.” Petition at 8. This fundamental change in operations and service will not only bring into the equation new and different rail operations by a third rail carrier added to the overall movement, but also potential economic issues that could adversely affect the cost of transportation incurred by Bartlett Grain and/or the costs of the KCS for its trains to access Bartlett Grain’s tracks and facility.

Because of this fundamental change and the potential disruption to Bartlett Grain’s rail service and plant operations, Bartlett Grain has attempted to work closely with BNSF, IAIS and IDOT to ensure that the CBIS project and the associated rail projects and land transfers will not adversely affect or disrupt the current level of rail service to Bartlett Grain’s CB South facility. Bartlett Grain’s overall goal and requirement is that, if these rail transactions are permitted to go forward, Bartlett Grain’s current rail service from BNSF and KCS will not be adversely affected, either from an operational or from an economic standpoint, and the CB South facility will remain a viable asset to Bartlett Grain. To some extent, Bartlett Grain’s prior efforts to achieve this goal have been successful. Also, since filing its letter in this proceeding on August 8, 2013, Bartlett Grain has received certain additional, written assurances from IAIS that it will deliver in a single movement entire unit trains it receives from BNSF to the CB South facility, and will similarly pick up entire loaded unit trains. However, Bartlett Grain believes there are still several factual and legal issues upon which the Board should request IAIS to supply additional information before deciding whether it is in the public interest to grant the exemption authority IAIS seeks. These issues are summarized below.

A. Ensuring Bartlett Grain's Industry Tracks are Directly Connected to a Common Carrier Line of Rail Upon Consummation of the CBIS Project Rail Transactions

An overarching issue and concern to Bartlett Grain is that the Petition seeks authority to purchase a segment of BNSF rail line that Bartlett Grain understands would not provide common carrier service to the CB South facility after the completion of the CBIS project and related rail transactions in 2015. Specifically, the "Bartlett Line" is described in the Petition as an approximately 0.75-mile rail line that "extends from approximately BNSF milepost 491.00 near 29th Avenue in Council Bluffs to the crossing of the line of CBEC Railway, Inc. ('CEC') at approximately BNSF milepost 491.75 in Council Bluffs." Petition at 3. Exhibit A to the Petition shows the two referenced mileposts, but does not label which track on the diagram is the "Bartlett Line." Bartlett Grain surmises that this track is the continuation of the BNSF main line that passes on the eastern side of the CB South elevator and property. As explained above, the CBIS project plans contemplate IAIS providing service to Bartlett Grain and the other shipper located on the current line over an entirely different track to be constructed by a contractor of IDOT, and then operated and maintained by IAIS. This newly constructed track is to be connected to the CEC Railway, and IAIS will access the track from its Council Bluffs rail yard via operating rights it has over the CEC Railway. *Id.* at 4. It is Bartlett Grain's understanding that all or part of the current track that includes the "Bartlett Line" is to be removed prior to 2015.³

³ The CBIS project contemplates that the current rail service to CB South provided by BNSF and KCS from the south will continue until all of the rail-related land transactions are consummated, the construction and relocation of rail lines contemplated by the CBIS project are completed, and IAIS access to the CB South facility from the north is established. Under such a plan, the new connector would be constructed and the current "Bartlett Line" would be removed by 2015.

Despite the foregoing, the Petition states that the acquisition of “the Bartlett Line” is for the purpose of “preserving rail service to the two shippers located on that segment.” Petition at 3; *See also* Petition at 4 (the CBIS project “contemplates that preserved rail service on the Bartlett Line will be provided by IAIS”). The description of “the Bartlett Line” and vaguely worded intended purpose of the transaction raise issues that require clarification and additional information from IAIS and/or BNSF.

This is a critical issue for Bartlett Grain. Currently, the CB South property has direct access to BNSF’s common carrier line at the northern and southern ends of its property. When BNSF abandons its lines of rail to the south of the facility, Bartlett Grain will no longer have direct access to a common carrier line of rail – and therefore the interstate rail system – from the southern end of its property. This makes it imperative that the northern end of Bartlett Grain’s property continue to have direct access to a common carrier line of rail, as opposed to a private industry track owned by a third party that is outside the Board’s jurisdiction. However, the Petition (1) does not mention, let alone describe, the CBIS project plans for the construction of a new and different track over which IAIS would operate to serve Bartlett Grain after 2015, and (2) whether, when, and how IAIS intends to abandon or otherwise dispose of the “Bartlett Line” described in the Petition since the CBIS project and related rail transactions do not contemplate it will be used to serve Bartlett Grain.

In light of the above, the Board should direct IAIS to supply the Board with the following additional information:

(1) IAIS should describe in detail the IDOT and IAIS plans regarding construction and operation of the newly constructed connector track summarized above and how it relates to the proposed acquisition and operation of the segment of BNSF’s rail line covered by the Petition;

(2) IAIS should explain whether, and if so, how IAIS intends to use all or part of the segment of BNSF's rail line described in the Petition to provide common carrier service to Bartlett Grain and the other shipper on the line after 2015, when all of the rail track and land transactions between it and BNSF are expected to be consummated;

(3) If all or part of the common carrier service to Bartlett Grain and the other shipper is indeed intended to be provided over the newly constructed track that will connect the CB South industry track to the CBEC Railway track over which IAIS has operating rights, and not the rail line described in the Petition, then IAIS should (a) confirm that this new track will be a common carrier line of railroad, and (b) explain how and when IAIS and/or IDOT will to seek authority from the Board to construct and operate over the new track. Since the newly constructed line would replace a common carrier line of rail, and would introduce IAIS to new shippers and a market it presently doesn't serve, this new track would appear to clearly meet the definition of an extension of IAIS's existing system that would require construction and operation authority from the Board under 49 U.S.C. §10901(a)(1).⁴ In any case, it is imperative that the transactions between IAIS, BNSF, IDOT and CBEC Railway result in CB South's industry tracks continuing to be directly connected to a common carrier line of rail, as they are today. The Petition is not clear on this critical point.

⁴ Similarly, the Petition states that BNSF, CBEC, and IAIS anticipate filing a notice of exemption under 49 C.F.R. §1180.2(d)(5) for the "significant line relocations" involved with the CBIS. Petition at 4. However, as stated in the Petition, the line relocations will also include the proposed abandonment of BNSF tracks, as well as IAIS replacing BNSF as the railroad whose common carrier lines are connected to the CB South facility and the other rail shipper. In addition to the open question of whether these relocations will "disrupt" service to Bartlett Grain and other rail shippers, the §1180.2(d)(5) class exemption has not been permitted to apply to rail abandonments where a relocation proposal involved a change in service to shippers, expansion into new territory, or a change in existing competitive situations." *Denver & R.G.W.R Co. – Jt. Proj. Relocation over BN*, 4 I.C.C. 2d 95 (1987). Since all three of the foregoing criteria seem to apply to the IAIS/BNSF/CBEC transactions, it seems that use of the class exemption for the joint relocation project may not be appropriate in these circumstances.

B. Potential Disruption of Service to Bartlett Grain and other Shippers Currently Served by BNSF

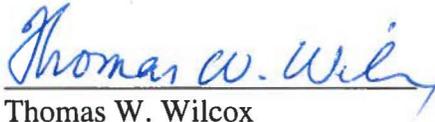
As stated above, Bartlett Grain's primary objective in engaging in discussions with IDOT and the railroads involved in the CBIS project has been to ensure, to the maximum extent possible, that the rail service Bartlett Grain receives today from BNSF and KCS pursuant to the railroads' haulage agreements is not materially changed by the contemplated transactions. A necessary prerequisite to achieving this goal is that complete unit trains of KCS railcars are delivered and picked up at the CB South facility by IAIS. The insertion of the IAIS as a switching railroad into the existing movement raises the possibility of disruptions to Bartlett Grain's service caused by additional costs imposed on BNSF, KCS and/or Bartlett Grain by IAIS. Accordingly, Bartlett Grain believes that IAIS should be required to supplement its Petition with a more thorough explanation of how its planned operations will not disrupt service to Bartlett Grain and other shippers by imposing additional costs or charges that could make rail service economically infeasible at this location.

**III.
CONCLUSION**

In conclusion, rail service to Bartlett Grain's CB South facility will be fundamentally changed by the numerous transactions contemplated by IDOT, IAIS, BNSF, and CBEC Railway as part of the CBIS project, including the transaction described in the Petition. However, the Petition glosses over the details these transactions, and by doing so, raises questions about whether the transaction covered by the Petition will result in the current rail service to Bartlett Grain being substantially disrupted or otherwise adversely affected. Accordingly, pursuant to 49 C.F.R. §1121.4(c)(1), the Board should direct IAIS to supplement its Petition to provide more

detailed information on the topics discussed in this reply, and any other information that the Board deems necessary and appropriate to properly evaluate and act on the Petition.⁵

Respectfully submitted,



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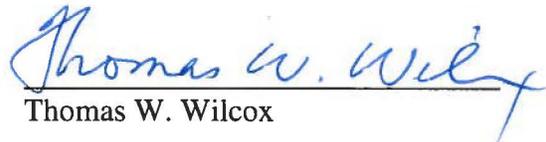
⁵ The Petition states that “the relevant agreements governing the Bartlett Line transaction do not contain any provision that would limit IAIS’s future interchange of traffic to or from the line with a third-party connecting carrier.” Petition at 8. However, it is Bartlett Grain’s understanding that IAIS and BNSF have not finalized the terms of their operating and interchange agreement, so it is not a current “relevant agreement.” Moreover, it is not clear whether IAIS considers the agreement governing its interchange with CBEC Railway to be an agreement governing the Bartlett Line transaction. For these reasons, the Board should also consider directing IAIS to submit into the record – subject to an appropriate protective order - its final operating and interchange agreement with BNSF, and any interchange agreement it has with CBEC Railway that would affect the movement of Bartlett Grain’s trains and rail service to the CB South facility.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply to Petition for Exemption was served this 27th day of August, 2013 via email and U.S. first-class mail on the following:

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