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August 7, 2020

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 20024

Re: AB-406 (Sub-No. 5X)
Central Kansas Railway, Limited Liability Company —
Abandonment Exemption — In Clarke and Comanche Counties, Kan.

Dear Ms. Brown:

OmniTRAX Holdings Combined, Inc. (“OTH”) and OmniTRAX, Inc. (“OmniTRAX”) hereby respond to the inquiry of the Surface Transportation Board (the “Board”) directed to OmniTRAX and others in a Director’s Order served on July 22, 2020, concerning a roughly 30.3-mile railroad line in Kansas (the “Line”) that is the subject of the above-referenced abandonment and interim trails use proceeding. OTH is a non-carrier holding company that controls OmniTRAX and the many short line railroads within the OTH corporate family.

The Line was among a network of railroad lines owned by Central Kansas Railway, Limited Liability Company (“CKR”), which was, until 2009, a holding of OmniTRAX.¹ In 1996, CKR obtained authorization to abandon the Line, and subsequently consented to an interim trails use agreement with Iowa Trails Council (“ITC”) covering the Line’s right-of-way. Under the terms of its trails use arrangement, CKR transferred all of its title and interest in the Line’s right-of-way to ITC under a donative quitclaim deed, subject only to CKR’s retention of an obligatory common carrier reactivation right, as of October 1, 1997.

¹ OTH did not assume control of OmniTRAX and the OTH short lines until 2015. The Board authorized OTH’s control of the short line railroads previously under OmniTRAX’s control in 2016. See *OmniTRAX Holdings Combined, Inc.—Acquisition of Control Exemption—Alabama & Tennessee River Railway, LLC, et al.*, FD 36032 (STB served Jul. 14, 2016).

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The record in this proceeding indicates that ITC conveyed its interests in the right-of-way to Short Grass Prairie Trail, Inc. (“SGPT”) in 2000, which, in turn, transferred its interests in the corridor to the incumbent trails sponsor, Sunflower Rail-Trails Conservancy, Inc. (“SRTC”), in 2013. OmniTRAX suspects, but has not been able to ascertain, that each subsequent trails sponsor has secured all of the rights and interests in the corridor that CKR originally conveyed to ITC in 1997. CKR has never re-acquired any ownership interest in any part of the Line’s right-of-way after the sale to ITC.

Following abandonment authorization and subsequent trails use arrangement with ITC in 1997, CKR sold all of its then-active railroad lines and related assets to Kansas & Oklahoma Railroad, Inc. (“K&O”) in 2001. *See Kan. & Okla. R.R.—Acquis. Exemption—Cent. Kan. Ry.*, FD 34030 (STB served June 12, 2001). OTH has no records to indicate that the reactivation rights that CKR would have held in the Line at that time were included in the K&O asset sale, and it would appear that the reactivation right for the Line remained with CKR. However, CKR remained a corporate holding of OmniTRAX, Inc., and was never transferred to Watco Companies, as SRTC reportedly has stated, mistakenly.

In 2009, CKR was dissolved, and no longer exists. OTH has no record of any conveyance of CKR’s reactivation right in the Line to anyone outside of the OmniTRAX corporate family before or after CKR’s dissolution. OTH believes that, under applicable law, CKR’s reactivation right in the Line most likely fell to OmniTRAX, CKR’s corporate parent at the time, and now a subsidiary of OTH.

Having learned of SRTC’s decision to end its trails sponsorship for the Line and its corresponding request to vacate the current notice of interim trails use (“NITU”), OTH has determined that, to the extent it may control CKR’s historic reactivation right in the Line, it has no interests in restoring the Line to service. OTH and OmniTRAX desire that the Line be fully abandoned following the vacation of the NITU, and with the abandonment, that any reactivation right that may reside within the OmniTRAX corporate family be extinguished by such consummation of abandonment. As explained above, neither OTH nor OmniTRAX has a claim to title to the Line. OTH and OmniTRAX presume that, through ITC and SGPT, SRTC is now the owner of the Lines’ right-of-way, currently possessing whatever rights CKR had in the corridor as of the sale to ITC in 1997 (again, subject to CKR’s retention of a reactivation right). Accordingly, it appears that the issue of corridor ownership will be for SRTC to establish.

If the Board were to determine that, under the circumstances, OmniTRAX (as putative holder of the reactivation right) should tender a formal notice of abandonment consummation for the Line upon the vacation of the current NITU, OmniTRAX will do so forthwith.

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Respectfully submitted,

/s/ *Michael J. Barron, Jr.*

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and OmniTRAX, Inc.

MJB:ah

cc: All parties of record