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June 1, 2020

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VIA ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W., Room #1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
June 1, 2020
Part of
Public Record

Re: **Docket No. AB-1272X**
Central Texas & Colorado River Railway, LLC – Abandonment Exemption –
in McCulloch, San Saba, Mills, and Lampasas Counties, TX

Dear Ms. Brown:

Central Texas & Colorado River Railway, LLC (“CTXR”) hereby replies in opposition to the May 21, 2020 filing (the “Appeal”) of the Brady Line Shipper Group (“BLSG”) appealing an order of the Director of the Office of Proceedings served on May 20, 2020 (the “May 20 Order”). As provided below, BLSG fails to satisfy the very high burden to warrant reversal of the May 20 Order, and, accordingly, the Appeal must be denied.

BLSG lodged its Appeal pursuant to 49 C.F.R. § 1011.6(b),¹ which allows reversals of decision such as the May 20th Order “only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.” Such appeals are not favored. *Id.* Against this restrictive standard, BLSG has failed to show that the May 20 Order reflects any error of judgment, or that the decision to permit the continuation of an abeyance order in the subject proceeding perpetrates an injustice.

The apparent thrust of BLSG’s Appeal is that the Board’s recent order allegedly extends an embargo of rail service that “cannot be justified” (Appeal at 2) over a line that is the subject of the present abandonment proceeding. But there is no unjustified or unlawful embargo, and the lone precedent upon which BLSG relies is readily distinguishable and inapplicable.

¹ CTXR tenders its reply today, out of an abundance of caution, but believes that the Board’s rules would allow for a reply to the Appeal by or before June 9 (ten days after the due date for appeals). See Section 1011.6(b).

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As the record in this proceeding reflects, CTXR embargoed service on the line due to deteriorated track conditions in July of 2019. Concluding that the line's traffic levels did not warrant the expenses of necessary track rehabilitation, and in view of projected operating cost losses, CTXR only weeks later promptly invoked the Board's abandonment procedures for authorization to discontinue common carrier service over, and to abandon, the line.

The record on the merits of CTXR's abandonment petition is closed. CTXR has shown in detail that the economic circumstances unquestionably support a full and formal cessation of service. For its part, BLSG responded to the abandonment petition by stating that CTXR had provided "ample" information upon which BLSG could decide whether or not to oppose the abandonment. BLSG Reply (August 14, 2019) at 1. BLSG never addressed the merits of the petition thereafter, nor did anyone else. In fact, BLSG's subsequent filings indicate that it had reconciled itself to a Board decision granting CTXR authority to formally end its common carrier obligations. Accordingly, no one, including BLSG, has disputed that CTXR should be relieved of its common carrier obligation, or has argued that CTXR's petition should be denied. BLSG's argument that the Director's order "cannot be justified" because it would extend the application an embargo – when no one has questioned the merits of a permanent and formal cessation of service via abandonment – does not comport with the record or with simple logic. In fact, it would be manifestly unjust for the Board, in the face of undisputed (ample) evidence supporting abandonment, to declare the current embargo to be unjustified.

BLSG's reliance upon *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, 5 ICC 2d 542 (1989) ("*Louisiana*") merely builds on its erroneous unlawful embargo theory, ignores the critical distinctions between that case and the facts here, and overlooks precedent supporting the abeyance order. Specifically, the railroad in *Louisiana* had suspended operations pursuant to an embargo based upon poor track conditions, but, very unlike CTXR, it did not seek abandonment or discontinuance authority until roughly 11 months later. The shipper contested the legal *bona fides* of the embargo prior to the abandonment filing, and, in response, the railroad attempted to excuse its inaction in either restoring or seeking abandonment authority by arguing (unsuccessfully) that it was attempting to resolve the embargo by pursuing a buyer for the line segment. *Louisiana* at 547.

The Interstate Commerce Commission ("ICC") did not rule on the propriety of any procedural order in *Louisiana*, as BLSG is asking the Board to do here. *Louisiana* did not involve any ICC abeyance orders or requests, and, as such, that decision lacks any analysis regarding whether an abeyance order intended to avert outright abandonment, rather than the

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extension of a naked embargo, is proper. While *Louisiana* is not on point, *Grenada Railway*² is. There, the Board permitted abandonment proceedings involving railroad lines that had been the subject of a service embargo to be held in abeyance to facilitate (ultimately fruitful) efforts to avert abandonment through private line sale negotiations, in keeping with the facts here. BLSG's Appeal seeks a remedy that is therefore inconsistent with recent agency precedent.

In light of the relevant distinctions, the Director has properly exercised her discretion under the circumstances to decide whether or not an abeyance order is warranted. The Director has overlooked no controlling precedent, and, instead has acted in accordance with prior agency action. Thus, the Director's decision to extend the abeyance order, following CTXR's compliance with prior Board instructions to supply detailed information regarding efforts to avoid abandonment that might support continued abeyance of this proceeding, does not constitute material error.

For these reasons, BLSG's Appeal should be viewed with appropriate disfavor, and it should be denied.

Respectfully submitted,

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Attorney for Central Texas &
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RAW/ah

cc: All parties of record

² *Grenada Railway – Abandonment Exemption – In Montgomery, Carroll, Holmes, Yazoo, and Madison Counties, Miss.*, AB-1087 (Sub-No. 1X), *et al.* (STB served Feb. 9, 2015 and Feb. 25, 2016) ("*Grenada Railway*").