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By e-filing

Allison C. Davis, Director
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

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

Dear Ms. Davis:

Hereby transmitted is a Reply In Opposition To Request To Change Relief From
Abandonment To Discontinuance for filing with the Board in the above referenced matter.

Respectfully submitted,

/s/ Thomas F. McFarland

Thomas F. McFarland
Attorney for Brady Line Shipper Group

TMcF:mg:1860\efSTB11

cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

CENTRAL TEXAS & COLORADO	)	
RIVER RAILWAY, LLC --	)	
ABANDONMENT EXEMPTION -- IN	)	DOCKET NO. AB-1272X
MCCULLOCH, SAN SABA, MILLS,	)	
AND LAMPASAS COUNTIES, TX	)	

**REPLY IN OPPOSITION TO REQUEST TO CHANGE
RELIEF FROM ABANDONMENT TO DISCONTINUANCE**

THE BRADY LINE SHIPPER GROUP
471 South Highway 16
San Saba, TX 76877

Replicant

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DATE FILED: August 24, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

CENTRAL TEXAS & COLORADO	)	
RIVER RAILWAY, LLC --	)	
ABANDONMENT EXEMPTION -- IN	)	DOCKET NO. AB-1272X
MCCULLOCH, SAN SABA, MILLS,	)	
AND LAMPASAS COUNTIES, TX	)	

**REPLY IN OPPOSITION TO REQUEST TO CHANGE
RELIEF FROM ABANDONMENT TO DISCONTINUANCE**

Pursuant to permission granted in the Board's decision served August 7, 2020, the BRADY LINE SHIPPER GROUP (the Shipper Group)^{1/} hereby replies in opposition to a change of relief from abandonment to discontinuance in a Status Report filed by Central Texas & Colorado River Railway, LLC (CTXR) on July 20, 2020.

BACKGROUND

The Brady Line extends 67.5 miles between point of connection to BNSF Railway Company (BNSF) at Lometa, TX and terminus at Brady, TX. The Brady Line is owned by CTXR, a subsidiary of OmniTRAX, Inc. The members of the Shipper Group were active shippers over the Brady Line until CTXR stopped providing service over the line more than a year ago.

As of July 25, 2019, the Brady Line was embargoed, assertedly due to unsafe track and bridge conditions. On August 9, 2019, CTXR filed a Petition for Exemption of abandonment of the Brady Line.

^{1/} Members of the Brady Line Shipper Group are The J.C. Smith Co.; P.W. Gillibrand Co. of Texas, Inc.; and Jacoby and Jacoby, Inc.

On October 25, 2019, CTXR requested that the Board hold the abandonment proceeding in abeyance because it was engaged in negotiations with multiple parties for sale of the Line. The Board approved that request on November 5, 2019. The abandonment proceeding continued to be held in abeyance until July 20, 2020 as a result of several additional Board decisions.

Initially, the Shipper Group did not oppose abeyance because of CTXR's representation that sale of the Rail Line for continued rail service was likely. However, after more than six months had passed with no sale, the Shipper Group opposed further abeyance, arguing that CTXR had ample time to complete sale of the Line. (Shipper Group letter dated May 4, 2020).

On May 20, 2020, the Board issued a decision continuing to hold the proceeding in abeyance until July 20, 2020, finding that CTXR's negotiations to sell the Line are still actively progressing and CTXR is also engaged with prospective shipper interests whose potential traffic might warrant withdrawal of the petition for abandonment.

However, CTXR's July 20, 2020 Status Report made no mention of a prospective sale of the Rail Line, nor of a potential infusion of new traffic that would obviate abandonment. Instead, CTXR claimed that reactivating the Line under current circumstances "would be financially calamitous" (July 20 Report at 2). Without providing any specifics, CTXR then stated that "traffic opportunities may yet arise in the future to warrant restoring the Line to service" (*Id.*).

Solely on the basis of those generalities and without seeking leave from the Board, CTXR withdrew its request for abandonment. CTXR instead requested authority to discontinue service over the Line (July 20 Report at 2).

In sum, CTR mislled the Shipper Group and the Board to believe that sale or an infusion of new traffic would obviate abandonment, and, when neither materialized, CTR proposed an abeyance of indefinite duration (which is what discontinuance authority is) instead of abandonment. The Board should not countenance CTR's manipulation of the discontinuance - abandonment process.

The National Rail Policy is furthered when action is taken that would result in restoration of rail service. *See* 49 U.S.C. § 10101(4) ("In regulating the railroad industry, it is the policy of the United States Government. . .to insure the development and continuation of a sound rail transportation system. . .to meet the needs of the public. . ."); *see, also, New York Cross Harbor Railroad v. STB*, 374 F.3d 1177 (DC Cir, 2004), ("...[the STB has] a statutory duty to preserve and promote continued rail service.").

The change from abandonment to discontinuance is not in furtherance of that Policy because the Shipper Group and North Central Railcorp (NCR) would restore rail service over the line by means of an Offer of Financial Assistance (OFA) at the conclusion of abandonment, but there is no opportunity to force a sale of the line for reactivation of rail service when a rail carrier is authorized to discontinue service over a line.

Normally, Board authorization is not required for a change in relief from abandonment to discontinuance because discontinuance is a lesser remedy that is included in abandonment. Here, however, Board oversight for the proposed change is required to uphold the integrity of the Board's processes. *See, e.g., The Burlington Northern & S.F. Ry. Co. -- Abandonment Exemption -- in King County, WA*, 1998 WL 452837 at *5 (3 STB 634):

...Nor can we find that continued rail service is likely to result from the offer. That being the case, it would be an abuse of our processes to permit the (OFA) process to go forward.

CTXR's behavior is thwarting the OFA process. Discontinuance enables a rail carrier to investigate whether new or increased traffic may materialize, thereby enabling operation of a rail line to resume on a long-term basis. If investigation does not uncover such traffic, discontinuance gives way to abandonment.

But CTXR has it backwards. CTXR first filed for abandonment, which it held in abeyance while it allegedly investigated whether there may be new or increased traffic. When no such traffic appeared, CTXR now seeks discontinuance authority instead of abandonment authority. The upshot is that the critical opportunity to file an OFA, readily available under abandonment, is unavailable under discontinuance. Rail service that would be restored under OFA-abandonment, would not be revived under discontinuance. The seemingly simple change in relief from abandonment to discontinuance would thus deprive the Shipper Group of greatly needed restoration of rail service in derogation of the National Policy in favor of preservation and promotion of rail service.

The present case is much like *V&S Railway, LLC -- Discontinuance Exemption -- in Pueblo, Crowley, Kiowa, and Otero Counties, CO*, 2016 WL 185151 (Docket No. AB-603 [Sub-No. 4X], decision served January 15, 2016), in which the Board rejected a Notice of Exemption for discontinuance where the applicant rail carrier had previously sought abandonment. An interested person had filed a formal expression of intent to file an OFA to purchase the rail line in lieu of its abandonment. The change from abandonment to discontinuance would displace the OFA, just as it would in the present case (the Shipper Group and a Class III rail carrier were found to be financially responsible to file an OFA). In rejecting the Notice of Exemption for discontinuance, the Board said (at *4):

...if V&S chooses not to seek abandonment authority by supplementing its Original Notice and instead seeks discontinuance authority, V&S must file a petition for exemption or an application. Either of those processes would allow the more comprehensive review that is needed here, including consideration of the arguments raised in KCVN's petition to reject and whether V&S should be permitted to discontinue service. . .

No additional action was taken in that docket. The rail line was acquired by KCVN, LLC and Colorado & Pacific Railroad, LLC pursuant to 49 U.S.C. § 10907. *See KCVN, LLC -- Feeder Line Application -- Line of V&S Railway, LLC*, 2016 WL 1532993 (Finance Docket No. 36005, decision served April 15, 2016).

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the proposed change from abandonment to discontinuance should be denied

Respectfully submitted,

THE BRADY LINE SHIPPER GROUP
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San Saba, TX 76877

Replicant

/s/ Thomas F. McFarland

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Attorney for Replicant

DATE FILED: August 24, 2020

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2020, I served the foregoing document, Reply In Opposition To Request To Change Relief From Abandonment To Discontinuance on Robert A. Wimbish, *rwimbish@fletcher-sippel.com* and Thomas Healey, Esq., *thealey@fletcher-sippel.com*, attorneys for Central Texas & Colorado River Railway, LLC and on all parties of record by email.

/s/ Thomas F. McFarland

Thomas F. McFarland