

**BEFORE THE
SURFACE TRANSPORTATION
BOARD**

ENTERED
Office of Chief Counsel
November 20, 2025
Part of
Public Record

Docket No. AB – 1344

**COLORADO PACIFIC RIO GRANDE RAILROAD LLC –
ABANDONMENT EXEMPTION – IN RIO GRANDE COUNTY, COLORADO**

REPLY TO OFFER OF FINANCIAL ASSISTANCE

Colorado Pacific Rio Grande Railroad LLC (“CXRG”), the applicant in this proceeding, hereby files this brief reply to the Offer of Financial Assistance (“OFA”) filed by Mr. Mathew Hayduk, an individual,¹ on November 17, 2025. For the reasons set out herein, the OFA should be rejected or dismissed since it is unnecessary and moot and is otherwise substantially flawed.

I. The OFA Should Be Rejected Because it is Moot

The main reason the OFA should be rejected or dismissed is that on October 23, 2025, CXRG filed a letter notifying the Board that it desired to withdraw its Verified Notice of Exemption in this docket for a variety of reasons, which included the fact that CXRG became aware of local opposition to the abandonment, and that previously undisclosed land transactions by the prior owner of the line were complicating CXRG’s ability to accurately estimate the property’s value for purposes of conveying the railroad line to a potential purchaser. Letter to STB Chief of Case Administration from Counsel for CXRG, dated October 23, 2025 at 1. CXRG stated further that it remained doubtful that viable requests for common carrier railroad freight service over the 26.8-mile segment covered by the Verified Notice would be forthcoming in the

¹ On information and belief, Mathew is neither a licensed attorney nor a practitioner under the Surface Transportation Board regulations.

indefinite future, but that it nevertheless decided to retain ownership of the line and reevaluate CXRG's plans for it longer term, which could eventually include reinstating common carrier freight service. *Id.*

A copy of the letter was served the same day on Mr. Michael Hayduk, who had submitted a Notice of an Offer of Financial Assistance on behalf of Hayduk International, LLC on August 29, 2025. Mr. Hayduk was also notified verbally of CXRG's decision that same day. However, despite Mr. Hayduk having prior knowledge of CXRG's withdrawal request since October 23, 2025, the OFA submitted by his son, Mathew Hayduk² makes no mention of CXRG's request, let alone advance any grounds why the Board should not summarily allow CXRG to withdraw its Verified Notice consistent with well-established precedent. That precedent consistently and uniformly permits railroads to withdraw their abandonment applications or notices of exemption at any time in the process prior to exercising abandonment authority. As the Board has repeatedly held:

When a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not. Because carriers are not compelled to abandon lines, the Board normally grants a carrier's motion to withdraw its request for abandonment authority. . . . Until [a railroad] exercises its abandonment authority, which it has not (and indeed cannot, because the authority is not yet effective), the line is not abandoned and the Board's primary jurisdiction over the line continues. Accordingly, the request will be granted, and the notice of exemption will be dismissed.

Docket No. AB-290 (Sub-No. 288X), *Norfolk Southern Railway Company – Abandonment Exemption – In Bergen County, NJ* (Served May 14, 2008)(“*Bergen County*”) at 2, *citing*, Docket

² In a pleading filed on November 17, 2025, Mathew Hayduk has moved to be substituted as a “corporate affiliate” of his father’s company, but the motion states that “Hayduk International LLC desires Mathew J. Hayduk, *in his individual capacity*, to be the legal entity that seeks to acquire, and actually acquires the Line Segment via the OFA process.” CXRG reserves all rights to file a reply the younger Mr. Hayduk’s motion within the time period allowed by the Board’s rules.

No. AB-842X, *Almono LP–Abandonment Exemption–In Allegheny County, PA*, (served Jan. 28, 2004)(where, as with CXRG, the railroad withdrawing its petition pledged to fulfill its common carrier duties to provide service upon reasonable request); *followed*, Docket No. AB 303 (Sub-No. 46X), *Wisconsin Central Ltd – Abandonment Exemption – In Lake County, Illinois* (September 22, 2017) Docket No. AB-996X, *Reading Blue Mountain and Northern Railroad Company – Abandonment Exemption – In Schuylkill County, PA* (served February 5, 2008); Docket No. AB-290; and *Maine Central Railroad Company – Abandonment Exemption – In Androscoggin County, ME*, STB Docket No. AB-83 (Sub-No. 16X)(served September 15, 2000);

Because the owning carrier retains the line and the common carrier obligation, the withdrawal of the notice of exemption necessarily moots the OFA process. *Bergen County* at 2. Moreover, in this case the notice of withdrawal was filed prior to the OFA being submitted, and the Hayduks had ample notice of CXRG’s intentions.³ Notwithstanding these facts, The OFA is completely silent on CXRG’s withdrawal of its Verified Notice. It makes no attempt to argue that CXRG’s withdrawal would be inappropriate, or contrary to the established precedent cited above. Having had a full and fair opportunity to address the matter and failing to do so at all in the OFA, Mr. Hayduk should be deemed to have waived any such arguments.

If instead, the Board intends to let the 20-day default period for filing replies expire (from a November 13, 2025 start date) then fundamental fairness dictates that the Board should hold this proceeding in abeyance pending resolution of the withdrawal issue to avoid prejudice to CXRG. Specifically, should the Board inexplicably find Mr. Hayduk to be financially

³ While CXRG’s letter was submitted to the Board on October 23, 2025, due to the federal government closure it was not deemed officially filed until November 13, 2025. Even so, the filing date of the request preceded the filing date of the OFA. And, as stated, Mr. Hayduk had actual knowledge of CXRG’s intentions as of October 23, 2025, a full 25 days before the OFA was filed.

responsible despite the evidence to the contrary summarized below, the short timelines for actions under 49 C.F.R. §1152.27(e)(2) could potentially result in the parties and the Board wasting time and effort if the Board, as expected consistent with its precedent, grants CXRG's request after waiting for the 20-day reply period to run. Administrative efficiency requires that this proceeding be held in abeyance in the meantime.

In summary, the Board should expeditiously allow CXRG to withdraw its Verified Notice of Exemption and retain the segment at issue as a rail line subject to the Board's jurisdiction, and reject the OFA as moot. If the Board is not going to act expeditiously on CXRG's request, then it should hold this proceeding in abeyance until that ruling is made.

II. The OFA Should be Rejected Because it is Fatally Flawed

While there should be no reason for the Board to consider the OFA because CXRG has decided to retain ownership and the common carrier obligations, the OFA is also rife with misstatements of law and facts and fails to meet the regulatory requirements. CXRG submits this brief reply outlining several other reasons why the OFA should be rejected.

Alleged False and/or Misleading Statements. As an initial point, the OFA is schizophrenic in that it first devotes nearly one quarter of its narrative pages asserting (wrongly) that the Verified Notice of Exemption filed by CXRG was void *ab initio* for various alleged "false and/or misleading" statements. OFA at 4-9. But if such allegations were true – and they are not – then the appropriate relief would render the OFA moot, because the Verified Notice would be deemed void as of its filing date and the track would remain a common carrier line of railroad owned by CXRG. See, Docket No. FD 35303, *San Francisco Bay Railroad – Mare Island – Operation Exemption*; and Docket No. FD 35303, *David Gavrich – Continuance in Control Exemption – San Francisco Bay Railroad – Mare Island* (served December 10, 2010) at 2, footnote 5 ("Notices

that contain false or misleading information are void ab initio (void “from the beginning”). *See* 49 C.F.R. § 1150.32(c). Authority sought pursuant to a notice of exemption found void ab initio is considered as never having taken effect.”). Consequently, the OFA argues simultaneously that the Verified Notice of Exemption is void *ab initio* and that it is also validly filed.

Because CXR has decided to withdraw its Verified Notice and retain ownership of the line it is not necessary for CXRG to reply in detail to the specific allegations of “false and/or misleading statements” other than to categorically deny that CXRG or its counsel made any false or misleading statements. Briefly, as to the OFA’s “stranded segment” assertion, CXRG’s Verified Notice correctly covered tracks owned by CXRG, and the abandonment of the segment at issue would not have created a stranded segment anywhere in CXRG’s system. CXRG also believes there are serious questions as to whether the tracks north of the end point of CXRG’s tracks are still common carrier railroad lines subject to the Board’s jurisdiction. On this point, it is telling that the owner of the alleged stranded segment, the Denver & Rio Grande Railway Historical Foundation (“DGRHF”), has never appeared in this proceeding or otherwise posed any objection to CXRG’s proposed abandonment. Nor did either Michael or Mathew Hayduk pursue this alleged issue at any time prior to the OFA being filed. Be that as it may, the resolution of this issue is moot because CXRG no longer desires to abandon its track, and so there is no risk of DGRHF’s track being “stranded.” But at a minimum, it provides additional grounds for allowing CXRG to withdraw the Verified Notice, should the Board conclude that, albeit unintentionally, the Verified Notice was misleading as to the DGRHF’s track.

The OFA’s assertion that CXRG’s statement in its Verified Notice that no overhead traffic had moved on the line in the previous two years prior to its filing was “potentially false and/or misleading” appears to be based on a vague claim that a single locomotive, currently stored on

another railroad line, was delivered there using the CXRG track at some undefined date prior to January 5, 2022, when CXRG received authority from the Board to acquire the line. OFA at 5. Even if CXRG had been aware of this past activity, it is hardly “overhead traffic” as that term is understood to mean. CXRG adds that the OFA’s statement that the locomotive “was sold to a Corporation that desires the locomotive to be moved” to California, is not supported by any evidence, and is apparently false.⁴

Similarly, because CXRG has decided to withdraw its Notice of Exemption there is no need to respond in detail to the OFA’s discussion of alleged “Options Available to Resolve Preliminary Issues,” other than to state that CXRG has no interest at this time in entering into a commercial agreement to sell its line of railroad to Mathew Hayduk or any other party. Rather, CXRG has decided to retain ownership of the line and the common carrier obligation attached to it. The OFA’s apparent (but clumsy) attempt to “convert” this exempt abandonment proceeding into a quasi feeder line proceeding under 49 U.S.C. §10907 and 49 C.F.R. Part 1151.1 (OFA at 10) is utterly baseless. There are no grounds, authority, or factual justification for the STB force CXRG to enter into such an agreement and convey any of its line of railroad to a third party.

Minimum Purchase Price/Financial Responsibility - The OFA erroneously states that CXRG’s minimum purchase price is \$850,000, supplied via a September 2, 2025 email from the undersigned counsel for CXRG to Michael Hayduk. OFA at 10. However, the OFA omits that this initial number was subject to adjustment from additional research on land values, and in a subsequent letter to Mr. Hayduk dated September 19, 2025, CXRG increased the minimum purchase price to \$1,676,083 due to land values being added to the prior number. Exhibit A.

⁴ Counsel for CXRG represents that Mr. Tim Bivens, CXRG’s General Manager, contacted Mr. Noah McCann, the owner of the locomotive, on November 18, 2025, and was informed by him that no such sale had occurred, and the locomotive remains in storage for the indefinite future.

Neither Hayduk International, LLC nor Mathew Hayduk have provided the Board with evidence that either has sufficient financial responsibility to pay the higher minimum purchase price.

No Funds Were Escrowed - Under §1152.27(c)(1)(iv)(D), a party submitting an OFA must “demonstrate that the offeror *has placed* in escrow with a reputable financial institution funds equally 10% of the preliminary financial responsibility amount” (emphasis supplied). There is no statement in the OFA that Mathew Hayduk complied with this requirement, and there is no evidence that the required funds were escrowed contemporaneously with the OFA’s filing. Moreover, while the OFA correctly states that the undersigned counsel extended the courtesy of using counsel’s firm trust account to Hayduk International, LLC, that exchange occurred prior to CXRG deciding to withdraw its Verified Notice and retain ownership of the line. Since CXRG’s position is that an OFA is no longer necessary or legally an option, the courtesy extended to Hayduk International, LLC was not also extended to Mathew Hayduk (nor was it requested prior to filing the OFA). Any presumption to the contrary was incorrect

No Demonstration of Continued Need for Rail Service – Not surprisingly, the OFA falls far short of providing any “[e]vidence of a demonstrable commercial need for service” in compliance with 49 C.F.R. §1152.27(c)(1)(iv)(E). There is no such immediate need or desire for freight rail service. Accordingly, the section of the OFA entitled “Demonstrate Continued Need for Rail Service on the Line,” OFA at 18-19, is necessarily devoid of any evidence on demonstrable need. It contains no “support from shippers or receivers on the line or other evidence of an immediate and significant commercial need.” 49 C.F.R. §1152.27(c)(1)(iv)(E).⁵ And the only letter of “community support” is from three officials of Grand County, Colorado

⁵ For example, the OFA vaguely states “Hayduk asserts that after brush is cleared and the Line is inspected limited service can start immediately to Del Norte.” OFA at 20. This is not evidence, let alone evidence of an immediate and significant need for rail service. It doesn’t supply even basic information such as location, commodities, timing, etc., and so is meaningless.

who generically state they are opposed to abandonment of the line and believe it has economic potential. OFA, Exhibit R. No mention is made of any need, let alone “immediate and significant need” for service. As can be inferred from its withdrawal letter to the STB, CXRG was aware of the County’s objection to the abandonment and its opposition factored into CXRG’s decision to keep the line in common carrier service. The rest of the “continued need” section raises points that have nothing to do with freight rail service needs, and they are all mooted by CXRG retaining ownership of the line.

III. Conclusion

For the reasons set out in this Reply, the Board should expeditiously grant CXRG’s request to withdraw its Verified Notice of Exemption and reject the OFA as moot or hold this proceeding in abeyance as discussed above. The Board also has ample separate grounds for rejecting the OFA because it fails to meet the basic regulatory requirements for an Offer of Financial Assistance under 49 C.F.R. §1152.27. Rejection of the OFA will not adversely affect the line in question, any rail shipper, or the public interest, because (1) there is no present need or desire for freight rail service to fulfill; and (2) CXRG has pledged to retain ownership of the line and the attendant common carrier obligation and evaluate its future use for freight rail service.

Respectfully submitted,

/ss/ Thomas W. Wilcox
Thomas W. Wilcox
LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. Street NW, Suite 300
Washington, D.C. 20006
(202) 508-1065
tom@twilcoxlaw.com

*Attorney for Colorado Pacific Rio Grande
Railroad, LLC*

November 20, 2025

EXHIBIT A

9/19/25 Letter without attachments



LAW OFFICE OF THOMAS W. WILCOX, LLC

1629 K. STREET, NW SUITE 300

WASHINGTON, DC 20006

(202) 508-1065 (O)

(202) 365-8409 (C)

TOM@TWILCOXLAW.COM

WWW.TWILCOXLAW.COM

September 19, 2025

By E-Mail

Mr. Michael J. Hayduk
Managing Member
Hayduk International, LLC
23 Macky Farm Drive
Old Fort, North Carolina 28762 23

Re: Docket No. AB-1344 – *Colorado Pacific Rio Grande Railroad LLC -
Abandonment Exemption – In Rio Grande County, Colorado*

Dear Mr. Hayduk:

By this letter Colorado Pacific Rio Grande Railroad LLC (“CXRG”) furnishes land record information in response to your request. The accompanying deed and other documents were collected to attempt to determine how much of the railroad land west of Monte Vista is owned vs how much is easement rights only. The attached Quitclaim Deed does not identify each of the deeds under which CXRG’s title vested, back in the 1880s. To see those for each parcel would require one to review the valuation map for the right-of-way (attached).

However, review of every map and deed covering the approximately 300 acres underlying the track to be abandoned (not including the land underlying yards and sidings) would take an enormous amount of work that CXRG is reluctant to undertake in these circumstances, which entail arriving at an estimate of the land values for purposes of submitting an Offer of Financial Assistance.

Consequently, CXRG believes a workable estimate of the land values for OFA purposes can be arrived at from publicly available sources such as <https://www.landwatch.com/colorado-land-for-sale/rio-grande-county/undeveloped-land/sort-acres-low-high>. According to that website, land values for undeveloped small parcels in Rio Grande County are ranging between \$5000 and \$50,000 per acre. If the lowest price of \$5000 is used because the ROW tracts are so

Law Office of Thomas W. Wilcox

Letter to Michael J. Hayduk

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narrow; that generates a land value of approximately \$1.5 million. CXRG is willing to apply a conservative assumption that approximately 75% of the tracts are owned in fee simple (as opposed to CXRG holding an easement as long as the track is subject to Surface Transportation Board jurisdiction). Based on that assumption the estimated land value would be \$1.125 million.

In my letter of September 12, 2025 CXRG estimated the value of the track to be abandoned to be \$476,083, less the cost of removing it. CXRG estimates the removal costs will be approximately \$75,000 (but can try to obtain a more accurate estimate upon request). Adding the track costs to the land value increases the minimum purchase price of the land and track from \$850,000 to \$1,676,083, subject to further adjustment upon receiving more accurate information about the removal costs and the fee/easement land interest ratio.

Please call or email me with any questions.

Respectfully submitted,

A handwritten signature in blue ink that reads "Thomas W. Wilcox".

Thomas W. Wilcox

*Attorney for Colorado Pacific Rio Grande Railroad
LLC*

Attachments

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2025, a copy of the foregoing Reply to Offer of Financial Assistance was served on all parties of record on the official service list for Docket AB-1344.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox