

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB – 1344

ENTERED
Office of Chief Counsel
December 3, 2025
Part of
Public Record

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

**MOTION FOR PERMISSION TO
FILE SUR-REPLY TO JOINT REPLY**

Colorado Pacific Rio Grande Railroad LLC (“CXRG”) hereby seeks permission to submit into the record of this proceeding the attached Sur-Reply to the “Joint Reply to Colorado Pacific LLC’s Motion to Hold Proceeding in Abeyance; and Withdrawal Request,” (“Joint Reply”) filed on November 26, 2025¹ in response to the decision served in this proceeding November 21, 2025. That decision in pertinent part directed Hayduk International, LLC and Mathew Hayduk (“Hayduks”) to “respond to CXRG’s request to withdraw its verified notice of exemption.” Decision at 2.

The Board should grant this motion because typically requests for withdrawal of a notice of exemption in an abandonment proceeding are relatively straightforward, and so the withdrawal letter file by CXRG could not have anticipated the wide range of novel, seriously flawed arguments in the Joint Reply. This is therefore not a case where “information provided in a reply

¹ Also on November 26, 2025, the Concerned Citizens of San Luis Valley filed a Motion to Intervene in this proceeding, as well as Comments in Opposition to the Hayduks’ efforts to acquire the segment of CXRG’s line of railroad that is the subject of this docket. The Coalition supports CXRG’s withdrawal request. CXRG does not intend to submit a reply to the Coalition’s Comments other than to concur with the Coalition’s discussion of the relevant issues and concerns with the Hayduks’ attempt to acquire CXRG’s tracks, including the Coalition’s concerns about who might be behind their effort and their motivations.

to reply could have been included in an initial filing.” See Docket No. 36714 (Sub-No.1), *Sunflower State Industrial Railway – Petition for Declaratory Order* (served March 28, 2025) at 2, note 3. Moreover, this is a case where the information and argument provided in the proffered Sur-Reply would provide clarity to the Board, *id.*, both on the factual allegations and legal arguments offered by the Hayduks, but more significantly, additional clarity by rebutting numerous blatantly false factual allegations that are intended to disparage CXRG as the owner of the line.

For this latter purpose, the proffered Sur-Reply includes the Verified Statement of Mr. Jason Jones, the Chief Operating Officer of CXRG. Mr. Jones is a former 20-year employee of Union Pacific Railroad Company, whose positions included General Manager of UP’s Southern Region. Mr. Jones has decades of experience operating and maintaining common carrier railroads.

In conclusion, CXRG respectfully requests the Board to grant this motion and to accept the attached Sur-Reply into the record of this proceeding.

Respectfully submitted,

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December 3, 2025

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB – 1344

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

**SUR-REPLY TO JOINT REPLY TO REQUEST TO
WITHDRAW VERIFIED NOTICE OF EXEMPTION**

Colorado Pacific Rio Grande Railroad LLC (“CXRG”) hereby files this brief Sur-Reply to several aspects of the wide ranging “Joint Reply to Colorado Pacific LLC’s Motion to Hold Proceeding in Abeyance; and Withdrawal Request,” (“Joint Reply”) filed on November 26, 2025 in response to the decision served in this proceeding November 21, 2025 (“November 21 Decision”). That decision in pertinent part directed Hayduk International, LLC and Mathew Hayduk (“Hayduks”) to “respond to CXRG’s request to withdraw its verified notice of exemption” by November 26, 2025. November 21 Decision at 2.

Despite the November 21 Decision’s narrow scope as applied to Hayduks, the Joint Reply improperly ranges far beyond replying to CXRG’s request to withdraw. It violates 49 C.F.R. § 1104.13(c) by replying to CXRG’s reply to the Offer of Financial Assistance (“OFA”) filed by Mathew Hayduck. Joint Reply at 4-6. It also contains extraneous material that appears to be designed to bolster Mathew Hayduk’s fundamentally deficient OFA after-the-fact with alleged information of shipper interest in the line. It also makes arguments against temporarily holding the case in abeyance after the Board already took that action in the November 21 Decision by tolling the otherwise applicable OFA deadlines. All such extraneous material should be ignored

by the Board, as the question before it is whether to grant CXRG's withdrawal request. This Sur-Reply addresses those aspects of the Joint Reply and confirms that the request should be granted.

First, the Joint Reply argues that merely submitting a Notice of Intent to File an OFA pursuant to 49 C.F.R. §1152.27 results in the spontaneous creation of a completely separate "sub proceeding (or parallel proceeding) created [that] is an offer of financial assistance under §10904." Joint Reply at Par. 49. According to the Joint Reply, this "offer of financial assistance" sub-proceeding exists separately and distinctly from the underlying abandonment proceeding, although Hayduks cite no instance where the Board has ever taken such action. *Id.* at Par. 48.

There is no language supporting this novel theory in 49 U.S.C. §10904. The only purported authority offered by Hayduks (as opposed to statements of what the Joint Reply desires the rule to be) is the following partial passage from §1152.27(f)(2):

If the carrier and a person offering to purchase a line enter into a purchase agreement which will result in continued rail service, the Board will approve the transaction and **dismiss** the application for abandonment or discontinuance, or the petition for exemption or **notice of exemption.**" (Bold added)

From this passage Hayduks deduce that "The fact that the NOE must be DISMISSED clearly indicates that a separate and distinct §10903 abandonment proceeding has been held in abeyance during the OFA process." *Id.* at Par. 50. There is utterly no support for this interpretation of §1152.27(f)(2) either in the language of the OFA regulations themselves, or the Board's discussion of the 2017 OFA rules in its decision in Docket No. EP 729, *Offers of Financial Assistance* (served June 29, 2017)("EP 729").¹

¹ The Joint Reply tries to distinguish the numerous representative authorities cited by CXRG permitting carriers to withdraw abandonment requests on the grounds that "ALL of the cases involving withdrawal requests were decided prior to the July 29, 2017 Final 49 C.F.R. §1152.27 rule in EP 729." Joint Reply at Par. 47. However, that decision did not even discuss the topic of withdrawal of abandonment notices or petitions by applicant railroads, let alone specifically overrule decades of agency precedent prior to 2017 liberally allowing such withdrawals. Indeed,

The specific terms of §1152.27(f)(2) and the OFA regulations as a whole instead clearly and unambiguously make a potential OFA part of the overall abandonment proceeding, which is logically held in abeyance while the OFA process runs its course. If that process is successful, then the proper action is to dismiss the abandonment application or notice of exemption since the line will remain in common carrier service under new ownership. If the OFA process is not successful, then the abandonment is allowed to proceed. It would make no sense to have two completely separate and distinct proceedings, and neither the statute nor the regulations even hint at such a structure. But the entire process is rightfully subject to the right of the owner of the line of railroad to elect to retain its ownership of the line and fulfill its common carrier obligations should it choose to do so. Had the Board (and commenters) felt otherwise in *EP 729*, that proceeding provided the opportunity for the Board to propose and affirmatively establish what Hayduk now wishfully tries to say the regulations “clearly indicate.” That did not happen.

Second, the Joint Reply tries to fashion the absurd argument that a potential offeror under the OFA process can obtain greater legal rights than the actual owner of the track and common carrier obligation simply by filing a Notice of Intent to submit an Offer of Financial Assistance (“NOI”). Joint Reply at Par. 54; Page 18. According to the Joint Reply, the mere filing of a NOI creates a legal right to acquire the line of railroad subject to abandonment that may only be extinguished if the purported offeror decides not to go through with the acquisition. Under this theory, the actual owner of the line would apparently forfeit its ownership right upon the NOI being filed; all that would be left to resolve is the price. This grossly overstates the role of the

the Joint Reply’s boast that “Hayduk read a dozen more cases than those cited by CXRG,” Joint Reply at 12, footnote 7, misses the irony that apparently in none of the “dozen more cases” was a withdrawal request denied, thereby providing further justification for the Board following its precedent and granting CXRG’s request.

NOI in the OFA process. Unlike withdrawal requests, the form and purpose of a NOI was one of three specific topics the Board sought comment on in *EP 729*, and the Board advised in its 2017 decision that “the purpose of requiring NOIs in all cases is to make the OFA process more efficient by providing carriers with earlier notice that parties may be interested in purchasing or subsidizing service over rail lines that may otherwise be abandoned or discontinued and providing identifying information about those parties.” *EP 729* at 5. The NOI was not afforded any greater legal significance than that, and it is apparent from the decision that neither the Board nor any commenter even proposed that a NOI should hold the legal status that Hayduks now argue, as there is no discussion of such a possibility in the decision.

Finally, Hayduks' attempt to find authority for their theories in ICC Docket No. AB-167, (Sub No. 493N), *Conrail Abandonment of a Portion of the West 30th Street Secondary Track in New York, NY* (Served February 11, 1988)(“*Conrail*”)² falls flat. In the first place, the abandonment there was not even pursuant to 49 U.S.C. §10903, but rather the Northeast Rail Service Act of 1991 (“*NERSA*”) P.L. 97-35, 49 U.S.C. 743. *Id.* at 1. Consequently, the standards the Interstate Commerce Commission (“*ICC*”) would have applied to a proposed abandonment under §10903 did not even apply. More significantly, the question before the ICC – which was whether Conrail could simply notify the agency that it was withdrawing its application - was considered and decided *under the language and standards of NERSA, not 49 U.S.C. §§10903 or 10904.* *Id.* at 5. There is no need for the Board to change its longstanding precedent on withdrawals of abandonment notices and applications filed pursuant to 49 U.S.C. §10903 based on a 36-year old ICC case with very unique facts that considered a withdrawal request made under

² Apparently, the Board is supposed to ignore the blatant inconsistency of the Joint Reply faulting CXRG for citing cases on withdrawal requests dated prior to 2017 with the Joint Reply’s sole reliance on a single 36-year old ICC decision for its entire flawed “legal rights” theory.

a different statute.

In any event, Hayduks cannot claim any legal rights that are even close to the rights the ICC considered and rejected in *Conrail*. As stated above, they did not acquire any legal rights to CXRG's track merely by participating in the OFA process. Moreover, in *Conrail*, Conrail's application under NERSA had been extensively litigated by multiple parties for three years before the agency and federal courts, *id.* and the ICC noted that since the abandonment "was a precondition for other uses of the property involved, the parties to that litigation acquired certain rights." *Id.* However, despite recognizing such "rights" the ICC ultimately decided that Conrail's "proprietary interest" in its tracks outweighed any rights of those opposing the abandonment, which – even if the Board were to consider the *Conrail* case here - is overwhelmingly the correct result in this proceeding. *Id.*

Finally, because Hayduks' "legal rights" theory and attempted reliance on the ICC's application of NERSA in *Conrail's* fail, it is not necessary for the Board to give any credence to the so-called "public interest" analysis posited by the Joint Reply at pages 14-16. Nevertheless, the Joint Reply contains numerous patently false statements about CXRG and its stewardship of the line at issue. The attached verified statement of Jason Jones, the Chief Operating Officer of CXRG, briefly responds to those statements.

In conclusion, the Board should summarily grant CXRG's request to withdraw its Verified Notice of Exemption and declare the OFA to be moot, or reject the OFA as fundamentally flawed.

Respectfully submitted,

/s/ Thomas W. Wilcox

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VERIFIED STATEMENT OF JASON JONES

My name is Jason Jones. I am the Chief Operating Officer of the Colorado Pacific Rio Grande Railroad LLC (“CXRG”). I have been Chief Operating Officer of CXRG for two years. Prior to that, I was employed by the Union Pacific Railroad Company (“UP”) for 20 years in various positions, including General Manager of UP’s Southern Region. Consequently, over my career I have acquired extensive experience maintaining, owning and operating common carrier freight railroads. This Verified Statement is offered to respond to false statements made by Hayduk International, Inc. and Mathew Hayduk in their joint reply to CXRG’s request to withdraw its Verified Notice of Exemption in this proceeding. CXRG’s position is that any statements about CXRG and its ownership of the line are irrelevant to its withdrawal request, and to this proceeding generally, but that to the extent the Surface Transportation Board (“Board”) gives them any consideration, the factual record must be corrected.

First, the Joint Reply’s statements that CXRG has no interest in developing freight transportation on this segment of the tracks it purchased out of bankruptcy from the San Luis &

Rio Grande Railroad, Inc. are knowingly false. CXRG would respond to any reasonable request for freight rail service on this section of the tracks, but CXRG has never received such a request. There is simply no current need for freight service on the tracks, and none is expected in the foreseeable future. I have discussed these matters with Mathew Hayduk, and so the statements in the Joint Reply to the effect that CXRG only wishes to neglect the line and that CXRG has “distain” (sic) for its track are patently and knowingly false.

Also false are statements in the Joint Reply about the removal of the at-grade crossing at Del Norte. In the first place, CXRG is fully aware of its statutory obligations as a common carrier, and that if the Denver Rio Grande Historical Railroad Foundation (“DRGHF”) or any other entity requested rail service from CXRG, our legal responsibilities would include putting the track and Del Norte crossing back into service should that be required to accommodate the request. Consequently, CXRG’s retention of ownership of the line segment and the absence of the crossing at this time does not create the “stranded segment” the Joint Reply claims. CXRG is well aware of the fact that its legal obligations do not permit it to refuse service to a potential freight shipper on this basis.

In any case, the crossing was removed by CXRG on July 7, 2025. Contrary to statements in the Joint Reply, this was prior to the official filing date of CXRG’s Verified Notice of Exemption, which was July 30, 2025. CXRG’s first filing made on July 1, 2025 required some corrections in order to comply with the Board’s regulations and so was not accepted as being filed on that date. This is also known by the Hayduks. Consequently, the Joint Reply’s extensive assertions that the removal of the crossing was somehow unlawful or nefarious, or that it violated the Board’s rules by occurring after CXRG sought abandonment authority, are all overblown and wrong.

Also contrary to other statements in the Joint Reply, the DRGHF knew about the crossing removal both before and after, and it lodged no objections to the removal, perhaps because DRGHF is also aware that, should it ever need freight service, CXRG would be required to provide the tracks to accommodate its reasonable needs.

In conclusion, CXRG sought to abandon the segment covered by its Verified Notice because of a lack of past shipper interest, and the prospect of no interest for the foreseeable future. However, upon further reflection and community reaction and input, CXRG has elected to indefinitely postpone attempting to abandon the track and to continue to assess whether it can eventually be used for freight rail service again.

VERIFICATION

I, Jason Jones, Chief Operating Officer of Colorado Pacific Rio Grande Railroad LLC, state, under penalty of perjury, that the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge.

Executed: December 3, 2025



Jason Jones

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2025, a copy of the foregoing Motion for Permission to Submit Sur-Reply was served on all parties of record on the official service list for Docket AB-1344.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox