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August 14, 2019

By e-filing

By e-mail to rwimbish@fletcher-sippel.com
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Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Robert A. Wimbish, Esq.
Thomas J. Healey, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive, Ste 800
Chicago, IL 60606-3208

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 and Messrs. Wimbish and Healey:

On August 9, 2019, Central Texas & Colorado River Railway, LLC (CTXR) filed a Petition for Exemption of abandonment of its entire 67.5-mile line of railroad that extends between point of connection to BNSF Railway Company (BNSF) at Lometa, TX and the end of track at Brady, TX (the Rail Line).

I have been retained by three major shippers located on the Rail Line, i.e., (1) The J.C. Smith Co., (2) P.W. Gillibrand Co., Inc., and (3) Jacoby & Jacoby, Inc., d.b.a. Jacoby Feed & Seed (Brady Line Shipper Group).

The Brady Line Shipper Group has not yet decided whether to (1) oppose the Petition for Exemption, or (2) file an Offer of Financial Assistance (OFA) to purchase the Rail Line for continued rail operation, or (3) take no action.

The Petition for Exemption provides ample information that will permit the Brady Line Shipper Group to decide whether to oppose the Petition.

However, the Petition for Exemption is not required to contain information to enable the Brady Line Shipper Group to determine whether to file an OFA. It is stated on page 56 of the Petition for Exemption that it has been estimated that the net salvage value of track materials in the Rail Line is \$6,250,000. No support or detail is provided for that estimate. No estimate is provided for the value of land in the right-of-way to which CTRX has marketable title.

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This request for information and documents is not premature. It is provided in 49 U.S.C. § 10904(b) as follows:

- (b) Any rail carrier which has filed an application (or petition for exemption) for abandonment . . . shall provide promptly to a party considering an offer of financial assistance . . . --
- (1) an estimate of the . . . minimum purchase price required to keep the line . . . in operation;
 - (2) x x x;
 - (3) x x x; and
 - (4) any other information that the Board considers necessary to allow a potential offeror to calculate an adequate . . . purchase offer.

Thus, the obligation to provide valuation information arises at the filing of a petition for exemption of abandonment, and the information to be promptly provided is that which is necessary for calculation of an adequate purchase offer.

The Brady Line Shipper Group hereby requests CTXR to provide the following information and/or documents necessary to calculate an adequate purchase offer for the Rail Line:

- (1) evidentiary support for CTXR's estimate that the net salvage value of track materials is \$6,250,000; and
- (2) copies of the original acquisition deeds by which CTXR's predecessor acquired fee ownership, or an easement for railroad purposes, or some other property interest, in the land in the railroad operating right-of-way; and
- (3) evidentiary support for CTXR's estimate of the fair market value for their highest and best nonrail use of the parcels in the operating right-of-way that are shown to have been acquired in fee.

The information specified above is in CTXR's exclusive possession and such information is required to permit calculation of an adequate purchase offer. It is essential, therefore, that CTXR provide that information to the Brady Line Shipper Group "promptly", as required by the governing statute.

The Brady Line Shipper Group is requesting valuation information at this time so that it will have adequate time to review such information in CTXR's possession and to take such information into account in determining whether to file an OFA, and in determining the amount of an OFA if it decides to file an OFA.

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This request is not governed by recently adopted regulations that require a showing of preliminary financial responsibility by entities that file an expression of intent to file an OFA (*see*, e.g., 49 C.F.R. § 1152.27[c]). The Brady Line Shipper Group would abide by those regulations if the Group were to file a formal expression of intent to file an OFA.

WHEREFORE, CTXR should provide the requested information and documents to the Brady Line Shipper Group promptly.

Respectfully submitted,



Thomas F. McFarland
Attorney for Brady Line Shipper Group

TMcF:kl:1860\efSTB1

cc: *By email*

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