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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423

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

Dear Ms. Brown:

On August 14, 2019, a consortium identifying itself as the “Brady Shipper Group” (“BSG”) filed with the Surface Transportation Board (the “Board”) and served upon the undersigned counsel a request that the subject abandonment petitioner, Central Texas & Colorado River Railway, LLC (“CTXR”), provide valuation information that BSG contends it is entitled to, because the group is considering whether or not to file an offer of financial assistance (“OFA”) to purchase CTXR’s line. BSG insists that CTXR must provide the requested information “promptly” in accordance with 49 U.S.C. § 10904, that the August 14 information request filing should not be construed to be a notice of intent to file an OFA, and that BSG’s information request is not subject to the Board’s OFA regulations at 49 C.F.R. § 1152.27.

CTXR already has advised BSG that it will not accede to BSG’s information request. CTXR has explained that the Board’s OFA regulations *do* apply here, and, as such, CTXR is not obligated to provide the requested information unless and until BSG or one or more of its individual members files a notice of intent to file an OFA and subsequently is found preliminarily to be financially responsible. However, in its response to BSG, CTXR noted that CTXR representatives have been, and remain, willing to meet informally with all or individual members of BSG to discuss terms for the possible sale of the line (or alternatives to abandonment, for that matter), and to discuss whether the shippers have the financial wherewithal to fund such an acquisition, restore the line to operating condition, and resume railroad operations.

CTXR need not provide the requested valuation information just because BSG has registered a demand. Instead, for CTXR to be so obligated, BSG must comply with the threshold

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requirements of section 1152.27(c)(i)-(ii).¹ BSG has elected not to do so, declaring that its request is beyond the scope of the Board's procedures. CTXR knows of no precedent supporting the proposition that BSG may sidestep the Board's OFA implementing regulations, and BSG cites none. In fact, BSG's tactic – demanding valuation information, casting its request as “not a notice of intent,” and then declaring its request as therefore “not governed” by OFA regulation – if accepted, would establish a backdoor precedent that would swallow up the Board's recently-revised OFA rules. For that reason, CTXR has declined to provide the requested valuation information, and CTXR respectfully submits that the Board cannot at this juncture compel CTXR to produce it, since no one has come forward to make the necessary prerequisite financial responsibility showings under the applicable regulations.

To reiterate, CTXR stands willing to engage in informal, direct discussions with the group or its individual members to explore issues of concern to each member, including potential terms for the sale of the line to BSG or to an interested potential operator with which BSG may be in contact. Such discussion should aid BSG in determining whether to pursue an OFA. Such discussion may also reveal the extent to which BSG members have the financial wherewithal to purchase (or, in the case of one member, essentially to re-purchase)² the subject railroad line, return it to safe operating condition, and fund active rail service thereafter.

For these reasons, CTXR respectfully declines to sanction BSG's attempt to bypass applicable OFA regulations by providing the requested valuation information. In light of CTXR's objection, CTXR requests that the Board deny any subsequent attempt by BSG to compel production of the requested information absent BSG's compliance with, and satisfaction of, the threshold requirements of section 1152.27(c)(i)-(ii).

Respectfully submitted,



Robert A. Wimbish

Attorney for Central Texas & Colorado
River Railway, LLC

Cc: All parties of record

¹ See 49 C.F.R. § 1152.27(a), providing that CTXR would be required to provide the information BSG seeks if and when BSG “has proven itself preliminarily financially responsible under paragraph (c)(1)(ii) of this section.”

² Among BSG's members is Jacoby & Jacoby, Inc., d.b.a. Jacoby Feed & Seed (“Jacoby”). On information and belief, CTXR understands that the principal of Jacoby is the same individual that held an ownership stake in the Heart of Texas Railroad, the entity from which CTXR acquired the subject railroad line in 2016, and so it comes as a surprise to CTXR that BSG professes unfamiliarity with the line's possible valuation, just as it is untrue, despite BSG's assumption, that some of the valuation information that BSG has demanded is in CTXR's exclusive possession, or that it is in CTXR's possession at all.