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January 27, 2020

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street S.W., Room 1034
Washington, D.C. 20423-0001

**Re: Docket No. AB-1108 (Sub-No. 1X)
The Blacklands Railroad – Discontinuance of Service Exemption – In Hunt,
Delta, Hopkins, Franklin and Titus Counties, Texas**

NETEX Reply to The Blacklands Railroad

Dear Ms. Brown:

The Northeast Texas Rural Rail Transportation District (“NETEX”) respectfully submits this reply to the Reply of The Blacklands Railroad (“BLR”) dated December 26, 2019 (the “BLR Reply”).¹ It is not NETEX’s intention to address all of the incorrect and misleading statements that have been submitted to the Board in BLR’s initial petition (the “BLR Petition”) or in the BLR Reply. NETEX spotted over fifty issues in the BLR Petition alone that require correction. NETEX wishes only to highlight a few examples of the factual issues that are in dispute, as well as to provide additional factual information so that the Board can base its determination on a more complete factual record.

NETEX and BLR have worked cooperatively for approximately twenty years and it is unfortunate that BLR has recently decided to utilize half-truths and outright falsehoods both in the STB docket and in the state court litigation currently ongoing between the parties. NETEX

¹ NETEX understands that a reply to a reply is generally prohibited by STB procedural rules. See 49 C.F.R. 1104.13. However, the Board will permit a reply to a reply if it serves the “interest of having a more complete record.” See *Ulster & Delaware Railway Revitalization Corp. – Petition for Declaratory Order*, STB Docket No. FD-36164 (Service Date Jun. 29, 2018); see also *Hartwell First United Methodist Church – Adverse Abandonment and Discontinuance – The Great Walton Railroad Company, Inc., in Hart County, Ga.*, STB Docket No. AB-1242 (Service Date Jan. 31, 2018) (accepting a reply to a reply because it “provides information that is necessary to develop a more complete record”).

requests that the Board utilize its normal application procedures for BLR's discontinuance request or, alternatively, condition a discontinuance exemption on allowing time for a new operator to be found for NETEX customers and for the NETEX Line rail to be adequately repaired for the successor's use.²

NETEX Is Working Diligently To Secure a Successor Operator

Contrary to BLR's assertion that NETEX isn't working to secure a BLR successor, NETEX held discussions with a neighboring railroad with regard to emergency services within days of BLR's public notice of "Potential Notice of Discontinuance" showing up in the local newspapers. As BLR continued the process with additional public notices and BLR's legal representation communicating that BLR wanted out of its contract, NETEX continued discussions with additional short line railroads with respect to a managed process of transition, to understand what a reasonable transition scope might look like and how much time would be realistically needed in order for a successor to truly understand shipper requirements and infrastructure conditions. If BLR were immediately released, the BLR successor operator would be required to take over service on the NETEX Line under the unfavorable conditions that BLR is trying to leave behind.³ These potential operators are interested in understanding the exact condition of the infrastructure that will be handed over to them if selected as the successor. Key issues are the deteriorated condition of the track caused by BLR and the repairs that will be necessary to bring the track back up to FRA Class I condition, potential safety issues remaining as BLR exits, potential future operational issues if BLR remains on the 7.9-mile lease in Titus County, and what the process of transition will look like. These are issues that require rail operators' time for study and evaluation before committing to serve as NETEX operator.

NETEX is ready and willing to work with a process established by the Board and with BLR to ensure an orderly and timely process by which operations on the NETEX Line are transitioned from BLR to a successor operator. Granting BLR's exemption request with a February 14, 2020 effective date will not allow for an orderly transition, but rather would lead to NETEX's rural industrial shippers being left without rail service for an undetermined amount of time. If the Board does not deny the BLR Petition, it should, at the very least, delay the effective date of the exemption until NETEX, with cooperation from BLR as needed, has secured a new operator and the NETEX Line track has been restored to FRA Class I condition. *See, e.g., Savage Davenport Railroad Company – Discontinuance of Service Exemption – In Scott County, Iowa*, STB Docket No. AB-1277X (Service Date Oct. 29, 2019) (delaying effective date of discontinuance exemption until new operator was found for rail line).

² "NETEX Line" has the same meaning in this reply as in NETEX's Opposition.

³ In several instances BLR has stated that NETEX is a Class III rail carrier and is capable of operating the NETEX Line once BLR discontinues service. *See, e.g.,* BLR Reply at 3-4. This is not correct. NETEX is a governmental subdivision of the State of Texas comprised of a board of volunteers that has never operated a railroad. To our knowledge, no Texas rail district has any experience in actually operating a rail system; that is what operators like BLR are hired to do.

BLR Seeks To Leave The NETEX Line in Excepted Condition

BLR cannot seriously argue that it has maintained the NETEX Line track in FRA Class I condition as required by the BLR operating agreement (*see* NETEX Opposition at Exhibit A) and the BLR Reply does not even seek to make such an argument. Instead, BLR argues that the condition of the track is outside of the Board's jurisdiction and should not be considered in connection with its exemption petition. BLR Reply at 11. The Board should reject this argument, especially when BLR wants to continue its seemingly "profitable" operations on the 7.9-mile contiguous line. The condition of the track is directly related to STB's requirement to carry out the federal rail transportation policy, which includes ensuring the "development and continuation of a sound rail transportation system...to meet the needs of the public." 49 U.S.C. 10101(4). BLR is attempting to leave the NETEX Line in such poor condition that no successor will be willing to succeed as operator and serve NETEX's customers. The Board is operating well within its jurisdiction to consider such important facts when determining whether to grant an exemption petition.

In addition, BLR argues that it has invested an appropriate amount into track maintenance over the past four years. *See* BLR Reply at 11-12. But rail infrastructure doesn't deteriorate to the current condition of the NETEX Line in four years; it takes years of performing only the bare minimum repairs to get to the current situation where almost the entire line is in an unacceptable condition. More financial information is needed for the previous sixteen years of BLR's operation of the NETEX Line to determine if these expenditures are simply a result of not performing planned preventive maintenance in previous years.⁴

The current infrastructure condition and level of concentrated maintenance required today is a major issue for prospective BLR successors and it threatens NETEX's ability to secure a contract with a reliable successor to BLR, primarily due to safety concerns and secondly because a successor doesn't want to be responsible for the years of BLR neglecting preventive maintenance. Before BLR is permitted to discontinue service on the NETEX Line, the transition from BLR to a new successor must provide a reasonable amount of time for safety issues to be discovered and addressed by BLR in accordance with a plan of action approved by the Board.

The Impacts of BLR's Lease of the 7.9-Mile Segment Is Directly Relevant To This Proceeding

The 7.9-mile segment at issue is one segment of the continuous 76-mile NETEX Line. The Board should note that BLR operates over the 7.9-mile segment in its role as NETEX operator in the same manner as the rest of the NETEX Line – the same locomotives, equipment, staff, etc. For all practical purposes, this segment is indistinguishable from the rest of the NETEX Line. So it is unclear how BLR plans to continue to operate on this segment without serving as the NETEX operator (or how it has operated on this segment outside of its role as the NETEX operator to date). This issue will remain a major impediment to finding a successor operator for the NETEX Line until it is resolved under Board oversight.

⁴ As noted in the NETEX Opposition, NETEX is unable to verify BLR financial figures for the NETEX Line due to BLR's refusal to participate in an audit. *See* NETEX Opposition at 8-9.

BLR argues that “none of those concerns” raised by NETEX regarding BLR’s continued lease of the 7.9-mile segment of NETEX Line track directly from Union Pacific stand as a basis to deny or reject BLR’s petition for exemption. BLR Reply at 6. This is, of course, false. In considering whether to grant a discontinuance request, the Board must consider, among other things, whether the discontinuance “will have a serious, adverse impact on rural and community development” and whether “the present or future public convenience and necessity require or permit” the discontinuance. 49 U.S.C. 10903(d). NETEX’s initial opposition details the multiple potential “adverse impacts on rural and community development” that could arise from BLR’s continued lease of the 7.9 mile segment, including the inability to secure a successor operator and inability for rural businesses to connect to the interstate rail system. These potential impacts are at the core of the Board’s inquiry into whether to grant a request for discontinuance and make clear that STB regulation of BLR’s discontinuance is necessary to protect federal rail policy objectives.

BLR continues to hide from the Board and from NETEX the financial details related to the 7.9-mile segment BLR directly leases from UP. This is curious, as the BLR Petition is based almost exclusively on BLR’s argument that the NETEX Line is hopelessly unprofitable. This does not appear to be the whole truth, since BLR is insisting on continuing its operations on this 7.9-mile segment, which sits in the middle of the NETEX Line and serves NETEX customers. It appears that BLR wants to continue operating on some portion of the NETEX Line but walk away from their FRA Class 1 maintenance responsibilities under the NETEX-BLR operating agreement. Instead of living up to its obligations under the agreement, BLR appears poised to build its own business on this portion of the NETEX Line for those customers that fall on the 7.9-mile segment and for off-rail customers that have previously received inbound carloads on NETEX infrastructure and transloaded to trucks. This would be to the detriment of NETEX and shippers located on the segment of line subject to this request for discontinuance. While NETEX is not opposed to healthy competition that benefits shippers, BLR’s apparent scheme would be directly harmful to most shippers because it is highly unlikely that NETEX will be able to find a successor operator willing or able to deal with the situation left behind by BLR outside of this 7.9-mile segment: severely deteriorated tracks in need of major capital improvements and the former operator (BLR) potentially blocking access to the interchange in Mt. Pleasant. Shippers have voiced this concern to NETEX and NETEX believes that BLR’s scheme poses a substantial threat to these shippers.

NETEX has no issue accepting its responsibility to secure a BLR successor and will gladly do so, but BLR’s scheme to continue its own competitor business on the 7.9-mile segment of the NETEX Line would make it substantially less likely that NETEX will be able to secure a successor operator. A successor should not be forced to contend with NETEX’s former operator as the gatekeeper to the interchange in Mt. Pleasant. Nor should a successor operator be forced to contend with potential BLR predatory practices that are aimed at furthering the damage that BLR has already caused NETEX. Such circumstances are directly contrary to the needs of shippers in the region who rely on consistent and reliable rail service. STB regulation is necessary to ensure these shippers are protected from potential market power abuse.

Existing Customers Object to BLR's Request to Abruptly Discontinue Service

BLR would like the Board to think that existing customers do not object to BLR's exemption petition because they have not submitted comments to this docket. Based on conversations with shippers that have contacted NETEX, NETEX believes this is likely because shippers are eager for a transition to a more reliable successor operator taking control of the NETEX Line and haven't voiced concern to the STB for fear that it would delay that transition to a new operator. As just one example of shippers who desire a new operator, some shippers in Greenville, TX are today having to order raw materials by truck due to a BLR reduction in service. NETEX agrees with the shippers that it would be beneficial to have a more reliable successor operator. However, an orderly transition to a successor operator will be substantially less likely if BLR is permitted to simply leave the NETEX Line track in its deteriorated condition. Such a situation is directly harmful to these shippers and would only serve to benefit BLR.

In addition, NETEX's opposition in this docket should be understood by the Board to be undertaken on behalf of NETEX Line shippers. NETEX is a subdivision of the State of Texas and is run by a board of volunteers. Its purpose is to ensure that shippers in the region have access to reliable rail service. NETEX's sole purpose in this proceeding is to ensure that shippers are protected from service disruption and are able to access the rail service they need in the future.

BLR would also like the Board to believe that Kansas City Southern Railway Company ("KCS") and the Dallas, Garland and Northeastern Railroad ("DGNO") would be able to easily serve NETEX customers. However, in response to the substantial investment that NETEX noted would be necessary for such service to be realistic, BLR simply states that it "believes" that DGNO has direct access to NETEX customers. BLR Reply at 16. BLR's belief is wrong. Regardless, these are precisely the types of factual disputes that are incompatible with a Board exemption proceeding.

These are just a few examples of BLR claims that just simply are not true. The complexity of this situation and factual disputes at issue require much more investigation and verification by the Board or, at the very least, require additional time to allow NETEX to find a successor operator for the NETEX Line.

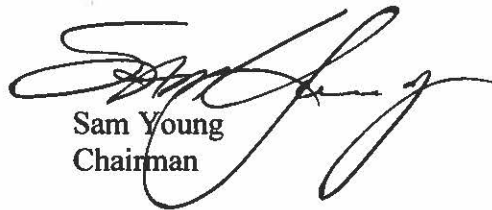
Conclusion

The record is clear that BLR's attempt to abruptly discontinue service and walk away from its maintenance obligations is highly controversial and could result in numerous shippers without any viable rail option for the foreseeable future. Moreover, BLR's financial figures, which serve as the basis of BLR's exemption request, cannot be verified (because BLR has refused to participate in an audit), are not complete (because they do not contain revenues and expenses related to the 7.9-mile segment of the NETEX Line that BLR wishes to operate on its own), and appear to purposefully exclude years where BLR was earning a profit on the NETEX Line. It is crucial for the Board to base its decision on a complete and accurate factual record developed through the normal application procedures. Alternatively, the Board should delay the

effective date of an exemption to allow time for NETEX to transition to a successor operator and the NETEX Line track is brought back to FRA Class I condition. NETEX continues to work diligently to find a new operator and will work cooperatively with BLR to bring about a transition as soon as possible.

NETEX is not opposed to BLR's eventual discontinuance and a transitioning to a new operator. However, such discontinuance must be overseen by the Board to ensure that BLR's discontinuance does not have a serious, adverse impact on rural and community development.

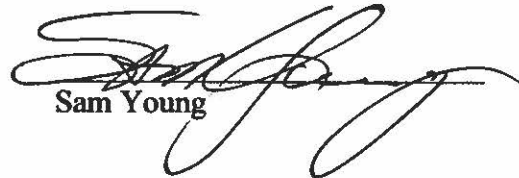
Sincerely,

A handwritten signature in black ink, appearing to read 'Sam Young', is written over the printed name and title. The signature is fluid and cursive, with a large loop at the end.

Sam Young
Chairman

Certificate of Service

I hereby certify that on January 28, 2020, I caused copies of this letter and its exhibits to be served (1) by first class mail, postage prepaid, on all parties listed on the service list for STB Docket No. AB-1108 (Sub-No. 1X) and (2) by first class mail, postage prepaid, on all customers identified by BLR in its Certificate of Service dated October 25, 2019.



Sam Young