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SERVICE DATE - FEBRUARY 14, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1108 (Sub-No. 1X)

THE BLACKLANDS RAILROAD—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUNT, DELTA, HOPKINS, FRANKLIN, AND TITUS COUNTIES, TEX.

Digest:¹ This decision allows The Blacklands Railroad to discontinue freight rail service over 65.59 miles of rail line owned by the Northeast Texas Rural Rail Transportation District and to discontinue trackage rights over 10.41 miles of rail line owned by Union Pacific Railroad Company, in Hunt, Delta, Hopkins, Franklin, and Titus Counties, Tex.

Decided: February 13, 2020

On October 28, 2019,² The Blacklands Railroad (BLR), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903, to discontinue its operations over 65.59 miles of rail line (the Line) owned by the Northeast Texas Rural Rail Transportation District (NETEX), in Hunt, Delta, Hopkins, Franklin, and Titus Counties, Tex. The Line extends from Greenville, Tex., at or near milepost 555.0, to Winfield, Tex., at or near milepost 489.41. BLR also seeks to discontinue use of NETEX's overhead trackage rights over 10.41 miles of rail line owned by Union Pacific Railroad Company (UP) between Winfield, at or near milepost 489.41, and a UP interchange at Mount Pleasant, Tex., at or near milepost 479.0 (UP Segment). However, BLR plans to continue to operate over a portion of the UP Segment pursuant to a lease held by BLR directly with UP.

On November 15, 2019, notice of the exemption proceeding was served and published in the Federal Register (84 Fed. Reg. 62,561). NETEX timely filed replies in opposition to the petition on November 7, 2019, and December 5, 2019. One comment was filed in response to the petition. The Board will grant the petition for exemption, subject to standard employee protective conditions.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² BLR initially submitted its petition on October 25, 2019. In light of a supplement filed on October 28, 2019, that date is deemed the filing date of the petition for exemption.

BACKGROUND

The Line connects with UP at Mount Pleasant, with Kansas City Southern Railway Company (KCS) at Sulphur Springs, Tex., and with KCS and the Dallas, Garland & Northeastern Railroad, Inc. (DGNO), at Greenville. (BLR Pet. 6.) BLR interchanges traffic with UP at Mount Pleasant and with KCS at Sulphur Springs. (*Id.*)

NETEX acquired the Line in two separate transactions in 1996 and 2000. In 1996, NETEX acquired from St. Louis Southwestern Railway Company the portion of the Line extending 31 miles between milepost 524.0 and milepost 555.0, as well as trackage rights over approximately seven miles of the Line extending between milepost 524.0 and milepost 517.0. Ne. Tex. Rural Rail Transp. Dist.—Purchase (Portion) Exemption—St. Louis Sw. Ry., FD 32841, slip op. at 1 (STB served Jan. 26, 1996). Pursuant to an agreement with NETEX, beginning in April 1996, East Texas Central Railroad, Inc. (ETC), operated the Line between milepost 517.0 and milepost 555.0. See E. Tex. Cent. R.R.—Operation Exemption—Ne. Tex. Rural Rail Transp. Dist., FD 32841 (Sub-No. 1), slip op. at 1 (STB served Sept. 27, 1996). In 1999, BLR acquired from ETC its rights to operate that portion of the Line. Blacklands R.R.—Operation Exemption—Lines of Ne. Tex. Rural Rail Transp. Dist., FD 33708, slip op. at 1 (STB served Feb. 16, 1999).

In 2000, NETEX acquired from UP the portion of the Line extending approximately 34.6 miles between milepost 524.0 and milepost 489.41, at the eastern county line of Franklin County, Tex. Ne. Tex. Rural Rail Transp. Dist.—Acquis. Exemption—Lines of Union Pac. R.R. (NETEX 2000 Acquisition), FD 33892, slip op. at 1 (STB served Jul. 26, 2000). NETEX also acquired approximately 10.41 miles of incidental trackage rights over the UP Segment (milepost 489.41 to milepost 479.0) for the purpose of interchanging traffic with UP. *Id.* In a concurrently filed verified notice of exemption, BLR agreed to operate over this portion of the Line and the UP Segment pursuant to the overhead trackage rights acquired by NETEX from UP.³ Blacklands R.R.—Operation Exemption—Ne. Tex. Rural Rail Transp. Dist., FD 33893 (STB served Jul. 26, 2000).

BLR's petition includes annual traffic volumes for 2015 through September 2019 and projected traffic for 2020. (BLR Pet. Ex. D.) The petition also includes annual financial data for 2015 through August 2019, (*id.* at Ex. E); projected expenses for the operation of the leased portion of the UP Segment in 2020, (*id.* at Ex. F); and projected full-year total income and total expense for 2019, (*id.* at 13). BLR states that traffic and income have both fallen close to 25% from 2015 through 2018 and that traffic is expected to remain flat in 2019 while income is

³ Customers located on the UP Segment cannot be served pursuant to the trackage rights held by BLR through NETEX because those trackage rights are for overhead service only. (BLR Pet. 13.) BLR provides local service on a portion of the UP Segment pursuant to a lease it entered into directly with UP in 2005. (*Id.* at 6); Blacklands R.R.—Lease & Operation Exemption—Union Pac. R.R., FD 34723 (STB served Jul. 26, 2005). BLR intends to continue the local service on the leased portion of the UP Segment after it discontinues service on the Line and use of NETEX's overhead trackage rights. (BLR Pet. 13.)

projected to fall further in 2019 to almost two-thirds below the 2015 level. (*Id.* at 6-7, 9, Ex. D.) In addition, the data provided by BLR indicates it has incurred substantial losses each year since 2015. (*Id.* at 13.) These data show a loss of \$320,835.02 in 2015, which increased to a loss of \$621,050.95 in 2018 and a projected loss of \$1,292,315.76 in 2019. (*Id.*) BLR notes that these financial data include expenses for providing service to customers located on the UP Segment that will continue to be served after discontinuance but do not include the revenues associated with serving these customers. (*Id.*) BLR has therefore provided an estimate of the expenses associated specifically with serving those customers—approximately \$250,000 per year—so that those expenses can be backed out of the financial data for purposes of assessing the impact of the proposed discontinuance. (*Id.* at 13-14.)

According to BLR, no customer on the Line will be left without service after BLR’s discontinuance because NETEX retains a residual common carrier obligation with respect to the entirety of the Line. (*Id.* at 2.) In addition, BLR states that more than 80% of the rail traffic on the Line can either be directly served by rail by KCS or be transloaded to and from other carriers at nearby locations, such as KCS in Sulphur Springs or Greenville, DGNO in Greenville, or UP in Mount Pleasant. (*Id.* at 19, 22-23.) The remaining shippers, according to BLR, have access to, and have previously used, trucks for their transportation needs. (*Id.* at 23.)

BLR argues that the exemption process is appropriate in this case given the significant and consistent losses it has incurred and will continue to incur. (*Id.* at 19.) BLR also argues that the exemption would promote the rail transportation policy (RTP) under 49 U.S.C. § 10101 by allowing for efficient management of railroads and reducing railroad regulation while still maintaining service to shippers. (*Id.* at 20-22.)

On December 5, 2019, NETEX filed a reply in opposition to the petition.⁴ NETEX states that it does not oppose a transition to a new operator, but it argues that the process should be overseen by the Board through the full application procedures to ensure that discontinuance does not harm existing shippers and does not impede the continuous and efficient operation of rail traffic. (NETEX Reply 9, Dec. 5, 2019.) NETEX claims that it is not a Class III rail carrier as BLR contends in the petition; that it does not have the resources to fix or operate the Line, even on a temporary basis; and that it is not certain that it can find a successor operator willing to operate over the Line before discontinuance is granted. (*Id.* at 4 n.3, 4-5.) In addition, NETEX states that alternative transportation will either be unavailable or more expensive for shippers. (*Id.* at 7-8.) According to NETEX, granting the discontinuance through the exemption process

⁴ NETEX also filed a short letter on November 7, 2019, stating that the exemption process is not appropriate in this case and that many of the details in the petition are inaccurate or misleading. (NETEX Reply 2, Nov. 7, 2019.) In addition, the letter states that NETEX would “be open to supporting Blacklands [sic] discontinuance of service if and only if (1) Blacklands agrees to restore the NETEX track to [Federal Railroad Administration (FRA)] Class 1 Standards, (2) Blacklands vacates all operations and interests in the NETEX Member Counties, including the [leased portion of the UP Segment], and (3) Blacklands ceases to provide service to shippers after a 90-day transition period with the successor operator to ensure continued and uninterrupted rail service for shippers.” (*Id.* at 1 (emphasis omitted).)

would therefore result in an abrupt and complete disruption of service for an unknown period of time, which, it argues, would be contrary to the RTP's mandate to "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." (Id. at 4 (quoting 49 U.S.C. § 10101(4)).) NETEX also states that a disruption in service caused by granting the exemption would result in an extensive economic impact on shippers and their customers and suppliers and would hamper the economic development of the region generally. (NETEX Reply 6-7, Dec. 5, 2019.)

NETEX further argues that, despite an operating agreement between NETEX and BLR requiring BLR to maintain the track in Class 1 condition, the track has been allowed to deteriorate and all but a small segment is in excepted condition. (Id. at 5.) NETEX claims that it has had preliminary discussions with short line operators, and they have indicated they are not in a position to repair the Line. (Id.) Accordingly, NETEX argues that the condition of the track may make it difficult to find a replacement operator, and that the Board should ensure that the track maintenance issue is "appropriately handled" before allowing BLR to discontinue service. (Id.)

In addition, NETEX asserts that BLR may use its control over the leased portion of the UP Segment to cut off access to any successor operator "under the auspices of track maintenance or other reasons" and that this possibility will further discourage a new operator from taking over operations on the Line. (Id. at 5.) According to NETEX, Board oversight is necessary to ensure that BLR's "continued exercise of control" over the leased portion of the UP Segment does not interfere with operations on the Line after BLR discontinues its service as NETEX's operator. (Id.)

NETEX also argues that BLR's decreased shipping volumes and revenues are a result of BLR's unreliable service in recent years, not a decrease in demand for rail service. (Id. at 5-6.) NETEX claims that because of BLR's unreliable service, shippers have been forced to utilize trucks rather than rail transportation. (Id. at 6.) According to NETEX, Board regulation is therefore necessary to ensure freight rail remains competitive with other modes of transportation in the region. (Id. at 5-6 (citing 49 U.S.C. § 10101(5)).)

Finally, NETEX asserts that because it cannot verify the financial information provided by BLR and because it is unclear whether BLR's financial information has been audited by any third party, the Board should provide for an examination of this information to ensure accuracy. (Id. at 8-9.) NETEX argues that BLR should be required to provide the revenue associated with serving customers on the leased portion of the UP Segment because "this information is directly relevant to the determination of whether the NETEX Line as a whole is financially viable." (Id. at 9.)

On December 26, 2019, BLR filed a surreply.⁵ BLR argues that NETEX's lack of resources does not extinguish its residual common carrier obligation to provide service, nor does it provide a basis for denying BLR's petition. (BLR Surreply 3-4.) In addition, BLR claims that NETEX had notice of its potential discontinuance for many months prior to the filing of the petition. (Id. at 4-5.)

BLR further argues that NETEX's concerns regarding access to the UP Segment are unwarranted. According to BLR, NETEX holds overhead trackage rights on the UP Segment and these trackage rights may be used by an operator that replaces BLR on the Line. (Id. at 6.) In response to NETEX's claims that BLR might attempt to unreasonably interfere with another operator's access to the UP Segment, BLR states that NETEX has presented no facts or reasoning to support this allegation and points out that NETEX could always seek relief from the Board if it believed BLR did engage in such conduct. (Id. at 7-8.)

BLR also disputes NETEX's claims that BLR has provided unreliable service. According to BLR, its service levels are appropriate for the current level of demand and nothing in NETEX's reply demonstrates that service issues are responsible for the decreases in traffic that have led to BLR's financial losses. (Id. at 8-10.)

With respect to track maintenance, BLR argues that claims regarding its alleged failure to maintain the track as required by the operating agreement are irrelevant to the discontinuance proceeding and should be resolved in court. (Id. at 11.) Additionally, BLR states that it has spent approximately \$8,000 per mile each year on maintaining the Line, which it argues is within the range the Board has previously deemed reasonable. (Id. at 12 n.5.)

BLR also argues that NETEX's claim that it cannot verify BLR's financial data is not a sufficient basis to question BLR's verified financial data or to require a full application. (Id. at 13-14.) Moreover, BLR asserts that the financial information associated with serving customers on the UP Segment should not be considered by the Board because BLR is not seeking to discontinue those operations. (Id. at 7.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

⁵ While the Board's regulations generally do not permit "replies to replies," 49 C.F.R. § 1104.13(c), in the interest of having a more complete record, the Board will accept BLR's surreply.

Detailed scrutiny of BLR's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. No shipper has opposed the proposed discontinuance or indicated that they would be adversely affected by it,⁶ and the record indicates that transportation alternatives are available. By minimizing the administrative expense of the application process, an exemption would advance several RTP objectives. See 49 U.S.C. § 10101(2) (expedite regulatory decisions), (5) (foster sound economic conditions), (7) (reduce regulatory barriers to entry and exit), (9) (encourage efficient management of railroads). Other aspects of the RTP would not be adversely affected by use of the exemption process.

Regulation of the proposed transaction under 49 U.S.C. § 10903 is also not needed to protect shippers from the abuse of market power.⁷ NETEX, as the owner of the Line, retains a common carrier obligation to provide rail service on the Line, either itself or through another operator. See NETEX 2000 Acquisition, FD 33892, slip op. at 1 (referring to NETEX as a "Class III rail carrier"); see also, e.g., Wheeler—Pet. for Declaratory Order—Rail Line in Erie Cty., Pa., FD 35082 et al., slip op. at 7 (STB served Aug. 27, 2008) ("[T]he tracks and right-of-way over which Penn Central operated were owned by the [Erie & Pittsburgh Railroad Company (E&P)] As owner and lessor, E&P continued to hold a residual common carrier obligation to operate the line after Penn Central was relieved of its obligation."); Groome & Assoc., Inc. v. Greenville Cty. Econ. Dev. Corp., NOR 42087, slip op. at 10 (STB served July 27, 2005) ("By acquiring full ownership of an active rail line, [Greenville County Economic Development Corporation] assumed a common carrier obligation. Even though it did not intend to operate the line itself, it assumed responsibility for contracting with, and ensuring continued service by, a rail operator."). Thus, contrary to NETEX's argument that granting the petition would result in an "abrupt discontinuance" as "NETEX is not a rail operator," (NETEX Reply 7, Dec. 5, 2019), the discontinuance of service by BLR would mean that, if service is needed in the future, NETEX would have the obligation of providing it either itself or through another operator. NETEX states that it "does not have the resources to fix the line or operate the line on a temporary basis" and that it would be difficult for NETEX to find another operator on short notice. (*Id.* at 4, 7.) However, the Board has abandonment and discontinuance procedures, which an entity with a common carrier obligation may pursue if it wishes to excuse itself from that obligation. See Strohmeyer—Acquis. & Operation Application—Valstir Indus. Track in Middlesex & Union Cty., N.J., FD 35527, slip op. at 2 (STB served Oct. 20, 2011) (citing Pejepscot Indus. Park, Inc.—Petition for Declaratory Order, 6 S.T.B. 886, 898 (2003)).

NETEX's arguments as to why Board regulation is necessary to carry out the RTP and protect shippers in this case are not persuasive. Here, the Board will not force BLR to subsidize

⁶ On January 10, 2020, a comment was filed by Norman and Lisa Rigney, owners of two small businesses in Winfield, Tex., that do not ship on BLR but are located close to BLR's operations. The Rigneys express concern about significant traffic problems and noise caused by BLR's operations. The Rigneys' reply was filed after the applicable deadline. However, the Board will accept the reply in the interest of a more complete record.

⁷ Because this decision finds that regulation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. § 10502(a)(2).

operations on the Line by requiring it to continue operating at a substantial financial loss, particularly when the record indicates that shippers have other transportation options. (BLR Pet. 2, 17.) NETEX argues that other rail carriers will be unwilling or unable to serve customers on the Line and that shippers do not want to use options that include truck transportation because they are more expensive. (NETEX Reply 7-8, Dec. 5, 2019.) However, NETEX's claims that shippers will be unable to obtain service from other railroads is unsupported, and "the fact that a shipper is likely to suffer some harm and added expense is insufficient by itself to outweigh the detriment to the public interest caused by continued operation of uneconomic facilities." Norfolk S. Ry.—Discontinuance of Service Exemption—in Stanly Cty., N.C., AB 290 (Sub-No. 254X) et al., slip op. at 7-8 (STB served Aug. 11, 2006). In addition, no shipper has filed a reply either opposing the petition or expressing concern that it will be left without service if BLR is permitted to discontinue operations.

NETEX's complaint that BLR's financial data is inadequate because it has not been audited by a third party, (NETEX Reply 8-9, Dec. 5, 2019), also is unpersuasive. The accuracy of the financial data provided by BLR has been verified by the president of BLR, and the Board does not generally require verified financial data to be audited by a third party. In addition, the Board rejects NETEX's argument that data associated with service to shippers on the leased portion of the UP Segment must be provided by BLR. Neither the expenses nor the revenues associated with serving shippers on the leased portion of the UP Segment should be considered as part of the petition since BLR will continue to provide service to those shippers after discontinuance. BLR's financial data do not allow for a precise calculation of BLR's losses associated with only the service to be discontinued (i.e., service other than the service on the leased portion of the UP Segment) because the expenses associated with serving customers on the leased portion of the UP Segment are included in the total reported expenses. However, BLR has provided an estimate of \$250,000 per year for those expenses so that they can be removed from the profit/loss calculations. (BLR Pet. 13-14.) The Board finds that, while BLR could have provided more detail regarding how the \$250,000 estimate was derived, the estimate appears reasonable given the length of the leased portion of the UP Segment compared to the Line⁸ and given that no evidence has been presented indicating that providing service to customers on the UP Segment is disproportionately expensive. After subtracting BLR's estimated expenses for the leased portion of the UP Segment, BLR's data still reflect a substantial loss each year.⁹

⁸ Together, the Line and UP Segment are 76 miles in length, extending between milepost 555.0 and milepost 479.0. (BLR Pet. 4.) The leased portion of the UP segment is 7.9 miles in length, extending between milepost 489.40 and milepost 481.5. (*Id.* at 6.); Blacklands R.R.—Lease & Operation Exemption—Union Pac. R.R., FD 34723, slip op. at 1. Thus, the length of the leased portion of the UP Segment represents approximately 10.4% of the length of the Line and the UP Segment combined. The estimated \$250,000 expense for serving customers on the leased portion of the UP Segment as a percentage of total expenses reported by BLR, (see BLR Pet. at 13), is 9.2% for 2015, 10.3% for 2016, 10.1% for 2017, 10.3% for 2018, and 11.9% based on projected 2019 expenses.

⁹ Subtracting \$250,000 in estimated expenses from BLR's profit/loss calculations results in a loss of \$70,835.02 in 2015, a loss of \$220,836.15 in 2016, a loss of \$611,540.16 in 2017, a
(continued...)

NETEX also argues that any financial losses BLR may have incurred are due to its failure to provide reliable service rather than a lack of demand. (NETEX Reply 5-6, Dec. 5, 2019.) However, NETEX has not provided sufficient evidence to support this claim. NETEX provides correspondence from one shipper located in Greenville indicating that the shipper wants BLR to provide more frequent service. (Id. at Ex. D.) NETEX also provides a letter that NETEX itself wrote stating that shippers located in the Greenville Industrial Park are concerned with BLR's "current level of service." (Id. at Ex. E.) However, none of this evidence rebuts BLR's contention that the "economics of the Greenville service simply couldn't support continuation of service twice per week." (BLR Surreply 9.) If BLR had provided all the service sought by shippers on the Line, its losses may have actually increased.

NETEX further argues that discontinuance should not be granted until maintenance issues on the Line have been addressed. (NETEX Reply 5, Dec. 5, 2019.) NETEX claims that BLR has failed to maintain the Line in FRA Class 1 condition as required by the operating agreement. (Id.) BLR disputes this claim, but the Board need not resolve this dispute. Whether BLR has fulfilled its maintenance obligations under the operating agreement is a contract issue governed by state law and should be determined by an appropriate court. See Ballard Terminal R.R.—Pet. for Declaratory Order, FD 36261, slip op. at 4 (STB served June 27, 2019) (explaining that "a court is typically the more appropriate forum for interpreting an operating agreement or other contract" and citing prior Board decisions finding that contracts should be interpreted by a court rather than the Board); Ga. Great S. Div., S.C. Cent. R.R.—Aban. & Discontinuance Exemption—Between Albany & Dawson, in Terrell, Lee & Dougherty Ctys., Ga., AB 389 (Sub-No. 1X), slip op. at 4 n.8 (STB served Aug. 16, 1996) (rejecting protestant's request that the Board require the carrier to affirm it would fulfill an alleged contractual obligation to repay rehabilitation expenses incurred by the seller of the line because such contractual disputes should be decided by a court). Moreover, there is no evidence in the record that BLR's maintenance practices were intended to reduce traffic or that maintenance issues caused service problems. NETEX has not shown that BLR's failure to invest more than \$8,000 per track mile per year on a line being operated at a loss is unreasonable.¹⁰ BLR is not required to incur additional expenses to bring the Line up to Class 1 condition, assuming that it is not already in that condition. See, e.g., Mid-Michigan R.R.—Discontinuance of Service Exemption—in Kent Cty., Mich., AB 364 (Sub-No. 10X), slip op. at 2 (STB served Oct. 14, 2005) (allowing an operator to discontinue service of a line it leased without requiring the

(...continued)

loss of \$371,050.95 in 2018, and a projected loss of \$1,042,315.76 in 2019. (See BLR Pet. 13-14.)

¹⁰ See Ill. Cent Gulf R.R. Aban. Near Kevil & Barlow in Ballard & McCracken Ctys., Ky., 363 I.C.C. 729, 730 (1980) (the agency generally considers a lack of profitability to be a valid reason for deferring maintenance on a line absent evidence of deliberate downgrading); Offers of Financial Assistance, EP 729, slip op. at 16 (STB served Sep. 30, 2016) ("In the past, the Board has accepted base maintenance costs for rail line of between \$4,000 and \$11,000 per mile per year."); Norfolk S. Ry., AB 290 (Sub-No. 254X) et al., slip op. at 7 ("Normalized maintenance costs usually do not exceed \$5,000 per mile annually.").

operator to make the substantial investment necessary to bring the track up to Class 1 condition).¹¹

NETEX claims that Board oversight is necessary to ensure that BLR does not use its control of the UP Segment to prevent a future operator of the Line from accessing the UP Segment to reach the UP interchange at Mount Pleasant. (NETEX Reply 8, Dec. 5, 2019.) However, NETEX holds overhead trackage rights over the UP Segment; it is not clear how BLR would cut off access to the UP Segment. (*Id.* at 1 n.1; BLR Surreply 8.) NETEX suggests that BLR might act in bad faith by inventing maintenance issues or by other means to restrict access, (NETEX Reply 5, Dec. 5, 2019), but such claims are speculative. If BLR were to engage in such activity, NETEX could seek appropriate relief to enforce its trackage rights at that time.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose upon BLR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because no formal expressions of intent to file an offer of financial assistance (OFA) to subsidize continued rail service were filed by the November 25, 2019 deadline, the Board will not consider subsidy OFAs in this case. *See* 49 C.F.R. § 1152.27(c)(1)(i). And, because this is a discontinuance and not an abandonment, the Board need not consider OFAs to acquire the Line or the UP Segment, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line or the UP Segment under 49 U.S.C. § 10905.

Because there will be an environmental review during an abandonment, this discontinuance does not require an environmental review.

¹¹ On January 28, 2020, NETEX filed a surreply in response to BLR's surreply, raising largely the same arguments as its December 5, 2019 reply. (NETEX Surreply 2-4.) NETEX's new claim that shippers opposing the petition have not filed replies in opposition because they fear that doing so would delay the transition to a new operator, (*id.* at 5), is based on unverified, second-hand assertions that do not warrant the relief sought here. The January 28, 2020 surreply also asks that, if the Board grants the exemption, it delay the effective date to allow NETEX more time to find a new operator, citing Savage Davenport Railroad—Discontinuance of Service Exemption—in Scott County, Iowa, AB 1277X, slip op. at 2 (STB served Oct. 29, 2019). (NETEX Surreply 2.) However, in Savage Davenport, the Board extended the exemption's effective date until the end of the year only after the current operator had agreed to continue operations until then. In this case, BLR has not agreed to continue subsidizing the unprofitable operations on the Line and UP Segment. On February 10, 2020, BLR filed a reply to NETEX's surreply, arguing that the Board should not accept the surreply because it does nothing more than restate arguments previously raised by NETEX. As noted above, the Board's regulations generally do not permit "replies to replies," 49 C.F.R. § 1104.13(c). However, in the interest of compiling a more complete record, the Board will accept NETEX's surreply and BLR's reply to NETEX's surreply.

It is ordered:

1. BLR's December 26, 2019 surreply, the Rigneys' January 10, 2020 reply, NETEX's January 28, 2020 surreply, and BLR's February 10, 2020 reply are accepted into the record.

2. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of BLR's service on the Line and BLR's use of NETEX's trackage rights on the UP Segment, as described above, subject to the employee protective conditions in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

3. Petitions to stay and petitions to reopen must be filed by March 2, 2020.

4. This exemption will be effective on March 15, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.