

SERVICE DATE—MARCH 23, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1272X

CENTRAL TEXAS & COLORADO RIVER RAILWAY, LLC—DISCONTINUANCE
EXEMPTION—IN MCCULLOCH, SAN SABA, MILLS, AND LAMPASAS COUNTIES,
TEX.

Decided: March 22, 2021

On August 9, 2019, Central Texas & Colorado River Railway, LLC (CTXR), a Class III rail carrier, filed with the Board a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon a railroad line covering approximately 67.5 miles of track in McCulloch, San Saba, Mills, and Lampasas Counties, Tex. (the Line), which constitutes CTXR's entire railroad system. Notice of CTXR's petition was served and published in the Federal Register on August 29, 2019 (84 Fed. Reg. 45,618).

At CTXR's request, the proceeding was held in abeyance from November 5, 2019, through July 20, 2020, pursuant to orders issued on November 5, 2019, February 14, 2020, and May 20, 2020, as CTXR had stated that it was in the process of negotiating for a private sale of the Line.¹ The Board's abeyance orders required CTXR to file status reports describing the progress of its negotiations. In its July 20, 2020 status report, CTXR stated that it no longer sought continued abeyance of this proceeding and that it "withdr[ew] its request . . . for authority to abandon its entire system, and instead limit[ed] its [p]etition, going forward, to a request to be relieved of its common carrier obligation under authorization to discontinue common carrier service." (CTXR Status Report 1, 3, July 20, 2020.)

After allowing interested parties an opportunity to comment on CTXR's request for discontinuance authority, the Board, on November 20, 2020, granted CTXR's request to modify its petition by limiting it to a request for discontinuance authority and permitted the submission of comments on CTXR's revised petition by December 10, 2020. CTXR filed a comment asking that the Board grant its petition for exemption but not impose labor protective conditions on the discontinuance. (See CTXR Comment 2, Dec. 10, 2020.)

Under 49 U.S.C. § 10903(b)(2), the Board is required to impose employee protective conditions on abandonments and discontinuances. The standard labor protective conditions for abandonments and discontinuances are set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,

¹ On July 9, 2020, the Board denied an appeal of the May 20 order holding the proceeding in abeyance.

354 I.C.C. 76 (1977), modified, 360 I.C.C. 91 (1979). However, it has been the longstanding policy of the agency (a policy which predates the § 10903 statutory language) that a railroad that is abandoning its entire system generally is not required to provide labor protection. Northampton & Bath R.R.—Aban. Near Northampton & Bath Junction in Northampton Cnty., Pa., 354 I.C.C. 784, 785-86 (1978); Wellsville, Addison & Galetton R.R.—Aban. of Entire Line in Potter & Tioga Cntys., Pa., 354 I.C.C. 744 (1978). The policy has also been applied to entire-system discontinuances involving lines not owned by the discontinuing carrier. See, e.g., Mo. & Valley Park R.R.—Discontinuance of Serv. Exemption—in St. Louis Cnty., Mo., AB 1057X, slip op. at 1, 2 (STB served June 15, 2010); N.Y. & E. Ry.—Discontinuance Exemption—in Dutchess Cnty., N.Y., AB 873X et al., slip op. at 1, 4 (STB served Oct. 15, 2004). See also Mfrs. Ry.—Discontinuance Exemption—in St. Louis Cnty., Mo., AB 1075X, slip op. at 3 (STB served Feb. 6, 2013) (with Board Member Begeman dissenting).

However, there are several exceptions under which the Board may impose labor protective conditions in an entire-system abandonment or discontinuance. Relief under the policy has not been extended to situations where a corporate affiliate will continue substantially similar rail operations. Honey Creek R.R.—Aban. Exemption—in Henry Cnty., Ind., AB 865X, slip op. at 2 (STB served Aug. 20, 2004). In addition, relief has not been extended to situations where a corporate parent will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. Honey Creek R.R., AB 865X, slip op. at 2; see also Northampton & Bath R.R., 354 I.C.C. at 786. Finally, the Board held in Manufacturers Railway, AB 1075X, slip op. at 4-7, that when a carrier seeks to discontinue operations entirely, but continues to own the railroad assets in question, the discontinuance should be made subject to the Oregon Short Line conditions. In that decision, the Board reasoned that in such a situation, the railroad will continue to enjoy benefits associated with remaining subject to the Board’s jurisdiction, and therefore labor protective conditions are warranted. Mfrs. Ry., AB 1075X, slip op. at 5-7.

In its December 10, 2020 response to the Board’s order, CTXR acknowledges that Manufacturers Railway would require the Board to impose labor protective conditions in this proceeding, but CTXR urges “the Board to exercise its discretion and decline to impose labor protective conditions” in granting CTXR’s discontinuance petition. (CTXR Comment 2, Dec. 10, 2020.) CTXR suggests that the Board should reconsider Manufacturers Railway and “clarify and refine its position on the subject.” (See id. at 5-10.) CTXR argues that the Board should take a more flexible approach to labor conditions in entire-system discontinuance proceedings and evaluate their imposition on a case-by-case basis. (See id. at 7-8.) Specifically, CTXR argues that “in any entire-system discontinuance, the option to impose labor protective conditions should be tied primarily (if not exclusively) to practical considerations of the railroad’s ability to pay, and whether any affiliate or parent of the railroad would enjoy any discernible financial advantage from discontinuance to offset the cost of the condition.” (Id. at 8.)

Given the potential impact of CTXR’s argument regarding the Manufacturers Railway precedent, the Board will permit any interested person to file comments regarding CTXR’s request that the Board reevaluate that precedent and not impose labor conditions in this

proceeding by April 12, 2021. CTXR's response to any comments filed will be due by April 22, 2021.

It is ordered:

1. Comments are due by April 12, 2021.
2. CTXR's response is due by April 22, 2021.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.