

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

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

REPLY COMMENTS OF CENTRAL TEXAS & COLORADO RIVER RAILWAY, LLC

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Dated: April 22, 2021

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Pursuant to a Surface Transportation Board (“Board”) order served in this proceeding on March 23, 2021, Central Texas & Colorado River Railway, LLC (“CTXR”) hereby tenders its reply comments on the issue of whether, and under what circumstances, the Board should impose labor protection conditions in this or in other entire-system discontinuance proceedings. CTXR believes that the Board should not impose labor protection conditions as an element of authorizing CTXR’s proposed discontinuance of service. However, CTXR would agree that such relief, if granted, should be without prejudice to a global re-evaluation of the circumstances under which other railroad carriers may seek and obtain relief from Board-imposed labor protection conditions in any other entire-system discontinuance proceedings initiated hereafter.

As brief background, CTXR initiated this proceeding on August 9, 2019, by filing an individual petition for exemption (the “Petition”) to abandon its entire, 67.5-mile line of railroad from Lometa to Brady, Texas (the “Line”). In the context of the abandonment authority that it was seeking at the time, CTXR pointed out in its Petition that Board-imposed labor protective conditions would be

inappropriate under well-established Board precedent. No party challenged the merits of CTXR's Petition, which was supported by a detailed evidence justifying abandonment.

Toward the end of a period of time during which this proceeding was held in abeyance, CTXR tendered on July 20, 2020, a letter filing indicating that it no longer would seek authorization to abandon its entire system, advising that CTXR instead sought to pursue only the "lesser included relief" of an entire-system discontinuance, and asking for the Board to commence consideration of CTXR's modified Petition. CTXR stated in its July 20 filing that, in seeking discontinuance authorization only, CTXR "may be ineligible for relief from the otherwise-applicable labor protective conditions." CTXR at the time did not specifically request relief from the imposition of labor protective conditions, but instead suggested the possibility that the Board could order such relief if it so chose. By order served on November 20, 2020, the Board determined that it would allow CTXR to pursue discontinuance of service over its system and to forego its original request for abandonment authorization. In that order, the Board on its own initiative took up the issue of labor protection, noting that, under fairly recent Board precedent – *Manufacturers Railway Company – Discontinuance Exemption – In Saint Louis County, MO*, AB-1075X (STB served Feb.6, 2013)) ("*Manufacturers Railway*") – the Board could impose labor protective conditions upon a grant of CTXR's modified Petition. The Board added that it was inclined to revisit *Manufacturer's Railway*, and to consider extending to rail carriers such as CTXR relief from the labor protection conditions on a case-by-case basis. Accordingly, the Board invited comments on the labor protection issue that the Board resolved to take up, and generally on the merits of the modified Petition.

CTXR alone supplied responsive comments on December 10, 2020, welcoming the Board's apparent desire to assess the appropriate scope (and logic) of *Manufacturer's Railway*, and arguing that labor protection should not automatically be imposed in entire system discontinuances such as its own, but rather that the Board should provide relief from labor protection conditions on a case-by-case basis. CTXR pointed out that a more lenient approach to labor protection – one that would focus on

the financial burden of labor protection, and upon whether the discontinuing carrier or its parent or any affiliates would enjoy a “discernable financial advantage” from the discontinuance – would not require the Board to repudiate the policy considerations undergirding *Manufacturer’s Railway*. CTXR stands by its December 10 Comments, and sees no reason to repeat them here.

For reasons unknown to CTXR, the Board has not yet addressed the merits of CTXR’s discontinuance request or decided the issue of labor protection in this case despite supplemental briefing last December. Instead, although not explaining why the December 2020 round of comments were insufficient, on March 23, 2021, the Board yet again solicited input on the issue of labor protection in entire-system discontinuances due on April 12, 2021. This time, two informal groups of labor unions¹ (collectively the “Labor Interests”) supplied comments. In their respective comments, SMART/ATDA and ARU pointedly take no position on whether CTXR should be granted relief from labor protection if CTXR’s Petition were to be granted.² Rather, the Labor Interests generally embrace the proposition advanced initially by the Board itself that *Manufacturers Railway* and the scope of its application in future discontinuance proceedings should be revisited.³ The Labor Interests then proceed to discuss in some detail how the Board might employ a case-by-case analysis in entire-system discontinuance proceedings going forward. CTXR has elected not to respond to the particulars of the Labor Interests’ proposals, although CTXR is pleased that the Labor Interests have generally espoused pragmatism on an issue that, in all likelihood, is likely in most situations to involve a smaller railroad seeking to be relieved

¹ The Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers and the American Train Dispatchers Association (“SMART/ATDA”) tendered comments, and the Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU (collectively, “ARU”) jointly filed comments.

² SMART/ATDA Comments, 6, n. 1; ARU Comments, 5.

³ SMART/ATDA Comments, 5; ARU Comments, 2, 5.

of the financial burden of offering common carrier service on rail system that is long moribund or, as in the case of CTXR, is demonstrably not financially viable.

The Board would be acting within its discretion, and would be doing so wisely, if it were to forego imposing labor protection conditions in granting CTXR's still-pending Petition, particularly where no one has argued against extending CTXR such relief. But, while CTXR would welcome such relief as a matter of principle, Board action on labor protection here would be symbolic from CTXR's perspective, because a decision in either direction would be largely meaningless for immediate, practical purposes. That is because CTXR had very few employees (given its limited operations), and those few arguably displaced have been offered or have accepted comparable alternative employment with other railroads within the OmniTRAX corporate family or elsewhere. For this reason, CTXR believes that, though meaningful in the broader context, the Board's resolution of the labor protection question will have minimal if any consequences *in this docket*. (CTXR is much more interested in obtaining a decision granting it discontinuance relief, regardless of how the labor protection issue is addressed.)

To be sure, while CTXR has already expended considerable resources in advancing its position on an issue of negligible impact in the limited context of CTXR's discontinuance Petition, CTXR understands the broader ramifications of the issue upon which the Board has solicited a second round of comments. But CTXR questions the wisdom, given what little is at stake for it here, to use this proceeding as a surrogate for a rulemaking proceeding that would better serve to address the relative merits of the mechanics of case-by-case analysis of whether the Board should impose labor protection conditions in an entire-system discontinuance proceedings. The various concepts and recommendations advanced by the Labor Interests are thoughtful and deserve to be carefully considered, but not here. CTXR is simply not appropriately incented (given the absence of significant financial impact to itself either way) on its own to discuss the nuances of the Labor Interest's proposals, nor does CTXR believe it is equipped to represent the entire railroad industry. Given the posture of this case, CTXR respectfully

suggests that full consideration of the factors to be considered in determining whether or not to impose labor protection conditions in entire-system discontinuance cases should be explored in the context of a rulemaking proceeding or, absent that approach, in a future entire-system discontinuance where the discontinuing railroad faces serious financial hardship absent labor protection relief. It is only through a full exploration of these issues, argued by properly-incented parties or in a formal rulemaking, that the Board would enjoy a fully-developed record to enable it to reach an informed decision.

Finally, CTXR again emphasizes that no one has challenged the merits of its modified Petition. CTXR would be grateful for a decision granting it the discontinuance relief that it seeks – and with such a decision, the certainty that comes with discontinuance authorization, regardless of how the Board elects to address labor protection in this particular case. On that note, CTXR submits that, whatever decision the Board reaches on the labor protection issue in this proceeding, the Board may clarify that the action it takes is limited to the facts of this case, and is without prejudice to the Board’s subsequent action on the general issue of labor protection conditions in entire system discontinuances.

Respectfully submitted,

/s/ *R. A. Wimbish*

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**Attorneys for Central Texas &
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Dated: April 22, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on this 22th day of April, 2021, I served copies of the foregoing Reply Comments electronically (via email) upon each party of record.

/s/ *R. A. Wimbish*

Robert A. Wimbish