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May 11, 2021

By Electronic Submission

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

ENTERED
Office of Proceedings
May 11, 2021
Part of
Public Record

Re: Finance Docket No. 36468, *American Rocky Mountaineer, LLC – Petition for Exemption from 49 U.S.C. Subtitle IV*

Dear Ms. Brown:

On behalf of American Rocky Mountaineer, LLC, enclosed please find a Reply to the Comments by the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers in the above-referenced docket.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Carolyn G. Kraska

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36468

AMERICAN ROCKY MOUNTAINEER, LLC

**PETITION FOR EXEMPTION FROM
49 U.S.C. SUBTITLE IV**

**REPLY TO
COMMENTS BY TRANSPORTATION DIVISION OF THE INTERNATIONAL
ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION
WORKERS**

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Counsel for American Rocky Mountaineer, LLC

Dated: May 11, 2021

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I. Introduction

On February 3, 2021, American Rocky Mountaineer, LLC (“ARM”) filed a Petition for Exemption from Subtitle IV for which exemption is permissible (the “Petition”) to operate a new seasonal passenger rail excursion on lines of Union Pacific Railroad Company (“UPRR”) between Denver, Colorado and Moab, Utah. ARM requested expedited consideration, explaining that a decision issued and effective on or before May 31, 2021 would allow the company to work smoothly towards commencement of service.

On March 15, 2021, the Brotherhood of Locomotive Engineers and Trainmen (“BLET”) filed a Partial Opposition to the ARM Petition for Exemption (“BLET Partial Opposition”). ARM replied to the BLET Partial Opposition on April 5, 2021 (“ARM Reply”). On April 13, 2021, BLET responded to the ARM Reply (“BLET Reply”).

On March 18, 2021, the Transportation Division of the International Association of Sheet Metal, Air, Rail And Transportation Workers (“SMART-TD”) filed a Notice of Intent to Participate but did not file a reply or comments.

On May 4, 2021, the Surface Transportation Board instituted a proceeding under 49 U.S.C. § 10502(b).

On May 7, 2021, SMART-TD filed its Comments to American Rocky Mountaineer's Petition for Exemption ("SMART-TD Comments").

II. Reply

SMART-TD asserts that there is no authority that would support a Subtitle IV exemption for ARM's luxury rail passenger excursion service. In support of its argument, SMART-TD makes three arguments, each of which is discussed below.¹

First, SMART-TD points out that ARM's planned service is not a passenger service operated by Amtrak under 49 U.S.C. § 24308. SMART-TD Comments at 4. ARM agrees, but has not invoked or relied upon section 24308 directly or by analogy.

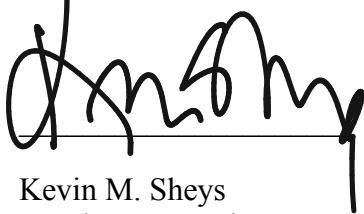
Second, SMART-TD states that ARM's planned service will not be an intrastate passenger service. SMART-TD Comments at 4. ARM agrees, but has not asserted that it will be an intrastate passenger service (and would not seek a Subtitle IV exemption if ARM's service were an intrastate service, because the STB would not have jurisdiction).

ARM's service will be an interstate passenger rail service, subject to STB jurisdiction; once ARM commences the service, it will be subject to STB jurisdiction. Petition at 3, 4–5. ARM also will be subject to the Railway Labor Act and the Railroad Retirement Act. ARM Reply at 10. ARM's service also will be subject to the safety laws and regulations administered by the Federal Railroad Administration. Id. at 5.

¹ SMART-TD also cites 49 U.S.C. § 10101(12), SMART-TD Comments at 3, but does not explain its relevance or applicability to the exemption criteria for ARM's planned passenger rail excursion service.

Third, SMART-TD incorporates by reference the arguments of the BLET Partial Opposition and BLET Reply. SMART-TD Comments at 5. ARM has replied to BLET's arguments and need not repeat its reply points here with the exception of the point in this paragraph. The SMART-TD Comments emphasize a BLET argument that the cases relied upon by ARM are distinguishable because they involved passenger cars added to existing Amtrak trains. Id. at 5. ARM did not rely on American Orient Express for its exemption argument. ARM Reply at 12, footnote 19. Great Canadian Rail Tour was not an Amtrak hook and haul case, as SMART-TD notes earlier in its own pleading.² ARM Reply at 12. Most importantly, Great Canadian Rail Tour and Pullman were both decided on the exemption criteria of 49 U.S.C. § 10502, rather than on who was driving the train. See ARM Reply at 12–13.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Sheys', written over a horizontal line.

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Dated: May 11, 2021

² SMART-TD Comments at 2, footnote 2.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May 2021, a copy of the foregoing Reply was served by email on the following counsel of record:

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/s/ Carolyn G. Kraska

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