

SERVICE DATE—APRIL 27, 2022

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.

Digest:¹ This decision allows Central Texas & Colorado River Railway, LLC, to discontinue its operations over approximately 67.5 miles of track in McCulloch, San Saba, Mills, and Lampasas Counties, Tex. In addition, the Board concludes that it will no longer apply its recent precedent imposing labor protective conditions in entire-system discontinuances where the carrier owns the rail assets at issue, and therefore the Board imposes no labor protective conditions in this case.

Decided: April 26, 2022

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).

In response to CTXR's petition, the Brady Line Shipper Group (Shipper Group)² and North Central Railcorp, Inc. (NCR), a noncarrier, filed formal expressions of intent to file offers of financial assistance (OFA) to purchase the Line. However, 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

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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Shipper Group is an association of users of the rail service provided by CTXR—specifically, The J.C. Smith Co., P.W. Gillibrand Co. of Texas Inc. (Gillibrand), and Jacoby and Jacoby, Inc. (Jacoby). According to the Shipper Group, its members were active shippers on the Line until CTXR stopped providing service. (See Shipper Group Reply 2, Aug. 24, 2020.)

the process of negotiating for a private sale of the Line.³ 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. Noting that the modification would prevent OFAs for purchase, the Board also allowed the Shipper Group and NCR to notify the Board if they wished to submit OFAs to subsidize continued service on the Line.

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.) Thereafter, a decision was issued permitting any interested person to comment on CTXR’s request that the Board not impose labor protective conditions. See Cent. Tex. & Colo. River Ry.—Discontinuance Exemption—in McCulloch, San Saba, Mills, & Lampasas Cntys., Tex., AB 1272X (STB served Mar. 23, 2021). A joint comment was filed by the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers and the American Train Dispatchers Association (collectively, SMART-TD/ATDA). 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, Allied Rail Unions or ARU) also filed a joint comment. CTXR filed a response to the two comments on April 22, 2021.

BACKGROUND

CTXR acquired the Line in 2016. See Cent. Tex. & Colo. River Ry.—Acquis. & Operation Exemption—Line of Heart of Tex. R.R., FD 36018 (STB served July 14, 2016). CTXR explains that when it acquired the Line, significant work was needed to prepare the Line for extended operations, and CTXR invested approximately \$2 million in track and right-of-way repairs to the Line. (CTXR Pet. 5.) CTXR states that, at the time of the acquisition, OmniTRAX Holdings Combined, Inc., (OmniTRAX), CTXR’s corporate parent, was “cautiously optimistic” about the Line’s prospects given the existing traffic and plans for a new crushed rock facility that would produce 8,000 to 10,000 revenue carloads per year. (Id. at 5-6.) However, CTXR states that the Line, which has been embargoed since July 25, 2019, due to bridge problems and unsafe track conditions, has become a burden to CTXR and interstate commerce due to decreased traffic and the resulting loss of revenues. (Id. at 2.)

³ On July 9, 2020, the Board denied an appeal of the May 20 order holding the proceeding in abeyance.

CTXR states that there were six active customers on the Line in 2018 but that changes in the market for frac sand have eroded its traffic base. (*Id.* at 6, 11.) One of CTRX's two largest shippers, Premier Silica, LLC, has sold its facility to Gillibrand, which will need significantly less service. (*Id.* at 6, 8 & n.6.) The second, Covia Holdings Corporation, announced that it would be closing its Brady frac sand operations. (*Id.* at 6.) In addition, according to CTRX, the anticipated new crushed rock facility, which CTRX expected to ship 8,000 to 10,000 cars per year, has not opened and may never open. (*Id.* at 5-6.)

According to CTRX, it has incurred millions of dollars of losses since acquiring the Line and the costs of maintaining and operating the Line heavily outweigh the potential annual revenue that could be generated from those shippers remaining on the Line. (*Id.* at 2.) CTRX states that its 2017 losses were approximately \$2.489 million, its 2018 losses were over \$2 million, and its projected 2019 losses were approximately \$1.946 million. (*Id.*, Ex. F, V.S. Bell 2-6.) CTRX states that despite its significant capital investments and good faith efforts to work with potential and existing customers to generate sufficient operating revenues, the anticipated traffic increases that motivated the purchase of the Line have not materialized. (CTRX Pet. 2.) However, CTRX explains that it now seeks only discontinuance authority, rather than the abandonment authority it originally sought, because substantial traffic opportunities may arise that warrant restoring service. (CTRX Status Report 2, July 20, 2020.)

As to transportation alternatives for the remaining shippers, CTRX states that U.S. Route 190 provides a truck route to BNSF Railway Company at Lometa, Tex. and U.S. Route 87 provides a truck route to Texas Pacifico Railway and San Angelo, Tex. (CTRX Pet., Ex. E, V.S. Touesnard 10.) CTRX describes its service as a "convenient and cost-effective, but non-essential, alternative to truck transportation," (CTRX Pet. 15), and points out that Gillibrand and Jacoby, the two largest remaining customers on the Line, both already depend on truck transportation to some extent, (*id.*, Ex. E, V.S. Touesnard 9-10). CTRX acknowledges that "[w]hile the remaining . . . customers may make use of highway transportation for their shipping needs, it is not clear to what extent these customers will resort to truck transportation, particularly with regard to Brady[-]area frac sand shippers, which are already facing competitive pressures from other sand sources located closer to sand-consuming markets." (CTRX Pet. 11.)

DISCUSSION AND CONCLUSIONS

Discontinuance authority. 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.

Detailed scrutiny of CTRX'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,⁴ 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.⁵ CTXR has shown that truck shipping is available for the remaining shippers on the Line, (CTXR Pet., Ex. E, V.S. Touesnard 9-10), and no shipper has contested CTXR's assessment that its service has been a "convenient and cost-effective, but non-essential, alternative to truck transportation," (CTXR Pet. 15). Therefore, the Board will not require CTXR to subsidize operations on the Line by requiring it to continue operating at a substantial financial loss. See Blacklands R.R.—Discontinuance of Serv. Exemption—in Hunt, Delta, Hopkins, Franklin, & Titus Cntys., Tex., AB 1108 (Sub-No. 1X), slip op. at 9-10 (STB served Feb. 14, 2020) (rejecting unsupported claims that shippers did not have transportation alternatives and declining to require railroad to continue service at a loss); Norfolk S. Ry.—Discontinuance of Serv. Exemption—in Stanly Cnty., N.C., AB 290 (Sub-No. 254X) et al., slip op. at 7-8 (STB served Aug. 11, 2006) (noting "the detriment to the public interest caused by continued operation of uneconomic facilities").

Labor protective conditions. Under 49 U.S.C. § 10903(b)(2), the Board is required to impose employee protective conditions on abandonments and discontinuances.⁶ 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, 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 that 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 & Galeton R.R.—

⁴ The Shipper Group states that its members were being injured by the embargo, which was preventing rail service on the Line. (See Shipper Group Reply 1, May 4, 2020; see also Shipper Group Reply 1, Jan. 24, 2020 ("[T]he embargo . . . continues to substantially harm the members of the . . . Shipper Group"); Shipper Group Comment 1, Jan. 22, 2020 ("Continuing embargo will have a serious adverse impact on the members of the . . . Shipper Group").) However, the Shipper Group never provided support for its statements alleging that its members were being harmed by the embargo, nor did the Shipper Group, or anyone else, file in opposition to the initial petition for abandonment authority or the revised petition for discontinuance authority.

⁵ 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).

⁶ Under 49 U.S.C. § 10502(g), the Board may not exercise its exemption authority to relieve a rail carrier of its obligation to protect the interests of employees.

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).

However, there are several exceptions under which the Board may impose labor protective conditions in an entire-system abandonment or discontinuance. For example, labor protection has been applied 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), and 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—Discontinuance Exemption—in St. Louis County, Mo. (Mfrs. 2013), AB 1075X, slip op. at 4-7 (STB served Feb. 6, 2013),⁷ that, when a carrier seeks to discontinue operations entirely but continues to own the railroad assets in question, the discontinuance should be subject to the Oregon Short Line conditions.

In Manufacturers 2013, the Board reasoned that two factors supported its decision to create the additional exception to the no-labor-protection policy for entire system abandonments or discontinuances. First, the Board said that narrowing the policy was more consistent with § 10903(b)(2) because “[t]he plain language of the statute creates a powerful presumption in favor of imposing employee protection in abandonments and discontinuances, and for narrowly applying the regulatory policy that created an exception to Congress’ directive.” Mfrs. 2013, AB 1075X, slip op. at 5. Second, the Board explained that:

as a policy matter, [it did] not think Congress intended to deprive rail employees of labor protection when the carrier seeks to terminate service over its entire rail system on tracks that it owns but that will remain subject to the Board’s jurisdiction. This is because such a carrier will continue to enjoy several benefits associated with remaining a regulated carrier.

Id.

The Board described four benefits of the Board’s continuing jurisdiction for such carriers. Id. at 5-6. First, the Board identified federal preemption from the application of many state and local laws. Second, the Board described the ability to resume service over the line without new licensing authority from the Board. Third, the Board stated that, for lines that consist of a less-than-fee-simple property interest, such as an easement for freight rail purposes, discontinuance “preserves the carrier’s property by keeping it in the national transportation system and barring the vesting of those reversionary interests to prior owners; abandonment, in contrast, does not.” Id. at 6. Fourth, the Board said that a carrier discontinuing service over a

⁷ The Manufacturers 2013 decision was issued following remand of the proceeding by a reviewing court. Mfrs. Ry. v. STB, 676 F.3d 1094 (D.C. Cir. 2012).

line is not potentially subject to forced sale through the OFA process under 49 U.S.C. § 10904, whereas a carrier seeking abandonment might be forced to instead sell the line under the OFA process.⁸

In its December 10, 2020 response to the Board's order, CTXR acknowledges that Manufacturers 2013 would require the Board to impose labor protective conditions in this proceeding but argues the Board should "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 2013 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.)

SMART-TD/ATDA and ARU take no position regarding CTXR's request that the Board not impose labor protective conditions in this case. (SMART-TD/ATDA 6 n.1; ARU 5.) They also do not oppose the Board revisiting Manufacturers 2013 and adopting a case-by-case approach, but they oppose CTXR's specific proposal. (SMART-TD/ATDA 5-7; ARU 5-7.) SMART-TD/ATDA argue that because § 10903 mandates labor protective conditions in discontinuances, "there should be a presumption in favor of imposing employee protections in complete discontinuances of service, which must be overcome by the petitioning carrier seeking to avoid such protections." (SMART-TD/ATDA 6; see also ARU 5.) SMART-TD/ATDA and ARU suggest the Board should consider multiple factors in such a case. (SMART-TD/ATDA 6-7; ARU 6.) SMART-TD/ATDA suggests the Board should consider the circumstances of the initial acquisition, including the foreseeable risks of the acquisition; "[t]he actual cost of employee protections in the overall context of the economic considerations behind the decision to seek discontinuance authority"; and "[t]he carrier and corporate parent or affiliate's commitment to completely cease operations on the line for the duration of any applicable employee protective condition period." (SMART-TD/ATDA 6-7; see also ARU 6 (suggesting similar considerations).)

In response, CTXR states that it will not respond to the particulars of SMART-TD/ATDA and ARU's proposals. (CTXR Reply 3, Apr. 22, 2021.) CTXR explains that it had very few employees, and "those few arguably displaced have been offered or have accepted comparable alternative employment with other railroads within the OmniTRAX corporate family or elsewhere." (Id. at 4.) Therefore, CTXR concludes that the Board's decision regarding labor protection in this case would not have a practical effect on CTXR, although CTXR acknowledges that a decision revisiting Manufacturers 2013 would be meaningful in the broader context. (Id.)

⁸ In discontinuance proceedings, the OFA option to subsidize continued rail service is still available. See 49 U.S.C. § 10904; 49 C.F.R. § 1152.27.

An agency has the discretion to modify, narrow, or completely set aside prior agency precedent if it offers a reasoned basis for its decision. See, e.g., Greater Bos. Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir 1970) (“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored . . .”). The Board acknowledged that Congress gave it discretion to define the parameters of the entire-system policy. Mfrs. 2013, AB 1075X, slip op. at 5. For the reasons described below, the Board will exercise its discretion and will no longer apply the Manufacturers 2013 exception to the entire-system policy.

The Board’s reasoning in Manufacturers 2013 does not require the Board to continue to apply the exception. First, with regard to the statutory language favoring labor protection, Railway Labor Executives Association v. ICC, 735 F.2d 691, 698-702 (2d Cir. 1984), explained that the legislative history of § 10903(b)(2) indicates both that Congress was aware of the entire-system policy and expected that it would continue, and that the Interstate Commerce Commission’s continued application of the policy reflected that legislative history. And indeed, in that case, the court upheld the entire system policy—without the Manufacturers 2013 exception—following the enactment of 10903(b)(2). Ry. Lab. Execs. Ass’n, 735 F.2d at 698-702. Second, while some or all of the benefits of the Board’s jurisdiction described in Manufacturers 2013 may accrue to a particular carrier discontinuing service over its entire line, the benefits are only one side of the equation. The decision to discontinue service, rather than abandon a line, is complex. The considerations identified in Manufacturers 2013 may be a few factors among many. For example, the decision to discontinue service requires the carrier to retain the property along with any obligations that come with it, such as property taxes, and prevents the carrier from selling the property (assuming that it owns the property). Therefore, it seems unlikely that a carrier would regularly choose to seek discontinuance authority over abandonment authority merely to remain under the Board’s jurisdiction without at least some expectation that it may resume service at some point. The fact that entire-system discontinuances involving a line owned by the discontinuing carrier do not seem to occur frequently supports this view. See Mfrs. 2013, AB 1075X, slip op. at 3 (explaining that the Board viewed the case as one of first impression).

Manufacturers 2013 also did not acknowledge the negative incentive it created. The Manufacturers 2013 exception tends to encourage carriers to seek abandonment, rather than discontinuance, to avoid the imposition of labor protective conditions, and thereby remove a line from the national rail network. The importance of this consideration may vary from line to line. Here, CTXR has explained that the imposition of labor protective conditions would have no practical impact in this case. (CTXR Reply 4, Apr. 22, 2021.) But the Board is concerned about any policy that may contribute to unnecessary removal of lines from the national rail network without a strong justification. See 49 U.S.C. §§ 10904, 10907; 16 U.S.C. § 1247(d); Jie Ao—Pet. for Declaratory Ord., FD 35539, slip op. at 7 (STB served June 6, 2012) (noting “strong federal policy in favor of retaining rail property in the national rail network, where possible”); see also City of S. Bend, Ind. v. STB, 566 F.3d 1166, 1168 (D.C. Cir. 2009) (noting that, after abandonment, “reassembling a right-of-way may be difficult if not impractical”).

The requirement to apply labor protective conditions in all entire-system discontinuances where the rail assets are owned by the discontinuing carrier also prevents the Board from considering the broader circumstances of such a discontinuance when deciding whether to impose labor protective conditions. Specifically, the Manufacturers 2013 exception disregards the entire-system policy's rationale. Under the exception, the Board cannot consider whether "rail carrier operations on other lines . . . would provide employment opportunities or revenue sources for affected employees after abandonment or discontinuance of the railroad's entire rail system." See Mfrs. 2013, AB 1075X, slip op. at 4.

The Board will not adopt SMART-TD/ATDA and ARU's proposal that there be a presumption in favor of imposing employee protections in entire-system discontinuances, which the carrier could argue should be overcome by various factors, (see SMART-TD/ATDA 6-7; ARU 5-6). SMART-TD/ATDA and ARU argue that a presumption would be consistent with the statutory mandate in § 10903. However, as discussed above, the Board has discretion to set the parameters of the pre-existing entire-system policy, and such a presumption is unnecessary to carry out the mandate in § 10903. In addition, the factors that SMART-TD/ATDA and ARU propose are partially accounted for in the approach the Board is adopting here, in that the remaining exceptions consider benefits to a corporate parent or affiliate and commitments to completely cease operations by a corporate parent or affiliate. Honey Creek R.R., AB 865X, slip op. at 2. The Board will not consider "[t]he actual cost of employee protections in the overall context of the economic considerations behind the decision to seek discontinuance authority," (see SMART-TD/ATDA 7), because such a factor could work to the disadvantage of employees receiving more generous compensation. This is because all things being equal, it is possible that the Board would be less likely to impose employee protective conditions the higher the compensation. Finally, the suggestion that the Board consider the foreseeable risks of the initial acquisition might discourage acquisitions of unprofitable lines. The Board does not want to discourage carriers from making investments that may keep lines in the national rail network. See 49 U.S.C. § 10101(4) (RTP includes "ensur[ing] the development and continuation of a sound rail transportation system"). CTXR's acquisition of the Line illustrates such a situation.⁹

Therefore, the Board concludes that ending the narrow Manufacturers 2013 exception would be consistent with the policy objective of retaining lines in the national rail network and with the rationale of the long-established and judicially approved entire-system policy. This change will encourage retention of struggling lines in the national rail network, consistent with the RTP. See 49 U.S.C. § 10101(4) (development and continuation of a sound rail transportation system); § 10101(7) (reducing regulatory barriers to entry into and exit from the industry); see also Jie Ao, FD 35539, slip op. at 7; City of S. Bend, Ind., 566 F.3d at 1168. Going forward, the Board will consider the previously-established exceptions to the entire-system policy when deciding whether to impose labor protective conditions on entire-system discontinuances where the discontinuing carrier owns the rail assets. See Honey Creek R.R., AB 865X, slip op. at 2 (describing exceptions). And while the Board is not adopting the presumption or specific factors proposed by SMART-TD/ATDA and ARU, it is not ruling out the possibility that, in the future, it might be open to other exceptions to the "no-labor-protection policy" in entire-system

⁹ As described above, CTXR purchased the Line with the intent of rehabilitating it to serve an expanded traffic base, which did not materialize. (See CTXR Pet. 2, 4-6.)

discontinuances where the discontinuing carrier owns the rail assets. It is simply saying that the Manufacturers 2013 exception will no longer be applied.

In light of the policy shift described above, the Board will not impose labor protective conditions on this discontinuance. Where, as here, the carrier is discontinuing service over its entire system, the Board does not normally impose labor protection under 49 U.S.C. § 10502(g) unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See id.; Northampton & Bath R.R., 354 I.C.C. 784; Wellsville, Addison & Galetton R.R., 354 I.C.C. 744. There has been no showing that CTRX has a corporate affiliate that will continue substantially similar rail operations or a corporate parent that will realize substantial benefits over and above relief from the burden of deficit operations. (See CTRX Comment 9, Dec. 10, 2020.) Therefore, labor protective conditions will not be imposed.

Other matters. Because no formal expressions of intent to file an OFA to subsidize continued rail service were filed by the November 30, 2020 deadline,¹⁰ 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, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905.¹¹ Because an environmental review will be conducted during any future abandonment, this discontinuance does not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts the discontinuance of CTRX's service on the Line from the prior approval requirements of 49 U.S.C. § 10903.
2. Petitions to stay and petitions to reopen must be filed by May 12, 2022.
3. This decision is effective on May 27, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

¹⁰ See Cent. Tex. & Colo. River Ry.—Discontinuance Exemption—in McCulloch, San Saba, Mills, & Lampasas Cntys., Tex. (Nov. 2020 Decision), AB 1272X, slip op. at 3 (STB served Nov. 20, 2020) (allowing parties, that had previously filed notices of intent to file an offer to purchase the Line through the OFA process, to file notices of intent to file an offer to subsidize continued operations given that the Board granted CTRX's request to limit its petition to seek only discontinuance authority).

¹¹ The Board previously explained that, given its decision to allow CTRX to limit its petition to seek only discontinuance authority, the Board would not consider Red Line Parkway Initiative's request for public use and trail use conditions. See Nov. 2020 Decision, AB 1272X, slip op. at 4-5.