

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. AB-1075x**

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**MANUFACTURERS RAILWAY COMPANY  
--DISCONTINUANCE EXEMPTION --  
IN ST. LOUIS, MO**

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230769

**MOTION TO ALLOW FILING OF REPLY AND  
UNITED TRANSPORTATION UNION'S  
REPLY TO PETITION TO STAY**

United Transportation Union ("UTU") respectfully moves it be permitted to submit the following in reply to Manufacturers Railway Company's ("MRS") Petition to Stay Pending Judicial Review filed with the Surface Transportation Board ("STB") on July 27, 2011, as this filing is beyond the five-day period for reply contained in 49 C.F.R. § 1152.25(e)(7)(iii).

**BACKGROUND**

On March 24, 2011, MRS filed its Petition for Discontinuance Exemption, pursuant to 49 U.S.C. § 10903, to discontinue service over all tracks and yards located in St. Louis, Mo. The Brotherhood of Maintenance of Way Employes Division-International Brotherhood of Teamsters ("BMWED"), UTU and the International Association of Machinists and Aerospace Workers ("IAMAW") filed protests with respect to the imposition of labor protection. The STB issued its decision on July 12, 2011 permitting the discontinuance, subject to the imposition of the labor protective conditions contained in *Oregon Short Line R.R. III*, 360 I.C.C. 91 (1979) to protect the interests of the affected employees.

## REPLY

The standards governing disposition of a petition for a stay pending appeal are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Washington Metropolitan Area Transit Commission v. HolidayTours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). MRS has failed to meet the criteria for a stay.

### *1. MRS Has Not Demonstrated Likelihood of Success on the Merits*

MRS has not demonstrated that it is likely to prevail on the merits on appeal. MRS argues that the Board's ruling on labor protection is based on two arbitrary and capricious distinctions between "(1) entire system discontinuances over lines owned and not owned by the carrier and (2) an entire system discontinuance and entire system abandonment."

While MRS cites, *inter alia*, *Brooks-Scanlon Co. v. R.R. Commission*, 251 U.S. 396 (1920), which held that a company cannot be compelled to operate its railroad at a loss, that case is inapposite because there the issue was "whether the plaintiff could be compelled by the Commission to operate its railroad." That, however, is not the case here. The STB in its decision granted MRS the right to discontinue its operations over its entire system. The STB is not attempting to force MRS to continue rail operations, which was the issue in *Brooks-Scanlon*.

Moreover, the STB's reasoned decision as to why labor protection should be imposed here is entitled to considerable deference under *Chevron U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The STB found that the rationale behind the agency policy of not imposing labor protection in entire-system abandonments (or discontinuances on

lines the carrier does not own) does not apply here. *Decision* at 6. That finding cannot be overcome on appeal because of the *Chevron* deference to which it is entitled. Thus, MRS has not established likelihood of success on the merits of the appeal.

2. *Denial of the Stay will Not Cause MRS Irreparable Harm*

The key to this standard is the irreparable nature of the harm, and MRS has failed to establish that. The fact that it may have to pay protective payments pending appeal does not rise to the level of irreparable harm because mere monetary losses never amount to irreparable harm. *Sampson v. Murray*, 415 U.S. 61, 88-91 (1974).

3. *A Stay Would Harm MRS Employees*

The balance of the hardships does not tip decidedly toward MRS with respect to a stay. The employees idled by the abandonment/discontinuance have much more to lose in terms of wages, health benefits and the like, and they should continue to be protected during the pendency of the appeal so that the reasonable expectations they have in their working lives are not disrupted by the corporate shell game MRS and its owner are playing.

4. *A Stay Is Not In the Public Interest*

The public interest would not be served by a stay pending appeal since it would disrupt the sound policy judgment the STB has made with respect to the unique facts of this case.

**CONCLUSION**

For the foregoing reasons, MRS' petition for a stay pending appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing was served upon the following parties of record in this proceeding by email and first-class mail this 5<sup>th</sup> day of August 2011.

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