

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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July 21, 2020  
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Public Record

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**Finance Docket No. 36284**

**SEVEN COUNTY INFRASTRUCTURE COALITION—  
CONSTRUCTION AND OPERATION—IN UTAH, CARBON,  
DUCHESNE, AND UINTAH COUNTIES, UT.**

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**PETITIONER'S MOTION FOR LEAVE TO FILE  
RESPONSE TO REPLIES TO PETITION FOR EXEMPTION**

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**Dated: July 21, 2020**

**PETITIONER'S MOTION FOR LEAVE TO FILE  
RESPONSE TO REPLIES TO PETITION FOR EXEMPTION**

Seven County Infrastructure Coalition (the “Coalition”) respectfully moves for leave to file the attached Response to the various letters and replies submitted in opposition to the Coalition’s Petition for Exemption. In particular, the Coalition’s Response addresses the detailed replies filed by the Center for Biological Diversity and the Argyle Wilderness Protection Alliance.

The Board will permit a reply to a reply for “good cause.”<sup>1</sup> The Coalition has good cause to file such a response in this case. The replies in opposition to the Coalition’s Petition for Exemption mischaracterize important facts, make unsupported claims, and raise a variety of issues and arguments that exceed the scope of the Petition. If the Board gives consideration to any of these contentions, it should grant the Coalition leave to file the attached Response. Doing so will afford the Coalition an opportunity to address the issues raised by the opponents and to provide the Board with a more complete record. The attached Response also does not raise any new arguments in support of the Petition for Exemption, but instead clarifies facts that will aid the Board in its decision-making process.

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<sup>1</sup> Although 49 C.F.R. § 1104.13(c) indicates that “[a] reply to a reply is not permitted,” the Board has frequently waived that provision for good cause. *See, e.g., Sierra R.R. Co. v. Sacramento Valley R.R. Co., LLC*, STB Docket No. NOR 42133, at 1, n.1 (served Mar. 9, 2012); *Cross Oil Ref. & Mktg., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 33582, at 1 (served Oct. 27, 1998). *See generally* 49 C.F.R. § 1100.3 (“The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.”); *see also BNSF Ry. Co.—Abandonment Exemption—In Kootenai Cty., ID*, STB Docket No. AB-6 (Sub-No. 468X), at 1 (served Nov. 27, 2009) (“It is within the Board’s discretion to permit otherwise impermissible filings . . .”).

First, the Response should be allowed because it responds to CBD’s and Argyle’s factual mischaracterizations and misleading and unsupported claims. For example, the replies mischaracterize the facts surrounding the need for the Project and misconstrue prior Board precedent regarding the requirement (or lack thereof) for a petitioner to demonstrate an important public need for a project under the STB’s transportation merits review.<sup>2</sup>

The replies also advance other arguments that have no bearing on the merits of the Coalition’s Petition for Exemption, including concerns about the environmental impact of the proposed Uinta Basin Railway,<sup>3</sup> the sources of financing the Coalition has secured and will secure for the project,<sup>4</sup> and the financial viability of the project.<sup>5</sup> They also argue that the Board should require a full application due to the “controversial nature” of the Project.<sup>6</sup> The attached Response is the Coalition’s opportunity to explain why these arguments are irrelevant to its Petition for Exemption and do not raise any issues warranting detailed scrutiny under § 10901.

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<sup>2</sup> See, e.g., Center for Biological Diversity, Reply to Petition for Exemption, STB Finance Docket No. 36284, at 9 (July 7, 2020) (“CBD Reply”) (incorrectly asserting that the Coalition and the Utah Permanent Community Impact Board are assuming the “entire financial risk” associated with the project); Argyle Wilderness Preservation Alliance, Reply in Opposition to Petition for Exemption, STB Finance Docket No. 36284, at 3 (July 7, 2020) (“Argyle Reply”) (incorrectly asserting that exemptions should be granted only in uncontested or noncontroversial proceedings); Argyle Reply at 8 (incorrectly implying that no shippers support the project).

<sup>3</sup> CBD Reply at 33; Argyle Reply at 11-12.

<sup>4</sup> CBD Reply at 7-15; Argyle Reply at 6.

<sup>5</sup> CBD Reply at 22-32; Argyle Reply at 12.

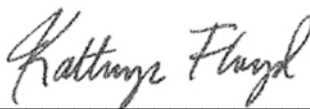
<sup>6</sup> CBD Reply at 33; Argyle Reply at 3.

Finally, affording the Coalition an opportunity to respond will not prejudice any party and will provide the Board with a more complete record without material delay.<sup>7</sup> A fuller, more complete record will facilitate the Board's decision-making process as it addresses the Petition for Exemption.<sup>8</sup>

### CONCLUSION

For the forgoing reasons, the Coalition respectfully requests that the Board grant this Motion for Leave to File a Response to Replies.

Respectfully submitted,



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<sup>7</sup> The attached Response is being filed 14 days after the replies to the Coalition's Petition for Exemption were due.

<sup>8</sup> See *Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Petition for Exemption—Passenger Rail Line Between Dallas and Houston*, Tex., FD 36025 at 3 n. 5 (July 18, 2016) (allowing a reply to a reply “in the interest of compiling a more complete record”); *Tongue River R.R. Co., Inc.—Construction & Operation—Western Alignment*, FD 30186 (Sub-No. 3), at 4 (served June 15, 2011) (“In the interest of compiling a more complete record in this case, we will accept into the record the surreplies.”); *Union Pac. R.R. Co.—Abandonment—In Lancaster & Gage Ctys., NE, and Marshall Cty., KS*, AB-33 (Sub-No. 140), at 1 (served Dec. 22, 1999) (replies accepted “where they will contribute to a complete record without prejudicing any party or delaying the proceeding”); *City of Alexandria, Va.—Pet. for Declaratory Order*, FD 35157, slip op. at 2 (served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”).

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of July 2020, I caused a copy of the foregoing Petitioner's Motion for Leave to File Response to Replies to Petition for Exemption to be served on all parties of record by email or first-class mail, postage prepaid.



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Margaret K. Fawal