

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36652

**GREEN EAGLE RAILROAD, LLC
– CONSTRUCTION AND OPERATION OF A LINE OF RAILROAD –
IN MAVERICK COUNTY, TX**

**REPLY TO UNION PACIFIC’S COMMENTS ON THE TRANSPORTATION MERITS
OF GREEN EAGLE RAILROAD, LLC’S PETITION FOR EXEMPTION**

(includes color images)

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Dated: September 15, 2025

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**REPLY TO UNION PACIFIC’S COMMENTS ON THE TRANSPORTATION MERITS
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Green Eagle Railroad, LLC (“GER”) respectfully requests that the Board reject the relief sought in the Union Pacific Railroad Company (“Union Pacific”) Comments asking the Board to deny the GER Petition for Exemption. The GER Proposed Line satisfies the clear presumption of ICC Termination Act of 1995 (“ICCTA”) in favor of rail construction proposals, and the Union Pacific Comments fail to demonstrate that the GER Proposed Line is not in the public interest given that the Final Environmental Impact Statement (“EIS”) and the May 31, 2024 approval of the Maverick County/Puerto Verde Holdings Presidential Permit both clearly demonstrate that the Proposed Line is in the public interest. Further, the Board should deny the relief sought in the Union Pacific Comments asking the Board to regulate the Proposed Line under a full application pursuant to 49 U.S.C. § 10901. The GER Petition satisfies the Board’s exemption requirements of 49 U.S.C. § 10502 by demonstrating that the Proposed Line is consistent with the Rail Transportation Policies of 49 U.S.C. § 10101.

I. BACKGROUND

A. The GER Proposed Line Seeks to Resolve the Problems Cited in the Texas-Mexico Border Transportation Master Plan

The GER Petition for Exemption explains in detail the purpose and need for the Proposed Line. In summary, the primary purpose for the Proposed Line is to resolve the cross-border trade

issues identified by the Texas Department of Transportation’s (“TXDOT”) Texas-Mexico Border Transportation Master Plan (“BTMP”) by creating a new trade corridor to resolve anticipated rail and CMV congestion, reduce cross border wait times, route rail traffic and CMV traffic around the urban centers of the City of Eagle Pass and Piedras Negras thereby eliminating the at-grade crossings and the associated environmental and community burdens, and increase security. In addition, the new trade corridor would directly link the industrial areas of Mexico with the United States providing economic opportunity in Maverick County and the State of Coahuila.¹

GER’s proposal assumes that both UP and BNSF would transition cross-border traffic to the Proposed Line.² Further, GER’s Petition explains that its proposal would require a trackage rights agreement from UPRR to access UPRR Clark’s Park Yard and BNSF Ryan’s Ruin Yard for GER to offer freight service between the Ferromex Rio Escondido Yard and the Union Pacific and BNSF yards.³

B. The Final EIS Demonstrates the Public Benefit of the Proposed Line.

The Final EIS developed by the Board’s Office of Environmental Analysis (“OEA”) documents the public benefits that would come with the development of the Proposed Line as presented in the GER Petition for Exemption – a proposal that assumes all rail traffic would transition to the Proposed Line.

The Final EIS states that under the GER proposal, grade crossings would drop from seven to zero on the American side of the Border.⁴ According to the Final EIS, “[t]his would result in

¹ GER Petition at 5.

² GER Petition at 8; *See also* Green Eagle Railroad Letter to the Office of Environmental Analysis, June 2, 2025 (available via the Board’s website as Environmental Comment EI-34039).

³ GER Petition at 8; Verified Statement of Ruben Garibay at 7-8.

⁴ Because the Board does not have jurisdiction in Piedras Negras, OEA did not study the impact of removing sixteen at-grade crossings in that City.

beneficial impacts on freight rail safety, grade crossing safety, and delay, air quality, and energy when compared to the [the status quo].”⁵ In addition, the Proposed Line would eliminate existing severe noise impacts experienced by 1,980 receptors near the UP mainline.⁶ Further, as a result of the elimination of all public at-grade crossings, the Proposed Line would lower the predicted grade crossing crashes per year compared to the status quo.⁷ And, under the GER proposal, “the average delay time (including emergency vehicles) of 24.8 seconds at high-volume annual average daily traffic” currently impacting Eagle Pass “would be reduced to zero, a beneficial impact.”⁸ Further, the Final EIS states that the Proposed Line and “the associated CMV Facility would result in a beneficial impact on air quality.”⁹

C. The Presidential Permit Granted to Puerto Verde Holdings through Maverick County Demonstrates the Public Benefit of the Proposed Line.

On May 31, 2024, the President of the United States granted GER’s parent company, Puerto Verde Holdings (“PVH”), through PVH’s public agency sponsor, Maverick County, TX a presidential permit to build the Proposed Line and associated CMV facility into Mexico subject to receiving all necessary permits.¹⁰

An applicant submitting a Presidential Permit must provide an explanation as to why the applicant believes the proposed project would serve the foreign policy interests of the United

⁵ *Green Eagle R.R., LLC – Construction and Operation Exemption – in Maverick County, Tex. STB Finance Docket No. 36652*, Final Environmental Impact Statement, at S-6 (served Aug. 6, 2025)(“Final EIS”).

⁶ *Id.* at 2-24.

⁷ *Id.* at 2-26.

⁸ *Id.* at 2-26 and 3-13.

⁹ *Id.* at S-8.

¹⁰ U.S. Department of State, Permit Authorizing Maverick County, Texas, to Construct, Maintain, and Operate a Vehicular, Pedestrian, and Rail Border Crossing near Eagle Pass, Texas, at the International Boundary Between the United States and Mexico, *available at* <https://www.state.gov/wp-content/uploads/2024/06/Presidential-Permit-Maverick-County-PV-Accessible-6.21.2024.pdf>.

States.”¹¹ Under 33 U.S.C. § 535d(c)(2), this requirement allows the Secretary of State to make a recommendation to the President whether the proposed international bridge “is in the foreign policy interests of the United States.” In awarding the Presidential Permit to Puerto Verde Holdings through Maverick County and granting permission for the construction, maintenance, and operation of a vehicular and rail crossing as described in the Puerto Verde Global Trade Bridge Presidential Permit Application, the President, as recommended by the Secretary of State, confirmed that the proposal is in the public interest and supports the Country’s foreign policy interests.

II. ARGUMENT

A. The Proposed Line is in the Public Interest and the Union Pacific Comments Fail to Demonstrate Otherwise.

The Board has stated that the legal standard for rail construction licensing authority under the ICCTA is a permissive standard that directs the Board to grant construction authority “unless [the Board finds] the proposal inconsistent with the public convenience and necessity [“PC&N”].”¹² The Board has said, “Congress made a presumption that rail construction projects are in the public interest unless shown otherwise.”¹³ This standard – as explained by the Board – represents a Congressional policy shift that, prior to 1980, required the Board’s predecessor, the Interstate Commerce Commission (“ICC”) to “scrutinize rail construction proposals closely to prevent excess rail capacity.”¹⁴ Under the pre-1980 standard, the ICC “was to issue a [construction] license only if it found that the PC&N “required” the construction. Congress eased this standard

¹¹ U.S. Department of State, Presidential Permits for Border Crossings, *available at* <https://www.state.gov/presidential-permits-for-border-crossings>.

¹² *Alaska R.R. Corp - Construction and Operation Exemption – Rail Line between North Pole and Delta Junction, AK*, STB Finance Docket No. 34658, slip op. at 5 (served Jan. 6, 2010).

¹³ *Id.*

¹⁴ *Id.*, slip op. at 5, n. 4 (internal citations omitted).

under the Staggers Act, directing the ICC to issue a construction license if it found that the PC&N would “permit” the proposed construction project.¹⁵ Under ICCTA, Congress completed its policy shift to the current standard that a rail construction project license shall be issued unless otherwise shown inconsistent with the PC&N.”¹⁶

The Board should reject the Union Pacific Comments arguing that the Proposed Line is not in the public interest because the Union Pacific Comments fails to overcome the Congressional presumption that the Proposed Line is in the public interest. Not only should the Proposed Line be granted the benefit of the doubt that it is in the public interest, it is in fact in the public interest because –as demonstrated in the Final EIS – it would route traffic away from the City of Eagle Pass and the City of Piedras Negras resulting in beneficial impacts to the public on noise, grade crossing safety, grade crossing delay, and air quality.

Further, the Proposed Line received a Presidential Permit to develop a new crossing into Mexico and as part of the Presidential Permit application, PVH was required to provide an explanation of how the Proposed Line served the foreign policy interests of the United States. The grant of the Presidential Permit validates GER’s position that the Proposed Line is in the foreign policy interests of the United States and thus, the public interest.

In addition to the public interest benefits acknowledged in the Final EIS and the Presidential Permit, GER believes that the Proposed Line will also resolve the cross-border issues identified by the TXDOT BTMP. The GER Petition for Exemption’s arguments citing the TXDOT BTMP need not be repeated here, however, the Proposed Line is intended to remedy the issues identified in the BTMP such as the limited infrastructure (single tracking) at U.S. / Mexico

¹⁵ *Id.*

¹⁶ *Id.*

border crossings including at Eagle Pass. The Proposed Line seeks to remedy these choke points by constructing a double tracked bridge into Mexico.¹⁷ The Proposed Line also seeks to improve security by developing a secure corridor and proposes to utilize international crews to forgo the current practice of crew changes at the border.¹⁸

The Union Pacific Comments argue that “GER is proposing to construct a railroad line that is not needed to meet existing or future demand for transportation.”¹⁹ Yet, Union Pacific also states that it “is actively planning operational improvements and capital investments to support improved fluidity and growth of traffic moving through the Eagle Pass Gateway.”²⁰ Even though Union Pacific states that GER is proposing to construct a line that is not needed and duplicative,²¹ it nevertheless asserts that it will construct a new lead at the north end of Clark’s Park Yard and it will double track – if needed – from the south end of Clark’s Park Yard to complete a second main line all the way to the border.²² In addition, similar to the GER proposal, the Union Pacific Comments states that Union Pacific will be shifting “cross-border crew changes from the Eagle Pass-Piedras Negras International Railway Bridge to Clark’s Park Yard, reducing the amount of time trains are stopped on the bridge, which will improve security, service, and capacity.”²³

The Union Pacific Comments includes these proposed improvements to argue that the Proposed Line is unnecessary.²⁴ However, these statements fail to demonstrate that the Proposed Line would not be in the public interest – the current legal standard for rail construction projects

¹⁷ GER Petition at 2.

¹⁸ *Id.* at 6.

¹⁹ Union Pacific Comments at 15.

²⁰ *Id.* at 6.

²¹ *Id.* at 7.

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.* at 14-15.

which Congress modernized from the pre-1980 standard presumes that rail construction is in the public interest. Therefore, the Union Pacific argument that the GER Proposed Line is duplicative is irrelevant. In any event, the GER Proposed Line is not duplicative because it is envisioned to replace the Union Pacific bridge at Eagle Pass.

Further, the Board has held that under 49 U.S.C. § 10101, a “showing that the incumbent railroad’s service is inadequate is simply not necessary to obtain authority for construction of a competing line.”²⁵ Therefore, even if the Union Pacific Comments were to be correct (that its proposed infrastructure and operational improvements will resolve problems at the border), GER does not need to demonstrate that Union Pacific’s service is currently inadequate to obtain authority to construct the Proposed Line.

Finally, the proposed Union Pacific infrastructure improvements do nothing to solve the negative impacts that double tracking will have on the Eagle Pass public. In fact, double tracking into the City of Eagle Pass has the potential to exacerbate the status quo (including negative effects of the crossings) identified in the Final EIS for the Proposed Line.

B. GER’s Proposed Line Satisfies the Standard for an Exemption under 49 U.S.C. § 10502 because it satisfies the Rail Transportation Policies of § 10101.

The Board has determined that under 49 U.S.C. §10502, it must exempt a transaction from regulation when it finds that: (1) is not necessary to carry out the transportation policy of section 10101 of this title; and (2) either – (a) the transaction or service is of limited scope; or (b) the

²⁵ *Texas Railway Exchange LLC – Construction and Operation Exemption – Galveston County, Tex.* STB Finance Docket No. 36186, *et al.*, slip op. at 5 (served Jan. 17, 2020) (*citing Midwest Generation, LLC Exemption from 49 U.S.C. 10901 – for Construction in Will County, IL*, STB Finance Docket No. 34060, *et al.* slip op. at 9 (served March 21, 2002)).

application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.²⁶

In support of GER's Petition for Exemption, GER argues that the Proposed Line satisfies the Rail Transportation Policies of 49 U.S.C. § 10101, specifically, § 10101(2), to minimize federal regulatory control over the rail transportation system; § 10101(4), to ensure the development of a sound rail transportation system with effective competition among rail carriers and with other modes to meet the needs of the public and the national defense; § 10101(5), to ensure effective competition and coordination between rail carriers; § 10101(7), to reduce barriers to entry; § 10101(8), to operate transportation facilities and equipment without detriment to public health and safety; and § 10101(14), to encourage and promote energy conservation.²⁷

Conversely, Union Pacific's Comments argue that "GER's proposal is inconsistent with the substantive policies set forth in § 10101" and as such, the Board should reject the GER Petition and "should require GER to submit a full application under § 10901."²⁸ The Union Pacific Comments claim that the GER Petition is inconsistent with the Rail Transportation Policies at § 10101 (4), (5), and (14) as well as § 10101(3), to promote safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board, and § 10101 (9), honest and efficient management of railroads.²⁹

1. The Union Pacific Comments ignore the Rail Transportation Policies at § 10101 (2) and (7) because it seeks to use Board regulation to stop or delay GER's Proposed Line in favor of the status quo.

²⁶ *Port of Moses Lake – Construction Exemption – Moses Lake, Washington*, STB Finance Docket No. 34936, slip op. at 4 (served Aug. 27, 2009).

²⁷ GER Petition at 13-15.

²⁸ Union Pacific Comments at 2, 15.

²⁹ *Id.* at 12-14.

The Union Pacific Comments ignore the Rail Transportation Policies at § 10101 (2) and (7) because those policies encourage less Federal regulatory control over the rail transportation system and reduced regulatory barriers to entry into the industry. The Union Pacific Comments favor more regulation and increased barriers to entry by requesting that the Board deny the GER petition and require GER to submit “an application for construction authority if GER decides to try to move forward with its proposal.”³⁰ Instead, the Union Pacific Comments argue that Board regulation is required because GER’s proposal “does not appear to be financially viable” and would cause Union Pacific to incur “spillover costs.”³¹

The Union Pacific arguments are inconsistent with Board construction precedent. First, the Board has used its exemption authority to grant a variety of rail construction projects to include large and small freight lines and passenger rail lines.³² Second, because the Board’s authority is permissive, the availability of funds is not a relevant factor when it considers a construction petition for exemption.³³ The Board has “repeatedly recognized that the decision to go forward with an approved project ultimately is in the hand of the applicant and its potential investors

³⁰ *Id.* at 2, 15. The Union Pacific Comments do not acknowledge that requiring an application would provide for less expeditious handling and resolution of the request for construction authority in contradiction to the transportation policy expressed in § 10101(15).

³¹ *Id.*

³² *Townline Rail Terminal, LLC-Constr. & Operation Exemption-in Suffolk County., N.Y.*, STB Finance Docket 36575, slip op. at 6 (Nov. 15, 2023)(construction of 5,000 feet of rail line)(citing *DesertXpress Enters.—Constr. & Operation Exemption—in Victorville, Cal.*, FD 35544 (STB served Oct. 25, 2011) (190-mile passenger rail line estimated to cost \$6.5 billion); *Alaska R.R.*, FD 35095, slip op. at 1, 4 (35-mile rail line for which the state appropriated \$62.5 million to support, among other things, initial construction expenses); *San Jacinto Rail Constr. Exemption—Build Out to the Bayport Loop Near Hous., Harris Cnty., Tex.*, FD 34079, slip op. at 1 (STB served Aug. 28, 2002) (12.8-mile rail line).

³³ *Seven County Infrastructure Coalition – Rail Construction & Operation Exemption – In Utah, Carbon, Duchesne, and Uintah Counties, Utah*, STB Finance Docket 36284, slip op. at 6 (served Jan. 5, 2021) citing *Mid States Coal. For Progress*, 345 F.3d 520, 552 (8th Cir. 2003); *Cal. High-Speed Rail Auth. – in Fresno, Kings, Tulare, & Kern Cntys., Cal.*, FD 35724 (Sub-No. 1) (STB served Aug. 12, 2014).

(whether public or private) and not” the Board.³⁴ Further, the Board has stated that it “may grant authority to construct a line even if all outstanding issues related to the proposed construction have not yet been resolved or if factors beyond the Board’s control...might ultimately prevent consummation of the proposed construction.”³⁵

In the limited instances where the Board has rejected a petition and instead required an application, the Board has done so where multiple commenters raise “significant questions surrounding the financial feasibility” of a proposed project.³⁶ In those instances, the Board has justified an application as appropriate “due to the magnitude of [a] project, the questions about increased costs and funding sources, the substantial public interest, and the potential impact on numerous local landowners.”³⁷ However, the Board has rejected calls for an application where the concerns over finances are vague and unsupported.³⁸

The Union Pacific Comments acknowledge its understanding of the Board’s precedent related to construction project financing, “[i]n many cases, the Board can exempt a construction proposals (*sic*) and allow the applicant and the financial marketplace to determine whether the construction ultimately proceeds.”³⁹ However, Union Pacific seeks to introduce its own new factor for why the Board should regulate GER via application. “Here, the Board cannot simply rely on the marketplace because GER would not be internalizing the proposal’s full costs; instead, GER

³⁴ *Cal. High-Speed Rail Auth. – in Fresno, Kings, Tulare, & Kern Cntys., Cal.*, FD 35724 (Sub-No. 1) (STB served Aug. 12, 2014).

³⁵ *Id.*

³⁶ *Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC – Petition for Exemption – Passenger Rail Line Between Dallas and Houston, Tex.*, STB Finance Docket 36025, slip op. at 14 (served July 16, 2020).

³⁷ *Id.*, slip op at 14-15.

³⁸ *Townline Rail Terminal, LLC-Constr. & Operation Exemption-in Suffolk Cnty., N.Y.*, STB Finance Docket 36575, slip op. at 8 (Nov. 15, 2023).

³⁹ Union Pacific Comments at 15.

would be imposing spillover costs and inefficiencies on Union Pacific, BNSF and shippers using those railroads' existing services to move traffic via the Eagle Pass Gateway.”⁴⁰ Further, the Union Pacific Comments state that GER's proposal “does not appear to be economically viable.”⁴¹

The Board should reject Union Pacific's proposed new factor for requiring regulation through an application. Although the Union Pacific Comments suggest that Union Pacific is commenting on behalf of BNSF and shipper interests, neither BNSF nor any shippers have joined in this request for an application. Union Pacific represents that “BNSF and shippers” would suffer “spillover costs and inefficiencies” but neither BNSF nor any shippers have joined the Union Pacific Comments. In fact, in the Presidential Permit application, the Proposed Line received support from chambers of commerce and a local shipper.⁴²

Further, Union Pacific provides no Board authority for this vague factor it has invented for the purpose of opposing the GER Petition. Under Union Pacific's new “spillover” factor, any impact on an incumbent could be seen as “spillover” and thus merit Board regulation. As such, it could be used in future rail construction cases whereby an incumbent seeks to limit competition by blocking a rail construction project citing Union Pacific's vague “spillover” factor. The Board should reject Union Pacific's request for an application because its proposed “spillover” factor is vague and could be used to stymie competition. Additionally, even its own statement that GER's proposal “does not appear to be financially viable” is vague and unsupported, and does not support a deviation from the Board's traditional reliance on the financial marketplace.

⁴⁰ *Id.*

⁴¹ *Id.* at 10.

⁴² See GER Petition, Exhibit B, Presidential Permit Application, Appendix B. Gunderson-GIMSA S.A. de C.V. (aka Greenbrier Manufacture), a shipper of rail cars submitted a support letter in favor of the Presidential Permit noting that the “project will allow faster merchandise movements and rail car deliveries to our US customers”.

In addition, the Union Pacific Comments ignore potential cost savings to Union Pacific if it were no longer responsible for cross-border operations. Assuming rail traffic would be re-routed in totality to the GER Proposed Line, Union Pacific would benefit through savings to bridge inspection and maintenance and track inspection and maintenance.

The Board's permissive licensing authority is particularly relevant in this matter, the GER Proposed Line and PVH's Commercial Motor Vehicle Port of Entry will require authorization or agency approval from a variety of U.S. and Mexican state and federal agencies. In the U.S. alone, PVH (through Maverick County) has already acquired the Presidential Permit. In addition, PVH will require approval from the State of Texas Bridge Permit program, Customs and Border Protection/General Services Administration, the International Boundary Water Commission, the United States Coast Guard, the Army Corps of Engineers, and Maverick County.⁴³ Further, GER will require commercial agreements to include – as stated – agreements with Union Pacific and BNSF. The Board's permissive licensing authority allows the Board to grant its authority even if all aspects of the rail construction project have not been resolved and provides GER the opportunity to obtain Board authority as GER completes all of the other regulatory requirements that this project requires.

2. The Union Pacific Comments ignore the Rail Transportation Policy at § 10101(8) because the GER Proposed Line would improve public health and safety versus the status quo.

The Union Pacific Comments make no effort to argue that the GER Proposed Line is inconsistent with the Rail Transportation Policy at § 10101(8) because current operations are clearly associated with negative impacts to the citizens of Eagle Pass as demonstrated in the Final EIS.

⁴³ GER Petition at 11.

According to the Final EIS, rerouting the Proposed Line “would result in beneficial impacts on freight rail safety, grade crossing safety, and delay, air quality, and energy when compared to the No-Action Alternative.”⁴⁴ And it “would eliminate existing severe noise impacts experienced by 1,980 receptors near the UP mainline.”⁴⁵

The Final EIS did not study the benefits of the Proposed Line in Mexico and therefore applying the benefits that Eagle Pass would realize to those in Piedras Negras would be conjecture. What is not conjecture is that a political constituency in Mexico exists for the Proposed Line and a primary reason for that support is to route the current rail line away from Piedras Negras.⁴⁶

3. The GER Proposal is consistent with the Rail Transportation Policies at §10101(3), (4) and (5).

In its Petition, GER argued that the Proposed Line satisfies the policies in § 10101(4) and (5) because it is intended to facilitate a sound rail transportation system by providing a less congested and more efficient, safe, and secure rail line into Mexico at Eagle Pass and because it would facilitate competition by providing a more efficient border crossing to compete with CPKC’s border crossing at Laredo.⁴⁷

The Union Pacific Comments argue that the GER Proposal is inconsistent with those policies stating that “GER’s proposed new line would not provide any shipper in the United States a freight rail option that does not currently exist” and would not provide “an entirely new rail service or option or a competitive alternative to existing rail services offered by Union Pacific and BNSF.”⁴⁸

⁴⁴ Final EIS at S-6.

⁴⁵ *Id.* at 2-24.

⁴⁶ See Green Eagle Railroad Letter to the Office of Environmental Analysis, June 2, 2025 (available via the Board’s website as Environmental Comment EI-34039); GER Petition at 10 and Exhibit B, Presidential Permit Application, Appendix A.

⁴⁷ GER Petition at 15.

⁴⁸ Union Pacific Comments at 12.

The Union Pacific Comments also argue that the GER Proposed Line is inconsistent with § 10101(3), (4) and (5) because insufficient demand exists to justify the proposed construction and operation.⁴⁹ Further, Union Pacific argues that Union Pacific and Ferromex have plans to eliminate crew changes at the border this year” and “Union Pacific has plans to add infrastructure to expand cross-border capacity to accommodate future growth.”⁵⁰

However, Union Pacific’s Comments and arguments are not consistent with the Board’s construction case law precedent. The Board has held, the “rail transportation policy of 49 U.S.C. 10101 contemplates competition as a means of ensuring that shippers receive reasonable service at reasonable rates.”⁵¹ The Board has further stated, “[a] showing that the incumbent railroad’s service is inadequate is simply not necessary to obtain authority for construction of a competing line.”⁵²

Union Pacific’s arguments are incorrect because the GER Proposed Line does offer a new option to replace the status quo. A status quo, that according to the TXDOT BTMP cannot manage future growth. Further, while GER’s Proposed Line is not marketing to new shippers without direct rail access in the U.S., it would provide aggregate shippers in Mexico that currently lack any rail access, a connection to the Mexican/U.S. rail networks.⁵³

The Union Pacific Comments suggest that Union Pacific views GER as its competition and not as a partner to facilitate growth at the Eagle Pass Port of Entry. If Union Pacific and GER are

⁴⁹ *Id.* at 13-14.

⁵⁰ *Id.*

⁵¹ *Texas Railway Exchange LLC – Construction and Operation Exemption – Galveston County, Tex.* STB Finance Docket No. 36186, et al., slip op. at 5 (served Jan. 17, 2020)(citing *Midwest Generation, LLC Exemption from 49 U.S.C. 10901 – for Construction in Will County, IL*, STB Finance Docket No. 34060, et al. slip op. at 9 (served March 21, 2002).

⁵² *Id.*

⁵³ GER Petition at 7.

competitors, it appears that the competition created by the GER Petition has already spurred improvements – or at least talk of improvements – by Union Pacific.⁵⁴ The Union Pacific Comments detail two proposed track construction projects and an operational change to improve cross-border trade at Eagle Pass. For this reason alone, the GER Petition satisfies the procompetitive policies of 49 U.S.C. §10101 and the Board should grant GER’s Petition because even the threat of a new line appears to be encouraging Union Pacific to act in a more procompetitive manner.⁵⁵

4. The GER Proposed Line, if constructed as envisioned, would improve the fluidity of rail traffic at the Eagle Pass Port of Entry.

The Union Pacific Comments argue that the GER Petition is inconsistent with the Rail Transportation Policy at § 10101(9), stating that the GER Proposed Line would be constructing a duplicative rail line and adding interchange events.⁵⁶ Further, Union Pacific states that GER is “misleadingly understating overall costs.”⁵⁷

First, the purpose and need of the Proposed Line is to develop the Proposed Line to route rail traffic away from the congested areas of Eagle Pass on the United States side of the border and Piedras Negras on the Mexican side of the border. It is not GER’s intention for the Proposed Line to duplicate Union Pacific’s line, it is the purpose of the project to replace the Union Pacific rail line to execute the recommendations of the BTMP and to relieve the citizens of Eagle Pass and Piedras Negras of the status quo. Even if GER were duplicating the Union Pacific’s line, which it

⁵⁴ Union Pacific Comments at 6.

⁵⁵ *See Union Pac. Corp., et al. – Control and Merger – S. Pac. Rail Corp., et al.* STB Finance Docket No. 32760, 1996 WL 467636, Decision No. 44, *53, *160 (served Aug. 12, 1996) (preservation of Union Carbide Corporation build-out option improved pricing it received from Union Pacific).

⁵⁶ Union Pacific Comments at 14.

⁵⁷ *Id.*

is not since it is routing around two congested cities, this would not overcome the Congressional presumption that rail construction is in the public interest.

Second, UP's accusation that GER is misleadingly understating overall costs fails to discuss how the GER Proposed Line could save Union Pacific costs by removing from Union Pacific the burden of inspecting and maintaining its rail bridge or that GER is attempting to work with Union Pacific on this project. Further, whereas Union Pacific views GER as a competitor, GER seeks to work with Union Pacific to create a beneficial relationship (through agreements) whereby the parties could work together to create a more competitive and efficient Eagle Pass Port-of-Entry that would benefit both parties and would not expose Union Pacific to the spillover costs that Union Pacific argues are inherent in the GER Petition.

5. The Union Pacific Comments on fuel efficiency are unsupported in contrast to the benefits of the Proposed Line as outlined in the EIS.

The Union Pacific Comments argue that the Proposed Line is inconsistent with the Rail Transportation Policy at § 10101(14), "GER's proposed route between the connection and Ferromex's Rio Escondido Yard is longer than Union Pacific's current route, resulting in a net increase in fuel consumption."⁵⁸ The Final EIS did not evaluate benefits and impacts of the Proposed Line in Mexico because the Board does not have jurisdiction over the Mexican rail system. Therefore, even if Union Pacific were correct, its assertion lacks any support. The Final EIS does study energy efficiency in the United States and finds that the GER proposal would have a beneficial impact on energy efficiency.⁵⁹

⁵⁸ Union Pacific Comments at 14.

⁵⁹ Final EIS at S-8.

CONCLUSION

In conclusion, GER respectfully requests that the Board reject the relief sought in the Union Pacific Comments asking the Board to deny the Petition for Exemption because Union Pacific did not demonstrate that the Proposed Line is not in the public interest. Further, GER respectfully requests that the Board deny the relief sought in the Union Pacific Comments asking the Board to regulate the construction of the Proposed Line through an application because the construction of the Proposed Line is consistent with the Rail Transportation Policies at 49 U.S.C. §10101.

Respectfully submitted,



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Dated: September 15, 2025

I hereby certify that on this 15th day of September, 2020, I caused a copy of the foregoing document to be served electronically on all parties of record in STB Docket No. FD 36652.

CERTIFICATE OF SERVICE



Justin J. Marks