

**BEFORE THE SURFACE TRANSPORTATION BOARD**

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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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**RESPONSE TO PETITION FOR LEAVE TO FILE  
SUPPLEMENTAL COMMENTS AND OBJECTIONS**

The Seven County Infrastructure Coalition (“Coalition”) hereby files its opposition in response to the Center for Biological Diversity (the “Center”)’s recent Petition for Leave to File Supplemental Comments and Objections to the Final Environmental Impact Statement, Biological Opinion, and Proposed Exemption for the Uinta Basin Railway (referred to herein as the “Petition for Leave”). The Center has had ample opportunity to document its concerns during multiple NEPA public comment periods, in response to the Coalition’s Petition for Exemption, and in its Petition for Reconsideration. The Center has not provided any compelling reasons why the Surface Transportation Board (“Board”) should allow it to submit late-filed comments that only serve to reiterate arguments it has previously raised.

CBD claims that the Board has a “compelling interest” in allowing its late-filed comments to ensure completeness of the record.<sup>1</sup> But the Center does not raise any new information not already in the record. As it readily acknowledges, the Supplemental Comments address issues that the Center has already raised.<sup>2</sup> In

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<sup>1</sup> Petition for Leave at 1.

<sup>2</sup> See Petition for Leave at 2.

these circumstances—where parties attempt to add comments well after the deadline has passed and offer no compelling reason why they should be permitted to do so—the Board has rejected late-filed comments.<sup>3</sup>

The Center seems to believe that the late-filed comments should be accepted because the final Environmental Impact Statement (“EIS”) does not “adequately address” its previously raised comments.<sup>4</sup> But, in accordance with NEPA, the Board’s Office of Environmental Analysis (“OEA”) considered and responded to the Center’s comments on the draft EIS, as well as those of other commenters.<sup>5</sup> NEPA does not require allowing supplemental comments months after the comment period closed from parties who are dissatisfied with the results of an agency’s “hard look.”

Similarly, the Center’s Supplemental Comments on the transportation merits of the Uinta Basin Railway address the same issues already raised by the Center in its Response to the Petition for Exemption and its Petition for Reconsideration. For example, the Center continues to assert that the Board must require a full application to examine the financial viability of the Project.<sup>6</sup> The Board has twice

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<sup>3</sup> See e.g., *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation And Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Docket No. FD 33388, at 2 (served Nov. 28, 1997) (finding that comments filed almost 1 month after the established deadline were “much too late to be accepted into the record” given that commenter’s reasons for asking the Board to accept the comments were “by no means exceptional or compelling” and reasoning that if it were to accept the comments, “the meaning of deadlines in this proceeding would be much diminished.”).

<sup>4</sup> Petition for Leave at 2.

<sup>5</sup> See Final EIS at Appendix T.

<sup>6</sup> Center for Biological Diversity Supplemental Comments and Objections at 95-96.

rejected that argument in this very proceeding.<sup>7</sup> The Center also argues that the Board must consider public health and safety when making a final decision on the Project.<sup>8</sup> But, again, the Board has repeatedly made clear that it will appropriately factor the final EIS into its final decision,<sup>9</sup> and the EIS confirms this Project is consistent with the Rail Transportation Policy and should be approved.<sup>10</sup>

Admitting the Center's Supplemental Comments onto the record would offer no benefit in this matter, but instead would prolong the process and harm the Coalition's interest in the timely resolution of the remaining issues pending before the Board. The Center's Supplemental Comments are 110 pages excluding appendices. It strains common sense to argue, as the Center does, that introducing this voluminous filing onto the record would cause no delay. Though the Board has not yet issued a final decision on the Uinta Basin Railway, reviewing and considering such a large submission—which again merely reiterates previous comments by the Center—could occupy Board resources and prolong the decision-making process.

Because the Center's Supplemental Comments were filed well after the deadline and add no new information, and because Center has offered no compelling

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<sup>7</sup> See *Seven Cnty. Infrastructure Coal.—Rail Constr. & Operation Exemption—in Utah, Carbon, Duchesne, & Uintah Cntys., Utah*, STB Docket No. FD 36284, at 6 (served Sept. 30, 2021) (“*Seven County II*”); *Seven Cnty. Infrastructure Coal.—Rail Constr. & Operation Exemption—in Utah, Carbon, Duchesne, & Uintah Cntys., Utah*, STB Docket No. FD 36284, at 5-6 (served Jan. 5, 2021) (“*Seven County I*”).

<sup>8</sup> Petition for Leave at 2.

<sup>9</sup> See *Seven County II* at 7; *Seven County I* at 10.

<sup>10</sup> See Final EIS at 1-3.

reasons to justify this departure from Board procedure, the Coalition respectfully requests that Board deny the Center's motion to admit its Supplemental Comments into the record.

Respectfully Submitted,

/s/ Kathryn K. Floyd

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Dated: October 22, 2021

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22nd day of October, 2021, I caused a copy of the foregoing Response to Petition for Leave to be served on all parties of record by email or first-class mail, postage prepaid.

/s/ Margaret K. Fawal  
Margaret K. Fawal