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May 5, 2025

Andrea Poole
Surface Transportation Board
c/o VHB
Attention: Environmental Filing, Docket No. FD 36652
1001 G Street NW, Suite 1125
Washington, DC 20001

Re: Green Eagle Railroad – Construction and Operation Exemption – Line of Railroad in Maverick County, Texas, STB Docket No. FD 36652

Dear Ms. Poole:

Union Pacific Railroad Company (“Union Pacific”) respectfully submits these comments in response to the Draft Environmental Impact Statement (“Draft EIS”) served on March 14, 2025, by the Surface Transportation Board (“STB”) regarding the Green Eagle Railroad, LLC (“GER”) proposal to construct approximately 1.3 miles of new common carrier line in Maverick County, Texas (the “Proposed Line”). Union Pacific appreciates the opportunity to comment on the Draft EIS.

As the STB is aware, the National Environmental Policy Act (“NEPA”) requires an Environmental Impact Statement (“EIS”) to consider a broad range of potential effects, including “economic” and “social” effects. *350 Montana v. Haaland*, 50 F.4th 1254, 1279 (9th Cir. 2022). Likewise, the “requisite hard look mandated by NEPA” includes evaluating any relevant “transportation issues.” *City of Riverview v. STB*, 398 F.3d 434, 443 (6th Cir. 2005). In conducting this analysis, the agency must “both evaluate a ‘no action’ alternative to the proposed agency action and must ‘[r]igorously explore and objectively evaluate all reasonable alternatives’ to the action.” *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1181 (D.C. Cir. 2023) (alteration in original). “[A]n agency ‘may not rely on incorrect assumptions or data’ in arriving at its conclusion” under NEPA. *Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 872 (9th Cir. 2022).

The Draft EIS fails to provide the requisite hard look mandated by NEPA. The Draft EIS (1) unreasonably assumes all freight traffic via Eagle Pass will use the Proposed Line; (2) fails to consider either the impacts of GER’s proposed operations on Union Pacific or the impacts of Union Pacific’s operations on GER’s proposed operations; (3) fails to consider reasonably

foreseeable impacts of GER's operations in Mexico; and (4) fails to acknowledge that the few supportable benefits are greatly outweighed by the clear short-term and long-term negative impacts. These flaws in the Draft EIS are described in greater detail below.

A. The Draft EIS unreasonably assumes all freight traffic via Eagle Pass will use the Proposed Line.

The Draft EIS's analyses of the potential environmental impacts that could result from construction and operation of the Proposed Line are all based on the assumption that all freight rail traffic between Mexico and the United States that passes through Eagle Pass and Maverick County will use the Proposed Line. *See, e.g.*, Draft EIS at 2-15 ("GER anticipates that, once complete, the proposed rail line would move *all* freight rail traffic between Mexico and the United States that passes through Eagle Pass and Maverick County. . . . If the proposed line is built, UP and BNSF would no longer run through trains on the UP mainline south of milepost 31 (including over the existing UP Rail Bridge)." (emphasis added)); *id.* at 2-21 ("If the Board authorizes the proposed line, UP and BNSF would no longer run through trains on the UP mainline south of milepost 31 (including over the existing UP Rail Bridge). All international rail traffic would use the proposed line."); *id.* at 3-7 (freight rail safety); *id.* at 3-10 (grade crossing safety); *id.* at 3-12 (grade crossing delay); *id.* at 3-45 (air quality); *id.* at 3-49 (energy); *id.* at 3-42 (noise). The Draft EIS's assumption is unreasonable.

Union Pacific has no intent to discontinue use of its current border crossing at Eagle Pass. As a legal matter, Union Pacific is the rail carrier that originates a substantial amount of traffic that moves southbound to Mexican destinations via Eagle Pass. As the origin carrier, Union Pacific could not be forced to interchange that traffic to GER. *See* 49 U.S.C. § 10705.

Further, even if Union Pacific could be forced to interchange southbound traffic to GER, GER's proposal does not include construction of facilities necessary to support interchange of southbound traffic forwarded by Union Pacific. *See* 49 U.S.C. § 10742; *Wisconsin Cent., Ltd.—Pet. for Declaratory Order—Interchange with Soo Line R.R.*, FD 36397, slip op. at 6 (STB served Jan. 29, 2024) (explaining 49 U.S.C. § 10702 requires the receiving carrier to provide reasonable facilities that are within its power to provide for the interchange of traffic), *pet. for review denied sub nom. Wisconsin Cent. Ltd. v. STB*, 122 F.4th 1009 (7th Cir. 2024). According to the Draft EIS, GER anticipates the trains it would interchange with Union Pacific would be approximately 9,300 feet long. *See* Draft EIS at 2-15. However, GER is proposing to construct only approximately 6,864 feet of track (1.3 miles) between a connection with Union Pacific's mainline at milepost 31 and the border. *See id.* at S-1. Union Pacific could not deliver a 9,300-foot train to GER's 6,864-foot track.

In addition, the STB could not reasonably assume shippers of southbound or northbound traffic would voluntarily choose a routing that requires a new, unnecessary interchange between Union Pacific and GER, particularly given the STB's long recognition of the synergies and

efficiencies of single-line service. *See, e.g., Canadian Pac. Ry.—Control—Kansas City S.*, FD 36500, slip op. at 29 (Mar. 15, 2023); *Burlington N., Inc.—Control & Merger—St. Louis-S.F. Ry.*, 360 I.C.C. 784, 940 (1980), *CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.*, 3 S.T.B. 196, 248 (1998). All or most shippers would choose routings that do not require an interchange with an additional rail carrier for a 1.3-mile move between the border and Union Pacific's Clark's Park Yard. Adding an additional rail carrier in the route unequivocally adds cost and time.

Because the Draft EIS's analyses are all based on the unreasonable assumption that all freight rail traffic that passes through Eagle Pass will use the Proposed Line, they do not allow the STB to make a meaningful comparison among the two alternatives considered for the Proposed Line and the no-action alternative. *See, e.g., WildEarth Guardians v. United States Bureau of Land Mgmt.*, 870 F.3d 1222, 1235-36 (10th Cir. 2017) (rejecting "perfect substitution" assumption as "irrational" and explaining that it "does not provide 'information sufficient to permit a reasoned choice' between the preferred alternative and no action alternative").

B. The Draft EIS fails to consider the impacts of GER's proposed operations on Union Pacific and the impacts of Union Pacific's operations on GER's proposed operations.

The Draft EIS's analyses of the potential environmental impacts that could result from construction and operation of the Proposed Line fail to consider direct, reasonably foreseeable environmental impacts from interactions between GER's proposed operations and Union Pacific's operations in Clark's Park Yard and between Clark's Park Yard and the border.

First, the Draft EIS implicitly and incorrectly assumes Union Pacific's operations in Clark Park Yard would not be impacted by GER's operations. The assumption is clear from the Draft EIS's air quality and energy analyses, which conclude construction and operation of the Proposed Line would eliminate train idling time due to changes in train inspection technology and the location of crew change points. *See* Draft EIS at 2-21; *id.* at 3-45; *id.* at 3-49. However, even if all freight traffic via Eagle Pass used the Proposed Line, GER trains could not operate without idling unless Union Pacific restructured its own operations so GER trains never had to stop between the border and Clark's Park Yard. Such an operational restructuring would produce environmental impacts relating to Union Pacific's operations that the Draft EIS fails to consider.

Union Pacific uses Clark's Park Yard for a variety of functions that support its cross-border operations and service to local shippers. Union Pacific's mainline runs in a north-south direction bisecting the yard. At the yard's north end, Union Pacific has one track, its mainline. At the yard's south end, Union Pacific has two tracks, its mainline and a 10,250-foot lead track. On the west side of the yard, Union Pacific has four yard tracks, an industry runner, four customer switches, a wye for repositioning power, two car repair tracks, a customer industry spur, and tracks used for Customs and Border Patrol. On the east side of the yard, Union Pacific has three

yard tracks it can use to slot trains for border staging, inspection, classification, and crew change operations. Activities in Clark's Park Yard must be closely coordinated to minimize disruption to and from trains moving through the yard to and from the border.

Union Pacific's mainline and lead track at the south end of Clark's Park Yard play important roles in minimizing disruption to both yard and cross-border activities. GER trains would not be able to make the same use of those tracks as Union Pacific. Union Pacific uses the tracks to support yard switching and make train meets between the border and the yard. More importantly, Union Pacific uses the tracks to stage trains between the border and yard. That is, when a northbound train has cleared the border but the yard cannot immediately accommodate the train, Union Pacific can hold the train out of the yard so it does not interfere with ongoing yard activity. The Draft EIS noted these practices. *See* Draft EIS at 2-5 (noting trains "occasionally stop between the UP Rail Bridge and Clark's Park Yard."). Similarly, when a southbound train is ready to depart the yard but cannot immediately be processed at the border, Union Pacific can move the train out of the yard so it does not interfere with necessary yard activity. Union Pacific would not have the same ability to hold northbound or southbound GER trains clear of the yard. As discussed above, GER plans to operate 9,300-foot cross-border trains over a 6,864-foot track. As a result, GER will not be able to move a southbound train clear of the yard until the train can cross the border, and GER will not be able to hold a northbound train clear of the yard once the train has crossed the border. Unless GER is required to construct additional facilities capable of supporting trains held between the border and the yard, Union Pacific will have to modify its own yard operations to accommodate arrivals and departures of GER trains. As a minimum, Union Pacific often would need to make extra movements to clear yard tracks ahead of the arrival of northbound trains and suspend yard work to accommodate departures southbound trains, all of which would increase total Union Pacific locomotive operating time and thus increase emissions and fuel consumption in the yard, as well as increase delays to Union Pacific trains (and thus to shippers). The Draft EIS does not consider these environmental impacts.

Union Pacific would potentially experience similar operational impacts, resulting in similar or greater environmental impacts, even if only some freight traffic via Eagle Pass used the Proposed Line. For example, if a Union Pacific train was moving northbound to Clark's Park Yard when a GER train was entering or leaving the yard, the Union Pacific train would have to stop and wait for the GER train to clear the connection with Union Pacific's mainline at milepost 31, resulting in increased emissions and fuel consumption and delays to the Union Pacific train. Likewise, if a Union Pacific train was ready to depart for the border when a GER train was entering the yard and another train was staged on the lead track south of the yard, the Union Pacific would have to wait for the GER train to clear into the yard, resulting in increased emissions and fuel consumption and delays to the Union Pacific train. The Draft EIS does not consider these environmental impacts.

Second, even if the Draft EIS does not assume Union Pacific would be forced to accommodate GER's proposed operations, it still understates the environmental impacts of the proposed operations. That is, if GER's northbound trains could hold clear of Clark's Park Yard on the Proposed Line to avoid interfering with Union Pacific operations, or if GER's southbound trains could clear out of the yard onto the Proposed Line even when they could not be processed at the border, then the Draft EIS's air quality and energy analyses would be flawed because they incorporate the expectation of reduced emissions and fuel consumption based on the assumption that GER train idling times would be zero minutes. *See* Draft EIS at 3-45. In any event, the Draft EIS overstates the air quality and energy benefits of the proposed operation by asserting GER's proposal to change crews in the yard rather than on the bridge would reduce train idling. *See* Draft EIS at 3-49. Altering the crew change location would shift the location of train idling time, but it would not reduce the total amount of train idling time and thus the related emissions and fuel consumption.

C. The Draft EIS fails to consider reasonably foreseeable impacts of GER's operations in Mexico.

The Draft EIS's analyses of the potential environmental impacts that could result from construction and operation of the Proposed Line fail to consider reasonably foreseeable environmental impacts of GER's operations in Mexico resulting from the increased distance GER trains would have to travel between the border and a connection with Ferromex.

As the STB acknowledged when it transmitted preliminary consultation letters to various agencies, the Proposed Line is just one link in an international railroad construction project that also includes construction of 18 miles of new track in Mexico to reroute traffic moving between Clark's Park Yard, which is owned by Union Pacific, and Rio Escondido Yard, which is owned by Ferromex, the largest railroad network in Mexico, over a new railroad line operated by GER:

The rail line would extend from the Union Pacific Railroad's mainline at Gates Street south across a newly constructed bridge over the Rio Grande River into Mexico for 18 miles to a connection with the Ferromex Rio Escondido rail line.

See, e.g., Draft EIS, Vol. II, App. A at A-12. Currently, Union Pacific connects with Ferromex using the existing UP Rail Bridge, which is located approximately 4 miles south of the proposed connection between GER and Union Pacific at Union Pacific's milepost 31. *See* Draft EIS at S-6. Traffic moving between the existing UP Rail Bridge and Ferromex's Rio Escondido Yard moves approximately 10 miles over Ferromex's Rio Escondido rail line. Construction of the Proposed Line would reduce the distance trains travel in the United States between the border and Union Pacific's milepost 31 by approximately 2.7 miles. *See* Draft EIS at S-6. Several of the beneficial environmental impacts identified in the Draft EIS are based on the shorter distance trains would travel in the United States. *See, e.g., id.* at S-6; *id.* at 3-7 (freight rail safety); *id.* at 3-44 (rail

emissions); *id.* at 3-49 (energy). However, those analyses are incomplete and misleading because they fail to account for the longer distance trains would travel in Mexico. When total distance is considered, it becomes clear that the GER route between Union Pacific milepost 31 and Rio Escondido Yard would be approximately 5.3 miles longer than the current route. Operations over the longer route would produce reasonably foreseeable effects on emissions, fuel consumption, and freight rail safety incidents. In addition, certain other beneficial environmental impacts identified in the Draft EIS are based on the different route trains would use in the United States. *See e.g., id.* at 3-10 (grade crossing safety); *id.* at 3-13 (grading crossing delay), 3-42 (rail operations noise). However, those analyses are also incomplete because they fail to account for the different route trains would use in Mexico.

The strong causal link between construction and operation of the Proposed Line and construction and operation of the new line in Mexico is beyond dispute: the U.S. and Mexican lines are literally two links in a single chain connecting Union Pacific's Clark's Park Yard and Ferromex's Rio Escondido Yard. There can be no dispute that it is reasonably foreseeable that approval of the Proposed Line will trigger the construction and operation of the line in Mexico. In such circumstances, actions producing reasonably foreseeable effects on emissions, fuel consumption, freight rail safety incidents, grade crossing safety, grade crossing delay, and rail operations noise are actions affecting the "human environment" that require a "hard look" under NEPA, even when those effects would arise from operations across the border in Mexico. *See, e.g., Backcountry Against Dumps v. Chu*, 215 F. Supp. 3d 966, 981 (S.D. Cal. 2015), *modified on reconsideration sub nom. Backcountry Against Dumps v. United States Dep't of Energy*, No. 3:12-CV-03062-L-JLB, 2017 WL 2988273 (S.D. Cal. Jan. 30, 2017); *Gov't of Province of Manitoba v. Salazar*, 691 F. Supp. 2d 37, 51 (D.D.C. 2010), *clarified on denial of reconsideration*, No. CV 02-2057 (RMC), 2010 WL 11595314 (D.D.C. June 17, 2010).

D. The Draft EIS fails to take a hard look at the relationship between short-term uses of the environment and long-term productivity.

The Draft EIS fails to take a hard look at the relationship between local short-term uses of the environment and maintenance and enhancement of long-term productivity, as required by 42 U.S.C. § 4332(C)(iv). In particular, the Draft EIS fails to recognize that the few supportable long-term beneficial impacts are outweighed by the clear short-term and longer-term negative impacts of the proposed project. *See* Draft EIS at 3-95.

Although the Draft EIS identifies the Proposed Line's primary purpose and need as expanding capacity at the current rail crossing between the United States and Mexico in Eagle Pass, *see* Draft EIS at 1-2, the Draft EIS's analysis does not identify any environmental benefits flowing from expanded capacity at the current rail crossing. The Draft EIS's analyses incorporate a five-year traffic projection, which in this case results in an assumption that the number of trains traveling daily on the proposed line would be "similar to existing operations." Draft EIS at 2-15.

Where the Draft EIS identifies supposed long-term beneficial impacts, those impacts are based on the unreasonable assumptions and incomplete analyses discussed above. In short, they are based on the flawed assumption that all rail freight traffic moving via Eagle Pass will use the Proposed Line; on superficial analyses that fail to consider the environmental impacts of the proposed operations on Union Pacific operations, including increased emissions, increased fuel consumption, and increased freight delays; and on analyses that fail to consider reasonably foreseeable impacts of GER's operations in Mexico. In light of these significant analytical flaws, the Draft EIS could not properly conclude the proposed transaction would result in beneficial impacts on freight rail safety, grade crossing safety and delay, energy, air quality, or noise impacts or that the recommended mitigation would avoid or minimize long-term adverse impacts. At the same time the Draft EIS identifies a range of short-term environmental harms from construction of the proposed line, *see* Draft EIS at 3-31 (noise); *id.* at 3-44 (emissions); *id.* at 3-77 (water quality), as well as long-term harms, *see id.* at 3-27 (roadway safety); *id.* at 3-65 (plant communities and wildlife habitat); *id.* at 3-84 to 3-94 (visual quality).

In sum, the Draft EIS fails to recognize the proposed project involves the construction of a duplicative rail line that might never be used to handle significant volumes of rail traffic, and even if it is used, might cause environmental harms that outweigh any benefits.

Sincerely,

/s/ Richard L. Lichtas

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AVP Network & Capital Planning