

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 EAGLE PASS BORDER COALITION LETTER

(includes color images)

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Counsel for
Green Eagle Railroad, LLC

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REPLY TO EAGLE PASS BORDER COALITION LETTER

Green Eagle Railroad, LLC (“GER”) respectfully requests that the Board reject the relief sought in the Eagle Pass Border Coalition (“EPBS”) Letter asking the Board to deny the GER Petition for Exemption and/or asking the Board to regulate the Proposed Line under a full application pursuant to 49 U.S.C. § 10901 because 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. The EPBS Letter fails to argue a single one of the § 10101 policies but instead offers clearly erroneous arguments in both law and fact.

Further, the Board should reject the relief sought in the EPBS’s Letter because the Final Environmental Impact Statement (“Final EIS”) satisfies the Board’s National Environmental Policy Act (“NEPA”) obligations by taking the necessary “hard look” into the environmental impacts of the project.

I. BACKGROUND

- A. The EPBS Letter argues that the Final EIS is deficient and therefore asks the Board to reject the GER petition or reject it and require a full application under 49 USC § 10901.

On September 8, 2025, the EPBS submitted a letter to the Board, The Texas Commission on Environmental Quality, and the U.S. Army Corps of Engineers (“ACE”). The EPBS Letter states that it is a “501(c)(3) that works to ensure a future in which frontline communities are no

longer isolated or voiceless from state or federal decision making that affect our home, where we have an active role in the evolution of our community and preservation of our culture.”¹ EPBS provides no other information related to its organization or its interest in the proceeding. The letter is signed by five individuals, three of which identify themselves as part of EPBS. Certain EPBS signatories previously submitted comments to the Board’s Office of Environmental Analysis (“OEA”) during OEA’s in-person public comment forums and through individual comments submitted to OEA.

In the letter, EPBS asks the Board to deny the GER Petition and “require further evaluation under NEPA, Section 404 and the Clean Air Act.”² It further asks the Board to deny the GER Petition “and require a full application under § 10901 and address water quality, air quality and human health risks.”³

The EPBS letter states that the Proposed Line “will have major impacts to adjacent riverine wetlands that have not been adequately identified in the Draft EIS or [F]inal EIS.”⁴ Beyond wetlands, the letter asserts that the GER Proposed Line is in a 100-year floodplain and fails to provide for the long-term safety for the surrounding properties.⁵ As part of this critique, the EPBS Letter states that [i]t is not an economically viable project and must be reconsidered.” In addition, the letter argues, the “applicant’s evaluation of the impacts of its Project on ... threatened and endangered species is wholly inadequate.”⁶ Further, the EPBS Letter provides a ten-point list of what EPBS believes should be studied as part of a cumulative impact analysis.⁷

¹ EPBS Letter at 1.

² *Id.* at 1.

³ *Id.* at 14.

⁴ *Id.* at 1.

⁵ *Id.* at 7.

⁶ *Id.* at 8.

⁷ *Id.* at 3.

The remainder of the EPBS Letter argues that the Final EIS failed to provide sufficient information for analysis under the Clean Water Act permitting requirements.

B. OEA's process for conducting its environmental analysis.

The Final EIS issued by OEA outlines the procedural steps that it applied to its environmental review of the Proposed Line. In the Final EIS, OEA explains the Board's role in authorizing railroad lines and the environmental review process under NEPA.⁸ OEA further explains that ACE and "state environmental departments administer Sections 404 and 401 of the Clean Water Act."⁹ The Final EIS issued by the Board studied statutorily required resource areas including air quality, biological resources, and water resources in Chapters 3.7, 3.10, and 3.11.

The Final EIS documents the public benefits associated with the development of the Proposed Line. It states that under the GER proposal, grade crossings would drop from seven to zero on the American side of the Border. According to the Final EIS, "[t]his would result in beneficial impacts on freight rail safety, grade crossing safety, and delay, air quality, and energy when compared to the [the status quo]."¹⁰

The Final EIS also identifies potential impacts of the Proposed Line and specifically recommends mitigation measures for potential impacts on noise, cultural resources, and biological resources.¹¹

II. LEGAL STANDARD

A. The standard for filing petitions to intervene.

⁸ *Green Eagle R.R., LLC – Construction and Operation Exemption – in Maverick County, Tex. STB Finance Docket No. 36652*, Final Environmental Impact Statement, at 1-3 (served Aug. 6, 2025)(“Final EIS”).

⁹ Final EIS at 3-66.

¹⁰ *Id.* at S-6.

¹¹ *Id.* at 4-2, 4-3.

Under the Board’s regulations, a petition to intervene shall set out (1) the petitioner’s interest in the proceeding; (2) whether the petition supports or opposes the relief sought or the action proposed or is otherwise concerned with the issues presented in the proceeding; and (3) the petitioner’s request, if any for relief.¹² Further, the Board may grant a petition to intervene in a proceeding if it would not unduly disrupt the procedural schedule and would not unduly broaden the issues raised in the proceeding.”¹³

B. The legal standard for granting construction authority is permissive.

The legal standard for rail construction licensing authority under the ICC Termination Act of 1995 (“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”].”¹⁴ The Board has said, “Congress made a presumption that rail construction projects are in the public interest unless shown otherwise.”¹⁵

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 application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.¹⁶ The Board may require an application in lieu of a petition for exemption.¹⁷ In those instances, the Board has justified an application as appropriate “due to the magnitude of [a]

¹² 49 C.F.R. 1112.4(b).

¹³ 49 C.F.R. 1112.4(a).

¹⁴ *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).

¹⁵ *Id.*

¹⁶ *Port of Moses Lake – Construction Exemption – Moses Lake, Washington*, STB Finance Docket No. 34936, slip op. at 4 (served Aug. 27, 2009).

¹⁷ *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).

project, the questions about increased costs and funding sources, the substantial public interest, and the potential impact on numerous local landowners.”¹⁸

C. The NEPA legal standard requires an agency to take a “hard look”.

NEPA requires agencies to take a “hard look” at environmental consequences before an agency undertakes a major federal action that will affect the environment.¹⁹ The purpose of NEPA “is to inform agency decisionmaking.”²⁰ NEPA “does not mandate particular results, but simply prescribes the necessary process in which an agency must adequately identify and evaluate the adverse environmental effects of a proposed action.”²¹ The Supreme Court recently held that under NEPA, an agency may use its discretion in analyzing the environmental effects of a project. “[C]ourts should defer to agencies’ decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand.”²²

The Board’s regulations at 49 C.F.R. Part 1105 outline the agency’s process to “assure adequate consideration of environmental and energy factors in the Board’s decisionmaking” pursuant to NEPA.²³ Under the Board’s regulations, an EIS will normally be prepared for a rail construction project, but a waiver allowing a project to be reviewed as an Environmental Assessment is available for rail construction in certain circumstances.²⁴ For rail construction

¹⁸ *Id.*, slip op at 14-15.

¹⁹ *See generally, Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

²⁰ *Seven County Infrastructure Coalition, et al., v. Eagle County, Colorado, et al.* 145 S. Ct. 1497, 1507.

²¹ *Townline Rail Terminal, LLC – Construction and Operation Exemption – in Suffolk County, N.Y.*, STB Financed Docket No. 36575, slip op. at 4 (served Dec. 3, 2024).

²² *Seven County Infrastructure Coalition, et al.* at 145 S. Ct. at 1513.

²³ 49 C.F.R. § 1105.1.

²⁴ 49 C.F.R. § 1105.6.

projects, OEA develops the environmental document to inform the Board in its decisionmaking process. The applicant does not complete the EIS on OEA's behalf. The applicant hires a third-party environmental firm that operates solely under the direction of OEA. However, specifically for the wetlands delineation, OEA's process is for the applicant to hire a consultant to conduct the wetlands delineation under OEA supervision. The reasoning for this is because the petitioner will need the wetlands delineation for its discussions with ACE as it pertains to ACE's jurisdiction under the Clean Water Act.

The Board's regulations at 49 CFR § 1105.7(e) stipulate the specific information to be required as part of an EIS, including an analysis of air, biological, and water resources. In addition, the Board's regulations require consultation with ACE and state water quality officials to determine whether any ACE or other permits are required.²⁵ Further, under 49 C.F.R. § 1105.10(a) the Board's regulations require a scoping period providing the public time to comment on the scope of the EIS. Following the issuance of the draft EIS, the Board's procedures call for another 45-day comment period.²⁶

III. ARGUMENT

A. EPBS does not adequately demonstrate its interest in this proceeding.

Under the Board's regulations, a petition to intervene shall set out the petitioner's interest in the proceeding. Here, EPBS invests a single sentence explaining what the organization is, who they represent, and what interest it has in this proceeding. Considering that the EPBS Letter does not adequately explain the organization's interest in the proceeding, the Board should reject the letter. Alternatively, the Board could accept the letter as authored by five individuals opposed to the GER Proposed Line.

²⁵ 49 CFR § 1105.7(e)(9)

²⁶ 49 C.F.R. § 1105.10(a)(4).

- B. The EPBS Letter unduly expands the scope of issues raised in this proceeding by conflating the Board’s NEPA obligations with separate applicant obligations under the Clean Water Act.

Under the Board’s regulations, a petition to intervene shall not unduly broaden the issues raised in the proceeding. The Board’s NEPA role is separate from an applicant’s permitting obligations under the Clean Water Act. As part of a Board led EIS, the EIS is to “state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year floodplains will be affected” and to describe the effects.²⁷ The Final EIS does so.²⁸

The EPBS Letter confuses the Board’s NEPA requirements with obligations under the Clean Water Act, Sections 404 and 401. The EPBS assertions that the Final EIS fails to satisfy Section 404 and Section 401 is irrelevant to this proceeding and unduly broadens the scope of this proceeding beyond the Rail Transportation Policies of 49 U.S.C. § 10101. It is ACE that determines the applicability of Section 404 and not the Board. Further, 401 is only applicable if ACE makes a 404 determination.²⁹

- C. The EPBS Letter fails to argue any of the Board’s factors for requiring an application instead of a petition for exemption.

EPBS submits its letter “in response to the Final [EIS] and to “urge the Surface Transportation Board to delay and/or deny the approval, further investigate environmental and human health impacts before issuing the Record of Decision.”³⁰ The EPBS Letter also asks the

²⁷ 49 C.F.R. § 1105.7(e)(9)(ii).

²⁸ Final EIS at 1-4, 1-5; 3-66 through 3-78.

²⁹ U.S. Environmental Protection Administration, 2023 Clean Water Section 401 Water Quality Certification Improvement Rule Final 2023 Rule Questions & Answers, Last Updated November 2024, at page 4, available at <https://www.epa.gov/system/files/documents/2024-12/qa-for-2023-cwa-section-401-rule-implementation-112024.pdf> (“Answering the question, “When is CWA Section 401 Water Quality Certification Required?”).

³⁰ EPBS Letter at 1.

Board “to not grant GER an exemption under 49 U.S.C. § 10502 and require a full application under § 10901 and address water quality, air quality and human health risks.”³¹

In limited circumstances, the Board has rejected a petition for exemption and instead required a petitioner to file an application under 49 U.S.C. § 10901. 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.”³² The EPBS Letter does not mount a persuasive argument for any of these factors.

First, the EPBS Letter does not demonstrate a substantial public interest. The letter is signed by five individuals that purport to be a “coalition” without any information about its organization beyond the fact that EPBS holds 501(c)(3) tax status.

Second, in a section dedicated to the floodplain, the EPBS Letter contains an unsupported statement saying, “[i]t is not an economically viable project and must be reconsidered.”³³ As the Board is well aware, because its authority is permissive, the availability of funds is not a relevant factor when it considers a construction petition for exemption.³⁴ Further, the Board has rejected calls for an application where the concerns over finances are vague and unsupported.³⁵ The

³¹ *Id.* at 14.

³² *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 14-15 (served July 16, 2020).

³³ *Id.* at 14.

³⁴ *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).

³⁵ *Townline Rail Terminal, LLC-Constr. & Operation Exemption-in Suffolk Cnty., N.Y.*, STB Finance Docket 36575, slip op. at 8 (Nov. 15, 2023).

Board should reject the EPBS's vague and unsupported assertion that the Proposed Line is not an economically viable project because nothing in the floodplain analysis even connects the EPBS floodplain analysis to the financial viability of the project.

Finally, the EPBS Letter does not explain how the requirements of an application would impact the Board's environmental analysis as completed in the Final EIS. Under the Board's application procedures at 49 C.F.R. § 1150.7, the Board would be required to draft an EIS and that EIS would contain the same environmental analysis that OEA conducted for the GER Petition for Exemption as demonstrated in the Final EIS.

D. The EPBS Letter fails to demonstrate that the GER Petition is inconsistent with the Rail Transportation Policies of § 10101.

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) - minimizing federal regulatory control over the rail transportation system; § 10101(7) reducing barriers to entry; § 10101(4), 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; § 10101(8), to operate transportation facilities and equipment without detriment to public health and safety; and § 10101(14), to encourage and promote energy conservation.³⁶

The EPBS Letter does not argue that the GER Petition fails to satisfy any of the enumerated Rail Transportation Policies of § 10101 and therefore the relief sought should be denied.

E. The Final EIS provides the appropriate "hard look".

³⁶ GER Petition at 13-15.

Assuming for the sake of argument that the EPBS Letter intended to argue under § 10101(8), the EPBS argument still fails because the Board has met its NEPA obligations by thoroughly studying GER's proposal as demonstrated in the Final EIS.

In fact, rail projects of the scope of the GER proposal (1.3 miles) are often reviewed under an Environmental Assessment in lieu of an EIS.³⁷ Here, OEA chose to review this project as an EIS which provides for a more intensive procedural process to include the publication of a notice of intent to publish an EIS. OEA published the notice of intent in the Federal Register on March 29, 2024, to provide the public with an opportunity to comment on the scope of the environmental review.

Additionally, once OEA issued the draft EIS, it provided the public with 45 days to comment and then extended the public comment deadline another 28 days on request of one of the signatories to the EPBS Letter.³⁸

As can be seen in the Final EIS, OEA's analysis satisfies the regulatory standards of 49 C.F.R. Part 1105. Considering that OEA drafted its environmental analysis of the Proposed Line under an EIS instead of an Environmental Assessment, OEA granted commenters extra time to provide comments, and OEA satisfied its procedural requirements, the Final EIS gave the appropriate hard look to the environmental impacts of the GER proposal.

1. The EPBS Letter does not demonstrate that the Final EIS is deficient because the letter is littered with incorrect legal citations and false statements.

³⁷ See *ex. Townline Rail Terminal, LLC – Construction and Operation Exemption – in Suffolk County, N.Y.*, STB Finance Docket No. 36575 (served Dec. 3, 2024)(5,000 feet); *Northwest Tennessee Regional Port Authority – Construction and Operation Exemption – In Lake County, Tenn.*, STB Finance Docket 35802 (served Apr. 21, 2016)(5.5 miles); *Port of Moses Lake – Construction Exemption – Moses Lake, Washington*, STB Finance Docket 34936 (served Aug. 27, 2009) (11.5 miles); *Pemiscot County Port Authority – Construction of a Line of Railroad - In Pemiscot County, MO*, STB Finance Docket 34117 (served July 2, 2002)(5 miles).

³⁸ Served in this docket on May 20, 2025; See Environmental Comment, EI-33928.

The EPBS Letter is replete with statements that are clearly false or incorrect. To begin, the Council for Environmental Quality regulations cited by the EPBS Letter were repealed effective April 11, 2025.³⁹ In any event, the Board’s environmental regulations are applicable here.

Substantively, the EPBS Letter makes assertions that can be easily refuted by the Final EIS. For example, the EPBS Letter states, [t]he applicant’s evaluation of the impacts of its Project on these threatened and endangered species is wholly inadequate.”⁴⁰ It continues, “[b]efore issuing a decision on this permit application, the STB must require the applicant to supplement its application with information that will allow the STB to fully evaluate the threats of the Project on the continued existence of the Mexican Fawnsfoot and the Texas Hornshell and/or consult with U.S. Fish & Wildlife Services (*sic*) as appropriate and minimize the impacts and/or deny the project.”⁴¹

This statement is simply false. First, it is OEA that directs the environmental review of this project and has complete responsibility for the Final EIS, not GER. Second, the Final EIS specifically discusses the biological resources and consultation with the U.S. Fish & Wildlife Service in Chapter 3.10 of the Final EIS and in the summary of the Final EIS in Chapter/Section S.3.11. Further, in Chapter 4.4.3, OEA recommends measures to mitigate against harming these species.

Another statement that has no basis in fact is the assertion that “[t]he wetland survey report included in the Final EIS disregards the critical habitat along the Rio Grande as wetland and shrub habitat.”⁴² The phrase “shrub” or “scrub-shrub” as described in the Final EIS and in the wetlands

³⁹ EPBS Letter at 2; Removal of National Environmental Policy Act Implementing Regulations, Council on Environmental Quality, 90 Fed. Reg. 10610 (Feb. 25, 2025).

⁴⁰ EPBS Letter at 8.

⁴¹ *Id.*

⁴² EPBS Letter at 11.

report does not assign value to the plant community.⁴³ The phrase is descriptive of a habitat type – “scrub-shrub upland community” – it is not commentary on the quality of habitat.⁴⁴

The EPBS Letter also asserts that the GER Proposed Line is in a 100-year floodplain and fails to provide for the long-term safety for the surrounding properties.⁴⁵ But the analysis in the Final EIS disagrees and notes that “existing regulations governing construction in the floodplain” would result in minimal impacts.⁴⁶ Further, the Final EIS states, “[p]rior to any construction, the local floodplain administrator, as well as FEMA and IBWC, would require GER to provide more detailed design plans and hydrologic and hydraulic modeling to ensure that the proposed line and the associated CMV Facility do not adversely affect the floodplain” under local and federal regulations.⁴⁷

Considering the totality of the incorrect statements in the EPBS Letter, statements that are clearly refuted by the Final EIS, the Board should reject the relief sought by EPBS. The EPBS Letter appears to be the type of behavior that the Supreme Court warned against in the recent *Seven Counties* decision. “NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects.”⁴⁸ The Board should not allow its NEPA process to be derailed by the unsupported arguments in the EPBS Letter.

2. The EPBS bullet point demand for additional cumulative impact analysis includes items that either fail to state an actual indirect impact or ignore the analysis conducted in the Final EIS.

⁴³ Final EIS at 3-56 and Appendix J at 10-11.

⁴⁴ Final EIS at 3-56.

⁴⁵ *Id.* at 7.

⁴⁶ *Id.* at S-10

⁴⁷ *Id.* at 3-68.

⁴⁸ *Seven County Infrastructure Coalition, et al.* at 145 S. Ct. at 1513.

The Board's cumulative or indirect impact analysis is guided by the "'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process."⁴⁹ It is up to the Board to determine how to manage its environmental analysis including "(i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand."⁵⁰

Here, the EPBS Letter suggests several cumulative impacts that defy any rule of reason, because they simply do not make any sense. For example, "[t]he cumulative impacts of completed, underway, and imminent phases of the Green Eagle Rail Project."⁵¹ The Proposed Line is merely at its permitting phase, no projects have been completed and none are underway or imminent – this sentence is nonsensical.

The letter also states the following to be a cumulative impact, "[h]ow the project's occurrence in a 100 year floodplain may not be aligned with public interest."⁵² A public interest analysis as a cumulative impact? It appears that EPBS doesn't understand what a cumulative impact is because a public interest analysis is not an indirect impact of the GER Proposed Line.

Another headscratcher is this "cumulative impact" that the EPBS Letter states the Board "must consider" – "How impacts to human health with regard to air quality have been largely understudied and the cumulative impact must be addressed."⁵³ Understudied by who? In this EIS? Or just generally speaking?

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

The EPBS Letter also argues that the Board needs to study the “cumulative impacts of this project and other projects in the area.”⁵⁴ However, EPBS fails to share which projects it may be referring to and in any event, the Board has discretion to analyze the environmental effects of other projects.

In addition, the letter states that the Board needs to further study the cumulative impacts of water quality and wetlands, flooding risk, traffic, and air quality.”⁵⁵ However, the Board studied the impacts on water resources, Chapter 3.11; traffic, Chapters 3.2, 3.3, 3.4, and 3.5; and air quality, Chapter 3.7

The EPBS concerns have been raised and responded to in the Final EIS. Appendix O of the Final EIS explains the Board’s process for hearing and responding to public comments. OEA has already addressed many of the items raised under the EPBS’s Cumulative impact argument. The fact that EPBS may disagree with the conclusions in the Final EIS does not render it incomplete under NEPA or the Board’s environmental regulations.

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⁵⁴ *Id.*

⁵⁵ *Id.*

CONCLUSION

In conclusion, GER respectfully requests that the Board reject the EPBS Letter asking it to deny the Petition for Exemption because EPBS did not demonstrate that the Proposed Line is not in the public interest. Further, GER respectfully requests that the Board deny the EPBS Letter asking it to regulate the Proposed Line through an application because the Proposed Line is consistent with the Rail Transportation Policies at 49 U.S.C. §10101 and the EPBS Letter fails to demonstrate otherwise.

Respectfully submitted,



Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

*Counsel for
Green Eagle Railroad, LLC*

Dated: September 22, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September 2025, I caused a copy of the foregoing document to be served electronically on all parties of record in STB Docket No. FD 36652.



Justin J. Marks