

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36652

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GREEN EAGLE RAILROAD, LLC—CONSTRUCTION AND OPERATION
EXEMPTION—IN MAVERICK COUNTY, TEX.

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

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The Board should deny the petition filed by Green Eagle Railroad, LLC (GER) seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a new 1.335-mile rail line in Maverick County, Texas (the Line). GER is proposing to insert a new carrier in the middle of the current, direct connection between Union Pacific Railroad Company (Union Pacific) and BNSF Railway Company (BNSF), on the one hand, and Ferrocarril Mexicano, S.A. de C.V. (Ferromex), on the other hand, at the United States-Mexico border in Eagle Pass, Texas. GER’s proposal to construct and operate the Line is inconsistent with the public convenience and necessity. At the very least, significant questions exist concerning whether the Line is needed to meet existing or future demand for transportation, whether its operation would be less efficient and more costly than existing service, whether its operation would harm existing services provided by Union Pacific and BNSF, and whether it is financially viable. The Board should conclude that requiring the additional information that would be provided in a full application under 49 U.S.C. § 10901 is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101.

I. Background¹

The Eagle Pass Gateway is the second busiest railroad crossing between the United States and Mexico, but existing capacity is sufficient to accommodate current demand for rail transportation, and capacity can be expanded if necessary to meet future demand. Union Pacific is actively planning operational improvements and capital investments to support improved fluidity and growth of traffic moving through the Eagle Pass Gateway.

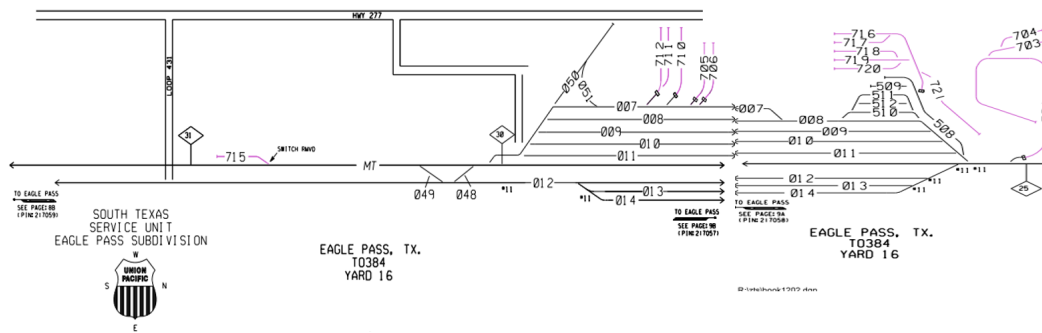
Union Pacific and BNSF move approximately 19 trains per day to and from the gateway using a Union Pacific-owned line over which BNSF has trackage rights. At the border, Union Pacific and BNSF interchange traffic directly with Ferromex. Union Pacific supports its cross-border operations from Clark's Park Yard, which is located approximately 4.2 miles north of the border. BNSF supports its cross-border operations from Ryan's Ruin Yard, which is located on Union Pacific's line approximately 14 miles north of the border. Ferromex supports its cross-border operations from Rio Escondido Yard, which is located approximately 9.9 miles south of the border. Trains cross the border using the Eagle Pass-Piedras Negras International Railway Bridge, which is owned and operated by Union Pacific on the U.S. side of the border and owned by the Mexican federal government and operated by Ferromex on the Mexican side of the border. Later this year, Union Pacific and Ferromex expect to shift cross-border crew changes from the bridge to Clark's Park Yard, reducing the amount of time trains are stopped on the bridge, which will improve security, service, and capacity.

¹ The factual statements in the "Background" section of Union Pacific's comments regarding Union Pacific's operations in the Eagle Pass area and GER's potential impact on those operations are verified by Richard L. Lichtas, Union Pacific's Assistant Vice President, Network and Capital Planning.

A. Union Pacific’s and BNSF’s Eagle Pass operations.

Union Pacific’s operations in Eagle Pass are centered in Clark’s Park Yard. The yard supports Union Pacific’s cross-border service and service to local shippers. As shown below in Figure 1, Union Pacific’s mainline runs through the middle of the yard in a north-south direction. 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 certain customs inspections. On the east side of the yard, Union Pacific has three yard tracks it uses to slot trains for border staging, inspection, classification, and crew change operations.

**Figure 1
Clark’s Park Yard**



All Union Pacific northbound and southbound cross-border trains stop to change crews in Clark’s Park Yard. All northbound cross-border trains also undergo a Class I brake test and other mechanical inspections required for trains entering the United States

under rules established by the Federal Railroad Administration (FRA).² If a particular railcar requires repairs, Union Pacific sets out the car and moves it to the car repair tracks on the west side of the yard. Northbound trains also undergo secondary security inspections and required agricultural import and entry inspections by U.S. Customs and Border Protection (CBP).³ If a particular railcar requires additional scrutiny, CBP may require Union Pacific to hold the train until it completes its inspection, or CBP may require Union Pacific to set out a car and move it to designated inspection tracks on the west side of the yard.

Union Pacific also performs classification and blocking on northbound manifest and intermodal trains in Clark's Park Yard. Union Pacific uses tracks on the west side of the yard to sort cars from trains delivered by Ferromex into manifest blocks destined to Brazos Yard, near Hearne, Texas, and intermodal blocks destined to San Antonio Intermodal Terminal (SAIT). Union Pacific also uses Clark's Park Yard to support local operations in Eagle Pass. Two active customers, Alcalosa Forwarding and Maverick Rail Park, have facilities that connect to yard tracks. Union Pacific spots and pulls cars moving from and to those facilities.

To support its yard activities, Union Pacific currently has four jobs that work five days per week in Clark's Park Yard. Union Pacific also operates manifest trains that provide daily service between the Clark's Park Yard and Laughlin, Texas, and between Clark's Park Yard and Spofford, Texas.

² A Class III brake test and a roll-by inspection are performed on northbound trains as they come off the bridge at Eagle Pass.

³ Trains pass through CBP Vehicle and Cargo Inspection System (VACIS) scanners as they cross the bridge.

BNSF trackage rights trains pass through Clark's Park Yard on their way to and from the border. As stated above, BNSF's supports its cross-border operations from Ryan's Ruin Yard, which is approximately 4 miles north of Clark's Park Yard. All BNSF's northbound trains stop at Ryan's Ruin Yard for FRA-mandated Class I brake tests and inspections, as well as security and agricultural inspections conducted by CBP.

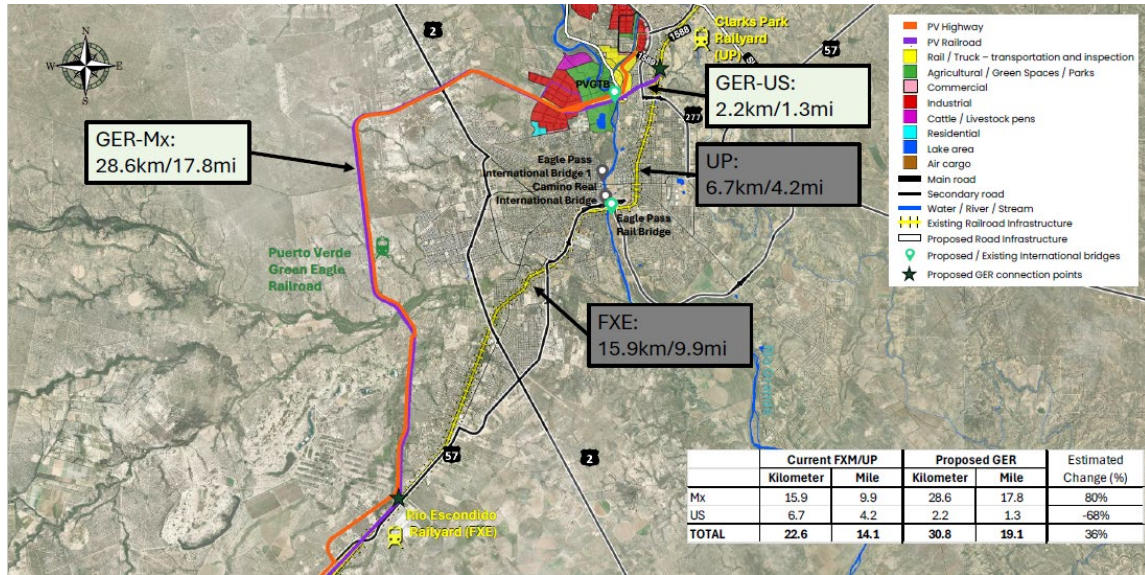
Union Pacific carefully coordinates switching and other local activities in Clark's Park Yard to minimize disruption to and from Union Pacific and BNSF cross-border through trains and to provide equal dispatch to both railroads' through trains.

Union Pacific is actively planning operational improvements and capital investments to support improved fluidity and growth of traffic moving through the Eagle Pass Gateway. First, Union Pacific and Ferromex expect to shift 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. Second, Union Pacific has plans to construct a new lead at the north end of Clark's Park Yard, which would allow it to stage southbound trains north of the yard to improve operational fluidity. The north lead project is moving forward in design, and construction could begin as early as 2026. Third, Union Pacific is developing plans to extend its lead track at the south end of Clark's Park Yard to complete a second main line all the way to the border, allowing for two-way movement of traffic. The double-track project is in the early planning stages, and if needed to accommodate traffic growth, construction could begin as early as 2028. Union Pacific's plans to improve its existing route provide an efficient, cost-effective approach to improving fluidity and accommodating growth at Eagle Pass.

B. GER’s proposed Line and operations

GER’s proposed Line would create a second, duplicative route connecting Union Pacific and BNSF with Ferromex. As shown below in Figure 2, the Line would extend 1.335 miles between milepost 31 on Union Pacific’s Eagle Pass Subdivision south of Clark’s Park Yard and a new bridge crossing the Rio Grande, then connect with a new 17.8-mile line to Ferromex’s Rio Escondido Yard. The Line would reduce Union Pacific’s and BNSF’s current route to the border by 2.9 miles, but GER’s route in Mexico would be 7.9 miles longer than Ferromex’s current route from the border to Rio Escondido Yard, creating a longer route overall between Clark’s Park Yard and Rio Escondido Yard.

**Figure 2
GER Proposal⁴**



GER’s proposed Line would not increase rail competition for cross-border traffic. GER would have to interchange all its cross-border traffic with either Union Pacific or

⁴ Figure 2 is an excerpt from a presentation GER’s corporate parent, Puerto Verde Holdings, provided Union Pacific dated January 2024.

BNSF. GER's proposed Line thus would increase the number of carriers required to complete cross-border movements, and thus the complexity and cost of such movements, but would not increase the number of independent routing options available to shippers.

GER does not appear to have a viable plan for operating its proposed Line without harming existing service offered by Union Pacific and BNSF. GER's petition does not address the practical issues that would arise from moving cross-border trains averaging 9,300 feet in length⁵ while constructing only 1.335 miles (*i.e.*, approximately 7,050 feet) of new track between the border and its connection with Union Pacific's Eagle Pass Subdivision.⁶ The difference between train length and track length means GER is not planning to construct sufficient facilities to receive southbound trains in interchange from Union Pacific or BNSF: the rear end of a 9,300-foot train would block Union Pacific's main line all the way past the switch between the main line and the lead track at the south end of Clark's Park Yard. For northbound trains, GER is not planning to construct sufficient facilities to conduct FRA-mandated safety inspections or the customs and agricultural inspections conducted by CBP.

The difference between GER's proposed train length and track length would cause operating issues even if Union Pacific interchanged southbound trains with GER in Clark's Park Yard and GER's northbound train received FRA and CBP inspections in the yard. GER train arrivals and departures would disrupt the flow of other traffic in and through the yard. Currently, Union Pacific uses its main line and lead track at the south

⁵ See Final Environmental Impact Statement, Docket No. FD 36632 ("Final EIS") at Vol. I, p. 2-16.

⁶ See Petition at 1.

end of the yard to stage trains between the border and the yard. When a northbound train has cleared the border but cannot immediately be accommodated in the yard without disrupting ongoing activity, Union Pacific can stage the inbound train south of the yard on either its main line or lead track. Similarly, when a southbound train is ready to depart the yard, but Ferromex cannot accept the train at Rio Escondido Yard, Union Pacific can stage the outbound train south of the yard on either its main line or lead track so the train does not interfere with yard activity. However, with only 7,050 feet of track north of the border, GER would not be able to move an average southbound train clear of the Clark's Park Yard until the train could cross the border, and GER would not be able to hold an average northbound train clear of the yard once the train crossed the border. Union Pacific's would have to suspend certain yard activities to accommodate arrivals of GER's northbound trains and delays to departures of GER's southbound trains. As a result, Union Pacific operations would become less efficient and less able to meet customer needs.

GER's harmful impacts on operational efficiency and customer service would increase if GER were to handle some but not all cross-border traffic at Eagle Pass. For example, if a Union Pacific train were 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 switch between Union Pacific's main line and lead track, delaying Union Pacific's train. Likewise, if a Union Pacific train were ready to depart for the border when a GER train was entering the yard, the Union Pacific train would once again have to wait for the GER train to clear the connection between Union Pacific's main line and lead track, delaying Union Pacific's train. Further, Union Pacific could no longer use its lead track to stage trains south of the yard without potentially

blocking the route between Clark's Park Yard and the International Railway Bridge. The end result is Union Pacific would experience congestion and delay, to the detriment of its customers.

Further, if GER were to handle some but not all cross-border traffic at Eagle Pass, switching activity at Clark's Park Yard would increase at the same time GER's presence would prevent Union Pacific from clearing space in the yard. Specifically, if northbound traffic were divided between Ferromex-Union Pacific and Ferromex-GER-Union Pacific routings, Union Pacific would need to perform classification and blocking on twice as many trains. Union Pacific also might need to hold cars for a longer period to build efficient blocks, which would consume still more yard capacity. The added work and congestion would raise transportation costs and reduce service quality.⁷

In addition, if GER were to handle some but not all cross-border traffic at Eagle Pass, it would require expenditure of additional government resources to staff facilities at two rail border crossings, rather than the one rail crossing that currently exists at Eagle Pass, which could potentially contribute to delays at the border.

Finally, GER's proposed Line does not appear to be economically viable. As GER explains in its Petition, GER's plan is to enter into agreements with Union Pacific and BNSF for those carriers to shift their cross-border traffic to the Line.⁸ However, Union Pacific has no intent to discontinue using its border crossing at Eagle Pass. GER appears to have no plan for making the Line economically viable if Union Pacific and BNSF do

⁷ For southbound traffic, Union Pacific could not be required to short-haul itself by interchanging cars with GER in Clark's Park Yard. *See* 49 U.S.C. § 10705. If Union Pacific could be required to short-haul itself, these problems would be multiplied.

⁸ *See* Petition at 7.

not voluntarily agree to route their customers' traffic over GER. In fact, GER has acknowledged that if it "is unable to attract all cross-border rail traffic . . . GER would be unable to construct and/or operate the proposed line."⁹ And even if Union Pacific and BNSF were to voluntarily reroute their traffic over GER, there is no evidence that GER would earn sufficient revenue from shuttling trains between the U.S. and Mexico to make its Line economically viable.¹⁰

II. The Board should deny GER's petition for exemption.

Construction of a new railroad line requires prior Board authorization, either through issuance of a certificate under 49 U.S.C. § 10901 or, as requested by GER, through an exemption under 49 U.S.C. § 10502 from the application requirements of § 10901. Section 10502 directs the Board to exempt construction proposals from the requirements of § 10901 when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of § 10101, and (2) either (a) the transaction is of limited scope or (b) application of the statutory provision is not needed to protect shippers from the abuse of market power. *See* 49 U.S.C. § 10502(a). In considering a construction application under § 10901, the Board "shall" grant the application "unless the Board finds that such activities are inconsistent with the public convenience and necessity." 49 U.S.C. § 10901(c). In reviewing construction applications, the Board examines "whether (1) the applicant is financially fit to undertake the construction and provide service; (2) there is a public demand or need for the proposed service; and (3) the construction project is in the public interest and will not unduly harm existing service." *Dakota, MN & Eastern RR—*

⁹ Final EIS at Vol. I, p. 2-16 n.8.

¹⁰ GER "projects that it could develop its own cross border traffic," but GER does not claim such traffic alone would justify constructing the Line. *See* Petition at 7.

Construction—Powder River Basin, 3 S.T.B. 847, 863 (1998). Based on the record here, the Board cannot find that regulation is not necessary to carry out the rail transportation policy of § 10101. Accordingly, the Board should require GER to submit a full application under § 10901.

GER asserts that regulation is not necessary to carry out the rail transportation policy of § 10101 because its proposal meets several of the enumerated policies in § 10101.¹¹ However, GER's analysis is superficial and incomplete. GER's proposal is inconsistent with the substantive transportation policies set forth in § 10101.

In most cases, construction of a new railroad line provides shippers a freight rail option that does not currently exist and fosters sound economic conditions in transportation, consistent with § 10101(4) and § 10101(5). However, GER's proposed new line would not provide any shipper in the United States a freight rail option that does not currently exist. GER is not proposing to create an entirely new rail service option or a competitive alternative to existing rail services offered by Union Pacific and BNSF. GER is merely proposing to insert an additional rail carrier into the middle of existing Union Pacific-Ferromex and BNSF-Ferromex cross-border routes.

Moreover, GER's proposed new line would not foster sound economic conditions in transportation. GER claims it would provide a more efficient routing option across the border at Eagle Pass.¹² However, GER's proposal to insert a new carrier into the middle of the direct connection between Union Pacific and BNSF, on the one hand, and Ferromex, on the other hand, would raise rail transportation costs and reduce service quality. The

¹¹ See Petition at 14.

¹² See *id.* at 15.

Board has repeatedly recognized the significant cost- and service-related benefits of eliminating interchanges between rail carriers.¹³ GER's proposal would have the opposite effect: every cross-border movement with GER in the route would require three rail carriers rather than two. Thus, contrary to GER's claim,¹⁴ GER's presence would weaken, rather than strengthen, Union Pacific's and BNSF's ability to use the Eagle Pass Gateway to compete with Canadian Pacific Kansas City Limited's cross-boarder operations via the Laredo Gateway. Further, as discussed above, GER is not proposing to construct sufficient infrastructure to accommodate the additional interchanges. GER's proposal would thus further raise costs and reduce service quality for Eagle Pass shippers by disrupting Union Pacific's operations in Clark's Park Yard and between the yard and the border.

GER's proposal is also inconsistent with § 10101(3), § 10101(4), and § 10101(5) because insufficient demand exists to justify the proposed construction and operation. GER's proposal depends on Union Pacific's and BNSF's agreement to share their existing traffic and revenues with GER.¹⁵ However, Union Pacific is not planning to discontinue its direct interchange with Ferromex in favor of the less efficient, less competitive, three-carrier alternative proposed by GER. GER claims its operations would be more efficient and safer than the existing route because it proposes to keep trains moving by using

¹³ See, e.g., *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500, slip op. at 29 (STB served Mar. 15, 2023) (“The agency has long recognized the benefits of single-line service.” (citing *Burlington N., Inc.—Control & Merger—St. Louis-S.F. Ry.*, 360 I.C.C. 784, 940 (1980) and *CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.*, 3 S.T.B. 196, 248 (1998))).

¹⁴ See Petition at 15–16.

¹⁵ See Petition at 8 (“If GER is able to attract BNSF and UPRR to route their traffic over the Proposed Line, GER anticipates that it will serve 15-18 trains per day based on the current traffic flow.”).

international crews to eliminate crew changes at the border.¹⁶ However, Union Pacific and Ferromex have plans to eliminate crew changes at the border this year. In addition, Union Pacific's existing capacity is plainly sufficient to accommodate reasonably foreseeable cross-border traffic levels at Eagle Pass,¹⁷ and Union Pacific has plans to add infrastructure to expand cross-border capacity to accommodate future growth.

Furthermore, GER's proposal is inconsistent with § 10101(9)'s policy of encouraging honest and efficient management of railroads. GER's proposal introduces significant inefficiencies: GER would be constructing a duplicative rail line and adding interchange events. In addition, by failing to provide for construction of sufficient trackage to stage its trains north of the border, GER is misleadingly understating the overall costs of its proposal by attempting to impose burdens and inefficiencies on Union Pacific.

Finally, GER's proposal is inconsistent with § 10101(14)'s policy to encourage and promote energy conservation. GER's proposed route between its proposed connection to Union Pacific's line and the border will be shorter than Union Pacific's route between the same point and the border, but 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.

GER's proposal is one of the rare construction cases in which regulation of a relatively small project is necessary to carry out the rail transportation policy of § 10101.

¹⁶ See Petition at 7.

¹⁷ See Final Environmental Impact Statement at 2-16 ("GER forecasts that by 2031, . . . an average of 19 trains would travel daily on the proposed line, similar to existing operations . . ."); see also *id.* at 2-5 ("Anything beyond five years is speculative and not reasonably foreseeable.").

In many cases, the Board can exempt a construction proposals and allow the applicant and the financial marketplace to determine whether the construction ultimately proceeds.¹⁸ Here, the Board cannot simply rely on the marketplace because GER would not be internalizing the proposal's full costs; instead, GER 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.¹⁹

GER is proposing to construct a railroad line that is not needed to meet existing or future demand for transportation, would be less efficient and more costly than existing rail services, would harm existing rail services provided by Union Pacific and BNSF, and does not appear to be financially viable. Under these circumstances, the Board cannot conclude, as it must do in exemption cases, that regulation is not necessary to carry out the national rail transportation policy. Consequently, the Board should deny GER's petition for exemption and require GER to submit an application for construction authority if GER decides to try to move forward with its proposal.²⁰

¹⁸ Cf. *Seven Cnty. Infrastructure Coal.—Rail Constr. & Operation Exemption—in Utah, Carbon, Duchesne, & Uintah Cntys., Utah*, FD 36284, slip op. at 6 (STB served Jan. 5, 2021).

¹⁹ Cf. Arthur C. Pigou, *The Economics of Welfare*, pt. II, ch. IX, § 10 (4th ed. 1932) (discussing negative externalities).

²⁰ Cf. *Tex. Cent. R.R. & Infrastructure-Pet. for Exemption—Passenger Rail Line Between Dallas & Houston, Tex.*, FD 36025 (STB served July 16, 2020) (denying petition for construction exemption); *Ozark Mountain R.R.—Constr. Exemption*, FD 32204 (ICC served Dec. 15, 1994) (same).

Respectfully submitted,

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August 25, 2025

VERIFICATION

I, Richard L. Lichtas, Assistant Vice President, Network and Capital Planning for Union Pacific Railroad Company, declare under penalty of perjury that I have read the Background section of Union Pacific's Comments on Transportation Merits of Green Eagle Railroad, LLC's Petition for Exemption and that the factual statements regarding Union Pacific's operations in the Eagle Pass area and Green Eagle Railroad's potential impact on those operations are true and correct. Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed on August 25, 2025.

/s/Richard L. Lichtas

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2025, I caused a copy of the foregoing document to be served electronically on all parties of record in STB Docket No. FD 36652.

/s/ Michael L. Rosenthal