VENABLE LLP

September 4, 2019

VIA EMAIL

Ms. Victoria Rutson
Surface Transportation Board
Office of Environmental Analysis
395 E Street, SW
Washington, DC 20423-0001

Re: Finance Docket No. 36284 – Seven County Infrastructure Coalition – Uinta Basin Railway Project Proposal – Feasibility of Craig Route Alternative

Dear Ms. Rutson,

I am writing regarding the route alternatives under consideration of the Office of Environmental Analysis (OEA) for the Uinta Basin Railway Project. The Seven County Infrastructure Coalition (the Coalition), the project applicant, identified three potential routes: the Indian Canyon route, the Wells Draw route, and the Craig route.[1] Public scoping has been ongoing, and your office has received numerous comments regarding the potential routes to be evaluated in the Environmental Impact Statement. The Coalition has continued its data collection, technical evaluations, and public outreach. Through these efforts, the Coalition has learned more information associated with the Craig route, which prevents this route from meeting the project's purpose and need. Because of this, I am writing to request that the Board consider removal of the Craig route from further consideration in the NEPA review process.

As you are aware, the Coalition has proposed to develop the Uinta Basin Railway in order to provide common-carrier rail service connecting the Uinta Basin in northeastern Utah to the interstate common-carrier rail network using a route that would allow the Coalition to attract shippers with a *cost-effective* rail alternative to trucking. Further investigation of the Craig route has revealed several deficiencies including: lack of competitive access to existing Class I rail carriers, private ownership of components of the Craig route, and potential increased costs associated with maintenance and/or acquisition of the Union Pacific Craig Subdivision branch line. Because these and other deficiencies will not allow the Coalition to provide a *cost-effective* rail alternative to trucking on the Craig route, this route does not meet the project's purpose and need.

In support of the Coalition's request to eliminate the Craig route, we summarize information collected for your consideration.

[1] *See* Seven County Infrastructure Coalition's First Supplemental Response to the STB Office of Environmental Analysis April 12, 2019 Request for Information # 1, Attachment 1: Uinta Basin Railway Evaluation of Potential Route Alternatives (May 31, 2019).

First and foremost, the Craig route lacks competitive access to existing Class I railways. In order to provide cost-effective rail transportation to shippers, the route must provide competitive access to existing Class I railways. Unlike the Indian Canyon and Wells Draw routes—which connect with both Union Pacific (UP) and Burlington Northern Santa Fe (BNSF) Railways—the Craig route connects only with UP. As a result, shippers are likely to be subjected to higher rates and inferior service. Attempts to avoid this issue by negotiating with UP to obtain assurance that it will provide competitive rates and service on the Craig route (*i.e.*, comparable to the rates and service it would provide if it were in competition with BNSF) have proven unsuccessful. Moreover, potential shippers have confirmed that the Craig route's lack of competitive access to BNSF Railway would prevent them from entering into term shipment contracts, which could negatively affect the Coalition's ability to obtain project financing.

Additionally, two key components of the Craig route are privately owned. The first, an approximately 20-mile segment of the Deseret Power Railroad, is owned by Blue Mountain Energy. The second, an approximately 30-mile segment of the Axial Spur, is owned by Tri-State Generation and Transmission Association (Tri-State). In order to provide cost-effective service along the Craig route, the Coalition would need to obtain trackage rights over these two segments of track by entering into commercial agreements with both Blue Mountain Energy and Tri-State. If the Coalition is unable to reach an agreement providing trackage rights over either segment, it would be forced to construct parallel trackage. With respect to the Axial Spur, parallel trackage may not be feasible for environmental reasons. Moreover, assuming construction of parallel trackage is even possible, it would increase construction costs by an additional $100-$500 million. These additional construction costs significantly reduce the economic feasibility of the proposed Craig route and further prevent this route from meeting the project's purpose and need.

If the Craig route were to be selected by the Board, the Coalition may also be forced to incur additional costs associated with the UP Craig Subdivision branch line. The Craig route connects to the UP Craig Subdivision branch line, which is over 90 miles in length and is currently maintained by UP. In part because it passes through extremely rugged canyons, the Craig Subdivision line has high operating and maintenance costs. Originally developed in the early 1900s, this line is highly dependent on coal production. Lately, however, decreased coal production has led to a declining traffic base on the Craig Subdivision branch line. Unit coal trains operated on the Craig Subdivision have declined from a high of as many as 30 per week as recently as 2005, to as few as 5 per week at present. At this rate, the Uinta Basin Railway would be the primary source of traffic on the Craig Subdivision line and, as a result, could be forced to either (1) purchase the line or (2) incur substantial costs to maintain the line. Given the length of the line and the historically high maintenance costs, either of these possibilities could prevent the Craig route from meeting the project's purpose and need.

By comparison, the Indian Canyon and Wells Draw routes connect to UP's Provo Subdivision line. Unlike the Craig Subdivision line, the Provo Subdivision line has numerous sources of traffic including UP trains, BNSF trains, and the twice-daily Amtrak *California Zephyr*. Accordingly, it is unlikely that the Coalition would be required to incur any substantial costs in connection with its use of the Provo Subdivision line.

During scoping, many different stakeholders weighed in with their views on the Craig route. The Coalition has seen the comments posted on OEA's environmental correspondence, including concerns about the Craig route raised by state and federal agencies relating to potential impacts to plant and animal habitat, visual resources, and historic and cultural resources.[2] In fact, the BLM Colorado State Office has requested OEA to eliminate the Craig route from further analysis.

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When conducting an environmental review under NEPA, the responsible federal agency need only consider feasible alternatives that meet the proposed project's purpose and need. *See City of Grapevine v. Dep't of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994). In determining which alternatives satisfy the project purpose, it is proper for the responsible agency to consider economic feasibility. *See Jones v. Nat'l Marine Fisheries Serv.*, 741 F.3d 989, 1001-02 (9th Cir. 2013) ("An agency may consider a project's economic requirements" in order to determine whether an alternative would meet "the objectives of the applicant's project."). If a proposed alternative is determined not to be economically feasible, it need not be analyzed during the environmental review process mandated by the NEPA. *See Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1088 (9th Cir. 2013) (failure to consider elevated track alternative was not improper where "prohibitively high cost of constructing an elevated track ma[de] it infeasible"); *Protect Lake Pleasant, LLC v. Johnson*, No. CIV 07–454 PHX RCB, 2007 WL 1486869, at *12-13 (D. Ariz. May 21, 2007) (agency did not err in eliminating alternative that, according to the project proponent, would not be economically feasible in light of the project's purpose and need).

Based on information developed during the public scoping process and information collected by the Coalition, it has become apparent that the Craig route is not economically feasible and therefore will not meet the project's purpose and need. Accordingly, the Coalition requests OEA to consider removal of this route alternative from further analysis in its NEPA review process. Please do not hesitate to contact me if you have any questions.

[2] *See, e.g.*, Letter from J. Connell, State Director, BLM Colorado, to J. Wayland, Surface Transportation Board (Aug. 26, 2019); Letter from P. Scolari, National Park Service, to J. Wayland, Surface Transportation Board (May 9, 2019); Letter from J. Comstock, Director, Moffat County Natural Resources Department, to J. Wayland, Surface Transportation Board (May 8, 2019).

Sincerely,

Kathryn Kusske Floyd

cc: Danielle Gosselin
Joshua Wayland
Mike McKee
Eric Johnson