

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36025

TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. AND TEXAS CENTRAL RAILROAD, LLC—PETITION FOR EXEMPTION—PASSENGER RAIL LINE BETWEEN DALLAS AND HOUSTON, TEX.

Digest:¹ Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC, propose to build a 240-mile rail line between Dallas and Houston, Tex. The Board finds that the proposed rail line, as described, does not require Board approval, as it would be constructed and operated entirely within the State of Texas and would not be part of the interstate rail network. Accordingly, the Board is dismissing this proceeding, because this proposed intrastate passenger operation would be outside the Board's jurisdiction. The Board is also denying as moot the related petition for clarification.

Decided: July 18, 2016

On April 19, 2016, Texas Central Railroad and Infrastructure, Inc. (TCRI) and Texas Central Railroad, LLC (TCRR) (collectively Texas Central)² filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a proposed passenger rail line between Dallas, Tex., and Houston, Tex. Concurrent with the filing of the petition for an exemption, Texas Central filed a petition requesting that the Board clarify that initiating the state administrative process to determine properties' condemnation value is not considered "construction" under 49 U.S.C. § 10901. As discussed below, the Board will dismiss this proceeding for lack of jurisdiction and will deny as moot the petition for clarification.

BACKGROUND

The Line. Texas Central proposes to construct and operate a 240-mile high-speed passenger rail line between Dallas and Houston, Tex., with an intermediate stop serving Bryan-

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² TCRI and TCRR are wholly owned subsidiaries of Texas Central Rail Holdings, LLC, which is a subsidiary of Texas Central Partners, LLC.

College Station and Huntsville, Tex. (Line). Texas Central states that the Line would be constructed and operated on a totally dedicated, grade-separated, secure high-speed corridor. Texas Central plans to operate up to 34 daily trains in each direction, with trains departing Dallas and Houston every half hour during peak travel time. According to Texas Central, trains would operate at speeds up to 205 miles per hour, allowing for a 90-minute transit time between Dallas and Houston. Texas Central states that TCRI would be responsible for constructing the track, stations, platforms, and other infrastructure along the route, and that TCRR and TCRI would operate and maintain the Line upon completion. Texas Central anticipates beginning construction in 2017 and plans to initiate passenger service as early as late 2021. Texas Central estimates the cost of construction, which is being privately financed, to be over \$10 billion.

Texas Central states that the Line would serve an important public need in providing a direct passenger rail connection between Dallas and Houston, thus filling a “gap” in the route structure of the National Railroad Passenger Corporation (Amtrak), which does not currently provide direct service between the two cities. Texas Central states that the potential sites for the Line’s stations are being evaluated for their connectivity with existing passenger rail services, including Amtrak, and envisions the use of pedestrian walkways and/or shuttle service to connect the Line’s stations with Amtrak’s existing train services. In Dallas, the two locations under consideration would be approximately a half mile from Dallas Union Station, where Amtrak trains arrive and depart. The precise location of the Houston station has not been determined, but the station site under consideration would be adjacent or close to the Northwest Transit Center, which is approximately seven miles from the Amtrak station in Houston. Texas Central further states that the Line would create potential for connections with other future passenger rail systems and would generate substantial economic benefits for the State.

Texas Central states that it is working with the Federal Railroad Administration (FRA) to develop a regulatory framework for safety to address the design, operations, and maintenance of the Line. Texas Central notes that it plans to petition FRA for a rulemaking specific to the technology and operations planned for the Dallas-Houston corridor and has been engaged in discussions with FRA about developing a Rule of Particular Applicability to establish the necessary safety regulations specific to Texas Central’s proposed operations. Texas Central also states that FRA’s future regulatory action to approve the proposed use of a specific train technology (Shinkansen N700 Bullet train technology) for the Line requires FRA to conduct an environmental review under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370(f).

Several parties filed comments in support of³ and in opposition to⁴ Texas Central’s petitions. On May 27, 2016, Texas Central filed a rebuttal brief in support of its petition for clarification. On June 20, 2016, Texas Central filed a surreply to its petition for exemption.⁵

³ United States Representatives Blake Farenthold, Eddie Bernice Johnson, and Gene Green, National Association of Railroad Passengers, Transportation Advocacy Group-Houston Region, as well as numerous state and county officials and individual citizens, submitted comments in support of Texas Central’s petitions.

⁴ United States Representatives Joe Barton, Kevin Brady, and Bill Flores, Texans Against High Speed Rail (TAHSR), Delta Troy Interests, Ltd. (Delta Troy), JBJQ Ranch, KSA

(continued . . .)

Board Jurisdiction. Texas Central asserts that the proposed intrastate Line would be part of the interstate rail network, and thus subject to the Board’s jurisdiction under 49 U.S.C. § 10501(a)(2)(A). Texas Central contends that the Line is of national significance and would enhance the connectivity of the interstate passenger rail network by “creat[ing] a connection between the Amtrak routes serving Dallas and Houston.” (Pet. 17.) Texas Central states that prospective station sites have been evaluated with the goal of allowing passengers to transfer conveniently between the Line and Amtrak, with existing Amtrak stations in Dallas and Houston serving as “feeders” for the Line, and vice versa. (Pet. 18; Surreply 4.) Texas Central further asserts that the Line would create potential connections with future high-speed passenger rail systems, and that it is willing to consider cooperative efforts in conjunction with passenger rail providers serving points beyond Texas.

Delta Troy and TAHSR dispute Texas Central’s claim that the proposed Line is subject to the Board’s jurisdiction. Delta Troy and TAHSR assert that the Line would not be attached to, nor would it be operated as part of, the interstate rail network. Delta Troy argues that the proposed Line has less connection to the interstate rail network than the intrastate passenger rail system in All Aboard Fla.—Operations LLC—Constr. & Operation Exemption—in Miami, Fla. & Orlando, Fla., FD 35680 (STB served Dec. 21, 2012), where the Board found that the proximity of a planned station at or near an airport did not make the proposed service part of the interstate rail network subject to Board jurisdiction. Both Delta Troy and TAHSR distinguish California High-Speed Rail Authority—Construction Exemption—in Merced, Madera & Fresno Counties, California, FD 35724, slip op. at 12-15 (STB served June 13, 2013) (Begeman dissenting in part), relied on by Texas Central, where the Board found an intrastate passenger rail system to be subject to the Board’s jurisdiction due to its extensive connectivity with Amtrak. Delta Troy and TAHSR note that here, unlike Cal. High-Speed Rail Auth., the proposed Line would not connect to existing Amtrak stations. Delta Troy and TAHSR also contend that Texas Central’s assertions regarding possible future connections with the interstate rail network are vague and speculative.

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Industries, as well as numerous state and county officials and individual citizens, submitted comments in opposition to Texas Central’s petitions.

⁵ Also on June 20, 2016, Texas Central filed a motion for leave to file its surreply. On July 7, 2016, TAHSR filed a reply in opposition to the motion for leave. Texas Central responded to TAHSR’s reply by letter filed on July 8, 2016. Delta Troy filed a reply in opposition to Texas Central’s motion for leave and the surreply on July 11, 2016. In the interest of compiling a more complete record, we will accept Texas Central’s rebuttal and surreply. See City of Alexandria, Va.—Pet. for Declaratory Order, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply “(i)n the interest of compiling a full record”).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10501(a)(2)(A), the Board has jurisdiction over transportation by rail carriers (1) between a place in a state and a place in another state, and (2) between a place in a state and another place in the same state, as long as that intrastate transportation is carried out as “part of the interstate rail network.” DesertXpress Enters., LLC—Pet. for Declaratory Order, FD 34914, slip op. at 9 (STB served May 7, 2010). Whether an intrastate passenger rail service is part of the interstate rail network is a fact-specific determination based on the totality of circumstances. See Cal. High-Speed Rail Auth., FD 35724, slip op. at 11-15; All Aboard Fla.-Operations LLC, FD 35680, slip op. at 3. In making this determination, the Board may examine several factors, such as whether the proposed service shares stations or has a through ticketing arrangement with Amtrak or another interstate passenger rail carrier, but no one factor is controlling. See, e.g., Cal. High-Speed Rail Auth., FD 35724, slip op. at 11-15; All Aboard Fla.-Operations LLC, FD 35680, slip op. at 3-4.

The Board finds that it does not have jurisdiction over the proposed Line as described in the petition, because it would not be part of the interstate rail network. It is undisputed that the Line would provide only intrastate passenger service between Dallas and Houston. What Texas Central characterizes as its proposed “connections” to Amtrak are not sufficient to make the proposed Line part of the interstate rail network. Texas Central makes clear that the Line would not directly connect, nor would it be feasible to directly connect, with Amtrak. (Surreply 7-8.) Rather, Texas Central states that passengers would have the “ability to connect” to the existing Amtrak station in Dallas by walking a half mile from the prospective Line station location. (Surreply 9.) In Houston, Texas Central proposes the use of an intermediate bus service to “connect” Line passengers to the existing Houston Amtrak station, located approximately seven miles from the prospective Line station site. (Surreply 11.) The proximity of a planned station near interstate transportation but with no concrete plans today for through ticketing and no direct connection to Amtrak or any other interstate passenger rail carriers does not make a proposed intrastate passenger service part of the interstate rail network. See All Aboard Fla.-Operations LLC, FD 35680, slip op. at 3-4. This is true, regardless of Texas Central’s argument that direct physical connections to the track of Amtrak or other rail carriers would be impractical in this case due to the distinct track technology Texas Central proposes to use.

Nor is this case sufficiently similar to Cal. High-Speed Rail Auth., where the Board found that it had jurisdiction over California’s proposed High-Speed Train (HST) System given its “extensive interconnectivity with Amtrak.” Cal. High-Speed Rail Auth., FD 35724, slip op. at 12. In that case, station sites that provided “good connectivity and accessibility to Amtrak” were preferred, such as Los Angeles’s Union Station, which also serves as an Amtrak station providing both intercity and interstate passenger service. Id. at 13. Additionally, construction of the proposed HST System entailed a “blended implementation strategy” that involved Amtrak trains operating on the proposed line for an interim period. Id. In contrast, the proposed Line here would not share the same stations and track with Amtrak; rather its passengers would “connect” with Amtrak by walking a half mile from the Line station in Dallas, and by taking a seven-mile shuttle bus service in Houston. The attenuated “connections” described in the petition are not sufficient to make the Line part of the interstate rail network. See All Aboard Fla.-Operations LLC, FD 35680; Napa Valley Wine Train—Pet. for Declaratory Order,

7 I.C.C.2d 954, 964 (1991) (finding no jurisdiction over a passenger excursion train with no direct connection with Amtrak, whose customers would rely on an intervening bus service to reach the excursion train).

The Board is not persuaded by Texas Central's claim that the Line is part of the interstate rail network, despite the absence of a physical connection with Amtrak. Texas Central argues that Alaska Railroad, which is located entirely in the State of Alaska, does not physically connect at any location with the interstate rail network and relies on water carriers to interchange and connect with other United States railroads; yet, the railroad is part of the interstate rail network and subject to the Board's jurisdiction. Texas Central fails to note, however, that Alaska Railroad and the water carriers that it uses to connect to the interstate rail network are part of the noncontiguous domestic trade subject to the Board's jurisdiction. 49 U.S.C. §§ 13102(17), 13521; see also § 10501(a)(1)(B) (Board has jurisdiction over transportation by railroad and water when under common control, management, or arrangement for continuous carriage or shipment). Texas Central also suggests that the physical gap between North Station and South Station in Boston, Mass., is relevant here. (Surreply at 10.) However, it fails to acknowledge that Amtrak provides interstate passenger service as part of the interstate rail system on both sides of Boston (northward on the Downeaster from North Station through New Hampshire and into Maine, and southward on the Northeast Corridor from South Station into Rhode Island and beyond). Unlike gaps between the proposed Line and Amtrak, the gap between North Station and South Station does not separate either segment from the interstate rail network. Again, the Board is not persuaded by Texas Central's claims that the Line is part of the interstate rail network.

While Texas Central asserts that a physical connection between the Line and Amtrak is not feasible given the differences in respective operating technologies, the proposed Line would have no direct connection with Amtrak, such as a shared station or a clearly defined arrangement to connect passengers using through ticketing. See Cape Cod & Hyannis R.R.—Exemption from 49 U.S.C. Subtitle IV, FD 30859 (ICC served Sept. 2, 1986) (finding jurisdiction over a through ticketing arrangement between an intrastate passenger railroad and Amtrak). The Line and Amtrak need not share the same track, but with no direct connection to the interstate rail network the construction and operation of the proposed Line is not subject to the Board's jurisdiction.

While Texas Central expresses a desire to coordinate its services with Amtrak at a future point in time and a willingness to consider cooperative efforts with other passenger rail providers outside of Texas, its plans are too speculative and undefined to make this intrastate line part of the interstate rail network based on the information in the petition. Texas Central merely states that "it has expressed interest in exploring mutually beneficial cooperative arrangements with Amtrak." (Surreply 6.)⁶ Texas Central notes that the Line may "create potential for connections with *future* high-speed passenger rail systems," such as a "possible" line between Oklahoma City, Okla., and South Texas and a "potential" line between Dallas/Fort Worth and San Antonio, Tex. (Pet. 19-20 (emphasis in original).) In contrast, the record in Cal. High-Speed Rail Auth.

⁶ Amtrak similarly indicates in a letter filed June 20, 2016, only that it "is open to exploring opportunities to develop such connections" with Texas Central.

contained concrete details regarding planned connections with existing Amtrak stations and interim Amtrak operations on the proposed line. Texas Central asserts that its lack of “definitive agreements” with Amtrak “does not deprive the Board of jurisdiction” over the Line, citing Cal. High-Speed Rail Auth. and Cape Cod & Hyannis R.R. In Cape Cod & Hyannis R.R., the petitioner was not seeking authorization to construct an intrastate rail line that could potentially coordinate with Amtrak in the future; rather, it sought an exemption for a through ticketing arrangement with Amtrak to commence on a specific date at a designated point on the line. See Cape Cod & Hyannis R.R. Pet. for Exemption, June 20, 1986, Cape Cod & Hyannis R.R., FD 30859. While the Board has recognized that parties may seek Board authority before all outstanding issues have been resolved, it has done so, as discussed above, when the record contains more concrete details and plans about direct linkage to the interstate rail network than what Texas Central has presented here. Texas Central’s assertions regarding potential connections to the interstate rail network do not provide sufficient basis for finding that the proposed Line is subject to the Board’s jurisdiction. Should Texas Central develop concrete plans that would make the Line part of the interstate rail network, such as an actual through ticketing arrangement with Amtrak or a shared station with an interstate passenger rail line, Texas Central could seek Board authority at that time.

Based on the record, the Board concludes that the construction and operation of the proposed Line would not be part of the interstate rail network and is therefore not subject to the Board’s jurisdiction under § 10501. Accordingly, this proceeding will be dismissed for lack of jurisdiction, and the petition for clarification will be denied as moot.

It is ordered:

1. This proceeding is dismissed for lack of jurisdiction.
2. Petitioner’s motion for leave to file its surreply is granted.
3. The petition for clarification is denied as moot.
4. This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.