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Chairman Daniel R. Elliott III
Vice Chairman Deb Miller
Member Ann D. Begeman
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Comments on and request for denial of Texas Central Railroad and Infrastructure Inc. and Texas Central Railroad LLC's April 19, 2016 Petitions for Exemption and Clarification.
Case Number: FD-36025-0

Dear Chairman Elliott, Vice Chairman Miller, and Member Begeman,

After reading the Petition for Exemption and Petition for Clarification recently submitted on April 19, 2016, by Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC, (collectively, TCR), I find the prospect that these petitions could be granted alarming.

It is important to realize where in the process TCR is at this point in time. TCR is a new railroad company with no experience in designing, constructing or operating any type of railroad. They are largely a group of Texas businessmen with a dream of finding private funding in excess of \$12 Billion to construct and operate a Japanese High Speed Rail bullet train between Houston and Dallas with the hopes and dreams of making large profits. My understanding at this time is that they currently have promises from investors of only \$75 million and how much of that has actually been invested at this time is unknown.

They hastily began the process of developing, with the FRA, a draft Environmental Impact Statement, which from the very beginning has been flawed, starting with a public scoping process that totally ignored a large segment of the population that would be affected by their proposed "corridors" and did not even hold public scoping meetings in several of the counties they wished to traverse. Those counties had to fight to get them to come back and offer public scoping meetings in December, 2014 so that their citizens could become informed of the project and its routes and offer feedback and comments.

One of their proposed initial "corridors" ran through Waller County with the proposed route aligned with a high voltage electrical transmission line and a county road named Hegar Road. Waller County was also one of the counties that were ignored in the initial round of public scoping meetings and they had to come back and hold further meetings here in December, 2014, after much public and official local government outcry. Public comments were only accepted through January 9, 2015 and the scoping process was closed with the selection of the "Utility Corridor", the one that crosses through Waller County, being their chosen corridor¹. The public comment period closed well before that report came out and no other opportunities for public comment have since been opened.

¹ FRA Dallas to Houston High-Speed Rail Project Corridor Alternatives Analysis Technical Report – August 10, 2015.

At a later time, on November 6, 2015, the FRA and TCR issued reports² on alternative “alignments” of the Utility “corridor” through Waller County, announcing that a much different route through Waller County had now been chosen. The reports indicate that an additional four alternative alignments through Waller County had purportedly been considered and the route they call HC-4 had now been chosen as the final route through Waller County. None of the additional four possible routes through Waller County were ever made public and indeed there was never any possibility for the public to comment or provide important local information on them. This violates the whole concept of the public scoping requirements and undermines the entire NEPA EIS process.

The Waller County Sub-Regional Planning Commission (WCSRPC), a governmental body created pursuant to Texas Local Government Code §391 has taken up this issue and has attempted to coordinate with both the Texas Department of Transportation (TxDOT) and the FRA. The FRA has illegally refused to come to the table to coordinate with WCSRPC to this date, however, that coordination process has commenced with TxDOT. You will no doubt hear more about this from others and these are just some of the problems they are facing in Waller County alone.

TCR certainly has some support for their project in Harris and Dallas Counties, where the end terminals of the project would be located, but every other county in between is opposed to it, including Grimes County where the only other station on the route is proposed, but not guaranteed to be built.

TCR is attempting to sell their dream as a feasible and financially viable project in order to garner support and authorizations from governmental agencies and woo future possible investors, yet they refuse to release any financial viability analysis studies or ridership studies, a matter that has already gone to litigation against the Texas Attorney General and TxDOT over their refusal to release any such studies that may have been submitted to them.³

They claim that they expect that the vast majority of landowners will be willing to negotiate the sale of portions of their farms and generations long held family properties and that they will only use eminent domain as a last resort, but the facts are this. The vast majority of landowners in the counties between Harris and Dallas Counties have refused to sign TCR’s requests for permission for TCR to enter their property and conduct a vast array of surveys, inspections, invasive soil boring activities, and an unlimited number of other studies, which far exceed any authority given to them under eminent domain laws.

TCR is currently facing litigation from a landowner in Leon County over the overbroad consent form and the threat of being sued should the landowner not give consent. But, in TCR’s reply, they make the following statement: “*TCRI has not made any representation to Mr. Miles that if it were unable to reach a voluntary agreement to survey his property that it would seek a temporary restraining order or temporary injunction in which it would attempt to secure the right to conduct all of the activities contained in the Consent Form. That contingent event has not and will not occur—TCRI has no intention to sue Mr. Miles on the terms of the Consent Form.*”⁴

² FRA Dallas to Houston High-Speed Rail Project Alignment Alternatives Analysis Report – November 6, 2015, and Texas Central High-Speed Railway Step 2 Screening of Alignment Alternatives Report Dallas-Houston, Texas, High-Speed Rail Project Report – November 5, 2015.

³ *Texans Against High Speed Rail, Inc., Plaintiff vs. Ken Paxton, Attorney General for the State of Texas, and Texas Department of Transportation, Defendants.* Cause No. D-1-GN-16-000942, in the 126th Judicial District Court, Travis County, Texas.

⁴ *TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.’S PLEA TO THE JURISDICTION AND, SUBJECT THERETO, ORIGINAL ANSWER* – Cause Number 16-0137CV, in the 87th District Court, Leon County, Texas, page 3.

Yet, well before they filed this response, TCR had already filed three lawsuits⁵ in Harris County alone for injunctive relief to force landowners to grant them access to their properties to conduct surveys and examinations.

This is a highly controversial project in Texas, with a vast majority of counties and citizens being opposed to a private corporation being given the right to exercise eminent domain authority for the purpose of private profits and foreign investments.

TCR has repeatedly hidden behind the cloak of trade secrets and confidentiality of a private corporation in refusing to release the financial viability analysis of their project. Yet, in their own filings before the STB, they readily admit that the financial viability of their project barely hangs by the thread of a fragile timeline and must receive exemptions and authority to begin eminent domain proceedings now, even before the EIS has been finalized and approved and the final route set⁶, otherwise the viability of their project would be threatened.

In fact, they state: “*Without guidance from the Board, state court litigation of this issue could significantly slow down Texas Central's property acquisition process. Such delays would have a cascading effect on Texas Central's overall schedule, adding costs and **potentially threatening the viability of this important project.**”⁷ (Emphasis added)*

Such representations should be a dire warning to the STB, as well as a dire warning to the FRA, TxDOT and all potential investors. Any project of this magnitude and novelty, by an unproven and inexperienced, newly formed railroad, that would be rendered unviable and unfeasible by significant delays in virtually any aspect (either singly or combined) of the completion of the NEPA EIS process requirements, the design, financing, acquisition of property, construction, unforeseen litigation, inability of contractors to meet scheduling, weather, or any number of other likely factors, is not a project that should receive anything less than the full scrutiny and evaluation of the governing bodies responsible for authorizing the project. If the viability of the project is not robust and able to withstand the inevitable and unavoidable unforeseen delays, it should not be authorized.

TCR’s arguments, in requesting the STB to issue an advisory opinion contrary to and reversing the ICC’s (its predecessor agency) position on eminent domain proceedings being considered as construction⁸ which first requires STB authorization because of cognizable injury to landowners, fall short for several different reasons.

First, such an advisory opinion, if issued, would likely have no legal validity and would be of no legal precedence, given the prior legal precedence, in State District Court litigation and would likely be challenged as to its admissibility. The landowner would have no realistic ability to challenge such an advisory opinion in a court of law.

⁵ Cause No. 201627731- 7, TCRI v HAYES, GREGORY W, 334th District Court, Harris County, Tx; Cause No. 201621839- 7, TCRI v SCHULTZ, BRUCE W et. al., 333rd District Court, Harris County, Tx; and Cause No. 201621875- 7, TCRI v DERRINGTON, WILLIAM L, 113th District Court, Harris County, Tx.

⁶ Petition for Clarification – Page 4, footnote 13, “*Texas Central recognizes that it may acquire property rights in locations not ultimately identified as the final alignment. Texas Central is willing to accept this risk because its construction schedule is central to its business model.*”

⁷ Petition for Clarification – Page 10.

⁸ Petition for Clarification – Page 8, footnote 31, “*The ICC in Nicholson approvingly cites language from a 1969 Fifth Circuit decision in which the Court of Appeals saw "no serious question that an attempt to condemn lands for the purpose of constructing new trackage ... constitutes construction within the meaning of [the Interstate Commerce Act] ."* Nicholson, 366”

Second, TCR argues that in Texas, the first phase of the condemnation proceedings only establishes a value of the property and therefore creates no cognizable injury to the landowner. And that despite the fact that after the conclusion of that first phase, TCR would legally have the authority to take possession of the property under certain conditions, TCR “promises” that they won’t.⁹ They make the claim that their “promise” that they won’t take possession therefore would result in no cognizable injury to the landowner. Such an argument is absurd.

Any landowner, faced with the prospect of a phase one condemnation proceeding against his property, would be forced to obtain very expensive legal counsel in order to protect his interests. The completion of a phase one proceeding, setting some abstract valuation on his property, and creating the prospect that possession of his property could be taken at any point in time by the condemning entity, subject only to a “promise” by such entity, would face an undeniable encumbrance on his property and his interests and a cloud on the title to his land. There is no question that the landowner would suffer real, cognizable injury over an indeterminate period of time that would be substantial.

Third, issuing a clarification or advisory opinion allowing TCR to begin condemnation proceedings against landowners in Texas, which would undeniably cause injury to the landowner, would be a reversal of the very principles of its previous position that construction includes activities that would cause such cognizable injury.

Making a request of the STB to issue such an advisory opinion, given the admission and declaration by TCR that with their current project schedule and without the STB issuing such an advisory opinion, that the viability of their whole project is threatened, is improper, and if granted, would likely create serious consequences for the STB. This is an attempt by TCR to coerce the STB into an ill-advised action because of TCR’s poor planning, scheduling and financial viability analysis, and ultimate admission of just how fragile their project is.

It would be an abandonment of the STB’s responsibilities if they were to issue such an advisory opinion or to exempt TCR and their project from the full application requirements for review and authorization for construction from the STB.

TCR has a dream, and, as a private entity whose motives are profit, are willing to gamble with outside investor money at the expense of the citizens of the State of Texas and this Country. They are trying to sell that dream, yet, even they admit that the viability of the entire project is so time sensitive that the likelihood of failure is great without extraordinary action on the part of the STB. The manner in which they have proceeded, especially here in Waller County, where their scoping process, “corridor” analysis, “alignment” alternative analysis, and failure to even come close to complying with the NEPA EIS requirements, is reprehensible, and indicative of an attempt to “fast-track” a fully less than viable and less than financially robust or well-planned project.

The consequences of failure, should they be allowed to proceed without the proper oversight and review of the STB and the FRA to insure a sound, safe, flexible, and financially robust and viable plan, will have serious long term ramifications. A project of this type has never been successfully completed in this country and in those countries where such projects have been completed, they have failed to even come close to being profitable.

⁹ Petition for Clarification – Page 8, “*Texas Central could take physical possession of property at the conclusion of the first phase of the eminent domain process if it complies with the statutory requirements, but is expressly agreeing not to do so.*”

For these reasons, I believe that it is important that the STB deny both the Petition for Exemption and especially, the Petition for Clarification.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Rick Welch". The signature is written in a cursive style with a prominent initial "R".

Rick Welch

Cc: (via email)

Certificate of Service

I hereby certify that on this 17th day of May, 2016, I have served a copy of the foregoing comments upon each of the following parties of record listed below, current as of the time of submission.

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