

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 36025**

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &  
TEXAS CENTRAL RAILROAD, LLC  
-AUTHORITY TO CONSTRUCT AND OPERATE-  
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV -  
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

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**PETITION FOR EXEMPTION**

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**PETITION FOR EXEMPTION**

Pursuant to 49 U.S.C. § 10502, Texas Central Railroad & Infrastructure, Inc. (“TCRI”) and Texas Central Railroad, LLC (“TCRR”) (collectively, “Petitioners”) submit this Petition for Exemption (the “Petition”) from the prior approval requirements of 49 U.S.C. § 10901 for Petitioners to construct and operate an approximately 240-mile high-speed passenger rail line between Dallas and Houston, Texas (the “Texas Central Line”). Petitioners also request an exemption from ongoing regulation under Subtitle IV of Title 49 once construction is completed and passenger service commences. As Petitioners explain below, the Texas Central Line will benefit the public and promote the national transportation policy by providing a safe, reliable, convenient and environmentally friendly travel option between Dallas/Ft. Worth and Houston, two of the fastest-growing metropolitan areas in the United States.

## **I. BACKGROUND**

### **A. Petitioners**

Petitioners TCRI and TCRR are wholly-owned subsidiaries of Texas Central Rail Holdings, LLC, which, in turn, is a subsidiary of Texas Central Partners, LLC (“TCP”) a Delaware limited liability company (hereinafter TCP, TCRI, TCRR and other affiliates, including Texas Central High-Speed Railway, LLC, are referred to as “Texas Central”).<sup>1</sup> TCRI will be responsible for constructing the tracks, stations, platforms and other infrastructure along the route. When completed, the Texas Central Line will be operated and maintained by TCRR and TCRI.<sup>2</sup>

### **B. The Texas Central Line**

Texas Central is developing an approximately 240-mile high-speed passenger rail line between Dallas and Houston, Texas—with an intermediate Brazos Valley stop serving Bryan-College Station and Huntsville, Texas—that will offer a safe and convenient transportation alternative for travelers between the Dallas/Ft. Worth and Houston metropolitan areas.<sup>3</sup> The Texas Central Line will be constructed and operated on a totally dedicated, grade separated, secure corridor. Based on projections of future market demand, Texas Central plans to operate up to 34 daily trains in each direction in its initial service plan, departing from both Dallas and

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<sup>1</sup> Verified Statement of Timothy B. Keith in Support of Petition for Exemption (“Keith V.S.”) ¶ 2.

<sup>2</sup> Keith V.S. ¶ 9.

<sup>3</sup> See Exhibit A (map of Texas Central Line). Exhibit A depicts the alignment alternatives under consideration. As explained below, the final alignment will be determined as part of the Environmental Impact Statement process.

Houston every half hour during peak travel time. Trains will operate at speeds up to 205 MPH, enabling Texas Central to achieve a transit time of less than 90 minutes between Dallas and Houston.<sup>4</sup>

As part of the route development, Texas Central identified two corridors for study in the Environmental Impact Statement (“EIS”) process led by the Federal Railroad Administration (“FRA”).<sup>5</sup> In August 2015, the FRA identified the Utility Corridor “as the only feasible end-to-end corridor based on operational, technological and environmental constraints.”<sup>6</sup> The FRA stated, “The Utility Corridor is the only corridor that demonstrates the potential to meet the [Project’s] purpose and technical requirements.”<sup>7</sup>

The alignment alternatives in the Utility Corridor would parallel existing electrical transmission lines for a significant portion of the route. The Utility Corridor offers a long, relatively straight routing alternative that would minimize the number of curves (thereby enhancing Texas Central’s ability to maintain constant train speeds) and reduce environmental impacts of construction.<sup>8</sup>

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<sup>4</sup> Keith V.S. ¶ 5.

<sup>5</sup> FRA initiated an EIS in June 2014. See *Environmental Impact Statement for Dallas-Houston High Speed Passenger Rail Corridor*, Federal Register Vol. 79, No. 122 (June 25, 2014) at 36123-36124.

<sup>6</sup> See United States Department of Transportation, Federal Railroad Administration, *FRA Completes High Speed Rail Corridor Alternatives Analysis* (September 14, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> See United States Department of Transportation, Federal Railroad Administration, *Dallas to Houston High Speed Rail Project Corridor Alternatives Analysis Technical Report* (August 10, 2015) at 15.

Petitioners currently anticipate that construction will begin in 2017. Petitioners plan to initiate passenger service as early as late 2021. The total cost of civil construction and the core system is estimated to be over \$10 billion, which is being privately developed by Texas Central.

**C. The Texas Central Line Will Serve An Important Public Need.**

Dallas/Ft. Worth and Houston are two of the nation's largest and fastest growing metropolitan areas. The Dallas-Fort Worth-Arlington and the Houston-The Woodlands-Sugar Land metropolitan statistical areas rank 4th and 5th, respectively, by population in the country.<sup>9</sup> Houston currently ranks as the 4th largest, and 3rd fastest growing, city in the United States. Dallas is the 9th largest city, and its rate of growth ranks 7th in the nation.<sup>10</sup> There currently is no direct passenger rail service between Dallas and Houston. Approximately 90% of travelers between the two cities make the journey by automobile. The current driving time via I-45 is a minimum of four hours each way.<sup>11</sup>

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<sup>9</sup> Ranking based on the United States Census Bureau, *Annual Estimates of Resident Population: April 1, 2010 to July 1, 2015—United States—Metropolitan Statistical Area; and for Puerto Rico 2015 Population Estimates*, available at [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP\\_2015\\_GCTPEPANNR.US24PR&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2015_GCTPEPANNR.US24PR&prodType=table).

<sup>10</sup> See [www.citymayors.com/gratis/uscities\\_100.html](http://www.citymayors.com/gratis/uscities_100.html); [www.citymayors.com/gratis/uscities\\_growth.html](http://www.citymayors.com/gratis/uscities_growth.html).

<sup>11</sup> Texas Transportation Institute, *Potential Development of an Intercity Passenger Transport System in Texas – Final Project Report* (published May 2010) (“*TTI Intercity Passenger Study*”) at 45, Table 20.

FRA has identified both Dallas/Ft. Worth and Houston as among the 10 U.S. cities with the most congested roads.<sup>12</sup> The Texas Transportation Institute (“TTI”) estimates that the number of cars traveling in the Dallas/Ft. Worth-Houston corridor is likely to exceed the capacity of the highway network by nearly 30% in 2035.<sup>13</sup> This would, in turn, increase the average driving time between the Dallas/Ft. Worth and Houston metropolitan areas to 6.5 hours by 2035.<sup>14</sup> The remaining ten percent of travel between Dallas/Ft. Worth and Houston takes place by air. Airlines offer frequent departures from both metropolitan areas. However, air travel can be unpredictable and stressful. While the gate-to-gate flight time between Dallas and Houston is approximately 65 minutes, the actual elapsed time from arrival at the origin airport to exit from the destination airport can be as much as three hours due to crowded check-in lines, airport security procedures and restrictions on carry-on luggage that require many passengers to check their bags. Air travelers experience frequent delays and flight cancellations due to weather conditions, mechanical issues, air traffic control system delays and the sheer number of flights arriving at and departing from airports in major cities like Dallas

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<sup>12</sup> See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 12, Map 2 (citing TTI *Urban Mobility Report* (2009)).

<sup>13</sup> TTI *Intercity Passenger Study* at 17, Table 3.

<sup>14</sup> *Id.* Based on these findings, TTI concluded that “if the population of the state continues to grow as forecast in the coming decades, additional intercity public transportation options such as intercity rail and express bus transit must be considered if TxDOT is to continue to fulfill its mission of efficient and effective movement of both people and goods.” *Id.* at 5.

and Houston.<sup>15</sup> Recent data indicate that on-time performance was only 80% on Houston-Dallas flights, and 80% on Dallas-Houston flights, for the period January 1 to December 31, 2015.<sup>16</sup>

The Texas Central Line will introduce a safe, reliable, convenient and productive mode of travel between the Dallas/Ft. Worth and Houston metropolitan areas. The line's design, construction, operation and maintenance will be based on the state-of-the-art fifth generation Shinkansen N700 Bullet train technology currently operated by Central Japan Railway Company ("JRC") on the Tokaido Shinkansen.<sup>17</sup> The Tokaido Shinkansen trains have operated in commercial service between Tokyo and Osaka, Japan for more than 50 years and have not experienced a single passenger fatality or injury due to a train accident such as a derailment or collision. Indeed, there have not been any train-to-train collisions or derailments on Tokaido Shinkansen's mainlines during more than five decades of service.<sup>18</sup> Operating on a dedicated, grade separated, secure corridor, Texas Central train service will be far safer than travel on the state's increasingly congested highways.

The Tokaido Shinkansen technology is exceptionally reliable and consistent. The average delay per train (including delays caused by external circumstances

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<sup>15</sup> Keith V.S. ¶ 16.

<sup>16</sup> See flight performance data from DAL to HOU and HOU to DAL at <http://apps.bts.gov/xml/ontimesummarystatistics/src/ddisp/OntimeSummarySelect.xml?tname=OntimeSummaryBothData>.

<sup>17</sup> Keith V.S. ¶ 6.

<sup>18</sup> See United States Department of Transportation, Federal Railroad Administration, *Vision for High-Speed Rail in America* (April 2009) at 3 ("the Tokaido Shinkansen trains have operated without a derailment or collision since the inception of operations in 1964.").

such as natural disasters) is less than one minute. Texas Central's dedicated rail corridor will enable it to deliver a level of on-time performance that is simply not possible via other modes of transportation. Operating at speeds up to 205 MPH, Texas Central trains are expected to achieve a total transit time of less than 90 minutes between Dallas and Houston.<sup>19</sup>

Texas Central's high-speed train service will be convenient—the Dallas and Houston stations will be located close to employment centers with high ridership capture, making the stations more accessible for customers (including business travelers, students, recreational passengers and persons seeking medical services in Dallas/Ft. Worth and Houston). Check-in and security procedures would be far less time-consuming than at busy airports. Passengers will be permitted to carry their luggage onboard, avoiding delays and the risk of lost bags at destination. Texas Central plans to offer amenities such as meal service and Wi-Fi to make the journey more productive and relaxing than travel by air or highway.

As FRA has observed:

The demand for rail passenger transportation depends on the performance of the system. Late passenger trains and inadequate amenities drive away customers, while on-time, frequent and comfortable trains draw increased patronage. Passengers switch to rail when the combination of the positive attributes (safety, speed, reliability, comfort, and convenience) outweighs the cost of transportation alternatives.<sup>20</sup>

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<sup>19</sup> Keith V.S. ¶ 5.

<sup>20</sup> See United States Department of Transportation, Federal Railroad Administration, *Preliminary National Rail Plan* (October 2009) at 7.

Petitioners anticipate that Texas Central's safe, efficient and convenient high-speed service will attract approximately four million riders annually by the year 2025. Ridership is expected to increase over a four-year "ramp up" period, as travelers become aware of the Texas Central service and its benefits. Petitioners anticipate that, by 2026, approximately 20% of all Dallas-Houston travelers will choose Texas Central's high-speed passenger service.<sup>21</sup>

Both USDOT and TxDOT have recognized the national benefits of introducing high-speed passenger rail service in heavily traveled transportation corridors such as Dallas-Houston. USDOT's *National Rail Plan* identifies the "Texas Triangle" consisting of Dallas, Houston and San Antonio (which contains most of Texas' major cities and close to 75% of the state's population) as one of America's emerging "mega-regions."<sup>22</sup> USDOT forecasts that, by 2050, 75% of the nation's population will live in such mega-regions.<sup>23</sup> The *National Rail Plan* identifies as a national goal to "connect communities with High-speed and Intercity Passenger Rail where population densities and competitive trip times create markets for success."<sup>24</sup> In particular, USDOT has found that "high-speed intercity

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<sup>21</sup> Keith V.S. ¶ 18.

<sup>22</sup> See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 5, Map 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 9.

passenger rail can play a critical role” in connecting cities that are up to 500 miles apart.<sup>25</sup>

As suggested by its consistency with the *National Rail Plan*, the Texas Central Line will also provide needed connectivity to the interstate passenger rail network. TxDOT has observed that

[t]he National Railroad Passenger Corporation (Amtrak) is currently the sole provider of intercity passenger rail service in Texas . . . . Amtrak currently serves most of the state’s major urban areas, although not all urban areas are directly connected.<sup>26</sup>

One of the most significant “gaps” in Amtrak’s route structure involves Texas’ two largest cities, Dallas and Houston. While certain Amtrak trains make stops in either Dallas or Houston, Amtrak does not provide direct service between those two cities.<sup>27</sup> The Texas Central Line will provide a needed rail connection between the Amtrak routes serving Dallas and Houston, respectively, thereby facilitating interstate rail travel. Thus, the Texas Central Line will “complete” the interstate railroad network serving the Texas mega-region; and as such, is a part of the interstate railroad network. Texas Central’s frequent train service will make it

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<sup>25</sup> See United States Department of Transportation, Federal Railroad Administration, *Vision for High-Speed Rail in America* (April 2009) at 2. See also United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 10. TxDOT has long identified Dallas-Houston as a corridor in which high-speed rail service can play a vital role. Texas Department of Transportation, *Texas Rail Plan* (revised May 12, 2014) at 4-4.

<sup>26</sup> *Id.* at 4-9.

<sup>27</sup> *Id.* at 4-11, Figure 4-4.

convenient for interstate passengers to coordinate travel on Texas Central with Amtrak's daily departures from Dallas and Houston.

The Texas Central Line will also create potential for connections with other future passenger rail systems. TxDOT and Oklahoma DOT are currently studying passenger rail service options for the 850-mile interstate corridor between Oklahoma City and South Texas.<sup>28</sup> That study includes an evaluation of potential rail service options that would connect Oklahoma City with the Dallas/Fort Worth area. TxDOT also established the Commission for High-Speed Rail<sup>29</sup> for the purpose of studying possible routes for a high-speed rail system between Dallas and Fort Worth (the so-called "Dallas – Fort Worth Core Express Service"). TxDOT and FRA are currently preparing an EIS for such a line.<sup>30</sup> As Texas Central's Chief Executive Officer, Timothy Keith, testifies, Petitioners welcome the opportunity to explore mutually beneficial cooperative arrangements with other passenger service providers to enhance the experience of interstate rail travelers.<sup>31</sup>

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<sup>28</sup> See Texas Department of Transportation, *Texas-Oklahoma Passenger Rail Study*, <http://www.txdot.gov/inside-txdot/projects/studies/statewide/texas-oklahoma-rail.html>. See also Texas Department of Transportation, *Texas Rail Plan* (revised May 12, 2014) at 4-8.

<sup>29</sup> See Ryan Poppe, *TxDOT Approves Creation of High-Speed Rail Commission*, TEXAS PUBLIC RADIO (January 30, 2014), available at <http://tpr.org/post/txdot-approves-creation-high-speed-rail-commission#stream/0>.

<sup>30</sup> See Texas Department of Transportation, *High-Speed Rail Study Between Dallas, Fort Worth Gets Federal Approval* (September 5, 2014). See also *Notice of Intent to Prepare an Environmental Impact Statement for Dallas-Houston High Speed Passenger Rail Corridor*, 79 Fed. Reg. 36123 (June 25, 2014).

<sup>31</sup> Keith V.S. ¶ 20.

In addition to connecting Texas' two largest cities and serving the two fastest growing metropolitan areas, the Texas Central Line will generate substantial economic benefits for the state. A high-speed rail connection between Dallas and Houston will improve the productivity of business people who travel between those cities on a regular basis. Petitioners project that construction of the Texas Central Line will create more than 10,000 jobs per year during the project's anticipated four-year construction phase. When Texas Central initiates service, its rail operations are projected to create approximately 1,000 permanent jobs. Development around Texas Central stations is likely to create even more employment opportunities, and to generate increased state, county and municipal sales and *ad valorem* tax revenues.<sup>32</sup> Texas Central estimates that its more than \$10 billion investment in the project's civil construction and the core system could spur \$36 billion in economic benefits, and generate nearly \$2.5 billion in tax revenues to the state, counties, local municipalities, school districts and other taxing entities, between 2015 and 2040.<sup>33</sup>

#### **D. Environmental Review**

FRA currently does not have comprehensive regulations governing a totally dedicated high-speed passenger rail operation based on accident avoidance principles. As such, Texas Central will petition the FRA for a rulemaking specific to the technology and operations planned for the Dallas-Houston corridor. Petitioners

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<sup>32</sup> Keith V.S. ¶¶ 21-22.

<sup>33</sup> See Insight Research Corporation, *Texas Central's High Speed Rail Corridor and Related Private Development Houston to Dallas/Fort Worth, Texas*, October 13, 2015.

have been engaged in discussions with FRA regarding the development of a Rule of Particular Applicability (“RPA”) to establish safety regulations specific to Texas Central’s services and operating environment.

FRA’s future regulatory action to approve the use of the Shinkansen technology by Texas Central constitutes a federal action and triggers an environmental review under NEPA.<sup>34</sup> In June 2014 the FRA initiated the Environmental Impact Statement as required by NEPA.<sup>35</sup> Petitioners anticipate that the Board will join the EIS process initiated by FRA as a cooperating agency. The Board has previously collaborated with FRA in reviewing the environmental impacts of proposed passenger rail construction projects, and it should take a similar approach here.<sup>36</sup>

The Texas Central Line represents an environmentally friendly alternative to travel via the increasingly congested highways serving the Dallas-Houston corridor. As stated above, Petitioners anticipate that the Texas Central service will reduce automobile traffic in the Dallas-Houston corridor, mitigating congestion and reducing carbon emissions. Moreover, travel by train is more fuel efficient than air

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<sup>34</sup> See United States Department of Transportation, Federal Railroad Administration, *Dallas to Houston High-Speed Rail Project Corridor Alternatives Analysis Technical Report* (August 10, 2015) at 2.

<sup>35</sup> See *Environmental Impact Statement for Dallas-Houston High Speed Passenger Rail Corridor*, Federal Register Vol. 79, No. 122 (June 25, 2014) at 36123-36124.

<sup>36</sup> See, e.g., *DesertXpress Enterprises, LLC – Construction & Operation Exemption – In Victorville, CA and Las Vegas (“DesertXpress”)*, FD 35544, at 4, n.6 (STB Oct. 20, 2011) (stating that FRA was lead agency in environmental review “because it has some jurisdiction and expertise related to high-speed train operations and railroad safety.”)

travel, particularly at the 240-mile distance between Dallas and Houston. An FRA comparison of energy consumption by mode indicated that intercity train service consumes 20% fewer BTUs per passenger mile than air service.<sup>37</sup>

Construction and operation of the Texas Central Line will not generate substantial adverse environmental impacts. Locating the line along an existing utility corridor (as proposed by Texas Central) would minimize displacement of other land uses and reduce environmental impacts during construction. Once the line becomes operational, the environmental impact of Texas Central's train service will be decidedly positive. The Shinkansen N700 Bullet train was designed to operate in Japan's most densely populated urban environments. Its design embodies decades of applied research, making it one of the quietest trains in the world.<sup>38</sup> Texas Central's ongoing train operations will not significantly increase existing levels of noise, vibration or pollutants. Any potential adverse impacts of the Texas Central Line are far outweighed by the environmental, health, safety and transportation benefits of introducing efficient high-speed passenger rail service in one of America's most congested (and fastest-growing) regions.

## **II. THE CONSTRUCTION AND OPERATION OF THE TEXAS CENTRAL LINE IS SUBJECT TO THE BOARD'S JURISDICTION.**

The STB has jurisdiction over rail transportation between a place in a state and a place in the same state where such transportation is carried out "as part of

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<sup>37</sup> See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 8, Figure 5.

<sup>38</sup> Keith V.S. ¶ 25.

the interstate rail network.”<sup>39</sup> The phrase “as part of the interstate rail network” was added to the statute to codify a “new, explicit statutory grant to the agency over intrastate rail transportation.”<sup>40</sup> With the passage of the ICC Termination Act of 1995 (“ICCTA”),<sup>41</sup> Congress expanded the Board’s jurisdiction to include rail lines located within a single state based upon their relationship to the interstate rail network.

The determination of whether a particular rail line is part of the interstate rail network is a fact-specific inquiry. Where a rail line located entirely within one state nonetheless provides connectivity with the interstate passenger rail network and creates new options for interstate rail travel, the line is deemed to be “part of the interstate rail network” subject to the Board’s jurisdiction. For example, in *CA High-Speed Rail*, the California High-Speed Rail Authority (the “Authority”) claimed that a proposed new high-speed passenger rail line was not subject to the Board’s jurisdiction because it would be located entirely within the state of California, would offer only intrastate service, and the Authority had no plans to participate in joint ticketing or other arrangements with Amtrak or other interstate rail service providers. The Board rejected those arguments, and unanimously held

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<sup>39</sup> 49 U.S.C. § 10501(a)(2)(A). See *California High-Speed Rail Authority—Construction Exemption—In Merced, Madera and Fresno Counties, Cal.* (“*CA High-Speed Rail*”), FD 35724, at 11-12 (STB June 13, 2013); *All Aboard Fla.—Operations LLC & All Aboard Fla.—Stations—Construction & Operation Exemption—in Miami, Fla. & Orlando, Fla.* (“*All Aboard Florida*”), FD 35680, at 3 (STB Dec. 21, 2012); *DesertXpress Enters., LLC—Pet. for Declaratory Order* (“*DesertXpress—Declaratory*”), FD 34914, at 9 (STB May 7, 2010).

<sup>40</sup> *DesertXpress—Declaratory*, at 9 (emphasis in original).

<sup>41</sup> ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803.

that the proposed line “will be constructed as part of the interstate rail network” based on the line’s “interconnectivity with Amtrak, which has long provided interstate passenger rail service.” *Id.* at 12. In particular, the Board noted that the proposed station locations for the new high-speed rail system created opportunities for interstate travelers to transfer between the line and existing Amtrak routes. *Id.* at 13. In contrast, where the rail line offers no possible connectivity to any other current or future rail line providing interstate transportation—and would therefore transport exclusively intrastate passengers—the proposed line would not be subject to the Board’s jurisdiction.<sup>42</sup>

In this case, Petitioners submit that once constructed, the proposed Texas Central Line would be “part of the interstate rail network” for at least five interrelated reasons.

First, the Texas Central Line is clearly a line of national (rather than solely intrastate) significance. Texas Central will operate the first true high-speed passenger rail service in the United States, offering up to 34 daily departures in its initial service plan, in each direction between two of the nation’s largest metropolitan areas. As discussed above, both USDOT and TxDOT have identified Dallas-Houston as a priority corridor for the development of a high-speed passenger

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<sup>42</sup> See, e.g., *All Aboard Florida*, slip op. at 3-4 (Board had no jurisdiction over a line that would offer connection only with an airport and would not be operated as part of the interstate rail network); *Fun Trains, Inc.—Operation Exemption—Lines of CSX Transp.*, FD 33472 (STB March 5, 1998) (STB lacked jurisdiction over a proposed excursion passenger train service in Florida).

rail network.<sup>43</sup> USDOT's *National Rail Plan* articulates a policy goal of "connect[ing] communities with High-speed and Intercity Passenger Rail where population densities and competitive trip times create markets for success."<sup>44</sup> As Texas Central's CEO, Timothy Keith, testifies: "The project is significant and will be a first of its kind; a privately sponsored high-speed passenger rail project—with private equity at risk during development, construction, and operation—that could transform how infrastructure projects of this kind are developed in the United States going forward."<sup>45</sup>

Second, construction of the Texas Central Line will significantly enhance the connectivity of the interstate passenger rail network. As Figure 1 shows, Amtrak's current route structure includes service to both Dallas and Houston, but Amtrak does not provide passenger service between those two major metropolitan areas.<sup>46</sup>

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<sup>43</sup> See United States Department of Transportation, Federal Railroad Administration, *Preliminary National Rail Plan* (October 2009) at 11, Figure 4; Texas Department of Transportation, *Texas Rail Plan* (revised May 12, 2014) at 4-4.

<sup>44</sup> See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 9.

<sup>45</sup> Keith V.S. ¶ 13.

<sup>46</sup> See also Texas Department of Transportation, *Texas Rail Plan* (revised May 12, 2014) at 4-11, Figure 4-4.

**FIGURE 1: THE INTERSTATE PASSENGER RAIL NETWORK**



The Texas Central Line will create a connection between the Amtrak routes serving Dallas and Houston, respectively, thereby facilitating interstate rail travel. Indeed, the Texas Central Line will “complete” the interstate passenger railroad network in the Texas mega-region. Texas Central’s frequent train service will make it convenient for interstate passengers to coordinate travel on Texas Central with

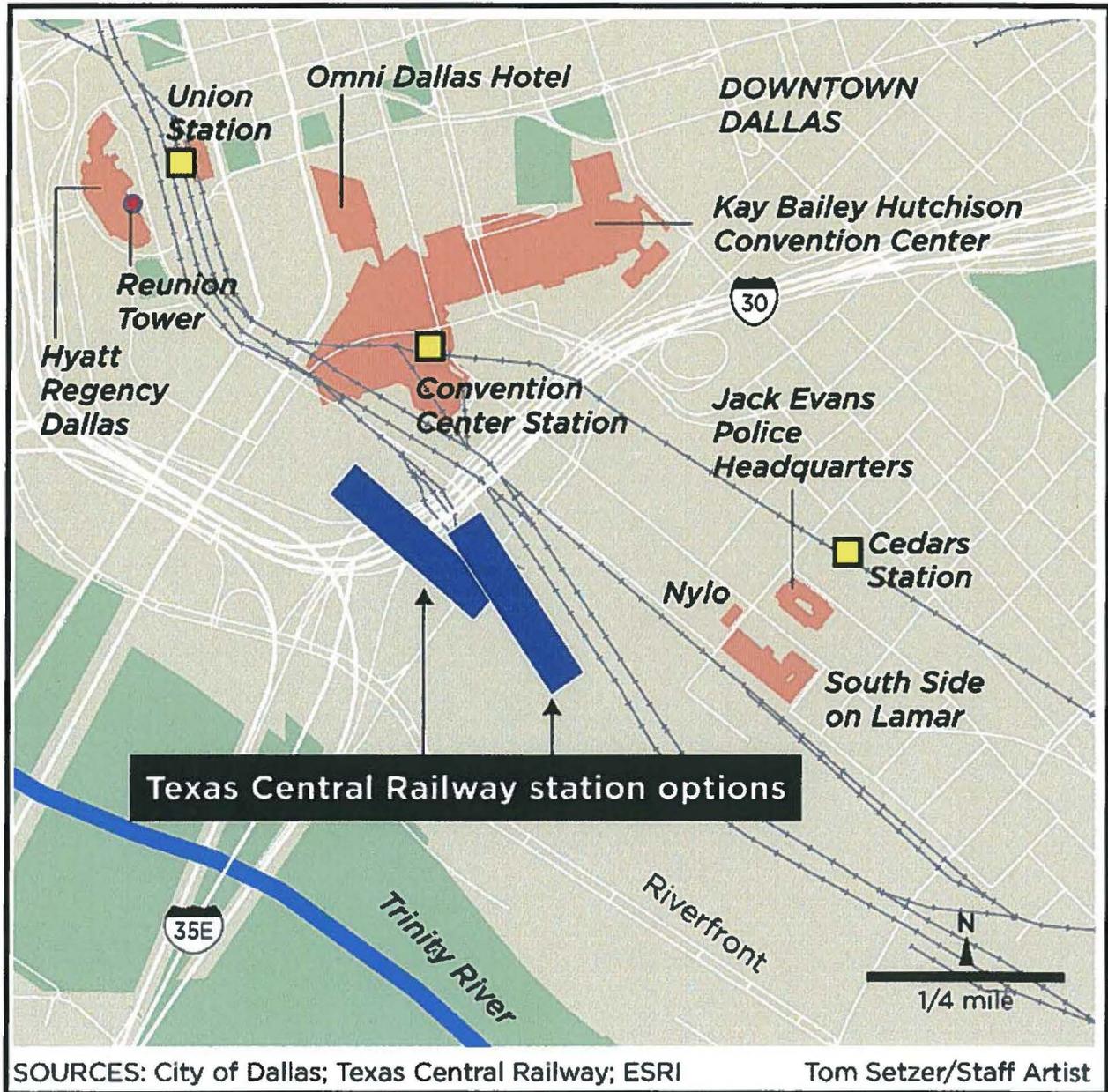
Amtrak departures from Dallas or Houston. Pedestrian walkways and/or shuttle service between stations (or cross-platform) could connect the Texas Central Line with Amtrak's existing train services, and (potentially) other high-speed passenger rail systems currently under consideration.

Third, as in *CA High-Speed Rail*, potential sites for Texas Central's stations are being evaluated (among other factors) for their connectivity with existing passenger rail services. Figure 2 depicts the two locations currently under consideration for Texas Central's Dallas station. As Figure 2 shows, both potential station sites are in close proximity to Dallas Union Station (where Amtrak trains arrive and depart) and to the existing rail lines operated by Dallas Area Rapid Transit ("DART"). While the precise location of Texas Central's Houston station has not been determined, a station site under consideration would be adjacent or close to the Northwest Transit Center, where travelers would have ready access to the Houston Amtrak station via a scheduled, short bus transfer. These Amtrak stations would function as "feeders" for the Texas Central Line, and vice-versa.<sup>47</sup>

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<sup>47</sup> See *CA High-Speed Rail*, slip op. at 6, 13.

**FIGURE 2: PROPOSED TCP STATIONS IN DALLAS**



Fourth, the Texas Central Line will create potential for connections with future high-speed passenger rail systems, including a possible line between Oklahoma City and South Texas currently being evaluated by the states of Texas and Oklahoma and a potential high-speed rail system between Dallas and Fort

Worth. Rail passengers utilizing those (and other) future high-speed rail services may be able to travel beyond Dallas to the Houston metropolitan area and (via Amtrak) to points beyond.

Finally, as Texas Central’s CEO, Timothy Keith, testifies, Petitioners “welcome[ ] the opportunity to serve the transportation needs of interstate rail passengers and enhance the experience of interstate rail travelers.”<sup>48</sup> It is too early in the project to define the precise nature and scope of such potential arrangements—indeed, it will be years before the Texas Central Line becomes operational. Nevertheless, Petitioners’ stated willingness to consider cooperative efforts in conjunction with passenger rail providers serving points beyond Texas distinguishes the Texas Central Line from those at issue in *All Aboard Florida* and *CA High-Speed Rail*, where the proposed operators expressly disavowed any desire or intention to hold themselves out to participate in transporting interstate passengers.

In short, it is readily apparent that the Texas Central Line will be “part of the interstate rail network.” Accordingly, the proposed construction and operation of the line are subject to the jurisdiction of the STB.

**III. THE BOARD SHOULD EXEMPT THE CONSTRUCTION AND OPERATION OF THE TEXAS CENTRAL LINE FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. § 10901.**

The construction and operation of a new rail line requires prior Board approval pursuant to 49 U.S.C. § 10901. However, 49 U.S.C. § 10502(a) provides

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<sup>48</sup> Keith V.S. ¶ 20.

that the Board “shall” exempt a proposed rail line construction from formal regulation under Section 10901 if it finds that (1) such regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.<sup>49</sup> Congress has admonished the Board to exercise its exemption authority broadly to reduce regulation wherever possible.<sup>50</sup>

The proposed construction and operation of the Texas Central Line easily satisfies the standards for exemption under Section 10502.

**A. An Exemption Will Promote The Rail Transportation Policy.**

The Interstate Commerce Act incorporates a general presumption that rail construction projects should be approved.<sup>51</sup> As the Board has explained,

[I]n enacting the ICC Termination Act of 1995, Pub. L. No. 104- 88, 109 Stat. 803, Congress intended to facilitate rail construction by changing the statutory standard from

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<sup>49</sup> See, e.g., *DesertXpress*, at 3; *Alaska Railroad Corp. – Construction and Operation Exemption – Rail Line between North Pole and Delta Junction, AK* (“*Alaska Railroad Construction*”), FD 34658, at 5-6 (STB Jan. 6, 2010).

<sup>50</sup> See, e.g., *American Trucking Associations v. ICC*, 656 F.2d 1115, 1119 (5th Cir. Unit A 1981) (explaining that the ICC was charged with the responsibility of actively pursuing exemptions for transportation and services that comply with the section's standards); H.R. Rep. No. 96-1430, at 105 (1980) (House Report on Staggers Act explaining that the ICC was charged with removing “as many as possible of the Commission’s restrictions”).

<sup>51</sup> See *Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, 1 S.T.B. 75, 79 (1996). This was not always the case—prior versions of the Act instructed the Interstate Commerce Commission to evaluate new construction proposals with care and not to approve new construction without finding that it was consistent with the public convenience and necessity. See *Alaska Railroad Construction*, slip op. at 5, n.4 (explaining statutory policy shift from pre-Staggers regime where ICC was “directed to scrutinize rail construction projects closely to prevent excess rail capacity”).

requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N. Under this new standard, proposed rail construction projects are to be given the benefit of the doubt.<sup>52</sup>

In short, “Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise.”<sup>53</sup>

Under the current statute, a party is not required to demonstrate a public need for a new rail line.<sup>54</sup> Rather, a party need only demonstrate that the proposed line is not inconsistent with the public convenience and necessity. Here, however, there is no question that construction of the proposed Texas Central Line is consistent with both the Rail Transportation Policy set forth in 49 U.S.C. § 10101 and with current federal policy encouraging the development of high-speed passenger rail services.

Granting an exemption for the construction and operation of the Texas Central Line will promote the Rail Transportation Policy in a variety of ways:

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<sup>52</sup> *The Burlington Northern & Santa Fe Ry. Co. – Construction and Operation Exemption – Seadrift and Kamey, TX*, FD 34003, at 4 (STB June 19, 2001) (emphasis added).

<sup>53</sup> *DesertXpress*, at 3. See also *Northern Plains Resource Council, Inc. v. STB*, 668 F.3d 1067, 1089-92 (9th Cir. 2011) (affirming Board’s interpretation of § 10901 finding a presumption that new construction should be approved).

<sup>54</sup> See *Illinois Central R.R. Co. – Construction and Operation Exemption – In East Baton Rouge Parish, LA*, FD 33877, at 2 (STB May 25, 2001) (“Neither under the exemption criteria of section 10502 nor under the prior approval requirements of section 10901 is there a requirement of a showing of public need for the facilities proposed to be constructed.”).

First, the Texas Central Line will help to “ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the general public.”<sup>55</sup> Construction and operation of the Texas Central Line clearly will contribute to the development of a sound rail transportation system by introducing a safe, efficient, comfortable and convenient transportation option between two of the nation’s largest cities. Indeed, the proposed Texas Central Line responds directly to the *National Rail Plan’s* goal of connecting communities with high-speed passenger rail service.<sup>56</sup> The Texas Central Line will also introduce an effective competitive alternative to air and highway travel in the Dallas-Houston transportation corridor.

Second, the Texas Central Line will “foster sound economic conditions in transportation and . . . ensure effective competition and coordination between rail carriers and other modes [of transportation].”<sup>57</sup> It will offer an efficient and cost-competitive option for persons traveling between two of the nation’s largest metropolitan areas (and points beyond). A high-speed rail connection between Dallas and Houston will improve productivity by creating a more convenient and reliable alternative to travel by automobile, bus or airline. It will also facilitate interstate rail travel by providing a needed link between Amtrak’s cross-country rail routes that stop at Dallas and Houston. Texas Central has stated its

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<sup>55</sup> 49 U.S.C. § 10101(4).

<sup>56</sup> See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 9.

<sup>57</sup> 49 U.S.C. § 10101(5).

willingness to serve the transportation needs of interstate rail passengers, and will promote coordination of services between rail carriers and other modes of transportation.

Third, the Texas Central Line will “encourage and promote energy conservation.”<sup>58</sup> Introducing high-speed passenger rail service between Dallas and Houston will mitigate traffic congestion in one of the nation’s busiest and most highly congested transportation corridors. The Texas Central Line will contribute to a reduction in carbon emissions by eliminating riders from the congested highways linking Dallas and Houston. As FRA has found, travel by train is likewise more fuel efficient than air travel, consuming 20% fewer BTUs per passenger mile than air service.<sup>59</sup>

Fourth, granting Petitioners’ request for an exemption will “minimize the need for Federal regulatory control over the rail transportation system” (49 U.S.C. § 10101(2)) by avoiding an unnecessarily cumbersome application process for the construction of the Texas Central Line. Petitioners’ proposal to construct the Texas Central Line—with private dollars—is manifestly consistent with USDOT’s stated policy objective of developing a robust network of high-speed passenger rail lines linking the nation’s major cities.<sup>60</sup> No legitimate policy objective would be served by

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<sup>58</sup> 49 U.S.C. § 10101(14).

<sup>59</sup> See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 8, Figure 5.

<sup>60</sup> See *id.* at 5, Map 1 and 9.

subjecting the proposed Texas Central Line to a lengthy application and approval process.

Fifth, granting the requested exemption will both “reduce regulatory barriers to entry into and exit from the industry”<sup>61</sup> and “provide for the expeditious handling and resolution of . . . proceedings required or permitted to be brought [before the Board].”<sup>62</sup> An exemption will minimize the time and administrative expense associated with Petitioners’ proposal, and enable them to construct the Texas Central Line and introduce an exciting new transportation option to millions of travelers sooner than would be possible if a formal application proceeding under Section 10901 were required. Regulatory barriers to the creation of new rail capacity should be minimized whenever possible in order to promote new transportation options.

In short, granting the requested exemption will promote the goals of the Rail Transportation Policy without generating any effects that would be counter to Section 10101’s mandates. Indeed, the Board (and the Interstate Commerce Commission before it) have repeatedly found that the construction and operation of additional rail lines promotes the Rail Transportation Policy by providing a greater range of transportation service options, promoting competition and encouraging all carriers to provide more efficient transportation service.<sup>63</sup>

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<sup>61</sup> 49 U.S.C. § 10101(7).

<sup>62</sup> 49 U.S.C. § 10101(15).

<sup>63</sup> See, e.g., *CA High-Speed Rail* at 22-23; *DesertXpress*, at 3-4; *Alaska Railroad* at 5-6; *Arizona Eastern Ry., Inc. – Construction Exemption – In Graham County, AZ*, FD 34836, at 3 (STB June 15, 2009); *Itasca County Regional Rail Authority – Petition*

**B. Regulation Of The Texas Central Line Is Not Needed To Protect Shippers From The Abuse Of Market Power.**

The second element of Section 10502's standard for granting an exemption is stated in the alternative: either "the transaction or service is of limited scope" or formal regulation of the transaction or service "is not needed to protect shippers from the abuse of market power."<sup>64</sup> The proposed construction and operation of the Texas Central Line clearly satisfies the latter test. Regulation of the Texas Central Line is unnecessary to protect freight shippers from an abuse of market power because Petitioners will not offer any freight transportation service. Likewise, construction of the Texas Central Line does not pose a threat to rail passengers, because there currently exists no passenger rail service in the Dallas-Houston transportation corridor that Petitioners plan to serve.

Nor is regulation of the Texas Central Line needed to protect persons traveling between Dallas and Houston via other modes of transportation from an abuse of market power. To the contrary, the Texas Central Line will enhance the competitive options available to both intrastate and interstate travelers, by introducing a safe, efficient, comfortable and convenient new rail service in the

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*for Exemption – Construction of a Line of Railroad in Itasca County, MN*, FD 34992, at 3 (STB Sept. 8, 2008); *Southwest Gulf R.R. Co. – Construction and Operation Exemption – Medina County, TX* ("Southwest Gulf R.R. Co."), FD 34284, at 2 (STB May 19, 2003); *Missouri Pacific R.R. Co – Construction and Operation Exemption – Harris and Chambers Counties, TX* ("Missouri Pacific R.R. Co."), FD 32571, 1995 WL 385792, at \*4 (STB June 30, 1995).

<sup>64</sup> 49 U.S.C. § 10502(a)(2).

Dallas-Houston corridor.<sup>65</sup> As discussed above, approximately 90% of all travel between Dallas and Houston occurs via automobile. The currently available alternatives to driving include traveling by bus or by air. Bus service between Dallas and Houston is offered by several carriers, including MegaBus and a new “luxury” bus operated by Vonlane.<sup>66</sup> Airlines likewise offer numerous daily flights between Dallas and Houston. Air travel currently accounts for approximately ten percent of all trips between Dallas and Houston.

Texas Central will offer an attractive competitive alternative to travel by automobile, bus or air. Riding a Texas Central train will enable travelers to avoid the delays, stress and inconvenience of driving along the congested I-45 highway corridor. Current airline passengers will be able to leave behind the crowded check-in lines, airport security procedures, restrictive baggage rules and frequent flight delays associated with air travel. Texas Central’s dedicated, grade separated, secure corridor will enable it to provide a safe, convenient and less stressful transportation service with consistent on-time performance. Nevertheless, Petitioners project that approximately 20% of Dallas-Houston travelers will choose Texas Central’s high-

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<sup>65</sup> See *DesertXpress* at 3 (approving exemption for new passenger line that would “provid[e] additional transportation options”); *Southwest Gulf R.R. Co.*, at 3 (concluding that “the proposed transaction will enhance competition by providing . . . a rail transportation option to go along with existing motor carrier options”).

<sup>66</sup> See D. Begley, *Luxury bus service aims to meet growing Houston-Dallas travel demand*, HOUSTON CHRONICLE (Apr. 16, 2015) (noting that the luxury bus company is “one of a handful looking for a foothold in the growing market of ferrying people among Texas’ metro areas”), available at <http://www.houstonchronicle.com/news/transportation/article/Company-banking-on-Texans-traveling-in-style-6204590.php>.

speed passenger service—approximately 80% of all travelers will continue to travel via competing transportation modes.

As these facts demonstrate, the introduction of a high-speed passenger rail option serving the Dallas-Houston corridor will not result in, or enable, any abuse of market power.<sup>67</sup> Accordingly, the Board should grant Petitioners an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the Texas Central Line.<sup>68</sup>

#### **IV. THE BOARD SHOULD EXEMPT PETITIONERS FROM REGULATION PURSUANT TO SUBTITLE IV.**

The Board should also grant Petitioners' request for an exemption from all of 49 U.S.C. Subtitle IV. The Board's evaluation of this element of the Petition is subject to the same statutory standards as Petitioners' request for an exemption from Section 10901 to construct and operate the Texas Central Line.<sup>69</sup> The Board and its predecessor have granted exemptions from Subtitle IV for a variety of rail

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<sup>67</sup> Because regulation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the transaction is of limited scope. *See, e.g., DesertXpress* at 4 n.5 (“Given our finding under 49 U.S.C. § 10502(a)(2)(B) regarding the probable effect of the proposed Line on market power, we need not determine under 49 U.S.C. § 10502(a)(2)(A) whether the transaction is limited in scope.”); *Missouri Pacific R.R. Co.* at \*4 (“The transaction appears to be of limited scope . . . but we need not make that finding here because regulation is not necessary to protect shippers from market power abuse.”).

<sup>68</sup> *See DesertXpress* at 4 (finding no market power abuse concerns for construction of new passenger line).

<sup>69</sup> *See* 49 U.S.C. § 10502(a). *See also, e.g., Great Canadian Railtour Co. Limited D/B/A Rocky Mountaineer – Petition for Exemption from 49 U.S.C. Subtitle IV* (“*Great Canadian Railtour*”), FD 35851, at 4 (STB June 3, 2015); *Logansport & Eel River Short-Line Co., Inc. – Exemption from 49 U.S.C. Subtitle IV*, FD 31367, 1989 ICC LEXIS 132 at \* 2 (May 1, 1989).

services and transactions, including passenger rail operations.<sup>70</sup> Petitioners should likewise be exempted from ongoing Board regulation.

**A. Economic Regulation Of Petitioners Is Not Necessary To Carry Out The Rail Transportation Policy.**

The Board should exempt Petitioners from ongoing regulation pursuant to Subtitle IV because such regulation is not necessary to carry out the Rail Transportation Policy set forth at 49 U.S.C. § 10101. The Board (and its predecessor, the ICC) have exempted a variety of passenger rail services from Subtitle IV regulation.<sup>71</sup> Indeed, the agency has found that exempting passenger operators from Subtitle IV regulation promotes (rather than undermines) the nation's Rail Transportation Policy objectives.<sup>72</sup> Formal regulation of Petitioners'

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<sup>70</sup> See, e.g., *Great Canadian Railtour* (passenger excursion service using Amtrak train and engine crews); *The Pullman Sleeping Car Co. LLC—Petition for Exemption from 49 U.S.C. Subtitle IV (“Pullman”)*, FD 35738 (STB Feb. 5, 2015) (passenger service on sleeping, dining, and lounge cars as part of Amtrak train consists); *American Orient Express Ry. Co. LLC – Petition for Declaratory Order*, FD 34502 (STB Dec. 29, 2005) (excursion service using Amtrak locomotives and Amtrak train and engine crews); *Metro North Commuter R.R. Co. – Acquisition Exemption – The Maybrook Line (“Metro North”)*, FD 32639, 1995 WL 11215 (Jan. 13, 1995) (commuter rail line); *Cape Cod & Hyannis R.R., Inc. – Exemption from 49 U.S.C. Subtitle IV (“Cape Cod & Hyannis”)*, FD 31229, 1988 ICC LEXIS 82 (March 21, 1988) (seasonal passenger and tour railroad service); *Alaska R.R. Co. – Exemption – From 49 U.S.C. Subtitle IV (“Alaska Railroad Subtitle IV Exemption”)*, FD 30740, 1985 ICC LEXIS 2 (Dec. 31, 1985) (Alaska passenger service with a modified winter schedule).

<sup>71</sup> See footnote 69 (and cases cited therein).

<sup>72</sup> See *Metro North*, at \* 3 (“Regulation of [the carrier] is also not necessary to carry out the goals of the RTP. Rather, the exemption will facilitate these goals.”); *Cape Cod & Hyannis* (“[E]xemption would foster the rail transportation policy by expediting regulatory decisions, minimizing the need for Federal regulatory control over the rail transportation system, . . . promoting an efficient and sound transportation system and encouraging efficient management.”).

high-speed rail operations is likewise unnecessary “because no vital interests of shippers (here, the traveling public), competition, or communities will be adversely affected.”<sup>73</sup>

Granting the requested exemption will “allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.”<sup>74</sup> Petitioners will face robust competition from both air carriers and bus operators for passengers traveling in the Dallas-Houston corridor. Travelers also have the option to make the journey by car—indeed, Petitioners project that the majority of trips between Dallas and Houston will continue to be via automobile. As USDOT’s *National Rail Plan* states, the success of Petitioners’ high-speed passenger rail service will depend upon the degree to which they can deliver safe, reliable and convenient service at a price that is competitive with other available transportation options.<sup>75</sup> The rates, schedules and service offerings of Petitioners’ prospective competitors (airlines and buses) are not subject to federal economic regulation. There is no legitimate policy reason to impose such regulatory burdens on Petitioners.<sup>76</sup> Texas Central’s operations will, of course, be subject to safety regulation by FRA.

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<sup>73</sup> See *Alaska Railroad Subtitle IV Exemption* at \* 5.

<sup>74</sup> 49 U.S.C. § 10101(1).

<sup>75</sup> See United States Department of Transportation, Federal Railroad Administration, *Preliminary National Rail Plan* (October 2009) at 7.

<sup>76</sup> See, e.g., *Great Canadian Railtour* at 5 (“Requiring Rocky Mountaineer to come to the Board for authority each time it proposes to change its service frequencies would be an unnecessary burden.”); *Pullman* at 4 (same).

Exempting Petitioners from Subtitle IV will “minimize the need for Federal regulatory control over the rail transportation system.”<sup>77</sup> In several prior decisions, the agency has found that an exemption for passenger rail services would promote this goal of the Rail Transportation Policy.<sup>78</sup> Subjecting Petitioners’ day-to-day operations to ongoing economic regulation would not produce any public benefits. To the contrary, hamstringing Petitioners (and other potential high-speed rail projects) with unnecessary regulatory requirements could undermine achievement of the federal policy encouraging the development of a network of high-speed passenger rail lines serving America’s major cities.<sup>79</sup>

The Rail Transportation Policy directs the Board to exercise its authority in a manner that “ensure[s] the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the general public.”<sup>80</sup> The introduction of the nation’s first true high-speed passenger rail system in the busy Dallas-Houston transportation corridor will, by definition, contribute to the development of a sound

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<sup>77</sup> 49 U.S.C. § 10101(2).

<sup>78</sup> See, e.g., *Great Canadian Railtour* at 4 (exempting passenger service is consistent with Section 10101(2) because regulatory control is unnecessary); *Pullman* at 4 (same). See also *Metro North* at \*3 (“Exemption will expedite regulatory decisions...”).

<sup>79</sup> See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 5, Maps 1 and 9.

<sup>80</sup> 49 U.S.C. § 10101(4).

rail transportation system.<sup>81</sup> It will also address a critical need for connectivity in the interstate rail network. Granting the requested Subtitle IV exemption will allow Petitioners to compete more effectively with other (unregulated) modes of transportation for passengers traveling in the Dallas-Houston corridor. For the same reasons, exempting Petitioners from Subtitle IV regulation will “foster sound economic conditions in transportation and . . . ensure effective competition and coordination between rail carriers and other modes [of transportation].”<sup>82</sup>

As discussed above, the Texas Central Line will promote the Rail Transportation Policy goal of energy conservation.<sup>83</sup> Petitioners’ high-speed passenger rail service between Dallas and Houston will mitigate traffic congestion in one of the nation’s busiest and most heavily traveled transportation corridors, and will consume less energy than travel by air or highway. The Board has previously found that exempting passenger rail services promotes energy conservation.<sup>84</sup>

As is often the case in connection with proposed exemptions involving passenger operations, other aspects of the Rail Transportation Policy would not be

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<sup>81</sup> See *Metro North* at \*3 (transaction at issue “will also help ensure the development and continuation of a sound rail transportation system to meet the needs of the public.”); *BG & CM R.R., Inc. – Exemption from 49 U.S.C. Subtitle IV*, FD 34399, at 3 (STB Oct. 17, 3003) (exemption will “ensure the development and continuation of a sound rail transportation system with effective competition with other modes of transportation to meet the needs of the public.”).

<sup>82</sup> See, e.g., *Great Canadian Raitour* at 5 (“an exemption would foster sound economic conditions...”); *Pullman* at 4 (same).

<sup>83</sup> See 49 U.S.C. § 10101(14).

<sup>84</sup> *Orange County Transportation Authority et al. – Acquisition and Exemption – The Atchison, Topeka & Santa Fe Ry. Co.*, FD 32173, at 4-5 (STB March 12, 1997).

adversely affected by granting the requested exemption.<sup>85</sup> Therefore, the Board should find that ongoing regulation of Petitioners pursuant to Subtitle IV is not necessary to promote the Rail Transportation Policy.

**B. Economic Regulation Of Petitioners Is Not Needed To Protect Shippers From The Abuse Of Market Power.**

In *Pullman* (at 4), the Board found that the proposed service would not threaten an abuse of market power because “customers have many other transportation options available to them (*i.e.*, other luxury passenger service, numerous flights, charter bus trips, etc.).”<sup>86</sup> The same conclusion is warranted here. Petitioners’ high-speed rail service will not result in any competitive harm—to the contrary, it will enhance competition by introducing a safe, efficient, comfortable and convenient new transportation alternative in the Dallas-Houston corridor. Petitioners will face vigorous competition from airlines and buses for those travelers who choose not to drive between the Dallas/Ft. Worth and Houston metropolitan areas. Indeed, Vonlane, which recently initiated a “luxury” bus service between Dallas and Houston, predicted that a high-speed rail service would be its “fiercest

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<sup>85</sup> See *Great Canadian Raitour* at 5; see also *Pullman* at 4; *Cape Cod & Hyannis* at \* 4.

<sup>86</sup> See also *Great Canadian Raitour* at 5 (“[S]ervice would not result in market power abuse as the record indicates that customers have many other transportation options available to them (*i.e.*, other passenger services, travel by air carrier, charter bus trips, etc.); *Cape Cod & Hyannis* at \* 4 (“[C]arriers compete with other passenger modes”); *Alaska Railroad Subtitle IV Exemption* at \* 6 (“Moreover, since the affected public sector has transportation alternatives in both an all-weather highway and superior air service between Anchorage and Fairbanks, regulation is not necessary to protect train passengers from an abuse of market power”).

competitor” in the corridor.<sup>87</sup> Economic regulation of Petitioners’ rates, schedules, station stops and service offerings is not necessary to prevent an abuse of market power, because they will not possess any market power.

In short, the Board should exempt Petitioners from all regulatory requirements under Subtitle IV of Title 49.

### CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board grant this Petition and issue a decision (1) exempting the construction and operation of the Texas Central Line from the prior approval requirements of 49 U.S.C. § 10901 and (2) exempting Petitioners from ongoing regulation under Subtitle IV of Title 49 once construction is completed and passenger service commences.

Respectfully submitted,

  
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Dated: April 19, 2016

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<sup>87</sup> See D. Begley, *Luxury bus service aims to meet growing Houston-Dallas travel demand* HOUSTON CHRONICLE (Apr. 16, 2015), available at <http://www.houstonchronicle.com/news/transportation/article/Company-banking-on-Texans-traveling-in-style-6204590.php>.

# **Exhibit A**

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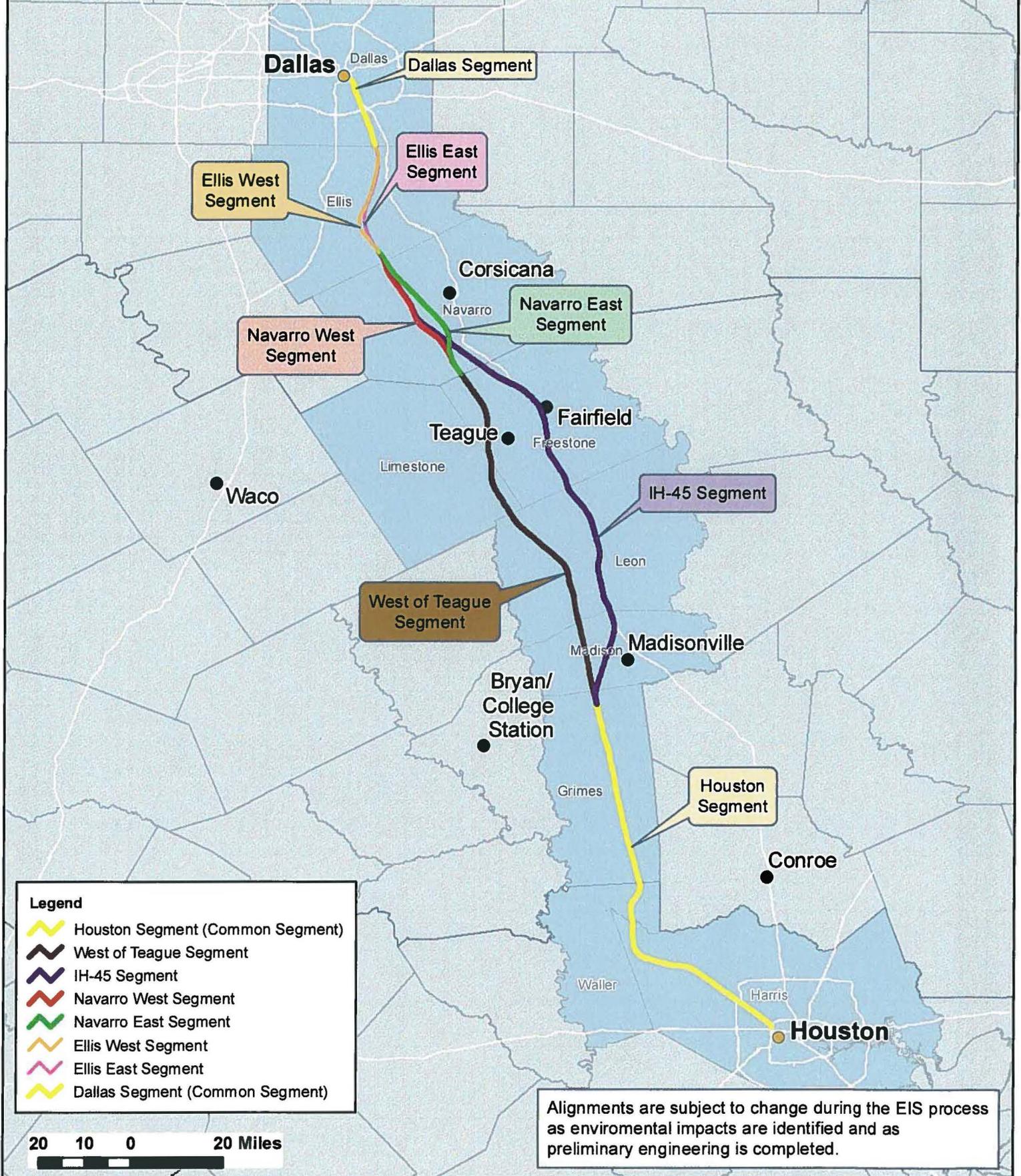
**Finance Docket No. 36025**

***TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &  
TEXAS CENTRAL RAILROAD, LLC  
-AUTHORITY TO CONSTRUCT AND OPERATE-  
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV  
- PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX***



# Texas Central Line Alignment Alternatives

(as of March 2016)



**Legend**

- Houston Segment (Common Segment)
- West of Teague Segment
- IH-45 Segment
- Navarro West Segment
- Navarro East Segment
- Ellis West Segment
- Ellis East Segment
- Dallas Segment (Common Segment)



Alignments are subject to change during the EIS process as environmental impacts are identified and as preliminary engineering is completed.

# **Verified Statement of Timothy B. Keith In Support of Petition for Exemption**

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**Finance Docket No. 36025**

***TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &  
TEXAS CENTRAL RAILROAD, LLC  
-AUTHORITY TO CONSTRUCT AND OPERATE-  
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV  
- PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX***

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 36025**

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &  
TEXAS CENTRAL RAILROAD, LLC  
-AUTHORITY TO CONSTRUCT AND OPERATE-  
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV -  
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

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**VERIFIED STATEMENT OF TIMOTHY B. KEITH  
IN SUPPORT OF PETITION FOR EXEMPTION**

1. My name is Timothy B. Keith. I am Chief Executive Officer (“CEO”) of Texas Central Partners, LLC (“TCP”), the parent company of Texas Central Railroad & Infrastructure, Inc. (“TCRI”) and Texas Central Railroad, LLC (“TCRR”) (hereinafter TCP, TCRI, TCRR and other affiliates, including Texas Central High-Speed Railway, LLC, are referred to as “Texas Central”). My business address is 1409 South Lamar Street, Suite 1022, Dallas, TX 75215.

2. Prior to assuming my position as CEO of Texas Central in June 2015, I served as Chief Investment Officer of HKS Capital Advisors, LLC, an investment advisory firm with a focus on private enterprise transactions. Between 2000 and 2010, I held various senior executive positions (including Global CEO, Infrastructure Investments) with RREEF/Deutsche Bank Alternative Investments, a New York-based global alternative asset management firm. As Global CEO of RREEF/Deutsche Bank Infrastructure, I had responsibility for managing the worldwide operations of the firm’s infrastructure funds management businesses.

I also served as CEO of Cabot Industrial Trust after its privatization on behalf of RREEF clients.

3. I am submitting this Verified Statement in support of the Petition for Exemption filed by TCRI and TCRR (collectively, "Petitioners") for an exemption (i) from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a high speed passenger rail line between Dallas and Houston, Texas, with an intermediate Brazos Valley stop serving Bryan-College Station and Huntsville, Texas (the "Texas Central Line") and (ii) from regulation pursuant to Subtitle IV of Title 49 upon completion of construction and the commencement of operations. As my testimony demonstrates, the Texas Central Line will introduce a reliable, safe and efficient new transportation option linking Dallas/Ft. Worth and Houston, two of the largest and fastest growing metropolitan areas in the United States.

**Background on the Texas Central Line.**

4. Texas Central is developing a 240-mile high-speed passenger rail line between Dallas and Houston that will offer a safe and convenient transportation alternative for travelers between the Dallas/Ft. Worth and Houston metropolitan areas. This rail line, the first true high-speed rail service in the United States, will connect two of the nation's largest cities and provide a critical link in the general system of rail transportation.

5. The Texas Central Line will be constructed and operated on a totally dedicated, grade-separated, secure corridor. Texas Central will offer frequent high-speed train service consisting of approximately 34 daily trains in each direction, based on projections of future market demand. Trains will operate at speeds up to

205 MPH, enabling Texas Central to achieve a journey time of less than 90 minutes between Dallas and Houston.

6. The Texas Central Line will be designed, constructed, operated and maintained using a total system concept based on the proven, state-of-the-art fifth generation Shinkansen N700 Bullet train technology currently operated by Central Japan Railway Company (“JRC”) on the Tokaido Shinkansen. The Tokaido Shinkansen trains have operated in commercial service between Tokyo and Osaka, Japan for more than 50 years without a single passenger fatality or injury due to a train accident such as a derailment or collision. Indeed, the Tokaido Shinkansen has not experienced any train-to-train collisions or derailments on its mainlines during more than five decades of service.<sup>1</sup> The Tokaido Shinkansen service is extremely reliable and consistent—the average annual delay per train (including delays caused by external factors such as natural disasters) is less than one minute. Like the proposed Texas Central Line, the Shinkansen system in Japan operates on a completely dedicated right-of-way with no at-grade crossings.

7. In mid-2014, the Federal Railroad Administration (“FRA”) as lead agency initiated the project’s environmental review pursuant to the National Environmental Policy Act (“NEPA”). Based on corridor-level alternatives identified by Texas Central, FRA identified and evaluated different corridors for potential route alignments, identifying the Utility Corridor as “the only feasible end-to-end

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<sup>1</sup> See United States Department of Transportation, Federal Railroad Administration, *Vision for High-Speed Rail in America* (April 2009) at 3 (“the Tokaido Shinkansen trains have operated without a derailment or collision since the inception of operations in 1964.”).

corridor based on operational, technological and environmental constraints. The Utility Corridor is the only corridor that demonstrates the potential to meet [the Project's] purpose and technical requirements.”<sup>2</sup>

8. The alignment alternatives in the Utility Corridor would parallel existing electrical transmission lines for a significant portion of the route (hence, the “Utility Corridor”) and are designated for further study. The Utility Corridor offers a long, relatively straight alignment option that would minimize the number of curves along the route (thereby enhancing the ability to maintain constant train speeds) and reduce environmental impacts of construction and operation.<sup>3</sup>

9. TCRI will be responsible for constructing the tracks, stations, platforms and other required infrastructure along the route. We currently anticipate that construction will begin in 2017. When completed, the Texas Central Line will be operated and maintained by TCRR and TCRI.

10. Petitioners hope to complete construction and to initiate passenger service by late 2021. The total cost of civil construction and the core system is estimated to be over \$10 billion, which is being privately developed by Texas Central.

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<sup>2</sup> See United States Department of Transportation, Federal Railroad Administration, *FRA Completes High Speed Rail Corridor Alternatives Analysis* (September 14, 2015).

<sup>3</sup> See United States Department of Transportation, Federal Railroad Administration, *Dallas to Houston High Speed Rail Project Corridor Alternatives Analysis Technical Report* (August 10, 2015) at 15.

11. Texas Central is working closely with FRA to obtain the environmental approval and to develop a regulatory framework for safety addressing the design, operations and maintenance of the proposed high-speed rail system. Current FRA regulations do not adequately address a totally dedicated high-speed passenger rail operation based on accident avoidance principles. As such, Texas Central will petition the FRA for a rulemaking specific to the technology and operations planned for the Dallas-Houston corridor. Texas Central and FRA have been engaged in discussions since Spring 2014 regarding the development of a Rule of Particular Applicability (“RPA”) to establish the necessary safety regulations specific to Texas Central’s services and operating environment.

12. FRA’s future regulatory action to approve the proposed use of the Shinkansen technology triggers an environmental review under NEPA. FRA initiated an Environmental Impact Statement (“EIS”) pursuant to the NEPA process in June 2014. Petitioners are working with FRA to complete an EIS. Texas Central anticipates that a Draft EIS will be issued by FRA in mid-2016.

13. The Texas Central Line is a project of national significance. The line will be the first true high-speed passenger rail service in the United States, and will connect two of the nation’s largest (and fastest growing) cities. The project is significant and will be a first of its kind—a privately developed high-speed passenger rail project that could transform how infrastructure projects of this kind are developed in the United States going forward.

### **The Texas Central Line Addresses An Important Public Need.**

14. The Texas Central Line offers a compelling alternative to existing modes of transportation in an increasingly congested travel corridor. Dallas/Ft. Worth and Houston are two of the fastest-growing metropolitan areas in the United States, and both are located in one of the fastest-growing states in the nation (in terms of both population and economic growth).

15. There currently is no direct passenger rail service between Dallas and Houston. Approximately 90% of travelers between the two cities make the journey by automobile. The current driving time via I-45 is a minimum of four hours each way. Studies project that future population growth in the Dallas/Ft. Worth and Houston metropolitan areas will result in a substantial increase in driving time, as more automobiles are added to already congested roads. Average automobile transit time between the two regions is expected to increase to 6.5 hours by 2035. The average automobile travel speed is likewise projected to decrease from 59 MPH to 39 MPH by 2035.<sup>4</sup>

16. The remaining ten percent of travel between Dallas/Ft. Worth and Houston takes place by air. Airlines offer frequent departures from both cities. However, air travel can be unpredictable and stressful. While the gate-to-gate flight time between Dallas/Ft. Worth and Houston is approximately 65 minutes, the actual elapsed time from arrival at the origin airport to exit from the destination

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<sup>4</sup> Texas Transportation Institute, *Potential Development of an Intercity Passenger Transit System in Texas – Final Project Report* (published May 2010) (“*TTI Intercity Passenger Study*”) at 17, Table 3.

airport can be as much as three hours due to crowded check-in lines, airport security procedures, and restrictions on carry-on luggage that require many passengers to check their bags. Moreover, air travelers experience frequent delays and flight cancellations due to weather conditions, mechanical issues, air traffic control system delays and the sheer number of flights arriving at and departing from airports in major cities like Dallas/Ft. Worth and Houston. Recent data indicate that on-time performance was 80% on Houston-Dallas flights, and 80% on Dallas-Houston flights, for the period January 1 to December 31, 2015.<sup>5</sup>

17. The Texas Central Line addresses the need for an efficient, reliable, safe and productive mode of travel between the Dallas/Ft. Worth and Houston metropolitan areas. Texas Central will offer frequent departures from both Dallas and Houston. Stations will be located closer to the center city and employment centers than the airports serving Dallas/Ft. Worth and Houston, making access to rail service more convenient. Available Wi-Fi and food service will make the journey more productive and relaxing than travel by air or highway. Texas Central's dedicated rail corridor will enable it to deliver a level of on-time performance that is simply not achievable via congested highways and busy airports.

18. Texas Central anticipates that the high-speed service will attract approximately four million riders annually by the year 2025. As with other

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<sup>5</sup> See flight performance data from DAL to HOU and HOU to DAL at <http://apps.bts.gov/xml/ontimesummarystatistics/src/ddisp/OntimeSummarySelect.xml?tname=OntimeSummaryBothData>.

“greenfield” transportation projects, ridership will increase over time as travelers become aware of the new Texas Central service and its benefits. A four-year ramp up period is projected. By 2026, Texas Central expects to capture an approximate 20% share of the Dallas-Houston travel market.

19. The proposed Texas Central Line will also provide needed connectivity to the interstate passenger rail network. Amtrak serves many of Texas’ major cities, but its route structure does not provide service connecting those urban areas.<sup>6</sup> In particular, while certain Amtrak trains make stops in either Dallas or Houston, Amtrak does not offer direct service between those two cities.<sup>7</sup> The Texas Central Line will complete the general railroad network between these two cities.

20. Construction of the Texas Central Line also creates the potential for connections with other future passenger rail systems, including the proposed Dallas – Ft. Worth Core Express Service, and the 850-mile corridor between Oklahoma City and South Texas currently under consideration. Texas Central welcomes the opportunity to serve the transportation needs of interstate rail passengers and enhance the experience of interstate rail travelers.

21. The Texas Central Line will generate significant economic benefits for the communities that it serves. A high-speed rail connection between Dallas and Houston will improve the productivity of the many business people who travel

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<sup>6</sup> See Texas Department of Transportation, *Texas Rail Plan* (revised May 12, 2014) at 4-9 (“Amtrak currently serves most of the state’s major urban areas, although not all major urban areas are directly connected.”).

<sup>7</sup> See Petition for Exemption, Figure 1.

between those cities on a regular basis. The \$10 billion investment in the project's design and construction could spur a \$36 billion boost to the Texas economy from 2015 to 2040. Between now and 2040, we estimate the project (as a private entity and therefore a taxpayer) could be the source of nearly \$2.5 billion in tax revenues to the state, counties, local municipalities, school districts and other taxing entities.

22. We expect that construction of the Texas Central Line will create more than 10,000 jobs per year during each of the project's anticipated four years of peak construction. When the Texas Central Line becomes operational, we project that Texas Central's rail operations will create approximately 1,000 permanent jobs. Development around Texas Central stations is likely to generate even more employment opportunities along with increased municipal/county/state revenues from sales and *ad valorem* taxes. Texas Central's economic impact study estimates that the private development related to the project will create approximately 14,000 direct jobs and 21,000 indirect jobs in private development related to the project will be created.

#### **The Texas Central Line Will Benefit The Environment.**

23. The Texas Central Line represents an environmentally friendly alternative to travel via the state's congested highways. We anticipate that the Texas Central service will reduce automobile travel in the Dallas-Houston corridor, mitigating traffic congestion and reducing carbon emissions. Moreover, travel by train is more fuel efficient than air travel, particularly at the 240-mile distance between Dallas and Houston. A comparison of JRC's Tokaido Shinkansen and airplanes (Boeing 777-200) indicates that the Tokaido Shinkansen generates

approximately 1/12 of the CO<sub>2</sub> emissions per passenger seat when travelling between Tokyo and Osaka in Japan.<sup>8</sup>

24. Construction and operation of the Texas Central Line will have a positive impact on the environment. Locating the line along an existing utility corridor (as proposed by Texas Central) would minimize displacement of other land uses and reduce environmental impacts during construction. Once the line becomes operational, the environmental impact of Texas Central's train service will be decidedly positive.

25. The Shinkansen N700 Bullet train was designed to operate in some of Japan's most densely populated urban environments. Its design embodies decades of applied research, making it one of the quietest trains in the world. Texas Central's ongoing train operations will not significantly increase existing levels of noise, vibration or pollutants. Any potential adverse impacts of the Texas Central Line are far outweighed by the environmental, health, safety and transportation benefits generated by introducing efficient high-speed passenger rail service in one of America's most congested (and fastest-growing) regions.

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<sup>8</sup> Central Japan Railway Company, Annual Report 2014: For the Year Ended March 31, 2014, at 22.

## VERIFICATION

I, Timothy B. Keith, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 19th day of April, 2016.



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Timothy B. Keith