

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35724 (Sub-No. 1)

CALIFORNIA HIGH-SPEED RAIL AUTHORITY
—CONSTRUCTION EXEMPTION—
IN FRESNO, KINGS, TULARE, AND KERN COUNTIES, CAL.

Decided: March 6, 2014

By petition filed on September 26, 2013, California High-Speed Rail Authority (Authority), a state agency formed in 1996, seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 for authority to construct an approximately 114-mile high-speed passenger rail line between Fresno and Bakersfield, Cal. (the Line).

The Line is the second of nine segments of the planned California High-Speed Train System (HST System), which would, when completed, provide high-speed intercity passenger rail service over more than 800 miles of new rail line throughout California. The complete system would connect the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the “Inland Empire” (i.e., the region east of the Los Angeles metropolitan area), Orange County, and San Diego.¹ The Authority states that it plans to contract with a passenger rail operator to commence HST System operations once it has completed construction of the portion of the HST system between Merced and the San Fernando Valley, which includes the Line.

The Board has extended the period for commenting on the transportation merits of the proposed transaction three times. Because the original October 16, 2013 deadline for interested persons to comment on the transportation merits fell during last fall’s partial government shutdown, the Board late last year extended that deadline by nearly 10 weeks, to December 24, 2013.² Thereafter, at the request of a number of parties, the Board extended the comment deadline by more than seven additional weeks, to February 14, 2014.³ Finally, because of the

¹ Last year the Board granted an exemption (with Vice Chairman Begeman dissenting), for construction of the first segment of the HST System, between Merced and Fresno, Cal. See Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera & Fresno Cntys., Cal., FD 35724 (STB served June 13, 2013) (the Merced-to-Fresno proceeding).

² See Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal., FD 35724 (Sub-No. 1) (STB served Dec. 4, 2013).

³ See Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal., FD 35724 (Sub-No. 1) (STB served Dec. 20, 2013).

Authority's delay in serving its petition on parties to the Merced-to-Fresno proceeding as directed by the Board, the comment deadline was extended another three weeks, to March 7, 2014.⁴

On February 28, 2014, the Community Coalition on High-Speed Rail (CC-HSR) requested a further extension of the comment period. CC-HSR notes that two rulings of the Sacramento Superior Court affecting funding for the California HST System are under review before the California Third District Court of Appeal. CC-HSR asserts that an extension of the comment deadline is warranted because the pending California state court litigation renders uncertain the Authority's ability and plans to finance and build the portion of the California HST System that includes the Line. CC-HSR argues that "[u]nder the circumstances, to require definitive responses from persons opposed to the Authority's exemption petition would be unrealistic, unfair and not likely helpful to this Board."⁵ CC-HSR therefore requests that the deadline for comments on the transportation merits of the proposed transaction be postponed until "15-20 days after the decision of the Third District Court of Appeal on the matters now pending before that court," or, alternatively, "to a date certain in early May of 2014 that it could adjust as needed."⁶

On March 5, 2014, the Authority filed a reply, requesting that the Board deny CC-HSR's request.

We have considered CC-HSR's request for further extension of the comment period but are unable to reach a majority decision on its request. Accordingly, the request cannot be granted, and the current comment deadline, March 7, 2014, remains in effect.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CC-HSR's petition to extend the comment deadline cannot be granted, as the Board was unable to reach a majority.

⁴ See Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal., FD 35724 (Sub-No. 1) (STB served Feb. 4, 2014).

⁵ CC-HSR letter at 1 (filed Feb. 28, 2014).

⁶ Id. at 3.

2. This decision is effective on its service date.

By the Board, Chairman Elliott and Vice Chairman Begeman. Chairman Elliott commented with a separate expression and Vice Chairman Begeman commented with a separate expression.

CHAIRMAN ELLIOTT, commenting:

I concur in the result here, as I would vote to deny CC-HSR's request for a further extension of the comment deadline until 15-20 days after a California state court rules or another date in early May that the Board "could adjust as needed." By the current deadline of March 7, the public will have had more than five months from the date the Authority's petition was filed to develop and submit comments on the transportation merits of the proposed construction, and more than eight times the standard comment period of 20 days. See 49 C.F.R. § 1104.13(a). If interested persons view the issues in the California state court proceedings as relevant here, they may raise those issues in their comments to the Board even if the state court issues are not resolved. Moreover, the Board's authority is permissive; were the exemption to be granted, it would not mean that the proposed construction must, or necessarily would, proceed in any event.

VICE CHAIRMAN BEGEMAN, commenting:

I support full public participation in this proceeding. As such, it is unfortunate that the Board cannot agree to extend the comment period on the proposed Fresno-to-Bakersfield Line construction as requested by the Community Coalition on High-Speed Rail. An extension of the current deadline on the project's transportation merits would be appropriate, particularly given the growing controversy over this project and pending action in state court regarding the project's future.

Since the California High-Speed Rail Authority came to the Board last March, I have voiced my concerns over the Board's rush to approve segments of the project without undertaking a full review of the key aspects of the segment at issue, including financial fitness. My concerns about the project have only deepened in the past months given the growing controversy over whether and how the State will be able to provide its share of the \$68 billion project.

The comment deadline of March 7, 2014, need not be set in stone. After all, the Board rightfully agreed to extend the comment deadline on three prior occasions, most recently due to the Authority's misunderstanding of the Board's December 20, 2013 decision intended to require

notification to all parties of record of this proceeding. Further, the project's Environmental Impact Statement is still not completed and it is not expected to be finalized for weeks, or longer.

Extending the comment deadline would help ensure full public participation here, and importantly, a more informed record on which the Board could base its future decision on the merits.