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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36025

TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC-
AUTHORITY TO CONSTRUCT AND OPERATE-
PASSENGER LINE BETWEEN DALLAS, TX AND HOUSTON, TX

REPLY IN OPPOSITION TO PETITION FOR EXEMPTION

My name is Ben Leman. I serve as the County Judge of Grimes County. I have reviewed the Petition for Exemption filed by Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC ("TCR"). I have also reviewed various other materials pertaining to the proposed construction of the 240-mile-long high speed rail between Houston and Dallas, Texas (the "Project"). I am a duly authorized representative of Grimes County and am authorized to file this Reply on its behalf.[1]

CONCERNS REGARDING TCR'S CORE PROJECTIONS AND THE PROJECT'S ALLEGED ECONOMIC BENEFITS

TCR's claims of substantial financial benefits to the Texas counties along the affected corridor should be subjected to close scrutiny by the Board. I believe TCR's claims of economic benefits are highly misleading and cannot be substantiated. At this time, I do not have any real means of ferreting out the truth, and neither does the Board, because TCR has presented no

[1] This Reply incorporates by reference the arguments and evidence set forth in the Reply to Petition for Clarification filed by Grimes County. In addition, this Reply adopts and incorporates by reference the arguments and evidence set forth in Texans Against High Speed Rail, Inc.'s Reply to Petition for Exemption.

evidence supporting these claims except the self-serving statements of Timothy B. Keith, the recently appointed CEO of TCR's parent company, Texas Central Partners, LLC.[2]

I believe that when subjected to a thorough examination, TCR's core projections will unravel. TCR has not yet provided a set figure of anticipated costs of construction, but has instead thrown out various figures from time to time. Nor has TCR provided any evidence to support any of these constantly changing estimates. In any event, I believe that the $10 billion to $12 billion range of estimates is greatly understated. In support, I note that in December 2013 the Texas Department of Transportation ("TXDOT") issued a report in which it determined that the Upfront Capital Cost of the Project would be $18.3 billion.[3] Although TxDOT lowered that estimate to $16.8 billion by removing the Brazos Valley stop, reducing fares, and increasing the speed to 160 mph (to produce the approximate trip time of 90 minutes),[4] TxDOT simultaneously raised the Project's annual operating and maintenance cost from $209 million to $266 million.[5] All of these constantly changing numbers are pure speculation, as I have not seen any supporting documentation for any construction or operating and maintenance costs for the Project. I do not understand how TCR can be given approval to construct without first having to provide the Board with objective, verifiable data supporting TCR's core projections and the feasibility of the Project.

With respect to these wide-ranging estimates, I don't know who to believe. I assume TxDOT's experience in building infrastructure would provide it with the means to accurately forecast construction costs. As a result, I believe TXDOT's calculations, however fuzzy they may be, should be more reliable than those of TCR, a start-up with no experience whatsoever in

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[2] In his Verified Statement, no mention is made of the date that he assumed the position of CEO of TCP. Upon information and belief, he joined TCP at some point in 2015.
[3] Texas Department of Transportation, Statewide Ridership Analysis Report, December 2013, at 71.
[4] *Id.* at 73-74.
[5] Id. 71, 75.

the railroad industry. Given the multi-billion-dollar differential in cost estimates, and without *any* supporting documentation, TCR's construction cost estimates cannot be accepted at face value. This is critically important, because if TCR's projected costs are understated to the tune of $6 billion or more, how will it cover the cost of the unanticipated debt? If it cannot, then taxpayers will be compelled to cover those costs without a vote. My County will not be able to recoup its losses caused by TCR's promoters and the Japan Bank of International Cooperation, which appears to be heavily involved in this Project behind the scenes.

The Board must also question TCR's ridership projections, which are a fundamental determinant of feasibility. I believe TCR's ridership projections are greatly exaggerated for several reasons. First, it appears TCR has greatly overstated the potential diversion of vehicle traffic from I-45, which runs along the affected corridors. Contrary to TCR's claims, there is relatively little congestion on I-45. Most of the congestion is contained within Dallas and Houston city limits, as passengers attempt to get on I-45. Indeed, the situation on I-45 is far different than that on I-35, which is a heavily congested NAFTA route with many 18-wheelers and passenger vehicles. Moreover, there are multiple large cities and communities between San Antonio and Dallas, which include Austin, Georgetown, Temple, and Waco. The same is not true of I-45.[6]

On a related issue to ridership projections, I have serious concerns regarding TCR's claims that the Project will result in billions of dollars in economic benefits and tax revenue, and the creation of thousands of jobs. If TCR has overstated ridership demand, which certainly

[6] In a study done by America 2050 titled *Where High-Speed Rail Works Best*, it is noted that "Interstate 45 that connects the two cities [Dallas and Houston] is not among the most heavily trafficked non-metro highways in the country." The study also commented that "[a]lthough metro regions in each of these megaregions appear on this list, as noted above, I-45 is not one of the more heavily traffic routes, whereas I-5 in California and I-95 in the Eastern Seaboard have consistently high traffic volumes throughout the megaregions." Online link: http://www.america2050.org/pdf/Where-HSR-Works-Best.pdf.

appears to be the case, then it will not be able to repay its investors or cover its operating costs. In fact, without any assurance that it has sufficient financing in place, or if it has greatly underestimated construction costs, TCR might end up with a half-built train. Texas has already suffered through a half-built Super Collider. Under any of these circumstances, the Project will not result in any economic benefit to my county or the State as a whole. Rather, it will be a financial albatross hanging around our necks.

Should the Board reject TCR's insufficient Petition and take a hard look at the evidence that is being submitted by Texans Against High Speed Rail, it will understand the critical errors in TCR's projected revenues and costs. Upon doing so, the Board should be compelled to deny TCR authority to construct what can only be described as an unnecessary project that has no hope of achieving financial viability. The citizens of Texas should not be asked to cover TCR's substantial financial losses. Nor should landowners whose property will be taken and devalued be forced to contribute to the coffers of railroad promoters who do not have the public interest in mind. All of these risks can be avoided if the Board will simply deny TCR's Petition and require TCR to file a full application disclosing all information related to its Project.

CONCERNS REGARDING IMPACT ON COUNTY ROADS AND RESPONSIBILITY FOR DAMAGES AND DESTRUCTION OF COUNTY PROPERTY

My duties include oversight of county roads. As the Board is aware, the Project's final route has not yet been determined. Therefore, while I want to address some of the more basic deficiencies in TCR's Petition, I expressly reserve the right to file further comments if and when the final route is disclosed.

There are several fundamental questions and concerns that the Board must consider at this juncture. First, I am concerned that roads in my county could be permanently shut down by TCR's Project. This would result in lengthy detours, disruption of emergency medical services,

and public inconvenience. The existing surface transportation infrastructure has been carefully constructed at considerable cost to the public, and my County should not be asked to fund new roads to accommodate the private interests of TCR for this ill-advised, unnecessary Project.

Second, even if none of our roads are shut down, why should my County be forced to pay exorbitant amounts to fund a road endeavor in order to: 1) cross TCR's "closed system"; or 2) widen an existing crossing at some time in the future? TCR's Project will freeze the county road system in place. TCR has not committed to pay the extra expense of growth caused by the existence of its "closed system."

Third, in the event that construction substantially disrupts local transportation, damages our public utilities, or sets our woods or pastures on fire, what entity will be responsible for these adverse impacts? The two named entities identified as parties are Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC. Under normal circumstances, I would assume that one or both of these entities would provide contact persons with the authority to deal with us. However, in February 6, 2015, TCR stated in a press release:[7]

> Texas Central Partners (TCP) is a private, Texas-based company that will develop the high-speed passenger railway and associated facilities. TCP and its affiliated entities will be responsible for the system's design, finance, construction, operation and maintenance. The proposed project will not request or require grants or operational subsidies backed by taxpayers for its eventual construction and operation.

If TCP will be partly responsible for the system's design, finance, construction, operation and maintenance, why was TCP not included as a party in the two petitions that have been filed in this docket? Will the Board have jurisdiction over TCP as well as the named entities? Who are TCP's investors? Why all of the corporate maneuvering?

[7] http://www.texascentral.com/wp-content/uploads/2015/10/Final-Announcement-020615a.pdf.

It appears that TCP's claim it is a "Texas-based" entity is solely intended to garner political support for the Project from elected officials who are not closely acquainted with the real management team and who are willing to trust the disinformation that has been disseminated by TCP and its affiliates. This disinformation includes but is not limited to claims of alleged benefits whose assumptions have never been subjected to any examination. I am not at all convinced that there will be any net benefit to my County from TCR's Project. On the other hand, I am certain the Project will result in substantial adverse impacts to landowners, citizens, roads, the environment, and the overall rural lifestyle in my County.

TCR'S REBUTTAL

My County filed a reply to TCR's Petition for Clarification, including two sections relating to TCR's planned actions which will amount to eminent domain abuse. Section VI was titled "Eminent Domain Abuse," and Section VII was titled "Unnecessary Eminent Domain Cases Clog the Court System." The "Rebuttal" filed by TCR in support of its Petition for Clarification does not address any of the concerns of my County. Nowhere in its Rebuttal does TCR address the concerns of landowners who will have to retain lawyers and expensive expert witnesses for cases that may never even happen. TCR does not address my County's concerns about unnecessary eminent domain cases clogging the courts either.

To reset the context, TCR's Petition for Clarification argues that due to its own financing concerns, TCR wants clearance from the Board to start the eminent domain cases ahead of schedule. Simply put, TCR wants a ruling to influence Texas state court judges. Nothing in the Texas eminent domain law relating to the administrative phase of the case allows a condemnor to get the case started, put a cloud on the title of the landowners, and then take a break at its own

leisure. Despite the misleading language in its Rebuttal, TCR is clearly trying to have the Board weigh in on matters of state law.

CONCLUSION

The Board should reject TCR's bare-bones Petition for Exemption. The only evidence in this docket has been submitted by TAHSR and Delta Troy. After reviewing such evidence, the Board should investigate the substantial errors in TCR's core projections and estimated costs. The Board will then be compelled to deny TCR's authority to construct what can only be described as an unnecessary project that has no hope of achieving financial viability. The citizens of Texas should not be asked to cover TCR's substantial financial losses. Nor should landowners whose property will be taken and devalued be forced to contribute to the coffers of railroad promoters who do not have the public interest in mind. The Project certainly cannot be said to embrace or enhance the public convenience and necessity.

By: _____
Ben Leman
Grimes County Judge

May 31, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail or by e-mail.

By: _____
Ben Leman
Grimes County Judge