



SIDLEY AUSTIN LLP  
1501 K STREET, N.W.  
WASHINGTON, D.C. 20005  
(202) 736 8000  
(202) 736 8711 FAX

thynes@sidley.com  
(202) 736 8198

BEIJING  
BRUSSELS  
CHICAGO  
DALLAS  
FRANKFURT  
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June 20, 2016

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Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings  
June 20, 2016  
Part of  
Public Record



Re: 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, Finance Docket No. 36025

Dear Ms. Brown:

Enclosed for filing in the above-referenced matter are the following:

1. An original and ten copies of the Petitioners' Motion for Leave to File Response to Replies, and three CDs containing the Motion in pdf searchable format.
2. An original and ten copies of the highly confidential version of Petitioners' Response to Replies consisting of two volumes, for filing under seal subject to Petitioners' Motion for Protective Order filed June 9, 2016. Three CDs containing the Response and Appendix in pdf searchable format.
3. An original and ten copies of the public version of Petitioners' Response to Replies and three CDs containing the Response in pdf searchable format.

Please acknowledge receipt of the enclosed documents for filing by date-stamping the extra copy and returning it to our messenger. If you have any questions, please contact the undersigned counsel.

Sincerely,

Terence M. Hynes

TMH:aat  
Enclosures

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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PETITIONERS' MOTION FOR LEAVE TO FILE RESPONSE TO REPLIES

Raymond A. Atkins  
Terence M. Hynes  
Hanna M. Chouest  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000  
(202) 736-8711 (fax)

Kathryn K. Floyd  
Jay Johnson  
Venable LLP  
575 7th Street, N.W.  
Washington, D.C. 20004  
(202) 344-4000

Counsel to Texas Central Railroad and Infrastructure, Inc.  
& Texas Central Railroad, LLC

Dated: June 20, 2016

**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-  
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**PETITIONERS' MOTION FOR LEAVE TO FILE RESPONSE TO REPLIES**

Texas Central Railroad & Infrastructure, Inc. ("TCRI") and Texas Central Railroad, LLC ("TCRR") (collectively, "Petitioners" or "Texas Central"), hereby move for leave to file the attached Response to the comments submitted by numerous parties, including Texans Against High Speed Rail ("TAHSR") and Delta Troy Interests, Ltd. ("Delta Troy"), in opposition to Texas Central's Petition for Exemption. A reply to a reply is permitted for "good cause." *See, e.g., Sierra R.R. Co. v. Sacramento Valley R.R. Co., LLC*, STB Docket No. NOR 42133, at 1, n.1 (served Mar. 9, 2012); *Cross Oil Ref. & Mktg., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 33582, at 1 (served Oct. 27 1998).<sup>1</sup>

Texas Central has good cause to file a Response in this case. Opponents' replies to Texas Central's Petition for Exemption raise a variety of claims, issues, and arguments that far exceed the scope of the Petition, mischaracterize important facts and

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<sup>1</sup> 49 C.F.R. § 1104.13(c) states that "[a] reply to a reply is not permitted." However, the Board has frequently waived that provision for good cause. *See generally* 49 C.F.R. § 1100.3 ("The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.").

law, introduce new evidence—including verified statements purporting to present outside studies regarding the Texas Central Line’s feasibility— and make unsupported claims questioning the veracity of facts set forth in the Petition for Exemption. If the Board gives consideration to any of the opponents’ contentions, it should grant Texas Central leave to file the attached Response. Such leave is necessary to afford Texas Central an opportunity to address the new claims and issues raised by the opponents, and to provide the Board with a complete record to aid its decision-making process.

Opponents’ replies raise several claims and issues that are not responsive to Texas Central’s Petition for Exemption. For example, opponents mischaracterize the test the Board employs to determine whether it has jurisdiction over new construction projects such as the Texas Central Line.<sup>2</sup> Opponents also seek to have the Board reject Texas Central’s Petition for Exemption outright by claiming—incorrectly—that Texas Central has not satisfied the Board’s exemption criteria.<sup>3</sup> They also raise a variety of issues that have no bearing upon the merits of the Petition itself, including concerns about the environmental impact of the Texas Central Line (which will be addressed during the Environmental Impact Statement review process), the sources of financing Texas Central intends to secure for the project (which will be determined by the markets), and even how many parking spaces Texas Central will offer to its riders.<sup>4</sup>

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<sup>2</sup> See Delta Troy Reply In Opposition To Petition For Exemption, STB Docket No. 36025, at 4-11 (filed May 31, 2016) (“Delta Troy Exemption Reply”).

<sup>3</sup> See TASHR Reply to Petition for Exemption, STB Docket No. 36025, at 15-18 (filed May 31, 2016) (“TAHSR Exemption Reply”); Delta Troy Exemption Reply at 22-28.

<sup>4</sup> See TAHSR Exemption Reply at 23; 28-29; 43-35; Delta Troy Exemption Reply at 13-16; 27-28.

TAHSR also introduced a new study and verified statement from Dr. John Harding, purporting to discredit Texas Central's ridership estimate.<sup>5</sup> Texas Central should be afforded the opportunity to respond to this new evidence. Finally, opponents assert that Texas Central is seeking to hide the truth from the Board and the public.<sup>6</sup> Such unfounded statements are inflammatory and are deserving of a response.

Texas Central could not have reasonably anticipated that, instead of addressing the Board's exemption criteria, opponents would introduce such wide-ranging new evidence. Where a movant could not have anticipated the arguments and claims of an opponent that could be central to the resolution of a case – as here – it has shown good cause for leave to file a reply. *See, e.g., Delaware & Hudson Ry. Co. v. Consol. Rail Corp. – Reciprocal Switching Agreement*, 9 I.C.C. 2d 989, 990 (1993) (finding good cause for a reply to a reply where a party “asserts that it could not have anticipated the arguments set out” in the reply when it filed its petition and the issue “is central to the resolution of this proceeding”).

Affording Texas Central an opportunity to respond to opponents' replies will provide the Board with a more complete record without material delay, as Texas Central's proffered Response is included with this Motion. A fuller, more complete record will facilitate the Board's decision-making process to address the Petition for Exemption, particularly where, as here, the Board has yet to establish a procedural schedule or to issue any ruling in this proceeding. *See Tongue River R.R. Co., Inc. –*

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<sup>5</sup> See TAHSR Exemption Reply, Exhibit 3.

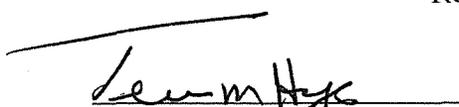
<sup>6</sup> See TAHSR Exemption Reply at 18-29; Delta Troy Exemption Reply at 16-17.

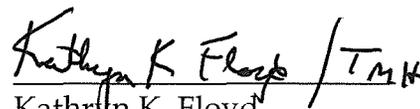
*Construction & Operation – Western Alignment*, STB Docket No. FD 30186 (Sub-No. 3), at 4 (served June 15, 2011) (“In the interest of compiling a more complete record in this case, we will accept into the record the surreplies.”); *Waterloo Ry. Co. – Adverse Abandonment – Lines of Bangor & Aroostook R.R. Co. and Van Buren Bridge Co. in Aroostook Cnty., ME*, STB Docket No. AB-124 (Sub-No.2), at 3 (served May 6, 2003) (accepting a reply “when additional information is necessary to develop a more complete record”); *Union Pac. R.R. Co. – Abandonment – In Lancaster & Gage Ctys., NE, and Marshall Cnty., KS*, STB Docket No. AB-33 (Sub-No. 140), at 1 (served Dec. 22, 1999) (replies accepted “where they will contribute to a complete record without prejudicing any party or delaying the proceeding”).

#### CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board grant their Motion for Leave to File a Response to Replies.

Respectfully submitted,

  
Raymond A. Atkins  
Terence M. Hynes  
Hanna M. Chouest  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000  
(202) 736-8711 (fax)

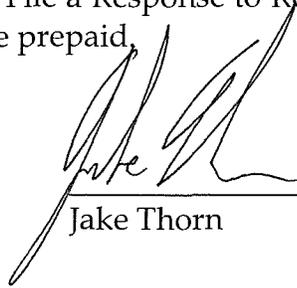
  
Kathryn K. Floyd  
Jay Johnson  
Venable LLP  
575 7th Street, N.W.  
Washington, D.C. 20004  
(202) 344-4000

Counsel to Texas Central Railroad and Infrastructure, Inc.  
& Texas Central Railroad, LLC

Dated: June 20, 2016

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of June 2016, I caused a copy of the foregoing Petitioners' Motion for Leave to File a Response to Replies to be served on all parties of record by first class mail, postage prepaid.



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Jake Thorn