

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings
May 19, 2016
Part of
Public Record**

Finance Docket No. 36025

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

REPLY IN OPPOSITION TO PETITION FOR CLARIFICATION

My name is Carol Bush. I serve as the County Judge for Ellis County, Texas. I have reviewed the Petition for Clarification filed by Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC. ("TCR"). On May 9, 2016 the Ellis County Commissioners Court authorized me to file comments in opposition to TCR's petitions filed with the Surface Transportation Board. (See attached a true and correct copy of that authorization). I understand that TCR desires to construct a 240-mile-long high speed rail between Houston and Dallas, Texas (the "Project").

1. JURISDICTION

Ellis County is aware that Texans Against High Speed Rail, Inc. ("TAHSR") is filing a jurisdictional challenge to the Petition for Clarification filed by TCR in Finance Docket No. 36025. Subject to the jurisdictional challenge, Ellis County submits the following comments in Opposition to TCR's Petition for Clarification.

2. TEXAS COUNTIES ARE OPPOSED TO FAST TRACK – NEED A "HARD LOOK"

In effect TCR's request for a fast-track decision reflects a desire to avoid delaying eminent domain proceedings until a route has passed environmental review. They propose to condemn

private property rights for which they will have no public need or necessity, i.e. properties on the route not chosen. Ellis County is concerned about condemning property without a public need. Possession is not the critical element, the taking will have occurred. Ellis County believes the Board should take a “hard look” to ensure it is consistent with the overall public convenience and necessity before approving construction.

3. TCR IS ATTEMPTING TO CIRCUMVENT EXISTING FEDERAL LAW

It is unclear why our Texas state courts “would benefit from a clear statement interpreting ‘the scope’ of construction under sections 10901.”¹ Texas state courts interpret well-settled federal and state law every day. TCR's financial fears notwithstanding, there is no compelling reason for STB to change or "clarify" its administrative interpretation. TCR should be left to the same avenue as any other condemning authority in Texas -- Texas state courts.

4. LACK OF FINAL APPROVED ROUTE

Our preliminary concern about the construction of the Project is based, in part, on the lack of specific details regarding the precise location of the tracks. It is our understanding that the potential alternative routes have been narrowed to two. However, no final route has been chosen, and no regulatory body has ruled on the actual alignment the Project will take. We reserve the right to provide the Board with additional comments regarding anticipated adverse impacts once the final route has been identified. Until then, the County's concerns must be expressed in broad terms.

5. DISRUPTION TO COUNTY ROADS NETWORK

As a County Judge, I am well-acquainted with the system of federal, state and county roads that have been built at taxpayer expense throughout my county and the affected region. No matter the route chosen, the Project will cut through a significant portion of Ellis County. The Scoping

¹ Petition for Clarification at 10.

Report makes it clear that the proposed “HSR system requires a completely grade-separated and dedicated right-of-way that is approximately 80 to 100 feet wide. It requires a ‘closed’ system, meaning that the train will run on dedicated HSR tracks for passenger rail service only and cannot travel on other rail lines.” The construction of the “closed system” will serve as a barricade that will significantly impede east-west vehicular traffic along its entire 240-mile length, substantially affecting existing county roads and other infrastructure, and change the lives of numerous citizens. In this county alone, it will impact an approximate minimum of twenty-seven county roads, state farm to market roads, and state highways.

The number of roads disrupted is far greater. Farms will be cut off from their owner with farm equipment traveling on other county roads to reach existing grade separations. Furthermore, while TCR has also claimed that it will bear the full cost of grade separations that would be required in order for it to operate safely, it has provided no verifiable information regarding who will determine whether a particular grade separation would or would not be required. TCR may try to close county roads to lessen its costs. Such a determination cannot be left to TCR. Instead, if the Board were to somehow find that the Project is needed and approve the construction of this “closed system,” the Board should require, as part of TCR’s full application, for TCR to show binding contracts with each County in the affected corridor that would:

- (1) require TCR to bear the cost of construction of every grade separation;
- (2) require TCR to agree with appropriate county officials regarding the placement of grade separations; and
- (3) require TCR to pay for any future crossings as the county road system expands.

The first condition simply requires TCR to pay for the benefits that it alone will realize if the Project is approved. The second condition is of particular importance to ensure that TCR’s Project does not shred county roads, forcing people who use the existing roadways to go to

hospitals, work, schools, and grocery stores to drive several additional miles to reach their destination. The Project will also force landowners to drive trucks, livestock, and tractors north or south to access the limited pass-throughs installed by TCR. The third condition ensures that TCR's "Great Wall" will not strangle future growth in our county.

6. EMINENT DOMAIN ABUSE

In its Petition for Clarification, TCR admits that it seeks to invoke condemnation proceedings and "accept" the risk that it "may acquire property rights in locations not ultimately identified as the final alignment."² In other words TCR will condemn property for which it has no public use.

The premature institution of condemnation proceedings would require families whose property may not ultimately fall within the approved right-of-way to bear the financial burden of hiring an attorney and an appraiser in order to preserve their rights under Texas law. The Texas Property Code contains a maze of requirements with respect to condemnation proceedings. Landowners affected by the Project will have little choice but to hire an attorney to guide them through the process. They should not be required to spend their limited time and resources on an attorney and experts when major uncertainty exists as to whether TCR will need the property it is trying to condemn.

We are concerned with TCR's statement that it "is preparing to use its eminent domain powers to establish the value—but not take physical possession—of the property rights it seeks to acquire."³ Even if this were true, it is still an abuse of process to bring condemnation proceedings

² Petition for Clarification at 4, n. 13.

³ Petition for Clarification at 5.

against landowners before a final determination is reached as to whether the Project will be approved by the Board, and before a final route is chosen.

CONCLUSION

The Petition for Clarification is an attempt to circumvent the Board's policy of refusing to adjudicate the merits of a rail construction project prior to completion of the environmental review process. There is nothing about this Project that would justify the Board deviating from this policy. The Board should not retreat from precedents holding that construction includes condemning land by eminent domain. The Board should take whatever time is necessary to weigh the competing interests and reject TCR's request.

For the reasons above, we do not think the Board has sufficient information to make an informed decision at this time. This Project is too costly and complicated, and will affect too many citizens and communities, to fast-track TCR's request before requiring TCR to make full disclosures and then taking a "hard look" at all aspects of the Project. If the Board determines it has jurisdiction, we urge the Board to deny TCR's Petition for Clarification, require TCR to file a full application, and create a procedural and evidentiary schedule following the completion of the environmental review that would allow counties and individuals who will be adversely impacted to file additional comments and seek additional mitigation from TCR.

County of Ellis, Texas

-S-
County Judge Carol Bush
The Historic Courthouse
101 W. Main St.
Waxahachie, TX 75165

**A RESOLUTION OF THE
ELLIS COUNTY COMMISSIONERS' COURT
MINUTE ORDER 220.16**

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**PRELIMINARY COMMENTS IN OPPOSITION TO
PETITION FOR EXEMPTION
AND PETITION FOR CLARIFICATION**

Whereas Texas Central Railroad and Infrastructure, Inc. and its affiliates, hereafter collectively TCRI, are proposing to build a 240 mile High Speed Rail line between Dallas and Houston and;

Whereas TCRI has recently filed two petitions with the Surface Transportation Board (STB) requesting exemptions from certain railroad regulations and;

Whereas TCRI is seeking an expedited review and approval to commence land acquisition through the use of Eminent Domain prior to the determination of the final alignments and;

Whereas TCRI has stated within their verified statement(s) that they are prepared to accept the risk of acquiring property that may not ultimately be used for the project and;

Whereas TCRI has not provided specific details on the impacts to all public roads within our jurisdiction that will result from the "closed system" nature of this type of railroad project and;

Whereas TCRI will not provide the financial and ridership data to the public for review and;

Whereas all of the above will have detrimental effects and adverse impacts on our jurisdiction and significant controversy exists surrounding this project,

Whereas Ellis County desires to protect all roads, citizens, and the private property within our jurisdiction,

NOW THEREFORE, BE IT RESOLVED, that Ellis County renews its opposition to the project as proposed by TCRI and;

Ellis County opposes the petitions filed at the STB; asking the Board to deny these petitions filed by TCRI and;

Ellis County authorizes the County Judge to file a reply, or replies, to the Surface Transportation Board (STB); and for the purposes of TCRI's petitions to the STB, execute future documents consistent with the intent of this resolution on behalf of the County and its citizens, and;

Ellis County generally opposes all efforts by TCRI to obtain waivers or exceptions to current law and/or regulations.

Executed this day, May 9th, 2016

Carol Bush
Carol Bush, County Judge

Absent
Dennis Robinson, Commissioner Precinct 1

Paul Perry
Paul Perry, Commissioner Precinct 3

Lane Grayson
Lane Grayson, Commissioner Precinct 2

Kyle Butler
Kyle Butler, Commissioner Precinct 4

Attest: Jina Chambers
Cindy Polley, County Clerk *Deputy*



**NOTICE OF MEETING
ELLIS COUNTY COMMISSIONERS COURT**

FILED FOR RECORD
CINDY POLLEY
ELLIS COUNTY CLERK

Notice is hereby given that a meeting of the Ellis County Commissioners Court will be held on **Monday, May 9, 2016, 9:00 A.M., in the Historic Ellis County Courthouse, Commissioners Courtroom (2nd flr), 101 W. Main Street, Waxahachie, Texas** at which time the following will be discussed and considered, to-wit:

County Judge: Carol Bush

County Clerk: Cindy Polley

Commissioners:

Dennis Robinson, Commissioner, Pct. 1
Lane Grayson, Commissioner, Pct. 2
Paul Perry, Commissioner, Pct. 3
Kyle Butler, Commissioner, Pct. 4

Assistant County Attorneys:

Vance Hinds
Ray Rike

OPENING COURT

County Judge will call meeting to order, declare quorum if present, and declare notices legally posted pursuant to Open Meetings Act.

Motion to Open Court.

Invocation and Pledge of Allegiance – Commissioner Paul Perry

PUBLIC COMMENT*- Members of the public will have the opportunity to make their comments at the time the agenda item is being addressed.

ADMINISTRATIVE

Consideration and action as may be appropriate regarding the following matters:

- 1.1 Proposed resolution regarding high-speed rail.

RECESS TO CONVENE TO EXECUTIVE SESSION

EXECUTIVE SESSION

The Commissioners Court of Ellis County reserves the right to adjourn into **Executive Session** at any time during the course of this meeting to discuss any of the matters listed in this agenda, in the order deemed appropriate, as authorized by Texas Government Code 551, or to seek the advice of its attorney and/or other attorneys representing Ellis County on any matter in which the duty of the attorney to the Commissioners Court under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Texas Government Code Chapter 551 or as otherwise may be permitted under 551.

ADJOURNMENT OF EXECUTIVE SESSION

ADJOURNMENT

Signed this the 5th day of May 2016.

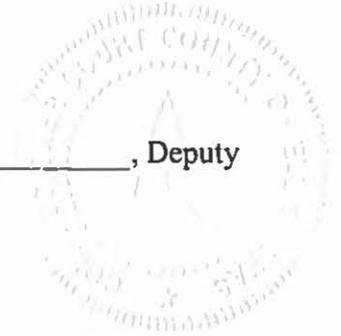
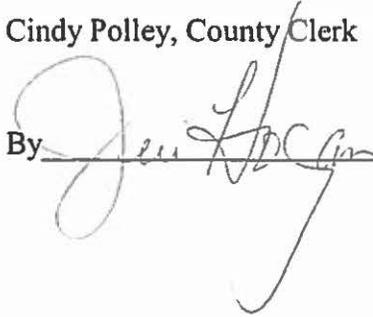


Carol Bush
Ellis County Judge

I, the undersigned, County Clerk of the Ellis County Commissioners Court do hereby certify that the above Notice of Meeting of the Ellis County Commissioners Court is a true and correct copy of said Notice, that I received said Notice, and it was posted at the doors of the Ellis County Courthouse, a place readily accessible to the general public at all times on the 5th day of May, 2016 at 4:07 a.m./(p.m)

Cindy Polley, County Clerk

By _____, Deputy



- ***Public Comment – This section provides the public the opportunity to address the Commissioners Court on any items on the Agenda. Members of the public wishing to participate must present a completed public participation form to the County Clerk at least 10 minutes prior to the beginning of the meeting.**
- **The Commissioners Court reserves the right to consider and take action on the above agenda items in any particular order.**
- **If you or your representative, have a disability that requires special arrangements and you plan to attend this public meeting, please contact the County Judge’s Office at (972) 825-5011 within 72 hours of the meeting. Reasonable accommodations will be made to meet your needs at the meeting.**

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.

/s/ Carol Bush

May 19, 2016