

EXPEDITED CONSIDERATION REQUESTED

234038

BEFORE THE SURFACE TRANSPORTATION BOARD

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Public Record

STB Finance Docket No. 35724

**CC-HSR REQUEST FOR EXTENSION OF TIME TO FILE ITS PROTEST
TO THE CHSRA PETITION FOR EXEMPTION AND MOTION TO DISMISS**

The Community Coalition for High-Speed Rail (CC-HSR) is a grassroots, non-profit citizens organization that works through public advocacy, litigation, and political action to make sure the proposed California High Speed Rail project complies with applicable laws and doesn't adversely affect the economy, environment, or quality of life of California's existing communities.

On March 27, 2013, the California High Speed Rail Authority (CHSRA) filed (1) a PETITION FOR EXEMPTION under 49 U.S.C. sec. 10502 from the prior approval requirements of 49 U.S.C. sec. 10901, and (2) a parallel MOTION TO DISMISS PETITION FOR EXEMPTION OF CALIFORNIA HIGH SPEED RAIL AUTHORITY. CHSRA's Motion to Dismiss argues that STB lacks jurisdiction over construction of its projected \$6 billion new rail line, asserting that this rail line is not "part of the interstate rail network" within the meaning of 49 U.S.C. sec. 10501(a)(2)(A).

CHSRA concedes, as it must, that "The determination of whether an intrastate passenger rail service is part of the interstate rail network is a fact-specific determination."¹ The same is necessarily true regarding certain factors on which the STB must make a determination under 49 U.S.C. sec 10502 on whether or not an exemption is necessary to carry out the transportation policy of 49 U.S.C. sec. 10101.²

¹ CHSRA Motion to Dismiss, p. 6, quoting *All Aboard Florida*, STB Finance Docket No. 35680, at p. 3 (Dec. 21, 2012).
² *E.g.*, 49 U.S.C. sec. 10101 (4)-(5): "(4) 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 public and the national

Unfortunately, CHSRA has been economical with the information that it has chosen to place in the record. For example, CHSRA carefully asserts that it has no *current* (i.e., not yet) contracts or arrangements for through ticketing or for use of its HST system for interstate passenger service. But CHSRA has not disclosed plans it may have for any such arrangements, and when and how it intends to implement such plans--despite the fact that its April 2012 Revised Business Plan boasts of its “blended systems and blended operations, which are the *integration of high-speed trains with [Amtrak’s] existing intercity [rail lines] and regional/commuter rail systems via coordinated infrastructure (the system) and scheduling, ticketing, and other means (operations).*”³ (emphasis added) Specifically, the April 2012 Revised Business Plan states:

“At all phases of development, [the CHSRA] seeks to use new and existing rail infrastructure more efficiently through coordinated delivery of services, *including interlining of trains from one system to another, as well as integrated scheduling to create seamless connections.*

...

"Through collaborative planning and implementation, *the [Amtrak] San Joaquin rail service (fifth busiest in the nation) will be shifted to [run on the tracks of] the first construction segment upon its completion,* resulting in a 45-minute time savings; through complementary improvements, this will tie with [Amtrak’s] ACE [Altamont Corridor Express] to provide new, expanded, and improved rail service throughout northern California, connecting the Central Valley with the San Francisco Bay Area and Sacramento region.”⁴ (emphasis added)

“*Planning for early interim service [by Amtrak] on the IOS [initial construction] segment is already underway, with the goal of commencing Amtrak operations as soon as possible after construction is complete in 2017.* The Authority is already [in April 2012] collaborating with its

defense; [and] (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;”

3 <http://www.cahighspeedrail.ca.gov/assets/0/152/431/1a6251d7-36ab-4fec-ba8c-00e266dadec7.pdf>, p. 2-1.

4 Id. at Exh. ES-1.

transportation partners to identify and address the technical and policy issues that would be associated with developing early service. Through this process, agreements will be worked out on a range of issues, including how and where the service would operate, how it would be integrated with other systems, and how to transition to revenue HSR service as the IOS is completed.”⁵ (emphasis added)

CC-HSR contends that Amtrak's San Joaquin passenger rail service is, and will be, part of the interstate rail network through, inter alia, its Sacramento connections with its California Zephyr and Coast Starlight interstate passenger services. CC-HSR should be allowed to develop the record to show that when the Sacramento-bound Amtrak trains run on CHSRA's tracks it will be a part of the interstate rail network. Accordingly, CC-HSR plans to promptly initiate discovery, including requests for production of documents, relating to the foregoing and similar CHSRA statements of integration with Amtrak and other passenger rail services. The purpose of such discovery will be to ascertain--in order to place in the record--relevant facts solely within the control of the CHSRA and its consultants that we believe would show that the facilities CHSRA proposes to construct will be “part of the general system of rail transportation and are related to the movement of passengers . . . in interstate commerce.”⁶ *DesertXpress Enterprises, LLC*, STB Finance Docket No. 34914, p. 9 (May 7, 2010).

Accordingly, CC-HSR requests that its time to file its response to CHSRA's Petition for Exemption and accompanying Motion to Dismiss be extended for at least fifteen days and, provided that within that time it notifies the STB that it has initiated discovery requests to CHSRA, its time to respond be extended for an additional fifteen days from (a) its receipt of the requested discovery or (b) the denial of its timely motion to compel discovery, whichever occurs first.

⁵ Id. at p. 2-14.

⁶ CC-HSR plans to initiate similar discovery of CHSRA regarding the provisions of section 10101 (4)-(5), quoted in fn. 2, *supra*.

In consideration of this request, the STB must balance CHSRA's desire for a quick resolution against the time reasonably required by prospective opponents to review statements made by the CHSRA which relate to the matters at issue in this proceeding, including, but not limited to the various versions of its Business Plan, transcripts of testimony of its officials in legislative hearings, its cooperative funding agreements with the Federal Railroad Administration, its Funding Plan, resolutions of its Board of Directors, its response to comments in EIR/EIS proceedings, staff reports to its Board of Directors, etc. Cumulatively, these constitute thousands of pages of documents. Manifestly, the 20-day time limit now in place is not adequate given the magnitude of the issues, the extensive documentary database, and the limited resources and knowledge of STB policies, procedures and practices that most prospective opponents possess, including CC-HSR.

The STB should also take into account that the time crunch that CHSRA believes it has appears to be a product of its own conscious decision. Thus, as long ago as *October 2009* CHSRA advised the Federal Railroad Administration:

*“Additionally, CHSRA will address potential jurisdiction of the Surface Transportation Board (STB) over any aspect(s) of the HST project and work to ensure timely completion of all prospective regulatory oversight responsibilities consistent with the project delivery schedule.”*⁷
(emphasis added)

Apparently, CHSRA made a conscious decision *not to apply* for an STB determination of its jurisdiction and CHSRA's possible exemption--when there was plenty of time for an orderly proceeding that would allow all interested parties the full opportunity to discover and present all the relevant facts and considerations. It should not now be allowed to abbreviate, confine, or restrict that full opportunity in the interests of its expediency or its self-inflicted time crunch.

⁷ CHSRA's Application Form for Track 2-Corridor Programs of the Federal Railroad Administration's High-Speed Intercity Passenger Rail (HSIPR) Program, p. 23, submitted Oct. 1, 2009.

Dated: April 8, 2013

Respectfully submitted,



James R. Janz

President,

Community Coalition on High Speed Rail

2995 Woodside Road, #400-362

Woodside, CA 94062

CERTIFICATE OF SERVICE

I certify under penalty of perjury that I have this day served copies of this document upon all parties of record in this proceeding by first class or express mail. Dated: April 8, 2013



James R. Janz, President of CC-HSR