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TRIAL LAW

June 9, 2020

The Honorable Ann D. Begeman, Chairman  
The Honorable Patrick J. Fuchs, Vice-Chairman  
The Honorable Martin J. Oberman, Member  
Surface Transportation Board

*Via e-filing*

**Re: STB Finance Docket No. 36025; Texas Central Railroad & Infrastructure, Inc. & Texas Central Railroad, LLC – Petition to Reopen**

Dear Chairman Begeman, Vice Chairman Fuchs and Member Oberman:

Along with co-counsel Richard Streeter, our law firm represents Texans Against High Speed Rail, Inc. (“TAHSR”) in the referenced proceeding. We also represent hundreds of landowners impacted by Texas Central’s proposed high-speed rail project (the “Project”).

In prior submissions, TAHSR has advised the Board of Texas Central’s repeated misrepresentations regarding the Project’s estimated costs and whether it will be privately financed.<sup>1</sup> Attached is an April 8, 2020 letter from Drayton McLane, Jr., Chairman of Texas Central, containing two startling admissions concerning these issues.<sup>2</sup>

First, Texas Central admits costs have now ballooned to at least \$30 billion, *three times* that which it first represented to the Board in 2016.<sup>3</sup> When asked about this new estimate, Texas Central CEO Carlos Aguilar commented it was “a conservative estimate of ‘all in’ numbers.”<sup>4</sup> I’ve attached the article containing Aguilar’s comments for context and easy reference.<sup>5</sup>

Second, Texas Central admits in its letter the Project *will not* be “financed entirely by investors and entrepreneurs,” as it represented to the Board less than a year ago.<sup>6</sup> Rather, Texas Central intends to rely on funding “from President Trump’s infrastructure stimulus through the Department of Transportation.”<sup>7</sup> CEO Aguilar confirmed the Project “could require some stimulus money, but we don’t know yet.”<sup>8</sup>

Setting aside Texas Central’s misrepresentations to the Board, the bottom line is this: during these uncertain times, using public money to fund a \$30+ billion project with grossly overstated ridership projections and rising costs is a recipe for disaster. It’s California all over again, in the midst of a global pandemic. For these reasons and those previously set forth, we respectfully request that Texas Central’s Petition to Reopen be denied. We further request that Texas Central’s recent admissions and comments be included in the record in this proceeding.

Respectfully submitted,

/s/ Patrick McShan

Cc: All parties of record

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<sup>1</sup> See, e.g., TAHSR's Factual Reply to Texas Central's Response to the Board's Request for Additional Information, p. 7-9 (submitted Oct. 18, 2019).

<sup>2</sup> Exhibit 1.

<sup>3</sup> See Texas Central's Petition for Exemption, p. 4 (submitted Apr. 19, 2016) ("The total cost of civil construction and the core system is estimated to be over \$10 billion, which is being privately developed by Texas Central.").

<sup>4</sup> Evan Hoopfer, *Texas Central's high-speed rail project 'could require some stimulus money,' CEO says*, DALLAS BUSINESS JOURNAL (June 5, 2020), <https://www.bizjournals.com/dallas/news/2020/06/05/texas-central-stimulus-money.html>.

<sup>5</sup> Exhibit 2.

<sup>6</sup> See Texas Central's Response to the Board's Request for Additional Information, p. 30 (submitted Aug. 21, 2019). ("Here, the project will be financed entirely by investors and entrepreneurs... In other words, the financial viability of this project will be determined by the investors and lenders involved in the financial markets, not federal regulators, as Congress contemplated.").

<sup>7</sup> Exhibit 1.

<sup>8</sup> Exhibit 2.

# **Exhibit 1**



April 8, 2020

The Honorable Robert Nichols  
329 Neches St.  
Jacksonville, TX 75766

Senator,

I hope you are doing well amidst the crisis our country is facing. I would like to give you an update on Texas Central and the High Speed Rail. The project has turned into a \$30B project and we have certainly hit a snag with all the difficulties of the Corona Virus. We are having to lay some of our employees off due to construction not being eminent, but will be right back on track as soon as we complete the financing.

We feel that between the Japanese government funding and the monies we hope to receive from President Trump's infrastructure stimulus through the Department of Transportation, along with private equity that the project still has a great opportunity, is viable and can be construction ready this year.

We thank you and continue to appreciate your support. Please let me know if you are available and open to any discussion.

Sincerely,

DRAYTON McLANE, JR.  
Chairman

DMc/bb

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# Exhibit 2

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From the Dallas Business Journal:

<https://www.bizjournals.com/dallas/news/2020/06/05/texas-central-stimulus-money.html>

## Texas Central's high-speed rail project 'could require some stimulus money,' CEO says

Jun 5, 2020, 8:14am CDT

Texas Central, like many other companies, is dealing with economic hardships brought on by the COVID-19 pandemic.

The company, which is developing a multibillion-dollar high-speed rail line that could connect Dallas and Houston via a 90-minute train ride, laid off 28 employees in March and watched as the pandemic roiled global financial markets it hoped to tap for financing.



TEXAS CENTRAL PARTNERS

Texas Central is developing a high-speed rail line between Dallas and Houston.

Texas Central is evaluating other means of financing besides private equity, according to an April 8 letter sent from Drayton McLane, Jr. — Texas Central chairman and an investor in the project — to Texas State Sen. Robert Nichols. The *Dallas Business Journal* obtained a copy of the letter, which can be seen here.

McLane gave an update on the project to Nichols, saying it's "turned into a \$30B project and we have certainly hit a snag with all the difficulties of the Corona Virus."

"We feel that between Japanese government funding and the monies we hope to receive from President Trump's infrastructure stimulus through the Department of Transportation, along with private equity that the project still has a great opportunity, is viable and can be construction ready this year," McLane added.

## Finding financing

In the early days of the project, Texas Central said its attempt at building high-speed rail in Texas would differ from previous attempts because the project would be privately financed. However, the company has also said it could explore government loan vehicles, such as Railroad Rehabilitation & Improvement Financing and Transportation Infrastructure Finance and Innovation Act.

The uncertainty in global markets also has Texas Central thinking about how much appetite there will be for private financing.

"We don't know whether that's going to be there or not," said Carlos Aguilar, CEO of Texas Central, about attracting private equity interest. "It depends on the markets themselves to determine if and how much of the money can come from private equity. And that's why it could require some stimulus money, but we don't know yet."

Aguilar said any funds from the U.S. government that Texas Central would seek would be in the form of loans. He said the company did not apply for funding through the CARES Act passed by the U.S. government. A Federal Railroad Administration spokesperson confirmed Texas Central did not receive funding through the CARES Act.

## Project cost rises

How much the Texas Central project will cost has been a hotly contested issue.

Currently on Texas Central's website, it says the train system will cost "more than \$12 billion to construct." Regarding the \$30 billion figure McLane mentioned, Aguilar said the project construction cost will be around \$20 billion, and environmental requirements are an example of something that could add costs.

Aguilar called the \$30 billion figure "a conservative estimate of 'all in' numbers."

## May momentum

The project is coming off what Aguilar said was "an amazing month" in May.

Texas Central won a key legal ruling, earning the designation of a railroad by the Thirteenth Court of Appeals. The designation is key for Texas Central, as railroads in

Texas have the power of eminent domain — a tool the company could use to acquire the land it needs. Project opponents are appealing the decision to the Texas Supreme Court. So far, Aguilar said the company has purchased about 25 percent of the land it needs, which represents about 360 parcels.

The FRA also issued a Final Environmental Impact Statement, a regulatory hurdle the company has been working for years to clear. Project opponents have also said they plan to challenge some items of the Final EIS.

**Evan Hoopfer**

Staff Writer

*Dallas Business Journal*