

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36025

ENTERED
Office of Proceedings
May 24, 2018
Part of
Public Record

**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**

JBQ Ranch's Response to Petition to Reopen

JBQ Ranch would request that the Surface Transportation Board (STB) not reopen its decision in Docket No. FD 36025 and continue to hold it does not have jurisdiction in this matter. In the alternative, should STB reopen this matter that Texas Central's Petition for Exemption be denied. The regulation set forth in **49 U.S.C. Subsection 10901** is most appropriate when considering whether or not the first High Speed Rail (HSR) project in the State of Texas meets the requirements of such statute. The licensing requirements of Subsection 10901 should be followed (and not exempted) especially in this Docket since the STB has had few opportunities to review HSR projects and in particular the Tokaido Shinkansen N700 Bullet Train. The Japanese technology product is not compatible with rail technology currently in use in the U.S.

Determining whether or not "public convenience and necessity" demands this type of bullet train should not be taken without due diligence being followed by the STB based on Texas Central's mischaracterizations of the benefits that will inure to the Public set forth in its Petition for Exemption. A number of the items listed by Texas Central in its Petition have proven to be incorrect in testimony that has been presented in public meetings held by the Federal Railway Administration (FRA) regarding the Draft Environmental Impact Statement (Draft EIS) for this HSR project.

By way of example, we submit:

1. Texas Central's agents have recommended to the STB that the "Utility Corridor" is the best route for the bullet train, however, the citizens of the State of Texas never envisioned that HSR would be constructed along the "Utility Corridor" alignment. Texas Central has advised the STB that the 2014 *Texas Rail Plan* (TRP) prepared by the Texas Department of Transportation (TxDot) found that HSR between Dallas – Houston can play a vital role in connecting the two cities. Texas Central failed to tell the STB that the "Utility Corridor" was not identified as the route for the HSR. TxDot identified three general corridors for the HSR. These corridors (identified in the TRP at page 4-52) were:
 - (a) BNSF Corridor
 - (b) UPRR Corridor (near College Station)
 - (c) I-45 Greenfield Corridor

More importantly, the TRP (at page 4-49) suggested that using existing Interstate Highway *right-of-way avoids many property acquisition delays and costs associated with securing new right-of-way, and minimizes public and environmental impacts.* Of equal importance, the TRP presumed that at some point an HSR corridor would be built connecting Dallas/Fort Worth with Austin and San Antonio (going from Oklahoma City to South Texas) and then an HSR corridor would be built connecting Austin to Houston (going through Bryan/College Station). [Pages 4-52 to 4-54] TxDot supported the creation of a network of HSRs in Texas [forming a triangle], not just one link from Dallas to Houston. If the Tokaido Shinkansen N700 Bullet Train technology is approved for Dallas-Houston HSR, which is not compatible with the technology currently in use in the U.S., then competition in the Texas market would be lost. (*Dallas News, "Transportation" 4-2-18*)

2. Texas Central's agents have stated generally to the FRA and the STB that the bullet train will reduce carbon emissions and specifically stated in a 2016 article in *Metro Magazine* (business oriented publication)

“The bullet train that will be deployed on the track is environmentally friendly – the electrified trains will have little impact on air and water quality along its route. With significantly lower emissions per passenger mile it will preserve clean air.”

Such statement is a canard. Texas Central takes comments that might be correct in one route in one area of the United States and applies it specifically to the “Utility Corridor” in Texas. Testimony was presented to the FRA wherein Professors Mikhail Chester and Arpad Horvath opined:

“For example, a light rail with 90% occupancy would compare favorably with just about any other mode if we consider only the energy expended and emissions created in operating the system. But building the infrastructure and producing the fuel essentially double the energy intensity of light rail. And if we change our assumptions further and assume the light rail system will be only 10% full, as opposed to 90%, then light rail starts to look much worse, and is less environmentally beneficial than a gasoline sedan with a solo driver.”

The Professors stated in an article written by them in *Access Magazine* that the cleanliness of the electricity used by cars, trains, etc. is a key factor in determining if high speed rail will be environmentally beneficial. The article states:

“High Speed Rail proponents have recently acknowledged the need to augment any new train infrastructure with investments in wind and solar electricity generation in order to reduce emissions.”

With coal and natural gas plants being in the vicinity of the proposed HSR one would assume if these plants are the source of energy for the HSR then this source would have

a negative environmental impact on the project. The article says that “Greenhouse gas emissions increase by about 15% in HSR projects primarily because of the concrete used in construction – half a kilogram of CO₂ is emitted for every kilogram of cement produced”.

The depth of the hoax that Texas Central is performing on the public is even more noticeable when you consider that the “Utility Corridor” crosses more Texas Forest than the corridors referenced in the Texas Rail Plan at the beginning of this submittal. In sworn testimony before the STB then CEO for Texas Central Tim Keith stated building the HSR in the “Utility Corridor” will have a positive impact on the environment and reduce carbon emissions. To quote a March 10, 2012 article by Professors William Brock Most and Steven Weissman in *Berkeley Law*:

“Global climate change is caused by high levels of carbon dioxide and other greenhouse gasses in the atmosphere trapping heat from the sun. As trees grow, they absorb carbon dioxide (CO₂) and release Oxygen (O₂) By this process, the growth of trees in an urban forest can reduce atmospheric levels of carbon dioxide and slow the process of global heating”.

The best tool that nature has given Texas for eliminating CO₂ and creating Oxygen is the mass amounts of Forestry in this state. It is difficult to understand how eliminating forested lands will benefit the environment when the other corridors considered by the *Texas Rail Plan* were mainly deforested.

3. Texas Central has told the STB in its Petition for Exemption that its HSR will improve safety along its corridor. However, the testimony before the FRA of the Police Chiefs, Sheriffs and Superintendents in the cities and counties along the route of the proposed HSR is that they have never been contacted by Texas Central regarding the safety issues that arise for emergency vehicles and school buses when traditional routes for such vehicles are closed because of the bullet train. Publicly, Texas Central says no public roads will be closed, but *Chapter 3.0 Section 3.11 – Transportation - of the Draft Environmental Impact Statement* lists many county roads that would be permanently impacted. Many of the individuals testifying before the FRA, regarding the Draft EIS, discussed the hardships (e.g. increased time for emergency medical services to reach their homes, longer bus rides for students or increased costs to school districts to purchase additional buses) caused by road closures and road relocations arising from the HSR. JBJQ Ranch owners testified before the FRA on a number of matters that negatively impact on our remainder properties. One major concern of JBJQ Ranch is that should the HSR be allowed to be constructed along the “Utility Corridor”, it crosses a JBJQ Ranch property we refer to as the Vaughn Place (12711 CR 408, Normangee, TX) [250 acres] Texas Central’s original drawings reflect that the HSR would be an embankment as it crosses the Vaughn Place. If this is not changed it would result in probably 100 acres of land on the Vaughn Place east of the HSR being landlocked with JBJQ Ranch still owning over a 100 acres of land west of the HSR. The Draft EIS (“*Project Footprint*” *Segment 4 – Sheet 389 of 536 and Parcel 9257*) does not reflect a viaduct in the

embankment that would allow livestock, wildlife and farming and ranching equipment to travel to each side of the HSR, however, Texas Central's public comments are that landowners would not lose access to their remainder properties.

In addition to reviewing the misstatements of Texas Central referenced above, we would request that STB obtain a copy of the transcripts of the testimony received by the FRA in the recent public meetings they conducted regarding the Draft EIS to better understand the breath of the misstatements that Texas Central agents have made regarding the proposed HSR. If time does not allow for such review, a number of the comments made at such public meetings are contained in a submittal to the STB dated 5/16/18 titled "*Letter of Objection by Glenn A. Mannina to Reopen the STB July 18, 2016 Decision*" that I believe was filed with the STB on May 18, 2018.

CONCLUSION

JBQ Ranch would request that the STB not reopen its prior decision in this docket. However, should the STB elect to reopen this decision, we would request **that subsection 10901** not be waived by the STB. We believe based on the information in the submittals the STB is receiving in response to Texas Central Petition to Reopen that the HSR proposed by Texas Central is inconsistent with public convenience and necessity.

However, should the STB determine that HSR generally meets the standards for issuance of a certificate of public convenience and necessity, then to protect the public interest, such certificate needs to be modified. We must not forget whom Texas Central says it is in its Petition for Exemption:

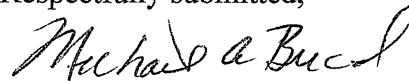
Petitioners TCRI and TCRR are wholly-owned subsidiaries of Texas Central Rail Holdings, LLC, which, in turn, is a subsidiary of Texas Central Partners, LLC ("TCP") a Delaware limited liability company (hereinafter TCP, TCRI, TCRR and other affiliates, including Texas Central High-Speed Railway, LLC, are referred to as "Texas Central").

Texas Central clearly isn't an entity like a municipality, county or state that has councilmembers, commissioners or legislators who are elected by the voters to look out for the public interest. If a landowner's adjoining property is damaged by a true public project administered by a governmental unit then a landowner has a claim for inverse condemnation to make them whole. The entities forming Texas Central are all about limiting their liability, if Texas Central goes bankrupt, landowners that have been damaged by them will probably be looking for recourse from an entity buying Texas Central's interests out from a bankruptcy court that will void unsecured claims.

Our only protection is for the STB to require due diligence of Texas Central in providing a viable route for the bullet train and that appropriate safeguards be placed in a certificate of convenience and necessity that protect our remainder properties. The STB is the only real protection we landowners have against the *laissez faire* attitude of Texas Central.

So, if a certificate of convenience and necessity should be issued by the STB we ask that the STB modify the certificate to provide that construction plans for the HSR include provisions that provide (a) emergency vehicle and bus access to existing homes and properties not being purchased or condemned by Texas Central be comparable to such properties current access; (b) viaducts or some type of improved openings to landowners who own substantial acreage (e.g. 25 acres or more) on each side of the Right-of-Way for the HSR so that livestock, wildlife and farming and ranching equipment can traverse from one side of the Right-of-Way to the other side without interference and (c) that roadways of cities and counties damaged by the construction of the HSR (including deterioration of nearby roadways resulting from Texas Central transporting heavy equipment hauling dirt and other construction materials to construction sites) be returned to the condition that such roadways existed prior to the HSR project or better.

Respectfully submitted,



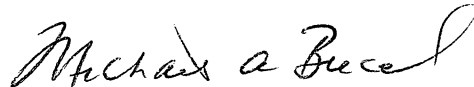
Michael A. Bucek
Of Counsel to The Frank Law Firm, PLLC
1017 William D. Tate Ave., Suite 110
Grapevine, TX 76051
817-319-4298 (cellular)
817-949-2161 (office)
817-416-6292 (fax)
mabucek@aol.com
Attorneys for JBJQ Ranch

CERTIFICATE OF SERVICE

I hereby certify that on the 23RD day of May, 2018, I served a true and correct copy of the foregoing upon counsel for the entities listed below via U. S. first class mail, postage prepaid, all other parties received service by email.

Raymond A. Atkins	Kathryn K. Floyd
Terence M. Hynes	Jay C. Johnson
Louis P. Warchot	Venable LLP
Hanna M. Chouest	600 Massachusetts Ave.
Sidney Austin LLP	Washington, D.C. 20001
1501 K Street, N.W.	(202) 344-4400
Washington, D.C. 20005	
(202) 736-8000	

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



Michael A. Bucek