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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
April 8, 2019
Part of
Public Record

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**

REPLY OF DELTA TROY INTERESTS, LTD.

TO

REQUEST FOR ORAL ARGUMENT

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Pursuant to 49 C.F.R. § 1104.13(a), Delta Troy Interests, Ltd. (“Delta Troy”) hereby replies to the Request for Oral Argument (“Request”) filed by Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC (collectively, “TCR”) on March 19, 2019. In the Request, TCR asked the Surface Transportation Board (“Board” or “STB”) to hold oral argument on the Petition to Reopen filed by TCR on May 4, 2018. As described herein, oral argument is both premature and unnecessary, and the Board should deny the Request. Nonetheless, if the Board does decide to grant the Request, the oral argument should be held in Texas so that the various parties of record in this proceeding – the overwhelming majority of whom are based in Texas – would have the opportunity to participate.

TCR originally requested Board authorization for its rail project in April 2016, but the Board properly found that the proposed intrastate rail line, based on proprietary technology never before utilized in the U.S. and with no physical connections to the national rail network, was

outside its jurisdiction.¹ Therefore, the Board dismissed the proceeding.² After exploring tentative through ticketing arrangements with Amtrak, TCR decided to try again with the Board, filing a Petition to Reopen in May 2018. In the Petition to Reopen, TCR asserted that its preliminary agreement-to-agree with Amtrak on possible through ticketing transformed its insular, intrastate rail proposal into a jurisdictional rail project that is part of the interstate rail network. This latter effort has also fallen short: as explained by Delta Troy and others, the tentative Amtrak arrangements do not warrant reopening and do not trigger Board jurisdiction, especially when considering all relevant characteristics of the TCR proposal.³ The parties are now waiting for a Board decision on the Petition to Reopen.

TCR's continuing quest for Board jurisdiction over its intrastate rail proposal is unsurprising given TCR's difficulties. TCR has been unable to obtain sufficient local support on the ground in Texas for its rail proposal, and it wants the force of federal preemption to override local opposition. A Texas county court recently found that TCR is not a railroad under Texas law, meaning that TCR cannot utilize eminent domain.⁴ TCR has been unable to answer simple questions about either its funding sources or its optimistic ridership estimates, questions that have only gained in importance in light of the extreme troubles faced by the California High Speed Rail project.⁵

¹ See Board decision, served July 18, 2016.

² See Board decision, slip op. at 6 (served July 18, 2016) ("This proceeding is dismissed").

³ See Delta Troy Reply in Opposition to Petition to Reopen (filed May 31, 2018).

⁴ Patrick, William, "Legal issues could derail high-speed rail in Texas," PALESTINE HERALD (March 7, 2019) ("District Judge Deborah Evans said Texas has historically granted eminent domain to entities such as railroad and utility companies. But TCR, Evans said, cannot be considered a railroad...."), available at https://www.palestineherald.com/news/legal-issues-could-derail-high-speed-rail-in-texas/article_8caeeab8-4136-11e9-bcf8-875c732afdd3.html.

⁵ Shephardson, David, California will not complete \$77 billion high-speed rail project: governor" REUTERS (Feb. 12, 2019), available at <https://www.reuters.com/article/california-governor-rail/california-will-not-complete-77-bln-high-speed-rail-project-governor-idUSL1N2071FE>.

Given these circumstances, it is obvious that TCR seeks oral argument in order to plead its case before the Board. Oral argument is premature, however. The Board dismissed this proceeding in 2016, and reopening has not occurred. To hold oral argument in a proceeding that does not exist would be putting the cart before the horse. Reopening is also unnecessary. The issues raised by the Petition to Reopen have already been fully briefed by TCR, Delta Troy, and numerous other parties. The single legal issue raised in the Petition to Reopen regarding the scope of the Board's jurisdiction can and should be addressed by the Board without further input from the parties. The issue to be decided does not involve highly technical expert evidence or complex factual circumstances that may warrant oral argument. The Request points to no compelling reason even remotely indicating that oral argument is warranted here. TCR attempted to support its Request with letters signed by twelve members of the prior Congress in June 2018, but these letters only address the proposed project generally, and are irrelevant as to whether oral argument before the Board is necessary as a procedural matter.⁶ In short, oral argument is both premature and unnecessary in light of the current procedural posture of this proceeding and the pleadings already before the Board. Given the Board's limited resources, it should not spend additional time and effort, and require interested parties to incur greater expense, by holding oral argument on a jurisdictional issue that the Board has already considered once.

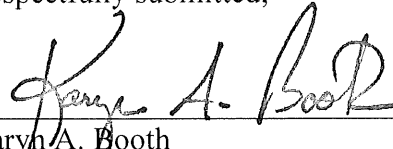
Oral argument is also very rare at the Board, and, in those few occasions when it is utilized, it is generally reserved only for complaint proceedings with a very limited number of parties. In contrast, the Petition to Reopen only raises a single jurisdictional question in a non-complaint proceeding where there are dozens of parties, making oral argument unwieldy at best.

⁶ In fact, only seven of the twelve are actually still in office. See TCR Request at Attachment A ("Letters of Congressional Support").

Although Delta Troy strongly believes oral argument is unnecessary, in the event that the Board decides to grant the Request, the oral argument should be held in Texas. Virtually all parties in this proceeding are located in Texas; the few non-Texas names in the Board's service list for this proceeding are generally outside counsel for Texas-located parties. In light of this fact, any oral argument should be held in Texas to facilitate the participation of all parties.

For all the reasons described herein, Delta Troy respectfully requests that the Board deny the Request for Oral Argument because oral argument is both premature and unnecessary. Nonetheless, if the Board grants the Request, the oral argument should be held in Texas in order to facilitate the participation of the parties to this proceeding.

Respectfully submitted,



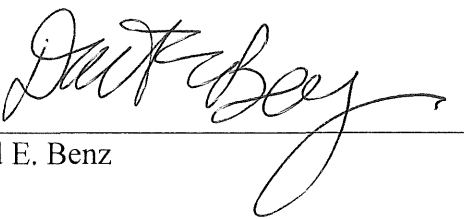
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April 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April 2019, I served a copy of the foregoing upon counsel for Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC via electronic mail and U.S. first-class mail, postage prepaid. All other parties of record were served on this day via U.S. first-class mail, postage prepaid.



David E. Benz