

Surface Transportation Board

Finance Docket No. 36025

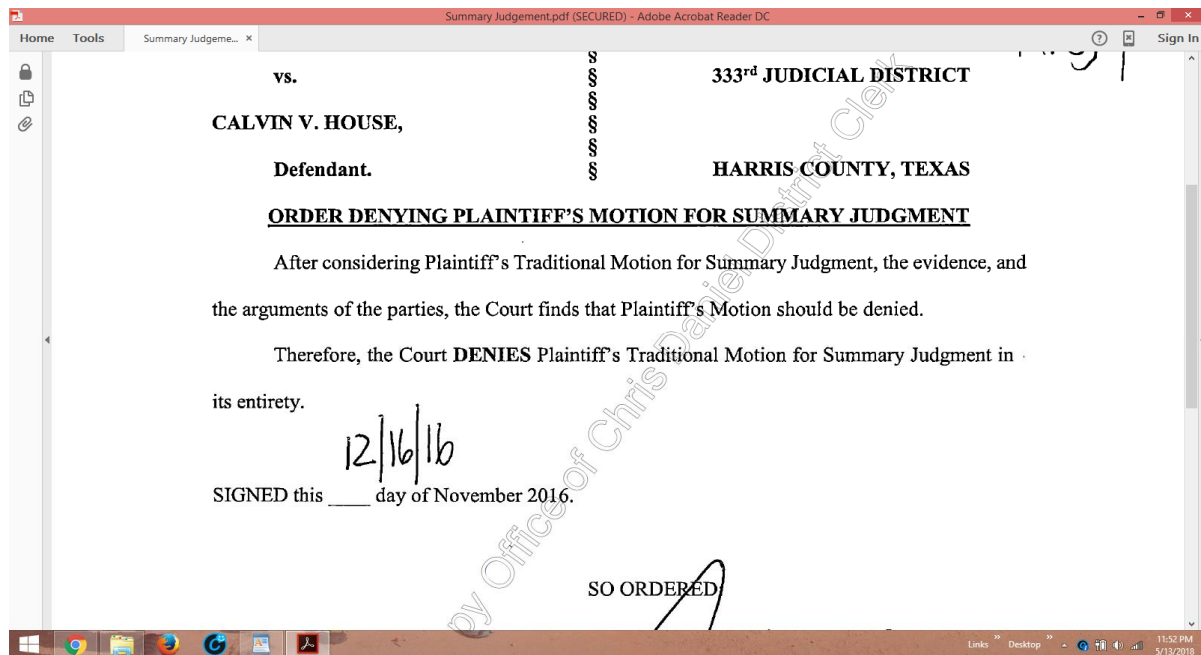
RE: Texas Central Railroad Petition to Reopen

ENTERED
Office of Proceedings
May 30, 2018
Part of
Public Record

I am writing this letter in opposition to the recently reopened STB filing Docket # FD_36025_0 by Texas Central Railroad and Infrastructure, LLC. I am a landowner directly impacted by this proposed venture. My parents were sued by Texas Central and they successfully won the court case in which Texas Central was unable to prove they were a railroad. I understand that this petition is not meant to prove the merits of a court case in Texas but I believe it is important to note that Texas Central has been unable to prove in any court in Texas that they are in fact a railroad. It is my humble opinion it is presumptive to put forth a petition before the STB without ascertaining they are even a railroad under current state laws. It is my prayer and request that the surface transportation board allows the state of Texas to rule accordingly in this matter before exempting or providing any oversight to this project as not to convolute current proceedings in active court cases. Please see the following requests in our court case in December 2016 by TCRI:

Because TCRI is entitled to these rights as a matter of law, this court should grant traditional motion for summary judgement and grant TCRI a summary judgement ordering and declaring that:

- a. TCRI is a "railroad company" as defined in Section 81.002 of the Texas Transportation Code;
- b. TCRI is an "interurban electric railway" as set forth in Section 131.011;
- c. TCRI has the right to conduct surveys and any other examinations required in order to select the most advantageous route for its new proposed railway. Tex. Transp. Code 112.051, 131.013; and
- d. Defendant is permanently enjoined from interfering with the surveys and examinations that TCRI needs to conduct on the Property in order to select the most advantageous route for its new proposed railway.



TCRI was denied on all requests and counts and they opted not to go to full trial. The judge ruled that they did not prove they were a railroad under current state law.

I would like to point to some current state statutes that TCRI also fails to meet which exemplifies that they do not fully understand Texas laws regarding transportation and railroads.

Sec. 131.013. RIGHT-OF-WAY. (a) A corporation described by Section 131.012 may:

(1) lay out right-of-way not to exceed 200 feet in width for its railways;

Clearly in the DEIS, TCRI does not follow these rules as the ROW varies from 100 ft. to 500 ft. in the DEIS with an average ROW being more than 250 ft. defying this statute completely.

Sec. 131.016. TIME REQUIRED FOR CONSTRUCTION.

The rights secured under this chapter by an interurban electric railway company are void unless the road to be constructed under the charter of the company is fully constructed from one municipality to another within 12 months of the date of the final judgment awarding the company an easement or right-of-way under Section 131.015.

Undeniably, TCRI is unable to follow this statute in its entirety.

Sec. 131.035. LIMITATION ON ACQUISITION. A corporation described by this subchapter may not:

(2) purchase, lease, acquire, own, or control, directly or indirectly, the shares or certificates of stock or bonds, a franchise or other right, or the physical property or any part of the property, of any corporation in violation of the law commonly known as the antitrust law.

The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." These prohibited restraints include price fixing, market allocation, boycotts, bid rigging and tying agreements. The Sherman Act also prohibits monopolizing or attempts to monopolize any line of commerce.

Despite being antiquated, these antitrust laws still carry some weight and the agreement between Japan and TCP needs to be transparent to ensure that antitrust laws are not violated by bid rigging and tying agreements as this project establishes a Japanese monopoly in the United States as only a Japanese Shinkansen can run on the tracks.

Sec. 112.059. CROSSINGS OF PUBLIC ROADS. (a) Each railroad company in this state shall place and keep the portion of the company's roadbed and right-of-way over or across which a public county road runs in proper condition for the use of the traveling public.

It is evident when reviewing the DEIS, TCRI violated this statute numerous times.

Sec. 81.002. APPLICABILITY. In this title, a reference to a railroad company includes:

(1) a railroad incorporated before September 1, 2007, under former Title 112, Revised Statutes; or

(2) any other legal entity **operating** a railroad, including an entity organized under the Texas Business Corporation Act or the Texas Corporation Law provisions of the Business Organizations Code.

It is without dispute that TCRI was not a railroad before Sept. 1, 2007 and they were also not operating a railroad six days after filing incorporation papers. They fall short of railroad statutes in the State of Texas and this is just one reason they have lost all court cases to date.

In the STB filing dated April 2016, TCRR argues that *"When a term goes undefined in a statute," it should be "give[n] its ordinary meaning."* Following TCP's own statements and citing 21 Taniguchi v. Kan Pacific Saipan, Ltd., 132 S. Ct. 1997, 2002 (2012), TCP cannot be a railroad according to Texas Statutes as they clearly were not **operating** a railroad by its ordinary meaning and thus the board should not have jurisdiction over this speculative intrastate project in any form or fashion until the State of

Texas can determine if TCP is even a railroad. Again the term operating should be "*give[n] its ordinary meaning*" which is present tense verbiage. Using TCRR's own claims and applying it to state statutes, they clearly are not a railroad.

Amtrak and Through Ticket Sales

Regarding the current reopening of this petition, TCP is asking for oversight by the STB solely due to through ticket sales. TCP stated that The Texas Central Line accordingly will create an important connection between several existing Amtrak routes, facilitating interstate rail travel and expanding the interstate rail network in its initial STB filing seeking interstate jurisdiction. TCP to this date still lacks important connections between Amtrak stations and any such connection is speculative as no Houston station site has been determined.

TCP stated in their petition the following: "*The Texas Central Line will provide a needed rail connection between the Amtrak routes serving Dallas and Houston, respectively, thereby facilitating interstate rail travel. Thus, the Texas Central Line will "complete" the interstate railroad network serving the Texas mega-region; and as such, is a part of the interstate railroad network*" This is clearly not true as even in the City of Houston and Metro's comments to the FRA there is a clear lack of planning and coordination along with an absence of transportation ties to any downtown area by TCRR. Due to this lack of connectivity along with other deficiencies, City of Houston is asking for a substantially revised DEIS. A shuttle service to 1 of the 3 proposed stations approximately 8 miles away from the downtown Amtrak station surely does not make this an interstate project. Instead it is simply a highly speculative venture by a private development group seeing to steer the STB into a quick decision in attempts to use this oversight or exemption as a means for validity for their proposed project. They are hoping this will assist in achieving eminent domain rights in state court cases as they have been unable to prove that they are a railroad thus far in the state of Texas.

TCRR stated in its April 2016 STB filing the following: "*For the purposes of this Corridor Alternatives Analysis, FRA is identifying logical termini for the Project as downtown Dallas in the vicinity of Dallas Union Station and downtown Houston in the vicinity of the Houston Amtrak Station. Such identification maximizes opportunities to connect to other existing or proposed intercity, regional and local rail facilities and other transit services, furthering FRA's connectivity goals for rail network development.*" The Downtown Houston station has been eliminated thus removing opportunities to reasonably connect to the Houston Amtrak station. There are currently three proposed station areas in the DEIS report. All sites are far from the Houston Amtrak station averaging 8 miles or more and approximately 37 mins via bus/shuttle without traffic. I think it is important to note that due to the lack of both a perceived and actual need, the Houston Amtrak station is little more than a parking lot with a small building. This station has 10 parking spots and serves the Sunset Limited which travels from Houston to New Orleans on a 9 1/2 hour journey. Currently, due to lack of ridership, they only have three trips a week. The Sunset Limited carried the fewest passengers of any Amtrak train in fiscal

year 2016. The Sunset Limited has the fewest ridership per mile of any Amtrak route. Amtrak's Houston to Dallas route was discontinued in 1979 due to considerable daily losses in operating costs. To suggest that a through ticketing arrangement with TCP and Amtrak would justify an interstate project is unwarranted based solely on a single party Amtrak through ticket sale agreement and no true connectivity along with dismal ridership of this 3 day a week route. It is unreasonable to believe that passengers would spend the great effort, time and money to use such a through ticketing arrangement in order to get from Dallas to New Orleans when they could fly for under a quarter of the time and purchase a much cheaper flight without various stops and connections as would exist with shuttle services. This trip and through ticketing system is simply not realistic or feasible for a passenger.

The board ruled in the initial petition that "*Whether an intrastate passenger rail service is part of the interstate rail network is a fact-specific determination based on the totality of circumstances*". One criterion such as a partial through ticket sales arrangement is only a one dimensional specific determination and many other facts and circumstances should be evaluated as stated in the previous board's decision. The board ruled that "*no one factor is controlling*" so it is premature for TCP to assume that a one sided through ticket sales would automatically grant them oversight by a federal board for a state project. The board ruled in the previous petition "*The proximity of a planned station near interstate transportation but with no concrete plans today for through ticketing and no direct connection to Amtrak or any other interstate passenger rail carriers does not make a proposed intrastate passenger service part of the interstate rail network.*" Note that the board concluded that direct connection to the Amtrak station was also a consideration with the through ticket sales. TCP chose to recently select a station approximately 1 mile further than the previous proposed station in the initial petition that has no direct connectivity to other rail or transit options.

TCP also claims in the current petition that "*The parties will also explore opportunities to make reservations and tickets for through transportation available in the future via Texas Central's ticketing system (which is currently in development).*" Merely exploring opportunities to make reservations via Texas Central's site is not concrete and remains vague and speculative. Texas Central has shown from previous behaviors that they have not coordinated and collaborated with stakeholders in important discussions and planning. TCP has consistently not coordinated with the numerous counties in between this speculative venture and the City of Houston and Metro have raised concerns with lack of planning and coordination by TCP. I would respectfully ask the board not to assume that TCP will explore opportunities if no such concrete plans can be presented. Merely allowing Amtrak to sell TCP's tickets is not a complete through ticketing package.

TCP stated in their previous petition the following : "*Prospective Texas Central station sites have been evaluated with the goal (among others) of enabling passengers to transfer conveniently between Texas Central trains and those operated by Amtrak and other rail service providers*" Again TCP has proven that they are not truly trying to enable convenient transfer between the Houston station and Amtrak as they have chosen the Northwest Mall site despite this not being the preferred site

by the FRA nor the City of Houston. This site does NOT hold true to what TCP has claimed in their previous statements. TCP claimed that they were happy in news reports and on their website of the board's conclusion that no jurisdiction was found after the board's previous decision. They have recently removed this proclamation of victory ¹ from their site in lieu of the current filing. It was titled Let's Clarify the STB Ruling... - Texas Central.

Coordination and Connectivity

There are concerns of TCP holding up to agreements made to the City of Houston in its MOU. For one, TCP has not coordinated with stakeholders including Metro and the City of Houston as stated in this agreement in order to provide express connections to Downtown Houston where there is considerable employment unlike the 290 area where the proposed station may be located. Metro has concerns as well that flooding issues have not been addressed in the DEIS. Given concerns with the environment and financial devastation to the area, a thorough review of TCP's financing and necessity of the project should be considered before moving forward.

According to Metro's comments to the FRA they are concerned that TCP has not included regional plans and policies which should have been included in the DEIS according to agreements TCP has made with City of Houston in the Memorandum of Understanding. Per comments made to the FRA, TCP did not consider the City of Houston's major thoroughfare and freeway plan in the DEIS despite many roads being in the planning process for a decade or more.

TCP chose the Northwest Mall site without the consent of the FRA and the FRA clearly stated that this site has not been chosen and is being evaluated. In their comments to the FRA, City of Houston has stated that this site does not currently have strong integration of local transit and *"accessing the site will generate significant vehicle trips and **contribute to roadway congestion**"*. Even the City of Houston is concerned that this will lead to further road congestion in and around the city where TCP is claiming that this project will help. The City of Houston is asking to minimize and mitigate the congestion in the DEIS which has not been proposed by TCP as part of the MOU agreement made between the two parties. City of Houston is concerned again with congestion as this will increase traffic along the IH-610 and IH-10 roadways which is already the most congested segment in the State of Texas and TCP has not provided any mitigation for this growing issue.

City of Dallas also made comments to the FRA regarding congestion problems caused by this project. They specifically bring up Austin street and the Cadiz/Lamar intersection which was not addressed in the DEIS in regards to congestion and traffic impacts in this area. City of Dallas brought up that TCP did not bring up "seamless connectivity and integration of all transportation modes" in the DEIS. This includes DART, TRE and other modes.

¹ <https://www.texascentral.com/2016/07/21/lets-clarify-the-stb-ruling/>

Along with not including many of the City of Houston thoroughfare plans, City of Dallas had many of the same issues with extreme lack of planning and inclusion of roadways by TCP. This same lack of planning and connectivity can be found along the entire proposed route. Dallas stated that the City of Dallas Thoroughfare Plan, and the City of Dallas CBD and Vehicular Plan and the City of Dallas Complete Streets Manual should be included and considered in planning as it had been left out of the DEIS. All comments from Metro, City of Houston, and Dallas can be provided upon request to the Board.

Adequate thoroughfare planning was omitted from the DEIS and lack of coordination with all the counties in between was demonstrated as well. It is clear that connectivity is not TCP's priority or goal as evidenced by their preference for the Northwest Mall site over the Northwest transit center location. This is further exemplified by their chosen midstop which is in the middle of nowhere and 26.6 miles from College Station. At this point, all connectivity TCP is proposing is obviously speculative and conjecture at best.

Financial Feasibility

In the STB filing in April 2016 by TCRR, they claim the following: *As defined by TCR, the purpose of the privately proposed Project is to provide reliable, safe and **economically viable** passenger rail transportation using proven high-speed rail technology between Dallas and Houston.* Reviewing numerous reports, this project will not be an economically viable. Please refer to Harding's and TX Dot Ridership report presented in the initial STB filings. The Reason report also provides evidence that this is not an economically viable project. There is absolutely no evidence that this project will support itself and not be a drain to the taxpayers.

In previous STB rulings, proper vetting of the project was required. Please see the following ruling dated August 30, 2017 *"GLBT has failed to provide the Board with accurate financial information upon which the Board can rely to make a determination on the transportation merits of the project as required by 49 U.S.C. § 10901. Under § 10901, the Board must authorize the construction and operation of a new line "unless the Board finds that such activities are inconsistent with the public convenience and necessity." In making this determination, the Board considers the financial condition of the applicant and the financial feasibility of the project. See Tongue River R.R.—Rail Constr. & Operation—W. Alignment, FD 30186 (Sub-No. 3), slip op. at 14 (STB served Oct. 9, 2007). The Board's purpose in doing so is not to protect the applicant or possible investors, but rather, "to protect (1) existing shippers from financial decisions that could jeopardize the carrier's ability to carry out its common carrier obligation to serve them, and (2) the affected communities from needless disruptions and environmental impacts if the applicant were to start construction but not be able to complete the project and provide the proposed service."* I respectfully ask that the Board consider the necessity of this project which would weigh both ridership and overall economic cost and burden of this venture along with financial status of TCRR.

Along with unsupported ridership projections by TCP, their business model is highly speculative as well. In the 2016 STB filing, TCP claimed that their business model calls for it to begin construction in 2017. Obviously this did not occur and they continue to miss milestones and timelines similar to the California High Speed Rail Project. This undertaking is running an eerily similar course in relation to slipped timelines and escalating costs which are much higher than first estimated. According to TCP's business model, Shaun McCabe stated under deposition that Virgin Trains would operate this project. Virgin trains have recently been unable to make payments on their private franchised East Coast line within three years of service and had to turn over the train route to the government. This was due to "wildly inaccurate passenger growth forecasts." It is interesting that TCP stated that they would use Virgin Trains and just another reason it is imperative to fully vet the projected data provided by TCP and their business model.

TCRR and Tim Keith stated in the April 19, 2016 STB filing, "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." The project has increased from a \$10 billion project to an estimated \$18 billion project excluding ROW according to TCP's projections in 2017. This is an 80% increase in just two years and construction has not even started and the majority of the ROW has not been obtained nor negotiated. TCP had obtained approximately 15% of the route needed under option contract as of 6 months ago with the majority of the landowners and stakeholders being unwilling to work with an entity that has yet to prove they are a railroad by Texas statutes. Due to the highly speculative nature of this project and the extent of devastation to the landowners and environment close scrutiny should be utilized when reviewing this private development venture which does not rise to the level of public necessity.

Reviewing SEC reports reveals that TCP/TCRR/TCR and other related companies have not raised a substantive amount of funding for construction. They advised the FRA that they are only using private funds at this time and the FRA stated this in every public meeting. Currently there is no reliable record of private funding for an 18 billion project which excludes ROW and is based on 2017 calculations.

To this date the only reported money raised can be found in SEC reports and much of this money presumably has been used and not saved for construction expenses which was already scheduled to begin according to TCRR's own verified statements. Thus a detailed and thorough examination of all funding should be considered in order to protect the public from "needless disruptions". Please see SEC report ² showing that Texas Central Partners, LLC raised \$75,000,000 on 8-14-2015. Executive officers and directors include Tim Keith, Richard Lawless, Robert Eckels, John Kleinheinz, John Matthews, and Melvin Richmond Jr. respectively. Another company they formed presumably related to the High Speed Rail is Houston HSR Investors, LLC. Please see SEC report ³ showing that Houston HSR Investors, LLC raised \$8,944,500 on 8-25-2015. Executive officers and directors include Tim Keith, Richard Lawless, Robert Eckels, John Kleinheinz, and John Matthews respectively.

² https://www.sec.gov/Archives/edgar/data/1649875/000164987515000002/xslFormDX01/primary_doc.xml

³ https://www.sec.gov/Archives/edgar/data/1651381/000165138115000001/xslFormDX01/primary_doc.xml

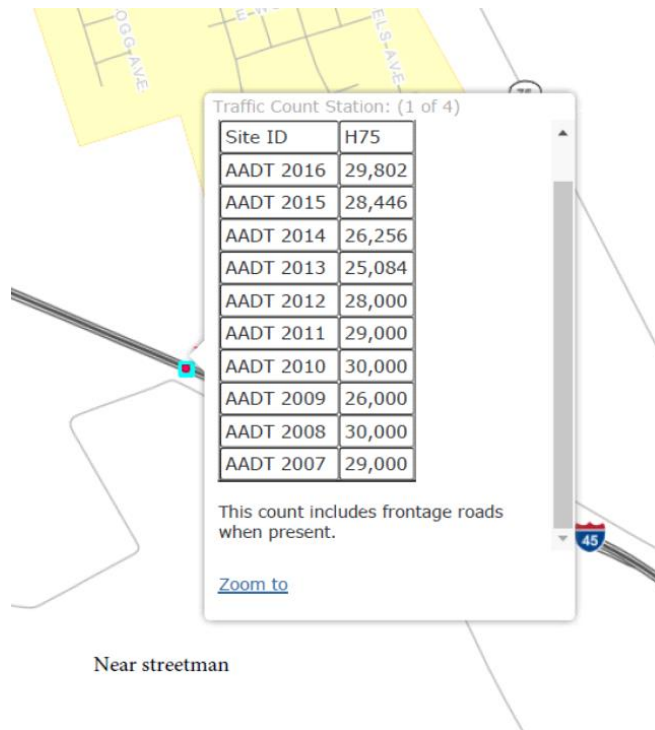
TCP stated in their previous petition that they "*anticipate that it will obtain the financing necessary to complete this important project*". They also anticipated that construction would begin in 2017 and there is only evidence of 75 million raised from TCP and 8.9 million raised in a separate investor LLC. How can an \$18,000,000,000 plus project be expected to be completed when construction was estimated to begin in 2017 and only \$75,000,000 has been raised?

In TCRR's April 2016 STB filing they stated the following: "*In August 2015, the FRA identified the Utility Corridor "as the only feasible end-to-end corridor based on operational, technological and environmental constraints." The FRA stated, "The Utility Corridor is the only corridor that demonstrates the potential to meet the [Project's] purpose and technical requirements."* This is currently in dispute as the purpose and need was changed in the middle of a NEPA process. Routes were eliminated due to economic criteria which were a component that was excluded from the final purpose and need but was used in initial public scoping meetings. "*Because it was deemed economically infeasible by the Proponent, FRA eliminated the I-45 Greenfield Corridor from further consideration*". This makes the entire route speculative in nature as the purpose and need was changed to benefit TCRR and this deviation during a NEPA process is being called into question.

Ridership and Congestion

TCRR claimed in their petition dated April 2016 the following: "*FRA has identified both Dallas/Ft. Worth and Houston as among the 10 U.S. cities with the most congested roads. 12 The Texas Transportation Institute ("TTI") estimates that the number of cars traveling in the Dallas/Ft. Worth-Houston corridor is likely to exceed the capacity of the highway network by nearly 30% in 2035.*" While it is true that congestion has increased within Houston and Dallas, the congestion does not lie in the middle along the 45 route but in the cities at the endpoints. This projected train will not do anything to relieve the congestion but only exasperate this issue. Please refer to the State of Texas AADT reports⁴ which dispute claims that TCP is referring to for congestion along the 45 route. It is also evidenced that congestion in 2035 in these middle sections of 45 have a slow growth pattern vs the congested growth in the cities. Again the congestion is in the major cities and this proposed project only makes this problem worse as stated by both City of Houston and Dallas officials.

⁴ http://www.txdot.gov/apps/statewide_mapping/StatewidePlanningMap.html



TCRR continues to offer unsubstantiated claims to the STB, the FRA and the public. In their statement to the STB in April 2016, they claim the following: *"Petitioners anticipate that Texas Central's safe, efficient and convenient high-speed service will attract approximately four million riders annually by the year 2025."* Just over a year later in their report to the FRA they are claiming now a 5 million ridership which is a magical 25% increase. It is interesting that they increased these figures in order to presumably make the figures look more appealing for investors and for those parties from whom they are seeking loans. Again, a thorough and transparent review should ensue for this project as they have hidden many of their reports to the public yet are threatening landowners with a governmental privilege of eminent domain. This is unacceptable and the public should be protected from development schemes by private investors.

Their very own Insight report uses incorrect data such as sales tax on ticket sales generated both on the local and state level which does not occur according to the State Comptroller's office. *"The tax forecast includes conservative estimates of property taxes on the completed corridor and rolling stock, plus sales and use taxes on construction materials, rolling stock and other equipment, and retail sales tax on ticket sales."*⁵ Surely a true transportation company would know this and the credibility of their entire secret study should be in question. TCP who has been given this information continues to this date to try to mislead the public and officials regarding this tax benefit to the tune of billions of dollars in perceived but untrue tax revenues. An ethical and competent transportation company would

⁵ <http://www.texascentral.com/wp-content/uploads/2016/04/Economic-Impact-Study-Executive-Summary.pdf>
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have known this and would have corrected their error after being brought to their attention instead of perpetuating a false claim.

According to their April 2016 petition they claim the following: *"Petitioners anticipate that, by 2026, approximately 20% of all Dallas-Houston travelers will choose Texas Central's high-speed passenger service."* How could this figure be true using either the 4 million or 5 million projection as even in 2035 mid areas on 45 have projected 54,000 vehicles including all local traffic, trucks and through traffic. This is under 20 million per year with all traffic and 32.4% of that traffic is expected to be trucks and local traffic is a large portion as well. Current air travel is under 2 million a year and has decreased for this route. Using 20% of TCP's market share as stated makes traffic counts on this corridor to be 20 million at the 4 million ridership and 25 million at the 5 million ridership figures. This is simply not supported by data. Please ensure that TCP provides data justifying this project as it doesn't appear to rise to public need and clearly doesn't suggest necessity for this route.

Annually there is only 1.3 million airline ridership for this route. Unfortunately for TCP there is only 89,060 annual workflow commuters according to American Community Survey 2006-2010⁶ Tract to Tract Data. It is concerning that they have calculated 5 million annual ridership when 100% of the airline traffic and workflow commuters are under 1.4 million. Data needs to be transparent and revealed to justify purpose and need. There is clearly not enough traffic or need for this route with Dallas County to Harris County commuters at 65 daily and Harris County to Dallas County at 179 daily commuters by car. Since this venture involves the NEPA process with many negative impacts, the ridership and data must be vetted and substantiated to safeguard taxpayers, property owners and the environment.

In the petition letter in April 2016, TCP stated the following: *"the Texas Central Line will "foster sound economic conditions in transportation and ... ensure effective competition and coordination between rail carriers and other modes [of transportation]." It will offer an efficient and cost competitive option for persons traveling between two of the nation's largest metropolitan areas* "These comments should be vetted as the project started out as a 10 billion project and now is up to 18 billion in just 2 years and still climbing. We do not want this to be another California debacle.

There is a great deal of evidence that this project will not gain the ridership that is estimated and even TX Dot claimed ridership would be 0.7-2.7 million per year with other studies at approximately 1.5 million ridership. TCP incorrectly asserts that TX Dot had higher ridership figures but they failed to note that TX Dot did so without the midstop location AND with average ticket prices at \$106 or below. TCP shows that their average ticket price will be \$199 based on false claims of taxes to City of Dallas⁷. Please look at the statement **\$10 million – Estimated local sales tax produced from the train's ticket sales in Dallas County** which would show at an estimated 5 million total ridership with 2.5 million at the Dallas station and 2% local sales tax and an average ticket prices of \$199 you will arrive at approximately \$10 million sales tax paid to Dallas County. That is of course if sales tax was collected on ticket sales which it is not. If ticket sales were an average of \$106 as suggested by TX Dot in order to achieve higher

⁶ <http://bigbytes.mobylus.com/commute.aspx>

⁷ <https://www.texascentral.com/2018/01/29/north-texas-bullet-train-station/>

ridership, you would only have an incorrect assumption of sales tax of 5.3 million which is not what they are proclaiming to the City of Dallas or Houston.

TCP's claims are false regarding TX Dot's ridership as they clearly did not follow the average ticket price or the omission of the midstop. TX Dot also had the following routes with higher estimated ridership than the Houston to Dallas route: Austin to Houston route with estimated ridership 1.1M – 4.1M, Houston to San Antonio route with estimated ridership 0.8M – 3.1M, Dallas to Austin route with estimated ridership 0.8M – 2.9M, Fort Worth to Houston route with estimated ridership 0.7M – 2.8M, Dallas to San Antonio route with estimated ridership 0.9M – 3.7M. Reviewing these ridership figures, TX Dot had the Houston to Dallas path as their 6th route in terms of ridership for the State of Texas. Again, necessity has not been proven for this project and both ridership and economic feasibility must be analyzed using real data and not secret reports that have been withheld to the public and necessary scrutiny should be utilized when attempting to seize 8000 acres of private property.

There is clear and transparent evidence of numerous reports that do NOT show a need for this private development venture. We know the secret reports have questionable data already as the tax information compiled is incorrect and an invalid conclusion that has been provided over and over again by TCP to the public and officials. One should believe that much of the data in this report is inaccurate as well and the consulting company was provided portions of faulty data from TCP to compile. Please read disclosure statements from all secret reports when reviewing this information. Also it is my supplication before taking approximately 8000 acres of people's private property all of this data should be transparent to the public and scrutinized before one single acre is seized from a landowner.

Environmental Concerns

I think it is imperative to bring to the board's attention that many landowners have raised considerable environmental impact concerns which were included in the FRA comments. City of Dallas also brought up significant concerns not addressed by TCP such as the following:

least tern findings,

evidence of threatened species (mussels),

air quality improperly assessed and evaluated,

water quality improperly assessed and evaluated,

noise and vibration improperly assessed and evaluated especially in reference to impacted cemeteries, neighborhoods and parks,

hazardous materials and solid wastes management and disposal not addressed or properly evaluated and assessed,

constructed wetlands in the area providing habitat to several protected species seems to have been omitted,

lack of accurate tables with protected species that could be negatively impacted,
inadequate and/or incorrect flooding determinations and impacts to the waters of the United States including hydrologic and hydraulic analyses,

lack of potential impacts to public utilities were not addressed,

utility and energy consumption were not adequately assessed and evaluated,

considerable Environmental Justice implications associated with impacts to LeForge and LeMay neighborhoods, Wilmer Hutchins High School, churches and historic cemeteries were mentioned,

omission of details for electromagnetic impacts to reference points outside the train,

inadequate assessment of environmental justice and LOD in the DEIS,

threatened and endangered species left out of level 2 screenings,

wastewater and water mains falsely low in DEIS that will be impacted,

number of wells appears incorrect and falsely low and not including private wells impacted,

mitigation measures omitted in relation to managing potential sources of pollution,

impacts to the Dallas levee were omitted,

"concerns relative to the evaluation performed for the impacts to Natural Ecological Systems and Protected species. We have TSE lists from other programmatic EIS efforts on the LOD, and from the referenced TWDB database for Dallas County that show 15-35 potential affected species; none of which were included in the summary analyses for this project",

numerous streams were omitted in the DEIS,

definition of wetland does not include hydric soils and these elements were omitted in DEIS,

definition of floodplain not consistent with current federal regulations,

HUD floodplain maps used instead of FEMA, incorrect flood policy used,

"no-rise" policy concerning post-project water surface elevations was addressed

These are just some items suggesting the huge environmental impact from one County alone. All counties and many landowners will have significant negative and permanent impacts as a result of this project. Due to the considerable adverse impacts to both threatened and endangered species a hard look is necessary. Recently a federal appeals court has ordered a halt to construction of Dominion Energy's Atlantic Coast Pipeline, finding that restrictions against harming wildlife are inadequate for the 600-mile natural gas project. SELC attorney D.J. Gerken said via email. "It's foolish and short-sighted to risk losing rare species for an unnecessary and costly pipeline boondoggle." TCP's venture will lead to even more significant environmental devastation than the aforementioned project.

On our property alone, a large variety of wildlife will be negatively impacted. Without doing boots on the grounds surveys for the majority of the route many environmental impacts were not assessed by TCP. We have seen bald eagles numerous times flying over our property. Each year we have migratory birds that utilize this land and ponds during their migration journey. We have red pileated woodpeckers as well on the property. There is a great concern due to the vast majority of migratory bird species and threatened birds on our property that a number of these birds will be killed due to the high speed rail traversing our parcel. Please refer to this independent research study regarding the mortality of birds ⁸

There is more than 200 miles of new roads proposed by TCP which would further fragment wildlife and damage the environment permanently. Habitat connectivity is a vital property of landscapes and is especially important for sustaining animal movement across the landscape. *“The preservation of habitat connectivity should be a strategic goal in the environmental policy of the transport sector.”*⁹ *“The basic approach should be that prevention is better than cure. Fragmentation should be minimized when planning new or upgrading existing infrastructure”. “The ecological effects of transportation include disturbance in terms of noise and visual nuisance and pollution, which act to reduce the suitability of adjacent areas for wildlife. The infrastructure itself contributes significantly towards habitat fragmentation by creating barriers to animal movement. This may result in the isolation and extinction of vulnerable species. The steady increase in the number of animal casualties associated with roads, railways and, to a lesser extent with drowned animals in waterways, provides a further indication of the fragmentation effect.”* Constructing more than 200 miles of new roads through vastly forested land and dividing the state with berms and low viaduct structures only irreparably harms the wildlife and environment. Unfortunately in TCP’s design which is distant from a freeway, the environment has not only the negative impact of a railway but also a new road along the entire stretch of Dallas to Houston as well. I respectfully request a detailed analysis of the project including ridership forecasts and finances be included by the STB should oversight be considered for this state railroad project as it will have devastating effects on the environment.

Conclusion

Pursuant to 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, Texas Central Railroad and Infrastructure, Inc. has not provided evidence of substantially changed circumstances but instead a mere partisan agreement of through ticket sales by a single party with only a suggested station site. This new information remains suppositional at most. I would like to refer to the ALL ABOARD FLORIDA – OPERATIONS LLC AND ALL ABOARD FLORIDA –STATIONS—CONSTRUCTION AND OPERATION

⁸ <https://www.frontiersin.org/articles/10.3389/fevo.2017.00117/full>

⁹ http://www.iene.info/wp-content/uploads/COST341_final_report.pdf

EXEMPTION—IN MIAMI, FLA. AND ORLANDO, FLA. Docket No. FD 35680. In its letter filed on October 26, 2012, "AAF advises that the Orlando station planned for the Line is currently expected to be located **at** or near the Orlando International Airport. It asserts however that, even if the Line were used by some of its passengers to make an interstate journey by multimodal transportation, such usage alone would not render its proposed Line "part of the interstate rail network," which is required to trigger Board jurisdiction under the statute. "They argued that this intrastate transportation will not be "part of the interstate rail network." See 49 U.S.C. § 10501(a)(2)(A). The board decided in this case that "It is undisputed that the proposed Line is to be used solely as an intrastate passenger service. AAF would transport passengers between stations on the Line within the state of Florida, with passengers boarding and debarking at four local stations for unspecified local travel purposes. As AAF states, the proximity of a planned station at or near an airport does not make the proposed intrastate passenger rail service a part of the interstate rail network. The fact that some passengers may travel outside of Florida by air does not transform this proposed intrastate rail passenger service into an interstate rail service that would be within the Board's jurisdiction under § 10501(a)(2)(A). In addition, AAF's plan to use tracks owned and operated by FECR is not sufficient to bring the proposed Line under our jurisdiction." Upon reviewing all factors and criteria, TCRR has been unable to make a case that this venture is anything more than an intrastate railroad. A shuttle, one sided ticket arrangement, and a possible handful of passengers a week crossing state lines do not make this an interstate project.

To this date, TCP has failed to meet the authority to actually condemn property. They have failed to adequately demonstrate the project is for the greater public good. Lastly, they have ineffectively argued necessity of this speculative venture. Due to the continued lack of direct connection by TCP to Amtrak's stations, I ask the Board again to deny jurisdiction over this intrastate project as they previously decided on July 18, 2016. It is imperative that the State of Texas be allowed to review the statutory nature of TCP's proclamations before the Board takes jurisdiction of a private company's project that has not yet been determined to be a railroad. In the event the Board decides to take jurisdiction prior to TCP qualifying as a railroad, I ask that a full analysis of TCP's business model including ridership projections, finances, and economic viability be completed.

Respectfully,

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CC: All Parties of Record by U.S. Mail or E-mail