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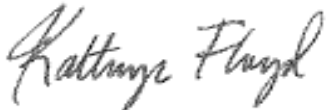
Re: Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Authority to Construct and Operate—Petition for Exemption from 49 U.S.C. § 10901 and Subtitle IV—Passenger Rail Line Between Dallas, Tex. and Houston, Tex., Docket No. FD 36025

Dear Ms. Brown:

Enclosed for filing in the above-referenced matter are (1) Petitioners' Motion for Leave to File Response to Replies and (2) Petitioners' Response to Replies to Petition to Reopen.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Kathryn Kusske Floyd

encl.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**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**

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**PETITIONERS' MOTION FOR LEAVE TO FILE  
RESPONSE TO REPLIES**

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

**Dated: June 12, 2018**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 36025**

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &  
TEXAS CENTRAL RAILROAD, LLC  
–AUTHORITY TO CONSTRUCT AND OPERATE –  
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**PETITIONERS’ MOTION FOR LEAVE TO FILE  
RESPONSE TO REPLIES**

Texas Central Railroad and Infrastructure, Inc. (“TCRI”) and Texas Central Railroad, LLC (“TCRR”) (collectively, “Texas Central”) respectfully move for leave to file the attached Response to the various letters and replies submitted in opposition to Texas Central’s Petition to Reopen. In particular, Texas Central’s Response addresses the extensive replies filed by Texans Against High Speed Rail (“TAHSR”) and Delta Troy Interests, Ltd. (“Delta Troy”).

The Board will permit a reply to a reply for “good cause.”<sup>1</sup> Texas Central has good cause to file such a response in this case. The replies in opposition to Texas Central’s Petition to Reopen raise a variety of issues and arguments that

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<sup>1</sup> Although 49 C.F.R. § 1104.13(c) indicates that “[a] reply to a reply is not permitted,” the Board has frequently waived that provision for good cause. *See, e.g., Sierra R.R. Co. v. Sacramento Valley R.R. Co., LLC*, STB Docket No. NOR 42133, at 1, n.1 (served Mar. 9, 2012); *Cross Oil Ref & Mktg., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 33582, at 1 (served Oct. 27, 1998). *See generally* 49 C.F.R. § 1100.3 (“The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.”).

mischaracterize important facts, make unsupported claims, and exceed the scope of the Petition. If the Board gives consideration to any of these contentions, it should grant Texas Central leave to file the attached Response. Doing so will afford Texas Central an opportunity to address the issues raised by the opponents and to provide the Board with a more complete record. The attached Response also does not raise any new arguments in support of the Petition to Reopen, but instead clarifies facts that will aid the Board in its decision-making process.

First, the Response should be allowed because it responds to TAHSR's and Delta Troy's factual mischaracterizations and misleading and unsupported claims. For example, TAHSR and Delta Troy question Texas Central's motives in entering into an agreement with Amtrak and moving the Board to reopen this proceeding.<sup>2</sup> They also baselessly argue that the agreement between Texas Central and Amtrak is "unenforceable," aggressively misconstruing and cherry picking language from that contract's provisions.<sup>3</sup> In addition, TAHSR and Delta Troy misinterpret the Board's July 2016 Decision in this proceeding, as well as other Board precedent.<sup>4</sup> Such unfounded arguments warrant a response from Texas Central.

Given the clear statements regarding the effect of a through ticketing arrangement with Amtrak, Texas Central could not have reasonably anticipated TAHSR's and Delta Troy's misleading and unsupported claims, including their

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<sup>2</sup> See Delta Troy Reply at 2; TAHSR Reply at 2.

<sup>3</sup> See Delta Troy Reply at 4-7; TAHSR Reply at 12-13.

<sup>4</sup> See Delta Troy Reply at 10-12; TAHSR Reply at 7-12, 14-15.

mischaracterization of the terms of Texas Central's agreement with Amtrak. In circumstances where a movant could not have anticipated the arguments and claims of an opponent that could be central to the resolution of a case, the Board has found good cause for leave to file a reply.<sup>5</sup>

TAHSR's and Delta Troy's replies also advance a variety of arguments that have no bearing on the merits of Texas Central's Petition to Reopen, including concerns about the environmental impact of the Texas Central Line,<sup>6</sup> the sources of financing Texas Central intends to secure for the project,<sup>7</sup> Texas Central's ridership projections,<sup>8</sup> and the financial viability of the project.<sup>9</sup> They also argue that Texas Central does not meet the exemption criteria and that the Board should require a full application.<sup>10</sup> The attached Response is Texas Central's opportunity to say that these arguments are irrelevant to its Petition to Reopen, and explain that, if the Petition to Reopen is granted, these arguments can be addressed in the context of Texas Central's Petition for Exemption.

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<sup>5</sup> See, e.g., *Delaware & Hudson Ry. Co. v. Consol. Rail Corp.—Reciprocal Switching Agreement*, 9 I.C.C. 2d 989, 990 (1993) (finding good cause for a reply to a reply where a party “asserts that it could not have anticipated the arguments set out” in the reply when it filed its petition and the issue “is central to the resolution of this proceeding”).

<sup>6</sup> See JBJQ Ranch's Response to Petition to Reopen, FD 36025 (filed May 24, 2018); Letter from Christie Parker, FD 36025 (filed May 30, 2018).

<sup>7</sup> See TAHSR Reply in Opposition to Petition to Reopen, FD 36025, at 20-22 (filed May 31, 2018) (“TAHSR Reply”); Delta Troy Reply in Opposition to Petition to Reopen, FD 36025, at 21-22 (filed May 31, 2018) (“Delta Troy Reply”).

<sup>8</sup> See TAHSR Reply at 22-27.

<sup>9</sup> See *id.* at 27-30.

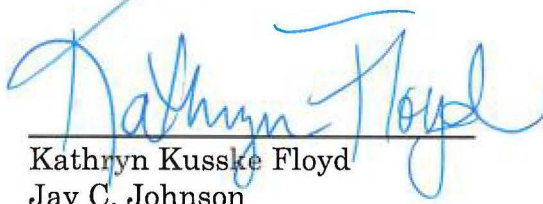
<sup>10</sup> See *id.* at 15; Delta Troy Reply at 17-20.

Finally, affording Texas Central an opportunity to respond will provide the Board with a more complete record without material delay.<sup>11</sup> A fuller, more complete record will facilitate the Board's decision-making process as it addresses the Petition to Reopen.<sup>12</sup>

### CONCLUSION

For the forgoing reasons, Texas Central respectfully requests that the Board grant this Motion for Leave to File a Response to Replies.

Respectfully submitted,



Kathryn Kusske Floyd  
Jay C. Johnson  
Margaret Fawal

Raymond A. Atkins  
Terence M. Hynes  
Louis P. Warchot  
Hanna M. Chouest

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<sup>11</sup> The attached Response is being filed 12 days after the replies to Texas Central's Petition to Reopen were due.

<sup>12</sup> See *Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Petition for Exemption—Passenger Rail Line Between Dallas and Houston*, Tex., FD 36025 at 3 n. 5 (July 18, 2016) (allowing a reply to a reply “in the interest of compiling a more complete record.”); *Tongue River R.R. Co., Inc.—Construction & Operation—Western Alignment*, FD 30186 (Sub-No. 3), at 4 (served June 15, 2011) (“In the interest of compiling a more complete record in this case, we will accept into the record the surreplies.”); *Union Pac. R.R. Co.—Abandonment—In Lancaster & Gage Ctys., NE, and Marshall Cnty., KS*, AB-33 (Sub-No. 140), at 1 (served Dec. 22, 1999) (replies accepted “where they will contribute to a complete record without prejudicing any party or delaying the proceeding”); *City of Alexandria, Va.—Pet. for Declaratory Order*, FD 35157, slip op. at 2 (served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”).

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

Dated: June 12, 2018

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June 2018, I caused a copy of the foregoing Motion for Leave to File Response to Replies to be served on all parties of record electronically, by courier, or by first class mail, postage prepaid.



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Jay C. Johnson