

Surface Transportation Board

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October 10, 2019  
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Public Record

**RE: Finance Docket No. 36025. Supplemental Filing Based on New Information.**

On October 7, 2019, I, Connie Shivvers filed a reply in opposition to the Petition in reference to FD 36025. However on October 9, 2019 new information became public that is relevant to these proceedings. I respectfully request that the Board add this statement to the record as a supplemental filing.

Texas Central Railroad and Infrastructure, Inc & Texas Central Railroad LLC filed a Reply Brief of Appellants in the Court of Appeals for the Thirteenth Judicial District, Corpus Christi-Edinburg, Texas, No. 13-19-00297-CV on October 8, 2019 which was made public on October 9, 2019 that demonstrates contradictory evidence about the validity of interstate filing with the STB. This new evidence is relevant to the STB case however the filing deadline and the filing with the courts happened on the same day. TCR gave no advance notice to participants to properly respond in light of this new information.

As a matter of fact TCR and ITL emphatically emphasize 42 times they are an “interurban electric railway” project and have repeated numerous times that it will only be in the State of Texas. While downplaying interstate aspect. Why does TCR insist it is an interurban electric railway between two cities in the State of Texas when at the same time TCR is selling the Board they will be an interstate project? This demonstrates to the Board the intentions of this project. A project can not be an intrastate for the convenience of court filings then be an interstate to obtain federal jurisdiction. TCR declares its interurban electric railway status is not open to more than one interpretation.

It appears that this document was not presented by TCR to the Board due in part that it contradicts the petitions before you. Below are some excerpts from the reply;

***III. For an “interurban electric railway company” under §131.011, Texas Central unambiguously satisfies the statutory definition. ...By its plain, unambiguous language, §131.011 defines an “interurban electric railway company” as “a corporation chartered [] to conduct and operate an electric railway between two municipalities in this state.”***  
Attachment - Page number 10

***“TCRI and ITL unambiguously meet §131.011’s definition of an “interurban electric railway company.”***

*As set out in §131.011, the definition of an “interurban electric railway company” is “a corporation chartered under the laws of this state to conduct and operate an electric railway between two municipalities in this state.” TEX. TRANSP. CODE §131.011. It is undisputed that both TCRI and ITL are chartered to conduct and operate an electric railway between two municipalities in Texas, i.e., Dallas and Houston. Attachment - Page number 11*

*SCR.13-18; see Br.App’ts 56. And TCRI amended its Articles of Incorporation to state that it is organized to “build, maintain and operate an interurban electric railroad.” SCR.8-12. Attachment - Page number 11.*

*Later, in 2015, TCRI amended its Articles of Incorporation to include that TCRI was chartered to conduct and operate an interurban electric railway, and as soon as it had done so, TCRI also amended its letter to the Comptroller to cite its eminent-domain authority under §131.012 based on meeting §131.011’s definition of “interurban electric railway company.” Br. App’ts 70-71; SCR9-12. Thus, TCRI timely notified they Comptroller of TCRI’s eminent-domain authority under §131.012 as soon as TCRI met §131.011’s definition of “interurban electric railway company.” Attachment - Page number 19.*

Case: 13-19-00297-CV Reply Brief pages 1, 2, 3, 7, 8, 9, 16, 18, and 25 reiterate these statements over and over and are attached to this submittal.

I humbly request the Board may accept this submittal in light of new evidence that has an impact on the validity of TCR’s petition before the Board.

Respectfully,

“/s/“ Connie Shivvers

I certify that I have this day served copies of this document upon all parties of record in this proceeding, by US mail or email consistent with 49 C.F.R. 1104.12(a)].

“/s/“ Connie Shivvers, October 10, 2019

# Attachments

No. 13-19-00297-CV

**In the Court of Appeals for the Thirteenth Judicial  
District, Corpus Christi-Edinburg, Texas**

13th COURT OF APPEALS  
CORPUS CHRISTI-EDINBURG, TEXAS  
10/8/2019 3:34:13 PM

DORIAN E. RAMIREZ

Clerk

TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC. AND  
INTEGRATED TEXAS LOGISTICS, INC.,  
*Appellants,*

v.

JAMES FREDRICK MILES,  
*Appellee.*

On Appeal from the 87th Judicial District Court  
Leon County, Texas, Cause No. 16-0137-CV

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Appellants Texas Central Railroad & Infrastructure, Inc. (“TCRI”) and Integrated Texas Logistics, Inc. (“ITL”) (collectively, “Texas Central”) file this Reply responding to James F. Miles’s Brief of Appellee.

## INTRODUCTION

This appeal arises out of Miles’s petition seeking a declaratory judgment that TCRI and ITL do not have survey or eminent-domain authority to build the high-speed electric-powered passenger train between Dallas and Houston (“High-Speed Train”). As explained herein, on the plain language of the relevant Transportation Code provisions, TCRI and ITL qualify as an “interurban electric railway company” and a “railroad company,” and thus TCRI and ITL qualify as entities to which the Legislature has granted survey and eminent-domain authority. TEX. TRANSP. CODE §81.002, §112.051(a), §112.053, §131.011-.012.

| Type of entity                        | Defines entity | Gives right to survey | Gives right of eminent domain |
|---------------------------------------|----------------|-----------------------|-------------------------------|
| “interurban electric railway company” | §131.011       | §131.012              | §131.012                      |
| “railroad company”                    | §81.002        | §112.051(a)           | §112.053                      |

Miles cites Texas’s rich history of property rights, but what matters here is the language of the statutes in which the Legislature balances the

Tex. 313, 313 (1900); Part III, *infra*. The statutory definition in §131.011 is unambiguous; strict construction is irrelevant because there is nothing to strictly construe where the statute is unambiguous. And properly interpreted, §131.011’s definition of “interurban electric railway company” unambiguously applies to TCRI and ITL. Part III, *infra*.

Likewise, Miles’s interpretation of §81.002’s definition of a “railroad company” must be rejected. His interpretation (1) would limit a “railroad company” only to entities that already have trains on tracks, (2) would thus create an unconstitutional monopoly for those entities that already have trains on tracks, and (3) should be rejected because courts construe statutes to avoid casting doubt on the statute’s constitutionality. *Brooks v. Northglen Ass’n*, 141 S.W.3d 158, 169 (Tex. 2004); Part IV, *infra*. Properly interpreted, §81.002’s definition of “railroad company” unambiguously applies to TCRI and ITL. Part IV, *infra*. And no amount of strict construction can change unambiguous statutory language or allow the Court to apply an interpretation that creates an unconstitutional monopoly.

Repeatedly citing the Supreme Court’s *Denbury* case, Miles asks this Court to accept his statutory interpretation because, according to

III. For an “interurban electric railway company” under §131.011, Texas Central unambiguously satisfies the statutory definition.

A. Miles’s statutory interpretation of §131.011 would erroneously limit “interurban electric railways” in Texas to 1907 trolleys.

By its plain, unambiguous language, §131.011 defines an “interurban electric railway company” as “a corporation chartered [] to conduct and operate an electric railway between two municipalities in this state.” TEX. TRANSP. CODE §131.011. The High-Speed Train is a modern, 200-mile-per-hour electric train running between Dallas and Houston. The High-Speed Train is thus most certainly an electric railway between two municipalities in Texas. Under §131.011’s plain, unambiguous language, the High-Speed Train is an interurban electric railway.

But Miles wants this Court to interpret §131.011’s term “interurban electric railway” to mean, and to be limited to, only the type of electric trolley cars that existed in the year 1907, and thus to exclude a modern, electric railway. Br.App’ee 25-26, 84-85, 91-92, 94 (picture of 1907 trolley). Miles’s interpretation must be rejected because statutory language is construed to embrace new technology. *San Antonio & A.P. Ry.*, 55 S.W. at 117; Br.App’ts 58-60. *Cf. Coastal Oil & Gas Corp. v. Garza*

*Energy Trust*, 268 S.W.3d 1, 29 (Tex. 2008) (Willett, J., concurring) (common law must accommodate new technologies). Miles’s attempt to limit §131.011 to 1907 electric trolleys is frivolous and would deny Texas new modern, electric high-speed trains.

**B. TCRI and ITL unambiguously meet §131.011’s definition of an “interurban electric railway company.”**

As set out in §131.011, the definition of an “interurban electric railway company” is “a corporation chartered under the laws of this state to conduct and operate an electric railway between two municipalities in this state.” TEX. TRANSP. CODE §131.011. It is undisputed that both TCRI and ITL are chartered to conduct and operate an electric railway between two municipalities in Texas, i.e., Dallas and Houston.

ITL’s corporate charter states that ITL is formed

to construct, acquire, maintain, or operate lines of electric railway between municipalities in this state for the transportation of freight, passengers, or freight and passengers, with all powers conferred pursuant to and all limitations imposed by Chapter 131 of the Texas Transportation Code.

SCR.13-18; see Br.App’ts 56. And TCRI amended its Articles of Incorporation to state that it is organized to “build, maintain and operate an interurban electric railroad.” SCR.8-12.

Thus, both TCRI and ITL satisfy the unambiguous language of §131.011's statutory definition of an "interurban electric railway company." Miles goes to exhaustive lengths in his brief to urge strict construction of the statute. Br.App'ee 60-61, 65-66, 69, 72, 75-76, 85-87, 90, 96-98. But, as Miles admits, strict construction applies only "in instances of doubt" as to statutory meaning. Br.App'ee 60-61, 69, 90. And §131.011's definition contains no doubtful language; that definition is unambiguous. Br.App'ee 87. Strict construction has no relevance; there is nothing to strictly construe where the statutory language is unambiguous.

Nor does strict construction permit a court to rewrite the language of a statute. Br.App'ee 87. Rather, "[s]trict construction [requires that] [t]he language used by the Legislature [] be accorded a full meaning that will carry out its manifest purpose and intention in enacting the statute [while] confin[ing] [the operation of the statute] to cases which plainly fall within its terms as well as its spirit and purpose." *Coastal States Gas Producing Co. v. Pate*, 309 S.W.2d 828, 831 (Tex. 1958). "[A]ccord[ing] [] full meaning" to the language used by the Legislature in §131.011, that statutory definition requires that an "interurban

electric railway company” is one chartered to “conduct and operate an electric railway between two municipalities in this state.” And as explained above, TCRI and ITL are both chartered to conduct and operate an electric railway.

**C. Miles’s “check the box” argument should be rejected.**

Again citing *Denbury*, 363 S.W.3d at 194-97, Miles argues that TCRI and ITL cannot meet §131.011’s definition of an “interurban urban electric railway company” by “merely checking a box on a form or administratively registering with the State.” Br.App’ee 84-87. But TCRI and ITL are not simply “checking a box.” Rather, on this summary-judgment record, TCRI and ITL have conclusively proved the enormous work that is underway to bring the High-Speed Train to Texas. *Supra*, p.4-8. One cannot label the High-Speed Train a “sham” given the massive effort in which Texas Central and the regulatory authorities have been engaged. *Id.*

Moreover, this case is not *Denbury* because Miles is not arguing that the High-Speed Train does not satisfy the public-use requirement for survey and eminent-domain. *Supra*, p.4-8. Miles does not deny that the High-Speed Train will serve the public. Miles cites *Denbury* 23 times,

exercise eminent domain under §131.012, did not exist as of the December 31, 2012 date by which §2206.101(b)'s language required the letter to be filed with the Comptroller. Br.App'ts 70-71; TEX. GOV'T. CODE §2206.101(c).

Later, in 2015, TCRI amended its Articles of Incorporation to include that TCRI was chartered to conduct and operate an interurban electric railway, and as soon as it had done so, TCRI also amended its letter to the Comptroller to cite its eminent-domain authority under §131.012 based on meeting §131.011's definition of "interurban electric railway company." Br.App'ts 70-71; SCR9-12. Thus, TCRI timely notified the Comptroller of TCRI's eminent-domain authority under §131.012 as soon as TCRI met §131.011's definition of "interurban electric railway company."

As the chart above shows, Miles's expiration-of-authority argument is limited to TCRI's eminent-domain authority as a §131.011 "interurban electric railway company." *Supra*, p.17. Miles's expiration-of-authority argument is thus limited and, in any event, wrong.