

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36025

TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC

ï AUTHORITY TO CONSTRUCT AND OPERATEï
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV ï
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX

LANDOWNER'S RESPONSE TO PETITIONERS RESPONSE
TO THE SURFACE TRANSPORTATION BOARD'S
REQUEST FOR ADDITIONAL INFORMATION

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Introduction

I am a directly impacted landowner residing in Harris County within the Houston metropolitan complex. My family and I run a business that would be shut down should this project move forward. Due to the devastation this would cause to us, I have taken a great deal of time and effort reviewing this project in depth over the past few years. Through ample due diligence, it has become quite evident that not only would this project destroy our livelihood but it would also devastate many others as evidenced by the thousands of letters sent in to the board in previous responses. The board must take great care in this ruling to prevent harm to both the public and the competitive markets that it serves. A project such as what Texas Central is proposing must actually provide a true demonstrated public need or it should be stopped from proceeding any further.

Background

Texas Central claims they are a Texas investor led company that has been formed to develop and one day operate a high speed rail project. Their beginnings didn't start in Texas for high speed rail but in Florida where Japan fostered a company in 2010 made up of Texas Central board members such as Melvin Richmond called Florida High Speed Rail¹². Florida High Speed Rail LLC was created under an umbrella of U.S. Japan High Speed Rail LLC which spawned many more companies that can be found intertwined with this project³⁴⁵⁶. They had attempted to initiate a high speed rail project in Florida and started a marketing

¹ <https://www.youtube.com/watch?v=AcCTDCIFmLo>

² <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResults?InquiryType=OfficerRegisteredAgentName&InquiryDirectionType=PreviousRecord&SearchTerm=P2b2%2C%20Llc&SearchNameOrder=P3ENTERPRISESINC%20L170001985001&ListNameOrder=P2B2LLC%20L120000933611&Detail=FL.DOS.Corporations.Shared.Contracts.FilingRecord>

³ <https://www.corporationwiki.com/District-of-Columbia/Washington/us-japan-high-speed-rail-llc/35909064.aspx>

company similar to Texas Central but when the grants were pulled by Governor Scott for high speed rail they turned their sights to Texas and formed Texas Central Rail. This Texas route was not their first choice but they decided to try where they thought it would be less expensive to construct not necessarily where it would be best for the public or sustainable. Japan was behind both companies and Japan has been the main entity providing funding. Texas Central investors have only provided 75 million dollars made up of funds, land and commitments for this more than 20 billion dollar project. To put this in perspective this is less than 0.4% of the construction costs. Japan added 300 million in the form of a loan⁷ last year and created a special purpose vehicle to advance their interests and the export of their system that would create a monopoly in the United States. Japan had previously provided Texas Central with a 40 million equity investment⁸. To put this into context, Texas Central investors have a 75 million equity stake while Japan has a 340 million equity participation in this project that proclaims that it is a Texas project.

Texas Central is using a Japan monopolistic train system which will be operated by the Spanish company Renfe and constructed by the Italian firm Salini Impregilo. Texas Central is merely the orchestrator of this project with Japan in the background providing the funding to push their agenda and equipment. Texas Central states "the project will use the international version of Japan's Shinkansen train as their rolling stock; this does not quite meet "Buy-America" requirements yet, but TCP is working with the manufacturer to obtain certification". "TCP has petitioned FRA to issue a "Rule of Particular Applicability" (ROPA) to address the operations of a rail system with speeds above 150 mph. TCP expects to operate at 186 mph initially and then increase operating speed to 205 mph. Additionally the ROPA is expected to define "Buy America" requirements for the project."⁹ This sure doesn't sound like a Texas or American project at all as Texas Central claims.

Texas Central is still not a railroad. The board cannot deny that multiple Texas courts have found that Texas Central is not classified as a railroad under Texas statutes. Currently this is being debated in the Appellate court system which very likely will find that Texas Central is still not a railroad. The Board should be extremely hesitant to take jurisdiction of a project where the petitioner is not even a railroad under Texas law where it is proposing this project. Texas Central has testified that they were a railroad 6 days after filing corporation papers with the secretary of state. They were not operating a railroad six days after incorporating and still to this date will never be operating a railroad as their plans are to have others such as Renfe eventually operate the venture. Besides the proposed duties by Renfe to operate the line, "They will also oversee development of ticketing platforms and procedures, passenger loyalty programs and other customer-facing passenger services to ensure a safe, comfortable and accessible journey for all."¹⁰ Has Renfe collaborated with the ticket developing platform with Amtrak?

⁴ <https://www.corporationwiki.com/District-of-Columbia/Washington/texas-central-high-speed-railway-llc/68516335.aspx>

⁵ <https://www.corporationwiki.com/Texas/Houston/texas-central-railroad-llc/108937500.aspx>

⁶ <https://www.corporationwiki.com/p/2fzrfy/texas-central-rail-holdings-llc>

⁷ <https://www.jbic.go.jp/en/information/press/press-2018/0910-011388.html>

⁸ <https://www.businesswire.com/news/home/20180918005202/en/Statement-SNCF-America-Texas-Central-Partners-LLC>

⁹ <http://www.cityofpalmdale.org/Portals/0/Documents/Business/Planning/HSRSAP/Documents/Palmdale%20HSR%20SAP%20-%20Texas%20Site%20Visit%20Summary%20Report.pdf?ver=2017-09-13-071517-897>

¹⁰ <https://www.texascentral.com/posts/texas-central-names-global-railway-company-renfe-as-its-high-speed-train-operating-partner/>

FLAWED RIDERSHIP

Texas Central used various secret ridership reports that could not be substantiated to claim that they had a viable and sustainable project that would not require any taxpayer subsidies. They have already fallen short on this claim with Japanese taxpayers being on the hook for 340 million and various agencies utilizing taxpayer resources to assist in the project. The Board has been given the Reason Foundation report which estimated ridership at 1.4 million using various data points while showing their work. It should be noted that this agency sounded the alarm for the California debacle more than once. John Harding also submitted research to the Board showing ridership under 1 million again with justifying his figures. Tx Dot did a statewide multimillion dollar study and they showcased that ridership on this route would be 700k to 2.7 million¹¹. Tx Dot further analyzed the Dallas to Houston route since it was one of the lower Texas city combinations and came to the conclusion that Texas Central could have higher ridership ranging from 1.5 to 5.7 million in 2035 IF they removed their midstop location which they did not and if they kept pricing at 80% of airfare which would be \$108. Texas Central shows that average ticket prices will be \$199 in the DEIS and also eluded to these figures in a Dallas press release¹² telling the public how much taxes will be received from ticket sales. One can calculate this to be an average of \$199 per ticket if they are claiming that ridership will be 5 million with Dallas selling roughly half of the ridership tickets and allowing them to receive 10 million in revenue from ticket sales. So both their press release and the DEIS is using the average ticket price of \$199 which would negate any of the higher ridership figures that Tx Dot reported as Texas Central did not follow 2 of the 3 criteria required by Tx Dot to achieve these estimates.

On the other hand, Texas Central has provided to the public various unsubstantiated reports riddled with errors. One such report is the Insight Research Report¹³. In this propaganda piece, they reported that the state and local jurisdictions would receive roughly 2.5 billion in revenue from "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.**" (Emphasis added) This research company and Texas Central who claim they are a railroad should have known that there is no sales tax on ticket sales¹⁴, rolling stock, or sales and use taxes on construction materials. The state comptroller claim they were never asked by Texas Central, Insight Research, AECOM, or the FRA anything about sales tax in the state of Texas. Texas Central supplied the Board with this erroneous information as well. The FRA put the following completely wrong information in the DEIS: "Additional sales tax revenue would result from the sale of tickets for travel on the new HSR system on an annual basis while it is in operation. As shown in Table 3.14-22, HSR ticket sales could generate between \$15 billion and \$39 billion in sales tax for the state plus \$5 billion to \$12 billion in local tax revenue. Local sales tax is assumed to be collected at the point of sale, roughly split between Dallas and Houston jurisdictions." Texas Central and the FRA were notified numerous times of this 51 billion dollar error yet didn't correct it and then Texas Central continued to tout this misinformation to legislators and in multiple public meetings¹⁵ garnishing support for the project.

Another faulty report that Texas Central provided snippets to the public is the most recent LEK report¹⁶ in which they now predict ridership of 5 million by 2026. Many errors exist in their methodology report and

¹¹ <https://ftp.dot.state.tx.us/pub/txdot-info/rail/rail-ridership-report-1213.pdf>

¹² <https://www.texascentral.com/posts/north-texas-bullet-train-station/>

¹³ <https://www.texascentral.com/wp-content/uploads/2016/04/Economic-Impact-Study-Executive-Summary.pdf>

¹⁴ <https://comptroller.texas.gov/taxes/publications/96-259.php>

¹⁵ <https://www.facebook.com/watch/?v=2027309054178497>

¹⁶ <http://www.texascentral.com/wp-content/uploads/2016/11/Ridership-Brochure.pdf>

are not supported by researchers as a whole. First they did not use estimated ticket prices and "It is impossible to accurately project ridership without estimating ticket price"¹⁷. Next they used "stated preference" which is largely not used by researchers due to its inaccurate results that cannot be reproduced vs quantitative modeling or other techniques that are more widely acceptable practices. Initial ridership figures are greatly overstated along with expected growth rates for the line. Multiple studies are not in line with the LEK report that excludes fare prices which is the standard model that even Amtrak uses to obtain their projected ridership on their typical routes outside of the Texas Central project. In a previous Board submission, "Petitioners anticipate that Texas Central's safe, efficient and convenient high-speed service will attract approximately four million riders annually by the year 2025" The LEK group had assisted with these ridership figures as well with no clear reason for the 25% jump in figures as AADT travel along the route remains stagnant. This is another report paid for by Texas Central for marketing purposes that has glaring errors and cannot hold up to scrutiny.

The Board must question their numbers when the much denser Northeast Corridor that the Acela serves only had ridership of 3,428,338¹⁸ in 2018. It should be noted that the ACELA EXPRESS¹⁹ serves the following stations in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and District of Columbia:

Union Station • Baltimore Penn Station • Wilmington Amtrak • Philadelphia 30th Street Station Amtrak • Metropark - Iselin Amtrak • Newark Penn Station Amtrak • New York Penn Station • Stamford Amtrak • New Haven Union Station Amtrak • New London Union Station Amtrak • Providence Amtrak • Route 128 - Westwood Amtrak • Boston Back Bay Station Amtrak • Boston South Station Amtrak

One can reasonably deduce that population densities between Houston and Dallas would not support ridership greater than what the Acela currently is receiving. It is worth noting that Dallas has 3,870 persons/sq.mile²⁰ and Houston has 3,842 persons/sq.mile while the following vastly different figures are true for areas around the Northeast Corridor:

Union City, N.J.: 54,138 persons/sq. mile ;
West New York, N.J.: 52,815 persons/sq. mile
Hoboken, N.J.: 42,484 persons/sq. mile ;
New York, N.Y.: 28,211 persons/sq. mile
Passaic, N.J.: 22,424 persons/sq. mile

Texas Central's ridership numbers are simply outlandish and not supported by independent research or even common sense.

There are many concerns reviewing the Amtrak and Texas Central ridership data that was provided to the Board. "According to Amtrak, 18,300 to 20,500 passengers will transfer from its interstate trains to Texas Central's trains during the tenth year of Texas Central operations. Texas Central will facilitate their transfer by accepting through tickets purchased from Amtrak and providing a convenient, timely, climate-controlled transfer service between terminals." This remains a speculative agreement as it is not enforceable and has a cancellation clause which can be severed by any party with written notice. Key elements to the long distance modeling by Amtrak fail to input Texas Central's fares which will eliminate a great number of

¹⁷ <https://reason.org/wp-content/uploads/texas-high-speed-rail-plan-requires-caution.pdf>

¹⁸ <https://media.amtrak.com/wp-content/uploads/2018/11/FY18-Ridership-Fact-Sheet-1.pdf>

¹⁹ https://moovitapp.com/index/en/public_transit-line-ACELA_EXPRESS-Washington_DCBaltimore-142-1268298-785532-0

²⁰ <https://www.governing.com/gov-data/population-density-land-area-cities-map.html>

Amtrak riders. Many passengers on these trips are long distance and price is a predominant factor in their travel. Average fares on these Amtrak routes are 12.1 cents per mile. Many passengers simply cannot afford the bullet train. Numerous riders would fly vs spending the excess money and time just to get to Houston or Dallas from their initial point. To demonstrate the absurdity of not providing a cost basis for the Texas Central portion of the agreement one can look at various price points. If the price is \$50 it is not financially feasible. At prices of \$400 it is also not viable as ridership would be minimal or nonexistent. To not provide price points to customers like similar projects such as All aboard Florida, the ridership data by both Texas Central and Amtrak is merely speculative and not credible at best and should be rejected by the Board.

One very serious and potentially fatal move by Amtrak and Texas Central that likely would negate any possible public benefit of an agreement between the two is the removal of the Thruway bus service between Houston and Longview. Currently a passenger can purchase a ticket via this mode for \$36 as opposed to a HSR ticket estimated to be \$199 according to the DEIS and a Texas Central press release. Megabus and Greyhound tickets start at \$13 and \$18 respectively for the Dallas to Houston route for a 3 hour 50 min journey. Most Amtrak passengers on this route are not business travelers and would not be able to afford the exponential increase in pricing that this would incur. This is a complete disservice to the public that Amtrak is bound to serve. Looking at the station details, In 2018 34,392 passengers went through the Longview station²¹ with the Station also handling 19,596 passengers to/from 4 cities on connecting Thruway bus service. The Houston station²² carried 19,952 passengers and handled 11,004 passengers to/from 2 cities on connecting Thruway bus service. Amtrak unwisely and wrongly eliminated this Thruway bus service in order to attempt to inflate potential ridership figures between Amtrak and Texas Central. Eliminating an economical option to the public in order to foster a private for profit venture is wrong and likely will cancel out any potential ridership that Amtrak could have achieved with this partnership. Creating a through ticket arrangement for namesake alone in order to obtain jurisdiction from the Board without any true benefit to the public should be questioned and frowned upon. This manipulation by the Petitioner to attempt to force a decision should be rejected by the Board. Market research²³ by Amtrak estimates that 80 percent of Thruway bus connecting passengers would not travel on Amtrak if it were not for the existence of the Thruway bus connection. Looking at Year 2026 provided by Amtrak and Texas Central of 5,100-5,700 you would very likely have a negative flow of Amtrak riders as the result of their ticket agreement and loss of affordable Thruway service when analyzing the Thruway figures at the Houston and Longview station and the 80% statistic Amtrak references.

According to 2018 Amtrak ridership fares averaged 12.1 cents per mile.

Houston station ridership has been stagnant since 2012 and increasing fares to Amtrak riders will only hurt ridership.

2012- 19,982 arrivals and departures 2018- 19,952 arrivals and departures

Dallas station ridership has decreased since 2012 and increasing prices to customers will hurt the base.

2012- 54,883 arrivals and departures 2018- 46,094 arrivals and departures

Longview station ridership has decreased since 2012 and increasing prices to customers will hurt ridership

2012- 48,525 arrivals and departures 2018- 34,392 arrivals and departures

Amtrak estimates that 27%–30% of Texas Eagle passengers at Dallas and 16–18% of Sunset Limited passengers at Houston will be connecting passengers. How would Amtrak be able to reasonably estimate

²¹ <https://www.railpassengers.org/site/assets/files/2152/lvw.pdf>

²² <https://www.railpassengers.org/site/assets/files/2047/hos.pdf>

²³ <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/businessplanning/Amtrak-Service-Line-Plans-FY20-24.pdf>

these figures without using data inputs for Texas Central fares especially when factoring just how inconvenient it would be to travel this route via Texas Central's scheduling arrangements? They eliminate this necessary input from their own Long Distance Modeling which would be needed in order to project any realistic ridership data. They also would need to subtract all current impacted riders on the Thruway services.

To discuss Amtrak's methodology further one must look at some of the data inputs analyzed such as on time performance²⁴. It is obvious Amtrak used the faulty endpoint analysis vs a hard look at actual station performance. Amtrak and Texas Central go on to state, "To ensure passengers make their connections, neither carrier will sell ticket combinations with a transfer window smaller than 90 minutes for transfers between Texas Central's and Amtrak's terminals in Dallas and Houston. This transfer window allows passengers a comfortable amount of time to detrain and embark on a bus, travel on the bus to the connecting terminal (with an appropriate margin for traffic conditions), and then disembark the bus and board the next train." Again, it is unfortunate to the public that when formulating this schedule neither Amtrak nor Texas Central even confirmed if the schedule was truly plausible under an average scenario. Looking back with a years' worth of data, the average delay²⁵ for the Houston station is 1 hour and 58 minutes. Reviewing this information, the Board would see that many of the connections would be altogether missed with the average delays and 90 minute window and the last connection would leave passengers stranded overnight which is not accounted for nor mentioned by Amtrak or Texas Central. The average delay²⁶ for the Dallas station is 1 hour and 32 minutes. Again many passengers would miss their connections with current influx and egress of travel at these Amtrak stations. To expand on this further, Bruce T. Williams stated that "both the type of transfer service Texas Central plans to provide and the service schedules should meet customer expectations and help to maximize the number of Connecting Passengers." As shown above, Mr. Williams has provided inaccurate information and faulty projections to the Board and did not take into account actual station details. Both Amtrak and Texas Central go on to say "that the connecting times should provide reliable connections even if transfer buses are delayed by traffic or trains arrive late." This has been shown to be false using 12 months of Amtrak data at both the Houston and Dallas station. Both Amtrak and Texas Central claim "it can automatically rebook passengers arriving on delayed Amtrak trains onto the next available Texas Central train" but looking at delays and the Amtrak 1 ARR 1818 / Amtrak 1 DPT 1855 you would deduce that a number of these connections would be missed altogether and not able to be rebooked unless on the following day. Neither Amtrak nor Texas Central mitigated for stranded passengers due to delays which is unacceptable. Mr. William portrays that "Texas Central, whose trains will operate **every half hour**, will be able to reaccommodate the passenger on the subsequent train"(emphasis added) Does Mr. Williams not know that TCR is only running trains every 30 mins at peak times which only one of these projected connections will occur during this timeframe while the all the others are on an hourly schedule? Did Mr. Williams factor in an extra hour of delay when missing the train and having to catch the next one in his ridership data or 30 minutes? What will be the accommodations for the stranded Amtrak passengers for the late arrival of Sunset Train #1 that would not be able to make their transfer to the proposed Texas Central Houston closed station? Did Mr. Williams factor in the extra night as would be necessary using key inputs²⁷ of the Long Distance Model? This could not be reiterated enough. Texas Central developed the schedule and didn't account for passengers being

²⁴ https://www.railpassengers.org/site/assets/files/6989/otp_one_pager_v4.pdf

²⁵ https://juckins.net/amtrak_status/archive/html/history.php?train_num=&station=hos&date_start=09%2F01%2F2018&date_end=09%2F01%2F2019&df1=1&df2=1&df3=1&df4=1&df5=1&df6=1&df7=1&sort=schAr&sort_dir=ASC&co=gt&limit_mins=&dfon=1

²⁶ https://juckins.net/amtrak_status/archive/html/history.php?train_num=&station=dal&date_start=09%2F01%2F2018&date_end=09%2F01%2F2019&df1=1&df2=1&df3=1&df4=1&df5=1&df6=1&df7=1&sort=schAr&sort_dir=ASC&co=gt&limit_mins=&dfon=1

²⁷ https://www.fhwa.dot.gov/policyinformation/analysisframework/docs/fundamental_knowledge_to_support_ld_passenger_model.pdf

stranded is the bottom line. Mr. Williams and Amtrak also looked over these schedules and didn't recognize that many of them wouldn't work. All of their numbers should be scrutinized and reformulated with advanced data points factoring in pricing of the bullet train and actual delays at the station. Otherwise these schedules and ridership data are mere speculation and guesswork without concrete analysis.

Reviewing the verified statement by Mr. Williams one can see that he is responsible for developing ridership and revenue forecasts for Amtrak's existing services. Some of these methods have already come under great scrutiny by Rail Passengers who submitted a report²⁸ before congress showing the disparities with some of Amtrak's modeling techniques and forecasts. How can Amtrak speculate how many passengers would actually transfer between the two stations without the multiple missing details along with the wrong inputted figures and the omissions? It is only pure speculation and conjecture at best without valid data entries and calibration of the results. Texas Central has promoted their service for its timesaving factors and efficiency to business travelers. Now one is expected to believe that these travelers don't care about this anymore and instead are fine with various delays and service that is unpredictable. The passengers that are traveling this route via Amtrak and high speed rail clients are different subsets of travelers. It is foolish to speculate that this voidable thoroughfare arrangement would draw much more than a handful of passengers a week to Amtrak yet Amtrak is cancelling a Thruway service that provides important and economical fares to its passengers. This is a disservice to the public that Amtrak is supposed to serve as many would not be able to pay the exorbitant cost increases charged by the bullet train which is a private for profit corporation. Mr. Williams notes that these assumptions are conservative, particularly given that Amtrak already serves the largest potential market - passengers to/from Houston connecting with the Texas Eagle with a Thruway bus connection. Since Amtrak already serves the largest potential market between Houston and Dallas with ticket prices of \$36 why would they eliminate this cost efficient method for a new mode that will likely be too expensive for most Amtrak current passengers? This Houston/Dallas route is already being served by Amtrak and Texas Central is proposing to cancel the inexpensive option for Amtrak customers for only their mode which is vastly more expensive than what is currently available to customers. Why would Amtrak subject its passengers to this costly option only to assist a private for profit developer group with foreign ties? Are they trying to lose their Thruway customers which are more than any ridership they could obtain with this unfavorable partnership as Amtrak customers can hop on a Greyhound or Megabus for a whopping \$13-\$18 and bypass the expensive Texas Central tickets altogether cutting Amtrak out of profit and route exposure?

Looking further at schedules provided for the Heartland Flyer and a years' worth of data²⁹ one can conclude that many of the transfers to HSR 10019 DPT 1430 would be missed even with the 120 MINUTE transfer window. Did Mr. Keith not look at the ridership data for this journey? This is an 8 hour journey costing considerably more than \$200 vs an airplane trip taking 1 1/2 hrs costing roughly \$100. Surely, Mr. Keith nor Amtrak believes this would be a reasonable or practical solution to their customers. It is not a sensible conclusion that a passenger would sacrifice 6 1/2 hours and the headache of multiple connections and transfers at an increased cost instead of taking an airplane. Mr. Williams said that if they did provide this transfer service it is predicted to generate 800-1000 connecting passengers in 2026, 2,900-3,300 connecting passengers in 2030, and 3000-3,400 passengers by 2035. Again looking at the lack of cost savings and the more than 6 hours added to the passenger's trip, these figures are unreasonable and absurd. These estimations should call into question all of Mr. Williams speculative figures. The Board must really scrutinize the figures provided in order to protect current Amtrak customers from Thruway services being removed for this more expensive private mode as a result of a revocable agreement by Texas Central.

²⁸ https://www.railpassengers.org/site/assets/files/7353/amtraks_route_accounting_-_fatally_flawed.pdf

²⁹ https://juckins.net/amtrak_status/archive/html/history.php?train_num=821&station=ftw&date_start=09%2F01%2F2018&date_end=09%2F01%2F2019&df1=1&df2=1&df3=1&df4=1&df5=1&df6=1&df7=1&sort=schAr&sort_dir=ASC&co=gt&limit_mins=&dfon=1

The Board must justify that it is reasonable and practical that a passenger would subject themselves to greater time delays at increased costs with multiple transfers in most of these scenarios. Texas Central wrongfully claims that the Board's jurisdiction is not dependent on the volume of interstate traffic. However, the public need and necessity bar must be considered in any ruling by the Board. Especially when there is harm to the public described above by the new arrangement made by Texas Central and Amtrak which would negatively impact current Amtrak customers and ridership. It is well known that rail projects are overestimated by more than 100 percent for passenger counts with high speed rail even more egregious in their tallies, therefore the Board must really dissect Texas Central's 300-500% projections over independent studies.

TEXAS CENTRALS NONRESPONSIVENESS TO BOARDS QUESTIONS

The Board asked the Petitioner for supplemental information on five main topics in which some were not answered or addressed in their response and should be considered as non-responsive.

On topic 1 the data was manipulated to suggest that Amtrak would benefit from this agreement. Texas Central did NOT include the number and percentage of Amtrak passengers on the relevant Amtrak services who would transfer to the Texas Central Service and the number and percentage of Texas Central passengers who would transfer to relevant Amtrak services. Instead they eliminated an economical Thruway service provided to customers and provided the board with ridership figures that included total ridership that would use the connecting service. Ridership for the Thruway service is already significant and likely larger than any projected ridership this agreement is estimating. The Board is left to ponder just how many if any Texas Central passengers would utilize Amtrak services. No real percentages are given except Texas Central claims that Amtrak riders will be under 1% of their ridership. This figure should be quantified to actually read 0.1-0.2% depending on what projected Texas Central ridership number they are utilizing. Amtrak makes no mention of what percentage of their ridership will be from Texas Central's passengers. Since Texas Central did not answer the question, the Board is left to conclude that there is no real percentage of ridership that Amtrak will be able to obtain from Texas Central's passenger count.

Regarding topic 2, Texas Central considers it unlikely that many transferring passengers will choose to carry their luggage and walk between stations as it is 0.8 miles in total distance to the station. So no arrangements would be made to assist with transferring luggage. It is much easier for Texas Central to state that they will have a bus pick the passenger up and then be able to cancel the Amtrak agreement when it becomes cost prohibitive for Texas Central than to commit to construction of some sort of connecting walkway. So no attempt was made to answer this portion.

When discussing topic 3, one must ask why Texas Central neglected to provide the Board with average and maximum wait times as requested. Of course this would have required more effort and actual review of station data along with real times of travel patterns around the station. Texas Central should have included maps consistent with peak travel times which can easily be configured in google maps to show that what they provided to the Board was misleading at best as it is at least twofold off during peak travel times. Maximum wait times could be the following day when actual travel patterns at both stations are analyzed. Apparently this information didn't bode well for Texas Central so they opted to omit it or they simply didn't bother to look. Either reason is egregious for the public who deserves better than either a negligent or dishonest approach to the Boards questions.

In regards to topic 4, Texas Central made many loose connections concerning case law but they skipped over any case law involving a gap AND a through-ticketing agreement. Texas Central is clearly relying solely on a harmful revocable through ticket arrangement while ignoring any other component which the Board clearly stated that no one factor is controlling. The Board would look at the totality of the petition based on facts.

The Board should take into consideration that 4 of the 5 questions presented to Texas Central were only partially answered with some portions not addressed at all when contemplating a reopening of this proposed intrastate project.

CASE LAW AND TEXAS CENTRAL'S STRETCH TO TIE CONNECTIONS

Texas Central made many references to case law in an attempt to support their flimsy through ticket arrangement. Many had other controlling factors in order to obtain board jurisdiction. They presented various case law in an attempt to avert the Board from taking a hard look at their financial status and feasibility of the project.

Texas Central cites Dakota, Minn. & E. R.R. Constr. into the Powder River Basin when dismissing previous objections to lack of finalized financing arrangements. However, Texas Central misses some very important points in the Board's ruling in this case. For one, DM&E at the time of their application was a Class II railroad already operating a 1,100 mile rail system and moving approximately 60,000 carloads of traffic a year. Texas Central is not even recognized as a railroad according to state law in Texas. They also are a startup company so have not operated anything much less a traffic load such as DM&E who also had a revenue stream. DM&E's project was estimated to be \$532 million. Texas Central's is estimated to be 20 billion and has already doubled from what they told the Board just a few years ago. DM&E were not seeking federal taxpayer backed loans. Texas Central has been noted numerous times to state that they would aggressively seek federal taxpayer backed loans such as RRIF and TIFIA. DM&E's project supported competition. Texas Central's project supports a monopoly. DM&E provided five different financial scenarios with both lower and optimistic forecasts. All were operating at a profit. The opposition provided a forecast of a loss of \$466,666 per year over a span of 6 years. Texas Central has not provided optimistic and low scenarios and independent studies have shown that the project is estimated to lose more than **500 million** a year. In DM&E 's project, even with the worst possible projections by the opposition (MSC), DM&E 's project would eventually become profitable after 6 years. This same scenario does NOT exist for Texas Central as the project is projected to suffer continued substantial losses even with much lower interest rates of 5% as opposed to what DM&E and MSC used in their scenario's 8.25% and 9.5% respectively. The opposition (MSC) accepted the phased in percentages. In the Texas Central case, the opposition calls into question all of their flawed ridership projections and does not accept any of the ridiculous figures. MSC accepted DM&E 's estimated rates. Texas Central's opposition does not have the estimated rates they are claiming they will charge as they refuse to provide them. There are a large number of supporters that believe that ticket prices will be in the \$50 range and they would not pay more. Their comments are in abundance on social media and Texas Central refuses to place an estimated cost on tickets to prevent loss of support from those that believe a ticket will be inexpensive and affordable for the general public including families. This is yet another glaring issue between the two cases and why Texas Central should not be comparing the ruling to justify any requests regarding financial capacity and fortitude of their shaky forecasts. Finally DM&E submitted historical financial statements This data indicated that the DM&E had realized rates of return that were substantially higher than those realized by the Class I railroads as a whole for the year 1995 and approximately equal to the Class I composite for 1996. Texas Central is a startup

development company and won't even provide average fares much less any type of financial statement. After reviewing DM&E's case, one should consider taking a much harder look at Texas Central's projections and financial status.

Texas Central also cites *Commerce Comm'n v. I.C.C.*, 749 F.2d 875, 878 n.4 (D.C.Cir. 1984) whereas ICCTA simply implements Congress's power to "regulate intrastate rail traffic where that traffic substantially affects interstate commerce by virtue of its being part of an interstate rail network." Surely Texas Central is not surmising that a projected 0.1-0.2% of ridership would "substantially" affect interstate commerce. One must also consider that their agreement would likely have a negative impact on interstate commerce in relation to Amtrak.

Texas Central later cites *Or. Coast Scenic R.R. v. Or. Dep't of State Lands*, 841 F.3d 1069, 1075 (9th Cir. 2016) which discusses whether there is "a *practical* continuity of movement" across state lines. Then Texas Central mentions *United States v. Yellow Cab Co.*, 332 U.S. 218, 229-31(1947) ("interstate commerce is an intensely *practical* concept" that reflects the "entire journey"). Texas Central then later cites '*practical* continuity of movement' between the intrastate segment and the overall interstate flow.'" *Abel*, 631 F.3d at 1214 (quoting *Walters v. Am. Coach Lines of Miami, Inc.*, 575 F. 3d 1221, 1226 (11th Cir. 2009). Looking at the delays, multiple connections and increased traveling costs discussed above one can conclude that there isn't anything *practical* or feasible about the Texas Central and Amtrak agreement in order to justify an interstate connection.

Texas Central argued how it was different than the Napa Valley Wine Train in which the ICC ruled they lacked jurisdiction. However the two cases are similar as both claimed to have a bona fide through ticket arrangement with Amtrak and both would be classified as intrastate. Texas Central may claim that their ticketing arrangement is bona fide but it is not enforceable and can be terminated after 90 days with written notice. This does not appear to be a genuine agreement and just like the Napa Valley decision, the Board should rule that they lack jurisdiction over this intrastate project.

The Board would be remiss in its analysis of this project if they fell for Texas Central's arguments surrounding both Great Lakes Basin and the California debacle. Regarding the Great Lakes Basin application, there are both similarities and stark differences between the projects which are not in favor of Texas Central. GLBT provided the Board with their balance sheets which Texas Central has not so one must be left to guess what is left in their bank account for a project that has already doubled in costs in a mere three years. The GLBT project was estimated to be 2.8 billion relying entirely on private financing sources unlike Texas Central who is aggressively seeking federal taxpayer loans in a mounting 20 billion plus venture. Similar to Texas Central, GLBT had stockholders. However, GLBT board members consisted of numerous individuals with an extensive history in the railroad business and operations. Texas Central on the other hand consists of a group of developers, investors and PR board members with none possessing any railroad experience at all. Unlike Texas Central, GLBT provided a financing structure to the Board complete with interest rates and anticipated revenues. GLBT named an operator while Texas Central still to this date has not told the Board who they chose as the operator for this project. One is left to agree with Texas Central that there are huge differences between the two projects as GLBT was more forthcoming to the Board and possessed a greater knowledge in the railroad industry. Nonetheless, both Texas Central and GLBT raised a limited amount of funding for a multibillion project and if the Board decides to take jurisdiction a similar hard look by the Board would be the only reasonable option to safeguard taxpayers, property owners and numerous businesses. In regards to the California project, Texas Central described this debacle incorrectly. The project was never sold to be a "ward of the state" as it was projected that its ridership would pay for the operations of the system. It was sold to the public that private investors would come in and assist with the construction of the endeavor. They describe that the California travesty was designed to proceed piecemeal but that is exactly what Texas Central is proposing as they now claim that construction will start

in 2020. Texas Central's railroad status and eminent domain privileges will be tied up for years so how would they be able to proceed unless piecemeal just like California when Texas Central only has options on approximately 20% of the route with most landowners refusing to sell.

Texas Central goes on to state that the Board should take a "light-handed regulatory approach" to their project as directed by Congress. They proceed to explain that The Board "shall exempt" a transaction (including a construction proposal) in whole or in part if: (1) application of the statutory provision from which exemption is sought is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 ("RTP"); and (2) either (a) the transaction is of limited scope, or (b) applying the statutory provision is not needed to protect shippers from the abuse of market power. 49 U.S.C. § 10502(a) Evidently Texas Central did not review the exemption criteria or glossed over it entirely. As will be detailed later, many of the transportation goals specified in 49 U.S.C. § 10101 would be violated by this project thus granting an exemption would be unconscionable at best. Texas Central's venture does not meet the limited scope application as well. Finally, a hard look and full application would be necessary as Texas Central has set up a monopoly and shippers would need to be protected from the abuse of market power. The Board rightfully stated should they take jurisdiction, "Moreover, scrutiny under the application process may be appropriate given the magnitude of the project, the substantial public interest, and the potential impact on numerous, local-area landowners.

Texas Central continues to argue against a hard look at their speculative undertaking and quotes "Congress has established a presumption that, unless shown to be otherwise, rail construction projects are in the public interest and should be approved." Cal. HSR (Fresno) at 9 (citing N. Plains Res. Council v. Surface Transp. Bd., 668 F.3d 1067, 1091–92 (9th Cir. 2011). Texas Central ignores the huge volume of opposition that has claimed that this project does not rise to public need or necessity. Thousands of landowners have written the Board describing negative impacts of the project and how it will hurt the public. This argument by Texas Central falls flat as there were a number of pieces of evidence submitted to the Board that has "shown to be otherwise". Shortly after, Texas Central discusses the DM&E argument once again which has been explored extensively above and those project details sharply contrasts with this endeavor. In this same paragraph they argue against the Board's GLBT's decision when stating "it is counterproductive to require applicants of major, multi-billion dollar private rail project to convince the STB of the project's financial viability, when a critical mass of investors will inevitably await the federal licenses and permits before committing to the project." They further falsely claim to the Board "the project will be financed entirely by investors and entrepreneurs" which even Texas Central's own website³⁰ shows this to be untrue.

Texas Central fails to note that in Yucca Mountain Alignment³¹ the Board ruled that "Historically, the agency has evaluated whether there is a public demand or need for the proposed service; whether the applicant is financially able to undertake the construction and provide rail service; and whether the proposal is in the public interest and will not unduly harm existing services. Safety and environmental concerns are also considered and weighed against transportation concerns in evaluating the public interest." If the Board decided to take jurisdiction of this intrastate project then a full application would be warranted to protect the public from undue harm.

Many of Texas Central arguments are based on practical movement of people across state lines. Since there isn't a practical continuity of movement in Texas Central's case as evidenced by arguments already made, physical continuity of transit would be a major factor. This gap is never discussed by Texas Central except to

³⁰ <https://www.texascentral.com/rumors-vs-reality/project-financing/>

³¹ https://www.stb.gov/stb/environment/key_cases/Yucca_Mountain.html

claim it doesn't matter. Convenience and practicality is absent from Texas Central and Amtrak's agreement thus the Board should dismiss this throughfare arrangement as a qualifying element to the interstate debate.

TEXAS CENTRAL FAILS TO MEET TRANSPORTATION GOALS

Taking a close look at the 15 objectives of the Rail Transportation Policy one can conclude that Texas Central falls short and even is detrimental to many of these goals as delineated below:

(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail. Texas Central already demonstrated the abuse of competition when they eliminated the economical rates provided to Amtrak customers via the Thruway service. Texas Central has set up a monopolistic approach that only Japan's technology can run on its tracks thus eliminating any type of competition.

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required. The Board has already ruled that it does not need to regulate this project nor does it have jurisdiction. Texas Central is asking for oversight but only for jurisdiction purposes in an attempt to circumvent state laws.

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board. It has already been demonstrated extensively that this is not an efficient arrangement with Texas Central and Amtrak. Also standing alone, Texas Central's project is no more efficient than air travel when factoring in driving to the station. TSA will be involved in both so there will be no time saving for the public. There have been a number of safety aspects and Union Pacific provided a letter in the last legislative session reporting that Texas Central's project would cause interference to its signaling system which could lead to accidents and deaths. Texas Central's train would also obscure view of the Union Pacific tracks leading to potential accidents. Experts also sent concerns into the FRA regarding the Atmos Compression station that routinely releases volatile gases. With the introduction of the electrified high speed train this is a recipe for disaster that can lead to mass casualties. This concern has been raised with both the FRA and Texas Central.

(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense. In order to ensure a sound transportation system the project must be financially viable and sustainable which has been shown with independent studies to not meet this objective as it is estimated to lose over 500 million a year. There will be no effective competition as it sets up for a monopoly and eliminated a reasonable thruway service for Amtrak customers. It is considerably more expensive than current bus and automobile transportation. It does not meet the needs of the public as it is too costly for most to ride. It also fails to meet the needs of the national defense as only Japan's trains can run on its tracks.

(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes. Please see response to RTP(4) above.

6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital.

Texas Central has eliminated any possible effective competition by ceasing the Thruway services. The average price of \$199 each way is not reasonable and most could not afford this price.

(7) to reduce regulatory barriers to entry into and exit from the industry. Texas Central is seeking additional regulation as they are petitioning the Board to take jurisdiction of the project when the Board already ruled that their approval was not necessary for the project to proceed.

(8) to operate transportation facilities and equipment without detriment to the public health and safety. Please see Union Pacific and Atmos Compression responses noted in RTP (3). There are numerous studies presented to the FRA demonstrating that the public health would be harmed by this project. Texas Central's alignment is close to a number of schools affecting children traveling to and from school and also impacting them throughout their school day. The DEIS shows that there will be an increase in emergency response times up and down the route which would ultimately lead to unnecessary deaths. In *Indiana and Ohio Railway Company--Construction and Operation--Butler, Warren, and Hamilton Counties, Ohio*, 9 I.C.C.2d 783 (1993) (Indiana and Ohio), the ICC determined "that even though the applicant was financially fit, there was public demand for the service, and the project would not unduly harm existing services, public safety concerns outweighed the transportation benefits of the proposed line, and the application was denied." **In this case, Texas Central has not proven it is financially fit, has not proven public demand, has shown that it would hurt current thruway services and has public safety concerns.** This project should be denied as well.

(9) to encourage honest and efficient management of railroads. Texas Central has consistently lied and misled the public and legislators. They have provided false information to the Board as previously mentioned in this response. They have represented to landowners and the public that they have eminent domain when the courts have repeatedly stated they did not. They have not worked well with other rail carriers as evidenced by Union Pacific's letter. They have consistently prevented transparency even with simple provisions such as fare prices. They have manipulated the amount of options obtained by refusing to report percentage of route but instead continue to only report parcels under their control. They marketed the 51 billion sales tax error, egregious VMT error and so many other false narratives to push their agenda despite knowing that it was wrong and dishonest. It would be easy to conclude that the as of today the management of Texas Central has not been efficient as they have doubled their construction estimates in only a few years.

(10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability. There will be an absence of competition so increases based on general applicability will be up to the petitioners' discretion should this project proceed.

(11) to encourage fair wages and safe and suitable working conditions in the railroad industry. There will be no competition in the passenger rail industry so wages will be at the petitioners' discretion should this project proceed.

(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination. This project sets up a monopoly with exorbitant costs to the consumer and the elimination of a cost efficient route for Amtrak customers.

(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information. Texas Central is seeking additional regulatory burdens as the Board already ruled it did not have jurisdiction and didn't need its regulation.

(14) to encourage and promote energy conservation. This project does NOT promote energy conservation as it will never overcome its carbon footprint with its low ridership. The European Commission reported that "Only under exceptional circumstances (a combination of low construction costs plus high time savings) could a new HSR line be justified with a level of patronage below 6 million passengers per annum in the opening year; with typical construction costs and time savings, a minimum figure of 9 million passengers per annum is likely to be needed."³² This project is estimated to only achieve ridership of 1.4 million per independent studies. Even with Texas Central's implausible ridership figures they are considerably less than what the Commission suggests before starting such a project. Still other studies state, "To capture the uncertainty of estimated parameters, distributions for the annual traffic emissions reduction required to compensate for the embedded emissions from the construction of infrastructure are calculated using Monte Carlo simulation. In order to balance the annualized emissions from the railway construction, traffic volumes of more than 10 million annual one-way trips are usually required."³³ Texas Central falls short of this study as well. Texas Central chose an alignment which had notable environmental concerns. They used stale google imagery which did not depict relevant changes in the topography and landscape. The FRA was given many examples. Very little boots on the ground surveys were conducted and numerous agencies provided concerns regarding wetland impacts along with negative environmental effects of the project. Some of these concerns were provide to the Board in my previous letter. Texas Central dismisses opponents' environmental concerns but if the Board takes jurisdiction of the project then the Board is required to take a hard look when performing their own environmental analysis of the project.

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part. The Board has previously ruled that they did not have jurisdiction and as stated by Texas Central that "Without that clarification, "regulatory uncertainty" would have affected the project's timelines, Texas Central officials said in a prepared statement." "The project continues to move forward with development activities."³⁴

TEXAS CENTRALS NUMEROUS SHELL COMPANIES

Texas Central has formed numerous companies in order to shift assets and liability. One must ask why one project has so many cloaks? It is imperative that any and all oversight into this project takes a hard look to protect the public.

TEXAS CENTRAL RAIL HOLDINGS, LLC
TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC
TEXAS CENTRAL RAILROAD LLC
TEXAS CENTRAL REAL ESTATE ASSET MANAGEMENT, LLC
TEXAS CENTRAL HIGH-SPEED RAILWAY, LLC
TEXAS CENTRAL HIGH-SPEED RAIL HOLDINGS, LLC
TEXAS CENTRAL INFRASTRUCTURE, LLC
TEXAS CENTRAL PARTNERS, LLC
INTEGRATED TEXAS LOGISTICS, INC

³² <https://www.greenaironline.com/news.php?viewStory=758>

³³ <https://www.sciencedirect.com/science/article/pii/S1361920911001155>

³⁴ https://www.progressiverailroading.com/federal_legislation_regulation/news/STB-has-no-oversight-of-Texas-Centrals-high-speed-rail-project--48821

TAXPAYER CONCERNS

It has already been demonstrated that the California project has hurt taxpayers tremendously. Texas Central will explain that their project is so different but many key components remain the same. WSP is a key player in both the California and Texas Central project. Many WSP³⁵ consultants have been removed from the California project recently due to mismanagement and escalating costs. Cost overruns are eerily familiar to this Texas Central project along with many missed timelines. Tim Keith told the Board in 2016 that “business model calls for it to begin construction in 2017” and the “cost of civil construction and the core system is estimated to be over \$10 billion”. Those timelines are now stretched to the 2020 and beyond with costs at 20 billion and continuing to rise. Many of California’s cost overruns were due to mismanagement of land acquisitions, unrecognized utility relocations and litigation³⁶. Texas Central has the same recipe for disaster on their proposed project as they are having significant problems acquiring land especially without the power to condemn property. They continue to find themselves in litigation which they have not been successful convincing judges to obtain access to the public’s property. They will have to relocate many utilities which have not been addressed in the DEIS and will be very expensive and time consuming. The estimated costs will undoubtedly go up significantly just like California and these private investors have only raised a miniscule 0.4% of construction rates based on today’s figures.

It is well known that Texas Central will seek both RRIF and TIFIA loans as listed on their website and the FRA also stated that they may seek these loans. We have witnessed taxpayers being left on the hook when private developers were unable to service their loan and debt many times. In a recent report it was noted that “The prospect of large loans for private intercity passenger rail and transit-related projects raises questions about potential risks to the RRIF program, because such projects may have no source of earnings until and unless they are completed and, even then, may not be able to generate sufficient revenue to service their loans. If such loans are extended, they are likely to be quite large relative to the loans RRIF has extended for freight projects and may pose different risks. RRIF loans for freight projects typically are for the purpose of improving an operating railroad that already generates revenue from customers. Those existing facilities may serve as collateral for the loans. Some of the private passenger rail projects now under development, by contrast, involve provision of new services on trackage that has yet to be built, potentially leaving the RRIF program with a significant risk of loss if the project is not completed.”³⁷ Texas Central’s project is mentioned in a footnote in this Congressional report.

Who is looking after taxpayers? Who is vetting this project to ensure that taxpayers are not footing the bill to promote a foreign agenda? A Japanese article states that “The final financing scheme seems like funded by equity of 20-30%, and debt for the rest, being contributed equally by the U.S. and Japan, debt portion amounting to \$ 7 to 8 billion each. A person familiar with the deal is optimistic; “if debt is determined, equity will follow.” The U.S. side is preparing to provide loan programs within the framework of the Federal TIFIA (Transport Infrastructure Funds and Innovation Law) and the RRIF (Railway Renovation and Improvement Fund) program embodying the Buy-American policy.”³⁸

It is noteworthy to mention that Japan’s exported Shinkansen system to Taiwan was a complete failure³⁹. This project was also sold as a private endeavor yet had to be bailed out by the taxpayers

³⁵ <https://www.latimes.com/california/story/2019-07-26/california-high-speed-rail-authority-management-shakeup>

³⁶ <https://www.bsa.ca.gov/pdfs/reports/2018-108.pdf>

³⁷ <https://fas.org/sgp/crs/misc/R44028.pdf>

³⁸ <https://facta.co.jp/sbi/20170831001354.html>

³⁹ <https://economictimes.indiatimes.com/industry/transportation/railways/when-japanese-bullet-train-flopped-in-taiwan-lessons-for-india/articleshow/60731283.cms>

despite having ridership of more than 40 million with similar construction costs and strong existing rail usage. Despite trying to sell all of us on a private project, Torkel Patterson, President of U.S.-Japan Maglev stated the following in a presentation in Georgia regarding high speed rail “Requires long-term commitment from both the Federal Government and States”⁴⁰. Yet we are now magically to believe that no support is necessary from the states or federal government as Texas Central has created the secret recipe for high speed rail success that no other company or country has been able to do. There has never been one rail line that has ever covered its construction, operation, and maintenance costs without governmental support. Not one.

When the Japan National Rail was privatized in the 1980’s, it had 250 trillion yen in debt, which only increased to 280, equal to about \$250 billion. The private company did not take this debt on either, rather, it was the public who continued to bear it. Japan continues to struggle with many of their routes even with lower car ownership, larger downtowns, and easily accessible HSR stations all which is not comparable to this project.

Even Amtrak admits on page 2 of their report⁴¹” In FY 2016, Amtrak earned approximately \$3.2 billion in revenue and incurred approximately \$4.3 billion in capital and operating expense. **No country in the world operates a passenger rail system without some form of public support for capital costs and/or operating expenses.**”(emphasis added) Again how is Texas Central able to do what no one else can with dismal ridership projections?

If this route was so palatable for Amtrak why wouldn’t they travel via host railroads? Union Pacific already owns the Houston Amtrak station and already has tracks available for usage. Union Pacific already has routes to Dallas as does BNSF. If the route was thought to have any likelihood of success wouldn’t one of these railroads or Amtrak choose to initiate a service? Currently seventy-two percent of the miles traveled by Amtrak trains are on tracks owned by other railroads with Union Pacific hosting 6.1 million and BNSF hosting 6.9 million. There just isn’t a case for a true public need for the Texas Central project and the risks for taxpayers are too great to be ignored.

ANALYSIS FOR NO JURISDICTION AND REJECTION OF PROJECT

The petitioner has never demonstrated a “public convenience and necessity” for the project. As mentioned above, if there were a true need for the project, Union Pacific, BNSF, or Amtrak could fill the void without risking billions of taxpayers’ money and confiscating over 11,000 acres of new raw land.

In reviewing if a project qualifies, “a three-part test has evolved to evaluate the public convenience and necessity, which requires a determination of whether: (1) the applicant is financially fit to undertake the construction and provide service; (2) there is a public demand or need for the proposed service; and (3) the construction project is in the public interest and will not unduly harm existing services. In regards to #1 the applicant has not demonstrated this ability. Regarding #2 the public demand is weak as evidenced by numerous independent studies. Finally #3 deals with the public interest and existing services. Many examples have been provided that affirms that this project will harm both the public and existing services such as Union Pacific.

⁴⁰ <http://www.dot.ga.gov/AboutGeorgia/Board/Presentations/Maglev.pdf>

⁴¹ <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/nationalfactsheets/National-Fact-Sheet-FY2016-0717.pdf>

Under 49 U.S.C. § 10901(c), the Board shall authorize construction and operation of railroad lines unless it finds that such activities are inconsistent with the public convenience and necessity. This speculative venture would fall under this categorization.

In a recent report, "TCP announced last fall that Irving, Texas-based Fluor Enterprises Inc. and The Lane Construction Corp. had been selected as the preferred team to try to negotiate a sole source design-build contract, with WSP USA conducting engineering work on their behalf. A similar agreement in 2015 with Archer Western Contractors and Ferrovial Agroman fell apart, partly due to rising costs, but mainly because of a lack of confidence in TCP's ridership estimates, according to one of the principals in the deal."⁴² Public demand simply isn't there for this project. Transit usage is very low in Texas compared to other states. In fact telecommuting is almost three times as likely in Texas than someone using public transit.⁴³

The petitioner previously told the Board, "When completed, the Texas Central Line will be operated and maintained by TCRR and TCRI". However, Texas Central has stated that the operator will be Renfe. They go on further to state that "The operator will run the trains and maintain system components such as the engines, signals and other equipment. They will also oversee development of ticketing platforms and procedures, passenger loyalty programs and other customer-facing passenger services to ensure a safe, comfortable and accessible journey for all"⁴⁴ Has Renfe coordinated with Amtrak regarding the through ticket arrangement? Has Texas Central filed a change of operator with the Board or even notified the STB that Renfe was named the operator of the system?

The through fare agreement is insignificant and negligible in interstate commerce and may in fact cause a loss of Amtrak customers due to new excessive incurred expenses to customers and the loss of an economical route with Amtrak. The through fare agreement is not enforceable and can be cancelled by either party. It would be an injustice to the public for the Board to grant jurisdiction based solely on this harmful agreement which was set up by Texas Central to circumvent the system. Texas Central had no interest in working with Amtrak until the STB denied jurisdiction. Texas Central passengers booking through Texas Central have no ability to book an Amtrak ticket when making a reservation with the bullet train. This ticketing scenario remains speculative and Amtrak is the only one that has the ability to book their customers with Texas Central. How does Amtrak benefit from this arrangement and will any Texas Central customers use Amtrak at all? This was never answered by Texas Central nor Amtrak and is imperative to an interstate argument. There simply is not a significant share of Amtrak's passengers that are forecast to benefit from the Texas Central through ticket agreement if any at all.

There still is no direct connection with Amtrak or any interstate rail network. The gaps are significant and kills any seamless and convenience argument. The Houston station is still unknown and three sites are in review by the FRA in the DEIS without any being finalized

The Texas Central project is an intrastate project. Texas Central claims they are an intrastate interurban electric railway. The ICA defines rail carrier in 49 U.S.C 101102(5) which specifically excludes street,

⁴² <http://pwfinance.net/bechtel-bets-on-texas-centrals-shinkansen-bullet-train/>

⁴³ https://public.tableau.com/views/USCommutingStatisticsbyCounty/StateDashboard?:embed=y&:display_count=yes&:showVizHome=no#5

⁴⁴ <https://www.texascentral.com/posts/texas-central-names-global-railway-company-renfe-as-its-high-speed-train-operating-partner/>

suburban, or interurban electric railways” Texas Central through its own submission clearly could not be an interstate entity.

In order for the Board to approve such a project they have to meet three general conditions. "The first one is they have to have the authority to actually condemn property," he says. "The second is they have to have a project for the public good, and the third is it has to be a necessary project."⁴⁵ Texas Central clearly does not have the power to condemn land. It does not meet the other two qualifications as well.

Texas Central’s application is incomplete along with its additional filings are found to be riddled with holes and therefore should be rejected. Texas Central has failed to provide substantiated information including financial details to the Board who has to determine the transportation merits of the project as required by 49 U.S.C. § 10901.

This project does not qualify for an interstate project nor does it rise to meet the transportation goals but rather is inconsistent with many of them. No exemption should be granted and the petition should be rejected given the overwhelming evidence in opposition of this venture.

CONCLUSION

Texas Central who maintains to be an intrastate interurban electric railway does not somehow make the leap to becoming an interstate project with a mere unenforceable through ticket agreement that can be cancelled when the petitioner finds that paying undue fees to Amtrak along with empty buses is not in their best interest. Texas Central only partially answered some of the Boards questions and like its proposed project left many gaps in their response.

On July 18, 2016 the Board ruled that Texas Central does not require Board approval as it would not be part of the interstate rail network. Texas Central’s proposed “connections” and agreement with Amtrak are impractical and will result in financial harm to Amtrak customers which would likely result in a loss of Amtrak ridership should this project be implemented. The applicants ridership figures are also unbelievable and do not hold up to actual detailed analysis of the route by independent scientific studies performed. This project is inconsistent with the public convenience and necessity guidelines and should therefore be rejected by the Board. Granting an exemption as requested by the applicant would be in conflict with Board precedence when reviewing the serious concerns of this enormous project. I am hopeful that after the Board reviews the Amtrak and Texas Central agreement and scheduling arrangement, they will see that it not a practical movement of people and rule once again that they do not have jurisdiction of this intrastate project.

Respectfully,

Christie Parker
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Pasadena, Tx. 77501

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

⁴⁵ <https://www.northernpublicradio.org/post/railroad-will-need-eminent-domain-powers-acquire-land>

