



Carbett "Trey" J. Duhon III
Waller County Judge

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

October 8, 2019

The Honorable Ann D. Begeman
Chairman
U.S. Surface Transportation Board
395 E. St., SW
Washington, DC, 20423

RE: COMMENTS AND REQUEST FOR DENIAL OF TEXAS CENTRAL RAILROAD AND
INSTRACSTURCUTURE INC. AND TEXAS CENTRAL RAILROAD LLC'S JUNE 20, 2019
PETITION TO REOPEN (FD 36025)

Chairman Begeman,

I as duly elected Judge in the State of Texas representing Waller County write to express my opposition to Texas Central Railway's (TCR) petition to re-open regarding the Surface Transportation Board's (the Board) jurisdictional authority over the ill-advised high-speed rail project between Dallas and Houston.

On July 18, 2016, (*Exhibit 1*) the Board correctly denied TCR's petition under 49 U.S.C § 10502 and 49 U.S.C. § 10901 (operation and construction), since TCR is not an interstate rail network, are not sufficiently connected to an interstate rail carrier, and has no right to eminent domain authority under Texas law.

TCR's claim of "substantially changed circumstances" via the formal "through-ticketing agreement" with Amtrak is not enough for the Board to assert jurisdictional authority over the proposed high-speed rail project. To that end, the Board has consistently ruled in past decisions (Cape Cod & Hyannis R.R., Cal. High-Speed Rail Auth., FD 35724, and All Aboard Fla.-Operations LLC, FD 35680) that a petition must exemplify "extensive interconnectivity" with an interstate rail carrier.

The "extensive interconnectivity" standard the Board has consistently utilized is reflective in three parts: 1) sharing a station with Amtrak or another interstate rail carrier; 2) sharing tracks with Amtrak or another interstate rail carrier; and 3) providing a through-ticketing agreement. However, in the July 18, 2016, decision, the Board clearly stated that "no one factor is controlling." This statement by the Board concludes that TCR's claim to having a formal "through-ticketing

agreement” with Amtrak is enough to “create Board jurisdiction” is factually inaccurate (See e.g., Cal. High-Speed Rail Auth., FD 35724; All Aboard Fla.-Operations LLC FD 35680). (*Exhibit 2*)

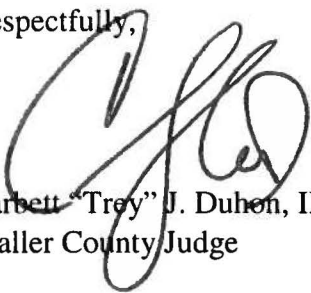
Moreover, it is evident through TCR’s own claims that they’re unable to meet the Board’s strict “extensive interconnectivity standard,” nor can they sufficiently adhere to having “good connectivity and accessibility to Amtrak” as was the case in Cal. High-Speed Rail Auth. In that case, the Board noted that—unlike TCR’s proposal—the Cal. High-Speed Rail Auth., proposal entailed a “blended implementation strategy” that involved Amtrak trains operating on the proposed line for an interim period.” In contrast, TCR would not share the same station and/or track with Amtrak; rather TCR’s passenger would “connect” to Amtrak via a shuttle service that is over seven miles from a TCR station, and a “walkway” that is over a half mile from a TCR station.

These “connections” as described by TCR were highlighted by the Board in their July 18, 2016 denial as “not sufficient to make the Line part of the interstate rail network.” (See All Aboard Fla.-Operations LLC, FD 35680; Napa Valley Wine Train—Pet. for Declaratory Order). This is still the case for TCR today.

Furthermore, on May 7, 2019, Judge Deborah Evans of Leon County District Court issued a Final Judgement declaring that TCR is “**not** a railroad or interurban electric railway company” under Texas law (*Exhibit 3*). This Final Judgement eliminates the ability for TCR to claim they have eminent domain authority in the State of Texas.

For the reasons stated above, I respectfully ask the Board to deny TCR’s Petition to Reopen (FD 36025) for lack of jurisdiction under 49 U.S.C § 10501.

Respectfully,

A handwritten signature in black ink, appearing to read 'Trey Duhon', is written over the printed name and title.

Carbett “Trey” J. Duhon, III.
Waller County Judge

EXHIBIT 1

Based on the record, the Board concludes that the construction and operation of the proposed Line would not be part of the interstate rail network and is therefore not subject to the Board's jurisdiction under § 10501. Accordingly, this proceeding will be dismissed for lack of jurisdiction, and the petition for clarification will be denied as moot.

It is ordered:

1. This proceeding is dismissed for lack of jurisdiction.
2. Petitioner's motion for leave to file its surreply is granted.
3. The petition for clarification is denied as moot.
4. This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

EXHIBIT 2

Docket No. FD 36025

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10501(a)(2)(A), the Board has jurisdiction over transportation by rail carriers (1) between a place in a state and a place in another state, and (2) between a place in a state and another place in the same state, as long as that intrastate transportation is carried out as “part of the interstate rail network.” DesertXpress Enters., LLC—Pet. for Declaratory Order, FD 34914, slip op. at 9 (STB served May 7, 2010). Whether an intrastate passenger rail service is part of the interstate rail network is a fact-specific determination based on the totality of circumstances. See Cal. High-Speed Rail Auth., FD 35724, slip op. at 11-15; All Aboard Fla.-Operations LLC, FD 35680, slip op. at 3. In making this determination, the Board may examine several factors, such as whether the proposed service shares stations or has a through ticketing arrangement with Amtrak or another interstate passenger rail carrier, but no one factor is controlling. See, e.g., Cal. High-Speed Rail Auth., FD 35724, slip op. at 11-15; All Aboard Fla.-Operations LLC, FD 35680, slip op. at 3-4.

The Board finds that it does not have jurisdiction over the proposed Line as described in the petition, because it would not be part of the interstate rail network. It is undisputed that the Line would provide only intrastate passenger service between Dallas and Houston. What Texas Central characterizes as its proposed “connections” to Amtrak are not sufficient to make the proposed Line part of the interstate rail network. Texas Central makes clear that the Line would not directly connect, nor would it be feasible to directly connect, with Amtrak. (Surreply 7-8.) Rather, Texas Central states that passengers would have the “ability to connect” to the existing Amtrak station in Dallas by walking a half mile from the prospective Line station location. (Surreply 9.) In Houston, Texas Central proposes the use of an intermediate bus service to “connect” Line passengers to the existing Houston Amtrak station, located approximately seven miles from the prospective Line station site. (Surreply 11.) The proximity of a planned station near interstate transportation but with no concrete plans today for through ticketing and no direct connection to Amtrak or any other interstate passenger rail carriers does not make a proposed intrastate passenger service part of the interstate rail network. See All Aboard Fla.-Operations LLC, FD 35680, slip op. at 3-4. This is true, regardless of Texas Central’s argument that direct physical connections to the track of Amtrak or other rail carriers would be impractical in this case due to the distinct track technology Texas Central proposes to use.

16-0137CV

JAMES FREDRICK MILES.

Plaintiff,

VS.

**TEXAS CENTRAL RAILROAD &
INFRASTRUCTURE, INC.,**

Defendant,

**INTEGRATED TEXAS LOGISTICS,
INC.,**

Intervenor.

IN THE 87th DISTRICT COURT

FILED

CASSANDRA NOEY, DISTRICT CLERK
LEON COUNTY, TEXAS

MAY 07 2019

BY

LEON COUNTY, TEXAS

After considering Plaintiff's Amended Motion for Summary Judgment, Defendant and Intervenor's Amended Motion for Partial Summary Judgment, the responses, the replies, the evidence, and the arguments of the parties, the Court finds that Plaintiff's Amended Motion for Summary Judgment should be **GRANTED** and Defendant and Intervenor's Amended Motion for Partial Summary Judgment should be **DENIED**.

It is therefore **ORDERED** that the Court **GRANTS** Plaintiff's Amended Motion for Summary Judgment;

It is further **ORDERED** that the Court **DENIES** Defendant and Intervenor's Amended Motion for Partial Summary Judgment;

It is further **ORDERED, ADJUDGED AND DECREED** that Texas Central Railroad & Infrastructure, Inc. is not a Railroad Company or Interurban Electric Railway Company.

