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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC-
AUTHORITY TO CONSTRUCT AND OPERATE-
PASSENGER LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

REPLY IN OPPOSITION TO MOTION FOR LEAVE TO FILE SURREPLY

Texans Against High Speed Rail, Inc. (“TAHSR”) files this Reply in Opposition to Petitioners Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC’s (collectively “Texas Central”) Motion for Leave to File Surreply to Replies to the Board’s Request for Additional Information as follows:

ARGUMENT

This is now the fourth time Texas Central has attempted to supplement the record in this proceeding in violation of the rule prohibiting “[a] reply to a reply.” 49 C.F.R. § 1104.13(c). The Board has routinely enforced this rule, and it should do so here.¹

In April 2016, Texas Central submitted its Petition for Clarification. After TAHSR and other parties submitted replies, Texas Central submitted—without leave—a “reply to a reply”

¹ See, e.g., *Cal. High-Speed Rail Auth.—Petition for Declaratory Order*, FD 35861 (STB served Dec. 12, 2014); *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*, NOR 42121 (STB served Sep. 4, 2015); *Consol. Rail Corporation—Abandonment Exemption—Hudson Cty., NJ*, AB 167 (SUB-1189X) (STB served May 21, 2015); *St. Lawrence & Atl. R.R. Company—Discontinuance of Serv. Exemption—Cumberland Cty., Me.*, AB 1117X (STB served Feb. 24, 2014); *V&S Ry., LLC—Petition for Declaratory Order—Railroad Operations in Hutchinson, Kan.*, FD 35459 (STB served July 9, 2012); *Michigan Air-Line Ry. Co.—Abandonment Exemption—in Oakland Cty., Mich.*, AB 1053 (SUB-2X) (STB served Oct. 18, 2011).

disguised as a “Rebuttal Brief in Support of Petition for Clarification.”² Texas Central submitted its Rebuttal pursuant to 49 C.F.R. § 1171.1, but that rule concerns only “Petitions.”³ It does not even mention rebuttals or replies, let alone provide a basis for filing one. Nevertheless, Texas Central asked the Board to accept the Rebuttal “in the interest of having a complete record and to correct certain inaccurate statements regarding the scope of its request for clarification.”⁴

In April 2016, Texas Central also submitted its Petition for Exemption. After TAHSR and other parties submitted replies, Texas Central filed a Motion for Leave to File Response to Replies. Texas Central claimed it had “good cause” for leave to submit a Response because opponents’ replies raised issues and arguments “that far exceed the scope of the Petition,” “mischaracterize important facts and law,” and “make unsupported claims.”⁵ According to Texas Central, leave was necessary “to afford Texas Central an opportunity to address the new claims and issues raised by opponents, and to provide the Board with a complete record to aid its decision-making process.”⁶

In May 2018, Texas Central submitted its Petition to Reopen. After TAHSR and other parties submitted replies, Texas Central filed a Motion for Leave to File Response to Replies. Texas Central claimed it had “good cause” for leave to submit a Response because opponents’ replies raised issues and arguments that “mischaracterize important facts, make unsupported claims, and exceed the scope of the Petition.”⁷ According to Texas Central, granting leave “will

² Texas Central Rebuttal Brief in Support of Petition for Clarification (filed May 27, 2016).

³ *Id.* at 1.

⁴ *Id.* at 1, n. 1.

⁵ Texas Central Motion for Leave to File Response to Replies, p. 1-2 (filed June 20, 2016).

⁶ *Id.* at 2.

⁷ Texas Central Motion for Leave to File Response to Replies, p. 1-2 (filed June 12, 2018).

afford Texas Central an opportunity to address the issues raised by the opponents and to provide the Board with a more complete record.”⁸

Most recently, in August 2019, Texas Central submitted its Response to the Board’s Request for Additional Information. After TAHSR and other parties submitted replies, Texas Central filed a Motion for Leave to File Surreply. Texas Central claimed it had “good cause” to submit a Surreply because opponents’ replies raised issues and arguments that “mischaracterize important facts, make unsupported claims, and misinterpret Board and Supreme Court precedent.”⁹ According to Texas Central, granting leave “will afford Texas Central an opportunity to address the issues raised by the opponents and to provide the Board with a more complete record.”¹⁰

Texas Central has not established “good cause.” Rather, it has merely recycled the same baseless arguments on four separate occasions in an attempt to circumvent the rule prohibiting a “reply to a reply.” 49 C.F.R. § 1104.13(c). This rule ensures that interested parties are given a **full and fair** opportunity to respond to **all** arguments and evidence supporting the relief requested. In addition, the rule prevents petitioners from impermissibly rearguing and expanding upon prior arguments, which is exactly what Texas Central is trying to do here... now for a fourth time.

Texas Central had ample time and opportunity (over two months) to gather the requested information and develop any arguments it deemed pertinent to the jurisdictional issue pending before the Board. Moreover, and as TAHSR has stressed from the outset, Texas Central’s isolated multi-modal system cannot satisfy the statutory requirement limiting the Board’s jurisdiction to transportation by a rail carrier that is “only by railroad.” 49 U.S.C. § 10501(a)(1). Nor can Texas

⁸ *Id.* at 2.

⁹ Texas Central Motion for Leave to File Surreply to Replies to the Board’s Request for Additional Information, p. 1-2 (filed October 24, 2019).

¹⁰ *Id.* at 2.

Central avoid the fact that 49 U.S.C. § 10501(a)(2)(A) limits the Board's jurisdiction to transportation that is "part of the interstate rail network." Thus, there is no reason for the Board to prolong this multiyear proceeding any further. The Board should deny Texas Central's Motion for Leave to File Surreply in its entirety, and strike its Surreply from the record in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail or by e-mail on October 29, 2019.

/s/ M. Patrick McShan