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**Federal Railway Administration Issues Record of Decision and Regulatory Carve Out for
“Conceptual Design” of Dallas Houston HSR**

Jewett, TX – The Federal Railroad Administration (FRA) has released a pre-publication of its final Rule of Particular Applicability (RPA) and Record of Decision (ROD) today, Monday, September 21, 2020. However, the final RPA and ROD have not been published in the Federal Register. The final RPA and ROD, one of many remaining milestones within the overall regulatory process—including the NEPA process—does not “permit construction or operations,” despite Texas Central Railway’s best efforts to describe the proposed HSR as “shovel ready.” Rather, the final RPA and ROD simply enables FRA to reach a decision that is informed by a cursory understanding of the potential environmental impacts and safety requirements Texas Central Railway (TCR) will be mandated to operate by.

“FRA does not grant any kind of construction approval or permit. Neither does this final rule, by itself, grant any permission or authority for TCR [Texas Central] to operate.” – excerpt from FRA’s pre-published final RPA and ROD

When considering the overall impact of the final RPA and ROD to the timeline of the project, it is worth noting that FRA concluded the project was in a “conceptual design” stage and does not grant any kind of construction approval or permit. Rendering this decision less than conclusory, FRA expressly states that “neither does this final rule, by itself, grant any permission or authority for TCR to operate.” It is the Surface Transportation Board (STB) that is the only agency that can grant TCR permits to operate and construct since taking jurisdiction over the project on July 16, 2020. And considering the STB via that decision is requiring TCR to submit a full application to the Board, which includes a detailed look at project financials, design, construction plans, and ridership numbers, TCR is years away from construction and operation.

This point is highlighted within FRA’s final RPA and ROD, where FRA denied TCR’s waiver to substitute non-compliant Japanese rolling stock, mandated compliance with crash readiness standards along with full Positive Train Control (PTC) compliance, thus meaning, TCR must do a complete redesign of their rolling stock in order to be compliant with this final RPA before they are even able to submit final designs for an STB application for construction and operational permits, which could potentially cost TCR tens of millions of dollars in additional costs.

Kyle Workman, Chairman and President of Texans Against HSR, said of the FRA ROD, “Texas Central will likely trumpet this decision as major progress for its project, but they are simply arranging deckchairs on the Titanic... Texans and federal taxpayers need to know this Record of Decision doesn’t change the fact that Texas Central has put up Texas land as collateral to the Japanese government when the project fails, while at the same time asking for billions in federal dollars to prop up its so-called ‘private project’ that is already failing in its ‘conceptual design’ stage.”

While Texas Central Railway continues to claim it will begin construction next year, the company has recently laid off the majority of its staff, admitted the cost estimate for the project has ballooned to \$30B,



expressed its intent to seek federal funds for a project they have called “private” and “not needing any public funds,” and has yet to file the required full application for construction approval to the federal-level Surface Transportation Board.

In short, the final RPA and ROD establish the minimum safety requirements with which TCR must comply, while signifying the completion of the NEPA process. The publication of this final RPA and ROD is the beginning, not the end, of TCR’s regulatory journey. In addition, these final agency actions clear the way for legal challenges regarding, among other NEPA violations, the FRA’s failure to take the requisite “hard look” at the project’s environmental impacts, reasonable alternatives and financial feasibility.

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