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SERVICE DATE - MARCH 24, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 30186 (Sub-No. 3)

TONGUE RIVER RAILROAD COMPANY--CONSTRUCTION  
AND OPERATION--WESTERN ALIGNMENT

Decided: March 19, 1998

On December 19, 1997, the Tongue River Railroad Company (TRRC) formally notified the Board of TRRC's intention to file a rail construction application under 49 U.S.C. 10901 for authority to construct and operate a 17-mile line of railroad near Decker, MT, referred to as the Western Alignment.<sup>1</sup> On February 27, 1998, TRRC filed a petition to establish a procedural schedule for the proceeding.<sup>2</sup> Under TRRC's proposed schedule, the proceeding would be concluded in approximately 9 months following the filing date of the application. We will deny the petition. GNPLP replied in opposition on March 18, 1998.

BACKGROUND

TRRC currently has authority to construct and operate a line of railroad between Ashland and Decker, MT, subject to various conditions. See Tongue River Railroad Co.--Rail Construction and Operation--Ashland to Decker, Montana, Finance Docket No. 30186 (Sub-No. 2) (STB served Nov. 8, 1996).<sup>3</sup> In that proceeding, the Board considered two alternative routes for the

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<sup>1</sup> Under Board regulations at 49 CFR 1105.10(a)(1) and 1150.1(b), a construction application must be preceded by a notice to the Board's Section of Environmental Analysis (SEA) at least 6 months prior to filing a rail construction application. However, by letter filed February 9, 1998, TRRC requested a waiver of the prenotification regulations. The waiver was granted by the Chief of SEA in a letter dated February 13, 1998, permitting TRRC to file its application after that date and before the 6-month prenotification period expires. Subsequently, on March 5, 1998, Great Northern Properties Limited Partnership (GNPLP) filed an appeal of the waiver ruling, to which TRRC replied. That appeal remains pending.

<sup>2</sup> TRRC's proposed schedule is set forth in an appendix to its petition.

<sup>3</sup> That proceeding also embraced Tongue River R.R.--Rail Construction and Operation--In Custer, Powder River and Rosebud Counties, Montana, Finance Docket No. 30186; and Tongue River Railroad Company--Issuance of Securities, Finance Docket No. 30186 (Sub-No. 1). In the lead proceeding, TRRC was authorized to construct a rail line between Miles City, MT, and Ashland, which would connect with the Ashland—Decker segment.

Judicial review of the Board's November 1996 decision is pending in the Ninth Circuit in  
(continued...)

Ashland—Decker line. The first proposed route, TRRC's preferred route, closely follows the Tongue River, and the Board found that this route presented adverse environmental impacts which could not be effectively mitigated. The second route, the "Four Mile Creek Alternative," partially avoids the Tongue River, but follows a more circuitous route and allegedly offers less favorable operating characteristics than TRRC's preferred route. For reasons set forth in the November 1996 decision, we rejected TRRC's preferred route and approved the Four Mile Creek Alternative.

On July 15, 1997, TRRC petitioned to reopen the November 1996 decision. In its petition, TRRC proposed the Western Alignment, a new alignment for an approximately 17-mile portion of the Four Mile Creek Alternative routing that would allegedly require less construction and offer improved operating characteristics over the approved Four Mile Creek Alternative routing. We denied the petition by decision served December 1, 1997, but stated that TRRC could file a new application for authority to construct the Western Alignment. As a result of that decision, TRRC has filed a notice of intent, informing the Board that TRRC will file at the earliest practical time a new construction and operation application in this proceeding. TRRC has not yet filed its application.

#### DISCUSSION AND CONCLUSIONS

TRRC states that the proposed procedural schedule is broadly modeled after procedural schedules adopted by the Board in recent Class I railroad control proceedings. TRRC asserts that those proceedings involved complex environmental and public interest issues well beyond the scope of issues likely to be raised in this proceeding. TRRC also maintains that the environmental analysis performed under Finance Docket No. 30186 (Sub-No. 2) will shorten the environmental process required by this proposal because much of the route for the Western Alignment is contiguous to or overlaps the Four Mile Creek Alternative.

For these reasons, petitioner asserts that 270 days would be an adequate time period to fully resolve this matter. Petitioner adds that establishing a schedule at the outset of this case will provide guidance to all interested parties and promote efficient and orderly consideration of the issues presented.

Because TRRC has not yet filed its application, we cannot determine the scope of the potential public interest issues at this point. Moreover, SEA has not received input from interested governmental agencies, businesses, and affected individuals on the potential environmental issues. Until SEA receives their input, the scope of the likely environmental issues cannot be fully identified. Thus, neither we nor any persons who might comment on a proposed procedural schedule are in a position at this point to assess whether TRRC's proposed procedural schedule

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<sup>3</sup>(...continued)

Nos. 97-70037, 97-70099, and 97-70217, Northern Plains Resource Council, Inc. v. STB.

would be compatible with the environmental and other issues that may be raised in this proceeding. Accordingly, we will deny TRRC's petition.

This decision will not affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. TRRC's petition to establish a procedural schedule is denied.
2. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary