

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 30186

TONGUE RIVER RAILROAD COMPANY, INC. — RAIL CONSTRUCTION AND OPERATION — IN CUSTER, POWDER RIVER AND ROSEBUD COUNTIES, MONT.

Decided: July 18, 2013

Tongue River Railroad Company, Inc. (TRRC) seeks a Board license under 49 U.S.C. § 10901 to construct and operate a rail line in southeast Montana. To acquire its authority, TRRC submitted a filing on December 17, 2012. The Board accepted the filing, invited comments on the merits of the request, and established a procedural schedule in a decision served on January 8, 2013. The schedule was subsequently modified and on April 2, 2013, the Board received three comments on the transportation merits of the application, including one from the Northern Plains Resource Council and Wally McCrae/Clint McCrae, d.b.a. the Rocker Six Cattle Company (collectively, NPRC Parties).¹ Pursuant to a subsequent extension granted by the Board, TRRC filed a rebuttal to all the comments on June 7, 2013.

On June 5, 2013, the NPRC Parties filed a petition asking the Board to revise the procedural schedule to allow for a six-month discovery period. TRRC filed a reply in opposition to the NPRC Parties' petition on June 25, 2013. On July 2, 2013, the NPRC Parties filed a "sur-reply" to TRRC's June 7 filing and a motion asking that the Board accept the sur-reply into the record. The NPRC Parties argue, among other things, that the June 7 filing reaffirms the need for discovery in this proceeding. Under the Board's regulations, a reply to the NPRC Parties' July 2 motion would be due on July 22, 2013.

On July 17, 2013, TRRC filed a request for an extension of time until August 9, 2013, to reply to the NPRC Parties' July 2 sur-reply and motion in one filing. TRRC states that its expert in this matter has just returned from vacation and that an extension will allow TRRC and its expert to properly analyze and respond to the NPRC Parties' lengthy and technical July 2 filing. TRRC adds that granting the request will reduce the administrative burden on the Board and TRRC.

¹ Other comments were filed by the United Transportation Union, General Committee of Adjustment, and jointly by Montana Environmental Information Center, National Wildlife Federation, and Sierra Club.

TRRC's extension request is reasonable and will be granted. A short delay will not prejudice the NPRC Parties but will allow TRRC to fully respond in one pleading to both the NPRC Parties' motion for leave to file a sur-reply and the sur-reply itself.

It is ordered:

1. TRRC's extension request is granted.
2. TRRC's response is due by August 9, 2013.
3. This decision is effective on its date of service.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.