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SEC

SERVICE DATE – NOVEMBER 28, 2003

SURFACE TRANSPORTATION BOARD

DECISION

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

TONGUE RIVER RAILROAD-COMPANY, INC. - CONSTRUCTION  
AND OPERATION-WESTERN ALIGNMENT

Decided: November 26, 2003

In a decision served July 7, 2003, the Board established a procedural schedule for parties to file comments and replies to the supplemental evidence Tongue River Railroad Company (TRRC)<sup>1</sup> filed on May 1, 2003. The decision also advised anyone interested in becoming a party of record to file a notice of intent to participate with the Board within 10 days of the service date of that decision. The Board received a number of responses and, on October 3, 2003, served a Notice to the Parties<sup>2</sup> and an attached, updated service list. That list reflected changes made as a result of the responses to the Board's July 7 decision, as well as other changes in address, counsel, and party status that have occurred over the years since the Board issued the first service list in this proceeding in July 1998.

To ensure the accuracy of the service list, the Board asked persons to file with it any requests for corrections, change of status, or deletion from the list published on October 3 by October 17, 2003. The Board received a number of responses, including requests for change of status, and issued a

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<sup>1</sup> In a decision served September 2, 2003, the Board allowed Tongue River Railroad Company, Inc. to be substituted for Tongue River Railroad Company as the applicant in this proceeding. The United Transportation Union-General Committee of Adjustment and the United Transportation Union-Montana State Legislative Board (UTU-GCA/MT), jointly, filed a petition for reconsideration of that decision on September 22, 2003. The decision granting the petition seeking substitution is under administrative review. In the instant decision, the applicant/petitioner will be referred to collectively as TRRC.

<sup>2</sup> The October 3 notice triggered the procedural schedule for the submission of pleadings established by the Board in the July 7 decision. Pursuant to that schedule, parties had to file comments responsive to TRRC's May 1 supplemental evidence by November 12, 2003, and TRRC must file its reply by December 2, 2003.

list of these corrections and updates as they pertain to parties of record in a Notice to the Parties served October 24, 2003.<sup>3</sup>

On November 10, 2003, four individuals<sup>4</sup> (Petitioners) filed a motion seeking an extension of the November 12, 2003 due date. Petitioners argue that they were prejudiced because, although the 45-day period<sup>5</sup> for persons to file comments responsive to TRRC's supplemental evidence began on October 3, 2003, they received less than the full time to file comments because the Board granted their requests<sup>6</sup> in its October 24 notice. Petitioners claim that they need the full 45 days and ask the Board to grant all those who were granted party of record status in the October 24 notice 21 days from the service date of this decision to file comments. TRRC, in a reply filed November 24, 2003, stated that, although it did not believe that the Petitioners were prejudiced, it would consent to the extension.

Petitioners' motion will be granted. Although it seems that the parties have had sufficient time to file their comments and that an extension should not be necessary because the supplemental evidence has been available on the Board's website since May, no parties will be prejudiced by an extension in these circumstances. Consequently, those to whom the Board granted party of record status in the October 24 notice must file comments responsive to TRRC's supplemental evidence by December 19, 2003. TRRC's reply to these comments is due January 8, 2004. TRRC's reply to the comments received as of November 12 remains due on December 2, 2003.

It is ordered:

1. The motion for extension of time to file comments is granted.

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<sup>3</sup> UTU-GCA/MT filed a separate petition "to correct and revise the service list" which included a suggestion for a modest extension of the November 12, 2003 due date. In light of the immediate availability of TRRC's updated information on the Board's website, an extension was not granted.

<sup>4</sup> Terry Punt, Jeannie Alderson, Irv Alderson, and Art Hayes, Jr.

<sup>5</sup> Petitioners have confused their period of time. The Board granted parties of record 40 days to file comments responsive to TRRC's supplemental evidence.

<sup>6</sup> On October 14, 2003, Terry Punt filed a letter asking that he, Jeanie Alderson, and Irv Alderson be changed from non-parties to parties of record. On the same date, Art Hayes Jr., sent a letter asking, among other things, that he be made a party of record.

2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary