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SERVICE DATE - JUNE 23, 1998

SURFACE TRANSPORTATION BOARD

DECISION

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

TONGUE RIVER RAILROAD COMPANY--CONSTRUCTION AND OPERATION--IN
ROSEBUD AND BIG HORN COUNTIES, MT

AGENCY: Surface Transportation Board.

ACTION: Notice of Construction and Operation Application and Adoption of Initial Procedural Schedule.

SUMMARY: The Board is publishing notice of an application filed by the Tongue River Railroad Company (TRRC) seeking authority to construct and operate 17.3 miles of track, called the Western Alignment, to be built between Decker, MT, and a point 17.3 miles north of Decker, to connect with the rail line previously approved for construction in Tongue River Railroad Company--Rail Construction and Operation--Ashland to Decker, Montana, Finance Docket No. 30186 (Sub-No. 2) (STB served Nov. 8, 1996) (Tongue River II). The Western Alignment is proposed as an alternative to a routing called the Four Mile Creek Alternative (herein, the Four Mile Creek Route) approved in Tongue River II. The routing of the Western Alignment separates from TRRC's approved Four Mile Creek routing approximately 20.8 miles south of the point at which the line connects with TRRC's approved line routing between Ashland and Miles City, MT, and extends southwest to the Spring Creek/Decker area of southeastern Montana, terminating near Decker where it will connect with The Burlington Northern and Santa Fe Railway Company's Kennecott Spur.

The Board is issuing a procedural schedule establishing filing dates for comments and replies on whether this application meets the criteria of 49 U.S.C. 10901. The Board may subsequently issue another notice setting forth a procedural schedule for the filing of any additional pleadings after completion of the necessary environmental analysis, if appropriate.

DATES: This notice is effective on June 23, 1998. Pleadings must be filed in accordance with the schedule set forth in the Appendix to this notice. All filings, except notices of intent to participate, must be concurrently served on all parties of record and must be accompanied by a certificate of service.

ADDRESSES: Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 30186 (Sub-No. 3) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. A copy of each comment shall concurrently be served upon TRRC's representative: Betty Jo Christian, Esq., Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036, (202) 429-3000, FAX (202) 429-

3902. One copy of each pleading must also be served upon: Peter Young, Federal Energy Regulatory Commission, 888 First St. N.E., Washington, DC 20426.¹

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695].

SUPPLEMENTARY INFORMATION: The Board's review of construction applications is governed by 49 U.S.C. 10901 and by the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370d (NEPA), and related environmental laws. Along with its application, TRRC has submitted a renewed petition² to establish a procedural schedule for this proceeding.³ The schedule proposed by TRRC would establish due dates for submissions and Board action, both in considering the transportation merits of the application and in carrying out the environmental review process. The Board is adopting only that portion of TRRC's procedural schedule that sets due dates for filing comments (including supporting or opposing evidence) on issues involving whether or not the application meets the statutory criteria of 49 U.S.C. 10901, and for filing replies to those comments. The Board will not, however, set a date for issuance of a final decision on the merits of the application. Nor will we establish a procedural schedule for our environmental review of the new application. Rather, as discussed below, we will initiate the environmental review process now, and establish a procedural schedule for submission of any additional pleadings and issuance of a final decision upon completion of that process.

We are not adopting TRRC's proposal that we set an environmental procedural schedule because the Board's environmental analysis depends on input from many sources, including Federal and state agencies, and at this point it is impossible to predict how long the environmental review process will take. Our experience has shown that the preparation of a NEPA document in a

¹ Administrative Law Judge Young has been appointed to resolve all disputes on discovery issues.

² TRRC's initial request for establishment of a procedural schedule was denied by decision served March 24, 1998.

³ Northern Cheyenne Tribe and Native Action, Inc., filed a reply to TRRC's request for a procedural schedule. Great Northern Properties Limited Partnership and Northern Plains Resource Council, Inc., also filed a reply to TRRC's petition. These replies are primarily directed to the environmental issues raised here and the schedule contemplated for their resolution. Since we are adopting a procedural schedule only for dealing with non-environmental issues, these petitions need not be addressed here. The United Transportation Union-General Committee of Adjustment and United Transportation Union-Montana State Legislative Board also replied jointly to TRRC's petition, raising concerns about technical compliance with our notification rules and the fairness or openness of our actions in this case. As discussed below, the procedural schedule we are adopting here provides adequate notice as well as ample opportunity for a full and thorough evaluation of all of the issues involved here.

proceeding such as this, where a number of environmental issues may exist generally, does not lend itself to a structured time limit. Because we would be unable to assure compliance with TRRC's proposed schedule even if we adopted it, we see no point in seeking public comment on it. Rather, we will adopt a schedule for receiving comments and replies on whether the application meets the statutory criteria in 49 U.S.C. 10901. The schedule we are adopting here will accord all parties due process because it provides ample time for the submission of comments and replies. In short, the schedule we are adopting will allow for adequate public participation and the development of a sufficient record to allow the Board to determine whether the proposed construction meets the criteria of section 10901.

In this proceeding, we will not issue a decision determining whether the proposed construction meets the statutory criteria in 49 U.S.C. 10901 prior to completion of the environmental review process. TRRC has not requested this action. Our decision on the merits will follow completion of the environmental review process and we will address both transportation and environmental issues in that decision.

We are requiring TRRC to publish notices setting forth the schedule we are adopting here, and to certify to us that it has done so. In addition to setting forth the procedural schedule, the new notices must state that anyone who intends to participate as a party of record by filing comments must file with the Secretary of the Board an original and 10 copies of a notice of intent to participate in accordance with the attached schedule. In order to facilitate service of pleadings on parties of record, the Board will issue a list of those persons who have given notice of their intent to participate. Nonparties may obtain copies of pleadings through the Board's copy contractor, DC News & Data, Inc., 1925 K Street N.W., Suite 210, Washington DC 20006. Telephone (202) 289-4357.

Turning to the environmental review, the Board's Section of Environmental Analysis (SEA) shortly will issue a notice of intent to prepare a supplement to the Final Environmental Impact Statement issued in Tongue River II (herein, the Supplement) and in that document will seek comments regarding the environmental scope of, and potential environmental concerns and issues to be addressed in, this case. Under our rules implementing NEPA, and the rules of the Council on Environmental Quality, it appears that a Supplement is the appropriate means of reviewing TRRC's application for the Western Alignment. See 49 CFR 1105.10(a)(5); 40 CFR 1502.9(c). It is premature to determine the scope of the Supplement at this time. Before doing so, SEA will review any comments on the notice of intent, verify the information in TRRC's environmental report, and consult with the appropriate Federal and state agencies to identify the key environmental issues to be addressed in the Supplement.

Copies of the application, including the Environmental Report, are available for public inspection at the offices of either the Surface Transportation Board or the applicant, Tongue River Railroad Company, 550 North 31st Street, Suite 250, P.O. Box 1181, Billings, MT 59102.

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Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

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

Decided: June 15, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX

PROCEDURAL SCHEDULE

June 23, 1998	Publication of notice adopting procedural schedule.
June 30, 1998	Due date for publication by TRRC of newspaper notices announcing this procedural schedule.
July 13, 1998	Due date for notices of intent to participate as a party of record.
September 16, 1998	Due date for comments in support of or opposition to the application.
November 2, 1998	Due date for replies to comments.