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SEC

SERVICE DATE - JULY 7, 2003

SURFACE TRANSPORTATION BOARD

DECISION

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

TONGUE RIVER RAILROAD CO. - CONSTRUCTION
AND OPERATION - WESTERN ALIGNMENT

Decided: June 27, 2003

By decision served March 11, 2003, the Board granted the Tongue River Railroad Company (TRRC) permission to update its previously submitted evidence on the transportation aspects of its Western Alignment construction application in this sub-numbered proceeding (Tongue River III). TRRC filed its updated evidence on May 1, 2003. In this decision, a procedural schedule is being established.

TRRC included a proposed procedural schedule with its supplemental evidence whereby parties would have no more than 20 days from the issuance of this decision to file comments or responsive evidence. The proposed procedural schedule would provide no more than 20 additional days thereafter for TRRC to file a reply.

On May 14, the United Transportation Union-General Committee of Adjustment and the United Transportation Union-Montana State Legislative Board (UTU-GCA/MT) jointly filed a reply with an alternative schedule. UTU-GCA/MT requests that the Board allow parties 60 days to file comments or evidence responsive to TRRC's supplemental evidence. UTU-GCA/MT also proposes that additional members of the public be permitted to become parties of record (PORs) by filing a notice of intent to participate. UTU-GCA/MT notes that the Board followed a similar "notice of intent" process when it established the first procedural schedule for the Tongue River III proceeding in a decision served June 23, 1998.

On May 21, Northern Plains Resource Council, Inc. (Northern Plains) also filed a reply with a proposed schedule. Northern Plains adopts UTU-GCA/MT's proposals, but requests that it be given 180 days to file responsive evidence or comments, claiming that the updated evidence TRRC submitted contains substantial new expert testimony that requires extensive analysis before a rebuttal can be filed.¹

¹ Northern Plains also asks for "limited discovery." Northern Plains may pursue discovery without obtaining prior Board approval. 49 CFR 1114.21(b).

The PORs will be allowed 40 days from the issuance date of the updated service list, discussed below, to file evidence or comments responsive to TRRC's supplemental evidence. A 40-day comment period provides ample time to analyze and comment on the updated evidence, which consists of two updated pro forma charts, four verified statements, and two letters supporting the proposal. This length of time balances the PORs' need to examine the updated evidence with the need to move forward on this matter. After the 40-day comment period has ended, TRRC will have 20 days to reply to the comments and responsive evidence.

In addition, prior to the beginning of the 40-day comment period, an opportunity will be given for new participants to become PORs. It has been almost 5 years since notice of this alternative construction proposal was originally published, and there may now be additional members of the public with an interest in this matter. Anyone interested in becoming a POR and being added to the service list must file a notice of intent to participate with the Board within 10 days of the service date of this decision (by July 17, 2003).² Send an original and 10 copies of the notice of intent to participate to: Surface Transportation Board, 1925 K Street N.W., Washington, DC 20423-0001. The new PORs must comply with the 40-day comment period, discussed above, for filing comments or evidence responsive to TRRC's updated evidence with the Board and serving copies on all other PORs.

After expiration of the 10-day period for filing notices of intent to participate, the Board will issue an updated service list, which will include persons who have given notice of their intent to participate pursuant to this decision, as well as those currently on the list. Within 5 days of the issuance of the updated service list, current PORs must serve the new PORs with copies of all filings submitted by that party since May 1, 2003. The current PORs will also be required to file with the Board, within 10 days of the service date of the updated list, an original plus 10 copies of a certificate of service indicating that the service required by this decision has been accomplished. The 40-day period for comments, described above, will begin running on the date the updated service list is issued.

Copies of the original application filed by TRRC in this case and TRRC's updated evidence are available for public inspection at the office of either the Surface Transportation Board or the applicant, TRRC.³

² Current PORs may update their addresses during this 10-day period by sending any new information to the Board.

³ TRRC has filed a petition for substitution of parties, in which it requests that Tongue River Railroad Company, Inc. be substituted for Tongue River Railroad Company as the applicant in this proceeding. This petition, which has been contested by both UTU-GCA/MT and Northern Plains, will be addressed in a subsequent decision by the Board. Until then, all pleadings should continue to refer to applicant as Tongue River Railroad Company. The address of the office where the copies

It is ordered:

1. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in the Appendix.
2. The parties to this proceeding must comply with the procedural requirements described in this decision.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

mentioned above may be obtained has not changed.

APPENDIX

Procedural Schedule

- July 17, 2003 Due date for notices of intent to participate as a POR.
- L Date of service of updated Service List.
- L + 5 Due date for current PORs to serve previously submitted filings on new PORs.
- L + 10 Due date for certificates of service from current PORs.
- L + 40 Due date for comments or evidence responsive to the supplemental evidence.
- L + 60 Due date for replies to comments and responsive evidence.