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SERVICE DATE – MAY 10, 2013

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: May 10, 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. The purpose of the proposed line is to transport low sulfur sub-bituminous coal from a planned coal mine currently in the permitting process at Otter Creek, Mont., and any future mines that might be developed in the Otter Creek and Ashland, Mont., area. TRRC had filed a revised application for its construction authority on October 16, 2012, but after a Board decision requesting additional information, TRRC modified the project in a December 17, 2012 supplemental application that supersedes the October 16 revised application. As discussed in the supplemental application, TRRC has changed its preferred alignment to the 42-mile Colstrip Alignment, which runs between Colstrip, Mont., and Ashland/Otter Creek, which would connect to the north with an existing BNSF Railway Company (BNSF) line known as the Colstrip Subdivision.

In a January 4, 2013 decision, served on January 8, 2013, and published in the Federal Register on January 9, 2013, the Board accepted TRRC's supplemental application for consideration. The Board also explained how parties could file comments by March 1 on the application. On January 7, 2013, Northern Plains Resource Council and Wally McCrae/Clint McCrae, d.b.a. the Rocker Six Cattle Company (collectively, NPRC Parties), jointly filed a petition asking that the Board reject TRRC's supplemental application. On January 25, 2013, the NPRC Parties submitted a petition asking that the Board reconsider its decision to accept the supplemental application. TRRC filed a reply to the January 7 petition on January 28, 2013, and a reply to the January 25 petition on February 14, 2013.

In a decision served on February 26, 2013, the Board denied the NPRC Parties' January 7 and January 25 petitions. The decision, in part, dealt with the scope of comments on the transportation merits of the application. Because these comments would be due only a few days later, the Board extended the procedural schedule to ensure that there was sufficient opportunity for interested persons to submit their filings. Based on this new schedule, on April 2, 2013, the

Board received three comments on the transportation merits of the application, including one from the NPRC Parties.<sup>1</sup>

On April 22, 2013, TRRC petitioned the Board to extend the due date for its reply to the comments from May 16 to June 7. TRRC asserts that, given the length and technical nature of the comment submitted by the NPRC Parties, it will need additional time to review and provide a response. Furthermore, TRRC asserts that its key expert has other commitments that restrict his ability to devote time to the proceeding between the date of the extension request and May 16. TRRC claims that no party will be prejudiced by the extension, given that the reply will still be submitted well before the Board's environmental review is complete. No party filed a reply to TRRC's extension request.

TRRC has shown good cause for its extension request, and it will be granted. TRRC's reply will be due on or before June 7, 2013.

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

It is ordered:

1. TRRC's request for an extension of time to file its reply is granted.
2. TRRC's reply is due on or before June 7, 2013.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>1</sup> 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.