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SERVICE DATE - OCTOBER 8, 1998

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33644]

Tongue River Railroad Company, Inc.—Acquisition and Operation Exemption—Tongue River Railroad Company

Tongue River Railroad Company, Inc. (TRRC Inc.), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 and 49 CFR 1150.35 to acquire from Tongue River Railroad Company (Partnership),¹ Partnership's existing transportation assets, including the previously issued Interstate Commerce Commission and the Board permits to construct and operate lines of railroad between Miles City and Decker/Spring Creek, MT (line). Once constructed, TRRC Inc. will operate approximately 120 route miles from milepost 0.0 at Miles City, to Spring Creek, which will be milepost 114.8, if constructed over the Western Alignment,² or milepost 126.9, if constructed over the Four Mile Creek

¹ All of the common stock of TRRC Inc. will be owned by Partnership, which is a Montana limited partnership. The sole stated purpose of the transaction is to convert the entity that will construct and operate the Tongue River Railroad Company from a partnership to a corporation in order to facilitate certain transactions that will need to be undertaken in order to exercise the construction and operation authority previously granted in Tongue River Railroad Company - Rail Construction and Operation - in Custer, Powder River and Rosebud Counties, MT, Finance Docket No. 30186, *et al.* (ICC served May 9, 1986) and Tongue River Railroad Co.--Rail Construction and Operation--Ashland to Decker, Montana, Finance Docket No. 30186 (Sub-No. 2) (ICC served Nov. 8, 1996) (the 1996 decision).

² Authority to construct over the Western Alignment is the subject of the pending application in Tongue River Railroad Company--Construction and Operation--Western (continued...)

Alternative.³ The line will also include the Otter Creek Spur, running from milepost 68.3, at Ashland, MT, to Terminus Point #2, approximately 7.7 miles southeast of Ashland in the Otter Creek Drainage. TRRC Inc. will become a Class II rail carrier upon commencement of operations.⁴

Pursuant to 49 CFR 1150.35(a), TRRC Inc. must comply with the notice requirement of 49 CFR 1150.32(e). TRRC Inc. certified to the Board, on September 18, 1998, that it had complied with the notice requirements of section 1150.32(e) on September 4, 1998. This notice must be provided at least 60 days before the exemption becomes effective. Therefore, the earliest the transaction can be consummated is November 17, 1998, the effective date of the exemption (60 days after TRRC Inc.'s September 18, 1998 certification to the Board).⁵

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C.

²(...continued)

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

³ The Board granted Partnership authority to construct over the Four Mile Creek Alternative in the 1996 decision.

⁴ TRRC Inc. represents that The Burlington Northern and Santa Fe Railway Company may be the operator of the property if an agreement can be reached between the parties.

⁵ While TRRC Inc. and Partnership maintain that there are no employees currently employed by either company and that 49 CFR 1150.32(e) and 1150.35(c)(3) have no applicability to the transaction, they have not specifically requested a waiver of the compliance requirements for those sections in their verified notice of exemption.

10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.⁶

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33644, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Mike T. Gustafson, Esq., 550 North 31st Street, Suite 250, Billings, MT 59101.

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Decided: October 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

⁶ The City of Forsyth, MT, the United Transportation Union-Montana State Legislative Board and the United Transportation Union-General Committee of Adjustment (GO-386), two subordinate units of the United Transportation Union (Forsyth/UTU), and the Northern Plains Resource Council Inc., have filed petitions to stay the operation of the notice of exemption. Forsyth/UTU has also filed a petition to reject the notice of exemption and/or to revoke the exemption. These petitions are pending before the Board and will be addressed in a subsequent decision.