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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SURFACE TRANSPORTATION BOARD FINANCE DOCKET NO. 30186

**TONGUE RIVER RAILROAD COMPANY, INC. – RAIL CONSTRUCTION
AND OPERATION – IN CUSTER, POWDER RIVER
AND ROSEBUD COUNTIES, MT**

**NORTHERN PLAINS RESOURCE COUNCIL'S
MOTION TO COMPELL SUPPLEMENTAL DOCUMENT
PRODUCTION**

Northern Plains Resource Council (“Northern Plains”) pursuant to 49 C.F.R. § 1114.29(c) hereby requests that the Board order Tongue River Railroad Company, Inc. (“TRRC”) to supplement its document production. On August 27, 2013, the Board granted Northern Plains’ request to conduct limited discovery in this proceeding, which represents more than thirty years’ worth of promises by TRRC that public demand and need warranted and indeed would support construction of a railroad line to haul coal from Montana’s Powder River Basin. No such line was ever built, nor is there any indication other than self-serving statements and unsupported claims from TRRC’s current ownership that the line will ever be built.

On September 13, 2013, Northern Plains issued requests for production of documents to TRRC. Thereafter, TRRC sought and Northern Plains agreed to an extension of time for TRRC to respond. On January 13, 2014, after reviewing TRRC’s limited production of documents, Northern Plains filed a Motion to Compel seeking an order from the Board requiring TRRC to produce documents withheld from discovery, including: (1) documents related to Otter Creek Mine economics; (2) factors influencing demand for Montana coal; (3) TRRC’s finances and financial relationships involved in the TRRC project; and (4) documents related to demand for

Wyoming coal. On September 9, 2014, the Board granted Northern Plains' Motion to Compel with respect to this information having found the information relevant and rejecting TRRC's claims that producing such information would be overly burdensome.

The Board's Order set October 25, 2014 as the deadline for completing discovery. TRRC requested and again Northern Plains agreed to extend the discovery deadline. TRRC and Northern Plains thereafter agreed to set December 31, 2014 as the deadline for producing documents. However, shortly after the parties agreed to the schedule, counsel for Northern Plains learned for the first time that TRRC intended not to produce any documents from the nearly one-year period between Northern Plains' September 2013 document requests and the Board's September 2014 Order. TRRC takes the untenable position, which it failed to share earlier, that the Board's Order compelling production of relevant and discoverable documents does not relate to those from the one-year period leading up to the Order. The parties have met and conferred in an attempt to resolve this dispute.

ARGUMENT

Northern Plains respectfully asks the Board to order TRRC to supplement its production of documents. The Board should grant Northern Plains' request for several reasons.

First, the only information sought is that which the Board has already found relevant and required TRRC to produce. Information about the demand for Otter Creek coal (Request Nos. 1-8, 11-13, 15-22, 28, 29, 31) and the finances of and financial relationships involved in the TRRC project (Request Nos. 46-49) from the past year is highly relevant and will provide a more complete record of the project for the Board's review. For example, Arch Coal, which pledged up to 100% equity financing to construct the Tongue River Railroad, is pulling back from export markets for thermal coal because those markets are "not attractive." Statement of John Eaves, CEO Arch Coal, Third Quarter 2014 Earnings Call Transcript, *available at*

<http://goo.gl/wsVjW2>. Similarly, Arch Coal continues to struggle financially and its stock is currently trading at under \$2.00 per share.

Second, documents sought through discovery are highly complex, including electronic spreadsheets that when printed exceed 3,000 pages. Such documents are easy to locate and produce but are not capable of being discovered adequately through a deposition.

Finally, TRRC's failure to supplement its discovery responses puts Northern Plains at risk of relying on information obtained in discovery that TRRC will later claim is stale or outdated. TRRC claimed as much in opposing Northern Plains' Motion to Compel. *See* TRRC Reply to Northern Plains' Motion to Compel at 11 (Feb. 3, 2013). The Board should not allow TRRC to rely on information it now inappropriately refuses to produce and thereby prejudice Northern Plains.

CONCLUSION

Northern Plains respectfully asks the Board to order TRRC to supplement its production of documents. Should the Board grant this request, Northern Plains further requests that the Board order TRRC to produce responsive documents up to the date of the Order.

December 30, 2014

Respectfully submitted,



Kenneth Rumelt, Esq.
VERMONT LAW SCHOOL ENVIRONMENTAL
AND NATURAL RESOURCES LAW CLINIC
P.O. Box 96 – 164 Chelsea St.
South Royalton, VT 05068
(802) 831-1031

Jack R. Tuholske
TUHOLSKE LAW OFFICE, P.C.
Missoula, MT 59807
(406) 396-6415

Attorneys for Northern Plains Resource Council

CERTIFICATE OF SERVICE

I certify that the foregoing has been served by U.S. mail on all parties of record this 30th day of December, 2014.


