

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 30186

TONGUE RIVER RAILROAD COMPANY, INC.-RAIL CONSTRUCTION AND
OPERATION-IN CUSTER, POWDER RIVER AND ROSEBUD COUNTIES, MONT.

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT

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September 23, 2015

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Preliminary Statement

Jay L. Schollmeyer,^{1/} for and on behalf of SMART-Transportation Division, General Committee of Adjustment-GO386 (SMART-386), pursuant to the Board's April 17, 2015 notification (No. 15-3), submits these comments in response to the Draft Environmental Impact Statement (DEIS) served April 17, 2015. The Board's notification announced comments would be entertained for a 60-day period after the U.S. Environmental Protection Agency (EPA) issues a notice of the DEIS availability, which was anticipated to be April 24, 2015. The EPA published such availability on April 24, 80 Fed. Reg. 22992,^{2/} thus setting public comments due June 23, 2015.^{3/}

^{1/}General Chairman for SMART/TD, with offices at 400 E. Evergreen Blvd., Vancouver, WA.

^{2/}EIS No. 20150109 DRAFT EIS.

^{3/}The June 23, 2015 date was consequently postponed to September 23, 2015, by decisions served May 29, and August 5, 2015.

Interest of SMART-386

SMART-386 is the collective bargaining representative for certain persons employed by BNSF Railway Company (BNSF) engaged in train and engine service on various lines of former components of BNSF, such as the Great Northern, Spokane, Portland & Seattle, and Montana Western, extending between the U.S. Midwest and the Pacific Coast. SMART-386 is the successor to United Transportation Union GO-386. (UTU/GO-386).^{4/}

SMART-386 has been an active participant in the instant proceeding. SMART-386 thus far not does not oppose construction of the railroad line by Tongue River Railroad Company (TRRC), and does not oppose operation by BNSF; however, SMART-386 opposes the application insofar as it might be construed to authorize operation of the railroad line by TRRC in addition operation by BNSF.

UTU/GO-386 was in strong opposition to the prior TRRC application to construct and operate a line between Ashland and Decker, MT, which in conjunction with an earlier-approved but never constructed-line between Miles City and Ashland, MT, would have served as an alternate route for BNSF coal traffic moving from Wyoming and Decker MT origins to the U.S. Midwest, in lieu of BNSF's direct route between those origins and the U.S. Midwest via Miles City, MT. The proposed TRRC alternate route, which would duplicate the BNSF direct route, was set aside by court action, and withdrawn after remand to the STB. Northern Plains Resource v. Surface Transp. Bd., 668 F.3d 1067 (9th Cir. 2011).

^{4/}Merger between SMART and UTU was implemented in August 2014.

Although active in the current merits phase of the instant application for construction (TRRC) and operation (BNSF) between Ashland and Colstrip, MT, SMART-386 thus far has not participated in the separate environmental phase leading up to the present DEIS. SMART-386 does so now to ensure the distinction is maintained between construction and operation.

SPECIFIC COMMENTS

1. Availability. The DEIS consists of 6 volumes; however, only Nos. 1 and 2 were made available to the public in printed form. SMART-386 made specific request that a complete set of the six volumes be made available at the SMART-386 office in Vancouver WA for ready reference by railroad employees, the majority of whom are believed without access to digital format. The SMART-386 request was denied. This was a departure from the earlier TRRCII and TRRCIII proceedings, where printed copies of the DEIS and EIS were available to all so requesting. It is understood that the printing costs are borne by applicant and not by STB.

2. Meetings. The Board's environmental contractor, ICF International, and STB environmental staff, held 2 meetings (beginning apx. 2:30 PM and 6:30PM) on each of 5 days in June, 2015 at 5 locations in Montana, namely, Ashland, Miles City, Colstrip, Lame Deer, and Forsyth, June 8, 9, 10, 11, and 12, respectively, to take oral comments on the DEIS from the public. The meetings were conducted not by STB staff, but by Ms. Jennifer Piggott, a "facilitator" apparently employed by ICF International. Each meeting was preceded by an "open house" period (not tran-

scribed) for ICF International and STB staff presentation, followed by oral transcribed statements (limited to three minutes) from the public in attendance. The 10 meeting transcripts do not contain an index of the names of the public presenters. Each meeting at its outset involved a STB staff statement concerning the application before the Board, that given at Forsyth, MT, as an example. (Forsyth, Tr. 3-4):

On October 16th, 2012, the Tongue River Railroad Company filed an application with the Surface Transportation Board to construct and operate a rail line from Miles City, Montana, to two endpoints near Ashland.

On December 17th, 2012, Tongue River Railroad filed a supplemental application in which it identified its preferred routing for the proposed line as the Colstrip alternative, between Colstrip and the Ashland area.

The 10 local meetings were followed on June 17, 2015 by two "on line" meetings.

At all of the meetings, as indicated above, the audience was advised that Tongue River Railroad proposed to construct and operate the line. Moreover, also as indicated, the STB's speaker highlighted the October 16, 2012 application for a rail line between Miles City and Ashland, then a supplemental application with a different preferred routing. In actual fact, as the Board indicated in its January 13, 2013 decision dealing with the December 17, 2012 "supplemental application," the latter "supersedes" the earlier October 16, 2012 Miles City-Ashland application. See: F.D. 30186, Tongue River Railroad, at 3 (served Jan. 8, 2013). The DEIS, itself, at the outset, states the December 17, 2012 supplemental application "supersedes" the October 16, 2012

revised application. (DEIS, Ch. 1, p. 1-1).^{5/} In short, the October 16, 2012 application is no longer before the agency, other than as an historical item for the archives.

3. Text of DEIS-Line Operator. The text of the DEIS at various pages recites that TRRC seeks authority to construct and operate the line. For example, see: DEIS, at Preface, Q&A-2, 1-1, 1-5. Yet, at numerous places TRRC indicates that BNSF will operate the line. See: DEIS, S-1, 1-1, 1-5.

The EIS should make it clear that although TRRC seeks authority to construct and operate the line, any such TRRC desire to operate the line would be inconsistent with the environmental evidence. Since BNSF is an applicant, and TRRC concedes that BNSF is to operate the line, it would be irresponsible for the Board to authorize both TRRC and BNSF to operate the line. Operation of the line by two carriers would raise safety issues, in addition to obvious track configuration and demand concerns.

The Board recently observed that the line would be constructed by TRRC but operated by BNSF. F.D. 30186, Tongue River Railroad, at 1 (served Aug. 19, 2015); F.D. 30186, Tongue River Railroad, at 4 (served Feb. 26, 2013).

^{5/Cf.}In the STB's Office of Environmental Analysis (OEA) letter dated April 17, 2015 (tucked inside the front cover of the DEIS) it is stated that the DEIS analyzes the potential environmental impacts of the October 2012 revised TRRC application. The STB should correct or delete this statement in the EIS.

CONCLUSION

The Board should consider and adopt the foregoing comments in issuing any EIS in this proceeding.

Respectfully submitted,



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