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November 16, 2012

233367

Via E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W
Washington DC 20423

ENTERED
Office of Proceedings
November 16, 2012
Part of
Public Record

Re: **Finance Docket No. 30186, Tongue River Railroad Company--Rail Construction and Operation--In Custer, Powder River and Rosebud Counties, MT**

Dear Ms. Brown:

Enclosed for filing in the above-captioned matter, in accordance with 49 C.F.R. § 1150.10(f) are affidavits of publication certifying that the public notice set forth in Exhibit I of Tongue River Railroad Company, Inc.'s ("TRRC") Revised Application for Construction and Operation Authority filed on October 16, 2012 was published on October 25, 2012 in (1) the Independent Press, a newspaper of general circulation in Rosebud County, Montana, and (2) the Miles City Star, a newspaper of general circulation in Custer County, Montana. We are awaiting delivery of the affidavit from the Powder River Examiner, a newspaper of general circulation in Powder River County, Montana and will file it upon receipt. We have been informed that the Powder River Examiner also published the notice contained in Exhibit I on October 25, 2012.

Pursuant to the Board's November 1, 2012 decision in the above-referenced docket, TRRC submitted a revised notice to the publications referenced above consistent with the November 1 decision and has been informed by each of those publications that the revised notice was published by each of them on or before November 16, 2012. TRRC will submit the affidavits of publication of the revised notice from the newspapers upon receipt.

Sincerely,



Linda S. Stein

Counsel for Tongue River Railroad Company, Inc.

Encl.

cc: all parties of record

AFFIDAVIT of PUBLICATION

No. 3074

STATE OF MONTANA)
)
County of ROSEBUD)

SHIRLEY BERTIN being first sworn, deposes and says: That she is and during the time hereinafter mentioned, has been ASSISTANT BOOKKEEPER of the INDEPENDENT PRESS, a weekly newspaper of general circulation, printed and published at Forsyth, in the said County and State.

That the (attached on back -
Finance Docket No. 30186
Stephoe + Johnson, LLP

a printed and true copy, cut from the columns of the said newspaper, of which is here unto annexed, was printed and published in the regular and entire issue of the weekly edition of said newspaper for 1 issues, commencing on the 25th day of October and ending on the 25th day of October, on the following dates, to wit.

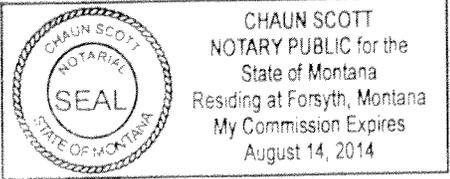
October 25, 2012 _____ _____

The legal rate charged for the printing does not exceed the minimum going rate charged to any other advertiser for the same publication, set in the same size type and published of the same number of insertions.

Shirley L. Bertin

Subscribed and sworn to before me this 25th day of October, 2012

CL Scott



FINANCE DOCKET NO.
30186

RAIL CARRIER:

Tongue River Railroad Company,
Inc.

AGENCY:Surface Transporta-
tion Board

ACTION:Notice of Filing a
Revised Application to Construct
and Operate the Previously
Approved Line of Railroad in
Custer, Rosebud, and Powder
River Counties, Montana

SUMMARY:

Tongue River Railroad Com-
pany, Inc. ("TRRC") has filed a
revised application with the Sur-
face Transportation Board seek-
ing authority to modify the align-
ment of the rail line between
Miles City, Montana, and Ash-
land/Otter Creek, Montana that
was previously approved in 1986
by the Surface Transportation
Board's ("Board") predecessor -
the Interstate Commerce Com-
mission ("ICC") -- in Tongue
River R.R. - Rail Construction
and Operation - In Custer, Power
River and Rosebud Counties,
MT, Finance Docket No. 30186
(ICC served May 9, 1986) (here-
after "1986 Decision"). As the
expected operator of the rail line,
BNSF Railway Company
("BNSF") joined in the revised
application.

The rail line approved in 1986
connects with a BNSF line at its
northern end near Miles City,
MT. Near its south end, the line
splits into two branches just
south of Ashland, MT and has
two Terminus Points - (1) Termi-
nus Point #1 continues south-
west and terminates at the previ-
ously proposed Montco Mine
location ("Montco Mine Spur"),
and (2) Terminus Point #2 contin-
ues south from the Ashland area
along the Otter Creek ("Otter
Creek Spur"). TRRC does not
intend to construct the rail lines
south of Terminus Points #1 and
#2 that were the subjects of its
applications in TRRC II (1) and
TRRC III. (2)

The proposed refinements to
the approved rail line address
rail operational considerations
that were raised subsequent to
the 1986 Decision. They general-
ly entail a straightening and
shortening of the rail alignment
approved in 1986. Most of the
refinements to the authorized rail
line that TRRC seeks authority to
construct and operate were con-
sidered in the TRRC III proceed-
ing, which has now been dis-
missed. (3) In this revised appli-
cation, TRRC is also proposing a
few additional refinements to the
authorized rail line that were not
considered in the TRRC III pro-
ceeding. The new refinements
are very minor curve adjust-
ments near the Miles City Fish
Hatchery that move the rail cen-
terline further from hatchery
facilities and certain adjustments
along the Otter Creek Spur.

The purpose of the rail line, as
refined, is the same as the pur-
pose of the approved rail line;
namely, to transport low sulfur,
sub-bituminous coal from pro-
posed mine sites in Rosebud and
Powder River Counties, Mont-
ana, including proposed mines
in the Otter Creek area. The rail
line will also operate as a com-
mon carrier line and will thus be
available to transport other com-
modities on reasonable request.

As part of its revised applica-
tion, TRRC has incorporated by
reference the draft Environmen-
tal Impact Statement ("EIS")
served in this docket on July 15,
1983, the supplement to the draft
EIS served in this docket on Janu-
ary 19, 1984, and the Final EIS
served in this docket on August
23, 1985 for the rail line approved
in the 1986 Decision. As part of
its revised application, TRRC has
also incorporated by reference a
September 1998 report prepared
by Radian International LLC., et
al., titled Analysis of Potential
Changed Circumstances Related
to the Environment and Pro-
posed Action along the Original
89 Miles of the Tongue River
Railroad approved in 1986, that
was previously filed with the

Board in the TRRC III proceed-
ing, (4) and the draft EIS from the
TRRC III proceeding served on
October 15, 2004 and the final EIS
from the TRRC III proceeding
served on October 13, 2006, to
the extent they evaluate pro-
posed refinements to the 1986
approved rail line. In addition,
TRRC is retaining a third party
contractor pursuant to 49 C.F.R. §
1105.10(d) to work with the
Board's Office of Environmental
Analysis in preparing additional
necessary environmental docu-
mentation as required by NEPA
in connection with TRRC's
revised application. The Board's
environmental documentation
will be made available for public
review and comment at a later
date.

Any interested party may
advise the Board of its interest in
this proceeding and/or file writ-
ten comments on the revised
application with the Board. Any
notice of interest and/or written
comments (with 10 copies) must
be filed within 35 days from the
date that TRRC filed the revised
application with the Board, or by
November 20, 2012. Written
comments must contain the basis
for the party's position either in
support of or in opposition to the
proposal. Written comments
should indicate the proceeding,
STB Finance Docket No. 30186,
and should be filed with the Sur-
face Transportation Board, Office
of the Secretary, Case Control
Unit, 395 E Street, SW, Washing-
ton, DC 20423-0001. A copy of
each comment shall also be
served upon TRRC's representa-
tive: David H. Coburn, Steptoe
& Johnson LLP, 1330 Connecticut
Ave., NW, Washington, DC
20036. (202) 429-3000, FAX: (202)
429-3902. TRRC has 5 days from
the due date of the comments to
respond to them. On the basis of
the comments and replies, the
Board will decide if a hearing is
necessary.

A copy of the revised applica-
tion, including the previous EISs
and 1998 Radian Report, is avail-
able for public inspection at the
offices of the Surface Transporta-
tion Board.

(1) Finance Docket No. 30186
(Sub-No. 2), *Tongue River Railroad
Company - Rail Construction and
Operations - Ashland to Decker,
Montana.*

(2) Finance Docket No. 30186
(Sub-No. 3), *Tongue River Railroad
Company, Inc. - Construction and
Operation - Western Alignment.*

(3) F.D. No. 30186 (Sub No. 3),
*Tongue River Railroad Company,
Inc - Construction and Operation -
Western Alignment* (dismissed by
order served June 18, 2012).

(4) This 1998 Radian report is
Exhibit 2 to the Reply of Tongue
River Railroad to Comments on the
Scope of the Supplement to the
Final Environmental Impact
Statement filed on September 8,
1998 in Finance Docket 30186
(Sub-No. 3).

Published October 25, 2012

CORRECTED

FINANCE DOCKET NO. 30186

RAIL CARRIER: Tongue River Railroad Company, Inc.

AGENCY: Surface Transportation Board

ACTION: Notice of Filing a Revised Application to Construct and Operate the Previously Approved Line of Railroad in Custer, Rosebud, and Powder River Counties, Montana

SUMMARY:

Tongue River Railroad Company, Inc. ("TRRC") has filed a revised application with the Surface Transportation Board seeking authority to modify the alignment of the rail line between Miles City, Montana, and Ashland/Otter Creek, Montana that was previously approved in 1986 by the Surface Transportation Board's ("Board") predecessor - the Interstate Commerce Commission ("ICC") - in *Tongue River R.R. - Rail Construction and Operation - In Custer, Powder River and Rosebud Counties, MT*, Finance Docket No. 30186 (ICC served May 9, 1986) (hereafter "1986 Decision"). As the expected operator of the rail line, BNSF Railway Company ("BNSF") joined in the revised application.

The rail line approved in 1986 connects with a BNSF line at its northern end near Miles City, MT. Near its south end, the line splits into two branches just south of Ashland, MT and has two Terminus Points - (1) Terminus Point #1 continues southwest and terminates at the previously proposed Montco Mine location ("Montco Mine Spur"), and (2) Terminus Point #2 continues south from the Ashland area along the Otter Creek ("Otter Creek Spur"). TRRC does not intend to construct the rail lines south of Terminus Points #1 and #2 that were the subjects of its applications in TRRC II¹ and TRRC III².

The proposed refinements to the approved rail line address rail operational considerations that were raised subsequent to the 1986 Decision. They generally entail a straightening and shortening of the rail alignment approved in 1986. Most of the refinements to the authorized rail line that TRRC seeks authority to construct and operate were considered in the TRRC III proceeding, which has now been dismissed³. In this revised application, TRRC is also proposing a few additional refinements to the authorized rail line that were not considered in the TRRC III proceeding. The new refinements are very minor curve adjustments near the Miles City Fish Hatchery that move the rail centerline further from hatchery facilities and certain adjustments along the Otter Creek Spur.

The purpose of the rail line, as refined, is the same as the purpose of the approved rail line, namely, to transport low sulfur, sub-bituminous coal from proposed mine sites in Rosebud and Powder River Counties, Montana, including proposed mines in the Otter Creek area. The rail line will also operate as a common carrier line and will thus be available to transport other commodities on reasonable request.

As part of its revised application, TRRC has incorporated by reference the draft Environmental Impact Statement ("EIS") served in this docket on July 15, 1983, the supplement to the draft EIS served in this docket on January 19, 1984, and the Final EIS served in this docket on August 23, 1985 for the rail line approved in the 1986 Decision. As part of its revised application, TRRC has also incorporated by reference a September 1998 report prepared by Radian International LLC, et al., titled *Analysis of Potential Changed Circumstances Related to the Environment and Proposed Action along the Original 89 Miles of the Tongue River Railroad approved in 1986*, that was previously filed with the Board in the TRRC III proceeding⁴; and the draft EIS from the TRRC III proceeding served on October 15, 2004 and the final EIS from the TRRC III proceeding served on October 13, 2006, to the extent they evaluate proposed refinements to the 1986 approved rail line. In addition, TRRC is retaining a third party contractor pursuant to 49 C.F.R. § 1105.10(d) to work with the Board's Office of Environmental Analysis in preparing additional necessary environmental documentation as required by NEPA in connection with TRRC's revised application. The Board's environmental documentation will be made available for public review and comment at a later date. Any interested party may advise the Board of its interest in this proceeding and/or file written comments on the revised application with the Board. Any notice of interest and/or written comments (with 10 copies) must be filed within 35 days from the date that TRRC filed the revised application with the Board, or by November 20, 2012.

Written comments must contain the basis for the party's position either in support of or in opposition to the proposal. Written comments should indicate the proceeding, STB Finance Docket No. 30186, and should be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E. Street, SW, Washington, DC 20423-0001. A copy of each comment shall also be served upon TRRC's representative: David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Ave., NW, Washington, DC 20036, (202) 429-3000; FAX: (202) 429-3902. TRRC has 5 days from the due date of the comments to respond to them. On the basis of the comments and replies, the Board will decide if a hearing is necessary. A copy of the revised application, including the previous EISs and 1998 Radian Report, is available for public inspection at the offices of the Surface Transportation Board.

¹Finance Docket No. 30186 (Sub-No. 2), Tongue River Railroad Company - Rail Construction and Operations - Ashland to Decker, Montana.

²Finance Docket No. 30186 (Sub-No. 3), Tongue River Railroad Company, Inc. - Construction and Operation - Western Alignment.

³FD. No. 30186 (Sub. No. 3), Tongue River Railroad Company, Inc. - Construction and Operation - Western Alignment (dismissed by order served June 18, 2012).

⁴This 1998 Radian report is Exhibit 2 to the Reply of Tongue River Railroad to Comments on the Scope of the Supplement to the Final Environmental Impact Statement filed on September 8, 1998 in Finance Docket 30186 (Sub-No. 3). (Published October 25, 2012)

Affidavit of Publication

STATE OF MONTANA }
County of Custer } ss.

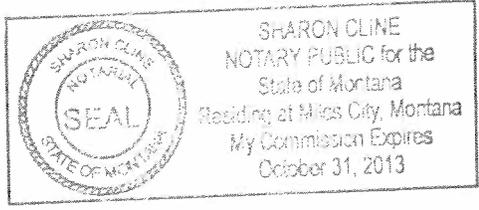
Mary Halvorson, being duly sworn on her oath, says that she has been the principal clerk of the printer of the MILES CITY STAR, a daily newspaper of general circulation, printed and published at Miles City, in said County and State. Tongue River Railroad Revised Application. A printed and true copy which, cut from the columns of said newspaper, is hereto attached, and made a part hereof, was printed and published in said newspaper, in the regular and entire issue of every number of the paper during the period, October 25, 2012.

Signed Mary Halvorson

Subscribed and sworn to before me this 1st

day of November, 2012

Sharon Oline



CERTIFICATE OF SERVICE

I hereby certify that a copy of Tongue River Railroad Company, Inc.'s letter re publication the revised newspaper notices and Affidavit of Publication of the original newspaper notice from the Independent Press and Miles City Star have been served this 16th day of November, 2012 via first-class U.S. mail, postage prepaid, upon all parties of record to this proceeding.



Keith Decker