

APPENDIX 11

**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, MT**

**VERIFIED STATEMENT
OF
GERALD W. FAUTH III**

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. I have over 30 years experience working on railroad regulatory issues. The vast majority of my experience has involved issues before or directly related to the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC). My experience includes serving 3½ years at the STB as a staff advisor and Chief of Staff for a STB Board Member. A statement describing my background, experience and qualifications is attached hereto as Appendix GWF-1.

Tongue River Railroad Company, Inc. (TRRC) is a subsidiary of BNSF Railway Company (BNSF) (which is a subsidiary of Berkshire Hathaway), and Arch Coal, Inc. (ARCH).¹

¹ According to TRRC's Revised Application dated October 16, 2012 (page 6) and Supplemental Application dated December 17, 2012 (page 11), TRRC is owned by Tongue River Holding Company, LLC (TRR Holding), which is owned by BNSF (34.68%) and ARCH (34.68%). In a previous STB filing dated August 29, 2011, however, TRRC indicated that BNSF and ARCH each hold a "33 1/3% membership interest." BNSF's 2011 Annual R-I Report to the STB also states that BNSF controls 33.33% of TRR Holding (Sch. 310, L. 23). TRR Financing, LLC ("TRR Financing"), a company controlled by Mr. Forrest E. Mars, Jr., also holds a 33.33% membership interest.

In response to an STB decision served June 18, 2012 which reopened this proceeding, TRRC filed a “*Revised Application*” in STB FD 30186, Tongue River Railroad Company, Inc. - Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, Montana, which represented a renewed proposal to construct and operate a new rail line to access Powder River Basin (PRB) coal mines in the Ashland, Montana area. The proposed railroad construction project is estimated to cost \$416 million.² BNSF would serve as the operator of the proposed TRRC line.

In its Revised Application, TRRC proposes to build, with certain refinements, approximately 83 miles of the line that was first approved and authorized by the ICC in 1986. TRRC stated that, “Most of the Refinements proposed in the Revised Application were already considered by the Board.”³ TRRC also indicated that it did not intend to build previously proposed and approved lines south of Ashland to Decker, Montana. Despite the fact that the line had been previously approved by the ICC, had been scaled back and involved previously considered refinements, the STB reopened the proceeding and decided to conduct a new environmental review based on TRRC’s modified plans.

In response to a subsequent STB decision dated November 1, 2012 which requested additional information, TRRC filed a “*Supplemental Application*” on December 17, 2012. Rather than merely supplementing the record and amending the Revised Application, however, TRRC submitted a totally new and revised application and proposed a major change in the configuration and alignment of the proposed TRRC rail line.

² TRRC Supplemental Application dated December 17, 2012, page 17.

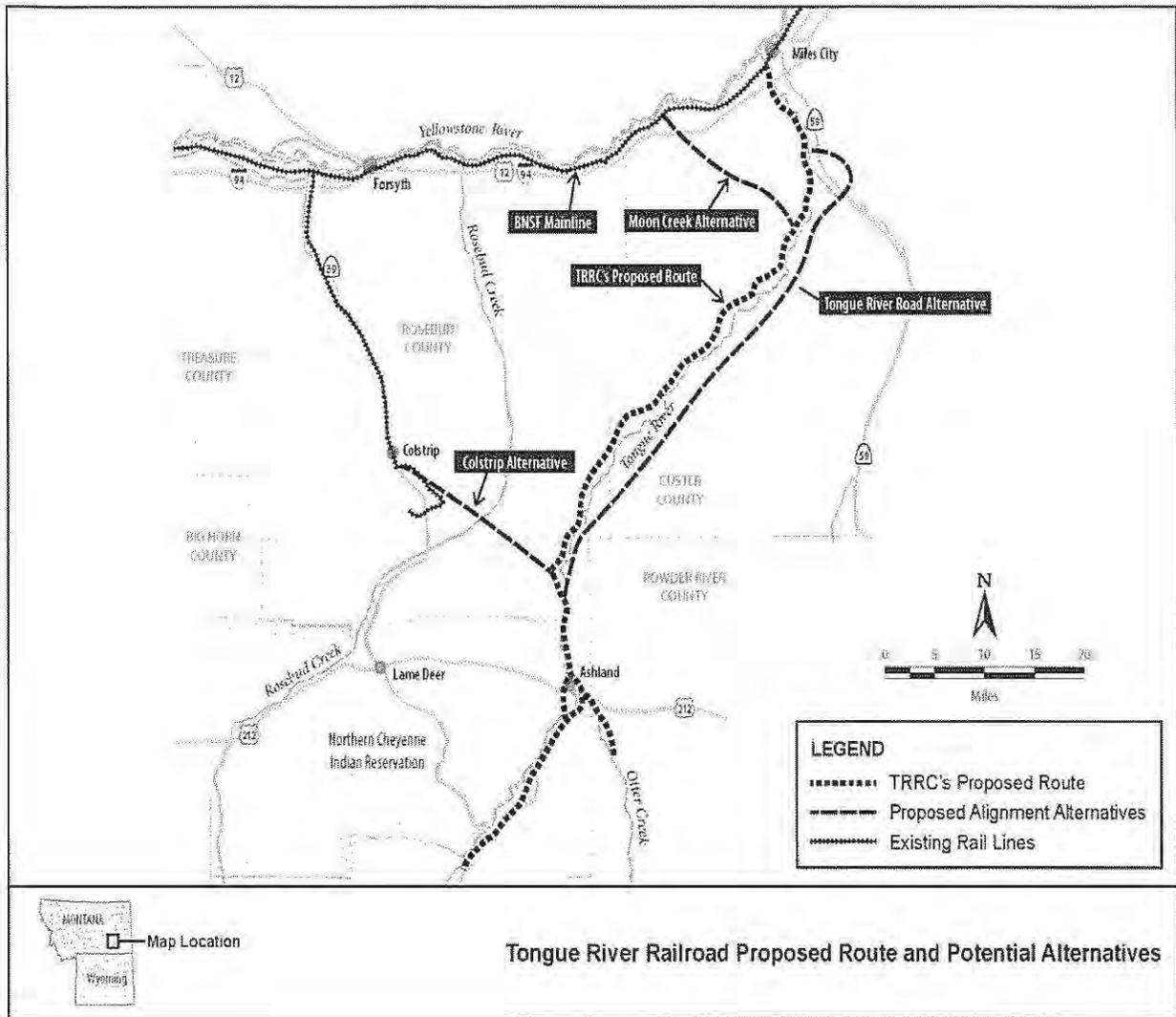
³ TRRC Revised Application dated October 16, 2012, page 1.

I have been asked by the Northern Plains Resource Council (NPRC) to review TRRC's Revised and Supplemental Applications and comment on the STB's proposed Draft Scope of Study. Under 49 U.S.C. 10901(c), the STB must approve a proposal to construct or operate a rail line unless the STB finds that such activities are inconsistent with the "public convenience and necessity." I will not address the merits of TRRC's revised proposal and the STB's broad public interest standard here. My comments focus on the STB's Draft Scope of Study and issues and impacts associated with TRRC's recent major change in the proposed preferred route set forth in its "Supplemental Application."

In its Supplemental Application, TRRC changed the previously preferred and ICC-approved route, which had remained basically unchanged since 1986, involved approximately 83 miles and connected with BNSF's main line at Miles City. TRRC now proposes a new route called the "*Colstrip Alignment*," (or Colstrip Alternative) which would involve the construction of approximately 42 miles and would connect with an existing BNSF coal line near Colstrip Montana. TRRC maintains that the Colstrip Alignment "offers the shortest, most cost-effective and least environmentally impactful routing for the proposed line."⁴ The following map shows the TRRC proposed and potential alternative routes:

⁴ Supplemental Application, dated December 17, 2012, page 2.

TRRC Proposed and Potential Alternative Routes



The following table shows the mileage differences between the previously ICC-approved route in TRRC I (and the preferred route in TRRC's Revised Application) and TRRC's new preferred Colstrip Alternative route set forth in TRRC's Supplemental Application:

Table 1

Comparison of TRRC Proposed Route Miles

TRRC Line Segment	Miles
ICC-Approved TRRC I	
Miles City to Common Point (Tongue River Crossing)	60.8
Common Point to Ashland Bifurcation Point	9.1
Ashland Bifurcation Point to Terminus Point 1 (Montco Mine)	7.6
Ashland Bifurcation Point to Terminus Point 2 (Otter Creek Mine)	<u>5.7</u>
Total Approved Miles	83.2
TRRC's Proposed New Colstrip Alternative Line (TRRC IV)	
Colstrip to Common Point (Tongue River Crossing)	19.8
Common Point to Ashland Bifurcation Point	9.1
Ashland Bifurcation Point to Terminus Point 1 (Montco Mine)	7.6
Ashland Bifurcation Point to Terminus Point 2 (Otter Creek Mine)	<u>5.7</u>
Total Proposed Miles	42.2
Total Miles Previously Approved by ICC in TRRC I	22.4

As can be seen, although the Colstrip Alternative is shorter than the TRRC I route (42.2 versus 83.2 miles), only 22.4 miles of the proposed Colstrip Alternative miles were approved by the ICC under TRRC I.⁵ Despite the fact that there may be certain benefits associated with the proposed Colstrip Alignment, TRRC's recent and sudden switch from the long-time (1986) and previously ICC-approved route via Miles City to the Colstrip Alignment (which was rejected by the ICC in 1986) represents a major and significant change. Only 53% (22.4/42.2 miles) of the proposed Colstrip route has been approved by the STB.

⁵ TRRC's Supplemental Application also includes certain "refinements" to the previously approved TRRC I lines, such as adjustments to the 5.7-mile Otter Creek spur, which have not been approved by the STB.

TRRC's Supplemental Application is a new proposal from a new owner. As a result, the STB should institute a new proceeding (e.g., STB FD No. 30186 (Sub-No. 4) or TRRC IV) and require TRRC essentially go back to the beginning of the process to allow proper public and regulatory involvement. For example, the STB has already held public scoping hearing in Montana and TRRC has made public notifications, but those hearing and public notifications were based on the TRRC I route via Miles City.

Moreover, as indicated herein, the STB should significantly expand its Draft Scope of Study and its environmental review to look at the significant impacts associated with the increase in coal trains over BNSF's existing system and impacts to other rail carriers' operations, as was done by the STB in the Dakota, Minnesota & Eastern Railroad Corp. (DM&E) case.⁶

There should be no distinction between TRRC and BNSF. BNSF is one of owners of TRRC, the TRRC officers and directors are also BNSF officers and directors, BNSF will be the operator of TRRC and all of the TRRC-originated coal will move over BNSF's existing system. TRRC has understated, downplayed and virtually ignored the potential downline or downstream impacts on BNSF's existing system by misrepresenting the destination market and significantly understating the potential annual coal volumes.

TRRC maintains that "domestic electric utilities represent the prime demand potential for Otter Creek coal that the TRRC would haul."⁷ However, it is very clear that the majority of TRRC coal will move to Pacific Northwest (PNW) export coal terminals - primarily to a massive new export coal terminal near Longview, Washington. TRRC also estimates that the Otter Creek mine will produce approximately 20 million tons of coal per year at full production, which

⁶ STB FD No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction Into The Powder River Basin, (DM&E)

⁷ Supplemental Application dated December 17, 2012, Operating Plan, page 2.

understates the potential Otter Creek volume and ignores other potential mine sites on the line.⁸ In its original ICC application, TRRC projected coal production levels which ranged from 33 to 44 million tons from potential five (5) mine sites.⁹ TRRC has also failed to mention other related BNSF and ARCH projects and efforts, which are clearly connected and related to the TRRC project.

As a consequence, the downline impacts on BNSF's existing system and customers will be significantly greater than the impacts described and represented in TRRC's Supplemental Application. As indicated herein, the potential downstream environmental impacts associated with the TRRC application on BNSF's existing system may be much greater than the potential impacts in the DM&E case and the STB evaluated the impacts on DM&E's existing system.

TRRC's Long ICC/STB History

The proposed TRRC rail line has a long regulatory and judicial history and has gone through several changes. It was first proposed in the 1970's. TRRC's original construction application was submitted to the ICC in 1983. Since then, the proposed TRRC rail line has been revised, amended and supplemented numerous times and the subject of numerous ICC, STB and court decisions. To date, the ICC and STB have approved and authorized three (3) previous TRRC proposals:

- **1985** - The ICC first gave approval to TRRC to build and operate an 89-mile rail line between Miles City, Montana, and two termini located near Ashland, Montana (**TRRC I**).¹⁰

⁸ *Ibid.*

⁹ ICC 1985 Final EIS, page 41.

¹⁰ ICC Finance Docket No. 30186, Tongue River R.R. – Rail Construction and Operation – In Custer, Powder River and Rosebud Counties, Montana, served September 4, 1985.

- **1996** - The newly-formed STB authorized TRRC to build an additional 41-mile rail line from Ashland to Decker, Montana. (**TRRC II**)¹¹
- **2007** - The STB authorized TRRC to build and operate the so-called “Western Alignment,” which was a 17.3-mile alternate route for a portion of the route already approved in Tongue River II. (**TRRC III**)¹²

Although the TRRC lines have been authorized by the ICC and STB for many years, to date, the line has not been built. TRRC maintains that the line was not built because “the Ashland/Otter Creek coal resources which the line is primarily designed to serve have not been commercially available for development.”¹³ However, the lack of strong financial backing, a changing PRB coal market and other factors also played a role.

TRRC’s New Ownership and New Plans

The prospects of the long-dormant TRRC construction project began to change a few years ago when ARCH and BNSF began to make a series of major financial moves:

- **November 2009** - ARCH announced that it had paid \$73.1 million for a lease agreement with Great Northern Properties Limited Partnership (GNP)¹⁴ for its Otter Creek coal tracks, which are estimated to cover approximately 9,600 acres and contain 731 million tons of coal reserves.¹⁵

¹¹ STB Finance Docket No. 30186 (Sub-No. 2), Tongue River Railroad Co. – Rail Construction and Operation – Ashland to Decker, Montana. 1 S.T.B. 809 (1996)

¹² During my time at the STB, I was involved in the decision-making process in a full Board decision served March 11, 2003 in STB Docket No. FD 30186 (Sub-No. 3), Tongue River Railroad Company, Inc. - Rail Construction And Operation – Western Alignment, which involved a proposal to construct a 41-mile line between Ashland and Decker, Montana.

¹³ TRRC’s April 19, 2012 filing, page 4. In Tongue River I, TRRC maintained that the primary purpose of the line was to transport coal from Montco mine, which was a partnership between Thermal Energy, Inc. and Tongue River Resources Inc. and had received a permit to open a new mine. (ICC Final EIS, Page 45). Since the Montco mine had previously been “commercially available for development,” TRRC’s statement is not correct.

¹⁴ GNP was formed in 1992 to acquire BNSF’s coal-related assets. It is privately-held company which is apparently part of Natural Resource Partners L.P. (NRP), a master limited partnership that is principally engaged in the business of owning and managing mineral reserve properties. One of the primary owners of NRP and GNP is Corbin J. Robertson, Jr. (see: www.nrplp.com)

¹⁵ ARCH press release dated November 12, 2009 (Appendix GWF-2).

- **March 2010** - ARCH announced that its paid \$85.8 million for a lease of the State of Montana’s Otter Creek tracks, which are estimated to cover 8,300 acres and contain 1.5 billion tons of coal reserves.¹⁶
- **January 2011** - ARCH announced that it had paid \$25 million for a 38% interest in Millennium Bulk Terminals – Longview, LLC (MBT), which is the owner of a proposed export coal terminal near Longview, Washington.¹⁷ A few days later, ARCH announced that it had reached an agreement with Canada’s Ridley Terminal to “facilitate coal exports to Pacific Rim markets.”¹⁸
- **July 2011** - ARCH and BNSF reached an agreement with Forrest E. Mars, Jr. (Mars), a longtime opponent of TRRC, under which BNSF, ARCH and Mars acquired the TRRC permits from Mike T. Gustafson, President of TRRC and Wesco Resources.¹⁹

Under the July 2011 agreement, Mars became partners with BNSF and ARCH and they agreed the not to build the southern extension of the line to Decker (TRRC II and TRRC III). In a Status Report dated November 4, 2011, TRRC indicates that:

“... its new owners have determined that they will not, in the reasonably foreseeable future, construct the portion of the TRRC line south of the Ashland/Otter Creek area. Instead, TRRC will concentrate on moving forward toward the construction of the line between Miles City and the Ashland/Otter Creek area along the Board-approved alignment for that portion of the line.”²⁰

To date, this July 2011 agreement has not been provided to parties and the amount paid by ARCH, BNSF and Mars for the TRRC permits has not been not disclosed.²¹

After the ARCH, BNSF and Mars Agreement was reached, BNSF also made some related major financial announcements:

¹⁶ ARCH press release dated March 18, 2010 (Appendix GWF-3).

¹⁷ ARCH press release dated January 12, 2011 (Appendix GWF-4).

¹⁸ ARCH press release dated January 18, 2011 (Appendix GWF-5).

¹⁹ Letter dated July 18, 2011 to Ed Gulick, NPRC Chairman, from Forrest E. Mars, Jr.

²⁰ TRRC November 4, 2011 STB Status Report, page 2.

²¹ TRRC formally notified the STB of this change in ownership on July 8, 2011. The STB should require TRRC to release this agreement and reveal the terms of the agreement.

- **May 2012** - BNSF announced a planned \$111 million capital program in Montana intended to maintain and improve rail capacity and “will include 956 miles of track surfacing and undercutting work, the replacement of 54 miles of rail and about 210,000 ties, as well as significant signal upgrades for federally mandated positive train control (PTC).”²²
- **August 2012** - BNSF announced a similar \$106 million capital program to maintain and expand capacity in Washington. BNSF’s projects in Washington include the construction of “a new lead to access the Port of Longview,” as well as signal upgrades for federally mandated positive train control (PTC), 1,020 miles of track surfacing and undercutting work, and the replacement of 56 miles of rail and about 178,000 ties.²³

Northern Plains Decision

Later that year (December 29, 2011), the U.S. Court of Appeals for the Ninth Circuit affirmed in part, reversed in part, and remanded for further environmental review the STB’s decisions in two STB Tongue River proceedings (STB FD 30186 (Sub-No. 2) and FD 30186 (Sub-No. 3)).²⁴ TRRC subsequently filed a “*Statement of Intent*” with the STB on April 19, 2012, notifying the STB that it “no longer intends to construct the rail lines” that were subject to its applications in TRRC II and TRRC III.²⁵ Rather, TRRC indicated it would focus on the line as approved in TRRC I (with certain refinements included in TRRC III).

TRRC’s Revised Application

In response to Court’s decision in Northern Plains, TRRC’s announced changes in ownership and plans, petitions from NPRC, and other factors, the STB issued a decision on June 18, 2012 which (in addition to addressing other matters) reopened STB FD 30186 “for the

²² BNSF press release dated May 24, 2012 (Appendix GWF-6)

²³ BNSF press release dated August 2, 2012 (Appendix GWF-7)

²⁴ December 29, 2011 U.S. Court of Appeals for the Ninth Circuit decision in Northern Plains Resource Council, et al. v. Surface Transportation Board, 668 F.3d 1067 (9th Cir. 2011) (Northern Plains). The Court’s mandate in the case was issued on March 2, 2012, which terminated the Court’s jurisdiction over the matter.

²⁵ TRRC’s April 19, 2012 filing, page 1.

purpose of requiring the railroad to file a revised application for the currently proposed rail line and preparing a new environmental review.” In response to the STB’s decision, TRRC submitted a “Revised Application For Construction and Operation Authority” dated October 16, 2012.

TRRC’s Revised Application concerned the authority to construct and operate the rail line that was previously authorized by the ICC under TRRC I (with some “refinements”), which would run south-west approximately 70 miles (MP 69.86) from a junction with BNSF’s main line near Miles City, Montana to junction south of Ashland, Montana, where it splits into: (1) a 7.5-mile line to “Terminus Point 1,” which terminates at the “previously proposed” Montco mine; and (2) a 5.7-mile “Otter Creek Segment” spur to “Terminus Point 2,” which will be ARCH’s Otter Creek coal mine loading station.

Despite the fact that this is one of STB’s largest rail construction cases and the fact that the TRRC proposal has a long (and controversial) history, the STB acted with extraordinary and unprecedented speed by reviewing TRRC’s extensive Revised Application submitted on October 16, 2012 and issuing a decision on October 22, 2012,²⁶ which served as formal regulatory notices of: Intent to Prepare an Environmental Impact Statement; Availability of the Draft Scope of Study for the Environmental Impact Statement; and Scoping Meetings (which were quickly scheduled and have, indeed, already taken place at various locations in Montana).

The STB’s October 22 decision also included a formal “Request for Comments on Draft Scope.” The STB’s decision states: “Interested parties are invited to submit written comments on the Draft Scope of Study, potential alternative routes for the proposed rail line, and other

²⁶ The STB’s 10-page decision was actually decided on October 17, 2012, only one day after it received TRRC’s extensive and lengthy Revised Application. In contrast, in STB FD No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction Into The Powder River Basin, (DM&E), the application was submitted by DM&E on February 20, 1998, but the Draft Scope of Study was not issued by the STB until June 10, 1998.

environmental issues and concerns by December 6, 2012, to assure full consideration during the scoping process.” (page 3).²⁷ Under the STB’s current procedural schedule, interested parties will not have another chance to submit comments until March 1, 2013, which is the due date for comments in support of or opposition to TRRC’s Revised Application.

TRRC’s Supplemental Application

In response to TRRC’s Revised Application on October 16, the STB (without any apparent formal petition or request from TRRC or opposing parties) took another unusual step by issuing a decision on November 1, 2012 which directed TRRC to “file supplemental information related to the *transportation merits* of the revised line TRRC now proposed to build.”²⁸ The STB set a date of December 17, 2010 as the date for TRRC to supplement the record. Rather than merely supplementing the record to include additional information regarding the “*transportation merits*” associated with of TRRC’s Revised Application, however, TRRC used the December 17, 2012 filing date as an opportunity to totally change the configuration and alignment of the proposed railroad line.

The Proposed Colstrip Alignment

As previously indicated, TRRC changed its preferred route from the 83-mile Tongue River Alternative (which was approved by the ICC in 1986) to the 42-mile Colstrip Alternative. TRRC also altered the Colstrip Alternative so that approximately five miles would generally parallel Greenleaf Road (S-447) rather than follow Roe & Cooper Creek. The ICC recognized that, due to its shorter length, the Colstrip Alternative would have the least environmental impact

²⁷ This date was extended to January 11, 2013 by a subsequent STB decision. See decision in STB Docket No. FD 30186, served November 30, 2012.

²⁸ November 1, 2012 decision, page 1 (emphasis added).

of any of the potential TRRC routes. However, the ICC approved TRRC's preferred route, which would connect with BNSF's main line near Mile City, over the shorter Colstrip Alternative. In approving TRRC's longer preferred Miles City route, the ICC stated "marketing and engineering considerations are critical to the Applicant in selecting the most feasible and practical route. From an engineering and marketing standpoint, the Proposed Rail Line has advantages over the Colstrip Alternative, as well as the other two routes."²⁹

Despite the fact that TRRC has alleged that there are environmental and other benefits associated with the Colstrip Alternative, TRRC's recent and sudden switch from the long-time (1985) and previously ICC-approved (TRRC I) route via Miles City to the Colstrip Alternative (which was rejected by the ICC in 1985) represents a major and significant change of the preferred alignment from new owners..

As a result, the STB cannot simply rubber stamp TRRC's new Supplemental Application and should certainly not fast-track this proceeding.. The STB should initiate a new proceeding, i.e., TRRC IV, and require TRRC essentially go back to the beginning of the process to allow proper public and regulatory involvement.

Major Change in the Destination Market

TRRC's recent and sudden switch to the Colstrip Alternative is logical given the fact that the destination market has also significantly changed. The previously approved Miles City route was preferable from a "marketing" standpoint because it resulted in a shorter distance to domestic coal-fired generating stations in the mid-west and east. As recently as 2006, the STB stated that the purpose of the TRRC line from Miles City was for the "transport of coal from

²⁹ ICC Final EIS, page i.

existing and future mines in the Powder River Basin and Tongue River Valley to markets in the Midwestern and northeastern states.”³⁰

Since TRRC was first proposed, however, the PRB coal market (and the circumstances associated with the proposed construction and operation of the TRRC line in Montana) has significantly changed. When TRRC was first proposed, BNSF dominated the PRB coal market, the BNSF / Union Pacific (UP) joint line in Wyoming had not been built and the Clean Air Act of 1990 (which increased the demand for low-sulfur coal) had not been passed. As a result, PRB coal production skyrocketed in the last 30 years. For example, Montana and Wyoming produced approximately 174 million tons in 1985 and 481 million tons in 2011.³¹ However, the PRB coal market now appears to have neared its peak production levels.

In the past few years, there has been a marked decrease in domestic coal generation as a result of numerous factors, such as the increased use of natural gas and new Environmental Protection Agency (EPA) regulations on coal plants. For example, domestic coal consumption dropped by 48 million tons in 2011.³² Total coal-based power sector generation decreased 6 percent in 2011, to 1,714.9 billion kilowatt hours (kWh), while natural gas generation increased 3.2 percent to 930.6 billion kWh.³³

A clear indication of this market shift is the fact that Canadian Pacific Railway Company (CP), which acquired DM&E in 2007,³⁴ recently announced that it was mothballing the proposed DM&E PRB expansion project and putting approximately 600 miles of DM&E lines up for sale

³⁰ STB October 2006 Final Supplemental EIS, page I-1.

³¹ Data from Energy Information Administration (EIA)

³² The National Mining Association (NMA) 2011 Coal Producer Survey, page 1.

³³ *Ibid.*

³⁴ See STB FD No. 35081, Canadian Pacific Railway Company, et al. – Control – Dakota, Minnesota & Eastern Railroad Corp. et al. I submitted expert testimony in this proceeding for the Iowa Northern Railway Company (IANR).

because of weaker domestic coal demand.³⁵ While domestic coal generation and demand are clearly declining, there has been a concomitant increase in demand for export coal in recent years, which has helped offset the reduction in domestic coal demand. For example, National Mining Association (NMA) states:

“However, partially offsetting the lower demand in the electricity sector were very strong exports of both steam and metallurgical coal. U.S. coal exports in 2011 surged to a level unseen in several decades at 107.3 million short tons.”³⁶

Although the domestic coal market is clearly in a state of decline and the export coal market is clearly expanding, TRRC indicates that the “U.S. *domestic electric utilities* represent the prime demand potential for Otter Creek coal that the TRRC would haul.”³⁷

TRRC’s Revised Application essentially ignored, and only includes a brief reference to, the booming export coal market in that it merely states that “*additional tonnages could be anticipated for export markets.*”³⁸ TRRC stated that “actual production may vary considerably depending upon market conditions and/or other business considerations.”³⁹ In its Supplemental Application, however, TRRC acknowledges (but still downplays) the fact that TRRC coal may move to export coal terminals. TRRC states that “it is not possible to predict at this time where the coal will be delivered after production commences” and “In other words, the coal could move east or west for domestic use or export.”⁴⁰

³⁵ See: <http://minnesota.publicradio.org/display/web/2012/12/03/business/candian-pacific-mothbolls-plans-for-coal-country-expansion/>

³⁶ *Ibid.*

³⁷ TRRC Revised Application, Exhibit D, Operating Plan, page 2 (emphasis added).

³⁸ *Ibid.* (emphasis added)

³⁹ TRRC October 16, 2012 Application, Exhibit D, Appendix A., Verified Statement of William M. Rowlands, President of Otter Creek Coal, LLC, an operating subsidiary of ARCH.

⁴⁰ TRRC Supplemental Application, Verified Statement of William M. Rowlands, page 4.

According to the ICC's 1983 Draft EIS, TRRC's original projections "indicate that one-third of the coal will be destined for locations in Oregon and Washington, and two-thirds for locations in South Dakota, Minnesota, Wisconsin, New York, and Pennsylvania."⁴¹ In other words, 1/3 of the traffic would move west from the Miles City interchange with BNSF and 2/3 of the traffic would move east from Miles City.

The domestic coal market in Oregon and Washington is clearly in a state of decline. There are only two major coal-fired electric generating stations in Washington and Oregon (i.e. Centralia, WA and Boardman, OR) and both of these plants are scheduled to close in the near future.⁴² If TRRC truly intends to serve the domestic coal market, then most, if not all, of the TRRC domestic coal would move east.

However, it is very clear that the domestic coal market is in a state of decline and the export coal market is expanding. Based on TRRC's recent and sudden switch to the Colstrip Alignment after more than 30 years, which would reduce the rail distance and cost of shipments to PNW export coal terminals, is indicative of this market shift. ARCH's own statements to investors and other information also indicate that "*prime demand potential*" for TRRA coal is clearly the "*fast-growing*" export coal market. As a result, it is also now very clear that most (if not all) of the TRRC coal will move *west* to Longview and other PNW export coal facilities.

⁴¹ Draft EIS in ICC Docket 30186, served July 15, 1983, page 3-5.

⁴² See, e.g., http://seattletimes.com/html/localnews/2014412221_coalplant06m.html and http://www.oregonlive.com/business/index.ssf/2010/12/pges_coal-fired_boardman_plant.html

Longview and Other PNW Export Terminals

The Port of Longview is the site of a proposed massive coal export terminal, which is projected to cost \$600 million and have the capacity to ship 48.5 million tons of PRB coal to the Asian markets.⁴³ ARCH, co-owner of TRRC, also owns 38% of Millennium Bulk Terminals-Longview, LLC, which is served by both BNSF and UP. Obviously, ARCH and BNSF, as partners in TRRC and Longview, would have an economic incentive to ship coal from the TRRC line to Longview and the growing export coal market. At 48.5 million tons per year, Longview would become one of the biggest coal destinations in the U.S. Longview would be far bigger than any domestic coal destination.

For comparison, Norfolk Southern recently completed a major upgrade of its Lamberts Point export coal transloading facility in Norfolk, Virginia (also known as Pier 6), which NS maintains is positioned “to remain the largest and fastest coal transload facility in the Northern Hemisphere.”⁴⁴ NS indicates that Pier 6 has an annual throughput capacity of 48 million tons, which would be slightly lower than Longview’s projected capacity.⁴⁵ Longview will become the Pier 6 of the west coast. CSX recently stated: “CSX Growing customer demand in the export market played a large factor in 2011's strong results. CSX shipped 40.2 million tons of export coal in 2011, a 34 percent year-over-year increase from 2010.”⁴⁶ In other words, more export coal will potentially move from Longview than the total export coal moved by CSX last year via several different major coal export terminals (Newport News, VA; Baltimore, MD; Mobile, AL; Ashtabula, OH; Toledo, OH and other terminals along the inland river system).

⁴³ A recent study produced for Millennium by Berk used 44 million metric tons which equated to 48.5 million short tons. See Berk Report, page 3 states which states that “the facility would be expected to begin operations in 2015 and full site capacity of 44 million metric tonnes of coal will be in place by 2018.”

⁴⁴ See: http://www.nscorp.com/nscportal/nscorp/Media/News%20Releases/2012/ns_export_facility.html

⁴⁵ See: http://www.nscorp.com/nscportal/nscorp/Customers/Coal/Transload/lamberts_point.html

⁴⁶ See: <http://corporate-social-responsibility.csx.com/markets/coal.php>

The proposed Longview export coal terminal and other proposed Pacific North West (PNW) export coal terminals are indicative of a recent change in the PRB coal market and a shift away from the declining domestic coal market and a focus on the growing coal export market.⁴⁷ In addition to Longview, BNSF also serves the proposed \$500 million Cherry point export coal terminal near Bellingham, Washington, which is projected to have the capacity to export 59.5 million tons per year.⁴⁸ In fact, BNSF is likely to move more export coal from Longview and Cherry Point than NS and CSX, *combined*.

Where will the Longview and Cherry Point export coal (over 100 million tons) come from? BNSF's PRB coal origins in Montana, such as ARCH's Otter Creek mine and Signal Peak Energy's Bull Mountain Mine, have obvious geographic and distance advantages over other origins, such as origins on the BNSF/UP joint-line in Wyoming.⁴⁹ A recent report by the University of Montana concerning Otter Creek (which is attached to TRRC's Supplemental Application) states:

. . . It takes only quick glance (at a railroad system map) to see that the Montana coal fields are closer to Northwest ports than the Wyoming coal fields. The transportation situation may now be reversed. Just as Wyoming was in a favorable geographic position to serve the fast growth in the south and east, Montana is now better situated to serve these fast growing Asian markets.⁵⁰

⁴⁷ See July 2012 report prepared for Western Organization of Resource Councils titled: *Heavy Traffic Ahead - Rail Impacts of Powder River Basin Coal to Asia by Way of Pacific Northwest Terminals*. I was one of the co-authors of this report. (<http://www.heavytrafficahead.org/pdf/Heavy-Traffic-Ahead-web.pdf>)

⁴⁸ An economic analysis prepared by Martin Associates for Gateway Pacific Terminals dated October 27, 2011 states "In the first phase, the terminal is projected to handle 25 million metric tons per year (27.6 million short tons). The second phase will take the terminal capacity up to 54 million metric tons per year" (59.5 million short tons). <http://gatewaypacificterminal.com/gateway-pacific-terminal-at-cherry-point-starts-permit-process/>

⁴⁹ BNSF currently moves export coal from Signal Peak (over a newly constructed 35-mile line in Montana) via Roberts Bank Terminal in Vancouver, BC. See: <http://www.coalage.com/index.php/features/2110-signal-peak-energys-bull-mountain-mine-has-pulled-it-together-and-is-pulling-ahead.html>

⁵⁰ See, *The Impact of Otter Creek Coal Development on the Montana Economy*, by Patrick M. Barkey, Director, Paul E. Polzin, Emeritus Director, Bureau of Business & Economic Research The University of Montana. May 2012. Page 17.

In all likelihood, a significant amount, if not most, of the Longview coal will originate from ARCH's Otter Creek coal mine and move over BNSF's existing lines in Montana, Idaho, and Washington.

DM&E Case and Downline Impacts on Existing System

On February 20, 1998, DM&E filed an application with the STB which sought authority to construct and operate a new 280-mile line, which would have extended DM&E's existing rail lines to access PRB coal market. DM&E's proposal also involved the rehabilitation of approximately 600 miles of existing rail line in Wyoming, South Dakota, and Minnesota, which it maintained were not subject to the Board's jurisdiction.

The STB clearly has authority to license the construction of new rail lines accessing new markets, such as the proposed TRRC and DM&E construction cases. However, the railroads are usually not required to seek the Board's approval to rehabilitate or improve their existing systems. In the DM&E case, however, in addition to reviewing the impacts associated with the new rail line construction, the Board reviewed the potential environmental impacts associated with DM&E's upgrading or rehabilitating its existing system. In its decision granting final approval to the DM&E project served January 30, 2002, the Board stated:⁵¹

. . . consistent with our approach in similar cases, . . . the EIS . . . examines the potential environments impacts resulting from increases from rail operations over portions of DM&E's line to be rebuilt as well as the impacts from the construction of the new rail line itself. . . . Thus, the environmental record in this case addresses the rehabilitation, upgrade, and increased use of DM&E's existing line, as well as the construction and operation of the proposed new line. (pages 5-6)

⁵¹ While at the STB, I participated in the decision-making process associated with the Board's January 30, 2002 decision in STB FD No. 33407.

The potential environmental impacts associated with the proposed TRRC line are similar to, if not greater than, the impacts associated with the DM&E case, which was another proposed expansion to access PRB coal. The DM&E case involves the proposed construction of approximately 280 miles of new rail line and the rehabilitation of approximately 600 miles of existing rail line in Wyoming, South Dakota, and Minnesota.

This case involves the proposed construction of approximately 42 miles of new rail line in Montana and the rehabilitation of nearly 2,000 miles of existing BNSF lines in Montana and Wyoming. In DM&E, the STB looked at the impacts associated with coal production levels at 20 million, 50 million and 100 million tons. Here, the coal production levels may not reach 100 million ton maximum level, but TRRC coal movements are likely to greatly exceed 20 million tons and more likely to be in the 40 to 50 million ton range.

Despite the lower miles and coal tonnage, the potential adverse environmental impacts associated with the proposed TRRC line may much greater than DM&E. In the DM&E case, the downstream adverse impacts were reduced by the fact there were many possible domestic destinations and many DM&E interchanges from which the coal could move to destinations on other railroads. Here, most of the TRRC-originated coal will likely move to a single destination (i.e., Longview) or relatively few destinations in a relatively small geographic area (i.e. the PNW).

Although smaller than the DM&E case in terms of new construction miles, the proposed TRRC line has many similarities to the DM&E case. First and foremost (and unlike any other previously proposed rail line construction projects considered by the STB), the proposed TRRC and DM&E projects and cases both involve proposed rail expansions to access PRB coal market. And, like DM&E, BNSF (one of the owners and the operator of TRRC) has announced and is

undertaking significant upgrades of its existing lines, which are required to handle, and clearly associated with, the proposed TRRC coal traffic. However, unlike the DM&E case, TRRC makes no mention of ARCH's related investment in Longview or BNSF's related system upgrades and improvements.

BNSF's Related Improvements

Last year, BNSF announced a planned \$111 million capital program in Montana and a similar \$106 million capital program to maintain and expand capacity in Washington. BNSF's projects in Washington include the construction of "*a new lead to access the Port of Longview.*" BNSF touts the benefits of these improvements in Montana and Washington, but makes no mention of the expected increase in PRB coal traffic. However, many, if not most, of these capacity improvements (such the new lead to Longview) are clearly related to the TRRC project and the expected increase in PRB export coal movements. BNSF is reportedly doing major improvements on the line between Billings and Great Falls in apparent anticipation of heavy traffic use in the near future, even though this line, is at this time, is not a CTC line.

The STB should require BNSF to disclose the specifics and costs associated the system improvements (such as the new lead in Longview), which are related to potential export coal movements from TRRC-originated mines.

TRRC's Understatement of Coal Volumes

In addition to misrepresenting the destination market (i.e., domestic versus export), TRRC has significantly understated and misrepresented the potential TRRC coal volumes. TRRC estimates that the Otter Creek mine will produce approximately 20 million tons of coal per year at full production, which understates the potential Otter Creek volume and ignores other potential mine sites on the line.

In its original ICC application, the projected coal production levels ranged from 33 to 44 million tons from potential five (5) mine sites.⁵² The Otter Creek mine should be capable of much larger production levels. Moreover, TRRC's Supplemental Application includes a 7.5-mile rail line to serve the "previously proposed" Montco mine. However, TRRA's application excludes potential Montco mine coal volumes. In the ICC's Final EIS, the ICC estimated that Montco mine (which was the only permitted mine at the time) could produce 12 million tons per year. This potential Montco coal production level could be much higher with more modern production techniques. In a 1996 decision, STB stated that "TRRC would still be able to serve the Montco mine, a mine site with an estimated annual coal production capacity of 38 million tons."⁵³

The obvious question is: *Why build a 7.6 mile line to Montco if there is no anticipated rail coal volume from this line?* Potential other mine sites were previously considered by the ICC and STB in TRRC I, TRRC II and TRRC III and should be considered by the STB here, which would push the volumes up over the projected volumes TRRC is proposing and greatly exceed the 20 million tons per year number.

TRRC coal volumes are very likely to greatly exceed 20 million tons per year and move in a completely different direction. There are significant transportation differences and environmental impacts associated with:

⁵² ICC Final EIS, page 41.

⁵³ STB FD 30186 (Sub-No. 2), Tongue River Railroad Co.--Rail Construction And Operation--Ashland To Decker, Montana, served November 6, 1996, page 14.

- TRRC/BNSF moving 20 million tons per year east and west to numerous domestic destinations spread over a wide geographic area: and
- TRRC/BNSF moving up to 48.5 million tons per year west to Longview and a relatively few other PNW destinations in a small geographic area.

Rather than moving east to domestic destinations, the coal will likely move west over BNSF's existing lines. Most of the BNSF existing lines that will be utilized currently handle very little coal movements and will need significant rebuilding and upgrading to handle the additional export coal traffic levels. BNSF recently announced major capital improvements in Montana and Washington coupled with the work that is visible on the Mossmain to Great Falls line are clearly linked to the expected increase in PRB to PNW export coal movements.

STB's 8 Trains Per Day Threshold

TRRC may have understated the potential TRRC coal volumes in order to avoid the STB's 8 trains per day threshold regarding the potential environmental impacts associated with increased traffic on the existing rail system.⁵⁴ TRRC indicates that, based on 20 million tons per year, it would handle "3.7 loaded coal trains/day."⁵⁵ The 3.7 loaded trains per day equates to 7.4 trains per day, loaded and empty. TRRC states that "Based on projected mine production, TRRC could interchange an average of *seven trains per day* with BNSF in the initial full year of operations."⁵⁶ TRRC's 7 trains per day figure is significant because it is conveniently just below the STB's 8 trains per day threshold. The following table shows the potential train per day differences between TRRC's estimated 20 million tons and Longview's 48.5 million tons per year:

⁵⁴ See 49 CFR § 1105.7

⁵⁵ TRRC Supplemental Application, Exhibit D, Operating Plan, page 2.

⁵⁶ TRRC Supplemental Application, page 28 (emphasis added)

Table 2

Comparison of Trains Per Day at 20 and 48.5 Million Tons Per Year

Ln.	Item	TRRC / BNSF / ARCH Coal to:	
		Declining U.S. Domestic Market	Or Expanding PNW Export Market
1	Tons Per Year	20,000,000	48,500,000
2	Cars Per Train	125	125
3	Load Per Car	118	118
4	Tons Per Trains	14,750	14,750
5	Loaded Trains Per Year	1,356	3,288
6	Days Per Year	365	365
7	Loaded Trains Per Day (L.5/L.6)	3.71	9.01
8	Empty Return Ratio	2.00	2.00
9	Loaded & Empty Trains Per Day (L.7xL.8)	7.43	18.02
10	STB's 8 trains per day Threshold	8.00	8.00

The STB in the DM&E case used a standard or threshold of 8 trains per day (loaded and empty) for the determination of an environmental review of DM&E existing lines:

... Those segments of rail line that meet or exceed the Board's thresholds for environmental review, as defined in 49 CFR 1105.7, will be evaluated. In cases where the Board's environmental rules do not provide a threshold, the EIS will use eight trains per day or more as the threshold for environmental evaluation. (emphasis added).⁵⁷

The potential export coal volumes over many of BNSF's existing lines will easily exceed 8 trains per day DM&E threshold. BNSF does have some available routing options (such as MRL's route in Montana and routing options in Washington), which could lower traffic levels over certain line segments, however, every TRRC/BNSF export coal train will move through

⁵⁷ STB FD 33407, decision served June 10, 1998, page 8.

Billings, Montana and Spokane, Washington, which are major population areas, as well as many other environmentally sensitive areas, such as Glacier National Park.

Conclusion

TRRC’s recent and sudden switch from the long-time (1986) and previously ICC-approved route via Miles City to the Colstrip Alignment (which was rejected by the ICC in 1986) represents a major and significant change. As a result, the STB should institute a new proceeding (i.e., STB FD No. 30186 (Sub-No. 4) or TRRC IV) and require TRRC essentially go back to the beginning of the process to allow proper public and regulatory involvement.

The STB must also look at the big picture, connect the dots and recognize that the proposed TRRC construction and operation, ARCH’s investments in Otter Creek, ARCH’s expansion of Longview and BNSF’s recently announced capacity improvements (which include a new lead at Longview) are all linked. It is very clear that these projects are related and the STB should recognize this fact. As they say, just “*follow the money*”:

Table 3
Costs of TRRC and Related Projects

TRRC and Related Projects	Estimated Cost (Millions)
ARCH Purchase of Otter Creek Coal Lease (GNP and MT)	\$159
ARCH Est. Otter Creek Equipment & Facilities Cost	\$715
ARCH/BNSF Purchase of TRRC’s Permits	\$???
ARCH/BNSF TRRC Est. Rail Construction Cost	\$419
BNSF MT & WA Capacity Improvements	\$217
Longview Expansion (ARCH, BNSF and Others)	\$600

ARCH and BNSF have spent or plan to spend well over \$2 billion to access the Otter Creek coal reserves. That is a lot of money for ARCH and BNSF (and savvy investors and billionaires such as Warren Buffet and Forrest Mars) to invest in a declining and more competitive domestic coal market, especially when you consider that BNSF will dominate PNW export coal market and coal from the TRRC line would have a competitive distance advantage over coal from most other PRB mines. These enormous expenditures (and TRRC's recent switch to the Colstrip Alternative) clearly indicate and show that ARCH and BNSF plan to move this coal to Longview and other PNW export coal terminals to take advantage of the expanding export coal market.

STB's proposed Draft Scope of Study is inadequate and incomplete because: it was based on TRRC's misleading and incomplete Revised Application (which is based on a superseded route, i.e., Miles City versus Colstrip); it misrepresents the destination market (i.e., the declining domestic coal market versus the expanding PNW export coal market); and it significantly understates and misrepresents the potential TRRC coal volumes (i.e., 20 million tons which excludes coal from Montco and other potential mine sites).

ARCH and BNSF are the owners of TRRC. BNSF will be the operator of TRRC. ARCH is one of the owners of Longview. BNSF serves Longview. The coal will move over BNSF's existing lines, many of which will need significant rebuilding and upgrading to handle the additional export coal traffic levels. As was done by the STB in the DM&E case, the STB's current TRRC proceeding should be significantly expanded to cover the environment impacts over BNSF's existing routes to Longview and other proposed PNW export coal terminals.

In 1983, the ICC described TRRC's Project Purpose and Need as follows:

Estimated strippable coal reserves in excess of 10 billion tons exist in the Ashland/Birney/Otter Creek area. This amount would translate into an energy equivalent greater than that produced by over 30 billion barrels of oil, or enough energy to supply nearly one-third of the nation's entire projected demand in the year 1985. This coal resource has not yet been developed.⁵⁸

The "Purpose and Need" for the proposed TRRC line has obviously changed since 1983. TRRC is no longer needed for an expanding domestic coal market to meet our nation's energy needs, but rather it appears likely that BNSF's and ARCH's true intended "purpose" is to take advantage and exploit the growing and profitable export coal market. Whether there still remains a "public need" for the TRRC project will ultimately be determined by the STB. However, prior to making this determination, the Board should carefully review TRRC's new plans via a new proceeding and significantly expand the proceeding and look at the significant downline impacts over BNSF's existing system.

⁵⁸ ICC Draft EIS dated July 15, 1983, page ii.

VERIFICATION

ALEXANDRIA, VIRGINIA)
) SS.

I, Gerald W. Fauth III, verify that: I have read the foregoing statement; I know the contents thereof; and those contents are true and correct as stated.



Gerald W. Fauth III

Subscribed and sworn to me this 7th day of January, 2013



Notary Public

My Commission expires:
February 28th, 2014



Wilson Watts Nash
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7343675
My Commission Expires
February 28, 2014

**STATEMENT
OF
BACKGROUND, QUALIFICATIONS AND EXPERIENCE
OF
GERALD W. FAUTH III**

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc. (GWF), an economic consulting firm with offices at 116 S. Royal Street, Alexandria, Virginia 22314. I am a recognized expert on transportation issues with over 30 years experience in the private sector and in the Federal government.

This statement generally describes my background, qualifications and experience. The majority of experience has involved economic, regulatory, public policy and legislative issues primarily associated with, or related to, the U. S. railroad industry. Most of my work has involved regulatory proceedings and related projects before, or related to, the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC).

I have extensive experience in working in regulatory and other proceedings and projects involving railroad mergers, transactions, acquisitions, rail line construction, rail line abandonments, rate reasonableness and other railroad related issues. These matters have involved railroad issues on a nation-wide, system-wide and individual railroad line basis.

GWF has been engaged in the economic consulting business for over 50 years. My part time affiliation with GWF began in 1972. I began working for GWF on a full-time basis on May 15, 1978 and was employed by GWF continuously until November 1, 1999 at which time I took a leave of absence in order to take a position with the STB.

At the STB, I served as Chief of Staff for one of the three Board Members appointed by the President, Vice Chairman Wayne O. Burkes. I returned to GWF and consulting work effective June 23, 2003 after Mr. Burkes resigned his position to run for a political office.

Over the years, I have submitted expert testimony before ICC, STB, state regulatory commissions, courts and arbitration panels on a wide-variety of issues in numerous proceedings. In addition, I worked for 3½ years at the STB where I reviewed, analyzed and made recommendations on over 600 written formal decisions that were decided by the entire Board. These proceedings and decisions involved all matters of STB jurisdiction and had an impact on the transportation industry and the national economy.

Railroad transactions have long been the subject of ICC and STB regulatory proceedings and other matters involving: railroad merger and acquisition approval and oversight proceedings; railroad line abandonment proceedings; line sales; feeder line application proceedings; and other railroad transaction-related proceedings. I have been involved in numerous such proceedings and projects as an expert witness and as an STB staff advisor.

For example, I was an expert witness in the last two major Class I railroad merger proceedings: STB Finance Docket No. 32760, Union Pacific Corporation, et al. – Control and Merger – Southern Pacific Rail Corporation, et al. and STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al. – Control and Operating Leases / Agreements – Conrail, Inc., et al. My testimony in these major merger proceedings concerned the potential adverse competitive impact of these mergers on two key areas.

In addition to my work in major railroad merger proceedings, I have submitted expert testimony in other railroad finance docket and abandonment proceedings before the ICC and STB. In these proceeding, I have developed and submitted evidence relating to the impacted railroad traffic and the valuation and economics of the railroad line at issue (such as: going concern and net liquidation values; freight revenues and traffic; operating costs; maintenance costs; right-of-way valuation; etc).

In addition to my testimony in railroad mergers and other rail finance and transaction proceedings, I served as an original member of the Conrail Transaction Council, which was established by the Board in Finance Docket No. 33388. This council consisted of representatives of the CSX, NS and shipper organization and provided a forum for timely and efficient communication of information and problems concerning the transaction. I was one of the original members of the Conrail Transaction Council and attended every meeting of the council until my employment with the Board.

During my time at the Board, I was actively involved in the STB merger oversight proceedings associated with the UP/SP and Conrail transactions. Perhaps the most significant merger-related proceedings that I was involved in during my time at the Board were STB Ex Parte No. 582, Public Views on Major Rail Consolidations and STB Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures. These STB major rulemaking proceedings involved extensive oral hearings and written testimony from hundreds of witnesses.

The Board concluded that its existing rules governing railroad mergers and consolidations, which had been developed nearly 20 years earlier, were not adequate for addressing the broad concerns expressed and initiated a major rulemaking proceeding which resulted in a major revision to the Board's railroad merger rules.

I have a significant amount of experience in issues involving railroad rate reasonableness. I was actively involved in the initial ICC regulatory proceedings over 30 years ago in which the ICC first proposed and established guidelines which have since evolved into the STB's current railroad rate reasonableness guidelines. I was actively involved in several of the first cases to test the ICC's then proposed guidelines. For example, I was the primary expert witness in ICC Docket No. 40073, South-West Railroad. Car Parts Co. v. Missouri. Pacific Railroad, which was the *first* case to test the ICC's proposed simplified guidelines, which have since evolved into STB's Three-Benchmark approach.

More recently, I submitted extensive written and oral testimony in STB Ex Parte No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, on behalf of a group of 30 major stakeholders and my testimony was cited by the Board in its decision served September 5, 2007. My work and testimony in these ICC/STB proceedings has helped shape the STB's current railroad rate reasonableness guidelines.

Many of our projects have involved the development of railroad variable cost analyses based on the application of URCS and its predecessor, Rail Form A (RFA). URCS is used to determine STB jurisdiction and is an integral component of the STB's Full-SAC method, new Simplified-SAC standard and recently modified Three-Benchmark approach. I have an extensive working knowledge of the development and application of URCS and RFA. I have prepared URCS cost analyses for thousands of individual railroad movements. I also submitted expert testimony in ICC Ex Parte No. 431 (Sub-No.1), Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for Regulatory Costing Purposes and more recently in STB Ex Parte No. 431 (Sub-No. 3), Review of the Surface Transportation Board's General Costing System.

Proceedings before the Board often involve traffic and market analyses using the Board's Waybill Sample, which is a computer database of approximately 600,000 records of sampled railroad movements. I am extremely familiar with this railroad traffic database. Over the years, I have performed hundreds of analyses using this data which has been used as evidence in merger and other proceedings before the Board.

I am a 1978 graduate of Hampden-Sydney College in Hampden-Sydney, Virginia where I earned a Bachelor of Arts degree. My major areas of study were history and government. My senior paper in college dealt with the History of Railroad Deregulation. I am a 1974 graduate of St. Stephen's School for Boys (now St. Stephen's and St. Agnes School), located in Alexandria, Virginia. My senior project and paper in high school dealt with the ICC and the Energy Crisis of 1973.

My professional memberships included the Transportation Research Forum and the Association of Transportation Law Professionals.

Arch Coal and Great Northern Properties Enter into Montana Coal Lease on Otter Creek Reserves

November 12, 2009 6:03 PM ET

ST. LOUIS, Nov 12, 2009 -- Arch Coal, Inc. (NYSE: ACI) and Great Northern Properties Limited Partnership (GNP) announced today that they have signed a coal lease comprising all of GNP's coal resources in the Otter Creek Tracts located in southeastern Montana. The coal lease will give Arch the right to mine approximately 9,600 acres of GNP-owned minerals that encompass approximately 731 million tons of high-quality, low-cost sub-bituminous coal reserves. As consideration for entering into the lease, GNP will receive a front-end bonus of \$0.10 per ton, or \$73.1 million, which will be payable in equal annual installments over a five-year period.

"The lease of GNP's Otter Creek reserves provides an attractive future growth opportunity for Arch to build a significant position in the Northern Powder River Basin coal region," said Steven F. Leer, Arch's chairman and chief executive officer. "We believe future development of these Montana coal reserves will help competitively serve the northern U.S. power generation market, provide Arch with an additional supply source to export into the fast growing Pacific Rim coal market or possibly house the site of a future coal-conversion facility. Investing in these low ratio reserves now will give us a future cost advantage in the domestic and international energy markets."

"We are pleased to have Arch, a world-class coal company, develop some of GNP's most significant reserves," said Corbin J. Robertson, Jr., chairman and chief executive officer of GNP.

The 731 million tons of low-ratio, sub-bituminous coal reserves, which are low in sulfur dioxide content, are located in the Ashland coalfield southeast of Billings, Mont. These reserves would support the future development of a large-scale, dragline-operated surface coal mine.

The consummation of the Arch-GNP Otter Creek Coal Lease comes on the eve of the State of Montana potentially putting its interests in the Otter Creek coal reserves up for lease as well. The state's ownership comprises about one-half of the Otter Creek area - with GNP and the state owning their respective interests in a checkerboard pattern.

St. Louis-based Arch Coal is the second largest U.S. coal producer. Through its national network of mines, Arch supplies cleaner-burning, low-sulfur coal to U.S. power producers to fuel roughly 8 percent of the nation's electricity. The company also ships coal to domestic and international steel manufacturers as well as international power producers.

Houston-based Great Northern Properties is a privately owned land management company with its lands and minerals largely concentrated in Montana and North Dakota. Formed in 1991 by the Robertson family and American Bailey Mining Limited Partnership to acquire these lands from Burlington Northern Railroad, GNP is the largest private owner of coal reserves in the United States.

Forward-Looking Statements: This press release contains "forward-looking statements" - that is, statements related to future, not past, events. In this context, forward-looking statements often address our expected future business and financial performance, and often contain words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," or "will." Forward-looking statements by their nature address matters that are, to different degrees, uncertain. For us, particular uncertainties arise from changes in the demand for our coal by the domestic electric generation industry; from legislation and regulations relating to the Clean Air Act and other environmental initiatives; from operational, geological, permit, labor and weather-related factors; from fluctuations in the amount of cash we generate from operations; from future integration of acquired businesses; and from numerous other matters of national, regional and global scale, including those of a political, economic, business, competitive or regulatory nature. These uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements. We do not undertake to update our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. For a description of some of the risks and uncertainties that may affect our future results, you should see the risk factors described from time to time in the reports we file with the Securities and Exchange Commission.

Arch Coal Secures State-Controlled Otter Creek Coal Reserves in Montana

March 18, 2010 2:22 PM ET

ST. LOUIS, March 18, 2010 -- Arch Coal, Inc. (NYSE: ACI) today announced that it was the successful bidder for a state coal lease known as the Otter Creek Tracts located in southeastern Montana. Arch made a one-time bonus bid for the lease of \$85.8 million, payable in April 2010. The coal lease will give Arch the right to mine approximately 8,300 acres of state-owned minerals. Arch now controls approximately 1.5 billion tons of coal in Montana's Otter Creek area, including previous reserve additions such as the coal lease secured in November 2009 through Great Northern Properties Limited.

"We view the combined Otter Creek coal reserves as a strategic platform for future growth in the Northern Powder River Basin," said Steven F. Leer, Arch's chairman and chief executive officer. "The addition of the Montana state reserves further expands and strengthens our position while affording us greater flexibility in future site development. As previously stated, we believe these Northern PRB reserves will help us competitively serve U.S. power producers, supply additional coal for export to emerging Asia or possibly house the site of a future coal-conversion facility."

St. Louis-based Arch Coal is the second largest U.S. coal producer. Through its national network of mines, Arch supplies cleaner-burning, low-sulfur coal to U.S. power producers to fuel roughly 8 percent of the nation's electricity. The company also ships coal to domestic and international steel manufacturers as well as international power producers.

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Arch Coal Acquires Equity Interest in West Coast Terminal

January 12, 2011 8:26 AM ET

ST. LOUIS, Jan. 12, 2011 -- Arch Coal, Inc. (NYSE: ACI) today announced that it has acquired a 38 percent interest in Millennium Bulk Terminals-Longview, LLC ("MBT"), the owner of a bulk commodity terminal on the Columbia River near Longview, Wash., in exchange for \$25 million plus additional consideration upon the completion of certain project milestones.

"This transaction gives us a direct stake in participating in the growth of U.S. coal exports off the West Coast," said Steven F. Leer, Arch's chairman and chief executive officer. "With our superior operating position in the Powder River Basin and Western Bituminous Region, we have the capability to service growing coal demand in Asia, the world's largest and fastest-growing coal market. We believe this first project - along with others in the pipeline - will provide Arch with more exposure to the seaborne thermal market and will further unlock the value inherent in our western coal assets."

Under terms of the agreement, Arch will control 38 percent of the terminal's throughput and storage capacity to facilitate export shipments of coal off the west coast of the United States. The facility will be capable of handling panamax-sized vessels, which account for the vast majority of the seaborne thermal coal trade for the Asia-Pacific market. The terminal also is dual served by the Union Pacific and Burlington Northern Santa Fe railroads, which will provide Arch with the flexibility to export its southern Powder River Basin and Western Bituminous coals, and eventually coal from its recently-acquired Montana reserves.

The MBT terminal, a former aluminum smelter site, is currently operated as a bulk commodity facility. MBT continues to work on obtaining the required approvals and necessary permits to complete dredging and other upgrades to enable coal, alumina and cementitious material shipments through the brownfield terminal. Once completed, coal shipments could begin in 2012. As currently planned, the MBT facility will utilize existing infrastructure with some minor modifications to handle loading 5 million tons of coal per year in addition to other types of bulk commodities.

Encompassing more than 400 acres, the industrial site offers the potential for terminal expansion should market demand warrant. Should MBT elect to expand the facility, necessary regulatory approvals would be sought and additional infrastructure investment would be required.

MBT recently completed the purchase of the marine terminal from Chinook Ventures, Inc. Australia-based Ambre Energy owns the remaining 62 percent of the terminal. Ambre Energy is a progressive mining and technology company, acquiring coal and oil shale resources in Australia and the United States. "We are pleased to be partners with Ambre and value their experienced management team," said John W. Eaves, Arch's president and chief operating officer.

According to MBT estimates, the terminal development project should create 120 temporary jobs during the build-out of the facility, and ultimately would result in 70 permanent jobs from ongoing operations at the terminal. The construction of the export facility will generate \$2.7 million in sales tax revenue for state and county governments, while expected income tax revenue - once the facility is fully operational - will provide \$1.2 million annually for state and county governments.

St. Louis-based Arch Coal, Inc. is the second largest U.S. coal producer. Through its national network of mines, Arch supplies cleaner-burning, low-sulfur coal to fuel roughly 8 percent of the nation's electricity. The company also ships coal to domestic and international steel manufacturers as well as international power producers.

Forward-Looking Statements: This press release contains "forward-looking statements" - that is, statements related to future, not past, events. In this context, forward-looking statements often address our expected future business and financial performance, and often contain words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," or "will." Forward-looking statements by their nature address matters that are, to different degrees, uncertain. For us, particular uncertainties arise from changes in the demand for our coal by the domestic electric generation industry; from legislation and regulations relating to the Clean Air Act and other environmental initiatives; from operational, geological, permit, labor and weather-related factors; from fluctuations in the amount of cash we generate from operations; from future integration of acquired businesses; and from numerous other matters of national, regional and global scale, including those of a political, economic, business, competitive or regulatory nature. These uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements. We do not undertake to update our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. For a description of some of the risks and uncertainties that may affect our future

Arch Coal Announces Agreement With Canada's Ridley Terminal for Pacific Coast Exports

January 18, 2011 4:52 PM ET

ST. LOUIS, Jan. 18, 2011 -- Arch Coal, Inc. (NYSE: ACI) today announced an agreement with Canadian Crown Corporation Ridley Terminals Inc. ("RTI") - a coal and other bulk commodity marine terminal located near Prince Rupert, British Columbia - to facilitate coal exports to Pacific Rim markets. The five-year agreement will give Arch throughput capacity at the terminal of up to 2 million metric tons of coal for 2011 and up to 2.5 million metric tons of coal for 2012 through 2015.

"This transaction is another important step in accomplishing our strategic objective of expanding Powder River Basin coal sales into the Asia-Pacific region," said Steven F. Leer, Arch's chairman and chief executive officer. "This throughput agreement gives us direct, immediate access to the growing seaborne thermal market. It also complements our recently announced investment in the Millennium Bulk Terminal in Longview, Wash., and other continuing terminal negotiations."

RTI can load up to 12 million metric tons of coal annually, with expansion plans that could increase the facility's capacity to 24 million metric tons by 2015. Coal accounts for more than 80 percent of RTI's total volume, and Asia is the primary destination for the products shipped through the terminal. The terminal shipped 8.3 million metric tons of coal during 2010.

"RTI's vision is to provide value to its parent company and expand its role as a leading trade gateway between North American and world markets," said George Dorsey, president of Ridley Terminals. "This agreement is a very important contract for the terminal. Arch Coal's guaranteed U.S. coal volumes will support our goal of doubling our capacity by 2015."

Located on Ridley Island, RTI affords reduced sailing time to Asia - by more than one day compared to Vancouver, and nearly three days compared to Long Beach, Calif. RTI can handle panamax as well as capesize vessel loadings of up to 280,000 metric tons.

St. Louis-based Arch Coal, Inc. is the second largest U.S. coal producer. Through its national network of mines, Arch supplies cleaner-burning, low-sulfur coal to fuel roughly 8 percent of the nation's electricity. The company also ships coal to domestic and international steel manufacturers as well as international power producers.

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News Release

BNSF Plans \$111 Million Capital Program in Montana to Maintain and Improve Rail Capacity

FORT WORTH, TEXAS, May 24, 2012:

BNSF Railway Company (BNSF) plans to invest an estimated \$111 million on maintenance and rail capacity improvement projects in Montana this year.

BNSF will continue its robust track maintenance program in Montana, which will include 956 miles of track surfacing and undercutting work, the replacement of 54 miles of rail and about 210,000 ties, as well as significant signal upgrades for federally mandated positive train control (PTC).

"BNSF's investments will improve our ability to provide rail freight services to Montana businesses and communities, and will expand opportunities to create more jobs and growth for the Montana economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Montana are part of BNSF's total 2012 capital commitment of \$3.9 billion. The largest component of the capital plan is spending \$2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately \$1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Montana. The program also includes about \$300 million for federally mandated positive train control and \$400 million for terminal, line and intermodal expansion and efficiency projects.

U.S. Department of Commerce economic data indicates that every dollar invested in freight railroads yields \$3 in economic output and according to a Department of Commerce economic model, every freight rail job supports another 4.5 jobs somewhere else in our economy.

About BNSF

BNSF Railway is one of North America's leading freight transportation companies operating on 32,000 route miles of track in 28 states and two Canadian provinces. BNSF is one of the top transporters of consumer goods, grain, industrial goods and low-sulfur coal that help feed, clothe, supply, and power American homes and businesses every day. BNSF and its employees have developed one of the most technologically advanced, and efficient railroads in the industry. We work continuously to improve the value of the safety, service, energy, and environmental benefits we provide to our customers and the communities we serve. You can learn more about BNSF at www.BNSF.com.

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BNSF Railway Company
2650 Lou Menk Dr. 2nd Floor
Fort Worth, TX 76131-2830
P.O. Box 961057
Fort Worth, TX 76161-0057
Phone: (817) 352-1000

<http://www.bnsf.com/media/news-releases/2012/may/2012-05-24a.html>

News Release

BNSF plans \$106 million capital program in Washington to maintain and expand rail capacity

FORT WORTH, TEXAS, August 2, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated \$106 million on maintenance and rail capacity improvement and expansion projects in Washington this year.

BNSF's 2012 capacity enhancement projects in Washington include the construction of a new lead to access the Port of Longview, as well as significant signal upgrades for federally mandated positive train control (PTC).

BNSF will also continue its robust track maintenance program in Washington, which will include 1,020 miles of track surfacing and undercutting work, and the replacement of 56 miles of rail and about 178,000 ties.

"BNSF's investments will improve our ability to provide rail freight services to Washington businesses and communities, and will expand opportunities to create more jobs and growth for the Washington economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Washington are part of BNSF's total 2012 capital commitment of \$3.9 billion. The largest component of the capital plan is spending \$2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately \$1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Washington. The program also includes about \$300 million for federally mandated positive train control and \$400 million for terminal, line and intermodal expansion and efficiency projects.

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APPENDIX 12



Country & Industry Forecasting: IHS Global Insight

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Same-Day Analysis

Chinese Government Plans Five Major Energy Bases During 12th Five-Year Plan

Published: 1/10/2011

China's government has announced that during the 12th Five-Year Development Plan period (2011–15) five major energy bases will be developed in Shanxi, the Ordos Basin, eastern Inner Mongolia, south-western China, and Xinjiang.

IHS World Markets Energy Perspective	
Significance	The plan to build energy bases during the 12th Five-Year Development Plan is designed to support national energy supply availability, and the economic development of less prosperous inland areas of China, in line with the government's aim to reduce socio-economic disparities in the country.
Implications	The formation of energy bases in remote areas of China will necessitate large-scale construction of energy-transmission infrastructure, including railways for coal transportation, gas pipelines, and long-distance electricity transmission lines.
Outlook	National Development and Reform Commission estimations in the 12th Five-Year Plan suggest coal will remain the primary contributor to total energy consumption, although non-fossil fuel resources are due to become increasingly important in the consumption mix, rising to 11% of China's energy needs by 2015.

Energy Bases

China's government has announced that during the 12th Five-Year Development Plan period (2011–15), five major energy bases will be constructed throughout the country. Media reports suggest the five energy bases will be in Shanxi province, the Ordos basin, eastern Inner Mongolia, Xinjiang autonomous region, and south-western China, and are designed to support national energy supply availability as well as the economic development of less prosperous inland areas.

Shanxi province—the largest coal-producing province in China—is a natural choice for a national energy base, given the coal dependent nature of China's energy-consumption mix. The 12th Five-Year Plan submitted by Shanxi advocates consolidation of the provincial coal industry to enhance productivity and regulatory oversight, as well as production efficiency, in line with national government objectives. This consolidation effort has already resulted in the closure of hundreds of small mines and this effort will continue—with previous reports suggesting the province is aiming to bring down the number of coal mines to 800 by 2015. To improve energy efficiency, Shanxi and other provinces will continue to use new technologies to upgrade coal-fired power plants. Shanxi seeks to diversify its energy resource base through to 2015 by promotion of alternatives to conventional coal production, such as coalbed methane (CBM), coal liquefaction, coal gasification and natural gas exploitation. Intensive coal mining activities in Shanxi have led to environmental degradation and resource exhaustion, which has prompted the provincial authorities to look at new ways of developing their domestic resources. Under the 12th Five-Year Plan, Shanxi's coal-to-liquid output is set to hit 15 million t/y, its coal-to-olefin output will hit 10 million t/y, and its oil and gas output is set to rise to 60 million t/y. Furthermore, development of coal-liquefaction techniques can improve domestic fuel supply availability—important in the context of the plateau in domestic crude production—and support a key pillar of the 12th Five-Year Plan, namely accelerating the development of advanced energy technologies based on current needs.

Inner Mongolia is set to be another key coal-producing region, with the government planning to increase output to hit 1.2 billion tonnes by 2015, and as in Shanxi, the government is looking to develop coal-conversion capacity in this region. Under the 12th Five-Year Plan, the National Development and Reform Commission (NDRC) expects coal consumption to drop from 70% to 63% of total energy consumption, although in real terms consumption is expected to increase from 3.3 billion tonnes to 3.7 billion tonnes. The government is looking towards other energy bases in Xinjiang, the Ordos basin, and areas of south-western China to meet a projected gas consumption level of 260 bcm/y by 2015, a staggering projected increase on the 91.7 bcm/y of gas consumed in 2009, according to the BP Statistical Review. With large reserves discovered in the Changqing oil and gas province and the south-west gas province, and tantalizing shale gas prospects, production will undoubtedly continue its rapid increase, although meeting this target will also be dependent on rapid increases in imported gas supplies both via newly built transmission infrastructure from Central Asia and LNG liquefaction facilities.

For crude oil, the aim is more modest—to stabilise domestic production over the next five years—in view of difficulties in increasing year-on-year proven reserve levels, although some crude output growth is expected from fields like Karamay and Tahe in Xinjiang, which can support expansion of refining and petrochemical facilities in north-west China (see **China: 30 January 2009: China's CNPC and Sinopec Vow to Ramp Up Xinjiang Crude Output**). The government's stated aim of

promoting efficiencies in exploration will probably mean a wider application of horizontal drilling and development of shale oil reserves to boost domestic production levels.

Outlook and Implications

A key plank of China's 12th Five-Year Plan is increasing non-fossil fuels in the energy mix, both to preserve finite non-renewable energy resources and to reduce the amount of carbon dioxide emitted per unit of GDP. Development of domestic hydropower capacity will play a key role in meeting China's national carbon-intensity targets over the next decade, with installed hydropower capacity due to hit 250 million kilowatts by 2015, according to Jiang Bing of the NDRC, while nuclear power capacity is set to rise to 39 million kilowatts. Overall, the National Energy Administration (NEA) estimates that non-fossil fuel capacity will make up 11% of China's energy needs by 2015. China is looking to the south-west region to reach the new hydropower capacity target, while new research and development centres for wind and solar energy are due to be established in Inner Mongolia, a region already named as one of China's wind power bases.

The development of energy bases is aimed at improving production efficiencies through clustering facilities, which can then share resources, while their location in relatively remote locations will necessitate significant investments in energy infrastructure, from coal railway transportation routes, to transnational gas pipelines and long-range electricity-transmission cables. The Chinese government hopes that the relocation of energy bases into these inland areas will improve employment opportunities for local people and revenue opportunities for provincial governments, which can be reinvested to bring down socio-economic disparities with China's more developed coastal areas.

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APPENDIX 13

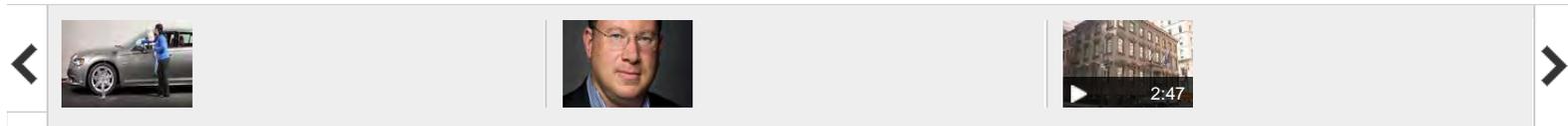
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China Boosts Energy and Emissions Goals After Record Smog

By Bloomberg News - Mar 5, 2013 5:15 AM ET

2 COMMENTS + QUEUE

China will step up efforts to cut its emissions and improve energy efficiency this year after record air pollution in Beijing, where the national legislature opened its annual meeting today.

The government will reduce carbon emissions and energy use per unit of gross domestic product by at least 3.7 percent in 2013 and carry out carbon-trading trials, the National Development and Reform Commission said in a report today. China's top economic planning agency said carbon intensity fell 5 percent, and energy use per unit of GDP slid 3.6 percent last year, beating targets of 3.5 percent.



The government will reduce carbon emissions and energy use per unit of gross domestic product by at least 3.7 percent in 2013 and carry out carbon-trading trials, the National Development and Reform Commission said in a report today. Photographer: Feng Li/Getty Images

The goals add to evidence that Premier Li Keqiang is preparing to rein in smog and squeeze more out of China's energy supply when his administration takes over from Wen Jiabao this month. China's cabinet, the State Council, estimates it may spend 2.37 trillion yuan (\$380 billion) on conservation and emissions cuts in the five years through 2015. The nation's oil companies have announced plans for billions of yuan of refinery upgrades that will produce cleaner fuels.

"The energy-intensity and carbon-intensity targets for this year will probably be met," Charlie Cao, an analyst at Bloomberg New Energy Finance in Beijing, said by phone

today. "The five-year targets by 2015 are more challenging to achieve especially if economic growth eases in the following years."

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The report from the NDRC said that China added 15 gigawatts of wind energy capacity last year and 3 gigawatts of solar. It endorsed targets to add 21 gigawatts of hydroelectric capacity, 18 gigawatts of wind and 10 gigawatts of solar this year.

Official measurements of fine particles in the air measuring less than 2.5 micrometers, which pose the greatest health risk, rose to a record 993 micrograms per cubic meter in Beijing on Jan. 12, compared with World Health Organization guidelines of no higher than 25.

The nation plans to reduce energy consumption per unit of GDP by 16 percent and carbon intensity by 17 percent in the five years ending 2015.

“We will make greater efforts to conserve energy and resources and protect the environment,” the NDRC said. “We will continue to reduce the discharge of major pollutants.”

Price Mechanism

The government will introduce reforms to the pricing mechanisms for oil products and natural gas, the report showed. The NDRC started trial gas-price programs in Guangdong and Guangxi provinces in southern China in December 2011 and said they would be extended nationwide after an evaluation.

Oil-product pricing reforms may be announced after the National People’s Congress, [Neil Beveridge](#), a senior research analyst at Bernstein in [Hong Kong](#), said Feb 25. China may let oil companies set fuel prices according to guideline rates posted by the government, the official Xinhua news agency reported March 28, citing Peng Sen, a former vice chairman at the NDRC.

Recent environmental concerns, a “tight” gas market with strong demand growth and the country becoming more dependent on pipeline and liquefied natural gas imports point to an acceleration of reforms this year and prices may increase, Scott Darling, an analyst at [Barclays Plc \(BARC\)](#) in Hong Kong, said in a report Jan 24.

China maintained its economic growth target at 7.5 percent for this year, according to Premier [Wen Jiabao](#)’s work report in Beijing today before his final opening address to almost 3,000 lawmakers at the annual meeting of the NPC. GDP expanded [7.9 percent](#) in the fourth quarter compared with 7.4 percent in the previous period, snapping a seven-quarter slowdown, government figures showed Jan. 18.

To contact Bloomberg News staff for this story: Penny Peng in Beijing at ppeng18@bloomberg.net

To contact the editor responsible for this story: Alexander Kwiatkowski at akwiatkowski2@bloomberg.net

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