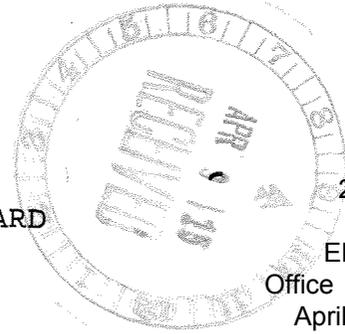


Before the
SURFACE TRANSPORTATION BOARD



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April 9, 2015
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Finance Docket No. 30186

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

SUPPLEMENTAL COMMENTS ON SUPPLEMENTAL APPLICATION

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Attorney for Jay L. Schollmeyer

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Preliminary Statement

Jay L. Schollmeyer,^{1/} for and on behalf of SMART-Transportation Division, General Committee of Adjustment-GO386, pursuant to the Board's decisions, served November 21, 2014 and implemented December 9, 2014, as amended March 17, 2015, presents this supplement to the comments previously submitted April 2, 2013,^{2/} with respect to the captioned Supplemental Application for Construction and Operation Authority (Supp.App.) which had been filed December 17, 2012 at the Board by Tongue River Railroad Company, Inc. (TRRC).

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

^{2/}The April 2, 2013 comments were filed by United Transportation Union, General Committee of Adjustment GO-386 (UTU/GO-386), predecessor of SMART-TD(GO-386). Merger of UTU and SMART was implemented August 2014.

These supplemental comments follow two years of discovery proceedings engaged in by TRRC and BNSF Railway Company (BNSF), on the one hand, and Northern Plains Resource Council (NPRC), on the other hand.

These supplemental comments are circumscribed by the Board's decisions, served November 21, 2014 and implemented December 9, 2014, that limit SMART-386's supplemental comments to those matters discussed in UTU/GO-386's comments submitted two years earlier on April 2, 2013.^{3/}

These supplemental comments also are circumscribed by statements in the Supplemental Application that BNSF will shortly file an application to control TRRC (Supp.App. 13), and an agreement will be entered into between TRRC and BNSF governing BNSF's operation of the line. (Supp.App. 11, 28, 30, Ex. D).

Accordingly, SMART-386 reserves the right to file additional comments in the event the opportunity arises to do so in connection with its pending December 11, 2014 petition, supra, or by virtue of commitments in the December 17, 2012 Supplemental Application, such as operational terms which may govern the TRRC-BNSF operating agreement.

ARGUMENT

SMART-386 has reviewed the April 2, 2013 comments of its UTU/GO-386 predecessor, and incorporates them in this current supplement, without necessity for repetition. At the present time,

^{3/}SMART-386 objected to this limitation, and sought reconsideration on December 11, 2014. TRRC responded on January 7, 2015. The SMART-386 petition remains undecided and pending.

and on the present record, SMART-386 does not oppose TRRC's request to construct the line, but the Board should deny or dismiss TRRC's request to operate the line, in light of BNSF's request for Board approval to operate the same line; and SMART-386 does not oppose BNSF's request to solely operate the line. Moreover, there is no evidence presented to justify two carriers operation of the line--such as would be required from a cost, service, efficiency, or safety standpoint.

The clear understanding from the language of the Supplemental Application, and the Board's understanding thereof, is that the line would be operated solely by BNSF. See: Supp.App. 1,5,11,30, 32; Ex. D, p. 4; STB, 1/8/13, at 3; STB 2/26/13, at 4. The Board recently reaffirmed its understanding that TRRC would construct and for BNSF to operate the line. STB 11/21/14, at ln.2. Nevertheless, ambiguity has arisen of concern to BNSF employees, particularly remarks from a BNSF official who served as President and a director of TRRC. (Supp.App., App. A, 4).^{4/}

The recent NPRC submission includes the deposition of the same BNSF official, Stevan Bobb, taken March 2, 2015, again indicating ambiguity concerning the operator of the line. (NPRC, 3/27/15, Ex. B) (highly confidential version). However, in the interim, TRRC on March 6, 2015, advised the Board that the BNSF individual was no longer President and a director of TRRC. (TRRC, 3/6/15, ID237889, Atta. 2). Cf. Supp.App. 12.

^{4/} An example of employee concerns, see: UTU/GO-386 Supp.Comments, 4/2/13, at 9.

CONCLUSION

The Board should dismiss or deny approval of the TRRC Supp. App. insofar as TRRC would operate the Colstrip Alignment. At this time, and on this record, SMART-386 does not object to TRRC's request to construct the line, or to BNSF's request to operate the line.

Respectfully submitted,



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April 9, 2015

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Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.



Washington DC

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