

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 30186

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

PETITION FOR RECONSIDERATION OF PROCEDURAL DECISION

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Preliminary Statement

Jay L. Schollmeyer,^{1/} for and on behalf of SMART-Transportation Division (SMART-TD), General Committee of Adjustment (GO-386), submits this petition for reconsideration, in part, of the Surface Transportation Board (STB, or Board) decision dated September 9, 2014 (served September 10) (Decision). The decision resolves numerous discovery issues between Northern Plains Resource Council (NPRC), on the one hand, and Tongue River Railroad Company, Inc. (TRRC), BNSF Railway Company (BNSF) and Arch Coal, Inc., on the other hand. (Decision 1-8). The issues concerned potential evidence to be produced for the transportation issues governing TRRC's supplemental application, pursuant to 49 U.S.C. §10901, filed December 17, 2012, and accepted January 8, 2013. The

^{1/} General Chairman for SMART-Transportation Div., with offices at 400 E. Evergreen Blvd., Vancouver WA. SMART-TD is the successor to United Transportation Union, merger implemented August 2014.

supplemental application proposes construction and operation^{2/} of a 42-mile railroad line between Colstrip and Ashland/Otter Creek, MT. The Decision concludes with a procedural schedule calling for NPRC to submit its reply November 17, 2014, with TRRC to follow with any rebuttal on December 8, 2014.

SMART-TD (GO-386) seeks reconsideration for that part of the Decision establishing the November 17 and December 8, 2014 dates for submission of reply/rebuttal materials. SMART-TD (GO-386) seeks an opportunity to submit supplemental comments, should it deem desirable, in response to the NPRC's forthcoming November 17 submission. A period of 14 days would appear reasonable, with a similar extension of time for TRRC to file any rebuttal.

ARGUMENT

SMART-TD (GO-386), and several other parties to the proceeding,^{3/} submitted their comments to the supplemental application on April 2, 2013, pursuant to the STB's January 8, 2013 directive, to which TRRC replied on June 7, 2013. However, although NPRC and Rocker Six Cattle Company (collectively, NPRC parties) also filed comments on April 2, 2013, such were merely pro forma, for NPRC on June 5, 2013, two days in advance of TRRC's reply to the April 2, 2013 filings, requested a revised procedural schedule calling for extensive discovery.

^{2/}BNSF, which would operate the line, appears to be a joint applicant.

^{3/}Montana Environmental Information Center, National Wildlife Federation, and Sierra Club.

Thus there ensued an 18-month discovery period between TRRC and NPRC, with the STB not ending the matter until the present December 8, 2014 due date for completion of transportation issue submissions. It has been an even longer period since the April 2, 2013 SMART-TD (GO-386) comments, and those of other parties.

SMART-TD (GO-386) does not, at least at this time, seek access to all discovery materials exchanged between NPRC, TRRC, BNSF, and Arch Coal, for much may be immaterial or not in issue. However, SMART-TD (GO-386) does require the opportunity to review discovery materials which are advanced in evidence or otherwise made part of the November 17, 2014 supplemental response (reply) of NPRC, and for SMART-TD (GO-386) to file supplemental comments thereafter, as SMART-TD (GO-386) may deem necessary.

WHEREFORE, the Board should reconsider its September 10, 2014 Decision, at page 9, and provide that SMART-TD (GO-386) may submit supplemental comments responsive to the November 17, 2014 filing, within 14 days thereafter.^{4/}

Respectfully submitted,


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September 17, 2014

Attorney for Jay L. Schollmeyer

^{4/} SMART-TD (GO-386) believes the Board, as a matter of fairness and due to the considerable time lapse since April 2, 2013, may wish to extend a similar opportunity for all parties. SMART-TD (GO-386) understands there may have been changes in circumstances (such as proposed route alignment) in the intervening period.

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.



Gordon P. MacDougall

Washington DC