

Statement of Matthew Bornstein
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TONGUE RIVER RAILROAD COMPANY, INC.-CONSTRUCTION
AND OPERATION-WESTERN ALIGNMENT
STB Finance Docket No. 30186 (Sub-No.3)

This case involves a petition for reconsideration filed by the United Transportation Union-General Committee of Adjustment and the United Transportation Union-Montana State Legislative Board. Petitioners ask the Board to reconsider its decision that allowed Tongue River Railroad Company, Inc., a corporation, to be substituted for Tongue River Railroad Company, a partnership, as the applicant for authority to construct and operate the rail segment involved here.

The petitioners' primary argument takes issue with the information describing the new applicant. Petitioners claim, generally, that the information currently in the record about the substituting corporate entity fails to satisfy the Board's regulations. The petitioners also argue that the Board lacks sufficient information about another corporate entity involved in this proceeding, Railco, LLC., which is a general partner of the entity that controls both the partnership and the corporation.

The draft decision before you finds that the petitioners' arguments do not warrant disturbing the Board's prior decision. The draft decision points to the information regarding the corporation's ownership structure and industrial affiliations that was filed in the original application, and later supplemented, and notes that this information does, in fact, comply with the Board's regulations. The decision further explains that there is no need for additional

information concerning Railco given that its involvement does not have an impact on the substitution proceeding, that Railco is far-removed from the actual applicant, and that it had become part of the overall organizational structure prior to the substitution-of-parties request.

The draft decision also rejects petitioners' argument that a finding that an applicant is financially fit is affected by whether the entity is organized as a partnership or a corporation. The draft explains that a finding of financial fitness turns on whether the applicant has sufficient funds, and that whether the applicant is organized as a partnership or a corporation has little or no bearing on this determination.

While the draft decision would deny the petition, it would also indicate that it would nonetheless be helpful for applicant to provide the Board with charts diagramming its controlling entities and any relationships with industries to be served by the line. This would require the applicant to provide charts similar to those submitted in the original Tongue River I proceeding.

If you have any questions, we'll be happy to respond to them now.