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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 30186

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

PETITION OF TONGUE RIVER RAILROAD COMPANY, INC. FOR EXTENSION OF
TIME TO COMPLETE DISCOVERY

 GRANTED Office of Proceedings	DECISION ID NO.: <u>44068</u>
	DECIDED DATE: <u>10/14/14</u>
	SERVICE DATE: <u>10-14-14</u>
	APPROVED: <u>Rachelle Campbell</u> Director
☐	

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October 7, 2014

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In a decision served on September 10, 2014 in the above-captioned proceeding, the Board granted in part and denied in part a motion to compel additional discovery filed by Northern Plains Resource Council and Wally McRae/Clint McRae d.b.a. Rocker Six Cattle Company (collectively, "NPRC"). That decision also set forth a new procedural schedule under which Tongue River Railroad Company, Inc. ("TRRC") and NPRC would be required to complete all discovery by October 25, 2014, NPRC would be required to submit its reply based on discovery by November 17, 2014 and TRRC would submit its rebuttal to NPRC by December 8, 2014. Pursuant to 49 CFR § 1104.7, TRRC hereby requests a postponement of the above deadlines pending the submission by TRRC of a proposed new schedule by no later than November 25.

In support of this request, TRRC notes that the September 10 decision requires TRRC to obtain and review a large number of additional documents. Specifically, the decision requires TRRC to gather and review, *inter alia*, (1) an additional two years' worth of documents from the files of BNSF Railway Company and Arch Coal, Inc. relating to coal demand, markets and the railroad's projected revenues; (2) documents relating to expected costs and revenues of the Otter Creek mine; (3) documents relating to TRRC's access to funds and any limitations on TRRC's

ability to act independently of its owners; and (4) documents relating to the marketability of Wyoming coal.

TRRC has diligently begun the process of identifying and collecting the files containing potentially responsive documents, and that process is still ongoing. However, the process of completing that document collection and reviewing the documents for responsiveness could prove to be a time-consuming exercise if a large volume of documents needs to be reviewed. At this time, the volume of documents that will need to be reviewed is not yet fully determined, but it appears likely that the document production will take several weeks to complete. Further, as the Board is aware NPRC will be conducting four depositions once the document production is completed. Those depositions cannot be scheduled until the document discovery is completed or nearly completed. As a result, there is no realistic possibility that the written discovery can be completed and the four depositions conducted by an October 25 discovery deadline.

Accordingly, TRRC hereby requests a postponement of the October 25 deadline and the subsequent filing deadlines. Should such an extension be granted, TRRC will consult with counsel for NPRC to provide the Board with a proposed new discovery deadline, and deadline for further submissions, no later than November 25, 2014. By or before that time, TRRC expects to be in a better position to evaluate what it believes would be a realistic new deadline for the completion of discovery. Obviously, as the applicant in this proceeding, TRRC has every incentive to move this process along as expeditiously as reasonably possible.¹

TRRC has consulted with NPRC counsel regarding this extension request. NPRC has authorized TRRC counsel to state that it consents to this request.

¹ TRRC is responding in opposition to the September 17, 2014 motion of SMART-Transportation Division, General Committee of Adjustment seeking a right to make a further submission.

For all of these reasons, TRRC respectfully urges that this Petition be granted and that the Board postpone the due date for the completion of discovery with the understanding that TRRC will provide the Board with a proposed new discovery completion deadline by no later than November 25, 2014, as well as proposed new deadlines for the submission of a reply based on the discovery by NPRC and a rebuttal by TRRC.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David H. Coburn", followed by a long horizontal flourish.

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October 7, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 7nd day of October 2013, I have caused a copy of the foregoing Petition for Extension of Time to be served by first-class mail, postage prepaid, on counsel for the parties of record in STB Finance Docket Nos. 30186.

A handwritten signature in cursive script, appearing to read "David H. Coburn", with a long horizontal flourish extending to the right.

David H. Coburn