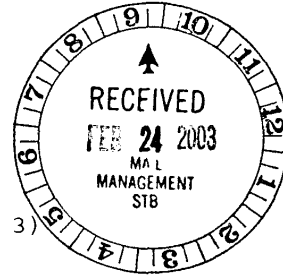


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Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 30186 (Sub-No. 3)

TONGUE RIVER RAILROAD COMPANY
--CONSTRUCTION AND OPERATION--
IN ROSEBUD AND BIG HORN COUNTIES, MT

REPLY TO MOTION BY APPLICANT FOR LEAVE
TO SUBMIT RESPONSE TO OPPOSITIONS TO
PETITION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE

ENTERED
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FEB 24 2003

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GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

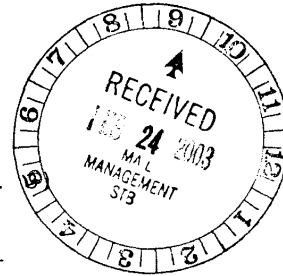
Attorney for United Transportation
Union, General Committee of Adjust-
ment on The Burlington Northern and
Santa Fe Railway Company, and
Montana State Legislative Board.

Due Date: March 5, 2003

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 30186 (Sub-No.

TONGUE RIVER RAILROAD COMPANY
--CONSTRUCTION AND OPERATION--
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Preliminary Statement

Protestants, United Transportation Union-General Committee of Adjustment (UTU/GO-386), ^{1/} and United Transportation Union-Montana State Legislative Board (UTU-MT), ^{2/} jointly submit this reply to the motion by Tongue River Railroad Company (TRRC), applicant, filed February 13, 2003, for leave to submit a response to the opposition to its petition for leave to file supplemental evidence. ^{3/} In short, applicant TRRC, by its February 13, 2003 motion seeks to file a reply-to-reply, which ordinarily is impermissible under the Board's rules. 49 CFR §1104.13(c).

^{1/} John D. Fitzgerald, General Chairman, United Transportation Union, with offices at 400 E. Evergreen Blvd., Vancouver, WA 98660.

^{2/} Francis G. Marceau, Director, with offices at 98 Sussex Drive, Kalispell, MT 59901.

^{3/} TRRC's motion is directed to two replies. We understand there exists at least a third opposition, that filed by Native Action.

RELY TO MOTION

TRRC's motion asserts filing a reply-to-reply has been sanctioned by the Board where it will not cause delay or prejudice any party. Here, the delay would be to TRRC itself, whereas prejudice would be to the opposition parties, unless afforded an opportunity to respond to the latest TRRC filing.

TRRC's reply-to-reply has a separate section addressed to the reply by these protestants, filed February 6, 2003, plus a footnote concerning the Dakota, Minnesota & Eastern Railroad project. (TRRC Response, 2/13/03, pp. 2-4, 5 n.3). TRRC has somewhat modified its proposed procedure schedule, to as to defer "specifics" of the schedule until after filing the supplemental evidence. (TRRC Response, 2/13/03, 3):

"...TRRC would not oppose deferring any Board Board consideration of the specifics of such a schedule until after it has submitted its supplemental evidence and the Board has had the opportunity to review the scope of the evidence and, on the basis of that information, set an appropriate schedule for responsive filings."

We do not believe the Board should give any advance indication or approval for TRRC to file its supplemental evidence. There has been a three-year suspension of activity in processing this application. TRRC should file its supplemental evidence and take its chances.

TRRC points to two situations where applicants were permitted to supplement their evidence in a pending proceeding. (TRRC Response, 2/13/03, 4 n.2). Neither citation is in point. In Central Kansas, the Board allowed filings, but declined to resolve

the issues, directing the parties to State courts; in Idaho Northern, the evidence was insufficient to decide an abandonment case, handled under expedited procedures, so that the Board itself requested additional evidence. In this TRRC case, it has been the applicant which deferred its presentation, and for an extensive period.

There are also practical reasons that dictate a fresh filing without preconditions, some of which were spelled out in our February 6, 2003 reply. A considerable number of our February 6, 2003 mailings to those on the July 1998 service list were returned as not forwarded, apparently owing to the lapse of time after address changes. A new Federal Register notice clearly is necessary.

TRRC claims its project could not have a major impact on the DM&E project, as the two carriers would serve different mines. However, an examination of the TRRC and DM&E indicate similar coal consuming concerns have been involved in both proceedings.

CONCLUSION

TRRC's motion should be denied; if not denied, this reply should be accepted as supplemental to our February 6, 2003 reply.

Respectfully submitted,


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1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for United Transportation
Union, General Committee of Adjust-
ment on The Burlington Northern and
Santa Fe Railway Company, and
Montana State Legislative Board.

February 24, 2003

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


Gordon P. MacDougall