

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



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

TONGUE RIVER RAILROAD CO.-CONSTRUCTION
AND OPERATION-WESTERN ALIGNMENT

PRELIMINARY RESPONSE TO SUPPLEMENTAL
EVIDENCE OF TONGUE RIVER RAILROAD COMPANY

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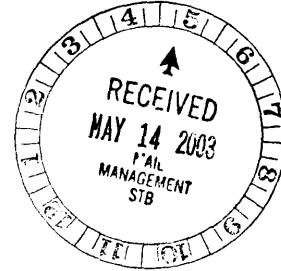
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Dated: May 14, 2003

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SURFACE TRANSPORTATION BOARD

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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 preliminary response to "Supplemental Evidence of Tongue River Railroad Company," filed May 1, 2003, by applicant, Tongue River Railroad Company (TRRC).

This response is not directed to the actual "evidence" proposed by TRRC in its filing, but rather to the procedure suggested for adoption by the Surface Transportation Board (Board) for responses to the TRRC supplemental evidence, contained in the preface to TRRC's evidentiary filing. (TRRC, 5/1/03, 3-4). In its May 1, 2003 filing, TRRC urges that the Board require the public have a maximum of 20 days from the Board's issuance of a

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

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

procedural order within which to submit responsive evidence, with TRRC to reply 20 days thereafter. (Ibid.).

These protestants mentioned the matter of procedure in their petition for reconsideration, filed March 31, 2003, at pp. 3-6.

The Board should not adopt TRRC's proposed procedure. The Board should adopt the following procedures, at a minimum:

1. When the Board publishes Federal Register notice,^{3/} such notice should provide that any person desiring to participate as a party of record by filing comments, and who may have not done so previously, may now do so by filing a notice of intent, after which the Board will issue a revised list of all persons who have given notice of their intent. This "notice of intent" process was adopted by the Board in its June 23, 1998 notice. 63 Fed. Reg. 34212-14.^{4/} The Board should encourage such additional participation. After a lapse of 5 years, it is necessary for the Board to again invite participation by the public, and to permit additional participants, and not confine parties to those who may have been active five years ago.

2. The Board's rules for line construction proceedings provide that an applicant should promptly furnish a copy of its documents to an interested party upon request. 49 CFR 1150.10(b). The Board's decision should require applicant not only to observe this requirement for existing parties as shown in the July 29, 1998 service list but, in addition, those persons now desiring to

^{3/} The Board's March 11, 2003 decision indicated that a fresh Federal Register notice will be published. (Decision, 3/11/03, 5).

^{4/} The Board published its service list on July 29, 1998, which is obviously out of date.

become parties should be provided a copy of the April 1998 application as supplemented by May 2003 supplemental evidence.^{5/}

3. While the extent of public participation is unknown at this time, it is clear that requiring the public to respond to TRRC's supplemental evidence within 20 days from issuance of the Board's procedural schedule--as urged by TRRC--would be woefully inadequate. The Board's June 23, 1998 procedural order provided for July 13, 1998 to file notices of intent, and a September 16, 1998 due date for submitting comments in support or in opposition to the application. Thus, a 60-day period was found necessary between filing a notice of intent and submitting opposition evidence. A similar 60-day period is needed now. The 20-day period suggested by TRRC would preclude meaningful participation, particularly if the proceeding is opened up for additional participants.

4. Any Board procedural order should leave undecided the matter of oral hearings.

Respectfully submitted,


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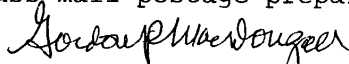
May 14, 2003

^{5/} Indeed, TRRC's May 2003 supplemental evidence is unintelligible without access to the April 1998 application. See: TRRC Supp. Evid., 5/1/03, Cross Reference Chart.

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