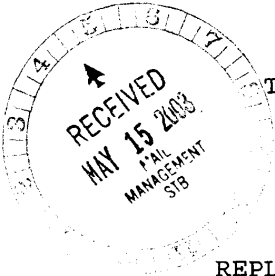


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ORIGINAL

Before the

SURFACE TRANSPORTATION BOARD



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

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

ENTERED
Office of Proceedings

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REPLY TO PETITION FOR SUBSTITUTION OF PARTIES

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

Dated: May 15, 2003
Due Date: May 21, 2003

Before the
SURFACE TRANSPORTATION BOARD

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

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

REPLY TO PETITION FOR SUBSTITUTION OF PARTIES

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 joint petition by Tongue River Railroad Company (TRRC) and Tongue River Railroad Company, Inc. (TRRC Inc.), filed May 1, 2003, that TRRC Inc. be substituted for TRRC, as applicant in this proceeding. TRRC is a partnership, whereas TRRC Inc. is a corporation, according to the TRRC/TRRC Inc. petition.^{3/}

The TRRC/TRRC Inc. petition is filed pursuant to 49 CFR § 1117.1,^{4/} and makes reference to language employed by the Board in

^{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.

^{3/} However, all of the TRRC Inc. stock is held by TRR Limited Partnership. (TRRC Supp. Evid., 5/1/03, Gustafson, 2).

^{4/} §1117.1 of the Board's Rules of Practice is an extraordinary procedure, where "(a) party seeking relief not provided for in any other rule may file a petition for such relief."

Finance Docket No. 33644, TRRC Acquisition,^{5/} and an unopposed substitution in Finance Docket No. 34110, Montreal, Maine & Atlantic Railway, LLC--Acquisition and Operation Exemption--Bangor & Aroostook Railroad Company, Canadian American Railroad Company, The Northern Vermont Railroad Company, Inc., Newport & Richford Railroad Company, and Van Buren Bridge Company (not printed) (served Dec. 18, 2002) (MMA).

The Board should deny the petition for substitution. TRRC and TRRC, Inc. should amend the application, and provide full corporate, ownership and identity information for TRRC, Inc. 49 CFR 1150.3(d)-(i).

1. The reliance of TRRC/TRRC, Inc. upon language in TRRC Inc. Acquisition is misplaced. The Board merely stated that the form of ownership from partnership to corporation had nothing to do with any issue decided by the ICC, or by the STB in the pending Western Alignment case. In MMA, the Board simply stated that the change in corporate form would not change the substance of the information provided pursuant to the Board's regulations.

2. The prior proceedings involving the railroad project inquired into the nature of applicant TRRC. Attached hereto as Appendix 1 are pp. 2-7 of the Administrative Law Judge (ALJ) initial decision, concerning TRRC's structure, in Finance Docket No. 30186 & Sub-No. 1, Tongue River Railroad Company--Rail Construction and Operation--In Custer, Powder River, and Rosebud

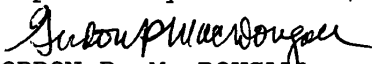
^{5/} Tongue River Railroad Company, Inc.--Acquisition and Operation Exemption--Tongue River Railroad Company at 5 (not printed) (served Nov. 13, 1998). The exemption earlier was noticed at 63 Fed. Reg. 54186 (Oct. 8, 1998).

Counties, MT (served September 4, 1985) (Miles City/Ashland). The ICC's final decision served May 9, 1986 in Miles City/Ashland, reproduced several of the ALJ's corporate charts.

3. The joint TRRC/TRRC Inc. petition for substitution does not indicate, and does not fully describe, the changes made for the ownership and structure of TRRC, Inc., from those found by the ICC to govern TRRC. Miles City/Ashland, supra. There are a number of new entities mentioned in the TRRC Supplemental Evidence, filed May 1, 2003, e.g. Gustafson, 2-3, but the real interests are not set forth. Full corporate disclosure should be forthcoming. 49 CFR 1150.3.

The petition for substitution of parties should be denied in the absence of full disclosure as required by the Board's rules for a new application, and by prior precedent in these line construction proceedings.

Respectfully submitted,


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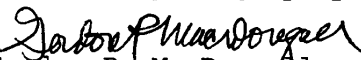
Attorney for United Transportation
Union, General Committee of Adjust-
ment on The Burlington Northern and
Santa Fe Railway Company, and
Montana State Legislative Board.

May 15, 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

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purpose of section 2(c) in its decision in this proceeding.

Section 2(c) provides in pertinent part that:

No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of [the Mineral Lands Leasing Act] * * * for any coal deposits excepted for its own use for railroad purposes * * *.

Protestants believe that TRRC will combine coal leasing and coal transportation. They assert that two of TRRC's affiliated corporations, Thermal Energy, Inc., and Wesco Resources, Inc., each own a federal coal lease and are affiliated with TRRC. Further, they state that Wesco will operate TRRC and that the resulting dual coal ownership and transportation is unlawful under section 2(c).

Protestants also contend that there is no public need for the proposed rail line and that important mitigating measures are required prior to any rail construction and operation.

Pursuant to the Commission order served November 15, 1984, the applications were reset for hearing. Oral hearing was held before me on January 16-23, 1985, at Miles City. Opening and reply briefs were filed. Additionally, a Final Environmental Impact Statement, including recommended mitigative measures was served.

STATEMENT OF THE FACTS

The applicant in this proceeding seeks authority to construct an eighty-nine mile common carrier railroad from points near Ashland, MT to a point near Miles City, MT. The proposed railroad is to serve future coal mines in the Ashland area and will connect with the Burlington Northern rail line at Miles City for shipments of coal to points east and west. The railroad generally will follow the valley of the Tongue River crossing private, state, and Federal lands between the termini points. The intervenors Northern Plains Resource Council, Tongue River Agriculture Protection Association, Rosebud Protective Association, and Powder River Protective Association (collectively "NPRAC") have members whose property will be directly affected by the proposed railroad.

The applicant also seeks authority to issue approximately 175 million dollars of securities for construction financing. The TRRC is a limited partnership. The general partners are D. S. Cartage Corporation, Transportation Properties, and Otter Creek Transportation. The limited partner is Tongue River Holdings.

The financial plan consists primarily of the issuance of three series of short-term construction notes to be replaced by three series of long-term notes issued at the conclusion of construction. Each series of notes will be the obligations of each general partner and will reflect, approximately, the proportional interests of the general partners' interest in the Tongue River Railroad Company. For instance, TRRC general partner D. S. Cartage will be liable for 42.5% of both the short-term and long-term notes; Transportation Properties will be liable for approximately 42.5% of the short-term and long-term notes; and Otter Creek Transportation Company will be liable for 15% of the short-term and long-term notes. These figures correspond closely to the proportionate ownership of the TRRC by the general partners. Further, under the proposed financial plan the obligations of D. S. Cartage will be guaranteed by its parent company, Diamond Shamrock Corporation, and the obligations of Transportation Properties will be guaranteed by the parent corporation of one of its general partners, the Washington Energy Company. The obligations of the Otter Creek Transportation Company will be guaranteed by its parent E. I. du Pont de Nemours and Company. In this strict financial sense, looking through the maze of corporate structures subsequently described, the controlling partners are three large corporations or shippers, each an independent force in its own right. These are, of course, Washington Energy, Diamond Shamrock, and Du Pont, the guarantors of the proposed financing.

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The basis for these applications is the intended development of low-sulphur coal reserves located in the Tongue River Valley in south-eastern Montana. These reserves are said by applicant to contain several (up to 10) billion tons of mineable coal, and are owned by various public and private interests, including the Federal government and the State of Montana. One Federal coal lease has been granted in the TRRC's proposed service area and another is pending. One private coal mining venture, the Montco project, recently received a permit to mine coal from the Montana Department of State Lands. A transportation system to serve these private and public coal reserves is non-existent. There is no rail service to the area and the use of the present road network to haul coal by truck is not feasible. Mine-mouth generation of coal, or the movement of coal by slurry line also are not viable alternatives to haulage by rail.

The TRRC initially was formed in March 1980 and organized in its present form as a limited partnership under the laws of Montana on June 19, 1981. The decision to organize the TRRC was prompted by a desire to secure transportation service to the coal reserves located in the Tongue River Valley. The local initiative for this project was undertaken by Wesco Resources, Inc. ("Wesco"), a Montana corporation holding economic interests in some of the pertinent Federal coal land. Although an initial effort was made to interest the Burlington Northern Railroad to participate in the project, BN declined to do so in the absence of a firm contract between coal reserve holders and a utility. The proposed formation of a railroad, the TRRC, thus arose.

As noted, the Tongue River railroad would extend 89 miles down the Tongue River Valley, linking Miles City on the north with two southern origin points one at the Montco mine site and the other at Otter Creek holdings. The rail line would be constructed of 132 lb. continuous welded rail and would be placed on a prepared grade occupying a right-of-way averaging 200 ft. There would be six sidings constructed on the proposed rail line: one at Miles City, four along specific points of the rail line, and one at the proposed Montco Mine site. The TRRC proposes two options for facilities at the north end of the line to support the railroad. One option would be to renovate the abandoned Milwaukee rail yards at Miles City. The other would be to construct new rail yards at a site currently owned by the Montana Department of Fish, Wildlife, and Parks, commonly known as Branum Lake. Either would result in a connection with the BN at Miles City. The TRRC also proposes to construct a maintenance facility in the town of Ashland near the southern terminal points which would consist of a signals and communication shop and maintenance-of-way facility.

The TRRC also proposes two options for traversal of the Ashland area. One east and the other west. The Otter Creek extension alignment would remain the same under either of the Ashland options.

The route chosen by applicant extending north along the natural corridor of the Tongue River Valley from the Montco and Otter Creek areas via Ashland to Miles City is superior to all other possible routes. Negative features of alternative routes consist of steep grades which would result in greater construction and operating costs. Moreover, the alignment to Miles City provides a shorter overall haul to the primary markets for Tongue River Valley coal in the upper midwest.

The operational design of the railroad envisions the use of two 3,000-hp locomotives and 100-110 unit trains, which appears reasonable given the northbound downhill corridor of the Tongue River Valley and the resulting favorable grades under load.

ORGANIZATIONAL STRUCTURE OF APPLICANT

The Tongue River Railroad Company is a so-called limited partnership comprised as previously stated of Transportation Properties, of Billings, MT, D. S. Cartage Corporation, of Lexington, KY, Otter Creek Transportation Company, of Pittsburgh, PA (the general partners), and Tongue River Holdings, Inc., a Montana Corporation (the limited partner). The Tongue River Railroad Company was formed on June 19, 1981, under the provisions of the Montana Uniform Limited Partnership Act.

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Transportation Properties is in partnership composed of WesRail Limited, a limited partnership, and ThermRail, Inc., a corporation. ThermRail, Inc. is a wholly-owned subsidiary of the Washington Energy Company, which also owns Thermal Energy, Inc., a corporation. The WesRail Limited partnership general partner is Wesco Transportation, Inc., a corporation, which is a wholly-owned subsidiary of Wesco Resources, Inc.; the limited partner of WesRail Limited is Bellford & Company. Wesco Resources and Bellford & Company are also partners in the limited partnership of Wesbel, Ltd. which together with Thermal Energy, Inc., comprise the partnership of ThermWest, which in turn is the dominant partner in Cook Mountain Partnership. The other partner to the Cook Mountain Partnership is Tongue River Resources, Inc., a wholly-owned subsidiary of the Diamond Shamrock Coal Company. There are plans to equalize the partnership share of the latter in Cook Mountain with the share of ThermWest or Thermal Energy.

Thermal Energy, Inc., holds a Federal coal lease (M-54714) pursuant to a successful bid in April 1982. Furthermore, Wesco Resources, Inc., also submitted a successful April 1982 bid on a Federal coal lease which has not yet been issued, apparently because corresponding surface rights have not been obtained by Wesco. The Thermal Energy Federal coal lease and the Wesco Resources pending coal lease are contiguous tracts near Ashland in the "Cook Mountain" area and could be developed jointly. The Cook Mountain Partnership, in which Thermal Energy, Inc., presently has dominant control, has acquired surface rights overlying the Federal coal which Thermal Energy has acquired by Federal coal lease. The Tongue River Railroad Company will act as the means of transporting the coal, including the Federal coal, from the Cook Mountain development. Thermal Energy additionally is a partner in the proposed Montco Mine in Rosebud County. The coal reserves within the Montco project area are privately owned and, as mentioned, are to be directly served by TRRC.

D. S. Cartage Corporation is a Montana corporation and is a wholly-owned subsidiary of the Diamond Shamrock Coal Company. Diamond Shamrock has surface and coal interests in the Tongue River Valley region and is a partner with Thermal Energy in the Montco Mine venture. None of the Diamond Shamrock enterprises have a Federal coal lease. An affiliate of Diamond Shamrock, Tongue River Resources, holds a minority partnership interest in the Cook Mountain Partnership, which owns surface rights.

Otter Creek Transportation Company is a wholly-owned subsidiary of Consol Transportation Company, which is a subsidiary of Consolidation Coal Sales Company, whose parent company is Conoco, Inc. Consolidation Coal Company, an affiliated company, has private surface and coal interests in a portion of Powder River County that would be served by the proposed rail line. It also has a Federal coal lease in Bighorn County, MT, but TRRC could not serve this Federal coal lease area.

Each of the partners of TRRC has invested in the carrier in order to create a transportation system in the Tongue River area and for investment purposes. The partnership agreement, signed June 19, 1981, provides for the overall management and conduct of the partnership through a management committee. Thus, the day-to-day operating management of the TRRC will have a subordinate role and will not exercise management control.

The respective ownership interests of the general partners are:

Transportation Properties - Washington Energy	42.075%
D. S. Cartage Corporation - Diamond Shamrock	42.075%
Otter Creek Transportation Company - Du Pont	14.850%

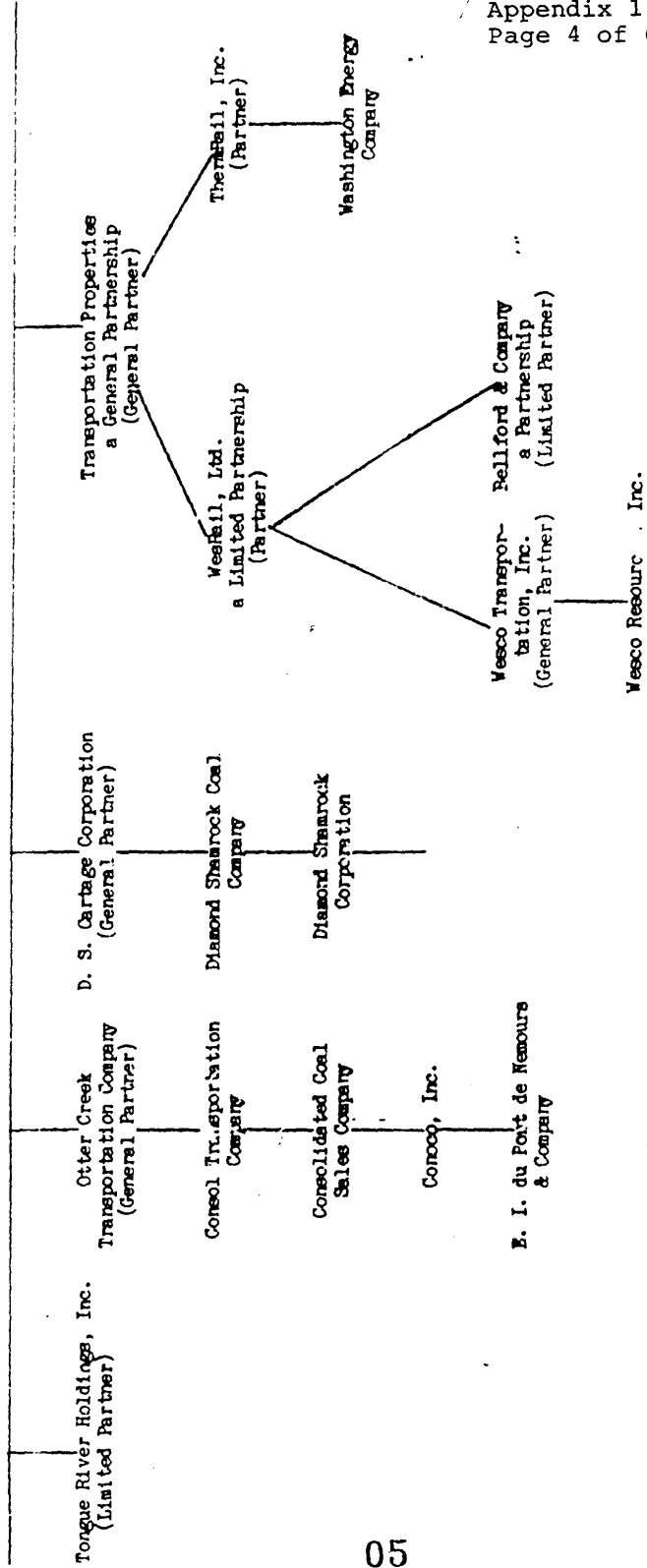
The limited partner (Tongue River Holdings, Inc.) interest is 1.000%.

Charts I, II and III following attempt to depict the connection between the various partnerships created by applicant's owners.

- 4 -

CHART I - TRRC OWNERSHIP

TONGUE RIVER RAILROAD COMPANY *
(a Montana Limited Partnership)

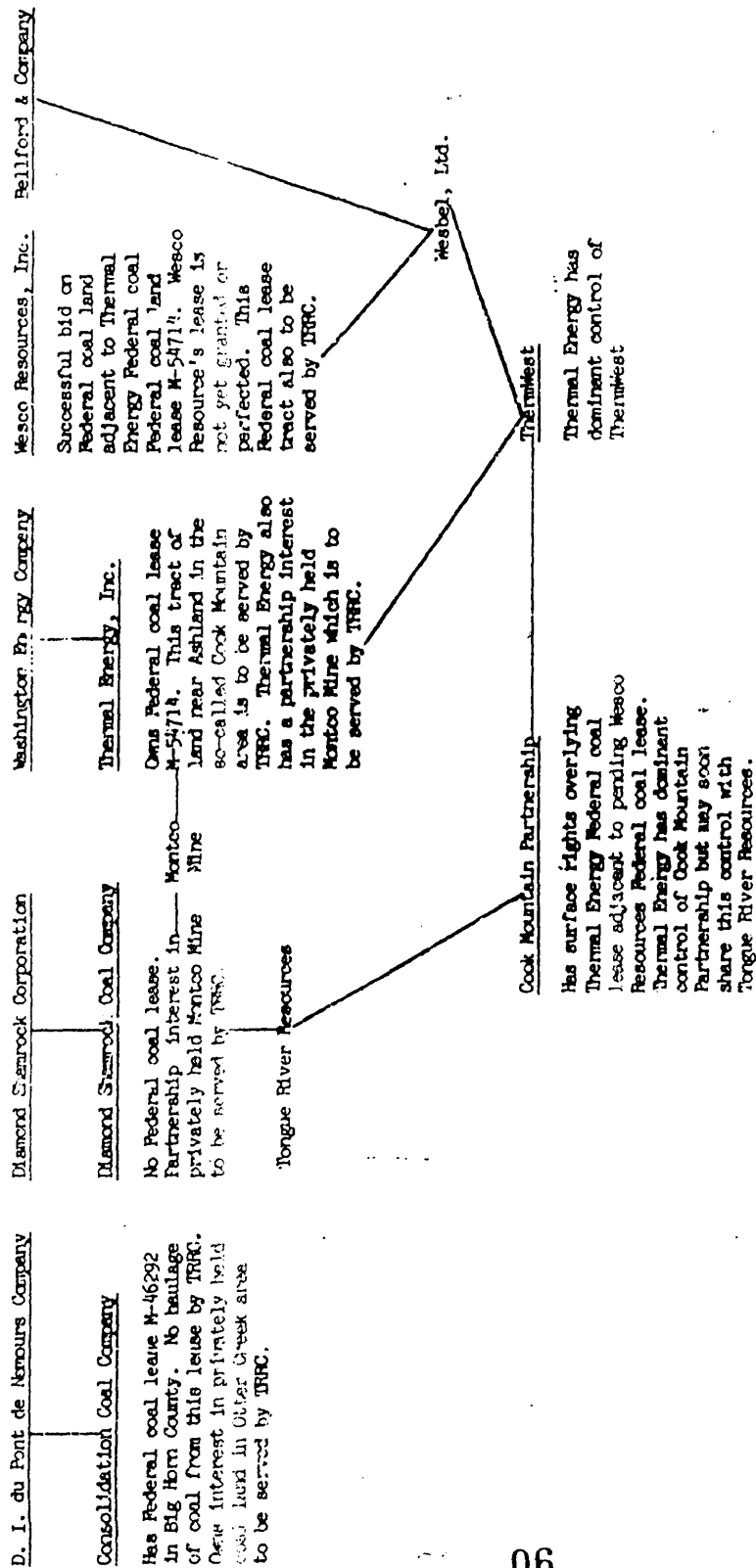


Appendix 1
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TRRC NO. HN-2
1/16/95

* All companies are corporations unless otherwise indicated

CHART II - COAL OWNERSHIP



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CHART III

WESCO RESOURCES, INC., OWNERSHIP

Mike Gustafson
President of
Wesco Resources
Company owns
57 percent of
company

Robert Hanley
owns 19 percent
of company

Thermal Exploration,
Inc., a subsidiary of
Washington Energy,
Inc., owns 20 percent
of company

Bellford
& Company
owns 20
percent of
company

Gustafson, Hanley and Bellford & Company also have royalty interests in the Montco mine.