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October 10, 2003



VIA HAND DELIVERY

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Office of Proceedings

OCT 14 2003

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Public Record

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001

**Re: Finance Docket No. 30186 (Sub No. 3), Tongue River Railroad
Company, Inc. - Construction and Operation - Western Alignment**

Dear Secretary Williams:

Enclosed please find an original and 10 copies of the Reply of Tongue River Railroad Company, Inc. to Petition for Reconsideration.

Respectfully,

Betty Jo Christian
David H. Coburn
Attorneys for Tongue River Railroad
Company, Inc.

DHC:dj
Enclosure

cc: All parties of record

WASHINGTON

PHOENIX

LOS ANGELES

LONDON

BRUSSELS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 30186 (SUB-NO. 3)



**TONGUE RIVER RAILROAD COMPANY -- CONSTRUCTION AND
OPERATION -- WESTERN ALIGNMENT**

**REPLY OF TONGUE RIVER RAILROAD COMPANY, INC. TO
PETITION FOR RECONSIDERATION**

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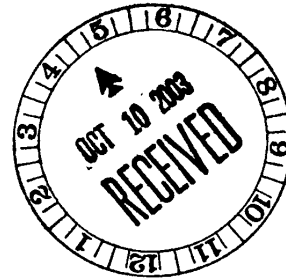
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Attorneys for Applicant
Tongue River Railroad Company, Inc.

October 10, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 30186 (SUB-NO. 3)



**TONGUE RIVER RAILROAD COMPANY -- CONSTRUCTION AND
OPERATION -- WESTERN ALIGNMENT**

**REPLY OF TONGUE RIVER RAILROAD COMPANY, INC. TO
PETITION FOR RECONSIDERATION**

Applicant Tongue River Railroad Company, Inc. ("TRRC Inc.") hereby replies to the September 22, 2003 Petition for Reconsideration filed by United Transportation Union-General Committee of Adjustment and United Transportation Union -- Montana State Legislative Board (jointly, "UTU-GCA/MT"). That Petition challenges the Board's September 2, 2003 Decision in this proceeding granting TRRC Inc.'s May 1, 2003 Petition to substitute TRRC Inc. for Tongue River Railroad Company Partnership as the applicant in this proceeding.

UTU-GCA/MT claims that there was material error in the Board's decision. There was no such error, and for the reasons stated below UTU-GCA/MT's Petition -- the latest in a long series of meritless appeals and petitions filed by that party in this proceeding -- should be summarily rejected. In fact, UTU-GCA/MT's Petition is largely a rehash of its May 15, 2003 Reply to the Petition for Substitution of Parties. In its September 2 Decision, the Board has already rejected the very arguments that UTU-GCA/MT raised in its Reply and that it raises again in its Petition for Reconsideration.

UTU-GCA/MT contends that the TRRC application, as supplemented, “does not conform with the agency’s regulations concerning ownership structure or affiliation with industries to be served by the line.” However, as the Board found at page 3 of its September 2 Decision, TRRC’s May 1, 2003 Supplemental Evidence, including the Verified Statement of Mike T. Gustafson, President of TRRC Inc., specifically sets forth each of the items of information required by 49 CFR § 1150.3, the regulation at issue. In that regard, Mr. Gustafson explains that all of the stock of TRRC, Inc. is owned by TRRC Limited Partnership, a Montana limited partnership, and he describes the ownership structure of that Partnership. What UTU-GCA/MT seeks is more information than the Board’s regulation requires, hardly a basis for reconsidering the Board’s decision. As the Board noted in its September 2 decision, “UTU-GCA/MT has not established that any additional detailed information about the entities involved in the substitution of parties request is necessary.”

UTU-GCA/MT claims that the Board erred in concluding that the only change relating the substitution of parties was that the entity applying for the construction and operation authority over the Western Alignment will be a corporation rather than a partnership. UTU-GCA/MT’s claim of error is, again, based on the proposition that TRRC Inc. has not provided sufficient information about its ownership structure. As discussed above, that allegation is not true. Further, as the Board properly notes in its September 2 decision, TRRC Inc. has previously been exempted from Board regulation with respect to the transfer from TRRC Partnership of the rail construction and operation permits previously issued to TRRC Partnership, including the permit authorizing the construction of the 41 mile Ashland-Decker line. As a result, it would be anomalous at best to deny TRRC Inc. the right to step into the shoes of TRRC Partnership as

applicant in this Western Alignment proceeding, which concerns 17 miles of that same line.¹

The Board so recognized at page 3 of its September 2 Decision, noting that the substitution of parties will simplify matters by leaving TRRC Inc. “as the sole entity directly involved in these proceedings.”

UTU-GCA/MT argues that the identity of the applicant is essential to a determination of its fitness and ability to carry out a rail construction project. Here, the Board knows the identity of the applicant and has been provided with the information required by its regulations. Further, data about the financing of the project has been supplied previously in the April 1998 Western Alignment Application. Mr. Gustafson explained in his Supplemental Verified Statement, submitted as part of applicant’s May 1, 2003 Supplemental Evidence, that the financing assumptions set forth in that Application remain unchanged. The Supplemental Evidence also contains updated income and cash flow data demonstrating the project’s viability. Accordingly, the Board has the data that it needs to determine that the applicant is financially fit to undertake the project and that the project is viable. As the Board stated at page 3 of its September 2 Decision, the “substitution of parties will have no bearing on the Board’s analysis of the Tongue River III application.”

¹ UTU-GCA/MT claims that the prior transfer of TRRC Partnership’s railroad certificates was not properly authorized by the Board under the noncarrier class exemption rules. This issue has already been fully considered and addressed in the Board’s November 13, 1998 decision allowing the transfer. STB Finance Docket No. 33644, *Tongue River Railroad Company, Inc. -- Acquisition and Operation Exemption -- Tongue River Railroad Company* (served Nov. 13, 1998). UTU-GCA/MT did not appeal that decision.

UTU-GCA/MT’s further suggestion that somehow this proceeding manifests questionable “trafficking” in certificates is entirely off the mark. The trafficking to which UTU-GCA/MT apparently refers is the practice under the prior, and entirely different, motor carrier regulatory regime of transferring dormant or allegedly dormant motor carrier operating rights from one entity to another, presumably to avoid the process of applying for new authority. There has been no comparable practice in this proceeding, but rather merely a substitution of one applicant for a related applicant.

CONCLUSION

For all of the above reasons, UTU-GCA/MT's Petition for Reconsideration should be denied.

Respectfully submitted,



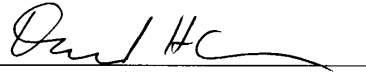
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Attorneys for Applicant
Tongue River Railroad Company, Inc.

October 10, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of October 2003 served by first class mail a copy of the Reply of Tongue River Railroad Company, Inc. to Petition for Reconsideration in Finance Docket No. 30186 (Sub No. 3) on all parties of record.



David H. Coburn