

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



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

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

PETITION TO COMPEL DISCOVERY

ENTERED
Office of Proceedings

NOV 18 2003

Part of
Public Record

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Union, General Committee of Adjust-
ment on The Burlington Northern and
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Montana State Legislative Board

November 17, 2003

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Protestants, United Transportation Union-General Committee of Adjustment (UT/GO-386), ^{1/} and United Transportation Union-Montana State Legislative Board (UTU-MT), ^{2/} jointly submit this petition to compel discovery from applicant, Tongue River Railroad Co., Inc. (TRRC).

These protestants requested to examine the agreement between TRRC and The Burlington Northern and Santa Fe Railway Company (BNSF), whereby BNSF advances the cost incurred by TRRC in this and in other regulatory proceedings. The agreement is described in the supplemental verified statement of Mike T. Gustafson, at 9:

In addition, BNSF has entered into a loan agreement with TRRC under which it is providing funds to TRRC for expenses incurred in the federal and state regulatory processes.

Our attempt at informal discovery was unsuccessful, ^{3/} counsel

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

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

^{3/} We were hopeful, as BNSF employees, that there would be no problem in this regard; however, we were mistaken.

for TRRC advising that the agreement is in writing, subject to a confidentiality agreement, and would not be provided.

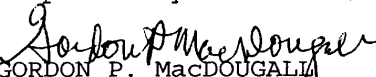
The Board should direct production of the BNSF/TRRC agreement, and without any requirement for confidentiality. Heretofore, TRRC and BNSF have disclaimed the existence of any agreements.

The agreement is relevant. TRRC is merely a corporate shell without any meaningful assets. The relationships between applicant and a potential carrier operator of the line should be disclosed. See: 49 CFR 1150.3. Indeed, if applicant is a carrier, the filing of such agreement would be mandatory. 49 CFR 1180.69(a)(7)(ii).4/-

The BNSF/TRRC agreement may be important for the purposes of any employee protective conditions which may be required if the Board, despite opposition, should approve the application.

WHEREFORE, the Board should order production of the BNSF/TRRC agreement.

Respectfully submitted,


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4/ Indeed, arguably TRRC is already a carrier, having received extensive operating authority, for certain purposes of the Act and the Board's regulations.

Certificate of Service

I hereby certify I have served a copy of the foregoing by
personal service upon counsel for TRRC, and by first class mail
postage-prepaid on all other parties of record,

Washington DC


Gordon P. MacDougal