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November 26, 2003



Via HAND DELIVERY

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

Respectfully,

A handwritten signature in cursive script, appearing to read "David H. Coburn".

David H. Coburn
Attorney for Tongue River Railroad Company, Inc.

DHC/dyj

Enclosure

cc: All parties of record

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**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 TO COMPEL DISCOVERY**

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

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**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 TO COMPEL DISCOVERY**

Tongue River Railroad Company, Inc. ("TRRC") hereby files this reply to the November 17, 2003 "Petition to Compel Discovery" filed by United Transportation Union, General Committee of Adjustment on the Burlington Northern Santa Fe Railway Company and Montana State Legislative Board ("UTU-GCA/MT"). TRRC opposes that Petition for the reasons stated below.

Claiming that an attempt at informal discovery was unsuccessful, the UTU-GCA/MT Petition seeks to compel TRRC to produce a copy of a loan agreement between TRRC and Burlington Northern Santa Fe Railway Company ("BNSF") under which BNSF is providing certain funds to cover expenses related to the federal and state regulatory processes. The Petition -- the functional equivalent of a motion to compel -- should be denied because it is premature. UTU-GCA/MT has filed no discovery request seeking a copy of this agreement. TRRC advised counsel for UTU-GCA/MT in response to his "informal" request made during a telephone conversation that it could not simply provide a copy of the agreement, but that it would respond

to an appropriate discovery request. UTU-GCA/MT did not then file a discovery request, but instead filed its Petition to Compel. Plainly, a petition or motion to compel production is premature when it comes before a formal discovery request is filed. *See* 49 CFR § 1114.21(b) (all discovery procedures may be used by parties without filing a petition and obtaining prior Board approval); 1114.31 (providing procedures that apply if a party fails to respond to discovery).

TRRC does not concede that the loan agreement is relevant for purposes of employee protection or for any other purposes with respect to the standards governing Board consideration of TRRC's application to construct the Western Alignment. Nonetheless, TRRC commits to responding to any appropriate UTU-GCA/MT discovery request that may be filed for the agreement. If UTU-GCA/MT is not satisfied with TRRC's response, it is of course free to pursue an appropriate motion before the Board at that time.

One other point in the Petition merits a brief response. UTU-GCA/MT claims that TRRC and BNSF have heretofore "disclaimed the existence of any agreements." Petition at 2. The falsity of that claim is proven by the Petition itself, which quotes the passage in the TRRC May 1, 2003 Supplemental Evidence that discloses the loan agreement, which was entered after TRRC filed its Application in this proceeding.¹

¹ UTU-GCA/MT also claims that TRRC is a shell corporation with no assets. This is not true. TRRC will address this point in its December 2 rebuttal evidence.

For the above reasons, the UTU-GCA/MT Petition should be denied.

Respectfully submitted,



Betty Jo Christian

David H. Coburn

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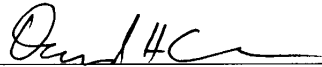
Attorneys for Applicant

Tongue River Railroad Company, Inc.

November 26, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of November 2003 served a copy of the foregoing Reply of Tongue River Railroad Company by first class mail on all parties of record.



David H. Coburn