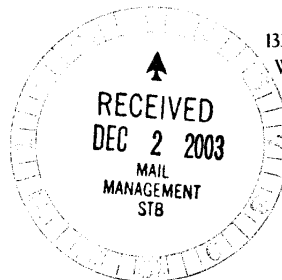


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December 2, 2003

Office of Proceedings

DEC 02 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 Rebuttal Argument and Evidence of Tongue River Railroad Company, Inc. in Response to Opponents' November 12 Evidence and Argument. A disk containing an electronic copy of this filing is also attached.

Respectfully,

A handwritten signature in black ink, appearing to read "David H. Coburn".

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

Enclosure

cc: All parties of record

01

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

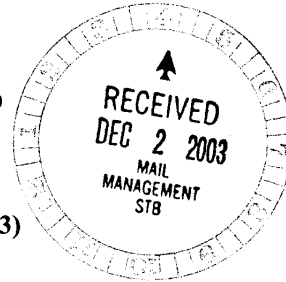
2003

Attorneys for Applicant
Tongue River Railroad Company, Inc.

02

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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



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

**REBUTTAL ARGUMENT AND EVIDENCE
OF TONGUE RIVER RAILROAD COMPANY, INC.
IN RESPONSE TO OPPONENTS' NOVEMBER 12 REPLY EVIDENCE AND
ARGUMENTS**

Pursuant to the procedural order set in this proceeding by decision served July 7, 2003, Tongue River Railroad Company, Inc. ("TRRC") hereby files this Rebuttal Argument and Evidence in reply to the evidence and arguments submitted by four parties in this proceeding on November 12, 2003. Specifically, TRRC will hereby reply to the filings of the Northern Plains Resource Council ("NPRC"); the City of Forsyth ("Forsyth"); Mr. Mark Fix and the United Transportation Union, General Committee on Adjustment on the Burlington Northern and Santa Fe Railway Company, and Montana State Legislative Board ("UTU-GCA/MT") (collectively "Opponents"). The Rebuttal Verified Statements of Mike Gustafson, President of TRRC, and Francis A. Roberts, a Principal at Platts Research and Consulting, are submitted herewith.

There is little the Board has not seen before in the evidence and arguments of the Opponents. None of them focus specifically on the sole and narrow issue before the Board in this (Sub No. 3) proceeding, namely, whether TRRC should be authorized to construct the

southernmost 17 miles of its line along the Western Alignment as opposed to the Four Mile Creek Alignment previously approved by the Board as part of the 41 mile TRRC line extension in *TRRC II*.¹ On that issue, they offer no reason at all why the Western Alignment should not be approved. For example, they offer nothing to rebut the proposition that the Western Alignment would be more efficient and cost-effective for TRRC to operate and nothing to demonstrate that TRRC's operating plan for the Western Alignment is somehow deficient. Nor do they choose to acknowledge that the Board and its predecessor have already approved construction of the TRRC in its decisions in *TRRC I* and *TRRC II*, where core issues about the need for the TRRC line were addressed and resolved in TRRC's favor.²

Thus, instead of focusing on the central issue before the Board in this proceeding, the Opponents endeavor to re-package and re-argue issues that have already been decided in the Board's previous rulings authorizing TRRC's construction and operation of its line. NPRC, for example, continues to argue that there is an insufficient need for TRRC's line because there is an insufficient market for the coal in Montana's Northern Powder River Basin ("NPRB"), which constitutes a significant percentage of the coal that TRRC would transport. That issue was raised by NPRC before in the *TRRC II* proceeding, and was squarely rejected by the Board in its November 8, 1996 decision in that case:

It appears that the potential users of the proposed line are seriously committed to the project and to its viability. NPRC has argued that the line is either not viable (alleging a lack of existing or future demand), or that adequate transportation services are currently

¹ *Tongue River Railroad Co. – Rail Construction and Operation – Ashland to Decker, Montana*, STB Finance Docket No. 30186 (Sub No. 2), served November 6, 1996 ("*TRRC I*").

² *TRRC I*, in which TRRC was authorized to construct an 89 mile line from Miles City to Ashland, was decided by the Interstate Commerce Commission in *Tongue River R.R. – Rail Construction and Operation – In Custer, Powder River and Rosebud Counties*, ICC Finance Docket No. 30186 (served September 4, 1985).

available. However, the demand for this service is self-evident from the potential users' support of this application, as the buyers of TRRC's services comprise one of the cornerstones of TRRC's financing. Moreover, if there is a lack of public demand for the proposed line, it will not be built. We also note that the demand for TRRC's services will be more affected by whether it can offer a more efficient transportation service in conjunction with BN than BN can now offer on its own for coal, rather than by whether TRRC can create totally new markets.³

The Board thus found in *TRRC II* that, "TRRC has shown the public demand necessary to support this application."⁴ The Board also found that financial fitness is not a major issue in this proceeding since construction of this new line by a new railroad would not jeopardize common carrier service to any existing shippers and that, in any event, TRRC has shown that it is financially fit and able to construct the line, fund operations and service its debt.⁵ Further, the Board found that the TRRC line would not impair rail competition, but would instead fulfill important national rail transportation policy goals related to ensuring a sound rail transportation system and effective competition.⁶ Based on these findings, and after balancing environmental issues and mitigation conditions, the Board concluded in *TRRC II* that the TRRC line satisfied the public convenience and necessity test of § 10901. The current proceeding involves only the question of whether TRRC should be permitted to construct the southernmost 17 miles of the line approved in *TRRC II* along a different alignment, and thus warrants no different public convenience and necessity findings than those made in *TRRC II*.

³ *TRRC II* at 16.

⁴ *TRRC II* at 15.

⁵ *TRRC II* at 14-15.

⁶ *TRRC II* at 16-17.

Without conceding that all or any of the issues raised by the Opponents are pertinent to the narrow issue in this proceeding, TRRC will nonetheless address (or, in some cases, address once again) the issues raised by the Opponents so as to provide the Board with as complete a record as possible in its deliberations on this matter.⁷ In doing so, TRRC will demonstrate that the Opponents have not met their difficult statutory burden of showing that the construction is “inconsistent with the public convenience and necessity.” 49 U.S.C. § 10901(c).⁸

A. Reply to NPRC

The bulk of NPRC’s submission consists of the Verified Statement of Edward P. Evert, a former rail official who testifies about the coal resources in the area that would be served by the TRRC.⁹ The theme of Mr. Evert’s testimony is that the TRRC “will not increase the marketability of Montana coal or other potential movements of coal from Northern Wyoming mines.” He argues that the marketplace prefers coal from the Southern Powder River Basin (“SPRB”) in Wyoming, essentially asserting that there is little market for the coal that would be produced from the Otter Creek tracts or other NPRB coal. Mr. Evert also argues that the

⁷ TRRC will not endeavor here to repeat arguments and testimony offered by it in the November 2, 1998 “Reply of Tongue River Railroad Company to Comments on the Application for Construction and Operation Authority for the Proposed Western Alignment” (“November 2 Reply”). TRRC stands on that filing and its supplemental submissions.

⁸ UTU-GCA/MT, which incorporates by reference comments it filed in this proceeding in 1998, apparently continues to question the applicability of this statutory standard, which was adopted as part of the Interstate Commerce Commission Termination Act of 1995, prior to the filing of the Application in this proceeding. TRRC has already responded to that argument in its November 2, 1998 Reply at pages 5-8.

⁹ Mr. Evert also offered testimony for NPRC in 1998, and TRRC replied to that testimony in its November 2 Reply, including in the Rebuttal Verified Statement of J. Chris Leshock, who demonstrated various errors in Mr. Evert’s prior testimony, including his analysis of the demand for NPRB coal.

proposed DM&E line should render the TRRC line unnecessary since any NPRB coal could be transported over BNSF/DM&E routings.

Mr. Evert's testimony is rebutted in the attached Rebuttal Verified Statements of Mr. Roberts and Mr. Gustafson. Mr. Roberts shows that: (1) SPRB coal has not successfully invaded the stable and sizeable market in the Upper Midwest where NPRB coal enjoys both a cost and geographic advantage; (2) there is reason to believe that NPRB coal markets will continue to grow even if population growth rates in the Upper Midwest remain low, since utilities in these states can be expected to continue to export power to other states at increasing levels; (3) the TRRC line is needed so that the Otter Creek tracts and other NPRB mines can be developed, thereby allowing NPRB output to be maintained given the depletion of reserves at current NPRB mines; (4) the DM&E line, were it constructed, would not diminish the need for the TRRC line, since DM&E does not today serve any SPRB coal and will need to interchange with a competitor railroad to serve Upper Midwest coal destinations, thereby increasing transportation costs and offsetting any distance advantage DM&E may have to certain points; and (5) Mr. Evert's criticism's of Mr. Morey's forecasts are unfounded.

Mr. Gustafson also addresses NPRC's arguments in his Rebuttal Verified Statement. Mr. Gustafson shows, for example, that Mr. Evert is mistaken in asserting that Mr. Gustafson and others prefer generation of power in the Otter Creek area to the construction of the TRRC line. Mr. Gustafson explains that the transportation of power by wire is not a substitute for the transportation of coal by rail. Mr. Gustafson also rebuts NPRC's claims that the TRRC line remains no more than a speculative venture. In that regard, Mr. Gustafson explains that he fully expects the business and financial community (including the several utilities that submitted statements in support TRRC's Application) to continue to support the TRRC. This support,

coupled with BNSF's support and the strong political support that TRRC has received from Montana's Governor, two Senators and Congressman should put to rest any doubt about the viability of the TRRC line.

Finally, to the extent that NPRC and other Opponents suggest that TRRC is not financially able to support its planned operations, it bears note that questions of financial fitness are relevant in rail construction cases only to the extent that the Board has an interest in protecting a carrier's ability to carry out its common carrier obligations to serve existing shippers. *See TRRC II* at 14. Here, TRRC is not currently serving any shippers and thus inquiries into its financial fitness are not germane to this Application. Moreover, TRRC is quite able to raise money from its financial backers and other backers sufficient to support construction of the railroad, as the Board has also already found in *TRRC II*.¹⁰ The *pro formas* prepared by TRRC's witness Robert Leilich, and submitted in updated form as Exhibit G with TRRC's Supplemental Evidence, also underscore that the TRRC will be profitable based on the conservative traffic projections that have been presented by TRRC.

B. Reply to Mr. Fix

Mr. Fix raises a series of issues in his continued efforts to fight the TRRC, which will traverse his ranch. Mr. Gustafson responds to these arguments in his attached Rebuttal Verified Statement, demonstrating that there is no merit to the numerous points Mr. Fix raises. For example, Mr. Gustafson shows that TRRC is fully capable, together with its investors, of constructing the railroad and that the TRRC line will benefit Montana. Mr. Gustafson also

¹⁰ *See TRRC II* at 15.

addresses, among other points, Mr. Fix's erroneous contentions about the marketability of coal from the Otter Creek tracts.¹¹

C. Reply to UTU-GCA/MT

UTU-GCA/MT claims that "BNSF ha[s] failed its burden" of proving the need for the new line construction.¹² However, BNSF -- which is not the applicant here -- bears no burden in this proceeding. The issue UTU-GCA/MT raises is whether, with the construction of the TRRC line, BNSF's existing route between Decker and Miles City will remain viable. This point is addressed in detail in the Rebuttal Verified Statement of Mr. Thomas Kraemer, Group Vice President of Coal and Grain Operations at BNSF, submitted in support of TRRC's November 2 Reply. Mr. Kraemer describes the continued importance of that BNSF line for non-coal traffic and the advantages TRRC offers in terms of freeing up needed capacity on that line.¹³

The Verified Statements of Messrs. Terry L. Ungricht and John D. Fitzgerald submitted in support of the comments of UTU-GCA/MT argue that TRRC's line will result in the loss of BNSF rail labor jobs. This point has already been addressed in the above-referenced Rebuttal Verified Statement of Mr. Kraemer and in the Rebuttal Verified Statement of Mr. Milton H. Siegele, Jr., BNSF's Assistant Vice President for Labor Relations submitted as part of TRRC's November 2 Reply. As Mr. Gustafson reiterates in the attached Rebuttal Verified Statement, the

¹¹ Mr. Fix expresses the view that TRRC should submit its 4-month reports to all parties of record in this proceeding. The 4-month report filed in November 2003 was in fact served on all parties currently listed by the STB as parties of record and TRRC will continue to serve these parties in the future.

¹² UTU-GCA/MT Comments at 7.

¹³ Kraemer Rebuttal Verified Statement at 3-5.

number of rail jobs lost in Montana would be significant if the TRRC line is not built and additional NPRB coal assets are not timely developed.¹⁴

UTU-GCA/MT contend without explanation that the TRRC application is incomplete, but this is not the case. UTU-GCA/MT apparently want to see an operating agreement between BNSF and TRRC. The fact is that, as TRRC has repeatedly stated, no such document exists as no agreement has yet been finalized. In the event that such an agreement is ultimately reached, however, the impact on rail labor has already been assessed. Specifically, and as explained in Mr. Gustafson's Rebuttal Verified Statement, a BNSF/UTU agreement that will apply if BNSF operates the TRRC line (which is the most likely scenario) is described in the 1998 Rebuttal Verified Statements of BNSF's Mr. Kraemer and Mr. Siegle, both submitted with TRRC's November 2 Reply. Mr. Gustafson also explains in his Rebuttal Verified Statement that UTU-GCA/MT has overstated the number of BNSF trains that might be rerouted to the TRRC line.

UTU-GCA/MT complains that the Board has allowed TRRC, Inc. to be substituted as the applicant in this proceeding. That issue is now before the Board on reconsideration. TRRC fails to understand how the mere substitution of that corporate applicant for the former partnership applicant could conceivably constitute a deficiency in the application.

UTU-GCA/MT claims that participation in this case by certain ranchers inadvertently omitted from the STB's service list served on October 3, 2003 has been limited since these persons were not added back as parties of record until the Board issued a corrected service list on October 24, 2003. However, there was nothing to stop these persons from filing any rebuttal evidence that they desired to file by the November 12, 2003 deadline for submission of such

¹⁴ Further, as TRRC discusses at page 20 of its November 2 Reply, the Board now lacks authority to impose labor protection conditions -- requested by Mr. Fitzgerald -- in rail construction cases.

evidence. The inadvertent omission of their names from a service list deprived them of no rights. Further, by order served November 28, 2003, the Board has extended the deadline for four parties of record added (or restored) to the service list to serve their reply evidence.¹⁵

UTU-GCA/MT appears to take issue with the fact that the STB no longer maintains an Office of Consumer or Public Services to assist parties interested in participating in STB cases. While this is not an appropriate issue for this proceeding, TRRC notes that numerous parties, including individuals such as Mr. Fix, have participated on both the merits and environmental sides of this proceeding.

UTU-GCA/MT argues in favor of assigning this matter to a public hearing. TRRC sees no reason for such action, as there is a complete written record in this proceeding and only a narrow issue for decision. To reiterate, the sole issue here is whether the construction and operation of the Western Alignment should be found to be not inconsistent with the public interest. Broader questions about whether or not the TRRC line should be built or not have already been decided by the Board and its predecessor, much as the Opponents may prefer to overlook that fact.

Further, Mr. Gustafson addresses in his Rebuttal Verified Statement the claim of UTU-GCA/MT, made in its November 17, 2003 Petition to Compel Discovery, that TRRC is a shell corporation with no assets. TRRC plainly has assets (as Mr. Gustafson shows), and as noted above it has the ability, as the Board found in *TRRC II*, to raise the funds from private markets that will be needed for construction of the railroad.¹⁶

¹⁵ TRRC did not oppose the November 10, 2003 request of these persons for more time to submit their replies.

¹⁶ See *TRRC II* at p. 15.

D. City of Forsyth

Forsyth raises concerns about the loss of employment in its two page filing. Mr. Gustafson addresses these concerns in his Rebuttal Verified Statement, noting that employment in Southeastern Montana will be positively impacted by the construction of the TRRC, without which Montana coal production will continue to decline.

CONCLUSION

Based on the evidence and arguments presented in this proceeding, and putting aside all of the rhetoric of the Opponents, the Board should find that construction of the Western Alignment is not inconsistent with the public convenience and necessity, and thus that the standard in 49 U.S.C. § 10901 has been met. TRRC has previously offered substantial evidence concerning the operational and economic advantages of the Western Alignment. Based on that unrebutted evidence, and the other evidence of record, the Board should approve TRRC's Application.

Respectfully submitted,



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Attorneys for Applicant

Tongue River Railroad Company, Inc.

December 2, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**REBUTTAL VERIFIED STATEMENT
OF MIKE GUSTAFSON**

My name is Mike Gustafson. I am the same person who submitted a verified statement in April 1998 in support of the Application of the Tongue River Railroad Company ("TRRC") for construction and operation of the Western Alignment, and in May 2003 in connection with TRRC's supplementation of that Application. I am President of TRRC, Inc., the applicant in this proceeding. In this Rebuttal Verified Statement, I will respond to certain arguments raised by the Northern Plains Resource Council ("NPRC"); Mr. Mark Fix, a rancher whose property would be traversed by the TRRC line; the United Transportation Union, General Committee of Adjustment on the Burlington Northern Santa Fe Railway Company and Montana State Legislative Board ("UTU-GCA/MT"); and the City of Forsyth, Montana.

None of these parties raise any arguments that would support a finding that construction of the Western Alignment would not be consistent with the public convenience and necessity. In fact, while that is the only issue in this proceeding, few of the arguments that they raise address the Western Alignment at all. To a significant degree, these parties take issue with the TRRC

project as a whole. I will demonstrate below that none of the points that they raise would justify denial of the pending TRRC application.

A. Reply to NPRC

Most of NPRC's submission consists of the Verified Statement of Edward P. Evert, who testifies primarily about demand for Northern Powder River Basin ("NPRB") coal, which he suggests is weak. Mr. Evert's arguments are addressed in detail in the Rebuttal Verified Statement of Mr. Francis A. Roberts, a principal at Platts Research & Consulting. Mr. Roberts convincingly demonstrates that while SPRB coal has seen a greater degree of market growth, the SPRB has not successfully invaded the strong and stable market for NPRB coal, primarily in the Upper Midwest. His testimony underscores that the TRR line will provide rail transportation for NPRB coal from sources, such as the Otter Creek tracts, that will replace existing mines and thereby allow the NPRB to retain and grow its market share.

I will here address a few additional points raised by Mr. Everts about coal markets and my prior testimony. Mr. Everts claims that the marketplace prefers Wyoming coal since, he claims, "it is cheaper to produce and nearer to coal consuming markets." Everts VS at 6. Mr. Everts' statement is much too broad. While demand for Wyoming coal has been growing faster than demand for Montana coal, Montana coal has had a stable market for years. Montana coal is in fact cheaper on a delivered cost basis than Wyoming coal for certain utilities and is certainly closer to many consuming markets, as is made clear from the Rebuttal Verified Statement of Mr. Roberts.

Citing a Billings Gazette article from June 2003, Mr. Everts also claims that I and others have asserted that transmitting power to the marketplace by wire may be "preferable" to rail car transportation of coal to power plants in connection with the development of the Otter Creek

tracts. In fact, the article did not claim that transmission of power by wire is “preferable” to rail transport, and the word “preferable” does not even appear in the article. Further, it is most assuredly not my position that transmission of coal by wire is always preferable to the rail transport of coal. The article in question was focused almost exclusively on the construction of generating plants in Montana, a matter about which I was quoted. It certainly is possible that generating plants in the area may be developed as part of the development of the Otter Creek tracts, as the article correctly points out. However, limitations on the transmission infrastructure and commercial considerations all indicate that the possible existence of such generation capacity would not reduce or eliminate the need for a railroad to transport NPRB coal to existing generating plants located primarily in the Upper Midwest. In short, potential coal by wire opportunities are not inconsistent with coal by rail plans, and the notion that the railroad would only be built after generating capacity is built in the Otter Creek area is not correct.

Mr. Everts also claims that BNSF’s involvement in discussions with TRRC over a possible operating agreement, and other BNSF support for TRRC that is discussed in the Application and TRRC’s Supplemental Evidence, might simply be a means of BNSF mollifying the State of Montana with respect to disputes BNSF might have with the State. He also posits that BNSF may be seeking to avoid its own capital expenditures for the project, and that it may possibly acquire the line if it later becomes uneconomical. Mr. Everts’ speculations are just that. Further, they are grossly off the mark and merit no extended response. The Board need not probe BNSF’s motives in supporting TRRC. Mr. Everts has in effect acknowledged that TRRC will provide a clear advantage for BNSF and it does not take anything more than a review of a map to understand that the TRRC will offer a more efficient route for BNSF to transport coal from origin mines in Montana and Wyoming to Upper Midwest markets. The testimony of Mr.

Thomas G. Kraemer, BNSF's Group Vice President of Coal and Grain Operations, in this proceeding underscores the advantages of the TRRC line for BNSF. TRRC will also provide an advantage for the NPRB and for the state of Montana, points Mr. Evert chooses to overlook.

Apart from Mr. Evert's testimony, the NPRC offers a one and one-half page diatribe against the TRRC, calling it a "speculative charade" and "not a viable entity." In support of these contentions, NPRC appears to rely primarily on the fact that the line has not yet been built and that certain of the coal mines it would serve have not been developed. The line has not been built, however, in large part because various secondary permits have not yet been procured. In that regard, TRRC requires permits from various agencies other than the Board, and the Supplemental EIS now in process will facilitate the issuance of those permits. Had TRRC started construction, NPRC would thus undoubtedly have complained about that action.

Further, in addition to continued strong political support for the TRRC as discussed in my supplemental verified statement, support for the TRRC line in the business and financial community also remains strong. Based on my discussions with key financial players, I remain confident that TRRC will be able to raise the funds that it needs for construction in the capital markets and that the financing plan described in the Application remains viable. The support expressed by BNSF and by the several end-user utilities in verified statements and letters previously submitted for the record, should remove any doubt that TRRC is far from a speculative enterprise, and that the railroad will be built once all of the relevant permitting has been completed.

B. Reply to Mr. Mark Fix

Mr. Fix, a long-time foe of the TRRC, offers a series of unfocused and generally unsupported questions, comments and criticisms in his latest comments. Mr. Fix purchased his

property in February 1991 following the ICC's September 5, 1985 final decision in *TRRC I*, and thus he had full information about the line at the time of his purchase. The landowner that sold the property to Mr. Fix was provided with maps of the proposed TRRC alignment through the property during the TRRC I planning process. Subsequent to acquiring the property, Mr. Fix has also been provided with information. I believe that his interest in this matter evolves from the fact that a rail line is planned to traverse his property. Mr. Fix's comments might therefore be characterized as "not in my backyard" in nature.

First, he observes that the TRRC pro forma income statement set forth at Exhibit G of the Supplemental Evidence shows a zero income tax payment. He questions how that could be and also whether any tax will be generated for Montana by the railroad. The reason that no income tax payments are shown on the pro formas is that it would be highly complex and speculative at this time to determine the amount of income tax payments that might be due from TRRC in any of the years for which projections are made on Exhibit G. Further, it is possible that at least for several years following the first few years of TRRC operation, any federal income tax liability would be reduced to zero by carry-over losses from the initial years of operation (as shown on the pro formas) and by the deduction of significant initial capital expenses.

The income generated for TRRC's shareholders will of course be subject to other federal and state taxes. TRRC will generate substantial employment, personal income and property tax revenues benefiting Montana. In addition, development of the resources in the Ashland/Otter Creek area will generate significant coal based production tax revenues for the State of Montana, including coal severance tax, gross proceeds tax, and resource indemnity trust tax. In addition, the mining of state owned coal in the area will generate significant coal lease bonus payments and production royalties dedicated to funding Montana's K through 12 education program.

Mr. Fix raises a series of questions about TRRC's corporate structure and the issue of eminent domain. The State of Montana's eminent domain laws relating to the ability of TRRC to acquire property necessary for rights of way is of no relevance to the issues before the Board. TRRC hopes to acquire the right of way needed to construct its line through negotiation and agreements with the landowners but will be prepared, in the absence of an agreed resolution, to exercise its eminent domain rights under Montana law. To the extent that Mr. Fix believes that TRRC does not, or will not, have adequate assets to acquire right of way by purchase or otherwise, he is mistaken. TRRC intends to raise significant capital to acquire the necessary right of way and to build the railroad, far beyond its initial capitalization of \$50,000. TRRC will also raise funds by selling equity interests (shares in TRRC, Inc.) to residents and non-residents of Montana and by assuming some debt, as described in the Verified Statement of Mr. Francis M. Cox, III, submitted with the 1998 Application.

To the extent that Mr. Fix is concerned about whether TRRC shareholders are residents of Montana, or whether TRRC income will remain in the state or not, those issues are not relevant to the Board's consideration of this proceeding. TRRC's construction and operation of the Western Alignment would be no less in the public interest of all citizens of the United States if all of the railroad's income were generated exclusively for the benefit of persons in other states -- which of course is plainly not the case or the plan. In fact, both of the two current shareholders of TRRC, Inc. are Montana residents and the railroad will generate significant economic benefits that will accrue largely in Montana, including additional income that will be taxed in Montana for the benefit of the citizens of that state.

Mr. Fix alleges that the low sulfur, Clean Air Act-compliant Otter Creek coal is high in sodium content, making it useable at only 15 of over 400 coal fired plants in the United States.

Mr. Fix's comment about the sodium content of the Otter Creek coal is no more than speculation. No studies have been conducted on the sodium content of the coal, although the State of Montana has now appropriated \$300,000 for the conduct of such a study. Even if the coal does contain elevated levels of sodium this would not significantly limit its use, since higher sodium coal can be used in boilers designed for its use and is also often blended with other coal for use at power plants. In fact, I have no reason to believe that Otter Creek coal will be any less marketable than coal from the Decker mines, which has a relatively higher sodium content. Further, newer plants are designed to burn this type of coal and the boilers at older plants can be modified to accommodate it. The final point that Mr. Fix overlooks is that the TRRC line is not dependent exclusively on Otter Creek coal in any event, as Mr. Morey's testimony makes clear.

Mr. Fix questions why, if Otter Creek coal is essential, the Decker mine is laying off workers. The short answer is that production at the Decker mine is decreasing since the coal resources there have been mined for over 20 years and are being depleted. Mr. Morey's forecasts take that fact into account, but also account for the fact that production at mines already in production (including Spring Creek) and expected to be developed in the vicinity of Decker (including Youngs Creek, Ash Creek, CX Ranch and East Decker) will continue area production at a steady pace for the foreseeable future. In his Rebuttal Verified Statement, Mr. Roberts reiterates the point that other coal reserves will be developed in the Decker area.

Mr. Fix challenges the proposition that new coal could be developed in the Decker area due to coal bed methane production in the area, which he says will preclude coal mining for about 20 years. I am not aware of any constraint that coal bed methane development places on coal mine development and Mr. Fix does not explain why the two cannot co-exist in the same area, as they do in the SPRB.

Mr. Fix questions why one of the generating plants at Colstrip is shutting down. TRRC does not know of such plans, but even if this were true, it has no bearing on the need for the TRRC line.

Mr. Fix challenges my contention that the Otter Creek tracts could not be developed without the TRRC line, claiming that the Western Alignment is not necessary to reach the Otter Creek area. I have never testified that the Western Alignment is needed to reach the Otter Creek tracts. What I have said is that the TRRC line is needed for that purpose, and that is correct. However, the financial projections on which the TRRC line has been based assume not only the transportation of Otter Creek coal, but also the transportation of coal from Decker area and Wyoming origins that would be served by the Western Alignment. In my Supplemental Verified Statement, I offered the Board a discussion of the Otter Creek tracts, and their transfer to state control, as a matter of updating an important development relative to the areas to be served by the TRRC line since we filed our Western Alignment application in 1998.

Mr. Fix correctly notes that I stated in my Supplemental Verified Statement that the TRRC line could be used to ship NPRB coal to electric utilities in the Pacific Northwest. He also correctly observes that transportation to such utilities is not discussed in Mr. Morey's Verified Statement. The bulk of the coal that TRRC would transport would be transported to the Upper Midwest destinations that both Mr. Morey and I have identified. Nonetheless, I mentioned the possibility of Pacific Northwest destinations since the possibility of serving points in the region, albeit uncertain and unquantifiable at this time, does exist. Such transportation would depend on utilities in that part of the country switching sources, which would in turn depend on, among other matters, the relative cost of NPRB coal versus other fuel sources. TRRC could be involved in the transportation of coal to the Pacific Northwest markets to the

extent that such coal were to originate on its line, e.g., at the Otter Creek tracts. At this stage, however, the extent of any such transportation is uncertain and thus not included in the projections on which the TRRC Application is based.

Mr. Fix claims that the DM&E line will have distance and competitive advantages over the TRRC line. However, as I have already explained in my Supplemental Verified Statement, the DM&E line will serve SPRB mines, not the NPRB mines that will be served by the TRRC line. Further, the Wyoming coal that would be transported on the TRRC line would originate at mines in the northern part of the state to which the DM&E would have no access. Further, Mr. Morey's forecast that TRRC will transport coal from points in Wyoming is not, as Mr. Fix claims, in any way inconsistent with similar statements made in my Supplemental Verified Statement about the transportation of Wyoming coal on the TRRC.

It also bears note that the DM&E line would either have to build into SPRB coal mines now served by other railroads or DM&E would have to reach agreement with those same railroads (who are also its competitors) for joint-line service. DM&E will also need to develop an infrastructure, which it does not now have, to serve destination ports and other points for SPRB coal. The existing railroads, BNSF and UP, have a substantial competitive advantage over DM&E in that regard. By contrast, the TRRC line is not designed to compete with the existing railroads, but rather to serve as a tributary to BNSF, facilitating the transportation of coal at origins that will be served directly by the TRRC line. Other issues concerning the DM&E line are addressed in Mr. Roberts' Rebuttal Verified Statement.

Mr. Fix inquires as to whether a fueling facility is planned for Miles City. The answer is no. The reference in Revised Attachment 1 to Mr. Leilich's Supplemental Verified Statement to the "Estimated Cost Per Gallon (Delivered at Miles City)" is a reference to the cost of fuel that is

delivered at Miles City, i.e., the local cost of fuel as opposed to the cost of fuel delivered at some distant point. It is not, and was not intended to be, a reference to the establishment of a fueling facility at Miles City, which would not be needed.

Mr. Fix also inquires as to whether or not a helper locomotive facility is being planned for Miles City. Again, the answer is no. Helper locomotives will be required only in those areas described by Mr. Leilich.

Mr. Fix claims that the construction costs for the Western Alignment are too low, but offers no explicit explanation as to why he believes that to be the case. TRRC stands by the detailed estimates prepared by Mr. Hadley.

Finally, Mr. Fix raises a series of comments on environmental issues. These comments should be addressed to SEA and thus I will not address them here.

C. Reply to UTU-GCA/MT

UTU-GCA/MT claims that BNSF is operating seven loaded and seven empty coal trains between Huntley and Forsyth over the former Northern Pacific line, three more loaded and empty trains than in 1998. It maintains that a greater number of trains would therefore divert to the TRRC than has been projected. However, UTU-GCA/MT is apparently including trains from the Sarpy Creek and Big Sky mines, which would not divert to TRRC. TRRC's projection of the number of BNSF jobs that would be impacted by a re-route of traffic to the TRRC line was conservatively based on the diversion of 5.27 trains/day. That estimate remains conservative since TRRC believes that no more than 4 daily trains would divert to TRRC.

UTU-GCA/MT raises concerns about adverse impacts on UTU members, as well as upon BNSF employees in other crafts, resulting from the construction and operation of the line at issue in this proceeding. TRRC understands, and the 1998 Rebuttal Verified Statements of Thomas G.

Kraemer and Milton H. Siegele, Jr., BNSF's Assistant Vice President for Labor Relations underscore, that BNSF has reached agreement with UTU and the Brotherhood of Locomotive Engineers that allows for the effective use of resources and provides for the protection of employees in the event that BNSF were to operate the TRRC line. While TRRC appreciates that there is no guarantee at this point that BNSF will enter an operating agreement with TRRC, there is certainly a very realistic possibility that this will in fact happen to ensure seamless operations. Further, to the extent that it does not, TRRC (or some other operator of the line) will generate jobs for rail employees, as described in Mr. Leilich's initial and Supplemental Verified Statements in this proceeding. There is no question that in the absence of a TRRC line, rail labor will lose jobs in Montana as the level of NPRB coal mining diminishes.

Finally, UTU-GCA/MT has claimed in a separate filing, a November 17 Petition to Compel Discovery, that TRRC is a shell corporation with no assets. This is not true. TRRC's most recent balance sheet is attached for the information of the Board and to demonstrate that TRRC is not a shell corporation. Further, as described previously, TRRC plans to raise significant capital from investors and to assume debt as needed to construct the line.

D. City of Forsyth

The City of Forsyth is concerned about job losses resulting from the re-routing of BNSF trains. However, by bringing new coal mine development to the Southeast Montana area, the TRRC will create many more jobs than now exist in Southeast Montana and greatly help the area's economy and tax base.

TONGUE RIVER RAILROAD COMPANY, INC
BALANCE SHEET
October 31, 2003

ASSETS:

CASH	\$	91,950.76
CAPITALIZED COSTS	\$	10,133,264.91
TOTAL ASSETS	\$	<u>10,225,215.67</u>

LIABILITIES:

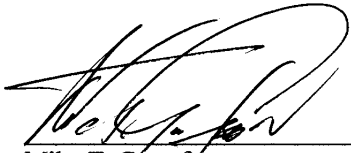
ACCOUNTS PAYABLE & LONG TERM DEBT	\$	<u>2,278,372.83</u>
-----------------------------------	----	---------------------

CAPITAL:

SHAREHOLDER'S CAPITAL	\$	8,715,749.77
CORPORATION RETAINED EARNINGS	\$	(422,700.01)
CURRENT YEAR NET INCOME/(LOSS)	\$	<u>(346,206.92)</u>
TOTAL PARTNERS' CAPITAL	\$	<u>7,946,842.84</u>
TOTAL LIABILITIES & PARTNERS' CAPITAL	\$	<u>10,225,215.67</u>

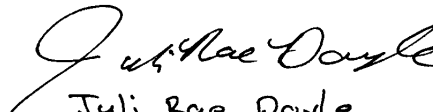
STATE OF MONTANA)
)
COUNTY OF YELLOWSTONE) ss:

Mike T. Gustafson, being first duly sworn, deposes and says he has read the foregoing statement, knows the contents thereof, and that the same are true and correct to the best of his knowledge and belief.



Mike T. Gustafson

SUBSCRIBED AND SWORN TO before me this 1st day of December, 2003.



Juli Rae Doyle

Notary Public for the State of
Montana.

Residing at Shepherd, Montana

My commission expires: Jan. 29, 2007

SEAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**TONGUE RIVER RAILROAD COMPANY, INC. – CONSTRUCTION AND
OPERATION – IN ROSEBUD AND BIG HORN COUNTIES, MONTANA**

**REBUTTAL VERIFIED STATEMENT OF
FRANCIS A. ROBERTS**

My name is Francis A. Roberts, and I reside at 4118 Stoneham Circle, Loveland, CO 80538. I am a Principal at Platts Research & Consulting (PRC), a Boulder, CO based energy information and consulting subsidiary of Platts, the world's largest energy information provider. Platts itself is a subsidiary of The McGraw-Hill Companies, a global information services provider. As a principal consultant at PRC, I have directed and participated in many coal, coal transportation, and electric power projects on behalf of coal companies, power companies, rail carriers, and financial institutions. I am the developer and leader of the Platts *Coal Market Research Service* (CMRS), a fee-based coal industry price and volume forecasting service. I have expertise in the areas of strategic planning and analysis, coal and energy market analysis, and coal supply, demand, and price forecasting. In my work, I have participated in numerous regional and national studies used to identify business opportunities. I have prepared "state-of-the-industry" analyses, have identified marketing opportunities for coal companies and am a

contributor to industry periodicals—writing articles and providing insight about the industry. I have provided analytical work in support of acquisition activity.

I have extensive experience in the coal mining and energy businesses, having been a Mining Engineer with 25 years experience in industry, 20 years of which have been in the energy businesses. My background is broad-based and includes domestic and overseas assignments in both engineering and marketing for large multi-national energy companies. My work has ranged from the theoretical (world-wide resource and technology reviews) to the practical (mine planning, ventilation, and construction engineering). Prior to joining Platts, I held management, marketing, engineering, and project development positions at Zeigler Coal Holding Company, British Petroleum, plc, and Exxon Minerals Company. I have a Bachelor of Science degree in Mining Engineering from the Colorado School of Mines as well as a Bachelor of Science degree in Forest Management from Oregon State University.

I have reviewed previous testimony in this case, including that of Mr. Morey, who submitted a statement with TRR's Supplemental Evidence. I assisted Mr. Morey, who no longer works for Platts, in the preparation of his statement and I concur with his conclusions.

In this rebuttal statement, I will address comments and criticisms made by Edward P. Evert in his November 10, 2003 Verified Statement included as part of the Comments of Northern Plains Resource Council On Supplement Evidence Filed by Tongue River Railroad.

There are sufficient factual errors and errors of omission in Mr. Evert's Verified Statement to lead one to conclude that his deductions are unfounded. Among these errors

are his supposition that the lack of rail infrastructure improvement by the BNSF along the Gillette, Wyoming to Billings, Montana line is evidence that there is no market potential for NPRB coal, his comments regarding the Dakota, Minnesota, and Eastern railroad (DME), his failure to account for expected Montana coal demand created by a utility's wholesale power transactions ("sale for resale"), and his reliance on summary-level out-of-context historical information as an indicator of the actual forecast determinants used by those who have concluded that there is a market for the coal that would be transported by the Tongue River Railroad ("TRR"). These, and other errors, are addressed in the following comments.

On page 2 of his Verified Statement, Mr. Evert begins a discussion in which he claims that the construction of the TRR will not improve the marketability of Montana coal. He incorrectly argues that had there been demand for NPRB coal, then there would have been infrastructure improvement in the NPRB proportional to the massive infrastructure improvements in the Southern Powder River Basin (SPRB). However, he overlooks that historically the rail capacity in the NPRB has met the existing demand, while disallowing SRPB penetration into core NPRB markets.

The massive SPRB production growth and attendant rail infrastructure improvements described by Mr. Evert were needed because the SPRB was penetrating new markets in the Midwest and Southeast, where there was new demand for SPRB coal. Unmentioned by Mr. Evert is the fact that during this time the SPRB was ineffective in penetrating the existing NPRB-supplied coal markets. In Table 1, it can be seen that NPRB shipments into its core market areas have been stable for years, even while SPRB

growth accelerated. Clearly, the SPRB is incapable of taking market away from Montana coal in its core market region, so long as Montana coal is available.

The market has demonstrated a preference for NPRB coal in the face of stiff SPRB competition, but some existing NPRB mines are nearing completion of their productive mine lives. Peabody Energy recently announced that it will be closing its Big Sky mine at the end of this year (2003). PRC estimates that Kiewit Mining's Decker mine is nearing closure. Thus, an important reason for constructing the TRR is to provide rail transportation for the replacement low-cost NPRB mines that the existing NPRB market prefers. The Otter Creek tract is one such replacement mine, and as Mr. Morey points out, there will be other reserves developed in the vicinity of the Decker mine.

The TRR will play an important part in ensuring efficient delivery of this coal from the massive Otter Creek reserve. As Mr. Thomas Kraemer, Group Vice President of Coal and Grain Operations at the Burlington Northern Santa Fe Railroad (BNSF) said to the Billings Gazette (April 10, 2003): "The (Otter Creek) development will be driven by low cost of service...It is a huge, tremendous reserve, and it would be low-cost mining." Furthermore, though the Otter Creek reserve could contain some sodium based on the limited available information, its sodium content would not appear appreciably different than that of existing mines in the Decker area. The State of Montana has appropriated funds for the conduct of a study to determine coal quality of the Otter Creek coal. Without the TRR, the level of production output from the NPRB will decline.

TABLE 1
PRB COAL SUPPLY BY CENSUS REGION

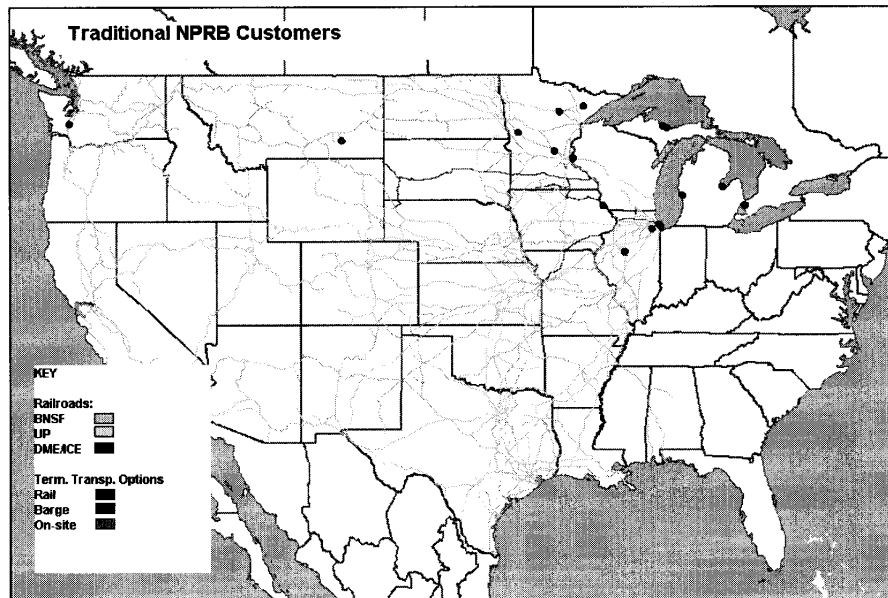
POWDER RIVER BASIN COAL SHIPMENTS¹					
<i>From Northern and Southern Regions Into Census Regions</i>					
		<i>Thousands of Delivered Tons</i>			
Supply Region	Receiving Census Region	1989	1993	1997	2001
Northern PRB	East North Central	16,871	16,042	14,450	15,699
	East South Central		178	3,246	
	Mountain One	9,989	8,619	8,495	8,647
	Mountain Two				264
	New England				10
	Pacific One	55	1,086	355	1,799
	South Atlantic	54			
	West/North Central	7,985	8,098	11,708	11,337
	West/South Central				1
Total Northern PRB		34,955	34,022	38,254	37,757
Southern PRB	East North Central	17,363	35,099	63,752	86,045
	East South Central	22	72	6,591	16,514
	Mid Atlantic	1			
	Mountain One	17,020	18,366	19,645	23,674
	Mountain Two			238	348
	New England		7		
	Pacific One	627	1,199	875	2,123
	South Atlantic	189	700	5,409	7,201
	West/North Central	44,336	56,228	77,721	101,696
	West/South Central	67,908	74,125	81,509	92,834
Total Southern PRB		147,466	185,797	255,740	330,435

¹ From the FERC Form 423

Mr. Evert asserts throughout his statement that, because of economic and transportation advantages, SPRB coal will either displace NPRB coal in the marketplace or limit its growth. However, it is historical fact that plants that have historically burned NPRB coal (shown in the map in Figure 1) have always had the option to burn SPRB coal, but have chosen to burn NPRB coal instead because it is either the most economic choice or because the characteristics of the NPRB coal make it more desirable. In fact, some of

these plants also burn SPRB coal, but have chosen to continue to burn large amounts of NPRB coal as well. All of these plants have preferred NPRB coal so long as it has been available, suitable, and competitively priced.

**FIGURE 1
LARGE CUSTOMERS OF THE NPRB SUPPLY REGION**



In Table 2 are examples of plants at which the NPRB and SPRB both deliver coal, but for which the NPRB coal was delivered at lower total cost (cents/mmBtu). These NPRB competitive advantages will not disappear provided that an adequate transportation infrastructure is maintained, and demonstrate the error of Mr. Evert's blanket reference, on page 12 of his Verified Statement, to alleged lower transportation costs of SPRB coal.

TABLE 2
EXAMPLES OF COMPETITIVE NPRB ADVANTAGE

SELECTED POWDER RIVER BASIN COAL SHIPMENTS¹			
<i>From Northern and Southern Regions</i>			
Plant	Supply Region	Delivered Cents/mmBtu	Rail Miles
Boardman (PGE)	Northern PRB	128.92	1,014
Boardman (PGE)	Southern PRB	135.06	1,115
King	Northern PRB	112.50	920
King	Southern PRB	115.66	1,018
Sherburne	Northern PRB	91.11	776
Sherburne	Southern PRB	92.92	1,103

¹ From the FERC Form 423

Thus, investment in SPRB rail development, by the BNSF, the Union Pacific Railroad (UP) or the DME, will not change customer preference for NPRB coal toward SPRB.

On page 9 of his Verified Statement, Mr. Evert begins a discussion in which he asserts that the combination of the DME and higher NPRB coal mine costs “could erode the market for NPRB coal substantially.” Mr. Evert fails to explain that the DME does not terminate much coal (and has no infrastructure in place to do so at the markets it proposes to serve), but will need to interchange with other rail carriers or barges for final delivery. Further, in contrast to the plans for the TRR, the DME does not currently originate any coal and will need to build into SPRB mines or interchange with competing carriers at origin as well. Thus, the cost advantages of any shorter route will be eliminated by the need for transloading and/or the use of multiple carriers. In any case, it is likely that the BNSF and the UP would choose to protect their own revenues rather than to divert coal to a shorter DME route. Further, construction of the DME line into Wyoming remains somewhat speculative at this time. TRR, by comparison, would either

be operated by BNSF or, even if not, would undoubtedly maintain an efficient interchange of coal traffic with BNSF, through which BNSF could achieve a shorter route to the Midwest and attendant savings.

On page 11 of his Verified Statement, Mr. Evert uses the U.S. Census Bureau forecast of population growth in Michigan, Minnesota, and Wisconsin to arrive at a growth rate that he claims will not support sufficient growth in shipments of NPRB coal to justify the TRR. Mr. Evert fails to account for the fact that significant amounts of power are moved from control areas based in the states of Michigan, Minnesota, and Wisconsin to control areas outside these states. In fact, the trend of these “out-of-area” power sales has been to increases in power sales.

One must realize that the demand for NPRB coal is influenced by market factors in many areas outside the areas where the power is produced. The fact that there are such significant “out-of-system” sales is evidence of growing demand for power from power plants in control areas served by NPRB mines. Table 3 illustrates that the control areas that include power plants served by NPRB coal (Michigan, Minnesota, Montana, and Wisconsin) exported significant power to control areas completely outside the states where that NPRB coal was burned. The table further illustrates that the trend for this power export has been increasing.

TABLE 3
POWER IMPORTS FROM CONTROL AREAS USING NPRB COAL

POWER IMPORTS¹

*From Control Areas Where NPRB Coal is Burned
Into Control Areas Outside States Where NPRB Coal is Burned*

Millions of MWHrs

State	2000	2001
Colorado	-	1,249,487
Iowa	6,064,235	6,964,828
Illinois	3,166,519	2,722,949
Indiana	54,479	180,426
Manitoba	150,905	14,290
Missouri	1,496,590	1,281,375
Nebraska	-	4,725,716
Ohio	4,621,802	1,797,501
Ontario	1,507,387	2,001,879
Oregon	13,519,067	14,582,140
Saskatchewan	-	736,523
Washington	945,122	971,922
Total	31,526,106	37,229,036

¹ Data from FERC Form 714. Note that control areas change occasionally from year to year, that there may be some non-reporting entities, and that the state is defined by the mailing address of the control company.

There are two additional important facts about these power exports. First, most of the generation in the primary states burning NPRB coal (Michigan, Minnesota, Montana, and Wisconsin) is produced from coal. Also, exports of power from control areas that burn NPRB coal inside these states are significant, as can be seen by the fact that those exports comprise a large fraction of the total generation in these states. These data can be seen in Table 4.

TABLE 4
THE IMPORTANCE OF COAL EXPORTS IN STATES BURNING NPRB COAL

POWER GENERATION STATISTICS¹					
<i>In Major States Where NPRB Coal is Burned²</i>					
Year	<i>Millions of MWHrs</i>		Total Generation From Coal	<i>Percent</i>	
	Total Generation From All Sources	Coal-Fired Generation		Exports of Total Generation	Exports of Coal- Fired Generation
2000	230,113,430	180,399,548	78%	14%	17%
2001	230,781,296	177,532,916	77%	16%	21%

¹ From EIA Form 906 (all plants greater than 50 MW in size)
² Michigan, Minnesota, Montana, and Wisconsin

Thus it can be seen that the market for NPRB coal is influenced by a region much larger than that defined simply by the states in which NPRB coal is burned. In fact, in years in which hydroelectric generation is down in the Pacific Northwest (drought years, for example), the need to deliver power from Montana to the Pacific Northwest could increase dramatically, possibly providing even greater demand for NPRB coal.

Mr. Evert's comments fail to address the impact of additional market demand arising from exported power to these other regions.

Mr. Evert draws conclusions about future coal markets on the basis of unconnected historical fact. For example, Mr. Evert incorrectly states on page 5 of his Verified Statement, that *historical* production trends are determinants of *future* market potential. This is untrue. If one were to rely on historical patterns of production, one would have concluded in the early 1990s that Illinois Basin and Central Appalachia coal production were poised for growth, having seen year-over-year increases in production. In fact, they were poised for production declines. (See Table 5.)

TABLE 5
HISTORICAL COAL PRODUCTION

COAL PRODUCTION BY SUPPLY REGION BY YEAR¹

	000 Tons													
Mine Supply Region	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Central Appalachia	262,023	289,648	271,147	269,872	249,869	273,863	271,898	278,281	287,495	277,540	283,416	262,609	288,975	248,762
Gulf Lignite	56,852	58,361	58,894	57,713	57,992	55,920	55,464	58,307	56,894	55,763	56,043	54,098	49,359	50,983
Illinois Basin	139,539	141,067	133,693	130,254	105,783	121,179	109,205	112,152	111,526	110,602	104,550	87,180	95,855	93,355
Interior	6,604	5,355	4,989	5,145	2,585	3,075	2,738	2,667	2,380	2,406	2,498	2,241	2,300	1,874
Northern Appalachia	126,272	131,187	124,036	121,979	94,884	114,847	111,982	118,626	123,815	129,617	119,026	117,457	118,950	107,603
Ohio	33,929	34,705	30,682	29,910	28,226	29,409	25,690	28,534	30,712	28,057	22,375	22,166	25,306	21,247
Southern Appalachia	27,839	29,319	28,406	26,264	25,309	23,715	26,294	25,867	25,160	23,769	19,993	19,337	19,455	18,867
Alaska	1,452	1,580	1,483	1,532	1,598	1,505	1,670	1,463	1,443	1,344	1,565	1,641	1,514	1,146
California			51	21	87	157	82	23	114	11	11			
Central Rockies	35,877	38,691	37,957	39,018	41,887	48,028	48,774	51,435	53,484	55,490	55,036	55,529	60,150	59,504
Four Corners	35,186	34,278	34,453	37,847	39,189	40,743	37,089	33,635	38,246	39,176	40,382	38,688	42,548	41,285
Northern Lignite	29,659	29,305	29,760	31,392	32,267	32,442	30,362	30,276	29,413	30,859	30,549	31,642	30,811	31,127
Northern PRB	37,384	37,554	36,856	38,608	35,645	41,641	39,778	37,588	40,642	42,577	40,904	38,016	38,802	37,058
Raton/Canon City	1,754	2,169	1,867	1,404	2,761	4,056	3,040	1,558	1,463	1,567	1,409	1,299	1,137	837
Southern PRB	150,176	161,818	172,902	164,874	191,711	215,869	246,006	261,091	264,648	297,200	317,491	323,519	353,900	359,972
Southern Wyoming	21,457	21,296	20,814	21,751	17,670	19,845	17,405	17,273	17,499	17,094	16,610	15,944	14,749	13,418
Washington	5,049	5,000	5,143	5,251	4,739	4,863	4,857	4,565	4,055	4,638	4,100	4,270	4,624	5,827

¹ From the MSHA Form 7000-2

Historical production has nothing to do with future markets. Rather, the demand for coal is influenced by its cost, its quality, its suitability to need, and its availability. By these measures, we believe that there will continue to be a large market for NPRB coal.

Furthermore, on page 13 of his Verified Statement, Mr. Evert cites the difference from a forecast prepared in 1994 by Dr. McMahan, the President of Resource Data International, Inc., (RDI) and the actual shipments from Montana for a given similar period as being due to failing to consider the importance of transportation costs and rates as determinants of market demand. This is false. Mr. Evert never worked for RDI, never had access to any of the proprietary sophisticated network linear programming models employed by RDI in the preparation of its forecast, and knows nothing of the market determinants used by RDI -- which did, incidentally, include transportation cost and rate components.

On page 8 of his Verified Statement, Mr. Evert refers to comments made by Montana State Senator Ken Toole wherein he states that Wyoming coal is cheaper, closer

to the surface, and possessed of a more competitive rail market. In fact, Senator Toole states that shipping coal to Midwestern markets from Wyoming can be done at half the cost of doing so from Montana. These generalizations range from occasionally correct to completely untrue. The facts are these: some Wyoming coal is more expensive to produce than is Montana coal, Wyoming strip ratios are increasing, and Montana rail transportation is often more competitive than Wyoming rail transportation. In Table 6 are estimates of mileages from typical NPRB and SPRB sources to selected power plants that have actually taken both NPRB and SPRB coal. Many PRB coal markets are closer to the NPRB by rail than they are to the SPRB. Those that aren't are nearly always no more than about 10% further.

TABLE 6
RAIL MILES FROM SOURCE TO DESTINATION BY REGION

ESTIMATED RAIL MILES FROM BASIN TO PLANT		
Plant	Miles from NPRB	Miles from SPRB
Alma	1,116	1,083
Ames	960	836
Arapahoe (PSCO)	573	362
Bay Front	1,037	1,166
Belle River	1,037	1,175
Big Stone	666	1,004
Boardman (PGE)	1,018	1,230
Boswell Energy Center	883	1,160
Campbell (CEC)	1,412	1,302
Cholla	1,298	1,137
Cobb	1,037	1,184
Columbia (WPL)	1,182	1,346
Corette	130	273
Coronado	1,216	1,060
Crawford (MIDGEN)	1,229	1,175
Dewey	1,092	1,021
Fisk	1,228	1,168
Gibbons Creek	1,858	1,447
Havana	1,165	1,035
Hennepin	1,165	1,198
Hoot Lake	848	924
J.P. Madgett	1,116	1,225
Joliet	1,288	1,265
Joliet 9	1,279	1,177
King	920	1,028
Lake Shore	1,037	1,502
Laskin Energy Center	1,067	1,281
Lawrence Energy Center	949	907
Miller	1,639	1,542
Monroe (DETED)	1,037	1,398
Oklaunion	1,233	1,112
Ottumwa - IES	969	873
Powerton	1,146	1,105
Presque Isle	968	1,187
Rock River	1,210	1,157
Sherburne	777	1,096
Sixth Street	1,184	943
St. Clair	1,043	1,503
Stateline (DOMENE)	1,275	1,152
Steam Plant 2	1,311	1,453
Tecumseh Energy Center	968	980
Trenton Channel	1,409	1,392
Victor J. Daniel	1,797	1,906
Waukegan (MIDGEN)	1,256	1,146
Weadock	1,021	1,579
Will County	1,216	1,138
Wright (FRE)	796	602

Mr. Evert, on page 11 of his testimony, refers to the Verified Statement of Mr. Mark T. Morey regarding “speculative statements regarding the ... possible changes in the price of natural gas”. Coal forecasts must account for the impact of natural gas prices. These prices have a demonstrated impact on the price of coal and coal consumption. It is not, as Mr. Evert states, speculation to account for these prices when forecasting; it is, in fact, the opposite: to ignore these impacts would be cause for speculation.

Further on page 11, Mr. Evert takes issue with Mr. Morey’s conclusion that building the TRR may cause a production shift to the NPRB. Mr. Evert correctly implies that the availability of coal does not, in itself, drive demand. The demand is driven by many factors, most of which are not mentioned by Mr. Evert: plant load forecast (in turn, a blend of many economic factors), coal quality, coal availability, delivered cost (evaluated for Btu, sulfur, ash, and other quality), and other competitive factors.

Mr. Evert’s Verified Statement does nothing to alter the conclusions drawn by Mr. Morey’s statement: NPRB coal will maintain its share of the northern tier market, including that involving final delivery by Great Lakes vessels; NPRB coal will grow its future share of the market at selected plants where both NPRB and SPRB coal is currently used; and there is a sufficient volume of NPRB coal demand to demonstrate the need for the TRR.

STATE OF COLORADO)

) SS:

COUNTY OF BOULDER)

Francis A. Roberts, being first duly sworn, deposes and states that he has read the foregoing statement, knows the contents thereof, and that the same are true and correct to the best of his knowledge.


Francis A. Roberts

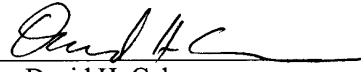
Subscribed and sworn before me this 26th day of November, 2003.

Carol Yummiahl
Notary Public for the State of Colorado

My Commission Expires 2/17/05

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of December 2003 served a copy of the foregoing Rebuttal Argument and Evidence of Tongue River Railroad Company, Inc. by first class mail, postage prepaid, on all parties of record.


David H. Coburn