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SERVICE DATE – SEPTEMBER 2, 2003

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: August 28, 2003

By petition jointly filed on May 1, 2003, in this sub-numbered proceeding (Tongue River III), the Tongue River Railroad Company (TRRC Partnership) and the Tongue River Railroad Company, Inc. (TRRC Inc.) (collectively petitioners) asked the Board to substitute TRRC Inc. for TRRC Partnership as the applicant for authority to construct and operate the so-called Western Alignment rail line between Ashland and Decker, MT. The petition will be granted.

BACKGROUND

An extensive description of the background of this proceeding is set forth in two decisions served earlier this year,¹ and it need not be repeated in detail. It is sufficient to note that TRRC Partnership was previously authorized to construct 89 miles of rail line between Miles City and Ashland, MT,² and to construct a contiguous 41-mile line from Ashland to Decker, MT.³ The Tongue River III proceeding now before the Board involves a request by TRRC Partnership for authority to construct and operate a rail line over an alternate route (the Western Alignment) to the route the Board previously approved (the Four Mile Creek Alternative) in Tongue River II for the southernmost 17.3-mile portion of the Ashland to Decker line.

¹ See Tongue River Railroad Co.–Construction and Operation–Western Alignment, STB Finance Docket No. 30186 (Sub-No. 3) (STB served May 19, 2003), and Tongue River Railroad Co.–Construction and Operation–Western Alignment, STB Finance Docket No. 30186 (Sub-No. 3) (STB served Mar. 11, 2003).

² See Tongue River R.R.–Construction and Operation–In Custer, Powder River and Rosebud Counties, MT, Finance Docket No. 30186 (ICC served Sept. 4, 1985), modified (ICC served May 9, 1986) (Tongue River I).

³ See Tongue River Railroad Company–Rail Construction and Operation–Ashland to Decker, Montana, Finance Docket No. 30186 (Sub-No. 2) (STB served Nov. 8, 1996) (Tongue River II).

TRRC Partnership filed the Tongue River III application on April 27, 1998. Some four months later TRRC Inc. filed a notice of exemption under 49 CFR 1150.31 from the provisions of 49 U.S.C. 10901 to acquire TRRC Partnership's transportation assets.⁴ The notice of exemption was served and published in the Federal Register (63 FR 54186) on October 8, 1998.⁵ Pursuant to that exemption, on January 1, 1999, TRRC Inc. acquired the transportation assets of TRRC Partnership, which consisted of the previously issued Interstate Commerce Commission and Board permits to construct and operate rail lines between Miles City and Decker, MT. As of that date, then, TRRC Inc. held authority to construct and operate the rail lines authorized in Tongue River I and Tongue River II, while TRRC Partnership was the applicant in Tongue River III.

The petition at issue here asks the Board to substitute TRRC Inc. for TRRC Partnership as the applicant in the Tongue River III proceeding. The United Transportation Union-General Committee of Adjustment and the United Transportation Union-Montana State Legislative Board (UTU-GCA/MT), jointly, filed a reply on May 15. The Northern Plains Resource Council, Inc. (Northern Plains) adopted UTU-GCA/MT's arguments in a reply filed May 16.⁶

DISCUSSION AND CONCLUSIONS

UTU-GCA/MT argues that the petition should be denied because it fails to provide full corporate, ownership, and identity information about TRRC Inc. According to UTU-GCA/MT, the petition does not comply with the corporate disclosure requirements of 49 CFR 1150.3 and fails to adequately describe the differences between TRRC Inc.'s corporate structure and the ownership and structure of TRRC Partnership as set forth in Tongue River I in 1986.⁷

⁴ Tongue River Railroad Company, Inc.—Acq. and Op. Exemption—Tongue River Railroad Company, STB Finance Docket No. 33644, filed September 18, 1998. The purpose of this transaction was to convert the entity that will construct and operate the Tongue River Railroad from a partnership to a corporation, thereby facilitating certain transactions that will need to be undertaken to exercise the construction and operation authority previously granted in Tongue River I and Tongue River II.

⁵ The Board denied petitions to reject, revoke, and stay the notice of exemption in a decision served November 13, 1998.

⁶ Because Northern Plains has not made any independent arguments, the Board will not separately address Northern Plains' reply.

⁷ Petitioners and UTU-GCA/MT also dispute whether a recent decision serves as persuasive
(continued...)

These contentions are not persuasive. The information required by the Board's regulations is already in the record here. Attached to the May 1, 2003 submission updating various information in the Tongue River III application is the supplemental Verified Statement of Mike T. Gustafson, President of TRRC Inc., which provides a description of the business and financial structure of TRRC Inc. The information set forth there includes a certificate of incorporation and the names of TRRC Inc.'s board of directors and officers, as well as a corporate resolution authorizing construction of the rail line. It specifies that all of the common stock of TRRC Inc. is owned by TRR Limited Partnership, a Montana limited partnership, and that none of the officers, directors, or major shareholders of TRRC Inc. control any other regulated carrier. The information TRRC Inc. has supplied is adequate to comply with 49 CFR 1150.3. Although not separately presented in the instant petition, the requisite information is in the record, and there is no need for the petitioners to submit the information again here. UTU-GCA/MT has not established that any additional detailed information about the entities involved in the substitution of parties request is necessary.

The only change that will take place if the petition at issue is granted is that the entity applying for the construction and operating authority over the Western Alignment will be a corporation rather than a partnership. As noted, TRRC Inc. currently holds the construction and operation authority granted in Tongue River I and Tongue River II, while TRRC Partnership is applying for authority to construct and operate over the Western Alignment in the Tongue River III proceeding. The substitution will simplify matters by replacing TRRC Partnership with TRRC Inc. in the Tongue River III application, leaving TRRC Inc. as the sole entity directly involved in these proceedings. The substitution of parties will have no bearing on the Board's analysis of the Tongue River III application.

In short, because petitioners have supplied all required information, and because petitioners' substitution of parties request is reasonable, the request will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

⁷(...continued)

precedent for granting the substitution. 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, STB Finance Docket No. 34110 (STB served Dec. 18, 2002). The Board need not address this issue because the petition is reasonable on its own merits.

It is ordered:

1. The joint petition of TRRC Partnership and TRRC Inc. is granted.
2. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary