BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 30186

TONGUE RIVER RAILROAD COMPANY, INC. – RAIL CONSTRUCTION AND OPERATION – IN CUSTER, POWDER RIVER AND ROSEBUD COUNTIES, MT

SUPPLEMENTAL APPLICATION FOR CONSTRUCTION AND OPERATION AUTHORITY

Betty Jo Christian
David H. Coburn
Linda S. Stein
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 429-3000

Attorneys for Applicant
Tongue River Railroad Company, Inc.

Dated: December 17, 2012
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(e) A list of the counties and cities to be served under the proposal, and whether there is other rail service available to them. The names of the railroads with which the line would connect, and the proposed connecting points; the volume of traffic estimated to be interchanged; and a description of the principal terms of agreements with carriers covering operation, interchange of traffic, division of rates, or trackage rights. ................................................................. 28

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As exhibit D, an operating plan, including traffic projection studies; a schedule of the operations; information about the crews to be used and where employees will be obtained; the rolling stock requirements and where it will be obtained; information about the operating experience and record of the proposed operator unless it is an operating railroad; any significant change in patterns of service; any associated discontinuance or abandonments; and expected operating economics. ............................................. 30

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 30186

TONGUE RIVER RAILROAD COMPANY, INC. – RAIL CONSTRUCTION
AND OPERATION – IN CUSTER, POWDER RIVER AND
ROSEBUD COUNTIES, MT

SUPPLEMENTAL APPLICATION FOR CONSTRUCTION AND OPERATION
AUTHORITY

Pursuant to the Surface Transportation Board’s (“STB” or “Board”) decision served
June 18, 2012 reopening the above-referenced docket (hereafter “June 18 Decision”) and the
November 1, 2012 Decision (hereafter “November 1 Decision”) clarifying the June 18 Decision,
Tongue River Railroad Company, Inc. (“TRRC”) hereby submits this Supplemental Application
for Construction and Operation Authority (“Supplemental Application”), under 49 U.S.C.
§ 10901 and 49 C.F.R. § 1150.1, et seq. This Supplemental Application supersedes the October
16, 2012 Revised Application filed by TRRC. Herein, TRRC will describe the common carrier
railroad that TRRC intends to construct in Powder River and Rosebud Counties, Montana, and
provide all of the information and justification required under the relevant statute and the
Board’s rules to allow the Board to authorize construction and operation of the proposed rail line
that is the subject of this Supplemental Application. As discussed further below, the line
proposed to be constructed by TRRC would be operated solely by BNSF Railway Company
(“BNSF”).

TRRC intends to construct a common carrier rail line that will serve any reasonable
request for service by shippers that locate along the line, including the planned coal mine that
Otter Creek Coal, LLC ("Otter Creek Coal") is in the process of permitting at Otter Creek, MT and any future coal mines that may be developed in the Otter Creek and Ashland, MT area. The primary purpose of the TRRC rail line now proposed -- to facilitate the transportation of substantial coal resources that otherwise have no viable transportation alternatives -- is no different than the rail line approved for construction and operation by the Interstate Commerce Commission ("ICC"), the Board's predecessor, in the TRRC I proceeding in 1986.\(^1\) However, the need for the railroad is now more immediate given the pending mine application of Otter Creek Coal.

TRRC previously proposed in its October 16 Revised Application: the construction of a line between Miles City, MT and Ashland/Otter Creek, MT following with some modification the alignment for the TRRC rail line approved by the ICC. However, TRRC herein proposes as its preferred alignment a different routing, hereafter referred to as the "Colstrip Alignment." TRRC makes this change to its proposal in light of additional engineering and other data that has been collected and analyzed in recent weeks that has led it to conclude that the Colstrip Alignment offers the shortest, most cost-effective and least environmentally impactful routing for the proposed line. TRRC has also determined that the Colstrip Alignment is operationally feasible for the unit trains of coal that would traverse it.

The Colstrip Alignment has been among the alignments considered for the TRRC line since the ICC proceeding was initiated. A modestly different version of the alignment was assessed in detail by the ICC in its TRRC Draft and Final Environmental Impact Statements ("EISs") in the previous TRRC I proceeding and determined at that time to be among the feasible

routes for the TRRC line.\textsuperscript{2} That Alignment also was among the alignments that the Board’s Office of Environmental Analysis ("OEA") has identified for further review in the new EIS to be prepared in this proceeding. \textit{See} Draft Scoping Notice issued October 22, 2012 at 4. OEA therefore solicited and received public comment on the Colstrip Alignment at the November 12-16 scoping meetings that were held in the area and in written scoping comments still in the process of being submitted.\textsuperscript{3}

The 42-mile Colstrip Alignment, depicted on the map at Exhibit C to this Application, would allow the transportation of coal and other products on the TRRC line between the Otter Creek/Ashland area and BNSF’s Forsyth Subdivision and therefore the national rail network. It would connect at its northern end with an existing and lightly used BNSF line known as the Colstrip Subdivision, which currently connects with the Forsyth Subdivision at Nichols Wye, a point approximately 6 miles west of Forsyth and approximately 50 miles west of Miles City. At its southern end, the Colstrip Alignment will have the same two termini south of Ashland, Montana proposed by TRRC in its October 2012 Application: Terminus Pont 1 at the previously proposed Montco Mine location and Terminus Point 2 along the Otter Creek drainage.

Because it connects to the existing BNSF Colstrip Subdivision, only 42 miles of new track would need to be constructed for the TRRC Colstrip Alignment. That is less than half of the new construction that would be required in comparison to the approximately 89-mile Miles City route previously approved by the ICC in the TRRC I proceeding and only marginally more than half of the new construction that would be required under the modified version of that Miles

\textsuperscript{2} TRRC has made one modest modification, described further below, to the previously-considered version of the Colstrip Alignment. That modification is designed to align the route more closely with an existing road and thus reduce environmental impacts.

\textsuperscript{3} OEA has extended the deadline for scoping comments through January 11, 2013, which will thereby allow additional comments to be received on the Colstrip Alignment proposal.
City route, which was proposed in TRRC’s October 16, 2012 Application. (We will refer to that alignment here as the “Modified Miles City Alignment”). The southernmost approximately 22 miles of the Colstrip Alignment would follow the Modified Miles City alignment to Terminus Point 1 and also follow that alignment to Terminus Point 2 at Otter Creek. The northern approximately 20 miles of the Colstrip Alignment will largely follow existing county and state road corridors to the point of connection with the Colstrip Subdivision south of the city of Colstrip.

This significant reduction in mileage of required new track proposed here for the TRRC line will substantially reduce environmental impacts, particularly land use impacts and impacts to agriculture and water quality. Further, there will be a substantial reduction of impacts within the Tongue River valley relative to the previously approved alignment because the Colstrip Alignment traverses only 17 miles within that valley versus approximately 81 miles for the Miles City alignment approved by the ICC and 77 miles for the Modified Miles City Alignment. Moreover, the Colstrip Alignment, which has the additional benefit of largely following existing road corridors, also avoids altogether the Miles City area, including the Miles City Fish Hatchery and the United States Department of Agriculture’s Livestock and Range Research Station (“LARRS”) facility. The Colstrip Alignment thereby eliminates a source of environmental impacts that have proven controversial in the past. While a thorough comparative analysis will be undertaken in the forthcoming EIS, various additional advantages of the Colstrip Alignment are described further below.

Although TRRC is now proposing to change its preferred alignment for the TRRC line, neither the purpose of the railroad nor the public necessity and convenience factors that justify its
construction and operation has diminished. The ICC found in 1986 that a common carrier rail line between the Otter Creek/Ashland area and Miles City serves the public interest for the transportation of coal resources. That same determination holds with even greater force in 2012 for the Colstrip Alignment, which will likewise be used to transport vital coal resources in response to market demands. As will be shown in this Application and the verified statements submitted in support of it, the developer of the Otter Creek mine, a subsidiary of Arch Coal, is moving forward to develop the very substantial low sulfur, sub-bituminous coal resources at Otter Creek and to transport that coal via the TRRC. Arch in fact has chosen to invest in the TRRC, having assumed an approximately one third ownership share in TRRC’s parent. Further, BNSF, which already has a substantial network of rail lines serving the Powder River Basin, is likewise confident that the TRRC rail line will be used to transport a significant volume of coal between Otter Creek and the national rail network. BNSF has demonstrated this confidence by also investing as an approximately one third owner in TRRC’s parent. BNSF is also the proposed sole operator of the TRRC line and in that capacity joins in this Supplemental Application.

The State of Montana, which has already benefited from the leasing of the coal tracts at Otter Creek, will benefit from royalties earned from the coal production at Otter Creek as well as from increased employment and associated economic development. These significant public benefits are discussed further below.

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4 Should the permitting agencies, including the STB, decide that some other alignment from among the alternatives being considered is preferable, TRRC is not hereby foreclosing the possibility that the line would be constructed along a different alignment.
TRRC does not intend to construct the rail lines south of Terminus Points 1 & 2 (located south of Ashland, MT) that were the subject of its applications in the now-dismissed TRRC II\(^5\) and TRRC III\(^6\) proceedings. Thus, the various concerns raised by Native American groups, the National Park Service and others about building a rail line south of the Ashland area and proximate to the historically significant Wolf Mountains battlefield site are no longer pertinent.

In further support of this Application, TRRC submits the following information as required by 49 C.F.R. Part 1150 and contemplated by the Board’s June 18 and November 1 Decisions:

OVERVIEW (Section 1150.2)

(a) **A brief narrative description of the proposal.**

By this Supplemental Application, TRRC is seeking authority to construct and operate a rail line between Colstrip, MT and Ashland/Otter Creek, MT, the southern portion of which was previously approved by the ICC in 1986. The principal purpose of the Tongue River Railroad project is to transport low sulfur, sub-bituminous coal, from mine sites developed in Rosebud and Powder River Counties, Montana, including proposed mines in the Otter Creek area.

The coal resources available for transportation from the Otter Creek area will be substantial, consisting of the about 1.5 billion tons, which makes Otter Creek one of largest undeveloped sources of low sulfur, sub-bituminous coal in the United States. See Rowlands VS

\(^5\) The TRRC II proceeding is Finance Docket No. 30186 (Sub-No. 2), *Tongue River Railroad Company – Rail Construction and Operations – Ashland to Decker, Montana.*

\(^6\) The TRRC III proceeding is Finance Docket No. 30186 (Sub-No. 3), *Tongue River Railroad Company, Inc. –Construction and Operations – Western Alignment.*
at 2. The TRRC line will provide the only rail service available to this resource and to other considerable coal resources in the Ashland area. Id. See Bobb VS at 5.

Development of the Otter Creek coal resource is moving forward at this time. Following approval of the Montana State Land Board on March 18, 2010, the Otter Creek coal tracts were leased by the State of Montana to Ark Land Company ("Ark"); a subsidiary of Arch Coal Inc. ("Arch"). Those coal resources have been aggregated with other coal resources on adjoining coal tracts now controlled by Ark. Otter Creek Coal, a subsidiary of Arch and an affiliate of Ark, has already sought and obtained a prospecting permit from the Montana Department of Environmental Quality ("MDEQ") for the Otter Creek area. On July 26, 2012, Otter Creek Coal filed a mine permit application with MDEQ seeking authority to develop and operate a substantial coal mine in the Otter Creek area. See Rowlands VS at 2. On December 14, 2012, MDEQ issued a determination that the Otter Creek Coal permit application was administratively complete and that MDEQ will proceed with environmental review of the mine proposal. See http://www.deq.mt.gov/ea/coal.mcpx

The TRRC line will provide a direct and efficient link between the coal resources and the national rail network. The northern end of the proposed rail line will connect to the existing BNSF Colstrip Subdivision just south of Colstrip, MT and then generally parallel existing State and County roads to the southeast to the Tongue River where it will turn south traversing a route east of Ashland to a bifurcation point south of that community where it will split into two branches – (1) one of which will continue southwest and terminate at Terminus Point 1, the previously proposed Montco Mine location ("Montco Mine Spur"), and (2) the other of which

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7 See Verified Statement of William M. Rowlands, President of Otter Creek Coal (hereafter "Rowlands VS"). The verified statements of William Rowlands and Stevan Bobb, President of Tongue River Railroad Company, Inc., (hereafter "Bobb VS") are included in Appendix A.
will continue south along the Otter Creek drainage to Terminus Point 2 at the planned Otter Creek Mine ("Otter Creek Spur"). See Exhibit C map of proposed line.

The proposed rail line is generally consistent with the Colstrip Alternative analyzed in the 1986 Decision, with the exception of approximately five miles of the rail line, which will now generally parallel Greenleaf Road (S-447) rather than Roe & Cooper Creek as originally considered. From approximately nine miles north of Ashland to Terminus Points 1 and 2, the proposed Colstrip Alignment, with some refinements, matches the rail line previously approved by the ICC in 1986. The refinements to the alignment address rail operational considerations that were raised subsequent to the 1986 Decision. They generally entail a straightening and shortening of the rail alignment approved in 1986. Most of these refinements were considered in the TRRC III proceeding. The refinements are illustrated in Exhibit C, which includes a schematic diagram comparing the alignment of the Otter Creek Spur considered in 1986 with the alignments now proposed and also includes aerial photos which are reproduced from the Final EIS in the TRRC III proceeding showing the modifications to the portion of the alignment that is now part of the proposed Colstrip Alignment. ⁸

The proposed TRRC rail line will connect to the existing BNSF Forsyth Subdivision main line via the existing BNSF Colstrip Subdivision branch line. See Exhibit C. Upgrades to the existing BNSF Colstrip Subdivision and the connection between the Colstrip and Forsyth Subdivisions, known as Nichols Wye, will be made to bring the BNSF branch line up to current main line standards. Construction of the TRRC rail line will commence near the south end of the

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⁸ The aerial photos describe the refinements as "1998" refinements, reflecting the date that they were first proposed. The photos reflect the names of property owners at the time these photos were taken, but the ownership information may no longer be accurate. The photos do not reflect the refinements to the Otter Creek Spur, which are shown on the map that is also part of Exhibit C.
BNSF Colstrip Subdivision (Point A on the first map in Exhibit C) and continue generally southeast to Ashland, MT and then south of Ashland to the two branch lines – the Otter Creek Spur and the Montco Mine Spur.

Because the Colstrip Alignment is significantly shorter in length than the route previously approved in 1986, the proposed TRRC rail line will require less land to be acquired for the right-of-way, will result in fewer at-grade private crossings, and will result in a lesser volume of earth work. As a result of moving the north end of the rail line to Colstrip from Miles City, construction of the Colstrip Alignment will utilize existing transportation corridors to a far greater extent than the previously approved route, and will result in a rail line that parallels the Tongue River valley for only a fraction of the distance compared to the previously approved route with attendant environmental, operating and economic advantages. Moreover, unlike the previously approved route, the Colstrip Alignment will result in no encroachment of the Miles City Fish Hatchery or the United States Department of Agriculture LARRS facility.

(b) **The full name and address of applicant(s).**

TRRC’s full name and address is:

Tongue River Railroad Company, Inc.
1302 24th Street West, #315
Billings, MT 59102

**INFORMATION ABOUT APPLICANT(S) (Section 1150.3)**

(a) **The name, address, and phone number of the representative to receive correspondence concerning this application**

Correspondence relating to this Supplemental Application should be directed to the following representative of TRRC:

David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC  20036
(202) 429-8063
(202) 261-0565 (FAX)
dcoburn@steptoe.com

(b) **Facts showing that applicant is either a common carrier by railroad or has been organized to implement the proposal for which approval is being sought.**

The Tongue River Railroad Company, Inc. is a corporation that was formed to construct the rail line previously approved by the Board and its predecessor in the 1986 Decision, the 1996 TRRC II Decision and the 2007 TRRC III Decision.⁹ TRRC no longer seeks to construct the rail line from Terminus Point 1 to Decker, Montana authorized in the 1996 TRRC II Decision and the 2007 TRRC III Decision.

A copy of the Certificate of Incorporation of Tongue River Railroad Company, Inc. is attached hereto as Exhibit B. This is the same Certificate that was filed on May 1, 2003 as Exhibit 1 to the Supplemental Verified Statement of Mike T. Gustafson included with the Supplemental Evidence of Tongue River Railroad Company in Finance Docket No. 30186 (Sub-No. 3).

As the Certificate of Incorporation reveals, TRRC was organized, among other things, to design, plan, conduct engineering studies of, arrange financing for, and obtain all necessary federal, state, and local permits and authorizations for the construction and the operation of, to secure rights-of-way for and to construct, equip and operate railroads. TRRC intends that its line

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⁹ The 1996 TRRC II Decision authorized TRRC to construct a rail line south of Ashland, MT to Decker, MT. See Finance Docket No. 30186 (Sub-No. 2), *Tongue River Railroad Co. – Rail Construction and Operation – Ashland to Decker, Montana* (served Nov. 8, 1996). The 2007 TRRC III Decision authorized TRRC to construct the rail line from Ashland, to Decker, MT via the Western Alignment rather than the Four Mile Creek Alternative. See Finance Docket No. 30186 (Sub-No. 3), *Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment* (served Oct. 9, 2007).
be operated as a common carrier line that transports coal and any other commodities that may be transported on reasonable request by shippers that locate on its rail line.

(c) **A statement indicating whether the rail line will be operated by applicant. If not, the operator which has been selected must join in the application, and provide all information required for an applicant. If the operator has not yet been selected, state who is being considered.**

BNSF is expected to be the sole operator over TRRC’s rail line pursuant to an agreement that has yet to be reached. TRRC will promptly inform the Board when a final agreement is reached with BNSF.

(d) **A statement indicating whether applicant is affiliated by stock ownership or otherwise with any industry to be served by the line. If so, provide details about the nature and extent of the affiliation.**

The only stockholder of Tongue River Railroad Company, Inc. is Tongue River Holding Company, LLC (“TRR Holding”), a Delaware limited liability company. Arch, a non-carrier, holds a 34.68% membership interest in TRR Holding. BNSF, the expected operator, also holds a 34.68% membership interest in TRR Holding. Ark has leased the Otter Creek coal tracts from the State of Montana and Great Northern Properties Limited Partnership (“GNP”). Coal produced from those Otter Creek coal tracts is to be served by the TRRC rail line.

(e) **Date and place of organization, applicable State statutes, and a brief description of the nature and objectives of the organization.**

TRRC was incorporated in the State of Delaware on September 4, 1998 pursuant to Delaware General Corporation Law. Prior to that, TRRC was registered as a Montana limited liability partnership with the Office of the Secretary of the State of Montana on June 19, 1981, under Document 283235, according to the provisions of the Montana Limited Partnership Act, Title 35, Chapter 12, *MCA*, 1981, and, to the extent applicable, of the Montana Uniform Partnership Act, Title 35, Chapter 10, *MCA*, 1981.
This corporation was organized to project, design, plan, conduct engineering studies of, arrange financing for, and obtain all applicable federal, state, and local permits and authorizations for the construction and the operation of, to secure rights-of-way for, and to construct, equip and operate railroads. As first reported to the Board in July 2011, on July 1, 2011, all of the stock of TRRC was sold to TRR Holding, which is jointly owned by BNSF, Arch Coal, Inc. and non-carrier TRR Financing, LLC ("TRR Financing"), a Delaware limited liability company controlled by Mr. Forrest E. Mars, Jr.

BNSF, the expected sole operator, was originally incorporated in the State of Delaware under the name Great Northern Pacific & Burlington Lines, Inc. on January 13, 1961 pursuant to General Corporation Law of Delaware. The purpose of the corporation was to engage in any lawful act or activity for which corporations organized under the General Corporation Law of the State of Delaware as the same existed at the time of incorporation or might be thereafter amended.

(f) **If a corporation, submit:**

(1) **A list of officers, directors, and 10 principal stockholders of the corporation and their respective holdings. A statement whether any of these officers, directors or major shareholders control other regulated carriers. Also a list of entities, corporation(s), individual(s), or group(s) who control applicant, the extent of control, and whether any of them control other common carriers.**

The officers and directors of Tongue River Railroad Company, Inc. are:

- Stevan B. Bobb, President
- Julie A. Piggott, Vice President – Finance
- C. Alec Vincent, Treasurer
- Robert M. Criswell, Secretary
- Stevan B. Bobb, Director
- Ken Cochran, Director
As shown in the table below, the sole shareholder of Tongue River Railroad Company, Inc. is TRR Holding, a Delaware limited liability company. BNSF, Arch Coal, Inc., and TRR Financing each own approximately a one-third, more or less, interest in TRR Holding.

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<th>Arch Coal, Inc.</th>
<th>BNSF Railway Company</th>
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<td>34.68%</td>
<td>34.68%</td>
<td>30.64%</td>
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Tongue River Holding Company, LLC  
(Sole Shareholder)

Tongue River Railroad Company, Inc.

None of TRRC’s officers, directors, or its sole stockholder, TRR Holding, control other regulated carriers. No entities that control applicant control other common carriers. However, BNSF plans to shortly submit an application to the STB seeking authority to acquire control of TRRC under 49 U.S.C. § 11323(a) (3).

The officers and directors of BNSF, the expected operator, are:

- Matthew K. Rose  Chairman and Chief Executive Officer
- Carl R. Ice  President and Chief Operating Officer
- Gregory C. Fox  Executive Vice President – Operations
- Thomas N. Hund  Executive Vice President and Chief Financial Officer
- Stevan B. Bobb  Executive Vice President and Chief Marketing Officer
- Roger Nober  Executive Vice President - Law and Secretary
- John O. Ambler  Vice President – Corporate Relations
- Paul B. Anderson  Vice President – Marketing Support
- Michael R. Annis  Vice President - Tax
- Paul W. Bischler  Vice President and Chief Sourcing Officer
- Stephen G. Branscum  Group Vice President – Coal
- Rollin D. Bredenber  Vice President – Capacity Planning and Operations Research
- M. Rizwan Chand  Vice President and Chief Human Resources Officer
Frederick G. (Fritz) Draper  
Vice President - Business Unit Operations

George Duggan  
Vice President – Coal Marketing

Kathryn M. Farmer  
Group Vice President – Consumer Products

John J. Fleps  
Vice President – Labor Relations

David L. Freeman  
Vice President – Transportation

David L. Garin  
Group Vice President - Industrial Products

Amy C. Hawkins  
Vice President – Government Affairs

Kevin Kaufman  
Group Vice President – Agricultural Products

Robert W. Lease  
Vice President – Service Design and Performance

John D. Lovenburg  
Vice President – Environmental

Frederick R. Malesa  
Vice President International Intermodal Marketing

John Miller  
Vice President – Industrial Products Sales

Jo-ann M. Olsovsky  
Vice President – Technology Services and Chief Information Officer

Julie A. Piggott  
Vice President – Planning & Studies and Controller

Rob M. Reilly  
Regional Vice President – Operations

Chris A. Roberts  
Vice President – Mechanical and Value Engineering

Mark A. Schulze  
Vice President – Safety, Training and Operations Support

Sanford C. Sexhus  
Vice President – Engineering

Charles W. Shewmake  
Vice President and General Counsel

Michael C. Shirecliff  
Regional Vice President – Operations

Denis J. Smith  
Vice President – Industrial Products Marketing

Jon Stevens  
Assistant Vice President and Assistant Controller

David W. Stropes  
Vice President – Corporate Audit Services

C. Alec Vincent  
Assistant Vice President – Finance and Treasurer

Richard E. Weicher  
Vice President and General Counsel – Regulatory

Thomas G. Williams  
Vice President Domestic Intermodal Marketing

Dean H. Wise  
Vice President – Network Strategy

Jeffrey B. Wright  
Regional Vice President – Operations

Judy K. Carter  
Assistant Secretary

Peter M. Lee  
Assistant Secretary

Beth A. Miller  
Assistant Treasurer

Vickie J. Popejoy  
Assistant Secretary

Jeffrey T. Williams  
Assistant Secretary
(2) As exhibit A, any resolution of the stockholders or directors authorizing the proposal.

See Exhibit A attached.

Section 1150.3, Paragraphs 2(g), 2(h), 2(i) and 2(j) are inapplicable.

INFORMATION ABOUT THE PROPOSAL (Section 1150.4)

(a) A description of the proposal and the significant terms and conditions, including consideration to be paid (monetary or otherwise). As exhibit B, copies of all relevant agreements.

This Supplemental Application seeks Board authorization to construct a rail line between Colstrip, MT and Ashland/Otter Creek, MT referred to as the Colstrip Alignment. The Colstrip Alignment connects to the BNSF Forsyth Subdivision main line via the existing BNSF Colstrip Subdivision branch line, which intersects the Forsyth Subdivision at a BNSF station known as “Nichols Wye” approximately six miles west of Forsyth, MT. Upgrades to the BNSF Colstrip Subdivision and the connection between the Colstrip and Forsyth Subdivisions will be made to bring the branch line up to current main line standards.

The north end of the TRRC rail line will connect to the existing BNSF Colstrip Subdivision just south of Colstrip, MT (Point A on the first map in Exhibit C) and continue southeast, crossing and paralleling Cowcreek Road for about seven miles before crossing Rosebud Creek Road and then Greenleaf Road (S-447). The rail line will then run generally
parallel to Greenleaf Road for about eleven miles to the southeast before crossing Tongue River Road (S-332) and then the Tongue River.

From just east of the Tongue River crossing, approximately nine miles north of Ashland, MT, the proposed TRRC rail line will begin to match the alignment previously approved in 1986, with some refinements, and continue south traversing a route east of Ashland where the line will divide at a bifurcation point, with one branch proceeding up the Otter Creek drainage to Terminus Point 2 and the other branch extending up the Tongue River valley to the previously proposed Montco Mine at Terminus Point 1. The refinements to the rail line approved in 1986 on the southern portion of the Colstrip Alignment have been made to the proposed preliminary track centerline based upon more detailed analysis. These refinements result in a variance that is generally no more than one-quarter mile from that portion of the rail line approved in 1986. See aerial views and schematic showing refinements at Exhibit C.

The TRRC rail line will be a single track facility constructed of continuous-welded rail, and will be built and maintained to Federal Railroad Administration (“FRA”) Class 3 standards. The rail will be placed on a prepared grade and will occupy a minimum right-of-way (“ROW”) of 200 feet. TRRC will of course be subject to FRA safety standards.

The TRRC rail line design includes one passing siding with 8,500 foot clear length. The siding will be constructed as volumes warrant. The location of the siding will be determined based on further engineering work. Number 20 electric powered switches will be used to permit route diversion at speeds up to 40 MPH. In addition to the passing siding, approximately three set-out tracks between 500 feet and 4,000 feet in length (between clearance points) will be constructed of continuous-welded rail, and will provide for temporary storage of cars requiring repair and for storage and clearing of maintenance equipment.
The estimated construction cost (in 2013 dollars) of the proposed TRRC rail line is approximately $416 million. The estimate includes all costs associated with excavation, major structure installation, construction reclamation, track installation, signals and communications system, and railroad infrastructure. A break-out of the costs is contained in Appendix B.

(b) Details about the amount of traffic and a general description of commodities.

The primary commodity to be transported over the TRRC rail line will be coal moving from the proposed Otter Creek coal mine and other mines that might be developed in the future in the Ashland area. The coal reserves subject to the leases between Ark and the State of Montana and the lease between Ark and GNP in the Otter Creek area near Ashland contain approximately 1.5 billion tons of low sulfur, sub-bituminous coal. See Rowlands VS at 2.

Construction of the TRRC line will provide, for the first time, rail service to one of the largest remaining undeveloped reserves of low sulfur, sub-bituminous coal in the United States. Id. As explained in the Rowlands Verified Statement at 3, TRRC anticipates that, at full production, approximately 20 million tons of coal will be moved annually over the TRRC line from Otter Creek Coal’s planned mine in the Otter Creek area. When the mine is at full production, coal tonnage hauled will result in approximately 26 round trips per week on a 7-day weekly schedule.

(c) The purposes of the proposal and an explanation of why the public convenience and necessity require or permit the proposal.\(^\text{10}\)

Under the current public convenience and necessity statutory provision in 49 U.S.C. § 10901(c) that was adopted in ICCTA in 1995, the Board must approve a construction application unless it finds that the construction is “inconsistent with the public convenience and necessity.” Under the prior provision in effect before 1995, the Board’s predecessor was

\(^{10}\) As explained herein, the language of 49 C.F.R. § 1150.4(c) does not reflect the current statutory standard as modified by the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”).
required to approve a construction application if it found that “present or future public
convenience and necessity require[d] or permit[ted]” it. The current public convenience and
necessity standard is more relaxed than the previous standard and creates “a statutory
presumption that rail construction is to be approved.” See, e.g., *Mid States Coal. Progress v.
Surface Transp. Bd.* 345 F.3d 520, 552 (2003); Finance Docket No. 30186 (Sub-No. 3), *Tongue
River Railroad Company, Inc. –Construction and Operations – Western Alignment*, at 13 (served
Oct. 9, 2007).

The Board has approved several recent rail construction applications, finding that they
met the public convenience and necessity standard or warranted an exemption from regulation.
Exemption – A Rail Line Extension to Port Mackenzie, Alaska*, (served Nov. 21, 2011); Finance
Docket No. 34284, *Southwest Gulf Railroad Company – Construction and Operation Exemption
– Medina County, Tx*, (served Dec. 18, 2008); Finance Docket No. 33407 *Dakota, Minnesota &
Eastern Railroad Corporation Construction into the Powder River Basin* (served Feb. 15, 2006).

The current public convenience and necessity standard applies to this Supplemental
Application. While this proceeding was originally opened in the 1980s when the prior provision
was in effect, the Board has made it clear that it is undertaking a full review of TRRC’s
application, treating it like a new application. As the Board explained in its November 1
Decision at 2:

We make clear here that we reopened the *Tongue River I*
proceeding to review in full what is now the entire *Tongue River I*
line construction project. The Board’s review will include not only
the new environmental review of the entire construction project
that will be prepared, but also an examination of the transportation
merits supporting the entire *Tongue River I* line.

Because the Board is reviewing this application as though it were an application submitted in a new proceeding, the current public convenience and necessity standard applies. However, as shown below, TRRC’s proposal to construct and operate the Colstrip Alignment meets the public convenience and necessity standard under the prior standard as well, because the current or future public convenience and necessity “requires or permits” TRRC’s construction proposal.

TRRC’s purpose in submitting this Supplemental Application is to receive Board authority to construct and operate the Colstrip Alignment, a rail line between Colstrip, MT and Terminus Points 1 & 2. The TRRC rail line is the only viable transportation option for a vast coal source that a subsidiary of Arch is currently developing in the Otter Creek area. As explained above, Ark, a subsidiary of Arch, has leased Otter Creek coal tracts from the State of Montana and GNP. Otter Creek Coal, LLC, an affiliate of Ark, has already obtained a prospecting permit from the MDEQ and filed a mine permit application with the MDEQ to construct and operate a mine in the Otter Creek area. See Rowlands VS at 2. The State of Montana has determined, through its lease of the Otter Creek tracts to Ark that its citizens will benefit from the mining of this coal.\textsuperscript{12}

A study prepared by the University of Montana’s Bureau of Business & Economic Research titled “The Impact of Otter Creek Coal Development on the Montana Economy” (hereafter “Montana Study”) found that the development of Otter Creek coal, including the construction and operation of the railroad, would substantially benefit the Montana economy.\textsuperscript{13}

The Study, which was based on the Miles City alignment of the TRRC line, found that “with the

\textsuperscript{12} The State Land Board’s leasing decision has been affirmed by the Montana Supreme Court, which held that the Board was not required to undertake an environmental review under Montana law in connection with the leasing decision. \textit{Northern Plains Resource Council v. Montana Bd. Of Land Comm’s}, 288 P3d 169 (Mont. 2012).

\textsuperscript{13} This Study is attached as Appendix D.
Otter Creek coal development the state economy would be significantly larger, more prosperous, and more populous than would otherwise be the case.” Montana Study at 4. For example, it concluded that such development would result in the creation of more than 2,600 jobs during construction of the mine and railroad, and more than 1,700 new permanent jobs during operations of the mine. Id. The jobs will result from direct employment by the mine and railroad, and would also be created in the retail, health care, construction, government and health care sectors, among others.

The Montana Study also concluded that the development would increase Montana personal income by more than $100 million during construction of the mine and railroad, and by more than $125 million per year during mine operations. Id. In addition, the study found that the development would generate substantial tax revenues for the state of Montana. Id.

The Board should also take into account that coal production is expected to grow in the United States during the years that the TRRC line would be operational. According to the U.S. Energy Information Administration’s Annual Energy Outlook 2012 at page 98, U.S. coal production will grow at an annual rate of 1% after 2015 through 2035 based on the Reference Case, “with coal use for electricity generation increasing as electricity demand grows and natural gas prices rise.” The same report forecasts that Western coal production will also continue to grow, as will demand, albeit at a slower rate of growth than in the past. Id. Coal use is predicted to increase for use in the production of synthetic liquids and for export. Id.

There is also demand for coal overseas. To the extent some portion of the Otter Creek coal may find markets overseas (see Rowlands VS at 4) through U.S. ports along the Atlantic, Pacific, Great Lakes or Gulf Coasts, the export of that coal does not diminish the need for the

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TRRC line. It goes without saying that large volumes of rail traffic today consist of goods transported to ports for export. Moreover, the Obama Administration’s National Export Initiative to grow the nation’s exports underscores that export traffic is consistent with the national interest. See Executive Order 13534 (March 11, 2010) at http://www.whitehouse.gov/the-press-office/executive-order-national-export-initiative (citing increasing exports as a “critical component” to the nation’s job growth and economic health).

Given the explicit need for transportation of coal from the Otter Creek area and the fact that the TRRC rail line is the only viable means by which to transport such coal to market, it clearly would serve the public convenience and necessity to authorize the construction and operation of the TRRC rail line. This is not a rail line that is being proposed for construction based on speculation or with only a thin public interest need. The fact that BNSF and Arch have invested in the TRRC rail line and are prepared to expend substantial resources to build it underscores the need for the rail line. Indeed, the market is the best governor of the demand for a new rail line and here market forces are coalescing behind a determination that the coal resource at Otter Creek should be developed and transported. Where industry players are prepared to dedicate resources to a significant mine and the railroad needed to transport the mine’s product to market, the STB has no grounds for finding that construction and operation are inconsistent with the public convenience and necessity.

Moreover, the TRRC proposal to construct and operate the Colstrip Alignment meets not only the current standard for approval of new construction, but the pre-ICCTA standard, which required that “present or future public convenience and necessity require or permit” the proposed rail construction and operation. Applying that standard in 1986, the ICC determined that the construction and operation of the then proposed Miles City rail line was consistent with the
public convenience and necessity. Specifically, in approving that rail line, the ICC stated “[w]e adopt the reasoning and conclusions of the initial decision finding that the construction, operation, and financing of the subject line by TRRC meet appropriate public interest standards in 49 U.S.C. 10901 and 11301. The evidence of record shows a need for rail transportation to serve coal mines in the Tongue River valley. This is a provident and necessary expenditure that will give shippers new rail service to their benefit and to the benefit of the public as well.” 1986 Decision at 10.

TRRC’s current Colstrip Alignment proposal serves public convenience and necessity even better than the rail line approved in 1986. The need for the rail line is more apparent now because a mine that will be served by the railroad is in the process of being developed in the Otter Creek area. In 1986 when the ICC approved the Miles City route, no mine permit application had been filed for any mine that would be served by the TRRC rail line. The Colstrip Alignment also serves the public interest better than the rail line approved in 1986 because it will have fewer environmental impacts than the approved rail line as described below. Most notably, the Colstrip Alignment will be approximately 46 miles shorter than the route previously approved by the ICC with attendant environmental, economic and operating advantages. The Colstrip Alignment also avoids the Miles City Fish Hatchery and the United States Department of Agriculture’s LARRS facility. Given that previous TRRC rail line approved in this proceeding met the then-governing public convenience and necessity standard, the proposed Colstrip Alternative clearly meets that standard as well. A discussion of some of the key factors that favor approval of the proposed line follows.

A. Environmental Factors

In the Draft and Final EIS’s prepared in the TRRC I proceeding, the ICC’s Section of Energy and Environment, predecessor to the STB’s Office of Environmental Analysis, found that
among the routes studied, both the originally preferred route proposed by TRRC (the Miles City-Ashland/Otter Creek Route through the Tongue River valley) and the Colstrip Alignment were the two feasible routing options from among those studied. See 1986 Decision at 6 ("The FEIS concluded that the route proposed by TRRC and the Colstrip Alternate were feasible choices.").

In fact, in most resource categories used for comparing the various alignments under review, the Colstrip Alignment was determined to have fewer environmental impacts. See Table 4-14 of 1983 Draft EIS in the TRRC I proceeding, entitled “Summary Impact Table” attached hereto in Exhibit H; Executive Summary of the 1985 Final EIS in the TRRC I proceeding and Section 4.15 of that Final EIS, entitled “Summary Comparison of Proposed Action and Alternatives,” all attached hereto in Exhibit H. While TRRC recognizes that a new EIS is in process in this proceeding and that the Colstrip Alignment and other alternatives will once again be reviewed and compared, certain inherent advantages of the Colstrip Alignment are likely to demonstrate that that Alignment will have fewer adverse environmental impacts than the other alternative routes; specifically, the fewer number of miles of new track construction overall and the fewer number of miles in the Tongue River valley as compared to other routes.

A key environmental advantage to the Colstrip Alignment stems from the fact that significantly fewer miles of new rail line would need to be constructed. This is so because the Colstrip Alignment takes advantage of the already-existing BNSF Colstrip Subdivision, a single track line that links BNSF’s Forsyth Subdivision with an area southeast of the city of Colstrip. See map at Exhibit C. The existing BNSF Colstrip Subdivision, apart from an occasional local train, is not used for regular train service today and thus the operation on that Subdivision of trains using the TRRC Colstrip Alignment will not result in any train conflicts or otherwise overburden the line. Bobb VS at 3. The Colstrip Subdivision was used for train service at the
time the Colstrip alternative was assessed in the Draft and Final EISs prepared by the ICC in the 1980’s.

In terms of new construction, the Colstrip Alignment is 46 miles shorter required than the Miles City route approved in 1986 and 41 miles shorter than the Modified Miles City alignment. It is also shorter than other routes previously considered for the TRRC line in the TRRC I proceeding, namely, the Moon Creek and Tongue River Road alignments. In large measure as a result of the fewer miles of new track that would need to be constructed, the Colstrip Alignment would impact (according to the prior EISs in this proceeding) fewer landowners, fewer acres, fewer private road crossings, fewer streams, and fewer cultural resources sites. See Exhibit H. The prior studies also show that it would have fewer impacts to vegetation and wildlife and impact less agricultural property, among other advantages. Id.

Further, to a greater extent than other alternatives under review, including the Modified Miles City Alignment, the Colstrip Alignment follows existing transportation corridors. Specifically, the Alignment would follow Cowcreek Road and Greenleaf Road, prior to traversing parallel to Tongue River Road and (for Terminus Point 2) Otter Creek Road. See map at Exhibit C. The advantages of the Alignment found in the prior EISs are likely to be enhanced by the current Colstrip Alignment proposal which would route the Alignment along Greenleaf Road for the entire distance between Rosebud Creek and the Tongue River Road, an increased distance along existing transportation corridors of about 5 miles compared to the Colstrip Alternative route studied in previous EISs. By following the existing corridor of the road, as opposed to creating a new corridor for this approximate distance as proposed in the version of the Colstrip Alignment previously considered in the Tongue River I EISs, there are likely to be even fewer disruptions to agricultural and ranching operations in the area. See Bobb VS at 3-4.
Further, the modifications proposed to the portion of the Colstrip Alignment that was previously approved by the ICC in 1986 (the portion south of the Greenleaf Road area) may result in some environmental benefits, including fewer impacts to the river valley as a result of locating the line further west of the Tongue River. *See* Bobb VS at 7.

The Colstrip Alignment not only has the advantages of requiring less new track construction and of following existing corridors, it also has the environmental advantage over other routings considered previously of reducing the number of railroad miles traversing the Tongue River valley. Heading south from its northern terminus at the existing BNSF Colstrip Subdivision south of the city of Colstrip, the Alignment would enter the Tongue River valley near the point where Greenleaf Road intersects with Tongue River Road, and traverse the valley for a distance of only 17 miles to Terminus Point 1. *See* Bobb VS at 6. In contrast, the Miles City route approved in 1986 traversed the Tongue River valley for 81 miles. Thus, potential impacts to the valley and to the Tongue River, including water quality, very likely would be reduced, as found in the prior TRRC I EISs. *See* Exhibit H; Bobb VS at 6-7.

The Colstrip Alignment also has the significant advantage of not impacting the State of Montana’s Miles City Fish Hatchery or the U.S. Department of Agriculture’s LARRS station. *See* map at Exhibit C; Bobb VS at 7. Impacts to these two facilities have generated controversy in this proceeding, and, thus, a routing that avoids them entirely is advantageous. Another advantage is that the Colstrip Alignment would not require any crossing of I-94 (*see* map at Exhibit C), as would be required under the Miles City route. *See* Bobb VS at 7.

**B. Economic and Operating Factors**

Construction of the Colstrip Alignment is estimated to cost $416 million in 2013 dollars, a substantial economic savings compared to the approximately $625 million estimated
construction cost in 2012 dollars for the Modified Miles City Alignment. The Colstrip Alignment is also less costly to construct than other alignments under consideration, the cost of each of which would exceed $700 million.

Operations over the Colstrip Alignment will not require a different number of locomotives than would be the case for any of the other alternatives. See Bobb VS at 7. Further, the alignment will be designed to efficiently handle unit trains of coal. See Bobb VS at 7. The Colstrip Alignment would require longer operations against ruling grade (about 12 miles) as opposed to other alternatives, including the Modified Miles City Alignment. See Bobb VS at 7. However, the overall shorter distance of the combined Colstrip Alignment/existing BNSF Colstrip Subdivision routing between Otter Creek and the BNSF Forsyth Subdivision will offset to some extent the longer distance of such against-grade operations. See Bobb VS at 7. Moreover, Colstrip Alignment is operationally feasible for unit trains of coal and its characteristics are not markedly different from those of other lines operated by BNSF that haul coal unit trains. See Bobb VS at 7-8.

For Otter Creek/Ashland coal traffic heading westbound, the Colstrip Alignment’s general northwest/southeast orientation offers a reduction in the total mileage from origin to ultimate destination for the coal, eliminating 50 miles (100 miles round-trip) that the traffic would otherwise have to travel on the existing BNSF Forsyth Subdivision if that traffic entered that Subdivision at or near Miles City as it would under the other alignments being considered. See Bobb VS at 8. While eastbound coal traffic would ultimately travel about 38 miles (76 miles round trip) farther under the Colstrip Alignment as opposed to the other routes under

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15 The cost of the Modified Miles City Alignment has been adjusted upwards based on further engineering studies undertaken since TRRC filed its October 16 Application, which reported a lower estimated construction cost figure.
consideration (see Bobb VS at 8), the inability to predict how much coal traffic will head east versus west makes it impossible to accurately measure the implications of the Colstrip Alignment versus the other routes on this basis. Nonetheless, it merits noting that to the extent the Colstrip Alignment was not chosen by the ICC in the TRRC I proceeding in the 1980s on the basis that eastbound coal traffic would travel a longer distance to its ultimate destination, it was assumed at that time that all or virtually all of the coal traffic would move eastbound. That presumption is no longer valid – the coal market has evolved so that future coal traffic could move in either direction once it reaches the existing BNSF Forsyth Subdivision. See Rowlands VS at 4.

Finally, the proposed modifications to the portion of the Colstrip Alignment in the Tongue River valley and along the Otter Creek spur, i.e., the portion of the line south of Greenleaf Road that was previously approved by the ICC, are designed to straighten the line and thereby improve the efficiency of the planned transportation of unit coal trains along the line. See Bobb VS at 8. This will result in fuel usage, operational cost and maintenance cost benefits relative to the somewhat curvier line previously approved. See Bobb VS at 8.

(d) As exhibit C, a map which clearly delineates the area to be served including origins, termini and stations, and cities, counties and States. The map should also delineate principal highways, rail routes and any possible interchange points with other railroads. If alternative routes are proposed for construction, the map should clearly indicate each route.

Exhibit C, attached hereto, contains a map of the proposed rail line from Colstrip to the two Terminus Points, Terminus Points 1 & 2. Exhibit C also includes aerial views and a schematic diagram of the southern portion of the proposed rail line show the location of the proposed refinements to the rail line relative to the routing approved in 1986.
(e) **A list of the counties and cities to be served under the proposal, and whether there is other rail service available to them. The names of the railroads with which the line would connect, and the proposed connecting points; the volume of traffic estimated to be interchanged; and a description of the principal terms of agreements with carriers covering operation, interchange of traffic, division of rates, or trackage rights.**

The TRRC rail line, as proposed in this application, would serve the following counties and communities:

**Counties**
- Rosebud County
- Powder River County

**Communities**
- Colstrip
- Ashland

The community of Colstrip and Rosebud County benefit from rail service by means of a BNSF branch line to Colstrip. The community of Ashland and Powder River County currently do not have rail service.

The TRRC rail line would connect to the existing BNSF Colstrip Subdivision just south of Colstrip, MT. Based on projected mine production, TRRC could interchange an average of seven trains per day with BNSF in the initial full year of operations. TRRC and BNSF have not yet reached a specific agreement regarding BNSF’s operation of the TRRC rail line.

(f) **The time schedule for consummation or completion of the proposal.**

Construction of the TRRC approved rail line from Colstrip to Ashland/Otter Creek should take approximately 20 months over three years, assuming a construction season of eight months per year. TRRC anticipates that the rail line could be constructed and ready for

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16 Custer County would be served were one of the other alignments under environmental review to be constructed.

17 Miles City would be served were one of the other alignments under environmental review to be constructed.
transportation by the time that coal will begin to be produced from the Otter Creek mine, which is subject to the completion of permitting and a myriad of other factors including, without limitation, market conditions and general business considerations.

(g) **If a new line is proposed for construction:**

(1) The approximate area to be served by the line.

(2) The nature or type of existing and prospective industries (e.g., agriculture, manufacturing, mining, warehousing, forestry) in the area, with general information about the age, size, growth potential and projected rail use of these industries.

(3) Whether the construction will cross another rail line and the name of the railroad(s) owning the line(s) to be crossed. If the crossing will be accomplished with the permission of the railroad(s), include supporting agreements. If a Board determination under 49 U.S.C. 10901 (d) (1) will be sought, include such requests.

(1) The TRRC rail line would serve an area within Rosebud and Powder River Counties in Montana. Although the TRRC would be a common carrier railroad for all commodities, the greatest potential use of rail service is for the movement of coal. The TRRC rail line will serve the Otter Creek coal area leased by Ark which contains an approximately 1.5 billion ton coal reserve of low sulfur, sub-bituminous coal. In addition, TRRC has the potential to transport additional coal from the considerable coal resources that are located between Colstrip and the two Terminus Points and will serve any mines developed in that area. See Bobb VS at 5. However, at present, there are no known mine projects other than the Otter Creek mine in that area.

(2) At present, the area to be traversed by the TRRC rail line is used primarily for livestock grazing and to raise dry-land crops, such as wheat, barley, and oats. Some of the

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18 See Rowlands VS at 2.
land is irrigated, which permits the production of alfalfa and hay. It is not known at this time whether other businesses or agricultural interests will utilize rail transportation.

The new mine expected to be developed by Otter Creek Coal will be served by the TRRC. Output from Otter Creek Coal’s planned mine is predicted to be 20 million tons annually when the mine is at full production. See Rowlands VS at 3. It is not known at this time whether other industries will locate in the area served by the TRRC line, but TRRC will hold itself out as a common carrier to transport for any shipper upon reasonable request.

(3) The rail line will not cross another rail line.

OPERATIONAL DATA (SECTION 1150.5)

As exhibit D, an operating plan, including traffic projection studies; a schedule of the operations; information about the crews to be used and where employees will be obtained; the rolling stock requirements and where it will be obtained; information about the operating experience and record of the proposed operator unless it is an operating railroad; any significant change in patterns of service; any associated discontinuance or abandonments; and expected operating economics.

Exhibit D, attached hereto, contains an Operating Plan that sets out in general terms the expected operating plan if BNSF operates the TRRC rail line. As previously noted, the operations over the TRRC line are expected to be conducted solely by BNSF, under an agreement with TRRC. No agreement with respect to BNSF operations has yet been reached. Nevertheless, BNSF’s general plans for operations over the TRRC line, in the event of such an agreement, are set forth in the Operating Plan.

No associated discontinuances or abandonments are expected in connection with the construction of the approved TRRC rail line from Colstrip to Ashland/Otter Creek, MT.
FINANCIAL INFORMATION (SECTION 1150.6)

(a) The manner in which applicant proposes to finance construction or acquisition, the kind and amount of securities to be issued, the approximate terms of their sale and total fixed charges, the extent to which funds for financing are now available, and whether any of the securities issued will be underwritten by industries to be served by the proposed line. Explain how the fixed charges will be met.

Construction of the Tongue River Railroad will most likely be financed pursuant to one of the following options:

1. 100% equity contributions from some or all of the members of its sole shareholder, TRR Holding.

2. Guarantee by the some or all of the members of its sole shareholder, TRR Holding, of long-term debt privately placed by TRRC.

3. Combination of either 1 or 2 above.

(b) As exhibit E, a recent balance sheet. As exhibit F, an income statement for the latest available calendar year prior to filing the application.

Attached hereto are Exhibit E, a recent balance sheet for TRRC as of December 31, 2011 and for BNSF, the expected operator, as of December 31, 2011, and Exhibit F, an income statement for TRRC as of December 31, 2011 and for BNSF, the expected operator, as of December 31, 2011, the latest available calendar year prior to filing the Supplemental Application.

(c) A present value determination of the full costs of the proposal. If construction is proposed, the costs for each year of such construction (in a short narrative or by chart).

The present value cost of constructing the TRRC rail line is approximately $416 million.

A chart breaking out the projected construction costs by year is presented in Appendix B.
(d) **A statement of projected net income for 2 years, based upon traffic projections. Where construction is contemplated, the statement should represent the 2 years following completion of construction.**

*See* attached Exhibit G, which shows that the TRRC line will be profitable based on projected payments from the operator, BNSF.

**ENVIRONMENTAL AND ENERGY DATA (Section 1150.7)**


ICF International has been retained as the third party contractor pursuant to 49 C.F.R. § 1105.10(d) to work with the OEA staff in preparing an EIS relative to TRRC’s construction and operation proposal. As noted above, the scoping process relative to that EIS is currently underway. In addition, certain materials that bear on the Colstrip Alignment drawn from the ICC’s prior EISs in the TRRC I proceeding are included in Exhibit H to this Application.

**ADDITIONAL SUPPORT (SECTION 1150.8)**

**Any additional facts or reasons to show that the public convenience and necessity require or permit approval of this application. The Board may require additional information to be filed where appropriate.**

The purpose of this Supplemental Application is to obtain authorization to construct and operate a rail line between Colstrip, MT and Terminus Points 1 and 2, south of Ashland, MT. Compared to the rail line approved in 1986, the proposed TRRC rail line will create a route that permits more efficient, economical operations while resulting in less environmental impact. This would be a win-win situation in any circumstance. The Board has indicated that it “intends to expedite this case to the extent possible” in its decision reopening this docket and requiring TRRC to file a Supplemental Application. *See* June 18 Decision at 11.
Letters of support for this Supplemental Application from the Montana Coal Council, Western Environmental Trade Association, and Montana Chamber of Commerce are included in Appendix C. Other supporting comments from various entities and persons have been submitted to date in response to the Board’s scoping notice. See, for example, EI-19027 (Statement of Support from Billings Chamber of Commerce) and EI-19097 (Statement of Support from Two Rivers Authority). It is noteworthy that Rose Hanser, the mayor Colstrip, has submitted a comment in the current scoping phase of the EIS process in support of the Colstrip Alignment. See EI-19129.

NOTICE (Section 1150.9)

A summary of the proposal which will be used to provide notice under § 1150.10 (f).
Pursuant to 49 C.F.R § 1150.9, attached hereto as Exhibit I is a summary of the proposal in this Supplemental Application that was used to provide notice under § 1150.10(f). The summary was published in November 2012 in a newspaper of general circulation in each county in which the line will be located pursuant to the Board’s instruction in its November 1 Decision.

CONCLUSION

For the reasons stated herein, TRRC respectfully requests that the Board grant it authority to construct a common carrier rail line between Colstrip, MT and Terminus Points 1 & 2.
south of Ashland, MT as specified in this Supplemental Application and that BNSF be authorized to serve as the operator over that line.

Respectfully submitted,

[Signature]

Betty Jo Christian  
David H. Coburn  
Linda S. Stein  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-3000

Attorneys for Applicant  
Tongue River Railroad Company, Inc.

Dated: December 17, 2012
CERTIFICATE OF SERVICE

I hereby certify that a copy of Tongue River Railroad Company, Inc.’s Supplemental Application for Construction and Operation Authority was been served this 17th day of December, 2012 via first-class U.S. mail, postage prepaid, upon all parties of record to this proceeding.

[Signature]
Keith Decker