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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**SURFACE TRANSPORTATION BOARD FINANCE DOCKET NO. 30186**

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

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**NORTHERN PLAINS RESOURCE COUNCIL’S MOTION TO COMPEL**

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Northern Plains Resource Council (“Northern Plains”) hereby moves the Board pursuant to 49 C.F.R. § 1114.31 to compel the Tongue River Railroad Company, Inc. (“TRRC”) and two of its owners, the BNSF Railway Company (“BNSF”) and Arch Coal, Inc. (“Arch Coal”) to answer fully Northern Plains’ interrogatories and request for production of documents.<sup>1</sup> Northern Plains’ discovery is narrowly tailored to matters raised in TRRC’s December 17, 2012 Supplemental Application and relevant to the Board’s determination of the public demand and need for the proposed rail line and TRRC’s financial fitness.

TRRC is specifically relying on its owners’ “financial expertise” and status as “large sophisticated businesses with substantial resources . . . [and] expertise in rail transportation and coal production” to support its claims of public demand and need for the Tongue River Railroad and TRRC’s financial fitness. TRRC June 7, 2013 Reply at 26-27. Indeed, TRRC claims that Arch Coal and BNSF’s investment in TRRC and willingness to “expend substantial resources to build [the Tongue River Railroad] underscores the need for the rail line” and that “market forces are coalescing behind a determination that the coal resource at Otter Creek should be developed and transported.” Dec. 17, 2012 Supplemental Application at 21. TRRC’s financial fitness

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<sup>1</sup> Consistent with Order No. 235081, Northern Plains requests the discovery period be extended 45 days after the Board rules on any motion to compel.

similarly depends on its owners who according to TRRC may finance construction of the \$416 million rail line entirely through additional equity investments. Supplemental Application at 31. Despite TRRC's reliance on its owners to meet the Board's three-part test for determining whether to authorize construction and operation of the rail line, TRRC, Arch Coal and BNSF (collectively the "TRRC parties") are withholding critical information in response to discovery requests tailored to these matters.

Principally, the TRRC Parties will not produce *any* documents created or modified before the Board reopened TRR I on June 18, 2012, or that were not "relied upon in any filings" in this proceeding since then. *See e.g.* TRRC Resp. to Req. for Prod. No. 1. They are also limiting their search for responsive documents to "files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application." *Id.* The TRRC Parties claim that *all* other documents are not relevant, not reasonably calculated to lead to the discovery of admissible evidence, and are too burdensome to locate and produce. Other categories of documents are being withheld altogether.

The TRRC Parties' answers to interrogatories are similarly limited. As discussed below, *Arch Coal* and *BNSF* answered interrogatories directed to TRRC but hid behind the veil of TRRC's corporate form when it would allow limited disclosure of key information. The TRRC Parties cannot selectively choose which information is available to them when answering interrogatories. 49 C.F.R. § 1114.26(a) (a party "shall furnish such information as is available to the party.").

Northern Plains respectfully requests that the Board overrule the TRRC Parties' objections and issue an order compelling them to produce responsive documents and provide non-evasive and complete answers to interrogatories consistent with this motion. The Board

should have a complete record before deciding whether to grant a Certificate of Public Convenience and Necessity that would expose landowners to the permanent condemnation of their land and subject Montana to significant environmental impacts.

### **BACKGROUND**

The Interstate Commerce Commission authorized a variant of the Tongue River Railroad project in 1986. Over the last three decades, market forces have never been strong enough to justify construction of the line. Nevertheless, on July 1, 2011, Arch Coal, BNSF, and TRR Financing LLC agreed to invest in the project by purchasing TRRC. **Highly Confidential**

[REDACTED]

[REDACTED]

[REDACTED]

On September 2, 2011, TRRC informed the Board that its new owners “have determined that they will not, in the reasonably foreseeable future, construct the portion of the TRRC line south of the Ashland/Otter Creek area. Instead, TRRC will concentrate on moving toward construction of the line between Miles City and the Ashland/Otter Creek area, *i.e.*, the Tongue River I portion of the line.” June 18, 2012 Decision at 5 (quoting TRRC’s Letter to the Board of Sept. 2, 2011) (brackets omitted).

On December 29, 2011, the Ninth Circuit remanded the Board’s decision in TRR II and III, with the mandate issuing on March 22, 2012. On April 13, 2012, Northern Plains petitioned the Board to reopen Tongue River I, II, and III. In response, TRRC filed a Statement of Intent with the Board on April 19, 2012 indicating that it no longer intended to construct Tongue River

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<sup>2</sup> This document is substantially redacted without any claim of privilege. Northern Plains requests the Board compel the TRRC Parties to produce an unredacted version of this and other similarly redacted documents. It is unclear why this information is redacted given it is designated as “Highly Confidential” subject to the Board’s protective order.

II and III. Instead, TRRC planned to proceed with Tongue River I, with modifications to the line as contemplated in Tongue River III.

On June 18, 2012, following additional filings by interested parties, the Board found that circumstances had “changed significantly” since 1986 and that those changes warranted reopening Tongue River I. June 18, 2012 Decision at 8. The significant changes include new ownership of TRRC and a change in the purpose and need for Tongue River I. *Id.* Consequently, the Board required TRRC to submit a revised application providing for, among other things, “the purpose of the proposed rail line; the demand and need for its construction; and TRRC’s financial fitness to proceed.” *Id.* This information would allow the Board to consider the transportation merits of the revised Tongue River I project with a “complete and current description of TRRC’s plans and financial fitness, and replies raising concerns about TRRC’s revised application that might be filed.” *Id.* at 9.

On October 16, 2012, TRRC filed its Revised Application for Construction and Operation Authority. However, the Board determined the Revised Application was deficient because TRRC sought to “incorporate information from the original 1983 application” to support the transportation merits for the newly proposed railroad. Nov. 1, 2012 Decision at 3. The Board determined that TRRC could not rely on the information from 1983 and required updated information including “any additional evidence and argument in its supplemental filing in support of the transportation merits for the line that it now intends to build.” *Id.*

On December 17, 2012, TRRC filed its Supplemental Application for Construction and Operation Authority (hereinafter, “Supplemental Application”), which the Board accepted on January 8, 2013. Thereafter, on January 23, 2013, the Board sought additional information from TRRC in connection with its Supplemental Application. Among other things, the Board sought

information on potential market locations for the coal that would be transported from the mines; any potential plans to transport Otter Creek coal through U.S. ports along the Atlantic, Pacific, Great Lakes or Gulf Coast; and “potential shippers with whom Arch Coal has negotiated or signed contracts to ship Powder River Basin (PRB) coal from the Northern PRB on the Tongue River Railroad.” Jan. 23, 2013 Letter from Victoria Rutson to David Coburn.

TRRC’s response explained that the Otter Creek mine is “being developed on the basis that there will be a market for the coal mined there” and that “there is *ample* reason to believe that there will be a market for the coal once it becomes available for transport.” Feb. 6, 2013 Letter from Coburn to Blodgett and Summerville at 1 (emphasis added). TRRC noted that in Arch Coal’s view, “specific coal-fired power plants in the Upper Midwest and Washington that purchase coal from Montana mines at Spring Creek, Decker, and Rosebud . . . are potential customers for Otter Creek coal.” *Id.* at 2. TRRC further noted that some Otter Creek coal could be shipped to Europe from a port in Superior, WI and to Asia via the Westshore Terminals south of Vancouver, B.C or through export facilities proposed to be constructed in Washington, but that it is uncertain that those facilities will “ever come to fruition.” *Id.* at 3. Similarly, TRRC stated that the “volume of TRRC-transported coal that could be exported to Asia will in part turn on the availability of additional export capacity and thus relatively lesser amounts of coal will be exported to Asia in the event that these facilities are not developed.” *Id.* However, to its knowledge, no contracts with potential shippers had been negotiated or signed at that time. *Id.* at 4. TRRC also noted its prediction for traffic on the Tongue River I was “based on the assumption that the Otter Creek mine will reach its anticipated maximum production level of 20 million tons of coal per year.” *Id.* at 5.

On April 2, 2013, Northern Plains filed its comments on TRRC's Supplemental Application. TRRC replied to the comments on June 7, 2013 and included substantial amounts of new information in support of its application. Thereafter, Northern Plains filed a Sur-Reply on July 2, 2013, which included a renewed request to conduct limited discovery. On August 9, 2013, TRRC objected to Northern Plains' Sur-Reply and filed a Reply that included objections to Northern Plains' renewed request for discovery.

On August 27, 2013, the Board accepted Northern Plains' Sur-Reply and granted its request for discovery in this proceeding. The Board noted that this proceeding involves a "number of important and complex issues" that warrant further development of evidence through discovery. Aug. 27, 2013 Decision at 3. The Decision recognized four issues raised by Northern Plains in its request for discovery: (1) inconsistencies in TRRC's pleadings, (2) the credulity of TRRC's evidence, (3) the level of commitment to the project from TRRC's financial backers (Arch Coal, BNSF Railway, and TRR Financing), and (4) Arch Coal's estimates of demand for the coal. *Id.* at 2-3.

Northern Plains issued its First Set of Interrogatories (Appendix A) and First Request for Production of Documents (Appendix B) on September 12 and 13, 2013, respectively. On October 7, 2013, TRRC provided its Answers and Objections to Interrogatories (Appendix C) and Responses and Objections to Northern Plains' document requests (Appendix D). TRRC sent its final set of documents on December 6, 2013. The parties have met and conferred in an attempt to narrow the scope of discovery and resolve outstanding objections.

## SUMMARY OF RELEVANT ISSUES

The relevant issues in this proceeding stem from the Board's three-part test for determining whether to authorize construction and operation of the Tongue River Railroad: (1) whether the applicant is fit, financially and otherwise, to undertake the construction and provide rail service; (2) whether there is a public demand or need for the service; and (3) whether the construction project is in the public interest and will not unduly harm existing carrier services. *See e.g. N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1092 (9th Cir. 2011); *Norfolk Southern Corporation and Norfolk Southern Railway Company—Construction and Operation—in Indiana County, PA*, 2003 WL 21132522 (S.T.B.), at \*4 (May 15, 2003). Consistent with the test, here the Board reopened the TRR I proceeding and required TRRC to submit a revised application providing for, among other things, “the purpose of the proposed rail line; the demand and need for its construction; and TRRC’s financial fitness to proceed.” June 18, 2012 Decision at 8.

The purpose of the proposed rail line is to serve the Otter Creek mine and eventually other unspecified Ashland-area coal mines. *See e.g.* Dec. 14, 2012 Verified Statement of Stevan Bobb (submitted with TRRC’s Supplemental Application) at 5. Consequently, the demand and need for the Tongue River Railroad is inextricably linked to Arch Coal’s decisions vis-à-vis the Otter Creek mine. Most importantly, Arch Coal must decide to open the Otter Creek mine and produce coal in volumes sufficient to generate enough revenue-generating traffic for TRRC to cover the cost of constructing the Tongue River Railroad and BNSF’s operating costs and revenue requirements.<sup>3</sup> Arch Coal’s decision to open the mine will depend on market conditions and other factors, which will likely include:

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<sup>3</sup> Assuming that BNSF operates the Tongue River Railroad as claimed in TRRC’s Supplemental Application and later filings in this docket.

- Whether sufficient foreign and/or domestic markets exist for Otter Creek coal.
- Whether the price it can receive for Otter Creek coal is high enough to recover costs.
- Whether the delivered price of Otter Creek coal is competitive with coal from other suppliers.
- Whether the quality of Otter Creek coal is competitive with coal from other suppliers.
- Whether sufficient capacity exists at export terminal facilities to ship Otter Creek coal in volumes to cover Otter Creek costs.
- Whether to invest Arch Coal's limited resources in opening the Otter Creek mine instead of its other holdings.
- Whether introducing Otter Creek coal into the market will destroy whatever price discipline exists in the market.
- And, because Arch Coal is a part owner of TRRC, whether to finance TRRC with additional equity or by guaranteeing debt privately placed by TRRC.

Arch Coal's Chief Operating Officer, noted in Arch's most recent quarterly earnings call with investors that "I have to be honest, to even consider ramping up or bringing back equipment in any fashion [in the PRB], prices have got to be quite a bit better than what they are today. The numbers just don't support any further volume pick-up." *Wyoming coal mines look at cutting production*, Rapid City Journal (Nov. 3, 2013), available at

[http://rapidcityjournal.com/business/wyoming-coal-mines-look-at-cutting-production/article\\_5d46d132-ab29-5ace-a73b-06c3512cf7d2.html](http://rapidcityjournal.com/business/wyoming-coal-mines-look-at-cutting-production/article_5d46d132-ab29-5ace-a73b-06c3512cf7d2.html) (statement of Paul Lang,

Executive Vice President and Chief Operating Officer, Arch Coal) (last visited Jan. 13, 2013).

Thus, it is essential to understand whether Arch Coal will open the Otter Creek mine and come close to its claimed annual production capacity in the foreseeable future. These considerations factor prominently into the Board's determination of public demand and need and TRRC's financial fitness.



TRRC will also need to show investors it can generate sufficient income “needed to cover the investment necessary to construct the TRRC rail line . . . .” *See* Aug. 9, 2013 TRRC Reply to Northern Plains Sur-Reply at 3 n.2. Unlike earlier applications before the Board where TRRC provided a verified statement from an investment banker to demonstrate the project had a reasonable chance of financial success, here TRRC has taken the position that it has “large owners that [have] committed to either provide equity contributions to fund the construction or guarantee long-term debt privately placed by TRRC that would fund the construction.” TRRC’s Aug. 9, 2013 Reply at 27. TRRC further claims the “owners of TRRC are large sophisticated businesses with substantial resources, and include owners with expertise in rail transportation and coal production. They will not invest the millions of dollars in the project available to them if there were no market for the coal that the line will transport.” TRRC June 7, 2013 Reply at 26. Indeed, TRRC represents that one or more of its owners could finance construction of the Tongue River Railroad through 100% equity contributions. Dec. 17, 2013 Supplemental Application at 31. TRRC’s owners are, therefore, in a unique position to provide highly relevant information about the financial fitness of TRRC and market conditions that would justify, among other possibilities, a 100% equity investment in the \$416 million rail line.

These “large sophisticated businesses” with “considerable resources and financial expertise” made a substantial investment in TRRC in July 2011, which in part went to satisfying an outstanding multimillion-dollar loan from BNSF to TRRC. These investments, however, came before the dramatic decline in the market for coal.<sup>4</sup> Arch Coal and BNSF’s market analysis and other factors that led to their initial investment are probative of their willingness to commit additional equity financing to TRRC in the future. At a minimum, such information is reasonably

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<sup>4</sup> An indicator of this decline is the dramatic drop in the price of Arch Coal’s stock, which traded at \$26.99 on July 1, 2011. Two years later on July 1, 2013, Arch’s stock closed at \$3.66—a decline of 86.4%.

calculated to discover such information. Likewise, the terms and conditions of BNSF's pre-2011 loan to TRRC will help determine under what conditions BNSF, a "large sophisticated" business with "considerable resources and financial expertise," is willing to finance TRRC by issuing or guaranteeing debt.

To date, the evidence before the Board detailing Arch Coal and BNSF's commitment to TRRC is incredibly sparse. It consists merely of a bald assertion that "the owners of TRRC, which include BNSF and Arch, *are prepared* to make a significant financial investment in the TRRC line to *complement* the investment that Arch is making in the development of the Otter Creek mine." Dec. 14 2012 Bobb V.S. at 6 (emphasis added). Discovery tailored to address steps Arch Coal and BNSF have taken or would take to prepare for a \$416 million investment are highly relevant. Mr. Bobb's statement also underscores the importance of the Otter Creek mine to this proceeding.

### **NORTHERN PLAINS' DISCOVERY REQUESTS**

On September 12 and 13, 2013, Northern Plains served its First Set of Interrogatories and Request for Production of Documents on TRRC, respectively. Appendix A and B. Northern Plains tailored the requests to discover information related directly to central issues in this case—public demand and need for the line and TRRC's financial fitness—and matters raised in TRRC's filings.

### **THE TRRC PARTIES' RESPONSES AND OBJECTIONS**

On October 7, 2013, *Arch Coal* and *BNSF* answered the interrogatories directed to TRRC and produced documents from their files, not the files of TRRC. *See* Appendix C verification statements of Andrew Blumenfeld and Scott Castleberry;<sup>5</sup> and Ans. to Interrog. Number 30 (stating that TRRC has no custodian of records and that documents related to TRRC's

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<sup>5</sup> Neither person is employed by TRRC.

application are at BNSF and Arch Coal). Specifically, the interrogatory answers were verified as true and correct “only as it pertains to [Arch Coal or BNSF] acting as part owner of the parent company of Tongue River Railroad Company, Inc. and subject to the objections and qualifications included in such response.” Appendix C verification statements. Nevertheless, interrogatory answers were drafted as if written by TRRC and when convenient limited to TRRC’s apparent knowledge and understanding.

As noted at the outset of this Motion, the TRRC Parties object to producing *any* documents created or modified before the Board reopened TRR I on June 18, 2012, or that were not “relied upon in any filings” in this proceeding since then. Moreover, they are limiting production to an ostensibly “reasonable search” of “files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.” *See e.g.* TRRC Resp. to Req. for Prod. No. 1. The TRRC Parties also objected to producing any documents whatsoever in response to document request numbers 18, 22, 31, and 46-49. *See* Appendix D.

## **ARGUMENT**

### **I. The Board Should Overrule the TRRC Parties’ Meritless Objections and Compel Complete Responses to Northern Plains’ Discovery Requests.**

Northern Plains is entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). Further, it “is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 49 C.F.R. § 1114.21(a)(2). “The requirement of relevance means that the information might be able to affect the outcome of a proceeding.” *Waterloo Ry.-Adverse Aband.-Lines of*

*Bangor and Aroostook R.R. and Van Buren Bridge Co. In Aroostook Cnty., Me.*, AB 124 (Sub-No. 2), et al. (Board served Nov. 14, 2003).

Northern Plains anticipates that the TRRC Parties will argue that the burden placed on Arch Coal and BNSF to respond to discovery is overly burdensome as they are nonparties to this proceeding. As the Board noted in an earlier proceeding involving BNSF, “[a]ll discovery requests entail the balancing of the relevance of the information sought against the burden of producing that information.” *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557, 2012 WL 2378133 at \*4 (S.T.B. June 21, 2012) (upholding BNSF’s request to subpoena nonparty members of trade organization). The weight given to the burden of a party or nonparty “will be influenced by that party’s relationship to the proceeding.” *See id.* at \*3. “The more tangential the nonparty is to the proceeding, the greater the weight given to the burden being imposed in the balancing test.” *Id.* at \* 4.

Here, TRRC relies heavily on two of its owners to support claims of public demand and need for the Tongue River Railroad and its financial fitness. The Board should not allow TRRC to depend on its owners to support its application while simultaneously shielding them from discovery. That is particularly true where, as here, Arch Coal and BNSF are participating directly in the proceeding by answering discovery directed to TRRC. Under these circumstances, the relevance of information sought from Arch Coal and BNSF, who have a direct financial interest and whose coffers may finance the proposed rail line *in its entirety*, far outweighs the burden. Moreover, the burden should be minor for companies that are apparently “prepared to spend considerable resources” to construct the Tongue River Railroad. *See TRRC Supplemental Application* at 21.

**A. The Board Should Compel the TRRC Parties to Produce Documents Created or Modified After July 1, 2010 from the Files of those Employees or Departments That Are Likely to Have Responsive Information.**

The TRRC Parties improperly limited their production of documents to those that were created or modified after June 18, 2012 and then only from employees at Arch Coal and BNSF who provided information in connection with the reopened proceedings. *See* Appendix D, Nos. 1-4, 6-8, 11-13, 15-17, 19-21, 28-29. These requests relate to demand, markets, and competitiveness of Otter Creek coal; market conditions that could delay or prevent development of Otter Creek or reduce production levels below capacity; export terminal capacity; and revenue projections for the Tongue River Railroad.

The documents produced subject to TRRC's objections are devoid of information one would reasonably expect from "large and sophisticated" businesses with expertise in coal, rail transportation, and finance that have invested in and are prepared to expend substantial additional resources on the Tongue River Railroad. For example, there are only two emails from Arch Coal discussing demand. Both emails are from Andrew Blumenfeld, Vice President of Analysis and Strategy for Arch Coal, who provided a verified statement in these proceedings and answered certain interrogatories on behalf of Arch Coal. Mr. Blumenfeld is the *only* Arch Coal employee identified in response to Interrogatory Number 5, which asks for the identity of "any person who was or is responsible for evaluating demand for Otter Creek coal." Notably, the answer does not state that Mr. Blumenfeld is "responsible" for evaluating demand for Otter Creek coal. Rather, he is identified as merely having "provided information to TRRC on demand for Otter Creek coal." Similarly missing are any documents that evidence Mr. Blumenfeld "provided information to TRRC about demand for Otter Creek coal" as claimed in response to Interrogatory Number 5. The lack of information on demand produced from his files, among other things, is telling.

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[REDACTED] These emails show that Arch Coal scrutinizes information relating to markets for the coal it produces and relies on for revenue. It also evidences other employees at Arch Coal whose files were not searched but who likely have responsibility for assessing demand for PRB coal, including Otter Creek coal.

At a minimum, Arch Coal and BNSF likely performed some analysis before deciding to invest [REDACTED] each to become owners of TRRC. One would also expect additional analysis

in light of the steep drop in demand for coal in 2012 that led to Arch cutting production at operations in the Wyoming PRB.

Northern Plains anticipates the TRRC Parties will argue that the highly confidential internal spreadsheets containing projections of demand and analysis of markets produced to date are sufficient for purposes of these proceedings. Northern Plains does not dispute the fact that Arch Coal produced these spreadsheets. However, Arch Coal did not produce any documents discussing or interpreting information contained with the spreadsheets. Given Arch Coal's direct financial interest in the Otter Creek mine and Tongue River Railroad, one reasonably expects that its spreadsheets do not exist in a vacuum devoid of any interpretation or discussion. If these documents do not exist in files of a handful of Arch and BNSF employees who assisted in the TRRC application, then they should certainly exist in the files of other employees or perhaps were created earlier in time.<sup>6</sup> This information is highly relevant and should be produced.

Northern Plains cannot narrow the scope of its document requests to the files of particular employees because the TRRC Parties would not identify anyone who was or is responsible for relevant matters at Arch Coal and BNSF. *See e.g.* Appendix C, TRRC Ans. to Interrog. Nos. 3-10. Northern Plains is willing to limit the relevant timeframe to those documents created or modified after July 1, 2010. This period represents Northern Plains' conservative estimate of the period when Arch Coal and BNSF analyzed market conditions and committed to invest in the proposed rail line.<sup>7</sup>

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<sup>6</sup> It is also possible that the TRRC Parties are withholding such documents on the claim of privilege. However, they have not produced a privilege log. To the extent privilege is being invoked, Northern Plains asks the Board to require the TRRC Parties to produce a privilege log.

<sup>7</sup> TRRC also states that it relied on "without limitation the Board's prior decisions approving TRRC's applications in this proceeding and various sub-dockets" to contend there is a public demand and need for the Colstrip Alignment. TRRC Ans. to Interrog. No. 31. Thus, the relevant timeframe extends far beyond July 1, 2010.

Northern Plains requests the Board to compel the TRRC Parties to produce documents from a “search for records within [their] possession, custody or control [that] should include files that are located on its premises [and] files that are kept electronically . . . of those individual employees or departments likely to have responsive information.” *See Entergy Arkansas, Inc. & Entergy Servs., Inc.*, STB Docket No. 42104, 2008 WL 2091414 at \*4 (S.T.B. Served May 19, 2008).

**B. The Board Should Compel the TRRC Parties to Produce Documents That They Have Objected to Producing Outright.**

The TRRC Parties object outright to producing documents responsive to several of Northern Plains’ document requests. For each of the following requests, the TRRC Parties object “on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC’s December Application.” Northern Plains addresses each claim below.

1. **Request for Production No. 18:** Produce all documents related to the past, present, or future estimated costs of shipping Otter Creek coal to domestic and international customers.

Estimated shipping costs are relevant and reasonably calculated to lead to the discovery of admissible evidence because it is a critical aspect of determining where Otter Creek coal may compete, if at all. TRRC relies in part on contentions that Otter Creek’s transportation disadvantage “could be offset by the difference in mine prices between Otter Creek and the Wyoming PRB.” Jun. 6, 2013 Verified Statement of Seth Schwartz (submitted with TRRC’s Jun. 7, 2013 Reply) at 13. Notably, transportation costs make up more than half the delivered price of PRB coal. *Id.* Thus, shipping costs are a significant factor in whether Otter Creek coal is competitive with other suppliers’ coal. Arch Coal is likely to weigh transportation costs in



determining the size of the market for Otter Creek coal. This will play a substantial role in whether and under what conditions Arch Coal is willing to open the Otter Creek mine, finance the Tongue River Railroad, or both. Shipping costs also play an obvious role in the profitability of the Tongue River Railroad. So not only are Otter Creek's projections important, so too are BNSF's.

2. **Request for Production No. 22:** Produce all documents related [to] the competitiveness of coal as affected by natural gas, environmental regulations on coal, and the decommissioning of power plants.

With the advent of fracking, the price of natural gas has declined tremendously. Demand for coal at generating stations is dependent on the price of natural gas, a competitive good. TRRC admits in its February 6, 2013 letter to the Board that factors such as “the cost of competitive fuel, and in particular natural gas [and] regulatory developments that could influence the ability of domestic and foreign utilities to use coal versus other fuels” will influence whether coal will be exported at all and, if so, where it will be exported. Feb. 6, 2013 Letter from Coburn to Blodgett and Summerville.

3. **Request for Production No. 31:** Produce all documents related to projected revenue, expenses, and profits for the Otter Creek mine.

Arch Coal's projected revenue, expenses, and profits for the Otter Creek mine will determine whether the mine opens and, if it does open, whether it is likely to produce coal at levels sufficient to sustain the Tongue River Railroad. This information is also relevant to Arch Coal's willingness to finance TRRC through 100% equity investment or guarantee debt privately placed by TRRC.

4. **Request for Production No. 46:** Produce all documents related to policies or procedures for authorizing expenditures of TRRC's funds.

This information is reasonably calculated to lead to discovery of admissible evidence regarding limitations placed on spending TRRC funds, whether pursuant to TRRC's own policies or those of its owners. These policies and procedures will determine whether and under what circumstances, e.g. financial conditions, the Tongue River Railroad will be constructed and the individuals responsible for making the decisions.

5. **Request for Production No. 47:** Produce all documents related to policies or procedures for requesting additional funds or capital from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C., or any combination thereof.

This request is relevant and reasonably calculated to lead to discovery of admissible evidence related to limitations TRRC's owners place on additional financing for the Tongue River Railroad.

6. **Request for Production No. 48:** Produce all documents related to funds or capital you requested or received from Arch Coal, Inc., Otter Creek Coal, LLC, BNSF Railway Company, TRR Financing LLC, and Tongue River Holding Company, L.L.C., or any combination thereof.

Request No. 48 seeks information that is relevant to past decisions by Arch Coal and BNSF, either independently or through Tongue River Holding Company, L.L.C., to provide or withhold funding or capital to TRRC. Again, this information is relevant and reasonably calculated to discover information about the commitment of TRRC's owners to the proposed rail line.

7. **Request for Production No. 49**: Produce all documents related to actions TRRC is prohibited from taking without authorization from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C., or any combination thereof.

This request is reasonably calculated to discover admissible evidence about limitations TRRC's owners have placed on TRRC that would prevent the Tongue River Railroad project from moving forward. For example, it is public knowledge that TRRC asked the Board to delay action on the Environmental Impact Statement for budgeting reasons. This action is inconsistent with TRRC's claims that its owners are prepared to expend considerable financial resources on the Tongue River Railroad.

**C. The Board Should Compel the TRRC Parties to Produce Information about PRB Coal.**

The TRRC Parties also object to producing documents related to the markets for coal mined in the Wyoming PRB. *See e.g.* Appendix D, Nos. 1, 4, 16, and 17. These requests seek relevant information about the competitiveness of Otter Creek coal with coal mined in the Wyoming PRB. Notably, Arch Coal claims that “coal mined at Otter Creek will be *highly competitive* with PRB coal mined elsewhere in Montana and *Wyoming* and used today at numerous generating plants in the Upper Midwest, including facilities operated by Detroit Edison and Minnesota Power.” Jan. 25, 2013 Blumenfeld V.S. (emphasis added). And as noted above, Arch Coal's COO stated, “I have to be honest, to even consider ramping up or bringing back equipment in any fashion [in the PRB], prices have got to be quite a bit better than what they are today. The numbers just don't support any further volume pick-up.” *Wyoming coal mines look at cutting production*, Rapid City Journal (Nov. 3, 2013). The information is relevant because a market that cannot support full production from Arch Coal's mines in Wyoming may

not support an additional 20 million tons of coal per year from the Otter Creek mine or provide enough economic incentive for Arch Coal to open Otter Creek.<sup>8</sup>

**D. Other Responsive Documents Exist.**

The limited documents produced to date demonstrate that other responsive documents exist. Though already referenced, Northern Plains is aware of Highly Confidential

There is similar evidence of other responsive documents that were not produced. For example, it appears that

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These documents are relevant or will lead to discovery of relevant information, including financial limits TRRC's owners have placed on their commitment to the Tongue River Railroad project, the demand for Otter Creek coal and the rail line that is proposed to serve it.

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<sup>8</sup> Also, given the lack of documents produced from searches for Montana PRB coal and/or Otter Creek coal, it is possible that Arch Coal and BNSF do not normally distinguish between Otter Creek coal and PRB coal.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Board should compel the TRRC Parties to produce these and other responsive and relevant documents.

**E. The Board Should Compel Arch Coal, BNSF, and TRRC to Provide Complete, Non-Evasive Answers to Northern Plains’ Interrogatories.**

As noted above, Arch Coal and BNSF answered Northern Plains’ First Set of Interrogatories Directed to TRRC. The Board’s rules therefore require Arch and BNSF to “furnish such information as is available to the party.” 49 C.F.R. § 1114.26(a). For purposes of discovery, it is clear that information known to the officers and employees of Arch and BNSF and contained within their files is “available” to TRRC. The Board should overrule the TRRC Parties’ objections as noted above and compel complete and non-evasive answers to Northern Plains’ interrogatories based on information known by and contained within the files of Arch and BNSF.

This includes interrogatories referenced above that seek the identity of employees who have had responsibilities relevant to the Otter Creek mine and Tongue River Railroad. It also

includes Interrogatory Numbers 42 and 49. Interrogatory No. 42 asks TRRC to identify documents and communications related to any possible sale of the Otter Creek mine. The current answer provides that such information “is not within TRRC’s knowledge” and that “TRRC states that it is not aware of any documents or communications relating to the possible of selling the Otter Creek mine.” Appendix C, Ans. to Interrog. No. 42.

Interrogatory No. 49 asks for a description “in as much detail as possible anything you have done to identify potential customers for Otter Creek coal. Where applicable, your response should include, but not be limited to, the identity of potential customers, tonnages, prices, quality of coal, and method and cost of shipment.” The current answer provides that “it is not the responsibility of TRRC to market Otter Creek coal and that since June 17, 2012 no one at TRRC has been assigned the responsibility of identifying potential customers for Otter Creek coal.” Appendix C, TRRC Ans. to Interrog. No. 49. The answer further provides that “Arch Coal is familiar, and in some instances, has business relationships with most of the *potential domestic customers* for Montana PRB coal in the United States . . . .” *Id.* (emphasis added). The answer is further limited by claiming that Arch Coal has not identified “specific” customers. *Id.*

The answer is evasive, incomplete, and inconsistent with earlier statements TRRC made to the Board. If Arch Coal is “familiar” and has “business relationships” with “potential domestic customers for Montana PRB coal in the United States” it clearly has done something to identify potential customers for Otter Creek coal. Moreover, TRRC indicated in February 2013 that in Arch Coal’s view, “*specific* coal-fired power plants in the Upper Midwest and Washington that purchase coal from Montana mines . . . are *potential* customers for Otter Creek coal.” Feb. 6, 2013 Letter from Coburn to Blodgett and Summerville at 1 (emphasis added).

Northern Plains respectfully requests that the Board compel complete and non-evasive answers that are not artificially limited to TRRC's apparent knowledge.

**CONCLUSION**

Northern Plains respectfully requests that the Board compel the TRRC Parties to respond fully to its discovery requests. Consistent with the Board's August 27, 2013 Order granting Northern Plains' request for discovery, the requested relief will assist the Board in rendering a decision that requires resolution of several important and complex issues.

Dated: January 13, 2014

Respectfully submitted,



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Kenneth J. Rumelt, Esq.

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AND NATURALRESOURCES LAW CLINIC  
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**CERTIFICATION OF SERVICE**

I, Kenneth J. Rumelt, hereby certify that, on January 13, 2014, I caused a copy of the foregoing to be served on all parties of record in this proceeding.

  
\_\_\_\_\_  
Kenneth J. Rumelt, Esq.



# **APPENDIX A**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 30186**

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

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**FIRST SET OF INTERROGATORIES  
BY NORTHERN PLAINS RESOURCE COUNCIL DIRECTED TO  
TONGUE RIVER RAILROAD COMPANY, INC.**

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Pursuant to the Surface Transportation Board’s August 27, 2013 Order and 49 C.F.R. § 1114.26, Northern Plains Resource Council requests that you answer separately and fully, in writing and under oath, each of the following Interrogatories, and serve such answers on Northern Plains Resource Council within fifteen days from the date of service of these Interrogatories.

**DEFINITIONS AND INSTRUCTIONS**

A. “You” and “your” means the company to which these Interrogatories are addressed; its officers, employees, agents, servants, representatives, past and present; and, unless privilege is claimed, each and every attorney, past and present, of each and every such individual or entity.

B. “Communication” or “communications” is used here in the broad sense and includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by telephone, as well as all letters, memoranda, telegrams, cables, e-mails and other writings or documents, and any and all means of transmitting, sending, transferring, conveying, disclosing, or exchanging information.

C. “Document” or “documents” are used herein in the broadest sense to include, by way of illustration only and not by way of limitation, all originals and non-identical copies of any writing or any other tangible thing or data compilation, whether printed, typed, reproduced by any process, written or produced by hand, including any graphic matter however produced or reproduced, or produced by and other mechanical means—and all data, either electronic, magnetic, mechanical, or other form of data storage capable of being transformed into written or oral matter, including, but not limited to, CD-ROMs, computer disks, hard-drive computer storage mediums, e-mail, letters, affidavits, filings, engineering studies and/or tests, reports, agreements, communications, correspondence, permits, accounting records, business records, contracts, letter of agreements, telegrams, mail grams, memoranda, summaries and/or records of personnel or telephone conversations, diaries, calendars, forecasts, photographs, tape recordings, facsimiles, models, statistical statements, graphs, charts, plans, drawings, logs, minutes or

records of meetings, minutes or records of conferences, reports or summaries of interviews, reports, conversations, summaries of investigations, opinions or reports of consultants, topographical or geological maps or surveys, appraisals, records, reports or summaries of negotiations, drafts of any document, revisions of drafts of any document, purchase orders, invoices, receipts, original or preliminary notes, financial statements, accounting work papers, promissory notes, film, microfilm, microfiche, punch cards, slides, pictures, videotapes, moving pictures, digital video, laboratory results, magnetic tapes or any other matter which is capable of being read, heard or seen with or without mechanical or electronic assistance.

D. “Identify,” when used in connection with a natural person, means to state his or her name, last known address, job title and employer.

E. “Identify,” when used in connection with corporate or other business entities, means to state the name of the entity, its principal business address, and the form of its organization (corporation, company, partnership, etc.).

F. “Identify,” when used in connection with a communication a corporation or other business entity includes without limitation; its officers, employees, agents, servants, representatives, past and present; and, unless privilege is claimed, each and every attorney, past and present, of each and every such individual or entity.

G. “Identify,” when used in connection with a document, means to attach a copy or describe the document, setting forth its location and custodian, date, title, author, other parties thereto, if any, and the substance of the document with such particularity as is sufficient for a specific request for production. Documents to be identified shall include both documents in the possession, custody, or control of the party being served and all other documents of which that party has knowledge.

H. “Employee,” when used in an Interrogatory, means the officers, employees, agents, servants, representatives, past and present, whether or not also employed elsewhere; and, unless privilege is claimed, each and every attorney, past and present, of each and every such individual or entity.

I. The term “network” means and refers to any hardware or software combination that connects two or more computers together and which allows such computers to share and/or transfer digital signals between them. For the purposes of this definition, the connection between or among the computers need not be either physical or direct (e.g. wireless networks utilizing radio frequencies and data sharing via indirect routes utilizing modems and phone company facilities). In addition, there need not be a central file or data server or a central network operating system in place (e.g. peer-to-peer networks and networks utilizing a mainframe host to facilitate the transfer of electronically stored information). The ability to share electronically stored information is the key factor.

J. “Or” and “and” are to be construed to mean and/or.

K. “Participate” or “participated,” when used in connection with a natural person, includes without limitation any involvement or contribution in any way that is not clerical or secretarial.

L. The terms “related to,” “relating to,” “relate to,” and “concerning” mean pertaining to, referring to, relevant to, supporting, constituting, contradicting, mentioning, evidencing, discussing, or otherwise involving, whether directly or indirectly, the subject matter of the specified request.

M. Unless otherwise stated, “TRR” means the Colstrip alignment of the Tongue River Railroad as set forth in the Tongue River Railroad Company, Inc.’s (TRRC) December 17, 2012 Supplemental Application for Construction and Operation Authority, STB Finance Docket No. 30186.

N. “Owners” means the Arch Coal, Inc., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C.

To the extent an Interrogatory asks you to identify a person that is not your employee, or a document that is not in your possession, custody or control, you are to answer the Interrogatory based on your knowledge of that person or document.

In answering each of these Interrogatories, identify each person relied upon for information, and identify all documents used to support your response.

### **INTERROGATORIES**

1. Identify every person that participated in drafting TRRC’s October 16, 2012 Revised Application for Construction and Operation Authority.
2. Identify every person that participated in drafting TRRC’s December 17, 2012 Supplemental Application for Construction and Operation Authority.
3. Identify every person who was or is responsible for projecting the tonnage of coal to be shipped on the TRR.
4. Identify every person who was or is responsible for projecting revenue from the TRR.
5. Identify every person who was or is responsible for evaluating demand for Otter Creek coal.
6. Identify every person who was or is responsible for finding customers for Otter Creek coal.
7. Identify every person who was or is responsible for projecting Otter Creek coal sales to U.S. customers.

8. Identify every person who was or is responsible for projecting Otter Creek coal sales to foreign customers.
9. Identify every person who was or is responsible for sales or marketing of Otter Creek coal.
10. Identify every person who was or is responsible for sales of thermal coal from Montana's Powder River Basin.
11. Identify every person who knew of or participated in any decision by Arch Coal to slow or halt coal production in the Powder River Basin in 2012.
12. Identify every person who knew of or participated in Arch Coal's decision to sell the Sufco, Skyline, or Dugout Canyon Mines.
13. Identify every person who was or is responsible for knowing about available capacity for exporting coal from U.S. or Canadian export terminals.
14. Identify every person who was or is responsible for securing capacity for Otter Creek coal at U.S. or Canadian export terminals.
15. Identify every person who was or is responsible for forecasting production levels for the Otter Creek mine.
16. Identify every person who was or is responsible for projecting costs for the Otter Creek mine.
17. Identify every person who was or is responsible for monitoring costs at existing coal mines in the Powder River Basin.
18. Identify every person who was or is responsible for securing financing for the construction of the TRR, the Miles City alignment, or both.
19. Identify every person or entity that has offered or agreed to offer credit support for financing the TRR.
20. Identify every person who is responsible for developing financial pro forma or similar statements for the TRR.

21. Identify every person or entity from which financial support has been sought to construct the TRR.
22. In connection with the preceding Interrogatory, identify every person or entity that did not provide or agree to provide financial support.
23. Identify any investment bankers that have been consulted in connection with financing the TRR.
24. Identify your employees or your owners' employees who are responsible for knowing about human health effects from exposure to coal dust.
25. Identify your employees or your owners' employees who are responsible for knowing about environmental impacts from transporting coal by rail.
26. Identify your employees or your owners' employees who are responsible for knowing about measures for mitigating environmental impacts from transporting coal by rail.
27. Identify every person who participated in the decision to change the preferred alignment from the Miles City alignment to the Colstrip alignment.
28. Identify every person whose authorization is necessary to suspend or terminate TRRC's December 17, 2012 Supplemental Application for Construction and Operation Authority.
29. Identify each individual whose authorization is necessary to terminate Otter Creek Coal, L.L.C.'s Application for a Strip Mining Permit for the Otter Creek Mine.
30. Identify your custodian of records. State whether that person or persons is also custodian of records for Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, Tongue River Holding Company, L.L.C., Dominion Terminal Associates, TRR Financing L.L.C., or Millennium Bulk Terminals – Longview, L.L.C.
31. Identify all documents you relied on to contend in your December 17, 2012 application and later filings that there is public demand and need for the TRR.
32. Identify all documents you relied on to contend there will be capacity available for shipment of Otter Creek coal from U.S. or Canadian export terminals.

33. Identify all documents related to Seth Schwartz's Verified Statements dated June 6 and August 9, 2013, including but not limited to, all communications with and documents provided to Mr. Schwartz and all documents he relied on to form the basis of his Verified Statements.
34. Identify all documents related to William Rowlands' Verified Statements dated September 21 and December 13, 2012, including but not limited to, all communications with and documents provided to Mr. Rowlands and all documents he relied on to form the basis of his Verified Statements.
35. Identify all documents related to Stevan Bobb's Verified Statements dated September 24 and December 14, 2012, including but not limited to, all communications with and documents provided to him, and documents he relied on to form the basis of his Verified Statements.
36. Identify all documents related to Andrew Blumenfeld's January 28, 2013 Verified Statement, including but not limited to, all communication with and documents provided to him, and all documents he relied to form the basis of his Verified Statement.
37. Identify all communications with the Montana Coal Council, the Montana Chamber of Commerce, or the Western Environmental Trade Association relating to this application.
38. Identify all communications relating to TRRC's application with all domestic and international coal users, including but not limited to: DTE Electric Company, Minnesota Power, or WE Energy.
39. Identify all documents related to projected sales of Otter Creek coal to either U.S. or foreign customers.
40. Identify all communications with Arch Coal, Inc. related to its decision in 2012 to slow production or close Powder River Basin coal mines.
41. Identify all communications with Arch Coal, Inc. related to its decision to sell the Sufco, Skyline, or Dugout Canyon Mines to Bowie Resources L.L.C.
42. Identify all documents or communications relating to the possibility of selling of the Otter Creek mine.
43. Identify all documents related to the value of the Otter Creek mine.

44. Identify all documents you relied on to contend in your application and subsequent filings with the Surface Transportation Board that TRRC is financially fit to construct and operate the TRR.
45. Identify all documents you relied on to form the basis of Exhibit G to your December 17, 2012 application.
46. Identify all documents you relied on to form the basis of Exhibit G to your October 16, 2012 application.
47. Identify all communications with Arch Coal, Inc., BNSF, or TRR Financing L.L.C. relating to financing the TRR.
48. Identify all documents related to your decision to change the preferred alignment of the TRR from the Miles City alignment to the Colstrip alignment.
49. Describe in as much detail as possible anything you have done to identify potential customers for Otter Creek coal. Where applicable, your response should include, but not be limited to, the identity of potential customers, tonnages, prices, quality of coal, and method and cost of shipment.
50. Describe in as much detail as possible any analysis you have done to predict if and when the Otter Creek mine will become profitable. Your response should describe any assumptions or bases you relied on in the analysis.
51. Describe in as much detail as possible what you have done to secure financing for construction and operation of the TRR.
52. Describe in as much detail as possible what you did to secure financing for construction and operation of the Miles City alignment.
53. Identify all documents related to your efforts to finance the TRR.
54. Identify all documents related to your efforts to finance the Miles City alignment of the Tongue River Railroad.
55. Identify all documents you contend demonstrate BNSF's confidence in the TRR project.

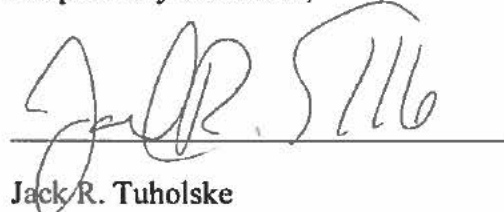


56. Identify all documents you contend support your statement that BNSF is expected to be the sole operator of the TRR.
57. Identify all documents you contend support your statement that BNSF and Arch are prepared to expend substantial resources to build the TRR.
58. Describe in as much detail as possible each factor you considered in deciding to change the preferred alignment of the TRR from the Miles City alignment to the Colstrip alignment. Your answer should include, but not necessarily be limited to, any consideration of a preference for west-bound versus east-bound rail traffic.
59. Identify each person of yours who has access to the computer networks of Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing, L.L.C., Tongue River Holding Company, L.L.C., Dominion Terminal Associates, or Millennium Bulk Terminals – Longview, L.L.C.
60. Identify each email account that you have used in relation to the Miles City alignment or TRR, including emails sent or received by every person via personal or other business email accounts.
61. Identify any policies or procedures you employ for retention of documents.
62. Identify any written policies or procedures for authorizing expenditures of TRRC funds.
63. Identify any written policies or procedures for requesting additional funds or capital from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., Tongue River Holding Company, L.L.C., or any combination thereof.
64. Identify all actions TRRC is prohibited from taking without authorization from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., Tongue River Holding Company, L.L.C., or any combination thereof.

65. Please describe the positions and responsibilities of your employees with management or supervisory authority.

66. Please identify each employee of TRRC.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack R. Tuholske", is written over a horizontal line.

Jack R. Tuholske  
Attorney for Northern Plains Resource Council

Dated: 9/12/13

# **APPENDIX B**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 30186**

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

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**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
BY NORTHERN PLAINS RESOURCE COUNCIL DIRECTED TO  
TONGUE RIVER RAILROAD COMPANY, INC.**

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Pursuant to the Surface Transportation Board’s August 27, 2013 Order and 49 C.F.R. § 1114.30, Northern Plains Resource Council requests you produce the following documents within fifteen days from the date of service of this Request for Production of Documents.

**DEFINITIONS AND INSTRUCTIONS**

A. “You” and “your” means the company to which these Requests are addressed; its officers, employees, agents, servants, representatives, past and present; and, unless privilege is claimed, each and every attorney, past and present, of each and every such individual or entity.

B. “Communication” or “communications” are used herein in the broadest sense and includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by telephone, as well as all letters, memoranda, telegrams, cables, e-mails and other writings or documents, and any and all means of transmitting, sending, transferring, conveying, disclosing, or exchanging information.

C. “Document” or “documents” are used herein in the broadest sense to include, by way of illustration only and not by way of limitation, all originals and non-identical copies of any writing or any other tangible thing or data compilation, whether printed, typed, reproduced by any process, written or produced by hand, including any graphic matter however produced or reproduced, or produced by and other mechanical means—and all data, either electronic, magnetic, mechanical, or other form of data storage capable of being transformed into written or oral matter, including, but not limited to, CD-ROMs, computer disks, hard-drive computer storage mediums, e-mail, letters, affidavits, filings, engineering studies or tests, reports, agreements, communications, correspondence, permits, accounting records, business records, contracts, letter of agreements, telegrams, mail grams, memoranda, summaries or records of personnel or telephone conversations, diaries, calendars, forecasts, photographs, tape recordings, facsimiles, models, statistical statements, graphs, charts, plans, drawings, logs, minutes or records of meetings, minutes or records of conferences, reports or summaries of interviews,

reports, conversations, summaries of investigations, opinions or reports of consultants, topographical or geological maps or surveys, appraisals, records, reports or summaries of negotiations, drafts of any document, revisions of drafts of any document, purchase orders, invoices, receipts, original or preliminary notes, financial statements, accounting work papers, promissory notes, film, microfilm, microfiche, punch cards, slides, pictures, videotapes, moving pictures, digital video, laboratory results, magnetic tapes or any other matter which is capable of being read, heard or seen with or without mechanical or electronic assistance.

D. "Employee," when used in a Request, means the officers, employees, agents, servants, representatives, past and present, whether or not also employed elsewhere; and, unless privilege is claimed, each and every attorney, past and present, of each and every such individual or entity.

E. "Or" and "and" are to be construed to mean and/or.

F. "Participate" or "participated," when used in connection with a natural person, includes without limitation any involvement or contribution in any way that is not clerical or secretarial.

G. The terms "related to," "relating to," "relate to," and "concerning" mean pertaining to, referring to, relevant to, supporting, constituting, contradicting, mentioning, evidencing, discussing, or otherwise involving, whether directly or indirectly, the subject matter of the specified request.

H. Unless otherwise stated, "TRR" means the Colstrip alignment of the Tongue River Railroad as set forth in the Tongue River Railroad Company, Inc.'s (TRRC) December 17, 2012 Supplemental Application for Construction and Operation Authority, STB Finance Docket No. 30186.

I. "Owners" means Arch Coal, Inc., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C.

J. If your response is that the documents are not in your possession or custody, describe in detail the unsuccessful efforts you made to locate the records.

K. If your response is that the documents are not in your control, identify who has control and the location of the records.

L. If a request for productions seeks a document not in your possession, custody, or control, provide any documents you have that contain all or part of the information contained in the requested document or category.

M. With respect to any document sought by this Request for Production of Documents that is withheld upon a claim of work product or attorney-client privilege, state for each document:

- i. The number of the Requests to which the document is otherwise responsive;
- ii. Its title and general subject matter;
- iii. Its date;
- iv. The full name, job title, employer, and last known address and phone number of its author;
- v. The full name, job title, employer, and last known address and phone number of each person for whom it was prepared and/or whom it was sent;
- vi. The full name, job title, employer, and last known address and phone number of every person who has seen the document;
- vii. The nature of the privilege claimed; and
- viii. The basis for the assertion of privilege.

N. With regard to any document sought by this Request for Production of Documents that was once but is no longer under your possession, custody, or control state for each such document:

- i. The number of the Request to which the document is responsive;
- ii. Its title and general subject matter;
- iii. Its date;
- iv. The full name, job title, employer, and last known address and phone of its author;
- v. The full name, job title, employer, and last known address and phone number of each and every person who had possession, custody, and/or control of the document;
- vi. The date you lost possession, custody or control of the document; and
- vii. The reason you lost possession, custody or control of the document.

## REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents describing or analyzing domestic or international demand for Powder River Basin (PRB) coal, including without limitation Otter Creek coal.
2. Produce all documents describing or analyzing the potential domestic market for Otter Creek or Montana PRB coal.
3. Produce all documents describing or analyzing demand for thermal coal in China, South Korea or Japan.
4. Produce all documents related to the ability of PRB coal, including Otter Creek coal, to compete on a delivered price basis with Indonesian and Australian thermal coal in China, South Korea or Japan.
5. Produce all documents related to Energy Information Administration (EIA) projections of future sales of PRB coal.
6. Produce all documents related to limitations on the market for Otter Creek coal due to its sodium content.
7. Produce all documents related to market conditions that could delay or prevent development of the Otter Creek mine.
8. Produce all documents related to market conditions that could reduce production levels at the Otter Creek mine below those referenced in your December 17, 2012 Supplemental Application to Construct.
9. Produce all documents related to financing the Otter Creek mine, including without limitation any agreements to finance, provide credit support, debt or equity.
10. Produce all documents related to any financial pro forma or similar financial statement for the Otter Creek mine, Miles City alignment, or TRR.
11. Produce all documents related to the tonnage of coal to be mined from the Otter Creek mine, including but not limited to forecasted production levels in relation to fluctuations in the price of coal.
12. Produce all documents related to the competitiveness of Otter Creek coal on a delivered price basis.

13. Produce all documents related to potential or prospective domestic or international customers for Otter Creek coal.
14. Produce all documents related to the quality of Otter Creek coal, including without limitation its chemical and energy content.
15. Produce all documents related to the fungibility (the ability to use Otter Creek coal interchangeability with other sources of coal) of Otter Creek coal and Wyoming PRB coal.
16. Produce all documents related to any power plant that places limitations on or rejects coal from the PRB due to its sodium content.
17. Produce all documents related to limits on the marketability of PRB coal due to its sodium content.
18. Produce all documents related to the past, present, or future estimated costs of shipping Otter Creek coal to domestic and international customers.
19. Produce all documents related to any efforts taken to secure capacity for Otter Creek coal at U.S. and Canadian export terminals.
20. Produce all documents related to the cost and availability of capacity for shipping Otter Creek coal from U.S. and Canadian export terminals.
21. Produce all documents related to production level forecasts for the Otter Creek mine.
22. Produce all documents related the competitiveness of coal as affected by natural gas,, environmental regulations on coal, and the decommissioning of power plants.
23. Produce all documents related to your request for the Board to delay work on the Environmental Impact Statement for the TRR.
24. Produce all documents related to human health effects from exposure to coal dust.
25. Produce all documents related to environmental impacts from transporting coal by rail.
26. Produce all documents related to mitigating environmental impacts from transporting coal by rail.
27. Produce all documents related to revenue projections for the Otter Creek mine.



28. Produce all documents related to revenue projections for the TRR.
29. Produce all documents related to projected sales of Otter Creek coal to domestic or international customers.
30. Produce all documents related to price estimates for Otter Creek coal.
31. Produce all documents related to projected revenue, expenses, and profits for the Otter Creek mine.
32. Produce all documents related to offers or agreements to provide credit for financing the TRR.
33. Produce all documents related to any decision not to provide credit for financing the TRR.
34. Produce all documents related to any efforts made to obtain credit for financing the TRR.
35. Produce all documents related to offers or agreements to offer financial support for the TRR.
36. Produce all documents related any decision not to provide financial support for the TRR.
37. Produce all documents related to any efforts made to obtain financial support for the TRR.
38. Produce all documents related to communications with investment bankers concerning financing the TRR.
39. Produce all documents related to financing the constructing and operating the Miles City alignment and the TRR.
40. Produce all documents and communications with Arch Coal, BNSF, or TRR Financing L.L.C., relating to the financing of the TRR.
41. Produce all documents related to any agreements you and BNSF have negotiated for BNSF to be the sole operator for the TRR.
42. Produce all documents related to Arch Coal's decision to slow or halt coal production in the PRB in 2012 or 2013.

43. Produce all documents related to Arch Coal's decision to sell the Sufco, Skyline, or Dugout Canyon mines.
44. Produce all documents related to any contemplated or potential sale of the Otter Creek mine.
45. Produce all documents that estimate the value of coal reserves at what is now identified as the Otter Creek mine.
46. Produce all documents related to policies or procedures for authorizing expenditures of TRRC's funds.
47. Produce all documents related to policies or procedures for requesting additional funds or capital from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C., or any combination thereof.
48. Produce all documents related to funds or capital you requested or received from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C., or any combination thereof.
49. Produce all documents related to actions TRRC is prohibited from taking without authorization from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C., or any combination thereof.
50. Produce all documents and communications with DTE Electric Company, Minnesota Power Company, or WE Energy.
51. Produce all documents and communications with Montana Coal Council, Montana Chamber of Commerce, or Western Environmental Trade Association.
52. Produce all documents related to your December 17, 2012 application demonstrating public demand, or lack thereof, for the TRR.
53. Produce all documents related to your December 17, 2012 application relating to your financial fitness in constructing and operating the TRR.
54. Produce all documents related to Exhibit G in your October 16 and December 17, 2012 applications.
55. Produce all documents related to the decision to change the preferred alignment from the Miles City alignment to the TRR, including but not limited to all documents relating to a preference for west-bound or east-bound traffic.

56. Produce all documents related to Seth Schwartz's Verified Statements dated June 6 and August 9, 2013, including but not limited to, all communications with and documents provided to Mr. Schwartz.

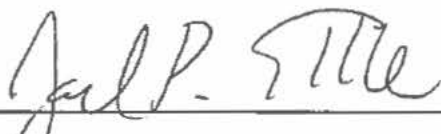
57. Produce all documents related to William Rowlands' Verified Statements dated September 21 and December 13, 2012, including but not limited to, all communications with and documents provided to or authored by Mr. Rowlands.

58. Produce all documents related to Stevan Bobb's Verified Statements dated September 24 and December 14, 2012, including but not limited to, all communications with and documents provided to or authored by Mr. Bobb.

59. Produce all documents related to Andrew Blumenfeld's January 28, 2013 Verified Statement, including but not limited to, all communication with and documents provided to or authored by Mr. Blumenfeld.

60. Produce all documents related to policies or procedures you employ for retention of documents.

Respectfully submitted,



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Jack R. Tuholske  
Attorney for Northern Plains Resource Council

Dated: 9/13/13

# **APPENDIX C**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 30186**

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

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**TONGUE RIVER RAILROAD COMPANY, INC.’S RESPONSES AND OBJECTIONS  
TO  
NORTHERN PLAINS RESOURCE COUNCIL’S FIRST SET OF INTERROGATORIES**

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Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Applicant Tongue River Railroad Company, Inc. (“TRRC”) hereby responds and objects to the First Set of Interrogatories served by Northern Plains Resource Council (“NPRC”) on September 12, 2013 (“NPRC’s First Set of Interrogatories”).

**GENERAL OBJECTIONS**

The following general objections are made with respect to NPRC’s First Set of Interrogatories.

1. TRRC objects to NPRC’s First Set of Interrogatories to the extent they seek information or documents that contain information that is confidential, commercially sensitive, or proprietary, including information relating to or from third parties, that, if produced, could result in the violation of any contractual obligation to third parties or could violate 49 U.S.C. § 11904.

2. TRRC objects to NPRC's First Set of Interrogatories to the extent they seek disclosure of information or documents that are protected by the attorney-client privilege, work product doctrine, and/or any other appropriate privilege or doctrine. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claim of privilege or other protection.

3. TRRC objects to NPRC's First Set of Interrogatories to the extent they seek production of or information regarding "every person," "each person," "every entity," "all documents," and "all communications" relating to matters described in particular interrogatories on grounds that those interrogatories are overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. TRRC will conduct a search for responsive information as indicated in its responses to specific requests that is commensurate with the nature and expedited discovery schedule of this proceeding.

4. TRRC objects to NPRC's First Set of Interrogatories as being vague and ambiguous because they do not specify a start date for the response. Since this proceeding was reopened by STB order issued on June 18, 2012, TRRC will provide information for each unobjected-to interrogatory that relates to the period beginning June 18, 2012, unless otherwise indicated.

5. TRRC objects to NPRC's First Set of Interrogatories to the extent that it calls for the production of publicly available documents.

## **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

The following objections to definitions and instructions are made with respect to NPRC's First Set of Interrogatories. The objections are numbered consistent with NPRC's numbering.

### **Objection to Definition and Instruction A:**

TRRC objects to the definition of "You" and "Your" in Definition and Instruction A on the basis that it is overly broad, unduly burdensome, and beyond the scope of permissible discovery to the extent it seeks information or documents from past officers, employees, agents, servants, representatives, and attorneys because such information and documents are not in the possession, custody, or control of TRRC. TRRC also objects to the definition of "You" and "Your" as being vague, ambiguous and overly broad to the extent that it includes "agents," "servants," "representatives," as well as "each and every attorney . . . of each and every such individual or entity."

### **Objection to Definition and Instruction B:**

TRRC objects to NPRC's definition of "Communication" and "Communications" in Definition and Instruction B as unduly burdensome and overly broad to the extent that NPRC's interrogatories seek the identification or production of any and all oral communications that have not been reduced to writing.

### **Objection to Definition and Instruction D:**

TRRC objects to the definition of "Identify" in Definition and Instruction D as being overly broad, unreasonable, unduly burdensome, and imposing obligations beyond the permissible scope of discovery to the extent that the definition requires TRRC to provide the "last known address" for a natural person.

**Objection to Definition and Instruction E:**

TRRC objects to the definition of “Identify” in Definition and Instruction E as being overly broad, unreasonable, and imposing obligations beyond the permissible scope of discovery to the extent that the definition requires TRRC to provide the “form of organization” for any business entity other than TRRC, TRRC’s parent or any owner of TRRC’s parent.

**Objection to Definition and Instruction F:**

TRRC objects to the definition of “Identify” in Definition and Instruction F as being vague and incomprehensible.

**Objection to Definition and Instruction G:**

TRRC objects to the definition of “Identify” in Definition and Instruction G as being overly broad, unreasonable, and imposing obligations beyond the permissible scope of discovery to the extent that the definition requests TRRC to “attach” a copy of responsive documents to the interrogatory responses and to the extent it requests TRRC to identify documents that are not in TRRC’s possession, custody, or control. Subject to and without waiving its specific and general objections, TRRC will produce non-privileged documents responsive to unobjected-to interrogatories as such documents are collected.

**Objection to Definition and Instruction H:**

TRRC objects to the definition of “Employee” in Definition and Instruction H as being vague, ambiguous and overly broad to the extent that it includes “agents,” “servants,” and “representatives,” as well as “each and every attorney . . . of each and every such individual or entity.” Such entities are not “Employees”.



**Objection to Definition and Instruction I:**

TRRC objects to the definition of “Network” in Definition and Instruction I as being vague and ambiguous.

**Objection to Definition and Instruction N:**

TRRC objects to the definition of “Owners” in Definition and Instruction N as being overly broad and inaccurate to the extent it implies that Arch Coal, Inc. (“Arch Coal”), BNSF Railway Company (“BNSF”), and TRR Financing LLC are owners of TRRC. As explained in TRRC’s December 17, 2012 Supplemental Application for Construction and Operation Authority (“TRRC’s December Application”), TRRC’s sole shareholder is Tongue River Holding Company, LLC. Arch Coal, Inc., BNSF Railway Company, and TRR Financing LLC own interests in Tongue River Holding Company, LLC.

**Objection to First Unnumbered Definition and Instruction After Definition and Instruction N:**

TRRC objects to this instruction as being overly broad, unreasonable, and imposing obligations beyond the permissible scope of discovery to the extent that the instruction requires TRRC to identify documents that are not in TRRC’s possession, custody, or control.

**RESPONSES AND OBJECTIONS TO INTERROGATORIES**

TRRC incorporates its General Objections and Objections to Definitions and Instructions into each response below as if fully set forth therein.

**Interrogatory No. 1:**

Identify every person that participated in drafting TRRC’s October 16, 2012 Revised Application for Construction and Operation Authority.

**TRRC’s Response:** TRRC objects to Interrogatory Number 1 on the grounds that requesting TRRC to identify “every person” who participated in drafting the October 16, 2012

Revised Application (“TRRC’s October Application”) is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states the following individuals had significant involvement in drafting TRRC’s October Application: Stevan B. Bobb, former President of the Tongue River Railroad Company, Inc. and former Group Vice President, Coal Marketing for BNSF; William M. Rowlands, President of Otter Creek Coal, LLC (Otter Creek Coal, LLC is an operating subsidiary of Arch Coal and hereafter all references to Arch Coal include Otter Creek, LLC where appropriate); Scott Castleberry, Director Economic Analysis, Coal Marketing for BNSF. Betty Jo Christian, David H. Coburn, and Linda S. Stein of Steptoe & Johnson LLP, among other attorneys, had legal input into TRRC’s October Application.

**Interrogatory No. 2:**

Identify every person that participated in drafting TRRC’s December 17, 2012 Supplemental Application for Construction and Operation Authority.

**TRRC’s Response:** TRRC objects to Interrogatory Number 2 on the grounds that requesting TRRC to identify “every person” who participated in drafting TRRC’s December Application is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states the following individuals had significant involvement in drafting TRRC’s December Application: Stevan B. Bobb, President of the Tongue River Railroad Company, Inc. and Group Vice President, Coal Marketing for BNSF; William M. Rowlands, President of Otter Creek Coal, LLC; Scott Castleberry, Director Economic Analysis, Coal Marketing for BNSF. Betty Jo Christian, David H. Coburn, and Linda S. Stein of Steptoe & Johnson LLP, among other attorneys, had legal input into TRRC’s December Application.

**Interrogatory No. 3:**

Identify every person who was or is responsible for projecting the tonnage of coal to be shipped on the TRR.

**TRRC's Response:** TRRC objects to Interrogatory Number 3 on the grounds that requesting TRRC to identify "every person" who was or is responsible for projecting the tonnage of coal to be shipped on the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that since June 18, 2012 the following individual at Arch Coal has provided information to TRRC on the tonnage of coal projected to be produced from the Otter Creek mine: William M. Rowlands, identified previously.

**Interrogatory No. 4:**

Identify every person who was or is responsible for projecting revenue from the TRR.

**TRRC's Response:** TRRC objects to Interrogatory Number 4 on the grounds that requesting TRRC to identify "every person" who was or is responsible for projecting revenue from the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that since June 18, 2012 the following individual at BNSF has provided information to TRRC on projected revenue from the TRR: Scott Castleberry, previously identified.

**Interrogatory No. 5:**

Identify every person who was or is responsible for evaluating demand for Otter Creek coal.

**TRRC's Response:** TRRC objects to Interrogatory Number 5 on the grounds that

requesting TRRC to identify “every person” who was or is responsible for evaluating demand for Otter Creek coal is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that since June 18, 2012 the following individual at Arch Coal has provided information to TRRC on demand for Otter Creek coal: Andrew Blumenfeld, Vice President Analysis and Strategy, Arch Coal, Inc. TRRC further states that its expert, Seth Schwartz, has evaluated demand for Otter Creek coal and Mr. Schwartz’s evaluation is contained in his verified statements submitted with filings made by TRRC in this proceeding on June 6, 2013 and August 9, 2013.

**Interrogatory No. 6:**

Identify every person who was or is responsible for finding customers for Otter Creek coal.

**TRRC’s Response:** Subject to and without waiving its general objections, TRRC states that it is not the responsibility of TRRC to market Otter Creek coal and that since June 18, 2012 no one at TRRC has been assigned responsibility for finding customers for Otter Creek coal. TRRC further states that no one has been assigned such responsibility at Arch Coal, the entity that will be responsible for finding such customers, because it is premature to do so. The Otter Creek mine has not been permitted yet and is not expected to be operational for several years. TRRC understands that Arch Coal is familiar and, in some instances, has business relationships with most of the potential domestic customers for Montana PRB coal in the United States but it is too early to negotiate with those potential customers because the mine has not yet been permitted and the timing of its operation and that of the Tongue River Railroad is uncertain at this time given the pendency of permitting. With respect to potential international customers,

Arch Coal has employees on the ground in Singapore and China who will work to develop potential customer bases for Otter Creek coal, and Arch Coal believes that traders will be interested in purchasing Otter Creek coal. However, in Arch Coal's experience, international customers typically do not purchase coal more than one year in advance of receiving the coal so it is premature to contact potential international customers this far in advance of the Otter Creek mine and Tongue River Railroad being permitted and becoming operational. TRRC further states that its expert, Seth Schwartz, has identified potential U.S. customers for Otter Creek coal in his verified statements submitted with filings made by TRRC in this proceeding on June 6, 2013 and August 9, 2013. TRRC agrees that the potential customers identified by Mr. Schwartz are potential customers for Otter Creek coal. TRRC also states that statements of support from some potential U.S. customers for Otter Creek coal were submitted with TRRC's June 6, 2013 filing in this proceeding.

**Interrogatory No. 7:**

Identify every person who was or is responsible for projecting Otter Creek coal sales to U.S. customers.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC understands this question to be asking who is responsible for assessing the demand for Otter Creek coal sales to US customers. TRRC hereby refers to and incorporates its response to Interrogatory Number 5. TRRC further states that Arch Coal is familiar and, in some instances, has business relationships with most of the potential domestic customers for Montana PRB coal in the United States but it is too early to negotiate with those potential customers because the mine has not yet been permitted and the timing of its operation and that of the Tongue River Railroad is uncertain at this time given the pendency of permitting. TRRC further states that its expert, Seth Schwartz, has identified potential U.S. customers for Otter Creek coal in his verified

statements submitted with filings made by TRRC in this proceeding on June 6, 2013 and August 9, 2013. TRRC agrees that the potential customers identified by Mr. Schwartz are potential customers for Otter Creek coal. TRRC also states that some potential U.S. customers for Otter Creek coal prepared statements of support that were submitted with TRRC's June 6, 2013 filing in this proceeding.

**Interrogatory No. 8:**

Identify every person who was or is responsible for projecting Otter Creek coal sales to foreign customers.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC understands this question to be asking who is responsible for assessing the demand for Otter Creek coal sales to foreign customers. TRRC hereby refers to and incorporates its response to Interrogatory Number 5. With respect to potential international customers, Arch Coal has employees on the ground in Singapore and China who will work to develop potential customer bases for Otter Creek coal, and Arch Coal believes that traders will be interested in purchasing Otter Creek coal. However, in Arch Coal's experience, international customers typically do not purchase coal more than one year in advance of receiving the coal so it is premature to contact potential international customers this far in advance of the Otter Creek mine and the Tongue River Railroad being permitted and becoming operational. TRRC further states that its expert, Seth Schwartz, has identified foreign countries that are likely markets for Otter Creek coal in his verified statements submitted with filings made by TRRC in this proceeding on June 6, 2013 and August 9, 2013. TRRC agrees that the foreign countries identified by Mr. Schwartz are likely markets for Otter Creek coal.

**Interrogatory No. 9:**

Identify every person who was or is responsible for sales or marketing of Otter Creek coal.

**TRRC's Response:** Subject to and without waiving its specific and general objections, TRRC states that since June 18, 2012 no one has been responsible for sales or marketing of Otter Creek coal at TRRC because marketing such coal is not the responsibility of TRRC. TRRC further states that Arch Coal is the entity that will sell and market the coal. TRRC also understands that no person at Arch Coal is currently responsible for sales or marketing of Otter Creek coal because the Otter Creek mine has not been permitted yet and is not expected to be operational for several years. TRRC further understands that Arch Coal is familiar and, in some instances, has business relationships with most of the potential domestic customers for Montana PRB coal in the United States but it is too early to negotiate with those potential customers because the mine has not yet been permitted and the timing of its operation and that of the Tongue River Railroad is uncertain at this time given the pendency of permitting. With respect to potential international customers, Arch Coal has employees on the ground in Singapore and China who will work to develop potential customer bases for Otter Creek coal, and Arch Coal believes that traders will be interested in purchasing Otter Creek coal. However, in Arch Coal's experience, international customers typically do not purchase coal more than one year in advance of receiving the coal so it is premature to contact potential international customers this far in advance of the Otter Creek mine and Tongue River Railroad being permitted and becoming operational.

**Interrogatory No. 10:**

Identify every person who was or is responsible for sales of thermal coal from Montana's Powder River Basin.

**TRRC's Response:** TRRC objects to Interrogatory Number 10 on the grounds that: (i) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application and is not within TRRC's knowledge to the extent it seeks information regarding sales of thermal coal from mines in Montana's Powder River Basin that will not be served on the TRRC rail line; and (ii) it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, to the extent it requests the identification of "every person" who was or is responsible for sales of thermal coal from Montana's Powder River Basin that will be served by the TRRC rail line. Subject to and without waiving its specific and general objections, as explained in response to Interrogatory No. 9, TRRC states that since June 18, 2012 no one has been responsible for sales or marketing of Otter Creek coal at TRRC because marketing such coal is not the responsibility of TRRC. TRRC further states that Arch Coal is the entity that will sell and market the coal. TRRC also understands that no person at Arch Coal is currently responsible for sales or marketing of Otter Creek coal because the Otter Creek mine has not been permitted yet and is not expected to be operational for several years. TRRC further understands that Arch Coal is familiar and, in some instances, has business relationships with most of the potential domestic customers for Montana PRB coal in the United States but it is too early to negotiate with those potential customers because the mine has not yet been permitted and the timing of its operation and that of the Tongue River Railroad is uncertain at this time given the pendency of permitting. With respect to potential international customers, Arch Coal has employees on the ground in Singapore and China who will work to develop potential customer



bases for Otter Creek coal, and Arch Coal believes that traders will be interested in purchasing Otter Creek coal. However, in Arch Coal's experience, international customers typically do not purchase coal more than one year in advance of receiving the coal so it is premature to contact potential international customers this far in advance of the Otter Creek mine and Tongue River Railroad being permitted and becoming operational.

**Interrogatory No. 11:**

Identify every person who knew of or participated in any decision by Arch Coal to slow or halt coal production in the Powder River Basin in 2012.

**TRRC's Response:** TRRC objects to Interrogatory Number 11 on the grounds that: (i) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application and that is not within TRRC's knowledge because it seeks information regarding coal that will not be served on the TRRC rail line; and (ii) it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period to the extent it requests the identification of "every person" who knew of or participated in any decision by Arch Coal to slow or halt coal production in the Powder River Basin in 2012. TRRC further states that information about Arch Coal's activities in the Powder River Basin in 2012 are a matter of public record.

**Interrogatory No. 12:**

Identify every person who knew of or participated in Arch Coal's decision to sell the Sufco, Skyline, or Dugout Canyon Mines.

**TRRC's Response:** TRRC objects to Interrogatory Number 12 on the grounds that: (i) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application and that is not within

TRRC's knowledge because it seeks information regarding coal that will not be served by the TRRC rail line; and (ii) it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period to the extent it requests the identification of "every person" who knew of or participated in Arch Coal's decision to sell the Sufco, Skyline, or Dugout Canyon Mines. TRRC further states that Arch Coal's activities with respect to the named mines, each of which is in Utah, are a matter of public record.

**Interrogatory No. 13:**

Identify every person who was or is responsible for knowing about available capacity for exporting coal from U.S. or Canadian export terminals.

**TRRC's Response:** TRRC objects to Interrogatory Number 13 on the grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and seeks information that is not within TRRC's knowledge to the extent it requests TRRC to identify "every person," even persons unrelated to TRRC, who was or is responsible for knowing about available capacity for exporting coal from U.S. or Canadian export terminals. Subject to and without waiving its specific and general objections, TRRC states that Andrew Blumenfeld, previously identified, is familiar with available capacity for exporting coal from U.S. or Canadian export terminals. TRRC further states that the verified statements submitted by Seth Schwartz with filings made by TRRC in this proceeding on June 6, 2013 and August 9, 2013 contain information regarding the capacity of U.S. or Canadian terminals for exporting coal that will be transported by the TRRC rail line.

**Interrogatory No. 14:**

Identify every person who was or is responsible for securing capacity for Otter Creek coal at U.S. or Canadian export terminals.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC states

that it is not the responsibility of TRRC to secure capacity for Otter Creek coal at U.S. or Canadian export terminals and that since June 18, 2012 no one at TRRC has been assigned such responsibility. TRRC also understands that no one has been assigned such responsibility at Arch Coal, the entity that will sell and market the Otter Creek coal. The Otter Creek mine has not been permitted yet and is not expected to be operational for several years. Consequently, it is premature to assign a person responsibility for securing capacity for Otter Creek coal at U.S. or Canadian export terminals.

**Interrogatory No. 15:**

Identify every person who was or is responsible for forecasting production levels for the Otter Creek mine.

**TRRC's Response:** TRRC objects to Interrogatory Number 15 on the grounds that requesting TRRC to identify "every person" who was or is responsible for forecasting production levels for the Otter Creek mine is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that it is not the responsibility of TRRC to forecast production levels for the Otter Creek mine and that since June 18, 2012 no one at TRRC has been responsible for forecasting production levels for the Otter Creek mine. TRRC further states that the following individual at Arch Coal has supplied information for TRRC's use in terms of production levels for the Otter Creek mine: William M. Rowlands identified previously.

**Interrogatory No. 16:**

Identify every person who was or is responsible for projecting costs for the Otter Creek mine.

**TRRC's Response:** TRRC objects to Interrogatory Number 16 on the grounds that requesting TRRC to identify "every person" who was or is responsible for projecting costs for the Otter Creek mine is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. TRRC also objects to Interrogatory Number 16 on the grounds that the term "costs" is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application to the extent it requests information regarding costs other than the costs of production at the Otter Creek mine. Subject to and without waiving its specific and general objections, TRRC states it is not the responsibility of TRRC to project costs of production for the Otter Creek mine and that since June 18, 2012 no one at TRRC has been assigned such responsibility. TRRC understands that the Otter Creek mine is not expected to be operational for several years, and that Arch Coal does not task someone with the responsibility for projecting specific costs of production for the Otter Creek mine this far in advance of the mine's operational date. TRRC further states that the following individual has general information about costs of production for the Otter Creek mine: William M. Rowlands identified previously. TRRC also states that the verified statements submitted by Seth Schwartz with filings made by TRRC in this proceeding on June 6, 2013 and August 9, 2013 contain information projecting costs of production for the Otter Creek mine.

**Interrogatory No. 17:**

Identify every person who was or is responsible for monitoring costs at existing coal mines in the Powder River Basin.

**TRRC's Response:** TRRC objects to Interrogatory Number 17 on the grounds that requesting TRRC to identify "every person" who was or is responsible for monitoring costs at existing coal mines in the Powder River Basin is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. TRRC also objects to Interrogatory Number 17 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application. Subject to and without waiving its specific and general objections, TRRC states it is not the responsibility of TRRC to monitor costs at existing coal mines in the Powder River Basin and that since June 18, 2012 no one at TRRC has been assigned such responsibility. TRRC further states that the verified statements submitted by Seth Schwartz with filings made by TRRC in this proceeding on June 6, 2013 and August 9, 2013 contain information regarding costs of production at existing mines in the Powder River Basin.

**Interrogatory No. 18:**

Identify every person who was or is responsible for securing financing for the construction of the TRR, the Miles City alignment, or both.

**TRRC's Response:** TRRC objects to Interrogatory Number 18 on the grounds that the term "Miles City alignment" is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets "Miles City alignment" to mean the preferred alignment in TRRC's October Application. Subject to and without waiving its specific and general objections, TRRC states that since June 18, 2012 no person has been assigned

responsibility for securing financing for the construction of the TRR or the Miles City alignment because it is premature to do so given that construction will not begin until sometime in the future after the required permitting has been granted. In TRRC's December Application, TRRC explained that construction of the Tongue River railroad will most likely be financed through 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 some or all of the members of its sole shareholder, TRR Holding, of long-term debt privately placed by TRRC, or (3) some combination of Options 1 or 2.

**Interrogatory No. 19:**

Identify every person or entity that has offered or agreed to offer credit support for financing the TRR.

**TRRC's Response:** TRRC objects to Interrogatory Number 19 on the grounds that the term "credit support" is vague and ambiguous. Subject to and without waiving its specific and general objections, TRRC states that at this time there is no financing for the construction of the TRR line.

**Interrogatory No. 20:**

Identify every person who is responsible for developing financial pro forma or similar statements for the TRR.

**TRRC's Response:** TRRC objects to Interrogatory Number 20 on the grounds that requesting TRRC to identify "every person" who is responsible for developing financial pro forma or similar statements for the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. TRRC also objects to Interrogatory Number 20 on the grounds that the term "financial pro forma or similar statements" is vague. TRRC construes the term to refer to the TRR projected income statement

included as Exhibit G of TRRC's December Application. Subject to and without waiving its specific and general objections, TRRC states the following individual is primarily responsible for developing the Exhibit G TRR projected income statement: Scott Castleberry, previously identified.

**Interrogatory No. 21:**

Identify every person or entity from which financial support has been sought to construct the TRR.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC states that it has not yet sought financial support to construct the TRR from any person or entity.

TRRC further states that as it explained in TRRC's December Application, the construction of the Tongue River railroad will most likely be financed through 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 some or all of the members of its sole shareholder, TRR Holding, of long-term debt privately placed by TRRC, or (3) some combination of Options 1 or 2.

**Interrogatory No. 22:**

In connection with the preceding Interrogatory, identify every person or entity that did not provide or agree to provide financial support.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC states that it has not contacted any person or entity to seek financial support for construction of the TRR that has declined to provide such support.

**Interrogatory No. 23:**

Identify any investment bankers that have been consulted in connection with financing the TRR.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC states that no investment bankers have been consulted in connection with financing the TRR.

**Interrogatory No. 24:**

Identify your employees or your owners' employees who are responsible for knowing about human health effects from exposure to coal dust.

**TRRC's Response:** TRRC objects to Interrogatory Number 24 on the grounds that information on environmental and human health issues, including those relating to coal dust, will be developed by the Board's Office of Environmental Analysis ("OEA") in a separate environmental review process and therefore discovery on such issues is not available in connection with the Board's review of the transportation merits of TRRC's December 2012 Application. *See Canadian Nat'l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, Docket No. FD 35087, 2008 WL 474157, at \*2 (STB served Feb. 22, 2008); *Ill. Cent. R.R. Co.—Constr. & Op. Exempt.—In E. Baton Rouge Parish, LA*, Docket No. FD 33877, 2001 WL 940574, at \*2 (STB served Aug. 21, 2001). Subject to and without waiving its specific and general objections, TRRC states that in response to an OEA information request in the environmental review process, TRRC has provided information to the OEA relating to coal dust on June 17, 2013 and that such information is available on the website maintained for this proceeding by the Board.



**Interrogatory No. 25:**

Identify your employees or your owners' employees who are responsible for knowing about environmental impacts from transporting coal by rail.

**TRRC's Response:** TRRC objects to Interrogatory Number 25 on the grounds that information on environmental impacts of the planned TRRC coal transportation will be developed by the OEA in a separate environmental review process and therefore discovery on such issues is not available in connection with the Board's review of the transportation merits of TRRC's December 2012 Application. *See Canadian Nat'l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, Docket No. FD 35087, 2008 WL 474157, at \*2 (STB served Feb. 22, 2008); *Ill. Cent. R.R. Co.—Constr. & Op. Exempt.—In E. Baton Rouge Parish, LA*, Docket No. FD 33877, 2001 WL 940574, at \*2 (STB served Aug. 21, 2001).

**Interrogatory No. 26:**

**TRRC's Response:** Identify your employees or your owners' employees who are responsible for knowing about measures for mitigating environmental impacts from transporting coal by rail.

**TRRC's Response:** TRRC objects to Interrogatory Number 26 on the grounds that information on environmental impacts of the planned TRRC coal transportation will be developed by the OEA in a separate environmental review process and therefore discovery on such issues is not available in connection with the Board's review of the transportation merits of TRRC's December 2012 Application. *See Canadian Nat'l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, Docket No. FD 35087, 2008 WL 474157, at \*2 (STB served Feb. 22, 2008); *Ill. Cent. R.R. Co.—Constr. & Op. Exempt.—In E. Baton Rouge Parish, LA*, Docket No. FD 33877, 2001 WL 940574, at \*2 (STB served Aug. 21, 2001).

**Interrogatory No. 27:**

Identify every person who participated in the decision to change the preferred alignment from the Miles City alignment to the Colstrip alignment.

**TRRC's Response:** TRRC objects to Interrogatory Number 27 on the grounds that the term "Miles City alignment" is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets "Miles City alignment" to mean the preferred alignment in TRRC's October Application. TRRC also objects to Interrogatory Number 27 on the grounds that requesting TRRC to identify "every person" who participated in the decision to change the preferred alignment from the Miles City alignment to the Colstrip alignment is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states the following individual had significant involvement in the decision to change the preferred alignment from the Miles City alignment to the Colstrip alignment: Stevan B. Bobb, previously identified.

**Interrogatory No. 28:**

Identify every person whose authorization is necessary to suspend or terminate TRRC's December 17, 2012 Supplemental Application for Construction and Operation Authority.

**TRRC's Response:** TRRC objects to Interrogatory Number 28 to the extent that it assumes that the authorization of an individual person or a group of individual persons is necessary to suspend or terminate TRRC's December Application. Subject to and without waiving its specific and general objections, in response to this Interrogatory TRRC will produce responsive, non-privileged documents, if any, that it locates following a reasonable search of relevant files.

**Interrogatory No. 29:**

Identify each individual whose authorization is necessary to terminate Otter Creek Coal, L.L.C.'s Application for a Strip Mining Permit for the Otter Creek Mine.

**TRRC's Response:** TRRC objects to Interrogatory Number 29 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application. Subject to and without waiving its specific and general objections, TRRC states that it lacks knowledge regarding the identity of the individual or individuals, if any, whose authorization is necessary to terminate Otter Creek Coal, LLC's Application for a Strip Mining Permit for the Otter Creek Mine.

**Interrogatory No. 30:**

Identify your custodian of records. State whether that person or persons is also custodian of records for Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, Tongue River Holding Company, L.L.C., Dominion Terminal Associates, TRR Financing LLC, or Millennium Bulk Terminals – Longview, L.L.C.

**TRRC's Response:** TRRC objects to Interrogatory Number 30 to the extent that it asks for information about entities that have no relationship with TRRC. Subject to and without waiving its specific and general objections, TRRC states that it has no custodian of records. Some documents related to TRRC's October Application and TRRC's December Application are at BNSF and some documents related to those applications are at Arch Coal. BNSF has a custodian of records and Arch Coal has a custodian of records. The custodian of records for BNSF is not the same person as the custodian of records for Arch Coal.

**Interrogatory No. 31:**

Identify all documents you relied on to contend in your December 17, 2012 application and later filings that there is public demand and need for the TRR.

**TRRC's Response:** TRRC objects to Interrogatory Number 31 as vague to the extent that it refers to "later filings" without referring to a proceeding in which those later filings were made. TRRC will construe Interrogatory Number 31 as referring to later filings in this proceeding, STB Docket No. FD 30186. Subject to and without waiving its specific and general objections, TRRC states that the documents it relied on to contend in TRRC's December Application and later filings that there is public demand and need for the TRR are identified in those filings and includes without limitation the Board's prior decisions approving TRRC's applications in this proceeding and various sub-dockets.

**Interrogatory No. 32:**

Identify all documents you relied on to contend there will be capacity available for shipment of Otter Creek coal from U.S. or Canadian export terminals.

**TRRC's Response:** TRRC objects to Interrogatory Number 32 as vague to the extent that it does not refer to the documents in which the referenced contentions were made. TRRC will construe Interrogatory Number 32 as referring to contentions made in TRRC's December 17, 2012 Supplemental Application and later filings in this proceeding, STB Docket No. FD 30186. Subject to and without waiving its specific and general objections, TRRC states that the documents it relied on to contend in TRRC's December Application and later filings that there will be capacity available for shipment of Otter Creek coal from U.S. or Canadian export terminals are identified in those filings.

**Interrogatory No. 33:**

Identify all documents related to Seth Schwartz's Verified Statements dated June 6 and August 9, 2013, including but not limited to, all communications with and documents provided to Mr. Schwartz and all documents he relied on to form the basis of his Verified Statements.

**TRRC's Response:** TRRC objects to Interrogatory Number 33 to the extent it seeks

identification or production of “all documents” related to Seth Schwartz’s Verified Statements dated June 6 and August 9, 2013, including “all communications” with Mr. Schwartz, on the grounds that the interrogatory is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that all documents that Mr. Schwartz relied on to form the basis of his verified statements are referred to in his verified statements and are publicly available.

**Interrogatory No. 34:**

Identify all documents related to William Rowlands’ Verified Statements dated September 21 and December 13, 2012, including but not limited to, all communications with and documents provided to Mr. Rowlands and all documents he relied on to form the basis of his Verified Statements.

**TRRC’s Response:** TRRC objects to Interrogatory Number 34 to the extent it seeks identification or production of “all documents” related to William M. Rowlands’ Verified Statements dated September 21 and December 13, 2012, including “all communications” with Mr. Rowlands, on the grounds that the interrogatory is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that all documents that Mr. Rowlands relied on to form the basis of his verified statements are referred to in his verified statements.

**Interrogatory No. 35:**

Identify all documents related to Stevan Bobb’s Verified Statements dated September 24 and December 14, 2012, including but not limited to, all communications with and documents provided to him, and documents he relied on to form the basis of his Verified Statements.

**TRRC's Response:** TRRC objects to Interrogatory Number 35 to the extent it seeks identification or production of "all documents" related to Stevan Bobb's Verified Statements dated September 24 and December 14, 2012, including "all communications" with Mr. Bobb, on the grounds that the interrogatory is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that all documents that Mr. Bobb relied on to form the basis of his verified statements are referred to in his verified statements.

**Interrogatory No. 36:**

Identify all documents related to Andrew Blumenfeld's January 28, 2013 Verified Statement, including but not limited to, all communication with and documents provided to him, and all documents he relied to form the basis of his Verified Statement.

**TRRC's Response:** TRRC objects to Interrogatory Number 36 to the extent it seeks identification or production of "all documents" related to Andrew Blumenfeld's January 28, 2013 Verified Statement, including "all communications" with Mr. Blumenfeld, on the grounds that the interrogatory is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that all documents that Mr. Blumenfeld relied on to form the basis of his verified statement are referred to in his verified statement.

**Interrogatory No. 37:**

Identify all communications with the Montana Coal Council, the Montana Chamber of Commerce, or the Western Environmental Trade Association relating to this application.

**TRRC's Response:** TRRC objects to Interrogatory Number 37 to the extent that it seeks the identification of all oral communications on the grounds that the interrogatory is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly

compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that it will produce all communications in its possession, custody, or control with the Montana Coal Council, the Montana Chamber of Commerce, or the Western Environmental Trade Association that relate to TRRC's October Application and TRRC's December Application.

**Interrogatory No. 38:**

Identify all communications relating to TRRC's application with all domestic and international coal users, including but not limited to: DTE Electric Company, Minnesota Power, or WE Energy.

**TRRC's Response:** TRRC objects to Interrogatory Number 38 to the extent that it seeks the identification of all oral communications on the grounds that the interrogatory is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that it will produce all communications in its possession, custody, or control with domestic and international coal users that relate to TRRC's October Application and TRRC's December Application.

**Interrogatory No. 39:**

Identify all documents related to projected sales of Otter Creek coal to either U.S. or foreign customers.

**TRRC's Response:** TRRC objects to Interrogatory Number 39 on the grounds that requesting TRRC to identify "all documents" related to projected sales of Otter Creek coal to either U.S. or foreign customers is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period and given that no time period has been specified for the response. Subject to and without waiving its specific and general

objections, TRRC states that it will produce responsive, non-privileged documents created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, if any, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Interrogatory No. 40:**

Identify all communications with Arch Coal, Inc. related to its decision in 2012 to slow production or close Powder River Basin coal mines.

**TRRC's Response:** TRRC objects to Interrogatory Number 40 on the grounds that: (i) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application and that is not within TRRC's knowledge because it seeks information regarding coal that will not be served on the TRRC rail line; and (ii) it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period to the extent that it requests the identification of "all communications" related to any decision in 2012 by Arch Coal to slow coal production or close Powder River Basin coal mines. TRRC further states that information about Arch Coal's activities in the Powder River Basin in 2012 are a matter of public record.

**Interrogatory No. 41:**

Identify all communications with Arch Coal, Inc. related to its decision to sell the Sufco, Skyline, or Dugout Canyon Mines to Bowie Resources L.L.C.

**TRRC's Response:** TRRC objects to Interrogatory Number 41 on the grounds that: (i) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application and that is not within TRRC's knowledge because it seeks information regarding coal that will not be served by the TRRC rail line; and (ii) it is overly broad and unduly burdensome in light of the nature of this



proceeding, including the highly compressed discovery period, to the extent that it requests the identification of “all communications” with Arch Coal related to its decision to sell the Sufco, Skyline, or Dugout Canyon Mines to Bowie Resources L.L.C. TRRC further states that Arch Coal’s activities with respect to the named mines, each of which is in Utah, are a matter of public record.

**Interrogatory No. 42:**

Identify all documents or communications relating to the possibility of selling of the Otter Creek mine.

**TRRC’s Response:** TRRC objects to Interrogatory Number 42 on the grounds that it seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence concerning TRRC’s December Application and that is not within TRRC’s knowledge. Subject to and without waiving its specific and general objections, TRRC states that it is not aware of any documents or communications relating to the possibility of selling the Otter Creek mine.

**Interrogatory No. 43:**

Identify all documents related to the value of the Otter Creek mine.

**TRRC’s Response:** TRRC objects to Interrogatory Number 43 on the grounds that: (i) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC’s December Application and that is not within TRRC’s knowledge; and (ii) it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period to the extent that it requests the identification of “all documents” related to the value of the Otter Creek mine.

**Interrogatory No. 44:**

Identify all documents you relied on to contend in your application and subsequent filings

with the Surface Transportation Board that TRRC is financially fit to construct and operate the TRR.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC states that the documents it relied on to contend in TRRC's December Application and subsequent filings in this proceeding that TRRC is financially fit to construct and operate the TRR are identified in TRRC's December Application and subsequent filings in this proceeding. TRRC further states that it has no plans to operate the TRR line.

**Interrogatory No. 45:**

Identify all documents you relied on to form the basis of Exhibit G to your December 17, 2012 application.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC will produce responsive, non-privileged documents, if any.

**Interrogatory No. 46:**

Identify all documents you relied on to form the basis of Exhibit G to your October 16, 2012 application.

**TRRC's Response:** Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents, if any.

**Interrogatory No. 47:**

Identify all communications with Arch Coal, Inc., BNSF, or TRR Financing LLC relating to financing the TRR.

**TRRC'S Response:** TRRC objects to Interrogatory Number 47 to the extent it seeks identification of "all communications" with Arch Coal, Inc., BNSF, or TRR Financing LLC relating to financing the TRR on the grounds that the interrogatory is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery

period. Subject to and without waiving its specific and general objections, TRRC will produce any agreement between Arch Coal, BNSF, and TRR Financing, LLC relating to the financing of the construction of the TRR.

**Interrogatory No. 48:**

Identify all documents related to your decision to change the preferred alignment of the TRR from the Miles City alignment to the Colstrip alignment.

**TRRC's Response:** TRRC objects to Interrogatory Number 48 on the grounds that the term "Miles City alignment" is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets "Miles City alignment" to mean the preferred alignment in TRRC's October Application. TRRC also objects to Interrogatory Number 48 on the grounds that requesting TRRC to identify "all documents" related to its decision to change the preferred alignment of the TRR from the Miles City alignment to the Colstrip alignment is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, if any, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Interrogatory No. 49:**

Describe in as much detail as possible anything you have done to identify potential customers for Otter Creek coal. Where applicable, your response should include, but not be limited to, the identity of potential customers, tonnages, prices, quality of coal, and method and cost of shipment.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC states that it is not the responsibility of TRRC to market Otter Creek coal and that since June 18, 2012 no one at TRRC has been assigned the responsibility of identifying potential customers for Otter Creek coal. TRRC understands that Arch Coal has not identified specific customers for Otter Creek coal because the Otter Creek mine is not expected to be operational for several more years. However, Arch Coal is familiar and, in some instances, has business relationships with most of the potential domestic customers for Montana PRB coal in the United States but it is too early to negotiate with those potential customers because the mine has not yet been permitted and the timing of its operation and that of the Tongue River Railroad is uncertain at this time given the pendency of permitting. With respect to potential international customers, Arch Coal has employees on the ground in Singapore and China who will work to develop potential customer bases for Otter Creek coal, and Arch Coal believes that traders will be interested in purchasing Otter Creek coal. However, in Arch Coal's experience, international customers typically do not purchase coal more than one year in advance of receiving the coal so it is premature to contact potential international customers this far in advance of the Otter Creek mine and Tongue River Railroad being permitted and becoming operational.

**Interrogatory No. 50:**

Describe in as much detail as possible any analysis you have done to predict if and when the Otter Creek mine will become profitable. Your response should describe any assumptions or bases you relied on in the analysis.

**TRRC’S Response:** TRRC objects to Interrogatory Number 50 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC’s December Application. Subject to and without waiving its specific and general objections, TRRC states that it has not performed any analyses to predict if and when Arch Coal’s Otter Creek mine will become profitable. TRRC further states that information on the competitiveness of the Otter Creek mine relative to other PRB mines is set forth in the June 6, 2013 and August 9, 2013 verified statements of Seth Schwartz submitted in this proceeding.

**Interrogatory No. 51:**

Describe in as much detail as possible what you have done to secure financing for construction and operation of the TRR.

**TRRC’S Response:** Subject to and without waiving its general objections, TRRC states that it has described existing plans to secure financing for the construction and operation of the TRR line in TRRC’s December Application.

**Interrogatory No. 52:**

Describe in as much detail as possible what you did to secure financing for construction and operation of the Miles City alignment.

**TRRC’S Response:** TRRC objects to Interrogatory Number 52 on the grounds that the term “Miles City alignment” is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets “Miles City alignment” to mean the

preferred alignment in TRRC's October Application. Subject to and without waiving its specific and general objections, TRRC states that it described its plans to secure financing for the construction and operation of the TRR line along any alignment that might traverse the Miles City area in TRRC's October Application.

**Interrogatory No. 53:**

Identify all documents related to your efforts to finance the TRR.

**TRRC'S Response:** TRRC objects to Interrogatory Number 53 on the grounds that identifying "all documents" related to its efforts to finance the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that TRRC's December Application describes its efforts to finance the TRR and TRRC will produce any agreement between Arch Coal, BNSF, and TRR Financing, LLC relating to the financing of the construction of the TRR.

**Interrogatory No. 54:**

Identify all documents related to your efforts to finance the Miles City alignment of the Tongue River Railroad.

**TRRC'S Response:** TRRC objects to Interrogatory Number 54 on the grounds that the term "Miles City alignment" is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets "Miles City alignment" to mean the preferred alignment in TRRC's October Application. TRRC also objects to Interrogatory Number 54 on the grounds that identifying "all documents" related to its efforts to finance the Miles City alignment is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that TRRC's October Application describes its

plans to finance the TRR line along any alignment that might traverse the Miles City area and TRRC will produce any agreement between Arch Coal, BNSF, and TRR Financing, LLC relating to the financing of the construction of the TRR line along any alignment that might traverse the Miles City area.

**Interrogatory No. 55:**

Identify all documents you contend demonstrate BNSF's confidence in the TRR project.

**TRRC's Response:** TRRC objects to Interrogatory Number 55 on the grounds that identifying "all documents" demonstrating BNSF's confidence in the TRR project is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC identifies TRRC's December Application in which BNSF joined and other TRRC filings in this proceeding. TRRC further states that BNSF's confidence in the TRR project is demonstrated by the substantial financial investment BNSF has made and continues to make in the TRR project.

**Interrogatory No. 56:**

Identify all documents you contend support your statement that BNSF is expected to be the sole operator of the TRR.

**TRRC's Response:** TRRC objects to Interrogatory Number 56 on the grounds that identifying "all documents" supporting the statement that BNSF is expected to be the sole operator of the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC identifies TRRC's December Application, including the attached December 14, 2012 Verified Statement of Stevan B. Bobb, and other TRRC filings

in the current proceeding as documents that show BNSF is expected to be the sole operator of the TRR.

**Interrogatory No. 57:**

Identify all documents you contend support your statement that BNSF and Arch are prepared to expend substantial resources to build the TRR.

**TRRC's Response:** TRRC objects to Interrogatory Number 57 on the grounds that identifying "all documents" is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC identifies TRRC's December Application, including the December 14, 2012 Verified Statement of Stevan B. Bobb, and other filings in the current proceeding.

**Interrogatory No. 58:**

Describe in as much detail as possible each factor you considered in deciding to change the preferred alignment of the TRR from the Miles City alignment to the Colstrip alignment. Your answer should include, but not necessarily be limited to, any consideration of a preference for west-bound versus east-bound rail traffic.

**TRRC's Response:** TRRC objects to Interrogatory Number 58 on the grounds that the term "Miles City alignment" is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets "Miles City alignment" to mean the preferred alignment in TRRC's October Application. Subject to and without waiving its specific and general objections, TRRC states that responsive, non-privileged documents will be produced that provide information responsive to this Interrogatory.

**Interrogatory No. 59:**

Identify each person of yours who has access to the computer networks of Arch Coal,



Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing, L.L.C., Tongue River Holding Company, L.L.C., Dominion Terminal Associates, or Millennium Bulk Terminals – Longview, L.L.C.

**TRRC’S Response:** TRRC objects to Interrogatory Number 59 on the grounds that: (i) the phrases “each person of yours” and “access to the computer networks” are vague and ambiguous; and (ii) the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC’s December Application.

**Interrogatory No. 60:**

Identify each email account that you have used in relation to the Miles City alignment or TRR, including emails sent or received by every person via personal or other business email accounts.

**TRRC’S Response:** TRRC objects to Interrogatory Number 60 on the grounds that: (i) the interrogatory is vague, ambiguous, and incomprehensible, and (ii) the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC’s December Application. TRRC also objects to Interrogatory Number 60 on the grounds that the term “Miles City alignment” is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets “Miles City alignment” to mean the preferred alignment in TRRC’s October Application.

**Interrogatory No. 61:**

Identify any policies or procedures you employ for retention of documents.

**TRRC’s Response:** Subject to and without waiving its general objections, TRRC states that it has no policies or procedures for retention of documents. TRRC further states that some

documents related to TRRC's October Application and TRRC's December Application are at BNSF and some documents related to those applications are at Arch Coal. BNSF has policies and procedures for retention of documents, and Arch Coal has policies and procedures for retention of documents.

**Interrogatory No. 62:**

Identify any written policies or procedures for authorizing expenditures of TRRC funds.

**TRRC's Response:** TRRC objects to Interrogatory Number 62 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Interrogatory No. 63:**

Identify any written policies or procedures for requesting additional funds or capital from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., Tongue River Holding Company, L.L.C., or any combination thereof.

**TRRC's Response:** TRRC objects to Interrogatory Number 63 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Interrogatory No. 64:**

Identify all actions TRRC is prohibited from taking without authorization from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., Tongue River Holding Company, L.L.C., or any combination thereof.

**TRRC's Response:** TRRC objects to Interrogatory Number 64 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably

calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Interrogatory No. 65:**

Please describe the positions and responsibilities of your employees with management or supervisory authority.

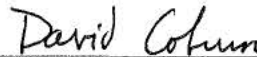
**TRRC'S Response:** Subject to and without waiving its general objections, including specifically its objection to the definition of "Employee," TRRC states that it has officers and directors but has no employees. In its December Application, TRRC identified its officers and directors as of the date of the application.

**Interrogatory No. 66:**

Please identify each employee of TRRC.

**TRRC's Response:** Subject to and without waiving its general objections, including specifically its objection to the definition of "Employee," TRRC refers to its response to Interrogatory Number 65.

Respectfully submitted,



Betty Jo Christian *RL*

David H. Coburn

Linda S. Stein

Roy E. Litland

Dated: October 7, 2013

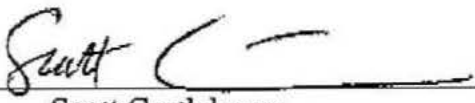
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
(202) 429-3000

Attorneys for Applicant  
Tongue River Railroad Company, Inc.

**VERIFICATION**

I, Scott Castleberry, Director Economic Analysis, Coal Marketing for BNSF Railway Company, hereby verify under penalty of perjury of the laws of the United States that the foregoing responses of Tongue River Railroad Company, Inc. to Northern Plains Resource Council's interrogatories are true and correct to the best of my knowledge and belief only as it pertains to BNSF Railway Company acting as part owner of the parent company of Tongue River Railroad Company, Inc., and subject to the objections and qualifications included in such responses.

Executed on October 7, 2013

  
\_\_\_\_\_  
Scott Castleberry

## VERIFICATION

I, Andrew Blumenfeld, Vice President Analysis and Strategy, Arch Coal, Inc., hereby verify under penalty of perjury of the laws of the United States that the foregoing responses of Tongue River Railroad Company, Inc. to Northern Plains Resource interrogatories are true and correct to the best of my knowledge and belief only as it pertains to Arch Coal, Inc. acting as part owner of the parent company of Tongue River Railroad Company, Inc. and subject to the objections and qualifications included in such responses.

Executed on October 7, 2013



Andrew Blumenfeld

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of October 2013, I caused a copy of the foregoing to be served by first-class mail, postage prepaid, upon all parties of record in this proceeding.

  
\_\_\_\_\_  
Roy E. Litland

## VERIFICATION

I, Andrew Blumenfeld, Vice President Analysis and Strategy, Arch Coal, Inc., hereby verify under penalty of perjury of the laws of the United States that the facts stated in the foregoing responses of Tongue River Railroad Company, Inc. to Northern Plains Resource Council's Interrogatory Numbers 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 30, 31, 32, 34, 36, 40, 41, 42, 49, 50, 57, and 61 are true and correct to the best of my knowledge and belief only as it pertains to Arch Coal, Inc. acting as part owner of the parent company of Tongue River Railroad Company, Inc., and subject to the objections and qualifications included in such responses.


Executed on December 4, 2013

  
\_\_\_\_\_  
Andrew Blumenfeld

## VERIFICATION

I, Scott Castleberry, Director Economic Analysis, Coal Marketing for BNSF Railway Company, hereby verify under penalty of perjury of the laws of the United States that the facts stated in the foregoing responses of Tongue River Railroad Company, Inc. to Northern Plains Resource Council's Interrogatory Numbers 1, 2, 4, 18, 19, 20, 21, 22, 23, 27, 30, 31, 35, 44, 51, 52, 53, 54, 55, 56, 57, 61, 65, and 66 are true and correct to the best of my knowledge and belief only as it pertains to BNSF Railway Company acting as part owner of the parent company of Tongue River Railroad Company, Inc., and subject to the objections and qualifications included in such responses.

Executed on December 5, 2013

  
\_\_\_\_\_  
Scott Castleberry



# **APPENDIX D**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 30186**

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

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**TONGUE RIVER RAILROAD COMPANY, INC.’S RESPONSES AND OBJECTIONS  
TO NORTHERN PLAINS RESOURCE COUNCIL’S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS**

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Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Applicant Tongue River Railroad Company, Inc. (“TRRC”) hereby responds and objects to the First Request for Production of Documents served by Northern Plains Resource Council (“NPRC”) on September 13, 2013 (“NPRC’s First Set of Requests for Production”).

**GENERAL OBJECTIONS**

The following general objections are made with respect to NPRC’s First Set of Requests for Production.

1. TRRC objects to NPRC’s First Set of Requests for Production to the extent they seek information or documents that contain information that is confidential, commercially sensitive, or proprietary, including information relating to or from third parties, that, if produced, could result in the violation of any contractual obligation to third parties or could violate 49 U.S.C. § 11904.

2. TRRC objects to NPRC's First Set of Requests for Production to the extent they seek disclosure of information or documents that are protected by the attorney-client privilege, work product doctrine, and/or any other appropriate privilege or doctrine. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claim of privilege or other protection.

3. TRRC objects to NPRC's First Set of Requests for Production to the extent they seek production of "all documents" and "all communications" relating to matters described in particular document requests on grounds that those document requests are overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. As indicated in its responses to specific requests, TRRC will conduct a reasonable search that is commensurate with the nature and expedited discovery schedule of this proceeding for responsive information in the files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

4. TRRC objects to NPRC's First Set of Requests for Production as being vague and ambiguous because they do not specify a start date for the response. Since this proceeding was reopened by STB order issued on June 18, 2012, TRRC will produce documents that were either: (i) created or modified on or after June 18, 2012, or (ii) relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, unless otherwise indicated.

5. TRRC objects to NPRC's First Set of Requests for Production to the extent that it calls for the production of publicly available documents.

## **OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

The following objections to definitions and instructions are made with respect to NPRC's First Set of Requests for Production. The objections are numbered consistent with NPRC's numbering.

### **Objection to Definition and Instruction A:**

TRRC objects to the definition of "You" and "Your" in Definition and Instruction A on the basis that it is overly broad, unduly burdensome, and beyond the scope of permissible discovery to the extent it seeks information or documents from past officers, employees, agents, servants, representatives, and attorneys because such information and documents are not in the possession, custody, or control of TRRC. TRRC also objects to the definition of "You" and "Your" as being vague, ambiguous and overly broad to the extent that it includes "agents," "servants," "representatives," as well as "each and every attorney . . . of each and every such individual or entity."

### **Objection to Definition and Instruction B:**

TRRC objects to NPRC's definition of "Communication" and "Communications" in Definition and Instruction B as unduly burdensome and overly broad to the extent that NPRC's requests for production seek the identification or production of any and all oral communications that have not been reduced to writing.

### **Objection to Definition and Instruction D:**

TRRC objects to the definition of "Employee" in Definition and Instruction D as being vague, ambiguous and overly broad to the extent that it includes "agents," "servants," and "representatives," as well as "each and every attorney . . . of each and every such individual or entity." Such entities are not "Employees".

**Objection to Definition and Instruction I:**

TRRC objects to the definition of “Owners” in Definition and Instruction I as being overly broad and inaccurate to the extent it implies that Arch Coal, Inc. (“Arch Coal”), BNSF Railway Company (“BNSF”), and TRR Financing LLC are owners of TRRC. As explained in TRRC’s December 17, 2012 Supplemental Application for Construction and Operation Authority (“TRRC’s December Application”), TRRC’s sole shareholder is Tongue River Holding Company, LLC. Arch Coal, Inc., BNSF Railway Company, and TRR Financing LLC own interests in Tongue River Holding Company, LLC.

**Objection to Definition and Instruction J:**

TRRC objects to Definition and Instruction J as being overly broad, unreasonable, and imposing obligations beyond the permissible scope of discovery.

**Objection to Definition and Instruction K:**

TRRC objects to Definition and Instruction K as being overly broad, unreasonable, and imposing obligations beyond the permissible scope of discovery. TRRC has no obligation to identify the custodians and locations of documents that are not in TRRC’s possession, custody, or control, and TRRC lacks knowledge of who may have control of or the location of documents that are outside of TRRC’s possession, custody, or control.

**Objection to Definition and Instruction L:**

TRRC objects to Definition and Instruction L as vague, ambiguous and confusing.

**Objection to Definition and Instruction M:**

TRRC objects to Definition and Instruction M on grounds that preparing a privilege log is unduly burdensome, especially in light of the nature of this proceeding, including the highly compressed discovery period. Privilege logs are not routinely provided in proceedings at the

STB and there are not unique circumstances in this case that would warrant the requirement to prepare a privilege log. *See Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, Docket No. FD 35557, 2012 WL 2378133, at \*6 (STB served June 25, 2012).

**Objection to Definition and Instruction N:**

TRRC objects to Definition and Instruction N as being overly broad, unreasonable, and imposing obligations beyond the permissible scope of discovery.

**RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION**

TRRC incorporates its General Objections and Objections to Definitions and Instructions into each response below as if fully set forth therein.

**Request for Production No. 1:**

Produce all documents describing or analyzing domestic or international demand for Powder River Basin (PRB) coal, including without limitation Otter Creek coal.

**TRRC's Response:** TRRC objects to Request for Production Number 1 on the grounds that requesting TRRC to produce "all documents" describing or analyzing domestic or international demand for Powder River Basin (PRB) coal is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. TRRC further objects to this document request to the extent it seeks documents that were obtained under a subscription agreement that precludes disclosure to other parties. TRRC further objects to this Request for Production on the grounds that it is overly broad, unduly burdensome and seeks information that is not relevant nor reasonably likely to lead to the discovery of admissible evidence concerning TRRC's December Application to the extent it seeks analyses of demand for coal that will not be served by the Tongue River Railroad. Subject to and without waiving its specific and general objections, TRRC will produce non-privileged documents created or modified on or after June

18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, describing or analyzing domestic or international demand for Powder River Basin (PRB) coal generally or demand for a particular type of PRB coal that may be served by the Tongue River Railroad located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 2:**

Produce all documents describing or analyzing the potential domestic market for Otter Creek or Montana PRB coal.

**TRRC's Response:** TRRC objects to Request for Production Number 2 on the grounds that requesting TRRC to produce "all documents" describing or analyzing the potential domestic market for Otter Creek or Montana PRB coal is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. TRRC further objects to this document request to the extent it seeks documents that were obtained under a subscription agreement that precludes disclosure to other parties. TRRC further objects to this Request for Production on the grounds that it is overly broad, unduly burdensome and seeks information that is not relevant nor reasonably likely to lead to the discovery of admissible evidence concerning TRRC's December Application to the extent it seeks analyses of demand for coal that will not be served by the Tongue River Railroad. Subject to and without waiving its specific and general objections, TRRC will produce non-privileged documents created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, describing or analyzing the potential domestic market for Otter Creek specifically or Montana PRB coal generally located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 3:**

Produce all documents describing or analyzing demand for thermal coal in China, South Korea or Japan.

**TRRC's Response:** TRRC objects to Request for Production Number 3 on the grounds that: (i) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application to the extent it seeks production of documents describing or analyzing demand in China, South Korea or Japan for thermal coal from outside of Montana's Powder River Basin; and (ii) it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, to the extent it requests the production of "all documents," and given that no time period has been specified for the response. TRRC further objects to this document request to the extent it seeks documents that were obtained under a subscription agreement that precludes disclosure to other parties. Subject to and without waiving its specific and general objections, TRRC will produce non-privileged documents created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, describing or analyzing demand in China, South Korea or Japan for thermal coal from Montana's Powder River Basin generally or from mines that will be served by the Tongue River Railroad specifically located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.



**Request for Production No. 4:**

Produce all documents related to the ability of PRB coal, including Otter Creek coal, to compete on a delivered price basis with Indonesian and Australian thermal coal in China, South Korea or Japan.

**TRRC's Response:** TRRC objects to Request for Production Number 4 on the grounds that: (i) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application to the extent that "PRB coal" includes coal outside of Montana's Powder River Basin; and (ii) it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, to the extent it requests the production of "all documents," and given that no time period has been specified for the response. TRRC further objects to this document request to the extent it seeks documents that were obtained under a subscription agreement that precludes disclosure to other parties. Subject to and without waiving its specific and general objections, TRRC will produce non-privileged documents created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, related to the ability of coal from mines inside Montana's Powder River Basin, including Otter Creek coal, to compete on a delivered price basis with Indonesian and Australian thermal coal in China, South Korea or Japan located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 5:**

Produce all documents related to Energy Information Administration (EIA) projections of future sales of PRB coal.

**TRRC's Response:** TRRC objects to Request for Production Number 5 on the grounds that EIA projections of future sales of PRB coal are publicly available. TRRC further objects to Request for Production Number 5 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 6:**

Produce all documents related to limitations on the market for Otter Creek coal due to its sodium content.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application. TRRC further states that the verified statements submitted by Seth Schwartz with filings made by TRRC in this proceeding on June 7, 2013 and August 9, 2013 contain information responsive to this request.

**Request for Production No. 7:**

Produce all documents related to market conditions that could delay or prevent development of the Otter Creek mine.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding,

located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 8:**

Produce all documents related to market conditions that could reduce production levels at the Otter Creek mine below those referenced in your December 17, 2012 Supplemental Application to Construct.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 9:**

Produce all documents related to financing the Otter Creek mine, including without limitation any agreements to finance, provide credit support, debt or equity.

**TRRC's Response:** TRRC objects to Request for Production Number 9 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 10:**

Produce all documents related to any financial pro forma or similar financial statement for the Otter Creek mine, Miles City alignment, or TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 10 as overly broad, unduly burdensome and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December

Application to the extent that the request for production seeks documents related to any financial pro forma or similar financial statement for the Otter Creek mine. TRRC also objects to Request for Production Number 10 on the grounds that the term “Miles City alignment” is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets “Miles City alignment” to mean the preferred alignment in TRRC’s October 16, 2012 Revised Application (“TRRC’s October Application”). TRRC further objects to Request for Production Number 10 on the grounds that the term “financial pro forma or similar statements” is vague. With respect to the Miles City alignment and the TRR, TRRC construes the term to refer to the TRR projected income statement included as Exhibit G of TRRC’s October Application and December Application. Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents, if any, that it relied on to form the basis of Exhibit G to TRRC’s October Application and TRRC’s December Application.

**Request for Production No. 11:**

Produce all documents related to the tonnage of coal to be mined from the Otter Creek mine, including but not limited to forecasted production levels in relation to fluctuations in the price of coal.

**TRRC’s Response:** TRRC objects to Request for Production Number 11 on the grounds that requesting TRRC to produce “all documents” related to the tonnage of coal to be mined from the Otter Creek mine, including but not limited to forecasted production levels in relation to fluctuations in the price of coal, is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June

18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 12:**

Produce all documents related to the competitiveness of Otter Creek coal on a delivered price basis.

**TRRC's Response:** TRRC objects to Request for Production Number 12 on the grounds that requesting TRRC to produce "all documents" related to the competitiveness of Otter Creek coal on a delivered price basis is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application. TRRC further states that the verified statement submitted by Andrew Blumenfeld with a filing made by TRRC in this proceeding on January 28, 2013, and the verified statements submitted by Seth Schwartz with filings made by TRRC in this proceeding on June 7, 2013 and August 9, 2013 contain information responsive to this request for production.

**Request for Production No. 13:**

Produce all documents related to potential or prospective domestic or international customers for Otter Creek coal.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding,

located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 14:**

Produce all documents related to the quality of Otter Creek coal, including without limitation its chemical and energy content.

**TRRC's Response:** TRRC objects to Request for Production Number 14 on the grounds that requesting TRRC to produce "all documents" related to the quality of Otter Creek coal, including without limitation its chemical and energy content, is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that it will produce non-privileged documents sufficient to show the quality of Otter Creek coal. TRRC further states that the verified statement submitted by Andrew Blumenfeld with a filing made by TRRC in this proceeding on January 28, 2013, and the verified statements submitted by Seth Schwartz with filings made by TRRC in this proceeding on June 7, 2013 and August 9, 2013 contain information regarding the quality of Otter Creek coal.

**Request for Production No. 15:**

Produce all documents related to the fungibility (the ability to use Otter Creek coal interchangeability [sic] with other sources of coal) of Otter Creek coal and Wyoming PRB coal.

**TRRC's Response:** TRRC objects to Request for Production Number 15 on the grounds that requesting TRRC to produce "all documents" related to the fungibility (the ability to use Otter Creek coal interchangeably with other sources of coal) of Otter Creek coal and Wyoming PRB coal is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has

been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 16:**

Produce all documents related to any power plant that places limitations on or rejects coal from the PRB due to its sodium content.

**TRRC's Response:** TRRC objects to Request for Production Number 16 on the grounds that requesting TRRC to produce "all documents" related to any power plant that places limitations on or rejects coal from the PRB due to its sodium content is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents, if any, relating to the limits any power plant places on Montana PRB coal due to its sodium content created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application. TRRC further states that the verified statements submitted by Seth Schwartz with filings made by TRRC in this proceeding on June 7, 2013 and August 9, 2013 contain information responsive to this request.

**Request for Production No. 17:**

Produce all documents related to limits on the marketability of PRB coal due to its sodium content.

**TRRC's Response:** TRRC objects to Request for Production Number 17 on the grounds that requesting TRRC to produce "all documents" related to limits on the marketability of PRB coal due to its sodium content is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents, if any, relating to limits on marketability of Montana PRB coal due to its sodium content created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application. TRRC further states that the verified statements submitted by Seth Schwartz with filings made by TRRC in this proceeding on June 7, 2013 and August 9, 2013 contain information regarding limitations on the market for Otter Creek coal due to its sodium content.

**Request for Production No. 18:**

Produce all documents related to the past, present, or future estimated costs of shipping Otter Creek coal to domestic and international customers.

**TRRC's Response:** TRRC objects to Request for Production Number 18 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.



**Request for Production No. 19:**

Produce all documents related to any efforts taken to secure capacity for Otter Creek coal at U.S. and Canadian export terminals.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 20:**

Produce all documents related to the cost and availability of capacity for shipping Otter Creek coal from U.S. and Canadian export terminals.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC will produce responsive, non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 21:**

Produce all documents related to production level forecasts for the Otter Creek mine.

**TRRC's Response:** TRRC objects to Request for Production Number 21 on the grounds that requesting TRRC to produce "all documents" related to production level forecasts for the Otter Creek mine is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce non-privileged production level forecasts for the Otter Creek

mine created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 22:**

Produce all documents related the competitiveness of coal as affected by natural gas, environmental regulations on coal, and the decommissioning of power plants.

**TRRC's Response:** TRRC objects to Request for Production Number 22 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 23:**

Produce all documents related to your request for the Board to delay work on the Environmental Impact Statement for the TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 23 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application. TRRC further objects to Request for Production Number 23 on the grounds that the Environmental Impact Statement is being prepared in a separate process by the Board's Office of Environmental Analysis ("OEA") and therefore discovery relating to the Environmental Impact Statement is not available in connection with the Board's review of the transportation merits of TRRC's December 2012 Application. *See Canadian Nat'l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, Docket No. FD 35087, 2008 WL 474157, at \*2

(STB served Feb. 22, 2008); *Ill. Cent. R.R. Co.—Constr. & Op. Exempt.—In E. Baton Rouge Parish, LA*, Docket No. FD 33877, 2001 WL 940574, at \*2 (STB served Aug. 21, 2001).

**Request for Production No. 24:**

Produce all documents related to human health effects from exposure to coal dust.

**TRRC's Response:** TRRC objects to Request for Production Number 24 on the grounds that information on environmental and human health issues, including those relating to coal dust, will be developed by the OEA in a separate environmental review process and therefore discovery on such issues is not available in connection with the Board's review of the transportation merits of TRRC's December 2012 Application. *See Canadian Nat'l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, Docket No. FD 35087, 2008 WL 474157, at \*2 (STB served Feb. 22, 2008); *Ill. Cent. R.R. Co.—Constr. & Op. Exempt.—In E. Baton Rouge Parish, LA*, Docket No. FD 33877, 2001 WL 940574, at \*2 (STB served Aug. 21, 2001).

Subject to and without waiving its specific and general objections, TRRC states that in response to an OEA information request in the environmental review process, TRRC has provided information to the OEA relating to coal dust on June 17, 2013 and that such information is available on the website maintained for this proceeding by the Board.

**Request for Production No. 25:**

Produce all documents related to environmental impacts from transporting coal by rail.

**TRRC's Response:** TRRC objects to Request for Production Number 25 on the grounds that information on environmental impacts of the planned TRRC coal transportation will be developed by the OEA in a separate environmental review process and therefore discovery on such issues is not available in connection with the Board's review of the transportation merits of TRRC's December 2012 Application. *See Canadian Nat'l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, Docket No. FD 35087, 2008 WL 474157, at \*2 (STB served Feb. 22,

2008); *Ill. Cent. R.R. Co.—Constr. & Op. Exempt.—In E. Baton Rouge Parish, LA*, Docket No. FD 33877, 2001 WL 940574, at \*2 (STB served Aug. 21, 2001).

**Request for Production No. 26:**

Produce all documents related to mitigating environmental impacts from transporting coal by rail.

**TRRC's Response:** TRRC objects to Request for Production Number 26 on the grounds that information on environmental impacts of the planned TRRC coal transportation will be developed by the OEA in a separate environmental review process and therefore discovery on such issues is not available in connection with the Board's review of the transportation merits of TRRC's December 2012 Application. *See Canadian Nat'l Ry. Co. & Grand Trunk Corp.—Control—EJ&E W. Co.*, Docket No. FD 35087, 2008 WL 474157, at \*2 (STB served Feb. 22, 2008); *Ill. Cent. R.R. Co.—Constr. & Op. Exempt.—In E. Baton Rouge Parish, LA*, Docket No. FD 33877, 2001 WL 940574, at \*2 (STB served Aug. 21, 2001).

**Request for Production No. 27:**

Produce all documents related to revenue projections for the Otter Creek mine.

**TRRC's Response:** TRRC objects to Request for Production Number 27 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 28:**

Produce all documents related to revenue projections for the TRR.

**TRRC's Response:** TRRC objects to Request for Production No. 28 on the grounds that requesting TRRC to produce "all documents" related to revenue projections for the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the

highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce responsive non-privileged documents, if any, created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 29:**

Produce all documents related to projected sales of Otter Creek coal to domestic or international customers.

**TRRC's Response:** TRRC objects to Request for Production Number 29 on the grounds that requesting TRRC to produce "all documents" related to projected sales of Otter Creek coal to domestic or international customers is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce responsive, non-privileged documents created or modified on or after June 18, 2012, or relied upon in any filings made by TRRC on or after June 18, 2012 in this proceeding, if any, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 30:**

Produce all documents related to price estimates for Otter Creek coal.

**TRRC's Response:** TRRC objects to Request for Production Number 30 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant

nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 31:**

Produce all documents related to projected revenue, expenses, and profits for the Otter Creek mine.

**TRRC's Response:** TRRC objects to Request for Production Number 31 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 32:**

Produce all documents related to offers or agreements to provide credit for financing the TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 32 on the grounds that requesting TRRC to produce "all documents" related to offers or agreements to provide credit for financing the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce any offers or agreements to provide credit for financing the TRR. TRRC further states that TRRC's December Application describes its plans to finance the TRR.

**Request for Production No. 33:**

Produce all documents related to any decision not to provide credit for financing the TRR.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC refers to its response to Interrogatory Number 22 and states that it has no documents responsive to this request.

**Request for Production No. 34:**

Produce all documents related to any efforts made to obtain credit for financing the TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 34 on the grounds that requesting TRRC to produce "all documents" related to any efforts made to obtain credit for financing the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce any offers or agreements to obtain credit for financing the TRR. TRRC further states that TRRC's December Application describes its plans to finance the TRR.

**Request for Production No. 35:**

Produce all documents related to offers or agreements to offer financial support for the TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 35 on the grounds that requesting TRRC to produce "all documents" related to offers or agreements to offer financial support for the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce any offers or agreements to offer financial support for the TRR. TRRC further states that TRRC's December Application describes its plans to finance the TRR.

**Request for Production No. 36:**

Produce all documents related [sic] any decision not to provide financial support for the TRR.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC refers to its response to Interrogatory Number 22 and states that it has no documents responsive to this request.

**Request for Production No. 37:**

Produce all documents related to any efforts made to obtain financial support for the TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 37 on the grounds that requesting TRRC to produce "all documents" related to any efforts made to obtain financial support for the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce any offers or agreements to obtain financial support for the TRR. TRRC further states that TRRC's December Application describes its plans to finance the TRR.

**Request for Production No. 38:**

Produce all documents related to communications with investment bankers concerning financing the TRR.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC refers to its response to Interrogatory Number 23 and states that it has no documents responsive to this request.

**Request for Production No. 39:**

Produce all documents related to financing the constructing and operating the Miles City alignment and the TRR.



**TRRC's Response:** TRRC objects to Request for Production Number 39 on the grounds that requesting TRRC to produce “all documents” related to financing the construction and operation of the Miles City alignment and the TRR is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. TRRC also objects to Request for Production Number 39 on the grounds that the term “Miles City alignment” is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets “Miles City alignment” to mean the preferred alignment in TRRC’s October Application. Subject to and without waiving its specific and general objections, TRRC will produce any agreement between Arch Coal, BNSF, and TRR Financing, LLC relating to the financing of the construction of the TRR or any alignment that might traverse the Miles City area.

**Request for Production No. 40:**

Produce all documents and communications with Arch Coal, BNSF, or TRR Financing L.L.C., relating to the financing of the TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 40 to the extent it seeks production of “all communications” with Arch Coal, Inc., BNSF, or TRR Financing LLC relating to financing the TRR on the grounds that the request for production is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC will produce any agreement between Arch Coal, BNSF, and TRR Financing, LLC relating to the financing of the construction of the TRR.

**Request for Production No. 41:**

Produce all documents related to any agreements you and BNSF have negotiated for BNSF to be the sole operator for the TRR.

**TRRC's Response:** Subject to and without waiving its general objections, TRRC states that there are no documents responsive to this request.

**Request for Production No. 42:**

Produce all documents related to Arch Coal's decision to slow or halt coal production in the PRB in 2012 or 2013.

**TRRC's Response:** TRRC objects to Request for Production Number 42 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application. TRRC further states that information about Arch Coal's activities in the Powder River Basin in 2012 are a matter of public record.

**Request for Production No. 43:**

Produce all documents related to Arch Coal's decision to sell the Sufco, Skyline, or Dugout Canyon mines.

**TRRC's Response:** TRRC objects to Request for Production Number 43 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application. TRRC further states that Arch Coal's activities with respect to the named mines, each of which is in Utah, are a matter of public record.

**Request for Production No. 44:**

Produce all documents related to any contemplated or potential sale of the Otter Creek mine.

**TRRC's Response:** TRRC objects to Request for Production Number 44 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 45:**

Produce all documents that estimate the value of coal reserves at what is now identified as the Otter Creek mine.

**TRRC's Response:** TRRC objects to Request for Production Number 45 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 46:**

Produce all documents related to policies or procedures for authorizing expenditures of TRRC's funds.

**TRRC's Response:** TRRC objects to Request for Production Number 46 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 47:**

Produce all documents related to policies or procedures for requesting additional funds or capital from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C., or any combination thereof.

**TRRC's Response:** TRRC objects to Request for Production Number 47 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 48:**

Produce all documents related to funds or capital you requested or received from Arch Coal, Inc., Otter Creek Coal, LLC, BNSF Railway Company, TRR Financing LLC, and Tongue River Holding Company, L.L.C., or any combination thereof.

**TRRC's Response:** TRRC objects to Request for Production Number 48 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 49:**

Produce all documents related to actions TRRC is prohibited from taking without authorization from Arch Coal, Inc., Otter Creek Coal, L.L.C., BNSF Railway Company, TRR Financing L.L.C., and Tongue River Holding Company, L.L.C., or any combination thereof.

**TRRC's Response:** TRRC objects to Request for Production Number 49 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application.

**Request for Production No. 50:**

Produce all documents and communications with DTE Electric Company, Minnesota Power Company, or WE Energy.

**TRRC's Response:** TRRC objects to Request for Production Number 50 as being overly broad to the extent that it seeks documents and communications with DTE Electric Company, Minnesota Power Company, or WE Energy that do not relate to TRRC's October Application or TRRC's December Application. Subject to and without waiving its specific and general objections, TRRC states that it will produce all communications with DTE Electric Company, Minnesota Power Company, and WE Energy that relate to TRRC's October Application or TRRC's December Application.

**Request for Production No. 51:**

Produce all documents and communications with Montana Coal Council, Montana Chamber of Commerce, or Western Environmental Trade Association.

**TRRC's Response:** TRRC objects to Request for Production Number 51 as being overly broad to the extent that it seeks documents and communications with the Montana Coal Council, the Montana Chamber of Commerce, or the Western Environmental Trade Association that do not relate to TRRC's October Application or TRRC's December Application. Subject to and without waiving its specific and general objections, TRRC states that it will produce all communications with the Montana Coal Council, the Montana Chamber of Commerce, or the Western Environmental Trade Association that relate to TRRC's October Application or TRRC's December Application.

**Request for Production No. 52:**

Produce all documents related to your December 17, 2012 application demonstrating public demand, or lack thereof, for the TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 52 to the extent it seeks production of "all documents" related to TRRC's December Application demonstrating public demand, or lack thereof, for the TRR on the grounds that the request for production is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that the documents it relied on to contend in TRRC's December Application and later filings that there is public demand and need for the TRR are identified in those filings and are publicly available. They include without limitation the Board's prior decisions approving TRRC's applications in this proceeding and various sub-dockets.

**Request for Production No. 53:**

Produce all documents related to your December 17, 2012 application relating to your financial fitness in constructing and operating the TRR.

**TRRC's Response:** TRRC objects to Request for Production Number 53 to the extent it seeks production of "all documents" related to TRRC's December Application relating to TRRC's financial fitness in constructing and operating the TRR on the grounds that the request for production is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, and given that no time period has been specified for the response. Subject to and without waiving its specific and general objections, TRRC states that the documents it relied on to contend in TRRC's December Application and subsequent filings in this proceeding that TRRC is financially fit to construct and operate the

TRR are identified in TRRC's December Application and subsequent filings in this proceeding and are publicly available.

**Request for Production No. 54:**

Produce all documents related to Exhibit G in your October 16 and December 17, 2012 applications.

**TRRC's Response:** TRRC objects to Request for Production Number 54 to the extent it seeks production of "all documents" related to Exhibit G in TRRC's October Application and December Application on the grounds that the request for production is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC will produce all non-privileged documents, if any, that it relied on to form the basis of Exhibit G to TRRC's October Application and TRRC's December Application.

**Request for Production No. 55:**

Produce all documents related to the decision to change the preferred alignment from the Miles City alignment to the TRR, including but not limited to all documents relating to a preference for west-bound or east-bound traffic.

**TRRC's Response:** TRRC objects to Request for Production Number 55 on the grounds that the term "Miles City alignment" is vague and ambiguous since various Miles City alignments have been considered in this proceeding. TRRC interprets "Miles City alignment" to mean the preferred alignment in TRRC's October Application. TRRC also objects to Request for Production Number 55 on the grounds that requesting TRRC to produce "all documents" related to its decision to change the preferred alignment of the TRR from the Miles City alignment to the Colstrip alignment is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without

waiving its specific and general objections, TRRC will produce responsive, non-privileged documents, if any, located in a reasonable search of files of employees of BNSF and/or Arch Coal who supplied information for use in connection with the TRRC Application.

**Request for Production No. 56:**

Produce all documents related to Seth Schwartz's Verified Statements dated June 6 and August 9, 2013, including but not limited to, all communications with and documents provided to Mr. Schwartz.

**TRRC's Response:** TRRC objects to Request for Production Number 56 to the extent it seeks production of "all documents" related to Seth Schwartz's Verified Statements dated June 6 and August 9, 2013, including "all communications" with Mr. Schwartz, on the grounds that the request for production is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that all documents that Mr. Schwartz relied on to form the basis of his verified statements are referred to in his verified statements and are publicly available.

**Request for Production No. 57:**

Produce all documents related to William Rowlands' Verified Statements dated September 21 and December 13, 2012, including but not limited to, all communications with and documents provided to or authored by Mr. Rowlands.

**TRRC's Response:** TRRC objects to Request for Production Number 57 to the extent it seeks production of "all documents" related to William M. Rowlands' Verified Statements dated September 21 and December 13, 2012, including "all communications" with Mr. Rowlands, on the grounds that the request for production is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that all



documents that Mr. Rowlands relied on to form the basis of his verified statements are referred to in his verified statements and are publicly available.

**Request for Production No. 58:**

Produce all documents related to Stevan Bobb's Verified Statements dated September 24 and December 14, 2012, including but not limited to, all communications with and documents provided to or authored by Mr. Bobb.

**TRRC's Response:** TRRC objects to Request for Production Number 58 to the extent it seeks production of "all documents" related to Stevan B. Bobb's Verified Statements dated September 24 and December 14, 2012, including "all communications" with Mr. Bobb, on the grounds that the request for production is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that all documents that Mr. Bobb relied on to form the basis of his verified statements are referred to in his verified statements and are publicly available.

**Request for Production No. 59:**

Produce all documents related to Andrew Blumenfeld's January 28, 2013 Verified Statement, including but not limited to, all communication with and documents provided to or authored by Mr. Blumenfeld.

**TRRC's Response:** TRRC objects to Request for Production Number 59 to the extent it seeks production of "all documents" related to Andrew Blumenfeld's January 28, 2013 Verified Statement, including "all communications" with Mr. Blumenfeld, on the grounds that the request for production is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, TRRC states that all documents that Mr. Blumenfeld relied on

to form the basis of his verified statement are referred to in his verified statement and are publicly available.

**Request for Production No. 60:**

Produce all documents related to policies or procedures you employ for retention of documents.

**TRRC's Response:** TRRC objects to Request for Production Number 60 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence concerning TRRC's December Application. Subject to and without waiving its specific and general objections, TRRC states that it has no policies or procedures for retention of documents.

Respectfully submitted,



Betty Jo Christian  
David H. Coburn  
Linda S. Stein  
Roy E. Litland

Dated: October 7, 2013

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Tongue River Railroad Company, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of October 2013, I caused a copy of the foregoing to be served by first-class mail, postage prepaid, upon all parties of record in this proceeding.

  
\_\_\_\_\_  
Roy E. Litland