

Jack R. Tuholske
Sarah K. McMillan
Tuholske Law Office
P.O. Box 7548
Missoula MT 59807
406- 721-6986
Attorney for Northern Plains Resource Council Inc.

ORIGINAL

204388



**BEFORE THE SURFACE TRANSPORTATION BOARD
OF THE UNITED STATES OF AMERICA**

FINANCE DOCKET No. 30186 (Sub-No. 3)

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

**COMMENTS OF NORTHERN PLAINS RESOURCE COUNCIL ON SUPPLEMENT
EVIDENCE FILED BY TONGUE RIVER RAILROAD**

**COMMENTS OF NORTHERN PLAINS RESOURCE COUNCIL ON SUPPLEMENT
EVIDENCE FILED BY TONGUE RIVER RAILROAD**

Northern Plains Resource Council files these comments on the Supplemental Evidence submitted by the Tongue River Railroad (TRR). Northern Plains notes that it has a valid Notice of Deposition to depose Mr. Mike Gustafson, the chief proponent of the TRR. He failed to attend his deposition as noticed for November 11, 2003. Northern Plains was prepared to transcribe and submit the deposition with these comments. His failure to attend was not excused, and indeed the Surface Transportation Board denied TRR's motion to quash. Northern Plains will supplement these comments with the deposition (which has been rescheduled for November 19th, 2003) if it determines that the deposition reveals relevant evidence to the issues at bar.

Northern Plains submits under separate cover the Verified Statement of Ed Everts. Mr. Everts, based on extensive experience with the rail and coal industries, refutes that shaky basis for TRR's continued assertion that there is a demand for coal to be shipped on his proposed rail line. Mr. Evert's comments provide Northern Plains' technical critique of the supplemental evidence. In addition, Northern Plains asks the Board to consider the following comments.

The TRR has been proposed for over 20 years. Despite repeated promises by Mr. Gustafson that construction would commence at various long-gone dates, not an inch of track has been laid. TRR's continued pursuit of this speculative charade should not be allowed to continue, because the proposed rail line, and this process to grant the permit, is no longer suited to public's needs or convenience. This project has been hanging over the head of Tongue River valley farmers and ranchers for 20 years. During that time their land has been de-valued or rendered unsalable. They cannot make long term commitments to improve their property as the ever-shifting location of the rail line makes it unwise to improve irrigation systems (something

that is vital in this desert climate) or create new pastures. These folks have lived under the threat of condemnation for over 20 years. At some point the Board must take into account the damage that this on-going permit application has had on local land owners. How long must they bear this burden? TRR has had 20 years to get its rail line up and running - to prove to the world that the market really will support its assertions. The fact that no track has been laid, no firm contracts have been signed, no coal mines have been built is proof alone that this project is not in the public need.

The supplemental evidence will not change the fundamental fact that the TRR is not a viable entity. All the political happy-talk in the world cannot change the fact that TRR's competitors have already spent billions of dollars and are moving Southern Powder River Basin coal to market in record and ever-increasing volumes. The DM&E will solve the errors in the Environmental Impact Statement and when that line is built, TRR will be less competitive. Moreover, TRR's claims about the vast Otter Creek coal tracts providing the rail road with a future is contradicted by assertions that power plants are being proposed on the site to ship the power from the coal via new transmission lines directly to the West Coast. The time is now for the Board to recognize this economic reality and deny the application once and for all.

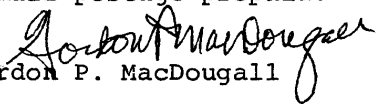
Dated this 12th day of November, 2003.


TUHOLSKE LAW OFFICE PC
Jack R. Tuholske
on behalf of Northern Plains Resource Council

CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the foregoing
upon all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall

VERIFIED STATEMENT OF
EDWARD P. EVERT

I am the same Edward P. Evert of The Geneva Group, who prepared a verified statement in Finance Docket No. 30186 (Sub-No. 2) before the Interstate Commerce Commission. The Geneva Group is an Illinois corporation, specializing in transportation marketing, sales, industrial development and marketing research assistance to the transportation industry.

I received a Bachelor of Science degree in Economics and Business Administration from the University of Detroit in 1963 and a Master of the Arts degree in Economics from that same institution in 1964. The course work for these degrees emphasized economics, statistics and finance.

My railroad career began in 1957, prior to the start of my formal education. After holding a variety of positions with other railroads, I joined the Chicago & North Western Railway ("CNW") as Assistant Superintendent—Car Service in 1967. I was employed by CNW for 22 years in a variety of management positions including Manger—On Line Operations; Director—Data Communications; Director—Telecommunications and Data Entry; Director—Planning and General Market Manager. My last position with CNW was Assistant Vice President—Marketing Research.

In the course of my employment with CNW, I became familiar with marketing, operating and competitive issues concerning railroad transportation of low-sulfur coal produced in the Powder River Basin. As Director—Planning, I was thoroughly involved with all aspects of the planning for the location and construction by CNW affiliate Western Railroad Properties, Inc. ("WRPI") of the "connector line"

between Crandall, Wyoming and Joyce, Nebraska; the rehabilitation and replacement of CNW's existing line between Crandall, Wyoming and Shawnee Junction, Wyoming and WRPI's acquisition of a one-half interest in the line constructed from Shawnee Junction to Coal Creek Junction and East Caballo Junction, Wyoming.

After leaving CNW, I served as Chief Marketing Officer of Chicago South Shore & South Bend Railroad, which terminated coal trains delivered by other railroads. In this position, I became familiar with the efforts of western coal producers and western railroads to extend the market for low-sulfur coal to the Eastern United States and certain European destinations. I worked with a number of transportation companies and potential customers to develop new markets for coal blending operations, where western low-sulfur coal is blended with Illinois Basin coal to create fuel which would comply with Clean Air Act standards.

I have reviewed my previous testimony along with that of others in this case. I have also reviewed the May 1, 2003 submission of the Supplemental Evidence of Tongue River Railroad Company ("TRRC"), dated May 1, 2003.

Nothing in my review convinces me that the construction of this new railroad line will increase the marketability of Montana coal or other potential movements of coal from Northern Wyoming mines. The fact that the construction of this new line has been studied for almost two decades and no rails have been laid stands in stark contrast to the expenditure of hundreds of millions of dollars by WRPI, the Union Pacific ("UP") and the Burlington Northern Santa Fe ("BNSF") in the Southern Powder River Basin ("SPRB") to the south.

The Joint Line¹ to serve the SPRB from the south was originally planned and constructed as a single track railroad with 4 sidings, each of which was approximately 5 miles long and used for the meeting and passing of trains.

¹ See Exhibit 1 for map of the Joint BNSF-UP Line

As the demand for Powder River Basin coal increased, coal train traffic increased, additional mines were built and the railroad infrastructure was expanded.

The railroad line serving the SPRB extends from Donkey Creek Junction on the north (east of Gillette, WY) to Bridger Junction on the south (near Orin, WY), a distance of approximately 127 miles. Most of this railroad is shared by trains of BNSF and UP and is dispatched from the BNSF's Network Operations Center in Fort Worth, TX. Approximately 55-60 loaded coal trains and an equal number of empty trains use the railroad each day.

As a result of the heavy demand for SPRB coal, the railroad has been substantially expanded and is now generally configured as follows:

- The northern segment consists of approximately 58 miles of two main tracks, Centralized Traffic Control ("CTC"), numerous mine track entrances, and a series of control points with crossovers between the two main tracks.
- The central segment consists of approximately 45 miles of three main tracks, CTC, several junctions, mine entrances, and control points with crossovers between the three main tracks, and the UP Bill Yard.
- There is a section of approximately 14 miles of two main tracks extending south from the central segment to Shawnee Junction where the UP trains head east and south on their own line. These 14 miles are also controlled by CTC and there is an intermediate control point with crossovers between the two tracks in the segment.
- The southernmost segment, approximately 10 miles from Shawnee Junction to Bridger Junction is single track with CTC and two intermediate junction points.

In addition to the expansion of the Joint Line, the BNSF has also invested heavily in additional capacity improvements on its line between Donkey Creek Junction and Alliance, NE and beyond. In addition to the substantial segments of second main track that BNSF has constructed, and a major yard facility at Alliance, it has

replaced bridges, grade crossings, signal and communications systems. It has also made major earthwork and track improvements on and near Crawford Hill in Nebraska to help reduce a major operating bottleneck at that location. Both BNSF and UPRR have made significant investments in "downstream" capacity improvements at other locations on their lines where coal train traffic has increased.

Significant to this operation are the technological changes which occurred as a result of the growing tonnages over this section of railroad. While available to other railroads now, these improvements underscore the technology required to support the dramatic growth of coal traffic over this line.

Most trains, which use the Joint Line, vary between 100 and 135 cars. Major technological improvements in recent years that have dramatically increased the productivity of SPRB and other coal trains include:

- The aluminum coal car, which carries about 121.5 tons of coal in a 21.5 ton car for a total gross weight of 143 tons per car.
- Newer higher horsepower locomotives equipped with AC traction, which provides superior adhesion and pulling power on steep grades permitting longer and heavier trains.
- Distributed locomotive power controlled by radio which allows the locomotive engineer at the front of the train to remotely control one or more locomotives placed at the rear of the train to reduce in-train coupler forces and help prevent unintended train separations. Using distributed power permits longer and heavier trains to be operated without the need for helper locomotives and crews stationed at locations where there are steep grades.
- The use of end-of-train telemetry devices which provide safety-critical train operating information from the rear of the train to the locomotive engineer by radio, eliminating the need for cabooses on trains.
- Wayside detection devices that inspect passing trains for hot journal bearings, hot wheels, sliding wheels, flat wheels and dragging equipment.

- Important improvements in the construction and maintenance of track, turnouts, bridges and other structures that are able to withstand the demands of the high volumes of heavy trains that use the line.
- Specialized rail lubrication equipment and systems that preserve the locomotive's adhesion and protect the rails in high-wear locations while reducing the drag effect on the train. These systems reduce maintenance, reduce noise, improve fuel efficiency and reduce derailments.
- Computerized systems in many phases of operations, equipment and maintenance that have had the combined effect of keeping trains performing more efficiently.

These massive infrastructure improvements stand as a testament to the amount of coal being transported from the SPRB. If the potential for coal from the region near the proposed TRRC was anywhere near that of the SPRB, we would have expected proportional infrastructure improvements by the BNSF along their line from Gillette, Wyoming to Billings, Montana.

As a part of my work, I have reviewed the Supplemental Verified Statement of Mike T. Gustafson and wish to make the following comments:

"There are significant coal reserves located beneath the Otter Creek Tracts, but at the present time those reserves are undeveloped. As explained in the Application, a principal purpose of the TRRC line is to provide rail transportation to the mines to be developed in the Ashland area, including new mines in the Otter Creek Tracts."²

The presence of an excess of 500 million tons in these tracts is impressive, indeed. However, the mere presence of this coal does not make a market. A review of coal production statistics in Montana and Wyoming provides a stark contrast in growth and development of coal production. A comparison of coal production trends in Montana and Wyoming from 1975 until 2002 is instructive in

² Verified Statement of Mike T. Gustafson, page 6

determining market potentials for these coals. In 1975, Montana produced 22.1 million tons of coal and Wyoming some 23.8 million tons.³ At this point in time, both states were nearly on a par in their production of low sulfur coal. In 2002, we see a stark difference in the development of Montana coal and Wyoming coal. During that recent year, 37.4 million tons were mined in Montana, while Wyoming produced approximately 373.5 million tons. There must be a logical explanation for this dramatic gulf in coal production figures. Why would Montana's production increase by 69.52% during this time and Wyoming's by 1,469.18%. There can only be one answer and that is that the marketplace prefers Wyoming coal. By virtue of geological and geographical accident, Wyoming coal is cheaper to produce and nearer to coal consuming markets.

"The Otter Creek coal reserves can benefit the state only if they are commercially developed. But commercial development will not - and indeed cannot - occur until there is a means of getting the coal to market. As a practical matter, rail continues to be the only feasible way of transporting that coal to potential customers, but at the present time no rail line reaches the Otter Creek tracts. Thus until the Tongue River Railroad is built, the Otter Creek coal reserves will remain undeveloped and the state will be unable to realize the benefits to the people of Montana that the transfer was designed to achieve."⁴

In examining the circumstances surrounding the Otter Creek, it is curious to note that others in the State of Montana, and even Mr. Gustafson, feel that other methods of transmitting power to the marketplace may be preferable to building the railroad: "Gustafson said the real key for both the first and second phase of this proposal is "long-term, exclusive contractual access to transmission."⁵

Later in this same article, "[Jerry] Vanetti's Great Northern Power Development and its partner, Kiewit Mining Group of Omaha, in May announced their intention

³ U.S. Geological Service

⁴ Verified Statement of Mike T. Gustafson, pages 8-9

⁵ Billings Gazette, June 23, 2003

to proceed with permitting and construction of a 500-megawatt coal-fired generating plant at Miles City.”⁶

“The Miles City plant is to serve Montana and the Pacific Northwest.”⁷

Clearly, the elements in this article point to moving power to sections of the nation, which are growing more rapidly than the northern tier of states traditionally served by NPRB coal mines.

“The first phase of the Otter Creek project would include a 750-megawatt coal-fired generator, a 100-mile power line to tie into existing transmission, a 3-million-ton-a-year coal mine for the power plant with the electricity being sold in Montana and the Pacific Northwest. Completion is estimated at 2008-2010.

“Colstrip Units 3 & 4 have a capacity of 750 megawatts each.

“The second phase would include three 750-megawatt generators, a 1,700-mile high voltage transmission line to the Pacific Northwest and Northern California. The mine would expand production to 9 million tons a year with operation targeted for 2012.

“The cost of building high-voltage transmission lines could be up to \$1.5 million a mile.

“A third phase envisions mine expansion to supply coal by rail to other markets, an 89-mile railroad from Ashland to Miles City, including an eight mile spur to the Otter Creek coal that would connect to the BNSF system. A 27-mile southern segment remains a potential addition. Timing of the third phase would depend on coal market demand and economic conditions.

⁶ *ibid.*

⁷ *ibid.*

"The project is pegged at \$2 billion to \$4 billion depending on the phases completed.

"It is the transmission corridor that is "critical," said Mike Gustafson, president of Wesco of Billings. He likened the corridor to the Interstate Highway System."⁸

A review of this article produces no convincing evidence that the construction of this railroad can be justified or is a priority.

In another article, we learn of the skepticism in the state for development of these coal mines. Senator Ken Toole of Helena offered that: "The problem in competing with Wyoming coal has nothing to do with taxes, Toole argued. Wyoming coal burns cleaner than Montana coal, is closer to the surface and runs in thicker seams, Toole said. Finally, Wyoming, unlike Montana, has a competitive rail market, he said, adding that Wyoming's costs of shipping coal to Midwestern markets are roughly half of Montana's."⁹

In referring to the relationship of the TRRC and the BNSF, Mr. Gustafson states: "An agreement has not yet been finalized. However, now that this application is again moving forward, BNSF and TRRC have resumed discussions and anticipate that an agreement will be in place prior to the time that operations over the line are ready to begin. In addition, BNSF has entered into a loan agreement with TRRC under which it is providing funds to TRRC for expenses incurred in the federal and state regulatory processes."¹⁰

During my railroad career and as a part of my consulting practice, I have become familiar with the manner in which railroads work with prospective customers. Nothing in this statement convinces me that BNSF's actions are an endorsement or guarantee of the success of this project. Just recently, I have testified in a case wherein the BNSF advanced substantial funds for potential business development.

⁸ Billings Gazette, October 8, 2003

⁹ Montana News Service, February 5, 2003

This planned operation was unmarketable, again due to the limitations of geography.¹¹

We cannot ascribe any motives to the actions by the BNSF, but their apparent proactive stance on this project can serve to mollify any disputes they may have with the State of Montana. In addition, their actions allow them to avoid spending scarce capital resources on this project. If the project later becomes uneconomical, they can acquire the line for a fraction of the cost of its planning and construction.

Mr. Gustafson comments on the presence of a new coal line into the SPRB to be constructed by the Dakota, Minnesota & Eastern ("DME"). "In its application, the DM&E reasoned that, because of its mileage advantage in certain markets, it will have a competitive edge and will take traffic away from BNSF and UP based on prevailing market rates."¹²

The most recent statistics available for Wyoming coal production indicate tonnages of approximately 374 million tons, most of which comes from the SPRB. In the Surface Transportation Board's decision of January 28, 2002, the DME estimates its tonnages rising from 40 million in 2005 to 100 million in the year 2015.¹³ This could divert from twenty to twenty-five percent of BNSF and UP tonnages. Moreover, the entrance of a third railroad into the SPRB will result in further downward pressures on transportation rates. A lowering of these already lower rates can not help the future of the TRRC.

Exhibit 2¹⁴ illustrates the directness of this route compared to those of the UP and the BNSF. For example, the mileage from Campbell, Wyoming, just east of Gillette to Minneapolis is 1,111 miles via the existing BNSF route, 980 miles via the proposed TRRC and 753 miles via the DME. Similarly, the DME route is also

¹⁰ Verified Statement of Mike T. Gustafson, page 9

¹¹ SDDS, Inc. vs. State of South Dakota

¹² Verified Statement of Mike T. Gustafson, page 10

¹³ STB Finance Docket No. 33407, page 38.

shorter to Duluth and Superior. Even the mileage from Decker is only seven miles longer via this route.¹⁵ These comparisons of railroad mileages do not speak to the demand for a new railroad to achieve transportation efficiencies.

While the primary goal of the DME is to reach the SPRB, we can not ignore the systemic nature of the railroad network. Just as Mr. Gustafson proposes a new line to connect with BNSF, there is no reason to suppose that the DME and the BNSF would never agree to move BNSF origin coal from the Gillette area (either north or South of Gillette via the DME. This type of agreement could be an operating or marketing agreement, which would allow BNSF to take advantage of the significantly shorter route to its markets. In such a situation, BNSF itself (through DME routing) could divert coal from TRRC or its own line via Sheridan and north.

As noted above, the shorter route provided by the DME from the SPRB to the Twin Cities area and other potential market areas will definitely erode market share from the UP and BNSF into this market area. Although I am not aware of any discussions on the part of the DME relative to interchanging with the BNSF to reach the Northern Powder River Basin ("NPRB"), such an operation could allow the BNSF to reach certain Midwestern markets at a lower transportation cost than at present. Manifestly, the DME's new coal line will allow SPRB coal to reach northern Minnesota points at even lower prices than at present. This combined with the higher costs of NPRB coal could erode the market for NPRB coal substantially.

I have also reviewed the verified statement of Mr. Mark T. Morey, dated April 30, 2003. Much of Mr. Morey's testimony relates to the work done by Mr. Ronald L. McMahan, the former President of Resource Data International.

¹⁴ See Exhibit 2 for competitive routes of the BNSF, UP and DME

¹⁵ Official Railway Guide

"PRC/RDP's updated projections of NPRB coal demand reflects a significantly lower growth rate of 1.5% per year due in part to modest gross state product growth, reduced industrial activity, higher natural gas and electricity prices, and lower than average electric sales growth experienced in recent years, which we expect to continue."¹⁶

The discussion continues to note a number of variables, which they have used to create a forecast of energy sales by market sector. I am not persuaded by these speculative statements regarding the vagaries of weather or possible changes in the price of natural gas, but must rely on some rational and straightforward forecasts from the U.S. Census Bureau. I have reviewed the forecasted population growths for the states of Michigan, Minnesota and Wisconsin between the years of 2000 and 2025. Michigan's population is expected to grow at a rate of 0.16%, Minnesota's at 0.53% and Wisconsin's at 0.40%. These demographics combined with a dwindling market share for NPRB coal would indicate that a growth rate of 1.5% per year is overly ambitious. A more reasonable estimate would be in the range of from 0.3% to 0.4%. These meager increases do not point to a hopeful future for this railroad.

Mr. Morey continues:

"While our forecast of the total coal tonnage that would be available for transport by the TRR is similar to Mr. McMahan's forecast, it bears note that our model apportions a somewhat higher percentage (about one third) of the total traffic to coal originating in Wyoming and using the TRR to reach the marketplace. We believe our figures are reasonable in light of predicted levels of Wyoming coal production and contractual commitments for the coal. However, we also believe that the availability of the TRR may cause production to shift to the NPRB."¹⁷

These assumptions are erroneous for two reasons. First, the availability of coal in a particular location does not drive demand. The demand for this coal is driven

¹⁶ Verified Statement of Mark T. Morey, pages 1-2

¹⁷ Verified Statement of Mark T. Morey, page 3.

by competitive delivered prices—prices which are driven by mine-mouth costs and, more importantly, by rail rates. If we are to speculate and include the construction of the DME coal line (a line with vastly more tonnage potential), the market area of NPRB coal will shrink from its already limited market area.

In his statement, Mr. Morey makes an assumption that dwindling reserves in the NPRB will necessarily be replaced by coal from other mines in that same area. I am not persuaded by this assumption either. As these mines play out, coal users will survey the market for new sources. Due to the lower mining and transportation costs associated with the SPRB, much of this volume is likely to originate in this area, rather than in the NPRB.

Mr. Morey refers to the prior work done by Mr. McMahan.¹⁸ In Table 1 on his statement, he forecasts a total demand of 45.3 million tons for Montana coal, with the tonnages rising to 54.4 in 2005 and 63.1 in the year 2015. As with other forecasts for Montana coal, the forecast for 2000 is overly ambitious. As reported by the USGS, the actual tonnage for 2000 was 39.4 million tons, a shortfall of 13.02%. We have been accustomed to such over-estimations in this case. The combination of shrinking markets, the commercial success of the SPRB and overall shorter routes to the major market areas continues to place downward demand pressures on the TRRC project.

Similarly, an examination of the work done by Resource Data International, Inc. in 1994, of which Mr. McMahan president, yields similar results.¹⁹ On page 12 of the Executive Summary, "RDI forecasts SPRB utility demand to increase 35% by the year 2000, from 192 million tons in 1993 to 260 million tons in 2000. At the same time, NPRB utility demand is expected to increase from 35 million in 1993 to 47 million in 2000."

¹⁸ Verified Statement of Ronald L. McMahan, April 22, 1998

¹⁹ RDI's 1994 Powder River Basin Study

An examination of actual tonnage for the forecast periods indicated Wyoming production increased from 210 million tons in 1993 to 338 million tons in 2000. The percentage increase was 61.2% as compared to the 35% increase forecasted by RDI. While the Wyoming figures are for the entire state, the majority of the increase for the state was from the SPRB.

As to NPRB coal, they forecasted that 47 million tons would be demanded from the NPRB. As a matter of fact, only 38.3 million tons were shipped from the entire state. On the basis of their analysis of coal demand, it is patently evident that they have failed to consider the importance of transportation costs and rates as a critical determinant of market demand.

There was a time when the construction of the TRRC might have seemed reasonable, although this is doubtful. The original premise for this line was based on a fully regulated railroad industry under the supervision of the Interstate Commerce Commission. Since that time, the railroads have been deregulated and they are now monitored by the Surface Transportation Board. While these changes have taken place, the markets for coal have changed as well. The decreasing rail rates from the SPRB combined with less expensive mining cost have catapulted this energy source to preeminence in the market place. While competition in the SPRB has driven delivered costs down, the NPRB has suffered from a lack of competition and coal seams, which are more expensive to mine.

The massive expenditures of funds to expand the infrastructure in the SPRB overshadow the lack of construction in the NPRB. Now, the developers are searching for ways to make this coal marketable. Will it be long-distance transmission lines or will it be a railroad, for which the Public Convenience and Necessity no longer exists? While the NPRB lives in a world of speculation and hope, the SPRB continues to expand. My knowledge of the railroad industry, the market for coal and the economics of transportation lead me to only one conclusion. There is no reasonable prospect for this railroad to be necessary.

EXHIBIT 1

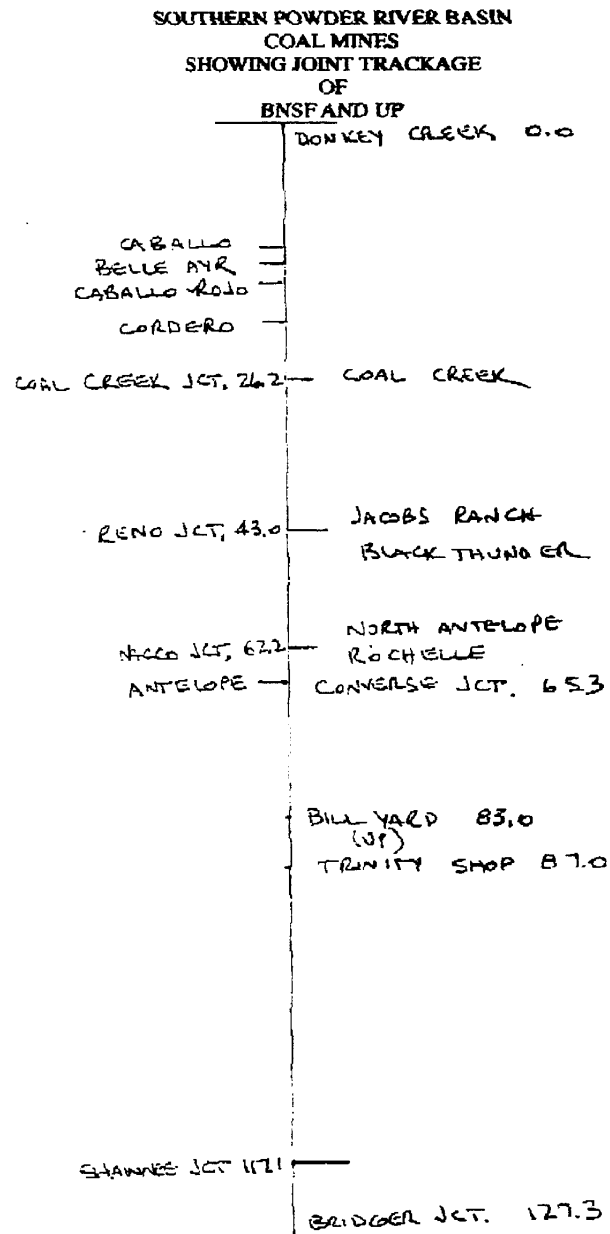
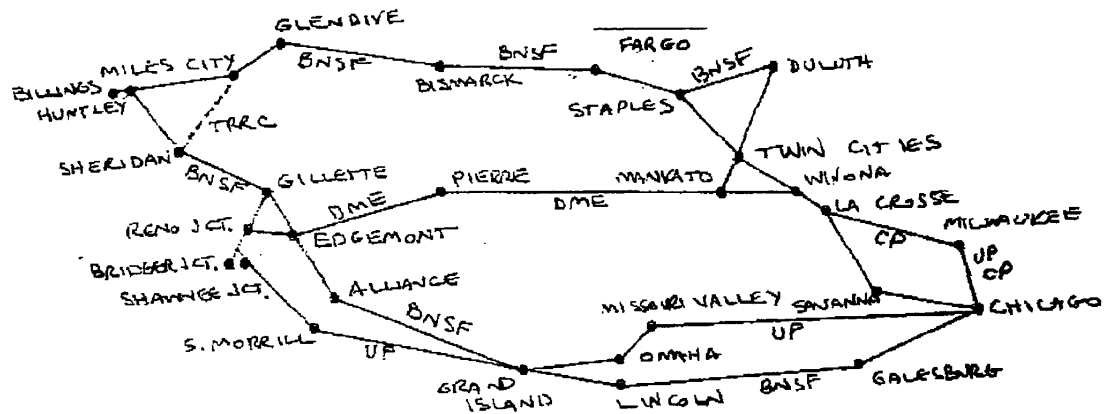


EXHIBIT 2

**MAJOR COAL ROUTES
BETWEEN
THE POWDER RIVER BASIN
AND
MIDWESTERN POPULATION
CENTERS**



VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF KANE) §

Edward P. Evert, being first duly sworn, deposes and states that he has read the foregoing
Verified Statement and that the same is true and correct to the best of his knowledge,
information and belief.



SUBSCRIBED and SWORN
before me this 10th day
of November, 2003



Notary Public