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SEC

SERVICE DATE - LATE RELEASE NOVEMBER 3, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33407

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
CONSTRUCTION INTO THE POWDER RIVER BASIN

Decided: November 3, 1998

By decision served May 7, 1998, the Board issued a procedural schedule in this proceeding. Pursuant to that schedule and a previously granted extension of time, the record closed October 5, 1998. By motion filed on October 28, 1998, 23 days after the record closed, the Mid-States Coalition for Progress (the Coalition) requests leave to file supplemental evidence. The Coalition argues that applicant Dakota, Minnesota and Eastern Railroad Corporation (DM&E) included in its reply statement filed on October 6, 1998, evidence that goes beyond proper rebuttal of the evidence filed by the Coalition on August 31, 1998. The Coalition argues that admission of its supplemental evidence is necessary to allow it to respond to DM&E's allegedly improper rebuttal evidence.

The supplemental evidence tendered by the Coalition will be admitted. As argued by the Coalition, DM&E's reply contains evidence going beyond rebuttal of the Coalition's August 31, 1998 opposition statement. The new evidence submitted by DM&E is a direct response to the Board's request in the decision served July 16, 1998, in this proceeding, for "additional evidence" related to why this rail line is needed and to the financial fitness of the applicant. Under the circumstances, procedural due process requires that the Coalition be given an opportunity to respond to this evidence, and the Coalition's motion for leave to file supplemental evidence will therefore be granted.¹

It is ordered:

1. The Coalition's motion to admit its tendered supplemental evidence is granted.

¹ To allow proper evaluation of this evidence, the target date for issuance of a preliminary decision on the transportation aspects of this application will also be extended by 23 days — from November 17, 1998, to December 10, 1998. Previously, in the decision served on September 16, 1998, the original target date for issuance of a preliminary decision was extended to November 17, 1998, in response to a two-week filing extension sought by, and granted to, DM&E.

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2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary