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SERVICE DATE - MARCH 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33407

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION—CONSTRUCTION
AND OPERATION—IN CAMPBELL, CONVERSE, NIOBRARA, AND WESTON
COUNTIES, WY, CUSTER, FALL RIVER, JACKSON, AND PENNINGTON COUNTIES, SD
AND BLUE EARTH, NICOLLET, AND STEELE COUNTIES, MN

AGENCY: Surface Transportation Board.

ACTION: Notice of Construction and Operation Application and Request for Comments on
Procedural Schedule.

SUMMARY: The Board is publishing notice of an application filed by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) requesting authority to construct and operate 280.09 miles of new railroad line, which would provide for an extension of DM&E's existing rail lines into the Powder River Basin coal fields in northeastern Wyoming. Specifically, the railroad seeks authority to build: (1) a 262.03-mile rail line between DM&E's existing main line in western South Dakota and the coal producing region of the Powder River Basin (PRB) south of Gillette, WY; (2) a 13.31-mile rail bypass around a portion of the line currently used by DM&E in and near Mankato, MN; and (3) a new 2.94-mile rail connection in Owatonna, MN, between DM&E's line and the line of I&M Rail Link, LLC.¹ This notice also requests comments on a procedural schedule based on a schedule that DM&E has asked the Board to establish for this proceeding.

DATES: Written comments must be filed by April 2, 1998 and concurrently served on applicant's representatives. Each comment must be accompanied by a certificate of service. Applicant's reply must be filed by April 7, 1998.

¹ DM&E also plans several related projects, which it states are not subject to the Board's jurisdiction. These include the comprehensive rebuilding of approximately 597.8 miles of its existing rail lines consisting of: (1) a 467.55-mile segment of DM&E main line between Wasta, SD, and Mankato; (2) a 117.4-mile segment of DM&E main line between Mankato and Winona, MN; and (3) a 12.85-mile segment of DM&E branch line north of Oral, SD, to a point south of Smithwick, SD. DM&E plans to perform a substantial upgrading of an additional 239.3 miles of its existing rail lines, including the relocation and upgrading of an existing connection with Canadian Pacific Railroad near Winona/Minnesota City.

ADDRESSES: Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 33407 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. A copy of each comment shall concurrently be served upon DM&E's representative: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036-1609 [Fax (202) 973-7610]. Comments should contain the name and address of the commenting party, any recommendations for changes to the attached proposed procedural schedule and support for any such changes.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Along with its application, DM&E has submitted a petition to establish a procedural schedule for this proceeding. DM&E's proposed schedule would establish various due dates for submissions and due dates for Board action, both in considering the merits of the application and in carrying out the environmental review process.

We believe it would be premature at this point to establish any sort of environmental review schedule for the Board to meet its responsibilities under the National Environmental Policy Act of 1969 (NEPA) and related environmental laws. We lack substantive input from other Federal and state agencies (for example, the U.S. Forest Service, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and Wyoming State Historic Preservation Division) that may have an interest in this proceeding. Without information from these agencies, we cannot anticipate the range of potential environmental impacts that may be involved with DM&E's proposal and how long the Environmental Impact Statement (EIS) process is likely to take.² We have, however, directed our Section of Environmental Analysis to begin preparation of a notice of intent to prepare an EIS and to initiate the public scoping process. This will enable us to begin to determine key environmental issues to be addressed in our NEPA analysis as expeditiously as possible.

With regard to the merits of the application, DM&E has proposed alternative schedules of 90 and 180 days in which to develop the record and issue a decision on the merits, conditioned upon completion of the environmental review process and consideration of the results of that process in a final decision.³ The proposal by DM&E that we issue a decision in 90 days does not warrant further consideration, and we will not request comments on it. That proposal simply does not provide adequate opportunity for public participation. Nor does it provide adequate time for the necessary evaluation of the record in light of the statutory considerations we must undertake in this case. The proposed 180-day alternative, however, does appear to provide adequate opportunity for public

² Of course, if DM&E could work with these agencies to secure appropriate permits, identify potential environmental impacts, and minimize or avoid such effects, the time required for us to meet our NEPA obligations might be reduced.

³ No actual construction could begin prior to issuance of that decision.

participation and for development of a sufficient record on which to base a conditional grant of the application and make the findings required by the statute. Therefore, we are seeking comments on the proposal by DM&E that we issue a decision in 180 days approving the applicant's construction proposal under section 10901 of the ICC Termination Act, conditioned upon consideration of the environmental impacts of the proposed construction. Under that proposal, we would issue a subsequent decision after the completion of the EIS process, allowing construction to begin, if appropriate, based on a consideration of the potential environmental impacts of the proposed transaction.

We understand that the DM&E has caused notices to be published stating that comments on the application are due March 27, 1998. While interested parties may file comments by March 27, 1998, the Board will establish a new due date for comments on the merits of the proposed transaction in any procedural schedule it ultimately adopts. Accordingly, we will require DM&E to cause notices to be published in the same places as the prior notices advising that comments will not be due until the Board establishes a procedural schedule. And after the Board publishes such a schedule, DM&E must cause to be published new notices setting forth the schedule adopted by the Board, including the due date for comments on the merits of the proposed transaction.

The purpose of this notice is to solicit input as to the establishment of a procedural schedule that provides adequate time for the submission and consideration of comments while still enabling the proceeding to move forward as expeditiously as possible.⁴ After reviewing the comments, the Board will establish an appropriate procedural schedule for consideration of the merits of the construction application.

The Board's review of construction applications is governed by both 49 U.S.C. section 10901 and the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. sections 4321-4370d. The Board intends to prepare an EIS to assess the environmental impacts of DM&E's proposal. The Board's Section of Environmental Analysis will separately publish a notice of intent to prepare an EIS and request comments on its scope.

⁴ DM&E's proposed 180-day schedule is set forth in the attached Appendix, but is modified to reflect the removal of the portion of the schedule pertaining to environmental review and to reflect the current status of this matter.

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Copies of the application are available for public inspection at the offices of the Board and the offices of the applicant, 337 22nd Avenue South, Brookings, SD 57006.

Decided: March 9, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX

PROCEDURAL SCHEDULE ON THE MERITS

In the following schedule, the term “P” refers to the date that the Board issues a procedural schedule based on the comments received from this notice and “P + n” means "n" days following that date.

P	Procedural schedule established by the Board.
P + 7	Due date for publication by DM&E of newspaper notice announcing the procedural schedule.
P + 35	Due date for written comments on Application.
P + 40	Due date for DM&E's replies to written comments on Application.
P + 70	Board decision ordering hearing under modified procedures.
P+ 135	Due date for DM&E's reply evidence and argument in support of the Application.
P + 180 (or earlier)	Service of decision (a) conditionally approving Application, contingent on completion of environmental review process, or (b) disapproving Application.