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ALJ

SERVICE DATE - FEBRUARY 2, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33407

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

Decided: January 27, 2000

By a pleading dated October 27, 1999, described as a preliminary objection, Dakota, Minnesota & Eastern Railroad Corporation (DM&E) objects to the fourth set of interrogatories and requests for production of documents served on it October 12, 1999, by the City of Rochester, Minnesota (Rochester). In its pleading, DM&E alleges that Rochester's discovery measures address matters involved in the Board's preparation of an Environmental Impact Statement (EIS) and are unauthorized. No pleading responding to that preliminary objection has been filed.

No authority for the discovery Rochester seeks has been advanced. No such discovery is authorized by the National Environmental Policy Act, 16 U.S.C. § § 4321-70(d), or by the Board's relevant Rules at 49 CFR Part 1105.

DM&E's preliminary objection to Rochester's discovery requests is, therefore, sustained.

This decision is effective on the service date.

By the Board, Joseph R. Nancy, Administrative Law Judge.

Vernon A. Williams
Secretary