30163 SERVICE DATE - APRIL 20, 1999
SEA

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33407

Decided: April 14, 1999

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

NOTICE TO THE PARTIES:

On March 10, 1999, the Final Scope of Study for the Environmental Impact Statement (EIS) and Request for Comments on 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal was issued in this proceeding. The Final Scope provided a 30 day comment period for interested parties to submit comments on the two new proposed alternatives listed above, while making it clear that the 30 day comment period, which was due to expire on April 10, 1999, was in addition to, not a substitute for, the comment period that will be provided on all aspects of the Draft Environmental Impact Statement (DEIS) when that document is made available.

The Board and cooperating agencies have received requests to extend the April 10, 1999 comment date. Some of the requests seek an extension in which to comment on a number of potential environmental impacts and others seek additional time to permit development of bypass alternative proposals.

As discussed below, we will provide a limited additional comment period for interested communities to develop bypass proposals. As we stated in the Final Scope, we are mindful of our obligations under the National Environmental Policy Act, 16 U.S.C. 4321-4335 (NEPA) to explore and evaluate in the EIS a reasonable range of alternatives designed to meet the purpose and need of the applicant's proposal. Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991). At the same time, we are aware that we cannot let the environmental review process indefinitely delay the Board's final decision on this matter.

In the Final Scope, we made a preliminary determination, based on the City of Rochester's engineering study and cost estimates, that the City had met an initial burden of showing that its proposed south bypass may be a feasible routing alternative. Accordingly, we requested comments from the railroad and other concerned parties on whether the south bypass proposal was feasible, or would simply shift the potential environmental consequences of the applicant's proposal to different communities and populations. Having provided this opportunity in Rochester, we believe that we should afford other interested communities the same opportunity to submit specific bypass designs.

Therefore, we will extend the comment period established in the Final Scope for an additional 60 days, or until June 10, 1999, to provide time for any other interested community to submit a bypass proposal. Dakota, Minnesota & Eastern Railroad or any interested party or person

who may be affected by a proposed bypass would then have 30 days, or until July 12, 1999, to respond. In addition, parties may use the additional time to submit comments on other alternatives described in the Final Scope.

We note that the information we receive from any community regarding a bypass must be detailed enough for us to determine whether a specific bypass proposal constitutes a reasonable and feasible alternative to the applicant's proposal or merely relocates the potential environmental consequences of the applicant's proposed action. To that end, any bypass proposal submitted by a community must, at a minimum, contain the following information: detailed maps showing where the route would be located; quantified impacts to wetlands; cut and fill requirements to permit design and operation of a railroad; roads that would be crossed and their average daily traffic levels; proximity of the bypass to sensitive structures (for example, schools, libraries, hospitals, residences, retirement communities, and nursing homes); and impacts to landowners and farmlands.

Also, in considering bypass proposals that may be submitted to the Board and determining whether they constitute reasonable, feasible alternatives, we will take into account the applicant's goal to create a more efficient route by which to transport coal. A circuitous route that bypasses numerous communities could add so many additional miles that it would be unlikely to allow applicant to achieve its goal of providing efficient rail transportation. However, before arriving at a final decision on the range of alternatives to be addressed in the DEIS, we will carefully consider any specific bypass proposal and all responses to such a proposal.

Finally, we must balance our responsibility to analyze a reasonable range of alternatives with the need to move the environmental review process forward without undue delay. To allow us to issue the DEIS in a timely manner, we will not grant further extensions of time.

The requests for additional time to provide comments on potential environmental impacts will be denied. As the Board and its cooperating agencies stated in the Final Scope, we are in the process of preparing a DEIS analyzing all potential environmental effects discovered during the course of the environmental review process, including concerns identified during scoping. The DEIS will be made available upon its completion for public review and comment. Accordingly, there is no need to provide an additional comment period on potential environmental impacts at this point.

Bypass proposals and comments on alternatives described in the Final Scope must be submitted to the Board by June 10, 1999. Replies or responses must be submitted by July 12, 1999. Comments should be sent to:

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

It is ordered:

1. The comment due date set forth in the Final Scope regarding alternatives shall be extended to June 10, 1999. Reply comments are due by July 12, 1999. No further extensions of time shall be granted.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary