

Surface Transportation Board Gives Final Approval for "Dakota, Minnesota & Eastern Railroad" to Construct Powder River Basin Rail Expansion Project

Surface Transportation Board (Board) Chairman Linda J. Morgan today announced that the Board has given final approval for the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) to build a 280-mile rail line to tap into the coal mines of Wyoming's Powder River Basin, subject to a number of environmental mitigation conditions and the requirement that DM&E use environmentally preferable routes. The DM&E project represents the largest rail line construction proposal ever considered by the agency, and the environmental review process and the environmental conditions imposed by the agency reflect the unique scope of the project.

The DM&E Proceeding. DM&E applied to the Board in 1998 for authority to build the new line to gain access to the Powder River Basin and to generate revenues needed to upgrade approximately 600 miles of DM&E's existing rail line in Minnesota and South Dakota. In a previous decision in this matter, issued in December 1998, the Board preliminarily found that the new line, if built, should produce transportation benefits by giving DM&E an opportunity to compete with the Union Pacific Railroad Company and The Burlington Northern and Santa Fe Railway Company in the Powder River Basin. The Board explained, however, that the project could not be finally approved until the Board had the opportunity to conduct the extensive environmental review required by the National Environmental Policy Act and assess fully the potential environmental effects of the construction and the cost of any environmental mitigation that might be imposed on the project. To this end, the Board's Section of Environmental Analysis (SEA), in conjunction with five Federal cooperating agencies that have statutory mandates to review issues implicated by the project, conducted a comprehensive environmental analysis culminating in its 2,500-page Final Environmental Impact Statement (EIS) (discussed in the Surface Transportation Board "News" release No. 01-63 issued November 19, 2001).

Overview of Environmental Mitigation. Today's decision generally adopts the analysis and recommended mitigation measures proposed in the EIS, which examined both the impacts of constructing the new rail line and the environmental impacts of rehabilitating DM&E's existing line in Minnesota and South Dakota to accommodate the significant increase in coal traffic that is anticipated as a result of the project. The Board noted that the environmental mitigation measures it is imposing reflect the challenging circumstances presented by this complex project. The Board's mitigation--147 conditions in all--addresses issues ranging from safety, noise, water quality, and biological and cultural resources to establishing community and Tribal liaisons. The Board noted that 24 of the environmental mitigation conditions it imposed address safety concerns. To address certain specific safety concerns, three grade-separated crossings will be required, one in Pierre, SD, and two in Rochester, MN. In addition, DM&E must comply with a Grade Crossing Mitigation Plan, which it had submitted, intended to provide a level of grade crossing protection significantly better than that found on any comparable rail line in the United States.

The decision also provides for continuing oversight of DM&E's implementation of the environmental mitigation measures, and the Board retains the authority to resolve any unanticipated environmental problems or otherwise address any situation in which a condition is not being implemented as intended. The Board explained that this oversight "will allow communities or other interested parties to seek redress if there are unanticipated problems or if there are material changes in the facts and circumstances, and will permit us to take appropriate action, if necessary."

Negotiated Agreements. During the course of the environmental review, DM&E entered into mutually acceptable Negotiated Agreements with 51 of the 56 communities located on the existing line to address potential adverse environmental impacts and other local concerns. These Negotiated Agreements, which must be complied with as a condition of the Board's approval of the construction, are in some cases more far-reaching than the mitigation the Board could impose unilaterally. To further encourage private solutions to environmental issues whenever possible, the Board also explained that, if additional agreements are reached between DM&E and other communities, those agreements will be substituted for the corresponding local mitigation measures imposed in the decision.

Major Conclusions On Environmentally Preferable Routes. For the proposed new line extending DM&E's system westward into the Powder River Basin, the Board determined that the alternate route specifically designed by DM&E to avoid potential environmental impacts --which differs from its originally proposed route by avoiding environmentally sensitive areas along the Cheyenne River--would be the environmentally preferable alternative. The Board also explained that, while the "No-Action Alternative" (under which DM&E would not receive authority for the new line) would prevent some adverse environmental impacts, aborting the construction plan could itself result in potentially significant adverse environmental impacts because the existing line would likely continue to deteriorate.

Turning to DM&E's existing line, some communities had suggested that the Board require that the line's routing be modified so that it would bypass certain communities through which it now runs. In today's decision, the Board determined that the proposed bypass around Rochester, MN could not be required because it would have its own potentially significant adverse effects due to the potential risk of sinkholes along that route. Accordingly, the Board concluded that the existing route through the City, coupled with the comprehensive mitigation measures it is imposing, would be environmentally preferable. In addition, the Board found that rehabilitation of the existing line through Brookings, SD, and Pierre, SD, with appropriate mitigation, would be the environmentally preferable alternative in those communities. The Board also adopted SEA's recommendations on routing alternatives for Mankato, MN, and Owatonna, MN (discussed in "News" release No. 01-63).

Transportation Analysis. In reviewing rail line construction proposals, the Board examines whether an applicant is financially able to construct and operate the line, whether there is public need for the proposed new service, and whether the project is in the public interest and will not unduly harm existing rail services. In reaffirming the conclusion it reached in 1998 that these criteria have been met by DM&E's proposal, the Board today stated that there would be transportation benefits from the proposed construction and that "the public interest would be well served by this construction due to the potential for increased competition, lower costs, and improved service to shippers."

As discussed in the 1998 decision, the entire construction cost of the project would be approximately \$1.4 billion, which includes \$532 million to construct the approximately 280-mile new line and \$876 million to rebuild and upgrade approximately 600 miles of DM&E's existing line. The Board has now estimated that the outer limits of the cost of environmental mitigation, including the mitigation that could be imposed by the cooperating agencies, is likely to total about \$140 million (approximately 10 percent of the \$1.4 billion construction costs of this project). Compliance with the 51 Negotiated Agreements could add up to \$33.5 million in additional environmental mitigation costs, for a combined total maximum of \$173.5 million for environmental mitigation.

The Board today concluded that this cost of complying with the environmental mitigation conditions does not alter its prior determination that DM&E is financially able to carry out the proposed construction project. The Board noted that the project had broad support from DM&E's existing customers and that there has been interest expressed by the financial community in providing the requisite equity financing. Accordingly, so as not to deprive shippers of the anticipated improved rail service that would result from the addition of this new line and attendant upgrade of DM&E's existing line, the Board stated that it would not stand in the way of DM&E's going forward with this construction if it can obtain the necessary financing.

Next Steps. The issuance of the Board's decision today concludes the Board's proceeding in the case. The cooperating agencies (the U.S. Department of Agriculture Forest Service, U.S. Department of Interior Bureaus of Land Management and Reclamation, U.S. Army Corps of Engineers, and U.S. Coast Guard) now will issue decisions under their own governing statutes, based on the information in the EIS and the environmental mitigation here, and the various applications submitted to them by DM&E.

The Board issued its 90-page decision today in the case entitled *Dakota, Minnesota & Eastern Railroad Corporation*

Construction into the Powder River Basin, STB Finance Docket No. 33407. Vice Chairman Burkes commented in a separate expression. A printed copy of the decision is available for a fee by contacting **D~2-D~ Legal, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via http://Da_To_Da@Hotmail.com. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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