

**SURFACE TRANSPORTATION BOARD ISSUES NOTICE OF "DM&E" RAILROAD
CONSTRUCTION & OPERATION APPLICATION, REQUESTS COMMENTS ON
PROCEDURAL SCHEDULE**

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**SURFACE TRANSPORTATION BOARD
ISSUES NOTICE OF
"DM&E" RAILROAD CONSTRUCTION & OPERATION APPLICATION,
REQUESTS COMMENTS ON PROCEDURAL SCHEDULE**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board is publishing notice of an application filed by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) requesting authority for DM&E to construct and operate 280.9 miles of new railroad line[FOOTNOTE 1: The Board's review of construction applications is governed by both section 10901 of Title 49, United States Code (49 U.S.C. 10901) and the requirements of the National Environmental Policy Act of 1969 (NEPA), sections 4321-4370d of Title 42, United States Code (42 U.S.C. 4321-4370d)] that would provide for an extension of DM&E's existing main railroad line into the Powder River Basin (PRB) coal fields in northeastern Wyoming. The notice also requests comments on a procedural schedule based on a schedule DM&E has asked the Board to establish in this case.

Specifically, DM&E seeks authority from the Board to build (1) a 262.03-mile line between DM&E's existing main line in western South Dakota and the coal producing region of the PRB south of Gillette, Wyoming; (2) a 13.31-mile rail bypass around a portion of the line currently used by DM&E in and near Mankato, Minnesota; and (3) a new, 2.94-mile rail connection in Owatonna, Minnesota, between DM&E's line and the line of I&M Rail Link, LLC [FOOTNOTE 2: DM&E also plans several related projects, which it states are not subject to Board jurisdiction, including the comprehensive rebuilding of 597.8 miles of its existing rail lines and the substantial upgrading of an additional 239.3 miles of its lines.]. Along with its application, DM&E has submitted a petition with a proposed procedural schedule that would set various due dates for submissions to the Board and for Board action in its consideration of the merits of the application and in carrying out the environmental review process.

Relative to the proposed schedule, the Board stated that it would be premature to set any sort of environmental review schedule now for the Board to meet its responsibilities under NEPA and related environmental laws, as the Board lacks substantive input from other federal and state agencies that may have an interest in

this case. The Board stated that it has, however, directed its Section of Environmental Analysis to begin preparation of a notice of intent to prepare an Environmental Impact Statement (EIS) and to initiate the public scoping process to enable the Board to determine key environmental issues to be addressed in the NEPA analysis as expeditiously as possible. The Board intends to prepare an EIS to assess the environmental impacts of DM&E's proposal.

With regard to the merits of the application, the Board said that DM&E's proposed schedule of 90 days in which to develop the public record and to issue a decision on the merits of the proposal does not warrant further consideration, since it neither provides adequate opportunity for public participation, nor provides adequate time for the necessary evaluation of the record to be developed in light of the statutory considerations the Board must undertake. The Board is, however, seeking comments on DM&E's alternative proposal for the Board to issue a decision in 180 days concerning the merits of the construction proposal, with a condition of Board consideration of environmental impacts upon completion of the environmental review process.

Relative to the Board's understanding that DM&E has caused notices to be published stating that comments on the application are due March 27, 1998, the Board said that, while interested parties may file comments by that date, the Board will establish a new due date for comments on the merits of the proposal in any procedural schedule the Board ultimately adopts. For that reason, the Board will require DM&E to have notices published, in the same places as the prior notices it published about the comment due date, advising the public that comments will not be due until the Board establishes a procedural schedule. And after the Board adopts a procedural schedule, DM&E must publish new notices setting forth the Board-established schedule, including the due date for comments on the merits of the proposed transaction.

The proposed schedule, as modified by the Board, is attached. Written comments addressing the proposed procedural schedule in the case entitled *Dakota, Minnesota & Eastern Railroad Corporation--Construction and Operation--in Campbell, Converse, Niobrara, and Weston Counties, WY, Custer, Fall River, Jackson, and Bennington Counties, SD and Blue Earth, Nicolet, and Steele Counties, MN*, Finance Docket No. 33407, must be filed by **April 2, 1998**. The Board issued its decision in Finance Docket No. 33407, today, March 11, 1998.

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ATTACHMENT

PROPOSED PROCEDURAL SCHEDULE IN FINANCE DOCKET NO. 33407, AS MODIFIED BY THE SURFACE TRANSPORTATION BOARD

Date

(With "P" indicating
date the Board issues
procedural schedule) Material due/action taken

P Procedural schedule established

P + 7 days DM&E's publication of newspaper

notice

P+ 35 days Written comments on DM&E's application are due

P + 40 days DM&E's replies to written comments are due

P + 70 days Board decision ordering hearing under modified procedures
(procedures using written submissions rather than an oral hearing) is issued

P + 135 days DM&E's reply evidence and argument in support of application is due

P + 180 days (or earlier) Board issues decision either conditionally approving
application, contingent on completion of environmental review process, or
disapproving application