

NATIONAL ENERGY INTERAGENCY TASK FORCE INITIATIVE PROPOSAL

PROJECT OVERVIEW

The Dakota, Minnesota and Eastern Railroad's ("DM&E") Powder River Basin (PRB) Project was initiated at the urging of power generating utilities and coal producers in 1996. The PRB Project is designed to increase rail transportation capacity, and improve service and competition for coal hauled from the Wyoming PRB. The capacity enhancement and service improvement are in two basic forms. First, DM&E's PRB Project is designed as an independent east/west rail line into the basin, as opposed to the existing north/south line which is shared by two railroads. This independent access relieves the frequent rail congestion in the immediate PRB area, and perhaps more importantly is designed to prevent capacity and congestion constraints on the rail line hundreds of miles to the east where coal is often competing for track time with other commodities, such as time sensitive intermodal traffic. Secondly, the DM&E mine connection tracks are specifically designed for independent access to each mine, which will make it easier to relieve mine mouth capacity constraints, as well. In summary, the DM&E PRB Project is specifically designed to eliminate both rail and mine capacity constraints, both of which have created congestion and delays in existing traffic. More importantly, both present significant constraints for future growth opportunities. This project is consistent with the President's National Energy Policy, as set forth in Chapter 7, page 7-16, in the section entitled "Rail Transportation".

REGULATORY BACKGROUND

On February 20, 1997, DM&E filed its application for approval to construct 260 miles of rail line to connect its existing line to all the southern Powder River Basin mines. The key regulatory milestone events occurred as follows:

Application Filed	February 1998
Draft EIS Scope	June 1998
Transportation merits approved	December 1998
Final EIS Scope	August 1999
Draft EIS Published	October 2000
Public Comments Finalized	March 2001

The two remaining regulatory milestones are:

- Publication of the Final EIS
- Issuance of Permits from each Federal Agency

The STB has announced that it intends to complete the Final EIS "no later than late Fall" of 2001.

The DM&E PRB Project requires six different federal permits from six different agencies, all of which are based on a single, consolidated EIS. These six permit-issuing agencies are all involved in writing the EIS. The Surface Transportation Board is designated as lead agency for EIS purposes, with the other five permit-issuing agencies acting as "cooperating agencies" for EIS purposes. But each independently issues its own permit following completion of the Final EIS. The six permit-issuing agencies are:

1. Surface Transportation Board - must issue a permit to construct and operate the new rail extension.
2. Corps of Engineers - must issue Section 404 Wetlands and Stream Crossing permits for both new construction and rebuilding of existing lines.
3. U.S. Forest Service - must issue easement/permit to cross certain USFS lands (SD & WY).
4. Bureau of Land Management - must issue easement/permit to cross certain BLM lands (SD & WY).
5. Bureau of Reclamation - must issue easement/permit to cross certain BOR administered lands and project easements within the Angastora irrigation district (SD only).
6. U.S. Coast Guard - must issue permit to upgrade existing rail bridges (or possibly replace) which cross two "navigable" waterways (SD only; Missouri River and James River).

In addition to the six permit-issuing agencies, there are a host of other federal agencies involved in the design, writing, rewriting and review of the EIS. The most significant of those are (1) the Environmental Protection Agency, (2) the U.S. Fish and Wildlife Service, and (3) the National Parks Service.

ACTION ITEM

The PRB Project area has a fairly limited construction season, running from late April to October. The objective is to develop and publish a definitive regulatory schedule that does not unnecessarily waste another critical construction season. There are numerous long lead time items required to be addressed prior to construction. They include such things as completion of the final design, ordering of long lead time materials, completion of contract procurement, marshalling equipment and other resources, financing, etc. Accordingly, a minimum of eight to nine months is required to be prepared to begin construction. Hence, a predictable schedule now is extremely important in order to avoid losing an entire construction season. For example, if railroad builders received the final permit to construct by December of this year, they

would not be able to begin construction realistically until almost a year and one-half later. However, if there was a schedule in place next month that provided a fairly definitive time frame that all federal permits would be issued by December of this year, that would provide enough certainty to initiate commitments from various contractors, suppliers and financiers necessary to begin construction, and construction could reasonably begin in next year's construction season.

Therefore, the objective is to achieve administration consensus from the various cooperating agencies as to a time schedule for issuing the required federal permits. Obviously, for this to have maximum benefit in meeting the national energy, transportation, and other needs served by this project, it would be important that such a schedule be timely enough to allow for construction to begin next year.

Because the public comment period is closed and all the comments have been reviewed, it appears to be an appropriate time to establish a schedule. But this would require consensus and commitment from each of the key federal agencies involved (the five cooperating agencies and the three key commenting agencies). The Interagency Task Force created under Executive Order 13212 seems to be well positioned to effect this objective.

DM&E

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KEVIN V. SCHIEFFER • President & CEO

August 28, 2001

Chair, Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington DC 20503

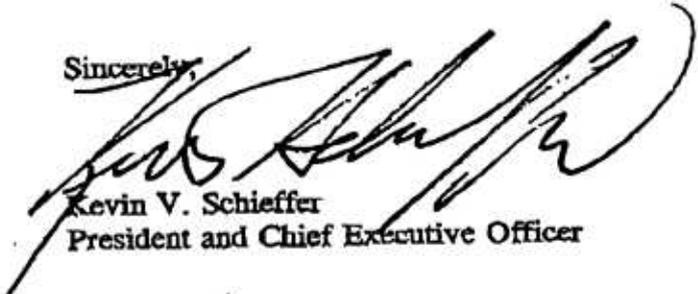
Attention: Task Force

Gentlemen:

Enclosed herewith please find our Comments in response to "Notice and Request for Comments" Council on Environmental Quality, Energy Task Force, Federal Register Notice Dated August 31, 2001.

Should you have any questions, do not hesitate to contact me. Thank you for your consideration.

Sincerely,


Kevin V. Schieffer
President and Chief Executive Officer

KVS:jeb(j:\env\ceq)

Enclosures

**COMMENTS IN RESPONSE TO "NOTICE AND REQUEST FOR COMMENTS"
COUNCIL ON ENVIRONMENTAL QUALITY, ENERGY TASK FORCE
FEDERAL REGISTER NOTICE DATED AUGUST 31, 2001**

These comments are submitted in response to the above-referenced Federal Register Notice from CEQ concerning implementation of Executive Order 13212. Because of the timely nature of this proposal, we respectfully request expedited consideration. In order to provide a reasonable opportunity to be prepared to utilize next year's construction season, the schedule proposed below would be most effective if made public by or before the end of September/early October, 2001.

Synopsis. On February 20, 1998, the Dakota, Minnesota & Eastern Railroad filed an application to construct and operate approximately 280 miles of rail line in western South Dakota and northeastern Wyoming. We have missed our initial construction season projection, and are submitting this proposal with the objective of avoiding the loss of another important construction season opportunity, which in this part of the country is relatively short (approximately May to October). It should be noted that this project presents compelling environmental advantages as well as energy and transportation policy benefits. It will result in significant reductions in overall SO₂ emissions from coal burning and diesel emissions required to deliver PRB coal.

1. Name of Project: DM&E Powder River Basin (PRB) and Rail Revitalization Project (STB Finance Docket No. 33407).
2. Entity Proposing Project: The Dakota, Minnesota & Eastern Railroad Corporation.
3. Category of Project: Railroad Construction.
4. Brief Description of Project: To extend the existing DM&E line approximately 200 miles westward to reach the Wyoming PRB low sulfur coal mines, and to revitalize our existing railroad (which is in serious need of repair. See map at Attachment 1).
- 5(a). Agencies from which a permit is needed:

i. Federal.

1. Surface Transportation Board; permit to construct and operate the new line extension.

Decision-making Authority: The Board, Washington, DC.

Staff contact: Victoria Rutson, Environmental, Washington, DC; Joe Detmar, Regulatory, Washington, DC.

2. Corps of Engineers; Clean Water Act Section 404 wetlands and stream crossing permits.

Decision-making Authority: Lt. Col. Kurt Ubbelohde, Omaha District Engineer, Omaha, NE (for SD & WY permits). Col. Robert Ball, St. Paul District Engineer, St. Paul, MN (for MN permits).

Staff contact: Chandler Peter, Cheyenne, WY (WY & SD); Tim Fell, St. Paul, MN (MN).

3. U.S. Forest Service; easement to cross certain USFS lands (approximately 38.9 miles) in Wyoming and South Dakota.

Decision-making Authority: Lyle Lavery, Regional Forester, Lakewood, CO.

Staff contact: Wendy Schmitzer, Douglas, WY.

4. Bureau of Land Management; easement to cross certain BLM lands (approximately 4.9 miles) in Wyoming and South Dakota.

Decision-making Authority: Al Pierson, State Director, Cheyenne, WY (for WY easements) and Matt Millenbach, State Director, Billings, MT (for SD easements).

Staff contact: Mike Karbs, Supervisor, Casper, WY.

5. Bureau of Reclamation; easement to cross certain lands within the Angostura Irrigation District in South Dakota.

Decision-making Authority: Dennis Britzman, Area Manager, Bismarck, ND.

Staff contact: Jeff Nettleton, Rapid City, SD.

6. U.S. Coast Guard; permit to repair existing bridges crossing navigable waters (Missouri River and James River) in South Dakota.

Decision-making Authority: Rear Admiral Roy J. Casto, New Orleans, LA.

Staff contact: Roger Wiebusch, St. Louis, MO.

ii. State.

1. Section 401, Water Quality permits from the Minnesota Pollution Control Agency.

5(b). Agencies that must be consulted:

i. Federal. Among others:

1. U.S. Environmental Protection Agency (NEPA section relative to the EIS adequacy; Clean Water Act section relative to the CoE section 404 permits).

2. US Fish & Wildlife Service (on endangered species issues).

3. National Park Service, on air quality issues.

ii. State. Various state agencies from the three affected states (Wyoming, South Dakota & Minnesota), including SHPOs, DENRs, BOWSR, PCA, etc.

iii. **Tribal.** 38 tribes or tribal organizations specified in the memorandum of agreement and Tribal consultation and the programmatic agreement published in the Draft EIS.

iv. **Local.** All of the 56 affected communities through which DM&E currently operates. DM&E has entered into formal mitigation and partnership agreements with and has received formal project support from 51 of these 56 communities. The new extension goes through no communities. DM&E has also consulted with and developed formal plans for all 7 counties affected by the new line construction and the 21 counties affected by the increased traffic on our existing rail line.

6. Recommendations:

i. **Specific recommendations/requests for the DM&E Powder River Basin Project.** These recommendations are limited to the federal administrative agencies of jurisdiction in this case. They are not directed toward the STB, for several reasons. We recognize STB's unique position as an independent, quasi-judicial agency. Additionally, STB already has adopted a schedule for completion of the Final Environmental Impact Statement (FEIS). Finally, it is obvious that that agency already has focused a considerable amount of its limited resources on fulfilling its publicly stated commitment to complete review of this project as soon as practicable, and we know of no reasonable action that agency could take at this time to further expedite that aspect of the project. With that in mind, these comments are intended as constructive suggestions to coordinate the various federal environmental review and permitting agencies that must take action on this major construction project.

1. Public Schedule. The most important request is to adopt a formal schedule that could prevent the loss of another construction season. The STB has announced that it will complete the Final EIS this Fall, and based on our assessment of the remaining substantive work and the technical requirements involved in publishing the document with the appropriate Federal Register process, we expect that October 2001 is a reasonable publication date for the FEIS.

At this point, our concern is with the post-EIS review time necessary for each agency to publish their Record of Decision for their respective permits. Based on our understanding of the process and statutory requirements relative to each agency, we propose the following schedule for developing a Record of Decision for each permit-issuing agency:

- | | |
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| 1. CoE: | FEIS + 150 days |
| 2. USFS: | FEIS + 45 days |
| 3. BLM: | FEIS + 45 days |
| 4. BoR: | FEIS + 45 days |
| 5. USCG: | FEIS + 120 days |

2. Reasonable Mitigation, directly related to project impacts. Based on voluntary mitigation to date which has resulted from significant agency and public input and negotiations, the project costs have substantially increased. DM&E has made many concessions (e.g., alignment adjustments, formal mitigation agreements with agencies, landowners, and communities). As we enter the final stages of the project, there appears to be a growing

tendency to seek additional mitigation for things that (a) certain agencies have not been able to fund within local budgets, (b) are not realistically related to project impacts, or (c) without reasonable precedent. In order to avoid ending up with a project approval so laden with expensive conditions as to make it difficult to reasonably finance, reliance on precedent and reasonableness in mitigation requests that are reasonably tied to the project is becoming increasingly important. Existing STB caselaw shows that the STB does appear to recognize that governmentally crafted mitigation must be project-specific.

ii. General recommendations for Energy Projects which fall within the purview of Executive Order 13212.

1. For rail related projects, provide the STB more resources. They have worked dilligently with extremely limited resources.

2. Require schedules. NEPA encourages schedules, but until STB established a schedule for the FEIS, we have not had a realistic possibility to make reasonable estimates necessary for the practical budgeting and decision-making that is so important to a working business. This is not to suggest an inflexible schedule. We envision one that begins with broad, generic parameters for the major milestones (e.g., X months for scoping, y months for public comment and substantive analysis, z months for reports and DEIS publication, XX months for DEIS comments; YY days/months for DEIS comment review and FEIS publication, zz days for RoD issuance). In the early stages of the process, it could be recognized that these are very preliminary and subject to adjustment as the comment period progresses and all agencies get a better feel for the issues. At defined milestones, the agencies should review and adjust the schedule accordingly, with increasing precision and accountability as more information is learned about the project (e.g., after scoping, after reports & public comment on DEIS).

3. Formalize a process for an applicant to "sunshine appeal" to the Interagency Task Force to raise issues as to the reasonableness of actions (or inaction), including schedules and progress thereon. This would be discretionary review for the Task Force, and at the very least would provide a forum of potential accountability which would discourage arbitrary and capricious actions which today can be taken with impunity. This review would be on process issues and not for the purpose of substantive oversight or micromanagement. The goal is to inject a greater degree of accountability in the process by creating a forum to disclose "horror story" examples that exist in every major case, each of which has a tremendous "ripple effect" on other cooperating agencies who must await action from a counterpart before moving forward. In our experience much delay is created by a single agency's inaction (while others are waiting) or an agency action that is either outside its area of expertise or its jurisdiction. A modest degree of accountability would tremendously improve the process. This would not only aid the applicant, but based on our experience would be welcomed by the vast majority of federal staffers who work diligently to effectively meet their responsibilities in a timely manner, only to be frustrated by another agency over whom they have no control.

Attachments: 1. Project overview map
2. DM&E Testimony, US House Transportation & Infrastructure Committee
3. White paper issue analysis relative to PRB Project

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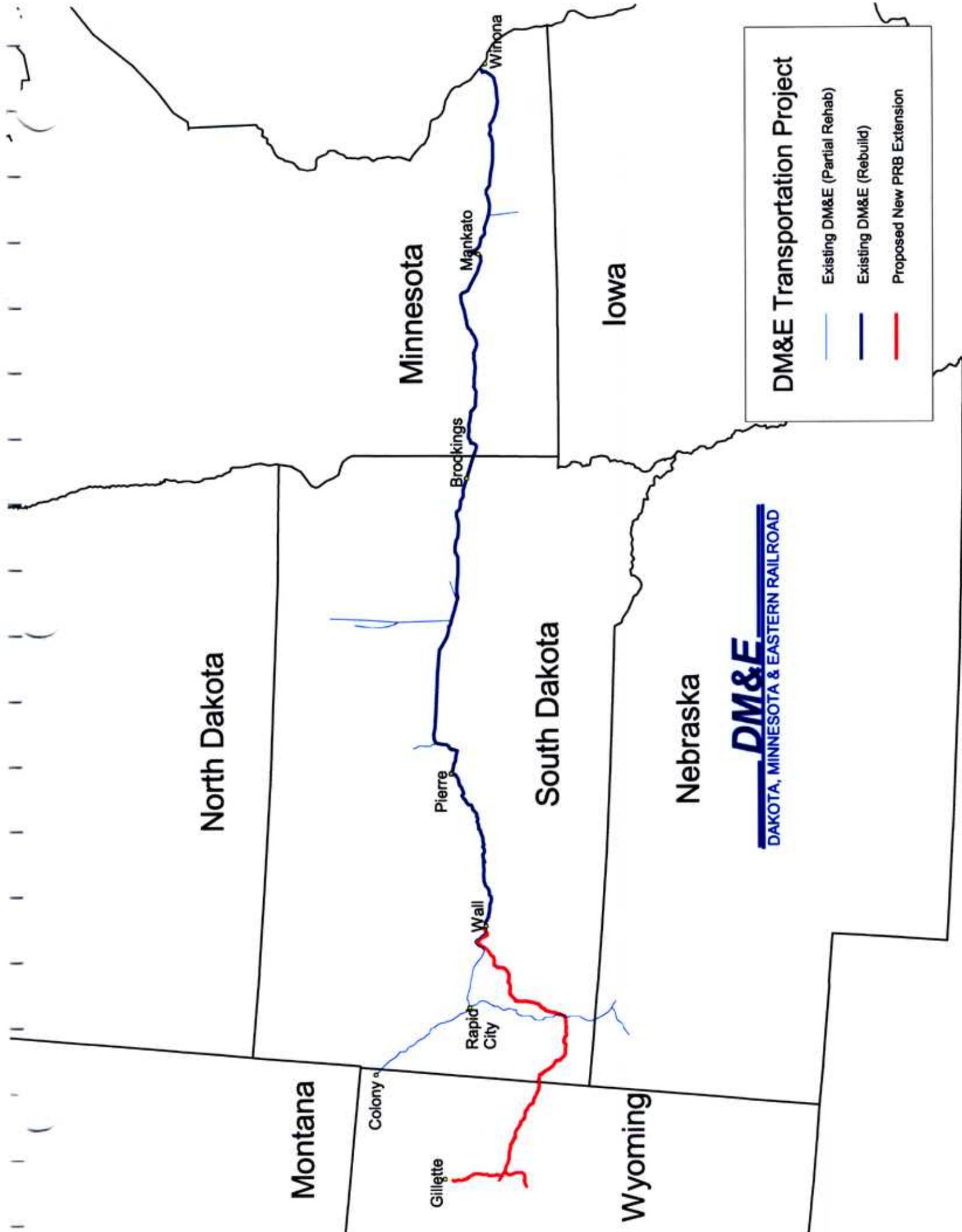
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FEDERAL REGISTER NOTICE DATED AUGUST 31, 2001



DM&E Transportation Project

- Existing DM&E (Partial Rehab)
- Existing DM&E (Rebuild)
- Proposed New PRB Extension

DM&E
 DAKOTA, MINNESOTA & EASTERN RAILROAD

North Dakota

Minnesota

Iowa

South Dakota

Nebraska

Montana

Wyoming

Gillette

Rapid City

Wall

Pierre

Brookings

Mankato

Winona

Colony

**Obstacles to Rail Infrastructure Improvements
before the United States House of Representatives
Transportation and Infrastructure Committee
May 22, 2001**

My name is Kevin Schieffer. I am the President & Chief Executive Officer of the Dakota, Minnesota & Eastern Railroad ("DM&E"), a regional railroad currently operating approximately 1,150 miles of track in five states (South Dakota, Minnesota, Iowa, Wyoming & Nebraska). DM&E was created in 1986 from lines owned by the former Chicago & North Western (C&NW) railroad. We operate with about 350 employees, generating about \$60 million per year in revenues. Our shippers' primary commodities include grain and agriculture products, clay products mined in Wyoming and Minnesota, wood products, cement, fertilizer, foodstuffs, metal and paper products.

I first became involved in this railroad as a Congressional staffer in 1983, when the C&NW attempted to abandon it. My boss fought against the railroad in the abandonment case before the Interstate Commerce Commission, which denied the abandonment. We eventually worked out an agreement with the C&NW to sell the line as an alternative to future abandonment efforts. DM&E was created as a result and began operations in September of 1986.

DM&E CONSTRUCTION PROJECT BACKGROUND

Not too many people gave the DM&E very good odds of surviving more than a year. We had inherited a track that had experienced decades of deferred maintenance, the last 6 to 8 years of which had been extreme neglect. Since 1986, the current owners have invested more than \$120 million in the infrastructure trying to catch up. Our biggest single project to date was completed 5 years ago, replacing approximately 100 miles of 100-year old 72-pound rail with new 115-pound continuous welded rail. The employees of the railroad have worked miracles to keep the rest of the line glued and scotch-taped together, with far fewer resources than are needed to catch up to the decades of neglect. Progress has been made, but on many parts of the line, rail defect rates are higher than the day we bought it.

We are currently engaged in efforts to develop a project to extend and fundamentally rebuild this railroad. It would transform DM&E into a highly efficient Class I railroad. This project would involve laying approximately 1,100 miles of new track at a cost of roughly \$1.5 Billion.¹

¹ Specifically, the \$1.5 Billion project as proposed would:

1. Extend our existing line westward approximately 260 miles, into the low sulfur Powder River coal basin;
2. Add approximately 20 miles of new line for competitive connections and elimination of traffic

This project is a unique rail construction opportunity. It has come to us largely by luck of geography. In 1996 we were approached by numerous potential customers in the energy industry, seeking a way to move coal from the Powder River Basin to defined target markets in the upper Midwest, Chicago gateway, and the Great Lakes region. On the railroad map, we happen to be the shortest distance between those two points. With the extension of our line approximately 200 miles further west to reach the Powder River Basin mines, we would not only add much needed rail capacity to the PRB and relieve rail congestion pressure in many other parts of the country, but we would also shorten the route to our target markets by 20 to 30%.

We seized upon the opportunity as the long elusive means to fixing our existing railroad. We carefully researched the legal precedent, and reviewed pretty much every railroad construction case in the past 50 years and quite a few others. We knew there would be obstacles and challenges. But I have come to appreciate in a very direct way the topic of today's hearing, and am pleased to offer a poster child's perspective on "Obstacles to Rail Infrastructure Improvement". It is a timely and important hearing. We applaud this Committee's interest, and thank you for the opportunity to participate.

RAIL INFRASTRUCTURE OBSTACLES

There are at least three potential fundamental obstacles to any major rail infrastructure investment. They are:

1. Developing a business plan that makes sense.
2. Finding the money to build it.
3. Obtaining permission to build it.

On the first point, it is our belief that for a business plan to "make sense", it requires more than an accounting exercise that shows a profit and an engineering analysis that says it can be done. Especially for new construction projects, it must also serve a demonstrable and important public interest. The public interest element is important because we all need to be sensitive to the fact that railroad construction -- like highways, pipelines, and other utilities -- has significant impacts on others. In those cases, a business profit justification by itself is not sufficient. Sometimes the biggest obstacle to project development can be an uncompromising developer. Through the course of this project we have come to appreciate the origins of the phrase "I was railroaded." There is a healthy skepticism out there that the railroad industry has an obligation to overcome. It takes going the extra mile, beyond the minimums required by law.

bottlenecks;

3. Completely rebuild 600 miles of our existing line; and
4. Build approximately 200 miles of new passing track.

A 19th century development mentality cannot and should not be allowed to work in the 21st century. We have worked hard to achieve partnership and consensus with affected parties. We have developed a very successful landowner outreach program that has been widely acclaimed. We have negotiated individual community agreements with 51 of the 56 communities through which our present railroad operates (even though they are not part of our jurisdictional application before the STB). And we have tried to keep an open door to NIMBY ("not in my back yard") opponents of the project, respecting their positions and looking for areas of reasonable compromise. At the end of the day, all these impacts need to be weighed in the overall public interest balancing test. We think our project -- with the strong transportation interests already recognized by the STB in 1998 and the strong energy interests it serves as was recently recognized in the President's Energy Policy plan and in many other ways -- meets and exceeds those standards.

On the second point, financing is always critical. This project will be financed on its stand-alone business merit. The free market profit-driven capital system shines its brightest when it also serves a public interest. The tougher fiscal public policy questions come into play when the business plan by itself will not sustain an important infrastructure, and in effect government subsidies are needed to prevent deterioration or loss of service. Our PRB Project represents an opportunity for a major investment in our national rail infrastructure without any federal or other public financial assistance.

On the third point of simply obtaining the government's permission to build it, our case research indicated that a two-year approval process was not an unreasonable likelihood. But three and one-half years and \$35 million later, it is clear that was optimistic. To be fair, our research also indicated that it could be much longer than 2 years. In our case, the compelling safety and infrastructure needs of our existing track, combined with a very strong public interest case, led us to go forward with this initiative. But it is safe to say that the dark, deep, unknowable black hole called NEPA scares off much important transportation infrastructure development. The implementation National Environmental Policy Act (NEPA) and all the other regulatory approvals associated with this project create so much uncertainty as to seriously undermine rational development efforts. Let me be clear that we have no argument with the policy goals or most of the specific statutory language of NEPA. It is its implementation -- or lack thereof -- that presents the problem. Indeed, the Council on Environmental Quality (CEQ) guidelines encourages in loose terms many of the recommendations we believe should be more specific. For example, it encourages time limits, and defined work plan, and agency cooperation to avoid duplication and inconsistencies. The uncertainty from NEPA implementation, however, creates a chilling effect on investment decisions. What happens to this case will be watched closely by the rail industry and investment community -- particularly as it relates to how long it takes and what the ultimate price tag becomes in terms of mitigation. From our perspective, the uncertainty associated with the federal regulatory approval process is the single biggest obstacle today discouraging new railroad construction.

When Abraham Lincoln was the President of the United States a new rail project much bigger than ours was approved and built as a single construction project. For that project,

largely at the urging of Lincoln, the federal government provided incentives that (1) gave the railroad the entire railroad right of way necessary for construction and operation, (2) gave the railroad an additional 20 square miles of land for every 1 linear mile of rail line built by the railroad, (3) gave the railroad a bond payment of up to \$50,000 for every mile actually built, (4) donated to the railroad much of the raw materials, including timber for ties and rock for ballast, necessary for construction, and (5) provided additional incentives for the railroads to get the job done faster than they had planned.

We miss Abraham Lincoln.

The point of this historical aside is not to suggest we can or should roll back the regulatory clock. But it does underscore a basic obstacle to 21st Century railroad construction. One hundred years ago the biggest obstacle facing projects of this nature were the engineering and construction challenges. The government's role was as a promoter and facilitator. Today, the obstacles of 100 years ago have largely been overcome with technology and equipment. This is not to suggest that there are not significant construction and engineering challenges. But in relative terms, building one mile or 100 miles of railroad involves pretty straightforward engineering basics, backed up by centuries of experience and modern engineering aids that transform years of field measurement and office computations into computer runs from a digitized GIS data base. Months of backbreaking effort by thousands of laborers can be duplicated by a single operator on an efficient piece of equipment.

Engineering and construction challenges today are not the daunting obstacles they were to railroad builders 150 years ago. Today the biggest obstacle -- at least for our project -- is simply obtaining the government's permission to make the investment. In far less glamorous and decidedly more intangible ways, the modern regulatory obstacles are as daunting as the historic construction challenges of earlier centuries.

To its credit, the STB issued its decision on the policy merits of the application in less than one year -- subject to the environmental review. Though it leads that review, it does not control it. In the way NEPA is implemented today, it is relatively easy for one agency to hold up the process in fairly anonymous ways that do not involve a great deal of accountability. That can happen one of two ways. Either the laws can be changed to remove some subjectivity and increase accountability, or Congress or some other entity can demand more accountability out of the existing process.

I am not here today to argue that regulatory obstacles ought to be removed or even reduced. The most important recommendation we could offer based on our experience is simply to make their implementation more visible by interjecting more objectivity and more accountability into the process. If we know what the goal is, applicants can make a rational decision on whether or not we can achieve it. But often we are left to guess as to what the objectives are and whether we have satisfied them or not. When rules are developed, they are subject to change without notice.

To illustrate the point, I will offer one of dozens of examples we could cite from our pending case. As a applicant with a pending application, there is some reluctance to get too far into the details of an existing case -- both because there is no one we would point to as being intentionally arbitrary, and also because the vast majority of agency personnel involved in these cases are hardworking, dedicated professionals trying to do their job as best as possible. But one example might help the committee to understand the practical issues faced in today's regulatory environment:

In defining the routing "Alternatives" to be considered under NEPA, early on in this process questions were raised as to why we did not use a portion of our existing rail line which today runs through the Black Hills of South Dakota as an alternative to the route proposed in our original application. It is a perfectly reasonable question, and one with which I struggled early on in this process. We cannot run modern trains on this particular section of track because of the underlying geography, which is the mountainous region of the Black Hills. When it was built 100 years ago for a small train hauling light, general merchandise, it was a feasible though undesirable line. Today, moving a full modern train over that grade and alignment would physically tear apart the train drawbars and would literally rip the track structure out of the ground. This is because of excessive grade and curve problems which result from winding around and over mountainous terrain. Everyone who has spent any time looking at the issue understands that fact, but the question becomes whether or not the grade and curvature can be modified to support modern train operations. Like almost every other engineering question, the answer is that it is theoretically possible -- but not practical. It would result in deep cuts several thousand feet wide. It would require very long and high trestle bridges, spanning miles in length and hundreds of feet in height. It would require stream relocations, channelization and probably aqueducts in some places. In short, it is impractical. At one stage in the process this was agreed to by all the relevant agencies. Later, it was agreed that a certain amount of work needed to be completed to document the infeasibility of the route prior to ruling it out. We spent well over \$100 thousand documenting what every railroad engineer immediately recognized as impractical by looking at the track charts and USGS topographical mapping of the area. The amount of detail required and effort expended we felt was excessive, but we agreed to it in the interest of moving forward.

Now, approximately one year after all that work was done and all the agencies involved agreed that this was an unreasonable alternative, one of the agencies experienced a personnel change. There is no dispute that his predecessors and all the other agencies agreed on the documentation earlier presented. There is also no serious dispute among those involved in the earlier decision that "unreasonableness" remains valid. Without any engineering expertise or ability to develop an informed opinion, one new person to the process has in effect reversed his predecessor and demands a completely different engineering justification, requiring additional months and six figure expenses. This is not because it was done wrong the first time. It is not because anyone working on the case disagrees with the result from the first two or three times we have reviewed the issue. It is not because some objective standard was not met. It is simply because of a subjective view of a new person to the process who wants the case proven over again -- this time to a different standard than the first two times. There is no articulation of

why. It is simply required, without a defensible rationale despite requests.

The process needs to be more objective than that. It can and should be -- even under current law. But often it is not. It is easier to say "let's study some more" than to make a decision. In today's environmental cases, the way to kill a project is to study it to death rather than by outright opposition on the merits.

The balancing test required by NEPA, in our view, is based on sound policy. That does not need to be changed. But the process for getting to that test needs to be more objective and timely.

SUGGESTIONS

1. The most important improvement to the process would be to establish a statutory requirement for a time certain schedule, much as is done in merger cases. As pointed out earlier, CEQ guidelines encourage the establishment of a schedule, which we have tried to accomplish in this case. The STB last week announced that it has completed review of its comments and that it will publish the Final EIS no later than December of this year -- and we hope significantly sooner than that. This is a very positive development, though a December decision probably will not allow enough lead time to make good utilization of next year's construction season. We are hopeful that we can build upon this announcement in order to achieve a definitive schedule to conclusion of final permit decisions from each of the various agencies that must issue a permit in this case. Hopefully this can be accomplished in a manner that will allow construction to begin next year. But at the very least, with last week's action, the STB has set some type of deadline. That is light years ahead of where we were a week ago for which we are grateful.

2. Measure and define policy benefits, as well as environmental impacts. Throughout the NEPA process, the emphasis seems to be on the negative environmental impacts. The STB noted some environmental benefits, particularly from a transportation perspective, and its EIS review. But many of the environmental benefits of the project -- including those pointed out in the President's recent Energy Policy Statement -- were largely ignored in the EIS. When the applicant presents a project with strong environmental benefits, those beneficial impacts should be weighed prominently along with the negative impacts. For example, in our case there is much discussion about increased train traffic on our line, but no acknowledgement for the reduced train traffic congestion which will result in other parts of the country because of our project.

3. Give the lead agency more direction and legislative ability to make decisions and require action by other participating agencies. In our case, STB as the lead agency is often not in a position to lead. The process allows veto authority from many agencies without the expertise on the broader policy issues involved in the public interest determination.

4. Curb the ability to appeal, or at least require opponents to post bonds sufficient

enough to compensate for damages associated with appeal delays if they are unsuccessful. We have not reached that stage in our process, but this is another of the environmental "dark holes" that discourage investment.

5. Provide the STB more resources to prosecute these cases. The STB staff is very competent and hard working, but hopelessly overworked. There are not reasonably sufficient resources, in our view, to process or even effectively manage the processing of significant projects.

More important than any of these statutory changes, the individual agencies' implementation of the existing law and its underlying policy could be more carefully scrutinized. Either Congress or the appropriate executive agency with the correct charge could more aggressively monitor implementation of the existing NEPA laws and regulations -- demanding accountability from participating agencies. That by itself would make a huge difference in the cases, and provide much needed encouragement to the investing community.

These are a few immediate steps that could be taken. From our standpoint, we have tried to be accountable and responsive to all involved. We welcome scrutiny, and expect to be held accountable. If this project is not in the public interest to be built, it should not be. But if it is, we should figure out a way to get through the process and get it built. This is a window of opportunity that cannot stay open indefinitely.

The DM&E PRB Project requires six different federal permits from six different agencies, all of which are based on a single, consolidated EIS. These six permit-issuing agencies are all involved in writing the EIS. The Surface Transportation Board is designated as lead agency for EIS purposes, with the other five permit-issuing agencies acting as "cooperating agencies" for EIS purposes. But each independently issues its own permit following completion of the Final EIS. The six permit-issuing agencies are:

1. Surface Transportation Board - must issue a permit to construct and operate the new rail extension.
2. Corps of Engineers - must issue Section 404 Wetlands and Stream Crossing permits for both new construction and rebuilding of existing lines.
3. U.S. Forest Service - must issue easement/permit to cross certain USFS lands (SD & WY).
4. Bureau of Land Management - must issue easement/permit to cross certain BLM lands (SD & WY).
5. Bureau of Reclamation - must issue easement/permit to cross certain BOR administered lands and project easements within the Angastora irrigation district (SD only).
6. U.S. Coast Guard - must issue permit to upgrade existing rail bridges (or possibly replace) which cross two "navigable" waterways (SD only; Missouri River and James River).

In addition to the six permit-issuing agencies, there are a host of other federal agencies involved in the design, writing, rewriting and review of the EIS. The most significant of those are (1) the Environmental Protection Agency, (2) the U.S. Fish and Wildlife Service, and (3) the National Parks Service.

ACTION ITEM

The PRB Project area has a fairly limited construction season, running from late April to October. The objective is to develop and publish a definitive regulatory schedule that does not unnecessarily waste another critical construction season. There are numerous long lead time items required to be addressed prior to construction. They include such things as completion of the final design, ordering of long lead time materials, completion of contract procurement, marshalling equipment and other resources, financing, etc. Accordingly, a minimum of eight to nine months is required to be prepared to begin construction. Hence, a predictable schedule now is extremely important in order to avoid losing an entire construction season. For example, if railroad builders received the final permit to construct by December of this year, they would not be able to begin construction realistically until almost a year and one-half later. However, if

there was a schedule in place next month that provided a fairly definitive time frame that all federal permits would be issued by December of this year, that would provide enough certainty to initiate commitments from various contractors, suppliers and financiers necessary to begin construction, and construction could reasonably begin in next year's construction season.

Therefore, the objective is to achieve administration consensus from the various cooperating agencies as to a time schedule for issuing the required federal permits. Obviously, for this to have maximum benefit in meeting the national energy, transportation, and other needs served by this project, it would be important that such a schedule be timely enough to allow for construction to begin next year.

Because the public comment period is closed and all the comments have been reviewed, it appears to be an appropriate time to establish a schedule. But this would require consensus and commitment from each of the key federal agencies involved (the five cooperating agencies and the three key commenting agencies). The Interagency Task Force created under Executive Order 13212 seems to be well positioned to effect this objective.

NATIONAL ENERGY INTERAGENCY TASK FORCE INITIATIVE PROPOSAL

PROJECT OVERVIEW

The Dakota, Minnesota and Eastern Railroad's ("DM&E") Powder River Basin (PRB) Project was initiated at the urging of power generating utilities and coal producers in 1996. The PRB Project is designed to increase rail transportation capacity, and improve service and competition for coal hauled from the Wyoming PRB. The capacity enhancement and service improvement are in two basic forms. First, DM&E's PRB Project is designed as an independent east/west rail line into the basin, as opposed to the existing north/south line which is shared by two railroads. This independent access relieves the frequent rail congestion in the immediate PRB area, and perhaps more importantly is designed to prevent capacity and congestion constraints on the rail line hundreds of miles to the east where coal is often competing for track time with other commodities, such as time sensitive intermodal traffic. Secondly, the DM&E mine connection tracks are specifically designed for independent access to each mine, which will make it easier to relieve mine mouth capacity constraints, as well. In summary, the DM&E PRB Project is specifically designed to eliminate both rail and mine capacity constraints, both of which have created congestion and delays in existing traffic. More importantly, both present significant constraints for future growth opportunities. This project is consistent with the President's National Energy Policy, as set forth in Chapter 7, page 7-16, in the section entitled "Rail Transportation".

REGULATORY BACKGROUND

On February 20, 1997, DM&E filed its application for approval to construct 260 miles of rail line to connect its existing line to all the southern Powder River Basin mines. The key regulatory milestone events occurred as follows:

Application Filed	February 1998
Draft EIS Scope	June 1998
Transportation merits approved	December 1998
Final EIS Scope	August 1999
Draft EIS Published	October 2000
Public Comments Finalized	March 2001

The two remaining regulatory milestones are:

- Publication of the Final EIS
- Issuance of Permits from each Federal Agency

The STB has announced that it intends to complete the Final EIS "no later than late Fall" of 2001.

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MEMORANDUM

FROM: Distribution List
TO: Distribution List
DATE: August 23, 2001
RE: Energy Policy; DM&E Rail Construction Case.

- * STB Finance Docket No. 33407
- * U.S. Corps of Engineers Application (CWA 404 Permit)
- * U.S. Forest Service Permit Application (Easement)
- * Bureau of Land Management Permit Application (Easement)
- * Bureau of Reclamation Permit Application (Easement)
- * U.S. Coast Guard Application

In May 2001, the President released the "National Energy Policy, Report of the National Energy Policy Development Group", setting forth the energy policy of this Administration. Chapter 7 of that policy statement, in the section entitled Rail Transportation, states:

"Demand for clean coal from Wyoming's Powder River Basin is expected to increase because of its environmental benefits. However, rail capacity problems in the Powder River Basin have created a bottleneck in the coal transportation system."

"With little excess capacity in the rail lines supporting the Powder River Basin, expected increases in demand could result in capacity shortfalls and delays in providing coal to power plants that are relying increasingly on "just-in-time" shipments to reduce inventory costs. . . ." (p. 7-16, emphasis added)

On May 18, 2001 the President issued Executive Order No. 13212, directing the Interagency Task Force "to monitor and assist the agencies in their efforts to expedite their review of permits or similar actions, as necessary, to accelerate the completion of energy-related projects, increase energy production and conservation, and improve transmission of energy. The Task Force also shall monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected."

The above referenced project is the only known rail construction project which (a) meets the quoted policy criteria articulated relative to the specific energy-related rail capacity needed, and (b) involves an application currently pending before your agencies which meets that need and falls within the purview of the Executive Order.

The Administration believes this project is an important infrastructure component of a strong national energy policy. The Surface Transportation Board already has committed to publishing a final EIS this fall. We encourage your efforts to expedite this application to the extent practicable, consistent with the Executive Order and in compliance with all necessary environmental and other regulatory requirements. We

encourage federal agencies to develop schedules for the timeframe between issuance of the final EIS and individual agency decisions of record, assuming the final EIS is published in October. Any information you can provide as to the status of this project and your individual agencies' efforts to implement the Executive Order would be appreciated. A proposed schedule follows:

Bureau of Land Management	+40 days *
US Forest Service	+40 days
Bureau of Reclamation	+40 days
Corps of Engineers	+160 days
US Coast Guard	+90 days

* Assume final EIS is published in October 2001. Day "0" is final EIS publication date.

We would appreciate your assessment as to its reasonableness and practicability given the status of this case. We encourage your consideration of a published schedule, which could allow the fullest utilization of the relatively short construction season. Should you have any questions, please contact John Howard of my office at (202-456-6224). Thank you for considering our position.

**Obstacles to Rail Infrastructure Improvements
before the United States House of Representatives
Transportation and Infrastructure Committee
May 22, 2001**

My name is Kevin Schieffer. I am the President & Chief Executive Officer of the Dakota, Minnesota & Eastern Railroad ("DM&E"), a regional railroad currently operating approximately 1,150 miles of track in five states (South Dakota, Minnesota, Iowa, Wyoming & Nebraska). DM&E was created in 1986 from lines owned by the former Chicago & North Western (C&NW) railroad. We operate with about 350 employees, generating about \$60 million per year in revenues. Our shippers' primary commodities include grain and agriculture products, clay products mined in Wyoming and Minnesota, wood products, cement, fertilizer, foodstuffs, metal and paper products.

I first became involved in this railroad as a Congressional staffer in 1983, when the C&NW attempted to abandon it. My boss fought against the railroad in the abandonment case before the Interstate Commerce Commission, which denied the abandonment. We eventually worked out an agreement with the C&NW to sell the line as an alternative to future abandonment efforts. DM&E was created as a result and began operations in September of 1986.

DM&E CONSTRUCTION PROJECT BACKGROUND

Not too many people gave the DM&E very good odds of surviving more than a year. We had inherited a track that had experienced decades of deferred maintenance, the last 6 to 8 years of which had been extreme neglect. Since 1986, the current owners have invested more than \$120 million in the infrastructure trying to catch up. Our biggest single project to date was completed 5 years ago, replacing approximately 100 miles of 100-year old 72-pound rail with new 115-pound continuous welded rail. The employees of the railroad have worked miracles to keep the rest of the line glued and scotch-taped together, with far fewer resources than are needed to catch up to the decades of neglect. Progress has been made, but on many parts of the line, rail defect rates are higher than the day we bought it.

We are currently engaged in efforts to develop a project to extend and fundamentally rebuild this railroad. It would transform DM&E into a highly efficient Class I railroad. This project would involve laying approximately 1,100 miles of new track at a cost of roughly \$1.5 Billion.¹

¹ Specifically, the \$1.5 Billion project as proposed would:

1. Extend our existing line westward approximately 260 miles, into the low sulfur Powder River coal basin;
2. Add approximately 20 miles of new line for competitive connections and elimination of traffic bottlenecks;
3. Completely rebuild 600 miles of our existing line; and

This project is a unique rail construction opportunity. It has come to us largely by luck of geography. In 1996 we were approached by numerous potential customers in the energy industry, seeking a way to move coal from the Powder River Basin to defined target markets in the upper Midwest, Chicago gateway, and the Great Lakes region. On the railroad map, we happen to be the shortest distance between those two points. With the extension of our line approximately 200 miles further west to reach the Powder River Basin mines, we would not only add much needed rail capacity to the PRB and relieve rail congestion pressure in many other parts of the country, but we would also shorten the route to our target markets by 20 to 30%.

We seized upon the opportunity as the long elusive means to fixing our existing railroad. We carefully researched the legal precedent, and reviewed pretty much every railroad construction case in the past 50 years and quite a few others. We knew there would be obstacles and challenges. But I have come to appreciate in a very direct way the topic of today's hearing, and am pleased to offer a poster child's perspective on "Obstacles to Rail Infrastructure Improvement". It is a timely and important hearing. We applaud this Committee's interest, and thank you for the opportunity to participate.

RAIL INFRASTRUCTURE OBSTACLES

There are at least three potential fundamental obstacles to any major rail infrastructure investment. They are:

1. Developing a business plan that makes sense.
2. Finding the money to build it.
3. Obtaining permission to build it.

On the first point, it is our belief that for a business plan to "make sense", it requires more than an accounting exercise that shows a profit and an engineering analysis that says it can be done. Especially for new construction projects, it must also serve a demonstrable and important public interest. The public interest element is important because we all need to be sensitive to the fact that railroad construction -- like highways, pipelines, and other utilities -- has significant impacts on others. In those cases, a business profit justification by itself is not sufficient. Sometimes the biggest obstacle to project development can be an uncompromising developer. Through the course of this project we have come to appreciate the origins of the phrase "I was railroaded." There is a healthy skepticism out there that the railroad industry has an obligation to overcome. It takes going the extra mile, beyond the minimums required by law. A 19th century development mentality cannot and should not be allowed to work in the 21st century. We have worked hard to achieve

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4. Build approximately 200 miles of new passing track.

partnership and consensus with affected parties. We have developed a very successful landowner outreach program that has been widely acclaimed. We have negotiated individual community agreements with 51 of the 56 communities through which our present railroad operates (even though they are not part of our jurisdictional application before the STB). And we have tried to keep an open door to NIMBY ("not in my back yard") opponents of the project, respecting their positions and looking for areas of reasonable compromise. At the end of the day, all these impacts need to be weighed in the overall public interest balancing test. We think our project -- with the strong transportation interests already recognized by the STB in 1998 and the strong energy interests it serves as was recently recognized in the President's Energy Policy plan and in many other ways -- meets and exceeds those standards.

On the second point, financing is always critical. This project will be financed on its stand-alone business merit. The free market profit-driven capital system shines its brightest when it also serves a public interest. The tougher fiscal public policy questions come into play when the business plan by itself will not sustain an important infrastructure, and in effect government subsidies are needed to prevent deterioration or loss of service. Our PRB Project represents an opportunity for a major investment in our national rail infrastructure without any federal or other public financial assistance.

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entire railroad right of way necessary for construction and operation, (2) gave the railroad an additional 20 square miles of land for every 1 linear mile of rail line built by the railroad, (3) gave the railroad a bond payment of up to \$50,000 for every mile actually built, (4) donated to the railroad much of the raw materials, including timber for ties and rock for ballast, necessary for construction, and (5) provided additional incentives for the railroads to get the job done faster than they had planned.

We miss Abraham Lincoln.

The point of this historical aside is not to suggest we can or should roll back the regulatory clock. But it does underscore a basic obstacle to 21st Century railroad construction. One hundred years ago the biggest obstacle facing projects of this nature were the engineering and construction challenges. The government's role was as a promoter and facilitator. Today, the obstacles of 100 years ago have largely been overcome with technology and equipment. This is not to suggest that there are not significant construction and engineering challenges. But in relative terms, building one mile or 100 miles of railroad involves pretty straightforward engineering basics, backed up by centuries of experience and modern engineering aids that transform years of field measurement and office computations into computer runs from a digitized GIS data base. Months of backbreaking effort by thousands of laborers can be duplicated by a single operator on an efficient piece of equipment.

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To illustrate the point, I will offer one of dozens of examples we could cite from our pending case. As a applicant with a pending application, there is some reluctance to get too far into

the details of an existing case -- both because there is no one we would point to as being intentionally arbitrary, and also because the vast majority of agency personnel involved in these cases are hardworking, dedicated professionals trying to do their job as best as possible. But one example might help the committee to understand the practical issues faced in today's regulatory environment:

In defining the routing "Alternatives" to be considered under NEPA, early on in this process questions were raised as to why we did not use a portion of our existing rail line which today runs through the Black Hills of South Dakota as an alternative to the route proposed in our original application. It is a perfectly reasonable question, and one with which I struggled early on in this process. We cannot run modern trains on this particular section of track because of the underlying geography, which is the mountainous region of the Black Hills. When it was built 100 years ago for a small train hauling light, general merchandise, it was a feasible though undesirable line. Today, moving a full modern train over that grade and alignment would physically tear apart the train drawbars and would literally rip the track structure out of the ground. This is because of excessive grade and curve problems which result from winding around and over mountainous terrain. Everyone who has spent any time looking at the issue understands that fact, but the question becomes whether or not the grade and curvature can be modified to support modern train operations. Like almost every other engineering question, the answer is that it is theoretically possible -- but not practical. It would result in deep cuts several thousand feet wide. It would require very long and high trestle bridges, spanning miles in length and hundreds of feet in height. It would require stream relocations, channelization and probably aqueducts in some places. In short, it is impractical. At one stage in the process this was agreed to by all the relevant agencies. Later, it was agreed that a certain amount of work needed to be completed to document the infeasibility of the route prior to ruling it out. We spent well over \$100 thousand documenting what every railroad engineer immediately recognized as impractical by looking at the track charts and USGS topographical mapping of the area. The amount of detail required and effort expended we felt was excessive, but we agreed to it in the interest of moving forward.

Now, approximately one year after all that work was done and all the agencies involved agreed that this was an unreasonable alternative, one of the agencies experienced a personnel change. There is no dispute that his predecessors and all the other agencies agreed on the documentation earlier presented. There is also no serious dispute among those involved in the earlier decision that "unreasonableness" remains valid. Without any engineering expertise or ability to develop an informed opinion, one new person to the process has in effect reversed his predecessor and demands a completely different engineering justification, requiring additional months and six figure expenses. This is not because it was done wrong the first time. It is not because anyone working on the case disagrees with the result from the first two or three times we have reviewed the issue. It is not because some objective standard was not met. It is simply because of a subjective view of a new person to the process who wants the case proven over again - this time to a different standard than the first two times. There is no articulation of why. It is simply required, without a defensible rationale despite requests.

The process needs to be more objective than that. It can and should be -- even under current law. But often it is not. It is easier to say "let's study some more" than to make a decision. In today's environmental cases, the way to kill a project is to study it to death rather than by outright opposition on the merits.

The balancing test required by NEPA, in our view, is based on sound policy. That does not need to be changed. But the process for getting to that test needs to be more objective and timely.

SUGGESTIONS

1. The most important improvement to the process would be to establish a statutory requirement for a time certain schedule, much as is done in merger cases. As pointed out earlier, CEQ guidelines encourage the establishment of a schedule, which we have tried to accomplish in this case. The STB last week announced that it has completed review of its comments and that it will publish the Final EIS no later than December of this year -- and we hope significantly sooner than that. This is a very positive development, though a December decision probably will not allow enough lead time to make good utilization of next year's construction season. We are hopeful that we can build upon this announcement in order to achieve a definitive schedule to conclusion of final permit decisions from each of the various agencies that must issue a permit in this case. Hopefully this can be accomplished in a manner that will allow construction to begin next year. But at the very least, with last week's action, the STB has set some type of deadline. That is light years ahead of where we were a week ago for which we are grateful.

2. Measure and define policy benefits, as well as environmental impacts. Throughout the NEPA process, the emphasis seems to be on the negative environmental impacts. The STB noted some environmental benefits, particularly from a transportation perspective, and its EIS review. But many of the environmental benefits of the project -- including those pointed out in the President's recent Energy Policy Statement -- were largely ignored in the EIS. When the applicant presents a project with strong environmental benefits, those beneficial impacts should be weighed prominently along with the negative impacts. For example, in our case there is much discussion about increased train traffic on our line, but no acknowledgement for the reduced train traffic congestion which will result in other parts of the country because of our project.

3. Give the lead agency more direction and legislative ability to make decisions and require action by other participating agencies. In our case, STB as the lead agency is often not in a position to lead. The process allows veto authority from many agencies without the expertise on the broader policy issues involved in the public interest determination.

4. Curb the ability to appeal, or at least require opponents to post bonds sufficient enough to compensate for damages associated with appeal delays if they are unsuccessful. We have not reached that stage in our process, but this is another of the environmental "dark holes" that discourage investment.

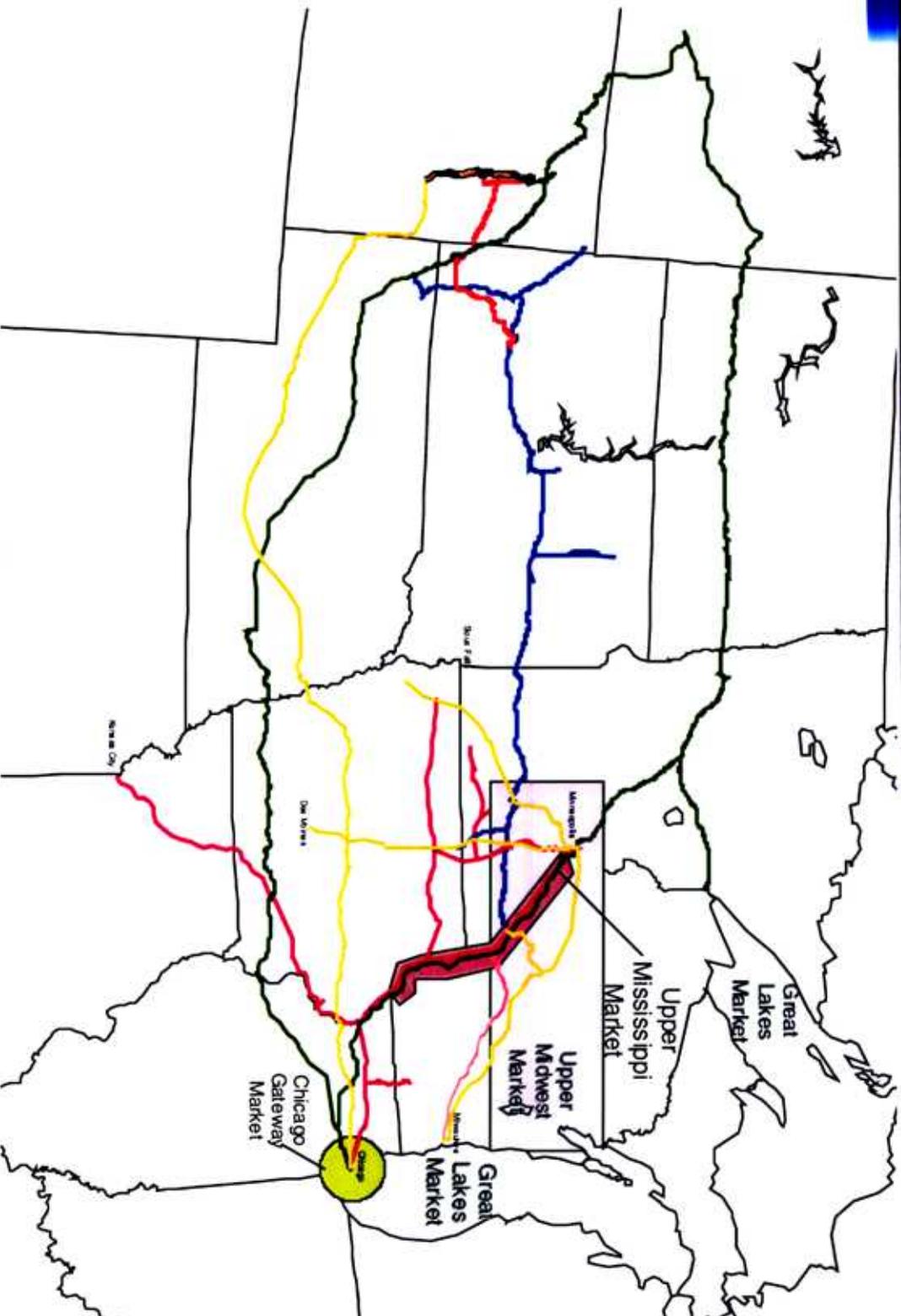
5. Provide the STB more resources to prosecute these cases. The STB staff is very competent and hard working, but hopelessly overworked. There are not reasonably sufficient resources, in our view, to process or even effectively manage the processing of significant projects.

More important than any of these statutory changes, the individual agencies' implementation of the existing law and its underlying policy could be more carefully scrutinized. Either Congress or the appropriate executive agency with the correct charge could more aggressively monitor implementation of the existing NEPA laws and regulations -- demanding accountability from participating agencies. That by itself would make a huge difference in the cases, and provide much needed encouragement to the investing community.

These are a few immediate steps that could be taken. From our standpoint, we have tried to be accountable and responsive to all involved. We welcome scrutiny, and expect to be held accountable. If this project is not in the public interest to be built, it should not be. But if it is, we should figure out a way to get through the process and get it built. This is a window of opportunity that cannot stay open indefinitely.



PRB Project Target Markets



DM&E



Dakota, Minnesota & Eastern Railroad Corp.

Expansion into the Powder River Basin

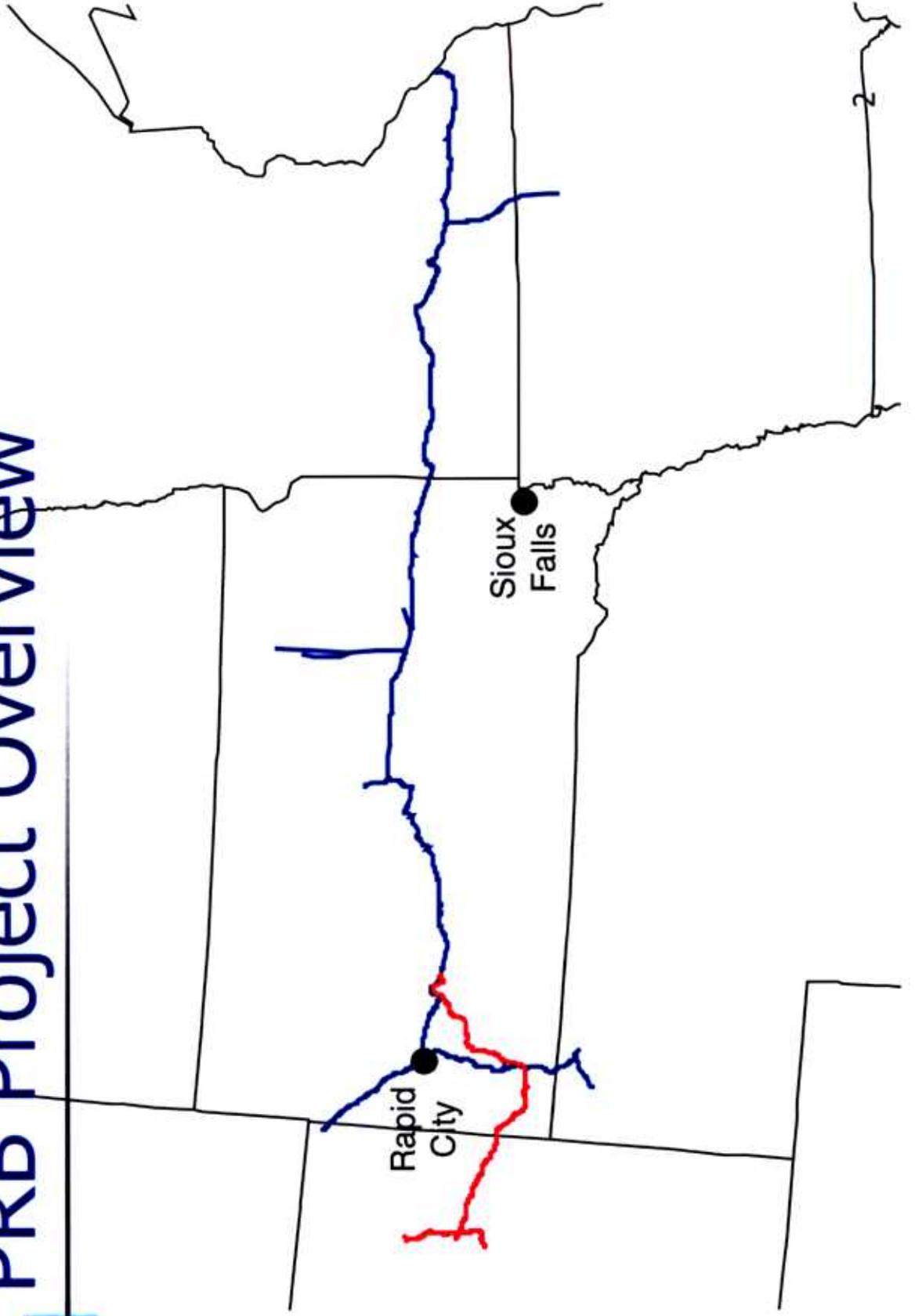
Eliminating Obstacles to Decision-Making

August 23, 2001

John Howard
CEQ



PRB Project Overview





Growth of Company

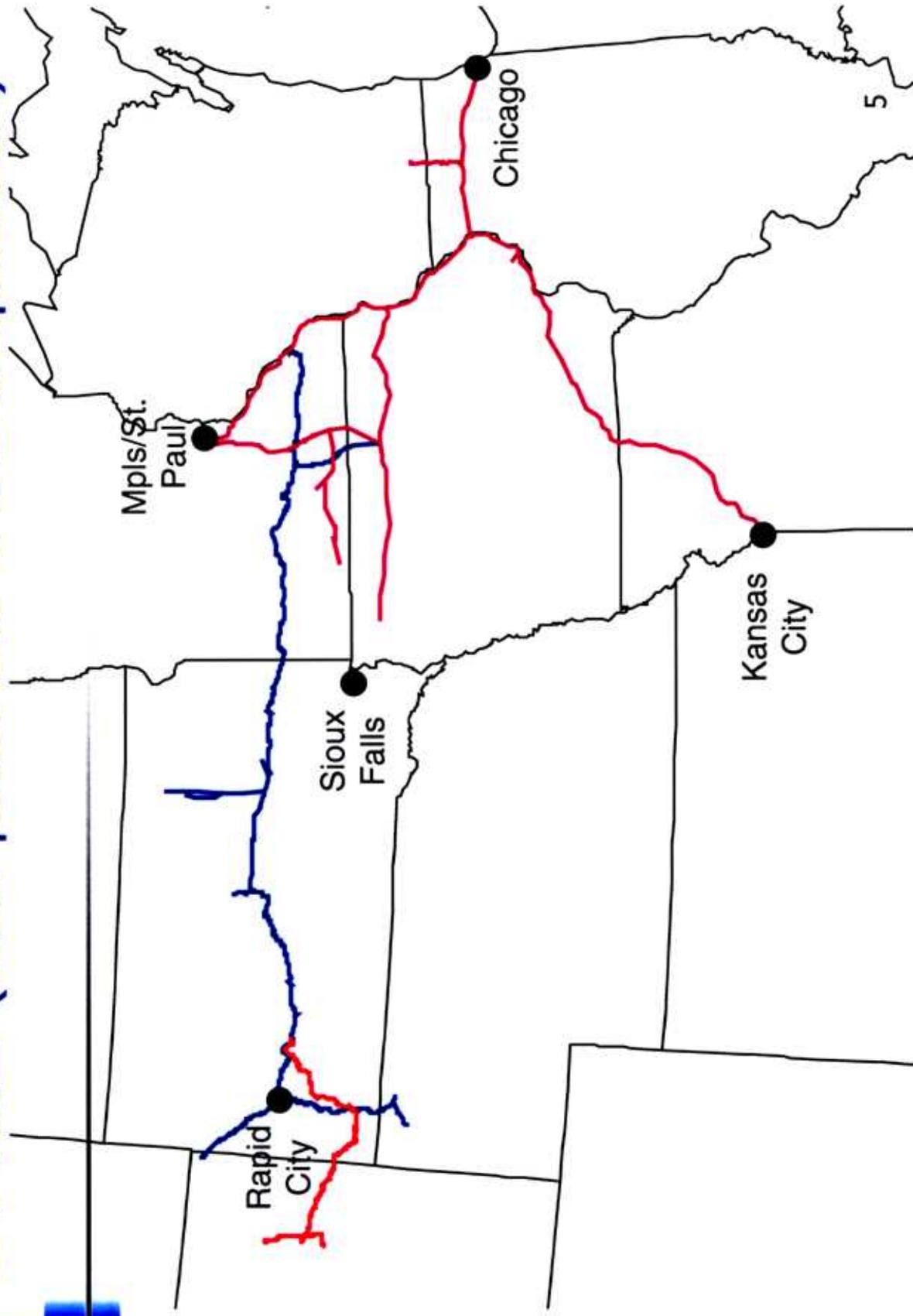
	Start-Up	Current
EMPLOYEES	<u>1986</u>	<u>2000</u>
LOCOMOTIVES	130	350
FREIGHT CARS	37	66
	0	3,500



DM&E History and Background

- Created in 1986
- Acquisition growth (1996 Colony Line)
- Future growth opportunities
 - Acquisitions (IMTL 2002?)
 - PRB

DM&E (with potential IMRL acquisition)





PRB Project Background

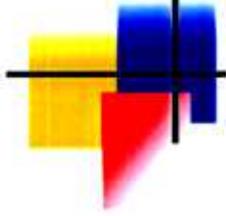
- Initiative from utility industry
- Project drivers
 - Clean Air Act
 - Energy industry deregulation
 - Service and capacity problems
 - Cost efficiencies



National Policy

The relevant portion of the National Energy Policy states:

“Demand for clean coal from Wyoming’s Powder River Basin is expected to increase because of environmental benefits. However, rail capacity problems in the Powder River Basin have created a bottleneck in the coal transportation system.” *National Energy Policy, Report of the National Energy Policy development Group, Chapter Seven, America’s Energy Infrastructure, p. 7-16, May 2001.*



PRB Project Benefits

National Energy Policy (PRB Coal Transport)

- Cleaner energy coal stock (environmental)
- Cheaper energy (coal and transportation/distance)
- Enhanced transportation delivery capacity and service

National Energy Policy (New Generation Plants and Transmission Lines)

- New generation opportunities
- Transmission line corridor opportunities (Chicago and West)



PRB Project Benefits cont.

Transportation, Safety and Economic

Development Benefits

- Save existing railroad
- Safety improvements
- New, non-coal economic development opportunities
- Agriculture, manufacturing
- New market access
- Highway infrastructure
- National rail network backup system



Regulatory History to date (\$40M spent; \$10M remaining)

- Pre-application consultation 1997
- Filed application February 20, 1998
- Draft EIS scoping published June 1998
- Final EIS scope published August 1999
- Draft EIS published October 2000
- Public comment period ended March 2001

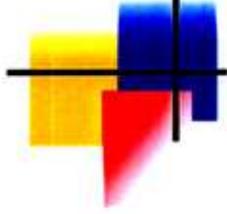
Remaining Regulatory Milestones

- Publication of Final EIS
- Individual Agency RoD's
 - Surface Transportation Board (authority to construct and operate rail line)
 - Corps of Engineers (CWA 404 permits, wetland & stream crossings)
 - US Forest Service (easement)
 - Bureau of Land Management (easement)
 - Bureau of Reclamation (easement)
 - US Coast Guard (bridging river)



Obstacles

- Big picture
 - Commitment to a schedule
 - Administration policy commitment
- Minutia
 - Standard delays and agency issues; none major
 - USFS (awaiting mitigation draft agreement)
 - ✳ ■ EPA (new alternatives, parochial water/air analysis)
 - NPS (local air analysis)
 - Corps of Engineers (multi-jurisdictional)
 - EPA and NPS only concerns today: all local NIMBY



Oustanding Issues

- Major work to be done
 - Wyoming Archeo & Paleo (timing/cost)
 - Minnesota Archeo & Paleo (scope)
 - Wetlands mitigation
 - Wyoming (minimal)
 - South Dakota (in lieu fee)
 - Minnesota (state issues, uncertain)



Solutions

- Policy Priority Communicated to relevant agencies
- Adopt a schedule
 - Certainty (contractor and financing commitments)
 - Contract letting process
 - Long lead time for material ordering
 - Construction logistics (workers & equipment)
- Administration monitoring/facilitation follow through

Proposed Schedule (Published in early September)

- October 20, 2001 – Publication of Final EIS
- November 20, 2001 – STB RoD
- November 30, 2001 – BLM RoD
- November 30, 2001 – BoR RoD
- November 30, 2001 – USFS RoD
- March 1, 2002 – USCG RoD
- April 20, 2002 – CoE RoD

(organize agency/applicant meeting to refine)