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March 6, 2001

Mr. Vernon A. Williams  
Office of the Secretary  
Case Control Unit  
STB Finance Docket No. 33407  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

**ENTERED  
Office of the Secretary**

**MAR -7 2001**

**Part of  
Public Record**



RE: STB Finance Docket No. 33407

Dear Secretary Williams:

DM&E's detailed comments relative to the DEIS are filed under the signature of our environmental counsel. This is to offer a few broad concerns about the DEIS and the EIS process going forward.

**1. National Perspective.** For the EIS to provide meaningful direction to the ultimate federal decision makers, a national perspective seems necessary. This is a project of national scope. That notion is lacking in the Draft EIS. The DEIS is driven in large part by local political concerns -- be they tied to a handful of individual communities or an individual agency's local portfolio. While these are legitimate issues that need to be addressed in the EIS, the forest should not be lost in the trees. There seems to be little attention to the broader environmental policy issues driving the project. This is not the kind of analysis that requires additional studies or detailed documentation. These are readily observable, common sense issues that are nevertheless fundamentally important to an understanding of the national and environmental implications of the Project.

Were it not for the Clean Air Act, for example, it is unlikely that this project would ever have been conceived. Were there not a compelling demand for cleaner, cheaper domestic energy alternatives, the project would not be built. Were it not for the very desperate state of our present DM&E rail infrastructure, shareholders probably would not have risked their entire investment in an attempt to develop it. Were there not a critical need for this line based on past and prospective rail service and infrastructure failures, and competitive market deficiencies, the existing customers (agricultural, energy utilities, and others) would not be as adamant as they are in demanding a new Class I carrier as envisioned by this project. These are all issues appropriate for consideration in the EIS, but they are not developed in the Draft. They should be. To do so does need not detract from determining whether more

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local concerns in the immediate project area are addressed adequately. But they should be developed sufficient for the decision makers to understand what the Project is really about.

It is about saving a critically important transportation option in the existing DM&E service region. More importantly, it is about transforming that relatively anemic, albeit important, line into a Class I transportation artery of national significance to agriculture and energy and other industries, and to positive economic development of many kinds. It is about providing critical new access to markets never before available. It is about providing cleaner air and facilitating compliance with the Clean Air Act amendments. It is about providing cheaper, cleaner domestic energy. And it is about meeting a critical service demand (notwithstanding notional comments in the DEIS suggesting that the service provided by this project is not necessary because two carriers already serve the PRB). There is a reason for the intense lobbying and filings from shippers in support of this project.

**2. Safety.** One hundred years ago the challenge to building a railroad was engineering and construction, and the federal government was pushing hard with subsidies, land grants, free construction material and other incentives for private industry to overcome those challenges. Today, for this project, the most significant challenge comes from the regulatory process. The challenge is not to demonstrate the overwhelming public benefits of the project. It is simply to get through the process to a final decision. We seek no subsidies or incentives; only permission to invest 1.5 billion dollars in the national rail infrastructure.

As detailed in our more extensive comment filing, there are critical safety issues confronting this railroad on a daily basis. It is impossible to adequately convey the sense of frustration upon seeing the condition of this line, knowing the solution is at hand, but being unable to implement it. We have had major accidents which could have been avoided if we simply had the federal government's permission. There are daily infrastructure failures and other challenges which inevitably will lead to other avoidable major accidents. The fact that there would likely be more fatalities if the same amount of traffic moved on this line today had to be moved by truck is of little consolation.

We recognize that there are safety challenges inherent in the project itself, which we fully recognize and are discussed in the DEIS. But it is hard to comprehend that any knowledgeable person will seriously challenge the proposition that safety will be greatly enhanced as a result of this project. Continued delay creates needless additional exposure. The FEIS should measure and recognize safety issues, with a finding of overall improved safety.

We are mindful of arguments presented by some suggesting that increased train traffic could delay emergency vehicle service, which is a point addressed in the DEIS. But the FEIS should also note and acknowledge that current delays on this line with trains moving as slow as 5 MPH creates far more serious delays, with total blockage times under either scenario demonstrating no significant difference in overall blockage in any 24 hour period. But the DEIS does not recognize the benefits of shortened delays. In situations where seconds count, the difference between a 2-minute maximum delay compared to a 20-minute delay needs to be considered in addition to overall daily blockage.

More importantly, the DEIS needs to recognize that the train traffic resulting from this project is not the result of artificial demand. The traffic will flow somewhere. Whether an ambulance is delayed

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in Rochester, MN on the DM&E line or in Lincoln, NE on the BNSF line, the potential for the patient affected is the same. And because almost all of the alternative routes affect a higher population base than DM&E's route, the overall exposure is reduced as a result of this project. The FEIS needs to recognize that common sense broader perspective.

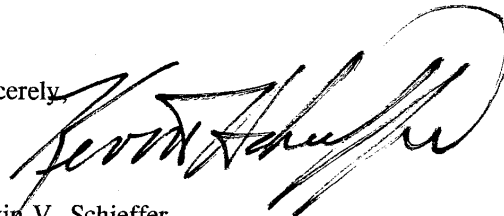
**3. Bypasses.** Other DM&E filings have exhausted this issue. For reasons detailed in those submissions, we strongly encourage STB to reject this flawed concept. To condition approval of this Project on building a bypass will have the same end result as project denial. If that is the intention, outright project denial would be preferable so we do not further jeopardize the existing operation in pursuit of an unattainable demand. In short, if the sentence is death, we prefer the firing squad to starvation.

We are mindful of the challenges presented by this project, and fully recognize that all the impacts cannot be fully mitigated. We have developed it in a responsible fashion, with extensive public outreach efforts which have resulted in agreements with and support from 51 of the 56 affected communities. The FEIS needs to reflect their support as well as the opposition from the handful of communities identified in the DEIS. The same is true of our landowner outreach program, and voluntary mitigation efforts with individual agencies. We are convinced that any reasonable analysis of the project's overwhelming local and national purpose and need compared to the relatively isolated local impacts will demonstrate, however, that on balance it is a project of overwhelming public benefit. If it is not, it should not be approved. If it is, it needs to be approved without further delay or it will be an opportunity lost.

Up to this point, the STB has rejected requests for an EIS completion schedule, based largely on the uncertainty of issues to be raised in the public comment process. Now that the public comment is completed, and the issues defined, we hope the STB will establish a schedule so that all affected parties will know when this process will come to closure so that we can all get on with planning our lives. We are hopeful that such schedule will allow for sufficient advanced lead time so that another construction season is not lost. On behalf of our employees, our shippers, and the vast majority of the communities we serve which are supporting this project, we urge your prompt completion of this process.

Thank you for your consideration.

Sincerely,



Kevin V. Schieffer  
President and Chief Executive Officer

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Enclosures - original letter and 10 copies