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LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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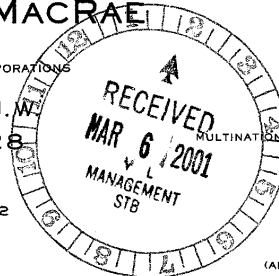
1875 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20009-5728

(202) 986-8000

TELEX: 440274 FACSIMILE: (202) 986-8102

WRITER'S DIRECT DIAL:
202-986-8050

E-MAIL ADDRESS: MFMCBRID@LLGM.COM



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March 6, 2001

VIA HAND DELIVERY

Office of the Secretary
Case Control Unit
Attention: Victoria Rutson
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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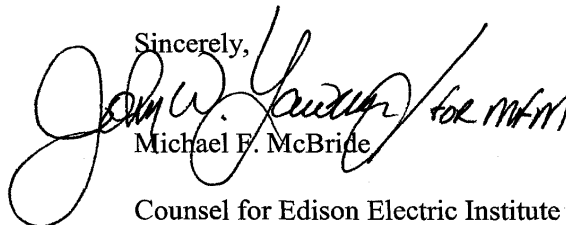
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RE: Comments of Edison Electric Institute on the Draft Environmental Impact Statement for the Dakota, Minnesota & Eastern Railroad Corporation Construction into the Power River Basin, STB Finance Docket No. 33407

Dear Secretary:

As counsel for Edison Electric Institute, we hereby submit final comments on the Draft Environmental Impact Statement served on all parties on September 27, 2000 (notice of availability published at 65 Fed. Reg. 58,146), concerning the application filed before the Surface Transportation Board by Dakota, Minnesota & Eastern Railroad Corporation regarding the proposed Powder River Basin Expansion Project. On December 22, 2000 (65 Fed. Reg. 80,987), the Board extended the public comment period an additional 60 days until March 6, 2001.

Sincerely,


Michael F. McBride

Enclosure

Counsel for Edison Electric Institute

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Office of the Secretary

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33407

ORIGINAL

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



**COMMENTS OF EDISON ELECTRIC INSTITUTE
ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Michael F. McBride
John W. Lawrence
Uta Melzer
LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.
1875 Connecticut Avenue, Suite 1200
Washington, D.C. 20009-5728
(202) 986-8000

Attorneys for Edison Electric Institute

Due Date: March 6, 2001
Dated: March 6, 2001

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33407

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

**COMMENTS OF EDISON ELECTRIC INSTITUTE
ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT**

As counsel for Edison Electric Institute ("EEI"), we hereby submit final comments¹ on the Draft Environmental Impact Statement ("DEIS") served on all parties on September 27, 2000,² concerning the application filed before the Surface Transportation Board ("STB" or "Board") by Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") regarding the proposed Powder River Basin Expansion Project (the "PRB Expansion Project" or "Project"). On December 22, 2000, the Board extended the public comment period an additional 60 days until March 6, 2001.³

INTRODUCTION

EEI is a strong supporter of the Project because many of its members may become customers of DM&E for transportation of PRB coal if the Project is brought to fruition. Accordingly, the purpose of these final comments is to advocate the Project's

¹ EEI previously submitted preliminary comments by letter from the undersigned counsel dated November 13, 2000. EEI hereby incorporates by reference those preliminary comments.

² A notice of availability of the DEIS was also published in the *Federal Register*. See 65 Fed. Reg. 58,146 (Sept. 27, 2000).

³ See 65 Fed. Reg. 80,987 (Dec. 22, 2000).

benefits, which currently are addressed only in the "no action alternative" section of the DEIS.⁴ As an initial matter, however, these comments also address a legal issue regarding the scope of the Board's jurisdictional authority to require any mitigative measures (*e.g.*, bypasses) with regard to DM&E's existing rail line.

LEGAL ISSUE

The DEIS Executive Summary at ES-48 admits that "[r]ailroads are not required to seek the Board's authority to rehabilitate or improve their existing systems." The courts have also concluded that the Board lacks authority over track rehabilitation. *See Lee's Summit, Missouri v. STB*, 231 F.3d 39, 42, n.3 (D.C. Cir. 2000) ("Improvement of existing track does not constitute 'construction,' and does not even trigger Board jurisdiction"); *accord, City of Auburn v. U.S. Government*, 154 F.3d 1025 (9th Cir. 1998). Accordingly, the Board lacks statutory authority to require bypasses in any location along the PRB Expansion Project where DM&E has not sought line-construction authority from the Board.⁵

Nevertheless, the Board prepared the DEIS for the entire PRB Expansion Project. In several places the Board notes that it is considering requiring new rail

⁴ EEI's preliminary comments were filed to call the Board's and the parties' attention to this oversight so as to provide the Board and Project supporters the maximum amount of time possible to address Project benefits and so that no party could claim lack of notice of EEI's position on this matter.

⁵ EEI does not dispute that the Board clearly has authority over the construction of the new line proposed by DM&E in western South Dakota and eastern Wyoming. EEI also does not dispute that the Board has authority over any request by DM&E for authority to construct any other new line or line segment outside of DM&E's existing right-of-way, such as in Mankato, Minnesota.

construction of bypasses in order to mitigate⁶ perceived environmental impacts of the rehabilitation of the existing DM&E line as a condition of approval of the Project. *See, e.g.*, DEIS Sections 6.2 and 7.1. EEI vigorously contends that the STB lacks authority to adopt a condition on its approval of the PRB Expansion Project that would assert any obligation on the part of DM&E to construct bypasses or other alterations of the existing line for which approval from the Board has not been requested by DM&E.

The statutory driver for preparing the DEIS, *i.e.*, Section 102(2)(c) of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4332(2)(c), does not change this conclusion. Courts have consistently held that NEPA obligations do not enlarge an agency's authority under its organic statute. *See, e.g., NRDC v. EPA*, 859 F.2d 156, 159 (D.C. Cir. 1988); *NRDC v. EPA*, 822 F.2d 104, 129 (D.C. Cir. 1987); *Cape May Greene, Inc. v. Warren*, 698 F.2d 179, 188-89 (3d Cir. 1983). Rather, the courts have held that NEPA merely requires the agency to consider the environmental impacts of a proposed major federal action in deciding whether to approve it, and that any authority to impose conditions on its approval must depend on the agency's substantive authority found in statutes other than NEPA. *Id.* Therefore, if the Board were to require a bypass along DM&E's existing route, it would need statutory authority other than NEPA to require that.

⁶ Although the DEIS analysis of bypasses refers to them as "alternatives," it is unclear whether the proposed bypasses are actually "mitigation" or a separate action. But in this case, there is no proposed action to which bypasses would be an alternative. DM&E's rehabilitation of its existing line is not, from a jurisdictional standpoint, a "proposed action" over which the Board has any authority.

Agencies, of course, have only such authority as Congress gives them. *See, e.g., American Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995), *citing Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). To be sure, the Board has authority under 49 U.S.C. § 10901(c) to adopt conditions to "a certificate authorizing activities for which such authority is requested," but as to routing that can only mean conditions with respect to the activity over which the Board has authority, or the statutory language would have no meaning. Here, that statutory authority means that the Board clearly has authority to adopt routing conditions with respect to the new line DM&E proposes to build into the PRB, or in Mankato, Minnesota. However, the Board cannot adopt routing conditions with respect to the rehabilitation of the existing line over which it concedes it lack authority. *See, e.g., NRDC v. EPA*, 822 F.2d at 130. *Accord, Altamont Gas Transmission Co. v. FERC*, 92 F.3d 1239 (D.C. Cir. 1996) (undisputed authority to certificate an interstate gas pipeline project did not give the responsible agency authority over intrastate rate-making matters not entrusted to it).⁷

The Board's Section of Environmental Analysis ("SEA") has already acknowledged that the scope of the PRB Expansion Project does not include the various bypasses proposed by other parties. *See* DEIS Executive Summary at ES-54 ("SEA noted that 'a circuitous route that bypasses numerous communities could add so many additional miles that it would be unlikely to allow [DM&E] to achieve its goal of

⁷ Also, under 49 U.S.C. § 10901, the Board lacks *sua sponte* authority to require line construction. Since a permit requires an applicant, and since there is no applicant before the Board as to bypasses, it follows that there can be no "proposed action" for which alternatives need be considered.

providing efficient transportation"). The Board certainly was not required to consider such bypasses, and certainly lacks the authority to require them. *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir. 1991) (where a project is defined by the applicant, the federal agency need not consider alternatives not within the Project's purposes as defined by the applicant). Here, DM&E has not applied for line construction authority in the areas where bypasses have been proposed and, therefore, those proposed bypasses are not reasonably related to the Project for which DM&E has sought line construction authority.

Even assuming *arguendo* that the Board claims authority to adopt bypass conditions, such conditions would have a chilling effect on competition. If the STB requires such unprecedented, extraordinary mitigation in areas hundreds of miles from the proposed action, such new precedent would create so much uncertainty as to chill any future initiatives to build new rail capacity. In any event, bypass routes must be alternatives to what the applicant has proposed under 49 U.S.C. § 10901, and here DM&E has not applied for line construction authority in areas where bypasses have been proposed. Moreover, under the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, even if DM&E were required to build a bypass, DM&E could not be prevented from operating over its existing line. For all these reasons, EEI believes that it would be unwise public policy for the STB to adopt bypass conditions.

Notwithstanding these jurisdictional concerns, EEI commends the Board for attempting to evaluate all of the environmental impacts of the PRB Expansion

Project, including possible bypasses, especially if there is any possibility that such a bypass may be agreed to by DM&E and other parties. Federal agencies are certainly encouraged to consider all reasonably possible effects of the environment of the proposed action, including alternatives logically within its scope. EEI's purpose in raising this jurisdiction issue, however, is simply to ensure that the parties and the Board do not misunderstand the limits on the Board's statutory authority.

PROJECT BENEFITS

NEPA requires an evaluation of not only the harms, or adverse effects, of a particular proposed action, but also requires an evaluation of the benefits of the Project so that its overall costs and benefits may be evaluated. *See City of Des Plaines v. The Metropolitan Sanitary District of Chicago*, 552 F.2d 736, 737 (7th Cir. 1977); *Sierra Club v. Froehlke*, 534 F.2d 1289, 1299 (8th Cir. 1976); *NRDC v. TVA*, 502 F.2d 852, 853 (6th Cir. 1974); *NRDC v. Morton*, 458 F.2d 827, 833 (D.C. Cir. 1972).

Unfortunately, the DEIS is lacking a section specifically devoted to the benefits of the PRB Expansion Project. To be sure, there is, in the "no action alternative" section, a brief description of the benefits of the proposed PRB Expansion Project, thus putting parties on notice of those benefits. However, the description is brief and is found only in a section that could be overlooked by commenting parties or the public.

Accordingly, EEI urges the Board to include a new section in the Final Environmental Impact Statement ("FEIS") setting forth in detail the Project's benefits, including but not necessarily limited to those benefits highlighted in the "no action

alternative" section. To assist in that regard, EEI has prepared a proposed textual insert that could be used by the Board to present such information in the FEIS. The proposed textual insert is attached to these comments, and incorporated herein. The following summary addresses the major benefits of the Project based on information available to EEI.

Safe and Reliable Rail Service. All parties recognize that the existing state of DM&E's rail line is in need of improvement. Currently, however, DM&E has limited capital funds and lacks a sufficient revenue base to make meaningful improvements. Consequently, service to existing customers and the ability to attract new business is hindered, which serves to further exacerbate the problems. On the other hand, if the PRB Expansion Project were approved the infusion of additional capital would address and improve long-standing safety and service reliability problems associated with those lines. Thus, the approval of the Project presents many real and tangible benefits to DM&E's existing rail line that would not otherwise exist.

For example, if the PRB Expansion Project were approved, DM&E plans on replacing the entirety of its rail line, replacing all ties and ballast, replacing all timber bridges and steel bridges, and repairing and reinforcing through-plate girder bridges. In addition, approximately 20 percent of its existing rail bed subgrade would be improved, 35 to 45 new sidings would be constructed, 5 new rail yards would be added, and existing rail yards would be upgraded. Furthermore, DM&E plans on implementing major enhancements to its grade crossings and road crossings and implementing other

right-of-way improvements. DM&E also would purchase new locomotive engines, install a new state-of-the-art signaling system (including use of a global positioning system) for train control, construct a new state-of-the-art locomotive and rail car maintenance and repair facility, and implement a new track maintenance program.

Further National Energy Policies. Two national energy policies, as well as a broad market increase in overall consumer demand for electrical energy, are prompting the utility industry to seek out for use low-sulfur, cheap coal -- the kind to be supplied by DM&E from the PRB. Those two national energy policies -- deregulation of the electric industry and further reductions in sulfur dioxide emissions -- will be satisfied if the PRB Expansion Project is approved.

With regard to deregulation, there is currently an increased emphasis by energy producers on finding lower cost sources of energy. Fuel costs are a significant portion of the overall cost of electric generation, and transportation charges to move coal often outweigh the cost of the coal itself, especially from the PRB. Thus, by converting to low-cost coal from the PRB and reducing the associated transportation charges, power generators can save on expenses and in turn pass those savings onto the consuming public. Because the PRB Expansion Project will not only increase access to coal that is 40 percent cheaper than other western sources, and 75 percent cheaper than eastern coal, but also reduce the associated transportation costs by 20 to 30 percent, the Project if approved offers power generators a way to better compete in a deregulated environment.

With regard to the environment, PRB coal has an estimated sulfur emission rate approximately 53 percent lower than coal mined in the eastern United States. Since demand for PRB coal is expected to increase if the Project is approved, EEI estimates that PRB coal will displace 87 million tons of bituminous coal by 2010 and thus reduce sulfur dioxide emissions by approximately 420,000 tons per year through 2010. In addition, because DM&E plans to purchase and use new diesel locomotives from General Electric as part of the Project, there will be an associated annual emissions avoidance which is estimated to amount to 292,000 tonnes (metric) of hydrocarbons, 780,000 tonnes (metric) carbon monoxide, 6,871,000 tonnes (metric) of nitrous oxides, and 182,000 tonnes (metric) particulate matter. These reductions in emissions, and in particular the reduction in sulfur dioxide emissions ensures continued compliance with the Phase II mandates of the Clean Air Act Amendments of 1990.

Satisfaction of Increased Demand for Energy. Consumption of energy in the United States has increased steadily over the past several years, and is expected to continue to increase for the foreseeable future. Chief among the varied fuel sources supplying that growth is coal, and the State of Wyoming, with its extensive deposits of low-cost, low-sulfur coal is the nation's leading coal-producing state, supplying 25 percent of the demand in the United States. The mines in the PRB to which DM&E would connect are capable of providing continued supply of such coal over the next 20 years. If approved, the PRB Expansion Project will continue to ensure that the nation has a proper diversification of energy sources. In addition, given the current high costs

of natural gas, and recognizing that the price of oil is vulnerable to political instabilities around the world, there is an inherent beneficial value to affording increased access to this nation's existing supply of low-cost, low-sulfur PRB coal. Thus, approving the PRB Expansion Project will satisfy the nation's increased demand for energy while maintaining important national priorities and thus generally benefitting the public interest.

Increase Transportation Capabilities. There may now be enough rail capacity in the PRB to handle existing mine output, but that output is expected to increase with increased demand over the foreseeable future and as a result the increased output may create capacity shortfalls as have occurred previously. In addition, despite continued capital spending, existing rail carriers serving the PRB have consistently failed to meet guaranteed cycle times (*i.e.*, the time required to deliver the coal to the user and return the rail car to the mine for reloading), and as a result there is now ongoing litigation regarding those failures. DM&E's proposal for additional rail capacity through creation of a third PRB carrier would mitigate the impacts of both rail capacity shortages and rail service failures, and should address shortages of rail resources during regional catastrophes (*e.g.*, floods and snowstorms) that have halted rail traffic during periods of critical need or during market peaks.

Currently two railroads (Union Pacific Railroad Company and Burlington Northern and Santa Fe Railway Company) service the PRB. However, most of their customers have only a single carrier access to such coal because only one carrier may

serve a particular geographic market or may offer a route or because only one carrier offers a route direct enough to be economically competitive. In addition, both carriers are capacity-constrained over much of their existing system, including that portion serving the PRB. The addition of DM&E as an alternate carrier for PRB coal will foster competition, drive down transportation prices (and thus reduce total fuel costs), increase customer value, and ultimately benefit the consuming public.

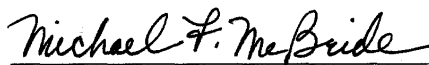
Public Interest, Demand, and Need. The Board has already recognized in this docket that there is strong public demand for the PRB Expansion Project. In addition, strong support has been expressed for the Project by seven individual electricity providers,⁸ who collectively purchase and transport by rail well over 100 million tons of coal annually, most of which is from PRB mines. In addition, 90 percent of DM&E's current shippers have voiced their support for the Project, and none has voiced any opposition. Moreover, due to the condition of the existing DM&E rail line and the size of its current annual revenue stream, if the PRB Expansion Project were not approved there exists the very real likelihood that DM&E could cease to exist as a viable railroad, which would create a detrimental impact on DM&E's existing customers. Therefore, public convenience and necessity weigh strongly in favor of the approval of the Project.

⁸ Those individual providers are Commonwealth Edison Company ("ComEd"), Dairyland Power Cooperative, Kansas City Power & Light Company, Lower Colorado River Authority, Minnesota Power, Northern States Power, and Wisconsin Public Service Corporation. *See* STB Decision dated December 9, 1998, App. A at A-41. Some of these companies now have new names. ComEd's fossil-fueled plants have been sold to other power generators.

CONCLUSION

Based on the foregoing, EEI urges the Board to refrain from conditioning the DM&E Expansion Project to include various bypass routes or other mitigation measures over the existing portion of DM&E's rail line. In addition, EEI urges the Board to expand the DEIS for the Project by including a new chapter (similar to that contained in the attached draft) on the Project's benefits. Finally, EEI requests the Board to approve the DM&E Expansion Project on a timely basis.

Respectfully submitted,



Michael F. McBride

John W. Lawrence

Uta Melzer

LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.

1875 Connecticut Avenue, Suite 1200

Washington, D.C. 20009-5728

(202) 986-8000

Attorneys for Edison Electric Institute

Due Date: March 6, 2001

Dated: March 6, 2001

**CHAPTER X
PROJECT'S BENEFITS**

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CHAPTER X PROJECT'S BENEFITS

X.1 SAFE AND RELIABLE RAIL SERVICE

X.1.1 Existing State of DM&E's Rail Line is in Need of Improvement

According to DM&E, long-standing safety and service reliability problems associated with the existing state of DM&E's rail lines would be addressed and rectified if the Powder River Basin ("PRB") Expansion Project were approved. As discussed below, based upon its review of those problems as well as its understanding of the Project, the Board agrees with DM&E.

Although its safety record has seen some improvements over the past several years, DM&E's accident rate is still among the highest in the rail industry. *See* Tables 1-1 through 1-3. Currently DM&E's rail line averages two to three major derailments and over a dozen smaller derailments each month. This situation is caused, in large part, by the current poor condition of most of DM&E's track. For example, two-thirds of DM&E rail ties need to be replaced, much of the steel track is fatigued and consists of varying weights, sizes, and ages, and some of the track was rolled over 100 years ago. In some track locations the speed of the trains is limited to no more than 5 mph, and the weight of the cars (263,000 pounds) is limited to approximately 92 percent of the current industry standard (286,000 pounds) and 84 percent of the new industry standard (315,000 pounds). In addition, of the approximately 1300 grade crossings on DM&E track, only 19 currently have gates and lights and there is virtually no right-of-way protection such as fencing for pedestrian traffic.

Unfortunately, without the PRB Expansion Project DM&E lacks a sufficient revenue base to make meaningful improvements to its current system. Currently DM&E expends its limited capital on only those most critical problems while deferring other worthwhile projects unless and until they jeopardize continued safe operation. DM&E recognizes that such an approach is both inefficient and costly, and that continued derailments are detrimental to the economic viability of the entire railroad itself. For example, without adequate funds to make necessary improvements, service to existing customers as well as DM&E's ability to attract new business from both existing and potentially new shippers is reduced, which in turn limits income and thus further exacerbates the problems.

The Board concurs, and has determined that absent the infusion of capital funds associated with the PRB Expansion Project, there is a very real likelihood that DM&E could cease to exist as a viable railroad. Such a turn of events would cause a significant adverse impact on existing customers that wholly rely upon DM&E for needed rail service to transport grain and other agricultural products.

X.1.2 Beneficial Value of the Proposed Improvements

DM&E believes, and the Board agrees, that existing and projected future demand for cleaner burning, low-sulfur coal available from mines in Wyoming's Powder River Basin provides an opportunity for DM&E to increase its revenue base and to obtain necessary capital funds to rebuild its existing rail system (in addition to building a new rail line into the PRB). Such rebuilding would provide DM&E's existing shippers with improved service, increased safety, greater efficiency, and the potential to expand

markets nationwide. In addition, such rebuilding could potentially lead to increased agricultural revenues and a stronger agricultural economy in the region.

The following examples detail several of the more significant improvements to the existing DM&E rail line that would be implemented as a result of the PRB

Expansion Project:

- (1) the entirety of the rail line would be replaced with 136-pound, continuously welded rail, and all ties and ballast would be replaced;
- (2) all timber bridges and steel bridges would be replaced, and through-plate girder bridges would be repaired and reinforced;
- (3) approximately 20 percent (120 miles) of existing rail bed subgrade would be improved;
- (4) 35 to 45 new sidings would be constructed with 115-pound, continuously welded rail, and many of the existing sidings would be upgraded;
- (5) 5 new rail yards would be constructed and existing yards would be upgraded;
- (6) major enhancements to grade crossings, road crossings, and other right-of-ways would be implemented (using, for example, protective devices, fencing, and cattle guards) throughout the existing rail line;
- (7) a state-of-the-art locomotive and rail car maintenance and repair facility would be constructed, and a new track maintenance program would be implemented; and
- (8) a state-of-the-art signaling system would be installed for train control, including use of a global positioning system with full implementation of communication based train control.

The Board is of the opinion that each of these improvements to DM&E's existing rail line will improve overall safety and reliable, but without approval of the PRB Expansion Project, the Board concludes that none of these improvements would be implemented. Accordingly, the Board has determined that approving the PRB Expansion

Project would result in significant positive benefits for DM&E's existing rail system, and as a result, existing shippers that use the system would also benefit.

X.2 FURTHER NATIONAL ENERGY POLICIES

In the current electric utility regulatory environment, two national energy policies, as well as a broad market increase in overall consumer demand for electrical energy, are prompting the utility industry to seek out for use low-sulfur, cheap coal. One of these national policies is deregulation of the electric utility industry. The other policy is continued compliance with federal environmental laws through further reductions in sulfur dioxide emissions. Because low-sulfur, cheap coal is available from mines located in the Powder River Basin, and proposed to be served by DM&E, the Board agrees, as discussed below, that if the PRB Expansion Project were approved additional positive benefits would result in that these two national energy policies would be met.

X.2.1 Changing Regulation of the Electric Utility Industry

Today, the United States electric utility industry is in the midst of changes in regulation (on national, regional, and state levels), driven by a series of state and national policies, including most notably the federal Energy Policy Act of 1992. This deregulation initiative is designed to lower energy costs for the consumer. Accordingly, there is an increased emphasis by energy producers to find lower cost sources of energy. In addition, utility deregulation fosters competition for electrical customers in areas formerly served by only one utility. Such competition is expected to be primarily in the area of lower electricity prices relative to other utilities offering similar service. In order to compete and remain viable in such a marketplace, utilities will likely need to lower

their energy generation, transmission, and distribution costs. Since fuel costs are a significant portion of the overall cost of electric generation, reducing fuel costs, either for the coal itself or for its associated transportation, or both, would enable utilities to substantially lower their costs for electrical generation. Such savings could then be passed on to the consumer. FERC has estimated that savings could amount to between \$3.5 and \$5 billion annually. *See* Section 1.3.2.

As deregulation progresses, those utilities most successful in lowering energy generation and delivery costs, and then passing those savings on to the consumer, will likely be the most successful. Converting to low-cost, low-sulfur coal from the PRB will enable utilities to reduce their fuel costs. But since the current transportation charge to move the PRB coal typically outweighs its cost (and at times is as much as 80 percent or more of the total delivered cost), any steps that can be taken to reduce the transportation component of the total fuel bill are vital to the success of PRB coal in a competitive generation market. Accordingly, allowing for increased and faster access to such fuel through the expansion proposed by DM&E would enable utilities to reduce their transportation costs, which translates into lower costs for electrical generation and the consuming public. For example, DM&E contends that if utilities and other power generators were able to utilize its new rail service to the PRB, there would be a 20 to 30 percent reduction in the mileage component of the fuel transportation cost. *See* Section 1.3.2.

X.2.2 Continued Compliance with the Clean Air Act Amendments of 1990

DM&E maintains that increasing utility access to low-sulfur coal (available from mines located in the Powder River Basin) would facilitate further reductions in sulfur dioxide emissions from utility coal-fired power plants, which is mandated under Phase II of the Clean Air Act Amendments of 1990 ("CAAA"). These requirements dictate a phased-in overall reduction in sulfur dioxide emissions from coal-fired electric plants. Sulfur dioxide is a common pollutant emitted when sulfur-containing fossil fuel, most notably coal, is burned, and is a key contributor to acid rain formation.

The first phase of the CAAA has already been implemented principally via the installation of scrubbers (*i.e.*, devices designed to remove sulfur dioxide from plant emissions) or through switching to low-sulfur coal, or from a combination of both. The use of low-sulfur fuels has provided the utility industry with a cost effective means of reducing sulfur dioxide emissions so as to comply with the CAAA. Specifically, unlike the high cost of designing and installing scrubbers (as well as their ongoing operation and maintenance costs and associated disposal costs), switching to low-sulfur fuels typically requires only minimal modifications to the plant facilities.

Under the next phase of the CAAA, which took effect in calendar year 2000, there are now mandated more stringent sulfur dioxide and other air quality requirements. Increased utilization of low-sulfur coal again provides the most cost effective way for many utilities to come into compliance with these new requirements. The low-sulfur coal from PRB mines has an estimated sulfur emission rate approximately 53 percent lower than coal mined in the eastern portion of the United States. In addition,

coal originating from the PRB mines is approximately 40 percent cheaper than other western coal sources and approximately 75 percent cheaper than coal mined in the eastern portion of the United States.

The Edison Electric Institute ("EEI")¹ has provided the Board with projections in the reduction of sulfur dioxide emissions that would result from use of low-sulfur content coal from the PRB mines (in lieu of high-sulfur content bituminous coal) if the PRB Expansion Project were to be approved. Specifically, EEI estimates that PRB coal demand within DM&E's market area is conservatively expected to increase (from 1999 levels) by at least 113 million tons to approximately 250 million tons by the year 2010, of which 87 million tons of the increase can be attributed solely to the displacement of bituminous coal (the remaining increase would be attributed to an increased utilization by plants (in light of average annual growth rates) that already use PRB coal). Using conservatively estimated values for the average Btu content and the amount of sulfur dioxide per million Btu in PRB coal versus bituminous coal, EEI has calculated that sulfur dioxide emissions will be reduced by approximately 420,000 tons per year between 1999 and 2010 due to the increase usage of PRB coal as opposed to bituminous coal. *See* Comments of EEI dated March 6, 2001.

As another part of the PRB Expansion Project, DM&E will purchase new diesel locomotives from General Electric ("GE") and operate them to transfer the coal from the mines in Wyoming to the eastern-most point of its rail system. From

¹ EEI is the association of investor-owned electric utilities whose members generate approximately 75 percent of the electricity produced in the United States.

information provided by GE (through comments filed by EEL), these new locomotives benefit the environment by using less diesel fuel than DM&E's existing locomotives. Specifically, GE has estimated that over 42 million gallons of diesel fuel will be saved each year as a result of use of their new locomotives, which can then be converted into the following estimated annual emissions avoidance (listed in metric tons):

HC	292,000 mt
CO	780,000 mt
NO _x	6,871,000 mt
PM	182,000 mt

X.2.3 Board's Conclusions

The Board concurs with DM&E that the environmental benefits associated with using low-sulfur PRB coal as compared to use of other coal available within the United States, as well as its lower cost, have increased the demand for PRB coal. The Board further finds that such demand would be satisfied as a result of the approval of DM&E's PRB Expansion Project, which were also serve to benefit the electric utility industry in meeting its requirements under the CAAA. Although the Board has not yet confirmed the quantitative extent to which sulfur dioxide emissions will be reduced as a result of additional reliance on PRB coal, or the emissions avoidance estimate associated with DM&E's use of new GE locomotives, the Board accepts the assertions presented to

it that such reductions will occur, and qualitatively agrees that such reductions will be significant.²

Accordingly, the Board has determined that approving the PRB Expansion Project would result in significant positive benefits because it would further support existing national energy policies associated with deregulation and CAAA compliance.

X.3 SATISFACTION OF INCREASED DEMAND FOR ENERGY

Consumption of energy in the United States has increased steadily over the past several years, and is expected to continue to increase for the foreseeable future. *See* Table 1-5. Chief among the varied fuel sources supplying such energy growth is coal. And the State of Wyoming, with its extensive deposits of low-cost, low-sulfur coal is the nations leading coal-producing state, supplying approximately 25 percent of the demand in the United States. The mines to which DM&E's PRB Expansion Project would connect are not only capable of providing continued supply of such coal, but at the current rate of extraction sufficient reserves exist to ensure the viability of most mines for anywhere between the next 7 and 16 years, and for the largest mine for over 20 years. *See* Table 1-4.

The Board appreciates the fact that the PRB Expansion Project will continue to ensure this nation properly diversifies its mix of energy sources. Given the

² EEI's estimate of 250 million tons as the demand figure for PRB coal demand within DM&E's market area in 2010 is consistent with the Board's prior finding of between 250 and 272 million tons. *See* Board's Decision of December 9, 1998, App. A at A63-A64. Because the Board has also previously concluded "that DM&E would be a real market presence," estimating its penetration at about 100 million tons in 2007, *id.* at A75, it appears reasonable for the Board to now conclude that approximately 40 percent of the reduction in sulfur dioxide emissions could likely be attributed to the PRB Expansion Project.

relatively high cost of natural gas, and recognizing that the price of oil is vulnerable to political instabilities throughout the world, there is inherent value in affording increase access to this nation's existing supply of low-cost coal. And at the same time, the sulfur content in PRB coal is sufficiently low so as to ensure its use complies with the CAAA. Thus, approving the PRB Expansion Project will satisfy the nation's increased demand for energy while maintain important national priorities and thus generally benefitting the public interest.

X.4 INCREASE TRANSPORTATION CAPABILITIES

X.4.1 Provide for Increase in Rail Capacity

Coal currently accounts for approximately 35 to 40 percent of the total rail commodity traffic in the United States, and thus the rail companies largest supplier is the coal mine operator. While there may now be enough rail capacity in the PRB to handle existing mine output, that output is expected to increase with increased demand over the foreseeable future (*supra*), and thus rail capacity shortfalls may be created similar to those that have occurred previously. Furthermore, despite continued capital spending, existing PRB coal carriers have consistently failed to meet guaranteed cycle times (*i.e.*, the time required to deliver the coal to the user and return the rail car to the mine for reloading), and as a result there is no ongoing litigation regarding such failures.

Rail capacity shortages and service failures have ripple effects on rail transportation throughout the country, effecting both coal and non-coal customers. DM&E's proposal for additional rail capacity through creation of a third PRB carrier would mitigate the impacts of both rail capacity shortages and rail service failures, and

should address shortages of rail resources during regional catastrophes, such as floods or snowstorms, which have halted rail traffic during periods of critical need or during market peaks.

The Board agrees with DM&E that its PRB Expansion Project will provide for an increase in rail capacity by offering a new, more direct route for movement of coal from the Wyoming PRB to the Upper Midwest, the Mississippi River and Ohio River valleys, and the Great Lakes system. A shorter distance would benefit utility operations by requiring fewer cars to achieve the same delivery of coal as well as other efficiencies such as fewer locomotives for the railroad.

X.4.2 Provide for Increase in Rail Competition

At present only two railroads -- Union Pacific Railroad Company ("UP") and Burlington Northern and Santa Fe Railway Company ("BNSF") -- offer service to the PRB. These railroads, either directly or through connections with other railroads, transport PRB low-sulfur coal to electric utility customers in the United States. However, most customers have only a single carrier access to such coal because: (i) only one carrier serves a particular geographic market, or (ii) only one carrier offers a route direct enough to be economically competitive. For example, as a practical matter, only BNSF reaches the Great Lakes market because of the substantial additional mileage UP must transport coal, thus making it economically uncompetitive for UP in that market. Further exacerbating the problem, both UP and BNSF are capacity-constrained over much of their existing system, including that portion serving the PRB.

Generally, railroads charge customers according to the distance that goods are transported, and thus, the farther a ton of coal must be transported the greater the transportation cost for that ton of coal. Today, approximately two-thirds of the cost of PRB coal delivered to an electric generation plant is for transportation, thus the advantages of PRB coal's low cost are currently offset by the transportation costs associated with its movement. And without the advantages of direct competition, there is no pressure for the rates charged by UP and BNSF for coal to decline.³

DM&E contends, and the Board agrees, that the PRB Expansion Project would increase rail competition by providing an additional rail carrier access to the mines in the PRB. In addition, DM&E's eastern connections with five other rail carriers could provide utilities access to a rail carrier with a shorter transportation route than either UP or BNSF. This additional access could, in the view of the Board, change the competitive rail transportation dynamics for many utilities currently using PRB coal. Increased competition could result in reduced transportation costs, reducing total fuel costs for the generation of electricity. In turn, reduced overall energy generation costs could then result in cheaper energy costs for the consuming public.

DM&E further contends, and again the Board agrees, that the PRB Expansion Project may enable PRB coal producers to compete with the high-sulfur coal producers in the Appalachian and other eastern coal-producing regions. Because transportation costs for PRB coal are, currently, most of the delivered costs of the coal, in

³ The Board is aware that, following entry of UP's predecessor into the PRB, rates declined significantly.

order for PRB coal to be competitive in Midwestern and eastern markets, transportation cost must be low enough so as not to offset the advantages gained by PRB coal's low-sulfur content and costs. The Board recognizes that much of the growth in demand for PRB coal has been from eastern utilities, and thus DM&E's proposed shorter and more efficient rail route, as well as other efficiencies potentially provided by the PRB Expansion Project, may enable eastern utilities currently relying on high-sulfur content eastern coal to take advantage of the availability of cheaper and cleaner PRB coal. Use of such coal would also help the eastern utilities and other power generators comply with the CAAA to meet the national policy of improved air quality through low-sulfur dioxide emissions.

X.4.3 Other Transportation Benefits

As noted in our Decision dated December 9, 1998, the Board agrees with DM&E that there likely would be additional transportation benefits associated with the approval of the PRB Expansion Project, which generally fall into two broad categories. *See App. A, at A48.* First, wherever there are mileage savings associated with the use of PRB coal supplied by DM&E, transportation costs will be reduced. This is due in large part to improvements in productivity and efficiency, improvements in railcar cycle times, and savings due to railcar pooling. Second, as a result of the reconstruction of DM&E's existing rail line, their existing customers will see similar transportation benefits.

Without endorsing a specific quantitative saving, from a qualitative perspective the Board agrees with DM&E that there will also be several other transportation benefits stemming from an approval of the PRB Expansion Project. For

example, there will be for the first time competitive transportation options available to several utility plants. As a result, smaller inventories would be required. On the other end of the rail line, the PRB mines will operate more efficiently and the coal hauling capacity from those mines will be increased.

X.5 PUBLIC INTEREST, DEMAND, AND NEED

As previously discussed by the Board in our Decision dated December 9, 1998, there is great public demand for the PRB Expansion Project. *See* App. A at A84-A86. Strong support has been expressed for the project by seven individual electricity providers,⁴ who collectively purchase and transport by rail well over 100 million tons of coal annually most of which is from PRB mines. In addition, 90 percent of DM&E's current shippers have voiced their support for the Project, and none has voiced any opposition. The Board has noted above that due to the condition of the existing DM&E rail line and the size of its current annual revenue stream, if the PRB Expansion Project were not approved there exists the very real likelihood that DM&E could cease to exist as a viable railroad, which would create a detrimental impact on DM&E's existing customers. Therefore, public convenience and necessity weigh in favor of the Board's approval of the PRB Expansion Project. *See* Board Decision dated December 9, 1998, at A50.

⁴ These individual providers are Commonwealth Edison Company, Dairyland Power Cooperative, Kansas City Power & Light Company, Lower Colorado River Authority, Minnesota Power, Northern States Power Company, and Wisconsin Public Service Corporation. *See* STB Decision dated December 9, 1998, App. A at A-41.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33407

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

VERIFIED STATEMENT OF CHARLES W. LINDERMAN

1. My name is Charles W. Linderman, and I am the Director, Energy Supply Policy at Edison Electric Institute's ("EEI's") Alliance of Energy Suppliers.
2. This Verified Statement supports concurrent comments submitted by EEI in favor of the application by Dakota, Minnesota & Eastern Railroad ("DM&E") filed before the Surface Transportation Board ("STB" or "Board") in Finance Docket No. 33407, to provide new, competitive railroad service into the Powder River Basin ("PRB") in the State of Wyoming (hereinafter referred to as the "PRB Expansion Project" or "Project").¹
3. EEI is the association of investor-owned electric companies, international affiliates, and industry associates worldwide. EEI's membership currently includes 200 U.S. companies, which serve over 90 percent of all customers served by the investor-owned segment of the industry. They generate approximately three-quarters of all the electric generated by electric companies in the country, and service about 70 percent of all ultimate customers in the nation. Coal constitutes approximately 55% of the fuel used to generate electricity. Many of EEI's members use coal as a fuel for generating

¹ On October 2, 1998, DM&E submitted my Reply Verified Statement in this docket that also supported DM&E's application. The discussion contained in the Reply Verified Statement remains accurate and of value, so it is incorporated herein by reference.

electricity, much of which is transported by the railroads. A large number -- approximately 50 -- of EEI's members have expressed their support for the DM&E Project as a means to improve the reliability and competitiveness of the coal supply system in the United States.

4. When the Board issued for public comment its Draft Environmental Impact Statement ("DEIS") for the DM&E Project, I directed that comments be prepared in support of the DEIS on behalf of EEI. I have reviewed and fully agree with the comments that are being filed concurrently with the Board today in that regard. I have reviewed and attest to the accuracy of the information provided to EEI by General Electric Company regarding the fuels savings and emission avoidance associated with DM&E's use of new General Electric locomotives as part of the Project. I have also reviewed and attest to the accuracy of the information provided to EEI by PA Consulting Group regarding the reduction in sulfur dioxide emissions due to a displacement of bituminous coal by PRB coal in the DM&E market area to be served by the Project. Further, I have reviewed and attest to the accuracy of the draft EIS chapter discussing the Project Benefits that was prepared at EEI's request. Finally, I have reviewed and attest to the accuracy of the comments filed on behalf of EEI regarding the Project. All these documents are attached to this Verified Statement.

VERIFICATION

I, Charles W. Linderman, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on March 6, 2001


Charles W. Linderman



Subject REDUCTION IN SO₂ EMISSIONS DUE TO DISPLACEMENT OF
BITUMINOUS COAL IN THE MARKET AREA SERVED BY
DM&E'S PROPOSED PRB EXPANSION PROJECT

To Chuck Linderman
Edison Electric Institute

From Jamie Heller, Trygve Gaalaas
PA Consulting Group

Date November 6, 2000

Per your request, this memorandum presents our estimate of the reduction in sulfur dioxide (SO₂) emissions which will occur between now and 2010 in the market area served by the Dakota, Minnesota and Eastern Railroad's (DM&E's) proposed Powder River Basin (PRB) expansion project as a result of higher-sulfur bituminous coals being displaced by PRB coal. Supporting calculations are also included.

Our estimate is that, by 2010, displacement of higher-sulfur bituminous coals within DM&E's market area will reduce SO₂ emissions by approximately 420,000 tons per year. Since this reduction will occur progressively between now and 2010, the total reduction in SO₂ emissions will be much greater than 420,000 tons, and the environmental benefits of greater PRB coal use will begin to be felt much earlier than 2010. The calculations supporting this estimate are explained in detail below.

As shown in Table 1 below, PRB coal shipments to power plants in DM&E's market area were approximately 137 million tons in 1999. Non-PRB (bituminous) coal shipments to plants in this region were 89 million tons, for a total of 226 million tons.

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Table 1
Summary Of 1999 Coal Use In DM&E's Market Area

Total PRB Coal Shipped To Plants In DM&E's Market Area

Total Tons PRB Coal (000)	137,085
Weighted Average Btu Content (Btu/lb)	8,737
Weighted Average Sulfur Content (lbs. SO ₂ /MMBtu)	0.75

Total Non-PRB Coal Shipped To Plants In DM&E's Market Area

Total Tons Non-PRB Coal (000)	89,288
Weighted Average Btu Content (Btu/lb)	11,857
Weighted Average Sulfur Content (lbs. SO ₂ /MMBtu)	2.48

Total Coal Shipped To Plants In DM&E's Market Area

Total Tons (000)	226,373
Weighted Average Btu Content (Btu/lb)	9,968
Weighted Average Sulfur Content (lbs. SO ₂ /MMBtu)	1.43

Data Sources: Primary source is FERC Form 423 data, as presented in FT Energy's COALDat database. Data for Ontario Power Generating (OPG) was estimated by PA Consulting Group since FERC Form 423 data is not available for OPG.

The PRB coal shipments contained an average of approximately 8,737 Btu/lb. and 0.75 lbs. SO₂ per million Btu (lbs. SO₂/MMBtu). The bituminous coal contained an average of approximately 11,857 Btu/lb. and 2.48 lbs. SO₂/MMBtu. Thus, on a per-million Btu basis, the bituminous coal emitted more than three times as much SO₂ as the PRB coal.

PRB coal demand within DM&E's market area is expected to total 250 million tons by 2010.¹ Thus, the total increase in PRB coal demand in this region between now and 2010 is expected to be about 113 million tons. These increases in demand can be attributed to three sources:

¹ As will be explained in more detail below, the average utilization of the coal-fired plants in DM&E's market region is expected to increase significantly between now and 2010. Although substantial displacement of bituminous coal will occur, there is expected to be at least 40 million tons of demand for bituminous coal in DM&E's market region in 2010 in addition to the large demand for PRB coal. The key environmental assumption underlying this forecast is that environmental regulations which significantly reduce coal demand (such as a carbon tax) will not be enacted prior to 2010.

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- 1) increased utilization of plants burning PRB coal,
- 2) use of a higher blend ratio of PRB coal at plants that currently burn a blend of PRB and other coals ("blend creep"), and
- 3) conversion of coal-fired plants that do not currently use PRB coal to PRB coal

Only the last two sources of demand increases (blend creep and conversions) involve displacement of higher-sulfur bituminous coal. Therefore, the first step in the emissions reduction calculation is to subtract out the portion of the PRB coal demand increases which can be attributed to higher utilization of the plants currently burning PRB coal.

The current National Electric Reliability Council (NERC) forecast of demand for electric generation in the three NERC regions which would be served by DM&E's proposed PRB expansion project is shown in Table 2 below.

Table 2
Estimated Generation Growth In DM&E's
Market Area

NERC Region	Actual 1999 Net Energy For Load (million KWH)	Forecasted 2009 Net Energy For Load (million KWH)	Annualized Growth Rate (%/year)
ECAR	547,846	633,686	1.5%
MAIN	243,278	284,000	1.6%
MAPP	152,350	185,403	2.0%
Total	943,474	1,103,089	1.6%

Source: National Electric Reliability Council (NERC) Electricity
Supply And Demand Forecast, 2000

As shown in the table, the average rate of increase in electricity demand which is projected for these three regions over the next decade is 1.6% per year. When applied to the 11-year period between 1999 and 2010, this yields a total demand increase of 19.1%.² Therefore, we estimate that increased utilization of the plants currently burning PRB coal in DM&E's market

² $(1.016)^{11} = 1.191$

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region will cause demand for PRB coal in this region to increase approximately 19.1%, from 137 million tons to 163 million tons.³

Therefore, approximately 26 million tons (163 million tons – 137 million tons) of the projected 113-million ton increase in PRB coal demand is attributable to increased utilization of the plants currently burning PRB coal. The remaining 87 million tons of the demand increase (113 million tons – 26 million tons) can be attributed to displacement of bituminous coal.

From this point, calculating the emissions reduction is fairly straightforward. The 87 million tons of PRB coal which are displacing bituminous coal contain approximately 1.52 billion MMBtu's.⁴ At 0.8 lbs. SO₂/MMBtu (or 0.0004 tons SO₂/MMBtu), this quantity of PRB coal emits 608,000 tons of SO₂.

However, even after accounting for the fact that a substantial number of plants currently burning bituminous coal will switch to a lower-sulfur bituminous coal by 2010, the SO₂ emissions associated with the PRB coal are significantly lower than the emissions produced by an equivalent quantity of bituminous coal. PA's dispatch modeling experience indicates that, given the rise in SO₂ emission allowance prices which we expect to occur over the next decade, it is unlikely to be economical in most cases to burn coal containing more than 2.0 lbs. SO₂/MMBtu in unscrubbed generating plants. Many (although not all) plants burning bituminous coal in DM&E's market area are likely to switch to Central Appalachian low-sulfur bituminous coal (containing between 1.2 and 1.5 lbs. SO₂/MMBtu) at some point over the next decade.

Therefore, we have assumed for purposes of this calculation that the average SO₂ content of the bituminous coal burned in DM&E's market area by 2010 will be 1.35 lbs. SO₂/MMBtu. Given this emissions assumption, the SO₂ emissions associated with 1.52 billion MMBtu's of bituminous coal would be 1,026,000 tons.⁵ Thus, the SO₂ emissions associated with the PRB coal are 418,000 tons (approximately 420,000 tons) lower than the SO₂ emissions associated with the bituminous coal.

³ The relationship between increases in PRB coal demand and increases in demand for electric generation is not exact and depends on a variety of complex factors (such as the mix of various types of generation in a particular region and the relative dispatch costs of plants burning PRB coal versus other coal-fired plants) which are beyond the scope of this analysis. However, we believe the methodology used above produces a reasonable estimate for purposes of the emission reduction calculation being made here.

⁴ 87 million tons x (8,737 Btu/lb x 2000 = 17.746 MMBtu/ton) = 1.52 billion MMBtu's.

⁵ 1.52 billion MMBtu's x (1.35 lbs./2000 = 0.000675 tons SO₂/MMBtu) = 1,026,000 tons SO₂



**GE Transportation
Systems**

Stephen B. Trier
National Account Executive

General Electric Company
2015 Spring Rd., Suite 300
Oak Brook, IL 60523

December 4, 2000

Mr. Charles A. Linderman
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Dear Mr. Linderman,

I am writing this letter at your request in order to provide Edison Electric Institute with some information regarding our AC locomotives.

The DM&E has studied the current coal market and has developed train mile savings estimate covering 100,000,000 annual tons of PRB coal movements on the railroad and its connecting carriers. A savings of 42,839,605 gallons of diesel fuel, annually, has been determined. This annual savings in gallons of diesel fuel is derived from gross ton miles saved for DM&E routes to power plants in its target markets. The fuel consumption comparison statistic is from the AAR Analysis of Class 1 Railroads, 1999.

The annual fuel savings can be converted into an emissions avoidance estimate. Below is a table with the avoidance figures based on our AC4400CW locomotive with the latest Tier Zero 7FDL engine. All values listed are in metric tons.

	HC	CO	NOx	PM
2001 Tier 0 Loco	292,000	780,000	6,871,000	182,000

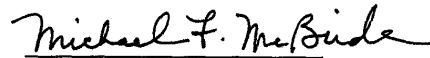
Please note that this savings calculation is only an estimate and is not a performance guarantee. If I can be of further assistance please do not hesitate to contact me.

Sincerely:

Stephen Trier

CERTIFICATE OF SERVICE

I hereby certify that I have served, this 6th day of March 2001, a copy of the foregoing
"Comments of Edison Electric Institute on the Draft Environmental Impact Statement" by first
class-mail, postage prepaid upon all parties of record.



Michael F. McBride
Michael F. McBride