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United States Senate

WASHINGTON, DC 20510-5004

MICHAEL ENZI
WYOMING

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January 25, 2002

Mr. Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

ENTERED
Office of the Secretary

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OFFICE OF
CHAIRMAN MORGAN

2002 MAR 11 P 3:57

RECEIVED
SURFACE TRANSPORTATION
BOARD

Dear Vernon:

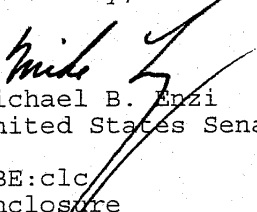
Enclosed are copies of two letters I received from my constituent, John M. Daly, concerning the Dakota, Minnesota and Eastern Railroad.

Mr. Daly's letter to me addresses five primary concerns he has with the application of the Dakota, Minnesota and Eastern Railroad (DM&E). Those concerns are the economics of the whole proposal; the environmental impact of the proposal; the integrity of the CEO and of the company involved; the issue of public safety and the issue of cultural sensitivity.

Mr. Daly also provided me a copy of the letter he wrote to you about an ex parte communication which he believes took place between Chairman Morgan, Vice Chairman Burkes and Kevin Schieffer, President and CEO of DM&E. I would appreciate your assistance in looking into this allegation.

Whatever information and assistance you can provide on the issues which Mr. Daly has raised would be appreciated. Please respond to me at 510 South Gillette Avenue; Gillette, Wyoming 82716. I look forward to your reply.

Sincerely,


Michael B. Enzi
United States Senator

MBE:clc
Enclosure

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January 11, 2002

Senator Mike Enzi
United States Senate
290 Russell Senate Building
Washington, D. C. 20510

RE: Dakota, Minnesota and Eastern Railway

Dear Senator Enzi:

I am writing regarding the application of the Dakota, Minnesota and Eastern Railway and a situation with reference to the Surface Transportation Board. I would first of all like to explain my bias in this matter:

Obviously our family is heavily impacted on the ranch at Newcastle by this proposal and, as you know, has openly and publicly opposed this proposal for some period of time. However, I do want to direct your attention to what I consider are five primary concerns why this matter should be rejected in hopes you may be able to assert some influence on the Surface Transportation Board about this situation by an expression of concern from your office.

1. The economics of the whole proposal.
2. The environmental impact of the proposal.
3. The integrity of the CEO and of the company involved.
4. The issue of public safety.
5. The issue of cultural sensitivity.

Let me begin by addressing the economics of this situation. The theory is this would make a shorter haul for coal, however, in the course of making its proposal the DM&E railroad will destroy a number of existing businesses or deeply affect a number of existing businesses for the benefit of a relatively small number of people. It seems to me the existing businesses ought to have preference over the new proposal as they are businesses with financial integrity, long-time histories in their communities, and businesses which represent a far greater number of people and affect a larger number of people than does this railroad proposal. To say the railroad's business is more important than the existing businesses, is simply a wrong statement of the economic facts. The businesses that exist there exist there because they have evolved in an economic situation that is desirable. This new proposal will disrupt those businesses to the detriment of the people involved

There has been no evaluation of the cost of disruption. The evaluations have all been made and perhaps some disingenuous statements made by Kevin Schieffer which have brought stars to the eyes of the local Chamber of Commerce that there will be "...this many thousand people employed

in Wyoming or in the various communities along the railroad." We all know from our experience with the Burlington Northern and the Union Pacific that in today's world these railroads employ a relatively small number of people in states like Wyoming or South Dakota. The majority of the employment is elsewhere.

This company has been unable to operate at a profit and owes the State of South Dakota a huge sum of money and lacks the financial integrity or resources to proceed. Why should anybody proceed with a company which has demonstrated a lack of creditworthiness by their failure to pay South Dakota in a timely fashion a debt which they owe it, even though South Dakota has extended the time to pay the debt. It seems to me that we as individuals having to deal with this company and their proposal should not be forced to deal at our costs with a company that is, in fact, uncreditworthy and has been unable to run the business in a creditworthy fashion.

This company has further been unable to keep its railroad in good repair, witness their rails as they exist in the area between Rapid City and Belle Fourche and the number of derailments. Even to the unpracticed eye, the rail is in disrepair and this company has been unable or unwilling to bring its equipment to any sort or level of serviceability. It obviously has not managed its resources very well.

The second reason deals with the environmental impact and I am sure this situation has been explained to you, but let me reiterate the problems with the Clean Air Act. The rail proposal will create an additional problem with the Class A air situation in the National Parks that exist east of the Powder River Basin, specifically, Jewel Cave, Wind Cave, Rushmore, and the Badlands. If that situation is allowed to worsen, it will have an economic impact on the mines and on the petroleum industry if they have to restrain their activities because of the conduct of the Dakota, Minnesota and Eastern Railway to comply with the Clean Air Act. It seems foolish to me to inject another major polluter into a situation where the Class A air is already critical in those areas. It is very easy to observe, as you approach Gillette by car from any distance, the increasing problems with the air quality in this area. That air quality becomes our neighbors' problem as the prevailing winds move out to the East into those national parks. We need to approach this situation with great care.

The third problem is the lack of integrity by this particular company and its representatives. I have been to several meetings in which Kevin Schieffer, the President and CEO of Dakota, Minnesota and Eastern Railway made representations to the communities that were blatantly false. The representations concerned the desirable economic impact this railroad would have on the communities, and how wonderful it would be, and how there would be gold in the streets as a result of the great benevolence of this railroad. This railroad is a taker. It is not a giver. Its economic impact is to haul goods away from Wyoming and not to return any economic activity toward Wyoming. It does not return any finished products, return any passengers, or return any raw product to Wyoming for remanufacture--it simply hauls coal away. To represent there is a positive economic impact on the communities of Newcastle, Lusk, Gillette, and those various communities through which it passes in South Dakota, is simply foolish.

In addition, the conduct of Mr. Schieffer is called into question by his attempt to ex parte the various decision makers, is contrary to the rules, and is contrary to the accepted rules of law. Mr. Schieffer happens to be an attorney. He should know that it is illegal to ex parte the decision makers by communicating when there is a decision pending before them, specifically the rules 1103.14 and 1102.(2)(f) of the Rules of Practice before the Surface Transportation Board.

In addition I would object on the basis of the public safety. There has been no clear examination of the public safety issues involved in this situation. Given the situation that occurred recently in Philadelphia and the direction of Congress in that regard, this proposal has received almost no consideration of public safety.

I would object further on the basis of the cultural violations that exist, particularly with the Sioux tribes as the route passes through this territory. The railroad is disturbing historic burial grounds that belong to the Sioux in violation of Treaty. This is clearly a lack of cultural sensitivity. It is my recommendation to you to formally make your feelings known to the Surface Transportation Board along with the other Senators and Representatives who have done so, and that this matter should be terminated as a project not in the public interest of the People of Wyoming, South Dakota or Minnesota.

Sincerely yours,

John M. Daly

JMD:bc

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January 11, 2002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Via Facsimile (202) 565-9003

RE: STB Finance Docket No. 33407

Dear Secretary Williams:

It has been brought to my attention and causes me great concern that an ex parte communication has taken place regarding matters pending before the Board in that a communication was had directly with Chairman Morgan and Vice Chairman Burkes by Kevin V. Schieffer, President and CEO of Dakota, Minnesota and Eastern Railroad. This is in violation of the Board's rules that prohibit private communications in a pending case.

I believe a) this is a pending case; and b) a communication from a CEO is a private communication. Your remedy is pursuant to Section 1102.2(f) of the Rules of Practice. I express desire that you impose a sanction on this situation.

Sincerely yours,

John M. Daly

JMD:bcb