

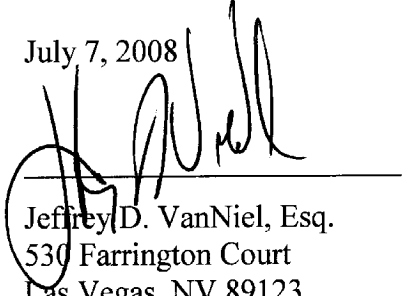
**SURFACE TRANSPORTATION BOARD
WASHINGTON D.C.**

Finance Docket No. 35106

DEPARTMENT OF ENERGY – CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO CONSTRUCT AND
OPERATE A RAIL LINE IN LINCOLN, NYE AND
ESMERALDA COUNTIES, NEVADA

SUPPLEMENTAL COMMENTS OF NYE COUNTY, NEVADA

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PRELIMINARY STATEMENT

On March 17, 2008, the United States Department of Energy (DOE) filed an application with the Surface Transportation Board (STB) to issue a certificate of public convenience and necessity to construct a new 300-mile dead-end spur rail line commencing in Caliente, Nevada, and passing through Lincoln, Esmeralda, and Nye Counties. DOE's proposed rail line will be used to transport spent nuclear fuel and high-level nuclear waste to the proposed Yucca Mountain geologic repository located in Nye County, Nevada ("Yucca Mountain Facility"). *See Finance Docket #35106, United States Department of Energy—Rail Construction and Operation—Caliente Rail Line in Lincoln, Nye, and Esmeralda Counties, NV.* Pursuant to the STB's April 11, 2008 Procedural Schedule, Nye County, Nevada ("Nye County") hereby submits the following supplemental comments concerning DOE's requested authority to construct a spur rail line from Caliente, Nevada to the Yucca Mountain Facility.

EXECUTIVE SUMMARY

As more fully explained below, Nye County generally supports both the DOE's Application to construct this rail line and to have a shared-use rail line, but believes that DOE has failed to adequately evaluate the operational and economic impacts associated with its preferred route. In that regard, Nye County asserts that alternative routes, including a through-going rail line to the south of the proposed repository, provide significant benefits over the proposed spur rail line. These alternative routes would provide greater efficiencies to the national and regional rail systems, face fewer environmental issues, cost less to construct, and provide more positive socio-economic impact to the region.

Accordingly, Nye County recommends that the STB approve DOE's Application only with the following conditions:

- 1) that DOE conduct a radiological survey of the Caliente corridor;
- 2) that DOE take no action that potentially jeopardizes DOE's ability to make use of the Mina corridor right-of-way; and
- 3) that DOE examine a) the potential impact of spent fuel shipments on regional rail systems, including congestion and flow of other products and commodities shipped by rail into and out of the State of Nevada, and b) whether its plan for shipment of spent fuel and high-level waste might be enhanced by a through-going rail system.

BACKGROUND, COMMENTS, AND CONDITIONS

Nye County is the host county for both the Yucca Mountain Facility as well as a significant portion of DOE's proposed 300-mile spur line. As such, Nye County has an obvious stake in all aspects of the repository development process, including the siting and operation of the proposed rail line. Nye County was a cooperating agency during completion of the DOE's Nevada Rail Corridor SEIS and Rail Alignment EIS, and has been actively involved in all aspects of the proceedings to both study and license the Yucca Mountain Facility.

Make no mistake: Nye County generally supports DOE's application to construct a rail line to the repository and DOE's intent to permit shared-use of the proposed rail line. Moreover,

Nye County agrees that rail transportation of spent nuclear fuel and high level waste is not only a matter of national concern and security, but also the safest and most efficient manner to transport such products.

However, Nye County has disagreed, and continues to disagree, with DOE's proposed spur line concept.¹ Based on the fact that it will be at least three (3) and most likely four (4) years before there is any certainty of a license to construct the Yucca Mountain Facility, DOE should not engage in activities that preclude reconsideration of more optimal routes. Nye County also asserts that regardless of the route to the repository, a through-going rail line connecting to the south along the Jean corridor provides much greater infrastructure efficiency and economic benefits to the regional rail system and western Nevada than a dead-end spur line.

I. ALTERNATIVE RAIL LINE ROUTES PROVIDE FEWER ENVIRONMENTAL ISSUES FOR RESOLUTION AS COMPARED WITH DOE'S PREFERRED ROUTE.

DOE has not evaluated all potential safety and health-related risks that may arise from its Caliente corridor. Additionally, DOE recognizes that its preferred route is not the optimum route for transporting the rail shipments of spent fuel and high-level waste to the proposed repository.

- a. DOE has failed to conduct a radiological survey of areas of the Caliente Corridor affected by weapons testing and it should be compelled to do so before any certificate of public convenience and necessity is approved.**

DOE's proposed Caliente corridor traverses areas of Nevada that were subject to radioactive fallout from nuclear weapons tests conducted at the Nevada Test Site. Portions of those fallout areas will be disturbed during construction of the proposed rail line. DOE has not studied these fallout areas to evaluate the potential risk to workers and the public that may result from this residual radioactivity. Nye County is concerned that

¹ Nye County has identified its specific rail transportation concerns in its comments on DOE's Draft Nevada Rail Corridor SEIS [DOE/EIS-0250F-S2D, Application Exhibit H] and Draft Rail Alignment EIS [DOE/EIS-0369D, Application Exhibit H]. Those comments were attached to Nye County's original comments, filed April 15, 2008, in their entirety, and are incorporated herein by reference.

there may be a potential risk to workers and the public as a result of disturbing this residual radioactivity. Accordingly, Nye County respectfully requests that the STB direct DOE to satisfy the following condition as part of any approval of the requested application for public convenience and necessity to construct a rail line:

Condition 1: Prior to issuing a record of decision (ROD) on the Caliente Corridor, DOE shall complete a radiological survey of those areas of the Caliente corridor that were subject to nuclear weapons test fallout and assess the potential radiological risk to workers and the public during construction.

- b. DOE acknowledges that fewer environmental issues are present in the Mina corridor than are faced in the preferred route, and should be prevented from taking any action that potentially jeopardizes DOE's ability to make use of the Mina corridor right-of-way.**

DOE acknowledges that the environmental impact of the Mina corridor is less than that associated with the Caliente Corridor. *See*, DOE's draft rail alignment EIS at Vol. I, Sec. 2.5 (p. 2-116) and Table 2-31 (pp. 2-118 to 2-134). Additionally, DOE is aware that the Mina corridor is shorter than the proposed route, that major portions of the Mina corridor follow existing and previously disturbed rail beds, and that the Mina route has fewer mountain crossings than the proposed route. *See*, DOE's draft rail alignment EIS at Vol. I, Sec. 2.2 (p. 2-3). Finally, the Mina route does not traverse an area of Nevada that was subject to radioactive fallout from nuclear weapons tests conducted at the Nevada Test Site. Given these factors, the Mina corridor almost certainly faces fewer environmental issues than DOE's proposed route.

Moreover, given the Mina Corridor's shorter length, use of existing and previously disturbed rail beds, and fewer mountain ranges to cross, DOE estimates that the Mina corridor likely would be considerably less difficult and much less costly to construct than its current proposed route. *See*, DOE's draft rail alignment EIS at Vol. I, Sec 2.2 (p. 2-5). Based on the fact that it will be at least three (3) and most likely four (4) years before there is any certainty of a license to construct the Yucca Mountain Facility, DOE should not engage in activities that preclude reconsideration of the Mina Corridor. Accordingly, Nye County respectfully requests

that the STB direct DOE to satisfy the following condition as part of any approval of the requested application for public convenience and necessity to construct a rail line:

Condition 2: DOE shall take affirmative steps to preserve the right of way associated with the Mina Corridor for at least the next four (4) years (i.e., through CY2012).

II. A THROUGH-GOING RAIL LINE TO THE SOUTH OF THE PROPOSED REPOSITORY GREATLY INCREASES THE RAIL LINE'S NATIONAL AND REGIONAL OPERATIONAL EFFICIENCIES.

DOE's proposed Caliente spur line will provide rail service to individuals and companies that are currently not receiving rail service. However, the rail line likely will have extremely limited effect on the rail system efficiencies in Southern Nevada, and virtually no effect on the efficiencies or rail infrastructure outside of Nevada.

Conversely, a through-going route that includes the Jean corridor, as described in the DOE's Draft Rail Corridor SEIS, is an essential component of any proposed rail line, and provides a significant benefit to the rail systems in Nevada and the Southwest region. A through-going rail line to the south of the repository would tie the northern and southern portions of Nevada and California together, allowing ready access to Utah and the northern rail corridors and beyond where none presently exists. In short, the through-going route would enhance the national and regional rail infrastructure.

Such a route would also allow spent fuel to flow into the repository from both the north and the south, reducing congestion along the rail line, enhancing the security for the individual shipments, and reducing the total number of shipments that will be passing through each point along the total route. Simply stated, there are no significant reasons not to adopt a through-going route to the repository.

Notwithstanding these benefits, DOE has not studied the operational impact associated with its preferred route and a through-going rail line. Nye County believes that given the significant benefits to the national and regional rail infrastructure of such a route, DOE should be compelled to conduct such an evaluation before conclusively deciding on a route for its rail line. Accordingly, Nye County respectfully requests that

the STB direct DOE to satisfy the following conditions as part of any approval of the requested application for public convenience and necessity to construct a rail line:

Condition 3: That DOE be directed to accomplish a comprehensive transportation study that (a.) examines the potential impact of spent fuel shipments on the regional rail systems, including congestion and flow of other products and commodities shipped by rail into and out of the State of Nevada, and (b.) examines whether its plan for shipment of spent fuel and high-level waste to determine whether it might be enhanced by a through-going rail system.

III. THE MINA CORRIDOR, INCLUDING A THROUGH-GOING ROUTE SOUTH OF THE REPOSITORY, PROVIDES SIGNIFICANTLY GREATER ECONOMIC BENEFITS TO SOUTHERN NEVADA AND THE REGION THAN THE CALIENTE CORRIDOR.

DOE has devoted significant time and effort in preparing both its pending Yucca Mountain Facility License Application before the Nuclear Regulatory Commission and its pending application for public convenience and necessity to construct a rail line before the STB. Yet, DOE has made virtually no effort to consider, address, or resolve the socioeconomic issues associated with either implementation of its proposed dead-end spur rail line or a through-going rail line connecting south along the Jean corridor.

The National Academy of Sciences Study, “Going the Distance,” makes specific recommendations suggesting that there should be some effort to quantify costs and benefits of social impacts. DOE seems to have limited its routing options because of difficult political opposition. However, a through-going rail system in Nevada would better serve the DOE’s stated shared use option as well as enhance the efficient transportation of spent nuclear fuel and high level waste at the national, regional, and local levels. Specifically, Nye County questions why DOE would choose to spend over two billion dollars on a rail spur that contributes relatively little to the regional rail infrastructure or economic development in western Nevada and the southwestern United States when other DOE-identified routes, individually or in combination, provide significantly greater economic development potential, face fewer environmental issues,

provide more positive socio-economic impact, and appear less difficult and much less expensive to construct. (See Sections I, and II above)

As with the environmental, construction cost, and construction difficulty issues mentioned above, DOE is aware that the proposed Mina route provides a potentially greater economic benefit to southern Nevada than that for the Caliente corridor; See, DOE's draft rail alignment EIS at Vol I, Sec 2.2.6.1, Table 2-28 (Caliente) and Table 2-29 (Mina). Nye County's 2007 rail transportation study likewise shows greater economic potential for the Mina route than the Caliente route (*26,538 car loads and 4,177 car loads, respectively, for the low traffic scenario*). See, *Rail Transportation Economic Impact Evaluation and Planning Study*, at page 19 Table 10 (Caliente) and Table 11 (Mina), which was attached to Nye County's original comments, and is incorporated herein by reference.

To date, there has been no substantive public policy debate on the overall issue of optimizing repository rail transportation and any attendant economic development in the State of Nevada. Because it is highly unlikely that the Nuclear Regulatory Commission will undertake a detailed review of DOE's proposed rail route in the pending Yucca Mountain Facility license application proceeding, it is imperative that the STB exercise its authority in this matter to serve the national transportation interests. Accordingly, Nye County respectfully restates its Condition Number 2 that the STB direct DOE to:

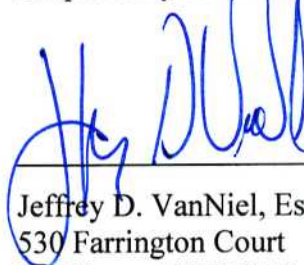
Condition 2: DOE shall take affirmative steps to preserve the right of way associated with the Mina Corridor for at least the next four (4) years (i.e., through CY2012).

CONCLUSION

Nye County generally supports the DOE's Application to construct this rail line and to have a shared-use rail line, but believes that the Mina route, including a through-going rail line to the south of the proposed repository, provide significantly greater efficiencies to the national and regional rail systems, fewer environmental issues for construction, reduced costs of construction, and greater positive socioeconomic impact. Accordingly, Nye County recommends that the STB approve DOE's Application only with the aforementioned conditions, and given the significance

and gravity of the issues raised herein, Nye County requests an oral hearing on the various issues and suggested conditions presented in these supplemental comments.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served on the following Parties of Record by (1) first-class U.S. mail, postage prepaid, (2) e-mail as shown, or (3) other expeditious method, this 7th day of July, 2008.

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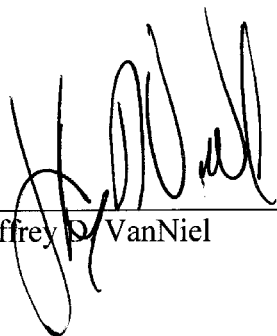
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