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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35106

**UNITED STATES DEPARTMENT OF ENERGY --
RAIL CONSTRUCTION AND OPERATION --
CALIENTE RAIL LINE IN LINCOLN, NYE, AND ESMERALDA
COUNTIES, NV**

**COMMENTS OF
CSX TRANSPORTATION, INC.**

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July 15, 2008

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INTRODUCTION

CSX Transportation, Inc. ("CSXT") respectfully submits these comments in response to the application of the United States Department of Energy ("DOE") to construct and operate an approximately 300 mile rail line connecting an existing Union Pacific Railroad Company line to the proposed geologic repository at Yucca Mountain, Nevada. The construction of the line of railroad by DOE to Yucca Mountain will serve as a catalyst for the movement of thousands of carloads of radioactive Spent Nuclear Fuel throughout the country, including on the CSXT system through the East and Midwest. CSXT does not take a position on the merits of DOE's application. However, if the application is granted, CSXT requests that the Board impose a safety-related condition on DOE. In particular, CSXT requests that all rail shipments of Spent Nuclear Fuel ("SNF") tendered to CSXT by, for, under the direction of, with the consent of, or in

any other manner on behalf of DOE for transportation to Yucca Mountain as the ultimate destination be required to move in dedicated trains, i.e., trains dedicated exclusively to the carriage of SNF.

I. BACKGROUND FACTS

In the past, there had been some difference of views as to whether there is a sufficient safety benefit as to justify the transportation of SNF in dedicated trains versus moving this highly hazardous material in regular train service with other cargoes. CSXT has long believed that the safety of train personnel, the public and the environment compels the use of dedicated trains to move this highly dangerous commodity. A consensus now appears to have developed in support of that position, with DOE now clearly on the side of those who perceive the safety benefits of dedicated train use.

In the 1960s and into the 1970s, railroads, including predecessors of CSXT, were asked to carry, and did carry, SNF under contractual arrangements with shippers. Such contracts typically required that the SNF move in dedicated or "special train service." Such special trains would "comprise less than five cars, and would move only at low speeds over specially designated routes." *Consolidated Rail Corp. v. ICC*, 646 F.2d 642, 644, n.6 (D.C. Cir. 1981) ("*Conrail*"). However, for fear of the catastrophic effects of a nuclear incident, should there be an accident, derailment or other incident that might trigger a release of nuclear material, the railroads were reluctant to handle SNF. In fact, many railroads sought to abstain from listing rates for the carriage of nuclear materials in their published tariffs. In 1978, the ICC held that the railroads were required to carry radioactive materials under their common carrier duty and ordered them to publish rates for such carriage in their tariffs. The 6th Circuit affirmed the ICC on appeal in *Akron, Canton & Youngstown R.R. Co. v. ICC*, 611 F.2d 1162 (6th Cir. 1979).

In order to comply with the ICC's mandate, the railroads filed tariffs for the shipment of SNF, but it appears that most of these rates were premised on the use of special or dedicated trains. *Conrail*, 646 F.2d at 645. Among other characteristics, special train service meant that "no freight other than spent fuel or radioactive waste is carried" and required that a buffer car be placed on either side of the car carrying the radioactive waste. *Id.* at 645 n.7. Electric utilities and other shippers objected to the special train service requirement.¹ On May 2, 1980, in *Trainload Rates on Radioactive Materials, Eastern Railroads*, 362 I.C.C. 756, 775 (1980) ("*Trainload Rates*"), the Commission found that the railroads' tariffs based on special train service were unreasonably high. The ICC based its decision, in part, on a 1977 Environmental Impact Statement that it had prepared in which it concluded -- consistent with the views of other federal agencies at the time -- that there was no safety benefit mandating the use of dedicated trains.

On appeal, in 1981, the DC Circuit in *Conrail* affirmed the ICC's decision. In reaching its decision, the Court found that there was sufficient evidence to support the ICC's conclusion that special train service "was unnecessary for safety reasons . . ." *Conrail*, 646 F.2d at 652. The D.C. Circuit held that "the Commission acted properly in finding on this record that [special or dedicated train service] was unnecessary as a safety measure, and that the tariffs based on it were therefore unreasonable." *Id.* at 656. While the court affirmed the ICC's decision, it did recognize "the potentially grave hazards which inhere in large-scale rail transportation of highly radioactive materials." *Id.*, see also *id.* at 643 ("Transporting spent nuclear fuel is potentially

¹ *Conrail* involved the transportation of hazardous radioactive materials in the Eastern United States. See 646 F.2d at 643. In separate cases, government and utility shippers complained to the ICC that certain Southern and Western railroads were charging excessive rates for transportation of SNF and other radioactive materials. See *Union Pac. R.R. Co. v. ICC*, 867 F.2d 646, 647 (D.C. Cir. 1989).

dangerous, since a train derailment, collision, sabotage, or terrorism could result in lethal and environmentally destructive radioactive leakage.”).

In 1981, DOE and the United States Department of Defense (DOD) filed complaints with the ICC against 21 railroads, including CSXT's predecessors. The complaints sought prescription of rates for the transportation of Naval SNF. *See United States Department of Energy and United States Department of Defense v Baltimore & Ohio R R Co., et al*, Docket No. 38302S, slip op at 1 (STB served Aug. 2, 2005). These proceedings have never been closed, but SNF has continued to move over the ensuing quarter century. And it has moved, almost without exception, in dedicated trains.²

The implicit recognition of the benefits of moving radioactive materials in dedicated train service has been a step in the right direction, but CSXT believes that it does not go far enough. Rather, CSXI believes that dedicated train service should be a requirement for shipment of highly radioactive materials.

II. THE SAFETY ADVANTAGES OF TRANSPORTING SNF IN DEDICATED TRAINS ARE NOW WIDELY RECOGNIZED BY DOE AND OTHERS

Since the ICC last addressed the issue of the safety of special trains in the early 1980s, there has been a sea change in federal agency views on this issue. Federal agencies with special expertise with respect to the safe transportation of nuclear materials have now determined that dedicated trains are in fact a safer means of transport than regular trains. These agencies include

² Indeed, CSXT is not aware of any movements of SNF in general merchandise service. One railroad has been dismissed from the pending proceedings under a settlement agreement that permits – but not requires – dedicated train service. As part of UP's settlement with the Government, the parties agreed that under certain conditions, SNF could move in dedicated train service. *See* Exhibit A to Joint Motion of the U.S. Department of Energy, U.S. Department of Defense, and Union Pacific Railroad Company for Approval of Settlement Agreement and Prescription of Rate Methodology, Docket No. 38302S, at 21-22 (filed Sep. 15, 2004).

DOE, the Federal Railroad Administration (FRA), the National Academy of Sciences (Academy) and the Nuclear Regulatory Commission (NRC), each of which has expressed concern over the public safety issues associated with the movement of SNF, particularly in light of the threat of terrorist activities. In their studies, these agencies have achieved consensus on the safety advantages of using dedicated trains over regular trains for the transportation of SNF. The STB should recognize this newly formed safety consensus – which did not exist at the time of the ICC's decision in *Trainload Rates* in 1980 – in adopting the safety condition that CSXT seeks here

Notably, in its June 2008 Nevada Rail Corridor EIS³ pertaining to the Yucca Mountain line, DOE stated that the railroad “would operate dedicated trains carrying spent nuclear fuel and high-level radioactive waste and trains carrying other materials, which could include construction materials, diesel fuel, and repository equipment.” Nevada Rail Corridor EIS, Vol. I, at 2-10.⁴ According to DOE, “[t]he dedicated cask trains on the rail line would be assembled at the staging yard and would consist of two or three 4,000-horsepower diesel-electric locomotives followed by a buffer car, one to five cask cars followed by another buffer car, and one escort car carrying security personnel.” *Id* (emphasis omitted) DOE further indicates that “[m]ost spent nuclear fuel and high-level radioactive waste would be transported from 72 commercial and 4 DOE sites to the repository in Nuclear Regulatory Commission-certified transportation casks placed on trains dedicated only to these shipments.” *Id* at 4-7 (emphasis added) In the EIS,

³ The Nevada Rail Corridor EIS is formally known as *Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada – Nevada Rail Transportation Corridor* DOE/EIS-0250F-S2.

⁴ It is not clear that the quoted statement means that all trains carrying SNF on the line would be dedicated trains CSXT believes that that is what is intended and DOE will presumably confirm that as the case proceeds.

DOE noted that latent cancer fatalities associated with incident free transportation decreased from estimates in an earlier EIS, primarily due to a change in the model to account for the use of dedicated trains. *See id.* at 5-22, 5-57. Thus, DOE acknowledged the increased safety of dedicated trains and committed on the record that at least the majority, if not all, of the shipments would be transported that way. Indeed, if the term “most” in the above-quoted DOE statement refers to the origins and not to “trains dedicated only to these shipments”, DOE may already have committed to use only dedicated trains for the entire route of movement.

While CSXT does not read DOE as meaning to suggest that some trains carrying radioactive waste on the line would be general mixed-freight manifest trains, its use of the expression “trains would be assembled” does suggest that there might be an expectation that individual cars of SNF might arrive over time in its yard and there be “assembled” into a dedicated train. This interpretation would suggest that DOE may expect to receive individual SNF cask cars at interchange – which would imply movement from the East in general manifest trains. If that is DOE’s intention, it should be made clear – and evaluated in light of the now fully emerged recognition that dedicated trains are decidedly superior from a safety and security standpoint. If not, then the condition that CSXT is requesting would not adversely affect DOE’s plans at all.

In recent years, DOE has issued a number of statements regarding the safety advantages of transporting SNF in dedicated train service. In 2005, DOE made its decision to ship SNF in dedicated trains to Yucca Mountain. *See Department of Energy Policy Statement for Use of Dedicated Trains for Waste Shipments to Yucca Mountain*, at 1 (DOE Policy Statement), attached as Exhibit A to these Comments. In the DOE Policy Statement, the agency cited safety as one of the benefits of using dedicated trains over regular trains for the transportation of SNF

and particularly noted “the radiological risk resulting from transport without incident may be lower due to decreased time in transit.” *Id*

More recently, DOE described the safety benefits of using dedicated trains for the transportation of SNF in its October 2007 *Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada DOE/EIS-0369D* (“2007 DOE Draft EIS”) There, DOE stated that “[d]edicated train service, which would be used to move cask railcars to the Yucca Mountain repository, would follow stringent safety regulations”⁵ Additionally, dedicated train service has increased control and command capabilities, because shorter trains allow better visual monitoring from the locomotive and the escort car. *Therefore, accident and incident rates for dedicated train service are expected to be lower than the ones [for general freight service]*” See 2007 DOE Draft EIS, Volume II, at 3-661 (emphasis omitted and supplied). Further, DOE stated that “a number of design and operating changes for dedicated trains have been predicted to reduce accident rates for dedicated trains . . .” See *id* , Volume III, at 4-319 Finally, in describing its dedicated train service policy in the 2007 DOE Draft EIS, DOE indicated “the shorter times in transit and shorter layovers at switching yards would enhance safety and security.” See *id* , Volume IV, Appendix I., at L-10 DOE’s assessment makes clear that the use of dedicated trains will enhance safety in the desert environment of Nevada, surely it will do likewise in the more densely populated areas of the Eastern United States

In 2006, the National Academy of Sciences published a book entitled “Going the Distance?” The book outlined the findings of a study initiated by the National Academies “to meet what it perceived to be a national need for an independent, objective, and authoritative

⁵ Again, we assume that DOE intends that all SNF on the proposed new line would be transported in dedicated trains.

analysis of spent nuclear fuel and high-level radioactive waste transportation in the United States ;
 . . .” *Id* at 1.

The Academy recommended that DOE implement its dedicated train decision “before commencing the large-quantity shipment of spent fuel and high-level waste to Yucca Mountain . . .” *Id* at 236. It based its decision on “operational, safety, security, communications, planning and programmatic advantages . . .” *Id* In describing the safety advantages, the Academy wrote “[r]educed travel times [associated with dedicated trains] would help limit worker and public radiation exposures during incident-free transport If desired and feasible, such trains also could be routed to avoid major population centers The separation of spent fuel and high-level waste shipments from other freight would reduce the potential for accidents involving very long duration fires Dedicated trains can be designed and operated to higher safety standards than are currently required for general trains, further reducing the potential for accidents, especially train derailments.” *Id* at 237 (footnote omitted). Additionally, in describing the security benefits and reduced program risks of dedicated train service, the Academy alludes to safety benefits Regarding security, the Academy wrote “[t]he use of dedicated trains would help reduce transit times and therefore reduce opportunities for malevolent acts, especially in rail yards. Additional security escorts also could be added more easily to dedicated trains when needed.” *Id* at 237. As to reduced program risks, the Academy wrote “[t]he use of dedicated trains would allow DOE greater control over avoidance of situations (e g , avoid tunnels, switching yards, and peak traffic conditions on heavily traveled corridors, minimize stops in yards and on sidings) that could contribute to such accidents.” *Id*

The Federal Railroad Administration -- the agency charged with rail safety as its primary function -- has also spoken in recent years on the issue of the safety advantages of dedicated

trains over general freight trains for the transportation of SNF. (By contrast, FRA did not favor dedicated trains at the time that the ICC rendered its decision in the 1980 *Trainload Rates* case) In a March 2005 Report to Congress entitled *Use of Dedicated Trains for Transportation of High-Level Radioactive Waste and Spent Nuclear Fuel* (FRA Report) (available at http://www.fra.dot.gov/downloads/safety/report_dedicated_trains.pdf), FRA compared “the relative safety of rail shipment alternatives for the transport of spent nuclear fuel (SNF) and high-level radioactive waste (HLRW)” FRA Report, at 2. In his letter transmitting FRA’s Report to Congress (available at http://www.fra.dot.gov/downloads/safety/transmittal_letters_dedicated_trains.pdf), then DOT Secretary Mineta wrote “FRA’s March 2005 Report to Congress concluded that dedicated train service offers the lowest accident probability and can reduce radiation exposure in the event of an accident by mitigating the consequences and simplifying wreck clearance . FRA met with representatives of the Department of Energy, the Nuclear Regulatory Commission, pertinent sectors of the rail transportation industries, and State and Tribal organizations to obtain comments and information pertinent to the study ”

FRA found “the study results support the conclusion that use of dedicated trains would reduce both the probability of a SNF/HLRW cask being involved in a train accident and the possibility that other hazardous materials might be involved that could subject a cask to a fire environment with possible loss of shielding ” *Id.* at 4 FRA also recognized “the improvements in quality and efficiency of inspection by the railroad and FRA that can be realized through use of dedicated consists ” *Id.* The agency further expounded that its role in promoting safe transportation of SNF “is greatly simplified and the likelihood of success is enhanced, where dedicated equipment is employed and the route is as direct and well suited to the mission as possible Concentrating on the safety of a discrete subset of locomotives and cars, and surveying

a route that avoids congested yards, will increase the likelihood that safety concerns are reliably identified and remedied before the shipment is accepted by the railroad.” *Id* at 8.

As to incident-free (non accident) risk, FRA found that “[p]rimarily because of the reduced time in transportation, incident-free risk was lowest for dedicated trains . . . ” *Id* Dedicated trains expose the general public to lower potential doses of radiation than general trains. *Id* at 16 “This reduction is primarily due to the fact that dedicated trains do not stop in yards for classification, reducing the total exposure time.” *Id* at 16-17. Similarly, rail worker radiation doses are lower for dedicated trains than regular trains. “This small decrease in absolute dose value is primarily due to the reduced yard visits of dedicated trains.” *Id* at 17.

As to accident-related risk, FRA found that “[d]edicated trains have the lowest accident probability due to the decreased stopping distance of the shorter consist, the fewer number of cars to derail, and fewer yard visits (decreasing yard accident probabilities) The probability of a fire engulfing the cask car is lower for dedicated trains because cars carrying hazardous materials are restricted from the consist.” *Id* at 17-18. FRA also found that latent cancer fatalities (LCFs) associated with a type of rail accident is lower than the LCFs associated with a general freight train accident. “The differential is due to the fact that the greater number of cars in regular trains requires more rerailing time ” *Id* at 18. FRA also found that “the more direct route taken by the dedicated train reduces both non-incident and accident-related risk associated with this type of shipment.” *Id* at 20. Finally, FRA found that under a new AAR standard, “the likelihood of derailment associated with transportation of the overweight cask car will be further mitigated through use of a state-of-the-art consist ” *Id*

In conclusion, FRA found that the “risk to employees and the public from transportation of SNF/HLRW is low, but on a comparative basis dedicated trains appear to offer advantages

over general consists. Several of these inherent advantages –avoiding yards, reducing derailment potential, and reducing the risk of involvement of other hazardous materials in an accident scenario–could be further exploited with careful attention to conditions of transportation.” *Id* at 20-21.

In March 2006, FRA issued a so-called Technical Study entitled *Comparative Safety of the Transport of High-Level Radioactive Materials on Dedicated, Key, and Regular Trains* (“FRA Technical Study”)(available at <http://www.fra.dot.gov/downloads/Research/ord0503.pdf>) The FRA Technical Study “was undertaken to fulfill the requirements of the Hazardous Materials Transportation Uniform Safety Act of 1990, which required a comparative analysis of the safety of using dedicated versus regular trains for the shipment of spent fuel . . . [The] report documents the results of that study, conducted by the Volpe National Transportation Systems Center, for the FRA . . . ” FRA Technical Study, at ix

According to the FRA Technical Study, “[d]edicated train shipments have a lower overall radioactivity exposure risk during incident-free transport than shipments by regular or key trains; the advantage is primarily derived from the differences in the duration and frequency of yard visits, which account for a significant portion of total exposure for impacted populations . . . Dedicated trains reduce the likelihood of high-temperature fires due to lessened exposure to other hazardous material. The risk for loss of shielding accidents is shown to be lower for the shorter dedicated trains due to the decreased number of potentially derailed cars.” *Id* at i.

The FRA Technical Study concluded that for the general wayside population “dedicated train service [radiation] doses were lower than for regular . . . train service . . . The total dose for all stops (yard and interchange) for regular . . . service are higher than for dedicated due to increased number of stops and longer stop durations.” *Id* at 48. “For shipment escorts,

dedicated train case [radiation] doses are lower than regular . . . train cases because of the shorter stop durations." *Id* at 53.

The FRA Technical Study reported that "[s]imulations of train makeup comparing dedicated train configurations and regular train configurations with the cask consist at the rear of the train illustrate the unfavorable train-track dynamics resulting from the regular train configuration." *Id* at 92. Further, "[f]orces on the car in the cask position when braking from 50 mph . . . are significantly higher in the longer train consist than would be experienced in a shorter, dedicated train. These unfavorable forces could contribute to an increased derailment risk." *Id* Finally, the Study concluded that it is reasonable to assume that 50 percent of certain train-handling accidents "would be significantly reduced or eliminated in short trains with six or fewer cars " *Id*

The FRA Technical Study concluded that "the speed restrictions associated with the use of dedicated . . . trains is expected to reduce high-speed accident probability (compared to regular trains) Reduction of yard entries also substantially reduces the expected accident rate for dedicated trains, compared to regular . . . trains." *Id* at 123. "The use of a dedicated train could allow the railroad to avoid classification yard entries and impose restrictions, such as the no-passing rule in territory that may be operationally challenging." *Id* at 124 "Based upon analyses of the typical number of cars involved in derailments and the possibility that other hazmat may be included in the consists of regular . . . trains, the duration of the incidents involving dedicated trains are likely to be much shorter than those of regular . . . trains. The duration of the event determines the amount of radiological exposure to surrounding population and responders When duration is included, the result shows that dedicated trains reduce the potential exposure when compared to regular . . . trains." *Id*

The staff of the Nuclear Regulatory Commission (NRC) has also noted the safety advantages of dedicated trains for the transportation of SNF. In a June 6, 2007 Policy Issue Information regarding "Staff Actions Taken in Response to the National Academy of Sciences' Study on Transportation of High-Level Waste and Spent Nuclear Fuel in the United States" (available at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2007/secy2007-0095/2007-0095scy.html>) NRC's staff wrote about dedicated trains. The staff stated that the operating practices in AAR Circular OT-55, "coupled with either an FRA requirement or DOE policy on using dedicated trains, will virtually eliminate the chances of rail accidents resulting in long-duration, fully engulfing fires, and that NRC does not need to take any further actions on rail operating practices."

In short, the key agencies responsible for the safety of SNF and other radioactive materials, including their safe transportation, have come to recognize the safety benefits of dedicated trains in the last several years. In the face of this information, the STB should not overlook the important and unique opportunity presented by this proceeding to contribute to the safe transportation of SNF over the national rail network.

CSXT addresses next the safety condition it proposes for the transportation of SNF to the line proposed for construction by DOE

III. PROPOSED SAFETY CONDITION

Given the now well-settled safety advantages of dedicated trains, CSXT requests that the Board impose a safety related condition to any approval of DOE's construction and operation of the Yucca Mountain line that the Board may issue. CSXT specifically requests that the Board order, as a condition of approval, that any SNF tendered to CSXT for transportation by rail to Yucca Mountain be transported in trains that are strictly dedicated to the transport of SNF.

CSXT does not purport to speak here for the entire rail industry and thus takes no position on whether non-CSXT traffic destined for Yucca Mountain likewise should be moved in dedicated trains. At the same time, CSXT notes the clear safety advantages of dedicated trains, as described above. That now established safety benefit should not be ignored in this proceeding or limited to the proposed line. The STB should take the opportunity presented by this case to ensure that transportation of SNF to Yucca Mountain moves on dedicated trains not only on the proposed Yucca Mountain line (as DOE has itself proposed), but while en route to Yucca Mountain.

The Board has clear authority to attach safety-related conditions to the approval of a rail construction application. See 49 U.S.C. § 10901(c) (STB certificates approving rail line construction “may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest”). In its “Yucca Mountain Fact Sheet” on its website, the Board indicates it can approve a rail construction application “with conditions imposed to mitigate potential safety or environmental concerns.” See http://www.stb.dot.gov/stb/environment/key_cases/Yucca_Mountain.html. Moreover, in recent construction proceedings, the Board has imposed numerous safety related conditions on its approval of rail construction. See *Tongue River R R Co., Inc -Construction and Operation-Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3), slip op. at 35, 55-58 (STB served Oct. 9, 2007)(approving rail construction subject to transportation and safety mitigation conditions); *Ameren Energy Generating Co -Construction and Operation Exemption-in Coffeen and Walshville, IL*, STB Finance Docket No. 34435, slip op. at 8-10 (served Feb. 17, 2006) (approving rail construction conditioned on transportation and traffic safety conditions).

CSXT's request for a safety-related condition on movements of SNF that are not directly on the line at issue is not only reasonable, but consistent with the views of other agencies. DOE (not to mention FRA, NRC and other experts) has acknowledged the safety benefits. Certainly if dedicated train service is safer for DOE's proposed rail line in the Nevada desert, it is safer for the transportation of SNF through cities and other more densely populated areas in the East and Midwest. Accordingly, DOE would have no basis for opposing the use of safer dedicated trains for SNF transported on CSXT's lines.

The condition is also directly related to the proposed action that the Board is considering in this proceeding. CSXT's transportation of SNF destined for any repository that may be located at Yucca Mountain would not exist absent any approval by the Board of DOE's construction and operation of the proposed Yucca Mountain line. In other words, Yucca Mountain rail traffic would not be transported on the national rail system, including on CSXT's lines, unless the Board approves construction of the line at issue in this case. Further, the approval of that line would almost certainly significantly increase the volume of SNF rail shipments nationwide, increasing the safety risks of such transportation by virtue of that increase in volume. The Board can mitigate the safety hazards created through its approval of this line by at least protecting carriers, their employees, and the general public by requiring the use of the now well documented preferred type of service for the movement of this highly dangerous commodity. Requiring the use of dedicated train service over the line, and for shipments destined to this line, will serve the public interest not only on the line and its environs, but throughout all parts of the country through which these shipments move.

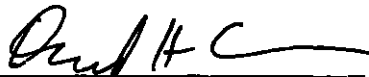
In short, there is a clear relation between this proceeding and the safety related condition that CSXT requests. Viewed from the context of the National Environmental Policy Act of 1969

(NEPA), which the Board must consider in construction applications, there is a “but for” relationship between the shipment of SNF on a CSXT line and the Yucca Mountain project as a whole -- SNF would not be transported on CSXT’s lines in greater volumes and frequency but for any Board decision in this proceeding to allow DOE to construct its proposed line. Under accepted NEPA doctrine, therefore, the STB has clear authority to consider the safety impacts of SNF rail transportation nationwide and to prescribe a condition relative to the safety of a SNF shipment well before it reaches the repository. *See Riverview Trenton Railroad Company – Petition for an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line*, STB Finance Docket No. 34040 (EA served October 15, 2001) (concluding that STB would review environmental implications of intermodal facility that would not exist “but for” rail line proposed for acquisition and operation). Here, the case for imposition of a condition that extends beyond the line at issue is even stronger given the STB’s unquestioned jurisdiction over the national rail network in general and CSXT’s lines in particular.

IV. CONCLUSION

If the Board approves DOE's construction and operation application, CSXT requests that the Board condition any such approval on the above-described requirement that any SNF transported over the line be carried in dedicated trains only. CSXT further requests that the condition be extended to all shipments of SNF tendered to CSXT and destined to Yucca Mountain on the ground that but for the approval of the construction and operation of the line to Yucca Mountain, there would be no rail shipments of SNF and the accompanying hazards of such shipments. The condition would be entirely consistent with DOE's own policy statement. The Board therefore should mitigate the hazards of such transport by imposing the requested condition

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July 15, 2008

EXHIBIT A

Department of Energy Policy Statement for Use of Dedicated Trains for Waste Shipments to Yucca Mountain

POLICY STATEMENT

The Department of Energy (DOE) will use dedicated train service (DTS) for its usual rail transport of spent nuclear fuel (SNF) and high-level radioactive waste (HLW) to the Yucca Mountain Repository site in Nevada when the repository is operational.

BACKGROUND

On April 8, 2004, the Department issued a record of decision on using rail as the preferred mode for transport of SNF and HLW to the repository. Using rail would result in fewer shipments than using trucks and would reduce environmental impacts. The term "dedicated train" refers to train service dedicated to one commodity (in this case, SNF and HLW). Past and current SNF shipping campaigns by DOE programs, including fuel from Three Mile Island and the West Valley Demonstration Project, the Foreign Research Reactor SNF Acceptance Program, and commercial campaigns, have used DTS.

DEDICATED TRAIN SERVICE BENEFITS

The benefits for the use of dedicated trains can be grouped into categories of safety, security, cost and operations.

Safety

SNF and HLW is shipped safely regardless of mode or type of service, primarily due to the *stringent regulations in place and the robust nature of the transport packages involved*. However, the radiological risk resulting from transport without incident may be lower due to decreased time in transit.

Security

DOE shipments have been and will continue to be made securely using both DTS and general freight service. Escort and other physical protection features can be employed using either type of service. DTS does offer some potential advantages, such as:

- Increased command and control capabilities. Shorter DTS trains allow better visual monitoring from the locomotive and escort car.
- Avoidance of lengthy "dwell times" in rail yards.

System Cost

Analyses indicate that the primary benefit of using DTS is the significant cost savings over the lifetime of the Yucca Mountain project. The cost of DTS is offset by a reduced fleet size and its attendant operations and maintenance.

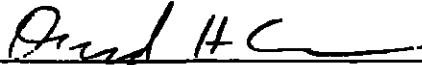
Operations

The use of DTS will result in several benefits for repository and transportation operations.

- Transit and turnaround times will be shorter using DTS, enabling the repository to operate with fewer casks and fewer railcars (i.e., equipment will not sit idle in rail yards). In contrast, using general freight service would increase the required size of the cask and railcar fleet by about 40 percent due to the increased transit time associated with general freight service.
- Use of DTS provides greater operational flexibility and efficiency for the waste management system due to reduced time in transit, and greater predictability in routing and scheduling.
- Repository operational resources could be better managed by taking advantage of more predictable shipment and receipt schedules.
- Transportation planning and operations would be simplified by narrowing mode and type to mostly rail coupled with the use of DTS.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Comments of CSX Transportation, Inc. to be served on each Party of Record by first class mail, postage prepaid, on July 15, 2008.

A handwritten signature in black ink, appearing to read "David H. Coburn", is written over a horizontal line.

David H. Coburn