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July 15, 2008

Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

**Re: *United States Department of Energy Rail Construction and Operation Caliente
Rail Line in Lincoln, Nye and Esmeralda Counties, Nevada***

Application for a Certificate of Public Convenience and Necessity.

Finance Docket No. 35106

Dear Sir or Madam,

The National Association of Regulatory Utility Commissioners (NARUC) respectfully provides the attached comments for filing in the above-captioned proceeding.

NARUC strongly supports the construction and operations of the proposed rail line as a matter of national importance as indicated in the application. We also support the shared-use option for common carriage as potentially providing economic development benefits to the region served by the rail line and the State of Nevada.

Thank you for this opportunity to present our views

Sincerely,

_____/s/_____
James Bradford Ramsay
NARUC General Counsel

cc: U S Department of Energy
Director, Office of Civilian Radioactive Waste Management
Director, Office of Logistics Management
Assistant General Counsel for Civilian Nuclear Programs

**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, NEVADA**

**APPLICATION FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

**Comments of the
National Association of Regulatory Utility Commissioners**

The National Association of Regulatory Utility Commissioners ("NARUC") is a quasi-governmental nonprofit organization founded in 1889. Its members include the government agencies of the fifty States, the District of Columbia and U.S. Territories engaged in the economic and safety regulation of carriers and utilities. NARUC's members are charged with regulating the retail rates and services of electric, gas, water and telephone utilities operating within their respective jurisdictions. They have the obligation under State law to assure that such energy utility services as may be required by the public convenience and

necessity are established, maintained, and provided at rates and conditions which are just, reasonable and nondiscriminatory for all consumers.

NARUC is located at 1101 Vermont Ave., NW, Suite 200, Washington D.C. 20005. Both the Courts¹ and the United States Congress² recognize NARUC as the proper party to represent the collective interest of the State regulatory commissions.

NARUC strongly supports the construction and operations of the proposed rail line, which will expedite waste shipments to the repository, as well as the shared-use option for common carriage which, could potentially provide economic development benefits to the region served by the rail line and the State of Nevada.

NARUC's Interest in the Proposed Rail Line to Yucca Mountain

NARUC has a range of obvious concerns about anything related to the Yucca Mountain repository, including this proposed rail line.³ NARUC's member

¹ See, e.g., *USA v. Southern Motor Carrier Rate Conference, et al*, 467 F.Supp. 471 (N.D. Ga. 1979), aff. 672 F.2d 469 (5th Cir. Unit "B" 1982); aff. en banc, 702 F.2d 532 (5th Cir. Unit "B" 1983, rev'd, 471 U.S. 48 (1985). See also *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976).

² See, e.g., 47 U.S.C. § 410 (1986); Cf. 47 U.S.C. § 254 (1996).

³ NARUC has reviewed and commented upon all draft and supplemental environmental impact statements (EIS) related to the Yucca Mountain repository, including the Yucca Mountain Final EIS in 2002, the Draft Nevada Rail SEIS and the Draft Rail Alignment EIS, both in 2007. DOE has gone the "extra mile" in accommodating public input to each of the NEPA documents. DOE can provide exact figures on how many hearings were held, how many comments were received and how much it cost DOE (and the ratepayers) in each case. DOE also withstood litigation on the Yucca Mountain EIS.

State public utility commissions are charged with assuring the utility rates paid by electric consumers are just and reasonable. Those consumers will ultimately bear the cost of building the rail line through those rates.

Since Nuclear Waste Policy Act ("NWPA") was enacted in 1983, utilities have been required to pay a fee to the federal government's Nuclear Waste Fund for the eventual disposal of the spent fuel used to generate electricity.⁴ Electric utilities, in turn, pass those fee payments through to customers. This means ratepayers will pay for both disposal in the repository and the transportation of the waste to it. This will include the bulk of the \$2.6 billion cost of building and operating the proposed rail line.

NARUC's members also have interest in expediting the opening of a working repository to avoid the safety concerns associated with, as well as the costs of, onsite waste storage.⁵ The proposed rail line is a prerequisite for successful repository operation. It is needed to transport spent nuclear fuel and high-level radioactive waste ("HLW") from present commercial and federal temporary storage locations in 77 locations in 35 States. The line will serve as the

⁴ The Department of Defense also has a disposal fund to be used to pay for the cost of the government-managed HLW. By agreement with DOE the Defense Department will pay 27 percent of the repository expenses (and of rail line costs) and DOE and the ratepayers will pay for the rest.

⁵ The disposal of nuclear waste (spent fuel and HLW) in a geologic repository is necessary for the reasons cited in the NWPA. DOE needs to dispose of the spent fuel already produced and currently in temporary storage at reactor sites, as called for in contracts mandated by the NWPA between DOE and the reactor owners.

final link between those storage sites that are served by the national rail network and the proposed disposal facility (repository) to be built and operated at Yucca Mountain. Since the Department of Energy ("DOE" as the Applicant) has chosen the "mostly rail" mode as the preferred means of transporting the spent fuel and HLW to the site, there needs to be a rail link between a main line and Yucca Mountain for that shipment mode to work.

Finally, NARUC's member commissions have a critical role in planning, permitting and citing facilities, and establishing policies to assure an adequate future electricity supply. Many public and commercial entities are considering new nuclear generation as one possibility for meeting future electricity demand growth. One factor for policy makers and industry planners to consider is whether DOE will be able to dispose of spent fuel from new plants in any reasonable time frame. This uncertainty increases the risks and the potential costs of operating such facilities. The best way to eliminate that factor as a consideration, is for DOE to begin disposing of the spent fuel from existing reactors. To begin that process, under the recommended "mostly rail" transport scheme, this rail line is essential.

Discussion

The DOE Application makes an incontrovertible case that Congress, the President and the Secretary of Energy have recognized the critical need for an operational permanent geologic repository. See application at 19 – 24. The

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repository is critical to, *inter alia*, assure the nation's long term energy security. Disposal of spent fuel is indispensable to this environmentally efficient energy sector's growth. The repository is also important to homeland security. Spent nuclear fuel and HLW are currently stored at 131 sites in 39 States. Storage in a deep underground repository is far more secure option.

The proposed rail line is a critical link to making that repository operational There are several reasons why DOE's choice of the rail transport option, over competing proposals, makes sense.

First, the rail option increases the public's confidence in the overall security of the transport. The transportation analysis presented in the Yucca Mountain Draft EIS in 1999, examined two transportation scenarios for the shipment of 70,000 metric tons of nuclear waste to the repository from the 72 commercial and five DOE storage sites over a 24-year period. The scenarios were:

	Truck shipments	Rail shipments
Mostly rail scenario	2,600	10,800
Mostly truck scenario	49,800	300

While the safety records for both shipment modes are excellent, many public comments seemed to be based on a perceived greater risk of exposure to radiation in both incident-free and accident scenarios for highway shipments than for rail. The State of Nevada will file its own views on the relative merits of either option.

However, based on comments reviewed from other States, it appears the public at large —often fearful of radioactive materials—prefers this material be transported over rail rather than over the highways. This preference is probably based on the fact that rail shipments will be much fewer in number and members of the public are less likely to be stuck in traffic next to a truck carrying nuclear waste. Moreover, rail shipments somewhat simplify security options to handle efforts to interfere with shipments by groups opposed to the repository or nuclear power.

Second, DOE has identified and assessed the environmental impacts of the rail line construction and operations in a comprehensive way. NARUC has been an active reviewer in all the repository-related NEPA documentation, including the two rail Environmental Impact Statements. On this proposal, DOE has efficiently examined the potential impacts – which parallel those reasonably expected of any infrastructure project of this magnitude proposed for a rugged and largely unpopulated desert. Although much of the land is owned by the federal government, there are some permitted uses for such activities as grazing and mining. Some permittees expressed concern over how the rail line would affect present land uses. DOE seems poised to accommodate those concerns and apply a best practices approach to both construction and rail operations.

Third, if the proposed rail line is not built, there will only be additional and unproductive delay as DOE considers either another rail route within the preferred

Caliente corridor or shifts to the “mostly truck” scenario – an option which will necessarily include a corresponding reduction in public confidence in the transport option. The repository, and necessary adjuncts like this rail proposal, have already experienced too much delay.

Congress, when formulating the NWPA in 1982 called for the repository to begin acceptance of waste for disposal in fifteen years. But ever since Yucca Mountain was chosen as the repository site, a marathon of legal and political maneuvering has slowed progress. But delay has consequences. The utilities were required by the NWPA to enter into contracts with DOE. Under the contracts, since 1983, utilities have paid fees to the federal government for electricity sold and produced from nuclear power. In exchange, DOE was to site and construct a repository and begin accepting waste for disposal by January 31, 1998. DOE did not meet the 1998 acceptance date and many utilities sued the agency for its failure accept the waste. The utilities won and currently can either negotiate settlement agreements or seek court-awarded damages. The extent of liability is not known because, among other things, DOE’s liability extends until it actually accepts title to the waste as per the contract - and there is no reliable forecast of when this will occur. DOE repository managers had targeted 2017 as the “best-achievable” date that the repository might begin waste disposal operations. Following the latest

Congressional budget cuts, the program director indicated the earliest date for initial operations more likely to be 2020.

The application estimates it will take at least four years to construct the rail line. It is likely other legal delays will increase the construction time. For example, the Nevada State Engineer denied water permits for the Yucca Mountain site investigation phase of its development and is expected to deny a water permit for the repository construction. The State could also deny water permits for the rail line construction. *At a minimum, the rail line should be operational in time for the delivery of construction materials and equipment for constructing the repository itself*

If DOE's plan is to ship waste in the mostly rail mode, but no railroad is operational once the repository is ready to receive the shipments, then DOE will be faced with either (1) delaying shipments until rail access is available, or (2) making initial shipments by truck over the highways until rail is available. The first option increases DOE's liability in the litigation discussed earlier. The second could cause problems for States along the truck shipment routes told to anticipate shipments by rail. Those States would need to adjust their NWPA-mandated emergency response capability as well as resources to address potential public protests.

Finally, the rail option includes potential economic benefits for Nevada, as well as lower operating costs for the government, for by allowing for shared use. Exhibit K of the application suggests there are potential shippers in the region that could be served by rail service if it was available to them. This can only reduce the overall costs of the facilities. Moreover, the economic benefits of a new rail option might increase in-state support for the operation of the permanent repository.

Conclusion

NARUC strongly supports the construction and operations of the proposed rail line as a matter of national importance as indicated in the application. We also support the shared-use option for common carriage as potentially providing economic development benefits to the region served by the rail line and the State of Nevada.

Respectfully Submitted,

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July 15, 2008

Certificate of Service

I hereby certify on this 15th day of July 2008, that I Masha Shmukler have served the persons below and the service list by 1st class mail postage prepaid.

_____/s/_____
Masha Shmukler

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