Rail & Intermodal

May 2004

A Rail Hot Potato

Nevada says STB, not DOE, should have authority over Yucca Mountain rail line

If the state of Nevada gets its way, the Surface Transportation Board may be faced with yet another burden distracting it from shippers’ concerns over railroad rates and service.

Nevada contends that Department of Energy is usurping the STB's authority as the lead agency in assessing the environmental impact of a proposed rail line that would haul nuclear waste inside its borders. If approved, the line, estimated to cost close to $1 billion, would be used to move most of the shipments of spent nuclear fuel stored at 127 sites around the country to a repository at Yucca Mountain, Nev., a 1,200-foot-high ridge 100 miles northwest of Las Vegas.

But getting jurisdiction over such a huge project could place a significant burden on the STB's staffing resources, said the sole member of the STB, Chairman Roger Nober.

"We may have to ask for more (money) from Congress," if Nevada gets its way, Nober said recently.

The Yucca Mountain project also would further divert the amount of time and attention the STB has for shipper concerns such as rate cases and rail service oversight - time that may continue to be scarce with the nominations of STB commissioners Frank Mulvey and Douglas Buttrey held up by political infighting on Capitol Hill.

The state of Nevada isn't alone in trying to find more work for the STB. Opponents of a proposed $2 billion rail expansion into Wyoming's Powder River Basin want the board to perform extensive reviews of the rail line's environmental impact. The 8th U.S. Circuit Court of Appeals recently denied an STB petition to reconsider its decision ordering STB to handle the review.

DOE filed a notice in the April 8 Federal Register outlining its intent to prepare an environmental impact statement for the construction of the line. Nevada quickly
challenged that notice. "DOE appears to have blatantly preempted the exercise of exclusive regulatory authority by the STB over this new rail line" by assigning itself lead agency status, wrote Nevada attorney general Brian Sandoval to U.S. Council of Environmental Quality chairman James Connaughton on April 22. "Accordingly, Nevada respectfully requests that the CEQ investigate this matter and, if appropriate, issue corrective instructions to DOE."

Connaughton is the principal environmental policy adviser to the president and the CEQ works with other government agencies in developing environmental policies. "We received the letter, and our professional staff is reviewing it and will get back in touch with the AG in due course," said CEQ spokeswoman Dana Perino.

Nober recently testified that the STB's involvement in the Yucca Mountain rail project would depend on whether the Bush Administration decides to structure the project as a common carrier line or as private track.

"That determination is very fact-specific," Nober said. "It might be influenced by who builds the track, who pays for construction and maintenance, who owns the goods being shipped, but the most important determination is whether the line would be held open for service to the general public or reserved exclusively for service to the Department of Energy."

The CEQ says that federal regulations require that "uncertainties" over lead agency status must be resolved by letter or memorandum. Nober said that if DOE chooses to construct this project as private track, it could do so without notifying the board and that the STB would have no jurisdiction over it. Nober said the board has not yet received correspondence from DOE regarding the project.

The Nevada attorney's office argues that spent nuclear waste should stay where it is. "The storage facilities that are currently being used at the 127 locations around the country is good for another 100-120 years, according to DOE's own research," said Nevada attorney general spokesman Tom Sargent. Moving it to a central depository would only increase the risk."

President Bush signed into law the selection of Yucca Mountain as the disposal site for spent nuclear fuel in 2002. DOE chose the Caliente Corridor rail alternative to move the 70,000 metric tons of waste - roughly 3,300 train shipments - over a period of 24 years. DOE now will consider eight route alternatives within the quarter-mile wide corridor in which to run the rail line, which would begin near the end of a Union Pacific Railroad rail head roughly 150 northeast of Las Vegas.

Sargent concedes that the filing with the CEQ is also an attempt to delay a project that the state and environmental groups have opposed since DOE began studying the concept 25 years ago. "The attorney general's office is committed to leaving no legal avenue for delaying this project unevaluated," said Nevada attorney general's office spokesman Tom Sargent. "We're fighting this every step of the way. Every time (DOE) breaks proper procedure, we're going to call them on it."

© 2004 Traffic World Magazine