

**Congress of the United States**  
Washington, DC 20510

September 29, 2008

Charles D. Nottingham, Chairman  
U.S. Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

Dear Chairman Nottingham:

We are writing to express concern regarding the Surface Transportation Board's (STB) handling of the Department of Energy's (DOE) application for a Certificate of Public Conveyance and Necessity (CPCN) to construct and operate a rail line from eastern Nevada to the proposed nuclear waste repository at Yucca Mountain.

First, the STB appears to be asserting jurisdiction in this matter despite the fact that the critical decision that would determine jurisdiction has not yet been made, and might not be made before STB acts on DOE's application.

By law, STB has jurisdiction over rail lines that are to be used for commercial/common carrier purposes. A rail line that is not available for general commerce is, as we understand it, not subject to STB's jurisdiction. In the case of DOE's proposed Yucca Mountain rail spur in Nevada, DOE has not determined if it will be used exclusively by DOE solely for Yucca Mountain-related activities, or if it will also be available for use by commercial shippers. Until DOE makes the decision to allow 'shared use' on the proposed rail line, STB appears to be exceeding its authority by entertaining DOE's application.

This matter is important because a private rail line would fall within state rather than STB jurisdiction, and such an applicant would be subject to Nevada laws and regulations governing rail construction and operation. STB appears to be inappropriately – and perhaps illegally – usurping the State of Nevada's authority by allowing DOE to seek approval for its Yucca Mountain rail spur under STB jurisdiction.

***Please describe in detail STB's rationale for accepting DOE's application in light of the questions surrounding jurisdiction and STB's justification for usurping State jurisdiction in this matter.***

Additionally, the STB seems to be inappropriately limiting the geographic and demographic scope of its review of DOE's CPCN application.

While DOE's application involves constructing and operating over 300 miles of new rail line in Nevada, the impacts of the proposed rail line will affect about 25,000 miles of rail lines in 44 states. If the proposed Caliente line is built, DOE will make thousands of shipments of radioactive wastes for at least four decades. DOE shipments to the Caliente rail line in Nevada would traverse about 836 counties past 190 cities.

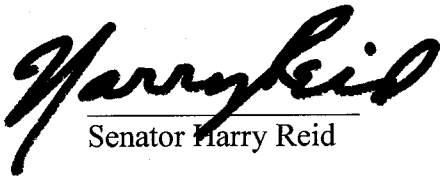
The issue before STB is much broader and more far-reaching than simply the approval of 300 miles of new rail construction in Nevada. STB has both a statutory and moral duty to comprehensively examine the full effects of the proposed nuclear waste rail line on the entire national rail transportation system before making any decision to issue a CPCN.

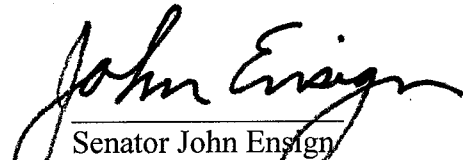
***Please provide a detailed explanation of STB's plan for addressing the national rail transportation system implications of DOE's proposed Caliente rail line.***

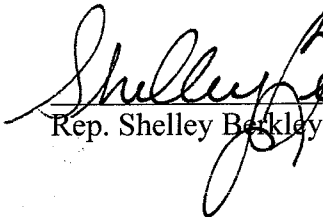
Finally, it is concerning that the STB has not scheduled a public hearing on the Department of Energy's application, and could choose to make a decision on this matter without an on-the record proceeding. The proposed rail line is the longest new track construction considered in the U.S. since the 1930s, is in the unique situation of being designed primarily for transporting nuclear waste, and will have impacts far beyond the State of Nevada's borders. It would be prudent for the STB to provide Nevadans and the American public ample opportunity to comment, including by scheduling a public hearing on the DOE's CPCN application.

Thank you for your attention to this matter. We look forward to your prompt reply.

Sincerely,

  
Senator Harry Reid

  
Senator John Ensign

  
Rep. Shelley Berkley

  
Rep. John Porter

  
Rep. Dean Heller