

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35106

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UNITED STATES DEPARTMENT OF ENERGY – RAIL  
CONSTRUCTION AND OPERATION – CALIENTE RAIL LINE  
IN LINCOLN, NYE, AND ESMERALDA COUNTIES, NEVADA

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**NORFOLK SOUTHERN CORPORATION'S RESPONSE TO  
REPLY OF THE UNITED STATES DEPARTMENT OF ENERGY**

Norfolk Southern Corp. ("Norfolk Southern") respectfully requests clarification of an important position by the United States Department of Energy ("DOE") In its Application (at 15), DOE stated that "[s]hipments of spent nuclear fuel and high-level radioactive waste [to Yucca Mountain] would be made by dedicated trains." In its latest Reply, however, DOE has said that its prior commitment to the use of dedicated trains was intended to apply only to the portions of the relevant movements between Caliente, Nevada and Yucca Mountain, and *not* between the origins and Caliente.<sup>1</sup> Moreover, DOE has emphasized that only "usual" movements would be in dedicated trains (*id* at 5-6), but has made no attempt to explain when a movement would be "unusual" and thus not made via dedicated train service. Based on the plain meaning of DOE's prior representations, Norfolk Southern believed that DOE would require all movements of spent nuclear fuel to be in dedicated trains unless some emergency situation required otherwise.

In its Application and in prior public statements, DOE said that.

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<sup>1</sup> *U S Dep't of Energy Reply to CSX Transportation, Inc.'s Motion for Leave to File Response to Reply of the U S Dep't of Energy to Comments on Its Application for a Certificate of Public Convenience and Necessity*, at 6 (filed October 8, 2008) (emphasis in original) ("Reply").

- “Shipments of spent nuclear fuel and high-level radioactive waste would be made by dedicated trains.” Application at 15; *see id* at 34-36.
- “DOE has also decided to use dedicated train service for rail shipments” to Yucca Mountain.<sup>2</sup>
- “DOE has decided to use dedicated train service for shipments to the repository. Dedicated trains would transport only spent fuel or high-level radioactive waste. . .”<sup>3</sup>
- DOE “is adopting a policy to use dedicated trains for its usual shipments of spent nuclear fuel and high-level radioactive waste. . .”<sup>4</sup>
- 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.”<sup>5</sup>

Norfolk Southern relied on these statements and believed that DOE had embraced the view that dedicated trains are the safest, most secure, and most efficient way to transport spent nuclear fuel. Norfolk Southern understood that DOE intended to use dedicated train service for such movements from origin to destination, and also understood that DOE’s use of the term “usual” meant that DOE intended to use dedicated trains routinely, except in case of emergencies or other extraordinary circumstances.

In its latest Reply, DOE has asserted (at 6) that its previous commitment to the use of dedicated train service “concerns the operation of the proposed Caliente Rail Line,” but “does not concern the mode of transporting spent nuclear fuel to the Caliente Rail Line.” This

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<sup>2</sup> *Did You Know Frequently Asked Questions about Spent Nuclear Fuel Transportation*, #10 (July 2008) (at <http://www.ocrwm.doe.gov/transport/faq2.shtml#9>)

<sup>3</sup> *Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste to Yucca Mountain* (January 2006) at 16 (at [http://ocrwm.doe.gov/transport/pdf/snf\\_transfags.pdf](http://ocrwm.doe.gov/transport/pdf/snf_transfags.pdf)).

<sup>4</sup> *Stakeholder Letter on Dedicated Train Policy* (July 18, 2005) from Paul M. Golan, Principal Deputy Director (at [http://ocrwm.doe.gov/transport/pdf/dts\\_stakeholder\\_ltr.pdf](http://ocrwm.doe.gov/transport/pdf/dts_stakeholder_ltr.pdf)).

<sup>5</sup> *DOE Policy Statement for Use of Dedicated Trains for Waste Shipments to Yucca Mountain*, at 1 (July 18, 2005) (at [http://www.ocrwm.doe.gov/transport/pdf/dts\\_policy.pdf](http://www.ocrwm.doe.gov/transport/pdf/dts_policy.pdf))

distinction seems illogical. DOE's original statements and representations were not limited to the portions of the relevant movements between Caliente and Yucca Mountain.

Moreover, it makes little sense to adopt a policy of using dedicated trains for only a portion of the relevant movements. DOE has acknowledged that dedicated train service is appropriate in the sparsely populated Nevada desert served by the Caliente Rail Line (as stated in the Application). The use of dedicated trains is manifestly even more appropriate in the more densely populated areas (and on the more congested rail routes) where much of the spent nuclear fuel and radioactive waste destined for Yucca Mountain will originate.

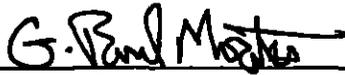
Norfolk Southern respectfully requests that the Board require DOE to clarify when it will use dedicated trains for the transportation of spent nuclear fuel and when it will not. In light of DOE's most recent filing, such a clarification is necessary for the STB to determine whether the DOE proposal would be consistent with the public interest, convenience and necessity under 49 U.S.C. § 10901.

Finally, Norfolk Southern did not realize until reading DOE's most recent filing that DOE's position is that it is unreasonable for railroads to charge for dedicated trains (even over lines with significantly greater density of both people and rail traffic) even though it represents to the Board that DOE itself will "usually" carry spent nuclear fuel and other hazardous materials in

dedicated trains *Compare DOE Reply at 7 n.4 with DOE Reply at 3 & 5.* We hope the Board will require further explanation as to why such a double standard represents sound public policy

Respectfully submitted,

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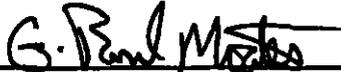
  
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Dated: October 10, 2008

**CERTIFICATE OF SERVICE**

I hereby certify on this 10th day of October, 2008, that I caused the foregoing Norfolk Southern Corporation's Response to Reply of the United States Department of Energy to be served by first-class mail, postage prepaid, and/or overnight delivery, on all parties of record

  
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