

**UNITED STATES OF AMERICA**  

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**BEFORE THE SURFACE TRANSPORTATION BOARD**  

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**STB 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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**STATEMENT OF  
MARTA ADAMS, CHIEF DEPUTY ATTORNEY GENERAL,  
ON BEHALF OF  
NEVADA ATTORNEY GENERAL CATHERINE CORTEZ MASTO  
IN OPPOSITION TO THE APPLICATION FILED MARCH 17, 2008 BY THE  
UNITED STATES DEPARTMENT OF ENERGY UNDER 49 U.S.C. 10901**  

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**PUBLIC HEARING  
LAS VEGAS, NEVADA  
DECEMBER 4, 2008**

Nevada Attorney General Catherine Cortez Masto, on behalf of the State of Nevada, is concerned that the STB is seeking to inappropriately expedite DOE's application for a certificate of public conveyance and necessity (CPCN) before the new Administration assumes office in January 2009. DOE's application to construct over 300 miles of new rail line in rural Nevada has potential impacts beyond Nevada's borders. In fact, the application presents unprecedented national impacts and could potentially affect huge swathes of the country's rail transportation system. If granted, the Caliente rail line will be the first, and only, rail line in the country proposed solely (or primarily) for the transport of thousands of shipments of deadly spent nuclear fuel and high-level radioactive waste to the proposed geologic repository at Yucca Mountain.

The rail line, if approved and constructed, will result in major impacts to the national rail system. With the prospect of nearly 10,000 shipments of dangerous nuclear waste moving along the country's railroad system for 30 years or more, the implications clearly extend to the nation as a whole. Almost every major metropolitan area in the country will be affected. The potential for accidents and terrorist attacks create new and poorly understood risks. The potential national impacts will require massive preventative efforts, infrastructure improvements, and maintenance efforts which will affect states, cities, and local governments in addition to the railroad companies charged with carrying this material thousands of miles to the proposed Nevada rail spur.

On behalf of Nevada's Attorney General, I ask that STB reconsider its current course and schedule for processing DOE's application. I ask that STB postpone any decision until the new Administration is in place and has had time to review the entire Yucca Mountain program and determine how it intends to proceed. President-Elect Obama has expressed serious doubts about the wisdom of the Yucca Mountain project and promised to end the project if

**elected. This fact alone should suffice for STB to suspend its proceedings on DOE's application.**

**Nevada is also concerned about the nature and purpose of this hearing today. It appears to be both premature and too unstructured in scope to provide for meaningful public input. The STB record on CPCN and National Environmental Policy Act (NEPA) issues remains incomplete. The notice of hearing identified no issues to be addressed, while STB staff reported that the hearing is "open for anyone who has anything to say about the Yucca Mountain project." In addition, it is unclear how the testimony you receive today will affect STB's deliberations concerning DOE's application.**

**Finally, Attorney General Cortez Masto is concerned that STB chose the location for the hearing today without consideration for the relative inaccessibility of this building. The secure NRC facility has limited access, restricted parking, and is difficult to find. Moreover, restricted press access is entirely inappropriate for a public hearing in which citizen participation should be encouraged, not hampered.**

**It is my understanding that STB historically has segmented the application process for rail construction into two equally important components - one dealing with the requirements for issuance of the CPCN and the other addressing the full range of NEPA requirements in support of any prospective CPCN decision. This historical approach does not appear to be the case here. Many of the issues that will be raised today and in written comments submitted into the record address issues related to the adequacy of DOE's Environmental Impact Statement (EIS) and STB's independent NEPA responsibilities. It is unclear how, when, and in what forum STB plans to address the vital NEPA issues or whether adequate opportunities for public involvement will be afforded.**

**Our review of DOE's application and related NEPA documents reveals a number of deficiencies. The application omits material facts and details regarding construction of facilities and operations, including the shared use option (SUO) or common carriage that DOE is now asserting for the rail line. Such details are essential to a complete evaluation of CPCN and NEPA issues. Implementation of SUO will require facilities and service that will certainly increase environmental impacts. The application offers no details.**

**STB's own regulations (Part 1150) require informative detail, especially operational data, for obvious evaluative reasons. After decades of "study and analysis" and many opportunities to provide informative submissions to support this application, DOE continues to omit foundational material facts for public scrutiny.**

**Other representatives from the State of Nevada will be providing specific information regarding particular deficiencies in DOE's application. I again urge**

**the Board to immediately suspend its review of DOE's application until the new Administration has determined its course of action with regard to the Yucca Mountain program. On behalf of the State of Nevada, the Attorney General's office is prepared to pursue all legal means to assure that no precipitous or unwarranted action on the Caliente rail line application is taken.**

**Thank you.**