
NEVADA NUCLEAR WASTE TASK FORCE, INCORPORATED

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March 27, 2009

224782

Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Finance Docket No 35219 — STB-2009-0035
Union Pacific Railroad petition for relief from their common carrier obligation

Comments by the Nevada Nuclear Waste Task Force In Opposition to the Petition.

The Nevada Nuclear Waste Task Force began its work in 1987, bringing the public voice to decision makers in matters regarding the proposed high-level nuclear waste repository at Yucca Mountain, NV. The Task Force is a non-profit, public interest organization dedicated to improving public access and involvement in issues and decisions that will involve their safety and well-being.

The Task Force is filing these comments in response to the above-referenced petition, published in the Federal Register (page 10991) on March 13, 2009 the Union Pacific Railroad's ("UP") request that the Board determine the extent of the common carrier obligation to quote rates for new, lengthy movements of chlorine where that transportation would require movement through High Threat Urban Areas and other communities. UP asserted that "... the risk of potential exposure from long distance shipments of chlorine is unnecessary..." because of the existence of closer and ample alternate chlorine supplies. Our focus is directed at the transport of highly radioactive materials and we believe that decisions in petitions such as this could set precedents for other dangerous cargo.

Our primary concern with UP's Petition is its casual understatement of the level of risk to life and property. No rational policy maker should dispute the critical need to analyze public safety issues related to the movement of hazardous cargo carried by various transportation modes. What is of great concern is that the petition by the UP suggests that it should have the power to decide when and where cargo is too risky to haul and, when it does so, that it has no duty to present facts supporting those conclusions to the public, public entities, and shippers. Its position seems inconsistent with a genuine concern about public safety matters and it is more consistent with an approach designed to ask for public indemnity, similar to Price-Anderson indemnity for nuclear accidents.

As a matter of law, the UP cannot receive the relief sought in its Petition for at least two reasons. First, what UP is required to do, if it really believes it is too unsafe to carry the chlorine cargo (or any other hazmat), is to file a petition for an embargo. Such a petition is required to be supported by Federal Railroad Administration findings confirming the existence of the unsafe conditions, the Board being without jurisdiction or competence to make those findings. See, e.g. *GS Roofing Products Company, et al., v. Surface Transportation Board*, 143 F.3d 387 (8th Cir. 1997).

Second, the UP failed to pursue its remedies with the FRA and DOT to have rules made concerning safety practices on long haul shipments of hazmat, if it does not believe current rules protect the public and its workers from disaster. UP is barred from Board relief because it failed to exhaust its remedies. See, *In Re Classification Ratings On Chemicals, Conrail*, 3 I.C.C. 2d 331 (Dec. 19, 1986).

Since the Board held that there should be a declaratory proceeding, the Task Force believes it is necessary to ask questions concerning public safety in regard to hazmat movement by rail including but not limited to:

- what are the statistical risks for carrying hazmat?
- on what basis are these risks, if any, acceptable?
- how do these risk/reward decisions get made?
- if Class I carriers can refuse to carry hazmat, who will carry the material and what risks will be associated with that carriage?

The Task Force believes that any process, such as the one selected by UP, must require the UP to make full disclosure to the public and policy-makers, of the results of any internal analysis showing the real risks of carrying hazmat.

For the reasons stated above, the Nevada Nuclear Waste Task Force opposes granting UP relief from its common carrier obligation.

A copy of this comment has been sent to each party on the Docket No. 35219 Service List.

Respectfully,

Judy Treichel

Executive Director