



NUCLEAR ENERGY INSTITUTE

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December 12, 2006

Mr. M. Lee Bishop
Environmental Impact Statement Document Manager
Regulatory Authority Office, Office of Civilian Radioactive Waste Management
U.S. Department of Energy
1551 Hillshire Drive
Las Vegas, NV 89134

Nuclear Energy Institute Comments on the U.S. Department of Energy Amended Notice of Intent to: *Expand the Scope of the Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, 71 Federal Register 60484, October 13, 2006*

Dear Mr. Bishop:

The Nuclear Energy Institute (NEI)¹, on behalf of the nuclear energy industry, is pleased to comment on the Department of Energy's Amended Notice of Intent (ANOI) proposing to *expand the Scope of the Environmental Impact Statement (EIS) for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*. The nuclear industry supports DOE efforts to provide for the safe transport of used nuclear fuel to a repository at Yucca Mountain. The nuclear industry has an impeccable safety record transporting thousands of shipments of used nuclear fuel and has the highest confidence that, whatever specific route DOE chooses for shipments to Yucca Mountain, the experienced transportation providers and proven regulations behind this achievement will assure that the same high standard of performance will be maintained throughout the repository shipping campaign.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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To enhance the opportunities for economic development associated with the repository and minimize the disruption to local communities associated with construction activities, as well as to provide for timely transportation of used nuclear fuel, industry urges DOE to make rail access available to Yucca Mountain as early as possible in the construction phase of the Yucca Mountain Repository project.

Industry takes no position on DOE's choice of a specific rail route. Accordingly, our interest in this ANOI is limited to ensuring that the process of selecting a route can be carried out in a timely and effective manner. In this regard, contrary to the approach identified in the ANOI, industry is of the view that the new EIS need not, and should not, reconsider previous DOE decisions that are not implicated by the new circumstances associated with the Mina corridor. We, therefore, recommend that DOE focus the scope of the proposed expansion to limit additional consideration to only the Mina corridor and the previously selected Caliente Corridor. In making a decision between these two alternatives we also encourage DOE to consider the wants and needs of local populations and continue to give due consideration to the extensive safety record that has been achieved over nearly half a century of used fuel transportation experience.

Additional details on these comments are provided in the enclosure to this letter. We look forward to continued dialogue on this subject and to participation in the public evaluation process proposed for this EIS. If you have any questions, please do not hesitate to contact me at (202) 739-8082; rxm@nei.org.

Sincerely,



Rod McCullum

c: The Honorable Edward F. Sprcat, Director, OCRWM, DOE
Mr. Mark H. Williams, Director, Regulatory Authority, OCRWM, DOE
Mr. Lawrence Kokajko, Director, HLWRS, NMSS, NRC

ENCLOSURE

Nuclear Energy Institute (NEI)
Detailed Comments On U.S. Department of Energy Amended Notice of Intent to Expand the Scope of the Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, 71 Federal Register 60484, October 13, 2006

Recommendation to Focus the Scope of the Proposed Expansion

The Department of Energy (DOE) had previously published notice of its intent to prepare a new Environmental Impact Statement (EIS) for the alignment, construction, and operation of a rail line to a geologic repository at Yucca Mountain last spring (69 Fed. Reg. 18,565 (Apr. 8, 2004)). The October 13, 2006 Amended Notice of Intent (ANOI) states that the scope of the new alignment EIS will be expanded to consider the potential environmental impacts of a newly proposed Mina rail corridor. According to the ANOI, this consideration will be at the same level of corridor analysis as is contained in the Yucca Mountain Final EIS. In addition, DOE intends to review the rail corridor analyses of that Final EIS and update it, as appropriate. DOE also intends to include in the new EIS a detailed analysis of alternate alignments within the Mina corridor at the same level of detail as the ongoing alignment analysis for the Caliente corridor.

Contrary to the approach identified in the ANOI, industry is of the view that the new EIS need not, and should not, reconsider previous DOE decisions that are not implicated by the new circumstances associated with the Mina corridor. In an August 8, 2006 decision, the United States Court of Appeals for the District of Columbia reviewed and rejected all challenges to the DOE's selection of the Caliente corridor as the preferred corridor based on the assessment in the Yucca Mountain EIS. See *State of Nevada v. Department of Energy*, 457 F.3d 78 (D.C. Cir. 2006). Nothing in the ANOI provides a reason to reconsider DOE's initial selection of the Caliente corridor.

Supplementation of an EIS is required when there are substantial changes to the proposed action or significant new circumstances or information relevant to environmental concerns, or where supplementation is otherwise needed to further the purposes of the National Environmental Policy Act – 10 CFR § 1021.314 (2006). The new EIS should assess how the conclusions based on the original EIS are affected by the new information or circumstances. See *Environmental Defense Fund v. Marsh*, 651 F.2d 983, 1006 (5th Cir. 1981) (requiring a supplementary EIS covering all of the changes in the proposed action and other information); *Kettle Range Conservation Group v. U.S. Forest Service*, 147 F.3d 1155 (9th Cir. 1998)

(upholding a supplemental EIS limited in scope to the issues directly raised by the new information).

The ANOI cites, as a new circumstance that justifies expansion of the scope of the new alignment EIS, a recent statement by the Walker River Paiute Tribe that it may reconsider its previous objection to nuclear waste crossing its Reservation in light of the alignment EIS. This new circumstance does not affect DOE's previous assessment of the relative merits of the five potential rail corridors that were evaluated in the Yucca Mountain Final EIS—Caliente, Carlin, Caliente- Chalk Mountain, Jean and Valley Modified. Consequently, there does not appear to be any reason for DOE to reconsider its earlier decision that the Caliente corridor is preferred to the other four corridors previously evaluated. To do so would add unnecessary cost and complexity to the preparation on the ongoing EIS and delay its issuance.

In assessing whether the Mina corridor should be preferred to the Caliente corridor, DOE may, for the purpose of comparison with the Mina corridor only, need to update some of the information in the Final EIS concerning the Caliente corridor. Unless significant new information is identified that provides "a seriously different picture of the environmental landscape¹," however, it should not be necessary for DOE to update and review its previous assessment of the Carlin, Caliente- Chalk Mountain, Jean and Valley Modified corridors, or to reconsider its previous decision that the Caliente corridor is preferable to those corridors.

Applicability of Established Transportation Safety Record

In developing whatever transportation route DOE chooses, the Department should continue to recognize the well established safety record of used fuel transportation. More than 3,000 shipments of used nuclear fuel, covering more than 1,700,000 miles, have been completed safely over the last 40 years in the United States. In fact, none of these shipments resulted in any injury due to the release of radioactive materials. There have been only four accidents, with no release of radioactive materials to the environment in any of them. Worldwide, more than 70,000 metric tons of used fuel has been transported safely in more than 21,000 shipments.

Used Fuel shipments to Yucca Mountain will meet the same stringent requirements that govern existing commercial used fuel shipments. These shipments are routinely made using robust shipping containers certified by the Nuclear Regulatory Commission. These regulations require stringent safety tests, extensive operational controls, and designed-in protection in order to assure that there will be no harmful release of radioactive materials even in extreme accident conditions.

¹ See *National Committee for the New River National Committee for the New River, Inc. v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (quoting *City of Olmsted Falls v. FAA*, 292 F.3d 261, 269 (D.C. Cir. 2002)).

This exemplary safety record should be a key input to the proposed EIS. Given this safety record, and the fact that it is fully representative of what can be expected of Yucca Mountain shipments, we would not expect, over any of the proposed routes, any significant difference from the low environmental impacts described in the original Yucca Mountain FEIS.

Consideration of the Wants and Needs of Local Populations

In making a decision between the Mina corridor and the previously selected Caliente Corridor, we recommend that DOE begin working, at the earliest possible time, in consultation with the affected jurisdictions and individual property owners and users. We further encourage DOE to consider, in its evaluation, the economic development potential and other benefits of making this railroad available for general use in these areas. Such efforts will result in a rail line and other needed infrastructure that will best meet the Yucca Mountain program needs as well as the needs of the affected jurisdictions, effectively considering the commercial and personal concerns of the affected individuals.

DOE should go beyond merely reaching out to the public affected by the development of this railroad and seek formal consultation with communities and government leaders near the routes under consideration. According to DOE's scoping request, the Department is doing this with the Walker River Paiute Tribe. Similar consultation should be done with other affected communities.

One specific consideration that should be given to these communities is to provide for rail access to Yucca Mountain to be completed before repository construction begins. Repository construction has the potential to be disruptive to residents in the vicinity of Yucca Mountain. The avoidance of hauling heavy construction materials and equipment on nearby roads to the extent practical would alleviate much of that disruption. It would likely also be logistically simpler and less expensive for hauling heavy components and large material quantities for DOE to have rail access available prior to commencement of construction. This would also allow the communities to begin capitalizing on the economic development potential of the railroad at an earlier time. DOE should do everything in its power to ensure rail availability before repository construction begins.