

# Western Interstate Energy Board/ WINB

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January 15, 2013

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Ms. Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

(via email)

Re: STB Dockets No. 38302S and 38376S (BSNF-DOE/DOD Settlement Agreement)

Stacey Crowley  
Chairman

Dear Ms. Brown:

Douglas C. Larson  
Executive Director

The Western Interstate Energy Board (WIEB) High-Level Radioactive Waste Committee appreciates the Joint Reply of the BNSF Railway Company (BNSF), the U.S. Department of Energy (DOE), and the U.S. Department of Defense (DOD) to our comments on the proposed Settlement Agreement in Dockets NOR 38302S and NOR 38376S. Since the Joint Reply makes three “overarching points” not included in the proposed Settlement Agreement, we respectfully request leave to respond.

### **Overarching Point #1**

The Joint Reply states that the Agreement provides “flexibility to address the evolution of (SNF/HLW) requirements and practices. .... While dedicated trains may seem the best practice for DOE/DOD shipments today, in the long-term some form of alternative freight service (may be better). .... (E)ven public perceptions of SNF/HLW transportation risk are apt to change.” It concludes, “While WIEB may believe that SNF/HLW should always move in dedicated train service, the Government has the discretion under the agreement to make that election on a case-by-case basis.”

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Response: First, it was the National Academies of Sciences (not just WIEB) that found that “*there are clear operational, safety, security, communications, planning, programmatic, and public preference advantages that favor dedicated trains*”, and recommended that “*DOE should fully implement its dedicated train decision before commencing large-quantity shipment of spent fuel and high-level waste . . .*” Second, while we agree that the Government has the discretion to elect dedicated train service, we hope that the Government can make that election with confidence that, under the Agreement, it will receive full cooperation from BNSF and other carriers.

### **Overarching Point #2**

The Joint Reply states that the provisions that WIEB has cited are not materially different from corresponding provisions in the Union Pacific-DOE/DOD agreement approved by the STB in 2005. Since none of the concerns expressed by WIEB have been at issue under the UP-DOE/DOD agreement, the Joint Reply suggests that they should not be of concern now under the BSNF-DOE/DOD Agreement.

Response: The provisions of the 2005 UP-DOE/DOD agreement have not been tested over the past seven years, because there have been no DOE requests to UP for spent fuel transport by dedicated train. Until the Government requests dedicated train service and receives fully cooperative response by UP and other carriers, the concerns expressed by WIEB are legitimate and worthy of the attention of the parties.

### **Overarching Point #3**

The Joint Reply states that “WIEB has not demonstrated that any provision in the Agreement traverses any law or regulatory policy that could justify disapproval of the Agreement”, suggesting that it is therefore not necessary to consider changes or improvements, either in the Agreement terms or in their application-in-process.

Response: It was not our purpose to show where the Agreement may traverse a law or regulatory policy. It was our purpose to express concerns about the potential application of the Agreement to frustrate fuller achievement of the national interest expressed by the National Academies in 2006. The Joint Reply states that the Agreement reflects movement “from a somewhat uncertain and perhaps even contentious business arrangement for transporting radioactive materials to more of a collaborative business partnership.” We applaud the movement and look for further steps.

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**Specific WIEB Concerns**

We appreciate the content of the Joint Reply to five specific WIEB concerns; we consider this content a significant value of this exchange. However, in each case, the Joint Reply re-characterizes our concern (i.e. a matter of importance, that has potential effects) as a “complaint” (i.e. an accusation, an expression of annoyance). Our concerns are matters of importance in SNF/HLW transportation system design and implementation that have potential effects in our region and others. The re-characterization is unnecessary and unwarranted.

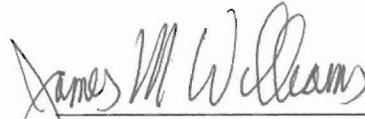
We appreciate your consideration of these responses. Sincerely,



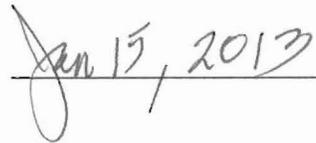
Ken Niles, Chair  
WIEB High-Level Radioactive Waste Committee

**Certificate of Service**

I hereby certify that I have served all parties of record in this proceeding with Western Interstate Energy Board's Motion to Participate and Comments by United States Mail.

  
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Jim Williams

Western Interstate Energy Board

Date:   
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