

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY  
-ADVERSE ABANDONMENT-  
ST. JOSEPH COUNTY, IN

PETITION OF  
THE CHICAGO, LAKE SHORE & SOUTH BEND RAILWAY COMPANY  
FOR LEAVE TO SUBMIT SUPPLEMENTAL ENVIRONMENTAL COMMENTS

Respectfully submitted,

John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 350  
Washington, D.C. 20006  
(202) 296-3334

Counsel for The Chicago, Lake Shore  
& South Bend Railway Company

Dated: December 21, 2007

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY  
-ADVERSE ABANDONMENT-  
ST. JOSEPH COUNTY, IN

PETITION OF  
THE CHICAGO, LAKE SHORE & SOUTH BEND RAILWAY COMPANY  
FOR LEAVE TO SUBMIT SUPPLEMENTAL ENVIRONMENTAL COMMENTS

INTRODUCTION

The Chicago, Lake Shore & South Bend Railway Company petitions the Board's Section of Environmental Assessment (SEA) to accept comments supplementing the environmental comments it filed in this proceeding on January 22, 2007. Recent developments in connection with a general acceptance of an impending world energy crisis<sup>1</sup> as well as the threat of global warming constitute changed circumstances requiring the Board and the SEA to reexamine the environmental claims made by the Applicants and the SEA's own conclusions. CLSSB submits with this Petition the comments of its President Robert S. Harris.

---

<sup>1</sup> In particular, Mr. Harris notes that President Bush signed into law this week H.R. 6, the Energy Independence and Security Act of 2007.

## BACKGROUND

On December 22, 2006, roughly one year ago, the SEA issued its Environmental Assessment indicating that it had reviewed and investigated the record in this proceeding.

More specifically, the SEA found that

...the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities, transportation of ozone-depleting materials, or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. SEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Noise associated with abandonment activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment. Based on all information available to date, SEA does not believe that abandonment activities would cause significant environmental impacts.

See, Norfolk Southern Railway Company - Adverse Abandonment  
- St. Joseph County, IN, STB Docket No. 290 (Sub-No. 286)

at 3. The SEA's assessment went on to conclude based on the information provided from all sources to date, that

if the recommended condition is imposed, abandonment of the lines will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary."

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and

continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

Id. at 4.

As Mr. Harris explains in his comments, the SEA missed the point.

Under the National Environmental Policy Act of 1972 (NEPA), administrative agencies including the Board are required to take a "hard look" at the environmental consequences of their decisions. Tongue River Railroad Co. - Rail Construction and Operation - Ashland to Decker, MT, 1 S.T.B.2d 809, 840 (served November 8, 1996, citing Robertson v. Methow, 490 U.S. 332, 350 (1989)). While NEPA does not mandate a particular result, it does require the adverse environmental effects to be adequately identified and evaluated and any alternatives examined as well. Although the SEA's assessment notes that such alternatives include denial of the abandonment, discontinuance of service without abandonment, and *continued operation by another operator* [emphasis supplied], the SEA's conclusion that abandonment will not significantly affect the quality of the environment demonstrates that it has not fulfilled the NEPA mandate. For the Board to base its conclusion only on the rail service that *had existed* as opposed to the

rail service that CLSSB is *prepared to provide* demonstrates "tunnel vision" to its worst degree.

Accordingly, CLSSB requests that the SEA accept and consider the supplemental comments of its President Robert S. Harris and revise its Environmental Assessment in light of those comments and that the Board deny the instant adverse abandonment application.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 350  
Washington, D.C. 20006  
(202) 296-3334

Counsel for The Chicago, Lake Shore  
& South Bend Railway Company

Dated: December 21, 2007

My name is Robert S. Harris. I am the president of The Chicago, Lake Shore and South Bend Railway Co., LLC (CLSSB). My address is 404 Franklin, Porter, IN 46304. I hold an Associates Degree in Business from Indiana University South Bend, a Bachelor's Degree in General Studies from Indiana University Bloomington, and a Master's Degree in Park and Recreation Administration from Indiana University Bloomington. As an undergraduate, I had "concentrations" in History and Geology. In January, 2006, I responded to the claims made by the Applicants in the Combined Environmental and Historic Report of the Adverse Abandonment Application (the Application) of the City of South Bend, the Brothers of the Holy Cross, Inc., and The Sisters of the Holy Cross, Inc., Docket AB 290 (Sub-No. 286) of Norfolk Southern Railroad property in St. Joseph County, Indiana (the Lines) and cited by the Board's Section of Environmental Analysis (SEA) in its Environmental Assessment dated December 22, 2006. Since the time that I filed my earlier comments on the subject of energy use with regard to the Application, there has been considerable new data available from the U.S. Department of Energy and other organizations in the past ten months that suggest that this is a particularly good time for an update.

To review, in Section 4 (iv) of the Application, Energy, page 6, the Applicants state that the proposed transaction will not cause any diversions from rail to motor. Yet, if the adverse abandonment takes place, it will force the current truck short haul from the rail to truck transload facility to the University of Notre Dame power plant to become permanent. Such a transfer would be wasteful and contrary to the long term energy policy of the United States.

The simple indisputable fact is that the wide scale use of motor transportation to move products that could move by rail is a waste of petroleum fuel. By now it is well acknowledged that this country and the whole world are facing an energy shortage caused by a finite amount of energy and an insatiable demand for that energy. President Bush noted the need to change the way we think about oil at the signing of H.R. 6, the Energy Independence and Security Act of 2007 on December 19, 2007, when he said “Today we make a major step towards reducing our dependence on oil, confronting global climate change, expanding our production of renewable fuels and giving our country a nation that is stronger, cleaner and more secure.” President Bush went on to note that dependence on foreign sources of oil threatens our national security and makes us more vulnerable to terrorists (source: White House news release, December 19, 2007).

Historically, many government transportation planners questioned the sanity of those who predicted this impending energy shortage. However, since the time of my earlier comments many energy industry experts have now come to recognize the truth of this not as prophecy, but as historical fact. To quote Dr. Ken Deffeyes, the former Princeton University professor of geology about his predictions that global oil production would peak in December, 2005, “That’s it. I can now refer to the world oil peak in the past tense. My career as a prophet is over. I’m now an historian ([www.princeton.edu/hubbert/current-events-06-02.html](http://www.princeton.edu/hubbert/current-events-06-02.html) ).”

The data from the Energy Information Agency of the U.S. Department of Energy (EIA), supports Dr. Deffeyes contentions. The EIA has a monthly chart of world crude oil production available to the public at [www.eia.doe.gov/ipm/t11d.xls](http://www.eia.doe.gov/ipm/t11d.xls). What the data indicates is that in May, 2005, world crude oil production did peak, and has been falling

steadily since. In fact, world crude oil production has declined 2.4% from May, 2005, to August, 2007 (the last posted data; the November posting shows data through August). This reported drop in production of 1,786,000 barrels of oil per day comes at a time when globalization has in fact continued to increase overall oil demand. According to the BP Statistical Review of World Energy 2007, global oil consumption grew at 0.7% in 2006. Growth in China's oil consumption was close to its ten year average at 6.7% (page 5). One would expect that these trends would continue.

The difference in demand and supply has to be made up somewhere, and right now it is most evident in price. The pricing structure for crude oil will often diverge from that for reformulated gasoline (RBOB on the New York Mercantile Exchange). While RBOB pricing peaked in June at \$2.41 for the front month futures contract, oil has in fact risen \$30/barrel since then. The recent price paid for the RBOB front month futures contract of \$2.47 suggests that the so-called "crack spread" is closing fast.

There are certainly those that suggest that the price of oil is tied to a "terror premium" or has something to do with speculative manipulation. But T. Boone Pickens (the Oracle of Oil!) has asked in an interview with CNBC on October 17, 2007 "who is it that gets that terrorist premium?" Mr. Pickens stated earlier in the interview that the problem is that the real supply of oil is 85 million barrels per day, and the real demand is 88 million barrels per day. (See the T. Boone Pickens interview video at [www.cnbc.com/id/21341628](http://www.cnbc.com/id/21341628)). This shortfall of three million barrels per day is what drives current oil pricing.

Mr. Pickens is certainly not the only oil professional who believes that the current supply does not meet the current demand. John Kilduff, Energy Analyst, at MF Global,

stated in an interview with Margaret Warner of PBS' NewsHour on October 26, 2007, that "there is zero room for error.... We saw OPEC, for example, suspend individual country quota limits last month because there's so many countries now having trouble meeting their actual quotas." (See the John Kilduff interview transcript and video at [www.pbs.org/newshour/bb/business/july-dec07/crude\\_10-26.html](http://www.pbs.org/newshour/bb/business/july-dec07/crude_10-26.html)).

Perhaps the most notable of the recent reports on trends in oil production and consumption is that of the Energy Watch Group (Germany) entitled *Crude Oil: The Supply Outlook* (October, 2007). It is also the most sobering report that I have found in recent years. The analysis of the Energy Watch Group indicates that the world production of crude oil will fall to 39 million barrels per day, a decline to less than half of current levels by the year 2030. Notably, the Energy Watch Group characterizes the future of the oil supply and demand gap as one "which can hardly be closed by growing contributions from other fossil, nuclear or other alternative sources in this time frame (*Crude Oil*, page 16)." The Energy Watch Group report is available on line in English at: [www.energywatchgroup.org/fileadmin/global/pdf/EWG\\_Oilreport\\_10-2007.pdf](http://www.energywatchgroup.org/fileadmin/global/pdf/EWG_Oilreport_10-2007.pdf).

The problem of future world oil production is made clear when one considers that new discoveries of oil peaked over 40 years ago. Indeed, since 1980, annual discoveries have lagged behind annual production despite higher oil prices (*Crude Oil*, pages 33-34)! Further, global oil production per capita peaked in 1979, suggesting that the current trend of globalization will put a severe restraint on the supply available per person in the future (Duncan, Richard C., November, 2001; *The Peak of World Oil Production and the Road to the Olduvai Gorge*; Population & Environment, vol. 22 [5]: pages 503-522).

One potential solution to this dilemma of dwindling world oil production is to switch freight and passenger transportation to more efficient modes. Railroading comes to mind. Recent advertising for CSX Transportation touts that one gallon of diesel fuel moves one ton of freight by railroad 423 miles (the advertising may be seen at [www.csx.com/?fuseaction=media.how](http://www.csx.com/?fuseaction=media.how) )! That same gallon of diesel fuel moves one ton of freight by truck 180 miles, only 42% as far as that ton of freight would go by train. The electrified railroad that we propose at the City of South Bend, would be powered by available electricity from AEP and would be fueled by hydro, wind, pumped storage (3%), nuclear (8%), natural gas (16%), and coal (73%; source: [www.aep.com/about/powerplants/default.htm](http://www.aep.com/about/powerplants/default.htm) ). No crude oil inputs would be used.

The bad news about the current state of world crude oil production does not affect just freight, but passenger transportation as well. In the face of real rising gasoline prices and potential gasoline shortages, the South Bend Airport Authority has found that they have a real transportation conundrum: insufficient taxi cab service at their airport. This is especially prevalent during events at the University of Notre Dame (South Bend Tribune, May 18, 2007). One possible solution suggested in the South Bend Tribune article would be to require more cabs. To me, this sounds like some sort of a taxi surge. And I question from whom they would require the cabs? Given the current price of gasoline (\$2.96 per gallon according to the Lundberg Survey of November 4, 2007; the survey at [www.aaa.com](http://www.aaa.com) was at \$3.09 per gallon on November 10, 2007), I have to wonder who is going to want to work for \$30 to \$40 per day (an amount suggested in the South Bend Tribune article) driving a taxi for a few University of Notre Dame events.

Indeed, a reasonable solution already suggested would be train service directly to the University from the South Bend Regional Airport. Whereas additional taxi service would add to street congestion during University events, electrified train service would reduce street congestion between the Airport and the University at the time when traffic would peak during University events! Oh yes, and the electrified train service suggested by the CLSSB would also cut gasoline consumption. Data collected by the Northern Indiana Commuter Transportation District (NICTD) indicates that the current electrified South Shore Line passenger service is five times as efficient as the private automobile: the South Shore Line uses 1073 BTUs per passenger mile compared to 5200 BTUs per passenger mile for private automobiles. Further, according to the NICTD data, the South Shore Line service is four times as energy efficient as urban bus service which uses 4250 BTUs per passenger mile (source: NICTD Marketing and Planning Director John Parsons). And remember, no crude oil inputs would be used to fuel our electrified passenger train service!

Now that President Bush has signed into law an energy bill that recognizes the need to reduce dependence on oil, it is only logical to support that law. The Applicants would like the Surface Transportation Board to believe that there is no environmental impact from the adverse abandonment of the Lines. But the reality is far different. Reactivating the Lines as an electric railroad per the CLSSB proposal will reduce oil consumption and green house gas emissions; abandoning the Lines per the will of the Applicants serves only to continue an inefficient, oil intensive, operation in defiance of our National energy policy.

## CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the Petition of The Chicago, Lake Shore & South Bend Railway Company for Leave to Submit Supplemental Environmental Comments was served on December 21, 2007 to the following:

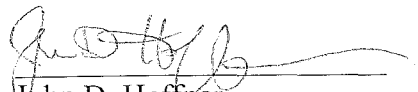
Mr. Sandra M. Seanor  
Executive Director  
Michiana Council of Governments  
227 West Jefferson Boulevard  
South Bend, IN 46601

Sister Joy O'Grady, President  
Sister of Holy Cross  
501 Bertrand Hall – St. Mary's  
Notre Dame, IN 46556-5000

Mr. Richard H. Streeter  
Barnes & Thornburg, LLP  
750 17<sup>th</sup> Street, NW – Suite 900  
Washington, DC 20006-4675

James R. Paschall  
Senior General Attorney  
Norfolk Southern Corp.  
Law Department  
Three Commercial Place  
Norfolk, VA 23510-9241

Mr. Jeffrey M. Jankowski  
Deputy City Attorney  
227 West Jefferson Boulevard  
South Bend, IN 46601

  
John D. Heffner