



Western States Petroleum Association
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Catherine H. Reheis-Boyd
President

June 10, 2014

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 14-IEP-1F
1516 Ninth Street
Sacramento, CA 95814-5512

Re: 2014 Integrated Energy Policy Report Update - Trends in Sources of Crude Oil (Docket No. 14-IEP-1F)

Dear California Energy Commission:

On behalf of our client, the Western States Petroleum Association (WSPA), we offer the following comments for the 2014 Integrated Energy Policy Report Update. Specifically, these comments are in response to the California Energy Commission's (CEC) workshop held on June 25, 2014, where various representatives discussed possible new roles of federal, state, and local governments to address market changes, particularly as it relates to transportation of crude oil.

Increased Crude Production Spurs Energy Independence, Benefits Economy

California is fortunate to have large supplies of crude oil within its boundaries. Over the last few years, California and other parts of the country have witnessed a surge in domestic energy production. However, much of the increased energy production is occurring in the middle of the country, which has been made possible by proven and highly regulated technologies such as directional drilling and hydraulic fracturing. Because of the increased crude oil production occurring throughout North America, the U.S. is in a position of achieving a level of energy security that has been unthinkable in recent years. As a result, this will help offset the need to obtain energy from foreign sources. Indeed, these new domestic sources of energy have been responsible for creating a revival in American manufacturing, job creation and economic growth. It is vital that rail transport safely play a role in this new oil production which has the opportunity to greatly benefit businesses and consumers in the West.

Shifting Markets May Increase Crude-by-Rail Projects, Also Depends on Local Permit Process

In order for California to benefit from this increased energy production, oil must be safely transported to California refineries where it can be converted into gasoline, diesel and jet fuel. But there are some logistical challenges to moving crude oil to California. The state is not linked to other refining or crude oil production regions via pipelines, which means all of the oil that is produced domestically must be delivered to the state by either tankers or other methods of transport, including rail. While we acknowledge the CEC's projections that crude-by-rail deliveries have increased recently, and are likely to continue over the next few years, we must point out that these potential increases are highly dependent on a number of factors, including external market forces and timely approval of rail and storage facility projects that must go through the local permit process. Each of these proposed projects must adhere to the public review process established under the California Environmental Quality Act (CEQA), which could impact the timing and determination of when, where, and how these projects are constructed.

Petroleum Industry Working with Railroads and Federal Agencies to Improve Crude-by-Rail Safety

Despite some recent unfortunate incidents that have occurred outside of California, rail transport remains a safe mode of transporting crude oil. That being said, WSPA members are committed to improving public safety and the environment, and recognize that recent concerns about crude-by rail deliveries have prompted calls for improvements in rail safety, public disclosure of crude oil deliveries, and requests for additional funding for state and local responders to prevent, prepare and respond to potential oil spills.

In fact, the petroleum industry is engaging with federal, state and local officials to examine regulations that govern the operation of the nation's railroads and the handling of many types of hazardous material that move on rail lines every day. From this effort will come a better understanding of what challenges must be addressed to ensure the safe and responsible transport of domestic crude-by-rail.

In addition, recent federal emergency orders requiring disclosure of certain crude oils (i.e., Bakken crude) and voluntary measures adopted by the rail industry to improve rail safety are helping to improve confidence in crude-by-rail transport. Among actions taken by the railroads include increased track inspections, improved braking systems, use of rail traffic routing technology, requiring lower speeds, and increased emergency response training. Likewise, the petroleum industry has also begun further enhancing crude- by-rail standards and practices including:

- Voluntarily building next generation tank cars;
- Improving emergency response training to assists communities in preparing for and responding to potential incidents; and
- Gathering top experts to develop a comprehensive standard for testing, classification, loading and unloading of crude oil based on the best available science and data.

These combined steps taken by both industries to further enhance some of the already safest and most strict safety practices signifies a commitment to the safest and most efficient rail transport of materials and goods, including crude oil.

WSPA Supports Legislative Action to Improve Rail Safety, Opposes Unlimited/Unspecified Fees to Fund Programs with Limited Accountability

Despite the above actions, we recognize some California officials and legislators want to go beyond federal requirements even though there are concerns that some of the proposals may be preempted under federal law and could pose security risks. During the CEC workshop, several presenters made references to pending legislation which is seeking to address crude-by-rail issues. WSPA members have been working with state and local agencies to ensure they have sufficient information about crude oil deliveries and to ensure oil spill prevention and response agencies have resources and training available to prevent accidents so they can respond quickly and effectively if an incident occurs.

For example, WSPA supports AB 380 (Dickinson) which would impose new disclosure requirements for railroads that transport or receive any type of oil or crude product by rail transport. The bill requires railroads to provide the Office of Emergency Services (OES), on a quarterly basis, data for the 25 largest hazardous material commodities and crude oil transported through California. The data provided will be by county and track routes, and is intended to provide OES the ability to disseminate the information to certified unified program agencies (CUPAs) that may be impacted by a hazardous material spill. By providing a copy of a summary report of a rail carrier's hazardous material business plan, with certain safeguards in place to protect security sensitive information, the agencies will be able to improve coordination and public safety. This improved coordination and planning is a positive step towards meeting public safety expectations for transporting crude-by-rail in California.

WSPA also recognizes that funding is essential and acknowledges the recent enactment of SB 861 (Chapter 35, Statutes of 2014) which expands the existing 6.5 cent per barrel fee cap that's assessed to crude oil and petroleum products for a marine oil spill program. The expanded 6.5 cent fee will also cover deliveries of crude oil and petroleum products that are transported by rail, pipeline or truck to a refinery. The expanded fees will provide an additional \$11 million in revenues for the Office of Spill Prevention and Response (OSPR) to fund an expanded statewide oil spill program to protect both marine and inland areas, including the hiring of 38 permanent positions to carry out the program.

It should be noted that the 6.5 cent fee cap contained in SB 861 was proposed by Governor Brown and ultimately approved by the Legislature as it was viewed as a compromise to other WSPA-opposed proposals that seek to impose excessive fees with no cap. For example, SB 1319 (Pavley), which contains several provisions to impose new conditions on the railroad industry, also contains a provision that would provide OSPR with unlimited fee authority to implement the new statewide oil spill program. WSPA members are already preparing to comply with the existing 6.5 cent per barrel fee, which will bring added costs to moving crude. But allowing an agency to have unlimited fee with no accountability in place would essentially provide a blank check. We think this is unacceptable to both business and consumers.

WSPA also believes funding from the expanded fees should be provided to local responders to protect human health and safety since they are usually the first on the scene if an event occurs. To that end, WSPA would support funding from the expanded fees already called for in SB 861 to go towards local responders, which could help them improve training and access to equipment. It should also be noted that WSPA strongly objects to imposition of any additional new fees on crude oil or petroleum products to fund local emergency response efforts, such as those called for in SB 506 (Hill), which would impose an unspecified fee on all owners of hazardous materials that transport the materials by rail or tank car. The unspecified hazardous materials rail fee proposed in SB 506 would be on top of the expanded oil spill prevention and response fees contained in the recently enacted budget trailer bill (SB 861). Given this new law, requiring the oil industry to pay another fee is unfair when implementation of the new OSPR fees should help fund local response efforts.

While OSPR prepares for implementation of SB 861, WSPA members have reached out to them to seek clarification on various implementation issues, particularly as it relates to jurisdictional issues among state and local agencies that may already oversee preparedness and prevention activities; the timing of when new contingency plans must be in place from pipelines and production facilities; and a provision that removed the previous 42 gallon threshold for determining what constitutes a spill.

WSPA Supports Improving Coordination Between State and Local Agencies

Finally, as noted in some of the presentations that were provided at the CEC workshop and the discussion regarding the Interagency Rail Safety Working Group (Working Group) report, several state agencies have been involved in making recommendations on how to improve crude-by-rail safety. In general, WSPA acknowledges that several of the recommendations expound on some of the actions that various federal agencies have already announced or are in the process of promulgating. Although the report does not recommend a new fee to fund local emergency response, we would question the need for additional funding through a new fee if the recommendation in the report that calls for funding regional hazardous materials response teams means it would be funded by a new fee on the oil industry. In addition, for those recommendations in the Working Group's report that may raise concerns about potential federal preemption issues, we think the state should work cooperatively with the railroads to alleviate those concerns.

At the same time, we think improvements could be made in the respective roles and responsibilities of the various state agencies who are involved in crude-by-rail safety, specifically as it relates to agency coordination. With the enactment of SB 861, that might be the overall intent and outcome but it's not necessarily a given. WSPA encourages state agencies that may have conflicting responsibilities over emergency preparation and response to work together through memorandums of understanding (MOUs) to avoid duplication, in addition to working with local first responders to address any potential regulatory gaps that may exist. Legislation introduced earlier this year (AB 2677 – Rodriguez) would have required the California Environmental Protection Agency (Cal-EPA) to work with relevant state and local agencies, and interested stakeholders in preparing a report that would provide recommendations to ensure there is a coordinated and comprehensive oil spill contingency plan for crude by rail. The report would have assessed which state or local agencies are best suited to serve as the primary responder for inland oil spill response. While the bill was not able to move

forward, WSPA thinks the public safety aspect of the bill is still relevant and should be something the state should embark upon.

In conclusion, WSPA recognizes the need to protect public safety and address concerns about crude-by-rail. While shifting market demands will likely increase crude-by-rail transport, external factors and the local permit process will play a larger role in determining how much of an increase may actually ensue. Legislation and regulatory efforts to expand the state's oil spill program, including efforts requiring railroads to maintain contingency spill plans and disclose information about crude deliveries will likely have some benefit, provided they aren't federally preempted or present security risks. The good news is that pipelines and oil fields are already highly regulated and have spill response plans and prevention programs in place. That being said, WSPA members will be working with OSPR to ensure implementation of the expanded oil spill program and the new inland fees is commensurate with the service provided, and to ensure the new rules don't impose duplicative requirements. At the same time, WSPA does not agree with any additional proposals that would have the oil industry subsidize a rail safety program to fund local emergency response efforts when there is already a funding mechanism in place that could help fund that effort.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cathie A. Boyd". The signature is fluid and cursive, with the first name "Cathie" and last name "Boyd" being the most legible parts.

cc: Mr. Gordon Schremp, California Energy Commission