

February 4, 2019

247048

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
February 4, 2019
Part of
Public Record

RE: City and County of Denver - Verified Petition for Declaratory Order, FD 36263

Dear Ms. Brown:

On behalf of CMC Steel Fabricators, Inc. d/b/a CMC Rebar ("CMC"), I am writing to express CMC's substantial concerns with the Petition for Declaratory Order filed by The City and County of Denver (the "City") on December 21, 2018 ("Petition"). In the Petition, the City explains that it plans to relocate rail tracks currently operated by Denver Rock Island Railroad ("DRIR") and to significantly change DRIR's operations over the Denver Stockyard tracks. The City claims that the relocation would not impact DRIR's service to shippers. As a shipper who depends heavily upon DRIR's Denver Stockyard operations for rail service, CMC has not seen any evidence that this statement is true as to it, and the City has presented none in its Petition. CMC's concerns are exacerbated by the fact that the City and DRIR have not reached a voluntary agreement for the proposed relocation/reconfiguration of the DRIR tracks and operations. As explained herein, CMC respectfully requests that the Board exercise jurisdiction over the proposed transactions and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City.

For over six decades, CMC has fabricated, furnished, and installed rebar and accessories for all construction markets, including residential, commercial, office buildings, hotels and motels, industrial, manufacturing, public, power, and highway clientele. CMC operates state-of-the-art fabrication facilities in over 90 locations throughout the U.S., including a facility approximately ¼ mile north of the Denver Stockyards, which supports customers throughout the region. Because staging is critical for its operations, CMC invested in and built trackage in the Denver Stockyards that directly connects to the DRIR. In 2018, DRIR interchanged 84% of CMC's long-distance traffic to BNSF Railway ("BNSF") over the very main line and side tracks in the Southern Denver Stockyard (406, 408, and 410) that the City now seeks to relocate/reconfigure. CMC also uses Tracks 301 and 305 in the Northern Denver Stockyard when interchanging with Union Pacific Railroad Company ("UP"), but those tracks are not as heavily utilized. CMC intentionally established, and has continued to invest heavily in, its operations in Denver, Colorado because of this direct access to BNSF, UP, and DRIR. In

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addition to connecting CMC with BNSF and UP, DRIR assists with car storage in nearby yards located on its main line. CMC is dependent on all of its rail partners for interchange purposes, staging, and storage to ensure the efficiency of its operations. The plan currently proposed by the City has the significant potential to adversely impact CMC's rail service, plant operations, and relationships with both its railroad partners and its customers.

Aside from a brief visit by the developer for the National Western Center over a year ago, the City has not consulted with CMC about the impact of the proposed relocation upon CMC's rail service and how those impacts would affect CMC's operations. As such, CMC does not understand how the City can represent in its Petition that the proposed relocation will have no effect upon shippers. In contrast, DRIR has met with CMC to explain the impact upon DRIR's operations, which in turn would adversely harm CMC absent adequate protections. It is imperative that the Board not allow the City to move forward with its plans without fully considering the needs of rail shippers, including CMC, that depend on the main lines and side tracks that comprise the Denver Stockyards. CMC's economic vitality depends on maintaining the status quo of rail operations until these factors have been fully identified, evaluated, and mitigated.

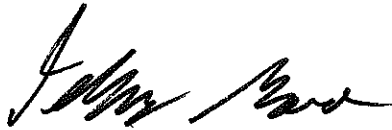
The Petition suggests that the proposed relocation/reconfiguration of the Denver Stockyards is routine. But the Petition presents only general assertions with little or no support. Indeed, the City refers to just one impacted shipper by name, McDonald Farms, and dismisses the impact upon all other shippers as merely switching operations that the City claims will be unaffected, but without providing a clear explanation. The City appears to be completely unaware of certain crucial facts, such as CMC's dependence upon track that it has constructed in the Stockyards to connect with DRIR. CMC and other users of the DRIR's stockyard tracks thus have legitimate reasons to be concerned.

The City has not obtained the consent of DRIR, the only rail carrier providing local service over the main lines and side tracks, to the relocation/reconfiguration. Although the City acknowledges some coordination with DRIR, it does not explain why it has been unable to obtain DRIR's consent. In the absence of such consent, the Board must carefully scrutinize the City's claims that the relocation/reconfiguration will not adversely impact rail service. The Petition is woefully inadequate for the Board to make such a determination.

For the reasons explained herein, CMC respectfully requests that the Board reject the City's Petition, exercise jurisdiction over the proposed transaction, and implement a proceeding to carefully consider the impacts of the relocation/reconfiguration proposed by the City in this docket.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', written in a cursive style.

Jeffrey O. Moreno
Counsel for CMC Steel Fabricators, Inc.

cc: Parties of Record