

SVC | SENN VISCIANO CANGES P.C.

ENTERED
Office of Proceedings
March 19, 2019
Part of
Public Record

Erich Bethke
Attorney
EBethke@sennlaw.com

March 19, 2019

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

Re: Docket No. FD 36263, City and County of Denver – Petition for
Declaratory Order

Dear Ms. Brown:

Enclosed for e-filing is the Petition to Intervene of Iron & Metals Inc. in
Docket No. FD 36263. Thank you for your assistance. If you have any questions,
please contact me.

Respectfully,

A handwritten signature in black ink, appearing to be 'EB' followed by a horizontal line.

Erich Bethke
Attorney for Iron & Metals, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36263

CITY AND COUNTY OF DENVER--PETITION FOR DECLARATORY ORDER

**PETITION TO INTERVENE OF
IRON AND METALS INC.**

Pursuant to 49 CFR § 1112.4 and/or 49 CFR § 1113.7, as appropriate, Iron and Metals Inc. (“IMI”) respectfully requests that it be permitted to intervene in the above captioned proceeding in opposition to the petition (the “Petition”) of the City and County of Denver (“the City”) for a declaratory order confirming that a proposed track reconfiguration does not require approval or exemption by the Board because the Board lacks jurisdiction over the matter. The City filed the Petition with the Board on December 21, 2018. IMI also respectfully requests that it be permitted to participate in any and all Board-sponsored mediation proceedings between the Parties.

IRON AND METALS’ INTEREST IN THIS PROCEEDING

IMI operates a metal scrapyard and recycling facility to the north of the National Western Center and the City’s proposed track reconfiguration. IMI is a rail shipper that relies heavily on the availability of daily rail service provided by Denver Rock Island Railroad (“DRIR”) to transport materials generated from its metal scrapyard and recycling operations. In 1975, IMI invested in and

built trackage near the National Western Center that directly connects to the DRIR. IMI established its operations in Denver, Colorado because it afforded IMI direct access to multiple railroads, including BNSF, UP, and DRIR. DRIR not only provides assistance to IMI with respect to interchanging traffic with BNSF and UP, but DRIR also assists IMI with car storage in nearby yards located on the main line. IMI is dependent on DRIR and the relevant track for interchange purposes, staging and storage, all of which ensure the efficiency of its operations.

The only practical and economical mode of transportation for IMI's materials shipments is by rail, and IMI has relied on regular, predictable rail shipments for the past forty years in order to maintain and expand its business. The City's proposed reconfiguration of track significantly threatens IMI's ability to receive daily rail service from DRIR by consolidating multiple rail lines in the National Western Center. The proposed reconfiguration involves the removal of significant sections of track as shown in Exhibits C and D to the City's Petition. IMI and DRIR currently rely on such sections of track to stage and store rail cars for the provision of daily rail service to IMI. The removal and reconfiguration of track as proposed by the City would adversely impact IMI's service, operations, and working relationship with its railroad partners by threatening IMI's ability to receive daily rail service. If IMI were to lose reliable daily railroad service and use of the relevant track, IMI estimates it would experience significant economic harm and the economic viability of its decades-old operation would be in jeopardy.

IMI's interest is not adequately represented in these proceedings at present. While DRIR opposes the City's Petition and is generally seeking to minimize the disruption to its shippers, DRIR's obligation is to maximize its own profits and preserve the overall bulk of its business, as opposed maintaining optimal service for any one specific shipper such as IMI. Therefore, IMI seeks to intervene to ensure that its current level of daily service is maintained after any reconfiguration that may be agreed to by the current Parties or as ordered by the Board.

IRON AND METALS' OPPOSITION TO THE CITY'S DECLARATORY ORDER

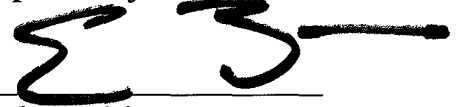
At the core of its Petition, the City argues that the Board does not have jurisdiction over the proposed reconfiguration because, under 49 U.S.C. §§ 10901 and 10903, the City's proposed reconfiguration does not impact or disrupt service to shippers. See Petition of City and County of Denver, pp. 8-10. IMI opposes the City's Petition and proposed declaratory order, because as discussed above, the City's assertion that there will be no disruption or impact to shippers is false. The City's proposed reconfiguration will involve the removal of significant portions of track, upon which IMI, a shipper, currently relies to receive daily rail service and to daily ship its product. The removal of such track will severely disrupt IMI's operations, undermining the City's claim that shippers will be unaffected.

CONCLUSION AND REQUEST FOR RELIEF

Given the substantial impact and disruption that the proposed reconfiguration will have on IMI as a shipper, IMI seeks to intervene in opposition to the City's Petition. So that IMI's interests will be adequately represented as the Parties work toward a possible resolution of their dispute, IMI also respectfully requests that it be allowed to participate in the mediation as ordered by the Board's March 8, 2019 Order granting mediation in both FD 36263 and NOR 42162.

Dated: March 19, 2019

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Erich Bethke', written over a horizontal line.

Erich Bethke
Senn Visciano Canges P.C.
1700 Lincoln St, Suite 4300
Denver, Colorado 80203
303-298-1122
EBethke@sennlaw.com

ATTORNEY FOR
IRON AND METALS INC.

CERTIFICATE OF SERVICE

I certify that I have this day served copies of Iron and Metals' Petition to Intervene by electronic mail and first class mail on the following:

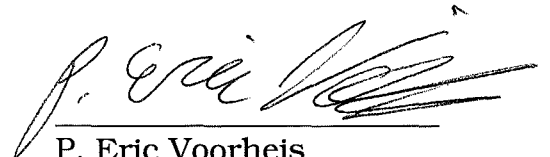
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1634 Eye Street, NW
Suite 300
Washington, DC 20006
afultz@kaplankirsch.com
Attorney for the City and County of Denver

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1666
Chicago, IL 60604-1228
mcfarland@aol.com
Attorney for Denver Rock Island Railroad

William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Ave, NW
Washington, D.C. 20037
WMullins@bakerandmiller.com
Attorney for Denver Rock Island Railroad

Jeffrey O. Moreno
Thompson Hine LLP
1919 M Street, Suite 700
Washington, DC 20036
Jeff.Moreno@ThompsonHine.com
Attorney for CMC Steel Fabricators, Inc.

Ken Kage
Vice President, Denver Region
Darling Ingredients, Inc.
5701 York Street
Denver, CO 80216
Kkage@darlingii.com



P. Eric Voorheis
March 19, 2019