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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35935

ENTERED
Office of Proceedings
June 19, 2015
Part of
Public Record

**CALUMET TRANSLOAD RAILROAD, LLC – PETITION FOR DECLARATORY
ORDER**

MOTION TO EXTEND TIME FOR REPLY

Communications with respect to this pleading
should be addressed to:

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Dated: June 19, 2015

 GRANTED Office of Proceedings	DECISION ID NO.: <u>44578</u>
	DECIDED DATE: <u>6-26-2015</u>
	SERVICE DATE: <u>6-26-2015</u>
	APPROVED: <u>Joseph A. Settmar</u> <i>Asst Dir</i> Director
	<input checked="" type="checkbox"/> <u>Extension until 8-31-15</u>

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**CALUMET TRANSLOAD RAILROAD, LLC – PETITION FOR DECLARATORY
ORDER**

MOTION TO EXTEND TIME FOR REPLY

The City of Chicago, Illinois (“City”) hereby submits this Motion to Extend Time for Reply in response to the Petition for Declaratory Order filed on June 10, 2015, in the above-referenced docket by Calumet Transload Railroad, LLC (“Calumet”).

Pursuant to the Board’s rules at 49 C.F.R. § 1104.13(a), a reply to Calumet’s petition would be due no later than June 30, 2015. Because Calumet’s representations and assertions raise a number of factual questions that are necessary to investigate in order to respond to its petition, the City respectfully requests an extension of time to August 30, 2015, to respond to Calumet’s assertions and arguments, and to conduct discovery in accordance with 49 C.F.R. Part 1114, Subpart B. This extension of time will enable the City to respond fully to the legal and factual issues presented, and so that the Board may have a fully developed record on which to base its decision.

Background

The petition at issue here concerns a transload facility located at 10730 South Burley, Chicago, Illinois, that is owned and operated by an affiliate or affiliates of Calumet. Calumet represents in its petition that the property upon which the facility sits also includes approximately one mile of industrial track that Calumet operates. Pet. at 2; *See also* Exhibit A – Affidavit of

Simon Beemsterboer (“Beemsterboer Affidavit”). Calumet represents that it transloads and stores “coal, met coke, calcium chloride, pet coke, salt, and other bulk materials” at this facility. Pet. at 2; *See also* Beemsterboer Affidavit. Calumet further represents that it has “transported, transloaded, loaded, unloaded, handled and stored” these materials for origin or destination in a number of states, and that it has engaged in contract and fee services with at least one out-of-state company to “accept” bulk materials from that company. Pet. at 2-3. *See also* Beemsterboer Affidavit. Furthermore, Calumet states that it contracts with adjacent facilities to use its “rail system to receive and transport goods to and from locations inside and outside Illinois.” Pet. at 3. *See also* Beemsterboer Affidavit. Based on these representations, Calumet asserts that it is a common carrier by rail subject to the Board’s jurisdiction, and that it therefore certain City regulations imposed upon it are federally preempted because they unduly burden interstate commerce. Pet. at 5, 8, 15, 17-18.

Argument

Pursuant to the Board’s rules at 49 C.F.R. § 1104.13(a), a reply to any pleading must be filed within 20 days after the pleading is filed, unless otherwise provided. However, under 49 C.F.R. § 1104.7(b), the Board has discretion to extend the time period for replies upon request and with good cause.

Good cause exists here. Calumet’s representations regarding the nature of the services it provides and the characterization of these services as part of interstate transportation are unclear and require further information before a complete response can be given. For example, while Calumet makes much of the interstate nature of the origin and destination of many of the goods it handles at its transload facilities, *see e.g.*, Pet. at 3, 6-7, it describes the purported rail transportation component of its services only briefly and in general terms, *see e.g.* Pet. at 2

("Those bulk materials arrive via interstate rail, and subsequently leave via interstate rail, boat ship and trucking."). No specifics regarding its railroad operations, standards, practices, or training are described, nor are any switching, interchange, operating, or other agreements discussed or provided. Calumet provides no information regarding the physical layout of the facility, milepost numbers, description of locomotives and rolling stock, or other physical information in support of its assertions. The City believes that, once these facts are discovered and disclosed, Calumet's claims of preemption will be found to lack merit. However, until it has a chance to engage in discovery, the City will not be able to fully present its case to the Board. Presently, the City does not have access to this information.

The need to fully develop the record is particularly important here given the City's significant interest in its ability to regulate and enforce its ordinances to address compelling local health and safety interests.

Providing additional time for the City to conduct discovery pursuant to the Board's regulations at 49 C.F.R. Part 114, Subpart B will allow the City to fully and properly address Calumet's claims, and will allow the Board to make a decision informed by a fully developed record.

WHEREFORE, and in view of the foregoing, the City respectfully requests the Board extend the time for responding to the Petition to August 30, 2015.

Respectfully submitted,



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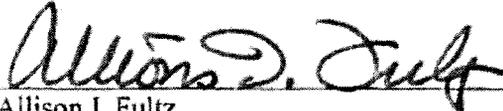
Counsel for City of Chicago, Illinois

Dated: June 19, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing MOTION TO EXTEND TIME FOR REPLY, upon the following parties of record in this proceeding by first-class mail with postage prepaid and properly addressed:

Michael J. Maher
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Allison I. Fultz

Dated: June 19, 2015