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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36036

REQUEST FOR EXTENSION
BY
SAFE FUEL AND ENERGY RESOURCES CALIFORNIA

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3111-025rc

INTRODUCTION

Pursuant to 49 C.F.R. §1104.7(b), Safe Fuel and Energy Resources California ("SAFER California") requests an extension until July 8, 2016 for any replies to the Petition for Declaratory order filed by Valero Refining Company on May 31, 2016, STB FD No. 36036 ("Petition"). In its Petition, Valero seeks a declaratory order that the City of Benicia Planning Commission's denial of a permit for Valero's proposed crude-by-rail offloading facility in Benicia, California, is preempted by the Interstate Commerce Commission Termination Act ("ICCTA"). Petition at 1. SAFER California intends to participate as a party of record and file a reply to Valero's Petition explaining why the Commission's denial of Valero's permit for a non- rail carrier facility is not preempted by the ICCTA.

This request is timely pursuant to 49 C.F.R. §1104.7(b), and the requested extension would not prejudice Valero because it does not allow SAFER California more time to reply than Valero's proposed schedule. Accordingly, SAFER California respectfully requests that the Board grant its request for an extension until July 8, 2016. In addition, given the Board's prohibition against replies to replies in its Rules of Practice, 49 C.F.R. § 1104.13(c), SAFER California requests that the Board deny Valero's request to file "Rebuttal Comments."

DISCUSSION

I. SAFER California's Request for an Extension is Supported by Good Cause

Under the Board's Rules of Practice, "[a] party may file a reply...to any pleading within 20 days after the pleading is filed with the Board, unless otherwise provided." 49 C.F.R. § 1104.13(a). Valero filed its Petition on May 31, 2016. Thus, replies would be due on June 20, 2016, unless the Board provides otherwise. The Board may extend the reply period in its discretion, upon request and for good cause. *Id.* § 1104.7(b).

SAFER California is diligently reviewing the legal and factual issues related to Valero's Petition. Valero's Petition raises preemption issues of national significance that require substantial research and analysis. In addition, Valero's Petition raises issues of significant, local interest and importance, and will likely elicit replies from numerous organizations (including, for example, Center for Biological Diversity, Communities for a Better Environment, Natural Resources Defense Council, San Francisco Baykeeper, Sierra Club, Benicians for a Safe and Healthy Community and STAND) and government entities (including, for example, the California Attorney General, the Sacramento Area Council of Governments, and many local and regional governments which submitted comments to the City of Benicia expressing the view that the ICCTA does not preempt denial of Valero's permit). The City of Benicia itself may likely weigh in on Valero's Petition as well. Granting an 18-day extension would allow SAFER California and other interested

organizations and government entities to file thoroughly researched and supported replies.

In addition, the Board's grant of an extension would provide clarity regarding the deadline for replies. In its Petition, Valero did not propose a date-certain deadline for replies, but instead proposed that replies be due within 30 days of an "STB order instituting declaratory proceeding." Petition at 21. However, it would be inappropriate for the Board to institute a declaratory proceeding in this case because the law is clear that the ICCTA does not apply to a non-rail carrier project. "Where the law is clear, the Board may decline to institute a proceeding and instead provide guidance on the preemption issue presented..." Decision, *SEA-3, Inc., Petition for Declaratory Order*, STB FD No. 3585, 2015 WL 1215490 at *4 (Mar. 17, 2015).

Finally, Valero would not be prejudiced by extending the reply deadline to July 8, 2016 since Valero's proposed deadline for replies is later (30 days from the Board's issuance of declaratory proceeding. Petition at 21.

II. The Board Should Not Allow Valero to Submit a Reply to Any Replies

Valero proposed in its Petition that it be allowed to file "Rebuttal Comments." Petition at 21. The Board should not allow Valero to submit "Rebuttal Comments" because the Board's Rules of Practice prohibit "[a] reply to a reply." 49 C.F.R. § 1104.13(c); Decision, *Cal. High Speed Rail Auth., Petition for Declaratory Order*, STB FD No. 35861, 2014 WL 7149612 at *4 (Dec. 12, 2014) (denying motion for leave to file a reply to a reply to a petition for declaratory order).

REQUEST FOR RELIEF

SAFER California respectfully requests that the Board: (1) grant an extension until July 8, 2016 for any replies to Valero's Petition; and (2) deny Valero's proposal to submit a reply to any replies.

June 9, 2016

Respectfully submitted,

Rachael E. Koss
Attorney for Safe Fuel and Energy Resources California

VERIFICATION

I, Rachael E. Koss, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed: June 9, 2016

Rachael E. Koss

Rachael E. Koss

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Request for Extension was filed electronically today with the Surface Transportation Board and served by express mail upon the following:

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Dated: June 9, 2016

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