

50018
DO

SERVICE DATE – DECEMBER 9, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36263

CITY AND COUNTY OF DENVER—PETITION FOR DECLARATORY ORDER

Docket No. NOR 42162¹

THE DENVER ROCK ISLAND RAILROAD COMPANY v. THE CITY AND COUNTY OF
DENVER, COLO.

Decided: December 6, 2019

On December 21, 2018, as amended January 30, 2019, the City and County of Denver (the City), a political subdivision of the State of Colorado, filed a petition for a declaratory order in Docket No. FD 36263 asking the Board to make certain findings pertaining to the City's proposed reconfiguration of track on its National Western Center campus (the Site). (City Pet. 1.) The Denver Rock Island Railroad Company (DRIR), which owns and operates most of the track located on the Site, filed comments opposing the petition on February 4, 2019. That same day, DRIR also filed a complaint in Docket No. NOR 42162 alleging that the City's proposed actions would violate various provisions of 49 U.S.C. subtitle IV pertaining to interstate transportation by rail.² (Compl. 9-10.)

On March 8, 2019, the Board granted the City and DRIR's joint request for Board-sponsored mediation and held both proceedings in abeyance.³ On March 19, 2019, IMI filed a petition to intervene in both proceedings and sought leave to participate in the parties' mediation. By decision served April 17, 2019, the Board denied IMI's request to participate in mediation and deferred ruling on the petitions to intervene while the proceedings were in abeyance.

On October 22, 2019, DRIR and the City filed a joint motion to dismiss the petition in Docket No. FD 36263, and DRIR filed a motion to dismiss its complaint in Docket No. NOR 42162. In those filings, DRIR and the City advised the Board that they had agreed to a

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² Letters from six shippers, including Iron and Metals Inc. (IMI), expressing concerns about the City's petition were attached to DRIR's pleadings. Similar letters from two additional shippers were subsequently filed in Docket No. FD 36263.

³ The mediation period was extended twice, and reinstated once, to permit the parties to finalize and consummate an anticipated settlement.

revised plan to reconfigure the track on the Site that resolved the concerns raised by DRIR. On October 30, 2019, IMI filed requests to withdraw its petitions to intervene and advised the Board that it does not oppose the motions to dismiss. There was no opposition to the motion to dismiss either proceeding.

Accordingly, because the parties have informed the Board that they have settled their disputes, the Board will decline to institute a declaratory order proceeding in Docket No. FD 36263, grant both motions to dismiss, and permit IMI to withdraw its petitions to intervene.

It is ordered:

1. The petition for declaratory order in Docket No. FD 36263 is dismissed and that proceeding is discontinued.
2. The complaint in Docket No. NOR 42162 is dismissed with prejudice.
3. IMI's requests to withdraw its petitions to intervene in both dockets are granted.
4. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.