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Via Electronic Filing

Ms. Anika S. Cooper
Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
Washington, D.C. 20423

ENTERED
Office of Chief Counsel
April 30, 2026
Part of
Public Record

Re: FD 36910
Denver Transit Operators, LLC — Petition for
Declaratory Order — Denver Transit Dispatch
Department

Reply to American Train Dispatchers Association
Filing—Opposition to Intervention; Consent to
Amicus

Dear Ms. Cooper:

On April 10, 2026, the American Train Dispatchers Association asked to intervene or to participate as an *amicus*. The Association also argued the Board should not open a proceeding.

Denver Transit Operators, LLC opposes intervention. But in keeping with the stipulated schedule, Denver Transit recognizes persons like the Association will have *amicus* interests. The Association's argument that the Board should forgo any proceeding disserves the action's stakeholders — the Railroad Retirement Board, Denver Transit, the D.C. Circuit, and the Board itself. The Railroad Retirement Board and Denver Transit have a mutual interest in a dispositive outcome. The D.C. Circuit referred the question so that it could have the Board's views. And the Board itself has a continued interest in interpreting the Interstate Commerce Act.

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1. *The Law Recognizes the Association's Interest as an Amicus, not a Party.*

Denver Transit asks the Board to answer a single question: is its Dispatching Department a common carrier by rail under the Interstate Commerce Act?¹ But the Association's filing expresses no interest in the Dispatching Department or Denver itself. The filing focuses on one aspect; the Board's *Rail-Term* precedent.²

That is a parochial concern relative to the bigger picture: Denver Transit's appeal of a Railroad Retirement Board order interpreting the Interstate Commerce Act. *Rail-Term* could stay good law—but not cover the Dispatching Department.³ As the Association conceded, a decision would only “*potentially* impact ATDA and its membership.”⁴

The filing's silence reveals the Association's lack of a cognizable interest here. Not a word of the filing (other than identifying the parties) references Denver. And no other part explains the Association's stake in whether commuter rail dispatchers instructing Amtrak trains at Denver Union Station meets the Act's definition of a common carrier.

¹ *Denver Transit Operators, LLC — Petition for Declaratory Order — Denver Transit Dispatch Department*, FD 36910, STB Filing ID No. 310904 (February 23, 2026 Denver Transit Petition) (“Petition”), 1 (“Denver Transit Operators, LLC (“Denver Transit”) petitions the Board to begin a declaratory order proceeding. The proceeding would determine whether Denver Transit's Dispatch Department is a rail carrier under the Interstate Commerce Act.”). Further citations to filings in the captioned matter will be by STB Filing No.

² STB Filing No. 311118 (“ATDA's Motion for Leave to Intervene, or in the Alternative, for Leave to File Comments as Amicus Curiae.”) at 1 (“... the Surface Transportation Board should decline to initiate a proceeding . . . because the *Rail-Term* precedent is well-settled.”) (“ATDA Filing”). The precedent identified is *RailTerm Corp.—Petition for Declaratory Order*, FD 35582 (STB served Nov. 19, 2013).

³ Petition, Appendix B-1 (“Employer Status Determination — Decision on Reconsideration, B.C.D. 2025-34) at 18 (Railroad Retirement Board Member Jayne, T. dissenting).

⁴ ATDA Filing, 1.

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Rather, the Association says it would offer only its “additional perspective regarding the nature of the work” of dispatchers—but not commuter personnel or the ones in Denver specifically—while advancing what it sees as “longstanding treatment of *similar* positions under the relevant statutes and longstanding precedent.” (emphasis supplied).⁵

Outside perspective and general background are what the law recognizes as an *amicus* interest—not a partisan one. An *amicus* is a person without a stake in the underlying dispute but who wants to offer its own “unique information or perspective.”⁶ The procedural schedule the parties have stipulated to here offers the Association precisely the relief the filing asks in the alternative. And it mirrors the law recognizing the Association’s “perspective” as an *amicus*.

Without a concrete stake in the outcome, the Association does not merit recognition as an intervenor. Just as in the Brotherhood’s petition, giving the Association intervenor status would (1) offend the Railroad Retirement Board’s rules defining party status at 20 C.F.R. § 259.2(a) and (2) seem to give appellate rights to a stranger⁷—one that does not even have members involved. And that means the Board would give the association rights it would not otherwise have and do so without any benefit to the Board’s consideration whether commuter rail dispatchers in Denver are rail carriers under the Interstate Commerce Act.

2. A Proceeding Remains Merited.

The Association’s indifference to the actual merits discredits its argument against a proceeding. Undertaking the proceeding would serve three public interests. First, Denver Transit and the Railroad Retirement Board have an interest in the Board addressing a potentially dispositive question. Second, the D.C. Circuit and the Board

⁵ *Id.* at 2.

⁶ *Youming Jin v. Minister of State Sec.*, 557 F. Supp. 2d 131, 136-37 (D.D.C. 2008) (quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1064 (7th Cir. 1997)).

⁷ *Tri-City R.R. v. United States Railroad Retirement Bd.*, Case No. 18-71936 (9th Cir. June 19, 2019) [2019 U.S. 8 App. Lexis 18961 at *1]. See also, STB Filing No. 31117 (Denver Transit Reply to Brotherhood of Railroad Signalmen’s Petition to Intervene) at 7-8.

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have a shared interest in the Board's primary jurisdiction over the referred matter. Third, the Board has its own interest in interpreting the Interstate Commerce Act. Any one of these outweighs the Association's generalized concern about Board precedent.

Yours,

A handwritten signature in blue ink that reads "Bradon J. Smith". The signature is written in a cursive, flowing style.

Bradon J. Smith
Attorney for Denver Transit Operators, LLC

CC: Parties of Record