

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36910

DENVER TRANSIT OPERATORS, LLC—PETITION FOR DECLARATORY ORDER—  
DENVER TRANSIT DISPATCH DEPARTMENT

Decided: June 30, 2026

On February 23, 2026, Denver Transit Operators, LLC (Denver Transit), filed a petition for declaratory order asking the Board to determine whether Denver Transit’s Dispatch Department is a “rail carrier” under 49 U.S.C. § 10102(5). The Board will institute a declaratory order proceeding in response to Denver Transit’s petition, grant petitions to intervene filed by the Brotherhood of Railroad Signalmen (BRS) and the American Train Dispatchers Association (ATDA), and establish a procedural schedule for the filing of pleadings.

*Denver Transit’s Petition.* Denver Transit states that it dispatches and operates commuter rail lines for Denver’s Regional Transportation District (RTD). (Denver Transit Pet. for Declaratory Order 2.) Although almost all of its dispatching activity involves commuter trains, Denver Transit states that it dispatches two Amtrak trains per day over a short RTD rail line that connects a BNSF Railway Company (BNSF) rail yard to Denver’s Union Station. (*Id.* at 3.) According to the petition, the Railroad Retirement Board (RRB)<sup>1</sup> recently decided<sup>2</sup> that Denver Transit is an employer covered by the Railroad Retirement and Unemployment Insurance Acts, *see* 45 U.S.C. Chapters 9 and 11, and must participate in pension and unemployment systems under those statutes. (*Id.* at 1-2.) Denver Transit contends that RRB’s decision is based on a finding that Denver Transit is a rail carrier subject to the Board’s jurisdiction because it dispatches Amtrak trains. (*Id.* at 2.)

Denver Transit has appealed the RRB decision to the United States Court of Appeals for the District of Columbia Circuit. (*Id.* at 2.) On January 23, 2026, in response to Denver Transit’s unopposed motion, the D.C. Circuit held the case in abeyance so that Denver Transit could petition the Board for a declaratory order “on the question whether petitioner’s dispatching unit is a ‘rail carrier’ under 49 U.S.C. § 10102(5).” (*Id.*, App. A.) Accordingly, Denver Transit’s petition asks the Board to institute a declaratory order proceeding on this issue and adopt a procedural schedule. (*Id.* at 6.)

---

<sup>1</sup> RRB filed an entry of appearance on March 11, 2026.

<sup>2</sup> The record reflects that the RRB issued an Employer Status Determination decision on July 13, 2020, and issued a decision on reconsideration on June 23, 2025. (Pet., App. B at 1 and App. B-1 at 1.)

Although RRB, BRS, and ATDA have submitted procedural pleadings in the proceeding, no replies to the petition were filed within the default 20-day reply period.

## DISCUSSION AND CONCLUSIONS

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board has discretionary authority to issue a declaratory order to eliminate a controversy or remove uncertainty. A controversy exists as to whether Denver Transit’s Dispatching Department is a rail carrier subject to the Board’s jurisdiction. Furthermore, the D.C. Circuit has held Denver Transit’s pending appeal in abeyance to allow the Board to address this issue. See Delegation of Auth.—Declaratory Ord. Proceedings, 5 I.C.C.2d 675, 676 (1989). The Board will therefore institute a declaratory order proceeding.

BRS’s Petition to Intervene. BRS requested leave to intervene on March 10, 2026. BRS states that it is the collective bargaining representative of the Denver Transit train dispatchers who may be affected by the Board’s decision. (BRS Pet. to Intervene 2.) BRS further states that it seeks to intervene in support of RRB and address the issue raised by Denver Transit, and it asserts that its intervention will not disrupt the procedural schedule at this stage of the proceeding. (Id. at 2.) BRS states that it did not participate in the previous proceedings before the RRB because it did not have notice of those proceedings. (Id. at 2 n.2.)

In its April 10, 2026 reply to BRS’s petition,<sup>3</sup> Denver Transit asks the Board to deny BRS’s petition to intervene. (Denver Transit Reply to BRS Pet. to Intervene 9.) Denver Transit argues that BRS has not met the standard for intervention and should not be given party status.<sup>4</sup> (Id.) Denver Transit asserts that BRS did in fact participate in the RRB proceedings as a non-party but lacks a “significant interest” in the declaratory order proceeding because, pursuant to the RRB’s procedural rules at 20 C.F.R. § 259.2(a), BRS was not eligible for party status or appeal rights in the RRB proceedings. (Id. at 1, 3-4, 7-9.) However, Denver Transit states that it would accept BRS’s participation as an *amicus curiae* if the Board prohibits BRS from discussing any facts or making any arguments that do not already appear in the RRB’s decisions and the appellate record. (Id. at 6.)

The Board has allowed interested persons to intervene in a declaratory order proceeding where: (1) the procedural schedule will not be unduly disrupted; and (2) the issues raised in the proceeding would not be unduly broadened. See Township of Pilesgrove, N.J.—Pet. for

---

<sup>3</sup> Replies to BRS’s petition to intervene were originally due on March 30, 2026. However, the Board extended the reply deadline to April 10, 2026 in response to Denver Transit’s unopposed motion for an extension of time. See Denver Transit Operators, LLC—Pet. for Declaratory Ord.—Denver Transit Dispatch Dep’t., FD 36910, slip op. at 1 (STB served Mar. 12, 2026).

<sup>4</sup> On April 13, 2026, Denver Transit filed a motion for a protective order related to redacted material in the exhibits attached to Denver Transit’s reply to BRS’s petition to intervene. The Board granted Denver Transit’s motion. Denver Transit Operators, LLC—Pet. for Declaratory Ord.—Denver Transit Dispatch Dep’t., FD 36910, slip op. at 1 (STB served Apr. 16, 2026).

Declaratory Order, FD 36770, slip op. at 2 (STB served Sept. 13, 2024); see also 49 C.F.R. § 1112.4. BRS’s petition to intervene meets this standard.<sup>5</sup> First, as the collective bargaining representative of the dispatchers affected by the RRB determination, BRS has a clear interest in the declaratory order proceeding. Second, intervention by BRS will not unduly disrupt the procedural schedule. Indeed, the schedule adopted today is the same overall length, and provides Denver Transit the same 30-day period to respond to BRS as intervenor, as the schedule Denver Transit itself proposed (had BRS participated as *amicus*). Finally, BRS’s participation will not broaden the issues because BRS seeks only to address the single issue raised by Denver Transit in its petition: whether Denver Transit’s dispatching unit is a “rail carrier” under 49 U.S.C. § 10102(5). Denver Transit’s arguments opposing BRS’s intervention are not persuasive.<sup>6</sup> Accordingly, BRS’s petition to intervene will be granted.

*ATDA’s Petition to Intervene.* ATDA requested leave to intervene on April 10, 2026. ATDA seeks to join the declaratory order proceeding as an intervenor or, alternatively, to file comments as *amicus curiae* in support of RRB and BRS.<sup>7</sup> (ATDA Pet. to Intervene 1.) ATDA asserts that it has an interest in the proceeding because its outcome could impact ATDA and its membership, which consists of train dispatchers employed by railroads throughout the United States. (Id.) If allowed to participate, ATDA intends to provide additional perspectives on the nature of the work these employees perform, and the way relevant statutes and precedent treat similar positions. (Id. at 2.) ATDA argues that its participation would not broaden the scope of the declaratory order proceeding because ATDA would address the issues raised in Denver

---

<sup>5</sup> While the RRB has by regulation set different limits on participation in its proceedings, see 20 C.F.R. § 259.2(a), the Board has its own procedural rules governing intervention in STB proceedings. Moreover, intervening in the Board’s declaratory order proceeding will not give BRS additional rights in Denver Transit’s appeal of the RRB’s decision, a separate proceeding before the D.C. Circuit. The Board recognizes that any future appeal of its declaratory order could have an impact on the resolution of the pending D.C. Circuit proceeding but finds that the harm from potential delay associated with an appeal of the Board’s declaratory order decision does not outweigh BRS’s interest in the proceeding. Moreover, despite the current abeyance, the ultimate resolution of the timing of the pending appeal remains with the D.C. Circuit.

<sup>6</sup> Denver Transit’s reliance on Rail-Term Corp.—Petition for Declaratory Order (Rail Term), Docket No. 35582, slip op. at 2-3 n.8 (STB served Dec. 30, 2014), is misplaced. Denver Transit characterizes Rail Term as an “indistinguishable” case that counsels against granting BRS’s “late” petition. (See Denver Transit Reply to BRS Pet. to Intervene 2-4, 8-9.) But in Rail Term, the Board limited the prospective intervenors to *amicus curiae* status because they attempted to intervene after a party sought reconsideration of the Board’s original decision on the merits. Slip op. at 2 n.8. In contrast, here, BRS filed before the Board instituted a proceeding and before a procedural schedule was set. It is not too late for BRS to seek to intervene in the Board’s declaratory order proceeding.

<sup>7</sup> In its April 10 petition to intervene, ATDA also asks the Board to deny Denver Transit’s request to institute a declaratory order proceeding. (ATDA Pet. to Intervene 1.) The Board will not consider ATDA’s arguments on this topic because replies to Denver Transit’s petition were due on March 16, 2026. See 49 C.F.R. §§ 1104.13(a) and 1104.7(a).

Transit's request, and it further states that its participation would not disrupt the procedural schedule. (Id.)

Denver Transit replied to ATDA's petition on April 30, 2026. Denver Transit asserts that the Board should not allow ATDA to intervene because ATDA does not have a concrete stake in the outcome of the dispute between Denver Transit and the RRB. (Denver Transit Reply to ATDA Pet. to Intervene 2-3.) According to Denver Transit, ATDA's interest in the proceeding does not justify intervention because ATDA and its members will only be affected if the Board overturns Rail Term. (Id. at 2.) However, Denver Transit "recognizes persons like [ATDA] will have *amicus* interests."<sup>8</sup> (Id. at 1.)

The record supports granting ATDA's petition to intervene. Like BRS, ATDA says it will address the sole issue raised in Denver Transit's petition, and ATDA's petition to intervene was filed before a proceeding was instituted or a procedural schedule was established. Thus, ATDA's participation will neither broaden the issues nor disrupt the procedural schedule. Denver Transit's arguments to the contrary are not persuasive. Denver Transit's petition for declaratory order states that the RRB's determination turned on Rail Term, highlights the legal and factual similarities between this matter and Rail Term, and suggests that the requested declaratory order proceeding is an appropriate vehicle for the Board to revisit Rail Term. (Denver Transit Pet. for Declaratory Order 3-4 and n.3.) Denver Transit essentially contends that the Board should deny ATDA's petition to intervene because ATDA will only be affected if Denver Transit succeeds in persuading the Board to overturn its Rail Term precedent. But ATDA has a clear interest in advocating on behalf of its members, who could be affected by any decision overturning Rail Term, precisely because a modification of the policy reflected in Rail Term is within the range of outcomes that Denver Transit may be seeking. And, as is also the case with BRS, intervening in the Board's declaratory order proceeding will not give ATDA additional rights in Denver Transit's appeal of the RRB's decision. See supra n.5. ATDA's petition to intervene will be granted.

Procedural Schedule. The petition states that Denver Transit and RRB have stipulated to a procedural schedule that includes an "explicit allowance for *amici* to be heard." (Id. at 6.) In light of the agreement between the parties on this topic, the Board will provide an opportunity for interested persons to file comments. However, the stipulated procedural schedule does not include an opportunity for RRB to reply to comments in support of Denver Transit. Minor modifications to the stipulated procedural schedule are appropriate to remedy this issue, and to assign filing deadlines for the intervenors. The Board will therefore direct the parties and commenters to file pleadings according to the following procedural schedule:

---

<sup>8</sup> Denver Transit also addresses ATDA's arguments for denying Denver Transit's petition for declaratory order. (Denver Transit Reply to ATDA Pet. to Intervene 1, 3-4.) As ATDA's late-filed merits arguments will not be considered, supra n.7, the Board likewise will not reach Denver Transit's response to those arguments.

Denver Transit Opening Statement..... August 14, 2026

Comments by (non-party) interested persons ..... August 24, 2026

RRB, BRS, and ATDA Replies to comments and Denver Transit Opening Statement..... September 14, 2026

Denver Transit Reply to comments and Rebuttal to RRB, BRS, and ATDA ..... October 13, 2026

It is ordered:

1. A declaratory order proceeding is instituted.
2. BRS’s petition to intervene is granted.
3. ATDA’s petition to intervene is granted.
4. The procedural schedule described above is adopted.
5. This decision is effective on its service date.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.