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SERVICE DATE – SEPTEMBER 27, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36263

CITY AND COUNTY OF DENVER—PETITION FOR DECLARATORY ORDER

Docket No. NOR 42162<sup>1</sup>

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

Digest:<sup>2</sup> This decision grants the parties' request to extend the mediation period until October 31, 2019, to permit them to consummate their anticipated settlement, and waives a regulatory provision that would otherwise limit the mediation period to 30 days.

Decided: September 26, 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 declare that: (1) the City's proposed reconfiguration of track on its National Western Center campus (the Site) is a relocation rather than an extension of a line or an additional railroad line; (2) the incidental abandonment of track following relocation will not require separate approval or exemption; and (3) the Board's prior approval of the relocation is not required because the Board has no jurisdiction over the proposed relocation. (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. In support of its comments in opposition, DRIR attached as Exhibit B to its comments letters from six of its shippers expressing concerns about the City's petition and describing the importance of the services provided by DRIR. Similar letters in opposition were subsequently filed by two additional shippers.

On February 4, 2019, DRIR filed a complaint in Docket No. NOR 42162, alleging that the City was violating 49 U.S.C. §§ 10903(d), 10906, and 10501(b)(2) by seeking to remove

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

<sup>2</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

tracks and railroad facilities owned and operated by DRIR on the Site “without the consent of DRIR and without first obtaining an adverse abandonment finding (or a declaratory order with respect to [§] 10906 operations) . . . that the public convenience and necessity require or permit the removal of [the Board’s] jurisdiction over the tracks.” (Compl. 2.)

On March 8, 2019, the Board granted the City and DRIR’s joint request for Board-sponsored mediation and held both proceedings in abeyance. On August 13, 2019, the Board granted the parties’ request to reinstate a mediation period until September 10, 2019, to permit them to consummate their anticipated settlement. By letter filed September 9, 2019, the City advised the Board that the parties “are in the process of finalizing, confirming, and executing a settlement agreement and related documents negotiated in the course of Board-sponsored mediation.” (City Letter Request 1, September 9, 2019.) The City therefore requests that the Board extend the mediation period until October 31, 2019, and waive the otherwise applicable 30-day limit on mediation periods in 49 C.F.R. § 1109.3(b), to permit the parties to consummate their anticipated settlement. The City states that DRIR joins in the request. (Id.)

The Board favors the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible. 49 C.F.R. § 1109.1. The Board will grant the parties’ request to extend the mediation period. The Board also finds good cause here to waive the restriction in § 1109.3(b) limiting mediation periods to 30 days to permit the mediation period to run until October 31, 2019.

It is ordered:

1. The 30-day limitation to the mediation period specified in 49 C.F.R. § 1109.3(b) is waived.
2. The parties’ request to extend the mediation period until October 31, 2019, is granted.
3. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.