

SERVICE DATE – APRIL 17, 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: April 16, 2019

On December 21, 2018, 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. (City Pet. 1.) Denver Rock Island Railroad Company (DRIR), which owns and operates most of the track located on the site, (*id.* at 7), filed initial comments opposing the petition on February 4, 2019. Letters from eight shippers, including Iron and Metals Inc. (IMI), a rail shipper that operates a facility north of the site, have also been submitted.

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 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.)

By decision served 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 March 19, 2019, IMI filed separate petitions to intervene in both proceedings, and also requests “that it be permitted to participate in any and all Board-sponsored mediation proceedings between [the City and DRIR].” (IMI Pets. 1.) On March 21, 2019, DRIR filed a reply in both dockets stating that it does not object to IMI’s intervention in the proceedings or participation in mediation. On April 1, 2019, the City filed a reply in both dockets stating that it does not object to IMI’s

¹ These proceedings have not been consolidated but are being addressed in the same decision for administrative convenience.

intervention if mediation is unsuccessful and these proceedings resume, but that “the City does not perceive any benefit to IMI’s participation in mediation, which is being established in order for the City and [DRIR] to resolve issues that have arisen as between DRIR and the City.” (City Reply 1.)

Here, mediation was ordered by the Board in response to a mutual request from the City and DRIR, and one of those parties, the City, does not consent to IMI’s request to participate. In these circumstances, it would not be appropriate to permit IMI to participate in the City’s and DRIR’s mediation, and IMI’s request will be denied. Because this proceeding is currently in abeyance pending mediation, IMI’s petition for leave to intervene in support of DRIR’s complaint and in opposition to the City’s petition for a declaratory order will be addressed at a later time.

It is ordered:

1. IMI’s request to participate in the City’s and DRIR’s Board-sponsored mediation is denied.
2. This decision is effective on its service date.

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