

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42160

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

Decided: January 30, 2019

On October 30, 2018, Denver Rock Island Railroad Company (DRIR), a Class III rail carrier, filed a complaint including a request for injunctive relief against the City and County of Denver, Colo. (the City). On November 19, 2018, the City filed a pleading styled as a reply. On December 6, 2018, the Board issued an order directing the City to file a brief statement clarifying whether its pleading was intended to serve as an answer or a motion to dismiss.¹ If the latter, the Board also directed the City to file an answer pursuant to 49 C.F.R. § 1111.5(c). Among other things, the order also specified dates for the parties to conduct procedural discussions and file the proposed procedural schedule pursuant to § 1111.11(a).

On December 10, 2018, DRIR submitted a proposed procedural schedule. On December 20, 2018, the Board granted an unopposed request for extension of time for the City to respond to the Board's directive, and re-set the dates for the parties to complete their obligations under § 1111.11(a). In response to the Board's December 6 order, on December 21, 2018, the City filed an answer to the complaint, clarified that its November 19 pleading was intended as a motion to dismiss, and stated that it was willing to supplement its motion if the Board requires additional information. A reply to the motion to dismiss would have been due on January 10, 2019, 20 days after the City's December 21 clarification. See 49 C.F.R. § 1104.13 (establishing the time period for filing replies).

During the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019, all deadlines requiring the submission of material to the Board were tolled. Moreover, the shutdown rendered unviable the procedural schedule proposed by DRIR on December 10, 2018.

Therefore, the parties are directed to confer and to file, either jointly or separately, a proposed procedural schedule by February 11, 2019. DRIR's reply to the motion to dismiss, if any, will be due on February 11, 2019.

¹ The order also specified that future filings in this proceeding should be in Docket No. NOR 42160 and that past filings in FD 36240 will be considered part of the record in NOR 42160.

It is ordered:

1. The parties are directed to confer and to file, either jointly or separately, a proposed procedural schedule by February 11, 2019.
2. DRIR's reply to the City's motion to dismiss, if any, will be due on February 11, 2019.
3. This decision is effective on its service date.

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