

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42160¹
Docket No. FD 36240

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

Decided: December 6, 2018

On October 30, 2018, Denver Rock Island Railroad Company (DRIR), a Class III rail carrier, filed a pleading styled “Complaint Including Request for Injunctive Relief” (Complaint) against the City and County of Denver, Colo. (the City) in Docket No. FD 36240. On November 19, 2018, the City filed a pleading in the same docket, styled “Reply of City and County of Denver” (Reply). The Board is issuing this order to address the following procedural ambiguities in the current record.

Docketing Nomenclature

The initial pleading filed by DRIR was docketed as “Finance Docket No. 36240” but is styled and described as a complaint filed pursuant to 49 C.F.R. part 1111—Complaint and Investigation Procedures. The Board is therefore changing the docketing nomenclature from FD 36240 to NOR 42160 to reflect that this was initiated as a complaint proceeding. All future filings in this proceeding should be in Docket No. NOR 42160. All past filings in FD 36240 will be considered part of the record in NOR 42160.

The City’s Reply to the Complaint

The Board’s complaint procedures provide that an answer to a complaint shall be filed within 20 days after service of the complaint or such additional time as the Board may allow. 49 C.F.R. § 1111.5(c). The answer “should be responsive to the complaint and should fully advise the Board and the parties of the nature of the defense.” 49 C.F.R. § 1111.5(a). A motion to dismiss the complaint may be filed with the answer or at any time during a proceeding. 49 C.F.R. § 1111.6.

¹ These proceedings are not consolidated. A single decision is being issued for administrative purposes.

Here, it is unclear from the title and the terminology used in the City's Reply whether the City intended its November 19 pleading to serve as its answer to the Complaint or as a motion to dismiss the Complaint and the related proceeding. Accordingly, the City is directed to file, within 10 days of the service date of this decision, a brief statement clarifying whether its Reply was intended to serve as an answer or a motion to dismiss. If the latter, the City is also directed to file its answer pursuant to § 1111.5(c).

The time periods established in 49 C.F.R. § 1111.11(a) for the parties to conduct procedural discussions and file the proposed procedural schedule will commence on December 17, 2018.

If the City's November 19 pleading was intended to serve as a motion to dismiss, DRIR's reply thereto, if any, will be due January 7, 2019.

It is ordered:

1. All pleadings hereafter filed in this proceeding shall bear the Docket No. NOR 42160. All past filings in Docket No. FD 36240 will be considered part of the record in Docket No. NOR 42160.

2. The City is directed to file the statement of clarification specified above and, if applicable, its answer to the Complaint by December 17, 2018.

3. The time periods stated in 49 C.F.R. § 1111.11(a) for completing the obligations of the parties specified therein shall commence on December 17, 2018.

4. If the City's November 19 pleading was intended to serve as a motion to dismiss, DRIR's reply thereto will be due January 7, 2019.

5. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.