

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, COLORADO

Decided: March 8, 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. (Pet. 1.) The Denver Rock Island Railroad Company (DRIR), which owns and operates most of the track located on the site, (Pet. 7), filed initial comments opposing the petition on February 4, 2019. Letters from eight shippers expressing concerns about the City’s petition and describing the importance of the services provided by DRIR 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.)²

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

² DRIR filed a separate complaint, pertaining to a dispute with the City over ancillary track located adjacent to the site, on October 30, 2018. On February 11, 2019, DRIR sought leave, with the City’s consent, to voluntarily withdraw that complaint without prejudice, which was granted. Denver Rock Island R.R. v. City & Cty. of Denver, NOR 42160 (STB served Feb. 25, 2019).

On March 1, 2019, the City and DRIR jointly filed a request in both dockets asking that the Board commence mediation pursuant to 49 C.F.R. part 1109, appoint a Board employee as mediator, and hold the captioned proceedings in abeyance. This request for mediation will be granted and the proceedings held in abeyance. While the parties are encouraged to work out as many issues as possible, the scope of the mediation will not encompass any grant, denial, stay, or revocation of regulatory authority. See 49 C.F.R. § 1109.1.

Within 10 days of the service date of this decision, the Chairman will appoint one or more mediator(s). Once appointed, the mediator or mediators will contact the parties to discuss the time and location of any meetings, and other matters. At least one principal of each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator or mediators request(s) that the principal be present. The mediation period shall be 30 days, beginning on the date of the first mediation session. 49 C.F.R. § 1109.3(b). The Board may extend mediation pursuant to mutual written requests of all parties to the mediation proceeding. Id. The mediator or mediators are instructed to inform the Board when mediation has ended, with or without a resolution.

It is ordered:

1. Mediation will be initiated as discussed above.
2. These proceedings are held in abeyance.
3. This decision is effective on its service date.

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