

SERVICE DATE – AUGUST 13, 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.

Digest:² This decision grants the parties’ request to reinstate a mediation period until September 10, 2019, to permit them to consummate their anticipated settlement.

Decided: August 12, 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 tracks and railroad facilities owned and operated by DRIR on the Site “without the consent of

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

² 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).

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 May 30, 2019, the mediation period was extended to June 24, 2019, at the parties' request, to enable negotiations to continue and the parties to enter into the anticipated agreements. By letter dated July 17, 2019, the City advised the Board that the parties had “reached agreement on the substantially final documents required to settle outstanding issues and set a preliminary schedule for the completion and execution of those documents.” The City therefore requests that the Board reinstate a mediation period until September 10, 2019, to permit the parties to consummate their anticipated settlement, and states that DRIR joins in the request. (City Letter Request 1, July 17, 2019.)

The Board favors the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible, see 49 C.F.R. § 1109.1, and will grant the parties' request to reinstate a mediation period until September 10, 2019.

It is ordered:

1. The parties' request to reinstate a mediation period until September 10, 2019, is granted, as discussed above.
2. This decision is effective on its service date.

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