

BEFORE THE SURFACE TRANSPORTATION BOARD

FD 35496

PETITION FOR DECLARATORY ORDER**DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION, INC.
D/B/A DENVER & RIO GRANDE RAILROAD, LLC**ENTERED
Office of Proceedings
September 4, 2012
Part of
Public Record**MOTION TO STRIKE PORTIONS OF THE
VERIFIED STATEMENT OF MATTHEW W. ABBEY****MOTION TO STRIKE EXHIBIT F OF THE JULY 11th, 2012 JOINT REPLY OF THE
CITY OF MONTE VISTA and the SAN LUIS AND RIO GRANDE RAILROAD****REQUEST FOR AN ENLARGEMENT OF TIME**

Comes now your Petitioner, the Denver & Rio Grande Railway Historical Foundation, Inc. (DRGRHF, or Foundation), which respectfully moves to strike the following, which was previously submitted to the Surface Transportation Board ("Board") by the City of Monte Vista, CO, and the San Luis & Rio Grande Railway:

Motion to Strike the photographs in the Verified Statement of Mathew W Abbey

The Foundation respectfully moves to strike the photographs that immediately follow statements made by Mathew W. Abbey, which statements immediately following page 23 of the July 11, 2012 Joint Reply Statement of the City of Monte Vista, CO, and the San Luis & Rio Grande Railway (jointly, "Respondents") ("Joint Reply"). In support of this request, the Foundation states:

The Respondents, and Mr. Abbey, failed to lay any foundation for the photographs, such as who took the photographs, when the photographs were taken, where the photographs were taken, and what the photographs depict, and how the photographs relate to the proceeding. The DRGRHF cannot properly address and cross examine the photographs until there is an appropriate foundation laid as to the basis for their inclusion in the response. As submitted

presently, the photographs do not comport with any of the basic elements of evidence, as set forth in the Federal Rules of Evidence.

Motion to Strike Exhibit F of the Joint Reply

The DRGRHF also moves to strike the photographs contained in Exhibit F of the Joint Reply. Once again, the Respondents failed to lay any foundation for the photographs, such as who took the photographs, when the photographs were taken, where the photographs were taken, what the photographs depict, and how they relate to the proceeding. The submission of the photographs, as they have been submitted, does not comport with the basics standards of the Federal Rules of Evidence.

Request for an Extension of Time

In the event that the Respondents should seek to submit the required foundation, which should have accompanied the photographs when they were submitted to the Board, as part of their response to this motion, the DRGRHF should be permitted to supplement the record, and file its amended Rebuttal which would include its cross examination of the new evidence, and to supplement its previous Rebuttal to address the impact of the photographs would have with respect to the entirety of the arguments which were set forth in the Joint response.

WHEREFORE, for the foregoing reasons, your Petitioner respectfully requests that the Board **STRIKE** the above two filings.

Respectfully,



Donald H. Shank

President

Denver & Rio Grande Railway
Historical Foundation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2012, I served via first class mail, postage prepaid, a copy of this Motion to Strike on the following:

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