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SERVICE DATE – AUGUST 29, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35496

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION D/B/A DENVER &  
RIO GRANDE RAILROAD, L.L.C.—PETITION FOR DECLARATORY ORDER

Decided: August 29, 2012

The Denver & Rio Grande Railway Historical Foundation, Inc. (DRGHF), a Class III railroad, filed a petition on July 12, 2011, asking the Board to declare whether 49 U.S.C. § 10501(b) preempts municipal zoning law with respect to DRGHF's activities on a parcel of land leased by DRGHF in Monte Vista, Colo. In a decision served on February 23, 2012, the Board instituted a declaratory order proceeding and established a procedural schedule.<sup>1</sup>

DRGHF filed its opening statement on April 12, 2012, the City of Monte Vista and San Luis & Rio Grande Railway (Respondents) filed their reply on July 11, 2012, and DRGHF filed its rebuttal on August 13, 2012. Before DRGHF filed its rebuttal, however, Respondents on August 2, 2012, filed a letter from the Federal Railroad Administration (FRA) referring to DRGHF as a “non-insular tourist railroad subject to the FRA’s safety jurisdiction.” In its cover letter, DRGHF asserts that the FRA letter “is substantial evidence that [DRGHF] is not acting as a common carrier railroad and is therefore not entitled to preemption under the Board’s case law and statute.”

On August 24, 2012, DRGHF filed a letter requesting a one-week extension of time to respond to the FRA letter. In support of the request, DRGHF states that, as a result of a burglary on August 19, 2012, the computer being used to draft the response and its memory backup were stolen, and that DRGHF has been trying to recreate the response but has not been able to do so in a timely manner.

A short extension of time for DRGHF to respond to Respondents’ submission is appropriate and will not prejudice any other party. Therefore, DRGHF’s due date for filing a response to Respondents’ August 2, 2012 submission will be extended to September 4, 2012.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>1</sup> The Board subsequently modified the procedural schedule by decisions served April 2, 2012, April 30, 2012, and June 6, 2012.

It is ordered:

1. The due date for DRGHF to respond to Respondents' August 2, 2012 submission is extended to September 4, 2012.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.