

Decision No. C23-0416

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 06A-153R

IN THE MATTER OF THE JOINT APPLICATION OF THE PARK CREEK METROPOLITAN DISTRICT AND THE CITY AND COUNTY OF DENVER FOR AUTHORITY TO CONSTRUCT A NEW PUBLIC HIGHWAY-RAILROAD AT-GRADE CROSSING ACROSS AN INDUSTRIAL RAILROAD SPUR TRACK WITHIN THE CITY AND COUNTY OF DENVER WHICH IS OPERATED BY THE UNION PACIFIC RAILROAD COMPANY AND TO INSTALL APPROPRIATE GRADE CROSSING WARNING DEVICES.

**COMMISSION DECISION
GRANTING AMENDED APPLICATION**

Mailed Date: July 11, 2023
Adopted Date: June 14, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Motion for Leave to Amend Application (Motion) and an Application Amendment (Amended Application) filed by application (Application) filed by the Park Creek Metropolitan District (Park Creek) and the City and County of Denver (Denver) (collectively, Applicants) on May 23, 2023, requesting to change the previously approved interconnection with and preemption of the traffic signal at 40th Avenue and Havana Street with the crossing of 40th Avenue with the Union Pacific Railroad Company (UPRR) approximately 450 feet west of Havana Street to installation of a queue cutter signal installed at the highway-rail grade crossing.

2. There were no responses filed to the Motion or the Amended Application.

B. Procedural History

3. On March 24, 2006, the Applicants filed a verified Application seeking authorization to construct a new at-grade highway-railroad crossing in Denver, including appropriate warning devices (Application). The filing commenced this proceeding. On March 31, 2006, Applicants filed an Amended Joint Application.¹

4. By Decision No. C06-0502, the Commission deemed the Application complete as of May 3, 2006; setting this matter for hearing on July 11 and 12, 2006; and established a procedural schedule. By Decision No. R06-0583-I, the Administrative Law Judge (ALJ) affirmed the procedural schedule and hearing dates and ordered additional service and procedural requirements. By Decision No. R06-0911-I, the ALJ extended the time for Commission decision in this matter.

5. The Applicants filed their direct testimony and exhibits on March 24, 2006.² UPRR filed its answer testimony and exhibits on June 22, 2006.³

6. The ALJ granted and denied various prehearing motions. *See* Decisions No. R06-0683-I, No. R06-0689-I, and No. R06-0796-I.

7. On July 10, 2006, Denver, Park Creek, and UPRR filed a Joint Motion to Approve Stipulation and Settlement Agreement (Joint Motion). A Stipulation and Settlement Agreement (Stipulation) accompanied the Joint Motion. The ALJ posed questions concerning the

¹Reference in this Decision to the Application is to the Application as amended on March 31, 2006.

²Applicants filed the direct testimony and exhibits of Messrs. Robert Duncanson, James D. Chrisman, Richard L. Anderson, John M.W. Aldridge, Jose M. Cornejo, and Jack Baier.

³ UPRR filed the answer testimony and exhibits of Ms. Susan K. Grabler and Messrs. Stephen A. Holt and Neil D. Scott.

Stipulation and requested that the parties respond to those questions. The ALJ scheduled an evidentiary hearing on the Stipulation. Decision No. R06-0927-I.

8. On September 5, 2006, the parties filed a Second Status Report and Suggestion that a Hearing on the Stipulation May Be Unnecessary. Accompanying that filing were written responses to the questions posed by the ALJ in Decision No. R06-0856-I. Based on the supplemental information provided, by Decision No. R06-1043-I, the ALJ vacated the hearing.

9. The parties have:

stipulate[d] to the admission into evidence of the prefiled testimony and exhibits that have been filed in this docket without further authentication of that testimony and the accompanying exhibits. The parties further agree[d] to waive cross examination of the same.

Stipulation at ¶ 15. The direct testimony and exhibits filed by Denver and Park Creek and the answer testimony and exhibits filed by UPRR will be admitted into evidence. These documents, in addition to other information, serve as the evidentiary basis for the Commission's consideration of the Stipulation.⁴

10. In the Joint Motion at ¶ 9, UPRR states:

The UPRR hereby withdraws its opposition to the Commission granting the approval sought by Park Creek and Denver in the Joint Application, subject to the provisions of this Stipulation and Settlement Agreement.

UPRR is the only intervenor and has withdrawn its opposition to the Application.

⁴This matter is determined based on the Application and the exhibits appended to the Application, the prefiled testimony, the Stipulation, and the supplemental information filed on September 5, 2006.

11. The Application is unopposed and uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1403, the uncontested Application may be considered under the modified procedure and without a formal hearing.

C. Discussion

12. By Decision No. R06-1072, mailed September 11, 2006, and R06-1072E mailed September 11, 2006, the ALJ granted the Application pursuant to the Stipulation entered into by the parties in this proceeding.

13. As part of that Stipulation, the parties agreed that train activated preemption of the traffic signal and Havana Street and 40th Avenue would be installed. The specifications were to be filed at a later date.

14. On January 12, 2007, Park Creek filed the traffic signal preemption timing analysis and specifications as required. Park Creek said it is waiting for information from UPRR to continue the railroad crossing design.

15. On January 25, 2007, UPRR filed a response to the signal preemption timing stating that they are waiting on information from Park Creek to continue the railroad crossing design.

16. On January 21, 2007, the Commission issued Decision No. C07-0102, mailed February 5, 2007. The decision stated that the preemption timing provided would not be needed until the 2010 forecast scenario when all facilities and development for Filing 7 are at the full-build out condition. The Commission required that the railroad and traffic signal designs must contain the necessary interconnect and controllers, but that it was not necessary to implement preemption at this time.

17. The Commission Decision also determined that a status conference was not necessary since the parties provided documentation to show the project design was moving forward.

18. Finally, the Commission required Park Creek and Denver to monitor the traffic volumes as build-out of Filing 7 continues and that once the traffic volumes reach the level that vehicles are queuing close to the railroad crossing, Park Creek and Denver were to work with Staff of the Commission and UPRR to update the timing calculations provided in the report to reflect the conditions at the time of implementation. Once all were satisfied that the preemption timings are correct, Park Creek and Denver would be required to implement the preemption timings without the need to file an additional application with the Commission and that once the preemption were implemented, Park Creek was required to inform the Commission, in writing, that the preemption timings are implemented and operational. For tracking purposes, the Commission initially expected this letter to be filed around December 31, 2010.

19. Park Creek, Denver, and Staff of the Commission monitored the traffic volumes along 40th Avenue. However, as a result of changes in market conditions and construction schedules, Filing 7 was not built-out as quickly as anticipated. Traffic volumes have only recently reached the level such that vehicles are queuing close to the railroad crossing.

20. In the course of discussions with Commission Staff and UPRR to update the timing calculations for preemption of the traffic signal, the original preemption specifications that render preemption as a less effective means to control traffic queuing close to the railroad crossing.

21. The parties met at the crossing and identified a queue=cutter signal as a newer and more efficient technology that will control traffic queuing close to the railroad crossing by

coordinating with both the traffic signal and the train signal regardless of whether a train is approaching. Because the Commission has not approved of the alternate proposal for signalization, this Amended Application is being filed requesting this change.

22. The Joint Applicants have discussed the queue-cutter signal design with UPRR and UPRR does not object to the installation of the queue-utter signalization in place of the originally designed preemption signal. Park Creek shall be solely responsible for any cost associated with the installation.

D. Finding of Fact

23. The Joint Applicants request leave to amend the Application by seeking permission from the Commission to use a queue-cutter signal as described in Exhibit B to the Amended Application to coordinate with the 40th Avenue and Havana Street traffic signal and the train signal for the public highway-rail crossing located approximately 450 feet west of such intersection. This queue-cutter signal would be in lieu of the original traffic signal preemption ordered by the Commission.

24. The queue-cutter signal is designed to show a green indication until one of two different operations occurs at the crossing. One involves train activation of the queue-cutter signal and the second involves vehicles stopped in the video detection zone activating the queue-cutter signal.

25. With the first scenario, the queue-cutter signal is preempted by train activation similar to what would happen with preemption of a traffic signal. The queue-cutter would cycle from green to amber to red. The railroad signal will start flashing red and the gates will descend

to block vehicles from entering the crossing. Once the train has cleared the crossing, the queue--cutter signal will change back to green.

26. With the second scenario, there will be a video detection zone created for the approach to Havana Street. If a vehicle gets stopped in the video detection zone for 5 seconds, the queue-cutter signal will be activated and will change from green to amber to red. Vehicles on the upstream side of the railroad crossing are required to stop at the stop bar at the “Stop Here on Red” sign. Once the video detection zone is cleared, the queue-cutter signal will change back to green, and traffic flow over the crossing can continue.

27. This queue-cutter solution solves two problems that traditional preemption would create. One, there is no violation of the maximum 50 second warning limitation with constant warning time detection which would be violated with traditional preemption. Two, with the long length of the storage distance between the intersection and the railroad crossing, there is no issue with the time it would take to clear enough of the storage distance to move any vehicles that may be stopped on the crossing so that vehicles will not be hit by an approaching train.

E. Conclusions

28. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

29. No intervenor that filed a petition to intervene or other pleading contests or opposes the Amended Application.

30. Because the Application is unopposed, the Commission finds that it will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1 of the Rules of Practice and Procedure.

31. We find that good cause exists and that the requirements of public safety are met by granting the Amended Application consistent with the above discussion.

32. We will require Park Creek to file a copy of the updated, signed Construction and Maintenance Agreement with the Commission by July 31, 2023, prior to start of construction at the tracks of the crossing.

33. We will require Park Creek to inform us in writing that construction is complete within ten days of project completion. We shall expect this letter by December 31, 2023.

34. We will require Park Creek and UPRR to work together to update the National Inventory Form for this crossing and file a copy of the updated crossing inventory forms in this proceeding by December 31, 2023.

II. ORDER

A. The Commission Orders That:

1. The Motion for Leave to Amend Application and an Application Amendment (Amended Application) filed by application (Application) filed by the Park Creek Metropolitan District (Park Creek) and the City and County of Denver (Denver) (collectively, Applicants) on May 23, 2023, requesting to change the previously approved interconnection with and preemption of the traffic signal at 40th Avenue and Havana Street with the crossing of 40th Avenue with the Union Pacific Railroad Company (UPRR) approximately 450 feet west of Havana Street to installation of a queue cutter signal installed at the highway-rail grade crossing is granted.

2. The Application is granted.

3. The Joint Applicants are authorized and ordered to install a queue-cutter signal at the 40th Avenue crossing per the plans and specifications included with the Amended Application.

4. Park Creek will be required to file a copy of the signed Construction and Maintenance Agreement with the Commission by July 31, 2023, prior to start of construction at the tracks of the crossing.

5. Park Creek shall be required to inform the Commission in writing that construction is complete within ten days of project completion. The Commission shall expect this letter by December 31, 2023. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

6. Park Creek and UPRR will be required to work together to update the National Inventory Form for this crossing and file a copy of the updated crossing inventory forms in this proceeding by December 31, 2023.

7. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

8. The Commission retains jurisdiction to enter further decisions, as necessary.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 14, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

COMMISSIONER MEGAN M. GILMAN
ABSENT