

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0538R

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES REGULATING
RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL
CROSSINGS, 4 CODE OF COLORADO REGULATIONS 723-7.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING PUBLIC COMMENT HEARING AND
INVITING COMMENT FROM
COLORADO DEPARTMENT OF TRANSPORTATION**

Mailed Date: April 26, 2023

I. STATEMENT AND BACKGROUND

A. Summary

1. This Decision schedules a fully remote public comment hearing using Zoom; identifies potential changes to Rules not specifically included in the Notice of Proposed Rulemaking (NOPR) in this Proceeding; invites public comment on the same; and invites the Colorado Department of Transportation (CDOT) to provide comment on matters identified below. Notably, this Decision also implements a relatively new Commission process that requires those interested in providing public comment during the hearing to register in advance to receive the Zoom information needed to join the hearing.

B. Procedural History and Background

2. The Colorado Public Utilities Commission initiated this matter on November 22, 2021 by issuing a NOPR to amend the Rules governing rail crossings, that is, Rules 7009

through 7301, 4 CCR 723-7.¹ At the same time, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition and provided notice to the General Assembly per § 24-4-103(3), C.R.S. that the proposed Rules seek to implement statutory fining authority.²

3. Many public comments have been filed in this Proceeding.

4. The ALJ has held numerous public comment hearings.³ During the October 24, 2022 public comment hearing, the ALJ directed interested persons to hold an informal workshop meeting on or by November 16, 2022 to attempt to identify agreeable Rule changes, and to file a status report and proposed consensus Rules on or by December 12, 2022.⁴ Stakeholders held workshops and filed a status report and proposed Consensus Rules consistent with that deadline.⁵

II. FINDINGS, ANALYSIS, AND CONCLUSIONS

5. Several suggested Rule changes in the proposed Consensus Rules would change or modify existing Rules that were not included in the NOPR. Specifically, the proposed Consensus Rules suggest the following changes⁶ to Rules that were not included in the NOPR:

- Adding Rule 7001(h) “Imminent safety hazard” means an imminent and unreasonable risk of death or severe personal injury.
- Adding Rule 7001(i) “Alterations or “changes” or “modifications” at a public crossing include, but are not limited to, installing sidewalk panels, installing passive warning devices other than crossbucks and yield signs, installing active warning devices, changing crossing detection circuitry, interconnecting a crossing

¹ Decision No. C21-0737 (mailed November 22, 2021) (Decision No. C21-0737).

² Decision No. C21-0737 at 20; Notice of Proposed Rule to Increase Fees or Fines filed on November 22, 2021.

³ Decision No. C21-0737; Decision Nos. R21-0781-I (mailed December 9, 2021), R22-0027-I (mailed January 12, 2022), R22-0420-I (mailed July 19, 2022), and R22-0483-I (mailed August 15, 2022); R22-0638-I (mailed October 24, 2022).

⁴ Decision No. R22-0638-I at 7.

⁵ Joint Status Report Submitting Partial Consensus Rules and Exhibit A thereto (Status Report and Consensus Rules) filed by the Colorado Communications and Utility Alliance (CCUA) on December 12, 2022. See Decision No. R22-0638-I.

⁶ Suggestions to add language or rule provisions are highlighted in red and suggestions to delete language in existing Rules are stricken through.

with a traffic signal or queue cutter signal, and adding or removing additional tracks.

- Modifying Rule 7002(a) to: Commission action ~~shall~~ ~~may~~ be sought regarding any of the follow matters ~~unless otherwise excepted by these rules~~ through the filing of an appropriate application.⁷

6. Although these Rules were not directly included in the NOPR, the ALJ finds that the above proposed changes are reasonably within the scope of the NOPR because they relate to other proposed Rule changes in the NOPR. As such, should the Commission choose to adopt the above or similar changes, this does not run afoul of § 24-4-103, C.R.S. of the Administrative Procedures Act (APA).⁸ Nonetheless, the ALJ finds that public notice that the Commission may adopt the above Rule changes serves the public interest, increases transparency, and is consistent with the spirit of the APA. This Decision accomplishes that.

7. In addition, the ALJ seeks input from CDOT on suggestions that CDOT and Commission Staff lead the charge in developing (and later updating) template agreements that railroad companies and road authorities will use for projects over which the Commission has jurisdiction.⁹ CDOT has submitted comments since these suggestions were filed but has not stated whether it agrees that such template agreements should be developed (or whether it is feasible to do so), or whether it is willing to work with Staff to develop and later update such templates. The Commission's authority over CDOT is not unlimited; this renders CDOT's position on these suggestions even more important.

8. For these reasons, the ALJ invites CDOT to respond to the above suggestions by written comments filed on or before the scheduled public comment hearing.

⁷ Exhibit A to Consensus Rules at 7-8.

⁸ See § 24-4-103(3)(a), C.R.S. (notice of proposed rulemaking must include "either the terms or the substance of the proposed rule or a description of the subjects and issues involved.")

9. Given the above, the ALJ finds that holding an additional public comment hearing is appropriate under the circumstances.¹⁰

III. METHODS TO SUBMIT PUBLIC COMMENTS

10. The ALJ invites public comment on the potential Rule changes discussed above, and from CDOT, as discussed above, and any other relevant matter.

11. Interested persons may provide written or oral comments. Although the Commission prefers written comments over oral comments, they are given the same weight.

12. Interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this Proceeding; or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Anyone using the latter option should ensure that their comments include this Proceeding number.

13. Verbal comments can be provided during the scheduled public comment hearing, or by leaving a voice mail message at 303-869-3490. Voice mail public comments will be placed in the record of this Proceeding and should include a reference to this Proceeding number.

IV. OBSERVING OR PARTICIPATING IN PUBLIC COMMENT HEARING

A. Participating in Public Comment Hearing

14. The hearing will be fully remote, using the web-hosted video conferencing service, Zoom. To ensure a clear record and orderly hearing progression, those interested in

⁹ City of Louisville's Comments filed September 16, 2022, at 7; Douglas County's Comments filed September 15, 2022 at 5.

providing public comment during the hearing must register for the hearing in advance using a link posted on the Commission's calendar of events for the date and time of the hearing at: <https://puc.colorado.gov/puccalendar>.¹¹ Registrants will receive an email with the link, meeting ID code, passcode, and call-in information to provide public comment during the Zoom hearing. If an interested person is unable to obtain the link and register, they can contact the PUC for assistance at (303) 894-2000.

15. For those who wish to provide comment during the hearing, video-conference participation is encouraged because it allows for the hearing to be held in a manner most like in-person hearings. Nevertheless, interested persons have the option to provide public comment by telephone.

16. During the public comment hearing, the ALJ will take action as necessary to facilitate a clear and understandable record, and to ensure the orderly progress of the hearing. For the same reasons, all participants are required to: (a) mute their microphone during the hearing until called upon by the ALJ; (b) ensure they are participating from a location with minimal or no background noise; and (c) not connect to the hearing using multiple devices located in the same room (which causes audio feedback). Participants are encouraged to use a headset to listen to the hearing, as this may also help avoid background noise and feedback when they speak.

17. Registrants are encouraged to use a computer, smart phone, or tablet that is connected to the internet and has an operational microphone, speaker, and camera. Registrants

¹⁰ See *supra*, ¶¶ 5-7. An additional public comment hearing also allows the ALJ more time to evaluate the complex issues and arguments raised in this Proceeding, presented through public comments filed in this Proceeding and numerous other Proceedings (e.g., Proceeding Nos. 21R-0100R and 19M-0379R).

¹¹ Interested persons will go to the Commission's calendar of events on the above link, then navigate to the date and time scheduled for the hearing where the registration link will be provided.

are required to input their full name when prompted to do so. This will allow the ALJ to call on participants to provide oral comments in an orderly fashion.

18. Registrants are strongly encouraged to prepare in advance and familiarize themselves with how to use the Zoom meeting platform. Attachment A to this Decision provides step-by-step technical instructions and requirements to participate by videoconference using a computer. This is intended to ensure that the remote hearing proceeds efficiently. Hence, it is important that video-conference participants carefully review and follow all requirements in this Decision and Attachment A.

19. The public comment hearing is scheduled to commence at 11:30 a.m., and consistent with Commission practice, will conclude no later than 5:30 p.m., or when all public comments have been received, whichever is earlier. The hearing will not be held open for public comments after all those who have appeared have provided public comment, even if this means concluding the hearing before 5:30 p.m. For example, if all those who appear at the hearing have provided public comment by 12:00 p.m. or sooner, the hearing will be adjourned. This also means that anyone who chooses to join the public comment hearing after the 11:30 a.m. start time assumes the risk that the hearing will already be concluded.

20. The Commission strives to accommodate all members of the public at its hearings by providing services for foreign language users and persons with disabilities upon receipt of a reasonable accommodation request. Registrants requesting an interpreter during the public comment hearing should complete the Language Access Form under the “How to Make Comments” tab at <https://puc.colorado.gov/how-to-participate> at least one week prior to the event. Requests for accommodation can also be made directly by contacting Holly Bise at (303) 894-2024 or holly.bise@state.co.us.

B. Observing Public Comment Hearing

21. Consistent with Commission practice, the public comment hearing will be webcast on the Commission's website. Persons wishing to observe, but not participate in the hearing may do so by observing the webcast of the rulemaking hearing and need not join the hearing by telephone or videoconference. To observe the rulemaking hearing by webcast, enter this link in the web browser at puc.colorado.gov/webcasts and select the audio or video option for assigned hearing room on the date and time of the hearing. The ALJ encourages interested persons who do not wish to provide comments during the hearing to observe the hearing through the webcast because this will help minimize background noise during the hearing and may assist in the orderly progression of the hearing.

V. ORDER**A. It Is Ordered That:**

1. This notice of public comment hearing shall be filed with the Colorado Secretary of State for publication in the May 10, 2023, edition of *The Colorado Register*.

2. A public comment hearing is scheduled as follows:

DATE: June 1, 2023

TIME: 11:30 a.m., continuing until concluded, but not later than 5:30 p.m.

PLACE: By video conference or telephone using the Zoom web conferencing platform at a link emailed to all those who register to participate in the public comment hearing.

3. All those who wish to provide comments in the public comment hearing must register for the public comment hearing to receive the Zoom information to join the hearing. Interested persons must register to participate in the public comment hearing by clicking on a link available on the Commission's calendar of events on its website for the date and time(s) of

the hearing at puc.colorado.gov/puccalendar, and following the requirements in Attachment A hereto, which is incorporated as if fully set forth herein.

4. Those wishing to observe but not participate in the above public comment hearing may do so by observing the Commission's webcast for the assigned hearing room at: puc.colorado.gov/webcasts.

5. Members of the public who wish to provide written comments may do so by following the instructions in this Decision.

6. The Administrative Law Judge may schedule additional hearings if necessary.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director