

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0274R

IN THE MATTER OF THE DEVELOPMENT OF TEMPLATE CONSTRUCTION AND MAINTENANCE AGREEMENTS AND PRELIMINARY ENGINEERING AGREEMENTS FOR USE IN PUBLIC CROSSING PROJECTS IN COLORADO CONSISTENT WITH RULE 4 CODE OF COLORADO REGULATIONS 723-7-7214.

**INTERIM DECISION
ESTABLISHING DEADLINES AND
SCHEDULING HEARING**

Issued Date: September 11, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision establishes a September 23, 2024 deadline for participants to submit comments on template construction and maintenance agreements and preliminary engineering agreements (collectively “template agreements”) filed in this Proceeding; a November 4, 2024 deadline for participants to submit comments in response to the same; and a December 16, 2024 deadline for participants to meet in an informal workshop to reach a consensus on template agreements. This Decision also schedules a fully remote hearing for December 17, 2024 at 3:00 p.m. for participants to share the results of their informal workshop and to determine appropriate next steps to bring this matter to a resolution.

B. Procedural History and Background¹

2. On June 14, 2024, the Commission initiated this Proceeding as a forum to develop Commission-approved template agreements for use as required by newly adopted Rule 7214 of

¹ Only the procedural history necessary to understand this Decision is included.

the Commission's the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7.² At the same time, the Commission referred this Proceeding to an administrative law judge ("ALJ").³

3. To date, participants have filed numerous template agreements.

4. The ALJ scheduled a prehearing conference for September 5, 2024 to establish an initial schedule to move this matter forward.⁴ The ALJ held the hearing as noticed. The following participants appeared: the Colorado Department of Transportation ("CDOT"); the Cities of Greeley, Fort Collins, Colorado Springs, Aurora, and Arvada; Board of County Commissioners of Weld County; the Town of Hayden; the Colorado Communications and Utility Alliance; the Regional Transportation District; Denver Transit Operators; Union Pacific Railroad Company; and BNSF Railway Company.⁵

II. FINDINGS AND CONCLUSIONS

5. During the prehearing conference, participants provided feedback on how this Proceeding should move forward. The ALJ largely accepted participants' suggestions, thereby establishing deadlines and a second hearing date. This Decision memorializes the rulings made during the prehearing conference.

² Decision No. C24-0420 at 1 (issued June 14, 2024) ("Decision No. C24-0420").

³ *Id.* at 5-7.

⁴ Decision No. R24-0560-I (issued August 7, 2024).

⁵ Although the Towns of Castle Rock and Timnath and Larimer County filed notices that they will participate, none of them appeared at the prehearing conference. During the prehearing conference, a participant noted that many participants who filed a notice indicating they will participate were not served with Decision No. R24-0560-I setting the prehearing conference, which may be the reason they did not appear. As noted during the hearing, the Decision was not served on some participants when it was issued due to inadvertent human error. The Decision and Attachment A thereto was served on such participants on August 26, 2024 as noted in the Third Supplemental Certificate of Service filed on August 27, 2024. In any event, such participants' failure to appear at the prehearing conference is not and should not be construed as indicating they no longer wish to participate in this Proceeding.

6. As previously noted, the template agreements will largely be developed by participants who will meet in informal workshop sessions.⁶ To ensure that participants' first informal workshop session is efficient and productive, participants will be given an opportunity to submit comments on template agreements filed in this Proceeding. For the same reasons, participants will also be given an opportunity to respond to comments on template agreements filed in this Proceeding. The ALJ anticipates that such comments will highlight disputed and undisputed concepts and terms in the filed template agreements; explain why such issues are disputed; and, as practicable, propose potential resolutions. Participants are not expected to suggest specific language changes (*i.e.*, redlined versions of template agreements with suggested changes) in their comments. Rather, the comments are intended to identify at a high level the disputed and undisputed issues, concepts and terms in template agreements filed in this Proceeding so that participants are prepared to discuss solutions during their first informal workshop session. Additional informal workshop sessions may be scheduled as appropriate in the future.

7. Participants are encouraged to comment on CDOT's master template agreements filed on August 19, 2024. Indeed, as noted in the Rulemaking Proceeding that resulted in the template agreement requirement, CDOT's master template agreements with railroads have been effective and have worked well.⁷ As a result, CDOT's master template agreements may serve as a solid starting point for creating template agreements to be used per Rule 7214.

⁶ That said, the ALJ will work with the participants and take necessary action to move this matter to a resolution.

⁷ Decision No. R23-0618 at 90 (issued September 22, 2023) in Proceeding No. 21R-0538R. During the prehearing conference, CDOT stated that it does not wish to continue to participate in this Proceeding, noting that it has already met the requirement to submit its master template agreements. The ALJ encouraged CDOT to continue to participate as CDOT may have insight that could be helpful in developing templates but does not require CDOT to participate further.

8. To allow participants ample time to review comments before meeting, the deadline for participants to have their first informal workshop meeting, (December 16, 2024), is approximately five weeks after responsive comments are due (November 4, 2024). Given typical scheduling difficulties that arise when coordinating schedules for numerous persons, participants are encouraged to immediately work together to identify a date between November 4, 2024 and December 16, 2024 to meet informally.

9. To encourage participants' open and frank discussions, the ALJ will not participate in the informal workshop. All those who file a notice that they intend to participate in this Proceeding must be invited to and included in the informal workshop session, but participation in the workshop session is voluntary (not mandatory).

10. The ALJ will hold a hearing on December 17, 2024 to hear from participants on the results of their informal workshop and determine appropriate next steps. To be clear, this will not be an evidentiary hearing, but is intended to determine the status of participants' efforts to create template agreements for use per Rule 7214, 4 CCR 723-7 and determine appropriate next steps. Participants will appear at the hearing from remote locations by videoconference via the web-hosted service, Zoom, and may not appear in person. Attachment A hereto includes important technical information and requirements to facilitate holding the hearing remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

11. Participants will receive an email with the Zoom information necessary to join the remote hearing at the addresses on file for participants. As such, *it is vitally important* that participants ensure that the Commission has the correct email address for them *in this Proceeding*.

12. Decision No. R24-0560-I establishes an August 19, 2024 deadline to make a filing providing notice of intent to participate in this Proceeding so that the record clearly establishes who will participate and who must be served with filings in this Proceeding.⁸ To date, the Commission has treated this similar to a rulemaking proceeding by serving decisions on a long list of stakeholders who the Commission has identified as potentially having an interest in this Proceeding. Because many stakeholders are not registered with the Commission's E-Filing System ("E-Filings") and have not provided the Commission a valid email address for service, many entities on that list must be served via U.S. mail, a time and resource intensive endeavor. Participants in this Proceeding should not be required to engage in that same time and resource intensive endeavor to serve their filings on those who have failed to indicate that they intend to participate. As such, consistent with Decision No. R24-0560-I, moving forward, participants are only required to serve their filings on entities who have made a filing indicating that they will participate in this Proceeding. Similarly, decisions will only be served on such participants.

13. That said, given the anomalous service issues in this Proceeding and because this is not an adjudicatory Proceeding, interested stakeholders may file a notice of intent to participate and participate in this Proceeding at any time. The filing must include an email address at which they may be served filings or other important information (such as Zoom information to join future hearings and workshops). Anyone who joins this Proceeding late risks missing opportunities to fully engage and participate in this Proceeding. In fact, although stakeholders may join this Proceeding at any time, the ALJ will not modify established deadlines to accommodate those who join this Proceeding after such deadlines or timelines have passed.

⁸ Decision No. R24-0560-I at 5.

III. ORDER

A. It Is Ordered That:

1. Any participant wishing to comment on template construction and maintenance agreements and preliminary engineering agreements (“template agreements”) filed in this Proceeding must file their comments on or by September 23, 2024, consistent with the above discussion.

2. Any participant wishing to respond to comments on template agreements filed in this Proceeding must file their responsive comments on or by November 4, 2024, consistent with the above discussion.

3. Participants are directed to meet at least once in an informal workshop session by December 16, 2024 to work together to create template agreements that will be used per Rule 7214 of the Commission’s the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7. All those who have made a filing indicating they will participate in this Proceeding must be invited to and included in this workshop session, consistent with the above discussion. Participation in the informal workshop session is voluntary.

4. A remote hearing is scheduled as follows:

DATE: December 17, 2024

TIME: 3:00 p.m.

PLACE: By video conference or telephone using Zoom information emailed to participants.

5. Participants are not permitted to distribute or share the Zoom information for the above hearing to anyone not participating in the hearing. Non-participants in the hearing may

observe the hearing live through the Commission's webcast for the Hearing Room assigned for the hearing at: <https://www.youtube.com/@COPublicUtilitiesCommission/featured>.

6. Participants in the hearing may not appear at the Commission's office in person but will appear by videoconference or telephone.

7. All those participating in the hearing must comply with the requirements in Attachment A to this Decision, which is incorporated as if fully set forth.

8. This Order 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

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director