

{PRIVATE }

(Decision No. C93-864)

BEFORE THE PUBLIC UTILITIES COMMISSION{PRIVATE }
OF THE STATE OF COLORADO

* * *

APPLICATION OF THE CITY AND COUNTY OF)
DENVER, STATE OF COLORADO, FOR AUTHORITY)
FOR AN AT-GRADE CROSSING BY THE 16TH)
STREET ROADWAY OF CERTAIN TRACKS OF THE)
DENVER UNION TERMINAL RAILWAY COMPANY)
AT WEWATTA STREET, IN THE CITY AND COUNTY)
OF DENVER, STATE OF COLORADO.)
)

DOCKET NO. 91A-071R

**COMMISSION DECISION GRANTING EXCEPTIONS IN PART
AND DENYING IN PART**

Mailing Date: July 26, 1993
Adopted Date: June 30, 1993

BY THE COMMISSION:

This matter comes before the Colorado Public Utilities Commission on exceptions by the Commission staff ("Staff") and the National Railroad Passenger Corporation ("Amtrak") to Recommended Decision R93-300. For the reasons set forth below, we will grant the exceptions of Staff and Amtrak in part and deny them in part. Except as expressly modified herein, the Recommended Decision is affirmed.

DISCUSSION

This matter was initiated by an application filed by the City and County of Denver for approval of an at-grade railroad crossing at 16th Street and Wewatta Street, Denver, Colorado. A hearing was held August 24-28, 1993, before Administrative Law Judge Michael Homyak. By Recommended Decision No. R93-300, the application was approved with modifications.

The Staff filed exceptions to a number of findings of fact and to the ultimate approval of the crossing in the Recommended Decision. Specifically, the staff argues that: (1) the safety, warning and protection devices are not standard, (2) the four quadrant gates conflicts with the standard configuration of gates only on the "incoming" traffic side, (3) the California examples were not similar to the proposed crossing, (4) the Administrative Law Judge's conclusion is erroneous because of the erroneous conclusions noted above, (5) there is no showing of present need for the crossing, and (6) approval here will set an inappropriate precedent for future crossings. We note that certain of the staff's exceptions were specifically addressed by the Administrative Law Judge in his Recommended Decision. Having reviewed the exceptions and the Administrative Law Judge's findings and conclusions concerning those exceptions, we find the Recommended Decision is just and reasonable and will affirm the decision, except as otherwise noted herein.

With respect to the first four exceptions of the staff, we agree with the staff to the extent that the 25 second delay in the closing of the gates, together with the simultaneous closing of those gates, may lure the unfamiliar inside the gate area. While we recognize that there will be a three foot gap on either ends of the gates, we are concerned that these gaps may not be readily apparent to those trapped inside the gates and who are quickly searching for a way out. Further, vehicles trapped in the crossing would not have such an escape route. To remedy this, we propose that the timing of the gates be staggered. This would allow someone inside the gate area to exit the side on which the gates last falls. The timing would, therefore, be changed so that the "first" gate for the "incoming" traffic lane would come down at the normal 3 to 4 second delay, and the "second" gate, the one for "outgoing" traffic, would come down on the 25 second delay to allow the crossing to be cleared.

We are also concerned about the safety of pedestrians at the intersection of the northerly sidewalk, railroad crossing, and the high occupancy vehicle ("HOV") lane. Due to the congestion at this intersection that is likely to occur, we will require either that an above-grade pedestrian walkway be installed on the northerly sidewalk over the HOV lane, railroad crossing, and Wewatta Street intersection; or, that the northerly sidewalk be eliminated and have all pedestrian traffic cross at-grade only on the southerly side of 16th Street. The southerly sidewalk should be expanded to accommodate the increased pedestrian traffic.

The Recommended Decision requires that a registered professional engineer licensed in the state of Colorado submit to the Commission certain drawings and specifications. We will modify that requirement to require that the engineer be one trained in the area of railroad or transportation safety. In our view, this will help insure that the proposed design and safety features of the crossing meets acceptable engineering standards for railroad grade crossings.

With respect to the staff's concern that this not be considered precedent for future grade crossings in lower downtown, we note that we retain jurisdiction over the adequacy of safety at this grade crossing, and that each application will be decided based on its particular facts. This Decision is based on the facts related to the particular application.

The Administrative Law Judge incorporated into his order, among other things, the filing of the engineering designs and train operating rules which the parties represented would govern how the crossing would be constructed and operated. Should there be any change in the design or operating procedures at this crossing, Denver Union Terminal Railroad Company ("DUT") and the City and County of Denver shall give this Commission prior written notice, together with a complete written proposal of the proposed change and a risk analysis of the proposed changes. No

changes shall be made until approved by this Commission. We retain jurisdiction to modify this decision, upon notice and opportunity to be heard, based on any proposed changes in the design or operation of the crossing. Moreover, we retain the right to modify the design and operation of the grade crossing at a later date if, upon notice and an opportunity to be heard, it is determined that the proposed design and operation is not reasonably safe. Finally, we will order that the Staff shall have a period of time to review the final plans and rules and submit objections if deemed appropriate. Said objections shall be filed within ten days of the filing of the plans and rules required by Ordering Paragraph one of the Recommended Decision (R93-300) as modified by this decision. If objections are filed, there shall be a five day response period, after which the Commission will rule on the objections, either on the written submissions or after hearing.

Amtrak also filed exceptions to the Recommended Decision. Amtrak takes issue with that part of the Decision that makes Amtrak responsible for the costs of maintenance and operation of the safety signal and devices at the crossing. It points out that agreements entered into between Amtrak, DUT, applicant and the Regional Transportation District specifically provide that neither Amtrak nor DUT are to be responsible for these costs.

This Commission is not bound by any agreements entered between the parties. We note that while the ultimate responsibility for these costs falls on DUT, this decision does not prohibit DUT and the parties from entering into separate agreements among themselves to allocate these costs. To make this point clear, we will modify the Administrative Law Judge's decision by adding the following sentence after the second full sentence on page 11 of the decision and before the first full sentence on page 12 of the decision:

This decision does not prohibit parties from entering into agreements which provide for reimbursement to DUT of costs of installing, reconstructing, improving and operating safety signal and devices as they may agree among themselves.

THEREFORE THE COMMISSION ORDERS THAT:

1. Recommended Decision No. R93-300 be, and is hereby, modified as set forth above. The exceptions of the Commission staff and Amtrack are otherwise denied.

This order is effective upon its Mailed Date.

ADOPTED IN SPECIAL OPEN MEETING June 30, 1993.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners