

Decision No. C16-0829

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0674R

IN THE MATTER OF THE TEMPORARY RULES IMPLEMENTING PROCEDURES FOR AUTHORITY TO INSTALL TEMPORARY SAFETY MEASURES AT RAILROAD CROSSINGS AND IMPLEMENTING MINIMUM CROSSING SAFETY REQUIREMENTS IN COLORADO, 4 CODE OF COLORADO REGULATIONS 723-7-7203, 7204, 7208, AND 7213.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: September 7, 2016
Adopted Date: September 7, 2016

I. BY THE COMMISSION

A. Statement

1. By this Decision, we adopt temporary rules to institute minimum crossing safety requirements at highway-rail crossing in Colorado. These temporary rules implement procedures for road authorities, railroads, railroad corporations, and rail fixed guideway systems to request authority to install temporary safety measures at railroad crossings in advance of an application to be filed to permanently install or modify active warning or passive warning devices at these crossings. These temporary rules are effective for 210 days from the effective date of this decision, or until the Commission issues permanent rules in this matter.

B. Background

2. On June 26, 2016, a multiple fatality accident occurred at the highway-rail crossing of Las Animas County Road 75.1. After this accident, the Colorado Department of Transportation (CDOT) prepared a memorandum with proposed ideas to enhance safety at railroad crossings. CDOT first suggests adding stop signs to crossbucks at crossings for which there has been a Section 130 program diagnostic identifying hazards at a crossing and for which

the diagnostic team, including the local government, agrees that the posting of stop signs is an appropriate short-term safety measure until active warning devices are installed. CDOT next suggests that flashing yellow beacons can be added to advance warning signs at certain crossings for which the diagnostic team, including the local government, agrees that the posting of stop signs as a short-term safety measure is appropriate until active warning signals are installed. These flashing beacons can be installed with the possibility of using solar power as a power source to reduce costs and would be installed in conjunction with a public awareness/educational campaign.

C. Findings and Conclusions

3. The Commission may adopt a temporary rule without engaging in the processes required for a permanent rule “only if the agency finds that immediate adoption of the rule is imperative to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements [to complete a permanent rulemaking] would be contrary to the public interest and makes such a finding on the record.” Section 24-4-103(6), C.R.S. For the reasons stated below, we find that immediate adoption of these temporary rules is imperatively necessary to provide for the public health, safety, and welfare of the traveling public that use at-grade highway-rail crossings in Colorado.

4. Necessary, temporary safety measures can be installed quickly for the public health, safety and welfare of the traveling public that use at-grade highway-rail crossings in Colorado, while a road authority, railroad, railroad corporation, or rail fixed guideway system performs the necessary design, plans, and estimates for an application for a more permanent solution.

5. Minimum crossing safety requirements for public highway-rail grade crossings in Colorado are necessary for the public health, safety and welfare of the traveling public and to

allow railroads to comply with the requirements of the 2009 Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD requires minimum required signage at all crossings consisting of: crossbucks; yield signs; and, at crossings with more than one track, a sign indicating the number of tracks. The temporary rules allow applicants to make these changes quickly without submitting an application with the Commission for approval of these necessary safety changes.

6. We find that these matters require our immediate and continuing attention to protect public safety for at-grade highway-rail crossing users in Colorado. We also find that the time that will transpire before completing a permanent rulemaking on these issues risks the safety of the traveling public in Colorado whether or not the project is a Section 130 program project. Thus, immediate adoption of temporary rules addressing certain minimum crossing safety requirements and providing an expedited process to provide temporary crossing safety measures in advance of a road authority, railroad, railroad corporation, or rail fixed guideway systems designing, developing and estimating the cost of a more permanent solution at a crossing are imperatively necessary to preserve public health, safety, and welfare for Colorado's traveling public.

7. With the temporary rules adopted here, we establish procedures to implement the first two proposals discussed in the CDOT memo. For the first CDOT proposal—installing stop signs to the cross bucks—the temporary rules implement an application process allowing road authorities, railroads, railroad corporations, rail fixed guideway systems, a state agency, or other governmental entity to apply for temporary safety measures at highway-rail crossings through an expedited process in advance of submitting an application to make more permanent changes at a highway-rail crossing. This process reduces the information to be filed in the application and reduces notice of such applications to 14 days.

8. For the second CDOT proposal—to add flashing yellow beacons to the advance warnings signs—the temporary rules provide minimum crossing safety requirements. Advance warning signs will be required at all public highway-rail crossings. Road authorities will be allowed to install warning beacons on advance warning signs in accordance with Section 4L.03 of the MUTCD without requiring an application with the Commission. These minimum safety requirements will also allow railroads that are not yet in compliance with the 2009 Edition of the MUTCD to come into compliance with the minimum requirement that public highway-rail crossings shall have posted as a minimum crossbucks and yield signs without submitting an application to the Commission.

9. By this Decision, we adopt temporary rules that accomplish the following:

- a) identifying the entities that may apply for authority to install temporary safety measures in advance of an application to install or modify active warning or passive warning devices at a highway-rail crossing;
- b) establishing criteria for and required contents of an application to install temporary safety measures;
- c) providing a 14 day notice of such an application; and
- d) establishing minimum crossing safety requirements for public crossings in the state of Colorado that can be installed without Commission approval of an application.

10. In an upcoming permanent rulemaking, we will revisit these temporary rules for inclusion in permanent rules.

11. The temporary rules shall be effective on the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

12. The temporary rules in legislative (strikeout and underline) format, and the temporary rules in final version forma are available through the Commission's E-Filings system¹ at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=16R-0674R.

II. ORDER

A. The Commission Orders That:

1. The rules in final version format available in this proceeding through the Commission's E-Filings system are hereby adopted as temporary rules consistent with the above discussion.
2. The temporary rules shall be effective on the mailed date of this order.
3. The 20-day period provided 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.
4. This Decision is effective upon its Mailed Date.

¹ From the *Electronic Filings* (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can also be accessed by selecting "Search" and entering this proceeding number (16R-0674R) in the "Proceeding Number" box and then selecting "Search".

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 7, 2016.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

FRANCES A. KONCILJA

Commissioners

ATTEST: A TRUE COPY

A handwritten signature in black ink that reads "Doug Dean".

Doug Dean,
Director