

Decision No. C23-0003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0416R

IN THE MATTER OF THE APPLICATION OF THE CITY OF GREELEY FOR AUTHORITY TO DESIGN AND IMPLEMENT HIGHWAY-RAIL GRADE CROSSING SAFETY IMPROVEMENTS ON THE UNION PACIFIC RAILROAD AT 13TH STREET (DOT NO. 804367T) IN THE CITY OF GREELEY, WELD COUNTY, COLORADO.

COMMISSION DECISION AFFIRMING TIMELINE AND ADDRESSING FILING

Mailed Date: January 4, 2023
Adopted Date: January 4, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a compliance filing made by the City of Greeley (Greeley) on December 12, 2022 filing a copy of the final roadway plans for the crossing of 8th Street with the tracks of the Union Pacific Railroad Company (UPRR) and requesting assistance from the Commission to obtain the front sheet and cost estimate from UPRR and to clarify ongoing maintenance payment obligations at the crossing.

2. Through this decision, we affirm the required filing date of March 31, 2023, for the required front sheet and cost estimate, and note that ongoing maintenance payment obligations are directed through Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7301(a).

B. Compliance Filing

3. On September 28, 2022, the Commission issued Decision No. C22-0581 granting Greeley a six-month extension of time to file the final plans and the UPRR front sheet and estimates for this project. Greeley believed it would be able to file the final plans and railroad information for Commission review and approval by March 31, 2023.

4. On December 12, 2022, Greeley file a copy of the final civil engineering plans for the Commission's review and action. In addition, Greeley filed a copy of an email from UPRR's public projects consultant, RailPros, informing Greeley that Greeley is responsible for ongoing maintenance costs incurred by UPRR and that UPRR will not progress the project until Greeley agrees to pay for the signal system maintenance costs related to the proposed design. No response to Greeley's filing has been provided.

5. As Greeley states in its filing, in accordance with Commission Rules, Greeley anticipates maintenance and associated costs of maintenance for railroad crossing warning devices would be borne by the railroad for the life of the crossing. Greeley further states that it cannot obligate funds indefinitely for ongoing maintenance of railroad infrastructure due to fiscal year constraints. Greeley claims it has no means by which to move this project forward if UPRR does not provide the necessary schematic diagram and front sheet for the crossing and subsequently procure materials, labor, and equipment to complete the work.

6. Greeley respectfully requests the Commission identify a timeline to UPRR within which UPRR must file, directly into this proceeding, the front sheet and railroad estimate for proposed crossing improvements. Greeley also respectfully requests the Commission require UPRR to file directly in this proceeding the draft agreement within 60 days of notification from

the Commission. Finally, Greeley requests the Commission set a reasonable timeline within which the UPRR must complete the work.

C. Discussion, Findings, and Conclusions

7. Section 40-4-106, C.R.S. grants authority to the Colorado Public Utilities Commission to make decisions regarding public grade crossings, including the particular point of crossing, whether a public crossing is at-grade or grade separated, and to prescribe the terms and conditions of installation, operation, maintenance, and level of warning at all such crossings. This authority includes how costs of the project will be divided and paid.

8. Through the rulemaking process where affected stakeholders were given the opportunity to file public comment, in consideration of § 40-4-106, C.R.S. the Commission codified through Rule 4 *Code of Colorado Regulations (CCR) 723-7-7301(a)* that railroads are required to maintain all active and passive warning devices at the railroad's expense for the life of the crossing.

9. Preventing this project from moving forward violates Commission Decision No. C22-0580, which requires that the cost estimate and schematic for this project be provided by March 31, 2023. The email from UPRR's consultant RailPros contradicts both the statutory authorities outlined in § 40-4-106, C.R.S. and Commission Rule 4 CCR 723-7-7301(a) requiring that railroads maintain all active and passive warning devices at the railroad's expense for the life of the crossing. UPRR has neither requested, nor received a waiver of Rule 7301(a) in this proceeding.

10. We affirm our determinations in Decision No. C22-0581 that UPRR is required to file the schematic diagram and cost estimate for the construction of this project in this proceeding by March 31, 2023.

11. Since the subject project has not yet been approved by the Commission as we are waiting for the cost estimate and schematic diagram to be filed by UPRR, it would not be appropriate at this time for us to require a construction and maintenance agreement to be filed or determine a final project completion date until such time as we take favorable action on this Application. We acknowledge Greeley's filing of the civil engineering plans and will take action on Greeley's Application through future order following the provision of the required cost estimate and schematic diagram filings.

II. ORDER

A. The Commission Orders That:

1. The compliance filing from the City of Greeley (Greeley) on December 12, 2022 filing a copy of the final roadway plans for the crossing of 8th Street with the tracks of the Union Pacific Railroad Company (UPRR) and requesting assistance from the Commission to obtain the front sheet and cost estimate from UPRR and to clarify ongoing maintenance payment obligations at the crossing is noted.

2. UPRR is required to file the cost estimate and schematic for this project by March 31, 2023, consistent with Decision No. C22-0580, issued September 28, 2022.

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

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 4, 2023.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director