

Decision No. C22-0565

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0319R

IN THE MATTER OF THE APPLICATION OF THE TOWN OF CASTLE ROCK, COLORADO, 80109 FOR AUTHORITY TO MODIFY THE CROSSING PROTECTION EQUIPMENT AT THE EXISTING AT-GRADE CROSSINGS OF THE UNION PACIFIC RAILROAD TRACKS AT 2ND, 3RD, AND 5TH STREETS IN CASTLE ROCK, COLORADO.

**COMMISSION DECISION DENYING UNOPPOSED
MOTION TO ACCEPT LATE FILING OF SIGNED
CONSTRUCTION AND MAINTENANCE AGREEMENTS
AND REQUIRING ADDITIONAL FILING**

Mailed Date: September 21, 2022

Adopted Date: September 21, 2022

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of Castle Rock's Unopposed Motion to Accept Late Filing of Signed Construction and Maintenance Agreements (Motion) filed by the Town of Castle Rock (Castle Rock) on August 30, 2022, requesting the Commission accept the late filed signed construction and maintenance agreements. Castle Rock has conferred with counsel for the Union Pacific Railroad Company (UPRR) and UPRR indicated it does not oppose this Motion.

2. For the reasons discussed below, we deny the Motion and require that corrected construction and maintenance agreements or other appropriate pleading(s) be filed by November 30, 2022.

B. Discussion

3. On July 1, 2021, Castle Rock filed an application requesting authority to modify the active warning equipment and change crossing configurations at the crossings of 2nd Street, 3rd Street, and 5th Street with the tracks of UPRR (Application).

4. By Decision No. C21-0527, issued August 27, 2021, the Commission granted the Application, with some clarification. We noted that the Application includes estimates for the cost of annual maintenance, and that it was unclear from the Application whether UPRR is requesting that Castle Rock pay these annual maintenance costs. We stated that the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7301(a) requires railroads to maintain all passive and active crossing warning devices at the railroads' cost for the life of the crossing, and we clarified that to the extent the Application contemplates that Castle Rock pay annual maintenance costs for crossing warning devices instead of UPRR, this portion of the Application is not approved.¹ This was appropriate because the Application included no justification for a departure from the rule's default cost allocation provisions.

5. On August 30, 2022, Castle Rock submitted the Motion with two exhibits. Exhibit A is the Pedestrian At-Grade Pathway Agreement for the 2nd Street crossing and Exhibit B is the Pedestrian At-Grade Pathway Agreement for the 3rd Street crossing. As demonstrated by Section 16 of both Exhibit A and Exhibit B, Castle Rock and UPRR have agreed that Castle Rock will pay UPRR an annual signal maintenance fee for UPRR's maintenance of the signal systems at the 2nd and 3rd Street Crossings.

¹ See Decision No. C21-0527 ¶ 12 and Ordering ¶ 4.

C. Findings and Conclusions

6. The Commission has jurisdiction in this matter under § 40-4-106, C.R.S.

7. The construction and maintenance agreements filed with the Motion violate Rule 7301(b) and contravene our clarification in Decision No. C21-0527 on the cost allocation of annual maintenance fees. The Motion fails to provide us with good cause to allow such a departure from our rules or the directive contained in our prior decision. Therefore, we do not accept the construction and maintenance agreements filed on August 30, 2022 and deny the Motion. We direct that corrected construction and maintenance agreements or other appropriate pleading(s) be filed by November 30, 2022, approximately two months from the adoption date of this Decision.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion to Accept Late Filing of Signed Construction and Maintenance Agreements is denied.

2. Construction and maintenance agreements that comply with Rule 4 *Code of Colorado Regulations* 723-7-7301(a), or appropriate pleading(s), shall be filed by November 30, 2022, consistent with the discussion above.

3. The 20-day period provided for 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. The Commission retains jurisdiction to enter further decisions as necessary.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 21, 2022.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners