

Decision No. R23-0513

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0335R

IN THE MATTER OF THE APPLICATION OF CITY AND COUNTY OF DENVER FOR AUTHORITY TO MODIFY AN AT-GRADE CROSSING OF THE TRACKS OWNED BY THE REGIONAL TRANSPORTATION DISTRICT AT THE INTERSECTION OF 16TH STREET AND CALIFORNIA STREET (US DOT NO. 966728S, MILE POST 3.87) IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

**RECOMMEND DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING APPLICATION AS AMENDED**

Mailed Date: August 8, 2023

I. STATEMENT

1. The City and County of Denver (Denver) initiated this proceeding by filing the above-captioned Application, including exhibits (Application) with the Colorado Public Utilities Commission (Commission) on July 15, 2021. The Application requests authority to make changes at the existing at-grade crossing on California Street at 16th Street where it crosses the tracks of the Regional Transportation District (RTD), Central Corridor, Light Rail Line Milepost 3.87, National Inventory No. 966728S, in Denver, State of Colorado (16th and California).¹ The Application sought preliminary approval of conceptual level design plans, rather than approval of final design plans, and proposed to file a final amended application with final design plans by December 31, 2022.²

¹ Application at 1, 5-7.

² *Id.* at 6, 7, and 20.

2. On July 19, 2021, the Commission gave notice of this Application to all interested parties and set a 30-day intervention deadline.

3. On August 18, 2021, RTD filed an Entry of Appearance and Notice of Intervention as of Right (Notice of Intervention) in which it opposed the Application and requested a hearing in this matter.

4. On September 3, 2021, by Decision No. C21-0539-I, the Commission deemed the Application complete within the meaning of § 40-6-109.5, C.R.S.; found that it has jurisdiction over the Application per §§ 40-4-106(2)(a) and (3)(a), C.R.S.; and referred this matter to an Administrative Law Judge (ALJ) for disposition.

5. On September 27, 2021, the parties filed their Stipulation, Provisional Withdrawal of Opposition of Regional Transportation District, and Motion to Vacate Prehearing Conference (Stipulation and RTD's Provisional Withdrawal), executed by all parties.

6. On September 28, 2021, by Decision No. R21-0607-I, the ALJ approved and accepted the parties' stipulations as set forth in the Stipulation and RTD's Provisional Withdrawal, acknowledged RTD's provisional withdrawal to the Application, and vacated the prehearing conference.

7. By Decision No. R21-0699-I, issued November 8, 2021, the ALJ preliminarily approved Denver's concept plans presented in the Application and ordered Denver to file an amended application with final data and plans by December 31, 2022.

8. By Decision No. R22-0758-1, issued November 23, 2022, the ALJ required Denver to file its final amended application by September 29, 2023.

9. On July 6, 2023, Denver filed its Amended Application, including exhibits (Amended Application).

II. FINDINGS OF FACT AND CONCLUSIONS

10. The Commission has jurisdiction in this matter pursuant to §§ 40-4-106(2)(a) and 40-4-106(3)(a), C.R.S.

11. The Commission gave notice of the Application to all interested parties.

12. Denver is a political subdivision of the State of Colorado and the municipality responsible for the rail grade crossing at 16th and California.

13. RTD operates the light rail tracks at 16th and California and the MallRide RTD buses that run along the 16th Street Mall in downtown Denver, including at 16th and California.

14. Pursuant to Rule 7204 of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7, "[a]n application may be filed for final approval of plans/drawings..."

15. Denver initiated this Proceeding seeking Commission approval to make changes at the existing at-grade crossing on 16th and California.

16. RTD, the sole intervener in this Proceeding, intervened because "the Application shows existing [grade lines] profiles of California Street and the 16th Street Mall, but not of the light rail tracks," and therefore, "RTD cannot adequately evaluate the effect of the project on its mass transportation system infrastructure or operations at the crossing..."³ RTD further notes four inaccuracies in the Application regarding: the existing weekday train count, the design speeds of the cross streets, warning devices comprised of signals, and signal operations.⁴

17. To address RTD's concerns, the parties stipulated to the following:

The final plans will incorporate vertical curves to provide a gradual approach onto, and exit from, the tracks. This updated design will be included as part of the final plans submitted with the final PUC application.

³ Notice of Intervention at 1-2.

⁴ *Id.* at 2.

- a. The existing weekday train count through the Crossing is 197, and that RTD currently expects an increase in this figure to 215 weekday movements.
- b. The design speed of the 16th Street Mall is 10 mph.
- c. No train-activated warning devices are proposed in the Application.
- d. No interconnection and preemption is proposed in the Application.⁵

The Stipulation and RTD's Provisional Withdrawal further indicate that RTD provisionally withdraws its opposition to the Application, subject to Denver's filing of its final amended application.⁶

18. The ALJ finds that the Amended Application includes a profile of the grade lines of the RTD light rail tracks at 16h and California⁷ and is otherwise consistent with the terms of Stipulation and RTD's Provisional Withdrawal.

19. Given RTD's provisional withdrawal and the filing of the Amended Application, this Proceeding is uncontested and, pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 *Code of Colorado Regulations* (CCR) 723-1, the Application may be processed under modified procedure without a formal hearing.

20. Denver's requests Commission approval to modify the existing at-grade crossing at 16th and California in accordance with the design plans set forth in Exhibit A to the Amended Application.⁸ The modifications requested by Denver would change where the 16th Street MallRide RTD bus lanes⁹ cross the RTD light rail tracks at 16th and California, from the former

⁵ Stipulation and RTD's Provisional Withdrawal at 1 -2.

⁶ *Id.* at 2.

⁷ See Exhibit A to the Amended Application at 5, 7, and 21.

⁸ See Amended Application at 1 and Exhibit A to the Amended Application.

⁹ The referenced RTD MallRide bus lanes, are expected to include, in addition to RTD MallRide bus traffic, incidental delivery, police, and emergency vehicle traffic. See Amended Application at 8.

traffic lanes along each of the 16th Street Mall sidewalks to the new traffic lanes to be constructed near the center of the 16th Street Mall.¹⁰

21. Based on the record, the ALJ finds that no public safety concerns are anticipated as a result of the granting of the Application.

22. Consistent with the above discussion, the Application, as amended on July 6, 2013, will be granted and the design plans contained in the Amended Application will be approved, as ordered below.

23. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission to enter the following order.

III. ORDER

A. It Is Ordered That:

1. The Application filed by the City and County of Denver (Denver) on July 15, 2021, as amended on July 6, 2023 (Amended Application), seeking authorization for modifying the existing at-grade crossing at 16th Street and California Street in the City of Denver, County of Denver, State of Colorado, is granted.

2. The design plan contained in the Amended Application are approved.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission

¹⁰ See Exhibit A to the Amended Application.

upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director