

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0336R

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 STOUT STREET (US DOT NO. 955751L, MILE POST 3.81) IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING APPLICATION AS
AMENDED UNDER MODIFIED PROCEDURE**

Mailed Date: September 11, 2023

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I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision grants the Amended Application filed by Applicant, the City and County of Denver (Applicant or the City) for an order authorizing modification to the existing at-grade crossing at 16th Street and Stout Street in the City.

B. Procedural History and Background

2. The City and County of Denver filed the above-captioned Application on July 15, 2021, requesting authority to make changes to the existing at-grade crossing on Stout Street at 16th Street where it crosses the tracks of the Regional Transportation District (RTD) Central Corridor Light Rail Line Milepost 3.81, National Inventory No. 955751L, in Denver, Colorado. The Application sought preliminary approval of conceptual level design plans, rather than approval of final design plans.

3. On July 19, 2021, the Commission gave notice of the Application to those interested in or affected by it and set a 30-day intervention period. As noticed, the Application sought approval of the following:

Modification of the existing at-grade crossing at 16th Street and Stout Street in the City and County of Denver, State of Colorado.¹

4. RTD, a political subdivision of the State of Colorado, timely filed its Intervention as of Right on August 18, 2021. In its Intervention, RTD requested a hearing and opposed the City’s Application on the grounds that the Application was incomplete and did not include detailed diagrams of the proposed modifications. RTD expressed that it could not “adequately evaluate the effect of the proposed project on its mass transportation system infrastructure or operations at the crossing without review of changes that would be shown in proposed condition profiles” because the drawings and schematics provided with the City’s original Application did not include “proposed condition profiles of the 16th Street Mall and the light rail tracks.”² However, RTD

¹ Notice of Application Filed, p. 1, filed July 29, 2021.

² Entry of Appearance of Notice of Intervention as of Right, ¶ 4, p. 2, filed by the Regional Transportation District August 18, 2021.

noted that it “anticipate[d] withdrawing its opposition and request for hearing once acceptable proposed condition profiles are provided.”³

5. No other Interventions were filed.

6. On September 3, 2021, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) for disposition.

7. By Decision No. R21-0586-I, mailed September 16, 2021, the ALJ set this matter for a prehearing conference to be held on September 30, 2021.

8. On September 27, 2021, Denver filed a Stipulation, Provisional Withdrawal of Opposition of Regional Transportation District, and Motion to Vacate Prehearing Conference (Motion), executed by all parties.⁴ In the Motion, Denver and RTD stipulated that, “[t]he 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.”⁵ The parties also stipulated to facts concerning the existing and anticipated number of trains using the subject crossing; the design speed of the 16th Street Mall; and specified that the Application does not propose train-activated warning devices, interconnection, and preemption.⁶ In addition, the parties agreed that if the stipulations in the Motion are accepted, RTD would withdraw its opposition to the Application, while remaining a party to this proceeding.⁷ Given

³ *Id.*

⁴ Stipulation, Provisional Withdrawal of Opposition of Regional Transportation District, and Motion to Vacate Prehearing Conference, filed Sept. 27, 2021.

⁵ *Id.* at ¶ 2, p. 2.

⁶ *Id.* at ¶ 3, p. 2.

⁷ *Id.* at ¶ 4, p. 2.

these stipulations and agreements, the parties also asked that the prehearing conference to be vacated.⁸

9. The ALJ accepted and approved the parties' Stipulation and granted their request to vacate the prehearing conference.⁹

10. By Decision No. R21-0700-I, issued November 8, 2021, the ALJ preliminarily approved the City's concept plans and set a deadline of December 31, 2022, by which the City was to amend its Application and file its final data and plans for the crossing.

11. One year later, on November 18, 2022, the City filed an Unopposed Motion for Extension of Time to File Final Application. Due to "staffing issues" and the complexity of the crossing project, the City requested an additional nine months, or up to and including September 29, 2023, within which to file its Final Application.¹⁰

12. By Decision No. R22-0762-I, issued November 28, 2022, the ALJ granted the Unopposed Motion and extended the deadline by which the City was to file its Amended Application up to and including September 29, 2023.

13. On July 6, 2023, the City filed its Amended Application along with five exhibits detailing the schematics and design plans of the crossing project, along with accident report data and traffic signal data.

⁸ *Id.* at ¶ 5, p. 2.

⁹ Decision No. R21-0608-I issued Sept. 28, 2021.

¹⁰ Unopposed Motion for Extension of Time to File Final Application, ¶ 5, p. 2, filed Nov. 18, 2022.

14. The Application as amended is uncontested and may be processed under modified procedure pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 *Code of Colorado Regulations* (CCR) 723-1, without a formal hearing.

15. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT AND CONCLUSIONS

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

17. RTD is a political subdivision of the State of Colorado that owns property rights and an easement at the railroad crossing located at the intersection of Stout Street and 16th Street that is the subject of this Application.

18. The City and County of Denver is also a political subdivision of the State of Colorado and a home rule city and municipal corporation. The City is the municipality responsible for the roadway and pedestrian systems on 16th Street and Stout Street in the City at the location of the crossing.

19. The City initiated this Application to modify the intersection of 16th Street and Stout Street as part of the City's plan to renovate and replace 12.5 blocks of the 16th Street Mall, from Market Street to Broadway,

to increase opportunities for public use of the Mall as an iconic civic space for leisure, commerce, and tourism; address the deteriorating infrastructure which will allow for reasonable maintenance frequency and reduce costs to business and taxpayers; improve safety for pedestrians and vehicles; and

maintain mobility for desired transit operations for all users. Rail crossings for the project occur at the intersection of 16th Street and Stout Street.¹¹

20. As part of the project, the City indicated its intent to consolidate and narrow the existing transit way “to a 24-foot typical section. Signals at the crossing . . . will be replaced but operations will not be changed.”¹² Further, the City stated that the project would maintain “the existing at-grade configuration” of the rail crossing.¹³

21. The City has now submitted its Amended Application, as anticipated by the parties’ September 2021 Stipulation.

22. In its Amended Application, the City amended its description of the “nature of and need for the construction” to state that railroad crossings affected by the 16th Street Mall Design-Build Project (the Mall Project) “occur at the intersection of 16th Street and Stout Street.”¹⁴

23. The Amended Application includes a detailed breakdown of the costs and funding sources for the Mall Project, anticipating a total cost of \$149,992,354.00 for the project, of which \$986,833.00 will be provided by RTD.¹⁵ The City’s original Application included only a generalized statement that the Mall Project “has available funding for the crossing improvements” through several identified sources. The Amended Application thus offers more detailed and precise cost and funding descriptions.

¹¹ Application of the City and County of Denver, ¶ II.A.7, pp. 5-6, filed July 14, 2021.

¹² *Id.*

¹³ *Id.* at ¶ II.A.12, p. 7.

¹⁴ Amended Application of the City and County of Denver, ¶ II.A.7, pp. 5-6, filed July 5, 2023; and Amendment to Amended Application, filed Aug. 31, 2023.

¹⁵ *Id.* at ¶ II.A.8(c), p. 6.

24. The Amended Application anticipates that the Mall Project, including modifications to the existing at-grade railroad crossings at the intersections of 16th Street and Stout Street, will “be completed in the last month of Q4 of 2024.”¹⁶

25. Exhibits A, B, C, D, and E, which were filed contemporaneously with the City’s Amended Application, provide additional information required in the application process.

- Exhibit A provides diagrams, a vicinity map, schematics and the final level plans, including proposed condition profiles for the light rail tracks, as required by ¶¶ II.A.10, II.F.1&2, II.J.1, and II.Q.1 of the Commission’s application. Exhibit A thus addresses the concerns raised by RTD in its Intervention.
- Exhibit B is a listing of adjacent property owners as required by ¶ II.A.11 of the Commission’s application. Exhibit B attached to the Amended Application updates the listing of adjacent property owners attached as Exhibit B to the City’s original Application filed in July 2021.
- Exhibit C is a summation and listing of attendees at a February 13, 2020, Diagnostic Meeting, as described in ¶ II.A.5 of the Amended Application and is identical to Exhibit C attached to the City’s original Application.
- Exhibit D is a summation of accident reports involving RTD light rail vehicles at 16th Street and Stout Street, and supplements and updates the 29 pages of accident reports for that intersection appended as Exhibit D to the City’s original Application, and as described in ¶ II.A.4 of the Amended Application.
- Exhibit E is a copy of the City’s Traffic Signal Work Order for the intersection of 16th Street and Stout Street for replacement of “the conflict monitors/malfunction monitor units (MMU) at LRT crossings in the CBD to make LRT triangle bar signal flash in order to bring LRT crossing signals in compliance with MUTCD standards.” The exhibit includes a list of calculations of distances and timings affecting RTD transit as described in ¶II.L.3(a)-(m) of the City’s Amended Application. Exhibit E is a new exhibit accompanying the City’s Amended Application; no version of Exhibit E was provided with the City’s original Application.

26. The City requests that the Commission grant its Amended Application.

¹⁶ *Id.* at ¶ II.A.9(b), p. 7.

27. RTD has not objected to the City's Amended Application. The Application, as now amended, is uncontested.

28. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, the uncontested Application may be processed under the modified procedure, without a formal hearing.

29. Based upon the foregoing, it is found and concluded that good cause exists and that the requirements of public safety and necessity are met by approving the City's final plans as set forth in its Amended Application

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

III. ORDER

A. It Is Ordered That:

1. The Application filed by the City and County of Denver (the City) on July 14, 2021, and amended on July 6, 2023, seeking authority to modify the existing at-grade crossing at 16th Street and Stout Street as part of the City's 16th Street Mall Design-Build Project (the Mall Project), is granted.

2. RTD and the City are authorized and ordered to proceed with the modification of the existing at-grade crossings at the noted intersection.

3. The City is required to inform the Commission in writing that the authorized improvements are complete and operational within ten days after completion. The Commission shall expect this letter by January 31, 2025. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

4. Proceeding No. 21A-0336R is closed.

5. 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.

6. 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 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.

7. 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

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director