

Decision No. R24-0560-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0274R

IN THE MATTER OF THE DEVELOPMENT OF TEMPLATE CONSTRUCTION AND MAINTENANCE AGREEMENTS AND PRELIMINARY ENGINEERING AGREEMENTS FOR USE IN PUBLIC CROSSING PROJECTS IN COLORADO CONSISTENT WITH RULE 4 CODE OF COLORADO REGULATIONS 723-7-7214.

**INTERIM DECISION
RESCHEDULING PREHEARING CONFERENCE AND
ADDRESSING MOTION FOR EXTENSION**

Issued Date: August 7, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision addresses the Colorado Department of Transportation's ("CDOT") Motion for Extension of Time filed August 5, 2024 ("Motion") by establishing an August 19, 2024 deadline for CDOT to file its master template Construction and Maintenance ("C&M") agreement ("C&M agreement") and preliminary engineering ("PE") agreement ("PE agreement") (if any), and for participants to file proposed template C&M and PE agreements, current or recent template C&M and PE agreements, C&M and PE agreements that participants believe will be helpful in developing template C&M and PE agreements, and any other document participants believe will be helpful in this Proceeding. This Decision also vacates the remote prehearing conference scheduled for August 19, 2024, reschedules it for September 5, 2024, and requires anyone who plans to participate in this Proceeding who has not made a filing indicating this to make a filing by August 19, 2024 indicating their intent to participate and providing their current valid email

address at which they may be served with filings in this Proceeding and Zoom information to attend future hearings and workshops.

B. Procedural History and Background¹

2. On June 14, 2024, the Commission initiated this Proceeding as a forum to develop Commission-approved template C&M and PE agreements for use as required by newly adopted Rule 7214 of the Commission's the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7.² At the same time, the Commission referred this Proceeding to an administrative law judge ("ALJ").³

3. On July 22, 2024, by Decision No. R24-0522-I, the ALJ established an August 5, 2024 deadline for CDOT to file a copy of its master template C&M and PE agreements, and for other participants to file their current or recent template C&M and PE agreements, proposed C&M and PE template agreements, and any C&M and PE agreements that they believe will be helpful in developing template C&M and PE agreements required by Rule 7214.⁴ Decision No. R24-0522-I also scheduled a fully remote prehearing conference for August 19, 2024 to address the forward movement of this Proceeding.⁵ The majority of the anticipated participants were served with Decision No. R24-0522-I when it was issued on July 22, 2024, but many were served two days later on July 24, 2024.⁶ However, due to a filing error, Decision No. R24-0522-I's Attachment A was neither filed with the Decision, nor served.

¹ Only the procedural history necessary to understand this Decision is included.

² Decision No. C24-0420 at 1 (mailed June 14, 2024) ("Decision No. C24-0420").

³ *Id.* at 5-7.

⁴ Decision No. R24-0522-I at 6-7 (issued July 22, 2024) ("Decision No. R24-0522-I").

⁵ *Id.*

⁶ See Certificate of Service for Decision No. R24-0522-I, Supplemental Certificate of Service to Decision No. R24-0522-I filed July 22, 2024 ("Supplemental Certificate"), and Second Supplemental Certificate of Service to Decision No. R24-0522-I filed July 24, 2024 ("Second Supplemental Certificate").

4. On August 5, 2024, the City of Greeley filed a template utility crossing agreement. At the same time, Union Pacific Railroad Company filed its C&M and PE template agreements.

5. Also on August 5, 2024, CDOT filed its Motion seeking an extension of time to August 9, 2024 to file its C&M and PE template agreements.

II. FINDINGS AND CONCLUSIONS

6. As noted, Attachment A to Decision No. R24-0522-I was neither issued nor served on the anticipated participants. As explained in Decision No. R24-0522-I, any participant in the prehearing conference is required to follow the requirements in Attachment A thereto.⁷

7. In addition, given that Decision No. R24-0522-I was sent to approximately 174 potential participants and only two participants filed template agreements, the ALJ is concerned that not all potential participants have had sufficient opportunity to submit C&M and PE agreements. Indeed, CDOT's Motion indicates that it requires more time to prepare and submit its template agreements.

8. For the reasons discussed, and in an abundance of caution, the ALJ finds that it is in the public interest to allow potential participants more time to submit C&M and PE agreements. This necessitates a later prehearing conference date. Allowing potential participants more time to submit C&M and PE agreements and pushing back the prehearing conference helps ensure that participants have ample opportunity to make the required filings prior to the prehearing conference. For these reasons and those discussed in Decision No. R24-0522-I, the ALJ establishes an August 19, 2024 deadline to file C&M and PE agreements, and other documents that participants believe will be helpful in developing template C&M and PE agreements, as explained

⁷ Decision No. R24-0522-I at 5-6.

below.⁸ For the same reasons, the ALJ vacates the remote prehearing conference scheduled for August 19, 2024 and reschedules it for September 5, 2024.

9. Anyone who will participate in this Proceeding is strongly encouraged to register with the Commission's E-Filing System ("E-Filings") so that they may receive decisions and other filings in this Proceeding in near real-time through E-Filings. This will avoid delay associated with receiving filings via U.S. mail and will help minimize resource-intensive service via U.S. mail. Interested persons may register with E-Filings (available at no cost) at the following link: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

10. As the Supplemental and Second Supplemental Certificate of Service indicate, the Commission has an extremely long list of potential participants.⁹ Most of these potential participants have not made a filing stating that they wish to participate in this Proceeding. The Commission served Decision No. R24-0522-I on these potential participants to ensure they have additional notice of this Proceeding and ample opportunity to participate. However, given that this list includes approximately 174 potential participants, many of whom are not registered with E-Filings and for whom the Commission does not have current email addresses, a significant number of these potential participants had to be served by U.S. mail, which is resource-intensive. To conserve participants' resources and facilitate administrative efficiency, the ALJ will require that by August 19, 2024, anyone wishing to participate in this Proceeding must make a filing indicating this.¹⁰ The filing must include an email address at which they may be served filings or other important information (such as Zoom information to join future hearings and workshops). Any

⁸ For obvious reasons, anyone who has made these filings by the current August 5, 2024 deadline are not required to refile C&M and PE agreements on August 19, 2024.

⁹ See Supplemental and Second Supplemental Certificate of Service.

¹⁰ Filing a C&M or PE agreement as required by this Decision serves to indicate a participant's intent to participate in this Proceeding, and as such, no separate filing indicating this is required.

potential participant who fails to meet this deadline will no longer be served with decisions issued in this Proceeding (unless and until they make a filing indicating they wish to participate).

11. At the rescheduled remote prehearing conference, the ALJ will determine the best way to move this Proceeding toward a resolution. During the prehearing conference, the ALJ will determine the immediate next steps, which may include establishing processes, deadlines, and workshop and hearing dates. The ALJ anticipates that the required template agreements will be primarily developed by participants, and that the ALJ will intercede as necessary to help participants overcome obstacles. While there are numerous options to move this Proceeding forward, the ALJ believes an appropriate starting point is to establish a deadline for participants to meet with each other in an informal workshop to begin discussions and a deadline by which participants must file a status report as to that initial discussion. To encourage participants' open and frank discussions, the ALJ does not plan to participate in the initial workshop. It may be appropriate to schedule additional informal workshop sessions, or more formal sessions in which the ALJ participates. Participants should be prepared to provide their positions and suggestions as to how this Proceeding should move forward during the prehearing hearing conference, and their availability for informal and formal workshops and any additional hearings that may be necessary.

12. Participants will appear at the prehearing conference from remote locations by videoconference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

13. Ordinarily, the Commission emails the Zoom information necessary to join a remote hearing to participants at the addresses on file for participants. Here, the Commission has a long list of potential participants who have not yet indicated whether they intend to participate, and for whom the Commission does not have a current email address on file. As such, for this hearing, the Zoom information to join the hearing will be posted on the Commission's calendar of events for the date and time of the prehearing conference. This information will be posted at least two days prior the prehearing conference.¹¹ Moving forward, however, Zoom information for future hearings will not be publicly posted on the Commission's website and will instead be emailed only to those participants who have indicated their intent to participate and have provided a valid email address at which they may be emailed Zoom information.

III. ORDER

A. **It Is Ordered That:**

1. On or by August 19, 2024, the Colorado Department of Transportation ("CDOT") is required to file a blank copy of its most recent master template Construction and Maintenance Agreement ("C&M Agreement"), consistent with the above discussion. If it has a master template preliminary engineering agreement ("PE agreement"), CDOT is required to file that on or by August 19, 2024. If possible, both should be filed in an executable format such as Microsoft Word.
2. CDOT's Motion for Extension of Time filed on August 5, 2024 is partially granted consistent with the above discussion.
3. On or by August 19, 2024, anyone who has template C&M and PE agreements (used in Colorado) must file a blank copy of those in this Proceeding, consistent with the above

¹¹ The information will not be posted much earlier than this to minimize the potential that the videoconference hearing may be disrupted by non-participants.

discussion and the discussion in Decision No. R24-0522-I (issued July 22, 2024) (“Decision No. R24-0522-I”). By that same date, anyone so desiring may file proposed template C&M and PE agreements, any C&M and PE agreements that the filers have used which they believe may be helpful in this Proceeding, and any other document they believe may be helpful in creating master template C&M and PE Agreements that will be used per Rule 7214 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7. If possible, these documents should be filed in an executable format such as Microsoft Word.

4. On or by August 19, 2024, anyone who plans to participate in this Proceeding must make a filing indicating their intent to participate. This filing must provide a valid email address at which the participant may be served with filings in this Proceeding and Zoom information to attend future hearings and workshops.

5. The remote prehearing conference scheduled for August 19, 2024 at 11:00 a.m. is vacated.

6. A remote prehearing conference is scheduled as follows:

DATE: September 5, 2024

TIME: 9:30 a.m.

PLACE: By video conference or telephone using Zoom information available on the Commission’s calendar of events at <https://puc.colorado.gov/pucalendar>

7. Those participating in the prehearing conference may not appear at the Commission’s office in person but will appear by videoconference or telephone.

8. All those participating in the prehearing conference must comply with the requirements in Attachment A to this Decision, which is incorporated as if fully set forth. Non-

participants in the prehearing conference may observe the hearing live through the Commission's webcast for the Hearing Room assigned for the prehearing conference at: <https://www.youtube.com/@COPublicUtilitiesCommission/featured>.

9. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director