

Decision No. C25-0731

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25R-0083R

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES REGULATING
RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL
CROSSINGS, 4 CODE OF COLORADO REGULATIONS 723-7, TO IMPLEMENT HOUSE
BILL 24-1030.

**COMMISSION DECISION DENYING APPLICATION
FOR REHEARING, REARGUMENT, OR
RECONSIDERATION OF DECISION NO. C25-0606
AND DENYING MOTION TO STAY**

Issued Date: October 8, 2025

Adopted Date: October 1, 2025

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of the Application for Rehearing, Reargument, or Reconsideration (“Application for RRR”) of Decision No. C25-0606, filed by Union Pacific Railroad Company (“Union Pacific”) pursuant to § 40-6-114, C.R.S. By Decision No. C25-0606, issued August 21, 2025, the Commission adopted amendments to its railroad civil penalty rules, comprising Rules 7009 through 7011 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (“CCR”) 723-7. The rule amendments implement the provisions of House Bill (“HB”) 24-1030, codified at § 40-20-308, C.R.S., and effective July 1, 2024, that authorize the Commission to impose a civil penalty on a railroad “[i]f a railroad or any officer, agent, or employee of the railroad violates section 40-20-303[.]” This § 40-20-303, C.R.S., outlines certain requirements for railroads to report to the Commission on their deployment and utilization of wayside detector systems and also sets forth certain expectations and procedures for obstructions at public crossings located in Colorado.

2. By this Decision, we deny Union Pacific’s Application for RRR and deny its request that the Commission stay these rules while any legal challenges are addressed.

3. The adopted rule amendments, which are the same as in Decision No. C25-0606, are set forth in legislative (*i.e.*, strikeout/redline) format in Attachment A to this Decision, and in final format in Attachment B to this Decision. The rule amendments are available for public access through the Commission’s E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=25R-0083R

B. Background

4. The Commission initiated this matter on February 27, 2025, by issuing a Notice of Proposed Rulemaking and referred the matter to an administrative law judge for disposition.

5. The administrative law judge issued a recommended decision on May 29, 2025.

6. On June 18, 2025, rulemaking participants BNSF Railway Company and Union Pacific each filed exceptions to the administrative law judge's recommended decision, pursuant to § 40-6-109(2), C.R.S., seeking changes to the recommended rules.

7. On August 21, 2025, the Commission issued Decision No. C25-0606, denying the exceptions and associated request for oral argument and adopting the administrative law judge's recommended decision and recommended rules in their entirety.

8. On September 10, 2025, Union Pacific filed its Application for RRR.

9. On October 1, 2025, the Commission deliberated on the Application for RRR at its Commissioners' Weekly Meeting, resulting in this Decision.

C. Discussion, Findings, and Conclusions

10. In Decision No. C25-0606, the Commission discussed the provisions in § 40-20-303 that address railroads' use of wayside detector systems and obstructions at public crossings. As discussed in that decision: § 40-20-303(1) sets out information railroads must report to the Commission regarding deployment and utilization of wayside detector systems on mainlines in Colorado to detect and prevent equipment failure; and § 40-20-303(2) articulates that the State of Colorado expects trains or equipment operating on a main line or siding should be operated as to minimize obstruction of emergency vehicles, and further states that, emergency vehicles may give warning to allow the crew to clear the crossing with all possible dispatch, and, if not cleared, then a request shall be made to the railroad to immediately take action, consistent with safe

operating procedures, to clear the crossing. We discussed that, through § 40-20-308, the legislature authorized the Commission to impose a fine on a railroad for violation of § 40-20-303. We reviewed that subsections (1) and (2) of § 40-20-308 set forth maximum fine amounts, subsection (3) directs the Commission transfer funds to the state treasurer, and subsection (4) directs the Commission to promulgate rules for determination, imposition, and appeal of fines.

11. In its Application for RRR, Union Pacific requests the Commission reconsider Rule 7011(b), or any rule that would impose a civil penalty associated with § 40-20-303.

The referenced Rule 7011(b) provides as follows:

A violation of § 40-20-303, C.R.S. may result in the assessment of a civil penalty of not less than \$10,000.00 but not more than \$25,000.00 per offense, unless the Commission determines that either: (1) the railroad intentionally or knowingly violated § 40-20-303, C.R.S., or (2) the violation was part of a pattern and practice of repeated violations of § 40-20-303, C.R.S., in which case the Commission may impose a fine of up to \$100,000.00 per violation. Each day of a continuing violation of § 40-20-303, C.R.S., constitutes a separate violation.

Union Pacific maintains that, although it recognizes the Commission initiated this rulemaking to adhere to the statutory mandate of implementing specific provisions of HB 24-1030, the Commission should decline to adopt this rule because it is preempted by federal law, as well as vague, making it impossible to enforce.

1. Blocked Crossings

12. Union Pacific argues the legislature attempted to draft the language in § 40-20-303(2) to avoid federal preemption but, in doing so, used ambiguous language that, when read alone, appears to be a request to minimize obstruction of highway-rail crossings. Union Pacific claims the statute does not define what constitutes an obstruction and generally lacks the degree of specificity needed for enforceability.

13. Union Pacific further challenges that imposing a civil penalty under § 40-20-308 and Rule 7011(b) creates the effect the legislature was trying to avoid, *i.e.*, it indirectly manages railroad operations by imposing economic disincentive, thereby violating the Interstate Commerce Commission Termination Act (“ICCTA”). Union Pacific contends, were the Commission to assess a civil penalty against a railroad for not separating a train, that would make § 40-20-303(2) function as a blocked crossing statute with § 40-20-308 and Rule 7011(b) as its fining mechanism. Union Pacific maintains this is prohibited as a state law is facially preempted when it directly or indirectly conflicts with exclusive federal regulation of railroads. Union Pacific adds that any suggestion the ICCTA does not apply because the law is related to railroad safety lacks merit.

14. We do not find cause to reconsider the adopted rules. We adequately addressed this argument in Decision No. C25-0606 and find no reason now to reach a different conclusion.

15. There, we said although we acknowledge the railroads’ concern that the language in § 40-20-308 and our implementing rules refer to a violation of § 40-20-303 without specifying individual provisions therein, the reference to § 40-20-303 cannot be read in isolation. We said, by its plain language, § 40-20-303 contains certain provisions that require the railroad to act in a certain manner, *e.g.*, reporting on wayside detector systems, that could lead to a fine for noncompliance, and other provisions that do not. We explained, on the one hand, for wayside detector systems, § 40-20-303(1) plainly imposes the obligation to report certain information annually to the Commission, which is something, if not done, could be subject to a fine for noncompliance; however, on the other hand, the blocked crossings provisions in § 40-20-303(2) are structured to express the State of Colorado’s expectation that trains and equipment should be operated to minimize the obstruction of emergency vehicles, and to express that emergency

vehicles may give warning to allow a train crew to clear the crossing with all possible dispatch and shall request the railroad to clear the crossing.

16. In Decision No. C25-0606, we addressed that state laws or regulations prohibiting blocked crossings that have the effect of regulating railroad operations are likely preempted. Consequently, we reasoned the legislature deliberately selected and structured the language in § 40-20-303(2) with these legal limits in mind, so as to strike a balance that seeks cooperation by the railroads in ensuring that emergency vehicles responding to crises in this state are not held up at blocked crossings while stopping short of enacting mandates that could be construed to manage or govern rail operations, and thus be preempted.

17. Upon review, we find nothing in Union Pacific's Application on RRR that compels our further analysis or consideration of this issue. While Union Pacific insists in its Application for RRR that, "when read alone," the language in § 40-20-303(2) "appears to be a request to minimize obstruction" of crossings and asks for clarity as to what this means,¹ the Commission already provided this clarity in Decision No. C25-0606, particularly at ¶ 23 where we construed this language as seeking "cooperation" by the railroads and "stopping short of enacting mandates that could be construed to manage or govern rail operations."

2. Reporting

18. Union Pacific takes issue with the language at ¶ 11 of Decision No. C25-0606 that states: "the legislature enacted HB 24-1030 to promote railroad safety in Colorado." Union Pacific challenges that it is unclear how imposing civil penalties pursuant to Rule 7011(b) for noncompliance with wayside detector reporting or crossings management would promote railroad safety. Union Pacific states it and other railroads have used wayside detectors for decades, and

¹ Application for RRR at p. 2-3.

Union Pacific has continuously advanced its wayside detector technology, regularly added wayside detectors around its system, and that it routinely maintains and replaces detectors. Union Pacific argues employing economic leverage on the railroad when adjacent states do not have such interference over interstate railroad operations inherently conflicts with the uniform regulation principle.

19. We do not find cause to reconsider the adopted rules. The statutory requirement enacted by HB 24-1030 is for railroads to *report* information to the Commission related to their wayside detectors; there is no substantive underlying requirement, *e.g.*, state requirement for their actual installation and use. Union Pacific itself discusses in its Application for RRR that it already uses wayside detectors, has done so for decades, and routinely maintains and replaces them. Union Pacific fails to explain in its Application for RRR both why this basic reporting requirement is preempted and why Colorado would go too far if it were to seek to enforce this state reporting requirement via a civil penalty mechanism. States continue to exercise traditional police powers to protect public health and safety. This basic reporting scheme enables the state and its public utility regulator to better understand how these devices are deployed and utilized by railroads operating within their borders and such data could be used by local officials and first responders to better manage incidents in their jurisdiction.

3. Civil Penalty Process

20. Union Pacific objects that the Commission begins its civil penalty assessment process through “another party’s one-sided version of events” and the railroad then “has no choice but to either pay a civil penalty for the alleged violation” or to incur the resources to “challenge the alleged violation and participate in a hearing to defend itself.”² Union Pacific contends there

² Application for RRR at p. 7-8.

should be a procedure for the railroad to be involved earlier so the Commission does not begin the civil penalty assessment process through a written notice that it has developed based solely on a one-sided version of events.

21. We do not find cause to reconsider the adopted rules. Consistent with the Commission's longstanding civil penalty assessment process across the several industries that it regulates,³ this process starts with issuance of a civil penalty assessment *notice* to the respondent, which describes the alleged violation and the permitted time to cure, which is at minimum 14 days. If the respondent elects to contest the alleged violation, then the notice converts to a complaint, which is set for a hearing on the merits. Accordingly, the very purpose of the initial notice issued to the respondent is to provide a written description of the alleged violation including the alleged constitutional provision, rule, statute, or order violated and the date and approximate location. Union Pacific's request on RRR is for the Commission to create a new, special process to accommodate pre-litigation advocacy by the railroads concerning the alleged violation. Although Union Pacific may prefer to have such an opportunity, it is neither required nor feasible. Legally, a respondent already has opportunity to respond to the notice. And practically, there is no way to inject representatives from the railroad into the pre-civil penalty assessment decision-making process conducted among Commission staff and counsel.

4. Motion to Stay

22. Union Pacific requests, pursuant to § 40-6-115, C.R.S., that the Commission find cause to stay its Decision No. C25-0606 and adoption of these rules while any legal challenges are addressed.

³ See Rules 3009–3010 of the Rules Regulating Electric Utilities, 4 CCR 723-3; Rules 4009–4010 of the Rules Regulating Gas Utilities, 4 CCR 723-4; Rules 5009–5010 of the Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5; and Rules 6017–6019 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

23. We deny this request. First, § 40-6-115 provides that parties may, within 30 days of a final decision by the Commission, apply to the district court for judicial review. In that context, § 40-6-116, C.R.S., specifies that the fact a party has sought judicial review does not stay the Commission's decision "but ... the district court, in its discretion, may stay or suspend" the decision. In the event that Union Pacific elects to pursue judicial review, it can seek such relief from the district court. Second, we do not find good cause on this record to take this extraordinary action of staying our own rules. To the extent Union Pacific continues to have legal concerns with the rules, it has the ability to pursue those claims in court, but we will not delay implementation of the rules simply because a party indicates it may prosecute an appeal.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C25-0606, filed by Union Pacific Railroad Company on September 10, 2025, is denied.
2. The Rules attached in redlined/strikeout format to this Decision as Attachment A, and in final format, as Attachment B, are adopted consistent with the above discussion.
3. The motion to stay included in such application is denied.
4. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

5. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 1, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners