

Decision No. R25-0230-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
GRANTING UNOPPOSED MOTION AND
CONTINUING HEARING**

Issued Date: March 27, 2025

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision grants the Unopposed Motion for Extension of Time (“Motion”) that BNSF Railway Company (“BNSF”) filed on March 19, 2025; extends the deadline for participants to meet in a second informal workshop to reach a consensus on template agreements; and continues the April 15, 2025 remote hearing to May 1, 2025.

B. Procedural History¹

2. On June 14, 2024, the Commission initiated this Proceeding as a forum to develop Commission-approved template agreements for use as required by newly adopted Rule 7214 of the Commission’s Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and

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

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. To date, participants have filed and commented on numerous template agreements.

4. On September 5, 2024, the ALJ held a prehearing conference during which the ALJ established an initial schedule to move this matter forward.⁴ As a part of that schedule, the ALJ established deadlines for public comments on template agreements; responses to the same; a deadline for participants to meet in their first informal workshop session to reach a consensus on template agreements for the Commission to adopt for use per Rule 7214, 4 CCR 723-7; and a December 17, 2024 at 3:00 p.m. remote hearing to discuss the results of the workshop session and appropriate next steps.⁵

5. The ALJ held the December 17, 2024 hearing as noticed; numerous participants appeared and provided updates as to their meeting about potential template agreements.⁶ Specifically, they explained that they held their first informal workshop meeting to discuss template agreements the day before the hearing, and had made little progress on reaching a consensus on template agreements.⁷ Union Pacific Railroad Company (“Union Pacific”) explained that it just shared certain relevant template agreement(s) in Word format with counsel for several local governments so that counsel could review the agreement(s), share it with other local government representatives and/or other participants who would also review it, and provide a single redlined version of the template(s) to Union Pacific and BNSF for their review prior to

² Decision No. C24-0420 at 1 (issued June 14, 2024) (“Decision No. C24-0420”).

³ *Id.* at 5-7.

⁴ Decision No. R24-0649-I (issued September 11, 2024).

⁵ *Id.*

⁶ *See* Decision No. R24-0927-I at 2-3 (issued December 19, 2024).

⁷ *Id.* at 2.

holding a second stakeholder meeting.⁸ This was intended to ensure that when participants hold their second stakeholder meeting, they would have had a reasonable opportunity to consider and evaluate the redlined template agreement to better position them to reach a consensus on template agreements.⁹ Based on all of this, during the hearing, the ALJ established a March 31, 2025 deadline by which participants must hold their second informal workshop meeting and scheduled a remote hearing for April 15, 2025 at 2:00 p.m. to hear from participants on the results of their second meeting and determine appropriate next steps.¹⁰

6. On March 19, 2025, BNSF filed the Motion.

II. FINDINGS AND CONCLUSIONS

7. The Motion states that counsel made a reasonable good faith effort to confer with all participants about the relief sought therein, and that “[t]he participants do not oppose the requested relief.”¹¹

8. The Motion explains that on December 17, 2024, Union Pacific provided two template agreements to counsel for several local governments, and that Union Pacific and BNSF received a redlined version of one of the template agreements almost three months later, on March 3, 2025.¹² The Motion states that the participants have been unable to schedule a time to meet before March 31, 2025 and that BNSF requires additional time to review the redlined template before meeting due to its limited availability in March.¹³ The participants have scheduled their second stakeholder meeting for April 14, 2025.¹⁴ For all these reasons, the Motion asks for an

⁸ See *id.* at 2-3.

⁹ See *id.*

¹⁰ *Id.* at 3-4.

¹¹ Motion at 1.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.* at 3

extension of the March 31, 2025 deadline to hold the second stakeholder meeting, and that the April 15, 2025 hearing be continued to a later date.¹⁵

9. Because the Motion is unopposed and based on the nature of the Motion, the ALJ finds good cause to waive the remaining response time to the Motion and does so.¹⁶

10. Assuming that numerous local governments participated in reviewing and redlining the template agreement that Union Pacific circulated, the delay in getting the redlined draft to Union Pacific and BNSF may be understandable and not unreasonable. For the stakeholder meeting to be productive, the redlined draft template agreement had to be circulated far enough in advance for Union Pacific and BNSF to thoroughly consider the suggested changes so that they understand the impact of suggested changes prior to meeting. This better enables the stakeholders to come to the table ready to negotiate specific language for a consensus template agreement. The Motion establishes that BNSF's limited availability in March rendered it difficult for BNSF to perform this work prior to meeting before the current March 31, 2025. What is more, the Motion also indicates that stakeholders were unable to schedule a time to meet in March at which all participants could attend. For all these reasons, the ALJ finds that the Motion establishes good cause to extend the deadline for a second stakeholder meeting and to continue the April 15, 2025 hearing. Given that participants have already scheduled a second meeting for April 14, 2025, the ALJ finds that allowing a short extension benefits participants and does not unnecessarily delay the resolution of this Proceeding.

11. For the reasons discussed, the ALJ extends the deadline for the participants to hold their second stakeholder meeting to April 14, 2025, and will continue the April 15, 2025 hearing

¹⁵ *Id.*

¹⁶ See Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-7.

to May 1, 2025 at 9:30 a.m. This two-week gap between the stakeholders' meeting and the hearing is intended to provide stakeholders additional time to work on a consensus agreement after they meet.

12. As with the April 15, 2025 hearing, the May 1, 2025 hearing will not be an evidentiary hearing but is intended to determine the status of participants' efforts to reach a consensus on template agreements for use per Rule 7214, 4 CCR 723-7, and determine appropriate next steps. Similarly, to encourage participants' open and frank discussions, the ALJ will not participate in the informal meeting. All those who filed a notice that they intend to participate in this Proceeding must be invited to and included in the informal meeting, but participation in the meeting is voluntary (not mandatory).

13. The May 1, 2025 hearing will be fully remote. Participants will appear at the hearing from remote locations by videoconference via the web-hosted service, Zoom, and may not appear in person. Attachment A hereto includes important technical information and requirements to facilitate holding the hearing remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

14. Participants will receive an email with the Zoom information necessary to join the remote hearing at the addresses on file for participants. As such, *it is vitally important* that participants ensure that the Commission has the correct email address for them *in this Proceeding*.

III. ORDER

A. It Is Ordered That:

1. The Unopposed Motion for Extension of Time filed on March 19, 2025 is granted, consistent with the above discussion and the below ordering paragraphs.

2. The March 31, 2025 deadline for participants to meet to create consensus template agreements that will be used per Rule 7214 of the Commission's the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7 is extended to April 14, 2025. All those who have made a filing indicating they will participate in this Proceeding must be invited to and included in this workshop session, consistent with the above discussion. Participation in the informal workshop session is voluntary.

3. The remote hearing scheduled for April 15, 2025 at 2:00 p.m. is continued as set forth below. No hearing will be held on April 15, 2025 in this matter.

4. A fully remote hearing is scheduled as follows:

DATE: May 1, 2025

TIME: 9:30 a.m.

PLACE: By video conference or telephone using Zoom information emailed to participants.

5. Participants are not permitted to distribute or share the Zoom information for the above hearing to anyone not participating in the hearing. Non-participants in the hearing may observe the hearing live through the Commission's webcast for the Hearing Room assigned for the hearing at: <https://www.youtube.com/@COPublicUtilitiesCommission/featured>.

6. Participants in the hearing may not appear at the Commission's office in person but will appear by videoconference or telephone.

7. All those participating in the hearing must comply with the requirements in Attachment A to this Decision, which is incorporated as if fully set forth.

8. 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