

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19M-0379R

IN THE MATTER OF THE COMMISSION'S REVIEW OF THE IMPLEMENTATION OF
FINING AUTHORITY IN ITS RAILROAD RULES.

**COMMISSION DECISION OPENING
REPOSITORY PROCEEDING AND SOLICITING
INPUT FROM INTERESTED PARTICIPANTS**

Mailed Date: July 16, 2019

Adopted Date: July 10, 2019

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. By this Decision, the Commission opens a miscellaneous repository proceeding to solicit input from stakeholders and other interested participants on what the Commission should include when it initiates a rulemaking to implement fining authority in its railroad rules. These rules comprise Rules 7213 to 7328 of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7.

2. We open this repository proceeding following the passage of Senate Bill (SB) 19-236 directing the Commission regarding its fining authority for noncompliance with railroad crossing safety regulations. Specifically, SB 19-236 adds subsection § 40-4-106(1)(b), C.R.S., which reads:

If, pursuant to this subsection (1), the Commission issues an order or promulgates a rule requiring a railroad company to comply with railroad crossing safety regulations, the Commission may impose a civil penalty pursuant to article 7 of this title 40, in an amount not to exceed the maximum amount set forth in

section 40-7-105(1), against a railroad company that fails to comply with the order or rule.

3. Section 40-7-105(1), C.R.S., states the following:

Any public utility which violates or fails to comply with any provision of the state constitution or of articles 1 to 7 of this title or which fails, omits, or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such public utility, is subject to a penalty of not more than two thousand dollars for each offense.

4. Prior to initiating a rulemaking process to implement this portion of SB 19-236, we find that stakeholder engagement is needed to help identify issues that may pertain to railroad crossing safety noncompliance matters that should be addressed in any such rulemaking.

5. We request that stakeholder comments identify their concerns with potential safety deficiencies occurring at crossings. This may include, without limitation, current or proposed rules the stakeholder suggests the Commission should promulgate to require a railroad company to comply with railroad crossing safety regulations. For each proposed rule addressed or recommended, we further request that the comment include the stakeholder's reasoning regarding its view on how the rule addresses the safety concerns at issue.

6. Stakeholders should include whether the safety issue identified is appropriately addressed through the imposition of penalties authorized in § 40-4-106(1)(b), C.R.S. If a stakeholder proffers that a penalty should be imposed for the safety issue, we request the stakeholder further address what action, or actions, constitute a separate "offense" for purposes of § 40-7-105(1), C.R.S., and identify a specific, proposed penalty amount, not to exceed two thousand dollars per offense.

7. We intend this proceeding to serve as an information-gathering process to compile input and information to help us determine issues to address in complying with and

implementing this new statutory authority. We direct the Staff of the Colorado Public Utilities Commission (Staff) to lead this information-gathering process. This includes establishing a schedule for written comments and holding at least one workshop to engage directly with railroads, road authorities, and other interested participants.

8. This proceeding shall also serve as a repository for reports and other documentary information that stakeholders and other interested participants believe will be useful to the Commission in deciding how best to implement fining authority in its railroad rules set forth in § 40-4-106(1)(b), C.R.S.

9. We invite stakeholders and other interested participants to submit initial comments in response to this Decision and to file any initial proposed rule suggestions by August 15, 2019. Proposed rule changes and specific language is also welcome. We defer to Staff to set additional deadlines and to schedule one or more workshops to engage directly with stakeholders and other interested participants.

10. We direct Staff to present at a future Commissioners' weekly meeting, a summary of the comments and information received in this proceeding along with Staff's recommendations on how to move forward with implementation of fining authority in the railroad rules. We intend to provide additional guidance to Staff for the preparation of a Notice of Proposed Rulemaking to be issued in a separate proceeding.

11. This proceeding will commence as a non-adjudicatory administrative proceeding. There will be no parties. Therefore, we do not anticipate any motions to be filed in this proceeding. We request, but do not require, that persons interested in participating in this proceeding file a notice indicating their intent to participate. This will allow Staff to better coordinate scheduling and other communications with participants. All filings in this proceeding

should be made pursuant to Rule 1204 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

12. Inquiries regarding this proceeding should be directed to Dr. Pam Fischhaber, Chief of Rail/Transit Safety (pamela.fischhaber@state.co.us).

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Commission opens this miscellaneous proceeding to serve as a repository for stakeholder and other interested participant comments, proposed rules, data, documents, and other information related to potential rules implementing fining authority granted by Senate Bill 19-236 as part of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7.

2. This proceeding is designated as an administrative proceeding under 4 CCR 723-1-1004(b).

3. Stakeholders and other interested participants are encouraged to file initial comments in this proceeding by August 15, 2019. Comments may be filed in paper or electronic form. Written comments should be addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202. Electronic comments shall be filed through the Commission's E-filings System using Proceeding No. 19M-0379R at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 10, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners