

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19I-0347R

IN THE MATTER OF THE REGIONAL TRANSPORTATION DISTRICT'S CORRECTIVE ACTION PLAN REGARDING THE SABLE BOULEVARD AND EXPOSITION AVENUE DERAILMENT, RULE 4 CCR 723-7-7347.

**COMMISSION DECISION GRANTING LIMITED
PROVISION OF REPORT MATERIALS TO REGIONAL
TRANSPORTATION DISTRICT MANUFACTURER**

Mailed Date: September 19, 2019

Adopted Date: September 11, 2019

I. BY THE COMMISSION

A. Statement, Findings, and Conclusion

1. This matter comes before the Commission for consideration of an Unopposed Motion of the Regional Transportation District (RTD) to Permit Limited Provision of Report Materials to Manufacturer filed on September 4, 2019 and Unopposed Amended Motion of RTD to Permit Limited Provision of Report Materials to Manufacturer filed on September 5, 2019 (collectively Motions).

2. By Decision No. C19-0665 mailed August 6, 2019, the Commission requested in ¶19 b) of the decision:

A report of the analysis performed by RTD of the LRV door design and what, if anything, can be done to mitigate the door failure that occurred during the January 28, 2019 derailment from occurring again under a similar set of circumstances in the future should such circumstances occur;

3. To address this request for additional information, RTD has requested an analysis and comment from its LRV manufacturer, Siemens Mobility, Inc. (Siemens) to assist in responding to this request. Siemens has requested that RTD provide Siemens with copies of

video recordings made during the derailment in order to aid Siemens in the analysis of the LRV door design. RTD has identified three videos that are included in the accident investigative report that RTD provided to the Commission and are part of the Commission's investigative report material in this matter.

4. RTD states that because the videos were submitted to the Commission as part of the RTD investigation report pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7349(c)(III)(J) of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, which requires that the report shall contain these types of videos and because rule 4 CCR 723-7-7349(c)(IV) states,

The RTA shall submit its accident investigation report, including its CAP and implementation schedule if necessary, to SSOA staff. Such report shall be submitted under seal and identified as a Highly Confidential Report filed in accordance with extraordinary protections afforded by Commission rules and §40-18-104, C.R.S. ... that shall be afforded extraordinary protections as highly confidential information. Unless modified by subsequent Commission decision, such extraordinary protections shall restrict access to the Highly Confidential Report only to Commissioners, Administrative Law Judges, Commission Advisory Staff, Commission Litigation Staff, and legal counsel for each of these groups.

RTD is not allowed to release these videos to Siemens without a decision of the Commission.

5. RTD believes that Rule 4 CCR 723-7-7349(c)(IV) and § 40-18-104, C.R.S., were enacted in order to enhance rail safety by promoting candor in preparation of accident reports and that the videos in RTD's hands must themselves be acknowledged as components of the report of the Commission even though they are retained independently by RTD and must be treated as highly confidential by RTD as to not eviscerate the confidentiality requirements of the rules and statute allowing confidentiality to be easily circumvented.

6. With this background, RTD requests the Commission permit provision of the videos contained in the accident investigation report to Siemens to allow Siemens the additional

information to provide analysis and comment to address that Commission request in the CAP pertaining to the door failure analysis and design. RTD states that in order to protect the confidentiality of the videos in question that provisioning of the videos to Siemens would be subject to prior execution and return of a non-disclosure agreement concerning the videos by Siemens to RTD.

7. We will grant RTD's Motions to release the videos contained in the investigation report to Siemens with the condition offered by RTD that Siemens be subject to execution and return of a non-disclosure agreement concerning the videos by Siemens prior to release of these videos. If these videos will assist Siemens in the analysis and comments to respond to our question regarding the door failure and what, if anything, could be done to prevent a similar failure from occurring in the future under a similar set of circumstances, it would serve rail safety to allow the LRV manufacturer to use these videos as part of that analysis.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion of the Regional Transportation District (RTD) to Permit Limited Provision of Report Materials to Manufacturer filed on September 4, 2019 and Unopposed Amended Motion of RTD to Permit Limited Provision of Report Materials to Manufacturer filed on September 5, 2019 are granted.

2. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 11, 2019.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners