

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0659R

PETITION OF THE REGIONAL TRANSPORTATION DISTRICT FOR WAIVER OF, OR VARIANCE FROM, 4 CCR 723-7 7325(A) CONCERNING THE SIDE CLEARANCE IN ONE LOCATION BETWEEN I-70 AND RACE COURT IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING VARIANCE**

Mailed Date: January 10, 2020

Adopted Date: January 8, 2020

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Commission for consideration of a petition (Petition) filed on November 22, 2019, by the Regional Transportation District (RTD). In this Petition, RTD requests a permanent partial waiver of, or variance from the 8'-6" minimum general side clearance stated in the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7-7325(a)(I) to no less than 7'-3" at the location of approximately 650' northeast of Marion Street in the City and County of Denver, State of Colorado.

2. The Commission noticed this Petition to all interested persons, firms, and corporations pursuant to § 40-6-108(2), C.R.S., on November 22, 2019.

3. No intervention or petition in opposition has been filed in this matter. This proceeding is therefore uncontested. Pursuant to § 40-6-109(5), C.R.S., this matter may be determined without a hearing.

4. Pursuant to Rule 1003 of the Rules of Practice and Procedure, 4 CCR 723-1, the Commission may grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions and orders for good cause. In making a determination, the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

5. Rule 7325(a)(I) requires that generally, side clearances shall be at least 8'-6".

6. There is one location along the RTD North Metro Rail Line that RTD is requesting a permanent partial waiver of, or variance from. The location is approximately 650' northeast of Marion Street between Station 261+60 and Station 262+80 with the variance being requested for approximately 120' of fencing. RTD requests a variance to 7'3" at this location.

7. As justification for this permanent variance of Rule 7325(a)(I), RTD states that they believe the side clearance standard originated in the days where railroad employees customarily performed some of their duties on the outside of railcars, making these employees vulnerable to side clearance impacts on fast moving trains. RTD states that commuter rail employees will not be working on the outside of these operating cars, and that rail workers and passengers will not be allowed to access the exterior portions of the vehicles while trains are in service. Because it will not be possible for commuter rail employees or passengers to ride on the outside of the cars, the reduced side clearance impact will not affect anyone and the impact will be eliminated. The variance would be preferable to removing the fence, which would allow easy, unauthorized access to the corridor.

8. After examination of the proposed variance and discussion about the requested variance, we do have some concern regarding the minimal distance between the commuter rail car and the distance to the fencing for any person that may be located in the corridor

at that location when a train may be passing by this location. Our understanding is that there is sufficient clearance on the opposite side of this location and that if Maintenance-of-Way workers are on the alignment, there would be flagging protection that would hold the train from passing this location until workers clear that location. This would provide mitigation for Maintenance-of-Way workers on the corridor at this location.

9. The Commission finds that RTD has shown good cause to grant a permanent variance of Rule 7325(a)(I) to allow shortened side clearance distances at this location stated above on the North Metro Rail Line.

II. ORDER

A. The Commission Orders That:

1. The Regional Transportation District petition requesting a permanent partial waiver of, or variance from the 8'-6" minimum general side clearance stated in the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7-7325(a)(I) to no less than 7'-3" at the location of approximately 650' northeast of Marion Street in the City and County of Denver, State of Colorado is granted. This permanent variance shall be for the life of the affected commuter rail line.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Decision.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 8, 2020.**

(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