

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 21R-0538R

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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.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
GRANTING MOTION TO RESCHEDULE HEARING,  
RESCHEDULING PUBLIC COMMENT HEARING AND  
MODIFYING DEADLINES TO FILE PUBLIC COMMENTS**

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Mailed Date: August 15, 2022

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## **I. STATEMENT AND BACKGROUND**

### **A. Summary**

1. This Decision grants Union Pacific Railroad Company's (Union Pacific) Motion to Reschedule Hearing (Motion), reschedules the public comment hearing, and modifies the deadlines to provide public comment on matters identified in Decision No. R22-0420-I.

### **B. Procedural History<sup>1</sup>**

2. The Colorado Public Utilities Commission initiated this matter on November 22, 2021 by issuing a Notice of Proposed Rulemaking (NOPR) to amend the rules governing rail crossings, that is, Rules 7001 through 7301 of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings (the Rules), 4 *Code of Colorado Regulations* 723-7.<sup>2</sup> At the same time, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. Since then, the ALJ has held two public comment hearings, and taken administrative notice of filings in other Commission proceedings.<sup>3</sup>

3. Members of the public have filed numerous public comments since the onset of this Proceeding. Among public commenters are road authorities and railroads.<sup>4</sup>

4. On July 19, 2022, the ALJ scheduled an additional public comment hearing for September 21, 2022, identified matters for additional public comment, and established an August

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

<sup>2</sup> Decision No. C21-0737 (issued November 22, 2021).

<sup>3</sup> *Id.* at 20; Decision No. R21-0781-I (issued December 9, 2021); Decision No. R22-0027-I (issued January 12, 2022)

<sup>4</sup> This Decision's reference to railroads includes railroads, railroad corporations, rail fixed guideways, or transit agencies as defined by Rule 7001, 4 CCR 723-7. Likewise, this Decision's reference to a road authority is to road authority as defined by the same rule.

19, 2022 deadline for such comments, and a September 9, 2022 deadline for responses to such comments.<sup>5</sup>

5. On August 2, 2022, Union Pacific filed its Motion. To date, no responses to the Motion have been filed.

## II. FINDINGS, ANALYSIS, AND CONCLUSIONS

6. Given that the deadline to file initial public comments responding to the items identified in Decision No. R21-0420-I is August 19, 2022, and the deadline was established based on the September 21, 2022 hearing date, the ALJ finds good cause to waive the remaining time left to respond to the Motion (one day). Doing so allows this Decision to issue earlier, which benefits the participants by giving them more time to craft and file their public comments, and allowing them to better manage their resources in the immediate future accordingly. As such, the ALJ waives the remaining response time to the Motion.<sup>6</sup>

7. The Motion states that critical Union Pacific employees will be unable to attend the September 21, 2022 public comment hearing as they are scheduled to present a class in coordination with the Arizona Corporation Commission (Arizona's public utilities commission), the Arizona Department of Transportation, and local city entities.<sup>7</sup> Union Pacific explains that this class was scheduled months ago, has spanned over many years, and that it would be exceedingly difficult to reschedule the class.<sup>8</sup> For these reasons, Union Pacific asks that the September 21, 2022 public comment hearing be rescheduled.

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<sup>5</sup> Decision No. R22-0420-I (mailed July 19, 2022).

<sup>6</sup> Rule 1400(b), 4 *Code of Colorado Regulations* (CCR) 723-1.

<sup>7</sup> Motion at 1.

<sup>8</sup> *Id.*

8. The ALJ finds that Union Pacific has shown good cause to reschedule the public comment hearing, and will do so. The hearing will be held on October 17, 2022 (as set forth in the ordering paragraphs below). Given that this is nearly a month after the original hearing date, the ALJ will modify the deadlines to submit public comments established by Decision No. R22-0420-I. This gives the parties additional time to craft and file their public comments and responses to the same. Notice of this new hearing date will be published in the *Colorado Register*.

### **III. WRITTEN PUBLIC COMMENTS**

9. The Commission prefers written comments over oral comments. As a result, interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding; or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Both oral and written comments will be given the same weight in this proceeding.

10. Anyone wishing to submit documents in addition to their oral comments must submit those in the same manner described above for written comments.

### **IV. OBSERVING OR PARTICIPATING IN RULEMAKING HEARING**

#### **A. The Rulemaking Hearing Will Continue Until Concluded But Not Later than 5:30 p.m.**

11. Consistent with Commission practice, the public comment hearing will continue until all verbal public comments are received, but will end no later than 5:30 p.m. The hearing will not be held open for public comments after all those who have appeared have provided public comment, even if this means concluding the hearing well before 5:30 p.m. For example, if

all those who appear at the hearing have provided public comment by 12:00 p.m. or sooner, the hearing will be adjourned. This also means that anyone who chooses to join the public comment hearing after the 11:30 a.m. start time assumes the risk that the hearing will be concluded before they join.

**B. Observing the Rulemaking Hearing**

12. Consistent with Commission practice, the public comment hearing will be webcast on the Commission's website. Persons wishing to observe, but not participate in the hearing may do so by observing the webcast of the rulemaking hearing, and need not join the hearing by telephone or video-conference. To observe the rulemaking hearing by webcast, enter this link in the web browser <https://puc.colorado.gov/webcasts> and select the audio or video option for the assigned hearing room.<sup>9</sup>

13. The ALJ encourages interested persons who do not wish to provide comments during the hearing to observe the hearing through the webcast because this will help minimize background noise during the hearing, and may assist in the orderly progression of the hearing.

**C. Participating in the Rulemaking Hearing**

14. The hearing will be a hybrid hearing to allow participants the flexibility to choose whether to appear in person or remotely.

15. For those who wish to participate remotely and provide oral comments during the hearing, video-conference participation is encouraged because it allows for the hearing to be held in a manner most similar to in-person hearings. During the public comment hearing, the ALJ will

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<sup>9</sup> The hearing room will be identified on the Commission's public calendar for the date and time of the hearing, at the following link: <https://puc.colorado.gov/pucalendar>.

take action as necessary to facilitate a clear and understandable record, and to ensure the orderly progress of the hearing. For the same reasons, all participants appearing remotely are required to: (a) mute their microphone during the hearing until called upon by the ALJ; (b) ensure they are participating from a location with minimal or no background noise; and (c) not connect to the hearing using multiple devices located in the same room (which causes audio feedback). Participants are encouraged to use a headset to listen to the hearing, as this may also help avoid background noise and feedback when they speak.

16. Any member of the public who wishes to participate in the public rulemaking hearing by video-conference are strongly encouraged to use a computer, smart phone, or tablet that is connected to the internet and has an operational microphone, speaker, and camera. Participants are required to input their full name when prompted to do so. This will allow the ALJ to call on participants to provide oral comments in an orderly fashion.

17. Attachment A to this Decision provides step-by-step technical instructions and requirements to participate by video-conference using a computer. This is intended to ensure that the remote hearing proceeds efficiently. Hence, it is important that video-conference participants carefully review and follow all requirements in this Decision and Attachment A.

18. The link, meeting ID code, passcode, and call-in information to participate in the hearing will be available on the Commission's public calendar on its website at <https://puc.colorado.gov/pucalendar>.

19. The Commission will equally consider comments submitted, whether in person, remotely, oral, or written.

**V. ORDER**

**A. It Is Ordered That:**

1. The public comment hearing scheduled by Decision No. R22-0420-I is vacated.
2. A public comment hearing on the proposed rules in this proceeding is scheduled

as follows:

DATE: October 17, 2022

TIME: 11:30 a.m., continuing until concluded, but not later than 5:30 p.m.

PLACE: In-person: Commission Hearing Room, Suite 250, 1560 Broadway  
Denver, Colorado

By video conference: using the Zoom web conferencing platform at a link in the calendar of events on the Commission's website, available at <https://puc.colorado.gov/pucalendar>.<sup>10</sup>

3. Members of the public who wish to participate remotely in the public comment hearing must follow the requirements in this Decision and Attachment A, which is incorporated into this Decision.

4. Members of the public who wish to provide written comments may do so by following the instructions in this Decision.

5. At the time set for the hybrid hearing, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

6. Interested persons may also submit oral comments in this matter, either in English or in Spanish, by calling (303) 869-3490 and leaving a voicemail containing the comments.

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<sup>10</sup> If a participant is unable to participate by video-conference, participation by telephone will be accommodated. The telephone number, meeting identification number, and passcode to participate by telephone will be available at the same link identified above for the Commission's calendar of events for the date of the hearing.

7. Regardless of which of the above methods is used for submitting comments in this proceeding, the number of this proceeding (21R-0538R) should be identified in submitted comments to aid the Commission's Administrative Staff in placing the comments in this proceeding.

8. The deadline to file initial public comments on the items identified in Decision No. R22-0420-I is modified to September 16, 2022. Likewise, the deadline to file comments responding to those initial public comments is modified to October 7, 2022.

9. No other aspects of Decision No. R22-0420-I are modified.

10. The Commission will equally consider comments submitted, whether in person, remotely, oral, or written.

11. This Decision 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 "Doug Dean".

Doug Dean,  
Director