

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0538R

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ESTABLISHING DEADLINES AND SCHEDULING
CONTINUED PUBLIC COMMENT HEARING**

Mailed Date: October 24, 2022

I. STATEMENT AND BACKGROUND

A. Summary

1. This Decision memorializes rulings made during the October 17, 2022 public comment hearing, including: scheduling an informal workshop meeting; establishing deadlines for a status report and proposed redline consensus rules and additional public comments; and continuing the October 17, 2022 public comment hearing to January 17, 2023.

B. Procedural History¹

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*

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

Colorado Regulations 723-7.² At the same time, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

3. Since the matter was referred, the ALJ has held three public comment hearings, the last one on October 17, 2022; taken administrative notice of filings in other Commission proceedings; and identified specific matters for additional public comment.

4. Members of the public have submitted numerous public comments since the onset of this Proceeding. Among public commenters are road authorities and railroads.³

II. FINDINGS, ANALYSIS, AND CONCLUSIONS

5. As noted in Decision No. R22-0420-I, the public comments in this proceeding demonstrate a significant chasm between the participants' positions on the issues presented through the NOPR.⁴ This makes it difficult to identify common ground that could form the basis of rule language that address the numerous significant concerns that participants have raised. To give the participants another opportunity to attempt to bridge their divide, clarify their position on issues, and offer productive solutions to the issues that the proposed Rules are designed to address, Decision No. R22-0420-I identifies numerous specific areas for written public comment. Among those items, the ALJ asked participants to comment on whether a workshop process open to all interested persons would be an efficient method to reach consensus rules or partial consensus rules.⁵

² Decision No. C21-0737 (issued November 22, 2021).

³ 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.

⁴ Decision No. R22-0420-I at 2-4 (mailed July 19, 2022).

⁵ *Id.* at 9.

6. Responses to a possible workshop process were mixed, with some suggesting this would not be fruitful, some indicating a willingness to participate in such a process, and some not taking any position at all.

7. During the public comment hearing on October 17, 2022, several interested participants provided public comment and the ALJ asked commenters questions. This exchange and other public comments during the hearing demonstrated that an informal workshop meeting could help bridge the significant divide between participants' positions on the proposed Rules. During the hearing, several commenters indicated they are willing to participate in this process and work toward identifying consensus rule language, and the ALJ received feedback from commenters on the process for a workshop and next steps beyond that. Based on this feedback, among other matters, the ALJ determined that an informal workshop meeting open to all interested participants will allow participants to engage in necessary candid and open discussions that may ultimately help them identify common ground and consensus rule language. As such, during the hearing, the ALJ established a schedule to allow for an informal workshop meeting and continued the public comment hearing to January 17, 2023. That schedule is provided in the ordering paragraphs below.

8. To help guide the parties' informal workshop meeting, the ALJ also provided her initial thoughts on several suggested rule changes. Specifically, the ALJ explained that she is unlikely to approve suggested rule language that would limit or otherwise restrict the Commission's rulemaking authority or would require a training as a condition precedent to filing a complaint before the Commission.

9. Participants in the informal workshop meeting should be prepared to discuss and address disputes concerning rule language in the NOPR and proposed rule language suggested

by the various comments filed in this Proceeding, including proposals to establish timelines for crossing projects. Participants should also be prepared to work together to identify acceptable solutions to the issues and concerns that the Commission identified in the NOPR. All interested participants are encouraged to attend the informal workshop meeting.

III. METHODS TO SUBMIT PUBLIC COMMENT

10. Interested persons may provide written or oral comments. Although the Commission prefers written comments over oral comments, they are given the same weight.

11. 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. Anyone using the latter option should ensure that their comments include this Proceeding number.

12. Oral comments can be provided during the scheduled public comment hearing, or by leaving a voice mail message at 303-869-3490. Voice mail public comments will be placed in the record of this Proceeding and should include a reference to this Proceeding number.

IV. OBSERVING OR PARTICIPATING IN RULEMAKING HEARING

A. Observing the Rulemaking Hearing

13. 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. Information on the assigned hearing room can be found at: <https://puc.colorado.gov/pucalendar>.

14. 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.

B. Participating in the Rulemaking Hearing

15. 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.

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

17. 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 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.

18. 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.

19. 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.

20. 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/puccalendar>. Information on the assigned hearing room can be found at the same link.

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

V. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the October 17, 2022 public comment is continued as follows:

DATE: January 17, 2023

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 or telephone: 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>.

2. 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.

3. Members of the public who wish to provide written or oral comments outside of the public comment hearing may do so by following the instructions in this Decision.

4. **Informal Workshop Meeting.** Interested participants will hold an informal workshop meeting on or by November 16, 2022 at a location and manner to be determined at their discretion.

5. **Status Report and Proposed Consensus Rules Deadline.** On or by December 12, 2022, participants in the informal workshop meeting must submit a joint status report sharing the results of the informal workshop meeting with any proposed consensus or partial consensus rules in redline format.

6. **Additional Written Public Comment Deadline.** Anyone wishing to submit additional written public comment relating to the above-referenced status report and consensus rules, or any other matter relating to the proposed Rules in this Proceeding, must file those comments on or by January 6, 2023.

7. 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