

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0086R

IN THE MATTER OF THE APPLICATION OF THE CITY OF ARVADA FOR AUTHORITY TO CONSTRUCT A TEMPORARY AT-GRADE RAIL CROSSING AND PERMANENT GRADE-SEPARATED CROSSING AT THE UNION PACIFIC TRACKS AT WEST 72ND AVENUE IN ARVADA, COLORADO, AUTHORITY TO REMOVE THE EXISTING AT-GRADE CROSSING AT THE UNION PACIFIC TRACKS AT WEST 72ND AVENUE IN ARVADA, COLORADO, AND REQUEST FOR COST ALLOCATION OF A GRADE-SEPARATED CROSSING PURSUANT TO PUBLIC UTILITIES COMMISSION RULE 7207.

**INTERIM DECISION ACKNOWLEDGING
WAIVER OF STATUTORY DEADLINE FOR A FINAL
COMMISSION DECISION AND SETTING A REMOTE
PREHEARING CONFERENCE**

Issued Date: May 29, 2025

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision acknowledges the City of Arvada's ("Arvada" or "Applicant") waiver of the statutory deadline for a final Commission decision to issue; sets a fully remote prehearing conference for **June 10, 2025** at 2:00 p.m.; and requires the parties to confer on certain issues.

B. Procedural History

2. On February 26, 2025, Applicant initiated this matter by filing the above-captioned Application ("Application"). The Applicant requests authority to construct a temporary at-grade crossing; remove the existing at-grade crossing; construct a permanent grade separation underpass; and request cost allocation of the permanent grade separated underpass

pursuant to Rule 7207 of the Commission’s Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Colorado Code of Regulations* (“CCR”) 723-7.

3. On March 4, 2025, the Public Utilities Commission (“Commission”) provided public notice of the Application, per § 40-6-108(2), C.R.S., as follows:

For an order authorizing the construction of a temporary at-grade crossing, removal of the existing at-grade crossing, construction of a permanent grade separation underpass, and request for cost allocation of the permanent grade separated underpass pursuant to PUC Rule 7202 in the City of Arvada, Jefferson County, State of Colorado.

4. The Notice also required that interventions be filed no later than 30 days from the date of the notice.¹

5. On April 3, 2025, Union Pacific Railroad Company (“Union Pacific”) filed an Entry of Appearance, Notice of Intervention, and Opposition (“Intervention”). Union Pacific opposes and contests the Application “on the basis that it seeks a cost allocation of 50% of the theoretical structure cost with [Union Pacific].”²

6. On April 18, 2025, by Decision No. C25-0306-I, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (“ALJ”) for a determination of the merits of the Application and to obtain additional information regarding the missing information from the Application.³ In the same decision the Commission acknowledged Union Pacific’s Intervention.⁴

7. On May 9, 2025, the parties provided the ALJ a proposed partial procedural schedule to govern this Proceeding.

¹ See Notice at pg. 1.

² Intervention at pg. 1.

³ See Decision No. C25-0306-I at pgs. 3-4.

⁴ *Id.* at pg. 4.

II. FINDINGS, ANALYSIS, AND CONCLUSIONS

A. **Deadline for Final Commission Decision**

8. In its Application, Arvada waived the statutory deadline for a final Commission decision to issue, as permitted by § 40-6-109.5(3), C.R.S.⁵ Arvada asks that the Commission include in any order approving the proposed crossing a requirement that Union Pacific finalize all remaining plan sets by a date certain.⁶

9. The ALJ concludes that because Arvada has waived the statutory deadline, the Commission is not bound by the time limits in § 40-6-109.5(1), C.R.S., for the Commission to issue a final decision.

B. **Prehearing Conference**

10. For the reasons discussed below, the ALJ is scheduling a remote prehearing conference as permitted by Rule 1409(a), 4 CCR 723-1.

11. Under Rule 7204(a), 4 CCR 723-7, an applicant in its application may seek “final approval of plans/drawings” or “preliminary approval of conceptual level design plans/drawings (plans at any level other than final design).” If an applicant seeks preliminary approval, “an additional filing of the final plans and estimates for final Commission approval will be required in the same proceeding.”⁷

12. Arvada ultimately seeks authority to construct a temporary at-grade crossing, remove the existing at-grade crossing, construct a permanent grade separation underpass, and request cost allocation of the permanent grade separated underpass pursuant to Rule 7207, 4 CCR 723-7.⁸ However, Arvada explains that engineering details on “the final level plans are not possible

⁵ Application at pg. 24 (“[Arvada] agrees to waive the applicable statutory decision period.”).

⁶ *Id.*

⁷ Rule 7204(a), 4 CCR 723-7.

⁸ Application at pg. 1.

due to the Union Pacific's lack of coordination and extremely slow response and approval process."⁹ As a result, Arvada also seeks preliminary approval of conceptual level design plans, which include the finalized geometries for bridge and alignments for the track, shoofly, roadway, roadway detour, and temporary at-grade crossing.¹⁰ Arvada states that final details will be provided upon Union Pacific's cooperation or "an order approving the application," and that it is working with Union Pacific to finalize all outstanding plan sets.¹¹ Arvada requests that the Commission require Union Pacific "to finalize all outstanding plan sets within a set number of days as deemed appropriate by the Commission."¹²

13. Based on the foregoing, the ALJ concludes that Arvada seeks both a final approval of its plans and a preliminary approval of its "conceptual level design plans/drawings" as contemplated by Rule 7204(a), 4 CCR 723-7. Union Pacific's Intervention is unclear as to whether it objects to Arvada's request for preliminary approval, final approval, or both. The Commission's practice has been to preliminarily approve concept designs based on the record, without an evidentiary hearing.¹³ As such, if Union Pacific does not object to preliminary approval of the concept level designs, preliminary approval may be granted without a hearing based on the record.¹⁴ Preliminarily approving the Application's concept plans does not grant Arvada authority to modify or begin construction, nor does it imply that Arvada will be granted such authority. Nor does this dictate how costs will be allocated or the final design for the projects. Indeed, the Application lacks certain information for the final design that must be submitted before the

⁹ *Id.* at 11.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See e.g., Decision No. R21-0699-I (issued November 8, 2021) in Proceeding No. 21A-0335R; Decision No. C24-0591-I (issued August 20, 2024) in Proceeding No. 24A-0288R.

¹⁴ If Union Pacific does object to preliminary approval, the ALJ may still grant preliminary approval based on the written record.

Commission can grant Arvada the authority it ultimately seeks here. For all these reasons, during the prehearing conference, Union Pacific will be required to clarify its objections to the Application, including whether it objects to preliminary approval of concept level designs.

14. Although the parties proposed a partial procedural schedule to govern this Proceeding, it is unclear whether the parties intend for that schedule to govern an adjudication on whether Arvada's final plans should be approved. While the proposed schedule contemplates a hearing between July 8 and 11, 2025, it includes no proposed deadlines for Union Pacific to provide Arvada the information it needs to finalize design plans, or for Arvada to amend the Application to incorporate those final design plans. For these reasons, during the prehearing conference, the parties will be required to explain their positions on these issues, including deadlines for Union Pacific to provide the missing information and for Arvada to amend the Application accordingly.

15. In addition to the above matters, at the prehearing conference, the ALJ will schedule an evidentiary hearing and will set related procedural deadlines.

16. The parties may raise or address other issues relevant to this Proceeding during the prehearing conference. However, the ALJ may require a written motion, as appropriate.

17. Before the prehearing conference, the parties must confer with each other on the issues that will be addressed during the prehearing conference (discussed above) and must be prepared to address those issues during the prehearing conference. At minimum, the parties must confer on all issues discussed herein. When conferring on a hearing date, the parties should discuss the appropriate number of days for the hearing.

18. Participants will appear at the prehearing conference from remote locations by videoconference and may not appear in person for the prehearing conference. The remote

prehearing conference will be held using Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

19. To minimize the potential that the videoconference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing. Parties will receive an email with information needed to join the hearing at the email addresses on file in this Proceeding.

C. Additional Procedural Notices and Advisements

20. The parties are on notice that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek; dismissing Union Pacific's Intervention; and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

21. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

22. Additional procedural requirements may be addressed in future interim decisions.

23. Each party is specifically advised that all filings with the Commission must also be served upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

III. ORDER

A. It is Ordered That:

1. The City of Arvada's waiver of the time limits for a final Commission decision in § 40-6-109.5(1), C.R.S., is acknowledged.

2. A fully remote prehearing conference in this Proceeding is scheduled as follows:

DATE: June 10, 2025

TIME: 2:00 p.m.

METHOD: Join by video conference using Zoom

3. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

4. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing.

5. All participants must comply with the requirements in Attachment A to this Decision.

6. The parties must confer with each other prior to the prehearing conference, consistent with the above discussion.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KELLY A. ROSENBERG

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director