

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08R-297R

IN THE MATTER OF THE PROPOSED RULES REGULATING RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL CROSSINGS, 4 CODE OF COLORADO REGULATIONS 723-7 UNDER HOUSE HB 1227 08-1227.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ADOPTING RULES**

Mailed Date: September 16, 2008

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. Statement

1. By Decision No. C08-0718, July 11, 2008, the Colorado Public Utilities Commission (Commission) issued its Notice of Proposed Rulemaking (NOPR) regarding its *Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 Code of Colorado Regulations 723-7*. A hearing to receive public comment on the proposed rules was set for September 4, 2008 at 9:00 a.m. in a Commission hearing room in Denver, Colorado.

2. The NOPR proposed changes to the Commission's rules necessitated by the passage of House Bill 08-1227 (HB 1227). HB 1227 amends, *inter alia*, §§ 40-4-106, 40-18-101(1), and 40-29-116, C.R.S. It became effective on July 1, 2008.

3. HB 1227's amendment of Articles 4, 18, and 29 of Title 40 of the *Colorado Revised Statutes* applies to railroads and rail fixed guideway operators. Under HB 1227, references to "railroad crossings" have been completely removed from Commission jurisdiction

and references to the American Public Transportation Association “Manual for the Development of Rail Transit System Safety Plans” have been removed from the statutes.

4. The Commission’s existing rules for railroad crossings were established in Docket Nos. 04R-285R and 06R-506R and the existing rules regulating rail fixed guideway systems were established in Docket No. 06R-189R.

5. The basis and purpose of the proposed amendments is to remove the definitions and references to railroad crossings, remove the requirement for map changes to be sent to those identified in Rule 7204(c)(XVI), remove a reference to the American Public Transit Association “Manual for the Development of Rail Transit System Safety Program Plans,” and correct the Commission’s address in one location.

6. The statutory authority for the proposed rules is found in §§ 40-2-108, 40-2-119, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101(1), 40-4-101(2), 40-4-106, 40-5-105, 40-6-111(3), 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-108, C.R.S.

7. Rules 7002, 7203, and 7204, remove references to and requirements regarding railroad crossings.

8. Rule 7201 removes the definition of a railroad crossing.

9. Rule 7204 removes the requirement that all persons identified in Rule 7204(c)(XVI) must be served with a true and correct copy of substantive changes to any map, drawing, plan, or schematic.

10. Rule 7342 removes references to the American Public Transit Association “Manual for the Development of Rail Transit System Safety Program Plans” and corrects the Commission’s address.

11. The proposed amendments were published in the August 10, 2008, edition of *The Colorado Register*. Written comments were filed by the BNSF Railway Company (BNSF) and the Regional Transportation District (RTD). BNSF expressed no objections to the proposed rulemaking. RTD suggested modifying the definition of “utility crossing” to clarify that “utility crossing” does not include the crossing of two lines of track.

12. At the assigned place and time the undersigned called the matter for hearing. Staff of the Commission presented an overview of the rulemaking. RTD appeared through its Associate General Counsel to orally present and expand on its written comments. At the conclusion of the hearing the matter was taken under advisement.

13. RTD’s proposed change will clarify the definition of “utility crossing” and it is adopted. As amended, the Rules proposed are clear; necessary to protect the health, safety, and welfare; are necessary to comply with HB 1227; do not conflict with other provisions of law; and do not duplicate other rules. The Rules are in the public interest, and they should be adopted.

14. In accordance with § 40-6-109, C.R.S., the administrative law judge recommends that the Commission enter the following Order.

II. ORDER

A. The Commission Orders That:

1. The Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7, contained in the attachment to this Order, are adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KEN F. KIRKPATRICK

Administrative Law Judge

ATTEST: A TRUE COPY

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

**Doug Dean,
Director**