

Decision No. R11-0120-I

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

DOCKET NO. 10A-736R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND CARR STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-737R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND TELLER STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-738R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND INDEPENDENCE STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-739R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND HARLAN STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-740R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND PIERCE STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-741R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND ESTES STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-742R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND GARRISON STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-743R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND PERRY STREET IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

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DOCKET NO. 10A-744R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND OAK STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-745R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND LAMAR STREET IN THE CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO.

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DOCKET NO. 10A-746R

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IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AND OPERATE AN ALTERED AT-GRADE CROSSING AT RTD'S WEST CORRIDOR AND KNOX COURT IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW  
JUDGE KEITH J. KIRCHUBEL  
SCHEDULING PUBLIC COMMENT SESSION;  
SCHEDULING EVIDENTIARY HEARING;  
GRANTING INTERVENTIONS;  
AND REQUIRING INFORMATION  
CONCERNING LEGAL REPRESENTATION**

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Mailed Date: February 2, 2011

**I. STATEMENT**

1. This consolidated proceeding was initiated the Regional Transportation District (RTD) on October 15, 2010, with the filing of eleven applications for Commission authority to construct or modify at-grade crossings on RTD's West Corridor Light Rail system in the City of Lakewood, and operate those same crossings without audible warnings.

2. Pursuant to Decision No. R11-0059-I, issued on January 18, 2011, a technical conference was held on February 1, 2011, in the Commission offices. As also noticed in that Order, at the conclusion of the technical conference, the undersigned Administrative Law Judge (ALJ) discussed the availability of the parties and their witnesses regarding the scheduling of a public comment session and the scheduling of an evidentiary hearing.

3. Given the Commission's responsibility and authority with regard to the safety of rail crossings in Colorado, and the proximity of the proposed crossings to residential neighborhoods and, in one case, a school, the ALJ determined that it is appropriate to receive

public comment on the applications. A public comment session will be convened in the Commission offices on February 17, 2011, at 4:00 p.m.

4. After consulting with the parties and the Commission's Advisory Staff, the ALJ has determined that counsel and witnesses will be available on February 22, 2011. An evidentiary hearing will be convened on that day in the Commission offices at 9:00 a.m. The ALJ reiterates what was stated at the technical conference, namely in the absence of any substantial examination of RTD's witnesses at the hearing supporting the configuration, programming and planned operation of the proposed installations at the subject crossings, the witnesses should be prepared to respond to questions from the ALJ with regard to the safety of these aspects of the applications.

5. On December 1, 2010, Intervenor 1283 Lamar, LLC (1283 Lamar) timely filed a Petition to Intervene as of Right in Docket No. 10A-745R (Lamar Street). 1283 Lamar owns property at the intersection of Lamar Street and 13<sup>th</sup> Avenue in Lakewood, adjacent to the proposed crossing at that location. 1283 Lamar represents that its pecuniary interests will be materially affected by the development of the crossing and that its interests are not adequately represented by any other party to the Docket. RTD has not opposed the Petition to Intervene of 1283 Lamar. Accordingly, pursuant to 4 *Code of Colorado Regulations* (CCR) 723-1-1401, the ALJ will grant the Petition to Intervene.

6. On December 3, 2010, Intervenor East-West Holdings, LLLP (East-West) timely filed a Petition to Intervene as of Right in Docket No. 10A-745R (Lamar Street). East-West owns property near the intersection of Lamar Street and 13<sup>th</sup> Avenue in Lakewood, close to the proposed crossing at that location. East-West represents that its pecuniary interests will be materially affected by the development of the crossing and that its interests are not adequately

represented by any other party to the Docket. East-West also indicates that it has a “member interest” in 1283 Lamar but that is not explained in any detail. The East-West Petition is not submitted on behalf of 1283 Lamar. RTD has not opposed the Petition to Intervene of East-West. Accordingly, pursuant to 4 CCR 723-1-1401, the ALJ will grant the Petition to Intervene.

7. The Petition of 1283 Lamar was filed by Truel W. West in an undisclosed capacity on behalf of the entity. The Petition contains no information indicating that Truel W. West is a member of 1283 Lamar, is authorized by the members of 1283 Lamar to act on behalf of the entity, or alternatively, is an attorney licensed to practice in the State of Colorado.

8. The Petition of East-West was also filed by Truel W. West in the capacity of a Manager of East-West. As noted in Paragraph No. 7 above, nothing more regarding Truel West’s ability to represent the entity before the Commission is disclosed.

9. In light of the fact that Intervenor 1283 Lamar is a limited liability company and Intervenor East-West is a limited liability partnership and neither has entered an appearance through counsel, it is appropriate to provide both entities (collectively, Intervenor) with advisements concerning certain Commission rules regarding legal representation. Intervenor are advised that 4 CCR 723-1-1201(a) *requires* a party in an adjudicatory proceeding before the Commission to be represented by an attorney *unless* the party is an **individual** appearing for the sole purpose of representing her/his own interests **or** for purposes of representing the interests of a **closely-held entity** pursuant to § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has found that if a party does not meet the criteria of this rule a non-attorney may not represent a party in such a proceeding. *See, e.g.*, Decisions No. C05-1018, No. C04-1119, and No. C04-0884.

10. Since Intervenor are not individuals, if they wish to proceed in this matter without an attorney each of them must establish that it is a closely-held entity; *i.e.*, that it has no more than three owners. *See*, 4 CCR 723-1-1201(b)(II) and § 13-1-127(1)(a), C.R.S. It must also demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. This portion of the statute provides that an officer<sup>1</sup> may represent a closely held entity before an administrative agency if both of the following conditions are met: (a) the amount in controversy does not exceed \$10,000; and (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely held entity.<sup>2</sup>

11. If either of the Intervenor wishes to continue in this case without an attorney it will be required to make, at the commencement of the hearing, a verified (*i.e.*, sworn) statement or other showing that: (a) establishes that it is a closely-held entity (that is, it has no more than three owners); (b) states that the amount in controversy in this matter does not exceed \$10,000 and explains the basis for that statement; (c) identifies the individual who will represent it in this matter; (d) establishes that the identified individual is a person in whom the management of the party is vested or reserved; and (e) if the identified individual is not a person in whom the management of the party is vested or reserved, produces a written resolution from the party's members that specifically authorizes the identified individual to represent the party in this matter. In the alternative, Applicant may, on or before the commencement of the hearing on February 22, 2011, cause to have filed an entry of appearance in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

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<sup>1</sup> Section 13-1-127(1)(i), C.R.S., defines "officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

<sup>2</sup> As pertinent here, § 13-1-127(2.3), C.R.S., states that a person in whom management of a limited liability company is vested or reserved "shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

12. Intervenor are advised that the failure to make the filing described in paragraph 11 above may result in a finding that either of them must be represented by an attorney. Intervenor are further advised that, if it is determined that either of them must be represented by an attorney in this matter and if it fails to obtain an attorney following such a determination, the motions and other filings made such Intervenor in this proceeding will be void and of no effect.

## **II. ORDER**

### **A. It is Ordered That:**

1. A public comment session shall be convened as follows:

DATE: February 17, 2011  
TIME: 4:00 p.m.  
PLACE: Commission Hearing Room  
1560 Broadway, Second Floor  
Denver, Colorado

2. An evidentiary hearing shall be convened as follows:

DATE: February 22, 2011  
TIME: 9:00 a.m.  
PLACE: Commission Hearing Room  
1560 Broadway, Second Floor  
Denver, Colorado

3. The Petitions of 1283 Lamar, LLC, and East-West Holdings LLLP to Intervene as of Right are granted.

4. 1283 Lamar, LLC, and East-West Holdings LLLP shall be required to demonstrate their respective status as closely-held entities as described herein above and therefore able to be represented by a non-attorney or, in the alternative, enter an appearance through a duly-licensed attorney, before being permitted to participate in the evidentiary hearing.

5. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

KEITH J. KIRCHUBEL

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director