

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0320R

IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO ALTER THREE AT-GRADE CROSSINGS ON THE BOULDER INDUSTRIAL LEAD AT YORK STREET, 136TH AVENUE AND 144TH AVENUE IN THE CITY OF THORNTON, COUNTY OF ADAMS, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING APPLICATION**

Mailed Date: June 16, 2014
Adopted Date: June 11, 2014

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Public Utilities Commission (Commission or PUC) for consideration of an application (Application) filed by the Regional Transportation District

(RTD) on April 9, 2014, requesting a Decision authorizing alterations RTD has already made to the at-grade highway-rail grade crossings of the Boulder Industrial Lead with York Street, National Inventory No. 804305V; 136th Avenue, National Inventory No. 804304N; and 144th Avenue, National Inventory No. 804306C by disconnecting the active warning crossing signals and chaining gates in the upright position to prevent accidental dropping in the City of Thornton, County of Adams, State of Colorado.

2. On May 9, 2014, the City of Thornton (Thornton) filed an Entry of Appearance and Motion to Intervene as of Right (Thornton Intervention), and noted certain requests and concerns. On May 22, 2014, RTD consented to the Application being granted on only a temporary basis, consistent with a request made by Thornton.

3. We grant the Application, consistent with the discussion below.

B. Background

4. The Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners, pursuant to § 40-6-108(2), C.R.S. The Notice was mailed April 10, 2014.

5. On April 11, 2014, Staff of the Commission (Staff) sent RTD a letter requesting additional information regarding the Application. RTD provided a response to Staff's request for additional information on April 22, 2014.

6. On April 24, 2014, the Union Pacific Railroad Company (UPRR) filed an Entry of Appearance and Notice of Intervention as of Right. UPRR withdrew its Entry of Appearance and Notice of Intervention in this matter on May 14, 2014.

7. On May 9, 2014, Thornton filed the Thornton Intervention. Thornton states that it does not contest or oppose the Application as long as: (a) no participant to these proceedings is

seeking an apportionment determination of any kind; (b) Thornton and RTD can agree on appropriate exempt signage; (c) the Application does not trigger any amendment to the North Metro Environmental Impact Statement, the I-25 North Environmental Statement, or the Interregional Connectivity Study by being construed as an abandonment of the crossings; and (d) the modifications approved by the Commission are on a temporary basis.

8. The Commission reviewed the record in this matter and deemed that the Application was complete pursuant to § 40-6-109.5, C.R.S., by minute entry at the Commission Weekly Meeting of May 21, 2014.

9. On May 22, 2014, RTD filed a Response to Thornton's Motion to Intervene (RTD Response) addressing each of the four issues outlined in the Thornton Intervention.

10. Regarding cost apportionment, the RTD Response states that the cost allocation requested in the Application is unopposed and that there is no request or record to support the present need for apportionment of such costs. Further, RTD argues that the question regarding future costs for removal or replacement is not ripe, and is therefore not a justiciable or permissible claim in this action.

11. Regarding marking crossings as "Exempt", RTD agrees that, if Thornton and RTD reach agreement on the terms governing the marking of the crossings as "Exempt", the crossings may be so marked.

12. Regarding Thornton's concern of a need to amend studies and environmental statements, RTD argues that the Commission is without jurisdiction to address Thornton's concerns and that Thornton has not claimed or shown that Commission approval of the Application may cause an unidentified third party to believe an abandonment has occurred.

13. Finally, regarding Thornton's request for interim or temporary approval, RTD states that in order to avoid the need for a hearing in this matter, RTD consents to the four-year period requested by Thornton.

C. Findings and Conclusions

1. Findings of Fact

14. RTD seeks a Decision authorizing alterations that it has already made to the three at-grade highway-rail crossings of the Boulder Industrial Lead with York Street, 136th Avenue and 144th Avenue in Thornton, Colorado. RTD has disconnected signals at the subject crossings, chained and locked gates at the crossings to prevent accidental dropping of the gates, and interconnection has been disconnected between the railroad signal and the traffic signal at the intersection of 136th Avenue and York Street. Additionally, UPRR has removed crossing circuitry from the various signal bungalows.

15. RTD states that it made the above alterations at the crossings because of false activations at the crossings. RTD states that adverse weather conditions and age of the existing circuitry are causing the flashing lights, gates, and bells to activate when no train is present and to remain active until someone manually shuts down the equipment. The false activations were causing traffic delays and public safety issues because it was possible that vehicle commuters were learning to disregard the active crossing devices. RTD states that for safety reasons it made the above described changes, and is now seeking approval from the Commission to modify the crossings to their now-present state.

16. RTD states that existing traffic volumes at the crossings are 3,794 vehicles per day (VPD) at the York Street crossing traveling at a speed limit of 35 miles per hour (MPH), 22,833 VPD at the 136th Avenue crossing traveling at a speed limit of 45 MPH, and 3,954 VPD

at the 144th Avenue crossing traveling at a speed limit of 45 MPH. There are currently no train movements through the crossing and currently no train movements through the crossing anticipated in the near future. The RTD North Metro Rail Line construction is currently planned along the Boulder Industrial Lead to 124th Avenue for the scheduled opening in 2018. RTD has an option for extension of the North Metro Rail Line to 162nd Avenue as funding becomes available, but it is currently unknown when such funding may become available. As a result, the portion of the Boulder Industrial Lead north of railroad milepost 9.27 that contains the subject crossings is anticipated to remain inactive in the near future.

17. RTD has installed a derail device at railroad milepost 9.23 on the Boulder Industrial Lead south of the crossings and a red board to prevent any trains or rail cars from moving north of the derail on the Boulder Industrial Lead. In response to Staff's question regarding how RTD would propose to move equipment through any of the subject crossings with the railroad signal equipment inoperable, RTD responded that it would stop and flag any equipment through the subject crossings. Any future changes to the crossings if they become part of the North Metro Rail Line would involve applications to the PUC for permission to modify the crossings.

18. RTD does not provide the costs of the proposed changes, but states that it has paid for 100 percent of the cost, which was minimal, and is not seeking apportionment of the costs to any additional entity.

2. Thornton Intervention

19. Thornton states it would oppose the Application if any participant is seeking apportionment of any kind. RTD is not requesting apportionment of costs; we agree with RTD that cost allocation issues, including future allocation, are not an issue in this proceeding.

20. In addition, the installation of “Exempt” signage is not at issue in this matter. Although the Thornton Intervention and the RTD Response concur that marking the crossings as “Exempt” may be acceptable, if Thornton wants to pursue installation of “Exempt” signage at the crossings at issue in this matter, a separate application will need to be filed with the Commission requesting such treatment.

21. Thornton makes claims that, if a decision regarding the Application could be construed as an abandonment, such abandonment could trigger amendments to the North Metro Environmental Impact Statement, the I-25 North Environmental Statement, or the interregional Connectivity Study. RTD did not request abandonment in its Application; has not requested to abolish any of the subject crossings in its Application; and did not post notice at the crossings regarding proposed closure of the crossings. A Commission decision granting the Application is not intended, and should not be construed as, an abandonment. We agree with RTD that Thornton has not shown that Commission approval of the Application may cause an unidentified third party to believe an abandonment has occurred.

22. Finally, in its response, RTD consents to the four-year temporary basis requested in the Thornton Intervention. The Commission will construe this consent by RTD as an amendment to the RTD Application.

3. Conclusions

23. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

24. Based on the above discussion, we find the Thornton Intervention does not contest or oppose the Application, as amended, or matters at issue in this proceeding.

We note that UPRR has withdrawn its intervention and no other interventions were filed in this proceeding.

25. Because the Application is unopposed, the Commission will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

26. RTD has already made the changes at the subject crossings for which it now seeks authority. RTD performed similar actions¹ whereby RTD commenced or completed projects prior to obtaining Commission approval for such improvements. At a hearing in Proceeding No. 11A-492R, RTD's General Manager stated that it would be official RTD policy to seek approval from the Commission *prior* to the commencement of construction of new crossings or improvement of existing crossings.² RTD did not request prior approval in this matter.

27. While the Commission understands the safety reasons that RTD considered when it decided to make changes at the subject crossings, these reasons do not excuse RTD from obtaining authority from the Commission prior to making any such changes. The Commission's procedures allow for such requests to be made to the Commission on less than the 30-day statutory notice period and RTD should use these procedures in the future.

28. Based on the findings of fact, even though RTD did not request prior approval in this instance, we find good cause exists and that the requirements of public safety and necessity are met by granting the Application and approving the requested modifications for four years, consistent with the above discussion.

¹ Proceeding Nos. 08A-313R, 10A-758R, 11A-492R, 11A-493R

² See, Proceeding No. 11A-492R Hearing Exhibits 1 and 2.

II. ORDER

A. The Commission Orders That:

1. The application filed by the Regional Transportation District (RTD) on April 9, 2014, as amended by RTD's Response to Thornton's Motion to Intervene on May 22, 2014, requesting a Decision authorizing alterations RTD has already made to the at-grade highway-rail grade crossings of the Boulder Industrial Lead with York Street, National Inventory No. 804305V; 136th Avenue, National Inventory No. 804304N; and 144th Avenue, National Inventory No. 804306C by disconnecting the active warning crossing signals and chaining gates in the upright position to prevent accidental dropping in the City of Thornton, County of Adams, State of Colorado is granted.

2. The Intervention of the City of Thornton is granted.

3. The Withdrawal of the Intervention of Union Pacific Railroad Company is noted.

4. The crossing changes already made by RTD at the subject crossings are approved pursuant to this Decision until June 11, 2018. The Commission will expect RTD to make a filing regarding these crossings for a more permanent condition prior to June 11, 2018.

5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 11, 2014.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners