

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-0678R

PETITION OF THE REGIONAL TRANSPORTATION DISTRICT FOR WAIVER OF, OR VARIANCE FROM, 4 CCR 723-7-7325(A) CONCERNING THE SIDE CLEARANCE AT THE 61ST AND PENA COMMUTER RAIL STATION IN THE CITY DENVER STATE OF COLORADO.

**COMMISSION DECISION
GRANTING VARIANCE**

Mailed Date: August 14, 2014
Adopted Date: August 13, 2014

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Commission for consideration of a petition filed on June 23, 2014, by the Regional Transportation District (RTD). In this petition, RTD requests a permanent partial waiver of, or variance from the 8'-6" minimum side clearance standard stated in Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7-7325(a) to a 6'-10" minimum clearance for warning devices and fences at the 61st and Pena Station on the East Corridor Commuter Rail Line.

2. RTD requests a permanent variance of Rule 7325(a) requiring that the minimum side clearance distance be 6'-10" for warning devices and fences.

3. The Commission noticed this petition to all interested persons, firms, and corporations pursuant to § 40-6-108(2), C.R.S., on June 25, 2014.

4. No petition to intervene in opposition or otherwise participate in this proceeding has been filed. This proceeding is therefore uncontested. Pursuant to § 40-6-109(5), C.R.S., this matter may be determined without a hearing.

5. Pursuant to Rule 1003 of the Rules of Practice and Procedure, 4 CCR 723-1, the Commission may grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions and orders for good cause. In making a determination, the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

6. Rule 7325(a) requires that generally, side clearances shall be 8'-6", and that wherever practicable, all posts, pipes, warning signs, and other small obstructions should be given a side clearance of at least 10'-0".

7. The RTD East commuter rail line will provide commuter rail service between Denver Union Station and Denver International Airport. The 61st and Pena Station is located along the East commuter rail lines. At this station, RTD proposes installing fencing between the inbound and outbound commuter rail tracks to discourage pedestrians from crossing the tracks at locations other than the designated crossing locations. RTD also proposes installing warning devices that will be located between the tracks at the designated crossing locations to provide information to pedestrians so they can make an informed decision of when to cross the tracks safely. Due to the right-of-way constraints at these stations, it is not possible to provide an 8'-6" clearance from the track centerline to the fences and warning devices. Table B in the petition lists the minimum clearances that can be provided to the warning devices and fence by station.

8. RTD requests a permanent variance of the side clearance at this station to 6'-10" for fencing and warning devices. As justification for this permanent variance of Rule 7325(a),

RTD states that they believe that the side clearance standard originated in the days where railroad employees customarily performed some of their duties on the outside of railcars, making these employees vulnerable to side clearance impacts. RTD states that commuter rail employees will not be working on the outside of these operating cars, and that rail workers and passengers will not be allowed to access the exterior portions of the vehicles while trains are in service. RTD also notes that if a commuter rail vehicle should become disabled at a station, the passengers would be offloaded to the station platform side of the vehicle rather than the fencing side of the vehicle. Finally, the minimum side clearance distance requested is outside the operating parameters of the commuter rail vehicles, so there would be no operational implications as a result of the requested reduced side clearance distance.

9. The Commission finds that RTD has shown good cause to grant a permanent variance of Rule 7325(a) to allow a shortened side clearance distance to 6'-10" at the 61st and Pena Station on the East Corridor Commuter Rail Line. The reduced side clearances are for purposes of providing safety fencing and crossing signals at the stations, which will promote public safety at these locations.

II. ORDER

A. The Commission Orders That:

1. The Regional Transportation District is granted a permanent variance of Rule 7325(a) of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7 to a minimum side clearance distance of 6'-10" at the 61st and Pena Station on the East Corridor Commuter Rail Line. This permanent variance shall be for the life of the station.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Decision.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 13, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners