

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0115R

IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO CONSTRUCT AN AT-GRADE LIGHT RAIL CROSSING AT THE SOUTH ABILENE STREET AND EAST EXPOSITION AVENUE INTERSECTION WITHIN THE CITY OF AURORA, ARAPAHOE COUNTY, COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING MOTION TO BIFURCATE PROCEEDING;
GRANTING APPLICATION TO CONSTRUCT CROSSING
EXCEPT FOR TRAFFIC SIGNAL RECONSTRUCTION;
ORDERING STATUS FILINGS; AND ACKNOWLEDGING
WAIVER OF 210-DAY STATUTORY DEADLINE**

Mailed Date: May 29, 2014

I. STATEMENT

1. On February 4, 2014, the Regional Transportation District (RTD or Applicant) filed an application for an Order requesting authority to construct an at-grade light rail transit crossing at the South Abilene Street and East Exposition Avenue intersection, including the installation of new crossing surfaces for two tracks, roadway profiling, traffic signal reconstruction, signage, pavement markings, blank-out sign indications for the movements into the crossing, detectable warning panels, and pedestrian related signing (Application). The crossing is located within the City of Aurora, Arapahoe County, Colorado.

2. Notice of the application was provided by the Commission to all interested parties pursuant to § 40-6-108(2), C.R.S., on February 7, 2014.

3. On March 5, 2014, the City of Aurora (Aurora) filed its Entry of Appearance and Motion to Intervene (Motion). According to the Motion, Aurora seeks to intervene in this Application in order to assist the Commission by providing comment, information, and project analysis. Aurora argues that its interests in this proceeding are clear and substantial since the construction of the proposed at-grade crossing involves Aurora streets.

4. On March 7, 2014, Applicant amended its Application by filing several updated exhibits to reflect coordination decisions with Aurora (Amended Application).

5. On March 17, 2014, Railroad Staff of the Colorado Public Utilities Commission (Staff) intervened in this proceeding as a matter of right. Staff intervenes in this proceeding due to potential inconsistencies and/or inaccuracies in the Application and attendant exhibits as filed, concerning, among other things, transit signaling and the safety and operational capabilities of the crossing. Staff is also concerned about a lack of adequate detail in the Application and exhibits as filed concerning transit signaling and safety and operational capabilities of the crossing.

6. The Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) for disposition on March 19, 2014. The matter was subsequently assigned to the undersigned ALJ.

7. A pre-hearing conference was scheduled for April 16, 2014 by Interim Decision No. R14-0356-I, issued April 3, 2014. However, Interim Decision No. R14-0366-I, issued April 7, 2014, granted in part, a motion filed by Staff to vacate the pre-hearing conference and instead, file a joint status report by April 28, 2014, in order to provide the parties time to confer regarding the issues raised in the intervention pleadings and determine whether those issues could be resolved and in that timeframe, or whether an evidentiary hearing was necessary.

By Interim Decision No. R14-0366-I, the parties were required to file a status report no later than April 25, 2014.

8. On April 25, 2014, the parties filed the required status report. According to that update, while RTD's amendment to its Application satisfied Aurora's concerns, Staff's concerns were not resolved. Staff takes the position that its concerns stated in its Notice of Intervention have not been resolved and modeling, analysis, and bench testing of the signalization timing alternatives is necessary. The parties agree that such modeling and testing cannot be finalized by July 11, 2014, the date by which a hearing must occur to meet the Commission's statutory obligations. RTD acknowledged that the proposed timeline would require it to waive the statutory deadline in which the Commission is required to issue a final decision in this proceeding and indicated it would voluntarily waive the deadline in a subsequent motion filing.

9. The status report additionally stated that the parties would seek to bifurcate the proceeding to allow the immediate construction of the crossing's civil elements as depicted in the application, since the crossing geometry and traffic signal installations at the crossing would be the same despite the traffic signal timing option selected.

10. On May 7, 2014, RTD, Staff, and Aurora (Joint Parties) filed a Joint Motion to Bifurcate Proceedings to Permit Construction, and for Approval of Procedural Stipulation (Joint Motion). As indicated previously in the status report, the Joint Parties represent that the crossing geometry and signal installations at the crossing at issue will be the same, no matter which traffic signal timing option is selected. RTD asserts that the inability to begin construction at the crossing at issue between the date of the Joint Motion and approval of a traffic signal timing would harm the public interest by delaying the construction of the I-225 Corridor.

11. The Joint Parties agree that RTD's design for the crossing as depicted in the civil plans filed with the Amended Application is acceptable and it is in the public interest to bifurcate this proceeding into two phases. Phase I would allow the immediate construction of the crossing's civil and hard signal infrastructure elements as set forth in the Amended Application, including, but not limited to trackway, curb and gutter, medians, utility work, signal foundations, traffic signals, and main control equipment, pending selection of a traffic signal timing option and finalization of the traffic signal timing related to the traffic signal-train interaction.

12. In the event the Joint Parties' request to bifurcate this proceeding is granted as described above, RTD represents that it will voluntarily waive the 210-day statutory time limitation in which to issue a final decision in this matter pursuant to § 40-6-109.5(3), C.R.S.

13. The Joint Parties also move to approve a procedural stipulation because the Joint Parties believe that the entire Amended Application may very well be resolved by stipulation without a hearing. However, the Joint Parties cannot predict with any certainty when the traffic signalization modeling, subsequent analysis, and bench testing will be completed. While an initial deadline is contemplated in Section 5.d of the Amended Application, the Joint Parties indicate that the deadline may be exceeded.

14. As a result, the Joint Parties propose that as Phase II of the proposed bifurcated proceeding, they file quarterly joint status reports which detail progress made, if any, toward selection of a traffic signal timing option and finalization of traffic signal timings. The first report is proposed to be filed on July 31, 2014 and every three months subsequent on the last day of each third month.

15. Good cause is found to grant the relief requested in the Joint Motion. This proceeding will be bifurcated into Phase I and Phase II as set out above.

Phase I, the proposed construction plan as proposed by RTD in the civil plan of the Amended Application will be allowed to go forward to immediately construct the crossing at issue in this proceeding consisting of the civil and hard signal infrastructure elements as depicted in the Amended Application, including, but not limited to construction of two new tracks with new crossing surfaces, roadway profiling, curb and gutter, medians, utility work, signal foundations, traffic signal reconstruction, signage, pavement markings, blank-out sign indication installation, detectable warning panel installation, detective warning panel installation, and main control equipment.

16. In Phase II of the bifurcated proceeding, Staff and RTD will be required to make regular status updates as set out above detailing the progress made in resolving the issues between the two parties regarding modeling, analysis, and bench testing of the signalization timing alternatives. In the event it appears to the undersigned ALJ that no progress is occurring over a period of time, a hearing may be convened to determine what issues are causing such lack of progress and to determine how the issues may be resolved.

17. RTD's voluntary waiver of the statutory deadline in which to issue a final Commission Decision in this proceeding is noted.

II. ORDER

A. It Is Ordered That:

1. The Joint Motion to Bifurcate Proceedings to Permit Construction, and for Approval of Procedural Stipulation filed by the Regional Transportation District (RTD), the City of Aurora, Colorado, and Railroad Trial Staff of the Commission (Staff) is granted consistent with the discussion above.

2. This proceeding shall be bifurcated consistent with the discussion above.

3. As part of Phase I of the bifurcated proceeding, RTD is granted authority to immediately begin construction at the at-grade light rail transit crossing at the South Abilene Street and East Exposition Avenue intersection, including, but not limited to the installation of new crossing surfaces for construction of two new tracks, roadway profiling, curb and gutter, medians, utility work, signal foundations, traffic signal reconstruction, signage, pavement markings, blank-out sign indication installation, detectable warning panel installation, detective warning panel installation, and main control equipment.

4. As part of Phase II of the bifurcated proceeding, Staff and RTD shall make quarterly status updates as set out above, detailing the progress made in resolving the issues between the two parties regarding modeling, analysis, and bench testing of the signalization timing alternatives.

5. The first status update report shall be due on July 31, 2014.

6. Each subsequent quarterly status update report shall be filed every three months thereafter on the last day of each quarterly month.

7. The waiver of the 210-day period to issue a final Commission Decision pursuant to § 40-6-109.5(3), C.R.S., by RTD is noted.

8. The Commission retains jurisdiction to enter further decisions as necessary.

9. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director