

Decision No. C14-1459

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 12A-1290R

THE APPLICATION OF THE CITY AND COUNTY OF DENVER, THE CITY OF AURORA AND THE REGIONAL TRANSPORTATION DISTRICT FOR AUTHORITY TO (1) CONSTRUCT A NEW GRADE SEPARATED STRUCTURE ABOVE UNION PACIFIC RAILROAD COMPANY'S FREIGHT TRACKS AND OVER THE REGIONAL TRANSPORTATION DISTRICT'S PROPOSED COMMUTER RAIL TRACKS; (2) CONSTRUCT NEW COMMUTER RAIL TRACKS BELOW THE NEW GRADE SEPARATED STRUCTURE; AND (3) TO ABOLISH THE EXISTING AT-GRADE CROSSING, ALL IN THE VICINITY OF PEORIA STREET.

**COMMISSION DECISION
GRANTING MOTION**

Mailed Date: December 11, 2014
Adopted Date: December 10, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Stipulated Motion to Supersede Motion to Amend of September 25, 2014 and to Amend Application of December 24, 2012 and the Commission Order Deeming Application Complete and Granting Application of February 13, 2013 to Include Application and Approval of Cash Contribution of Union Pacific Railroad Company, and to Waive Response Time (Motion), filed by the Union Pacific Railroad Company (UPRR) on November 12, 2014, requesting to amend the original application that did not request cost allocation to now allow UPRR to pay for part of the cost of the Peoria Crossing grade separation structure and requesting the Commission alter its decision approving the crossing to include a portion of the costs being allocated to the UPRR.

2. UPRR originally filed a Stipulated Motion to Amend Application of December 24, 2012 and the Commission Order Deeming Application Complete and Granting Application of February 13, 2013 to Include Application and Approval of Cash Contribution of Union Pacific Railroad Company on September 25, 2014 making the same request as the Motion.

3. On October 29, 2014, Staff of the Commission sent a Deficiency Letter to the attorneys for the parties in this matter outlining missing information relating to funding sources for the project.

4. The Motion is the response to the Deficiency Letter.

5. As grounds, UPRR provides a letter showing that it made a commitment and agreed to contribute \$270,000 to the City and County of Denver towards the cost of the project. However, the original application was never amended to account for this change. UPRR requests that the Commission alter Decision No. C13-0219 issued February 15, 2013, to reflect UPRR's cost contribution to the Peoria Crossing project.

6. Funding for the project consists of approximately \$21,406,396 in Federal Surface Transportation Program Metro grant funds and \$7,187,208 in Federal Section 130 funds in addition to funds from the City and County of Denver, City of Aurora, and RTD. As such, the federal cost allocation rules apply to this matter.

7. Under 23 *Code of Federal Regulations* (CFR) § 646.210(b)(3), the railroad share of project costs for federal-aid projects where an existing at-grade crossing with active warning devices is eliminated is 5 percent of the theoretical project costs. No theoretical project cost was provided as part of the Application or Amended Application that is part of this Motion.

8. Also under 23 CFR § 646.210(d), a railroad may voluntarily contribute a greater share of project costs than is required. This rule also states that other parties may voluntarily assume the railroad's share.

9. Although not specifically stated in the Motion, the presumption is that other parties are voluntarily assuming the majority of the railroad's required 5 percent share of the theoretical project costs given that the proposed costs to be allocated to UPRR are well below this required amount.

10. The proposed cost allocation meets the requirements of 23 CFR § 646.210. UPRR shall pay \$270,000 towards the cost of the Peoria Crossing structure.

11. Now being fully advised in the matter, we grant the Motion.

II. ORDER

A. The Commission Orders That:

1. The Stipulated Motion to Supersede Motion to Amend of September 25, 2014 and to Amend Application of December 24, 2012 and the Commission Order Deeming Application Complete and Granting Application of February 13, 2013 to Include Application and Approval of Cash Contribution of Union Pacific Railroad Company, and to Waive Response Time filed by the Union Pacific Railroad Company (UPRR) on November 12, 2014 is granted.

2. The UPRR shall pay \$270,000 towards the construction of the Peoria Crossing grade separation structure with the remaining costs being paid through federal and other funding sources.

3. 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.

- 4. The Commission retains jurisdiction to enter further decisions as necessary.
- 5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 10, 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