

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0274R

IN THE MATTER OF THE DEVELOPMENT OF TEMPLATE CONSTRUCTION AND MAINTENANCE AGREEMENTS AND PRELIMINARY ENGINEERING AGREEMENTS FOR USE IN PUBLIC CROSSING PROJECTS IN COLORADO CONSISTENT WITH RULE 4 CODE OF COLORADO REGULATIONS 723-7-7214.

**INTERIM DECISION
SCHEDULING HEARING AND
ESTABLISHING DEADLINES**

Issued Date: December 19, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision establishes a March 31, 2024 deadline for participants to meet in a second informal workshop to reach a consensus on template agreements and schedules a fully remote hearing for April 15, 2025 at 2:00 p.m. for participants to share the results of their informal workshop and to determine appropriate next steps to bring this matter to a resolution.

B. Procedural History and Background¹

2. On June 14, 2024, the Commission initiated this Proceeding as a forum to develop Commission-approved template agreements for use as required by newly adopted Rule 7214 of the Commission's the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* ("CCR") 723-7.² At the same time, the Commission referred this Proceeding to an administrative law judge ("ALJ").³

¹ Only the procedural history necessary to understand this Decision is included.

² Decision No. C24-0420 at 1 (issued June 14, 2024) ("Decision No. C24-0420").

³ *Id.* at 5-7.

3. To date, participants have filed and commented on numerous template agreements.

4. On September 5, 2024, the ALJ held a prehearing conference during which the ALJ established an initial schedule to move this matter forward.⁴ As a part of that schedule, the ALJ established deadlines for public comments on template agreements; responses to the same; a deadline for participants to meet in their first informal workshop session to reach a consensus on template agreements; and a December 17, 2024 at 3:00 p.m. remote hearing to discuss the results of the workshop session and appropriate next steps.⁵

5. The ALJ held the December 17, 2024 hearing as noticed. Numerous participants appeared. This Decision outlines what occurred during the hearing.

II. FINDINGS AND CONCLUSIONS

6. During the December 17, 2024 hearing (“hearing”), participants explained that they met in an informal workshop session on December 16, 2024 (the deadline to do so), and that they did not reach a consensus on language that may be used in template agreements. Union Pacific Railroad Company (“Union Pacific”) agreed to share a template agreement(s) in Word format with counsel for several local governments so that counsel could review the agreement(s), share it with other local government representatives and/or other participants who would also review it, and provide a redlined version of the template(s) to Union Pacific and BNSF Railway (“BNSF”). At the time of the hearing, Union Pacific had already shared the agreement(s). During the hearing, BNSF explained that it planned to review the template(s) once it is returned in redlined form from participants who are currently reviewing it (primarily local governments). The participants agreed during the hearing that once the redlined agreement is exchanged, another informal workshop

⁴ Decision No. R24-0649-I (issued September 11, 2024).

⁵ *Id.*

session will be held so that the participants may continue to discuss the issues, including those identified through the above-referenced redlined template agreement, and work toward reaching a consensus on template agreements.

7. Based on the foregoing, during the hearing, the ALJ scheduled a hearing for April 15, 2025 at 2:00 p.m. to hear from participants on the results of their second informal workshop and determine appropriate next steps. This will not be an evidentiary hearing but is intended to determine the status of participants' efforts to create template agreements for use per Rule 7214, 4 CCR 723-7 and determine appropriate next steps. The ALJ also established a March 31, 2025 deadline by which participants must hold their informal workshop meeting.

8. To encourage participants' open and frank discussions, the ALJ will not participate in the informal workshop. All those who file a notice that they intend to participate in this Proceeding must be invited to and included in the informal workshop session, but participation in the workshop session is voluntary (not mandatory).

9. Participants will appear at the hearing from remote locations by videoconference via the web-hosted service, Zoom, and may not appear in person. Attachment A hereto includes important technical information and requirements to facilitate holding the hearing remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

10. Participants will receive an email with the Zoom information necessary to join the remote hearing at the addresses on file for participants. As such, *it is vitally important* that participants ensure that the Commission has the correct email address for them *in this Proceeding*.

III. **ORDER**

A. **It Is Ordered That:**

1. Participants are directed to meet at least once in an informal workshop session by March 31, 2025 to work together to create template agreements that will be used per Rule 7214 of the Commission's the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7. All those who have made a filing indicating they will participate in this Proceeding must be invited to and included in this workshop session, consistent with the above discussion. Participation in the informal workshop session is voluntary.

2. A remote hearing is scheduled as follows:

DATE: April 15, 2025

TIME: 2:00 p.m.

PLACE: By video conference or telephone using Zoom information emailed to participants.

3. Participants are not permitted to distribute or share the Zoom information for the above hearing to anyone not participating in the hearing. Non-participants in the hearing may observe the hearing live through the Commission's webcast for the Hearing Room assigned for the hearing at: <https://www.youtube.com/@COPublicUtilitiesCommission/featured>.

4. Participants in the hearing may not appear at the Commission's office in person but will appear by videoconference or telephone.

5. All those participating in the hearing must comply with the requirements in Attachment A to this Decision, which is incorporated as if fully set forth.

6. This Order is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge