

Decision No. C16-0359

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0813R

IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT AND UNION PACIFIC RAILROAD COMPANY FOR AUTHORITY TO ALTER AN AT-GRADE CROSSING AT ULSTER STREET (U.S. DOT # 804638W) IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

COMMISSION DECISION GRANTING IN PART AND DENYING IN PART, THE APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: April 25, 2016

Adopted Date: April 15, 2016

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A. BY THE COMMISSION**1. Statement****a. Background**

1. On April 11, 2016, the Regional Transportation District (RTD) filed an Application for Rehearing, Reargument, or Reconsideration, and Request for Placement on Agenda for Next Commission Weekly Meeting (RRR). RTD seeks reconsideration of Commission Decision No. C16-0278, issued April 1, 2016. In that Decision, the Commission determined that frequent safety issues at the crossings continued to occur during the testing period. For those crossings not certified in writing as operation-ready by April 8, 2016 by RTD, we ordered that Federal Railroad Administration qualified personnel be posted 24 hours a day, 7 days a week, whose function would be to immediately handle any safety issues occurring at the crossings still experiencing issues. Upon certification by RTD to Commission Staff through a detailed filing that the crossings in question are complete and operationally correct, consistent, and safe, the Commission stated that it would issue a Decision that releases RTD from its obligation to employ crossing personnel.

2. We also approved RTD's proposal to add a timed exit gate delay of 14 seconds after the activation of the flashing lights and bells at the crossing which was intended to provide time for vehicles such as bicycles to exit the crossing before being trapped by the exit gates. We found this relief appropriate since the current exit gate vehicle management system which was designed and installed by RTD was unable to detect all vehicles potentially using the crossing. We additionally approved RTD's proposals to replace traffic signal heads; make changes to traffic signal phasing; remove an R4-7 "Keep right" sign from the median because the sign blocked flashing lights at the crossing; and, maintained the advance warning time at the crossing at 32 seconds.

3. RTD's RRR requests that Decision No. C16-0278 be modified in two respects. First, RTD requests that it be permitted to certify that the crossing is complete and operational pursuant to the requirements contained in our Decision at Ordering Paragraph No. 3, if lack of an Automatic Train Control (ATC) and lack of constant warning time be the only certification issue at the crossing.¹ RTD also seeks modification of our Decision to allow a "GO Team" consisting of a rail signal technician, and a traffic signal technician, be stationed along the corridor alignment 24 hours per day in order to allow RTD to respond to a crossing problem within 20 minutes of notification.

4. On April, 14, 2016, Union Pacific Railroad Company (UPRR) filed its Response to RTD's Application for RRR (Response). UPRR generally asserts several concerns with RTD's proposal to utilize the ATC system, which UPRR argues, will add 45 seconds of warning time at each crossing, which will result in nearly 2 minutes of warning time. UPRR is of the opinion that the addition of this time will result in heightened concerns as to potential driver behavior. UPRR suggests delaying the beginning of revenue operations by one month.

5. Now, being fully advised in the matter, we grant in part, and deny in part RTD's RRR, consistent with the discussion below.

2. Findings and Conclusions

a. Crossing Personnel

6. Regarding the requirement for RTD to post qualified personnel at each crossing with safety issues, RTD states that many of the crossing safety issues identified by the

¹ Decision No. C16-0278, issued April 1, 2016 at Ordering Paragraph No. 3, requires RTD to "file its letter of completion certifying that the subject crossing is complete and operational in compliance with the Commission's requirements for this crossing with the understanding that the approved traffic signal controller change, traffic signal head changes and phasing changes will not occur until after April 22, 2016, and is required to schedule field demonstrations with Commission Staff for Staff to verify that all elements of the crossing are complete and that the crossings are operating as designed and ordered. This certification letter will be filed with the Commission by April 8, 2016 to allow time for the field demonstration and a report to the Commission."

Commission have been addressed or reduced. Consequently, RTD believes it is not necessary to post railroad signal and traffic signal personnel at the crossing 24 hours per day, 7 days per week. Further, RTD claims that it does not have enough qualified technicians available to be able to post railroad signal and traffic signal personnel at each at-grade crossing on the corridor.

7. RTD points out that the required flaggers will be staffed at the crossing 24 hours per day, 7 days per week to direct traffic through the crossings in the event of a signal malfunction. The flaggers are required to have direct communication with the commuter rail control center. These flaggers will be able to identify and communicate any crossing issues to the commuter rail control center. Given the 24-hour presence of the flaggers, RTD proposes to create a “GO Team” consisting of a railroad signal technician and a traffic signal technician to be posted along the corridor alignment 24 hours per day to respond to any crossing location within 20 minutes of notification of a crossing issue by the commuter rail control center.²

8. We find good cause to approve RTD’s request to implement a GO Team. The implementation of a GO Team to respond to any crossing technical issues within 20 minutes of notification, coupled with the 24-hour presence of flaggers at the crossing with the ability to notify the commuter rail control center of a problem, while ensuring traffic and pedestrians continue to move safely through the crossing, provides adequate protection to the public until RTD is able to certify in writing that the crossing is complete and safe.

b. Certification of Crossing

9. As indicated above, RTD also requests that it be permitted to certify that the crossing is complete and operational pursuant to Decision No. C16-0278 if the use of ATC and

² RTD proposes that flaggers, already present at crossings, will report the need for technical support to the commuter rail control center, and provide any traffic control at the crossing that may be necessary pending resolution of a signal issue by the GO Team.

the lack of constant warning time are the only certification issues at the crossing. RTD proposes that it would file a supplemental notice for the crossing when the constant warning time at the crossing becomes operational as initially approved.

10. According to RTD, it can only provide constant warning time at the crossing through the Wireless Crossings component of its Positive Train Control (PTC) system, which is currently not operational. However, RTD represents that the warning time at the crossing is currently being provided through an ATC system that provides warning times greater than what was applied for and approved at the crossing. Because the ATC system provides adequate warning time and because of the difficulty of maintaining enough railroad and traffic signal technical personnel to staff the crossing, RTD takes the position that it is just and reasonable to permit certification of the crossing if the only issue is the use of ATC and the increased warning time from the approved constant warning provided by the Wireless Crossing component of the PTC system.

11. UPRR is concerned that the additional warning time will result in approximately two minutes of warning time at certain crossings, coupled with the fact that the RTD and UPRR warning systems provide different warning times for trains, raises concerns by UPRR regarding potential negative driver behavior at the crossings. UPRR expresses additional concern that the delayed exit gate descent issues are exacerbated by the length of the warning time and inconsistent warning time issues.

12. UPRR proposes that since RTD represented that the wireless issues preventing the constant warning time implementation should be solved by mid May 2016; then, RTD should delay the beginning of revenue operations by one month to address the compliance concerns.

13. Typically, responses to RRR are not allowed pursuant to 4 *Code of Colorado Regulations* 723-1-1506(b) of the Commission's Rules of Practice and Procedure, except upon a motion of the party in certain circumstances. Although UPRR failed to file a motion to accept its Response, we nonetheless find good cause to waive Rule 1506(b) *sua sponte* and allow the Response. Because UPRR trains will operate through the crossing at issue, it has an interest in assuring that the crossings will be safe and operate in the manner intended.

14. We deny RRR on this issue. What RTD proposes is certification to the Commission that technical issues at the crossing are merely improving. The purpose of certifying the crossing as complete and operational is to confirm to the Commission that the crossing is operating as was approved. By RTD's own admission, several technical issues at the crossings remain unresolved as of the date of its RRR filing.³ Therefore, we require that in addition to the certification of completion of work at the crossings, RTD must also certify that each of the specific areas in which safety issues have been occurring is to be included, such as resolution of: gate activation failure; gate false activation; commuter rail vehicles entering crossings while gates are descending; blank out signs; and, traffic signals in flash condition. The crossing must be certified by the person at RTD who bears the ultimate responsibility for determining the crossing work is complete, operational, and safe, whether that individual is the General Manager, Chairman of the Board, or other upper management executive. Until the crossings are operating as required and Commission Rail Staff has verified that the crossing is

³ For example, RTD notes in its RRR at ¶22 that a software modification has been developed to address gate activation failure at the Dahlia, Holy, and Chambers crossings. However, the software did not begin testing until April 11, 2016. At ¶24, RTD addresses the issue of commuter trains entering crossings while the gates are descending. RTD states that the cause for this malfunction has been addressed by an adjustment to the system by the manufacturer, but fails to indicate whether the issue has been fully resolved. At ¶26, RTD states that the issue of traffic signals in flash condition "have been reduced to two to three per week along the A-line. Ongoing work with the City and County of Denver engineers will reduce this further." However, there is no indication that these issues have been fully resolved.

operating as ordered, RTD must continue to post flaggers at the crossing and have the “GO Team” available to mitigate continuing issues.

15. This matter was addressed at a Commissioners’ Deliberations Meeting on Friday April 15, 2016. As a result, RTD’s request to place its RRR on the next Commission weekly meeting is denied.

B. ORDER

1. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration, and Request for Placement on Agenda for Next Commission Weekly Meeting filed by the Regional Transportation District (RTD) on April 11, 2016 is granted in part and denied in part consistent with the discussion above.

2. Commission Rule 4 *Code of Colorado Regulations* 723-1-1506(b) is waived, and the Response of Union Pacific Railroad Company to RTD’s Verified Application for Rehearing, Reargument or Reconsideration, and Request for Placement on Agenda for Next Commission Weekly Meeting is allowed.

3. RTD’s request for the Commission to place this matter on its next Commission Weekly Meeting is denied.

4. RTD’s request to provide a “GO Team” consisting of a railroad signal technician and a traffic signal technician to respond to crossing issues within 20 minutes, and the continued posting of flagging personnel at the crossing 24 hours per day is granted.

5. RTD’s request to certify the crossing as complete and operational under its Automatic Train Control system rather than a constant warning time system as was applied for and approved by the Commission is denied consistent with the discussion above.

6. 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.

7. This Decision is effective on its Mailed Date.

**2. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
April 15, 2016.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

FRANCES A. KONCILJA

Commissioners