

Decision No. R04-1227-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-090R

IN THE MATTER OF THE APPLICATION OF THE TOWN OF CASTLE ROCK,
4175 N. CASTLETON COURT, CASTLE ROCK, COLORADO 80109, FOR AUTHORITY
TO CONSTRUCT FIFTH STREET ROADWAY IMPROVEMENTS AT THE CROSSING OF
THE ROADWAY WITH THE UNION PACIFIC RAILROAD COMPANY, IN DOUGLAS
COUNTY, STATE OF COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
VACATING PROCEDURAL SCHEDULE
AND ESTABLISHING NEW
PROCEDURAL SCHEDULE**

Mailed Date: October 19, 2004

I. STATEMENT

1. On March 1, 2004, the Town of Castle Rock (Applicant) filed an application for a Commission order authorizing the construction of the widening of Fifth Street in Castle Rock at the existing crossing of Union Pacific Railroad Company (Application). Applicant filed a supplement to the Application of March 26, 2004. The Application commenced this proceeding.

2. On March 30, 2004, the Commission gave public notice of the Application. *See* Notice of Application Filed, dated March 30, 2004 (Notice). That Notice established a procedural schedule for this proceeding. By this Order the undersigned Administrative Law Judge (ALJ) will vacate that procedural schedule.

3. On April 28, 2004, Union Pacific Railroad Company (UPRR) intervened of right.

4. On May 3, 2004, the Burlington Northern and Santa Fe Railway Company (BNSF) filed a Motion to Intervene. Accompanying that filing was an entry of Appearance and Notice of Intervention. By Decision No. C04-0568 the Commission granted that intervention.

5. On October 8, 2004, by Decision No. C04-1168 the Commission deemed the Application complete as of that date and referred this matter to an ALJ. The Commission provided this specific guidance: Referral to the ALJ was “for determination of [the Application’s] merits, including the status of the final contract between the parties for construction and maintenance of the crossing” (*id.* at ¶ I.A.8). In addition, the Commission directed to the ALJ to “establish a procedural schedule for the filing of exhibits and witness lists and any pre-filed testimony.” *Id.* at ¶ II.A.3.

6. The time for Staff of the Commission (Staff) to intervene in this matter has expired. Staff has not intervened. Thus, the only parties in this matter are Applicant, UPRR, and BNSF.

7. Hearing in this matter is scheduled for March 14, 2005. *See* Decision No. C04-1168 at ¶ II.A.2.

8. In view of this hearing date and the Commission’s guidance, and to provide the parties time to come to a final agreement and written contract with respect to construction and maintenance of the proposed crossing, the following schedule will be adopted: (a) on or before **February 11, 2005**, Applicant will file its list of witnesses, a detailed summary of the testimony of each identified witness, and copies of its exhibits (including a copy of the final contract for construction and maintenance of the proposed crossing); (b) on or before **February 25, 2005**, each intervenor will file its list of witnesses, a detailed summary of the testimony of each identified witness, and copies of its exhibits; (c) on or before **March 9, 2005**, each party will file

its prehearing motions;¹ (d) on or before **March 9, 2005**, the parties will file any stipulation reached;² (e) hearing in this matter will be held on **March 14, 2005**.

9. No final prehearing conference will be scheduled. If a party believes that a final prehearing conference would be beneficial, that party may file an appropriate motion.

10. Absent further order, there will be no post-hearing statements of position.

11. In accordance with Commission procedure, absent good cause shown, no witness may testify (except in rebuttal) unless that witness has been identified and her/his testimony is summarized in accordance with the procedural schedule established in this Order. Similarly, absent good cause, no exhibit may be admitted (except in rebuttal) unless that exhibit has been provided in accordance with the procedural schedule established in this Order.

12. The provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 will govern discovery and motions to compel discovery in this proceeding.

13. Rule 4 CCR 723-1-22(d)(3) states: "If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading." If a party wishes the ALJ to consider a cited authority *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide copies of that cited authority.

14. The parties must provide the decision number when referring to a Commission decision.

¹ A filing party shall provide a copy of any filed motion directly to the ALJ (delivered to her office). This will not reduce the number of copies which must be filed with the Commission.

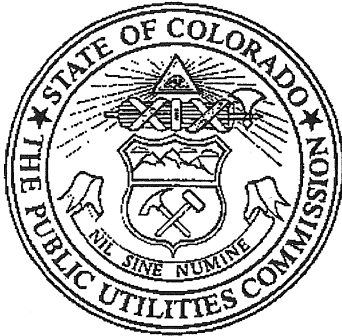
² The parties shall provide a copy of any filed stipulation directly to the ALJ (delivered to her office). This will not reduce the number of copies which must be filed with the Commission.

II. ORDER

A. It Is Ordered That:

1. The procedural schedule established in the Notice of Application Filed, dated March 30, 2004, is vacated.
2. The procedural schedule set out above is adopted.
3. The parties shall follow the procedures and shall make the filings set out above.
4. This Order is effective immediately.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

Bruce N. Smith
Director