

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0377R

IN THE MATTER OF THE APPLICATION OF THE TOWN OF KERSEY FOR AUTHORITY TO REMOVE EXISTING ADVANCED WARNING DEVICES, CROSSING SURFACE, AND ROAD APPROACHES TO CLOSE THE EXISTING CROSSINGS ON 3RD STREET AND TRUMBILL STREET AT THE TRACKS OWNED BY UNION PACIFIC RAILROAD COMPANY IN THE TOWN OF KERSEY, WELD COUNTY, STATE OF COLORADO.

**COMMISSION DECISION GRANTING
MOTION TO WITHDRAW APPLICATION**

Mailed Date: May 24, 2023
Adopted Date: May 24, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration request seeking to withdraw its Application, without prejudice, filed by the Town of Kersey (Kersey) on May 12, 2023 (Motion).¹ Kersey requests to withdraw its Application filed September 1, 2022, seeking to close the 3rd Street crossing, without prejudice.

2. Kersey states in its Motion that the application for closure of the crossing was filed on September 1, 2022, that the PUC accepted Kersey's Application as complete,² that

¹ While filed as a Motion in the Commission's E-filing system, the Motion appears to be inadvertently titled "Application." Given the requested relief provided by Kersey on the third page of the filing, to the extent necessary, we construe the filing as a motion, and through this Decision, grant the request to withdraw the filing, without prejudice.

² The application was deemed complete by minute entry October 26, 2022.

Kersey has been working with Union Pacific Railroad (UPRR)³ to complete an Agreement for the purchase of land and improvements directly affecting the subject crossing, that Kersey has been unable to complete the Agreement, and that Kersey will continue to work diligently to obtain a final executed Agreement. Kersey requested s a ten-week continuance of the final hearing for this proceeding to be held on a date after January 1, 2023.

3. On November 16, 2023, the Commission issued Commission Decision No. C22-0723 mailed November 18, 2023, requesting Kersey provide additional information to the Commission.

4. On November 30, 2022, Kersey filed a response to the questions. Kersey responded that there was no direct correlation between the purchase of land and improvements Being sought by Kersey and the closure of the crossing. Kersey further explained that it was expecting a final agreement with UPRR by June 1, 2023, and that it would notify the Commission regarding completion of any agreement with UPRR.

5. No further substantive filings were made.

6. On May 12, 2023, Kersey provided its Motion seeking to withdraw the application, without prejudice, at this time.

7. We find that withdrawal of the application, without prejudice, as requested is appropriate and grant the request.

³ UPRR provided an intervention pleading in this matter on October 6, 2022. UPRR has filed no response to the Motion or further pleadings in this matter.

II. ORDER**A. The Commission Orders That:**

1. The filing provided by the Town of Kersey on May 12, 2023, is construed as a Motion to Withdraw the Application (Motion), and we grant the motion. Kersey's request to withdraw its Application filed September 1, 2022, without prejudice, is granted.

2. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 24, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners