

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-463R

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

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
DENYING MOTION TO COMPEL
AND AUTHORIZING DEPOSITION**

Mailed Date: June 18, 2004

I. STATEMENT

1. On June 3, 2004, the Town of Castle Rock (Town) filed its Motion to Compel Answers to Interrogatories or, in the Alternative to Dismiss the UPRR as a Party to this Proceeding or Limit the Evidence the UPRR may Present at the Hearing. On June 11, 2004, the Union Pacific Railroad Company (Union Pacific) filed its Response to the Motion. For the reasons set forth below the motion should be denied, but the Town should be authorized to take a deposition.

2. The Town's Motion to Compel is based on its first set of interrogatories served May 5, 2004. The two interrogatories at issue are nos. 1 and 2 which state as follows:

1. State the allocation percentage for the cost of constructing the Front Street grade separation within the Town that UPRR believes it should bear.
2. State all reasons that support the allocation percentage UPRR proposes in response to written interrogatory no. 1.

3. The Union Pacific objects on the grounds that in essence the Town is seeking Union Pacific's expert's opinion on this subject. The Union Pacific further states that its testimony including expert opinions is not due until the end of July, at which point the Town will have an opportunity to rebut. The Union Pacific analogizes this to a civil action where the plaintiff's expert report is due first and then the defendant's expert report is due 30 days later. The Union Pacific notes that Rule 26(b)(4)(a) of the Colorado Rules of Civil Procedure provides that no discovery shall be had as to the expert's opinion until after the time for disclosures of said opinion.

4. The undersigned Administrative Law Judge (ALJ) agrees with the Union Pacific's analysis up to a point. The timeframes of this proceeding are considerably collapsed from the typical civil action. Here the Town has to file its rebuttal testimony, in question-and-answer format, 18 days after the filing of the expert testimony.

5. Granting the motion to compel is not warranted for the reasons offered by the Union Pacific. However, because of the expedited timeframes in this proceeding the ALJ will order that the Town shall be entitled to take the deposition of any witness endorsed and filing testimony on behalf of the Union Pacific that supports an allocation percentage. Furthermore, the Union Pacific shall make such witnesses available for deposition no later than August 6, 2004, unless an extension is granted by the Town.

II. ORDER

A. It Is Ordered That:

1. The Motion to Compel filed June 3, 2004 by the Town of Castle Rock is denied.

2. The Union Pacific Railroad Company shall make available for deposition no later than August 6, 2004 any witness who offers testimony relating to cost allocation. The Town of Castle Rock may extend this August 6, 2004 deadline at its convenience.

3. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge