

Decision No. R04-0752-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-020R

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IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION FOR AUTHORITY TO MODIFY EXISTING FLASHING LIGHT SIGNALS AND AUTOMATIC GATE ARMS AND TRAFFIC SIGNALS AT THE CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE RAILROAD TRACK AT U.S. HIGHWAY 85 AND COUNTY ROAD 16, DOUGLAS COUNTY, COLORADO.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
GRANTING UNOPPOSED LATE  
INTERVENTION, SCHEDULING HEARING,  
AND ESTABLISHING PROCEDURAL SCHEDULE**

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Mailed Date: July 9, 2004

**I. STATEMENT**

1. On January 9, 2004, the Colorado Department of Transportation (Applicant) filed an application for a Commission order authorizing installation of specified safety devices at the crossing of the Burlington Northern and Santa Fe Railroad track at U.S. Highway 85 and Douglas County Road 16, located in Douglas County, Colorado (Application). The Application commenced this proceeding. In the Application at ¶ 16, the Applicant waived the statutory time frames contained in § 40-6-109.5, C.R.S.

2. On February 20, 2004, the Commission gave public notice of the Application. The Burlington Northern and Santa Fe Railway Company (BNSF), Staff of the Commission (Staff), and Douglas County intervened of right.

3. On July 1, 2004, in accordance with Decision No. R04-0489-I, the undersigned Administrative Law Judge (ALJ) held a prehearing conference. All parties were present, were represented, and participated in the prehearing conference.

4. As a preliminary matter, Aggregate Industries, Inc. (Aggregate), requested permission to intervene out-of-time in this proceeding. Aggregate represented that its interest in this matter stems from its intention to build the facility which necessitates the requested upgrade and its intention to pay at least a portion of the cost of the proposed project. Applicant, Douglas County, BNSF, and Staff stated that they have no objection to the late intervention. Aggregate will take this proceeding as it finds it. Aggregate has stated good cause for its intervention, and no party will be prejudiced by granting the intervention. The ALJ granted the intervention at the prehearing conference, and this Order memorializes that ruling.

5. Applicant presented a proposed procedural schedule to which the parties generally agreed. After some discussion the ALJ stated that the schedule, as changed and clarified, was acceptable and would be adopted.

6. The following schedule will be adopted: (a) on or before **August 27, 2004**, Applicant will file its list of witnesses, a summary of the testimony of each identified witness, and copies of its exhibits; (b) on or before **September 24, 2004**, each intervenor will file its list of witnesses, a summary of the testimony of each identified witness, and copies of its exhibits; (c) on or before **October 15, 2004**, each party will file its prehearing motions; (d) on or before **October 15, 2004**, the parties will file any stipulation reached; (e) hearing in this matter will be held on **October 25 and 26, 2004**.

7. 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.

8. Absent further order, there will be no post-hearing statements of position.
9. 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 ¶ I.6 of 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 ¶ I.6 of this Order.
10. The provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 will govern discovery and motions to compel discovery in this proceeding.
11. The parties are directed to discuss: (a) in light of the scheduled hearing, the status of the Stipulation and Settlement Agreement filed on April 23, 2004;<sup>1</sup> and (b) whether Applicant seeks monies from the highway crossing protection fund to cover a portion of the costs of the proposed project.<sup>2</sup> On or before **July 23, 2004**, the parties shall file a letter informing the Commission of the status of these two matters.
12. 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.
13. The parties must provide the decision number when referring to a Commission decision.

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<sup>1</sup> With respect to any stipulation, the parties are reminded that they will need to provide an evidentiary basis for Commission approval of the stipulation.

<sup>2</sup> With respect to allocation of monies from the highway crossing protection fund, *see* § 40-4-106(2), C.R.S.

**II. ORDER**

**A. It Is Ordered That:**

1. The unopposed and oral motion of Aggregate Industries, Inc., to intervene in this proceeding out-of-time is granted.

2. Aggregate Industries, Inc., is an intervenor in this proceeding and will take this proceeding as it finds it.

3. On or before July 23, 2004, the parties shall file the information requested in ¶ I.11, *supra*.

4. The procedural schedule set out above is adopted.

5. Hearing in this matter will be conducted on the following dates, at the following times, and in the following location:

DATES:       October 25 and 26, 2004  
TIME:         9:00 a.m. on each day  
PLACE:        Commission hearing Room  
               1580 Logan Street, OL2  
               Denver, Colorado

6. The parties shall follow the procedures and shall make the filings set out above.

7. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge