

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

DOCKET NO. 02A-667R

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IN THE MATTER OF THE COLORADO DEPARTMENT OF TRANSPORTATION,  
FOR AUTHORITY TO RECONSTRUCT A PEDESTRIAN CROSSING AND SAFETY  
ENHANCEMENTS AT THE CROSSING OF THE UNION PACIFIC RAILROAD TRACKS  
AT STATE HIGHWAY 12 IN THE TOWN OF LA VETA, HUERFANO COUNTY,  
COLORADO.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
WILLIAM J. FRITZEL  
GRANTING APPLICATION**

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Mailed Date: October 21, 2004

**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

1. On December 20, 2002, the Colorado Department of Transportation (CDOT) filed an application for an order authorizing the reconstruction of a pedestrian crossing with safety enhancements, at the crossing of State Highway 12 and the tracks of the Union Pacific Railroad Company (UPRR).<sup>1</sup>

2. The Commission issued notice of the application and notice of the hearing on January 3, 2003. The hearing of this matter was set for March 11, 2003.

3. On January 9, 2003, Staff of the Commission filed an Entry of Appearance and Notice of Intervention.

4. On January 30, 2003, UPRR filed an Entry of Appearance and Notice of Intervention.

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<sup>1</sup> Subsequent to the filing of this application, UPRR either sold or transferred ownership of the tracks to Rail America, operating as San Luis and Rio Grande Railroad.

5. On February 18, 2003, CDOT filed an unopposed motion to vacate the hearing for the reason that the parties had tentatively agreed to settle the matter.

6. On February 21, 2003, by Decision No. R03-0205-I the unopposed motion to vacate the hearing was granted.

7. On January 22, 2004, Decision No. R04-0084-I was issued requiring CDOT to file a status report of the case.

8. On February 2, 2004, CDOT filed its status report indicating that the matter had been delayed since prior to completing a settlement agreement with UPRR, UPRR either sold or transferred ownership of the tracks involved to Rail America, operating at the subject crossing as San Luis and Rio Grande Railroad (SLRG). CDOT stated that it has started settlement discussions with the new owner of the tracks, and anticipating the filing of an agreement.

9. On July 6, 2004, CDOT filed the construction and maintenance contract between the Town of La Veta, CDOT, and SLRG, dated July 1, 2004. CDOT stated that this contract represented the settlement by the parties and requested that the Commission issue an order approving the application.

10. Since this application is uncontested, it will be determined without a formal hearing pursuant to the Commission's modified procedure, § 40-6-109(5), C.R.S., and Rule 24 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

11. In its application, CDOT requests that the Commission authorize the reconstruction of a pedestrian crossing with safety enhancements, at the crossing of State Highway 12 and the tracks of the SLRG, National Inventory Crossing No. 253-478L, at Railroad Mile Post 190.30 in the Town of La Veta, Huerfano County, Colorado.

12. CDOT states in the application that in the vicinity of the crossing, State Highway 12 has two 12-foot travel lanes with paved shoulders and a sidewalk on the west side. The sidewalk has deteriorated and the crossing surface has been removed by SLRG's predecessor, UPRR.

13. The crossing is protected by advance warning signs, flashing light signals with gates and bell. The crossing signals will not need to be relocated since the proposed sidewalk will be detached from the roadway.

14. In 2001, the average daily vehicular traffic count was 1,719 at the crossing. It is anticipated that by 2021, the traffic count will be 2,647. The vehicular speed limit is 25 miles per hour. At the time the application was filed, approximately 16 to 25 train movements per week crossed State Highway 12 with a railroad maximum speed of 20 miles per hour.

15. By the terms of the contract for reinstalling the pedestrian crossing, filed with the Commission on July 6, 2004, the improvements consist of two new eight-foot rubberized crossing panels across the tracks, to be installed by the SLRG and an eight-foot concrete sidewalk to the edge of the rubberized crossing, to include each approach as well as the section in between the tracks. The Town of La Veta will install the sidewalk.

16. The railroad has agreed to install the new rubberized crossing material across the tracks and the Town of La Veta will install a new concrete sidewalk. The sidewalk will be installed from the railroad right-of-way boundary to each approach of the crossing panels at the tracks as well as between the two tracks.

17. The railroad shall maintain the rubberized railroad crossing sidewalks.

18. The Town of La Veta shall maintain the pedestrian approaches to the crossing.

19. It is found and concluded that the public safety, convenience, and necessity require the granting of this application.

20. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

**II. ORDER**

**A. The Commission Orders That:**

1. The Application for Authority to Reconstruct a Pedestrian Crossing and Safety Enhancements at the crossing of the San Luis and Rio Grande Railroad at State Highway 12 in the Town of Le Veta, Huerfano County, Colorado is granted.

2. The San Luis and Rio Grande Railroad is authorized to install eight-foot rubberized crossing panels across each of its tracks at State Highway 12, National Inventory Crossing No. 253-478L, Railroad Mile Post 190.3, in Huerfano County, Colorado.

3. San Luis and Rio Grande Railroad shall maintain the rubberized railroad crossing sidewalks.

4. All work done shall be in accordance with the plans, specifications, exhibits, and the contract dated July 1, 2004.

5. The Commission retains jurisdiction to make further orders as required.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge

