

Decision No. R97-99

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96A-111R

IN THE MATTER OF THE COLORADO DEPARTMENT OF TRANSPORTATION FOR AUTHORITY TO PERFORM BRIDGE REPLACEMENT WORK ON STRUCTURES OVER THE DENVER AND RIO GRANDE WESTERN RAILROAD AND SOUTHERN PACIFIC TRANSPORTATION COMPANY TRACKS, AND FOR AUTHORITY FOR THE RAILROAD TO REALLOCATE SIGNAL LINES ON ITS PROPERTY, ALL AT RAILROAD MILE POST 449.13 ON STATE HIGHWAY 50, LOCATED IN MESA COUNTY, COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ARTHUR G. STALIWE**

Mailed Date: January 30, 1997

Appearances:

Harry S. Morrow, Assistant Attorney General,
Denver, Colorado, for the Colorado
Department of Transportation;

James Gatlin, Esq., Denver, Colorado, on
behalf of the Southern Pacific and Denver
and Rio Grande Western Railways;

John Baier, for the staff of the Commission;

Gerald Feather, Esq., Grand Junction,
Colorado, on behalf of MAMB Corporation; and

Dean H. VanGundy, Grand Junction, Colorado,
pro se.

I. STATEMENT OF THE CASE

A. By application filed March 6, 1996, the Colorado Department of Transportation requests authority to tear down and

replace existing bridge structures over tracks of the Denver and Rio Grande Western Railroad as well as Southern Pacific Transportation Company in the vicinity of Grand Junction, Colorado. The two structures in question currently carry U.S. Highway 50 over the main line and various spur tracks of the railroads. The tear down and subsequent rebuilding of these structures will require the replacement and relocation of certain signal lines belonging to the railroad. On April 4, 1996, the Commission sent notice to all who might desire to protest or object.

B. On April 4, 1996, the staff of the Commission entered its appearance. The two railroad companies entered their appearance on April 30, 1996. On May 10, 1996, Mr. Dean VanGundy entered his appearance as an adjacent property owner. On June 14, 1996, Gerald B. Feather, Esq., entered his appearance on behalf of MAMB Corporation, Grand Junction.

C. Pursuant to notice, the matter was scheduled for hearing on August 28, 1996. Pursuant to the provisions of § 40-6-109, C.R.S., Administrative Law Judge Staliwe now transmits to the Commission the record and exhibits of said hearing, together with a written recommended decision containing findings of fact, conclusions, and order.

II. FINDINGS OF FACT

A. Based upon all the evidence of record, the following is found as fact:

1. The testimony of Richard D. Perske, preconstruction engineer for the Colorado Department of Transportation, establishes that there exist two bridge structures carrying U.S. Highway 50 over the tracks of the Denver and Rio Grande Western Railway and Southern Pacific Transportation Company in the vicinity of Grand Junction. The first structure was built in 1936 as a two-lane highway, with a second bridge and set of lanes added in 1963. The existing four lanes carry an average of 27,000 cars per day. Because of existing traffic volumes, plans call for the sequential dismantling and rebuilding of the bridges, so that at least two lanes will remain open at all times during the anticipated 18 months of construction. The proposed plan calls for the original structure built in 1936 to be removed first, followed thereafter by the 1963 bridge. All funding has been provided at the state and federal level, to include the relocation of utilities such as telephone, electric, and water lines, etc.

2. Because of the complicated nature of dismantling followed by rebuilding, the project is anticipated to take up to 18 months, and the Colorado Department of Transportation will

make efforts to accommodate local businesses needing access to and from their property.

3. The testimony of Joseph Deveneenty, division train master for the Southern Pacific in Grand Junction, establishes that between 20 and 25 trains a day pass beneath the bridges, with speed limits ranging from 50 miles per hour on the main line (passenger trains), to as slow as 10 miles per hour on spur lines (freight trains). Mr. Deveneenty did concede that a current rail merger may result in fewer trains passing beneath the bridges in question, but future operations were not known and certain at the time of hearing, and no estimated numbers were provided.

4. Intervenors MAMB Corporation and Dean VanGundy were both concerned with local street access issues, not with any concerns related to actually crossing over the railroad tracks beneath the bridges. As testified to by Lew Inman, president of MAMB Corporation, his concern is that trucks carrying material into his property during construction will have to go a circuitous route on local streets in order to reach the nearest gas station, while currently they only need to scoot under the existing highway bridge. This occurs on the north side of the tracks in question, and at no time is it expected that any affected vehicle will cross any railroad track.

5. Similarly, the testimony of Dean Howard VanGundy relates to what he alleges is a property taking, involving access to his property located on the south side of the tracks. As with MAMB Corporation, Mr. VanGundy's concerns do not involve the crossing of the railroad tracks, but are solely related to local street access issues on the south side of the construction project, and their impact on his property values.

III. DISCUSSION

A. As noted in the findings, no intervenor was concerned with safety issues related to the reconstruction of the U.S. Highway 50 bridges over the railroad tracks in Grand Junction. Given that the existence of the bridges dates back to 1936 and 1963, we are not relitigating today their location or need. Further, there was no debate regarding the need to rebuild the bridges, nor the effect of reconstruction upon train operations. That more than exhausts this agency's jurisdiction over the project.

B. Questions regarding local street access, diminution of property values, etc., are all matters beyond this agency's purview. Many matters regarding access are within the express jurisdiction of the Colorado Department of Transportation pursuant to § 43-1-201, C.R.S., et seq. As was stated at hearing, and repeated here, intervenors are urged to consult

with counsel regarding their concerns over takings, loss of business, etc. These issues are not within the purview of this agency's jurisdiction.

IV. ORDER

A. The Commission Orders That:

1. The application of the Colorado Department of Transportation is approved.

2. 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.

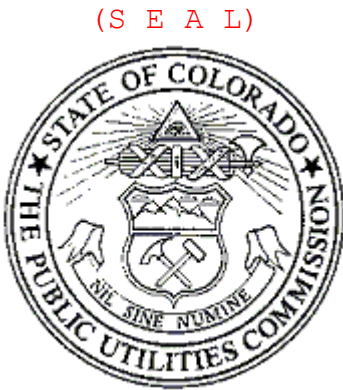
3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

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.

4. 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

ARTHUR G. STALIWE

Administrative Law Judge

ATTEST: A TRUE COPY

Bruce N. Smith
Director

g:\orders\111R.DOC