

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

DOCKET NO. 03A-512R

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IN THE MATTER OF THE APPLICATION FOR THE CITY OF THORNTON, COLORADO,  
FOR AN ORDER AUTHORIZING THE INSTALLATION OF AN ADDITIONAL MEDIAN  
MOUNTED RAILROAD CROSSING GATE DEVICE AND THE RELOCATION OF AN  
EXISTING CROSSING GATE DEVICE AT THE UNION PACIFIC RAILROAD COMPANY  
CROSSING OF 136<sup>TH</sup> AVENUE NEAR YORK STREET (DOT CROSSING NO. 804-304N)

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**COMMISSION ORDER GRANTING APPLICATION**

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Mailed Date: June 14, 2004  
Adopted Date: May 26, 2004

**I. BY THE COMMISSION**

**A. Statement**

1. On November 31, 2003, the City of Thornton, Colorado (Thornton) filed an application requesting authority to install an additional median mounted crossing gate and relocate the existing crossing gate at 136th Avenue near York Street, across the tracks and right-of-way of the Union Pacific Railroad Company (UPRR), at National Inventory I.D. No. 804-304N, in the City of Thornton, Adams County, Colorado.

2. The Commission gave notice of this application together with a copy of the application to all interested parties, including the adjacent property owners, in accordance with § 40-6-108(2), C.R.S. (1993). This Notice was mailed December 1, 2003.

3. On December 1, 2003, the Staff of the Commission filed its Entry of Appearance and Notice of Intervention.

4. On January 14, 2004, UPRR filed its Entry of Appearance and Notice of Intervention.

5. In its application, the Town of Thornton stated that it would pay for the entire cost of the project. Section 40-4-106(2)(b), Colorado Revised Statutes provides:

Whenever the commission orders in any proceeding before it, regardless of by whom or how such proceeding was commenced, that automatic or other safety appliance signals or devices be installed, reconstructed, or improved and operated at any crossing at grade of any public highway or road over the tracks of any railroad corporation, the commission shall also determine and order after notice and hearing, how the cost of installing, reconstructing, or improving such signals or devices shall be divided between and paid by the interested railroad corporation whose tracks are located at such crossing on the one hand and the highway operations and maintenance division and the interested city and county, town, county, or other political subdivision of the state on the other hand...but in every case the part to be paid by the railroad corporation shall be not less than twenty percent of the total cost of such signals or devices at any crossing...

Because the language of the statute can be read to conflict with Thornton's willingness to pay for the entire cost of the project, in Commission Decision No. C04-0350 we asked the parties to submit legal briefs addressing whether Thornton could pay for the entire project notwithstanding the statutory language above. The parties submitted a joint brief, and we agree that Thornton may pay for the whole project.

6. The Commission has reviewed the record in this matter and deems that the application is now complete within the meaning of § 40-6-109.5, C.R.S.

7. The Commission will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 24, Commission Rule of Practice and Procedure, 4 *Colorado Code of Regulations* (CCR) 723-1, because the application is now uncontested.

**B. Findings of Fact**

8. The purpose of this application is to secure Commission approval to install grade crossing warning devices consisting of flashing light signals with gates, bells, and constant warning devices at the crossing of 136th Avenue west of York Street across the tracks and right-of-way of the UPRR at National Inventory I.D. No. 804-304N, in Thornton, Colorado.

9. The average daily vehicular traffic count on 136<sup>th</sup> Ave. at the existing crossing is approximately 9,500 vehicles per day. The posted roadway speed limit is 40 mph. There are two trains per day with a maximum speed of 20 mph.

10. The proposed warning devices will consist of flashing signals with gates, warning bells, and constant warning devices.

11. The work to be done will be in accordance with the appropriate rules and regulations of the Federal Government and will be paid for by Thornton.

12. Maintenance of the roadway approaches to the crossing will be the responsibility of Thornton. Maintenance of the crossing surface, roadbed, tracks, grade crossing warning devices, and appurtenances will be the responsibility of UPRR.

13. All exhibits, specifications, and plans are complete, accurate, and meet Commission requirements.

14. The public safety, convenience, and necessity require, and will be served by granting this application.

**C. Conclusions**

15. The Commission has jurisdiction in this matter under § 40-4-106(2)(a) and (3)(a), C.R.S. (1993).

16. The Commission has reviewed the record in this matter and deems that the application is complete within the meaning of § 40-6-109.5, C.R.S.

17. The Commission will determine this matter on the record, without a formal hearing, under § 40-6-109(5), C.R.S. (1993) and Rule 24, Commission Rules of Practice and Procedure, 4 CCR 723-1.

18. The public safety, convenience, and necessity require, and will be served by, the granting of this application.

19. There is no reason to apply § 40-4-103, C.R.S. to this application because there is no need for the Commission to allocate costs. We also believe that Thornton's status as a home-rule city allows it to spend its funds as it sees fit. This decision is consistent with encouraging negotiated agreements between parties.

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

1. The City of Thornton, Colorado is authorized to install an additional median mounted crossing gate and to relocate the existing crossing gate at 136th Avenue near York Street, across the tracks and right-of-way of the Union Pacific Railroad Company at National Inventory I.D. No. 804-304N, in the City of Thornton, Adams County, Colorado.

2. Installation of the warning devices authorized in Ordering Paragraph 1 above shall be in accordance with the plans, specifications, and exhibits submitted in this application and hereby approved.

3. The total actual cost of labor and material required for installation of the grade crossing warning devices shall be paid consistent with the agreement reached between the parties.

4. The Union Pacific Railroad Company shall maintain the warning devices at its own expense for the life of the crossing so protected.

5. The Commission retains jurisdiction to enter further required orders.

6. The 20-day time period provided by § 40-6-141(1), C.R.S. to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this order.

7. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
May 26, 2004**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners