

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
(1) BIFURCATING PROCEEDING;
(2) ACCEPTING STIPULATION AND
PARTIAL SETTLEMENT AGREEMENT;
AND (3) VACATING HEARING**

Mailed Date: February 10, 2004

I. STATEMENT

1. This proceeding concerns an application by the Town of Castle Rock (Town) seeking authority for a grade separation over the tracks of the Union Pacific Railroad (UPRR) at a location to the north of the 5th Street at-grade crossing in the Town. The proposed grade separation structure would consist of an extension of Front Street to match and connect with Perry Street at a location also to the north of 5th Street. The UPRR, an intervenor in this proceeding, originally had no objection to the proposed overpass but did object to the expenditure of funds for a grade separation structure without the closing of an at-grade crossing in the same general area. UPRR therefore objected to any allocation to it of any of the cost of the grade separation requested by the Town in this proceeding.

2. The Town, the UPRR, the Burlington Northern Santa Fe Railroad (BNSF), and the Staff of the Commission, all of the parties to this proceeding, have conducted settlement negotiations in this proceeding. As a result of those discussions a Stipulation and Partial Settlement Agreement (Stipulation) and a Motion to Bifurcate Issues and Vacate and Reset Hearing Date were filed on February 3, 2004.

3. The Stipulation states that all parties have reviewed the filing as well as an attached revised cost estimate that is attached to the Stipulation. All parties agree with the need for the project and urge the Commission to enter an order approving the project for construction as set forth in the application and the plans attached to it. The parties seek to vacate the hearing scheduled for March 16, 2004 and to reschedule a hearing only on the issue of allocation of the costs of construction at least 90 days into the future. The Town and UPRR agree to work towards completion of a "Public Highway Crossing Agreement" prior to the cost allocation hearing. The resulting agreement will be filed as a late-filed exhibit. In addition, the Town agrees to file a separate application seeking improvements to the existing at-grade crossing at 5th Street before the cost allocation hearing. Finally, by the Stipulation the UPRR agrees to provide a license for the grade separation structure at the point where it will cross UPRR tracks, for a consideration to be determined in either future negotiations or the future cost allocation hearing.

4. A review of the file in this proceeding supports the agreement of the parties that construction should be immediately authorized. The current at-grade crossing of Front Street involves 16,000 vehicles per day and approximately 40 trains per day (25 UPRR and 15 BNSF), resulting in an exposure factor of 640,000. Without improvements, the predicted 2020 exposure factor is 872,000. The proposed grade separation will prevent accidents and promote the safety

of the public. It will also promote and safeguard the health and safety of the railroad employees as well as the public.

5. The Motion to Bifurcate should also be granted, and the order below requires the parties to submit their available dates for a hearing to be set by future order.

II. ORDER

A. It Is Ordered That:

1. The Stipulation and Partial Settlement Agreement filed February 3, 2004 by the parties to this proceeding is accepted and incorporated into this Order. It is attached to this Order as Exhibit A.

2. The Town of Castle Rock is authorized and ordered to commence construction of the project as set forth in the application and the plans attached to it. Any substantial variation from the application and the plans attached to it must be approved by this Commission. The Town of Castle Rock shall notify the Commission, by a filing in this docket, when the project is complete.

3. The issue of cost allocation is bifurcated from the issue of construction. The issue of cost allocation of the project shall be determined at a hearing to be scheduled in July. The parties are required to submit a list of available dates for the entire month of July within ten days of the effective date of this Order. Failure to submit a list of available dates will constitute a waiver of any objection to the date selected for the hearing.

4. The hearing in this matter scheduled for March 16, 2004 is vacated.

5. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge