

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
ACCEPTING SECOND STIPULATION
AND PARTIAL SETTLEMENT
AGREEMENT AND VACATING HEARING DATES**

Mailed Date: August 13, 2004

I. STATEMENT

1. On August 12, 2004, Applicant Town of Castle Rock (Town), Intervenor Union Pacific Railroad Company (Union Pacific), and Intervenor Burlington Northern and Santa Fe Railway Company (BNSF) (collectively Parties) filed their Joint Motion for Approval of Second Stipulation and Partial Settlement Agreement and to Vacate Hearing Dates. The Second Stipulation allocates the cost of the theoretical structure for the Front Street Flyover Project at 50 percent to the Town and 50 percent to Union Pacific, and caps the dollar value of the Union Pacific's allocation at a figure not to exceed \$2,350,000. The Parties have reserved the issue of the cost of the theoretical structure for agreement by the Parties no later than November 30, 2004. If the parties do not agree as of November 30, 2004 on the cost of the theoretical structure, the parties shall submit that issue to the Commission for determination based on the best information available at that time.

2. The Second Stipulation further obligates the Parties to work together to attempt to reach agreement on the cost of the theoretical structure that they have agreed to allocate 50/50. The Parties agree to use the best information available to them to estimate the cost of a theoretical structure, including the actual costs incurred for the construction of the Front Street Flyover, actual unit prices for the construction of the Front Street Flyover, any change orders, and actual acquisition costs, as well as all applicable license fees taking into account reasonable assumptions and projections as necessary and appropriate.

3. The Commission encourages negotiated settlements to contested proceedings. The Parties here have attempted to set forth an approach that will allow them to avoid the cost of litigating the allocation of costs. The Administrative Law Judge finds and concludes that the Second Stipulation and Partial Settlement Agreement is in the public interest and it should be accepted. Accordingly, he will vacate the hearing currently scheduled for September 15 through 17, 2004.

II. ORDER

A. It Is Ordered That:

1. The Joint Motion for Approval of Second Stipulation and Partial Settlement Agreement and to Vacate Hearing Dates is granted. The Second Stipulation and Partial Settlement Agreement is incorporated into this Order as if fully set forth, and is attached to this Order as Appendix A.

2. The Parties shall file a final Stipulation, or other appropriate pleading, no later than December 1, 2004.

3. The hearing in this matter scheduled for September 15 through 17, 2004 is vacated.

4. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge