

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-372R

IN THE MATTER OF THE APPLICATION OF THE BOARD OF COUNTY COMMISSIONERS OF CHAFFEE COUNTY, COLORADO, FOR THE AUTHORITY TO REINSTATE THE UNION PACIFIC RAILROAD COMPANY'S PRIVATE HIGHWAY-RAILROAD CROSSING LOCATED NEAR RAILROAD MILE MARKER 213.07 IN CHAFFEE COUNTY, COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING PETITION TO INTERVENE; DEEMING
APPLICATION COMPLETE; SETTING HEARING AND
ESTABLISHING PROCEDURAL SCHEDULE**

Mailed Date: September 20, 2004

I. STATEMENT

1. The captioned application of the Board of County Commissioners of Chaffee County, Colorado was filed with the Colorado Public Utilities Commission (Commission) on July 19, 2004.

2. On July 26, 2004, the Commission issued its Notice of Application Filed (Notice).

3. On September 3, 2004, the Union Pacific Railroad Company (UPRR) filed its Petition for Leave to Intervene (Petition) and Entry of Appearance and Notice of Intervention in this docket. Any desired responses to the Petition were due on or before September 17, 2004. *See, 4 Code of Colorado Regulations (CCR) 723-1-22(b).* However, none were filed and, as a result, the Petition is uncontested.

4. The Petition acknowledges that UPRR's request to intervene in this matter was filed after the August 25, 2004, deadline established by the Notice. However, it indicates that

UPRR's failure to meet that deadline resulted from a good faith belief that its concerns would be resolved either by an amendment to or by withdrawal of the application prior to that date. The Petition was filed only after it became apparent to UPRR that neither of these contingencies would occur. Good grounds having been shown, the Petition will be granted.

5. In order to facilitate the processing of this application it is advisable to deem it complete and to set it for hearing.¹ In connection therewith, the deadlines for the submission of witness lists and exhibits set forth in the Notice may be disregarded and the procedural schedule adopted by the Order that follows will apply to this proceeding.

6. Notwithstanding the above, this application may be eligible for processing under the Commission's modified, no-hearing procedure in the event it becomes uncontested (either through a stipulated agreement by the parties resolving all material issues or otherwise) prior to hearing. *See*, § 40-6-109(5), C.R.S., and 4 CCR 723-1-24.

II. ORDER

A. It Is Ordered That:

1. The Petition for Leave to Intervene filed by the Union Pacific Railroad Company is granted.

2. The captioned application of the Board of County Commissioners of Chaffee County, Colorado, is deemed complete as of the effective date of this Order.

¹ At present, the Commission's file in this matter does not contain an agreement between Chaffee County and UPRR covering the construction, operation, and maintenance of the proposed crossing as required by 4 CCR 723-1-51(d)(1). It is anticipated that any stipulation between the parties designed to resolve this matter will include such an agreement. In the absence of such a stipulation, these issues will be resolved at hearing.

3. The hearing of this matter is scheduled as follows:

DATE: December 21, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

4. The Board of County Commissioners of Chaffee County, Colorado shall file three copies of its list of witnesses and exhibits and shall serve all other parties and the Commission's Staff with a copy of the same on or before December 1, 2004.

5. The Union Pacific Railroad Company shall file three copies of their list of witnesses and exhibits and shall serve all other parties and the Commission's Staff with a copy of the same on or before December 10, 2004.

6. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

