

Decision No. R04-1151-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-094R

IN THE MATTER OF THE APPLICATION OF THE COUNTY OF ROUTT, COLORADO, FOR AN ORDER AUTHORIZING THE INSTALLATION OF A RAIL-ROAD CROSSING PROTECTION DEVICE TO BE CONSTRUCTED ON THE RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD COMPANY AND ROUTT COUNTY ROAD 14 ADJACENT TO ROUTT COUNTY ROAD 205 (DOT CROSSING NO 253-672E) STEAMBOAT SPRINGS, COLORADO.

DOCKET NO. 04A-189R

IN THE MATTER OF THE APPLICATION OF MORGAN COUNTY, COLORADO FOR AN ORDER AUTHORIZING THE INSTALLATION OF SIGNAL LIGHTS AND OTHER PROTECTIVE DEVICES TO BE CONSTRUCTED ACROSS THE TRACKS AND RIGHT-OF-WAY OF THE BURLINGTON NORTHERN SANTA FE RAILROAD COMPANY AT DOT #57262S ON COUNTY ROAD 25 IN BRUSH, MORGAN COUNTY, COLORADO.

DOCKET NO. 04A-200R

IN THE MATTER OF THE APPLICATION OF THE CITY OF AURORA, COLORADO FOR AUTHORITY TO TIE TRAFFIC SIGNAL RAILROAD INTERCONNECT EQUIPMENT FOR TRAFFIC SIGNALS AT SMITH ROAD AND TOWER ROAD INTO THE UNION PACIFIC RAILROAD COMPANY SIGNAL BOX AT TOWER ROAD.

DOCKET NO. 04A-374R

IN THE MATTER OF THE APPLICATION OF THE COUNTY OF JEFFERSON FOR AUTHORITY TO WIDEN AND SIGNALIZE THE RAILROAD HIGHWAY CROSSINGS OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY AT MCINTYRE STREET IN THE COUNTY OF JEFFERSON, STATE OF COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING UNOPPOSED MOTION FOR
LEAVE TO INTERVENE, SETTING HEARING
DATE, ESTABLISHING PROCEDURAL
SCHEDULE, AND EXTENDING TIME
FOR COMMISSION DECISION**

Mailed Date: October 4, 2004

I. STATEMENT

1. On March 4, 2004, the County of Routt (Routt) filed an application for a Commission order authorizing installation of a railroad crossing protection device at the crossing of the Union Pacific Railroad Company (UPRR) railroad track and Routt County Road 205, located in Routt County, Colorado (Routt Application). Routt asks that the proposed project's cost be allocated between Routt, the UPRR, and the Highway Crossing Protection Fund (Fund). That application commenced Docket No. 04A-094R.

2. On April 1, 2004, the Commission gave public notice of the Routt Application. See Notice of Application Filed, dated April 1, 2004. The UPRR intervened.

3. On May 26, 2004, the Commission deemed the Routt Application complete as of that date and referred this matter to an administrative law judge (ALJ) for hearing. In accordance with § 40-6-9.5, C.R.S., a Commission decision in the Routt Application should issue on or before December 22, 2004.

4. On April 15, 2004, Morgan County (Morgan) filed an application for a Commission order authorizing installation of a railroad crossing protection device at the crossing of the Burlington Northern and Santa Fe Railroad Company (BNSF) railroad track at DOT #57262S on County Road 25, in Brush, Colorado (Morgan Application). Morgan asks that

the proposed project's cost be allocated between Morgan, the BNSF, and the Fund. That application commenced Docket No. 04A-189R.

5. On April 30, 2004, the Commission gave public notice of the Routt Application. See Notice of Application Filed, dated April 30, 2004. BNSF intervened.

6. On June 8, 2004, the Commission deemed the Morgan Application complete as of that date and referred this matter to an ALJ for hearing. Pursuant to § 40-6-9.5, C.R.S., a Commission decision in the Morgan Application should issue on or before January 4, 2005.

7. On April 26, 2004, the City of Aurora (Aurora) filed an application seeking Commission authorization to tie traffic signal interconnect equipment at Tower Road and Smith Road into the UPRR track circuit equipment on Tower Road (Aurora Application). Aurora asks that the proposed project's cost be allocated between Aurora, the UPRR, and the Fund. That application commenced Docket No. 04A-200R.

8. On May 5, 2004, the Commission gave public notice of the Aurora Application. See Notice of Application Filed, dated May 5, 2004. UPRR intervened.

9. On June 16, 2004, the Commission deemed the Aurora Application complete as of June 16, 2004 and referred this matter for hearing by an ALJ. Pursuant to § 40-6-9.5, C.R.S., a Commission decision in the Aurora Application should issue on or before January 12, 2005.

10. By Decision No. C04-0848, the Commission consolidated the Routt Application, the Morgan Application, and the Aurora Application for hearing before an ALJ.

11. On July 19, 2004, the County of Jefferson (Jefferson) filed an application seeking Commission authorization to widen and to signalize the railroad-highway crossings of the BNSF at McIntyre Street in Jefferson County (Jefferson Application). Jefferson asks that the proposed

project's cost be allocated between Jefferson, the BNSF, and the Fund. That application commenced Docket No. 04A-374R.

12. On July 27, 2004, the Commission gave public notice of the Jefferson Application. See Notice of Application Filed, dated May 27, 2004. BNSF intervened.

13. On July 27, 2004, the Commission deemed the Jefferson Application complete as of July 27, 2004 and referred this matter for hearing by an ALJ. Pursuant to § 40-6-9.5, C.R.S., a Commission decision in the Jefferson Application should issue on or before February 22, 2005.

14. By Decision No. C04-0903, the Commission consolidated the Routt Application, the Morgan Application, the Aurora Application, and the Jefferson Application for hearing by an ALJ.¹ The Commission stated that, while each application seeks funds from the Fund created by § 40-29-116, C.R.S., the Fund does not have sufficient monies available to pay for all of the demands placed upon it. The Commission concluded that a consolidated proceeding should be held before one ALJ “[i]n order to make the most effective and efficient disbursement of monies from the Fund[.]” Decision No. C04-0961 at ¶ I.2.

15. This consolidated matter is assigned to the undersigned ALJ.

16. On August 30, 2004, Staff of the Commission (Staff) filed a Motion for Leave to Intervene in this consolidated proceeding. On that date Staff also filed its Notice of Intervention, Entry of Appearance, and Notice Pursuant to Rules 9(d) and 24 (a)(1). No party opposed this motion, and the ALJ orally granted this request at the prehearing conference in this case. This Order memorializes that oral ruling.

¹ By Decision No. C04-0961, the Commission denied an application for rehearing, reargument, or reconsideration of this consolidation order.

17. Pursuant to Decision No. R04-1036-I, the ALJ held a prehearing conference on September 8, 2004. All parties were present, were represented, and actively participated.

18. During this prehearing conference the ALJ considered the Commission's ability to issue a decision in this matter by the end of the § 40-6-109.5(1), C.R.S., time frame in each of Applications.² See ¶¶ 3, 6, 9, and 13, above. The ALJ took administrative notice of the fact that funding-related issue in this consolidated proceeding (*i.e.*, allocation of monies from the Fund across the four projects when there are insufficient monies to meet the requests) is a case of first impression and raises complex, novel, and unique legal and factual issues. The parties presented information about the impact, both on their cases and on their hearing preparation, of the allocation question. In addition, the record shows that the Commission consolidated the Jefferson Application, the last proceeding to be added, on August 5, 2004. This day was well into the 210-day period of the four cases. Finally, to meet the December 22, 2004, decision date,³ the parties were informed that the hearing in this proceeding would have had to be held no later than mid-October. Review of the Commission's file in the Routt Application revealed, and Routt County agreed, that there was no cost estimate information for its project available as of the date of the prehearing conference. With respect to the other three dockets, the railroad representatives stated that it might be necessary to update at the hearing the cost estimate data provided with those Applications and that whether an update would be done would depend on the amount of time which elapsed between the preparation of the filed cost estimates and the hearing. In light of the missing data, already-scheduled matters, and witness availability issues,

² These dates are: December 22, 2004 (Routt Application); January 4, 2005 (Morgan Application); January 12, 2005 (Aurora Application); and February 22, 2005 (Jefferson Application).

³ This is the first date and, therefore, is the date by which the Commission decision in the consolidated matter should be issued.

the parties were unable to prepare for hearing by mid-October (which was about four or five weeks after the prehearing conference). If the hearing is not held by mid-October, the December 22, 2004, Commission decision date for the Routt Application cannot be met.

19. Based on these matters and considerations, the ALJ determines that extraordinary circumstances exist which warrant extending until March 22, 2005, the date by which the Commission must issue its decision in the Routt Application, in the Morgan Application, in the Aurora Application, and in the Jefferson Application.

20. On September 23, 2004, the parties submitted two proposed hearing dates: December 1, 2004, for the Routt Application and the Aurora Application (each of which involves the UPRR) and December 2, 2004, for the Morgan Application and the Jefferson Application (each of which involves the BNSF). These dates are acceptable.

21. On September 24, 2004, the parties filed a Joint Petition for Commission-Assisted Mediation. The petition was granted, and a mediation session was scheduled for November 9, 2004. ALJ Isley will conduct that mediation. See Decision No. R04-1124-I.

22. Based on the hearing dates and in view of the scheduled mediation session, the ALJ will adopt the following schedule: (a) on or before **October 13, 2004**, each Applicant will file its list of witnesses, a detailed summary of each witness's testimony, and copies of its exhibits; (b) on or before **October 25, 2004**, each Intervenor will file its list of witnesses, a detailed summary of each witness's testimony, and copies of its exhibits; (c) on or before **November 18, 2004**, each party will file its prehearing motions; (d) on or before **November 26, 2004**, the parties will file any stipulation reached; (e) hearing in the matter will be held on **December 1 and 2, 2004**; and (f) on or before **December 15, 2004**, each party will file its post-hearing statement of position to which, absent further Order, no response will be permitted.

23. No final prehearing conference will be scheduled at this time. If a party believes that a final prehearing conference is warranted, it may file an appropriate motion.

24. Discovery in this matter, absent further Order, will be governed by Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77. Parties will be ordered to serve all discovery requests and all discovery responses on all other parties.

25. A party (including its witnesses) shall provide the decision number when referring to or citing a Commission decision.

26. Parties are reminded of Rule 4 CCR 723-1-22(d)(3), which states: "If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading." If a party wishes the ALJ to consider a cited authority *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide a copy of, or a website address for, that cited authority.

II. ORDER

A. It Is Ordered That:

1. The Motion for Leave to Intervene filed by Staff of the Commission is granted.
2. Staff of the Commission is a party to this consolidated proceeding.
3. Parties shall serve all filings on counsel and on Staff personnel identified in Staff's Notice Pursuant to Rule 9(d) filed on August 30, 2004.
4. The time for Commission decision in each docket consolidated in this matter is enlarged to and including March 22, 2005.
5. The procedural schedule set out above is adopted.

6. The hearing in this docket is scheduled on the following dates, at the following time, and in the following location:

DATE: December 1 and 2, 2004
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

7. The December 1, 2004, hearing will address the Application of the County of Routt (Docket No. 04A-094R) and the Application of the City of Aurora (Docket No. 04A-200R).

8. The December 2, 2004, hearing will address the Application of Morgan County (Docket No. 04A-189R) and the Application of the County of Jefferson (Docket No. 04A-374R).

9. The parties shall follow the procedures, and shall make the filings, as detailed above.

10. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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