

Decision No. R04-1191-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 JOINT
MOTION, MODIFYING
PROCEDURAL SCHEDULE, AND
WAIVING RESPONSE TIME**

Mailed Date: October 13, 2004

I. STATEMENT

1. On March 4, 2004, the County of 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). That application commenced Docket No. 04A-094R. On April 1, 2004, the Commission gave public notice of the Routt Application. The UPRR and Staff of the Commission (Staff) intervened.

2. On April 15, 2004, Morgan County 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). That application commenced Docket No. 04A-189R. On April 30, 2004, the Commission gave public notice of the Routt Application. BNSF and Staff intervened.

3. On April 26, 2004, the City of 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). That application

commenced Docket No. 04A-200R. On May 5, 2004, the Commission gave public notice of the Aurora Application. UPRR and Staff intervened.

4. By Decision No. C04-0848, the Commission consolidated the Routt Application, the Morgan Application, and the Aurora Application for hearing before an Administrative Law Judge (ALJ).

5. On July 19, 2004, the County of 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). That application commenced Docket No. 04A-374R. On July 27, 2004, the Commission gave public notice of the Jefferson Application. BNSF and Staff intervened.

6. 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.

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

8. 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. Various procedural issues were discussed.

9. Following that prehearing conference, the parties submitted two suggested 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).

10. Based on the available information, the ALJ issued Decision No. R04-1151-I, which (*inter alia*) established a procedural schedule, including hearing dates, for this

consolidated matter. On October 4, 2004, after issuance of that Order, the parties submitted a letter containing an agreed-upon proposed procedural schedule. Due to the timing of its receipt, the proposal was not considered by the ALJ prior to issuance of Decision No. R04-1151-I.

11. On October 13, 2004, the parties filed a Joint Motion to Modify Procedural Schedule (Motion) and Request for Waiver of Response Time (Request). In that filing the parties state that they wish to conclude discovery before filing and exchanging witness lists and copies of exhibits and, further, that there is discovery outstanding at this time. The parties request modification of the procedural schedule established in Decision No. R04-1151-I to include the dates informally agreed-to by the parties and submitted in the October 4, 2004, letter.

12. The Motion states good cause. As all parties concur, no party will be prejudiced by the granting of the Motion. The Motion will be granted, and the procedural schedule established in Decision No. R04-1151-I at ¶ 21 will be modified as set out below.

13. The hearing dates of December 1 and 2, 2004, are unaffected by the modification. In addition, the scheduled ALJ-assisted mediation before Judge Isley is unaffected by this modification. *See* Decision No. R04-1124-I (establishing date and procedures for the mediation).

14. The following modified schedule will be adopted: (a) on or before **November 15, 2004**, each party will file its list of witnesses, a detailed summary of each witness's testimony, and copies of its exhibits; (b) on or before **November 17, 2004**, each party will file its prehearing motions; (c) on or before **November 24, 2004**, the parties will file any stipulation reached;¹ (d) hearing in this matter will be held on **December 1 and 2, 2004**; and (e) on or before

¹ At the time the parties file any stipulation, they shall provide a copy of the filed stipulation directly to the ALJ in her office. This requirement does not affect the number of copies which must be filed with the Commission.

December 17, 2004, each party will file its post-hearing statement of position to which, absent further Order, no response will be permitted.

15. 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.

16. The last day to serve discovery is **November 1, 2004**. Absent further order, discovery in this matter will be governed by Rule 4 *Code of Colorado Regulations* 723-1-77. Parties shall serve all discovery requests and all discovery responses on all other parties. Further, unless part of a motion to compel response to discovery, an exhibit, or part of testimony, discovery requests, responses, and objections are *not to be filed with the Commission and are not to be served on the Commission advisors* (including Commission counsel) identified by Staff in the Rule 9(d) Notice filed by Staff in this docket.

17. In the Request, the parties seek a waiver of response time. Because all parties agree to the proposed procedural schedule and request the modification, no party will be prejudiced if the requested waiver is granted. The Request states good cause and will be granted. Response time to the Motion will be waived.

II. ORDER

A. It Is Ordered That:

1. The Joint Motion to Modify Procedural Schedule is granted.
2. The procedural schedule established in Decision No. R04-1151-I is modified as set out above. To the extent not modified by this Order, Decision No. R04-1151-I remains in effect.

3. The parties shall follow the procedures, and shall make the filings, as detailed above and, to the extent not modified by this Order, in Decision No. R04-1151-I.

4. The Request for Waiver of Response Time is granted.

5. Response time to the Joint Motion to Modify Procedural Schedule is waived.

6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge