

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03A-475R

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IN THE MATTER OF THE APPLICATION OF UNION PACIFIC RAILROAD COMPANY,  
FOR AUTHORITY TO CONSTRUCT PHASE 1 OF PECOS STREET AS A GRADE  
SEPARATION AT THE CROSSING OF THE ROADWAY WITH THE UNION PACIFIC  
RAILROAD COMPANY (US DOT NO 253 279T AT THE UPRR MILEPOST 3.87) IN  
ADAMS COUNTY, STATE OF COLORADO.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
VACATING PROCEDURAL SCHEDULE,  
ESTABLISHING NEW PROCEDURAL  
SCHEDULE, AND ORDERING  
STAFF TO OBTAIN COUNSEL**

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Mailed Date: November 1, 2004

**I. STATEMENT**

1. On October 23, 2003, Union Pacific Railroad Company (Applicant) filed an application for a Commission order authorizing the construction of a grade separation at Pecos Street in Adams County (Application). The Application commenced this proceeding.

2. The Commission gave public notice of the Application. *See* Notice of Application Filed, dated November 5, 2003 (Notice). That Notice established a procedural schedule for this proceeding. By this Order the undersigned Administrative Law Judge (ALJ) will vacate that procedural schedule.

3. On November 5, 2003, Staff of the Commission (Staff) intervened. The intervention was not filed by an attorney on behalf of Staff. If Staff desires to continue as an intervenor in this proceeding, Staff must obtain counsel and that counsel must enter her/his

appearance in this matter on or before November 30, 2004. If counsel for Staff does not enter her/his appearance, the intervention may be dismissed.

4. The time for intervention in this matter has expired. Staff is the only intervenor. Thus, the only parties in this proceeding are Applicant and Staff.

5. On October 29, 2004, by Decision No. C04-1277 the Commission deemed the Application complete as of that date and referred this matter to an ALJ. The Commission provided this specific guidance: Referral to the ALJ was “for determination of [the Application’s] merits, including the status of the final contract between the parties for construction and maintenance of the crossing” (*id.* at ¶ I.A.7). In addition, the Commission directed to the ALJ to “establish a procedural schedule for the filing of exhibits and witness lists and any pre-filed testimony.” *Id.* at ¶ II.A.3.

6. Hearing in this matter is scheduled for April 1, 2005. *See* Decision No. C04-1277 at ¶ II.A.2.

7. In view of this hearing date and the Commission’s guidance, and to provide the parties time to come to a final agreement and written contract with respect to construction and maintenance of the proposed crossing, the following schedule will be adopted: (a) on or before **February 25, 2005**, Applicant will file its list of witnesses, a detailed summary of the testimony of each identified witness, and copies of its exhibits (including a copy of the final contract for construction and maintenance of the proposed crossing);<sup>1</sup> (b) on or before **March 11, 2005**, each intervenor will file its list of witnesses, a detailed summary of the testimony of each identified witness, and copies of its exhibits; (c) on or before **March 25, 2005**, each party will file its

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<sup>1</sup> So there is no misunderstanding of this filing requirement, the ALJ emphasizes that the parties are to file **copies** of their exhibits. Filing a list of exhibits to which the exhibits are not attached will not meet this filing requirement.

prehearing motions;<sup>2</sup> (d) on or before **March 25, 2005**, the parties will file any stipulation reached;<sup>3</sup> and (e) hearing in this matter will be held on **April 1, 2005**.

8. No final prehearing conference will be scheduled. If a party believes that a final prehearing conference would be beneficial, that party may file an appropriate motion.

9. Absent further order, there will be no post-hearing statements of position.

10. In accordance with Commission procedure, absent good cause shown, no witness may testify (except in rebuttal) unless that witness has been identified and her/his testimony is summarized in accordance with the procedural schedule established in this Order. Similarly, absent good cause, no exhibit may be admitted (except in rebuttal) unless that exhibit has been provided in accordance with the procedural schedule established in this Order.

11. The provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 will govern discovery and motions to compel discovery in this proceeding.

12. Rule 4 CCR 723-1-22(d)(3) 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 copies of that cited authority.

13. The parties must provide the decision number when referring to a Commission decision.

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<sup>2</sup> A filing party shall provide a copy of any filed motion directly to the ALJ (delivered to her office). This will not reduce the number of copies which must be filed with the Commission.

<sup>3</sup> The parties shall provide a copy of any filed stipulation directly to the ALJ (delivered to her office). This will not reduce the number of copies which must be filed with the Commission.

**II. ORDER**

**A. It Is Ordered That:**

1. On or before November 30, 2004, Staff of the Commission must obtain counsel, and counsel must enter an appearance, in this matter. Failure of Staff of the Commission to obtain counsel may result in dismissal of Staff of the Commission's intervention.

2. The procedural schedule established in the Notice of Application Filed, dated November 5, 2003, is vacated.

3. The procedural schedule set out above is adopted.

4. The parties shall follow the procedures and shall make the filings set out above.

5. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge