

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-190R

IN THE MATTER OF THE APPLICATION OF THE AURARIA HIGHER EDUCATION CENTER FOR AN ORDER AUTHORIZING THE INSTALLATION OF A PEDESTRIAN CROSSING TO BE CONSTRUCTED IN THE RIGHTS-OF-WAY OF RTD AND UNION PACIFIC RAILROAD COMPANY (US DOT-AAR CROSSING I.D. NO. 253010E AT UPRR MILEPOST 1.2) IN CURTIS STREET, BETWEEN 5TH STREET AND 7TH STREET IN THE CITY AND COUNTY OF DENVER, COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
NOTING WAIVER OF § 40-6-109.5,
C.R.S., GRANTING MOTION TO
INTERVENE, AND SCHEDULING
PREHEARING CONFERENCE**

Mailed Date: November 10, 2004

I. STATEMENT

1. On April 15, 2004, the Auraria Higher Education Center (AHEC or Applicant) filed an application for a Commission order authorizing the installation of a concrete pedestrian crossing to be constructed in the rights-of-way of the Regional Transportation District (RTD) and the Union Pacific Railroad Company (UPRR) at a location in Denver, Colorado (Application). The Application commenced this proceeding.

2. The Commission gave public notice of the Application. *See* Notice of Application Filed, dated May 3, 2004. UPRR and RTD timely intervened of right.

3. On October 8, 2004, by Decision No. C04-1169 the Commission deemed the Application complete as of that date and referred this matter to an Administrative Law Judge (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.8).

4. By Decision No. R04-1281-I the undersigned ALJ, to whom the case is assigned, granted a motion filed by UPRR; vacated the scheduled hearing; and scheduled a prehearing conference for November 10, 2004.

5. On November 8, 2004, Staff of the Commission (Staff) filed its Notice of Intervention, Entry of Appearance, and Notice Pursuant to Rules 9(d) and 24(a)(1). This filing was made out-of-time. At the prehearing conference held on November 10, 2004, Staff orally moved for leave to intervene out-of-time. Staff presented good cause for its failure to intervene timely, and no party opposed the oral motion. Granting the oral motion would not prejudice any party. The ALJ granted Staff's oral motion and permitted Staff to intervene. This Order memorializes that ruling.

6. The ALJ held a prehearing conference on November 10, 2004. All parties (*i.e.*, AHEC, RTD, UPRR, and Staff) were present, were represented, and participated.

7. At the prehearing conference, the parties addressed the question of whether the Application is ready to proceed. The parties presented the following information: the plans for the proposed project filed as part of the Application are no longer under consideration; at present AHEC has not selected the final plan for the proposed project; and the parties are in discussions concerning possible alternative plans. The issue identified by RTD in its intervention remains unresolved because no agreement has been signed. The change in the plan for the proposed crossing has raised safety concerns for UPRR which UPRR believes need to be resolved.

8. Applicant wished to retain its Application and to have the flexibility to come to a final decision on the plan for the proposed crossing, to amend the Application as necessary to

accommodate the change of plans, and possibly to reach agreement with the intervenors. To achieve these goals and to provide sufficient time for discussions with the intervenors, Applicant orally waived the time limits specified in § 40-6-109.5(2), C.R.S. As a result of this waiver and pursuant to § 40-6-109.5(3), C.R.S., the Commission is no longer bound by the time frame established by § 40-6-109.5, C.R.S.

9. A prehearing conference will be scheduled for **January 13, 2005**. At that prehearing conference the parties are to report on the status of this matter. If the situation warrants, the parties should be prepared to discuss whether a hearing in this matter is necessary and, if it is, a procedural schedule (including hearing dates).

II. ORDER

A. It Is Ordered That:

1. The unopposed oral motion of Staff of the Commission for leave to intervene out-of-time is granted.

2. Staff of the Commission is an intervenor in this proceeding.

3. As a result of the waiver by Applicant Auraria Higher Education Center, the provisions of § 40-6-109.5, C.R.S., do not apply to this proceeding.

4. A prehearing conference in this docket is scheduled as follows:

DATE: January 13, 2005

TIME: 9:00 a.m.

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

5. The parties shall follow the procedures, and shall be prepared to discuss the matters, set out above.

6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge