

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-090R

IN THE MATTER OF THE APPLICATION OF THE TOWN OF CASTLE ROCK,
4175 N. CASTLETON COURT, CASTLE ROCK, COLORADO 80109, FOR AUTHORITY TO
CONSTRUCT FIFTH STREET ROADWAY IMPROVEMENTS AT THE CROSSING OF THE
ROADWAY WITH THE UNION PACIFIC RAILROAD COMPANY, IN DOUGLAS
COUNTY, STATE OF COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
DENYING MOTION AND WAIVING
RESPONSE TIME**

Mailed Date: November 26, 2004

I. STATEMENT

1. On March 1, 2004, the Town of Castle Rock (Applicant) filed an application for a Commission order authorizing the construction of the widening of Fifth Street in Castle Rock at the existing crossing of Union Pacific Railroad Company (Application). Applicant filed a supplement to the Application of March 26, 2004. The Application commenced this proceeding.

2. The Commission gave public notice of the Application. Union Pacific Railroad Company (UPRR) and Burlington Northern and Santa Fe Railway Company (BNSF) intervened. The Parties are Applicant, UPRR, and BNSF (collectively, Parties).

3. On October 8, 2004, by Decision No. C04-1168 the Commission deemed the Application complete as of that date; scheduled the hearing in this matter for March 14, 2005; 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). 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. By Decision No. R04-1227-I the undersigned ALJ, to whom this matter is assigned, established a procedural schedule.

4. On November 23, 2004, the Parties filed a Joint Motion to Proceed Pursuant to C.R.S. § 40-6-109(5) and to Vacate Hearing Date (Joint Motion). As the basis for this motion, the Parties state: “Assuming that a minor matter as to design can be worked out between the parties,” there will be no controversy so the matter can proceed as a noncontested matter. The Parties believe they can “report to the [ALJ] on or before January 1, 2005 as to whether or not the design issue has been resolved.” Joint Motion at ¶ 2.

5. The Joint Motion is premature because it is obvious that an issue remains to be resolved. In addition, the Joint Motion does not address explicitly the issue (discussed in ¶ 3, *supra*) identified by the Commission in Decision No. C04-1168. In view of these facts, the ALJ finds that the Joint Motion does not state good cause for vacating the hearing and treating the Application as an noncontested matter pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-24. For these reasons, the ALJ will deny the Joint Motion.

6. Should the Parties resolve all issues, the Parties may file a stipulation and settlement agreement and may file a motion to proceed pursuant to § 40-6-109(5), C.R.S., and to vacate the hearing. Absent such an agreement and motion, the procedural schedule and the hearing date set out in Decision No. R04-1227-I will remain in effect.

7. Because all Parties join in the Joint Motion, response time to the Joint Motion will be waived.

II. ORDER

A. It Is Ordered That:

1. The Joint Motion to Proceed Pursuant to C.R.S. § 40-6-109(5) and to Vacate Hearing Date is denied.

2. Response time to the Joint Motion to Proceed Pursuant to C.R.S. § 40-6-109(5) and to Vacate Hearing Date is waived.

3. The procedural schedule and hearing date as set out in Decision No. R04-1227-I remain in effect.

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge