

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0624R

IN THE MATTER OF THE APPLICATION OF THE WEST MOUNTAIN METROPOLITAN DISTRICT AND THE TOWN OF FRASER FOR AUTHORITY TO CONSTRUCT A NEW HIGHWAY-RAIL GRADE SEPARATION AT THE PROPOSED CROSSING OF GRAND PARK DRIVE AND THE UNION PACIFIC RAILROAD COMPANY TRACKS IN FRASER, COLORADO AND ABOLISH THE AT-GRADE RAILROAD CROSSING AT KINGS CROSSING ROAD (DOT NO. 254-214U) IN WINTER PARK, COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ACCEPTING AMENDED APPLICATION,
VACATING BRIEFING SCHEDULE, REQUIRING JOINT
FILING, AND DISMISSING CERTAIN INTERVENERS**

Mailed Date: September 15, 2014

TABLE OF CONTENTS

I.	STATEMENT, FINDINGS, AND CONCLUSIONS	2
A.	Amended Application.....	3
B.	Briefing Schedule.....	4
C.	Public Comment Hearing.....	4
D.	Cornerstone and Grand Park’s Intervention.....	5
E.	Winter Park’s Intervention.....	5
F.	Evidentiary Hearing & Requirement to Make Filing.....	5
II.	ORDER.....	6
A.	It Is Ordered That:	6

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. Only those portions of the procedural history necessary to understand this Decision are included.

2. On June 5, 2014, the West Mountain Metropolitan District and the Town of Fraser (collectively, Applicants) filed the above-captioned Application.

3. On July 11, 2014, Union Pacific Railroad Company (Union Pacific) filed an “Entry of Appearance and Notice of Intervention,” which it amended by a filing made on July 14, 2014.

4. On July 15, 2014, the Town of Winter Park (Winter Park) filed a “Motion to Intervene.”

5. On July 17, 2014, Cornerstone Winter Park Holdings, LLC (Cornerstone) and Grand Park Development LLC (Grand Park) filed a “Motion to Intervene.”

6. On July 30, 2014, the Commission deemed the Application complete.

7. On August 11, 2014, the Commission referred this matter for disposition to an administrative law judge (ALJ). Decision No. C14-0966-I.

8. A prehearing conference was held on September 2, 2014. Decision No. R14-1014-I and Decision No. R14-1066-I.

9. Cornerstone and Grand Park have been ordered to show cause why their Motion to Intervene should not be denied based upon their failure to appear at the properly noticed prehearing conference. Decision No. R14-1067-I issued September 5, 2014.

10. During the prehearing conference, Applicants indicated that they intend to amend the Application to eliminate their request to abolish the King’s Crossing Road crossing. Applicants were ordered to file their proposed amended Application by September 5, 2014.

Decision No. R14-1066-I. The filing was to include a statement indicating Applicants' preferred location for the hearing. *Id.*

11. Any party objecting to the proposed amendments to the Application were required to file and serve their objection on or by 5:00 p.m. on September 11, 2014. *Id.* Decision No. R14-1066-I advises the parties that failure to make a filing objecting to the proposed amendments to the Application by the deadline will amount to a waiver of any objections to the proposed amendments to the Application.

12. In addition, Decision No. R14-1066-I requires all parties to submit a legal brief on or by 5:00 p.m. on September 15, 2014 addressing whether Winter Park may be allocated any costs of construction for the grade separation in the Town of Fraser in light of Rule 7207 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7 and § 40-4-106, C.R.S. The parties were also required to address the applicability of the December 30, 2013 declaratory judgment by the Grand County District Court in Case No. 13CV30045 to this proceeding, including the scope of Winter Park's potential obligation (if any), in this proceeding.

13. Decision No. R14-1066-I indicated that the ALJ would revisit the issue of whether a public comment hearing should be held after Applicants filed their proposed Amended Application.

A. Amended Application.

14. Applicants timely filed their proposed Amended Application along with a "Motion to Amend, Waive Response Time, and Vacate Briefing Schedule" (Motion to Amend). The Motion to Amend indicates that the proposed Amended Application revises the original Application to exclude Applicants' original request that Kings Crossing Road crossing be

abolished, and to exclude Applicants' original request that Winter Park be allocated costs relating to construction of the grade separation in the Town of Fraser (requested by the original and Amended Application). The proposed Amended Application confirms that Applicants are no longer seeking either of these original requests for relief. Thus, if the proposed Amended Application is accepted, the remaining requests for relief are for an order authorizing construction of the grade separation at Grand Park Drive in the Town of Fraser, and allocation of costs of that construction in accordance with Commission rules, but not to Winter Park.

15. No party filed an objection to the Motion to Amend or the proposed Amended Application.

16. To be acceptable, a proposed amendment to an application must be restrictive in nature, must be clear and understandable, and administratively enforceable. The ALJ finds that the amendments proposed by Applicant in the Amended Application are restrictive in nature, clear and understandable, and administratively enforceable. The Amended Application will be accepted.

B. Briefing Schedule.

17. Since the Amended Application eliminates the issues identified for briefing, there is no need for the parties to submit briefs as ordered in Decision No. R14-1066-I. The ALJ will vacate the briefing schedule.¹

C. Public Comment Hearing.

18. The public comments that have been filed in this proceeding focus on the Applicants' original request to abolish King's Crossing Road crossing, and to allocate costs of construction for the grade separation in Fraser to Winter Park. The Amended Application

¹ The ALJ informed the parties of this via email on September 12, 2014 in an effort to avoid the parties' unnecessary expenditure of resources toward briefing.

eliminates those issues. Thus, given the significantly narrowed scope of the Amended Application, the ALJ finds that a public comment hearing is not necessary and will not hold a public comment hearing on the Amended Application.

D. Cornerstone and Grand Park's Intervention.

19. On September 12, 2014, Cornerstone and Grand Park filed a "Notice of Withdrawal of Motion to Intervene" (Cornerstone's Withdrawal or Withdrawal). The Withdrawal states that based on the Amended Application and Winter Park's intent to withdraw, Cornerstone and Grand Park withdraw their intervention in this proceeding.

20. The Withdrawal also states that counsel did not appear at the prehearing conference because she believed that Mr. Downing and Mr. Bestall would be jointly representing Cornerstone, Grand Park and the District at the hearing and that counsel's presence would be redundant.

E. Winter Park's Intervention.

21. On September 12, 2014, Winter Park filed a "Notice of Withdrawal as Intervenor" (Winter Park's Withdrawal or Withdrawal). The Withdrawal indicates that based upon the Amended Application and Cornerstone and Grand Park's Withdrawal, that Winter Park withdraws its intervention in this proceeding.

F. Evidentiary Hearing & Requirement to Make Filing.

22. The proposed Amended Application indicates that Applicants prefer the hearing on the Application be held in Fraser, but that they are "amenable to having the hearing at the PUC offices in Denver if the issues are narrowed sufficiently such that the convenience of the vast majority of witnesses and counsel would be better served if the hearing was in Denver." (Amended Application ¶ 12). These statements do not shed light on Applicants' preferred

hearing location. Thus, unless and until Applicants make a clear and plain request that the hearing be held in Fraser, the current hearing location (Denver) will remain.

23. And, in any event, in light of the Amended Application and the majority of the interventions being withdrawn, it is not clear that an evidentiary hearing will be necessary in this proceeding. Pursuant to § 40-6-109(5), C.R.S., and Rule 14034 CCR 723-1, an uncontested or unopposed application may be decided under a modified procedure, without a hearing.

24. The ALJ will require the remaining parties to make a joint filing indicating whether either of them request an evidentiary hearing on the Amended Application. The ALJ will modify the current procedural schedule after the parties make this filing.²

25. Moreover, in the interests of ensuring an efficient resolution to this proceeding, the ALJ will set a deadline for the remaining parties to file any stipulation or settlement agreements, if necessary.

II. ORDER

A. It Is Ordered That:

1. The proposed amendments to the Application in the Amended Application filed by West Mountain Metropolitan District and the Town of Fraser (collectively, Applicants) are accepted. The Application is hereby amended as set forth in the Amended Application.

2. The briefing schedule in Ordering Paragraph 5 of Decision No. R14-1066-I is vacated.

3. The Motion to Intervene filed by the Town of Winter Park (Winter Park) is withdrawn. Winter Park is dismissed as a party to this proceeding.

² The ALJ may have questions that are unanswered by the Amended Application, and may preserve the hearing date to address such issues.

4. The Motion to Intervene filed by Cornerstone Winter Park Holdings, LLC (Cornerstone) and Grand Park Development LLC (Grand Park) is withdrawn. Cornerstone and Grand Park are dismissed as parties to this proceeding.

5. On or by 5:00 p.m. MST on September 19, 2014, Applicants, and Union Pacific Railroad Company, shall make a joint filing indicating whether either of them request an evidentiary on the Amended Application.

6. Any stipulation or settlement agreement resolving the issues in the Amended Application shall be filed on or by 5:00 p.m. MST on October 15, 2014.

7. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge