

Decision No. R14-1266-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0894R

IN THE MATTER OF THE APPLICATION OF ADAMS COUNTY FOR AUTHORITY TO ALTER AN AT-GRADE CROSSING AT LOWELL BOULEVARD (U.S. DOT #253281K AND #094492S) IN ADAMS COUNTY, STATE OF COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REQUIRING LOBO LLC TO OBTAIN
COUNSEL AND MAKE SUPPLEMENTAL FILING**

Mailed Date: October 21, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On August 27, 2014, Adams County filed an Application for Authority to Alter an At-Grade Crossing at Lowell Boulevard in Adams County, State of Colorado (Application) with the Colorado Public Utilities Commission (Commission).

2. The Commission gave public Notice of the Application on September 3, 2014.

3. The Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

4. Union Pacific Railroad Company, BNSF Railway Company, Regional Transportation District, Lobo LLC, (Lobo), and Eddie H. and Carol H. Bohn, and Lake Carol Anne filed timely interventions.

5. For purposes of this Decision, all those persons or entities that have filed an intervention are treated as parties to this proceeding.

6. Lobo is a limited liability company that is not represented in this adjudicative proceeding by an attorney licensed to practice law before the Colorado Supreme Court.

7. Generally, a party in a proceeding before the Commission must be represented by an attorney authorized to practice law in the State of Colorado. Rule 1201(a), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

8. The Commission has emphasized that this requirement is mandatory, that a filing made by non-attorneys on behalf of that party is void and of no legal effect, and that a non-attorney may not represent a party in Commission adjudicative proceedings. *See, e.g.*, Decision No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; Decision No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and Decision No. C04-0884, Proceeding No. 04G-101CP issued August 2, 2004.

9. There are few exceptions to Rule 1201(a). However, based upon the circumstances of this proceeding, none of the exceptions apply to Lobo.¹ Consequently, Lobo will be ordered to obtain counsel. Lobo's failure to obtain counsel may result in a decision prohibiting Lobo from participating in this proceeding.

10. In addition, Lobo's intervention fails to allege sufficient facts for the ALJ to determine whether Lobo's intervention is of right or is permissive. Specifically, while Lobo's intervention states that it owns property "adjacent to the property where the public road crossing and improvements are proposed," Lobo fails to include information on the address or location of its property, or where its property is located in relation to the proposed alterations to the subject

¹ For instance, pursuant to Rule 1201(b)(II), 4 CCR 723-1, a non-attorney may represent the interests of a closely-held entity (a company with no more than three owners), as provided in § 13-1-127, C.R.S., if the amount in controversy does not exceed \$15,000, and the representative provides the administrative agency with evidence showing he has authority to represent the closely-held entity. Here, the Application seeks to allocate costs well in excess of \$15,000.

at-grade crossing. Lobo will be ordered to supplement its intervention with a filing that provides this information. Failure to make the filing may result in a decision prohibiting Lobo from participating in this proceeding.

II. ORDER

A. It Is Ordered That:

1. Lobo LLC (Lobo), must have legal counsel enter an appearance in this proceeding, and make a supplemental filing that provides the information identified in ¶ 9 above **on or by 5:00 p.m. on November 4, 2014.**
2. Failure to meet the requirements of Ordering Paragraph 1 may result in a decision prohibiting Lobo from participating in this proceeding.
3. This Decision shall be 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