

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

DOCKET NO. 03A-512R

---

IN THE MATTER OF THE APPLICATION FOR THE CITY OF THORNTON, COLORADO,  
FOR AN ORDER AUTHORIZING THE INSTALLATION OF AN ADDITIONAL MEDIAN  
MOUNTED RAILROAD CROSSING GATE DEVICE AND THE RELOCATION OF AN  
EXISTING CROSSING GATE DEVICE AT THE UNION PACIFIC RAILROAD COMPANY  
CROSSING OF 136TH AVENUE NEAR YORK STREET (DOT CROSSING NO. 804-304N).

---

**COMMISSION ORDER REQUESTING LEGAL BRIEFS**

---

---

Mailed Date: April 2, 2004  
Adopted Date: March 24, 2004

**I. BY THE COMMISSION:**

**A. Statement**

1. The City of Thornton, and the Union Pacific Railroad (Parties) have filed an application to construct an additional median mounted railroad crossing gate device and to relocate an existing crossing gate device at the Union Pacific Railroad Company Crossing at 136<sup>th</sup> Avenue near York Street (DOT crossing No. 804-304N).

2. In the application, the Parties agreed that the City of Thornton shall pay for the entire cost of the rail crossing devices.

3. Section 401-4-106 (2) (b), Colorado Revised Statutes states that:

*Whenever the commission orders in any proceeding before it, regardless of by whom or how such proceeding was commenced, that automatic or other safety appliance signals or devices be installed, reconstructed, or improved and operated at any crossing at grade of any public highway or road over the tracks of any railroad corporation, the commission shall also determine and order, after notice and hearing, how the cost of installing, reconstructing, or improving such signals*

or devices shall be divided between and paid... *but in every case the part to be paid by the railroad corporation shall be not less than twenty percent of the total cost* of such signals or devices at any crossing, and such orders shall provide that every such signal or device so installed shall be maintained by such railroad corporation for the life of the crossing to be so protected.

4. The language emphasized above may be read to require that the Union Pacific be pay 20 percent of the costs of the devices, even though the Parties have agreed otherwise.

5. Nonetheless, we are hesitant to void the freely negotiated agreement between the Parties.

6. We therefore ask the Parties to brief the following issue: Given the language of the statute, does Section 40-4-106 Colorado Revised Statutes supersede the parties' voluntarily negotiated agreement. As part of this discussion, the parties should discuss the authority of private entities to avoid statutory requirements through negotiated agreements.

## **II. ORDER**

### **A. The Commission Orders That:**

1. Within thirty days of the effective date of this order, the parties shall submit briefs consistent with the discussion set forth in this order.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING  
March 24, 2004.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Commissioners