

Decision No. C04-1082

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

DOCKET NO. 04A-094R

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IN THE MATTER OF THE APPLICATION OF THE COUNTY OF ROUTT, COLORADO, FOR AN ORDER AUTHORIZING THE INSTALLATION OF A RAIL-ROAD CROSSING PROTECTION DEVICE TO BE CONSTRUCTED ON THE RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD COMPANY AND ROUTT COUNTY ROAD 14 ADJACENT TO ROUTT COUNTY ROAD 205 (DOT CROSSING NO 253-672E) STEAMBOAT SPRINGS, COLORADO.

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DOCKET NO. 04A-189R

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IN THE MATTER OF THE APPLICATION OF MORGAN COUNTY, COLORADO FOR AN ORDER AUTHORIZING THE INSTALLATION OF SIGNAL LIGHTS AND OTHER PROTECTIVE DEVICES TO BE CONSTRUCTED ACROSS THE TRACKS AND RIGHT-OF-WAY OF THE BURLINGTON NORTHERN SANTA FE RAILROAD COMPANY AT DOT #57262S ON COUNTY ROAD 25 IN BRUSH, MORGAN COUNTY, COLORADO.

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DOCKET NO. 04A-200R

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IN THE MATTER OF THE APPLICATION OF THE CITY OF AURORA, COLORADO FOR AUTHORITY TO TIE TRAFFIC SIGNAL RAILROAD INTERCONNECT EQUIPMENT FOR TRAFFIC SIGNALS AT SMITH ROAD AND TOWER ROAD INTO THE UNION PACIFIC RAILROAD COMPANY SIGNAL BOX AT TOWER ROAD.

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DOCKET NO. 04A-374R

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IN THE MATTER OF THE APPLICATION OF THE COUNTY OF JEFFERSON FOR AUTHORITY TO WIDEN AND SIGNALIZE THE RAILROAD HIGHWAY CROSSINGS OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY AT MCINTYRE STREET IN THE COUNTY OF JEFFERSON, STATE OF COLORADO.

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**COMMISSION ORDER DENYING APPLICATION FOR  
REHEARING, REARGUMENT, OR RECONSIDERATION**

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Mailed Date: September 14, 2004

Adopted Date: August 25, 2004

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of an Application for Rehearing, Reargument, or Reconsideration (RRR) of Commission Decision No. C04-0903 which added Docket No. 04A-374R to the consolidated dockets listed above. Each docket concerned an application for authority to perform construction to change, alter, or upgrade an at-grade railroad crossing. The Burlington Northern and Santa Fe Railway Company (BNSF) filed the application on August 16, 2004.

2. The above dockets were consolidated because pursuant to § 40-4-106, C.R.S., an administrative hearing must be held to determine how the costs of the crossing construction are allocated between the municipality, the railroad, and the state when applications seek monies from the Highway Crossing Protection Fund (Fund) created in § 40-29-116, C.R.S. Each application in the consolidated docket sought monies from the Fund. In this fiscal year, the amount of dollars in the Fund available for distribution will not cover all of the costs of all of the projects. In order to make the most effective and efficient disbursement of monies from the Fund, we consolidated the dockets so that one individual may review all the applications at once.

3. The allocation of costs between the parties, the receipt of state dollars from the Fund, and the limited dollars available are common issues between all of the dockets, as is the requirement for a hearing.

4. The BNSF asserts that there are really no common issues of fact between the applications, and that each application should be treated on its own merits rather than as part of a consolidated docket.

5. We note that Rule 42 of the Colorado Rules of Civil Procedure (C.R.C.P.) is as follows:

**(a) Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Under the rule, the Administrative Law Judge handling the consolidated dockets has the flexibility to hear each case separately and then allocate Fund dollars between each docket.

6. The BNSF asserts that “the percentage of funds to be apportioned among the various involved entities is an individual determination made upon the facts of each case and each crossing based on a determination of the benefit to the railroad that will accrue from such signals, and devices” and that “if there are insufficient dollars in the Fund for the grade crossing projects before the Commission, then the projects will have to be postponed until funds are available.”

7. We believe that under C.R.C.P. 42, the separate factual determinations sought by the BNSF for each individual case can be made. The Commission has the obligation to administer its appropriation in the manner that best promotes the public safety. We thus deny the BNSF Application for RRR. We considered the issues addressed in BNSF’s brief when the BNSF filed exceptions and RRR with respect to the original consolidation in Decision No. C03-0848, issued August 11, 2004. Our reasons for consolidating the cases have not

changed, and our belief that Commission procedures can address the concerns of the BNSF has not changed.

**II. ORDER**

**A. The Commission Orders That:**

1. The Application for Rehearing, Reargument, or Reconsideration filed by the Burlington Northern and Santa Fe Railway Company is denied.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
August 25, 2004.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners