

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-020R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF
TRANSPORTATION FOR AUTHORITY TO MODIFY EXISTING FLASHING LIGHT
SIGNALS AND AUTOMATIC GATE ARMS AND TRAFFIC SIGNALS AT THE CROSSING
OF THE BURLINGTON NORTHERN AND SANTA FE RAILROAD TRACK AT
U.S. HIGHWAY 85 AND COUNTY ROAD 16, DOUGLAS COUNTY, COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION TO VACATE PREHEARING
CONFERENCE, VACATING PREHEARING
CONFERENCE, AND GRANTING IN PART
AND DENYING IN PART MOTION FOR
WAIVER OF RESPONSE TIME**

Mailed Date: April 23, 2004

I. STATEMENT

1. On January 9, 2004, the Colorado Department of Transportation (Applicant) filed an application for a Commission order authorizing installation of specified safety devices at the crossing of the Burlington Northern and Santa Fe (BNSF) railroad track at U.S. Highway 85 and Douglas County Road 16, located in Douglas County Colorado (Application). The Application, which is not verified, commenced this proceeding.

2. In the Application at ¶ 16, the Applicant waived the statutory time frames set out in § 40-6-109.5, C.R.S.

3. On February 20, 2004, the Commission gave public notice of the Application. BNSF, Staff of the Commission (Staff), and Douglas County intervened in this matter.

4. A prehearing conference is scheduled in this matter for April 27, 2004. *See* Decision No. R04-0359-I.

5. On April 23, 2004, Applicant, Staff, and Douglas County (collectively, Movants) filed a Motion to Approve Stipulation and Settlement Agreement, Vacate April 27, 2004 Prehearing Conference, and Request for Waiver of Response Time. A Stipulation and Settlement Agreement (Stipulation) signed by Movants accompanied the Motion.

6. The Movants represent that the Stipulation is acceptable to each of them and, if approved by the Commission, will settle all issues in this proceeding as among and between the Movants. They further state that, due to his absence from the office, counsel for BNSF has not yet reviewed the Stipulation. According to Movants, the filed Stipulation negates the necessity of holding the scheduled prehearing conference because that conference is to establish a procedural schedule and hearing dates in this proceeding.

7. The Motion to Vacate April 27, 2004 Prehearing Conference states good cause. Granting the motion will not prejudice any party. The Administrative Law Judge (ALJ) will grant the Motion to Vacate April 27, 2004 Prehearing Conference.

8. In view of the fast-approaching date for the prehearing conference and the absence of prejudice to any party, the ALJ will grant the Request for Waiver of Response Time insofar as that request pertains to the Motion to Vacate. The ALJ will waive response time to the Motion to Vacate April 27, 2004 Prehearing Conference.

9. Turning now to the Motion to Approve Stipulation and Settlement Agreement, the ALJ will hold consideration of the Stipulation until expiration of the 14-day response time. *See* Rule 4 *Code of Colorado Regulations* (CCR) 723-1-22. In addition, because counsel for BNSF

has not had an opportunity to review the Stipulation, the ALJ will deny the Request for Waiver of Response Time insofar as that request pertains to the Motion to Approve Stipulation and Settlement Agreement. The ALJ will not waive or shorten response time to the Motion to Approve Stipulation and Settlement Agreement. In accordance with Rule 4 CCR 723-1-22, response to the Motion to Approve Stipulation and Settlement Agreement is due on or before May 7, 2004.

10. The parties are on notice that the request to approve the Stipulation without a hearing is held in abeyance. It may be that, after reviewing the Stipulation and any response filed by BNSF, the ALJ will hold a hearing with respect to the Stipulation. In addition, the Commission has requested the parties in Docket No. 03A-512R to file legal briefs concerning § 40-4-106(2), C.R.S. (statute pertaining to allocation of costs of railroad crossings and safety devices), and whether that statute trumps the allocation of costs agreed to in the stipulation filed in that proceeding. It may be that the Commission's decision in that proceeding will have (or may have) an impact on consideration of the Stipulation in this proceeding, at least to the extent that the Stipulation addresses cost allocation and each party's responsibility for costs.¹

II. ORDER

A. It Is Ordered That:

1. The Motion to Vacate April 27, 2004 Prehearing Conference is granted.
2. The prehearing conference scheduled for April 27, 2004, is vacated.

¹ The ALJ has not reviewed the Stipulation. Reference to Docket No. 03A-512R is by way of notice only. The ALJ has made no determination with respect to whether the issues being briefed in Docket No. 03A-512R are relevant to, or controlling in, this matter.

3. The Request to Waive Response Time is granted with respect to the Motion to Vacate April 27, 2004 Prehearing Conference.

4. Response time with respect to the Motion to Vacate April 27, 2004 Prehearing Conference is waived.

5. The Request to Waive Response Time is denied with respect to the Motion to Approve Stipulation and Settlement Agreement.

6. Response to the Motion to Approve Stipulation and Settlement Agreement is due on or before May 7, 2004.

7. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge