

Decision No. R04-0489-I

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
SCHEDULING PREHEARING CONFERENCE
AND LISTING ISSUES FOR DISCUSSION**

Mailed Date: May 11, 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 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. In the Application at ¶ 16, the Applicant waived the statutory time frames set out in § 40-6-109.5, C.R.S.

2. On February 20, 2004, the Commission gave public notice of the Application. The Burlington Northern and Santa Fe Railway Company (BNSF), Staff of the Commission (Staff), and Douglas County intervened of right.

3. By Decision No. R04-0359-I, the undersigned Administrative Law Judge (ALJ) scheduled a prehearing conference in this matter.

4. On April 23, 2004, Applicant, Staff, and Douglas County 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) accompanied that motion.

5. By Decision No. R04-0426-I, the ALJ vacated the scheduled prehearing conference but denied the request to shorten response time with respect to the Motion to Approve Stipulation and Settlement Agreement.

6. On April 27, 2004, BNSF filed its Response to Motion to Approve Stipulation and Settlement Agreement (Response). In this filing BNSF stated that it is not a signatory to the Stipulation; that the Stipulation, if approved, will change the project which is the subject of the Application and the financing of the proposed project; and that BNSF has issues with respect to, *inter alia*, financial issues concerning the proposed project. To give the parties time to address the issues, BNSF “requests that the Commission not act on the Application until the parties, including BNSF, file an agreed upon Construction and Maintenance Agreement as a late filed exhibit.” Response at 2.

7. In light of the changes to the Application made by the Stipulation and the issues raised in the Response, the ALJ finds that, at this time, she cannot approve the Stipulation or the Application without a hearing. It is, therefore, necessary to schedule a hearing and to establish a

procedural schedule in this proceeding. To do so, a prehearing conference will be held on May 28, 2004. The provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and of Rule 4 CCR 723-1-79(b)(4) govern this prehearing conference.

8. The parties should be prepared to discuss these matters at the prehearing conference: (a) date by which Applicant will file its list of witnesses and copies of its exhibits; (b) date by which each intervenor will file its list of witnesses and copies of its exhibits; (c) date by which each party will file its prehearing motions;¹ (d) discovery procedures; (e) whether a final prehearing conference is necessary and, if it is, date for that prehearing conference; (f) date by which the parties will file any additional stipulation reached;² (g) date by which the parties will file corrected testimony and exhibits; (h) hearing dates; and (i) whether there should be post-hearing statements of position and, if so, the date for post-hearing statements of position and whether responses should be permitted. In addition, the parties should be prepared to address the impact, if any, of the filed Stipulation on the procedural schedule and the impact of § 40-4-106(2), C.R.S., on the Stipulation and the Application. Further, the parties should review, and be prepared to discuss to the extent relevant, the matters contained in Rule 4 CCR 723-1-79(b)(5). Finally, the parties may raise any additional issues.

9. The undersigned expects the parties to consult prior to the prehearing conference with respect to the listed matters. The parties are encouraged to present, if possible, a procedural schedule and hearing date(s) which are satisfactory to all parties.

¹ This date should be at least 10 days before the final prehearing conference or, if there is no final prehearing conference, 14 days before the hearing.

² This date should be at least seven calendar days before the first day of hearing.

II. ORDER

A. It Is Ordered That:

1. A prehearing conference in this docket is scheduled as follows:

DATE: May 28, 2004

TIME: 1:00 p.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

2. The parties shall follow the procedures, and be prepared to discuss the matters, as set forth above.

3. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge