

Decision No. R04-1036-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-094R

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.

DOCKET NO. 04A-189R

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.

DOCKET NO. 04A-200R

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.

DOCKET NO. 04A-374R

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.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
VACATING PROCEDURAL SCHEDULE,
SCHEDULING PREHEARING CONFERENCE,
AND LISTING ISSUES FOR DISCUSSION**

Mailed Date: August 27, 2004

I. STATEMENT

1. On March 4, 2004, the County of Routt (Routt) filed an application for a Commission order authorizing installation of a railroad crossing protection device at the crossing of the Union Pacific Railroad Company (UPRR) railroad track and Routt County Road 205, located in Routt County, Colorado (Routt Application). Routt asks that the proposed project's cost be allocated between Routt, the UPRR, and the Highway Crossing Protection Fund (Fund). That application commenced Docket No. 04A-094R.

2. On April 1, 2004, the Commission gave public notice of the Routt Application. *See* Notice of Application Filed, dated April 1, 2004. The UPRR intervened. There are no other interventions in the Routt matter.

3. On May 26, 2004, the Commission deemed the Routt Application complete as of that date and referred this matter to an administrative law judge (ALJ) for hearing. In accordance with § 40-6-9.5, C.R.S., a Commission decision in the Routt Application should issue on or before December 22, 2004.

4. On April 15, 2004, Morgan County (Morgan) filed an application for a Commission order authorizing installation of a railroad crossing protection device at the crossing of the Burlington Northern and Santa Fe Railroad Company (BNSF) railroad track at DOT #57262S on County Road 25, in Brush, Colorado (Morgan Application). Morgan asks that

the proposed project's cost be allocated between Morgan, the BNSF, and the Fund. That application commenced Docket No. 04A-189R.

5. On April 30, 2004, the Commission gave public notice of the Routt Application. *See* Notice of Application Filed, dated April 30, 2004. BNSF intervened. There are no other interventions in the Morgan matter.

6. On June 8, 2004, the Commission deemed the Morgan Application complete as of that date and referred this matter to an ALJ for hearing. Pursuant to § 40-6-9.5, C.R.S., a Commission decision in the Morgan Application should issue on or before January 4, 2005.

7. On April 26, 2004, the City of Aurora (Aurora) filed an application seeking Commission authorization to tie traffic signal interconnect equipment at Tower Road and Smith Road into the UPRR track circuit equipment on Tower Road (Aurora Application). Aurora asks that the proposed project's cost be allocated between Aurora, the UPRR, and the Fund. That application commenced Docket No. 04A-200R.

8. On May 5, 2004, the Commission gave public notice of the Aurora Application. *See* Notice of Application Filed, dated May 5, 2004. UPRR intervened and is the only intervenor.

9. On June 16, 2004, the Commission deemed the Aurora Application complete as of June 16, 2004 and referred this matter for hearing by an ALJ. Pursuant to § 40-6-9.5, C.R.S., a Commission decision in the Aurora Application should issue on or before January 12, 2005.

10. By Decision No. C04-0848, the Commission consolidated the Routt Application, the Morgan Application, and the Aurora Application for hearing before an ALJ.

11. On July 19, 2004, the County of Jefferson (Jefferson) filed an application seeking Commission authorization to widen and to signalize the railroad-highway crossings of the BNSF

at McIntyre Street in Jefferson County (Jefferson Application). Jefferson asks that the proposed project's cost be allocated between Jefferson, the BNSF, and the Fund. That application commenced Docket No. 04A-374R.

12. On July 27, 2004, the Commission gave public notice of the Jefferson Application. *See* Notice of Application Filed, dated May 27, 2004. BNSF intervened and is the only intervenor.

13. On July 27, 2004, the Commission deemed the Jefferson Application complete as of July 27, 2004 and referred this matter for hearing by an ALJ. Pursuant to § 40-6-9.5, C.R.S., a Commission decision in the Jefferson Application should issue on or before February 22, 2005.

14. By Decision No. C04-0903, the Commission consolidated the Routt Application, the Morgan Application, the Aurora Application, and the Jefferson Application for hearing by an ALJ.¹ The Commission stated that, while each application seeks funds from the Fund created by § 40-29-116, C.R.S., the Fund does not have sufficient monies available to pay for all of the demands placed upon it. The Commission concluded that a consolidated proceeding should be held before one ALJ “[i]n order to make the most effective and efficient disbursement of monies from the Fund[.]” Decision No. C04-0961 at ¶ I.2.

15. This consolidated matter is assigned to the undersigned ALJ.

16. A prehearing conference will be held on September 8, 2004, in this proceeding. The provisions of Rules 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and 4 CCR 723-1-79(b)(4) govern this prehearing conference.

¹ By Decision No. C04-0961, the Commission denied an application for rehearing, reargument, or reconsideration of this consolidation order.

17. The ALJ preliminarily determines that the most efficient way in which to proceed is to hold a single hearing at which each applicant will present its case in support of its application and in support of the amount of money its proposed project ought to receive from the Fund. Each intervenor will present its case, including any testimony concerning the way in which monies from the Fund ought to be allocated. Each party, whether applicant or intervenor, will be permitted to cross-examine all other parties' witnesses on any issue (for example, on the issue of Fund allocation). Each party must be prepared to discuss at the prehearing conference: (a) this preliminary determination; and (b) if it disagrees with the preliminary determination, its suggested alternative with respect to hearing this matter.

18. In addition, the parties must be prepared to discuss these matters at the prehearing conference: (a) date by which each applicant will file its list of witnesses, detailed summaries of each witness's testimony, and copies of its exhibits; (b) date by which each intervenor will file its list of witnesses, detailed summaries of each witness's testimony, and copies of its exhibits; (c) date by which each party will file its prehearing motions;² (d) whether a final prehearing conference is necessary and, if it is, date for that prehearing conference; (e) date by which the parties will file any stipulation reached;³ (f) hearing dates and city; (g) the date by which each party will file its post-hearing statement of position; and (h) the date by which each party will file its response to the post-hearing statements of position filed by other parties.

19. Further, the parties should review the discovery procedures in Rule 4 CCR 723-1-77 and, if necessary, should be prepared to discuss modification(s) to those procedures. The

² 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.

³ This date should be at least seven calendar days before the first day of hearing.

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, parties may raise any additional issues.

20. In considering proposed dates, parties should keep in mind that the Commission deemed the Routt Application complete as of May 26, 2004. Absent Routt's waiver of the statutory time frame or a Commission finding (following a hearing) of extraordinary circumstances, a Commission decision in this *consolidated* proceeding should issue within 210 days of that date (*i.e.*, December 22, 2004). Any procedural schedule must take into consideration, and allow time for, preparation of a recommended decision, preparation of exceptions to the recommended decision and responses to exceptions, and preparation and issuance of a Commission decision on exceptions,⁴ all of which should occur by December 22, 2004.

21. For purposes of considering proposed hearing dates, the ALJ advises the parties that the **ALJ is unavailable for hearing until September 28, 2004**. Given the current December 22, 2004, date for a Commission decision in this consolidated matter, the last date on which a hearing in this proceeding can be held is **October 6, 2004**. If the hearing is held on that date, statements of position would be due on October 13, 2004, and there would be no opportunity for response to statements of position.

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

⁴ As a general rule and not including the time necessary for preparation of a transcript if one is ordered, these activities consume 10 to 12 weeks from the latter of: the last day of hearing, the filing of the statements of position, or the filing of responses to statements of position.

II. ORDER

A. It Is Ordered That:

1. The procedural schedules established in the four Notices of Application Filed are vacated.

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

DATE: September 8, 2004

TIME: 10:00 a.m.

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

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

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

