

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-190R

IN THE MATTER OF THE APPLICATION OF THE AURARIA HIGHER EDUCATION CENTER FOR AN ORDER AUTHORIZING THE INSTALLATION OF A PEDESTRIAN CROSSING TO BE CONSTRUCTED IN THE RIGHTS-OF-WAY OF RTD AND UNION PACIFIC RAILROAD COMPANY (US DOT-AAR CROSSING I.D. NO. 253010E AT UPRR MILEPOST 1.2) IN CURTIS STREET, BETWEEN 5TH STREET AND 7TH STREET IN THE CITY AND COUNTY OF DENVER, COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION, VACATING
HEARING, SCHEDULING PREHEARING
CONFERENCE, SETTING OUT ISSUES
FOR DISCUSSION AT PREHEARING
CONFERENCE, AND WAIVING RESPONSE TIME**

Mailed Date: October 29, 2004

I. STATEMENT

1. On April 15, 2004, the Auraria Higher Education Center (Applicant) filed an application for a Commission order authorizing the installation of a concrete pedestrian crossing to be constructed in the rights-of-way of the Regional Transportation District (RTD) and the Union Pacific Railroad Company (UPRR) at a location in Denver, Colorado (Application). The Application commenced this proceeding.

2. The Commission gave public notice of the Application. *See* Notice of Application Filed, dated May 3, 2004 (Notice).

3. UPRR and RTD intervened of right. Applicant, UPRR, and RTD are the only parties in this proceeding.

4. On October 8, 2004, by Decision No. C04-1169 the Commission deemed the Application complete as of that date and referred this matter to an Administrative Law Judge (ALJ). The Commission provided this specific guidance: Referral to the ALJ was “for determination of [the Application’s] merits, including the status of the final contract between the parties for construction and maintenance of the crossing” (*id.* at ¶ I.A.8).

5. Hearing in this matter is scheduled for March 14, 2005. *Id.* at ¶ II.A.2. By Decision No. R04-1228-I the undersigned ALJ established a procedural schedule for this matter.

6. On October 25, 2004, UPRR filed a Motion to Vacate Hearing Date and for an Order Setting Prehearing Conference. As the basis for the Motion to Vacate Hearing Date, counsel for UPRR represents that she is unavailable the week of March 14 through 18, 2004. In addition, UPRR represents that “the design for the proposed pedestrian crossing may still not be complete. As such, Union Pacific respectfully submits that this Application may indeed not be complete and ready for adjudication.” Motion to Vacate Hearing Date at ¶ 4.

7. The ALJ finds that the Motion to Vacate Hearing Date states good cause and that granting the motion will not prejudice any party. The Motion to Vacate Hearing Date will be granted. The hearing scheduled for March 14, 2005, will be vacated. Because the hearing date is vacated, the procedural schedule established in Decision No. R04-1228-I will be vacated.

8. UPRR bases its Motion for Order Setting Prehearing Conference on its understanding that the Application may not be complete because the design for the proposed crossing is not yet complete. Accordingly, UPRR states that “a Joint Status Conference may shed some light on the status of this Application and enable the parties to proceed.” The ALJ agrees and finds that a prehearing conference will be beneficial in this matter. The Motion for Order Setting Prehearing Conference states good cause; granting the motion will not prejudice

any party; and the motion will be granted. A prehearing conference in this matter will be scheduled for **November 10, 2004**.

9. At the prehearing conference the parties must be prepared to discuss whether the Application is “complete,” as that term is used in § 40-6-109.5, C.R.S., and implementing Commission rules, and the options available if the Application is not “complete” notwithstanding the Commission’s having deemed the Application complete. In addition, the parties must be prepared to discuss a procedural schedule, including the following: (a) date by which 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; (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; (f) hearing date(s); and (g) whether post-hearing statements of position are necessary. Finally, the parties may raise any other issue.

10. In considering proposed dates, parties should keep in mind that the Commission has deemed the Application complete as of October 8, 2004. Assuming that determination to be correct and absent Applicant’s waiver of the statutory time frame or a finding of extraordinary circumstances, a Commission decision in this proceeding should issue within 210 days of that date (*i.e.*, on or before May 6, 2005). *See* §§ 40-6-109.5(2) and 40-6-109.5(4), C.R.S. Any procedural schedule must take into consideration, and must allow time for, preparation of a recommended decision, preparation of exceptions to the recommended decision and response to

exceptions, and preparation of a Commission decision on exceptions,¹ all of which should occur by May 6, 2005.

11. The ALJ expects the parties to come to the prehearing conference with proposed dates for all deadlines. In addition, the parties must consult prior to the prehearing conference with respect to the listed matters.

12. The ALJ will waive response time to the Motion to Vacate Hearing Date and for an Order Setting Status Conference in order to address in a timely manner the question of whether the Application is complete and ready to proceed. No party will be prejudiced by the waiving of response time.

II. ORDER

A. It Is Ordered That:

1. The Motion to Vacate Hearing Date is granted.
2. The hearing scheduled for March 14, 2005, is vacated.
3. The procedural schedule established in Decision No. R04-1228-I is vacated.
4. The Motion for an Order Setting Status Conference is granted.
5. A prehearing conference in this docket is scheduled as follows:

DATE: November 10, 2004
TIME: 10:00 a.m.
PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

¹ 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 end of the hearing, the filing of statements of position, or the filing of responses to statements of position, whichever occurs last.

6. The parties shall follow the procedures, and shall be prepared to discuss the matters, set out above.

7. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge