

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-475R

IN THE MATTER OF THE APPLICATION OF UNION PACIFIC RAILROAD COMPANY,
FOR AUTHORITY TO CONSTRUCT PHASE I OF PECOS STREET AS A GRADE
SEPARATION AT THE CROSSING OF THE ROADWAY WITH THE UNION PACIFIC
RAILROAD COMPANY (US DOT NO 253 279T AT THE UPRR MILEPOST 3.87) IN
ADAMS COUNTY, STATE OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
DISMISSING INTERVENTION, VACATING
HEARING DATE AND PROCEDURAL
SCHEDULE, ACCEPTING LATE-FILED EXHIBITS
TO THE APPLICATION, AND GRANTING
APPLICATION UNDER MODIFIED PROCEDURE**

Mailed Date: December 27, 2004

I. STATEMENT

1. On November 3, 2003, the Union Pacific Railroad Company (UPRR or Applicant) filed an Application for “an order authorizing the construction of Phase I of the Adams County roadway named Pecos Street as a grade separated underpass with the Applicant’s railroad tracks” (Application). The Applicant seeks Commission approval of track and signal relocation at UPRR milepost 3.87 on the Moffat Tunnel Subdivision, as more specifically described in the Application at ¶ 5 and supporting documents. The Application commenced this docket.

2. The Commission gave public notice of the Application in a Notice of Application Filed (Notice). *See* Notice of Application Filed dated November 5, 2003. The Notice, *inter alia*, established a 30-day intervention period. On this same date the Commission gave notice of the

Application, together with a copy of the Application, to all interested parties, including the adjacent property owners, in accordance with § 40-6-108(2), C.R.S.

3. On November 5, 2003, Staff of the Commission (Staff) intervened in this proceeding. There are no other intervenors.

4. By Decision No. C04-1277 the Commission deemed the Application complete, found that it has jurisdiction in this matter, and referred the case to an Administrative Law Judge (ALJ). The Commission provided this 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.7). In addition, the Commission directed the ALJ to “establish a procedural schedule for the filing of exhibits and witness lists and any pre-filed testimony.” *Id.* at ¶ II.A.3.

5. By Decision No. R04-1291-I the ALJ established a procedural schedule and ordered Staff to obtain counsel. That Order stated, at ¶ 3, that Staff’s intervention could be dismissed if Staff failed to obtain counsel on or before November 30, 2004.

6. On November 8, 2004, Applicant filed its Response to Decision No. R04-1291-I (Response). That filing supplemented the Application with specific information which addressed the Commission’s guidance contained in Decision No. C04-1277 and quoted above.

7. Applicant stated that, because it will pay all costs of construction in Phase I of the Pecos Street project, “a contract is not anticipated; instead, [Applicant] will comply with the terms and conditions of the Commission Order authorizing this Phase I Project.” Response at ¶ 6; *see also id.* at ¶ 7 (“All work will be performed by [UPRR] forces. Moreover, [UPRR] will maintain the crossing once completed.”).

8. Applicant attached to the Response two exhibits: first, a cost estimate of “track work and relocation of the gate and light on the north side of the crossing at Pecos Street” (Exhibit E); and, second, a schematic drawing which “show[s] the capacity improvement project of which this Pecos Street project is a part” (Exhibit F). Applicant offered the schematic in place of the construction plans referenced in the Application at ¶ 13. Applicant requests that the Commission accept Exhibits E and F as late-filed exhibits to the Application. This request states good cause and will be granted. Exhibits E and F will be accepted as late-filed exhibits to the Application.

9. Decision No. R04-1291-I required that, on or before November 30, 2004, Staff obtain counsel and that Staff’s counsel enter an appearance in this proceeding by that date. Staff did not request an extension of time within which to obtain counsel. Review of the Commission’s file in this matter reveals that, as of the date of this Decision, counsel for Staff has not entered an appearance in this matter. Staff was on notice that failure to obtain counsel could result in dismissal of its intervention. *See* Decision No. R04-1291-I at ¶ 3. Based on these facts, the intervention of Staff will be dismissed.

10. With the dismissal of the Staff’s intervention, the Application is uncontested and unopposed. Thus, pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-24, the Application will be determined under the Commission’s modified procedures and without a formal hearing. Accordingly, the procedural schedule established in Decision No. R04-1291-I and the hearing date of April 1, 2005, will be vacated.

11. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

12. The Commission has jurisdiction in this matter pursuant to § 40-4-106(2)(a) and § 40-4-106(3)(a), C.R.S.

13. The Applicant is a Delaware corporation with its principal office located in Omaha, Nebraska. Applicant is a railroad company authorized to conduct business in Colorado.

14. There is no intervention in opposition to the Application. The Application is uncontested and unopposed.

15. The purpose of the Application is to secure Commission approval: (a) “to relocate one existing track, currently located south of the Main Line tracks and known as the Cinder Block Spur, Track No. 731, ... to the north side of the existing Main Line tracks at Pecos Street, to ultimately be used as part of the East Denver Belt Line Connection in Phase II [of the Pecos Project]”; (b) to “relocate the existing gate and lights on the north side of the crossing to accommodate the track relocation”; and (c) to relocate “the existing flashing light signal on the Pecos Street northbound approach to the Cinder Block Spur ... to the next track north which is known as the Cargill Lead track.” Application at ¶ 5. This will be done at or near UPRR milepost 3.87 on the Moffat Tunnel Subdivision in Adams County, Colorado.

16. As of 2002, the Average Daily Traffic on Pecos Street was 10,938 motor vehicles crossing the railroad tracks at the Pecos Street crossing. By 2020 the Average Daily Traffic projection is that 12,900 motor vehicles will cross the railroad tracks at Pecos Street.

17. Currently, there are 28 trains per day operating over the Pecos Street crossing.

18. The existing warning devices will be relocated when the track is relocated. There will be no change in the number or type of warning devices from those now in use at the Pecos Street crossing.

19. Applicant will provide 100 percent of project costs of Phase I of the Pecos Street project. The total cost of Phase I is estimated to be \$96,442.

20. If the Application is granted, the Commission authorization will address only Phase I of the Pecos Street project. A separate application will be filed if and when Commission authorization for Phase II of the Pecos Street project is sought.

21. The exhibits, specifications, and plans (including late-filed Exhibits E and F) are complete, are accurate, and meet Commission requirements.

22. The public safety, convenience, and necessity require, and will be served by, the granting of the Application.

23. The Application, as supplemented on November 8, 2004, should be, and will be, granted.

24. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The intervention of Staff of the Commission is dismissed.
2. Late-filed Exhibits E and F to the Application are accepted.
3. The Application of the Union Pacific Railroad Company filed on November 5, 2003, as supplemented on November 8, 2004, is granted.

4. Union Pacific Railroad Company is authorized and directed: (a) to relocate the existing track, now located south of the Main Line tracks and known as the Cinder Block Spur, Track No. 731, to the north side of the existing Main Line tracks at Pecos Street; (b) to relocate

the existing gate and lights on the north side of the crossing to accommodate the track relocation; and (c) to relocate the existing flashing light signal on the Pecos Street northbound approach to the Cinder Block Spur to the next track north, which is known as the Cargill Lead track. This relocation work is to be done at or near UPRR milepost 3.87 on the Moffat Tunnel Subdivision in Adams County, Colorado.

5. The relocation of the track and of the warning devices authorized in Ordering Paragraph No. 4, above, shall be in accordance with the plans, specifications, and exhibits (including late-filed Exhibits E and F) submitted with the Application and hereby approved.

6. The total actual cost of labor and material required for relocation of the tracks and the warning devices shall be paid by the Union Pacific Railroad Company as stated in, and in accordance with, the Application.

7. The Union Pacific Railroad Company shall continue to maintain its trackage and railroad operating facilities.

8. Upon completion of the relocation authorized by this Order, the Union Pacific Railroad Company shall notify the Commission in writing within ten days of the initial operation of the warning devices.

9. If the relocation authorized in Ordering Paragraph No. 4, above, has not been completed within nine months of the effective date of this Order, the Union Pacific Railroad Company shall file with the Commission: (a) a status report on the project; and (b) a progress report each month after the status report is filed, until the installation is completed.

10. The Commission retains jurisdiction to enter further orders as necessary.

11. The procedural schedule established in Decision No. R04-1291-I is vacated.

12. The hearing scheduled for April 1, 2005, is vacated.

13. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

14. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

15. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge