

Decision No. R10-0021-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 06A-670R

IN THE MATTER OF THE APPLICATION FOR THE CITY OF FORT COLLINS, COLORADO FOR AUTHORITY TO MODIFY THE EXISTING RAILROAD SIGNAL SYSTEM FOR THE AT-GRADE CROSSING OF THE UNION PACIFIC RAILROAD COMPANY'S CROSSING ON HORSETOOTH ROAD IN THE CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO.

DOCKET NO. 06A-671R

IN THE MATTER OF THE APPLICATION OF THE CITY OF FORT COLLINS, COLORADO FOR THE AUTHORITY TO MODIFY THE EXISTING RAILROAD SIGNAL SYSTEM FOR THE AT-GRADE CROSSING OF THE UNION PACIFIC RAILROAD COMPANY'S CROSSING ON DRAKE ROAD IN THE CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DENYING MOTION FOR SUPPLEMENTATION
OF WITNESS AND EXHIBITS LIST; MODIFYING
PROCEDURAL SCHEDULE; GRANTING MOTION
FOR EXTENSION OF TIME TO FILE WITNESS
AND EXHIBIT LIST, IN PART; AND WAIVING
RESPONSE TIME TO MOTIONS**

Mailed Date: January 7, 2010

I. STATEMENT

1. On January 5, 2009, the Union Pacific Railroad Company (UP) filed a pleading entitled "Motion To Order Supplementation of Witness and Exhibit List, To Extend Time To File Union Pacific Railroad Company's Witness and Exhibit List, and For Waiver of Response Time" (Motion) in the captioned consolidated proceeding.

2. The Motion seeks an order requiring the City of Fort Collins (Fort Collins) to supplement the Witness and Exhibit List it filed in this matter "...so as to clearly indicate what the proposed testimony will be concerning what system will be requested and how it will operate."¹ It also seeks an extension of time for UP to file its Witness and Exhibit List in this matter and for a waiver of response time to the Motion.

3. In support of the Motion, UP states that the Fort Collins Witness and Exhibit List fails to include a sufficiently detailed summary of the testimony of Fort Collins' potential witnesses to allow it to prepare for hearing. It also complains that the Fort Collins Witness and Exhibits List fails to include exhibits concerning the use of "Pedestrian Hybrid Signals" at the involved crossings and, further, that it fails to include an indication of what signal system Fort Collins proposes for these crossings. UP requests that the Commission order Fort Collins to supplement its Witness and Exhibit List to include this information.

4. Regarding UP's request for more detailed information relating to the testimony of Fort Collins' witnesses, it is noted that the procedural order governing this proceeding merely requires a summary of such testimony. *See*, Decision No. R09-1188-I, Ordering Paragraph 4. This was provided by Fort Collins in its Witness and Exhibit List. If UP requires additional detail regarding the witnesses' potential hearing testimony it may utilize the discovery process in an attempt to ascertain that information. The procedural order governing this proceeding imposes a limitation of two depositions for each party. *See*, Decision No. R09-1188-I, Ordering

¹ The Certificate of Service attached to the Ft. Collins Witness and Exhibit List indicates that it was hand-delivered to the Commission on December 9, 2009. In fact, it was mailed to the Commission on December 9, 2009, but, due to a delivery error by the U.S. Postal Service, was not received by the Commission until December 15, 2009. Contrary to the requirements of Rule 1205 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1-1205, a copy of Fort Collins' Witness and Exhibit List was not served on UP or its counsel at the time it was filed with the Commission. However, the Motion indicates that UP's counsel received a copy of the same on December 31, 2009, two days after it was due to be served under the procedural order governing this proceeding. *See*, Decision No. R09-1188-I, Ordering Paragraph 4.

Paragraph 6. Since Fort Collins has listed three potential witnesses, the procedural order will be modified so as to allow UP the opportunity to take the depositions of these three witnesses.

5. Similarly, UP's request for more detailed information concerning the type of signal system Fort Collins proposes for the involved crossings can best be ascertained through the discovery process.

6. In order to allow UP additional time to conduct the discovery described above, various deadlines previously established by the procedural schedule governing this proceeding will be extended by the order that follows.

II. ORDER

A. It Is Ordered That:

1. The Motion To Order Supplementation of Witness and Exhibit List, To Extend Time To File Union Pacific Railroad Company's Witness and Exhibit List, and For Waiver of Response Time filed by Union Pacific Railroad Company is denied to the extent it seeks an order requiring the City of Fort Collins to supplement its previously filed Witness and Exhibit List.

2. The Motion To Order Supplementation of Witness and Exhibit List, To Extend Time To File Union Pacific Railroad Company's Witness and Exhibit List, and For Waiver of Response Time filed by Union Pacific Railroad Company is granted, in part, to the extent it seeks an extension of time for the Union Pacific Railroad Company to file its Witness and Exhibit List in this matter.

3. The Motion To Order Supplementation of Witness and Exhibit List, To Extend Time To File Union Pacific Railroad Company's Witness and Exhibit List, and For Waiver of Response Time filed by Union Pacific Railroad Company is granted to the extent it seeks a waiver of the response time to such motion.

4. Ordering Paragraph No. 5 of Decision No. R09-1188-I is modified to read as follows: The Union Pacific Railroad Company shall file its list of witnesses, summary of witness testimony, and exhibits on or before January 19, 2010.

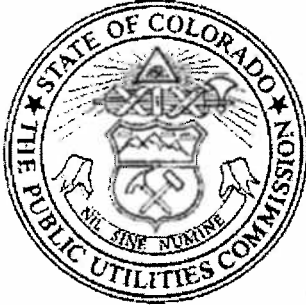
5. Ordering Paragraph No. 6 of Decision No. R09-1188-I is modified to read as follows: Discovery shall be governed by Rule 1405 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1-1405, except as follows: each party shall be limited to 20 requests for admission, 20 interrogatories, and 3 depositions each.

6. Ordering Paragraph No. 7 of Decision No. R09-1188-I is modified to read as follows: All written discovery shall be served on or before January 14, 2010, and all depositions will be conducted by January 22, 2010.

7. Ordering Paragraph No. 8 of Decision No. R09-1188-I is modified to read as follows: All pre-hearing motions or stipulations relating to settlement shall be filed on or before January 22, 2010.

8. This Order shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DALE E. ISLEY

Administrative Law Judge