

Decision No. R13-0233-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12F-1215R

UNION PACIFIC RAILROAD COMPANY

COMPLAINANT

V.

COLORADO DEPARTMENT OF TRANSPORTATION,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
DENYING MOTIONS REGARDING SUBPOENAS**

Mailed Date: February 20, 2013

I. STATEMENT

1. On February 15, 2013, Union Pacific Railroad Company's Motion and Request to the Colorado Public Utilities Commission to Issue a Subpoena in Connection with the Hearing in this Matter was filed along with three motions identically-titled as Motion and Request to the Colorado Public Utilities Commission to Issue a Subpoena in Connection with the Hearing in this Matter.

2. On February 19, 2013, Union Pacific Railroad Company's Motion and Request to the Colorado Public Utilities Commission to Issue a Subpoena in Connection with the Hearing in this Matter was filed along with a Motion and Request to the Colorado Public Utilities Commission to Issue a Subpoena in Connection with the Hearing in this Matter.

3. On February 19, 2013, Union Pacific Railroad Company's Motion to Amend Subpoenas to Request Documents (Duces Tecum) and to Reflect the Correct Date of the Hearing in this Matter was filed. Complainant Union Pacific Railroad Company (Union Pacific) is filing new subpoenas to reflect the correct date of Monday, April 8, 2013 and the fact that certain of them also request documents.

4. The Commission generally incorporates subpoena practice of the Colorado Rules of Civil Procedure. "Upon proper request and the filing of an affidavit showing good cause, the Commission or the Director shall issue a subpoena or a subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing, consistent with § 40-6-103(1), C.R.S." Rule 1406(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

5. Section 40-6-103(1), C.R.S., provides that no "subpoena shall be issued except upon good cause shown. Good cause shown shall consist of an affidavit stating with specificity the testimony, records, or documents sought and the relevance of such testimony, records, or documents to the proceedings of the commission." § 40-6-103(1), C.R.S.

6. Initially, issuance of a subpoena is not contemplated to be upon motion. Because there is no right for other parties to respond to a request for issuance, response time will be waived and the motions denied. Consistent with the Commission's subpoena practice, no decision will issue as to the issuance of the subpoenas.

7. Union Pacific's requests for issuance fail to meet the Commission's requirements such that the subpoenas should issue, except as to Larry J. Haas.

8. The Affidavit of Larry J. Haas including Attachments 1 through 6 thereto, are attached as Exhibit D to CDOT's Response to Order to Satisfy or Answer Dated December 5, 2012 by Answering Union Pacific Railroad Company's Formal Complaint Dated November 21, 2012 filed January 7, 2013. Based upon Union Pacific's request and such affidavit, good cause is shown for issuance. The subpoena will issue. As to the remaining requests, the subpoenas will not issue at this time based upon failure to comply with mandatory statutory procedures.

9. If the recipient of the subpoena believes the subpoena to be contrary to law or Commission rules, further relief may be sought as to the subpoena.

II. ORDER

A. It Is Ordered That:

1. Union Pacific Railroad Company's Motion and Request to the Colorado Public Utilities Commission to Issue a Subpoena in Connection with the Hearing in this Matter and three motions identically-titled as Motion and Request to the Colorado Public Utilities Commission to Issue a Subpoena in Connection with the Hearing in this Matter filed February 15, 2013 are denied.

2. Union Pacific Railroad Company's Motion and Request to the Colorado Public Utilities Commission to Issue a Subpoena in Connection with the Hearing in this Matter and Motion and Request to the Colorado Public Utilities Commission to Issue a Subpoena in Connection with the Hearing in this Matter filed February 19, 2013, are denied.

3. Union Pacific Railroad Company's Motion to Amend Subpoenas to Request Documents (Duces Tecum) and to Reflect the Correct Date of the Hearing in this Matter filed February 19, 2013, is denied.

4. This Order shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director