

Decision No. C14-0966-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0624R

IN THE MATTER OF THE APPLICATION OF THE WEST MOUNTAIN METROPOLITAN DISTRICT AND THE TOWN OF FRASER FOR AUTHORITY TO CONSTRUCT A NEW HIGHWAY-RAIL GRADE SEPARATION AT THE PROPOSED CROSSING OF GRAND PARK DRIVE AND THE UNION PACIFIC RAILROAD COMPANY TRACKS IN FRASER, COLORADO AND ABOLISH THE AT-GRADE RAILROAD CROSSING AT KINGS CROSSING ROAD (DOT NO. 254-214U) IN WINTER PARK, COLORADO.

**INTERIM DECISION DENYING FORTHWITH MOTION
TO CONSOLIDATE AS MOOT AND REFERRING
APPLICATION, PUBLIC COMMENT, AND
INTERVENTIONS TO ALJ FOR DISPOSITION**

Mailed Date: August 11, 2014

Adopted Date: August 6, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed jointly by the West Mountain Metropolitan District and the Town of Fraser (collectively Joint Applicants) on June 5, 2014, requesting authority to construct a new grade separated crossing of the extension of Grand Park Drive with the tracks of the Union Pacific Railroad Company (UPRR), no current National Inventory Number, requesting cost allocation of the grade separation structure between UPRR, the West Mountain Metropolitan District, and possibly the Town of Winter Park (Winter Park), and requesting to abolish the crossing of Kings Crossing Road in Winter Park, National Inventory No. 254214U, in the Towns of Fraser and Winter Park, County of Grand, State of Colorado.

2. Simultaneously, the Joint Applicants filed a Forthwith Motion to Consolidate (Motion) requesting that the Commission immediately consolidate the Application with Proceeding No. 12A-1216R and vacating the hearing that was scheduled for June 18, 2014 in Proceeding No. 12A-1216R. The Joint Applicants state that no party would be prejudiced by the consolidation of the two cases and vacation of the hearing in Proceeding No. 12A-1216R.

3. On June 9, 2014, Staff of the Commission sent a Deficiency Letter to the Joint Applicants outlining information required by Commission Rules 4 *Code of Colorado Regulations* (CCR) 723-7-7204 and 7205 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, missing from the Application including adjacent property owner information, and informing the Joint Applicants of the requirement and the date to post notice of proposed closure of the Kings Crossing Road crossing.

4. On June 18, 2014, the BNSF Railway Company responded to the June 9, 2014 deficiency notice providing the information missing from the Application. Based on the responses, it does not appear that the initial cost estimate for the theoretical structure was completed based on the requirements of the Commission's Rules.

5. The Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S. The Notice was mailed on June 20, 2014.

6. On June 20, 2014, the West Mountain Metropolitan District filed a Notice of Posting of Crossing and the Affidavit of C. Clark Lipscomb, a member of the Board of Directors of the West Mountain Metropolitan District, attesting that notice of proposed closure of the crossing was posted at the crossing on June 20, 2014. Photos showing the notice posted and the

posting of the closure notices were also provided. The posted notice complies with Commission Rule 4 CCR 723-7-7208(c).

7. On July 11, 2014, the UPRR filed an Entry of Appearance and Notice of Intervention. UPRR requests that any approval be conditioned on a Construction and Maintenance Agreement being filed. UPRR did state that it was not opposing or contesting the Application as long as the West Mountain Metropolitan District and the Town of Fraser did not seek a determination as to apportionment of costs. UPRR would oppose any application seeking an apportionment of costs to UPRR.

8. On July 14, 2014, UPRR filed an Amended Entry of Appearance and Notice of Intervention as of Right. UPRR states that is not opposing or contesting the granting of the Application.

9. On July 15, 2014, Winter Park filed a Motion to Intervene as of Right. Winter Park intervenes to protect its interests and the health, welfare, and safety of its citizens in relating to the proposed allocation of costs to Winter Park and the proposed closure of the Kings Crossing Road at-grade crossing. Winter Park is not taking a position on the Application at this time, but reserves the right to do so as the matter proceeds.

10. On July 17, 2014, Cornerstone Winter Park Holdings, LLC (Cornerstone), and Grand Park Development, LLC (Grand Park) filed a Motion to Intervene. Cornerstone claims it has pecuniary and contractual interests arising from the Annexation Agreement, ownership of adjacent property, and development rights that are substantially impacted by the Application and requests it be made a party to the proceedings.

11. The Commission notes that Clark Lipscomb is listed in the Application as the contact name for both Cornerstone and Grand Park. Mr. Lipscomb is also a member of the

Board of Directors of the West Metropolitan Mountain District, one of the Joint Applicants to this Application. We request any review of whether Cornerstone and Grand Park should be granted intervention take this information into consideration as part of the analysis.

12. Finally, as of the date of this Decision, the Commission has received ten public comments from citizens in Winter Park expressing great concern to their health and safety with the closure of the Kings Crossing Road crossing, frustration for economic reasons that they are being asked to subsidize a developer that will receive personal benefit from the proposed new grade separation, and concern that one of only two access points across the UPRR tracks will now be in another town's jurisdiction.

13. The Commission reviewed the record in this matter and deemed that the Application was complete within the meaning of § 40-6-109.5, C.R.S., at the Commission Weekly Meeting of July 30, 2014.

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

15. In regards to the Motion, the Commission could not have possibly ruled on the Motion until parties in this matter had been determined. Given the hearing in question for which the Motion was requesting be vacated has already occurred and a Recommended Decision in that proceeding has already been issued, the Motion in this matter becomes moot.

16. Now being fully advised in the matter, we deny the Motion as moot and we refer the Application to an Administrative Law Judge for disposition of the interventions in this matter consistent with the above discussion, determination of how to handle the public comments in this matter and whether a public hearing in this matter is warranted, determination of the merits of the Application, and appropriate allocation of costs of this project.

II. ORDER

A. It Is Ordered That:

1. The Forthwith Motion to Consolidate filed jointly by the West Mountain Metropolitan District and the Town of Fraser (collectively Joint Applicants) is denied as moot.

2. The application (Application) filed by the Joint Applicants on June 5, 2014, requesting authority to construct a new grade separated crossing of the extension of Grand Park Drive with the tracks of the Union Pacific Railroad Company (UPRR), no current National Inventory Number, requesting cost allocation of the grade separation structure between UPRR, the West Mountain Metropolitan District, and possibly the Town of Winter Park, and requesting to abolish the crossing of Kings Crossing Road in the Town of Winter Park, National Inventory No. 254214U, in the Towns of Fraser and Winter Park, County of Grand, State of Colorado was deemed complete within the meaning of § 40-6-109.5, C.R.S., at the Commission Weekly Meeting of July 30, 2014.

3. Proceeding No. 14A-0624R is referred to an Administrative Law Judge of the Colorado Public Utilities Commission for disposition of the interventions, determination of how to handle public comment, and determination of the merits of the Application including the appropriate cost allocation of the grade separation structure.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 6, 2014.**

(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

JOSHUA B. EPEL

PAMELA J. PATTON

Commissioners

COMMISSIONER GLENN A. VAAD
ABSENT.