

Decision No. R14-0171-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 12A-1216R

IN THE MATTER OF THE APPLICATION FOR THE MODIFICATION OF AN EXISTING AT-GRADE CROSSING - KING'S ROAD CROSSING IN THE TOWN OF WINTER PARK, COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION AND
SETTING PREHEARING CONFERENCE**

Mailed Date: February 13, 2014

I. **STATEMENT**

1. On November 20, 2012, the Town of Winter Park (Town or Applicant) filed an Application (with attachments) in which the Town seeks authority to modify the existing at-grade crossing located at King's Crossing Road in the Town. That filing commenced this proceeding.

2. On December 3, 2012, the Commission gave notice of the Application; and established an intervention period until January 2, 2013.

3. By Decision No. C13-0057-1, issued January 11, 2013, the Commission deemed the Application complete within the meaning of § 40-6-109.5, C.R.S., and referred this matter to an Administrative Law Judge.

4. On December 19, 2012, Union Pacific Railroad Company (UPRR) intervened of right in this proceeding. The crossing at issue crosses UPRR's track. UPRR neither opposes nor contests the Application but stated that it will participate in any hearing. UPRR is represented by legal counsel in this matter.

5. On January 3, 2013, one day after the intervention period ended, Cornerstone Winter Park Holdings, LLC and Grand Park Development, LLC (collectively, Cornerstone), filed their Joint Motion to Intervene. In that filing, Cornerstone asserted that they own property adjacent to the crossing at issue in this proceeding. They also asserted that the grade separation is contractually required at the crossing and an engineering firm has been contracted to complete the design with approval expected in 2013. Further, Cornerstone contended that information contained within the Town's Application is incorrect in light of the future Cornerstone development in the area of the subject crossing and an Annexation Agreement and the First Amendment to the Annexation Agreement between Cornerstone and the Town.

6. On January 11, 2013, the Town filed their objection to Cornerstone's Motion to Intervene. As grounds, the Town argued the intervention was late and good cause has not been shown to allow the late intervention.

7. Also on January 11, 2013, Cornerstone filed their Revised Motion to Intervene. In this motion, Cornerstone claimed that the late filing of the intervention was due to their receipt of the Notice on December 4, 2012, therefore they believed that the intervention period ended on January 3, 2013. In the alternative, Cornerstone argued that since the intervention was only one day late there was no prejudice to the Applicant or any party and failure to allow the intervention would prejudice Cornerstone's interest as well as the public's interest.

8. On January 18, 2013, Applicant filed their Objection to Revised Motion to Intervene. Applicant argued that the intervention should be denied due to a lack of good cause to allow the intervention, and in addition, Cornerstone did not meet the requirements of an intervenor by right.

9. By Interim Decision No. R13-0133-I, issued January 30, 2013, the interventions of UPRR and Cornerstone were granted and a prehearing conference was scheduled for February 7, 2013.

10. At the scheduled prehearing conference all parties were represented. Applicant moved to stay the proceeding in order to pursue a settlement with the Intervenors and also to seek a judicial determination as to whether the Annexation Agreement between Cornerstone and the Town is valid. Applicant agreed to waive the requirement that a Commission Decision be issued within 210 days and to provide the Court a status report every 90 days.

11. By Interim Decision No. R13-0187-I, issued on February 7, 2013, the proceeding was stayed and Applicant's waiver of the requirement that a Commission Decision issue within 210 was acknowledged.

12. On January 29, 2014, Applicant filed its Motion to Lift Stay and Set for Prehearing Conference (Motion). In its Motion, Applicant states that a majority of the issues between the Town and Cornerstone have been resolved and request that the above captioned proceeding be reopened for a determination to be made on the merits of the Application. Applicant states that UPRR does not object to the relief requested.

13. On February 12, 2014, Intervenor Cornerstone filed its Response to the Motion. Cornerstone stated it does not object to relief requested but still intends to contest the Application.

14. Good cause having been shown, the Motion shall be granted.

II. ORDER

A. It Is Ordered That:

1. The Motion to Lift Stay and Set for Prehearing Conference filed by the Town of Winter Park on January 29, 2014 is granted.

2. The stay in Proceeding No. 12A-1216R is lifted and the proceeding is reopened.

3. A prehearing conference is scheduled in this matter as follows:

DATE: March 13, 2014

TIME: 9:00 a.m.

PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado.

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director