

Decision No. R14-0286-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 CROSSINGS - KING'S ROAD CROSSING IN THE TOWN OF WINTER PARK, COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
SETTING PROCEDURAL SCHEDULE**

Mailed Date: March 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; 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 (ALJ).

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 that 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 Application 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 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 days was acknowledged.

12. On January 29, 2014, Applicant filed its Motion to Lift Stay and Set for Prehearing Conference.

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

14. By Interim Decision No. R13-0171-I, issued on February 13, 2014, the Motion to Lift Stay and Set for Prehearing Conference was granted and a prehearing conference was scheduled for March 13, 2014.

15. On March 13, 2014, a prehearing conference was held and the parties agreed to the following procedural schedule:

Applicant’s and Intervenor’s Witness and Exhibit List & Exhibits April 30, 2014
Evidentiary Hearing on Application May 21 & May 22, 2014
Deadline to File Statements of Position..... June 5, 2014

16. Witness lists shall include a detailed description of the witnesses’ anticipated testimony and the witnesses’ last known address and telephone number.

17. If a party intends to introduce any documents in support of their case, they **must file and serve** an exhibit list which references that document and they must file and serve the exhibit on the other party.

18. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, and Exhibit 3). The exhibits shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit’s foundation, and the date of the hearing. The parties are advised that they must have all their exhibits stamped prior to the time the hearing is scheduled to begin.

19. At the hearing, the parties shall bring an original and two copies of each exhibit they intend to introduce at the hearing. The filing of an exhibit with the Commission does not, by itself, admit an exhibit into the record of the proceeding.

20. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit.

21. **The parties are on notice** that no witness, shall be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served as required herein.

The parties are on notice that failure to provide a description of the witnesses' testimony may also result in a decision prohibiting such witness from testifying.

22. **The parties are on notice** that no exhibit will be received in evidence, except in rebuttal, unless filed and served as required herein.

23. **All parties are advised** that this proceeding is governed by the Rules of Practice and Procedure found at 4 *Code of Colorado Regulations* 723-1, Part 1. The ALJ expects the parties to comply with the Rules of Practice and Procedure. The rules are available on the Commission's website and in hard copy from the Commission.

II. ORDER

A. It Is Ordered That:

1. An evidentiary hearing is scheduled in this proceeding for:

DATES: May 21 and 22, 2014

TIME: 9:00 a.m.

PLACE: Winter Park Town Hall
50 Vasquez Rd.
Winter Park, Colorado.

2. The procedural schedule stated in ¶15 above is adopted.

3. 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