

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-1032R

IN THE MATTER OF THE APPLICATION OF THE GREAT WESTERN RAILWAY OF COLORADO, LLC (GWRCO) FOR AN ORDER AUTHORIZING THE RELOCATION AND CONVERSION OF THE EXISTING AT-GRADE CROSSING TO A GRADE-SEPARATED CROSSING, THE POUDBRE RIVER PEDESTRIAN PATH CROSSING (U.S. DOT# 934035G) LOCATED BETWEEN WINDSOR AND GREELEY, ON THE GWRCO GREELEY SUBDIVISION AT MP-94.60.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ADDRESSING INTERVENTIONS, VACATING
PROCEDURAL SCHEDULE AND SCHEDULING
PREHEARING CONFERENCE**

Mailed Date: December 19, 2014

I. STATEMENT

1. On October 22, 2014, Great Western Railway Company of Colorado (Great Western or Applicant) filed an Application requesting authority to construct a grade separated pedestrian crossing of the Poudre River Pedestrian Path and to remove the existing at-grade pedestrian path for this same pathway with the tracks of the GWRR Greeley Subdivision at approximate railroad milepost 94.60, National Inventory No. 934035G, in the County of Weld, State of Colorado. This filing commenced this proceeding.

2. On October 28, 2014, the Commission gave notice of the Application; established an intervention period; and established a procedural schedule. This Order will vacate that procedural schedule.

3. By Decision No. C14-1460-1, issued December 11, 2014, 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) “for disposition of the interventions and determination of the merits of the Application.” *Id.* at Ordering Paragraph No. 2.

A. Proceeding Caption

4. The caption that was assigned for this proceeding was incomplete.

5. The undersigned ALJ shall *sua sponte* amend the caption so it is complete.

B. Interventions.

6. On November 26, 2014, the City of Greeley, Colorado (Greeley) filed its Motion to Permissibly Intervene in this proceeding. Greeley states it has an interest in providing for its residents the continued safe access to the entire length of the Poudre River Trail (Trail) for educational, cultural, and recreational use. Greeley employs staff and administers programs to maintain the Trail under the management and oversight of the Board of Directors of Poudre River Trail Corridor, Inc. Greeley opposes GWRCO’s application and engineering design based on the safety and access concerns.

7. On November 28, 2014, the Town of Windsor, Colorado (Windsor) filed its Petition for Permissive Intervention in this proceeding. Windsor states it has committed significant funding to the Trail and believes if the Application is granted the Trail may be exposed to increased risk of inundation, flooding, erosion, siltation and deterioration.

8. On December 12, 2014, almost two weeks after the intervention period ended, the Poudre River Trail Corridor Inc. (Poudre River) filed its Motion to Permissibly Intervene. Poudre River requests the Commission find good cause to allow the intervention out of time.

Poudre River is the owner and operator of the Poudre River Trail. Poudre River is concerned with sight distances issues and drainage issues if the Application is approved.

9. Great Western did not file an objection to the intervention of Greely or Windsor.

10. The ALJ finds that the intervention of Greely and Windsor raises significant questions of public safety and public interest to allow the interventions.

11. Great Western has until December 26, 2014 in which to file an objection to the Motion to Permissibly Intervene filed by Poudre River on December 12, 2014. The undersigned ALJ shall not rule on the intervention of Poudre River until the issue has become ripe.

C. Time for Commission Decision.

12. By Decision No. C14-1430-I, the Commission deemed the Applications complete as of December 11, 2014. Applicant did not provide either its supporting testimony and exhibits or a detailed summary of its direct testimony and copies of its exhibits when it filed the Application.

13. Pursuant to § 40-6-109.5(2), C.R.S., absent an enlargement of time by the Commission¹ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue on or before 210 days from the date on which the Commission deemed the Application to be complete (that is, July 8, 2015).

D. Prehearing Conference.

14. It is necessary to schedule a hearing, to establish a procedural schedule, and to discuss discovery and other matters. To do so, a prehearing conference will be held on January 8, 2015.

¹ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary circumstances.

15. The Parties must be prepared to discuss whether the testimony in this proceeding should be presented through written question-and-answer testimony (including copies of the exhibits that the witness sponsors) that is prefiled or should be presented through oral testimony that is given during the hearing. If the testimony is presented orally at hearing, then, for each witness, a detailed summary of testimony is filed and copies of exhibits to be offered through the witness are filed.² Resolution of this issue will influence the procedural schedule.

16. At the prehearing conference, the Parties also must be prepared to discuss the following: (a) the date by which Applicant will file its written question-and-answer *direct testimony* (or a detailed summary of its direct testimony) and copies of the exhibits it will offer in its direct case; (b) the date by which each intervenor will file its written question-and-answer *answer testimony* (or a detailed summary of its answer testimony) and copies of the exhibits it will offer in its case; (c) assuming that written question-and-answer testimony is prefiled, the date by which Applicant will file written question-and-answer *rebuttal testimony* and copies of exhibits it will offer in rebuttal; (d) assuming that written question-and-answer testimony is prefiled, the date by which each intervenor will file written question-and-answer *cross-answer testimony* and copies of the exhibits it will offer;³ (e) the date by which each Party will file its corrected prefiled question-and-answer testimony and exhibits or will file its corrected and updated detailed summary of testimony; (f) the date by which each Party will file its prehearing motions;⁴ (g) the date for a final prehearing conference, if the Parties believe one is necessary;

² The detailed summary of testimony will include *at least* identification (name, address, daytime or business telephone number) of the witness and significant disclosure of: (a) the witness's expected testimony; (b) the witness's background; and (c) the witness's conclusions or recommendations (and the basis for each conclusion or recommendation).

³ Cross-answer testimony addresses and responds to answer testimony only. The date for filing cross-answer testimony and exhibits typically is the same date as that for filing rebuttal testimony and exhibits.

⁴ This date can be no later than ten calendar days before the first day of hearing.

(h) the date by which the Parties will file any stipulation reached;⁵ (i) the duration of the hearing and the proposed hearing dates;⁶ and (j) the date by which each Party will file its post-hearing statement of position.⁷

17. In considering a procedural schedule and hearing dates, and assuming the Applicant does not waive § 40-6-109.5, C.R.S., the Parties must take into consideration the date by which a Commission decision on the Application should issue (*i.e.*, July 8, 2015). Allowing adequate time for statements of position, a recommended decision, exceptions to the recommended decision, response to exceptions, and a Commission decision on exceptions, the hearing must be *concluded* no later than April 10, 2015.

18. At the prehearing conference, the Parties must be prepared to discuss any matter pertaining to discovery if the procedures and time frames contained in Rule 4 CCR 723-1-1405 are not sufficient.

19. At the prehearing conference, a party may raise any additional issue.

20. The ALJ expects the Parties to come to the prehearing conference with proposed dates, including hearing dates, for the procedural schedule. The Parties must consult prior to the prehearing conference with respect to the listed matters and are encouraged to present, if possible, a procedural schedule and hearing dates that are acceptable to all Parties.

⁵ This date can be no later than four business days before the first day of hearing.

⁶ The length of the hearing will depend, to a large degree, on whether written testimony is prefiled.

⁷ There will be no response to statements of position.

II. ORDER

A. It Is Ordered That:

1. Commission administrative personnel shall amend the Commission's records to reflect that the caption for Proceeding No. 14A-1032R is changed as set out above in this Decision

2. The Motion to Permissibly Intervene filed by the City of Greeley, Colorado, is granted.

3. The City of Greeley, Colorado, is an intervenor and a party in this proceeding.

4. The Petition for Permissive Intervention filed by the Town of Windsor, is granted.

5. The Town of Windsor, is an intervenor and a party in this proceeding.

6. The procedural schedule established in the Notice of Application Filed dated October 28, 2014 is vacated.

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

DATE: January 8, 2015

TIME: 9:00 a.m.

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

8. At the prehearing conference, the Parties shall be prepared to discuss the matters set out above.

9. The Parties shall be held to the advisements in this Order.

10. This Order 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