

Decision No. R09-0003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08A-172R

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AUTHORITY TO CONSTRUCT GRADE SEPARATIONS AT THE INTERSECTIONS OF THE HAYDEN RAIL SPUR AND COLORADO U.S. HIGHWAY 40 AND ROUTT COUNTY ROAD 27.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING APPLICATION**

Mailed Date: January 5, 2009

I. STATEMENT

1. On May 8, 2008, Public Service Company of Colorado (Public Service) filed an application (Application) requesting authority to construct two grade separated highway-rail crossings of U.S. Highway 40 (US 40) and Routt County Road 27 (CR 27) with the Hayden Rail Spur in Routt County, Colorado. The crossing of US 40 is National Inventory No. 253679C and the crossing of CR 27 is National Inventory No. 253680W.

2. Public Service contemporaneously filed this Application with a separate application for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the Hayden Fuel Project, Docket No. 08A-173E.

3. Staff of the Commission sent a deficiency letter to Public Service on May 16, 2008 outlining information missing from the Application. Public Service cured the deficiencies with its Supplement Application filed on May 19, 2008.

4. The Commission gave notice of this Application to all interested parties, including adjacent property owners in accordance with § 40-6-108(2), C.R.S. The Notice was mailed May 23, 2008.

5. On June 2, 2008, the Colorado Department of Transportation (CDOT) attorney filed an Entry of Appearance.

6. On June 6, 2008, the Routt County Board of County Commissioners (Routt County) filed an Entry of Appearance and Notice of Intervention. Routt County conditioned the Special Use Permit (SUP) granted to Public Service for the Hayden Fuel Project requiring Routt County to construct a grade separated crossing of CR 27. Routt County does not state in its intervention that it contests or opposes the Application.

7. On June 17, 2008, Union Pacific Railroad Company (UPRR) filed an Entry of Appearance and Notice of Intervention. UPRR does not oppose or contest the granting of the Application, but rather indicates that UPRR will participate in any hearing which results from an intervention contesting or objecting to any portion of the Application. If there are no other interventions or protests, and as long as a Construction and Maintenance Agreement is reached and the appropriate clearances and railroad requirements are met, UPRR has no objection to the Application being handled by the Commission's modified procedure.

8. The Commission reviewed the record in this matter and deemed the application complete within the meaning of § 40-6-109.5, C.R.S., by minute entry at the Commission Weekly Meeting on June 25, 2008.

9. On July 23, 2008, Public Service filed a Second Supplemental Application discussing requirements that UPRR is placing on delivery of coal trains to Hayden Station. The Second Supplemental Application states that the Memorandum of Understanding between Public

Service and UPRR require the train length to be 115 to 120 cars as opposed to the 70 cars included in the Application.

10. By Decision No. C08-0853, the Commission referred the matter to an administrative law judge (ALJ) for disposition. Because there are intervenors in Docket No. 08A-172R and no intervenors in Docket No. 08A-173E, it was requested that the ALJ in this matter consider the merits of this Application along with the merits of Docket No. 08A-173E, but that the ALJ not consolidate these two dockets.

11. Pursuant to Decision No. R08-0815-I, a prehearing conference was conducted in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1. During the course of the prehearing conference, Public Service requested that a procedural schedule not be established. Rather, Public Service intended to supplement its Application to address subject matters identified by the Commission in Docket No. 08A-173E. Thereafter, that docket might proceed as an unopposed application or a procedural schedule could be established. Thereafter, this matter might then be considered.

12. By Decision No. R08-1347, the undersigned ALJ issued a Recommended Decision granting the application in Docket No. 08A-173E. Thus, it is not appropriate to consider the within application. But for the Hayden Fuel Project, it would not have been necessary to consider this matter further.

13. Because this application is unopposed, it will be considered upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 CCR 723-1.

A. Findings of Fact

14. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the application.

15. Public Service proposes to construct two grade separated crossings along the Hayden Rail Spur leading from the UPRR Craig Branch mainline to the Hayden Power Plant. The two grade separated crossings will allow for the delivery of coal fuel by rail to the Hayden Power Plant. The SUP issued by Routt County is conditioned on Public Service constructing grade separations of US 40 and CR 27. Public Service is not seeking apportionment of its share of the costs with either Routt County or CDOT.

16. Public Service states that the bridges and rail construction will meet UPRR specifications and vertical and horizontal clearances for roadways will meet CDOT and Routt County requirements.

17. The plan and profile drawing provided by Public Service show that the grade separation construction for the rail spur over US 40 will consist of piers, retaining walls, abutments, superstructure, fences, and storm drainage. A 10' by 10' wildlife and trail tunnel is also proposed to the north of US 40 through the retaining wall. The rail spur will be carried on the bridge structure. The proposed structure over US 40 will consist of four spans with a total length of 247'-0". The minimum vertical clearance from the top of the roadway to the bottom of the girders for the structure will be a minimum of 20'-0" and the horizontal distance at US 40 will be a minimum of 78'-0" as required by CDOT. The retaining walls will be approximately 1600' in length north of the US 40 bridge structure and approximately 2450' in length south of the US 40 bridge structure. There are no railroad clearance issues as the rail will be carried on the bridge structure. The new US 40 structure will be 23'-0" out to out and accommodate one

standard gauge track on concrete ties and ballast with barriers and splash boards on both edges of the structure. This structure will replace the original at-grade crossing of US 40 used when the Hayden Power Plant was originally constructed. The at-grade crossing was paved over some time ago.

18. The plan and profile drawing provided by Public Service show that the grade separation construction for the rail spur over CR 27 will consist of piers, retaining walls, abutments, superstructure, fences, and storm drainage. The rail spur will be carried on the bridge structure. The proposed structure over CR 27 will consist of three spans with a total length of 228'-0". The minimum vertical clearance from the top of the roadway to the bottom of the girders for the structure will be a minimum of 16'-0" and the horizontal distance at CR 27 will be a minimum of 42'-0" as required by Routt County. CR 27 will be realigned shifting the roadway approximately 200' to the west of the existing alignment. There are no railroad clearance issues as the rail will be carried on the bridge structure. The new CR 27 structure will be 27'-8" out to out and accommodate one standard gauge track on concrete ties and ballast on a curve with barriers and splash boards on both edges of the structure. This structure will replace the original at-grade crossing of CR 27 used when the Hayden Power Plant was originally constructed.

19. Public Service states the current average daily traffic volumes on US 40 is 4,600 vehicles per day (VPD) in 2006 with 5.9 percent heavy vehicles and a projected increase to 5,773 VPD by 2023. Current average daily traffic volumes for CR 27 are 560 VPD in 2004 with no projections for future growth available. Public Service expects to run 1 trip to and from the Hayden Station per day, 5 days per week assuming 70 cars per train. With the information provided in the Second Supplemental Application, there may be fewer trains with the required 115 to 120 car train sets. The train will be moving slowly towards the plant and will cross CR 27

at approximately five to ten miles per hour. Public Service does not expect rail traffic along the Hayden Spur to increase or decrease in the future. Construction is expected to begin in March 2010 and end by June 2011 with commencement of crossing operations expected to start no later than January 2012. Public Service shall inform the Commission in writing that the new bridge construction is complete and operational within ten days of completion. The Commission shall expect this letter sometime around January 31, 2012. However, it is understood that this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule. Public Service shall also file two complete sets of final bridge plans with the Commission. The Commission will expect these bridge plans around the same time as notice of completion, January 31, 2012. Public Service shall also file signed copies of any Construction and Maintenance or similar type of agreement entered into with CDOT and/or Routt County outlining construction and maintenance agreements to be filed with the Commission. These agreements shall be filed with the Commission by March 1, 2010, or in the alternative a letter filed stating that no such agreements are being entered into.

20. Public Service states the estimated cost of the two new bridge structures is \$14,800,000, but that the estimates are very preliminary and within ± 30 percent. At +30 percent, the total cost of the two bridge structures can be as high as \$19,240,000. Public Service states that under a Participation Agreement with Hayden Station co-owners Salt River Project and PacificCorp, Public Service's share of the costs for the Hayden Fuel Project is 53.1 percent. Accordingly, the maximum Public Service would pay for the two new grade separation structures is 53.1 percent of \$19,240,000 or \$10,216,440.

21. If the crossings were constructed at-grade with active warning installed, it is likely that a collision could occur, specifically at the US 40 crossing, that would lead to a serious injury or fatality.

22. Looking at CR 27, this is one of the two major access roadways into the Hayden Power Plant. Blocking of this crossing could lead to issues with emergency response vehicles gaining access to the Hayden Power Plant or other areas south of the proposed rail spur.

23. It is in the public interest to grade separate both the US 40 and CR 27 crossings. From a safety perspective, grade separation of the crossings will practically eliminate the possibility of vehicles running into the side of a coal train moving slowly through the crossing and will allow better emergency vehicle access to the Hayden Power Plant and other areas south of the proposed rail spur.

24. Pursuant to the Commission's Rules, CDOT will be responsible for maintaining the US 40 roadway and Routt County will be responsible for maintaining the CR 27 roadway. Public Service will be responsible for maintaining the bridge structures including all piers, retaining walls, abutments, substructures, superstructures, track, ties, and ballast.

B. Conclusions

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

26. No intervenor that filed a petition to intervene or other pleading contests or opposes the application.

27. The Application, as supplemented, should be, and will be, granted.

28. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

29. Because the application is unopposed, the Commission will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 CCR 723-1.

II. ORDER

A. The Commission Orders That:

1. The application filed by Public Service Company of Colorado (Public Service) on May 8, 2008 and supplemented on May 19, 2008 and July 23, 2008 requesting authority to construct two grade separated highway-rail crossings of the Hayden Rail Spur with U.S. Highway 40 (US 40), National Inventory No. 253679C and Routt County Road 27 (CR 27), National Inventory No. 253680W in Routt County, Colorado (Application) is granted.

2. Public Service is authorized and ordered to proceed with constructing two new bridge structures of US 40 and CR 27 as shown in the plans included with the Application that will carry the rail spur tracks over US 40 and CR 27.

3. The Colorado Department of Transportation (CDOT) is required to maintain the US 40 roadway at its expense pursuant to Rule 4 Code of Colorado Regulations (CCR) 723-7-7211(c).

4. Routt County is required to maintain the CR 27 roadway at its expense pursuant to Rule 4 CCR 723-7-7211(c).

5. Public Service is required to maintain the bridge structures including all piers, retaining walls, abutments, substructures, superstructures, track, ties, and ballast at its expense pursuant to Rule 4 CCR 723-7-7211(a).

6. Public Service is required to file signed copies of the Construction and Maintenance Agreements with CDOT and/or Routt County, or in the alternative a letter stating that no such agreements are being entered into by March 1, 2010.

7. Public Service is required to file two complete sets of final bridge plans by January 31, 2012. However, it is understood that relief may be sought to file these plans later than this date depending on changes or delays to the construction schedule.

8. Public Service is required to inform the Commission in writing that bridge construction is complete and operational within ten days after completion. The Commission shall expect this letter sometime around January 31, 2012. However, it is understood that relief may be sought to file this letter later than this date depending on changes or delays to the construction schedule.

9. The Commission retains jurisdiction to enter further required orders.

10. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

11. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

30. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

31. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may

stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

12. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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