

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0334R

IN THE MATTER OF THE APPLICATION OF THE CITY OF FORT COLLINS, FOR
AUTHORITY TO RELOCATE THE RAILROAD SIGNAL BUNGALOW AND VACATE THE
ASSOCIATED EASEMENT AT THE CHERRY STREET CROSSING OF TRACKS OWNED
BY BNSF RAILWAY COMPANY, USDOT NO. 244-642N, IN LARIMER COUNTY, STATE
OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
APPROVING STIPULATION AND SETTLEMENT
AGREEMENT WITHOUT MODIFICATION
AND GRANTING APPLICATION AS
AMENDED UNDER MODIFIED PROCEDURE**

Mailed Date: January 13, 2023

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I. STATEMENT

A. Procedural History and Background

1. On July 22, 2022, the City of Fort Collins (the City) filed the above-captioned Application with the Colorado Public Utilities Commission (Commission). The Application sought the Commission’s approval of the relocation of a signal bungalow from the southeast

quadrant of the BNSF railroad crossing at Cherry Street in the City, to the southwest quadrant of the crossing. As the City explained in its Application, the signal bungalow currently sits on an easement on private property adjacent to the crossing. The property owner wishes to construct a parking garage on the property, necessitating the relocation of the signal bungalow.¹

2. On July 25, 2022, the Commission gave Notice of the Application to those interested in or affected by it. As noticed, the Application sought approval of the following:

relocation of the railroad signal bungalow and vacation of the associated easement at the Cherry Street crossing of tracks under the authority of the BNSF Railway in Larimer County, State of Colorado.²

3. BNSF Railway Company (BNSF) timely filed its Intervention on August 24, 2022. In its Intervention, BNSF sought a hearing and opposed the City's Application on the grounds that the relief the City sought in its Application exceeded the Commission's jurisdiction. BNSF requested that the Application be dismissed or, in the alternative, for an order mandating that the City "cease and desist work at th[e] crossing" until an agreement could be reached addressing the scope of the work.³

4. No other Interventions were filed.

5. On September 7, 2022, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) for disposition.

¹ City of Fort Collins' Application . . . to Relocate the Railroad Signal Bungalow, filed July 22, 2022, § II(G), p. 5.

² Notice of Application Filed, p. 1, filed July 25, 2022.

³ BNSF's Notice of Intervention and Request for Hearing, pp. 1-2, filed Aug. 24, 2022.

6. By Decision No. R22-0623-I, mailed October 18, 2022, the ALJ set this matter for a hearing scheduled to commence January 24, 2023.

7. On January 5, 2023, the parties filed a Joint Motion to Vacate Hearing and Stipulation. In the Joint Motion, the parties advised the Commission that they had reached a settlement agreement regarding the relocation of the signal bungalow.⁴ Under the terms of the parties' agreement, the City will "amend its Application to reflect the correct legal description and depiction of the Development Site upon which the Railroad Signal Facilities currently reside in order for the Commission to properly review and approve the construction proposed at the subject crossing."⁵ Further, the parties agreed that Exhibits A, B, and C submitted by the City with its initial Application remain unchanged and can be relied upon by the Commission in evaluating the City's Amended Application.⁶ The parties advised that because they had reached an agreement, an evidentiary hearing was no longer necessary.⁷

8. By Decision No. R23-0021-I, issued January 9, 2023, the ALJ vacated the January 24, 2023, evidentiary hearing.

9. Contemporaneously with the parties' Joint Motion, the City filed an Unopposed Motion for Amendment of Application.

⁴ Joint Motion to Vacate Hearing and Stipulation, ¶ 2, pp. 1-2, filed Jan. 5, 2023.

⁵ *Id.*, ¶ 3, p. 2.

⁶ *Id.*, ¶ 5, p. 2.

⁷ *Id.*, ¶ 4, p. 2.

10. The Application as amended by the parties' Stipulation and Agreement is uncontested and may and may be processed under modified procedure pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 *Code of Colorado Regulations* (CCR) 723-1, without a formal hearing.

11. 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.

II. FINDINGS OF FACT AND CONCLUSIONS

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

13. BNSF is a private entity that owns property rights and an easement at the Cherry Street crossing that is the subject of this Application.

14. The City of Fort Collins is a political subdivision of the State of Colorado and a home rule city and municipal corporation. The City is the municipality responsible for the roadway and pedestrian systems on Cherry Street in the City at the location of the crossing.

15. The City initiated this Application to assist the owner of property (Property Owner) adjacent to the crossing. In its current location on the southeastern quadrant of the crossing, "the signal bungalow controlling operations of the active crossing warning devices at the Cherry Street crossing of BNSF Railway tracks . . . sits on an easement within the property."⁸ The Property Owner wishes to construct a parking garage on the property, necessitating the relocation of the signal bungalow to the southwest quadrant of the crossing.⁹ The project will also encompass

⁸ City of Fort Collins' Application, ¶ II(G), p. 5, filed July 22, 2022.

⁹ *Id.*

the vacation of the existing easement across the adjacent owner's property.¹⁰ The City estimates the total billable cost of the project to be \$153,766.¹¹

16. The City now moves to amend its Application to reflect the parties' agreement and to "to reflect the details of the negotiated agreements between the Property Owner and BNSF."¹² The City represents that BNSF does not oppose the City's Motion to Amend its Application and asks that the response time for the motion provided by Rule 1400(b), 4 CCR 723-1, be waived.¹³

17. The requested relief being unopposed, it is appropriate that response time to the Unopposed Motion be waived. Based upon good cause shown for the Unopposed Motion, the request for leave to amend the Application will be granted.

18. In its Amended Application, the City states that, under the provisions of its Stipulation and Agreement with BNSF, Exhibits A (crossing inventory), B (cost estimate and schematic), and C (project vicinity map) — all of which were attached to its initial Application - remain unchanged and can be relied upon by the Commission in the latter's evaluation of the City's Amended Application.¹⁴

19. The Amended Application incorporates a new Exhibit D (Rev. 1) — Release of Easement Interest — which is pending signatures.¹⁵ Under the terms of the Release, BNSF will "issue a quitclaim and release deed for the purpose of releasing its interest in the subject easement

¹⁰ *Id.*, ¶ II(H)(i), pp. 5-6.

¹¹ *Id.*, attached Exhibit B.

¹² City of Fort Collins' Unopposed Motion for Amendment of Application, ¶ 8, p. 3, filed Jan. 5, 2023.

¹³ *Id.*, ¶ 11, p. 3.

¹⁴ *Id.*, ¶ 15, p. 4.

¹⁵ *Id.*, ¶ 13, p. 3.

right-of-way for and in consideration of Twenty-Seven Thousand Five Hundred and No/100 Dollars (\$27,500.00),” payable to the property owner.¹⁶ BNSF will retain easement rights over the area described in Exhibit C attached to the Application.¹⁷ The Release of Easement Interest “shall close” upon completion of the relocation of the signal bungalow.¹⁸

20. In addition, the Amended Application incorporates a new Exhibit E, RAILROAD FACILITIES RELOCATION AND DEVELOPMENT AGREEMENT, which was signed by the Property Owner and BNSF on January 3, 2023.¹⁹ The Agreement includes schematic diagrams, attached as Exhibits A and B to the Agreement, illustrating the current location of the signal bungalow and the proposed new location in the southwestern quadrant of the crossing, as well as copies of the parties’ Release of Easement and Special Warranty Deed.²⁰

21. Under the terms of the Railroad Facilities Relocation and Development Agreement, BNSF has agreed to supply the labor and materials to relocate the signal bungalow to its new location on the southwestern quadrant of the crossing. The final location of the moved signal bungalow “shall be within BNSF’s sole discretion within property owned or occupied by BNSF or as may be otherwise permitted within a public right of way or utility easement.”²¹

¹⁶ *Id.* attached Exhibit D (Rev. 1).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* attached Exhibit E, pp. 1 & 9.

²⁰ *Id.*, attachments to attached Exhibit E.

²¹ *Id.* attached Exhibit E, Art. II, p. 2.

In return, the Property Owner has agreed that the “work will be performed at [its] sole cost and expense.”²²

22. The City requests that the Commission grant the City’s requests as expeditiously as possible so that construction on the relocation project can commence “as soon as practicable” upon the Commission’s approval.²³

23. The Application, as now amended, is uncontested.

24. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, the uncontested Application may be processed under the modified procedure, without a formal hearing.

25. Based upon the foregoing, it is found and concluded that good cause exists and that the requirements of public safety and necessity are met by approving the City’s final plans as set forth in its Amended Application

26. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission enter the following order.

III. ORDER

A. It Is Ordered That:

1. The City of Fort Collins’ Unopposed Motion to Amend Application, filed January 5, 2023, is granted.

²² *Id.*

²³ *Id.*, ¶ 10, p. 3.

2. The Application filed by the City of Fort Collins (the City) on July 22, 2022, and amended on January 5, 2023, seeking authority to relocate the signal bungalow controlling operations of the active crossing warning devices at the Cherry Street crossing of BNSF Railroad from its current location at the southeast quadrant of the crossing at railroad milepost 74.52 on the Front Range Subdivision, National Inventory No. 244642N, in the City of Fort Collins, County of Larimer, State of Colorado, located on an easement on property owned by an adjacent Property Owner, to the southwest quadrant of the crossing to facilitate the Property Owner's desire to build a parking garage on the property, is granted.

3. BNSF and the City of Fort Collins are authorized and ordered to proceed with the relocation of the signal bungalow controlling operations of the active crossing warning devices at the Cherry Street crossing of BNSF Railroad in the City of Fort Collins, State of Colorado.

4. The City of Fort Collins is required to file a copy of the signed Construction and Maintenance Agreement in this matter prior to the commencement of construction work at the crossing.

5. The City of Fort Collins is required to inform the Commission in writing that the authorized improvements are complete and operational within ten days after completion. The Commission shall expect this letter by August 31, 2023. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

6. 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.

7. 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.

- a. 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.
- b. 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.

8. 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

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director