

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0353R

IN THE MATTER OF THE APPLICATION OF THE CITY OF LONGMONT, COLORADO, 80501 FOR AUTHORITY TO CONSTRUCT A NEW AT-GRADE CROSSING OF THE BURLINGTON NORTHERN SANTA FE TRACKS ON THE PROPOSED BOSTON AVENUE EXTENSION AND FOR AUTHORITY TO CLOSE THE EXISTING CROSSINGS OF THE BURLINGTON NORTHERN SANTA FE TRACKS AT FIFTH AVENUE AND TERRY STREET IN LONGMONT, COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
ACKNOWLEDGING INTERVENTION, ESTABLISHING
DEADLINE FOR APPLICANT TO SUPPLEMENT THE
APPLICATION, ESTABLISHING PROCEDURES,
SCHEDULING EVIDENTIARY HEARING,
AND PROVIDING INSTRUCTIONS CONCERNING
EXHIBITS AND PARTICIPATING
IN REMOTE EVIDENTIARY HEARING**

Mailed Date: September 11, 2023

I. STATEMENT

A. Procedural History

1. On June 27, 2023 the City of Longmont (Longmont) filed an Application (Application), requesting authority to open a new highway-rail grade crossing at the extension of Boston Avenue with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 43.4 of the Front Range Subdivision, no existing National Inventory Number, in Longmont, County of Boulder, State of Colorado and to close the existing crossings of 5th Avenue at railroad milepost 44.289, National Inventory No. 245003Y and Terry Street at railroad milepost 43.430, National Inventory No. 244846A in Longmont, State of Colorado. Longmont filed

testimony and exhibits with the Application. This filing commenced Proceeding No. 23A-0353R.

2. On July 7, 2023, Staff of the Commission sent a Deficiency Letter (Deficiency Letter) to Longmont requiring submission of additional necessary information that was omitted from the Application. Among other things, the Deficiency Letter pertinently states: “Because the Application as filed is incomplete without the railroad cost estimate and front sheet and the notes that plan sheets will be completed with the fina [sic] plans, Staff does not believe that Longmont is in a position for the Commission to approve final plans at the moment.”¹¹

3. On July 12, 2023, the Commission gave notice of this Application to all interested and affected parties.

4. On July 12, 2023, Longmont filed its Affidavit of Crossing Closure for the Terry Street Crossing and the 5th Avenue Crossing.

5. On July 19, 2023, BNSF noticed its intervention as a matter of right herein (Intervention), in which BNSF set forth its opposition to the Application.

6. On July 25, 2023, Longmont filed additional information in response to the Deficiency Letter.

7. The Application was deemed complete on August 26, 2023, in accordance with Rule 1303(c)(IV) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1.

8. By Decision No. C23-0560-I, issued August 31, 2023, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition of the intervention,

¹¹ Advice Letter at 2.

determination of the merits of the Application, and to obtain additional information regarding the missing information from the original Application.

B. Intervention

9. BNSF intervened of right as owner of the property that may be affected by the Application. The Intervention was timely filed by BNSF and is acknowledged by the ALJ.

C. Longmont's Supplementation of the Application, Procedural Schedule, Remote Evidentiary Hearing, and Unified Numbering System for Hearing Exhibits

10. As originally noted in the Deficiency Letter, the Application, as originally filed on June 27, 2023, seeks final approval of final design plans; however, certain information set forth in Rule 7204 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Crossings, 4 CCR 723-7 was omitted. Illustratively, Longmont's filings on July 12, and 25, 2023, fall short of complying with the requirements set forth in Rule 7204(a)(X)(C) and (D), 4 CCR 723-7, in that these filings do not contain detailed railroad cost estimates of the crossing warning devices, and a schematic diagram of the crossing warning devices (commonly referred to as "front sheets").

11. Because Longmont filed supporting testimony with the Application, pursuant to §40-6-109.5(1), C.R.S., the deadline for a Commission decision in this matter is December 26, 2023. In absence of a waiver of the applicable statutory period, this matter must be fully and expeditiously considered so that the Commission may issue a timely decision. However, the Application and supporting testimony initially appears incomplete.

12. Based on the foregoing, the ALJ: will provide one further opportunity for Longmont to supplement or amend the Application and supporting testimony; establish

procedural deadlines; and schedule a remote evidentiary hearing in this matter, as ordered below. Should Applicant choose to waive the applicable statutory period, the procedural schedule may be revisited.

13. Given Longmont's flexible position noted in the Application, as to Longmont's preference regarding the type of the hearing to be held in this matter,² and the flexibility that a remote evidentiary hearing would otherwise afford the parties, a remote evidentiary hearing will be held in this matter, as ordered below.

14. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by videoconference allows parties and witnesses to view exhibits on the video-conference screen while the exhibits are being offered into evidence and witnesses testify about them. This Decision and Attachments A and B to this Decision provide critical information and instructions to facilitate holding the video-conference part of the hearing, which all parties must follow.

15. The evidentiary hearing will be conducted via videoconference using the Zoom platform. Attachment A to this Decision provides information about the Zoom platform and how to use Zoom to participate in the remote hearing. To minimize the potential that the video-conference part of the hearing may be disrupted by non-participants, the link, meeting ID code, and passcode to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

² See Application at 2.

16. Attachment B to this Decision outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentations at the remote hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

17. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Longmont is assigned hearing exhibit numbers 100 to 199; and
- BNSF is assigned hearing exhibit numbers 200 to 299.

D. Additional Procedural Notices

18. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

19. Additional and/or different procedural requirements may be addressed in future Interim Decisions.

II. ORDER

A. It Is Ordered That:

1. The intervention of right, filed by BNSF Railway Company (BNSF) on July 19, 2023, is acknowledged.

2. On or before September 19, 2023, the City of Longmont (Longmont) shall file any amendment or supplement to its Application that it may desire.

3. The following procedural schedule is adopted to govern this proceeding:

<u>Event</u>	<u>Deadline</u>
BNSF's Answer Written Testimony is due	October 3, 2023
Longmont's Rebuttal's Written Testimony is due.	October 13, 2023

4. The parties shall be held to, and shall comply with, the requirements in this Decision. In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 (e.g., Rule 1202 regarding pre-filed testimony and Rule 1405 regarding discovery procedures), all pre-filed hearing exhibits shall be marked for identification and filed in accordance with this Decision, including Attachment B hereto.

5. An evidentiary hearing in this matter shall be conducted at the following dates, time, and place:

DATE: October 18, 2023

TIME: 9:00 a.m.

PLACE: By video conference: using the Zoom web conferencing platform at a link be provided to the participants by email.³

³ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director