

Decision No. R23-0701-I

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
DENYING WITHOUT PREJUDICE JOINT MOTION
TO CONTINUE HEARING OR IN THE
ALTERNATIVE TO CONVERT EVIDENTIARY
HEARING TO STATUS CONFERENCE**

Mailed Date: October 16, 2023

I. STATEMENT

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. This filing commenced Proceeding No. 23A-0353R.

2. 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.

3. 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.

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

5. By Decision No. R23-0606-I, issued September 11, 2023, the ALJ, among other things, established procedures and scheduled an evidentiary hearing in this matter for July 18, 2023.

6. On October 13, 2023, Longmont and BNSF filed their Joint Motion Requesting Continuance of the October 18, 2023 Evidentiary Hearing, or in the Alternative, a Request for a Status Conference (Motion for Continuance). In the Motion for Continuance Longmont and BNSF state that that the parties have agreed in principle to a settlement agreement whose terms include: BNSF's withdrawal of its opposition to the Application; Longmont agreement to support and cooperate in BNSF efforts to obtain grants for grade separation of existing at-grade crossings on CO 119 and CO 66; and BNSF's agreement to provide an updated sketch plan and cost estimate for the Application. Longmont and BNFS further state that the terms of their agreement will be memorialized in a memorandum of understanding that will be filed with the Commission prior to November 17, 2023. Longmont and BNFS request to continue the Hearing to November 17, 2023,

in order to provide the Parties with time to finalize the settlement agreement. In the alternative, the parties request that a status conference in this matter be held.

7. Without a Waiver of the statutory deadline for a Commission decision, the parties' requested continuance of the evidentiary hearing to November 17, 2023, does not allow for sufficient time for the Commission to appropriately consider, and render a Decision in, this matter by the statutory deadline of December 26, 2023. Moreover, without a waiver of the statutory deadline for a Commission decision, and given the tight procedural deadlines in this Proceeding, the parties' alternative request to convert the evidentiary hearing scheduled for October 18, 2023, to a status conference cannot be accommodated by the ALJ. Therefore, the Motion for Continuance will be denied without prejudice, as ordered below.

II. ORDER

A. It Is Ordered That:

1. The Joint Motion Requesting Continuance of the October 18, 2023 Evidentiary Hearing, or in the Alternative, a Request for a Status Conference, filed October 13, 2023 by the City of Longmont and BNSF Railway Company, is denied without prejudice.

2. 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