

Decision No. C24-0142-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0089R

IN THE MATTER OF THE APPLICATION OF BNSF RAILWAY COMPANY TO INSTALL A FLASHING LIGHT FOR THE PROTECTION OF NON-MOTORIZED VEHICLES AND PEDESTRIANS USING THE DETACHED WALK AT THE NICKEL STREET CROSSING OF TRACKS OWNED BY BNSF RAILWAY COMPANY IN THE CITY AND COUNTY OF BROOMFIELD, COLORADO (DOT #089385S).

**INTERIM COMMISSION DECISION GRANTING
REQUEST FOR SHORTENED NOTICE AND
INTERVENTION PERIOD**

Mailed Date: March 6, 2024
Adopted Date: March 6, 2024

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. This Decision establishes a shortened notice and intervention period for the Application filed by BNSF Railway Company (BNSF) seeking an order authorizing the installation of a flashing light for the safety and protection of non-motorized vehicles and pedestrians using the detached walk at the Nickel Street crossing of BNSF tracks in the City and County of Broomfield, Colorado (DOT #089385S) (Application).

2. Requests to intervene in this matter (including a notice of intervention by right of Staff of the Colorado Public Utilities Commission), along with any responses to the Application, shall be filed no later than **5:00 p.m. on March 13, 2024**.

B. Discussion

3. On February 22, 2024, BNSF submitted the Application, seeking authority to install a flashing light for the protection of non-motorized vehicles and pedestrians using the detached walk at the Nickel Street crossing of BNSF tracks in the City and County of Broomfield, Colorado (DOT #089385S).

4. BNSF explains the installation of the detached walk was previously approved by the Commission in Decision No. C23-0383, which granted the application of the City and County of Broomfield in Proceeding No. 23A-0203R to install 16 linear feet of concrete crossing material to construct a “detached walk to provide a non-motorized connection across the tracks” as described in the city and county’s application. Neither BNSF nor any other party intervened in the proceeding to support or oppose the application.

5. Through the instant Application, BNSF maintains that additional warning is needed along the detached walk. BNSF contends that good cause exists to allow the installation of the flashing-light signal to ensure enhanced protection for non-motorized and pedestrian users of the pathway approaching the pathway crossing, particularly those users who are deaf or hearing impaired who cannot hear the audible bells at this Quiet Zone crossing. For support, BNSF cites to Section 8E.07 of the updated edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD) that was released in December 2023 by the Federal Highway Administration.¹ At page 7 of its Application, BNSF states “[t]he relevant MUTCD Rule Section 8E.07 requires that pathway grade crossings using an active traffic control system, such as this

¹ We note that, as the Commission recently confirmed in Decision No. C24-0127, issued March 1, 2024, in rulemaking proceeding No. 21R-0538R, the recently released national standard has not yet been adopted in Colorado. As the Commission acknowledged in that case, the Colorado Department of Transportation has a two-year adoption period in which to adopt the 2023 edition of the MUTCD for use in Colorado, with a Colorado-specific supplement that includes exceptions, adaptations, or additions to the national publication where necessary for the proper and lawful application of the MUTCD in Colorado in compliance with state statutes.

one, *shall* include flashing-light signals on each approach to the crossing.” BNSF indicates this is a Standard under this recent edition of the MUTCD. BNSF states the Rule provides the option to omit flashing-light signals at crossings “that are located within 25 feet of an active warning device at a grade crossing that is equipped with those devices.” BNSF states, in this case, the pathway is 24 feet from the edge of the curb, thus it is just within the permissible distance for this exception to the requirement for flashing-light signals in the updated MUTCD.

6. BNSF states it seeks permission to install the flashing light at its own expense and in conjunction with the construction approved in Decision No. C23-0383. BNSF states it has agreed to pay for the flashing-light in the interest of ensuring the maximum possible protections for pathway users at this crossing.

7. BNSF indicates that the City and County of Broomfield does not oppose the relief requested in the Application and agrees with BNSF’s contemporaneous request for expedited review and approval of the Application so that the installation, if approved, may be performed in conjunction with the construction approved in Proceeding No. 23A-0203R.

8. Concurrent with the Application, BNSF filed a Motion for Expedited Review and Approval of Application (Motion for Expedited Review). BNSF requests the Commission establish a seven-day notice and intervention period for the Application. As good cause, BNSF states that an expedited procedural schedule would allow for BNSF to perform the proposed work concurrently with the work being performed in Proceeding No. 23A-0203R. BNSF states the construction authorized in Proceeding No. 23A-0203R is set to begin as soon as possible. BNSF states the City and County of Broomfield agrees with the request for expedited review and approval of the Application.

C. Findings and Conclusions

9. Rule 4 *Code of Colorado Regulations* 723-1-1206(d) of the Commission's Rules of Practice and Procedure, states that unless shortened by Commission decision or rule, the intervention period for notice mailed by the Commission shall expire 30 days after the mailing date. Further, Rule 1206(3) requires the Commission's notice to state the date by which any objection, notice of intervention of right, or motion to permissively intervene must be filed.

10. We find good cause to waive remaining response time to the Motion for Expedited Review, which BNSF states is unopposed by the City and County of Broomfield, and will take up the motion without further delay.

11. Upon consideration of the Motion for Expedited Review, we find good cause to grant BNSF's request for a shortened notice and intervention period so that the Application can be considered expeditiously, given the potential for the work to be done concurrently with the work the Commission has already authorized in Proceeding No. 23R-0203R.

12. Accordingly, the notice period for the Application shall extend for seven days from the effective date of this Decision, through **5:00 p.m. on March 13, 2024**. The intervention and response period will run concurrent with the notice period. Interventions and any responses to the Application shall be due by **5:00 p.m. on March 13, 2024**.

13. The Application is available for public inspection by accessing the Commission's E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24A-0089R.

This Decision is the Commission's notice that BNSF's Application has been filed seeking an order authorizing the installation of a flashing light for the safety and protection of non-motorized

vehicles and pedestrians using the detached walk at the Nickel Street crossing of BNSF tracks in the City and County of Broomfield.

II. ORDER

A. It Is Ordered That:

1. This Motion for Expedited Review and Approval of Application (Application), filed by BNSF Railway Company on February 22, 2024, is granted, consistent with the discussion above.

2. Service of this Decision will provide notice of BNSF Railway Company's Application to all interested persons, firms, and corporations.

3. The notice period for the Application shall extend through and include **5:00 p.m. on March 13, 2024.**

4. Any person desiring to intervene or participate as a party in this Proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, other appropriate pleadings to become a party by **5:00 p.m. on March 13, 2024.**

5. Any responses to the Application should be filed by **5:00 p.m. on March 13, 2024.**

6. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments in response to the Application, may send written comments addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or by accessing the Commission's E-Filing system under the above proceeding number at: <https://puc.colorado.gov/>.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 6, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners