

Decision No. C24-0181

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).

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND DENYING APPLICATION**

Mailed Date: March 20, 2024

Adopted Date: March 20, 2024

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the BNSF Railway Company (BNSF) on February 22, 2024, requesting authority to install an additional off-quadrant flashing light at the crossing of Nickel Street with the tracks of the BNSF from what was already approved by Commission Decision No. C23-0383 in Proceeding No. 23A-0203R.

2. By Interim Decision No. C24-0142-I, mailed March 6, 2024, the Commission shortened the notice and intervention period in this proceeding to 5:00 p.m. on March 13, 2024.

3. On March 5, 2024, the City and County of Broomfield (Broomfield) filed a Notice of Intervention in this matter. Broomfield does not contest the application, but rather files this intervention to provide further description of its planned project and clarify several inaccuracies in the Application.

4. The Commission has reviewed the record in this matter deems the Application is complete within the meaning of § 40-6-109.5, C.R.S.

5. Now being fully advised in the matter, we deny the Application.

B. Findings of Fact

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

7. In Proceeding No. 23A-0203R, Broomfield sought authority to install concrete crossing material for a detached walk west of the existing roadway crossing and updating of the existing interconnection between the existing traffic signal at Nickel Street and US 287 and the existing railroad signal. Additionally, the project will include installing a second traffic signal at the intersection of Industrial Lane, south of the BNSF track crossing, which will be connected to the existing signal at Nickel Street/US 287, such that both traffic signals are interconnected to the existing railroad signal bungalow. No roadway or active warning railroad equipment modifications are proposed as part of that project.

8. The Commission approved Broomfield's Application by Decision No. C23-0383 mailed June 7, 2023.

9. With the instant application, BNSF requests authority to install an additional off-quadrant flashing light at its own expense. BNSF seeks to install the additional flashing light for the protection of non-motorized vehicles and pedestrians using the detached walk at the Nickel Street crossing. BNSF believes additional warning is needed along the detached walk to provide visual notice to adjacent trail users approaching from the west, particularly for the protection of those using the detached walk who are deaf or hearing impaired. BNSF seeks to

install this flashing light in conjunction with the construction approved in Commission Decision No. C23-0383.

10. In support of this request, BNSF states that the relevant MUTCD Rule Section 8E.07 requires that pathway grade crossings using an active traffic control system such as this one, *shall* include flashing light signals on each approach to the crossing (as required by 8E.07 Standard 03). BNSF does note the Rule provides the option to omit flashing-light signals at pathway grade crossings that are located within 25 feet of an active warning device and a grade crossing that is equipped with those devices. See 8E.07 Option 5.

11. BNSF notes that in this case, the pathway is 24 feet from the edge of the curb and that neither approach is within line of sight of the existing flashers shown in Exhibit 3. BNSF believes good cause exists to allow the installation of the flashing light signal proposed by BNSF to ensure enhanced protection for non-motorized and pedestrians, particularly those users who are deaf or hearing impaired who will not hear the audible bells at this quiet zone.

12. Broomfield provides clarification of the design of the proposed detached sidewalk adjacent to the existing Nickel Street crossing. First, Broomfield notes that the currently adopted MUTCD in Colorado is the 2009 version with the Colorado supplement and that Colorado has an additional two years to adopt the national standard and develop a state supplement if they choose. Because the 2009 MUTCD standard for detached walks within 25 feet of existing active warning devices at the Nickel Street crossing, which is equipped with this device, separate flashing light signals may be omitted. Broomfield omitted the additional flasher requested by BNSF as that decision is at the roadway authority's discretion.

13. Second, Broomfield highlights concerns with Exhibit 3 in the Application. This BNSF exhibit uses Broomfield's plans from its application and identifies a field of vision

that is not realistic. Broomfield states the detached walk users will have view of the existing active crossing warning devices at the Nickel Street crossing. Broomfield notes this exhibit inaccurately presents that the existing flashers are aimed at the roadway. The existing roadway flashers are perpendicular to the roadway per BNSF standards and will remain. The existing flasher is visible to all approach traffic, both on the roadway and on the proposed detached walk.

C. Discussion

14. BNSF points to the 2023 MUTCD 8E.07 Standard 3 as justification for its Application. The 2023 MUTCD 8E.07 Standard 3 states, “If used at a pathway or sidewalk grade crossing, an active traffic control system (see Section 8D.01) shall include flashing-light signals (see Figure 8E-7) on each approach to the crossing”. The other section BNSF references, 8E.07 Section 5 states “Flashing-light signals and other audible warning devices may be omitted at pathway or sidewalk grade crossings that are located within 25 feet of an active warning device at a grade crossing that is equipped with those devices.”

15. BNSF misstates the information contained in the 2023 MUTCD 8E.07 Standard 3 by omitting that this Standard 3 starts out with “*If* used at a pathway or sidewalk grade crossing...(emphasis added)” and only including the “*shall* include flashing light signals on each approach.”

16. The 2009 MUTCD plus State Supplement is the currently adopted MUTCD for the State of Colorado. Because BNSF relies upon an MUTCD that is not currently in use in Colorado and misstates the information contained in that document, we will not consider those statements as good cause to grant the Application.

17. Additionally, our review of the photos provided in BNSF Exhibit 6 match more with Broomfield's explanation of the field of vision at the site than BNSF's representation of field of vision in BNSF Exhibit 3.

18. Broomfield's clarifications provide the more accurate summary of the conditions at the crossing and the thought process used to make the decision that an additional flashing light pair is not necessary at the crossing. We find no grounds in the Application to now reach a different determination.

D. Conclusions

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

20. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application.

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

22. We find that good cause exists and that the requirements of public safety are met by denying the Application consistent with the above discussion. BNSF has not met its burden of proof in this matter.

23. BNSF is not authorized to install additional flashing lights at the crossing.

II. ORDER**A. The Commission Orders That:**

1. The application (Application) filed by the BNSF Railway Company (BNSF) on February 22, 2024, requesting authority to install an additional off-quadrant flashing light at the crossing of Nickel Street with the tracks of the BNSF from what was already approved by Commission Decision No. C23-0383 in Proceeding No. 23A-0203R is deemed complete within the meaning of § 40-6-109.5, C.R.S. on February 18, 2023.

2. The Application is denied.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. The Commission retains jurisdiction to enter further decisions as necessary.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 20, 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

TOM PLANT

Commissioners