

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0598R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION, FOR AUTHORITY TO REPLACE EXISTING TRAFFIC SIGNAL INTERCONNECTION WITH NEW TRAFFIC SIGNAL INTERCONNECTION TO EXISTING RAILROAD ACTIVE WARNING SIGNAL BUNGALOW AT THE COLORADO STATE HIGHWAY 119-63RD STREET INTERSECTION CONNECTION TO THE 63RD STREET (DOT# 244-827V) CROSSING OF TRACKS OWNED BY BNSF RAILWAY, IN BOULDER COUNTY, STATE OF COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ACKNOWLEDGING INTERVENTION, ADOPTING
PROCEDURAL SCHEDULE, PROVIDING
INSTRUCTIONS CONCERNING EXHIBITS, AND
SCHEDULING EVIDENTIARY HEARING**

Mailed Date: April 30, 2024

I. STATEMENT

1. On December 8, 2023, the Colorado Department of Transportation (CDOT) filed the above-captioned application requesting authority to replace an existing traffic signal interconnection from the traffic signal at Colorado State Highway 119 (SH 119) and 63rd Street with the tracks of the BNSF Railway (BNSF) at railroad milepost 35.29 of the Front Range Subdivision, National Inventory No. 244827V near the Town of Niwot, County of Boulder, in the State of Colorado.

2. Notice of the Application was provided by the Commission to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on December 13, 2023.

3. On December 29, 2023, BNSF filed a Notice of Intervention contesting and opposing the Application. BNSF states that devices recommended by the safety diagnostic term were omitted from the Application.

4. By Decision No. C24-0048-I, issued January 24, 2024, the matter was referred to an administrative law judge (ALJ) for disposition.

5. By Decision No. R24-0206-I, issued April 2, 2024, a remote prehearing conference was scheduled for April 16, 2024.

II. FINDINGS AND CONCLUSIONS

A. Interventions

6. The intervention of right by BNSF is acknowledged. Therefore, the parties to this proceeding are CDOT and BNSF.

B. Procedural Schedule

7. At the scheduled time and place, the prehearing conference was convened. All parties appeared and participated through counsel. The ALJ discussed parameters for a procedural schedule to govern this matter.

8. The following procedural schedule will be adopted:

Procedural Event	Due Date(s)
Applicant's witness list and exhibits	May 31, 2024
Intervenor's witness list and exhibits	June 30, 2024
Hybrid Evidentiary Hearing	July 18, 2024

9. The proposed procedural schedule is reasonable and will be adopted as ordered below. Should any party find that an additional prehearing conference is needed for any reason, one may be scheduled at a later date.

C. Hybrid Evidentiary Hearing and Instructions Concerning Exhibits

10. CDOT expressed preference for a remote hearing while BNSF expressed preference for an in-person hearing. Therefore, the evidentiary hearing in this proceeding will be held as a hybrid hearing, accommodating participation by video-conference. This Decision, Attachment A, and Attachment B provide important information and instructions to facilitate holding the hybrid hearing, which all parties must follow.

11. Given that the hearing will accommodate remote participation by video-conference, exhibits must be presented electronically.

12. The procedures developed for the hybrid 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 video-conference 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.

13. The evidentiary hearing will be conducted in person and via video-conference 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 hybrid hearing may be disrupted by non-participants, the link and meeting ID, or access code, to attend the hearing will be provided to the parties by email before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

14. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating 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.

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

- CDOT is assigned hearing exhibit numbers 100 to 199
- BNSF is assigned hearing exhibit numbers 200 to 299.

D. Additional Procedural Notices and Advisements

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

17. Additional procedural requirements may be addressed in future Interim Decisions.

18. **All parties are advised** that this proceeding is governed by the Rules of Practice and Procedure found at CCR 723-1. The ALJ expects the parties to comply with these rules. The rules are available on the Commission's website (<http://puc.colorado.gov/pucrules>) and in hard copy from the Commission.

19. Each party is specifically advised that all filings with the Commission must also be served upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

III. ORDER

A. It Is Ordered That:

1. The intervention of right by the BNSF Railway (BNSF) is acknowledged.
2. No later than **May 31, 2024**, the Colorado Department of Transportation (CDOT) shall file and serve: (a) a list that identifies the witnesses it intends to call at the hearing, including a summary of the anticipated testimony of each witness; and (b) copies of the exhibits it will present at the hearing.
3. No later than **June 30, 2024**, BNSF shall file and serve: (a) a list that identifies the witnesses it intends to call at the hearing, including a summary of the anticipated testimony of each witness; and (b) copies of the exhibits it will present at the hearing.
4. An evidentiary hearing in this proceeding is scheduled as follows:

DATE: **July 18, 2024**

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
 1560 Broadway, Suite 250
 Denver, Colorado

METHOD: In-person and by video-conference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

Optionally, any party may participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.
5. 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 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), all pre-filed exhibits

shall be marked for identification and filed in accordance with this Decision, including Attachment B hereto.

6. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

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

Rebecca E. White,
Director