

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0159R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION FOR AUTHORITY TO REPLACE TRAFFIC SIGNAL CABINET AND ADD BLANK OUT SIGNS AT US 85 AND DUCKWOOD RD, MILE POST 86.18, BNSF RAILWAY, US DOT NO. 440805J IN THE CITY OF FOUNTAIN, EL PASO COUNTY, STATE OF COLORADO.

**INTERIM DECISION GRANTING
LATE INTERVENTION AND
ADDRESSING INTERVENTIONS**

Issued Date: July 25, 2024

I. STATEMENT

A. Procedural History¹

1. On April 2, 2024, the Colorado Department of Transportation (“CDOT”) filed the above-captioned application (“Application”) requesting authority to add a blank out sign, advance flashing warning beacons, and a modification to the preemption timing at the Duckwood Road crossing of BNSF Railway Company (“BNSF”) and Union Pacific Railroad Company (“UPRR”) on the BNSF Pikes Peak Subdivision, railroad milepost 86.18, National Inventory No. 440805J, in the City of Fountain, County of El Paso, in the State of Colorado.

2. On April 12, 2024, the Public Utilities Commission (“Commission”) gave notice to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S.

3. On May 14, 2024, BNSF filed its corrected Entry of Appearance and Notice of Intervention.

¹ Only the procedural history necessary to understand this Decision is included.

4. By Decision No. C24-0380-I, issued June 6, 2024, the matter was referred to an administrative law judge (“ALJ”) for determination of completeness, disposition of the interventions, and a determination of the merits of the Application.

5. On July 1, 2024, UPRR filed its Unopposed Motion to Late File an Entry of Appearance and Notice of Intervention (“Unopposed Motion”). UPRR requests late intervention in the proceeding and states that CDOT does not oppose the requested relief.

II. INTERVENTIONS

6. The ALJ acknowledges the intervention of right filed by BNSF.

7. Generally, interventions of right are governed by Rule 1401(b) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

8. Rule 1401(a), 4 CCR 723-1, permits the Commission “for good cause shown, [to] allow late intervention, subject to reasonable procedural requirements.”

9. In the Unopposed Motion, UPRR contends that good cause exists to accept its late filed notice of intervention because the delay in filing will result in no material harm and seeks to intervene as a matter of right, as they are the property owner of the crossing that is the subject of the Application. UPRR also argues that good cause exists because UPRR never received and/or saw the Commission’s Notice of Application.

10. Based upon good cause shown, UPRR’s Unopposed Motion to Late File an Entry of Appearance will be granted.

11. CDOT, BNSF, and UPRR are the parties to this Proceeding.

III. ORDER**It is Ordered That:**

1. The Unopposed Motion to Late File an Entry of Appearance filed by Union Pacific Railroad Company (“UPRR”) filed on July 1, 2024, is granted. Late intervention will be granted with the proviso that UPRR takes this proceeding as it finds it and is bound by the decisions previously entered in this proceeding.
2. The interventions of right filed by BNSF Railway Company (“BNSF”) is acknowledged.
3. BNSF and UPRR are intervenors in this Proceeding.
4. This Decision is effective immediately.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director