

Decision No. R24-0589-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
REQUESTING ADDITIONAL INFORMATION AND
CLARIFICATION FROM APPLICANT**

Issued Date: August 15, 2024

I. STATEMENT

A. Procedural History and Background

1. On June 27, 2023 the City of Longmont (“Longmont” or “City”) 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, in the State of Colorado (“Boston Avenue crossing”), 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, in the State of Colorado. This filing commenced Proceeding No. 23A-0353R.

The Application states that it is the Longmont's desire to start construction of the new crossing at Boston Avenue crossing in the year 2024.¹

2. The Application was deemed complete on August 31, 2023, in accordance with Rule 1303(c)(IV) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

3. By Decision No. C23-0560-I, issued August 31, 2023, the Commission referred this matter to an Administrative Law Judge ("ALJ") for determination of the merits of the Application.

4. By Decision No. R23-0606-I, issued September 11, 2023, the undersigned ALJ provided further opportunity for Longmont to supplement or amend the Application, established Procedures, and scheduled an evidentiary hearing in this matter.

5. On September 19, 2023, Applicant filed three supplemental exhibits to the Application.

6. By Decision No. R23-0709-I, issued October 18, 2023, the undersigned ALJ set a deadline of November 16, 2023 for filing of a notice of settlement and rescheduled the evidentiary hearing in this Proceeding.

7. On December 6, 2023, BNSF filed its Withdrawal of Intervention.

8. By Decision No. R23-0868-I, issued December 27, 2023, the ALJ vacated the evidentiary hearing and required Longmont to either file, or make a filing indicating a date by which Longmont will file: (a) a fully-executed copy of the Settlement and (b) the updated sketch plan ("front sheet"), and cost estimate for the Application filed by Longmont on June 27, 2023,

¹ Application at 7.

as Amended by the Mutual Release and Settlement Agreement and the Memorandum of Understanding, filed by Longmont and BNSF on November 16, 2023.

9. On January 8, 2024, Longmont filed its Notice of Submission of Executed Settlement Agreement, Updated Cost Estimate, and Sketch Plan (“Front Sheet”) (“Notice of Submission of Settlement and Updated Sketch Plan”), and attached thereto an executed copy of Settlement Agreement,² cost estimate for signal improvement,³ cost estimate for rail improvement,⁴ and a sketch plan.⁵

10. On July 31, 2024, Longmont filed its Notice of Filing Proposed Schedule and Final Plans, and attached thereto Exhibit A – Proposed Schedule, and Exhibit B – 100 percent Plans Boston Avenue (“Exhibit B”) (collectively, “Proposed Schedule and Final Plans”).

B. Questions and Need for Clarification

11. The Commission must have an evidentiary record upon which to determine whether Commission approval of the Proposed Schedule and Final Plans comports with public safety.⁶ The ALJ finds and concludes that it is appropriate to expand the evidentiary record to obtain additional information on the Proposed Schedule and Final Plans. Therefore, the ALJ will pose to Longmont the questions/clarification requests listed below.

² Attachment A to the Notice of Submission of Settlement and Updated Sketch Plan.

³ Attachment B to the Notice of Submission of Settlement and Updated Sketch Plan.

⁴ Attachment C to the Notice of Submission of Settlement and Updated Sketch Plan.

⁵ Attachment D to the Notice of Submission of Settlement and Updated Sketch Plan.

⁶ See Rule 7342(a)(I), 4 CCR 723-7.

12. Longmont is directed to respond to the following questions/clarification requests on or before August 30, 2024:

- On pg. 80 of Exhibit B, TRAFFIC subset sheet 10 of 15, the eastbound W10-1 sign and the railroad crossing pavement marking are not located together. Is there a reason the eastbound W10-1 sign and the railroad crossing pavement marking are not located together? If yes, please explain the reason. If no, please update this sheet to show the sign and pavement marking in the same location.
- On pg. 84 of Exhibit B, TRAFFIC subset sheet 14 of 15, on pole number 5, there is a three section signal head on the side of pole for westbound traffic, and a five section signal head on the mast arm that is part of pole number 1. Please explain the reason for the proposed use of each of these two traffic signal heads.
- On pg. 85 of Exhibit B, TRAFFIC subset sheet 15 of 15, the signal phasing for phase 8 of the railroad clear cycle and phase 8 of the railroad operation are different from those same phases that were shown in the Application. Please explain why those phases changed from what was specified in the Application versus what is reflected in the Proposed Schedule and Final Plans, or provide an updated subset sheet to correct the phasing.
- On pg. 88 of Exhibit B, DETAILS subset sheet 3 of 5, the detail shows double pedestrian swing gates, where the GEOMETRIC, EXISTING UTILITIES, PLAN & PROFILE, GRADING, DRAINAGE, and pgs. 71-85 of Exhibit B, TRAFFIC sheet subsets show a single pedestrian swing gate. Please clarify whether a single pedestrian swing gate or double pedestrian swing gates are being installed. Please correct the appropriate plans sheet(s), as needed.
- On pg. 88 of Exhibit B, DETAILS subset sheet 3 of 5, the sign details show that the “Push to Open” sign should be placed on the entrance side of the pedestrian swing gate and the “Pull to Open” sign should be placed on the exit side of the pedestrian swing gate. The remaining plan sheets show that the pedestrian swing gate is being pulled to open to enter the crossing. Is the pedestrian swing gate expected to be pushed toward the crossing to enter the crossing and pulled to open the pedestrian swing gate to exit the crossing, or are the signs marked incorrectly? Please clarify which situation is correct and correct the appropriate plan sheet(s), as needed.
- The Application states that the exit gates at the Boston Avenue crossing are proposed to operate as a combination of timed and dynamic.⁷ The Application also states that BNSF had not been willing to provide information on their equipment for the dynamic mode..⁸ Longmont has not specified in any of its filings the exit gate delay for the Boston Avenue crossing. What delay is Longmont proposing to use between

⁷ Application at 14.

⁸ *Id.*

the start of the entrance gate descent and the start of the exit gate descent for the Boston Avenue crossing?

II. ORDER

A. It Is Ordered That:

1. The ALJ requests the City of Longmont provide responses to the six questions/clarification requests posed above and file the requested responses and/or amended plan sheets, as appropriate, by August 30, 2024.

2. This Decision shall be 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