

Decision No. R23-0868-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
AVIV SEGEV
VACATING EVIDENTIARY HEARING
AND REQUIRING FILINGS**

Mailed Date: December 27, 2023

I. STATEMENT

A. Procedural Background

1. On June 27, 2023 the City of Longmont (Longmont) 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, State of Colorado, 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, State of Colorado. This filing commenced Proceeding No. 23A-0353R.

2. On July 19, 2023, BNSF noticed its intervention as a matter of right herein (Intervention), in which BNSF set forth its opposition to the Application.

3. The Application was deemed complete on August 26, 2023, in accordance with Rule 1303(c)(IV) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1.

4. 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.

5. By Decision No. R23-0606-I, issued September 11, 2023, the undersigned ALJ, among other things, scheduled an evidentiary hearing in this matter for October 18, 2023.

6. By Decision No. R23-0709-I, issued October 18, 2023, the undersigned ALJ, among other things, rescheduled the evidentiary hearing in this Proceeding for December 28, 2023.

7. On November 16, 2023, Longmont and BNSF filed their Joint Notice of Settlement (Joint Motion) and attached thereto, as Attachment A, their Mutual Release and Settlement Agreement and Memorandum of Understanding (Settlement Agreement). In the Joint Motion, Longmont and BNSF request the that the Commission approve the Settlement Agreement, approve the Application, and vacate the evidentiary hearing scheduled for December 28, 2023.

8. On December 6, 2023, BNSF filed its Withdrawal of Intervention (Withdrawal of Intervention).

B. Statutory Period for a Commission Decision

9. In the Joint Motion, Longmont and BNSF stated that “[t]he settlement of the Parties is memorialized in a Mutual Release and Settlement Agreement and Memorandum of Understanding (“Settlement”) the form of which is attached to this Notice as Attachment A.”¹

10. In the Settlement Agreement, Longmont states that it “waives its statutory right to a decision in 120 days after the Application was deemed complete.”²

11. Therefore, The ALJ finds and concludes that Longmont has waived its statutory right for a Commission Decision within 120 days.

C. Evidentiary Hearing

12. In the Withdrawal of Intervention, BNSF stated: “[w]hile the parties are completing execution of the Settlement, BNSF withdraws the Intervention in anticipation of the Settlement being fully executed shortly”³ and “per the settlement, BNSF has no objection to the granting of the City’s Application.”⁴

13. Because BNSF withdrew its intervention in this Proceeding, the ALJ finds and concludes that there is no need to hold an evidentiary hearing in this matter at this time. Therefore, the evidentiary hearing scheduled for December 28, 2023 will be vacated, as ordered below.

¹ Joint Motion at 2.

² Settlement Agreement at 4.

³ Withdrawal of Intervention at 2.

⁴ *Id.*

D. Missing Application Information and the Merits of the Settlement Agreement and Application

14. In the Joint Motion, Longmont and BNSF state that they have settled their dispute herein and reached a settlement agreement which was memorialized through the Settlement Agreement.⁵

15. As acknowledged in the Settlement Agreement, Longmont is awaiting from BNSF an updated sketch plan (front sheet) and cost estimate for the Application.⁶

16. The filing of the Withdrawal of Intervention leaves the Application unopposed. However, in order to consider the merits of the now-unopposed Application, the contemplated terms of Settlement Agreement must be filed in this Proceeding, including a fully-executed copy of the Settlement Agreement and updated front sheet and cost estimate for the Application.

17. Therefore, the ALJ will require Longmont to, within ten days of the Mailed Date of this Decision, 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 front sheet and cost estimate for the Application, as ordered below.

18. The merits of the Settlement Agreement and the Application, as amended by the Settlement Agreement, will be addressed by a separate decision.

II. ORDER

A. It Is Ordered That:

1. The requests for relief in the Joint Notice of Settlement, filed November 16, 2023, by the City of Longmont (Longmont) and BNSF Railway Company (BNSF) are granted, in part, consistent with the discussion above.

⁵ Joint Motion at 2.

⁶ Settlement Agreement at 5.

2. The evidentiary hearing scheduled for December 28, 2023, at 9:00 a.m. is vacated.

3. Consistent with the discussion above, within ten days of the Mailed Date of this Decision, Longmont shall 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, as Amended by the Mutual Release and Settlement Agreement and Memorandum of Understanding, filed by Longmont and BNSF on November 16, 2023.

4. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge