

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Docket No. 06A-541R

IN THE MATTER OF THE ARKANSAS RIVER POWER AUTHORITY, FOR AUTHORITY TO INSTALL AN AT-GRADE CROSSING AND INSTALL A CROSS BUCK SIGN AT THE NEW CROSSING OF THE ARKANSAS RIVER POWER AUTHORITY TRACK AT PROWERS COUNTY ROAD 9, NORTHEAST OF THE TOWN OF LAMAR, PROWERS COUNTY, COLORADO.

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STIPULATION

Applicant, The Arkansas River Power Authority ("ARPA" or "Applicant"), by and through its general counsel William H. McEwan, and Intervenor, BNSF Railway Company ("BNSF" or "Intervenor"), agree as follows:

1. On or about October 5, 2006, Applicant filed an application to construct a new at-grade crossing of Prowers County Road 9 with a new storage track constructed by ARPA ("the ARPA crossing") approximately sixty feet north of an existing BNSF two-track crossing ("the BNSF crossing") in Lamar, Colorado. The new track is needed to serve a coal fired power plant in Lamar, Colorado with rail deliveries of coal. Rail traffic on the ARPA crossing is expected to be sixteen crossings per month. It is anticipated that there will be two unit coal trains per month. It will take approximately eight crossings on each of the two days to move all the coal cars in and out of the coal fired plant. Daily traffic counts for vehicles on County Road 9 at the BNSF Crossing are currently one hundred eighty eight per day on average. Applicant proposed that the ARPA Crossing be marked with a railroad crossbuck sign and a multiple track sign on the north approach. No lights or gates for the ARPA crossing were proposed. ARPA planned to use a combination of horn whistle and flagman to alert traffic of the train approaching the ARPA crossing.

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2. BNSF intervened on October 26, 2006. BNSF indicated it was not opposed to the ARPA crossing itself but indicated further study was needed regarding ARPA's request for crossbuck warning only and using a flagman to alert traffic.

3. The Commission deemed the Application complete on November 2, 2006.

4. On May 30, 2007, representatives of ARPA, the BNSF, and the Prowers County road department (a total of 17 individuals) met on site in Lamar for a diagnostic review of the crossing. Campbell Technology Corporation, a consultant retained by BNSF, was also in attendance. As a result of the meeting, the parties agreed that rather than installing a crossbuck sign at the ARPA crossing and using a flagman to alert traffic of pending ARPA train movements, it would be safer to signalize the ARPA crossing by installing an island detection circuit at the ARPA crossing, removing the gate and lights currently on the north side of the BNSF crossing and placing a gate and lights on the north side of the ARPA crossing thereby including all three tracks within the two sets of gates and lights. The warning devices would activate with the presence of a train on any of the three track circuits. CTC advised BNSF that this would comply with Part 3.1.11 of the American Railway Engineering and Maintenance of Way Association 2007 Communication & Signal Manual of Recommended Practice (AREMA C&S Manual). CTC also recommended that the Total Approach Time for the existing BNSF track circuits be adjusted to include a Minimum Time (MT) of at least 20 seconds, Clearance Time (CT) of 7 seconds and Buffer Time and Equipment Response Time (ERT) as determined by BNSF. The island detection circuit activates the lights and gates any time a train or cars are within the "island" on the ARPA track. The "island" extends approximately fifty feet on either side of the edge of the roadway and includes the width of the roadway. The BNSF tracks will remain controlled by constant warning circuitry.

5. All parties also discussed whether to place a median separator and vertical panels along the centerline of the roadway for a distance of approximately 100' in advance of each gate assembly in order to discourage the "drive around gate" maneuver. Although all parties understood the merits of a median separator, the County stated that this treatment would be impractical due to the presence of oversized farm vehicles on the roadway and the other parties agreed. All representatives attending the meeting, including the Prowers County road supervisor, agreed that the proposed protection configuration will result in a reasonable method of protecting the traveling public. Counsel for ARPA is authorized by the County road supervisor to state that he concurs in the foregoing statements on behalf of Prowers County.

6. ARPA and BNSF have also agreed that the cost of these improvements shall be borne by ARPA exclusively. ARPA has already fully paid BNSF for the earthwork, labor and materials associated with installing the island detection circuit, removing the one set of lights and gates and installing a set of lights and gates on the north side of the ARPA track. The cost of this work was estimated and paid at \$115,245. The BNSF tracks will remain controlled by constant warning circuitry. BNSF will adjust the timing of the signals so that vehicles properly heeding the warning devices will not become trapped in between the gate arms. ARPA will maintain the ARPA crossing surface and the ARPA track at its own cost and expense. BNSF will maintain the signals and circuitry at its own expense.

7. Consequently, ARPA and its rail safety consultants, Prowers County and the BNSF and its consultant believe that this configuration provides a reasonable method of warning the traveling public of the approach of trains whether on the BNSF tracks or the ARPA tracks consistent with the purpose "that accidents may be prevented and the safety of the public promoted." See C.R.S. § 40-4-106(2)(a).

8. BNSF and ARPA also agree that ARPA and BNSF train movements across the ARPA crossing will operate at a speed not to exceed 10 mph. ARPA and BNSF trains will initiate the standard crossing whistle (2 longs, 1 short and 1 long) at least 15 seconds before entering the crossing and will maintain the whistle until the train fully occupies the crossing. ARPA and BNSF will not park or stop trains or cars within 250' of the crossing. These operating rules reflect BNSF current operating rules and current federal laws. ARPA will comply with any future changes in federal laws or BNSF operating rules.

DATED this 14th day of September, 2007.

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