

Decision No. C14-0334

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0124R

IN THE MATTER OF THE APPLICATION OF THE REGIONAL TRANSPORTATION DISTRICT, UNION PACIFIC RAILROAD COMPANY, AND BNSF RAILWAY COMPANY FOR AUTHORITY TO ALTER AN AT-GRADE CROSSING AT LOWELL BOULEVARD (U.S.DOT #253281K AND #094492S) IN ADAMS COUNTY, STATE OF COLORADO.

**COMMISSION DECISION DEEMING
APPLICATION COMPLETE, NOTING INTERVENTION
BY RIGHT, AND GRANTING APPLICATION**

Mailed Date: March 28, 2014

Adopted Date: March 26, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed jointly by the Regional Transportation District (RTD), the Union Pacific Railroad Company (UPRR), and the BNSF Railway Company (BNSF) (collectively Joint Applicants) on February 10, 2014. The Joint Applicants request authority to construct two new commuter rail tracks north of the existing UPRR and BNSF freight tracks for RTD with new crossing surface panels; install and upgrade active warning devices including flashing lights, bells, and four quadrant gates with exit gate vehicle detection loops for both northbound and southbound traffic and detection circuitry equipment; install vehicular signage; fencing; and signs prohibiting pedestrians from crossing the tracks at the crossing of Lowell Boulevard with the BNSF Golden Branch and UPRR Moffat Tunnel Subdivision, National Inventory Nos. 094492S for the BNSF crossing and 253281K for the UPRR crossing, in the County of Adams, State of Colorado. Pursuant to Federal Railroad Administration regulations requiring a

single crossing number per crossing, National Inventory No. 253281K will be retained as the crossing number for the entire crossing, and BNSF National Inventory No. 094492S will be removed.

2. The Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S. The Notice was mailed February 12, 2014.

3. On March 11, 2014, Adams County filed an Entry of Appearance and Notice of Intervention as of Right. Adams County states it is in the process of widening Lowell Boulevard in the area of the Application that will either be filed with the Commission through a joint amendment to the instant application, or by separate application to the Commission if external approvals are not secured in time to accommodate a joint amendment. Adams County states that the Lowell Boulevard Crossing Project may be impeded if the improvements installed by RTD do not accommodate expected pedestrian use of the area or the project anticipated roadway infrastructure and safety improvements, but does not state whether the changes requested in the Application actually impede the future Adams County project. Adams County states that it does not oppose the Application provided that any decision entered by the Commission adequately addresses Adams County's concerns. The Entry of Appearance and Notice of Intervention does not state whether the requested changes in the Application actually impede the future Adams County project.

4. Rule 1401(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 requires the intervenor opposing or contesting an application to state that: (1) the application is contested or opposed; (2) to give a reason why the application or petition is contested or opposed; and (3) explicitly request a hearing. The pleading filed by

Adams County does not explicitly request a hearing and does not state whether changes sought by the Joint Applicants will actually impede the future project in Adams County. Adams County, not the Commission, must review the Application and determine whether it wishes to oppose or contest it. Further, Adams County has not provided the information necessary for the Commission to determine whether the Application will impede the future project in Adams County. For this reason, the Commission is unable to ensure its decision will adequately address Adams County's concerns. Thus, we note Adams County's intervention as of right and find that Adams County does not oppose or contest the Application.

5. On March 14, 2014, the Joint Applicants filed an Amendment to the Application. The Amendment to the Application makes some minor corrections to the original Exhibit D sheet 1 of 5 and Exhibit H filed with the Application.

6. The Commission has reviewed the record in this matter and deems that the Application is complete within the meaning of § 40-6-109.5, C.R.S.

7. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

8. Now being fully advised in the matter, we grant the Application as amended.

B. Findings of Fact

9. The Commission gave notice to all interested parties, including the adjacent property owners. No interventions were received opposing the Application.

10. The Joint Applicants seek authority to construct two new commuter rail tracks north of the existing UPRR and BNSF freight tracks for RTD with new crossing surface panels; install and upgrade active warning devices including flashing lights, bells, and four quadrant gates with exit gate vehicle detection loops for both northbound and southbound traffic and

detection circuitry equipment; install vehicular signage; fencing; and signs prohibiting pedestrians from crossing the tracks at the Lowell Boulevard crossing in Adams County.

11. The grade of the track into the crossing for the proposed commuter rail tracks is at 0.49 percent. The roadway grade along Lowell Boulevard is not proposed to change over the BNSF or UPRR tracks. The Joint Applicants propose grades between the freight tracks and the commuter rail tracks at 1.31 percent transitioning to 0.03 percent across the commuter rail tracks and transitioning to 0.83 percent down north of the crossing.

12. The Joint Applicants state there are currently 5,712 vehicles per day (VPD) using Lowell Boulevard at a posted speed limit of 40 miles per hour (MPH). These volumes are projected to increase to 6,600 VPD in five years, 7,100 VPD in ten years, and 7,900 VPD by the year 2030. There are currently 14 daily train movements on the UPRR tracks at a maximum timetable speed of 65 MPH for passenger traffic and 45 MPH for freight traffic, and 3 daily train movements on the BNSF freight track operating at a maximum timetable speed of 20 MPH with no projections for future change at this time. The commuter rail train service is scheduled to open for revenue service in 2016. At that time, RTD projects there will be approximately 134 commuter rail train movements through the crossing operating at a maximum timetable speed of 60 MPH. Commuter rail train movements are not expected to change significantly in the future.

13. The Joint Applicants state a grade separation at this location is not practicable because either raising or lowering the roadway over or under the tracks would have a detrimental effect to vehicular connectivity in the area including business and property access concerns. The Joint Applicants also state that raising or lowering the tracks over or under the roadway is not practicable because of the nearby stations and because of low vehicle traffic volumes.

14. The Joint Applicants propose to install active warning devices that will consist of a four-quadrant gate system with vehicle detection loops proposed to be installed between the entrance gates, tracks, and exit gates. These vehicle detection loops will operate such that the exit gates will remain in the upright position until no vehicles are detected between the entrance and exit gates ensuring that no vehicles on Lowell Boulevard will be trapped on the tracks between the vehicle entrance and exit gates.

15. The Joint Applicants propose to install pavement markings on the northbound and southbound travel lanes approaching the Lowell Boulevard crossing.

16. The Joint Applicants propose installing advance warning signs on northbound and southbound Lowell Boulevard (W10-1). A quiet zone designation will be sought at this crossing from the Federal Railroad Administration. The Joint Applicants propose to install W10-9P “No Train Horn” signs at all of the advance warning sign locations; however, these signs would not be installed until implementation of the quiet zone. The Joint Applicants also propose installing “Stop Here When Flashing” (R8-10) signs at the stop bar locations on both sides of the crossing. Finally, the Joint Applicants propose to install crossbuck signs (R15-1) with the “5 Tracks” designation (R15-2P) on the flashing light and gate assemblies for the vehicle gates. No pedestrian facilities are proposed at the crossing, so the Joint Applicants propose installing “No Pedestrian” symbol signs (R9-3) adjacent to all four gate mechanisms at the crossing.

17. The Joint Applicants estimate the project costs at \$965,894 for the RTD crossing work and \$446,886 for UPRR signal related work. The RTD FasTracks program is responsible for all construction costs.

18. The Joint Applicants propose to start construction upon approval of the Application and have construction completed within three years. The Joint Applicants will be

required to inform the Commission in writing that all of the roadway, track, signal, and civil work are complete and operational within ten days of completion. The Commission will expect this letter no later than March 31, 2016. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule. We will also require the Joint Applicants to update the inventory forms for this crossing showing the crossing changes and movement of BNSF track information to the UPRR National Inventory Number and to file copies of the updated U.S. DOT crossing inventory forms in this proceeding by March 31, 2016.

19. Lowell Boulevard will only be closed temporarily once to perform track construction, civil and roadway improvements, and installation of the vehicle detection loops. The signal work at the crossing will be completed after the roadway is open for traffic.

20. Because RTD will be performing work on a design-build basis, they request a special application procedure. With a design-build process, design and construction can sometimes be performed concurrently, meaning that the design plans submitted with this Application may not be what is finally constructed. RTD proposes that it be allowed construction design tolerances from the plans as submitted such that they be allowed to stay within applicable clearance requirements contained in the Commission Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 CCR 723-7. If the final design includes a reduction or reductions in clearance from those outlined in the Commission's Rules, RTD would file a motion to permit the variance. Additionally, if the final design includes an improvement or improvements that were not originally applied for, or fails to include an improvement or improvements originally applied for, RTD would amend the Application to make the appropriate changes. RTD would not modify the applicable

improvement or construct the additional improvement, or fail to construct any improvements before any required motion or amendment has been granted by the Commission. Joint Applicants BNSF and UPRR do not object to the special application procedure for the separate RTD elements of the crossing construction.

21. We will allow the proposed special application procedure as outlined by RTD. We will require that RTD file a copy of the final plans for the crossing once construction is complete so that the Commission has an accurate record showing what was constructed at the crossing. We will expect these final plans to be filed with the Commission at the end of construction by March 31, 2016.

22. Unless otherwise stated in the uncontested Application, Rules 7211(a), 7211(c), and 7301(a) will govern the parties' obligations with respect to all crossing surface costs and all costs of crossing warning devices. As stated in the uncontested Application, BNSF will continue to maintain all BNSF railroad track within its right-of-way and UPRR will continue to maintain all UPRR railroad track within its right-of-way. RTD will maintain all RTD railroad track and active warning devices including all pedestrian static signs.

C. Conclusions

23. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

24. No intervenor that filed a petition to intervene or other pleading contests or opposes the construction of the new crossing and active warning equipment.

25. Because the Application is unopposed, the Commission will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 CCR 723-1.

26. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety and necessity are met by granting the Application consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed jointly by the Regional Transportation District (RTD), the Union Pacific Railroad Company (UPRR), and the BNSF Railway Company (BNSF) (collectively Joint Applicants) on February 10, 2014 as amended on March 14, 2014, requesting authority to construct two new commuter rail tracks north of the existing UPRR and BNSF freight tracks for RTD with new crossing surface panels; install and upgrade active warning devices including flashing lights, bells, and four quadrant gates with exit gate vehicle detection loops for both northbound and southbound traffic and detection circuitry equipment; install vehicular signage; fencing; and signs prohibiting pedestrians from crossing the tracks at the crossing of Lowell Boulevard with the BNSF Golden Branch and UPRR Moffat Tunnel Subdivision, National Inventory Nos. 094492S for the BNSF crossing and 253281K for the UPRR crossing, in the County of Adams, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Entry of Appearance and Notice of Intervention, filed by Adams County on March 11, 2014 is noted.

3. The Application is granted.

4. The special application procedure proposed by RTD is approved.

5. The Joint Applicants are authorized and ordered to proceed with construction of two new commuter rail tracks north of the BNSF and UPRR freight tracks for RTD with

new crossing surface panels; installation and upgrade of active warning devices including flashing lights, bells, and four quadrant gates with exit gate vehicle detection loops for both northbound and southbound traffic and detection circuitry equipment; installation of vehicular signage; fencing; and signs prohibiting pedestrians from crossing the tracks at the Lowell Boulevard crossing in Adams County, Colorado.

6. The Joint Applicants are required to inform the Commission in writing that the crossing changes are complete and operational within ten days after completion. We shall expect this letter by March 31, 2016. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

7. The Joint Applicants are required to update the U.S. DOT inventory forms showing the crossing changes and to file copies of the updated forms in this proceeding by the end of construction on March 31, 2016.

8. RTD shall file a complete set of plans for the constructed crossing by March 31, 2016.

9. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

10. The Commission retains jurisdiction to enter further decisions as necessary.

11. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 26, 2014.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

Commissioners

COMMISSIONER PAMELA J. PATTON
ABSENT.