

Decision No. C19-0573

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0237R

IN THE MATTER OF THE JOINT APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION AND THE CITY AND COUNTY OF DENVER FOR AN ORDER AUTHORIZING THE DEMOLITION OF THE EXISTING INTERSTATE 70 VIADUCT OVERPASS BRIDGE OVER BNSF TRACKS AND CONSTRUCTION OF THE REPLACEMENT INTERSTATE 70 UNDERPASS AT MILE POST 2.38 ON THE MARKET STREET LINE, AND RECONSTRUCTION OF 46TH NORTH AVENUE AND 46TH SOUTH AVENUE AT-GRADE CROSSINGS OF THE BNSF TRACKS AT MILE POST 539.08 ON THE MARKET STREET LINE.

**COMMISSION DECISION
GRANTING STAGE 1.1 PLANS AND APPROVING
REMAINING PRELIMINARY DESIGN PLANS**

Mailed Date: July 15, 2019

Adopted Date: July 10, 2019

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed jointly by the Colorado Department of Transportation (CDOT) and the City and County of Denver (Denver) (collectively Joint Applicants), on May 9, 2019, seeking preliminary approval of conceptual level design plans for Stages 1.1 through 1.4 and 2.1 through 2.3 for that portion of the Central 70 project to demolish the existing Interstate 70 (I-70) viaduct overpass bridge and construct a replacement I-70 underpass at railroad mile post 2.38 on the Market Street Line, National Inventory No. 924618R, and reconstruction of the at-grade crossing of 46th Avenue into two at-grade crossings of 46th North Avenue and 46th South Avenue of the tracks of the BNSF Railway Company (BNSF) at railroad mile post 539.08 of the Market Street Line including new traffic signal warning devices at both at-grade crossings with an additional

pre-signal traffic signal warning device for 46th South Avenue at railroad mile post 2.77, existing National Inventory No. 057038G in Denver, State of Colorado.

2. The Joint Applicants propose dividing the Application into separate stages to coincide with CDOT's design build process and construction activities for the entire Central 70 corridor. There are two construction stages proposed at this location with seven separate parts to the Application.

3. In general, Stage 1 of this crossings project involves a scheduled nine-month shutdown of the existing rail lead operations with the track being temporarily closed and removed across 46th Avenue and under I-70. The shutdown of rail operations will allow the new I-70 to be excavated and the new railroad bridge to be constructed in Stage 1.1, the new 46th North Avenue to be constructed in Stage 1.2, the new 46th South Avenue crossings to be constructed in Stage 1.3, and the new track to be installed and rail service to be returned to operations in Stage 1.4. Stage 2 of this project generally involves construction of the new I-70 under the new BNSF railroad bridge with I-70 traffic being shifted under the new BNSF bridge north span in Stage 2.1, demolition of the existing viaduct in Stage 2.2, and final construction and shifting of traffic to the ultimate configuration under the new BNSF bridge south span in Stage 2.3.

4. The Application requests Commission approval of conceptual level design plans at this time. As plans are finalized, the Joint Applicants will submit additional amendments to this Application for Commission review and approval prior to the start of construction.

5. Notice of the Application was provided by the Commission to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on May 24, 2019.

6. Notice of proposed closure of the existing I-70 viaduct and existing 46th Avenue crossing was posted at the crossings by Dan Virgilio on May 24, 2019 as stated in the Affidavit of Dan Virgilio and filed with the Commission on June 6, 2019. The affidavit includes photos of the notices posted at the subject crossings.

7. On June 24, 2019, BNSF filed a Passive Notice of Intervention. BNSF does not object or oppose the application (except for BNSF's belief that the application assigns maintenance responsibility for the traffic signals to BNSF).

8. The Application was deemed complete within the meaning of § 40-6-109.5, C.R.S., on July 9, 2019.

9. Now being fully advised in the matter, we approve the conceptual level design plans provided in the Application for Stages 1 and 2.

B. Findings of Fact

10. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

11. CDOT is starting the Central 70 Project, which is a public-private partnership to design, build, finance, operate, and maintain planned improvements on the I-70 corridor. The Central 70 Project will reconstruct ten miles of I-70 between Brighton Boulevard and Chambers Road including the addition of one new Express Lane in each direction, removal of the aging 54-year old viaduct, lowering I-70 between Brighton and Colorado Boulevards, and construction of a four-acre park over a portion of the lowered I-70. This design is based on a 14-year study that includes many public meetings, final approval of the study by the Federal Highway Administration, a Record of Decision for the project, and a completed environmental study process. CDOT selected a contractor to complete the improvements identified in the Final

Project Agreement. Denver is a coordinating agency for the project and Joint Applicant to the instant application as Denver currently owns or will own the roadway right-of-way in the future.

12. The instant application involves the I-70 and 46th Avenue crossings with the tracks of the BNSF Market Street Line. The result of the Central 70 project at this location will close the I-70 crossing over the tracks of the BNSF, will construct a new bridge structure for the tracks of the BNSF, will move the I-70 crossing under the new BNSF bridge structure, will close the existing 46th Avenue at-grade crossing of the BNSF tracks, and will split 46th Avenue into two one-way roadways that will cross the BNSF at-grade on each side of the new lowered I-70.

13. For the project, the Joint Applicants state that there are currently approximately four switching train movements per day using the crossings at a maximum timetable speed of 40 miles per hour (MPH). There are currently no known anticipated increases or decreases in train traffic projected. There are currently 2,855 vehicles per day (VPD) using the 46th Avenue crossing including approximately 5 percent heavy vehicles and school buses at a posted speed limit of 35 MPH with projections to 3,400 VPD in 5 years and 4,100 VPD in 20 years. There are currently 155,800 VPD using the I-70 crossing including approximately 11 percent heavy vehicles and school buses at a posted speed limit of 55 MPH with projections to 174,400 VPD in 5 years and 212,200 VPD in 20 years.

14. There have been no reported crashes at the crossings.

15. The Joint Applicants estimate the cost of the work for the subject crossings at \$4,810,000 with all costs for these crossing projects being borne by CDOT. Necessary funds are available through private activity bonds, loan agreements, a TIFIA loan, private equity funding, and CDOT funds.

16. The Joint Applicants propose to provide the plans for Stages 1.1 through 1.3 for Commission approval by July 2019, Stage 1.4 by April 2020, and Stage 2 by April 2020. The Joint Applicants have waived the applicable statutory period found at § 40-6-109.5, C.R.S., regarding the time limit for decisions.

17. We have performed a preliminary review of the future plans and discussion of proposed construction tasks for Stages 1 and 2 of the project to get an understanding of the scope of the entire project. The preliminary plans, specifications and discussions for these future stages show the flow of the proposed construction, bridge clearances meet the minimum requirements, and the general proposed operations of the future interconnected rail signal at the 46th Street crossings is reasonable, although we will need to review the more specific information as part of a later filing.

C. Conclusions

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

19. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application.

20. Because the Application is unopposed, the Commission finds that it will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, 4 *Code of Colorado Regulations* 723-1 of the Commission's Rules of Practice and Procedure.

21. Based on the Findings of Fact, we find that good cause exists and that the requirements of public safety and necessity are met by approval of the Joint Applicants' conceptual level design plans consistent with the above discussion. The Joint Applicants will be

expected to file the final plans for Stages 1.1 through 1.3, 1.4, and 2 in this proceeding for Commission review and approval by the dates stated earlier in this Decision.

II. ORDER

A. The Commission Orders That:

1. The application filed jointly by the Colorado Department of Transportation and the City and County of Denver (collectively Joint Applicants), on May 9, 2019, seeking preliminary approval of conceptual level design plans for Stages 1.1 through 1.4 and 2.1 through 2.3 for that portion of the Central 70 project to demolish the existing Interstate 70 (I-70) viaduct overpass bridge and construct a replacement I-70 underpass at railroad mile post 2.38 on the Market Street Line, National Inventory No. 924618R, and reconstruction of the at-grade crossing of 46th Avenue into two at-grade crossings of 46th North Avenue and 46th South Avenue of the tracks of the BNSF Railway Company (BNSF) at railroad mile post 539.08 of the Market Street Line including new traffic signal warning devices at both at-grade crossings with an additional pre-signal traffic signal warning device for 46th South Avenue approach existing 46th Avenue underpass at railroad mile post 2.77, existing National Inventory No. 057038G in Denver, State of Colorado was deemed complete within the meaning of § 40-6-109.5, C.R.S., by operation of rule on July 9, 2019.

2. The Joint Applicants' waiver of the applicable statutory period found at § 40-6-109.5, C.R.S., regarding the time limit for decisions is noted.

3. The intervention of BNSF is granted.

4. The conceptual level plans filed by the Joint Applicants for Stages 1 and 2 are approved.

5. The Joint Applicants will be expected to file the final design plans for Commission review and approval for Stage 1.1 through 1.3 by July 2019, Stage 1.4 by April 2020, and Stage 2 by April 2020.

6. 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.

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

8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 10, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners