

Decision No. C19-0700

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0316R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION, ON BEHALF OF WELD COUNTY, REQUESTING RETRACTION OF THE AUTHORITY PREVIOUSLY GRANTED IN DECISION C15-0552 TO INSTALL RAILROAD FLASHING LIGHTS, BELLS, CROSSBUCKS AND SIGNAL CABINET AT THE WELD COUNTY ROAD 29 CROSSING OF THE UNION PACIFIC RAILROAD TRACKS, AND REQUEST NEW AUTHORITY TO INSTALL THE AFOREMENTIONED NEW ACTIVE WARNING DEVICES AT THE WELD COUNTY ROAD 34 (USDOT NO. 804-342X) CROSSING OF THE UNION PACIFIC RAILROAD TRACKS, AND AUTHORITY TO REMOVE EXISTING PASSING WARNING SIGNS, CROSSING SURFACE AND ROAD APPROACHES TO CLOSE THE EXISTING WELD COUNTY ROAD 29 (USDOT NO. 804-346A) CROSSING AT THE UNION PACIFIC RAILROAD TRACKS, IN WELD COUNTY, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING APPLICATION**

Mailed Date: August 29, 2019
Adopted Date: August 21, 2019

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the Colorado Department of Transportation (CDOT) on behalf of the County of Weld (Weld County) on May 18, 2018, requesting preliminary approval to abolish the existing at-grade highway-rail crossing of Weld County Road (WCR) 29 by closure and removal of the roadway, National Inventory No. 804346A, near the Town of Gilcrest, for the Commission to rescind Decision No. C15-0552 in Proceeding No. 15A-0277R authorizing installation of active warning at WCR 29, and for authority to install active warning equipment at the crossing of WCR 34, National Inventory No. 804342X, in 003312T, in Platteville, Weld County, State of Colorado.

2. By Decision No. C18-0580-I mailed July 24, 2018, the Commission deemed the Application complete by operation of rule on July 19, 2018 and approved CDOT's preliminary plans and concept. Final plans were to be filed for Commission review and approval by August 31, 2018.

3. Motions for extension of time to file the final plans were filed by CDOT on August 30, 2018, November 15, 2018, February 22, 2019, and May 29, 2019.

4. The Commission granted these Motions by Decision Nos. C18-0846-I, mailed September 21, 2018; C18-1085-I, mailed December 6, 2018; C19-0244-I, mailed March 19, 2019; and C19-0554-I, mailed June 27, 2019.

5. On July 30, 2019, CDOT filed the final plans in this project for Commission review and approval.

6. No responses were filed to the filing of the final plans for review and approval.

7. Now being fully advised in the matter, we grant the Application as amended on July 30, 2019.

B. Findings of Fact

8. The Commission gave notice to all interested parties, including the adjacent property owners on June 4, 2018. No intervention was received opposing the Application. No public comments were filed regarding the Application.

9. CDOT proposes to abolish the crossing of WCR 29 by closure and removal of the roadway. CDOT proposes to initially install temporary road closures consisting of concrete barriers with OM4-1 object markers along the temporary concrete barriers. Permanent barricades consisting of Type 3 F-B barricades with R11-2 "Road Closed" signs will be placed on both sides of the crossing, and a W1-7 two-direction large arrow sign will be placed on the side of the crossing adjacent to U.S. Highway 85 (US 85).

10. WCR 29 was previously approved for installation of active warning devices paid for by Section 130 funding by Decision No. C15-0552 mailed June 16, 2015 as part of Proceeding No. 15A-0277R.

11. Shortly after the approval, a reevaluation of all of the crossings in Weld County as part of a collective agreement between CDOT, Weld County, and UPRR in the negotiation for CDOT to purchase the necessary right-of-way for the US 85 corridor was conducted. The WCR 29 crossing was one of the crossings recommended for closure. The agreement included seeking authority to move the Section 130 active warning that had previously been approved to the crossing of WCR 34 with the proposed closure of WCR 29.

12. UPRR currently has one track through both the WCR 29 and WCR 34 crossings. There are currently approximately 10 trains per day using the crossing at a maximum timetable

speed of 60 miles per hour (MPH). There are currently crossbucks posted at both crossings. There are currently 150 vehicles per day (VPD) using the WCR 29 crossing and 100 VPD using the WCR 34 crossing, both at speed limits of 55 MPH. There is limited storage distance between the tracks and US 85 at WCR 29 with much more storage distance available between US 85 and WCR 34.

13. If the subject crossing is closed, the 150 VPD will likely cross the tracks at either WCR 38 to the south or WCR 40 to the north of the subject crossing.

14. CDOT estimates starting the project by August 1, 2018 with the CR 29 closure being completed by March 2019 and the CR 34 signalization being completed by August 2019. CDOT has waived the applicable statutory period found at § 40-6-109.5, C.R.S., regarding the time limit for decisions.

15. CDOT estimates the cost of the CR 29 closure at \$50,000 and estimates the cost of the active warning installation at the CR 34 crossing at \$425,423 with all costs for the project being paid for with Federal Section 130 funds.

C. Discussion

16. Subsections 40-4-106(1),¹ 40-4-106(2)(a),² and 40-4-106(3)(a)(I),³ C.R.S., *both* provide the jurisdictional basis for the Commission to act on applications to abolish

¹ As pertinent here, that subsection grants the Commission the "power ... to make ... special orders ... or otherwise to require each public utility to maintain and operate its ... tracks, and premises in such manner as to promote and [to] safeguard the health and safety of ... the public and to require the performance of any other act which the health or safety of its employees ... or the public may demand."

² As pertinent here, that subsection grants the Commission the "power ... to determine, [to] order, and [to] prescribe the terms and conditions of installation and operation, maintenance, and warning at all such crossings that may be constructed, including ... the installation and regulation of ... means or instrumentalities as may to the commission appear reasonable and necessary to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted."

³ As pertinent here, that subsection grants the Commission the "power ... to order any crossing constructed at grade ... to be ... abolished, according to plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the commission[.]"

railroad crossings *and* establish the standard to be applied to such applications. *Hassler and Bates Company v. Public Utilities Commission*, 168 Colo. 183, 451 P.2d 280 (1969) (interpreting predecessor statutes with substantially identical language to current statutes). Based on the statutory language and the Colorado Supreme Court's interpretation, the standard to be applied in this case is: will abolishing (that is, closing) the WCR 29 crossing serve to prevent accidents and promote public safety; and, if so, are there just and reasonable conditions and terms which the Commission ought to attach to the closing?

17. Using the information provided by CDOT, the existing exposure factor at the WCR 29 crossing is 1,500 (number of trains per day multiplied by the number of VPD). Traffic volumes provided by CDOT for the two crossings adjacent to the subject crossing are 200 VPD at the WCR 38 crossing and 200 VPD at the WCR 40 crossing. Thus, the exposure factor for each of these crossings is 1,000 each. The cumulative exposure factor for the three existing crossings is 3,500. The cumulative exposure factor will remain the same for the two remaining crossings if the subject crossing is abolished.

18. Using information provided by CDOT, the hazard index for the existing conditions (approximately ten trains per day), as the calculation is outlined in the *1974 Colorado State Highway Railroad Grade Crossing Data* book, is 1.02 for the CR 29 crossing under the current configuration of crossbucks and stop signs only, 1.11 for CR 38 under the current configuration of crossbucks and stop signs only, and 1.11 for the CR 40 crossing under the current configuration of crossbucks and stop signs only. The hazard index is the probable number of accidents expected to occur in a five-year time period. The cumulative hazard index for the three crossings is 3.24.

19. To analyze the hazard indices if the CR 29 crossing were to be abolished, we will look at two scenarios: Scenario 1 would involve all traffic from the CR 29 crossing moving to either CR 38 or CR 40 (hazard index calculations will be the same for both since existing traffic volumes for both crossings are the same) and Scenario 2 would involve traffic from CR 29 splitting evenly so half of the traffic crosses CR 38 and half of the traffic crosses CR 40. Under Scenario 1, the hazard index for either CR 38 or CR 40 would increase to 1.32 while the other crossing would remain at 1.11. The cumulative hazard index for the two crossings would be 2.43 in either case. Under Scenario 2, the hazard index for each crossing would increase to 1.21 with the cumulative hazard index for the two crossings being 2.42. In both scenario calculations, the total number of accidents expected to occur in a five-year time period with the removal of the CR 29 crossing is reduced with the closure of this crossing. Therefore, the overall risk of crossing accidents at the two remaining crossings decreases since the exposure occurs now at only two crossings as opposed to three crossings.

20. It is our principal function in this proceeding to determine whether the CR 29 crossing should be abolished in order to prevent accidents and to promote public safety. Our decision is predictive out of necessity because we are dealing with prevention of accidents and promotion of public safety when the crossing is abolished in the future. While we cannot predict with absolute certainty and accuracy what may happen in the future, we have to make the best judgment possible based on the data available.

21. Based on our analysis, with the reduction in the number of crossings to which vehicles are exposed to potential train collisions and a reduction in the cumulative hazard index with the closure of the CR 29 crossing, we find that closure of the CR 29 crossing will serve to

prevent accidents and promote public safety and find that the CR 29 crossing should be abolished.

22. The Commission's second function in this matter is to determine whether there are just and reasonable terms which should be imposed. In this matter, we find that there are no separate just and reasonable terms which should be imposed in this matter.

D. 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 Application.

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 *Code of Colorado Regulations* 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 CDOT's application with final design plans for the closure of CR 29 and for moving the active warning devices previously approved for CR 29 to the CR 34 crossing consistent with the above discussion and our previous decisions in this matter.

II. ORDER

A. The Commission Orders That:

1. This application (Application) filed by the Colorado Department of Transportation (CDOT) on behalf of the County of Weld on May 18, 2018, as amended on July 30, 2019 requesting authority to abolish the existing at-grade highway-rail crossing of Weld

County Road (WCR) 29 by closure and removal of the roadway, National Inventory No. 804346A, near the Town of Gilcrest, for the Commission to rescind Decision No. C15-0552 in Proceeding No. 15A-0277R authorizing installation of active warning at WCR 29, and for authority to install active warning equipment at the crossing of WCR 34, National Inventory No. 804342X, in 003312T, in Platteville, Weld County, State of Colorado is granted.

2. CDOT is authorized and ordered to proceed with the installation of active warning devices at the crossing of WCR 34 and the closure of WCR 29 near the Town of Gilcrest, Colorado.

3. CDOT will be expected to provide copies of the signed Construction and Maintenance Agreements for the two crossings in this Application by November 30, 2019 before start of the construction and closure at the crossings.

4. CDOT shall inform the Commission in writing when the WCR 29 crossing is closed. The Commission will expect this letter by March 30, 2020.

5. CDOT shall inform the Commission in writing when the active warning signals have been installed at the WCR 34 crossing. The Commission will expect this letter by August 1, 2020. However, the Commission understands this letter may be provided earlier or later than this date depending on the construction schedule at this crossing.

6. CDOT will be required to file copies of the updated National Inventory Forms for the two crossings showing the changed statuses of the crossings by the completion of the project by August 1, 2020.

7. 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.

8. The Commission retains jurisdiction to enter further required decisions.
9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 21, 2019.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners