

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0476R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION, ON BEHALF OF WELD COUNTY, FOR AUTHORITY TO REMOVE EXISTING ACTIVE WARNING RAILROAD GATES, CROSSING SURFACE AND ROAD APPROACHES TO CLOSE THE EXISTING CROSSING AT TRACKS OWNED BY UNION PACIFIC RAILROAD COMPANY CROSSING COUNTY ROAD 64 (O STREET), U.S. DOT NO. 804-845R, IN WELD COUNTY, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING APPLICATION**

Mailed Date: January 25, 2021
Adopted Date: January 13, 2021

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 November 3, 2020, requesting authority to use Federal Section 130 funds to abolish the existing at-grade highway-rail crossing by closure and removal of the roadway, active warning signals, and crossing related signage with the tracks of the Union Pacific Railroad (UPRR) Greeley Subdivision of Weld County Road 64 (WCR 64) at railroad milepost 53.71, National Inventory No. 804845R, near the City of Greeley, Weld County, State of Colorado.

2. The Commission gave notice of this Application to all interested parties, including adjacent property owners in accordance with § 40-6-108(2), C.R.S. The Notice was mailed November 18, 2020.

3. Notice of proposed closure of the existing WCR 64 crossing was posted at the crossing by Chad Hall on December 2, 2020 as stated in the Affidavit of Chad Hall and filed with the Commission on January 4, 2021. The affidavit includes photos of the notice posted at the subject crossing.

4. There were no interventions filed in this matter.

5. There were no public comments received in this matter.

6. The Application was deemed complete by operation of rule on January 4, 2021.

7. Now being fully advised in the matter, we grant the Application.

B. Findings of Fact

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

9. CDOT proposes to abolish the crossing of WCR 64 by removal of the active warning railroad signals, removal of crossing surface and roadway and removal of railroad related signage. A new O Street spur road will be constructed that will allow traffic east of the crossing to access US 85 south of the existing crossing without having to cross the UPRR tracks. CDOT states that closure of the crossings are part of a Purchase and Sale Agreement between CDOT and UPRR to purchase right-of-way for the US 85 corridor. CDOT, UPRR, and Weld County worked together to identify locations for road closures as part of the Purchase and Sale Agreement with CDOT's goal from the negotiation to obtain full fee ownership from UPRR for the US 85 ROW, with UPRR's goal from the negotiation to mitigate capacity impairments and to close the Purchase and Sale Agreement, and with Weld County's goal from the negotiation to ensure the long-term stability of the US 85 corridor that improves safety of the highway and rail

corridors, improves operational efficiencies to enhance economic development opportunities, and reduces conflicts for communities while also ensuring reliable emergency response time.

10. The WCR 64 existing crossing is a two track crossing with active warning devices consisting of flashing lights, gates and bells. These two crossings are adjacent to each other. There are currently 1,000 vehicles per day (VPD) including approximately five percent heavy vehicles that use the WCR 64 crossing at an unposted speed limit of 55 miles per hour (MPH). School buses do not currently use this crossing. If the crossing is not abolished, traffic volumes are estimated to be 1,400 VPD in five years and 2,500 VPD in 20 years. There are currently approximately 14 trains per day that use the crossings at a maximum timetable speed of 30 MPH. There has been one collision at the WCR 64 crossing that occurred in 1991 that involved property damage only.

11. If the subject crossing is closed, the 1,000 VPD will likely use the new O Street spur road to access US 85, of which US 85 will have already crossed the tracks of the UPRR at the bridge structure to the north, or WCR 66 to the north of the subject crossing.

12. CDOT estimates the start date of the closure in March 2021 to be completed by November 2021.

13. CDOT estimates the total cost of the WCR 64 closure at \$90,000 with \$40,000 to pay for the UPRR related costs and \$50,000 for the CDOT costs for the roadway aspects of the closure with all costs for the project being paid for with Section 130 funding. No additional Section 130 funding will be used for construction of the adjacent intersection and spur road.

C. Discussion

14. Sections 40-4-106(1)(a),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 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 64 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?

15. Using the information provided by CDOT, the existing exposure factor at the WCR 64 is 14,000 (number of trains per day multiplied by the number of VPD). Traffic volumes provided by CDOT for the two crossings closest to the subject crossings are 800 VPD for WCR 66 and 13,320 VPD for US 85. The exposure factor for each of these crossings is 8,000 at WCR 66. Because the US 85 crossing is a grade separated crossing, the exposure factor is zero since vehicles and trains should not come into contact. The cumulative exposure factor for the three existing crossings is 27,320. The cumulative exposure factor could be as high as 27,320 if all

¹ As pertinent here, that section 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 that the health or safety of its employees ... or the public may demand."

² As pertinent here, that section 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 section 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[.]"

vehicles move to the WCR 66 crossing or as low as 13,320 if all traffic moves to the US 85 crossing.

16. Using information provided by the Colorado Department of Transportation, the hazard index for the existing conditions (approximately 14 trains per day), as the calculation is outlined in the *1974 Colorado State Highway Railroad Grade Crossing Data* book, is 0.93 for the WCR 64 crossing under the current configuration of flashing lights with gates and bells; 0.86 for the WCR 66 crossing under the current configuration of flashing lights with gates and bells; and 0 for the grade separation structure at US 85. 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 1.79.

17. To analyze the hazard indices if the WCR 64 crossing was to be abolished, we will look at three scenarios: Scenario 1 would involve all traffic from the WCR 64 moving to the WCR 66 crossing. Scenario 2 would involve all traffic from the WCR 64 moving to the US 85 grade separated crossing. Scenario 3 would involve half of the WCR 64 traffic moving to WCR 66 and the other half moving to the US 85 grade separated crossing. Under Scenario 1, the hazard index for WCR 66 increases to 1.02 if all traffic moves to this crossing which will be the cumulative hazard index. Under Scenario 2, the hazard index for WCR 66 remains 0.86 and the US 85 hazard index remains zero with the cumulative hazard index dropping to 0.86 under this scenario. Under Scenario 3, the hazard index for WCR 66 would increase to 0.97 and the hazard index at US 85 would remain zero. The cumulative hazard index becomes 0.97 for this scenario. In all scenario calculations, the total number of accidents expected to occur in a five-year time period with the removal of the WCR 64 is reduced with the closure of the crossing. Therefore, the overall risk of crossing accidents at the two remaining crossings decreases since the exposure occurs now at only one crossing as opposed to two crossings.

18. It is our principal function in this proceeding to determine whether the WCR 64 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 crossings are 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.

19. 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 WCR 64 crossing, we find that closure of the WCR 64 crossing will serve to prevent accidents and promote public safety and find that the WCR 64 crossings should be abolished.

20. 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

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

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

23. 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* (CCR) 723-1.

24. 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 to abolish the WCR 64 crossing consistent with the above discussion.

25. The Applicants shall inform the Commission in writing when the WCR 64 crossing has been abolished. The Commission will initially expect this letter by November 30, 2021. However, we understand that this letter may be provided at an earlier or later date depending on construction.

26. CDOT shall work with UPRR to file a copy of the updated National Inventory Form for the crossing showing the crossings as closed by the completion of the project, initially expected by November 30, 2021.

II. ORDER

A. The Commission Orders That:

1. This application filed by the Colorado Department of Transportation (CDOT) on behalf of the County of Weld (Weld County) on November 3, 2020, requesting authority to use Federal Section 130 funds to abolish the existing at-grade highway-rail crossing by closure and removal of the roadway, active warning signals, and crossing related signage with the tracks of the Union Pacific Railroad (UPRR) Greeley Subdivision of Weld County Road 64 (WCR 64) at railroad milepost 53.71, National Inventory No. 804845R, near the City of Greeley, Weld County, State of Colorado was deemed complete within the meaning of § 40-6-109.5, C.R.S. by operation of rule on January 4, 2021.

2. CDOT is authorized and ordered to proceed with the abolishment of the Weld County 64 crossing by removal of the crossing surfaces, railroad signals, and all railroad signage.

3. CDOT shall inform the Commission in writing when the Weld County Road 64 crossing is closed. The Commission will expect this letter initially by November 30, 2021.

4. CDOT and UPRR shall work together to file a copy of the updated National Inventory Form for the crossing showing the crossing as closed by the completion of the project, initially estimated at November 30, 2021.

5. 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.

6. The Commission retains jurisdiction to enter further required decisions.

7. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 13, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN C. GAVAN

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_____ Commissioners