

Decision No. C23-0816

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 10A-842R

IN THE MATTER OF THE COLORADO DEPARTMENT OF TRANSPORTATION, AND THE CITY OF COMMERCE CITY FOR AUTHORITY TO WIDEN THE ROADWAY AND CROSSING, INSTALL PEDESTRIAN SIDEWALKS, REMOVE EXISTING FLASHERS AND GATES AND INSTALL NEW APPROACH GATES, RAISED MEDIANS AND FLASHERS, RELOCATE ONE EXISTING RAILROAD CONTROL POINT TO THE NORTH SIDE AND, RELOCATE TWO SWITCHES TO MOVE THE HAZELTINE SIDING TO THE NORTH AT THE CROSSING OF THE UNION PACIFIC RAILROAD TRACK ON STATE HIGHWAY 44 (104TH AVE.) IN CITY OF COMMERCE CITY, ADAMS COUNTY, COLORADO.

**COMMISSION DECISION GRANTING
AMENDED APPLICATION**

Mailed Date: December 8, 2023

Adopted Date: December 6, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Joint Amended Application (Amended Application) filed by the Colorado Department of Transportation (CDOT) and the City of Commerce City (Commerce City) (collectively Applicants) on October 16, 2023, requesting authority to install a queue cutter traffic signal for the crossing of 104th Avenue with the tracks of the Union Pacific Railroad Company (UPRR), railroad milepost 11.25 of the Greeley Subdivision, National Inventory No. 804433D, in Commerce City, County of Adams, State of Colorado.

2. No responses to the Amended Application were received.

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

B. Background

4. This proceeding has been open since 2010 requesting changes at the at-grade crossing of 104th Avenue with the tracks of UPRR.

5. The Commission held hearings on this matter and the ALJ issued Recommended Decision R12-0400, mailed April 18, 2012.

6. Recommended Decision R12-0400 required UPRR to file a cost estimate for the crossing work including the queue cutter signal. Commerce City was required to file construction plans and a cost estimate for the queue cutter signal by July 31, 2012.

7. Exceptions and responses to the Recommended Decision were filed in this proceeding.

8. The Commission issued Decision No. C12-0881, mailed August 3, 2012. In this decision, the Commission noted that the required dates for the parties to file plans and estimates for the queue cutter signal were based on the mailed date of the Recommended Decision and had passed already due to the exceptions and responses. To cure the ordered date that had passed, the Commission, on its own motion, extended the date requiring that the plans and signal estimates were to be filed on or before October 31, 2012. The required date for the Construction and Maintenance (C&M) Agreement was extended to December 31, 2012, and the project completion letter was to be filed on or before March 31, 2013.

9. On August 14, 2012, UPRR, CDOT and Commerce City filed a Joint Motion For Stay Of Proceedings To Allow Settlement Discussions And Other Further Relief. The parties request that the Commission allow until October 11, 2012 to either file a Stipulated Settlement Agreement with the Commission or to file a report that they have been unable to reach agreement on the proposed settlement. If a settlement agreement was not reached, the parties

requested an additional 20 days to file a Motion for Rehearing, Reargument or Reconsideration to October 31, 2012. The parties also requested the dates concerning submission of plans, estimates, agreements and project completion letters be stayed as well. The parties requested that if a settlement agreement was not reached that the deadlines from the August 3, 2012 order be set forward a minimum of 120 days from the current scheduled due dates. The Motion for Stay of Proceedings was approved by Decision No. C12-0988-I mailed August 22, 2012.

10. On October 12, 2012, the parties filed a Joint Motion for Extension of Stay of Proceedings requesting an extension to October 19, 2012, and requesting the Commission enter an order granting the relief *nunc pro tunc*. The Commission issued Interim Decision No. C12-1195-I mailed October 17, 2012, granting the motion *nunc pro tunc*.

11. On October 19, 2012, the parties filed a Joint Motion to Vacate Decision No. C12-0881 and enter a Stipulated Settlement Agreement as a final Decision. In this Motion, the parties requested that the Commission approve the Stipulated Settlement Agreement as the final Decision. The Commission granted the Joint Motion by Decision No. C12-1315 with explicit instructions that the Commission needed to see the final plans and cost estimates in this proceeding. The Joint Movants were required to file the plans, cost estimates, and executed Construction and Maintenance Agreement by May 15, 2013.

12. On November 13, 2012, Commerce City filed a Motion for Clarification of Decision No. C12-1315 which the Commission clarified with an Errata Notice for Decision No. C12-1315-E.

13. On May 9, 2013, Commerce City filed a Joint Motion for Extension of Time to File Plans, Cost Estimates, and Executed Construction and Maintenance Agreement where the parties requested an additional 78 days up to and including August 1, 2013 to file the plans,

estimates, and executed Construction and Maintenance Agreement, which was granted by Decision No. C13-0642 mailed June 4, 2013.

14. Additional Motions for Extension of Time were filed by the Parties on July 29, 2013, and September 13, 2013 which were approved by the Commission by Decision Nos. C13-1017 mailed August 20, 2013, and C13-1240 mailed October 7, 2013, requesting an additional 45 days to file the fully executed Construction and Maintenance Agreement to October 25, 2013.

15. On October 29, 2013, UPRR filed a Notice of Filing of Unexecuted C&M Agreement with the unexecuted C&M Agreement. The Notice states that the plans were at 100 percent approval and the unexecuted C&M was agreed to with the final document being executed in approximately two weeks from the date of the Notice. No plans or cost estimates were filed with this Notice.

16. On May 22, 2014, a Notice of Filing of the Executed C&M Agreement was filed by UPRR. No plans or estimates were included with this filing either.

17. On October 16, 2023, Commerce City filed an Amended Application which included the queue cutter signal plan, circuit plans, and cost estimate.

C. Findings of Fact

18. After a wait of almost ten years, the Parties finally filed all of the remaining documents for Commission review and approval. The signed C&M agreement was filed on May 22, 2014, and the outstanding plans and estimates were filed on October 16, 2023.

19. No responses were filed regarding the Amended Application.

20. With the Amended Application, the Applicants request authority to install a queue cutter signal at the crossing of 104th Avenue with the tracks of the UPRR. This is the last approval required by the Commission for this proceeding.

21. The crossing has had previous changes made to the crossing installed including flashing lights, gates, bells, median mast mounted flashers, constant warning time circuitry, and a second track.

22. The queue cutter signal will be installed downstream from the crossing. Detection loops are installed downstream from queue cutter signal and are used to detect when traffic has queued towards the crossing. The queue cutter signal will burn green until one of two activations are received by the traffic signal controller. The first action is when a queue is detected by the in-pavement loops, which occurs when a vehicle sits on the loop for six seconds. The queue cutter signal will change from green to amber to red. Vehicles moving toward the crossing will be required to stop at the stop bar located upstream. The queue cutter signal will also turn from green to amber to red when a train has been detected and requires vehicles to stop before moving on to the tracks of the crossing. The flashing lights and gates will activate to provide warning to vehicles.

23. The Applicants estimate the cost of the queue cutter traffic signal at approximately \$160,000 and anticipates that the queue cutter traffic signal will start construction in January 2024. We will require the Applicants to inform the Commission in writing that the project has been completed. We will assign an initial date of June 30, 2024 to provide notice, although we understand this completion may be earlier or later based on weather and construction schedule.

D. Conclusions

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

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

26. Because the Amended 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 Rules of Practice and Procedure.

27. We find that good cause exists and that the requirements of public safety are met by granting the Amended Application consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. The application (Amended Application) filed by the Colorado Department of Transportation (CDOT) and the City of Commerce City (Commerce City) (collectively Applicants) on October 16, 2023, requesting authority to install a queue cutter traffic signal for the crossing of 104th Avenue with the tracks of the Union Pacific Railroad Company (UPRR), railroad milepost 11.25 of the Greeley Subdivision, National Inventory No. 804433D, in Commerce City, County of Adams, State of Colorado is granted.

2. Commerce City and CDOT are authorized and ordered to install a queue cutter signal for westbound vehicles at the crossing of 104th Avenue and the tracks of the UPRR in Commerce City.

3. The Applicants shall inform the Commission in writing when the project is complete within ten days of completion. The Commission will expect the letter by

June 30, 2024. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

4. 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.

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

6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 6, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners