

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22A-0334R

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IN THE MATTER OF THE APPLICATION OF THE CITY OF FORT COLLINS, FOR AUTHORITY TO RELOCATE THE RAILROAD SIGNAL BUNGALOW AND VACATE THE ASSOCIATED EASEMENT AT THE CHERRY STREET CROSSING OF TRACKS OWNED BY BNSF RAILWAY COMPANY, USDOT NO. 244-642N, IN LARIMER COUNTY, STATE OF COLORADO.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ALENKA HAN  
ESTABLISHING PROCEDURAL SCHEDULE AND  
SETTING EVIDENTIARY HEARING**

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Mailed Date: October 18, 2022

**I. STATEMENT**

**A. Procedural History and Background**

1. On July 22, 2022, the City of Fort Collins (the City) filed the above-captioned proceeding with the Colorado Public Utilities Commission (Commission).

2. On July 25, 2022, the Commission gave notice of the Application to those interested in or affected by it. As noticed, the Application sought approval of the following:

relocation of the railroad signal bungalow and vacation of the associated easement at the Cherry Street crossing of tracks under the authority of the BNSF Railway in Larimer County, State of Colorado.

3. BNSF Railway Company (BNSF) filed an Intervention on August 24, 2022. In its Intervention, BNSF sought a hearing and opposed the City's Application on the grounds that the relief the City seeks in its Application exceeds the Commission's jurisdiction. BNSF requests that

the Application be dismissed or, in the alternative, for an order mandating that the City “cease and desist work at th[e] crossing” until an agreement can be reached addressing the scope of the work.

4. No other Interventions were filed.

5. On September 7, 2022, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) for disposition.

**B. Prehearing Issues**

6. On September 30, 2022, the undersigned ALJ informally contacted the parties via email requesting the parties’ input on setting a procedural schedule for this proceeding.

7. To date, neither party has responded to this ALJ’s inquiry.

8. In order to ensure that this proceeding moves forward and that the Commission is able to issue a decision within the statutory period established by § 40-6-109.5, C.R.S., the undersigned ALJ will establish a procedural schedule and set a hearing date for a hybrid hearing.

9. The parties are advised that their witness lists, exhibit lists, and exhibits must be filed in advance of the scheduled hearing by the deadlines set in this order. To comply with this disclosure requirement, each party must file the following:

- a) A witness list identifying any witnesses that may be called, along with a detailed description of each witness’s anticipated testimony;
- b) An exhibit list identifying any exhibits that may be introduced at the evidentiary hearing; and,
- c) Copies of any exhibits that may be introduced at the evidentiary hearing.

10. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission’s hearing rooms in

Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

11. If the parties prefer a remote hearing, a motion to amend the hearing location and format may be filed.

12. The Parties are further advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>).

13. The parties are also on notice that failure to appear at the scheduled evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application.

14. The parties are reminded that no witness will be permitted to testify, except in rebuttal, unless that witness has been identified on a list of witnesses filed in accordance with the procedural schedule. Likewise, no exhibit will be received in evidence, except in rebuttal, unless filed in accordance with the procedural schedule.

**C. Informal Video-Conference Practice Session.**

15. The ALJ will hold an informal practice video-conference session if requested by either or both parties to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

16. The parties may contact a Commission Legal Assistant by email at [casey.federico@state.co.us](mailto:casey.federico@state.co.us) or [alejandro.aguirrerhode@state.co.us](mailto:alejandro.aguirrerhode@state.co.us), to schedule an informal practice video-conference session.

17. The parties will receive information and a link to participate in the informal practice session by email.

**II. ORDER**

**A. It Is Ordered That:**

1. A **hybrid** hearing is scheduled as follows:

Date: **Tuesday, January 24, 2023**

Time: **9:00 A.M.**

Location: Commission Hearing Room  
1560 Broadway, Suite 250  
Denver, Colorado

**METHOD:** In-person and by videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

**Optionally**, any party may participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.<sup>1</sup>

2. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

3. No later than **Friday, December 16, 2022**, Applicant the City of Fort Collins shall file (or supplement) and serve: (a) a list that identifies the witnesses the City intends to call at the hearing, including a detailed summary of the anticipated testimony of each witness; (b) a list of the exhibits the City intends to introduce at the hearing; and (c) copies of the exhibits the City intends to present at the hearing.

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<sup>1</sup> Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

4. No later than **Friday, January 6, 2023**, Intervenor BNSF Railway Company, shall file (or supplement) and serve: (a) a list that identifies the witnesses BNSF intends to call at the hearing, including a detailed summary of the anticipated testimony of each witness; (b) a list of the exhibits BNSF intends to introduce at the hearing; and (c) copies of the exhibits BNSF intends to present at the hearing.

5. **Video-Conference Participation.** Counsel for the parties, parties, and witnesses may attend in person or participate in the evidentiary hearing by videoconference using the Zoom platform.

6. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing may accommodate remote participation by videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

7. **The ALJ will hold an informal Zoom practice session upon request.**

8. **Instructions for Preparation and Presentation of Exhibits at Hearing:** Detailed instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

9. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

10. This Order is effective immediately.

( S E A L )



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ALENKA HAN

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director