

Decision No. R20-0531

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0552R

IN THE MATTER OF THE APPLICATION OF THE CITY OF WESTMINSTER FOR AUTHORITY TO UPGRADE APPROACH RAILROAD GATES WITH FLASHING LIGHTS, BELLS, CONSTANT WARNING TIME CIRCUITRY, NEW SIGNAL CABIN, UPGRADE OVERHEAD CANTILEVER FLASHERS, AND INSTALL RAISED MEDIANS, AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING LOWELL BOULEVARD, USDOT NO. 244778B, IN ADAMS COUNTY, STATE OF COLORADO.

PROCEEDING NO. 19A-0553R

IN THE MATTER OF THE APPLICATION OF THE CITY OF WESTMINSTER FOR AUTHORITY TO INSTALL RAISED MEDIANS, MODIFY OUTER CURBLINES AND CLOSE AN ADJACENT TURN BAY ON APPROACH TO TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING WEST 72ND AVENUE, USDOT NO. 244779H, IN ADAMS COUNTY, STATE OF COLORADO.

PROCEEDING NO. 19A-0554R

IN THE MATTER OF THE APPLICATION OF THE CITY OF WESTMINSTER FOR AUTHORITY TO UPGRADE APPROACH RAILROAD GATES WITH FLASHING LIGHTS AND BELLS, INSTALL EXIT RAILROAD GATES TO COMPLETE A 4-QUADRANT GATE INSTALLATION, UPGRADE CIRCUITRY TO CONSTANT WARNING TIME CIRCUITRY, AND INSTALL NEW RAILROAD SIGNAL CABIN, AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING BRADBURN BOULEVARD, USDOT NO. 244780C, IN ADAMS COUNTY, STATE OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ACCEPTING AMENDMENTS; GRANTING
APPLICATIONS UPON CONDITION, IN PART; AND
ALLOCATING COSTS**

Mailed Date: July 20, 2020

I. STATEMENT

1. On October 15, 2019, in Proceeding No. 19A-0552R, the City of Westminster (Applicant or the City) filed its application for authority to upgrade approach railroad gates with flashing lights, bells, constant warning time circuitry, and new signal cabin; installation of upgraded overhead cantilever flashers; and installation of raised medians, at tracks owned by BNSF Railway Company (BNSF) crossing Lowell Boulevard, USDOT No. 244778B, in Adams County, State of Colorado. The application was amended on November 14, 2019, and June 4, 2020.

2. On October 15, 2019, in Proceeding No. 19A-0553R, Applicant filed its application for authority to install raised medians, modify outer curblines, and close an adjacent turn bay on approach to tracks owned by BNSF crossing West 72nd Avenue, USDOT No. 244779H, in Adams County, State of Colorado. The application was amended on June 4, 2020.

3. On October 15, 2019, in Proceeding No. 19A-0554R, Applicant filed its application for authority to upgrade approach railroad gates with flashing lights and bells, install exit railroad gates to complete a four-quadrant gate installation, upgrade circuitry to constant warning time circuitry, and install new railroad signal cabin, at tracks owned by BNSF crossing Bradburn Boulevard, USDOT No. 244780C, in Adams County, State of Colorado. The application was amended on November 14, 2019, and June 4, 2020.

4. The Commission gave notice of all three applications on October 16, 2019.

5. On November 15, 2019, BNSF timely intervened of right, opposed the applications, and requested a hearing. The City and BNSF are the only parties to the three above-captioned proceedings.

6. These matters were referred to an Administrative Law Judge (ALJ) for resolution by minute entry during the Commission's Weekly Meeting held December 4, 2019.

7. By Decision Nos. R19-0977-I, R19-0978-I, and R19-0979-I, issued December 6, 2019, a prehearing conference was scheduled in the above-captioned proceedings at the same date and time. At the scheduled date and time, the prehearing conference was convened.

8. By Decision No. R20-0224-I, issued April 6, 2020, an evidentiary hearing was scheduled to commence in this consolidated proceeding on June 22, 2020.

9. By Decision No. R20-0531438-I, issued June 11, 2020, the evidentiary hearing scheduled for June 22, 2020 was converted into a remote hearing.

10. On June 12, 2020, a Notice of Resolution and Withdrawal of Request for Hearing (Notice of Resolution) was filed by BNSF. BNSF withdrew its request for a hearing and advised, with the City's consent, that the hearing should be vacated and final approval of the Applications should be granted.

11. BNSF's Notice of Resolution was construed as an unopposed joint motion to vacate the evidentiary hearing and procedural schedule, and to grant the unopposed applications.

12. By Decision No. R20-0531443-I, issued June 16, 2020, the unopposed joint request to vacate the evidentiary hearing and procedural schedule was granted. The remainder of any pending requested relief is addressed by this Recommended Decision.

13. With BNSF having withdrawn its opposition, the Applications now stand unopposed.

14. In accordance with § 40-6-109. C.R.S., the ALJ now transmits to the Commission, the record in this proceeding along with a written Recommended Decision.

II. FINDINGS AND CONCLUSIONS

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

16. BNSF having withdrawn its opposition and request for hearing, no intervenor contests or opposes the applications.

17. Because the application are 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 of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

A. Proceeding No. 19A-0552R

18. The City filed its application for authority to upgrade approach railroad gates with flashing lights, bells, constant warning time circuitry, and new signal cabin, installation of upgraded overhead cantilever flashers, and construction of raised medians, at tracks owned by BNSF crossing Lowell Boulevard, USDOT No. 244778B, in Adams County, State of Colorado. The application was amended on November 14, 2019, and June 4, 2020.

19. The application seeks final approval of final design plans included in therein.

20. The City is a political subdivision of the State of Colorado and a municipal corporation. Applicant is the roadway authority that owns the roadway affected by the application.

21. BNSF is the railroad that owns and operates the track through the crossing of Lowell Boulevard, USDOT No. 244778B, in Adams County, State of Colorado.

22. The City states that there are an estimated 8 daytime (6 a.m. to 6 p.m.) through freight trains and 8 nighttime (6 p.m. to 6 a.m.) through freight trains that use the crossing at a

maximum timetable speed of 25 miles per hour (MPH) with no estimates of increases or decreases in these volumes in the future.

23. The crossing is characterized as a minor arterial urban crossing and is not part of the National Highway System. According to the National Inventory Form, as of 1989, the annual average daily traffic was 8,000 vehicles per day (VPD), the crossing was not regularly used by school buses, and the estimated percentage of heavy vehicle traffic was 9 percent.

24. The City's most recent updated traffic counts are 10,460 VPD, with an estimated 9 percent heavy vehicles and school buses now using the crossing at a posted speed limit of 30 MPH, with an estimated increase to 11,160 VPD by 2023, and 13,440 VPD by 2038.

25. The City proposes to upgrade the existing active warning system at the crossing. The City requests authority to install upgraded active crossing warning devices, including flashing light signals, approach automatic railroad gates and bells, upgraded overhead cantilever flashers, and construct raised medians on each approach. The City anticipates existing approach railroad gates and existing overhead cantilever flashers will be removed and replaced. The City also proposes installing constant warning time circuitry and a new railroad signal cabin. There are no adjacent signalized intersections and no traffic signal interconnection or preemption is proposed. The estimated total cost for the installation of the warning devices is \$360,473 and \$205,041 for the civil engineering improvements. *See* Exhibit F to Amendment to Application.

26. The City is pursuing establishment of a railroad quiet zone at this crossing and is proposing this project in accordance with the Federal Railroad Administration rules. *See*, 49 C.F.R. Parts 222 and 229, Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule, August 17, 2006.

27. The City proposes funding for the improvements be provided through a combination of federalized funds administered by the Colorado Department of Transportation (CDOT) and the City's local general capital improvement funds.

28. The ALJ finds and concludes that granting the application filed in Proceeding No. 19A-0552R is reasonable and necessary to prevent accidents and promote the safety of the public. The application should be granted. The City is funding 100 percent of this project.

29. Applicant shall inform the Commission in writing when the crossing construction is complete and operational within ten days of completion. The Commission will expect this letter on or before July 31, 2021.¹

30. Applicant shall provide an updated crossing inventory for the changed crossing conditions and shall file a copy of the updated crossing inventory form with the Commission concurrent with notice to the Commission of completion of the crossing work initially expected July 31, 2021.

31. Applicant is reminded that ongoing delay and noncompliance with Commission orders can present public safety concerns relevant to the Commission's jurisdiction under § 40-4-106, C.R.S., and that pursuant to Rule 1302(b), 4 CCR 723-1, of the Commission's Rules of

¹ The Commission understands there may be changes or delays in the construction schedule. While a request for extension is not required in the event completion of the construction project goes past July 31, 2021, the City should inform the Commission through an appropriate filing if delays are anticipated or significant.

Practice and Procedure, and § 40-4-106(1)(b), C.R.S.,² the Commission may impose a civil penalty against a railroad company that fails to comply with a Commission order or rule directing compliance with railroad crossing safety regulations.

B. Proceeding No. 19A-0553R

32. The City filed its application for authority to install raised medians, modify outer curblines, and close an adjacent turn bay on approach to tracks owned by BNSF crossing West 72nd Avenue, USDOT No. 244779H, in Adams County, State of Colorado.

33. The application seeks final approval of final design plans included therein.

34. The City states that there are an estimated 8 daytime (6 a.m. to 6 p.m.) through freight trains and 8 nighttime (6 p.m. to 6 a.m.) through freight trains that use the crossing at a maximum timetable speed of 25 MPH with no estimates of increases or decreases in these volumes in the future.

35. The crossing is characterized as a minor arterial urban crossing and is not part of the National Highway System. According to the National Inventory Form, as of 1989, the annual averaged daily traffic was 14,000 VPD, the crossing was not regularly used by school buses, and the estimated percentage of heavy vehicle traffic was 8 percent.

36. The City's most recent updated traffic counts are 19,877 VPD, with an estimated 8 percent heavy vehicles and school buses now using the crossing at a posted speed limit of 30 MPH, with an estimated increase to 21,202 VPD by 2023, and 25,545 VPD by 2038.

² The Commission may pursue a notice of civil penalty assessment on its own motion, or upon consideration of a complaint filed pursuant to Rule 1302(a), 4 CCR 723-1, setting forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and how a statute, rule, decision or agreement memorialized, accepted, or approved by a Commission decision is alleged to have been violated. Relief requested must be clear, including without limitation, whether the complainant requests the Commission pursue civil penalties.

37. The City proposes the installation of raised center medians on each approach to the crossing with the east median measuring 100 linear feet measured from the location of the existing/upgraded approach flashing light signal gate arm. The west raised median will measure 60 linear feet measured from the location of the existing/upgraded approach flashing light signal gate arm. Each median includes six-inch curb and median cover material with no additional concrete crossing material needed for the proposed project. Although the existing railroad active warning devices are compliant with the FRA Final Rule, the City and BNSF have agreed to allow BNSF to upgrade the existing approach flashing light signals with gates, crossbucks and bells, overhead cantilever flashers, and constant warning time circuitry as part of this project with the cost being shared between the two parties.

38. The City is pursuing establishment of a railroad quiet zone at this crossing and is proposing this project in accordance with the Federal Railroad Administration rules. *See*, 49 C.F.R. Parts 222 and 229, Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule, August 17, 2006.

39. The City proposes funding for the improvements be provided through a combination of CDOT-Administered Federalized Funds, local general capital improvement funds from the City, and funding from BNSF for a portion of the railroad equipment upgrade. CDOT and City funds will be used for the roadway improvements included in Exhibit C – Roadway Items Estimate (Estimate), currently estimated at \$224,315.

40. The City will contribute to the railroad equipment upgrade, an amount not to exceed \$125,000. BNSF is responsible for the balance of cost shown on BNSF's Estimate; however, all final plans, specifications, and estimates are not yet available.

41. The ALJ finds and concludes that good cause exists and that the requirements of public safety and necessity are met by conditionally preliminarily granting the application filed in Proceeding No. 19A-0553R as being reasonable and necessary to prevent accidents and promote the safety of the public. The City will be ordered to file final plans in this proceeding by October 15, 2020, for Commission review and approval.

42. The City will be responsible for funding the roadway improvements, estimated at \$224,315. The City will be responsible for an amount not to exceed \$125,000 for the upgrade of railroad equipment, and BNSF will be responsible for any additional cost of upgrading the railroad equipment.

C. Proceeding No. 19A-0554R

43. The City filed its application for authority to upgrade approach railroad gates with flashing lights and bells, install exit railroad gates to complete a four-quadrant gate installation, upgrade circuitry to constant warning time circuitry, and install new railroad signal cabin, at tracks owned by BNSF crossing Bradburn Boulevard, USDOT No. 244780C, in Adams County, State of Colorado. The application was amended on November 14, 2019.

44. The application seeks final approval of final design plans included therein.

45. The City states that there are an estimated 8 daytime (6 a.m. to 6 p.m.) through freight trains and 8 nighttime (6 p.m. to 6 a.m.) through freight trains that use the crossing at a maximum timetable speed of 25 MPH with no estimates of increases or decreases in these volumes in the future.

46. The crossing is characterized as an urban major collector crossing and is not part of the National Highway System. According to the National Inventory Form, as of 1989, the

annual averaged daily traffic was 350 VPD, the crossing was not regularly used by school buses, and the estimated percentage of heavy vehicle traffic was 7 percent.

47. The City's most recent updated traffic counts are 2,424 VPD, with an estimated 8 percent heavy vehicles and school buses now using the crossing at a posted speed limit of 25 MPH, with an estimated increase to 2,580 VPD by 2023, and 3,110 VPD by 2038.

48. The City proposes upgrading the existing active warning railroad equipment to include installation of flashing light signals, 4-quadrant automatic railroad gates and bells, with existing approach railroad gates anticipated to be removed and replaced. The City's application states that, per request from BNSF, the railroad gates will be installed perpendicular to the roadway, necessitating vehicle detection at the crossing. The City's application further states that BNSF indicates that the railroad will include radar detection as part of its work. There are no adjacent signalized intersections, and no traffic signal interconnection or preemption is proposed. The estimated total cost of the proposed construction items is \$189,459 for the civil engineering work and \$514,031 for the grade crossing warning devices.

49. The City is pursuing establishment of a railroad quiet zone at this crossing and is proposing this project in accordance with the Federal Railroad Administration rules. *See*, 49 C.F.R. Parts 222 and 229, Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule, August 17, 2006.

50. The City proposes funding for the improvements to be provided through a combination of federalized funds administered by CDOT and the City's local general capital improvement funds.

51. The ALJ finds and concludes that granting the application is reasonable and necessary to prevent accidents and promote the safety of the public. The application should be granted. The City is funding 100 percent of this project.

52. Applicant shall inform the Commission in writing when the crossing construction is complete and operational within ten days of completion. The Commission will expect this letter on or before July 31, 2021.³

53. Applicant shall provide an updated crossing inventory for the changed crossing conditions and shall file a copy of the updated crossing inventory form with the Commission concurrent with notice to the Commission of completion of the crossing work initially expected July 31, 2021.

54. Applicant is reminded that ongoing delay and incompliance with Commission orders can present public safety concerns relevant to the Commission's jurisdiction under § 40-4-106, C.R.S., and that pursuant to Rule 1302(b), 4 CCR 723-1, and § 40-4-106(1)(b), C.R.S.,⁴ the Commission may impose a civil penalty against a railroad company that fails to comply with a Commission order or rule directing compliance with railroad crossing safety regulations.

³ The Commission understands there may be changes or delays in the construction schedule. While a request for extension is not required in the event completion of the construction project goes past July 31, 2021, the City should inform the Commission through an appropriate filing if delays are anticipated or significant.

⁴ The Commission may pursue a notice of civil penalty assessment on its own motion, or upon consideration of a complaint filed pursuant to Rule 1302(a), 4 CCR 723-1, setting forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and how a statute, rule, decision or agreement memorialized, accepted, or approved by a Commission decision is alleged to have been violated. Relief requested must be clear, including without limitation, whether the complainant requests the Commission pursue civil penalties.

III. ORDER

A. The Commission Orders That:

1. Proceeding Nos. 19A-0552R and 19A-0554R

1. The Applications in Proceeding Nos. 19A-0552R and 19A-0554R, as amended, are approved.

2. The City of Westminster (Applicant or the City) is authorized and ordered to proceed with changes at the existing crossing of Lowell Boulevard and the BNSF tracks, USDOT No. 244778B, in Adams County, State of Colorado, consisting of upgrading approach railroad gates with flashing lights, bells, constant warning time circuitry, and new signal cabin; installation of upgraded overhead cantilever flashers; and installation of raised medians. The estimated total cost for the installation of the warning devices is \$360,473 and \$205,041 for the civil engineering improvements.

3. The City is authorized and ordered to proceed with changes at the existing crossing of Bradburn Boulevard and the BNSF Railway Company (BNSF) tracks, USDOT No. 244780C, in Adams County, State of Colorado, consisting of upgrading approach railroad gates with flashing lights and bells, installing exit railroad gates to complete a four-quadrant gate installation, upgrading circuitry to constant warning time circuitry, and installing a new railroad signal cabin. The estimated total cost of the proposed construction items is \$189,459 for the civil engineering work and \$514,031 for the crossing warning devices.

4. Improvements authorized in ordering paragraphs 2 and 3 above shall be in accordance with the plans and specifications filed in the proceeding, as amended.

5. The costs for the installation of the warning devices shall be paid by the City.

6. BNSF is required to file a copy of the signed Construction and Maintenance Agreement in this matter by July 31, 2021, prior to starting construction work at the crossing.

7. Applicant is required to inform the Commission in writing that the crossing changes are complete and operational within ten days after completion.

8. Applicant shall update the crossing inventory form showing the changed crossing conditions and file a copy of that updated inventory form in this proceeding concurrent with notice of completion of the crossing changes.

2. Proceeding No. 19A-0553R

9. The Application in Proceeding No. 19A-0552R, as amended, is preliminarily approved to install raised medians, modify outer curblines, and close an adjacent turn bay on approach to tracks owned by BNSF crossing West 72nd Avenue, USDOT No. 244779H, in Adams County, State of Colorado, upon condition.

10. The preliminary approval is conditioned upon the City: (1) making a filing within 30 days of the effective date of this Recommended Decision waiving the applicable statutory period in §40-6-109.5, C.R.S., regarding the time limit for decisions and (2) filing the final railroad cost estimate of the crossing warning devices and schematic diagram of the crossing warning devices for approval on or before October 15, 2020. In the event that the City fails to timely satisfy either condition, the application in Proceeding No. 20A-0553R is dismissed without prejudice.

11. The City is responsible for funding the roadway improvements, estimated at \$224,315. The City is responsible for an amount not to exceed \$125,000 for the upgrade of railroad equipment, and the BNSF Railway is responsible for any additional cost of upgrading the railroad equipment.

3. Ordering Provisions Regarding All Applications.

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

13. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

14. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

15. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director