

Decision No. C23-0344

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0569R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION, ON BEHALF OF MORGAN COUNTY, FOR AUTHORITY TO RELOCATE AN EXISTING AT-GRADE HIGHWAY RAIL CROSSING (COUNTY ROAD U-DOT# 057-570X) AND ADD FLASHING LIGHT SIGNALS, GATES, BELLS, CONSTANT WARNING TIME CIRCUITRY, AND NEW SIGNAL CABINET, AND REMOVE ONE (1) ADJACENT EXISTING AT-GRADE HIGHWAY RAIL CROSSING AT COUNTY ROAD 31 (DOT# 0575-69D), BOTH CROSSING TRACKS ARE OWNED BY BNSF RAILWAY, IN MORGAN COUNTY, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING APPLICATION**

Mailed Date: May 26, 2023

Adopted Date: May 24, 2023

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 Morgan (Morgan County) on December 20, 2022, seeking authority to relocate the existing highway-rail grade crossing of County Road (CR U), adding flashing light signals with gates and bells, constant warning time circuitry, and new signal cabin, and closing the adjacent existing at-grade rail crossing with CR 31 by realigning the existing CR 31 roadway into a T-intersection with CR 31 using Federal Section 130 Funds, at the crossings of the BNSF Railway Company (BNSF) Brush Subdivision at CR U, existing National Inventory No. 057570X, and CR 31, National Inventory No. 057569D w BNSF Railway (BNSF) at railroad

mile post 215.846 of the Twin Peaks Subdivision, National Inventory No. 245153G near the Town of Hillrose, Morgan County, State of Colorado.

2. The Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S. The Notice was mailed on January 4, 2023.

3. At the time that Notice was provided by the Commission, there had not yet been notice of the closure of CR 31 at the crossing has not yet been provided to the Commission.

4. On February 24, 2023, the Commission issued Decision No. C23-0120-I requiring CDOT to post notice of closure at the CR 31 crossing and providing an additional 30 days of notice from the date of the posting of notice at the crossing.

5. On March 3, 2023, CDOT provided notification of posting the notice at the crossing on March 3, 2023.

6. On March 16, 2023, the Morgan County Board of County Commissioners made a filing in this proceeding. Morgan County is concerned that because CR 31 is a highly travelled road for transporting agriculture commodities with residential traffic as well. Harvest time will see an increase of said agriculture traffic. The County Commissioners state that while under construction, traffic will have a three-mile detour and that detoured truck traffic will have to navigate corners on graveled road which will have a significant impact to the detoured gravel road. The Morgan County Board of Commissioners is requesting that the new proposed CR 31 be build and finished before closing US DOT National Crossing ID 057-569D.

7. On March 31, 2023, CDOT filed the final information needed to complete the Application.

8. There were no interventions filed in this matter.

9. The Commission has reviewed the record in this matter and the Application was deemed complete within the meaning of § 40-6-109.5, C.R.S. by operation of rule on May 4, 2023.

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

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

B. Findings of Fact

1. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

2. CDOT seeks seeking authority to relocate the existing highway-rail grade crossing of County Road (CR U), add flashing light signals with gates and bells, constant warning time circuitry, and new signal cabin, and closing the adjacent existing at-grade rail crossing with CR 31 by realigning the existing CR 31 roadway into a T-intersection with CR 31.

3. CDOT is proposing changes at CR U and CR 31 for the following reasons. Both CR U and CR 31 cross the tracks at a 45-degree angle skew making it difficult for approaching motorists to look down the tracks for an approaching train. There are higher speed trains using the crossing that combined with the visibility issues reduce safety. By realigning one crossing (CR U) to cross the tracks at a right angle and to realign CR 31 to form a T intersection with the realigned CR U so that vehicles will be able to cross the tracks at a right angle as well, in combination with installing active warning at the crossing consisting of flashing lights, gates,

bells, constant warning time circuitry, and new signal cabin, safety at the crossing will be increased by providing drivers better visibility and active warning of an approaching train.

4. CDOT states there are currently 18 trains per day that use the crossing at a maximum timetable speed of 60 miles per hour (MPH) with no anticipated increases or decreases in the number or character of trains at this time. There are currently 245 vehicles per day (VPD) at CR U and 40 VPD at CR 31 using the roadways as unposted, statutory speed limits of 55 MPH with approximately nine percent heavy vehicles using each crossing and school buses not using either crossing. Vehicle volume is projected to increase to 285 VPD on CR U and 46 VPD at CR 31 in five years, and 380 VPD at CR U and 60 VPD at CR 31 in 20 years.

5. There was one property damage only accident at the CR U crossing in 2019. There are no recorded accidents at the CR 31 crossing since 1975.

6. CDOT states that the cost of the active warning equipment is estimated at \$602,659 and the cost to install the crossing surface is estimated at \$164,005 with Section 130 funds will pay for the costs of this project.

7. CDOT proposes to start construction on August 1, 2023, and complete construction of the project by December 31, 2024. We will require CDOT to inform us in writing that construction is complete within ten days of project completion. We shall expect this letter by December 31, 2024. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule. We will also require CDOT to file a copy of the signed master agreement task order by August 1, 2023, prior to starting construction at the crossing.

8. We will require that construction be conducted in such a way that the current CR U and CR 31 crossings are not closed until the new CR U crossing with active warning devices are constructed and operational.

9. We will require CDOT and BNSF to work together to assign a new US DOT crossing ID number for the relocated CR U crossing, to file the new US DOT crossing form for the realigned CR U crossing, and to file the revised US DOT crossing forms for the existing CR U and CR 31 showing the crossing as closed. We will require these to be filed by the end of construction on December 31, 2024.

C. Conclusions

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

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

12. Because the 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 CCR 723-1 of the Rules of Practice and Procedure.

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

I. ORDER

A. The Commission Orders That:

1. The Application (Application) filed by the Colorado Department of Transportation (CDOT) on behalf of the County of Morgan (Morgan County) on

December 20, 2022, seeking authority to relocate the existing highway-rail grade crossing of County Road (CR U), adding flashing light signals with gates and bells, constant warning time circuitry, and new signal cabin, and closing the adjacent existing at-grade rail crossing with CR 31 by realigning the existing CR 31 roadway into a T-intersection with CR 31 using Federal Section 130 Funds, at the crossings of the BNSF Railway Company (BNSF) Brush Subdivision at CR U, existing National Inventory No. 057570X, and CR 31, National Inventory No. 057569D w BNSF Railway (BNSF) at railroad mile post 215.846 of the Twin Peaks Subdivision, National Inventory No. 245153G near the Town of Hillrose, Morgan County, State of Colorado was automatically deemed complete by operation of rule on May 4, 2023.

2. The Application is granted.

3. CDOT is authorized and ordered to relocate the existing highway-rail grade crossing of County Road (CR U), add flashing light signals with gates and bells, constant warning time circuitry, and new signal cabin, and close the adjacent existing at-grade rail crossings of CR U and CR 31 after realigning the existing CR 31 roadway into a T-intersection with CR 31 near Hillrose, Colorado.

4. CDOT shall be required to file a copy of the signed master agreement task order by August 1, 2023, prior to starting construction at the crossing.

5. We will require that construction be conducted in such a way that the current CR U and CR 31 crossings are not closed until the new CR U crossing with active warning devices are constructed and operational.

6. CDOT shall inform the Commission in writing when the crossing changes are complete within ten days of completion. The Commission will expect the letter by

December 31, 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.

7. CDOT and BNSF shall be required to update the U.S. DOT National Inventory forms for CR U and CR 31 once those crossings are closed and the new US DOT National Inventory form for the realigned CR U for this crossing and file an updated copy of the form in this proceeding by December 31, 2024.

8. 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,

9. The Commission retains jurisdiction to enter further decisions, as necessary.

10. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 24, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners