

Decision No. R23-0522-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0267R

IN THE MATTER OF THE APPLICATION OF THE CITY AND COUNTY OF BROOMFIELD FOR AUTHORITY TO ADD CONCRETE CROSSING MATERIAL FOR ROADWAY WIDENING AND DETACHED WALKS, RELOCATE AN EXISTING APPROACH RAILROAD GATE WITH FLASHING LIGHTS AND BELL, AND INSTALL NEW RAISED MEDIANS TO ACCOMMODATE ROADWAY WIDENING ON APPROACH TO TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING 112TH AVENUE, USDOT NO. 244790H, IN BROOMFIELD COUNTY, STATE OF COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
MANDATING STATUS REPORTS**

Mailed Date: August 18, 2023

I. STATEMENT

A. Procedural History and Background

1. On May 25, 2023, the City and County of Broomfield (the City or Applicant) filed the above-captioned proceeding with the Colorado Public Utilities Commission (Commission) seeking approval of modifications it proposes to make to a railroad crossing and intersection within the City. Specifically, the City proposes to widen “existing 112th Avenue to the north, constructing new raised medians, adding detached walks, relocating the existing north railroad approach gate, and replacing the existing gate arms with 30 foot (approx.) gate arms to span the lanes in each direction.”¹

¹ City and County of Broomfield’ Application, ¶ II.A(H)(i), p. 5, filed May 25, 2023.

2. On June 1, 2023, the Commission gave notice of the Application to those interested in or affected by it. As noticed, the Application sought approval of the following:

The addition of concrete crossing material on each side of the existing roadway, relocation of the existing north railroad approach gate, and installation of new raised medians to accommodate roadway widening and detached walks on approach of the West 112th Avenue crossing to BNSF Railway tracks in Broomfield County, State of Colorado.²

3. Although the Commission’s Notice of Application specifies that the Applicant “is seeking a decision within 210 days,”³ in its Application, the City expressly “waive[d] the applicable statutory period regarding the time limit for decisions.”⁴

4. BNSF Railway Company (BNSF or Intervenor) filed its Notice of Intervention as a matter of right on June 8, 2023. In its Intervention, BNSF sought a hearing and opposed the City’s Application on the grounds that the City’s design plans, as submitted, are incomplete. BNSF intervened to preserve its right (1) “to comment on specific aspects of the proposed design and request appropriate revisions prior to providing a sketch and cost estimate; and (2) to raise appropriate objections before final approval by the Commission.”⁵

5. No other Interventions were filed.

6. On July 27, 2023, the Commission issued its decision deeming the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) for disposition.

² Commission’s Notice of Application Filed, p. 1., filed June 1, 2023.

³ *Id.*

⁴ The City’s Application, ¶ II.Q(B), p. 20.

⁵ BNSF Railway Company’s Notice of Intervention, p. 2, filed June 8, 2023.

B. Status Reports

7. On August 4, 2023, the undersigned ALJ informally contacted the parties via email requesting the parties' input on setting a procedural schedule for this proceeding.

8. On August 11 and 16, 2023, the parties communicated via email with the undersigned ALJ, indicating the following:

- they anticipated resolving any dispute between them through settlement;
- consequently, they did not wish to set an evidentiary hearing at this time; and
- because the City had waived the statutory time period within which a Commission decision must otherwise issue, the normal time constraints on a proceeding before the Commission were inapplicable.

9. Instead, the parties, through counsel for the City, requested that they be permitted to work to resolve any dispute without the burden of an impending hearing date and provide the Commission with quarterly status reports advising the Commission of their progress. The parties propose that the first quarterly status report be due on or before October 31, 2023.

10. The ALJ finds and concludes that the parties' proposal will promote settlement between the parties and conserve the Commission's limited resources by avoiding or delaying an unnecessary evidentiary hearing.

11. The ALJ further finds and concludes that providing quarterly Status Reports will ensure that the Commission remains informed regarding the progress of the City's project, the parties' positions, and the prospects for settlement of the issues raised in this Proceeding.

12. The ALJ will therefore order the Applicant and the parties to file Status Reports advising the Commission of following:

- the progress of the project expanding the 112th Avenue roadway and modifying the BNSF railroad crossing where it intersects with 112th Avenue; and
- the parties' efforts to resolve and settle any disputes between them pertaining to this Proceeding.

13. The first such Status Report will be due on or before October 31, 2023. A subsequent Status Report will be due every three (3) months thereafter, or on or before January 31, 2024, on or before April 30, 2024, and so on.

II. ORDER

A. It Is Ordered That:

1. The City and County of Broomfield's waiver of the applicable statutory period regarding the time limit for Commission decisions is acknowledged.

2. Applicant the City and County of Broomfield and/or Intervenor BNSF Railway Company shall file Status Reports with the Commission advising the Commission of:

- the progress of the project expanding the 112th Avenue roadway and modifying the BNSF railroad crossing where it intersects with 112th Avenue; and
- the parties' efforts to resolve and settle any disputes between them pertaining to this Proceeding.

3. The first such Status Report shall be due on or before October 31, 2023.

4. Subsequent Status Reports shall be due every three months thereafter, or on or before January 31, 2024, on or before April 30, 2024, and so on.

5. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director