

Decision No. R23-0555

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0321R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION ON BEHALF OF OTERO COUNTY FOR AUTHORITY TO INSTALL A NEW TRAFFIC SIGNAL AT THE INTERSECTION OF US HIGHWAY 50 AND COUNTY ROAD 18 (SOUTH)/STATE HIGHWAY 71 (NORTH), WITH INTERCONNECTION TO THE EXISTING ACTIVE WARNING DEVICES AT THE ADJAVENT COUNTY ROAD 18 CROSSING OF TRACKS OWNED BY BNSF RAILWAY COMPANY, USDOT NO. 003395J, IN OTERO COUNTY, STATE OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING APPLICATION AS AMENDED**

Mailed Date: August 23, 2023

I. STATEMENT

A. Background

1. The Colorado Department of Transportation (Applicant or CDOT) initiated this proceeding by filing the above-captioned Application with the Colorado Public Utilities Commission (Commission) on July 11, 2022. The Application requests authority to install a new traffic signal at the intersection of US Highway 50 (US 50) with County Road 18 (CR 18) to the south, and State Highway 71 (SH 71) to the north, and to interconnect and preempt the traffic signal with the existing active warning devices at the adjacent CR 18 crossing of tracks owned by BNSF Railway Company (BNSF) at railroad milepost 567.251 of the Powder River Division,

Pueblo Sub, National Inventory No. 003395J, in Otero County, State of Colorado.¹ The Application requests authority for construction of a new vehicular traffic signal at the intersection to improve safe vehicular movements through the intersection, provide for signalized turn movements, and provide traffic signal phasing to allow for track clearance of vehicles, in the event of an approaching train.²

2. On July 18, 2022, the Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners and set a 30-day intervention deadline.

3. On August 10, 2022, Notice of Intervention and Request for Hearing (Notice of Intervention) was filed by BNSF in which it opposed and contested the Application.³

4. On August 26, 2022, CDOT filed Exhibits A-G (Exhibits A-G) in support of its Application.

5. By Decision C22-0509-I, issued August 31, 2022, the Commission deemed the Application complete within the meaning of § 40-6-109.5, C.R.S.; found that it has jurisdiction over the Application per §§ 40-4-106(2)(a) and (3)(a), C.R.S.; and referred this matter to an Administrative Law Judge (ALJ) for disposition.

6. On October 13, 2022, Notice of Agreement Reached Regarding Design Plans and Withdrawal of Request for Hearing (Notice of Agreement) was filed by BNSF.

7. On March 21, 2023, CDOT filed its Amended Application, including exhibits (Amended Application).

¹ See Application at 1, 4, and 14.

² See Application at 5-6.

³ See Notice of Intervention at 1-2.

II. FINDINGS OF FACT AND CONCLUSIONS

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

9. The Commission gave notice of the Application to all interested parties, including adjacent property owners.

10. CDOT filed the Application on behalf of Otero County, which is a County located within the State of Colorado.

11. BNSF is the owner of the railroad crossing that will be affected by the Application.

12. There have been nine accidents at the crossing, including one fatal accident in 1981, one injury accident in 1994, and seven property damage only accidents in 1980, 1981, 1990, 2000, 2002, 2003 and 2007.⁴

13. CDOT estimates the cost of construction for the intersection improvements are \$2,632,751.50.⁵ The cost for improvements will be funded 100percent with State funds and, following construction, traffic signal maintenance will be the responsibility of CDOT.⁶

14. CDOT proposes starting construction in October 2022 and completing the project by June 2024.⁷

15. Pursuant to Rule 7204 of the Commission’s Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7, “[a]n application may be filed for final approval of plans/drawings...”

⁴ See Exhibits A-G, at Exhibit B at 3-11.

⁵ See *Id.* at Exhibit C at 12, and Exhibit C to the Amended Application at 2-3.

⁶ See Application at 6.

⁷ *Id.*

16. In the Application, as amended on March 21, 2023, CDOT requests Commission approval to install a new traffic signal at the intersection of US 50 and CR 18 and SH 71 with interconnection to the existing active warning devices at the adjacent CR 18 crossing of tracks owned by BNSF, in accordance with the final design plans set forth in Exhibit C and Exhibit E to the Amended Application.

17. BNSF, the sole intervenor in this Proceeding, intervened because “unresolved Comments remained requiring resolution”, and “CDOT filed the Application without addressing BNSF’s comments.”⁸ BNSF notes three items in the Application that need to be addressed before CDOT could proceed with the preparation of the signal design sketch and cost estimate: 1) revised preemption calculations and requests to meet the American Railway Engineering and Maintenance-of-Way Association’s 50 Second Rule and BNSF standards; 2) the Crossing Active circuit and Traffic Signal Health circuit; 3) BNSF’s requested Traffic signal controller type, software RR SIC interface and RR interconnection details including RR Relay(s), wiring diagram, and cable, be provided on traffic signal plans.⁹

18. The parties reached an agreement regarding CDOT’s proposed design plans. All comments and objections previously identified by BNSF have been addressed and no objection remains from BNSF regarding the updated design plan.¹⁰

19. To address BSNF’s concerns, CDOT submitted Exhibit C – Railroad Estimate and Schematic Diagram (Exhibit C), and Exhibit E – Final Design Plans (Exhibit E) with its Amended Application. CDOT states Exhibit E replaces in its entirety the original Exhibit E Final Design

⁸ See Notice of Intervention at 1-2.

⁹ See *Id.* at 2.

¹⁰ See Notice of Agreement at 1.

Plans provided with its Application. The new Exhibit C and Exhibit E provide revisions and two additional sheets depicting the railroad interconnection and wiring diagram as requested by BNSF.¹¹ More specifically, as pertinent herein, Exhibit C shows that 21 seconds of advanced preemption time is being provided.

20. The Notice of Agreement indicated that CDOT is anticipated to submit revised design plans to address the parties' agreed upon design, along with the final cost estimate and schematic and that BSNF does not have an objection to the approval of the Application by the Commission.¹²

21. Given BNSF's Notice of Agreement and the filing of the Amended Application, this Proceeding is uncontested and, pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 *Code of Colorado Regulations* (CCR) 723-1, the Application may be processed under modified procedures without a formal hearing.

22. The ALJ finds the installation of this new traffic signal requested in the Application, as amended on March 21, 2023 by CDOT, would improve safe vehicular movements through the intersection, provide for signalized turn movements, and provide traffic signal phasing to allow for track clearance of vehicles, in the event of an approaching train.

23. The ALJ further finds that the Amended Application includes revisions to the design and final costs estimate and schematic that are consistent with BNSF's Notice of Agreement.

¹¹ See Amended Application at 1.

¹² *Id.*

24. Consistent with the above discussion, the Application, as amended on March 21, 2023, will be granted and the design plans contained in the Amended Application will be approved as ordered below.

25. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission to enter the following order.

III. ORDER

A. It Is Ordered That:

1. The Application filed by The Colorado Department of Transportation (CDOT) on July 11, 2022, as amended on March 21, 2023 (Amended Application), seeking authorization for installation of a new traffic signal at the intersection of US 50 and CR 18, and SH 71 with interconnection to the existing active warning devices at the adjacent CR 18 crossing of tracks owned by BNSF at railroad milepost 567.251 of the Powder River Division, Pueblo Sub, National Inventory No. 003395J, in Otero County, State of Colorado, is granted.

2. The design plans and information contained in Exhibit C and Exhibit E to the Amended Application are approved.

3. 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.

4. 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.
5. 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)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

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

Rebecca E. White,
Director