

Decision No. R23-0709-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0353R

IN THE MATTER OF THE APPLICATION OF THE CITY OF LONGMONT, COLORADO, 80501 FOR AUTHORITY TO CONSTRUCT A NEW AT-GRADE CROSSING OF THE BURLINGTON NORTHERN SANTA FE TRACKS ON THE PROPOSED BOSTON AVENUE EXTENSION AND FOR AUTHORITY TO CLOSE THE EXISTING CROSSINGS OF THE BURLINGTON NORTHERN SANTA FE TRACKS AT FIFTH AVENUE AND TERRY STREET IN LONGMONT, COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING JOINT MOTION TO CONTINUE HEARING,
MODIFYING PROCEDURAL DEADLINES, AND
RESCHEDULING HEARING**

Mailed Date: October 18, 2023

I. STATEMENT

1. On June 27, 2023 the City of Longmont (Longmont) filed an Application (Application), requesting authority to open a new highway-rail grade crossing at the extension of Boston Avenue with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 43.4 of the Front Range Subdivision, no existing National Inventory Number, in Longmont, County of Boulder, State of Colorado and to close the existing crossings of 5th Avenue at railroad milepost 44.289, National Inventory No. 245003Y and Terry Street at railroad milepost 43.430, National Inventory No. 244846A in Longmont, State of Colorado. This filing commenced Proceeding No. 23A-0353R.

2. On July 19, 2023, BNSF noticed its intervention as a matter of right herein (Intervention), in which BNSF set forth its opposition to the Application.

3. The Application was deemed complete on August 26, 2023, in accordance with Rule 1303(c)(IV) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1.

4. By Decision No. C23-0560-I, issued August 31, 2023, the Commission referred this matter to an Administrative Law Judge (ALJ) for determination of the merits of the Application.

5. By Decision No. R23-0606-I, issued September 11, 2023, the ALJ, among other things, established procedures and scheduled an evidentiary hearing in this matter for July 18, 2023.

6. On October 13, 2023, Longmont and BNSF filed their Joint Motion Requesting Continuance of the October 18, 2023 Evidentiary Hearing, or in the Alternative, a Request for a Status Conference (Motion for Continuance).

7. By Decision R23-0701-I, issued October 16, 2023, the ALJ denied without prejudice the Motion for Continuance. In Decision No. R23-0701-I, the ALJ stated that he could not accommodate the parties' request for continuance without Longmont's waiver of the statutory deadline for a Commission Decision.

8. On October 17, 2023, Longmont and BNSF filed their Second Joint Motion Requesting Continuance of the October 18, 2023 Evidentiary Hearing, or in the Alternative, a Request for a Status Conference (Second Motion for Continuance). In the Second Motion for Continuance, Longmont and BNSF state that that the parties have agreed in principle to a

settlement agreement whose terms include: Longmont's waiver of the 120 days statutory deadline for a Commission Decision; BNSF's withdrawal of its opposition to the Application; Longmont agreement to support and cooperate in BNSF efforts to obtain grants for grade separation of existing at-grade crossings on CO 119 and CO 66; BNSF's agreement to provide an updated sketch plan and cost estimate for the Application; the parties' agreement that the terms of the parties' agreement will be memorialized in a memorandum of understanding filed with the Commission as an attachment to a notice of settlement to be filed with the Commission prior to November 17, 2023; and the parties' agreement that if a Notice of settlement is not filed by November 17, 2023, Longmont will file a Motion for Summary Judgment on the Application, to which BNSF could respond no later December 1, 2023. Longmont and BNSF further request that the evidentiary hearing be continued to a time convenient to the ALJ after December 1, 2023, or in the alternative, converting the evidentiary hearing previously scheduled herein to a status conference.

9. The Second Motion for Continuance was jointly filed by the parties. Therefore, response time to the Second Motion for Continuance will be waived, as ordered below.

10. Given Longmont's waiver of the statutory deadline for a Commission decision, the parties' requested deadlines for the filings of a notice of settlement, including any attachments thereto, and for the filing of a motion for summary judgment, as well as and the parties' request to continue the evidentiary hearing are reasonable and will be adopted, as ordered below.

II. ORDER

A. It Is Ordered That:

1. Response time to the Second Joint Motion Requesting Continuance of the October 18, 2023 Evidentiary Hearing, or in the Alternative, a Request for a Status Conference

(Second Motion for Continuance), filed October 17, 2023 by the City of Longmont and BNSF Railway Company, is waived.

2. Consistent with the discussion above, the Second Motion for Continuance is granted.

3. Any notice of settlement to be filed in this Proceeding, if any, including any attachments thereto, shall be filed by November 16, 2023.

4. The deadline for the filing of any motion for summary judgment in this Proceeding is November 17, 2023.

5. The evidentiary Hearing scheduled for October 18, 2023 at 9:00 a.m. is vacated, and a fully remote evidentiary Hearing is rescheduled as follows:

DATE: December 28, 2023

TIME: 9:00 a.m.

PLACE: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge¹

6. Any requirements in Decision No. R23-0606-I that were not specifically addressed herein shall remain in effect.

¹ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director