

Decision No. C23-0698

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0432R

IN THE MATTER OF THE APPLICATION OF BNSF RAILWAY COMPANY FOR AUTHORITY TO REPLACE FLASHERS, GATES AND BUNGALOW AND TO UPGRADE THE TRACK CIRCUITRY FROM MOTION DETECTION TO CONSTANT WARNING TIME AT THE CROSSING AT COUNTY ROAD 29, MILEPOST 148.70 IN THE CITY OF BRUSH, MORGAN COUNTY, COLORADO (DOT #057577V).

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Mailed Date: October 13, 2023
Adopted Date: October 11, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application (Application) filed by the BNSF Railway Company (BNSF) on August 25, 2023, requesting to replace the existing flashing lights, gates, bells, signal bungalow, and upgrading the crossing detection circuitry from motion detection to constant warning time at the crossing of Morgan County Road 29 (MCR 29) with the tracks of the BNSF Brush Subdivision, railroad milepost 148.70, National Inventory No. 057577V in the Town of Brush, County of Morgan, 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 August 30, 2023.

3. No interventions were filed in this matter.

4. The Commission has reviewed the record in this matter and deems that the Application is complete within the meaning of § 40-6-109.5, C.R.S.

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

B. Findings of Fact

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

7. BNSF requests authority to replace the existing flashing lights, gates, bells, signal bungalow, and upgrading the crossing detection circuitry from motion detection to constant warning time at the crossing of MCR 29 with the tracks of the BNSF Brush Subdivision. The warning time at the crossing will be 32 seconds with the circuitry change.

8. As grounds, BNSF desires to upgrade the train detection from the existing motion detection to constant warning time at the crossing and to replace the existing active warning signal equipment and signal bungalow at the crossing. No other aspects of the crossing are proposed to be modified with this Application.

9. BNSF states in its Application there are currently approximately 16 trains per day using the subject crossing at a timetable speed of 35 miles per hour on the mainline. BNSF states that there are approximately 350 vehicle crossings per day at a posted speed limit of 25 miles per hour with approximately 11 percent heavy vehicles using the crossing and school buses not using the crossing.

10. There have been two accidents including one injury accident in 1993, and one property-damage only accident, in 1985, at the crossing since 1975.

11. BNSF states the estimate for replacing the existing active warning equipment is \$132,127, with BNSF paying for 100% of the cost of the project.

12. BNSF plans to start this project as soon as possible after Commission approval and estimates completing the project by the end of 2023. We will require BNSF to inform the Commission in writing that the project has been completed by December 31, 2023, although we understand this completion may be earlier or later based on weather and construction schedule.

13. BNSF will also be required to provide the updated U.S. DOT Inventory Form for the updated crossing by the end of the project estimated to be on December 31, 2023.

C. Conclusions

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

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

16. 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 *Code of Colorado Regulations* 723-1 of the Rules of Practice and Procedure.

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

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed by the BNSF Railway Company (BNSF) on August 25, 2023, requesting to replace the existing flashing lights, gates, bells, signal bungalow, and upgrading the crossing detection circuitry from motion detection to constant warning time at the crossing of Morgan County Road 29 (MCR 29) with the tracks of the BNSF Brush Subdivision, railroad milepost 148.70, National Inventory No. 057577V in the Town of Brush, County of Morgan, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Application is granted.

3. BNSF is authorized and ordered to upgrade the active warning equipment and train-detection circuitry at the crossing of MCR 29 in the Town of Brush, Colorado.

4. BNSF shall inform the Commission in writing when the project is complete within ten days of completion. The Commission will expect the letter by December 31, 2023. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

5. BNSF shall update the National Inventory Form for this crossing and file a copy of the updated crossing inventory forms in this proceeding by December 31, 2023.

6. 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.

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

8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 11, 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