

Decision No. R24-0074-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
APPROVING SETTLEMENT; APPROVING
PRELIMINARY PLANS; AND
ESTABLISHING A DEADLINE FOR
THE SUBMISSION OF A FINAL APPROVAL REQUEST**

Mailed Date: February 5, 2024

I. STATEMENT

A. Procedural History and Background

1. On June 27, 2023 the City of Longmont (Longmont or City) 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, in the State of Colorado (Boston Avenue location), 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 (5th Avenue and Terry Street crossing), in Longmont, in the State of Colorado (collectively, the crossings). This filing

commenced Proceeding No. 23A-0353R. The Application states that it is the Longmont's desire to start construction of the new at Boston Avenue grade crossing in the year 2024.¹

2. On July 7, 2023, Staff of the Commission sent to Longmont and filed a Deficiency Letter (Deficiency Letter) to Longmont requiring submission of additional necessary information that was omitted from the Application.²

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

4. On July 25, 2023, Longmont filed a response letter (Response Letter) and attachments in response to the Deficiency Letter.

5. The Application was deemed complete on August 31, 2023, in accordance with Rule 1303(c)(IV) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

6. 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.

7. By Decision No. R23-0606-I, issued September 11, 2023, the undersigned ALJ, provided further opportunity for Longmont to supplement or amend the Application, established Procedures, and scheduled an evidentiary hearing in this matter.

¹ Application at 7.

² See generally, Deficiency Letter.

8. On September 19, 2023, Applicant filed three supplemental exhibits to the Application.

9. By Decision No. R23-0709-I, issued October 18, 2023, the undesignated ALJ, set the deadline of November 16, 2023, for the filing of a notice of settlement in this Proceeding and rescheduled the evidentiary hearing in this Proceeding.

10. On December 6, 2023, BNSF filed its Withdrawal of Intervention (Withdrawal of Intervention).

11. By Decision No. R23-0868-I, issued December 27, 2023, the ALJ vacated the evidentiary hearing and required Longmont to either file, or make a filing indicating a date by which Longmont will file: (a) a fully-executed copy of the Settlement and (b) the updated sketch plan (front sheet), and cost estimate for the Application filed by Longmont on June 27, 2023, as Amended by the Mutual Release and Settlement Agreement and the Memorandum of Understanding, filed by Longmont and BNSF on November 16, 2023.

12. On January 8, 2024, Longmont filed its Notice of Submission of Executed Settlement Agreement, Updated Cost Estimate, and Sketch Plan (Front Sheet) (Notice of Submission of Settlement and Updated Sketch Plan), and attached thereto an executed copy of Settlement Agreement,³ cost estimate for signal improvement,⁴ cost estimate for rail improvement,⁵ and a sketch plan.⁶

³ Attachment A to the Notice of Submission of Settlement and Updated Sketch Plan.

⁴ Attachment B to the Notice of Submission of Settlement and Updated Sketch Plan.

⁵ Attachment C to the Notice of Submission of Settlement and Updated Sketch Plan.

⁶ Attachment D to the Notice of Submission of Settlement and Updated Sketch Plan.

B. Approval Requested

13. According to the Response Letter, Longmont is seeking “final approval of the current 30 percent design plans (Not For Road Construction) before the plans are 100 percent complete.”⁷

C. Terms of Settlement Agreement

14. In the Settlement Agreement, which is attached to this Decision is Appendix A, the Parties have mutually agreed to the terms of the Settlement Agreement, including the following:⁸

1. Longmont waives its statutory right to a decision in 120 days after the Application was deemed complete.
2. BNSF will withdraw further opposition to the Application by filing a Notice of Withdrawal of their intervention within 15 days of the filing of the Settlement Agreement with the PUC.
3. BNSF will provide an updated sketch plan (front sheet) and cost estimate for the Application. Any final Commission decision approving the Application shall be conditioned on an updated sketch plan and cost estimates being provided and filed by BNSF. It is a material condition of the Settlement Agreement that the final design as approved by the Commission be based on BNSF’s sketch and cost estimate and not on any non-BNSF documents previously submitted by Longmont to the Commission.
4. Longmont agrees to support and cooperate in BNSF efforts to obtain grants to: 1) as an initial step, studying the feasibility of grade separation of existing at-grade crossings between BNSF Railway crossings on Colorado State Highway 119 and Colorado State Highway 66 within the City of Longmont; and 2) if feasibility is confirmed, Longmont will agree to support and cooperate in efforts to obtain grants for construction of grade separations of the Colorado State Highway 119 and Colorado State Highway 66 crossings. Longmont and BNSF agree that grade separation of the crossings is for the benefit of the traveling public. While the Parties

⁷ Response Letter at 2.

⁸ The terms Settlement Agreement set forth below are intended to provide a non-comprehensive summary of some of the Settlement Agreement’s pertinent terms.

agree that the effort to obtain the grants will be a joint effort between the City and BNSF, the City will ultimately be the applicant for any grants, and the City agrees to make all reasonable efforts in supporting and obtaining the grants for the grade separation of these crossings. Any matching funds required for the grants will be evenly split between the City and BNSF. Grade separation of the crossings pursuant to the Settlement Agreement is contingent upon the Longmont obtaining grants, and nothing in the Settlement Agreement shall be construed to require grade separation of these crossings absent obtaining federal or state grants.

II. FINDINGS AND CONCLUSIONS

A. Findings

15. Longmont is a political subdivision of the State of Colorado and a home rule city and municipal corporation. Longmont is the municipality responsible for the roadway and pedestrian systems at the Boston Avenue Location and the 5th Avenue and Treey Street Crossing.

16. BNSF is a private entity that owns property rights at Boston Avenue Location and the 5th Avenue and Treey Street Crossing.

17. Despite Longmont's use of the term "final approval" in the Response Letter,⁹ pursuant to Rule 7204 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 CCR 723-7, it is found that, through the Application, as amended, Longmont is requesting preliminary approval of design plans/drawings.

18. Longmont requests authority to open a new at-grade crossing at the Boston Avenue location across the tracks of the BNSF and to close the 5th Avenue and Terry Street crossing.

19. As part of what would be a new crossing at the Boston Avenue location, Longmont proposes to install a four-quadrant system and to interconnect that railroad crossing signal with a new traffic signal that will be constructed for the new four-leg intersection of

⁹ See Response Letter at 2.

Boston Avenue and Price Road to the west of the proposed new crossing. The four-quadrant gate system is proposed to operate on a combination of a timed and dynamic mode with an exit gate clearance time of 22 seconds. A radar detection is also proposed that would allow sooner closure of the exit gates if no vehicles are detected. The new traffic signal will be interconnected to and preempted by the railroad signal. The advanced preemption time will be 19 seconds for the new traffic signal.

20. The new crossing at the Boston Avenue location will have a new two-lane roadway with a concrete median located on both sides of the new crossing. There will be a detached sidewalk on the south side of the roadway and crossing with the sidewalk being located behind the back of the counterbalance mechanisms for the southern entrance and southern exit gates.

21. Longmont proposes this new at-grade crossing at the extension of Boston Avenue location to meet the current needs of the city to reduce traffic congestion and increase connectivity. This new roadway will also support future plans for transit-oriented development and as access for future Regional Transportation District Bus Rapid Transit vehicles to travel to the Main Transit Center. The Boston Avenue location also completes a needed east/west link that will connect two critical parts of Longmont more directly. As part of the Application, Longmont proposes closing two existing at-grade crossings at 5th Avenue and Terry Street pursuant to the closure plans included in the testimony of Jeff Temple as exhibits LMT-0021 and LMT-0022.

22. Longmont states in the Application there are currently approximately eight trains per day with two switching movements through the proposed new crossing at the Boston location at a maximum timetable speed of 20 miles per hour (MPH) on the mainline. Because the Boston location would contain a new railroad crossing, there are no current relevant vehicle counts.

However, Longmont estimates there will be 7,000 vehicles per day within five years and 16,000 vehicles per day within 20 years traveling at an anticipated speed limit of 35 MPH. It is unknown at this time whether school buses will use the crossing or what percentage of traffic will consist of heavy vehicles.

23. Because the Boston location would contain a new railroad crossing, there have been no accidents at this crossing. There have also been no recorded accidents at the 5th Avenue and Treay Street crossing.

24. The railroad cost estimates indicate that the cost of the active warning signals at the new crossing is approximately \$692,503, and approximately \$340,405 for the new crossing surface with Longmont paying for the cost of the entire project.

25. Longmont's plans are currently at 30 percent completion. Longmont states that final plans could be submitted within six months of PUC approval.

B. Conclusions

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

27. The sole intervenor in this Proceeding, BNSF, withdrew its intervention and is not opposing the Application.

28. Because the Application is unopposed, it is found that the Application can be determined 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.

29. The undersigned ALJ finds that good cause exists and that the requirements of public safety are met by approving the preliminary plans consistent with the above discussion.

30. Longmont shall submit the final plans by July 31, 2024, for Commission review and action, as ordered below. When Longmont files the final plans, Longmont shall provide the date when construction is proposed to begin and the date when construction is proposed to be completed, as ordered below.

III. **ORDER**

A. **It Is Ordered That:**

1. The Mutual Release and Settlement Agreement and the Memorandum of Understanding (Settlement Agreement) filed January 8, 2024,¹⁰ is approved.

2. The intervention of BNSF Railway Company (BNSF) is withdrawn, and BNSF is dismissed as a party to this Proceeding.

3. The Application requesting preliminary approval of design plans/drawings for authority to open a new highway-rail grade crossing at the extension of Boston Avenue with the tracks of the 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 (Application), filed by the City of Longmont (Longmont) on June 27, 2023, as amended, is approved, consistent with the discussion above.

4. Longmont's preliminary design plans/drawings, as amended, are approved.

5. Longmont shall provide the final plans to the Commission for review and action by July 31, 2024.

¹⁰ The ALJ notes that the Settlement Agreement was initially filed on November 16, 2023, however that version of the Settlement Agreement was not executed by the City of Longmont (Longmont) or BNSF.

6. With submittal of the final plans for Commission review and action, Longmont shall provide the date of when construction is proposed to begin and the date when construction is proposed to be completed.

7. This Recommended Decision shall be 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