

Decision No. R24-0765

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0159R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION FOR AUTHORITY TO REPLACE A TRAFFIC SIGNAL CABINET AND ADD BLANK OUT SIGNS AT US 85 AND DUCKWOOD RD, MILE POST 86.18, BNSF AND UPRR RAILWAYS, US DOT NO. 440805J IN THE CITY OF FOUNTAIN, EL PASO COUNTY, STATE OF COLORADO.

**RECOMMENDED DECISION
APPROVING APPLICATION**

Issued Date: October 23, 2024

I. STATEMENT

1. On April 2, 2024, the Colorado Department of Transportation (“CDOT”) filed the Application. On April 10, 2024, the Amendment to the Application was filed. The amendment was filed in accordance with Rule 1309(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. The application requests an order authorizing the replacement of a traffic signal cabinet, the addition of a blank out sign, and advance flashing warning beacons for the traffic signal at the intersection of US 85 and Duckwood Road, which is interconnected to the existing active warning equipment at the crossing of Duckwood Road with two tracks of BNSF Railway Company (“BNSF”) and Union Pacific Railroad Company (“UPRR”) at railroad milepost 86.183, National Inventory No. 440805J, in Fountain, El Paso County, State of Colorado. The initial filing commenced Proceeding No. 24A-0159R.

2. The Commission gave notice of the application on April 12, 2024.

3. On May 13, 2024, BNSF filed its Entry of Appearance and Notice of Intervention, in accordance with Rule 1211(d), 4 CCR 723-1, opposing a preemption timing change without a diagnostic team meeting.

4. The Application, as amended on April 10, 2024, was deemed complete within the meaning of § 40-6-109.5, C.R.S. by operation of rule on May 28, 2024.

5. This matter was referred to an Administrative Law Judge (“ALJ”) for determination of completeness, disposition of the interventions, and a determination of the merits of the application by Decision No. 24-0380-I, issued June 6, 2024.

6. On June 12, 2024, CDOT filed a second amendment to the application (“Second Amended Application”) providing information that CDOT and BNSF had concurrence that a crossing safety diagnostic was not necessary for the scope of work, and that no changes to the existing preemption are proposed.

7. On July 2, 2024, by Decision No. R24-0474-I, a prehearing conference was scheduled in the above-captioned proceeding.

8. By Decision No. R24-0503-I, issued July 11, 2024, the prehearing conference was rescheduled. At the scheduled time and place, the prehearing conference was convened.

9. By Decision No. R24-0539-I, issued July 25, 2024, UPRR was granted intervenor status and the intervention of right filed by BNSF was acknowledged.

10. By Decision No. R24-0561-I, issued on August 5, 2024, the ALJ scheduled another prehearing conference in this matter.

11. On August 9, 2024, BNSF filed its Unopposed Motion for Leave to File Amended Entry of Appearance and Notice of Intervention of Right for Good Cause. Based upon the

Second Amended Application, which removed the request for authority to modify preemption timing, BNSF withdraws its opposition and request for a hearing.

12. At the scheduled time and place, the prehearing conference was convened. All parties appeared and participated through counsel. During the conference, counsel for UPRR stated that the Second Amended Application is not contested.

13. The Second Amended Application now stands unopposed.

14. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written Recommended Decision.

II. FINDINGS AND CONCLUSIONS

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

16. No intervenor contests or opposes approval of the Second Amended Application.

17. Because the application is unopposed, the matter may be determined upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

18. CDOT filed its application requesting authority to replace a traffic signal cabinet, add a blank out sign and advance flashing warning beacons at the crossing of Duckwood Road of the BNSF and UPRR railway tracks at railroad milepost 86.18. The work will add a southbound facing No Right Turn (R3-1) activated blank out sign for the northbound right turn movement towards the tracks that will be activated during railroad preemption. Advance warning beacons will be installed for northbound and southbound US 85 traffic approaching Duckwood Road. The work will result in increased public safety for traffic using the blank out sign and seeing the amber flashing beacons.

19. CDOT is the roadway authority that owns the roadway affected by the application.

20. BNSF and UPRR own the tracks through the crossing of Duckwood Road.

21. CDOT states there are currently 10 daytime (6 a.m. to 6 p.m.) through freight trains and 10 nighttime (6 p.m. to 6 a.m.) through freight trains that use the crossing at a maximum timetable speed of 55 miles per hour (“MPH”) with no estimates of increases or decreases in these volumes in the future

22. The crossing is characterized as a minor arterial rural crossing with a posted speed limit of 30 MPH and is not part of the National Highway System. CDOT states that, as of 2023, the annual average daily traffic was 2,900 vehicles per day (“VPD”), the crossing was not used by school buses, and the estimated percentage of heavy vehicle traffic was one percent.

23. CDOT’s most recent updated traffic estimate is that traffic will increase to 3,300 VPD by 2028 and 6,000 VPD by 2045.

24. The estimated total cost for the traffic signal changes is \$100,215 for the traffic signal cabinet, signs and work. *See* Second Amended Application.

25. CDOT State Highway Maintenance Funds will be used to pay all costs of the project.

26. The ALJ finds and concludes that granting the Second Amended Application filed in Proceeding No. 24A-0159R is reasonable and necessary to prevent accidents and promote the safety of the public. The application should be granted.

27. CDOT is required to file the signed Construction and Maintenance agreement for this crossing by December 16, 2025, before the crossing interconnection work is started.

28. CDOT shall inform the Commission in writing when the crossing construction is complete and operational, within ten days of completion. The Commission will expect this letter on or before February 14, 2025.¹

29. BNSF and UPRR are reminded that ongoing delay and noncompliance with Commission orders can present public safety concerns relevant to the Commission's jurisdiction under § 40-4-106, C.R.S., and that pursuant to Rule 1302(b), 4 CCR 723-1, and § 40-4-106(b)(b), C.R.S.,² the Commission may impose a civil penalty against a railroad company that fails to comply with a Commission order or rule directing compliance with railroad crossing safety regulations.

III. ORDER

A. The Commission Orders That:

1. The Unopposed Motion for Leave to File Amended Entry of Appearance and Notice of Intervention of Right for Good Cause filed by BNSF on August 9, 2024, is granted.

2. The Application filed April 2, 2024, as amended on April 10, 2024, and June 12, 2024, is approved.

3. The Colorado Department of Transportation ("CDOT") is authorized and ordered to proceed with replacing the traffic signal cabinet and make the addition of a blank out sign and advance flashing warning beacons at the intersection of US 85 and Duckwood Road that

¹ The Commission understands there may be changes or delays in the construction schedule. While a request for extension is not required in the event completion of the construction project goes past March 1, 2025, CDOT should inform the Commission through an appropriate filing if delays are anticipated or significant.

² The Commission may pursue a notice of civil penalty assessment on its own motion, or upon consideration of a complaint filed pursuant to Rule 1302(a), 4 CCR 723-1, setting forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and how a statute, rule, decision or agreement memorialized, accepted, or approved by a Commission decision is alleged to have been violated. Relief requested must be clear, including without limitation, whether the complaint requests the Commission pursue civil penalties.

interconnects with the existing active warning crossing with the tracks of the BNSF Railway Company and the Union Pacific Railroad Company, National Inventory No. 440805J, in Fountain, El Paso County, State of Colorado. The estimated total cost of the traffic signal cabinet, signs, and work is \$100,215.

4. Improvements authorized in Ordering Paragraph 2 above shall be in accordance with the plans and specifications filed in the proceeding as amended.

5. The costs for the installation of the interconnection shall be paid by CDOT.

6. CDOT is required to file a copy of the signed Construction and Maintenance Agreement in this matter by December 16, 2024, prior to starting construction work at the crossing.

7. CDOT shall inform the Commission in writing when the crossing construction is complete and operational within ten days of completion. The Commission will expect this letter on or before February 14, 2024.

8. CDOT shall update the crossing inventory form showing the changed crossing conditions and file a copy of that updated inventory form in this proceeding concurrent with notice of completion of the crossing changes.

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

10. 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.

11. 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.

12. 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

G. HARRIS ADAMS

Administrative Law Judge

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

Rebecca E. White,
Director