

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 SETTING A REMOTE PRE-HEARING CONFERENCE AND DENYING AS MOOT MOTION REQUESTING THE RESCHEDULING OF A PRE-HEARING CONFERENCE

Issued Date: June 2, 2025

I. PROCEDURAL HISTORY¹

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, 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, in the State of Colorado. This filing commenced Proceeding No. 23A-0353R.

¹ Only the procedural history necessary to understand this Decision is included.

2. 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.

3. On October 17, 2023, Longmont waived its statutory right to a decision within 120 days after the Application was deemed complete pursuant to § 40-6-109.5(3), C.R.S.²

4. By Decision No. R24-0785-I, issued October 29, 2024, the ALJ, among other things, granted BNSF’s request to intervene out of time.³

5. By Decision No. R24-0899-I, issued December 10, 2024, the undersigned ALJ required the parties within 60 days of the issuance of that Decision to either:

(a) make a filing establishing that the Parties resolved all issues in this Proceeding, attach to such filing the final executed copy of the parties’ settlement agreement, cost estimate for signal improvement, cost estimate for rail improvement, and a sketch plan, and identify all differences between these attachments and the settlement agreement, cost estimate for signal improvement, cost estimate for rail improvement, and a sketch plan filed on January 8, 2024 in this Proceeding; or;

(b) file a motion requesting a pre-hearing conference to discuss any outstanding disputes between the parties.”⁴

6. On February 10, 2025, Longmont filed a Status Report and Notice of Filing (“Longmont’s February 2025 Status Report”) indicating that although the parties had not yet reached a final agreement, they were working diligently toward settlement. In Longmont’s February 2025 Status Report, Longmont listed various updated documents that it had sent to BNSF to address BNSF’s then-remaining concerns.

² Second Joint Motion Requesting Continuance of the October 18, 2023 Evidentiary Hearing, or in the Alternative, a Request for a Status Conference at ¶ 6.

³ See the Notice of Re-Intervention, filed by BNSF on September 25, 2024.

⁴ Decision No. R24-0899-I at p. 4.

7. By Decision No. R25-0126-I, issued February 20, 2025, the undersigned ALJ waived response time for, and granted, BNSF's Unopposed Motion for Additional Time for Filing, filed February 10, 2025, and required the parties within 60 days of the issued date of Decision No. R25-0126-I, to either: (a) make a filing establishing that the Parties resolved all issues in this Proceeding, attach to such filing the final executed copy of the parties' settlement agreement, cost estimate for signal improvement, cost estimate for rail improvement, and a sketch plan, and identify all differences between these attachments and the settlement agreement, cost estimate for signal improvement, cost estimate for rail improvement, and a sketch plan filed on January 8, 2024 in this Proceeding; or (b) file a motion requesting a pre-hearing conference to discuss to any remaining impasse between the parties.

8. On April 21, 2025, the Status Report and Notice of Filing of the City of Longmont (the "Longmont's April 2025 Status Report") was filed by Longmont. Longmont's April 2025 Status Report states that "[o]n March 28, 2025, the City received BNSF's additional comments and revisions to the City's revised plans,"⁵ "[a]n issue has arisen regarding the previously approved pedestrian crossing component of the Application[,]"⁶ and "[Longmont] seeks guidance from the Commission on how to proceed with the pedestrian crossing design."⁷ To Longmont's April 2025 Status Report, Longmont attached "[a]ll updated documents sent by BNSF to [Longmont]."⁸

9. On April 24, 2025, BNSF Railway Company's Supplemental Status Report was filed by BNSF ("BNSF's April 2025 Status Report"). BNSF's April 2025 Status Report states:

⁵ Longmont's April 2025 Status Report at p. 3, ¶19.

⁶ *Id.* p. 3, ¶21.

⁷ *Id.* p. 4, ¶25.

⁸ *Id.* at p. 3, ¶ 20; *see also*, files entitled "BNSF Boston Avenue (DOT TBD) Comment Summary Table.xlsx" and "BNSF Boston Avenue (DOT TBD) Comment Summary Package-32825.pdf" which were attached to Longmont's April 2025 Status Report.

“As set forth in the Boston Avenue Comment Summary Package, there remain outstanding issues, including but not limited to preemption timing calculations, truck turning movement conflicts, flashers consistent with the American Railway Engineering and Maintenance-of-Way Association..., review and revisions of the plans for consistency and to reflect the actual work to be performed, and development of a lighting plan. In addition, discussion with the diagnostic team is needed to address the pedestrian treatments at this crossing.”⁹ “Pursuant to Decision R24-0899-I, BNSF requests a pre-hearing conference to discuss any remaining impasse between the parties”¹⁰ and “... because BNSF has not received comments, questions, or any substantive response to those comments it provided on March 28, 2025, it appears that a status conference or the setting of a date certain when the City’s responsive comments will be provided may be beneficial to allow the parties and the Commission to better determine where, if at all, an impasse exists.”¹¹

10. By Decision No. R25-0335-I, issued April 30, 2025, the undersigned ALJ, scheduled a Pre-hearing Conference for May 21, 2025 “to discuss how to move this Proceeding forward toward resolution and to identify any outstanding disputes.”¹²

11. On May 19, 2025, BNSF filed its Motion to Reschedule Pre-hearing Conference (“Motion”). In the Motion, BNSF stated that Manager of Public Projects, Rafer Nichols, along with BNSF’s consultant, Karen Hankinson of Olsson, [were] unavailable to attend the Pre-hearing Conference”¹³ on May 21, 2025 and requested to reschedule it “to a date in which all counsel, personnel, and consultants [were] available.”¹⁴

⁹ BNSF’s April 2025 Status Report at p. 3, ¶18.

¹⁰ *Id.* at p. 3, ¶19.

¹¹ *Id.* at pp. 3-4, ¶20.

¹² Decision No. R25-0335-I, issued April 30, 2025, at p. 5.

¹³ Motion at p. 3.

¹⁴ *Id.*

II. PRE-HEARING CONFERENCE

12. On May 21, 2025, the undersigned ALJ convened a pre-hearing conference in this Proceeding as scheduled by Decision No. R25-0335-I. During the pre-hearing conference, in consideration of the relief requested in the Motion and the availability of the parties, the parties' witnesses, counsel for the parties, the ALJ, and Commission's Staff, the parties agreed to convene for a pre-hearing conference on June 6, 2025 at 9:00 a.m. to discuss any remaining impasse between the parties in this Proceeding.

13. Based on the parties' stated preference, the availability of Commission Staff and the undersigned ALJ, and pursuant to Rule 1409(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, a remote prehearing conference in this Proceeding shall be held on June 6, 2025, at 9:00 a.m. to address any remaining impasse between the parties, as ordered below.

14. The pre-hearing conference scheduled herein will be held remotely using the Zoom teleconference platform, as ordered below. Attachment A to this Decision provides information about the Zoom platform and instructions for participating in the remote pre-hearing conference. To minimize the potential for disruption by non-participants, the Zoom link and meeting ID or access code will be provided to the parties by email prior to the hearing. Parties and witnesses are prohibited from distributing that information to anyone not participating in the hearing.

15. The undersigned ALJ urges the parties to confer in advance of the pre-hearing conference scheduled herein to attempt to address or limit any remaining impasse.

III. MOTION

16. In light of the scheduling of a prehearing conference, as agreed upon by the parties and ordered herein, the Motion will be denied as moot, as ordered below.

IV. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, the Motion to Reschedule Pre-hearing Conference, filed May 19, 2025 by BNSF Railway Company (“BNSF”) is denied as Moot.

2. Consistent with the discussion above, a remote pre-hearing conference in this Proceeding is scheduled as follows:

DATE: June 6, 2025

TIME: 9:00 a.m.

WEBCAST: Commission Hearing Room

METHOD: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge¹⁵

3. Counsel for the parties, parties, and witnesses must participate in the pre-hearing conference scheduled herein by videoconference using the Zoom platform.

4. All participants shall comply with the requirements in Attachment A to this Decision, which is incorporated herein.

¹⁵ 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>.

5. This Decision is effective immediately.



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in black ink that reads "Rebecca E. White". The signature is written in a cursive style.

Rebecca E. White,
Director