

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0636R

IN THE MATTER OF THE APPLICATION OF THE CITY OF LOUISVILLE FOR
AUTHORITY TO INSTALL APPROACH RAILROAD GATES WITH FLASHING LIGHTS,
BELLS, CONSTANT WARNING TIME CIRCUITRY, NEW SIGNAL CABIN, AND
UPGRADED MEDIAN POST-MOUNTED FLASHERS AT TRACKS OWNED BY
BNSF RAILWAY COMPANY CROSSING DILLON ROAD, USDOT NO. 244798M, IN
BOULDER COUNTY, STATE OF COLORADO.

**COMMISSION DECISION GRANTING 30-DAY
EXTENSION TO FILE AGREEMENT**

Mailed Date: September 20, 2019
Adopted Date: September 18, 2019

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants, in part, the “Unopposed Motion for Extension of Time” filed by the City of Louisville (Louisville) on August 30, 2019 (Motion). In the Motion, Louisville requests a four-month extension to file the Construction and Maintenance Agreement (Grade Crossing Agreement) ordered by Decision No. R19-0640, issued in this proceeding on July 29, 2019.

2. Through this Decision, the Commission grants an extension of 30 days from the effective date of this Decision for Louisville to file the Grade Crossing Agreement ordered by Decision No. R19-0640. The Commission further orders that, if the Grade Crossing Agreement is not filed by this new deadline, then BNSF Railway Company (BNSF) shall file an affidavit explaining what negotiation has been completed and what open issues remain.

B. Findings and Conclusions

3. This proceeding involves an application filed by Louisville on September 17, 2018, seeking preliminary approval of design plans to upgrade the crossing at Pierce Avenue and Dillon Road, in Boulder County. The crossing is over tracks owned by BNSF.

4. By Decision No. C19-0429-I, issued May 23, 2019, the Commission referred this proceeding to an Administrative Law Judge. By Decision No. R19-0640, issued July 29, 2019, the Administrative Law Judge granted Louisville's application, as amended on September 24, 2018, and July 15, 2019. The Administrative Law Judge's decision has now become a final decision of the Commission, pursuant to § 40-6-109(2), C.R.S.

5. In its application (as amended), Louisville proposed to start construction on September 1, 2019, and be completed by November 30, 2020. Decision No. R19-0640 requires Louisville to file a copy of the signed Grade Crossing Agreement by September 1, 2019, prior to starting construction work at the crossing.

6. In the Motion, Louisville requests a four-month extension to file the Grade Crossing Agreement. Louisville explains that on August 20, 2019, it provided BNSF's Manager of Public Projects with requested edits to BNSF's standard Grade Crossing Agreement and requested an estimated timeframe for negotiations. Louisville reports that, based on her initial review of Louisville's requested edits, BNSF's Manager of Public Projects estimates it will take three to four months for the parties to negotiate terms. Louisville states it therefore requests a four-month extension to file the signed agreement. Louisville states it conferred with BNSF, who does not oppose the Motion.

7. Trial Staff of the Colorado Public Utilities Commission (Staff) filed a response on September 11, 2019. Staff recognizes an extension is warranted, given the September 1, 2019

deadline has passed, but questions whether four months is needed. Staff indicates it believes Louisville and BNSF are capable of resolving differences more quickly and urges the parties should be proceeding with greater urgency. Staff suggests the Commission assist by insisting the parties accelerate their work and granting only a two-month extension, to November 1, 2019.¹

8. We find good cause to grant an extension of time to file the Grade Crossing Agreement, but we are not persuaded that a full four months is appropriate and needed in this circumstance. We therefore will grant an extension of 30 days from the effective date of this Decision. We set this accelerated deadline in order to motivate both Louisville and BNSF to move this much-delayed proceeding along more quickly.

9. Given our interest in moving this proceeding to closure, we further order that if the signed Grade Crossing Agreement is not filed within the 30-day period established by this Decision, then BNSF shall file an affidavit with the Commission explaining what negotiation has been completed and what open issues remain. The affidavit shall be due **five business days** after expiration of the 30-day period to file the Grade Crossing Agreement established by this Decision.

II. ORDER

A. The Commission Orders That:

1. The “Unopposed Motion for Extension of Time” filed by the City of Louisville (Louisville) on August 30, 2019, is granted, in part, consistent with the discussion above.

2. Louisville shall file the signed Construction and Maintenance Agreement ordered by Decision No. R19-0640 within 30 days of the effective date of this Decision.

¹ Staff notes that, had Louisville properly conferred with Staff prior to filing the Motion, counsel for Staff would have stated at that time its opposition to a four-month extension.

3. If the signed Construction and Maintenance Agreement is not filed within the 30-day period established by this Decision, BNSF Railway Company shall file an affidavit with the Commission explaining what negotiation has been completed and what open issues remain, consistent with the discussion above.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 18, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners

CHAIRMAN JEFFREY P. ACKERMANN
ABSENT.