

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0388R

IN THE MATTER OF THE APPLICATION OF COLORADO PACIFIC RAILROAD FOR
AUTHORITY TO CHANGE A GRADE CROSSING FROM ACTIVE WITH FLASHERS AND
GATES TO ACTIVE WITH FLASHERS ONLY AT COLORADO AVENUE AND
COLORADO PACIFIC RAILROAD (SH 96 IN SUGAR CITY, CROWLEY COUNTY),
STATE OF COLORADO.

**COMMISSION DECISION DENYING
APPLICATION WITHOUT PREJUDICE**

Mailed Date: November 5, 2019
Adopted Date: September 25, 2019

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission denies, without prejudice, the application filed on July 12, 2019, by Colorado Pacific Railroad (CPR) for authorization to change the active

crossing protection from gates¹ and flashers to flashers only at the crossing at Colorado Avenue and Colorado Pacific Railroad (SH 96) in Sugar City, Crowley County, Colorado (Application). As part of this Decision, the Commission provides instruction to CPR on additional information that CPR should include in any new application for authorization to change the existing protections at this crossing.

B. Background

2. On July 12, 2019, CPR filed the Application with the Commission. The Application requests an order authorizing changing the active crossing protection at this crossing from gates² and flashers to flashers only, with the addition of new retroreflective R15-1 crossbuck signs, new I-13 ENS signs, new R15-2P signs (2 tracks) and other signs.

3. On July 16, 2019, the Commission issued notice of the Application and set an intervention period of 30 days from the date of the notice.

4. On July 17, 2019, in response to a request for clarification from Commission Staff filed on July 16, 2019, CPR made a supplemental filing in this Proceeding clarifying that the requested authorization is to remove and reinstall the current warning devices at the crossing including flashers, crossbuck signs, and other applicable warning signs. CPR states the crossing protection will remain active with flashers only, as it was previously

5. On August 14, 2019, the Department of Transportation, State of Colorado (CDOT), filed a notice of intervention of right and an entry of appearance. In its notice, CDOT

¹ As discussed below, CPR filed a notice clarifying the crossing currently has flashing lights (no gates) and the request is for authorization to remove and reinstall the current warning flashers, crossbuck signs, and other signs.

² As noted above, CPR later filed a notice clarifying the crossing currently has flashers (no gates) and the request is for authorization to remove and reinstall the current warning flashers, crossbuck signs, and other signs.

does not contest the Application but requests notice of any hearing so that it may participate if necessary.

6. On August 28, 2019, the Commission deliberated on the Application at its Commissioners' Weekly Meeting. By minute entry, the Commission deemed the Application complete for purposes of § 40-6-109.5, C.R.S., which establishes timelines for a Commission decision on applications. *See also* the Commission's Rules of Practice and Procedure, Rule 4 *Code of Colorado Regulations* 723-1-1303(c) (setting forth the process by which the Commission determines completeness of an application). However, after discussion, the Commission tabled any further decisions on the Application in order to consult with legal counsel.

7. On September 18, 2019, the Commission deliberated again on the Application at its Commissioners' Weekly Meeting. After discussion among the two Commissioners present, the Commission tabled the matter to its next Commissioners' Weekly Meeting, when all three Commissioners would be present to vote.

8. On September 25, 2019, the Commission deliberated on the Application at its Commissioners' Weekly Meeting. The Commission determined that it would deny the Application without prejudice and provide instruction on additional information that CPR should include in any new application.

C. Application

9. The Application indicates one train per day is anticipated at this crossing, with no projection for additional trains within the next five years. The Application indicates the maximum speed of trains using the crossing is 25 miles per hour. The Application indicates the speed limit for vehicles traveling through the crossing is 25 miles per hour. The Application

reports the most recent average daily traffic (ADT) study at the crossing, performed in 2017, accounted for 420 vehicles, 31 percent trucks, and 0 school buses. CPR states no accident reports exist for this crossing.

10. The Application describes the following proposed changes: The existing signal masts with crossing gates and flashers are to be removed and replaced with new masts, double 12" LED flasher pairs, new R15-1 crossbuck signs and I-13 ENS signs. An additional set of R15-1 retroreflective crossbuck signs will be installed with I-13 ENS signs on retroreflective posts for the industrial siding south of the main line track. Also, new R15-2P signs will be posted indicating the number of tracks (2 tracks). New W10-2 grade crossing and intersection advance warning signs will be placed on SH 96 and Railroad Avenue at approach 3 and 4. New W10-1 advance warning signs will be posted on the north approach and on the south approach. The Application states private funding by the railroad owner will cover the cost of new signals. CPR reports it has a bid from RJ Corman Railroad Construction of \$89,941 for this work. The Application states CDOT will be responsible for the cost of installing the advance warning signs, anticipated at \$1,500.

11. The Application describes the nature and need for these changes as follows:³

Missouri Pacific stopped running trains in 1999. They ran 10 trains per day, with some of the trains operating at night, at Timetable speed of 55 mph. The CPR will have one train per day, with timetable speed at this location of 25 mph. Revised traffic counts have been incorporated in the diagnostic review. There are no new traffic counts since 2017. It has been determined that the crossing may be changed from Gates and Flashers to Active Flashers only, with additional warning signs (refer to Exhibit B6, attached) with no reduction in terms of safety risk. The most recent AADT is from 2017 and is 420, 31% of which is truck traffic. ADT < 500 is classified as a low volume road. Vehicles utilizing this crossing are mostly local traffic and it would be beneficial to change to passive warning. Changing to flashers only will eliminate the risk of a gate malfunction and will reduce the amount of maintenance required for the crossing, therefore, it is most desirable to

³ Application at p. 6, ¶ 7.

change to flashers only. The local road is posted at 25 mph, and the crossing is located at Colorado Rd, which has sufficient sight distance in all directions.

12. The Application indicates the Diagnostic Team Review was performed on May 31, 2019 and included Dr. Pam Fischhaber of the Public Utilities Commission, Tobe Alumbaugh and Roy Elliott (Crowley County Commissioners), and attendees from Crouch Engineering for CPR. The Grade Crossing Diagnostic Notes are included as Attachment D to the Application.

D. Findings and Conclusions

13. Section 40-4-106, C.R.S., gives the Commission jurisdiction over the crossings between railroad tracks and public highways. In enacting that statute, the General Assembly charged the Commission with, *inter alia*, promoting and safeguarding health and safety of the public and preventing accidents. *See* §§ 40-4-106(1) and (2)(a), C.R.S. Pursuant to this statute, the Commission has the power to determine the just and reasonable manner, including the particular point of crossing; prescribe the terms and conditions of installation and operation, maintenance, and warning at such crossings; and to allocate the costs of safety signals or devices, among other things. The Commission reviews the crossing safety issues in this Proceeding pursuant to this express statutory authority. We review requests to modify crossing protections mindful of this statutory charge to promote and safeguard the health and safety of the public and prevent accidents.

14. After reviewing the Application and its attachments, and the clarification by CPR, we have significant concerns with the lack of supporting evidence for the requested, clarified authorization. Although we deemed the Application complete for purposes of § 40-6-109.5, C.R.S., that was a determination that the Application meets the basic requirements in our rules

and not a determination that we found the Application would support granting the requested relief.

15. After further review of the Application, we find the Application and its attachments fall short of the information and supporting documentation that we would need to grant the requested relief. Most significantly, we find the information provided in the Application is not consistent with CPR's clarified request. The Application still refers to removal of gates at the crossing and the support is tailored for that request. For example, the Application states the existing signal masts "with crossing gates" are to be removed.⁴ The Application explains it has been determined the crossing "may be changed from Gates and Flashers to Active Flashers only, with additional warning signs ... with no reduction in terms of safety risk."⁵ Likewise, the Application explains changing "to flashers only will eliminate the risk of a gate malfunction and will reduce the amount of maintenance required for the crossing, therefore, it is most desirable to change to flashers only."⁶ Even the Grade Crossing Diagnostic Notes in Exhibit D state the existing condition of the crossing is "Active Gates."⁷ This report also states, "Flashers to remain, but no gates."⁸ CPR's clarification of July 17, 2019, states that it wishes to clarify and amend the Application to remove and reinstall current warning devices including flashers, crossbuck signs, and other application warning signs and that the protections at the crossing will remain active with flashers only, as it was previously. We do not find the Application consistent with this request.

⁴ *Id.* at p. 7 ¶ 8a.

⁵ *Id.* at p. 6, ¶ 7.

⁶ *Id.*

⁷ Exhibit D to the Application at p. 2.

⁸ *Id.*

16. Because of the lack of support in the Application, we find it appropriate at this time to deny the Application, without prejudice, so that CPR may file a new application with a proper request for authorization and appropriate support. In these circumstances, we conclude that denial without prejudice, and the opportunity for CPR to file a new application, provides the most straightforward and efficient avenue of relief for CPR.

17. In preparing any new application for authorization to change the protections at this crossing, we also identify for CPR the following areas where we believe additional information is appropriate and would help our decision-making, depending on the relief sought in the request:

- a) The costs and benefits of maintaining the existing crossing protections at this crossing, including hiring sufficient staff to address signal maintenance, compared to removing the existing crossing protections and replacing them with the protections proposed in the Application.
- b) The potential for CPR's business operations to change such that the train or speed increases in the short- or long-term, and the impact such changes would have on the hazard index.
- c) The operational expertise of CPR in managing this type of operation including its previous experience and levels of insurance.
- d) How CPR described its proposed business and operational expertise in its filings to the Federal Railroad Authority seeking authority to operate this business in Colorado.
- e) Potential changes in the risk of civil liability for CPR resulting from modifying the crossing protections as proposed in the Application.

18. Finally, we direct that in the event CPR files a new application, Dr. Pamela Fischhaber should participate as Commission Trial Staff, rather than as Commission Advisory Staff. We ask that Dr. Fischhaber intervene in the application proceeding as a party and provide testimony in the record to assist in our decision-making.

II. ORDER**A. The Commission Orders That:**

1. The application filed on July 12, 2019, by Colorado Pacific Railroad for authorization to change the active crossing protection from gates and flashers to flashers only at the crossing at Colorado Avenue and Colorado Pacific Railroad (SH 96) in Sugar City, Crowley County, Colorado, is dismissed, without prejudice, consistent with the discussion above.

2. The 20-day period provided by § 40-6-114, C.R.S., to file applications for rehearing, reargument, or reconsideration begins on the first day after the effective date of this Decision.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 25, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners