

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19A-0533R

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IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION AND THE TOWN OF NUNN, FOR AUTHORITY TO REMOVE EXISTING PASSIVE WARNING SIGNS, CROSSING SURFACE AND ROAD APPROACHES TO CLOSE THE EXISTING CROSSING AT TRACKS OWNED BY UNION PACIFIC RAILROAD COMPANY CROSSING COUNTY ROAD 100, USDOT NO. 804-867R, IN WELD COUNTY, STATE OF COLORADO.

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**COMMISSION DECISION DEEMING APPLICATION  
COMPLETE AND GRANTING APPLICATION**

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Mailed Date: January 2, 2020  
Adopted Date: December 4, 2019

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**I.     BY THE COMMISSION**

**A.     Statement**

1.     This matter comes before the Commission for consideration of an application (Application) filed by the Colorado Department of Transportation (CDOT) and the Town of

Nunn (Nunn) (Collectively Applicants) on October 1, 2019, requesting authority to abolish the existing at-grade highway-rail crossing of Weld County Road (WCR) 100 with the tracks of the Union Pacific Railroad (UPRR) at railroad milepost 72.23 of the Greeley Subdivision by closure and removal of the roadway, National Inventory No. 804867R, in Nunn, County of Weld, State of Colorado.

2. The Commission gave notice of this Application to all interested parties, including adjacent property owners in accordance with § 40-6-108(2), C.R.S. The Notice was mailed October 16, 2019.

3. Notice of proposed closure of the existing WCR 100 crossing was posted at the crossing by Louis Keen on October 16, 2019 as stated in the Affidavit of Louis Keen and filed with the Commission on October 21, 2019. The affidavit includes photos of the notice posted at the subject crossing.

4. There were no interventions filed in this matter.

5. No public comments were received in this matter.

6. The Commission has reviewed the record in this matter and deems that the Application is complete within the meaning of § 40-6-109.5, C.R.S.

7. Now being fully advised in the matter, we grant the Application.

**B. Findings of Fact**

8. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application. No public comments were filed regarding the Application.

9. The Applicants propose to abolish the crossing of WCR 100 by closure and removal of the roadway. The Applicants propose to initially install temporary road closures consisting of concrete barriers with OM4-1 object markers along the temporary concrete barriers. Permanent barricades consisting of Type 3 F-B barricades with R11-2 "Road Closed" signs on both sides of the crossing and a W1-7 two-direction large arrow sign on both sides of the crossing.

10. UPRR currently has two tracks through this crossing. There are currently approximately 14 trains per day using the crossing at a maximum timetable speed of 60 miles per hour (MPH). There are currently crossbucks and stop signs posted on separate posts at the crossing. There are currently 300 vehicles per day (VPD) using the crossing at a speed limit of 55 MPH.

11. If the subject crossing is closed, the 300 VPD will likely cross the tracks at either 4th Street or WCR 98, both crossings to the south of the subject crossing.

12. The Applicants estimate starting the project by June 1, 2020, and have the project complete by December 31, 2020.

13. CDOT estimates the cost of the WCR 100 closure at \$20,000 with all costs for the project being paid for with Federal Section 130 funds.

### C. Discussion

14. Subsections 40-4-106(1)(a),<sup>1</sup> 40-4-106(2)(a),<sup>2</sup> and 40-4-106(3)(a)(I),<sup>3</sup> C.R.S., *both* provide the jurisdictional basis for the Commission to act on applications to abolish railroad crossings *and* establish the standard to be applied to such applications. *Hassler and Bates Company v. Public Utilities Commission*, 168 Colo. 183, 451 P.2d 280 (1969) (interpreting predecessor statutes with substantially identical language to current statutes). Based on the statutory language and the Colorado Supreme Court's interpretation, the standard to be applied in this case is: will abolishing (that is, closing) the WCR 100 crossing serve to prevent accidents and promote public safety; and, if so, are there just and reasonable conditions and terms which the Commission ought to attach to the closing?

15. Using the information provided by CDOT, the existing exposure factor at the WCR 100 crossing is 4,200 (number of trains per day multiplied by the number of VPD). Traffic volumes provided by CDOT for the two crossings south of the subject crossing are 150 VPD at the 4th Street crossing and 230 VPD at the WCR 98 crossing. Thus, the exposure factor for each of these crossings is 2,100 at 4th Street and 3,220 at WCR 98. The cumulative exposure factor for the three existing crossings is 9,500. The cumulative exposure factor will remain the same for the two remaining crossings if the subject crossing is abolished.

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<sup>1</sup> As pertinent here, that subsection grants the Commission the "[power to make] special orders ... [or otherwise] to require each public utility to maintain and operate its ... tracks, and premises in such manner as to promote and [to] safeguard the health and safety of ... the public and to require the performance of any other act that the health or safety of its employees ... or the public may demand."

<sup>2</sup> As pertinent here, that subsection grants the Commission the "power ... to determine, [to] order, and [to] prescribe the terms and conditions of installation and operation, maintenance, and warning at all such crossings that may be constructed, including ... the installation and regulation of ... means or instrumentalities as may to the commission appear reasonable and necessary to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted."

<sup>3</sup> As pertinent here, that subsection grants the Commission the "power ... to order any crossing constructed at grade ... to be ... abolished, according to plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the commission[.]"

16. Using information provided by CDOT, the hazard index for the existing conditions (approximately ten trains per day), as the calculation is outlined in the *1974 Colorado State Highway Railroad Grade Crossing Data* book, is 1.38 for the WCR 100 crossing under the current configuration of crossbucks and stop signs only, 0.71 for 4th Street under the current configuration of flashing lights and bells, and 1.26 for the WCR 98 crossing under the current configuration of crossbucks and stop signs only. The hazard index is the probable number of accidents expected to occur in a five-year time period. The cumulative hazard index for the three crossings is 3.35.

17. To analyze the hazard indices if the WCR 100 crossing were to be abolished, we will look at two scenarios: Scenario 1 would involve all traffic from the WCR 100 crossing moving to either 4th Street or to WCR 98, creating a hazard index of 1.65, and Scenario 2 would involve traffic from WCR 100 splitting evenly so half of the traffic crosses 4th Street and half of the traffic crosses WCR 98. Under Scenario 1, the hazard index for 4th Street would increase to 0.97 if all traffic moves to 4th Street and the hazard index for WCR 98 would increase to 1.65 if all traffic moves to WCR 98. The cumulative hazard index for the two crossings would be 2.36 if all traffic moved to 4th Street and 2.23 if all traffic moved to WCR 98. Under Scenario 2, the hazard index for each crossing would increase to 0.88 for 4th Street and 1.45 for WCR 98 with the cumulative hazard index for the two crossings being 2.33. In both scenario calculations, the total number of accidents expected to occur in a five-year time period with the removal of the WCR 100 crossing is reduced with the closure of this crossing. Therefore, the overall risk of crossing accidents at the two remaining crossings decreases since the exposure occurs now at only two crossings as opposed to three crossings.

18. It is our principal function in this proceeding to determine whether the WCR 100 crossing should be abolished in order to prevent accidents and to promote public safety. Our decision is predictive out of necessity because we are dealing with prevention of accidents and promotion of public safety when the crossing is abolished in the future. While we cannot predict with absolute certainty and accuracy what may happen in the future, we have to make the best judgment possible based on the data available.

19. Based on our analysis, with the reduction in the number of crossings to which vehicles are exposed to potential train collisions and a reduction in the cumulative hazard index with the closure of the WCR 100 crossing, we find that closure of the WCR 100 crossing will serve to prevent accidents and promote public safety and find that the WCR 100 crossing should be abolished.

20. The Commission's second function in this matter is to determine whether there are just and reasonable terms which should be imposed. In this matter, we find that there are no separate just and reasonable terms which should be imposed in this matter.

21. We will require the Applicants to file a copy of the signed Construction and Maintenance Agreement in this proceeding by May 31, 2020 prior to starting the necessary work to abolish the crossing.

22. The Applicants shall inform the Commission in writing when the WCR 100 crossing has been abolished. The Commission will expect this letter by December 31, 2020.

23. The Applicants will be required to file copies of the updated National Inventory Form for this crossing showing the crossing as closed by the completion of the project by December 31, 2020.

**D. Conclusions**

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

25. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application.

26. Because the Application is unopposed, the Commission will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

27. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety and necessity are met by granting the Applicants' Application to abolish the WCR 100 crossing consistent with the above discussion and our previous decisions in this matter.

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

1. This application (Application) filed by the Colorado Department of Transportation and the Town of Nunn (Nunn) (Collectively Applicants) on October 1, 2019, requesting authority to abolish the existing at-grade highway-rail crossing of Weld County Road (WCR) 100 with the tracks of the Union Pacific Railroad (UPRR) at railroad milepost 72.23 of the Greeley Subdivision by closure and removal of the roadway, National Inventory No. 804867R, in Nunn, County of Weld, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Application is granted.

3. The Applicants are authorized and ordered to proceed with the abolishment of the WCR 100 crossing by removal of the crossing surfaces and all related railroad signage and pavement markings in Nunn.

4. The Applicants will be expected to provide copies of the signed Construction and Maintenance Agreements for the abolishment of the crossings in this Application by May 31, 2020 before starting the necessary work to abolish the crossing.

5. The Applicants shall inform the Commission in writing when the WCR 100 crossing is closed. The Commission will expect this letter by December 31, 2020.

6. The Applicants will be required to file copies of the updated National Inventory Form for this crossing showing the crossing as closed by the completion of the project by December 31, 2020.

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

8. The Commission retains jurisdiction to enter further required decisions.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
December 4, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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FRANCES A. KONCILJA

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JOHN GAVAN

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Commissioners