

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0630R

IN THE MATTER OF THE APPLICATION OF THE TOWN OF LASALLE FOR
AUTHORITY TO REMOVE EXISTING ACTIVE WARNING DEVICES, PASSIVE
WARNING SIGNS, CROSSING SURFACE, AND ROAD APPROACHES TO
PERMANENTLY CLOSE THE EXISTING WALNUT STREET / 5TH AVENUE CROSSING
(USDOT NOS. 804357M AND 922332R) AT TRACKS OWNED BY UNION PACIFIC
RAILROAD COMPANY IN THE TOWN OF LASALLE, COLORADO.

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

Mailed Date: January 10, 2020

Adopted Date: January 8, 2020

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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 Town of LaSalle (LaSalle) on November 12, 2019, requesting

authority to abolish the existing at-grade highway-rail crossing of 5th Avenue with the tracks of the Union Pacific Railroad (UPRR) at railroad milepost 46.79 of the Greeley Subdivision by closure and removal of the roadway, National Inventory Nos. 804357M and 922332R, in LaSalle, County of Weld, State of Colorado.

2. On November 13, 2019, Staff of the Commission issued a deficiency letter outlining information missing from the Application regarding start and completion dates for construction of the project.

3. On November, 25, 2019, LaSalle amended the Application (Amended Application) to provide the missing information.

4. The Commission gave notice of this Amended Application to all interested parties, including adjacent property owners in accordance with § 40-6-108(2), C.R.S. The Notice was mailed November 27, 2019.

5. Notice of proposed closure of the existing 5th Avenue crossing was posted at the crossing by Lance Kippen on November 25, 2019 as stated in the Affidavit of Lance Kippen and filed with the Commission on December 10, 2019. The affidavit includes photos of the notice posted at the subject crossing.

6. There were no interventions filed in this matter.

7. One public comment was received in this matter.

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

9. Now being fully advised in the matter, we grant the Application as Amended.

B. Findings of Fact

10. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Amended Application. One public comment was filed regarding the Application.

11. LaSalle proposes to abolish the crossing of 5th Avenue, which has two crossings with separate National Inventory numbers, but which are both proposed to be abolished by closure and removal of the roadway. LaSalle states that closure of this crossing is part of a collective between LaSalle and UPRR in an effort to enhance long-term safety in the area. This closure would allow UPRR full use of the LaSalle switching yard, which should minimize blocking the 1st Avenue crossing. LaSalle is building a northward extension of Walnut Street/Weld County Road (WCR) 39, which will connect to WCR 52. The road to be extended is located east of the location of the crossing. LaSalle states that the 5th Avenue crossing is rarely used by vehicles because it crosses the location of a UPRR switch yard that is regularly occupied by trains.

12. The 5th Avenue crossing currently has flashing light signals with bells for the larger of the two crossings and a crossbuck with a yield sign for the single track crossing. Any traffic that does currently use the 5th Avenue crossing would be able to access locations east of this crossing using either the 1st Avenue crossing or the WCR 52 crossing, both of which contain flashing lights with gates and bells as warning devices.

13. LaSalle passed Resolution F – 2019 approving the Closure and Maintenance Agreement, approving the agreement with UPRR based on the conditions discussed below, and authorizing LaSalle Mayor Andrew Martinez to sign the agreements with UPRR. This resolution was passed on July 23, 2019 and signed by Mayor Martinez.

14. Per the agreement between LaSalle and UPRR, the 5th Avenue crossing would be closed once the following three conditions are met: 1) Commission approval of the permanent closure of 5th Avenue requested in this Application; 2) Completion of the construction of the WCR 39 extension/bypass road to WCR 52 being constructed by Weld County; and 3) UPRR conveying to LaSalle the property necessary for the WCR 39 extension/bypass road. With these requirements, the subject crossing would not be closed until after the new roadway is constructed and available for vehicle use.

15. LaSalle states that the project includes removal of active and passive warning devices and advance warning signs, crossing surfaces and existing roadway approaches of 5th Avenue to the crossing, and installation of permanent barricades on 5th Avenue on both sides of the crossing indicating the roadway is closed. LaSalle proposes installing permanent barricades consisting of Type 3 F-B barricades with R11-2 "Road Closed" signs on both sides of the crossing.

16. UPRR currently has a total of six tracks through this crossing. There are currently approximately 5 trains per day using the single track crossing and 17 through and switching trains per day using the multi-track crossing per day at a maximum timetable speed of 20 miles per hour (MPH) with no current anticipated increases or decreases in the number or character of trains. There are an estimated 125 vehicles per day (VPD) using the crossing at an unposted speed limit of 25 MPH. School buses do not use this crossing and it is estimated that 13 percent of the traffic currently using the crossing is heavy vehicles.

17. If the subject crossing is closed, the 125 VPD will likely cross the tracks at either 1st Avenue south of the subject crossing or WCR 52 north of the subject crossing.

18. LaSalle estimates starting the closure portion of the project by May 1, 2020. Construction of the bypass road started in August 2019 and is anticipated to be completed by November 30, 2019. UPRR is expected to convey the associated property on or before February 28, 2020 with the final crossing closure to be completed by May 31, 2020.

19. LaSalle estimates the cost of the 5th Avenue closure at \$70,000 with all costs for the project being paid for with funding from the UPRR.

20. One comment disputing the closure of the 5th Avenue crossing was filed in this matter on December 4, 2019. The comment did not request a hearing in this matter.

21. The comment from Jodi Ann McCarthy disputes the closing of the 5th Avenue crossing for the following reasons: 1) easy access to east LaSalle; 2) concern about a property value decrease from recent UPRR yard construction; 3) WCR 52 access to U.S. 85 southbound is a very unsafe option; and 4) main crossing in LaSalle is often blocked. Ms. McCarthy requests that this crossing remain open for direct access to the east part of LaSalle.

C. Discussion

22. Subsections 40-4-106(1)(a),¹ 40-4-106(2)(a),² and 40-4-106(3)(a)(I),³ 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*

¹ 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."

² 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."

³ 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[.]"

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 5th Avenue 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?

23. Using the information provided by LaSalle, the existing exposure factor at the 5th Avenue crossing is 3,375 (number of trains per day multiplied by the number of VPD). Traffic volumes provided by LaSalle for the two crossings closest to the subject crossing are 4,100 VPD for 1st Avenue (which is a three-track crossing) and 700 for WCR 52 (which is a two-track crossing). Thus, the exposure factor for each of these crossings is 110,700 at 1st Avenue and 18,900 at WCR 52. The cumulative exposure factor for the three existing crossings is 132,975. The cumulative exposure factor will remain the same for the two remaining crossings if the subject crossing is abolished.

24. Using information provided by the Colorado Department of Transportation, 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 0.71 for the 5th Avenue crossing under the current configuration of flashing lights and bells; 1.39 for 1st Avenue under the current configuration of flashing lights, gates, and bells; and 0.88 for the WCR 52 crossing under the current configuration of flashing lights, gates and bells. 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 2.98.

25. To analyze the hazard indices if the 5th Avenue crossing were to be abolished, we will look at two scenarios: Scenario 1 would involve all traffic from the 5th Avenue crossing moving to either 1st Avenue or to WCR 52. Scenario 2 would involve traffic from 5th Avenue splitting evenly so half of the traffic crosses 1st Avenue and half of the traffic crosses WCR 52. Under Scenario 1, the hazard index for 1st Avenue remains at 1.39 whether all traffic moves to 1st Avenue or WCR 52. If all traffic moves to WCR 52, the hazard index would increase to 0.9. The cumulative hazard index for the two crossings would be 2.27 if all traffic moved to 1st Avenue and 2.29 if all traffic moved to WCR 52. Under Scenario 2, the hazard index for each crossing would remain the same as the existing hazard index with the cumulative hazard index for the two crossings being 2.27. In both scenario calculations, the total number of accidents expected to occur in a five-year time period with the removal of the 5th Avenue 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.

26. It is our principal function in this proceeding to determine whether the 5th Avenue 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.

27. 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 5th Avenue crossing, we find that closure of the 5th Avenue crossing will

serve to prevent accidents and promote public safety and find that the 5th Avenue crossing should be abolished.

28. In reaching our decision, we are mindful of, and take fully into consideration, the comments provided by Ms. McCarthy. We are aware that some drivers that currently use the 5th Avenue crossing may experience some out of direction travel. However, these drivers will now be using the adjacent crossings that will have equipment in place to more actively warn drivers that a train is approaching the crossing, thereby promoting the safety of the traveling public in this area. The record does not indicate that closure of the 5th Avenue crossing completely cuts off residents in the east of LaSalle. Additionally, public convenience is not a factor enunciated in the statute for our consideration when determining whether to abolish a railroad crossing. Level of service at the intersection of U.S. 85 and WCR 52 does decrease for the westbound movements on WCR 52, but there is no indication in the record that the safety at the WCR crossing decreases (the maximum change is from a 0.88 to a 0.9 hazard index if all traffic moves from the 5th Avenue crossing to the WCR 52 crossing). Additionally, it is more likely that anyone that would want to access U.S. 85 southbound would take a shorter route of using the 1st Avenue crossing and then turning left at the traffic signal controlled intersection with U.S. 85 rather than driving north to access U.S. 85 southbound at WCR 52. Also, with the closure of the 5th Avenue crossing, 1st Avenue should not be blocked as much as before given that UPRR will now be able to perform its switching movements on an area of track from 1st Avenue to WCR 52 that will no longer be inhibited by the potential of blocking a highway-rail crossing. Regarding Ms. McCarthy's concern about property value decrease from the recent UPRR yard construction, property values is not a factor enunciated in the statute for our consideration when determining whether to abolish a railroad crossing. On balance, while

the points raised by Ms. McCarthy are significant and not to be dismissed lightly, they are insufficient to overcome the evidence of increased public safety and of prevention of accidents which support the Amended Application

29. 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.

30. LaSalle shall inform the Commission in writing when the 5th Avenue crossing has been abolished. The Commission will expect this letter by May 31, 2020.

31. LaSalle shall be required to work with UPRR to file copies of the updated National Inventory Forms for the two crossings showing the crossings as closed by the completion of the project by May 31, 2020.

D. Conclusions

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

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

34. Because the Amended 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.

35. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety and necessity are met by granting LaSalle's Amended Application

to abolish the 5th Avenue crossing consistent with the above discussion and our previous decisions in this matter.

II. ORDER

A. The Commission Orders That:

1. This application filed by the Town of LaSalle (LaSalle) on November 12, 2019, as amended on November 25, 2019 (Amended Application), requesting authority to abolish the existing at-grade highway-rail crossing of 5th Avenue with the tracks of the Union Pacific Railroad (UPRR) at railroad milepost 46.79 of the Greeley Subdivision by closure and removal of the roadway, National Inventory Nos. 804357M and 922332R, in LaSalle, County of Weld, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Amended Application is granted.

3. LaSalle is authorized and ordered to proceed with the abolishment of the 5th Avenue crossing by removal of the crossing surfaces and all related railroad signage and pavement markings and consistent with the agreement entered into between LaSalle and UPRR.

4. LaSalle shall inform the Commission in writing when the 5th Avenue crossing is closed. The Commission will expect this letter by May 31, 2020.

5. LaSalle shall work with UPRR to file copies of the updated National Inventory Forms for the two crossings showing the crossings as closed by the completion of the project by May 31, 2020.

6. 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.

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

8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 8, 2020.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners