

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0300R

IN THE MATTER OF THE APPLICATION OF THE CITY OF BOULDER FOR AUTHORITY TO UPGRADE RAILROAD CIRCUITRY TO CONSTANT WARNING TIME AT THE 47TH STREET CROSSING OF TRACKS OWNED BY BNSF RAILWAY COMPANY, USDOT NO. 244821E, IN THE CITY OF BOULDER, BOULDER COUNTY, STATE OF COLORADO.

**COMMISSION DECISION DENYING
REQUEST FOR STATUS CONFERENCE**

Mailed Date: February 3, 2020
Adopted Date: January 15, 2020

I. BY THE COMMISSION

A. Statement

1. Through this Decision, we deny the request for a status conference made by the City of Boulder (Boulder or the City) through its motion filed October 31, 2019. If Boulder seeks relief due to a regulated entity's failure to comply with a Commission decision, we remind Boulder to file and support its request through an appropriate pleading.

B. Background, Findings, and Conclusions

2. This proceeding involves an application filed by Boulder on May 30, 2019, requesting authority to upgrade the train detection circuitry to constant warning time detection at the existing crossing of 47th Street with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 32.04 on Front Range Subdivision, National Inventory No. 244821E, in Boulder, County of Boulder, State of Colorado.

3. Boulder previously applied to the Commission in Proceeding No. 18A-0628R for authority to make changes at this crossing consisting of extending an existing raised

center median on the south approach, relocating advanced warning signs and pavement markings, and adding “No Train Horn” plaques because of its desire to obtain a quiet zone at this crossing from the Federal Rail Administration. The Commission granted that authority by Decision No. C18-0945, mailed October 25, 2018.

4. Subsequent to approval of the crossing changes by the Commission, Boulder found out from BNSF that the detection at the crossing was not constant warning time as originally stated. Boulder therefore applied through this proceeding to upgrade the existing train detection circuitry to constant warning time to meet the requirements to obtain a quiet zone from the Federal Rail Administration. The application was noticed and no interventions were filed.¹ Through Decision No. C19-0583, issued July 16, 2019, the Commission deemed Boulder’s uncontested application complete and granted the application.

5. On October 31, 2019, Boulder filed a motion requesting a status conference. Boulder represents that BNSF “is requiring Boulder to enter into what BNSF is calling a ‘Crossing Signal Replacement Agreement.’”² It further represents that it understands BNSF “wishes to use this ‘Crossing Signal Replacement Agreement’ as a template for the work done at other quiet zones being established in Boulder.”³ Boulder admits, however, that the Commission did not order the referenced agreement through Decision No. C19-0583.

6. The City therefore requests that the Commission set the matter, along with the City’s Applications in Proceeding No. 18A-0629R (establishment of a quiet zone at the BNSF – Pearl Parkway crossing) and in Proceeding No. 18A-0631R (establishment of a quiet

¹ Despite no interventions being filed, including from BNSF, on August 12, 2019, BNSF filed a “Notice of Withdrawal of M. Kelly Ledoux” within the proceeding.

² October 31, 2019 Motion at ¶ 5.

³ *Id.*

zone at the BNSF – 55th Street crossing), for a status conference. Boulder includes that the “purpose of this status conference would be to establish commitments by and deadlines for the parties to complete the required agreements related to the quiet zones at those crossings.”⁴

7. We decline Boulder’s request to set a status conference. While we agree that the Commission’s requirement to file Construction and Maintenance Agreements (Agreements) remain unmet in Proceeding Nos. 18A-0629R and 18A-0631R, and that parties are currently noncompliant with Commission orders in those proceedings, we see little value in a “status conference” given the record here. Continuing these proceedings through a status conference, simply to reset dates certain for Agreement filings is unnecessary. Boulder seeks no other relief through its October 31, 2019, motion regarding this proceeding. We find Boulder shows no good cause to hold a status conference and we deny its request.

8. If Boulder seeks Commission action regarding the issues of ongoing noncompliance with Commission orders, we remind Boulder that Rule 4 *Code of Colorado Regulations* 723-1-1302(a) of the Commission’s Rules of Practice and Procedure provides that it may file a formal complaint at any time. As required by the rule, the complaint shall set forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought⁵ and how a statute, rule, decision, or agreement memorialized, accepted, or approved by a Commission decision is alleged to have been violated.

9. In addition, the Commission may pursue appropriate action for failure to comply with statutes, rules, and Commission decisions. The Commission has authority to assess civil

⁴ *Id.* at ¶ 6.

⁵ Boulder should include and support all relief requested in any future filing, if made, including if Boulder requests the Commission pursue applying civil penalties assessments to BNSF.

penalties, including specific statutory authority under § 40-4-106(1)(b), C.R.S., to assess a civil penalty for a railroad company's failure to comply with the Commission's orders.

II. ORDER

A. The Commission Orders That:

1. The Opposed Request to Schedule a Status Conference, filed by the City of Boulder on October 31, 2019, is denied.

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

3. This Decision is effective on its Mailed Date.

B. **ADOPTED IN COMMISSIONERS' WEEKLY MEETING January 15, 2020.**

(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