

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0683R

IN THE MATTER OF THE APPLICATION OF COLORADO PACIFIC RAILROAD, LLC
FOR AUTHORITY TO CHANGE A GRADE CROSSING FROM ACTIVE WITH FLASHERS
AND GATES TO PASSIVE WARNING ONLY AT NEPESTA ROAD AND COLORADO
PACIFIC RAILROAD IN BOONE, PUEBLO COUNTY, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING APPLICATION**

Mailed Date: February 12, 2020

Adopted Date: January 29, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the Colorado Pacific Railroad (CPRR) on December 2, 2019, seeking authority to change the active warning devices at the crossing of Nepesta Road from flashing lights with gates to passive warning with crossbucks with yield signs, and appropriate advance warning signs and emergency notification signs at railroad milepost 868.57, National Inventory No. 421985H, near Boone, County of Pueblo, State of Colorado.

2. Notice of the Application was provided by the Commission to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on December 6, 2019.

3. No interventions were filed in this matter.

4. The Commission reviewed the record in this matter and deemed that the Application was complete within the meaning of § 40-6-109.5, C.R.S., on January 21, 2020,

by operation of rule. This Application is a much more complete and thorough Application than the rejected Application that CPRR submitted earlier as to public safety and community involvement.

5. Now being fully advised in the matter, we grant the Application subject to certain conditions as discussed below.

B. Findings of Fact

6. CPRR is requesting authority to change the existing warning devices at the crossing of Nepesta Road near Boone from active warning devices consisting of flashing lights with gates and bells, to passive warning devices consisting of crossbucks with yield signs. Appropriate advance warning signs, and emergency notification signs would also be installed at the crossing as part of the project.

7. CPRR has purchased the railroad line that used to be owned by the Missouri Pacific (MP). The MP stopped running trains in 1999. At the time that the MP was running trains on this line, they ran ten trains per day at a maximum timetable speed of 55 miles per hour (MPH). CPRR operations will be substantially different with CPRR running a maximum of one train per day at a timetable speed at this location of 10 MPH.

8. CPRR states there are currently 54 vehicles per day that use the crossing with an estimated 5 percent heavy vehicles using the crossing at a posted speed limit of 35 MPH.

9. There have been no accidents at the crossing since 1975.

10. CPRR estimates the cost of the signal removal and sign replacement at \$5,000 with the railroad paying for the removal and installation of all signs.

11. As part of Decision No. C19-0899 in Proceeding No. 19A-0394R issued November 5, 2019, denying CPRR's original application without prejudice, the Commission requested that CPRR provide additional information in any future applications including:

- 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.¹

12. As part of this Application, CPRR provided answers to these questions and provided additional information about its community efforts as part of the restoration of service.

13. In response to question a),² CPRR states that the cost to remove the old/damaged/vandalized/antiquated signal systems and install new equipment would be approximately \$100,000 with annual inspection and maintenance estimated at \$3,600 per year. CPRR used the Federal Railroad Administration (FRA) GradeDec.net accident prediction and severity model to evaluate the change in hazard index from the previous crossing warning devices to the new proposed warning device and operating conditions. CPRR states this model can be used to comply with the Office of Budget and Management guidelines for Benefit Cost

¹ Decision No. C19-0899 at ¶ 15 p. 6.

² See Application at pp. 39 and 40.

Analysis as specified in Circular No. A94. CPRR's GradeDec.net calculations show the number of total predicted accidents at the subject crossing with crossbucks and yield signs at 0.00605 total accidents per year. This analysis indicates that the severity/hazard index shows no justification to install active warning at this location versus passive warning. Additionally, CPRR notes that signal vandalism and theft are a problem in this remote area, so installation of active warning would create additional targets for copper and steel theft, which a passive warning sign would not.

14. In response to question b),³ CPRR states that it is rehabilitating the line to a maximum timetable speed of 25 MPH per FRA requirements. The next level of maximum track speed would be 40 MPH, which would be expensive for the railroad to rehabilitate the line to, and is therefore likely to not be undertaken by CPRR. To address the Commission's concerns regarding potential future speed increases, CPRR proposes the Commission's approval of the Application be conditioned on a top speed of 25 MPH along the Towner Line, with a slower maximum speed of 10 MPH through the Towns of Eads, Ordway, and Crowley. This condition would require that any future speed increases would require new analysis of the crossing and new approval from the Commission.

15. In response to question c),⁴ while CPRR is the owner of the line, they will not be operating trains over this line. CPRR has leased the line to WATCO, one of the largest shortline railroad operators in the United States. CPRR states that WATCO has the necessary level of operational experience for safety and prudently operates along the line. Additionally, CPRR has \$25 million in general liability insurance coverage. CPRR proposes the Commission's approval

³ *Id.* at p. 40.

⁴ *Id.*

of the Application be conditioned on CPRR furnishing a certificate of such coverage to the Commission and informing the Commission if such coverage ever lapses or is diminished in coverage amount.

16. In response to question d),⁵ CPRR states that it has discussed with the FRA that lessee WATCO will be operating on the line and that CPRR will be contracting with CWC Rail, a railroad services company whose services include providing track and signal inspection services, to perform the required routine inspection and maintenance conforming to 40 *Code of Federal Regulations* Part 213 track safety standards. CPRR and CWC Rail have adopted WATCO's operating rules and standard procedures to provide seamless operation and safety practices. WATCO currently has operations in Colorado with switching services at the Vestas Plant NE of Denver, so Colorado is familiar with WATCO operations.

17. In response to question e),⁶ CPRR states that driver error typically is the cause of a train-vehicle collision. CPRR believes that so long as the sight line for approaching trains is sufficient and drivers obey the warning devices, there should not be a collision. CPRR does acknowledge that no matter what types of warning devices are installed, drivers will ignore them at times, which is why CPRR maintains such a high level of liability insurance. CPRR provides photos for the crossing showing the Commission the sight distance at the crossing.

18. In addition to the safety diagnostics and discussions with the FRA, CPRR states that it has been working with Operation Lifesaver to educate school aged children and the local communities regarding railroad safety and how to be safe at highway-rail grade crossings. CPRR states it has worked to coordinate other public awareness in local papers. CPRR states it

⁵ *Id.* at p. 41.

⁶ *Id.*

has also worked along the alignment to ensure proper sight distance for roadway vehicles approaching the highway-rail grade crossings on both sides of the crossings and will use the required practices by installing whistle boards to provide a minimum of 25 seconds for the train operator to provide the two long, one short, and one long horn sounding as they approach the crossings.

19. Because this line is returning to service after being dormant for over 20 years, the Commission appreciates the additional information that CPRR has provided in this Application regarding its community outreach efforts. CPRR demonstrates that it is working to provide education and information to the communities along its line and to teach new residents along the line and remind existing residents along the line how to behave safely at highway-rail crossings.

20. Based on our decision today, we will adjust CPRR's proposed starting construction date and completion date into March 2020. We order CPRR to inform the Commission in writing when the crossing changes are complete and operational, within ten days of completion. The Commission expects this notice to be filed on or around March 30, 2020, but recognizes changes or delays to the construction schedule may affect when this notice is submitted.

21. We order CPRR to file a Notice with the Commission when it enters into the agreement with CWC Rail to perform the maintenance and to similarly file a Notice with the Commission if it contracts with another entity to perform the maintenance.

22. We will require CPRR to update the crossing inventory form for the changed crossing conditions and to file in this Proceeding a copy of the updated crossing inventory form by March 30, 2020.

C. Conclusions

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

24. No interventions were filed in this matter.

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

26. We find that good cause exists and that the requirements of public safety and necessity are met by granting the Application, subject to the specific conditions discussed in this Decision.

27. We will grant the Application with the following conditions: CPRR is authorized to operate a maximum of one train per day. CPRR is required to operate trains at a maximum timetable speed of 25 MPH, with a slower maximum speed of 10 MPH through the Towns of Eads, Ordway, and Crowley. CPRR is required to furnish to the Commission a certificate showing at least \$25 million in general liability insurance coverage. If such coverage ever lapses or is diminished, CPRR must promptly inform the Commission of this change. CPRR is required to file a Notice with the Commission when it enters into the maintenance agreement with CWC Rail and file a Notice if that agreement is modified or terminated.

28. If CPRR later determines that operational changes require modification of these conditions, CPRR will need to file a new application with the Commission for approval of the requested modifications. At such time, CPRR will need to work with Staff of the Commission to determine how the requested modification(s) will affect the hazard index at the crossing.

II. ORDER

A. The Commission Orders That:

1. The application filed by the Colorado Pacific Railroad (CPRR) on December 2, 2019, seeking authority to change the active warning devices at the crossing of Nepesta Road from flashing lights with gates, to passive warning with crossbucks with yield signs and appropriate advance warning signs and emergency notification signs at railroad milepost 868.57, National Inventory No. 421985H, near Boone, County of Pueblo, State of Colorado, is granted, subject to the following conditions:

- a. CPRR is authorized to operate a maximum of one train per day along the Towner Line.
- b. CPRR is required to operate trains along the Towner Line at a maximum timetable speed of 25 miles per hour (MPH), with a slower maximum speed of 10 MPH through the Towns of Eads, Ordway, and Crowley.
- c. CPRR is required to furnish to the Commission a certificate showing at least \$25 million in general liability insurance coverage. If such coverage ever lapses or is diminished in coverage amount, CPRR is ordered to promptly inform the Commission of this change in coverage.

2. Any modification to these conditions will require a new application with the Commission for approval of the requested modification.

3. CPRR is authorized and ordered to proceed with installation of passive warning devices consisting of crossbucks and yield signs near Boone, Colorado.

4. CPRR is required to inform the Commission in writing that the crossing changes are complete and operational within ten days after completion. We shall expect this letter by March 30, 2020. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

5. CPRR is required to update the crossing inventory form showing the changed crossing conditions and file the updated form in this Proceeding by March 30, 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 decisions as necessary.

8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 29, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners