

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0542R

IN THE MATTER OF THE APPLICATION OF THE TOWN OF KERSEY FOR AUTHORITY TO CREATE A NEW ROAD, PEDESTRIAN, AND UTILITY CROSSING FOR THE UNION PACIFIC RAILROAD EAST OF 705240H IN THE TOWN OF KERSEY, WELD COUNTY, STATE OF COLORADO.

**COMMISSION DECISION GRANTING
MOTION FOR EXTENSION OF TIME**

Mailed Date: April 15, 2020
Adopted Date: April 8, 2020

I. BY THE COMMISSION

A. Statement

1. Through this Decision we grant the Unopposed Motion for Extension of Time (Motion) to File the Signed Construction and Maintenance Agreement filed by the Town of Kersey (Kersey) on February 28, 2020, seeking an extension of time to April 13, 2020 to file the signed Construction and Maintenance Agreement for this project.

B. Background, Findings, and Conclusions

2. In its application filed October 8, 2019 (Application), Kersey requests authority to construct a new vehicle and pedestrian/bicycle at-grade crossing of the tracks of the Union Pacific Railroad Company's (UPRRs) out of service Monfort Industrial Lead with the extension of 9th Street north of Latham Street and installation of passive warning devices consisting of crossbucks, yield signs, number of tracks signs, and advance warning signs; and installation of water and sewer utilities under the tracks, no current National Inventory Number, in Kersey, County of Weld, State of Colorado.

3. Notice of the proceeding was mailed October 9, 2019,¹ and no interventions were filed. The matter was therefore considered unopposed, and the Commission granted the Application through Decision No. C19-0947, issued November 22, 2019. Within the conditions required by the Commission in its decision granting the Application, the Commission required that Kersey provide a copy of the signed Construction and Maintenance Agreement for this project by February 29, 2020, prior to starting construction.²

4. As grounds for its Motion, Kersey states it has been working with UPRR to finalize and execute the Construction and Maintenance Agreement, but has not been able to do so yet. Kersey states it will continue to work diligently to obtain a final executed agreement and requests an extension of time to April 13, 2020 to file the signed Construction and Maintenance Agreement.

5. No responses were filed to the Motion.

6. Parties are reminded that ongoing delay and noncompliance with Commission orders can present public safety concerns relevant to the Commission's jurisdiction under § 40-4-106, C.R.S., and that pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1302(b) of the Commission's Rules of Practice and Procedure and § 40-4-106(1)(b), C.R.S.,³ the Commission may impose a civil penalty against a railroad company that fails to

¹ On October 9, 2019, Staff of the Commission sent a deficiency letter requesting final signed and stamped plans for a final Application, or to provide the additional information required for a preliminary Application for the preliminary plans filed with the Application. On October 21, 2019, Kersey filed final signed and stamped plans for the final Application.

² In its Application, Kersey proposes to start construction in March 2020 with completion by May 2020 estimating the crossing to go into service in May 2020.

³ The Commission may pursue a notice of civil penalty assessment on its own motion, or upon consideration of a complaint filed pursuant to Rule 4 CCR 723-1-1302(a) setting forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and how a statute, rule, decision or agreement memorialized, accepted, or approved by a Commission decision is alleged to have been violated. Relief requested must be clear, including without limitation, whether the complainant requests the Commission pursue civil penalties.

comply with a Commission order or rule directing compliance with railroad crossing safety regulations.⁴

7. Reviewing the pleadings here, we are satisfied that there are no safety concerns at present. In addition, we note that the Motion explains that efforts with UPRR are ongoing to comply with Decision No. C19-0947, which supports the brief extension requested. Further, shortly after the filing of the Motion, on March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over the novel coronavirus pandemic (COVID-19). We recognize that effective management of the challenges presented by COVID-19 given the timing of the filing additionally supports the requested extension to April 13, 2020, in these unique circumstances.⁵

8. We therefore find good cause to grant the Motion and permit the requested extension.

II. ORDER

A. The Commission Orders That:

1. The Motion for Extension of Time filed by the Town of Kersey (Kersey) on February 28, 2020 seeking an extension of time to April 13, 2020 to file the signed Construction and Maintenance Agreement for this project is granted.

2. Kersey shall provide the signed Construction and Maintenance Agreement by April 13, 2020.

⁴ Based on the Motion, at this time the Commission currently finds no need to pursue its fining authority regarding the matter.

⁵ In this instance, given the timing of the filing and Governor Polis' declaration of a state of emergency, we recognize these this declaration on our own motion. Any future filings should specify whether COVID-19 considerations, or any other pertinent circumstances, support the requested action.

3. The Commission retains jurisdiction to enter further decisions as necessary.
4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 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

JOHN GAVAN

MEGAN M. GILMAN

Commissioners