

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0629R

IN THE MATTER OF THE APPLICATION OF THE CITY OF BOULDER FOR AUTHORITY TO INSTALL RAILROAD EXIT GATES TO COMPLETE A 4-QUADRANT GATE SYSTEM WITH FLASHING LIGHTS, BELLS, AND CONNECT TO CONSTANT WARNING TIME CIRCUITRY, AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING PEARL PARKWAY, USDOT NO. 244815B, IN THE CITY OF BOULDER, BOULDER COUNTY, STATE OF COLORADO.

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

Mailed Date: April 20, 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 to File the Signed Construction and Maintenance Agreement (Motion) filed by the City of Boulder (Boulder) on February 27, 2020, seeking an extension of time to May 1, 2020 to file the signed Construction and Maintenance Agreement for this project.

B. Background, Findings, and Conclusions

2. Boulder initiated this proceeding by filing an application on September 14, 2018, as amended September 18, 2018, seeking authority to upgrade the active warning equipment to flashing lights with four-quadrant gates, bells, constant warning time circuitry, and railroad signal cabin; relocate advance warning signs; install pavement markings; and the addition of “No Train Horn” plaques at the existing crossing of Pearl Parkway with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 27.829 on the Front Range Subdivision,

National Inventory No. 244815B, in Boulder, County of Boulder, Colorado (Application). BNSF intervened in this proceeding, but did not oppose the Application.

3. Through Decision No. C18-0946-I, issued October 25, 2018, the Commission deemed the application complete and approved Boulder's preliminary design plans. Final design plans were ultimately submitted on January 10, 2019, which the Commission reviewed and found that the requirements of public safety and convenience are met by granting Boulder's Application with the final design plans submitted.¹ Through its decision approving the Application with the final design plans, the Commission required Boulder to file a signed Construction and Maintenance Agreement (Agreement) for the project by March 31, 2019, prior to starting work on the crossing.² Subsequent extensions of time to file the Agreement were requested, and ultimately granted through November 1, 2019.³

4. On October 31, 2019, Boulder filed a motion requesting a status conference and an additional extension of time to file the Agreement. Through Decision No. C20-0079, issued February 3, 2020, the Commission denied the request for status conference, but granted the requested extension through March 2, 2020. The Commission stated its concern with the parties' ongoing failure to comply with the requirements of Decision No. C19-0126, reminding parties of the Commission's ability to pursue fines as necessary under §§ 40-4-106(1)(b) and 40-7-105, C.R.S., and of Boulder's ability to pursue a complaint, consistent with Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1302(a) of the Rules of Practice and Procedure.

¹ Decision No. C19-0126, issued January 31, 2019.

² *Id.* at Ordering ¶ 3.

³ *See*, Decision No. C20-0079, issued February 3, 2020, at ¶ 8.

5. On February 27, 2020, Boulder filed its additional request for extension seeking to file the Agreement. As grounds for its Motion, Boulder states that negotiations between Boulder and BNSF are still ongoing. Boulder represents that it and BNSF are working cooperatively to finalize the Agreement, and there are relatively few, minor points that remain to be negotiated. Once an agreement is reached, the Agreement must then be reviewed and signed by different BNSF staff in Fort Worth, Texas, which will take several weeks. Boulder believes it will receive the executed agreement by the end of April, and therefore requests an extension of time to May 1, 2020 to file the signed agreement.

6. Boulder further represents that it conferred with BNSF counsel, and BNSF is not opposed to the Motion. No responses were filed to the Motion.

7. Parties are again reminded that ongoing delay and incompliance 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 CCR 723-1-1302(b) of the Commission's Rules of Practice and Procedure and § 40-4-106(1)(b), C.R.S., the Commission may impose a civil penalty against a railroad company that fails to comply with a Commission order or rule directing compliance with railroad crossing safety regulations.

8. Reviewing the pleadings here, however, we are satisfied that there are no safety concerns at present. In addition, we note that Boulder is continuing its efforts with BNSF to comply with Commission decisions and, despite being reminded of its ability to file a complaint through Decision No. C20-0079, filed its unopposed Motion seeking a limited filing deadline extension. 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 May 1, 2020, in these unique circumstances.⁴

9. 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 City of Boulder (Boulder) on February 27, 2020 seeking an extension of time to May 1, 2020 to file the signed Construction and Maintenance Agreement for this project is granted.

2. Boulder shall provide the signed Construction and Maintenance Agreement by May 1, 2020.

3. The Commission retains jurisdiction to enter further decisions as necessary.

4. This Decision is effective on its Mailed Date.

⁴ In this instance, given the timing of the filing and Governor Polis' declaration of a state of emergency, we recognize this declaration on our own motion. Any future filings should specify whether COVID-19 considerations, or any other pertinent circumstances, support the requested action.

**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