

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0475R

IN THE MATTER OF THE APPLICATION OF THE CITY AND COUNTY OF
BROOMFIELD FOR AUTHORITY TO UPGRADE APPROACH RAILROAD GATES WITH
FLASHING LIGHTS, BELLS, CONSTANT WARNING TIME CIRCUITRY, NEW SIGNAL
CABIN, AND INSTALL RAISED MEDIANS ON EACH APPROACH TO TRACKS OWNED
BY BNSF RAILWAY COMPANY CROSSING 112TH AVENUE, USDOT NO. 244790H, IN
BROOMFIELD COUNTY, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING APPLICATION AS AMENDED**

Mailed Date: July 16, 2020
Adopted Date: July 15, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the City and County of Broomfield (Broomfield) on August 30, 2019, seeking final approval of design plans to upgrade the flashing lights, gates, bells, constant warning time circuitry, a new signal cabin, construction of raised medians on each approach, and interconnection to and preemption of the traffic signal at 112th Avenue and Wadsworth Boulevard at the crossing of 112th Avenue with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 12.95 on the Front Range Subdivision, National Inventory Number 244790H, in Broomfield, State of Colorado.

2. Through this decision we grant the Application, as amended May 27, 2020, and as further supplemented on June 29, 2020, consistent with the discussion below.

B. Procedural Background

3. Notice of the Application filed August 30, 2019, was provided by the Commission to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on September 3, 2019. The Commission gave notice to all interested parties, including the adjacent property owners.

4. On October 3, 2019, BNSF filed a Notice of Intervention. BNSF did not object to preliminary approval, but stated it was still reviewing the design and providing comments and reserved all rights to object to final approval and to continue to provide comments to the on the design proposal. No other interventions were filed.

5. On October 16, 2019, the Commission issued Interim Commission Decision No. C19-0844-I, mailed October 17, 2019 deeming the Application complete, approving the preliminary design plans, and requiring Broomfield to file the final design plans for Commission review and approval by December 1, 2019.

6. On November 27, 2019, Broomfield filed a Motion for Extension of Time requesting a 90-day extension of time to February 29, 2020, to file the final design plans for Commission review and approval.

7. On December 17, 2019, the Commission issued Interim Commission Decision No. C19-1012-I, mailed December 17, 2019, granting an extension of time to February 29, 2020 to file the final design plans for Commission review and approval.

8. On February 28, 2020, Broomfield filed a Second Motion for Extension of Time requesting an additional 120-day extension of time to June 29, 2020, to file the final plans for Commission review and approval. Although the Commission granted the additional motion for extension of time, given the ongoing delays, the parties were 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 *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, 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.¹

9. On May 27, 2020, Broomfield filed a Notice of Amendment to Application, and Amendment and an amended exhibit. Broomfield updated the cost apportionment information and provided the cost estimate and schematic diagram.

10. On June 10, 2020, the Commission issued Decision No. C20-0434-I, requiring additional information. Since the originally proposed start date had passed providing only two months to complete the project, the Commission required Broomfield and BNSF to provide updates to the date by which the signed Construction and Maintenance Agreement will be filed with the Commission and that new date anticipated for the project to be completed. The Commission required this supplemental information be filed by June 30, 2020.

11. On June 29, 2020, the parties made a joint filing with the additional information requested from the Commission. Parties represent that Broomfield anticipates filing the executed Construction and Maintenance agreement on or before July 31, 2020, and requests an extension of time to do so. Further, the joint pleading states that parties continue to discuss new project benchmark dates, but that at the time of the joint filing, the expected project completion date of July 31, 2020, has not changed.

¹ Decision No. C20-0721, issued April 20, 2020, at ¶ 6.

C. Findings and Conclusions

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

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

14. 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, Commission's Rules of Practice and Procedure, 4 CCR 723-1.

15. Through its Application, as amended, Broomfield requests authority to upgrade the flashing lights, gates, bells, constant warning time circuitry, a new signal cabin, construction of raised medians on each approach, and interconnection to and preemption of the traffic signal at 112th Avenue and Wadsworth Boulevard at the crossing of 112th with the BNSF. Broomfield represents these changes are necessary because of some roadway reconfigurations and because Broomfield is pursuing a quiet zone at this crossing.

16. Broomfield proposes to interconnect the new crossing signal with the traffic signal at 112th Avenue and Wadsworth Boulevard. Broomfield proposes that 50 seconds of total preemption time be provided at the crossing with advance preemption of 20 seconds.

17. Within its filings, Broomfield states there are currently 16 trains per day that use the crossing at a maximum timetable speed of 49 miles per hour (MPH) with no estimates of increases or decreases in these volumes in the future. There are currently 12,700 vehicles per day (VPD) with approximately 5 percent heavy vehicles and school buses using the crossing at a posted speed limit of 35 MPH with an estimated increase to 13,500 VPD by 2023 and 15,600 VPD by 2038.

18. There have been six property damage only accidents and one injury accident reported at the crossing since 1975 with all accidents occurring when the crossing had passive warning devices.

19. Broomfield estimates the cost of the traffic signal interconnection and associated civil engineering work at \$303,091 with the estimate for the BNSF signal interconnect and signal work at \$234,142. The costs of the project will be paid for through a combination of CDOT administered federal funds, Broomfield local Capital Improvement Project funds, and BNSF paying for 50 percent of the railroad signal bungalow and constant warning time circuitry replacement.

20. As stated in the June 29, 2020, joint filing providing supplemental information on the application, as amended, Broomfield proposes to start construction after the signed Construction and Maintenance Agreement is filed on July 31, 2020 and be complete by July 31, 2021.

21. We find that good cause exists and that the requirements of public safety are met by granting the Application, as amended, for the proposed crossing project.

22. We require the parties to jointly file a copy of the signed Construction and Maintenance Agreement for this project by July 31, 2020 prior to the start of construction.

23. Broomfield shall inform the Commission in writing when the project is construction is complete and operational within ten days of completion. The Commission will expect this letter on or before July 31, 2021.²

² The Commission understands there may be changes or delays in the construction schedule. While a request for extension is not required in the event completion of the construction project goes past July 31, 2021, Broomfield should inform the Commission through an appropriate filing if delays are anticipated or significant.

24. BNSF shall provide an updated crossing inventory for the changed crossing conditions and shall file a copy of the updated crossing inventory form with the Commission concurrent with notice to the Commission of completion of the crossing work initially expected by July 31, 2021.

25. We note that there have been significant delays in this proceeding and requests for extensions of time. In the event there are further delays in providing the signed Construction and Maintenance Agreement, Broomfield and BNSF shall file a supported motion for extension of time, jointly if possible. Parties are reminded again 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 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 comply with a Commission order or rule directing compliance with railroad crossing safety regulations. Filings seeking an extension of time, if any is requested or deemed necessary, shall be supported with information confirming that there are no safety concerns caused by any delay.

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed by the City and County of Broomfield (Broomfield) on August 30, 2019 as amended on May 27, 2020 and June 29, 2020, seeking final approval of design plans to upgrade the flashing lights, gates, bells, constant warning time

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.

circuitry, a new signal cabin, construction of raised medians on each approach, and interconnection to and preemption of the traffic signal at 112th Avenue and Wadsworth Boulevard at the crossing of 112th Avenue with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 12.95 on the Front Range Subdivision, National Inventory Number 244790H, in Broomfield, State of Colorado is granted.

2. Broomfield is authorized and ordered to proceed with the 112th Avenue project including upgrading the flashing lights, gates, bells, constant warning time circuitry, a new signal cabin, construction of raised medians on each approach, and interconnection to and preemption of the traffic signal at 112th Avenue and Wadsworth Boulevard in Broomfield, Colorado.

3. The parties shall file a copy of the signed Construction and Maintenance Agreement for the project by July 31, 2020 with construction work at the crossing not expected to begin until these signed agreements are filed.

4. Broomfield is required to inform the Commission in writing that the project is complete and operational within ten days of completion.

5. BNSF shall update the crossing inventory form showing the changed crossing conditions and file a copy of that updated inventory form in this proceeding concurrent with notice of completion of the crossing changes.

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
July 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

JOHN GAVAN

MEGAN M. GILMAN

Commissioners