

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0202R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION FOR AUTHORITY TO OBTAIN PUC AUTHORIZATION TO RECONSTRUCT THE GREAT WESTERN RAILWAY OF COLORADO, LLC (GWRCO) BRIDGE CROSSING OVER INTERSTATE I-25 (U.S. DOT# 872121E) AND TO UPGRADE THE EQUIPMENT AND SAFETY OF THE CROSSING OF GWRCO ON THE INTERSTATE 25 FRONTAGE ROAD AT COUNTY ROAD LCR 20E, U.S. DOT # 872120X) LARIMER COUNTY, STATE OF COLORADO.

**COMMISSION DECISION GRANTING
SECOND AMENDED APPLICATION
FOR THE AT-GRADE CROSSING**

Mailed Date: November 20, 2020
Adopted Date: November 18, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a second amended application (Second Amended Application) filed by the Colorado Department of Transportation (CDOT) on October 30, 2020, seeking final authority to upgrade the existing active warning crossing of the Great Western Railway Company of Colorado (GWR) with the Interstate 25 (I-25) Frontage Road, just adjacent to the I-25 grade separation, from flashing lights with bells to flashing lights, gates, and bells, National Inventory No. 872120X, near the City of Loveland, County of Larimer, State of Colorado.

2. No responses were filed to the Amended Application.

3. Now being fully advised in the matter, we grant the Second Amended Application for the proposed at-grade crossing improvements.

B. Findings of Fact

4. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

5. The original application (Application) filed by CDOT on May 14, 2020 as amended May 28, 2020, sought final authority to perform a full reconstruction of the existing I-25 bridge structure over I-25, National Inventory No. 872121E and preliminary approval to upgrade the existing active warning crossing of the I-25 Frontage Road, just adjacent to the bridge structure, from flashing lights with bells to flashing lights, gates and bells, National Inventory No. 872120X, both crossing the tracks of the GWR Loveland Branch, near the City of Loveland, County of Larimer, State of Colorado.

6. 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 May 18, 2020.

7. On May 18, 2020, Staff of the Commission sent a Deficiency Letter outlining information missing from the Application under Rule 7204.

8. On May 28, 2020, CDOT filed an amendment to the Application (Amended Application) that provided the missing information from Rule 7204 of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7, filed final construction plans for the grade separation structure, and filed preliminary plans for the at-grade crossing.

9. By Decision No. C20-0485, mailed July 2, 2020, the Commission granted the Amended Application allowing construction of the proposed grade separation structure and granted preliminary approval for the proposed at-grade crossing changes with the final plans to be filed with the Commission review and approval by September 30, 2020.

10. On October 1, 2020, CDOT filed a Motion for Extension of Time requesting an extension of time to January 20, 2021. CDOT states that the at-grade crossing signal plans would not be complete from GWR until January 15, 2021. With time to review, CDOT would be able to file the final plans on January 20, 2021.

11. By Decision C20-0746, mailed October 23, 2020, the Commission granted CDOT's Motion for Extension of time.

12. On October 30, 2020, CDOT filed a Second Amended Application requesting final authority for construction of the at-grade crossing.

13. CDOT proposes to upgrade the existing at-grade crossing of the I-25 Frontage Road with the track of the GWR from flashing lights with bells to flashing lights, gates, and bells. The final plans show that an additional area will be constructed on the northwest corner of the crossing to provide enough space to accommodate not only the gate operations, but also to allow a signal maintainer to be able to safely move around the signal to maintain the gate mechanism without fear of falling down the slope to I-25 below.

14. CDOT provided the final plans showing the construction of flashing lights with gates and bells, and posting of W10-1 railroad crossing advance warning signs at the crossing.

15. CDOT states that the existing traffic volumes on the I-25 Frontage Road is currently 7,600 vehicles per day (VPD) with an estimated 4 percent trucks and an average of four school buses using the crossing. Traffic volumes on the I-25 frontage road are projected to increase to 9,300 VPD in 5 years and 15,800 VPD in 20 years. CDOT estimates that approximately two trains per day use the crossing at a maximum time table speed of 35 miles per hour with no anticipated increases or decreases known at this time.

16. CDOT estimates the cost of the project at \$7,375,000 with the cost for the project being funded through the North I-25 Express Lanes Project. This project includes the at-grade crossing and the new bridge structure over I-25 previously approved by the Commission.

17. CDOT proposes to start construction of the at-grade crossing in January 2021 with completion by March 2021.

C. Conclusions

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

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

20. 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.

21. We require that CDOT file a copy of the signed Construction and Maintenance Agreement for the at-grade crossing by January 31, 2021 prior to the start of construction.

22. CDOT shall inform the Commission in writing when the bridge construction is complete and operational within ten days of completion. The Commission will expect this letter on or before March 31, 2021.¹

23. CDOT 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

¹ 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 March 31, 2021, CDOT should inform the Commission through an appropriate filing if delays are anticipated or significant.

concurrent with notice to the Commission of completion of the crossing work initially expected by March 31, 2021.

24. In the event there are delays in providing the signed Construction and Maintenance Agreement, CDOT shall file a supported motion for extension of time upon conferral with GWR. Parties are 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.,² 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 second amended application filed by the Colorado Department of Transportation (CDOT) on October 30, 2020, seeking final authority to upgrade the existing active warning crossing of the Great Western Railway Company of Colorado (GWR) with the Interstate 25 (I-25) Frontage Road, just adjacent to the I-25 grade separation, from flashing lights with bells to flashing lights, gates, and bells, National Inventory No. 872120X, near the City of Loveland, County of Larimer, State of Colorado is granted for the at-grade crossing.

² 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.

2. CDOT is authorized and ordered to proceed with the removal of flashing lights with bells and installation of flashing lights with gates and bells at the crossing of the I-25 Frontage road with GWR in Loveland, Colorado.

3. CDOT shall file a copy of the signed Construction and Maintenance Agreement with the GWR for the bridge structure by January 31, 2021 with construction work at the crossing not expected to begin until these signed agreements are filed.

4. CDOT is required to inform the Commission in writing that the at-grade construction changes are complete and operational within ten days of completion by March 31, 2021.

5. CDOT 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 by the end of the at-grade project on March 31, 2021.

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
November 18, 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