

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0325R

IN THE MATTER OF THE APPLICATION OF COLORADO PACIFIC RIO GRANDE RAILROAD FOR AUTHORITY TO CHANGE A GRADE CROSSING FROM PASSIVE WARNING TO CLOSED AT FRANKLIN ST, NEAR MONTE VISTA, RIO GRANDE COUNTY, STATE OF COLORADO.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Issued Date: September 26, 2024

Adopted Date: September 25, 2024

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application (“Application”) filed by Colorado Pacific Rio Grande Railroad LLC (“CXRG”) on July 30, 2024, requesting authority to close the at-grade crossing at Franklin Street, in the City of Monte Vista (“Monte Vista”), at CXRG railroad milepost 268.73 by removal of the road and passive warning signs, National Inventory No. 253885P, in Monte Vista, County of Rio Grande, 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 August 14, 2024.

3. On August 14, 2024, CXRG provided the affidavit of Luke Porter of the posting of the notice of proposed closure at the at-grade crossing.

4. There were no interventions filed in this matter.

5. The Commission reviewed the record in this matter and deems the Application complete within the meaning of § 40-6-109.5, C.R.S.

6. Now being fully advised in the matter, we grant the Application.

B. Findings of Fact

7. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application. No public comments were filed regarding the Application.

8. CXRG requests authority to abolish the at-grade crossing of Franklin Street with the tracks of CXRG in Monte Vista, Colorado. Closure will involve removal of the road, and passive warning signs. CXRG and Monte Vista are working together to close two at-grade crossings in Monte Vista including Franklin Street and Faraday Street. CXRG desires to eliminate the Franklin Street railroad at-grade crossing because it wants to incorporate the short section of Franklin Street lying to the north of the CXRG main track, connecting to US 160, into its existing City Park and use that paved area for Park parking. Monte Vista will erect a fence along the north side of the railroad roadbed, connecting to existing park fences.

9. Most recent traffic volumes for Franklin Street at the subject crossing is 100 vehicles per day (“VPD”) and no heavy vehicles or school buses use the crossing. There are currently two trains per day that use the crossing at a maximum timetable speed of 15 MPH.

10. CXRG estimates the cost of the closure of the Franklin Street at-grade crossing to be \$5000 and will bear all costs associated with the removal of the at-grade crossing.

C. Discussion

11. Subsections 40-4-106(1)(a),¹ 40-4-106(2)(a),² and 40-4-106(3)(a)(I),³ C.R.S., *both* provide the jurisdictional basis for the Commission to act on applications to abolish railroad crossings *and* establish the standard to be applied to such applications. *Hassler and Bates Company v. Public Utilities Commission*, 168 Colo. 183, 451 P.2d 280 (1969) (interpreting predecessor statutes with substantially identical language to current statutes). Based on the statutory language and the Colorado Supreme Court's interpretation, the standard to be applied in this case is: will abolishing (that is, closing) the Franklin Street crossing serve to prevent accidents and promote public safety; and, if so, are there just and reasonable conditions and terms which the Commission ought to attach to the closing?

12. Using the most recently available information, the exposure factor (number of trains per day multiplied by the number of VPD at Franklin Street is 200. Most recent traffic volumes for the crossing closest to the subject crossing to the west is 500 VPD for Jefferson Street. The exposure factor for this crossing is 1000. Most recent traffic volumes for the crossing closest to the subject crossing to the east is 50 VPD for Lyell Street Road. The exposure factor for this crossing is 100.

¹ As pertinent here, that subsection grants the Commission the "[power to make] special orders ... [or otherwise] to require each public utility to maintain and operate its ... tracks, and premises in such manner as to promote and [to] safeguard the health and safety of ... the public and to require the performance of any other act that the health or safety of its employees ... or the public may demand."

² As pertinent here, that subsection grants the Commission the "power ... to determine, [to] order, and [to] prescribe the terms and conditions of installation and operation, maintenance, and warning at all such crossings that may be constructed, including ... the installation and regulation of ... means or instrumentalities as may to the commission appear reasonable and necessary to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted."

³ As pertinent here, that subsection grants the Commission the "power ... to order any crossing constructed at grade ... to be ... abolished, according to plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the commission[.]"

13. Using this data the hazard index for the existing conditions (approximately two trains per day), as the calculation is outlined in the 1974 Colorado State Highway Railroad Grade Crossing Data book, is 0.6 for the Franklin Street crossing under the current configuration of crossbucks with yield signs, 0.51 for the Lyell Street crossing under the current configuration of crossbucks with yield signs, and 0.92 for the Jefferson Street crossing under the current configuration of crossbucks with yield signs. The hazard index is the probable number of accidents expected to occur in a five-year time period. The cumulative hazard index for the three crossings is 2.03.

14. To analyze the hazard indices if the Franklin Street crossing was to be abolished, we will look at three scenarios: Scenario 1 would involve half of the traffic from the Franklin Street crossing moving to the Lyell Street crossing and the other half moving to the Jefferson Street crossing. Scenario 2 would involve all traffic from the Franklin Street crossing moving to the Lyell Street crossing and Scenario 3 would involve all traffic from the Franklin Street crossing moving to the Jefferson Street crossing. In looking at the scenarios in this proceeding, we look at what the future cumulative hazard indices would be with Franklin Street crossing being closed. In all three scenarios the hazard index for Franklin Street decreases to zero. Under Scenario 1, the hazard index for Lyell Street crossing increases to 0.6 and the hazard index for Jefferson Street remains at 0.92 if half the traffic moves to each crossing. The cumulative hazard index for scenario one is 1.52. Under Scenario 2, the hazard index for Lyell Street crossing increases to 0.66 and the hazard index for Jefferson Street remains the same at 0.92 if all the Franklin Street traffic moves to Lyell Street. The cumulative hazard index for Scenario 2 is 1.58. Under Scenario 3, the hazard index for Lyell Street crossing remains the same at 0.51 and the hazard index for Henderson Road increases to 0.96 if all the Franklin Street

traffic moves to Henderson Road. The cumulative hazard index for Scenario 3 is 1.47. In all scenario calculations, the total number of accidents expected to occur in a five-year time period with the removal of the Franklin Street crossing is reduced with the closure of the crossing. Therefore, the overall risk of crossing accidents at the remaining crossings decreases since the exposure occurs now at only two crossings as opposed to three crossings.

15. It is our principal function in this proceeding to determine whether the Franklin Street crossing should be abolished in order to prevent accidents and to promote public safety. Our decision is predictive out of necessity because we are dealing with prevention of accidents and promotion of public safety when the crossings are abolished in the future. While we cannot predict with absolute certainty and accuracy what may happen in the future, we have to make the best judgment possible based on the data available.

16. Based on our analysis, with the reduction in the number of crossings to which vehicles are exposed to potential train collisions and a reduction in the cumulative hazard index with the closure of the Franklin Street crossing, we find that closure of the Franklin Street crossing will serve to prevent accidents and promote public safety and find that the Franklin Street crossing should be abolished.

17. CXRG proposes to start the work on approval of the application and anticipates being complete with the work by December 31, 2024. CXRG will be required to inform the Commission in writing that all work is complete within ten days of completion. The Commission will expect this letter no later than December 31, 2024. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

18. The National Inventory Forms will need to be updated to show the at-grade crossing as closed. The updated form for this at-grade crossing in this proceeding will need to be filed in this proceeding by CXRG by December 31, 2024

D. Conclusions

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

20. No interventions were filed in this matter.

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

22. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety and necessity are met by granting CXRG's Application to abolish the Franklin Street crossing consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. The Application ("Application") filed by Colorado Pacific Rio Grande Railroad LLC ("CXRG") on July 30, 2024, requesting authority to close the at-grade crossing at Franklin Street, at CXRG railroad milepost 268.73, by removal of the road and passive warning equipment, National Inventory No. 253885P, in the City of Monte Vista ("Monte Vista"), County of Rio Grande, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S., and is granted.

2. CXRG is authorized and ordered to proceed with the closure of the at-grade crossing of Franklin Street with the tracks of CXRG in Monte Vista, Colorado by removal of the road and passive warning signs National Inventory No. 253885P.

3. CXRG is required to inform the Commission in writing that the closure is complete within ten days after completion. We shall expect this letter by December 31, 2024. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

4. The National Inventory Form for the subject crossing needs to be updated to show the crossing as closed and CXRG is required to file the updated National Inventory Form in this proceeding by December 31, 2024.

5. 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.

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

7. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 25, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners