

Decision No. R11-0975-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10A-107R

IN THE MATTER OF THE APPLICATION OF THE CITY OF LONGMONT, COLORADO, 80501 FOR AUTHORITY TO MODIFY AND IMPROVE AN EXISTING AT-GRADE CROSSING OF THE BURLINGTON NORTHERN SANTA FE TRACKS ON MARTIN STREET IN LONGMONT, COLORADO.

DOCKET NO. 11A-404R

IN THE MATTER OF THE APPLICATION OF THE CITY OF LONGMONT, COLORADO, FOR AUTHORITY TO INSTALL MEDIANS, RAILROAD CROSSING SIGNALS AND ACTIVATION EQUIPMENT AT THE CROSSING OF THE BURLINGTON NORTHERN SANTA FE TRACKS ON MARTIN STREET IN LONGMONT, COLORADO.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
REGARDING PREHEARING CONFERENCE AND
SCHEDULING FURTHER PREHEARING CONFERENCE**

Mailed Date: September 20, 2011

I. STATEMENT

1. On March 5, 2010, the City of Longmont (Longmont or City) filed its application in Docket No. 10A-107R seeking authority to widen the existing at-grade crossing of Martin Street with the BNSF Railway Company (BNSF), National Inventory No. 057133C located in Longmont, Boulder County, Colorado.

2. By Decision No. C10-0383, issued April 23, 2010, the Commission granted Longmont authority to widen the crossing of Martin Street in Docket No. 10A-107R pursuant to conditions expressed in the decision and the plans and specifications approved by the Commission.

3. On May 6, 2011, Longmont filed its application in Docket No. 11A-404R requesting authority to install medians, and new active warning signals at the existing at-grade crossing of Martin Street with the BNSF tracks at railroad milepost 37.68 on the Front Range Subdivision, National Inventory Crossing ID No. 057133C, in the City of Longmont, County of Boulder, State of Colorado.

4. By Decision No. C11-0686, issued June 23, 2011, the Commission informed the parties that substantial differences between the plans approved in Docket No. 10A-107R and the pending application need to be explored and resolved.

5. By Decision No. C11-0974, issued on September 9, 2011, Docket Nos. 10A-107R and 11A-404R, were consolidated and referred to the undersigned administrative law judge who had previously been referred Docket No. 11A-404R.

6. Longmont and BNSF are the only parties to this proceeding.

7. On August 17, 2011, correspondence was mailed to the Commission enclosing a revised "Martin Street Railroad Signal Median plan to replace the median plan that was attached to our PUC application." The correspondence was not signed or filed by counsel and was not served in accordance with Rule 1205, Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

8. By Decision No. R11-0958-I, issued September 6, 2011, a prehearing conference was scheduled in this matter and parties were informed of specific issues that would be addressed during the conference.

9. On September 8, 2011, the City of Longmont & BNSF Company Crossing Surface Installation Agreement and Revised Application was filed. The pleading attaches a

draft agreement proposed to the BNSF, but which is not signed by BNSF. The filing also includes a “revised application.”

10. On September 13, 2011, the City of Longmont - Revised Application and Response to Questions Raised by the PUC was filed. Written responses were filed addressing issues identified in Decision No. R11-0958-I. A revised application was attached including modifications to medians.

11. On September 16, 2011, Additional Response to Questions of the PUC and Request for Approval of Revised Application was filed. Among other things, the filing included an executed Construction and Maintenance Agreement, indicating BNSF’s approval of plan revisions.

12. At the scheduled time and place, the prehearing conference was convened. All parties appeared and participated through counsel.

13. The undersigned ALJ initially expressed frustration regarding the status of the proceeding. The ALJ distributed an aerial image of the crossing dated on or about May 4, 2011, and inquired whether the parties agreed that the picture was an accurate depiction of the crossing. Longmont confirmed the accuracy while BNSF was unable to do so because the site had not been recently visited.

14. By Decision No. C10-0383, the Commission ordered that “Longmont shall file a signed copy of the Construction and Maintenance Agreements by May 31, 2010 prior to starting the surface work at the crossing.” Decision No. C10-0383 at 5.

15. A copy of the plans for the crossing approved by Decision No. C10-383 were marked as Exhibit 2.

16. It is clear that both parties made modifications to the crossing. Yet, no party offered an adequate explanation as to why modifications were made to the railroad crossing before the filing of an executed construction and maintenance agreement.

17. Next, the current view of the crossing was compared to the plans and specifications approved by the Commission. Discussion made clear that modifications constructed to the crossing do not conform to the plans and specifications approved by the Commission.

18. The comparative view also appears to indicate only two BNSF tracks now cross Martin Street despite the fact that three tracks appear in the approved plans and specifications. *See Exhibit 2.*

19. Counsel for BNSF acknowledged the appearance that a track was removed, but could not explain why. Counsel could not point to any Commission decision authorizing and approving plans and specifications affecting removal of a third track.

20. Next, the undersigned addressed the appearance in Exhibit 1 that the sidewalk constructed varies from the approved plans and specifications. Counsel for Longmont acknowledged the disparity.

21. No adequate explanation was offered as to why Longmont failed to construct the improvements in accordance with the approved plans and specifications, or why a request was not made to modify those plans and specifications. Counsel could not point to any Commission decision authorizing and approving plans and specifications consistent with the depiction of the crossing appearing in Exhibit 1.

22. The construction and maintenance agreement filed includes the plans and specifications in Exhibit 3, which is the original plan filed as part of the Application in 11A-404R.

23. Counsel for Longmont then provided Exhibit No. 6, an excerpt from the filing of September 16, 2011, as the City's latest version proposed to be constructed pursuant to the application filed in 11A-404R.

24. Addressing Exhibit 6, the undersigned inquired whether Longmont proposed a continuous sidewalk through the railroad crossing along the west side of Martin Street. Longmont maintains that Exhibit 6 depicts a continuous walkway. Except as depicted in Exhibit 6, the westernmost boundary of the existing sidewalk is not proposed to change by approval of the application. There will be a continuation of a concrete walking surface across the tracks with the proposed sidewalk modifications. The sidewalk will permit continuous travel via an eight foot "jog" where pedestrians will walk parallel along the railroad crossing panels to return to the currently constructed sidewalk.

25. Next discussion turned to confirming that Martin Street has one northbound and two southbound travel lanes. Exhibit 6 was then reviewed to understand the proximity of the roadway edge to the proposed signals and gates.

26. The filed construction and maintenance agreement was discussed further. The parties will further review the agreement to determine whether it covers the scope of relief requested in Docket No. 10A-107R, Docket No. 11A-404R, or both, as well as the plans and specifications referenced therein.

27. After expressing concerns arising from Docket No. 10A-107R, Docket No. 11A-404R, and the status of the Commission's decisions, the parties were asked how they proposed to proceed.

28. BNSF counsel explained that the matter would be reviewed as to the number of tracks crossing Martin Street. Upon verification, an application will be filed in the next few days requesting appropriate relief.

29. Because a general consensus remains as to Longmont's requested relief, neither requested that a hearing be scheduled at this point. In order to permit BNSF to file the anticipated application, and for the Commission to consider appropriate notice periods, a further prehearing conference will be ordered below. In the meantime, parties will have a further opportunity address the merits of the proceeding as well. In the event BNSF should not file the anticipated application by September 23, 2011, appropriate timing for the next conference may be reconsidered.

30. Next, Longmont requested authorization to construct medians as depicted in Exhibit 6. BNSF was not in a position to respond to the requested relief. Procedurally, the request was viewed as an oral motion to bifurcate requested approval for construction of medians, as depicted in Exhibit 6, from the remainder of the application. In order to ensure understanding of the City's request and to permit BNSF an opportunity to respond, Longmont will reduce the motion to writing and file the same.

31. The ALJ *sua sponte*, shortened response time to the referenced motion to two days, without objection after conferral with BNSF counsel, as ordered below.

II. ORDER

A. It Is Ordered That:

1. The City of Longmont (Longmont) shall reduce to writing the oral motion to bifurcate requested approval for construction of medians, as depicted in Exhibit 6, from the remainder of the application and file the same with the Commission.

2. Response time to the written motion to be filed is shortened to two business days.¹

3. Any party desiring to file a response to Longmont's oral motion to bifurcate requested approval for construction of medians, as depicted in Exhibit 6, from the remainder of the application, shall file the same before the close of business two business days after filing of the written motion.

4. A prehearing conference in this docket is scheduled as follows:

DATE: October 21, 2011
TIME: 8:30 a.m.
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

¹ If the written motion is filed as anticipated on September 19, 2011, response time shall expire at the close of business on September 21, 2011.

5. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director