

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0263R

IN THE MATTER OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO AND
THE COLORADO DEPARTMENT OF TRANSPORTATION FOR AUTHORITY TO
REMOVE THE AT-GRADE SIDING TRACK CROSSING AND MODIFY SIGNALS AT TWO
LOCATIONS, WEST 120TH AVENUE AND NICKEL STREET CROSSING OVER THE
TRACKS OF THE BNSF AT LINE SEGMENT 476, ON THE FRONT RANGE
SUBDIVISION.

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

Mailed Date: May 16, 2014
Adopted Date: May 14, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed jointly by the City and County of Broomfield (Broomfield) and the Colorado Department of Transportation (collectively, Joint Applicants) on March 26, 2014, requesting authority to remove the siding track and modify the active warning devices at the crossings of the BNSF Railway Company (BNSF) with West 120th Avenue, National Inventory No. 244791P, and Nickel Street, National Inventory No. 089385S, in Broomfield, State of Colorado.

2. The Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S. The Notice was mailed April 1, 2014.

3. On April 30, 2014, BNSF filed an Entry of Appearance and Notice of Intervention as of Right. BNSF does not object to the proposed changes at the subject crossing, but

does object to Broomfield's statement that BNSF would be required to follow Broomfield's permitting process. BNSF claims that Broomfield is preempted by federal law from permitting processes for railroad track work on railroad right-of-way. BNSF does state that such work would be coordinated with the jurisdiction having authority for traffic control during the time when BNSF would perform the track removal work.

4. On May 6, 2014, Broomfield filed an Amendment to its Application removing the requirement that BNSF comply with Broomfield's standard permitting processes.

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

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

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

B. Findings of Fact

8. The Commission gave notice to all interested parties, including the adjacent property owners. No interventions were received opposing the Application.

9. The Joint Applicants seek authority to alter the existing at-grade crossings of the BNSF with West 120th Avenue and Nickel Street in Broomfield. The Joint Applicants request authority to remove the existing siding track through these two crossings, and modify the existing at-grade active warning devices to install new warning devices and move the location of the flashing light and gate mechanisms to accommodate a single track through each of the crossings. Through a separate project, BNSF will be constructing a new siding west of the existing siding. This new siding will not be located through any existing at-grade crossings and will eliminate the need for the siding tracks through the two subject crossings.

10. The Joint Applicants state that there are currently 5,730 vehicles per day (VPD) using the crossing at West 120th Avenue with growth projected to be reduced to 5,000 VPD after the 120th Avenue Connection Project is complete. The Joint Applicants also state that there are currently 6,526 VPD using the Nickel Street crossing with projections for growth to 7,250 VPD in the future. There are currently eight daily train movements through the crossing at a maximum timetable speed of 49 miles per hour with no projections for an increase or decrease in use in the near future.

11. The Joint Applicants state that grade separations at these locations are not practicable due to insufficient room to construct grade separations without having to completely redesign roads and acquire significant right-of-way, would create issues maintaining access to existing businesses, and lack of funding for such projects.

12. The Joint Applicants state that the cost of the projects is estimated at \$224,317 for the West 120th Avenue crossing and \$406,076 for the Nickel Street crossing with BNSF being reimbursed for eligible costs per the Construction and Maintenance Agreement.

13. The Joint Applicants propose to start work in the spring of 2014 and be complete by the summer of 2014. The Joint Applicants will be required to inform the Commission in writing that all of the roadway, track, signal, and civil work are complete and operational within ten days of completion. The Commission will expect this letter no later than September 30, 2014. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule. Broomfield will also be required to file a signed copy of the Construction and Maintenance Agreement for this crossing prior to starting work at the crossing. We will expect this signed agreement to be filed no later than June 30, 2014. Finally, we will require BNSF to update the crossing inventory form for this

crossing showing the crossing changes and to file a copy of the updated U.S. DOT crossing inventory form in this proceeding by September 30, 2014.

C. Conclusions

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

15. No intervenor that filed a petition to intervene or other pleading contests or opposes the construction of the new crossing and active warning equipment.

16. 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.

17. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety and necessity are met by granting the Application consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed jointly by the City and County of Broomfield (Broomfield) and the Colorado Department of Transportation (collectively, Joint Applicants) on March 26, 2014 as amended on May 6, 2014, requesting authority to remove the siding track and modify the active warning devices at the crossings of the BNSF Railway Company (BNSF) with West 120th Avenue, National Inventory No. 244791P, and Nickel Street, National Inventory No. 089385S, in Broomfield, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Entry of Appearance and Notice of Intervention of BNSF is noted.

3. The Application as amended is granted.
4. The Joint Applicants are authorized and ordered to proceed with removal of the siding track through the crossings of West 120th Avenue and Nickel Street, and replace the active warning devices for the single track configurations at each crossing with the BNSF in Broomfield, Colorado.
5. The Joint Applicants are required to file a copy of the signed Construction and Maintenance Agreement by June 30, 2014 prior to starting construction.
6. The Joint Applicants are required to inform the Commission in writing that the crossing changes are complete and operational within ten days after completion. We shall expect this letter by September 30, 2014. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.
7. BNSF is required to update the U.S. DOT inventory forms showing the crossing changes and to file a copy of the updated form in this proceeding by the end of construction on September 30, 2014.
8. 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.
9. The Commission retains jurisdiction to enter further decisions as necessary.
10. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 14, 2014.**

(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

PAMELA J. PATTON

GLENN A. VAAD

Commissioners

CHAIRMAN JOSHUA B. EPEL
ABSENT.