

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 12A-705R

IN THE MATTER OF THE APPLICATION OF THE TOWN OF WELLINGTON,
COLORADO FOR AUTHORITY TO CONSTRUCT AND OPERATE AN AT-GRADE
CROSSING AT WASHINGTON AVENUE IN THE TOWN OF WELLINGTON, COUNTY OF
LARIMER, STATE OF COLORADO.

**COMMISSION DECISION DENYING MOTION TO
COMPEL COMPLIANCE AS MOOT**

Mailed Date: September 19, 2014
Adopted Date: September 17, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Motion for Review and for Order to Compel Compliance (Motion) filed by the Town of Wellington (Wellington) on August 12, 2014, requesting the Commission compel compliance of the BNSF Railway Company (BNSF) to complete the crossing work at the Washington Avenue (Larimer County Road 64) crossing as required by Decision No. R12-1332 mailed November 14, 2012.

2. As grounds for the Motion, Wellington states that BNSF has made repeated assurances to Wellington relative to construction schedules and completion of projects with the most recent assurance that work would be completed by July 2014. Wellington states that at the time of the filing of the Motion, work had not been completed, and to the best of Wellington's knowledge, work had not been scheduled to be completed by BNSF. Wellington seeks an order from the Commission compelling completion of the ordered work.

3. On August 20, 2014, BNSF filed a Response the Motion for Review and for Order to Compel Compliance (Response). BNSF's Response stated that work to complete the project consisting of new track panels, concrete pads, and surfacing had been scheduled for the week of August 25, 2014 with completion of the project scheduled to occur before August 31, 2014. BNSF also states that the signal work at the project site was completed and in service around May or June of 2013.

4. On August 29, 2014, BNSF filed a Supplemental Response to Motion for Review and for Order to Compel Compliance stating that the crossing surface was replaced at the subject crossing on August 28, 2014 and that the surfacing and paving should be completed on August 29, 2014.

5. No further filings were received from Wellington on this matter.

6. Now being fully advised in the matter, given that the work that Wellington was requesting an order from the Commission to compel has been completed, the Motion becomes moot and will be denied as such.

7. We remind Wellington that pursuant to ordering paragraph 5 of Decision No. R12-1332, Wellington is required to inform the Commission in writing that the project is complete within ten calendar days of completion of the project. We will expect Wellington to make this filing forthwith.

8. We also remind BNSF that pursuant to ordering paragraph 6 of Decision No. R12-1332, BNSF is required to file a copy of the updated US DOT Inventory form for the subject crossing that reflects the changes made to the crossing. We will expect BNSF to make this filing forthwith.

II. ORDER

A. The Commission Orders That:

1. The Motion for Review and for Order to Compel Compliance filed by the Town of Wellington on August 12, 2014 is denied as moot consistent with the above discussion.
2. The Town of Wellington shall forthwith make its compliance filing with the Commission of the completion report required by Decision No. R12-1332 as the project has been complete for greater than ten days.
3. The BNSF Railway Company shall forthwith make its compliance filing with the Commission of a copy of the updated US DOT Inventory form for the subject crossing reflecting the changes made to the crossing as required by Decision No. R12-1332.
4. The Commission retains jurisdiction to enter further decisions in this matter as necessary.
5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 17, 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

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners