

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

Proceeding No. 19A-0042R

IN THE MATTER OF THE APPLICATION OF BNSF RAILWAY COMPANY FOR EMERGENCY AUTHORITY TO REMOVE THE EASTERNMOST TRACK AND RELOCATE THE CANTILEVER SIGNAL AT THE 56TH AVENUE CROSSING (U.S. DOT NO. 057050N) IN THE CITY OF COMMERCE CITY, ADAMS COUNTY, STATE OF COLORADO.

**JOINT NOTICE OF CERTAIN STIPULATIONS BETWEEN THE PARTIES; JOINT
NOTICE OF SETTLEMENT, AND JOINT MOTION TO VACATE HEARING**

The parties, by and through their undersigned counsel, submit this Joint Motion Notice of Certain Stipulations Between the Parties; Joint Notice of Settlement; and Joint Motion to Vacate Hearing, as follows:

RELEVANT PROCEDURAL HISTORY

1. Applicant BNSF Railway Company (“BNSF”) filed its Emergency Application to Remove Easternmost Track and Relocate the Cantilever Signal at 56th Avenue Crossing (U.S. DOT No. 057050N) on January 14, 2019 (“Application”).
2. In its Application, BNSF requested less than statutory notice of five days given the nature of and need for the work.
3. In Decision No. 19-0067, the Public Utilities Commission (“Commission”) granted BNSF’s request for less than statutory notice of five days.
4. On January 22, 2019, Commerce City, Colorado (the “City”) intervened as a matter of right pursuant to Rule 1401.

5. The City's intervention and objection concerned the allocation of costs for asphalt paving work required for the project. BNSF's Application specified it would cover all other costs for the project.

6. The only basis of the City's intervention and objection was concerning cost allocation to the City for asphalt paving work.

7. No other parties intervened.

8. By Interim Decision No. 19-0111, an evidentiary hearing on this matter is presently set for February 21, 2019 at 9 A.M. at the Commission's Denver offices.

**NOTICE OF CERTAIN STIPULATIONS BETWEEN THE PARTIES AND
SETTLEMENT**

9. The parties have been actively negotiating a mutually agreeable resolution of the issue of costs related to asphalt paving.

10. The parties now agree that the City shall be responsible for asphalt paving costs associated with the project described in BNSF's application up to thirty thousand dollars and no cents (\$30,000.00).

11. The parties agree that the City will perform or cause to be performed the asphalt paving work necessary for the project described in BNSF's Application.

12. The parties agree that they will work cooperatively and in good faith to reimburse the City for any asphalt paving costs associated with the project as described in BNSF's Application to the extent such costs exceed \$30,000.00.

13. The parties agree that they will work cooperatively and in good faith to coordinate the work proposed in the Application, taking into account the availability of the City's contractors and weather.

14. The City stipulates and agrees that its appearance and intervention may be treated as withdrawn pursuant to the stipulations set forth herein.

JOINT MOTION TO VACATE HEARING

15. Pursuant to the stipulations set forth herein, the parties respectfully request that the Commission grant BNSF's Application as modified by the stipulations set forth herein.

16. Per the parties' settlement agreement reflected in the stipulations set forth herein, the parties jointly request that the evidentiary hearing presently set for February 21, 2019, and all associated deadlines, be vacated.

17. The evidentiary hearing is no longer necessary per the parties' settlement agreement, as reflected in the stipulations herein. Good cause exists to vacate the evidentiary hearing, and no party will be prejudiced by doing so.

18. Given the joint nature of this motion, the parties respectfully request that the Commission waive any response pursuant to Rule 1400(b).

CONCLUSION

For the foregoing reasons, the parties respectfully request that: (1) the City's appearance and intervention be treated as withdrawn; (2) BNSF's Application be granted as modified by the stipulations set forth herein; (3) the evidentiary hearing presently set for February 21, 2019 be vacated; and (4) any response to this joint notice and motion be waived.

Respectfully submitted this 19th day of February, 2019.

HALL & EVANS, L.L.C.

By: /s/Cash K. Parker

Cash K. Parker, #40158
M. Kelly Ledoux, #49946
1001 17th Street, Suite 300
Denver, CO 80202
Telephone: (303) 628-3300
Facsimile: (303) 628-3368
Email: parkerc@hallevans.com
ledouxk@hallevans.com

Attorneys for BNSF

CITY OF COMMERCE CITY

By: /s/Robert Sheesley

Robert Sheesley, #47150
City Attorney's Office
City of Commerce City
Commerce City, CO 80022
Telephone: (303) 289-3604
Email: rsheesley@c3gov.com

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of February, 2019, a true and correct copy of the foregoing was filed electronically with the Colorado Public Utilities Commission and served all parties of record:

/s/Rochelle Gurule
Rochelle Gurule, Legal Assistant