

Decision No. R19-0483-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0530R

IN THE MATTER OF THE APPLICATION OF BOULDER COUNTY, FOR AUTHORITY TO INSTALL 4-QUADRANT RAILROAD GATES WITH FLASHING LIGHTS, BELLS, CONSTANT WARNING TIME CIRCUITRY, AND RAILROAD SIGNAL CABIN, AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING 2ND AVENUE (MAIN STREET), USDOT NO. 244834F, IN BOULDER COUNTY, STATE OF COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ORDERING FILING AND SCHEDULING
PREHEARING CONFERENCE**

Mailed Date: June 7, 2019

I. STATEMENT

1. On August 2, 2018, the County of Boulder (Boulder County) filed an application (Application) seeking preliminary approval of design plans to upgrade the active warning equipment to flashing lights with four-quadrant gates, bells, constant warning time circuitry, and railroad signal cabin; relocate advance warning signs; install pavement markings; and the addition of “No Train Horn” plaques at the existing crossing of 2nd Avenue (Main Street) with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 38.05 on the Front Range Subdivision, National Inventory No. 244834F, near the Town of Niwot, Boulder County, 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 3, 2018.

3. On August 3, 2018, Staff of the Commission sent a deficiency letter to Boulder County regarding missing information from the Application.

4. On August 7, 2018, Boulder County amended the Application to change the Application to seeking preliminary approval of plans and providing the information required in applications for preliminary plans.

5. On September 4, 2018, BNSF filed a Passive Notice of Intervention. BNSF does not contest or oppose the Application.

6. BNSF stated "By this intervention[,] BNSF is not opposing or contesting the granting of the application, but rather indicates to the parties and all interested persons, firms or corporations, that BNSF will participate in any hearing which results from an intervention contesting or objecting to any portion of the application."¹

7. Boulder County and BNSF are the only parties to this proceeding.

8. The Commission may take evidence in uncontested or unopposed proceedings by affidavit or otherwise, without the necessity of a formal oral hearing. § 40-6-109(5), C.R.S.

9. Rule 1403(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 provides:

The Commission may determine any application or petition without a hearing and without further notice, upon either its own motion or upon the motion of a party, if the application or petition is uncontested or unopposed, if a hearing is not requested or required by law, and if the application or petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing. A person having knowledge of the stated facts shall, under oath, sign a sworn statement attesting to the facts stated in the application or petition and any attachments and/or exhibits.

¹ BNSF Intervention at p. 1.

10. By Decision No. C18-0824-I, issued September 18, 2018, the Commission found the Application to be unopposed. Based upon the record, the Commission found that “good cause exists and that the requirements of public safety and necessity are met by approving Boulder County’s preliminary plans.” Decision No. C18-0824-I at 4. The preliminary plans filed by Boulder County were approved. Final design plans were expected to be filed by October 1, 2018.

11. Installation of new active warning devices, replacement of existing active warning devices, or replacement of existing train detection circuitry at crossings were addressed at pages 13 through 14. Detailed plans, estimated costs, calculations for Exit Gate Clearing Time, and a letter of concurrence from Staff of the Public Utilities Commission were provided.

12. Following several extensions of time to file the final design plans and estimate for Commission review and approval, the Commission referred the matter to an Administrative Law Judge (ALJ) for resolution.

13. Decision No. C18-0824-I, has not been modified.

14. In anticipation of any hearing, the undersigned ALJ is setting a prehearing conference in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

II. ORDER

A. It Is Ordered That:

1. On or before June 21, 2019, the BNSF Railway Company must file the cost estimate and schematic diagram consistent with the preliminary plans approved by the Commission in Decision No. C18-0824-I.

2. A prehearing conference in this proceeding is scheduled as follows:

DATE: June 24, 2019
TIME: 10:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

3. This Decision 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