

Decision No. R19-0571-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
SCHEDULING HEARING AND
ESTABLISHING PROCEDURAL SCHEDULE**

Mailed Date: July 9, 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 information missing from the Application.

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

5. Rule 7204(a) of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7, allows applications to be filed seeking preliminary approval of conceptual level design plans/drawings (plans at any level other than final design). If an application requests preliminary approval, then an additional filing of final plans and estimates for final Commission approval will be required in the same proceeding. Rule 7204(a).

6. On September 4, 2018, BNSF filed a Passive Notice of Intervention. BNSF does not contest or oppose the Application. 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. Boulder County included information required by Rule 7204(a)(X) and (XI) at pages 13 and 14 of the Application for installation of new active warning devices, replacement of existing active warning devices, or replacement of existing train detection circuitry at crossings. Detailed plans, estimated costs, and calculations for Exit Gate Clearing Time, as well as a letter of concurrence from Staff of the Public Utilities Commission were provided.

¹ BNSF Passive Notice of Intervention at p. 1.

9. By Decision No. C18-0824-I, issued September 18, 2018, the Commission found that the Application was unopposed and 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. Decision No. C18-0824-I, has not been modified and constitutes the law of the case.

10. By Decision No. C19-0457-I, issued June 3, 2019, the Commission referred the matter to an Administrative Law Judge (ALJ) for disposition.

11. By Decision No. R19-0483-I, issued June 7, 2019, a prehearing conference was scheduled for June 24, 2019. At the scheduled time and place, the prehearing conference was convened. All parties participated and appeared through counsel. Based upon discussions during the conference, and the filing of BNSF’s objection on July 5, 2019, a procedural schedule will be established as stated and as memorialized below.

12. The hearing in this matter will be conducted simultaneously with the hearing in Proceeding No. 18A-0532R on a common record. Conducting the consolidated hearing on a common record is solely for purposes of administrative and procedural efficiency. It does not make all parties in each proceeding a party to all proceedings for all purposes, as is customary when entire proceedings are consolidated. The evidence admitted at hearing will be given appropriate weight in each of the respective proceedings.

13. **Parties are advised** that no witness will be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served in accordance with the procedural schedule. **Parties are advised further** that no exhibit will be received in evidence, except in rebuttal, unless filed and served in accordance with this Decision.

14. **All parties are advised** that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1, Part 1. The ALJ expects the parties to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>) and in hard copy from the Commission.

15. Each party is specifically reminded that all filings with the Commission must also be served upon all other parties in accordance with *Rule 1205 of the Rules of Practice and Procedure*, 4 CCR 723-1.

II. **ORDER**

A. **It Is Ordered That:**

1. A hearing in this matter is scheduled as follows:

DATES: September 16 and 17, 2019

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. The hearing in this matter will be conducted simultaneously with the hearing in Proceeding No. 18A-0532R on a common record, consistent with the discussion above.

3. The County of Boulder shall file its list of witnesses, a summary of the testimony that the witness is expected to give, and complete copies of the exhibits that it will offer in its direct case no later than July 26, 2019.

4. BNSF Railway Company shall file its list of witnesses, a summary of the testimony that the witness is expected to give, and complete copies of the exhibits that it will offer in its case no later than August 16, 2019.

5. 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