

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0636R

IN THE MATTER OF THE APPLICATION OF THE CITY OF LOUISVILLE FOR
AUTHORITY TO INSTALL APPROACH RAILROAD GATES WITH FLASHING LIGHTS,
BELLS, CONSTANT WARNING TIME CIRCUITRY, NEW SIGNAL CABIN, AND
UPGRADED MEDIAN POST-MOUNTED FLASHERS AT TRACKS OWNED BY
BNSF RAILWAY COMPANY CROSSING DILLON ROAD, USDOT NO. 244798M, IN
BOULDER COUNTY, STATE OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING UNOPPOSED AMENDED APPLICATION**

Mailed Date: July 29, 2019

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I. STATEMENT

1. On September 17, 2018, the City of Louisville (Louisville) filed an application seeking preliminary approval of design plans to upgrade the active warning equipment to flashing lights with entrance gates, bells, constant warning time circuitry, and railroad signal cabin; relocate advance warning signs; install pavement markings; extend the median on the west side; interconnection with and preemption of the traffic signal at Pierce Avenue and Dillon Road; and the addition of “No Train Horn” plaques at the existing crossing of Dillon Road with the

tracks of the BNSF Railway Company (BNSF) at railroad milepost 18.35 on the Front Range Subdivision, National Inventory No. 244798M, in Louisville, County of Boulder, 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 September 20, 2018.

3. On September 24, 2018, Louisville amended the Application to change the Application to seeking preliminary approval of plans and providing the information required in applications for preliminary plans.

4. On October 22, 2018, BNSF filed a Passive Notice of Intervention. 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

5. By Decision No. C18-0974-I mailed November 5, 2018, the Commission deemed the Application complete and approved the preliminary design plans, and required Louisville to file the final design plans for Commission review and approval by December 1, 2018.

6. On November 30, 2018, Louisville filed a Motion for Extension of Time requesting additional time to March 1, 2019 to file the final design plans and estimate for Commission review and approval.

¹ BNSF Intervention at p. 1.

7. By Decision No. C18-1171-I mailed December 26, 2018, the Commission granted the Motion for Extension of Time and allowed Louisville until March 1, 2019 to file the final design plans and estimate for Commission review and approval. In this decision, the Commission stated that BNSF was required to provide the cost estimate and schematic diagram to Louisville for the project no later than February 15, 2019 to provide Louisville time to review and file the railroad estimate and schematic diagram in this proceeding for Commission review and approval. If BNSF did not provide the cost estimate and schematic diagram to Louisville by February 15, 2019, BNSF was expected to file an affidavit with the Commission from a person with authority explaining why BNSF had been unable to provide a timely estimate and schematic diagram to Louisville in this matter.

8. On February 28, 2019, Louisville filed a second Motion for Extension of Time requesting additional time to April 1, 2019 to file the final design plans and estimate for Commission review and approval.

9. On March 20, 2019, BNSF filed a Notice of Provided Signal Estimate and Schematic and Need for Revised Preemption Time.

10. By Decision No. C19-0266-I mailed March 26, 2019, the Commission determined that it would hear this matter *en banc*.

11. By Decision No. C19-0287-I mailed March 28, 2019, the Commission granted Louisville's Motion for Extension of Time granting Louisville until April 1, 2019 to file the final design plans for Commission review and approval.

12. On April 1, 2019, Louisville filed a Motion to Request Commission Relief with Regard to BNSF's Provision of Signal Estimate and Schematic Diagram with Modified Advance Preemption Calculation. In its motion, Louisville requested the Commission's assistance in

obtaining an estimate for the requested 25 seconds of preemption time contained with Louisville's Application.

13. On April 15, 2019, BNSF filed a Motion for Extension of Time to respond to Louisville's Motion of April 1, 2019.

14. By Decision No. C19-0343-I mailed April 19, 2019, the Commission granted BNSF's Motion for Extension of time to April 22, 2019 to respond to Louisville's Motion of April 1, 2019.

15. On April 22, 2019, BNSF filed a response to Louisville's Motion for Extension of Time requesting that Louisville either amend its Application to change its requested advance preemption time to 20 seconds or requesting a status conference in this matter.

16. By Decision No. C19-0398-I mailed May 7, 2019, the Commission scheduled a status conference in this matter for May 24, 2019.

17. By Decision No. C19-0429-I mailed May 23, 2019, the Commission vacated the status conference, required additional information from BNSF, referred this matter to an Administrative Law Judge (ALJ), and directed that the parties may file an affidavit regarding transfer of the role of the rail expert in this matter.

18. On June 5, 2019, BNSF filed an Affidavit Regarding the Transfer of the Role of the Commission's Rail Expert stating that it did not oppose or object to the Commission's rail expert transferring her role from advisory to trial staff and intervening in this proceeding.

19. On June 5, 2019, Louisville filed an Affidavit Regarding the Transfer of the Role of the Commission's Rail Expert stating that it did not oppose or object to the Commission's rail expert transferring her role from advisory to trial staff and intervening in this proceeding.

20. On June 7, 2019 by Decision No. R19-0481-I, the ALJ ordered filing of the cost estimate and schematic diagram consistent with the preliminary plans approved by the Commission in Decision No. C18-0974-I and scheduling of a prehearing conference for June 24, 2019.

21. On June 12, 2019, BNSF filed an Unopposed Motion for Extension of Time to File Additional Information.

22. On June 14, 2019 by Decision No. R19-0512-I, the ALJ granted the Unopposed Motion for Extension of Time allowing BNSF until June 19, 2019 to file the additional information in this proceeding pursuant to Decision No. C19-0429-I.

23. On June 18, 2019, Trial Staff of the Commission filed an Unopposed Motion for Leave to Intervene, Enter an Appearance of Staff's Counsel, and Waive Response Time.

24. On June 18, 2019, BNSF filed the Affidavit of Steve Phillips, the cost estimate, and the schematic diagram for the crossing.

25. On June 19, 2019 by Decision No. R19-0536-I, the ALJ granted the Unopposed Motion of Trial Staff for Leave to Intervene and waived response time to the motion.

26. On June 20, 2019, Trial Staff filed an Unopposed Motion to Reschedule the Prehearing Conference and for a Waiver of Response Time.

27. On June 21, 2019 by Decision No. R19-0543-I, the ALJ granted the Unopposed Motion and rescheduled the prehearing conference to July 16, 2019.

28. On July 11, 2019, Louisville filed an Unopposed Motion for Leave to Amend Application, for Vacation of Prehearing Conference, and for Waiver of Response Time (Motion).

29. On July 16, 2019 by Decision No. R19-0598-I, the ALJ granted the, Unopposed Motion for Vacation of Prehearing Conference to vacate the scheduled prehearing conference. This Decision addresses the remainder of the relief requested.

30. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT AND CONCLUSIONS

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

32. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

33. Louisville is a political subdivision of the State of Colorado and a municipal corporation. Louisville is the municipality responsible for the roadway system on Dillon Road at the location of the crossing.

34. BNSF is the railroad that owns and operates the track at the Dillon Road crossing.

35. Staff is Trial Staff of the Commission as identified in Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a), Rules of Practice and Procedure notices filed in this proceeding.

36. The requested relief being unopposed, it is appropriate that response time to the Motion be waived. Based upon good cause shown for the unopposed request, the request for leave to amend the Application will be granted.

37. The Motion states that the parties met on July 2, 2019, in an attempt to settle the disagreement over preemption calculations in Louisville's application. BNSF's Assistant

Director of Signal Design Steve Phillips stated that the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual Part 3.1.10(C)(1) states that “for grade crossing warning systems interconnected with highway traffic signals, System Design Time minus Equipment Response Time shall not exceed 50 seconds.”² Further, he stated that BNSF’s engineering standard for system design time included 20 seconds Federal Railroad Administration (FRA) minimum warning time plus ten seconds for speed changes by the trains and changes in the conditions of the ballast. Although AREMA says “buffer time” is discretionary, BNSF does not consider it so because the extra ten seconds allows for the gates to come down regardless of any changes to the conditions of the crossing.

38. The parties agreed that Louisville would amend the Application to reduce the minimum separation time by 2.5 seconds and that BNSF would reduce its separation time by 2.5 seconds, provide a revised front sheet for an advanced preemption time of 23 seconds, and update the start and end dates of the project to September 1, 2019 and November 30, 2020 respectively.

39. It was acknowledged and agreed to by the parties that the parties’ agreed-upon preemption calculations would exceed the AREMA Manual standard that “System Design Time minus Equipment Response Time shall not exceed 50 seconds” by three seconds.

40. To reflect the revised preemption calculations, BNSF agreed to provide Louisville with an updated schematic diagram to append to its application.

41. On July 15, 2019, the Unopposed Second Amendment to Application was filed. In the amendment, Louisville provided a Revised Exhibit E that changed the minimum separation in its advance preemption calculation to zero, a revised front sheet for an advanced

² Motion at ¶ 29.

preemption time of 23 seconds, a Revised Exhibit F, an updated railroad estimate and schematic diagram prepared by BNSF in accordance with the revised preemption calculations, and updated the start and end dates of the project to September 1, 2019 and November 30, 2020 respectively.

42. The Application, as now amended, is uncontested.

43. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1, the uncontested Application may be processed under the modified procedure, without a formal hearing.

44. Louisville is requesting authority to upgrade the active warning equipment at the crossing of Dillon Road and the tracks of the BNSF including flashing lights, entrance gates, bells, constant warning time detection circuitry, railroad signal cabin, relocation of advance warning signs, median extension, installation of pavement markings, interconnection with and preemption of the traffic signal at Pierce Avenue and Dillon road, and addition of “No Train Horn” plaques. Louisville requests 23 seconds of advance preemption at the crossing consistent with Revised Exhibit E to the Application.

45. Louisville seeks this authority because it desires to obtain a quiet zone at this crossing from the FRA. When Louisville obtains the quiet zone, Louisville will post W10-9P “No Train Horn” placard signs with the W10-1 advance warning signs.

46. Louisville states that there are currently 16 trains per day that use the crossing at a maximum timetable speed of 30 miles per hour (MPH) with no estimates of increases or decreases in these volumes in the future. There are currently 18,502 vehicles per day (VPD) with an estimated 4 percent heavy vehicles and no school buses using the crossing at a posted speed limit of 35 MPH with an estimated increase to 19,514 VPD by 2021 and 22,894 VPD by 2036.

47. There have been no accidents at the crossing since 1975.

48. Louisville estimates the cost of the proposed crossing changes at \$286,433 for the civil engineering work. Based on the cost estimate provided by BNSF, the work related to the rail crossing changes is estimated at \$284,086. The costs of the project will be paid for by Louisville with local capital improvement project funds.

49. Based on the Amended Application, Louisville proposes to start construction on September 1, 2019 and be complete by November 30, 2020.

50. It is found and concluded that good cause exists and that the requirements of public safety and necessity are met by approving Louisville's final plans consistent with the above discussion.

51. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Application filed by the City of Louisville (Louisville) on September 17, 2018 as amended on September 24, 2019 and July 15, 2019, seeking authority to upgrade the active warning equipment to flashing lights with entrance gates, bells, constant warning time circuitry, and railroad signal cabin; relocate advance warning signs; install pavement markings; extend the median on the west side; interconnection with and preemption of the traffic signal at Pierce Avenue and Dillon Road with 23 seconds of advance preemption time; and the addition of "No Train Horn" plaques at the existing crossing of Dillon Road with the tracks of the BNSF Railway Company at railroad milepost 18.35 on the Front Range Subdivision, National Inventory No. 244798M, in Louisville, County of Boulder, State of Colorado is granted.

2. Louisville is authorized and ordered to proceed with upgrading the active warning equipment to flashing lights with entrance gates, bells, constant warning time circuitry, and railroad signal cabin; relocate advance warning signs; install pavement markings; extend the median on the west side; interconnection with and preemption of the traffic signal at Pierce Avenue and Dillon Road with 23 seconds of advance preemption time; and the addition of “No Train Horn” plaques once a quiet zone is established at the existing crossing of Dillon Road in Louisville, Colorado.

3. Louisville is required to file a copy of the signed Construction and Maintenance Agreement in this matter by September 1, 2019 prior to starting construction work at the crossing.

4. Louisville is required to inform the Commission in writing that the authorized improvements are complete and operational within ten days after completion. The Commission shall expect this letter by November 30, 2020. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge