

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.

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

Mailed Date: September 5, 2019

I. STATEMENT

1. On August 2, 2018, the County of Boulder (Boulder County or County) filed an application (Application) seeking 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, ¶ 18. 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. Following 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. Decision No. C19-0457-I, issued June 3, 2019.

11. By Decision No. R19-0483-I, issued June 7, 2019, BNSF was ordered to file the cost estimate and schematic diagram consistent with the preliminary plans approved by the Commission in Decision No. C18-0824-I.

12. On June 21, 2019, Boulder County's Submission of Cost Estimates and Request for Application Approval was filed.

13. On July 5, 2019, BNSF Railway Company's Response and Objection to Boulder County's Submission of Cost Estimates and Request for Application Approval was filed.

14. By Decision No. R19-0571-I, issued July 9, 2019, a procedural schedule was adopted and a hearing was scheduled.

15. 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 AND CONCLUSIONS

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

17. Boulder County is a body corporate and politic organized under § 30-11-101, C.R.S., with its principal office located at 1325 Pearl Street, Boulder, Colorado

18. BNSF is the owner of adjacent right-of-way property affected by the Application.

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

20. On August 29, 2019, BNSF Railway Company's Notice of Withdrawal of Objection to Boulder County's Submission of Cost Estimates and Request for Application Approval was filed. BNSF no longer objects to Boulder County's Submission of Cost Estimates and Request for Application Approval and does not object to final approval of the County's Application.

21. Withdrawal of BNSF's objection leaves the Application, as preliminarily approved and now amended, uncontested.

22. 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.

23. Boulder County proposes to upgrade the active warning equipment at the crossing of 2nd Avenue (Main Street) and the tracks of the BNSF including flashing lights, four-quadrant gates, bells, constant warning time detection circuitry, railroad signal cabin, relocation of advance warning signs, installation of pavement markings, and addition of "No Train Horn" plaques. Boulder County proposes to operate the four-quadrant gate system using timed exit gates with a delay between the start of the descent of the entrance gates and the start of the descent of the exit gates. Boulder County proposes an eight-second exit gate delay time, which

would allow a bus just starting to enter the crossing from a stopped position to move through the crossing before the exit gate starts to descend. Exhibit C to the Application.

24. Boulder County seeks this authority because it desires to obtain a quiet zone at this crossing from the Federal Railroad Administration. When Boulder County obtains the quiet zone, Boulder County will post W10-9P “No Train Horn” placard signs with the W10-1 advance warning signs. *Id.*

25. Boulder County states that there are currently 18 trains per day that use the crossing at a maximum timetable speed of 49 miles per hour (MPH) with no estimates of increases or decreases in these volumes in the future. There are currently 788 vehicles per day (VPD) with an estimated 4.7 percent heavy vehicles and school buses using the crossing at a posted speed limit of 25 MPH with an estimated increase to 849 VPD by 2023 and 1,061 VPD by 2038.

26. There have been three property damage accidents and one injury accident at the crossing since 1975 when the crossing had passive warning devices.

27. Cost allocation between the railroad and the highway authority is not disputed. The costs of the project will be paid for through county funds allocated by the Denver Regional Council of Governments. Boulder County is funding 100 percent of the project. Boulder County's Submission of Cost Estimates filed June 21, 2019 is found sufficient to address deficiencies noted by Staff of the Commission on August 3, 2018 and will be approved to the extent consistent with the scope of the unopposed Application.

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

29. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Final design plans filed by the County of Boulder (Boulder County) on August 2, 2018 and amended on August 7, 2018, to upgrade the active warning equipment to flashing lights with four-quadrant gates, bells, constant warning time circuitry, and railroad signal cabin; relocation of advance warning signs; installation of 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 are approved.

2. Boulder County's Submission of Cost Estimates filed June 21, 2019 is acknowledged and is approved to the extent consistent with the remainder of Boulder County's application for approval of improvements at the existing crossing of 2nd Avenue (Main Street) with the tracks of 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. The application filed on August 2, 2018 and amended on August 7, 2019 shall prevail to the extent of conflict with the filed railroad cost estimate of the crossing warning devices and schematic diagram of the crossing warning devices.

3. Boulder County is authorized and ordered to proceed with upgrading the active warning equipment to flashing lights with four-quadrant gates, bells, constant warning time circuitry, and railroad signal cabin; relocate advance warning signs; timed exit gates with an

eight second delay between the start of the descent of the entrance gates and the start of the descent of the exit gates; install pavement markings; and the addition of “No Train Horn” plaques at the existing crossing of 2nd Avenue (Main Street) with the tracks of 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.

4. Boulder County is required to file a copy of the signed Construction and Maintenance Agreement in this matter by December 1, 2019 prior to starting construction work at the crossing.

5. Boulder County 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 April 15, 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.

6. The hearing scheduled for September 16 and 17, 2019, is vacated.

7. 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.

8. 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.

9. 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