

Decision No. R20-0438-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0552R

IN THE MATTER OF THE APPLICATION OF THE CITY OF WESTMINSTER FOR AUTHORITY TO UPGRADE APPROACH RAILROAD GATES WITH FLASHING LIGHTS, BELLS, CONSTANT WARNING TIME CIRCUITRY, NEW SIGNAL CABIN, UPGRADE OVERHEAD CANTILEVER FLASHERS, AND INSTALL RAISED MEDIANS, AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING LOWELL BOULEVARD, USDOT NO. 244778B, IN ADAMS COUNTY, STATE OF COLORADO.

PROCEEDING NO. 19A-0553R

IN THE MATTER OF THE APPLICATION OF THE CITY OF WESTMINSTER FOR AUTHORITY TO INSTALL RAISED MEDIANS, MODIFY OUTER CURBLINES AND CLOSE AN ADJACENT TURN BAY ON APPROACH TO TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING WEST 72ND AVENUE, USDOT NO. 244779H, IN ADAMS COUNTY, STATE OF COLORADO.

PROCEEDING NO. 19A-0554R

IN THE MATTER OF THE APPLICATION OF THE CITY OF WESTMINSTER FOR AUTHORITY TO UPGRADE APPROACH RAILROAD GATES WITH FLASHING LIGHTS AND BELLS, INSTALL EXIT RAILROAD GATES TO COMPLETE A 4-QUADRANT GATE INSTALLATION, UPGRADE CIRCUITRY TO CONSTANT WARNING TIME CIRCUITRY, AND INSTALL NEW RAILROAD SIGNAL CABIN, AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING BRADBURN BOULEVARD, USDOT NO. 244780C, IN ADAMS COUNTY, STATE OF COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
CONVERTING IN-PERSON HEARING
INTO REMOTE HEARING AND PROVIDING
INSTRUCTIONS FOR HOW TO PARTICIPATE REMOTELY**

Mailed Date: June 11, 2020

I. STATEMENT

1. On October 15, 2019 in Proceeding No. 19A-0552R, the City of Westminster (Applicant or the City) filed its application for authority to upgrade approach railroad gates with flashing lights, bells, constant warning time circuitry, and new signal cabin; installation of upgraded overhead cantilever flashers; and installation of raised medians, at tracks owned by BNSF Railway Company (BNSF) crossing Lowell Boulevard, USDOT No. 244778B, in Adams County, State of Colorado. The application was amended on November 14, 2019.

2. On October 15, 2019 in Proceeding No. 19A-0553R, Applicant filed its application for authority to install raised medians, modify outer curblines, and close an adjacent turn bay on approach to tracks owned by BNSF crossing West 72nd Avenue, USDOT No. 244779H, in Adams County, State of Colorado.

3. On October 15, 2019 in Proceeding No. 19A-0554R, Applicant filed its application for authority to upgrade approach railroad gates with flashing lights and bells, install exit railroad gates to complete a four-quadrant gate installation, upgrade circuitry to constant warning time circuitry, and install new railroad signal cabin, at tracks owned by BNSF crossing Bradburn Boulevard, USDOT No. 244780C, in Adams County, State of Colorado. The application was amended on November 14, 2019.

4. By Decision No. R19-1014-I, issued December 17, 2019, the above-captioned proceedings were consolidated, a procedural schedule was established to govern the proceeding, and a hearing was scheduled for February 18, 2020.

5. By Decision No. R20-0072-I, issued January 30, 2020, and Decision No. R20-0224-I, issued April 6, 2020, the hearing was vacated and rescheduled to commence in this matter on June 22, 2020.

6. On March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over the novel coronavirus pandemic (COVID-19). Since then, Colorado State government and the Commission have been working diligently to address how to safely and effectively manage the challenges presented by COVID-19. These efforts have focused on limiting the disruption to the services delivered by the Commission (and other State agencies), while attempting to mitigate the risks to State employees and the public. For example, the Commission has been conducting its Weekly Meetings remotely, and the Commission has asked members of the public not to attend meetings in person, but to view them by webcast. Finally, public access to the building containing the Commission's offices and hearing rooms has been restricted and it is unclear when the restriction will be lifted.

7. Given that in-person hearings at the Commission's offices are currently not authorized, the Administrative Law Judge finds that at this time, it is in the parties' interests to plan and prepare for a remote video-conference evidentiary hearing. Doing so is also consistent with public health advisories to prevent the spread of COVID-19. This Decision, including Attachment A, includes instructions and requirements intended to ensure that the remote evidentiary hearing proceeds efficiently without technical problems. As such, it is important that the parties carefully review and follow all requirements in this Decision and Attachment A.

8. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, this Decision explicitly does not require parties to pre-file or serve exhibits that may be used solely to impeach, refresh recollection, or for rebuttal, as those exhibits are ordinarily presented for the first time during the hearing. Instead, the parties will upload such exhibits to their designated folder on box.com using the process described

below. Other parties will be able to view and download such exhibits *only* when the party requests that such documents be displayed on the video-conference screen during the hearing. Uploaded documents will be presented electronically during hearing.

A. Presentation of Exhibits Electronically During Evidentiary Hearing.

9. Because the hearing will be held remotely by video conference, all evidence must be presented electronically.

10. These exhibit requirements apply to all exhibits, including those used solely for impeachment, to refresh recollection, or for rebuttal. Each party must: (a) mark all exhibits for identification with a hearing exhibit number in accordance with the procedures below; and (b) upload all pre-marked exhibits into each party’s respective designated box.com folder prior to presenting them during the hearing.¹ When exhibits will be first presented during the hearing, the Commission will receive them electronically from each party’s folder for display.

11. All parties are responsible for ensuring they and their respective witnesses have access to all exhibits via a link the Commission will provide and that they will be able to download and view documents from box.com *during the hearing*.

B. Identification and Page-Numbering Requirements for Hearing Exhibits.

12. Each party must pre-mark all hearing exhibits with a hearing exhibit number *before* uploading the exhibits to the party’s designated box.com folder.²

13. Applicant is assigned hearing exhibit numbers 100 through 199. For example, the City should mark for identification its first hearing exhibit as “Hearing Exhibit 100.”

¹ The Public Utilities Commission Administrative Hearings Section uses a web-based document sharing service, box.com. All parties must ensure they can access and use box.com. An email with more details will follow.

² Note, this is an addition to any other requirement to file and/or disclose exhibits that will be used at hearing.

14. BNSF is assigned hearing exhibit numbers 200 through 299. For example, BNSF should mark for identification its first hearing exhibit as “Hearing Exhibit 200.”

15. The parties must sequentially page-number each page of any hearing exhibit that is longer than two pages. The parties must number the first page of hearing exhibits as page 1, regardless of content.

II. ORDER

A. It Is Ordered That:

1. The hearing scheduled for June 22, 2020 shall be converted into a remote hearing. The parties, witnesses, and members of the public should not attend the remote hearing in-person. Evidence will be presented electronically during hearing, as described herein.

2. Each party is responsible for ensuring their respective witnesses: (1) have access to all pre-filed exhibits, (2) and are able to participate in the video conference by computer, and (3) are able to download and view documents available from box.com, during the hearing.

3. The undersigned will convene an informal Go-To-Meeting practice session on June 19, 2020 at 11:00 a.m. to allow the parties to familiarize themselves with the meeting and box.com process before the hearing. An email invitation and further information will be communicated by email to counsel.

4. This Decision shall be 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