

Decision No. R20-0439-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0142R

IN THE MATTER OF THE APPLICATION OF BNSF RAILWAY COMPANY FOR
AUTHORITY TO MODIFY AND UPGRADE ACTIVE WARNING DEVICES AT THE
CROSSING AT COUNTY ROAD 88 IN DELHI, LAS ANIMAS COUNTY, COLORADO
(DOT # 003299G).

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
SETTING HEARING AND
PROCEDURES; AND NOTICE OF HEARING**

Mailed Date: June 12, 2020

I. STATEMENT, FINDINGS, AND CONCLUSIONS.

A. Procedural History.

1. On March 31, 2020, the BNSF Railway Company (BNSF) filed an Application, requesting authority to replace the last wig-wag signal in Colorado with flashing lights and bells at the crossing of Las Animas County Road 88 with the tracks of the BNSF, at railroad milepost 591.27 of the Raton Subdivision, National Inventory No. 003299G, in Delhi, County of Las Animas, State of Colorado. BNSF requests funding from the Highway-Rail Crossing Signalization Fund with BNSF paying for 50 percent of the costs and the Highway-Rail Signalization Fund paying for 50 percent of the costs.

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

3. Because BNSF requests funding from the Highway-Rail Crossing Signalization Fund, § 40-4-106(2)(b), C.R.S., a hearing is required on the Application and the determination of the appropriate allocation of the costs of the project.

4. On April 17, 2020, the Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners, pursuant to § 40-6-108(2), C.R.S.

5. No interventions were filed in this Proceeding.

6. By Decision No. C20-0399-I (mailed on May 28, 2020), the Commission deemed the Application complete, within the meaning of § 40-6-109.5, C.R.S., and referred the Application to an Administrative Law Judge (ALJ) for determination of the merits of the Application and an appropriate allocation of costs of this project. Subsequently, the undersigned ALJ was assigned to preside over this Proceeding.

B. Scheduling the Hearing and Adopting Filing Requirements.

7. As noted in Decision No. C20-0399-I, § 40-4-106(2)(b), C.R.S., requires a hearing on the Application and the determination of the appropriate allocation of costs of the project. To facilitate the orderly and efficient litigation of this Proceeding, the ALJ will adopt a procedural schedule for BNSF to file, as prehearing disclosures, a list of its witnesses, a written summary of the testimony of each witness, and copies of the exhibits the BNSF intends to present at the hearing. This filing will give the ALJ and his advisors an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness and to review copies of the exhibits to be presented at the hearing.

8. BNSF will be ordered to file, on or before **July 16, 2020**: (a) a list that identifies the witnesses BNSF intends to call at the hearing; (b) a written summary of the anticipated testimony of each witness; and (c) copies of the exhibits BNSF intends to present at the hearing.

9. The evidentiary hearing will be scheduled for Thursday, July 30, 2020 at 9:30 a.m.

10. The ALJ finds that, given the uncertainty that the novel coronavirus (COVID-19) pandemic creates on future public gatherings, it is in the best interests of BNSF and Commission personnel to hold the evidentiary hearing remotely and that doing so is consistent with emergency declarations and public health advisories to prevent the spread of COVID-19. Therefore, the ALJ will order that the evidentiary hearing be held remotely by video conference.

11. Attachment A to this Decision sets forth general instructions and requirements for how to participate by computer and how to observe the hearing. These requirements are intended to ensure that the remote hearing proceeds efficiently without technical problems. Attachment A includes important requirements and technical information on participating in the hearing by computer through GoToMeeting. It is vitally important that counsel for BNSF and its witnesses carefully review and follow all requirements in this Decision and Attachment A.¹

12. **To Participate by Computer.** Counsel for BNSF and its witnesses should participate in the hearing using a computer that is connected to the internet and has a microphone and a speaker. At the time of the hearing, please join by video conference at the link to be provided in a future email from the ALJ or a Commission Legal Specialist. When you are not speaking, please mute your microphone. Attachment A contains detailed instructions for participating in the hearing using GoToMeeting.

13. The ALJ anticipates that the hearing will be webcast, consistent with Commission practice. This means that those persons wishing to observe the hearing may do so without

¹ Although it is possible to participate in the hearing by telephone using GoToMeeting, those instructions are not provided in this Decision. The ALJ prefers and strongly recommends that counsel for BNSF and its witnesses participate in the hearing by computer using GoToMeeting.

needing to join the hearing online. Please use the audio or video connection for Hearing Room B found at <https://puc.colorado.gov/webcasts>. More detailed instructions can be found in Attachment A.

C. Procedural Advisements.

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

15. The Parties are advised and are on notice that the Commission has an E-Filings System available. One may learn about -- and if not already registered, one may register to use -- that system at <http://www.dora.colorado.gov/puc>.

16. At the hearing, exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, Exhibit 3, and etc.). Each exhibit shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing.

17. As noted above, BNSF will be ordered to pre-file its hearing exhibits. After that filing, BNSF's hearing exhibits will be available electronically in the Commission's E-filing System. The mere pre-filing of an exhibit with the Commission does not result in the exhibit being admitted into the evidentiary record of the hearing. Rulings on admissibility of hearing exhibits offered at the remote hearing will be ruled on then.

18. If any exhibit is longer than two pages, the Party offering the exhibit shall sequentially number each page of the exhibit.

19. The ALJ or a Legal Specialist will informally email the Parties before the hearing relating to the log-in process or other procedural matters. Therefore, the ALJ requests that counsel for BNSF ensure that the email addresses stated in their pleadings are kept current.

II. ORDER

A. It Is Ordered That:

1. A remote evidentiary hearing is scheduled as follows:

DATE: July 30, 2020

TIME: 9:30 a.m.

FOR WEBCASTS: Hearing Room B

METHOD: Join by video conference at the link to be provided in a future email from the Administrative Law Judge or a Commission Legal Specialist.

2. The evidentiary hearing shall address: (1) the merits of the Application filed on March 31, 2020, by the BNSF Railway Company (BNSF) and on BNSF's request for authority to replace the wig-wag signal with flashing lights and bells at the crossing of Las Animas County Road 88 with the tracks of the BNSF, at railroad milepost 591.27 of the Raton Subdivision, National Inventory No. 003299G, in Delhi, County of Las Animas, State of Colorado; and (2) BNSF's request for funding from the Highway-Rail Crossing Signalization Fund with BNSF paying for 50 percent of the costs of this project and the Highway-Rail Signalization Fund paying for 50 percent of the costs.

3. Counsel for BNSF and its witnesses shall participate in the remote evidentiary hearing by following the instructions stated above in Paragraph Nos. 11, 12, and 13 of this Decision and Attachment A.

4. BNSF, its counsel, and its witnesses must comply with the requirements in Attachment A to this Decision, which is incorporated herein.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director