

Decision No. R04-0718

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-548R

IN THE MATTER OF THE APPLICATION OF OTERO COUNTY, COLORADO, FOR AN ORDER AUTHORIZING THE INSTALLATION OF RAILROAD CROSSING PROTECTION DEVICES TO BE CONSTRUCTED ON THE RIGHT OF WAY OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY AND COUNTY ROAD 21 (DOT#003-375X)

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
GRANTING APPLICATION**

Mailed Date: June 28, 2004

I. STATEMENT

1. This application was filed by the County of Otero (County) on December 17, 2003. By this application the County seeks an order of this Commission authorizing the installation of certain railroad crossing protection devices to be constructed on the right-of-way of the Burlington Northern and Santa Fe Railway Company (BNSF) and County Road 21 at DOT Crossing No. 003-375X. The Commission gave notice of the application on December 30, 2003. On that same date Staff of the Commission (Staff) entered its appearance. On January 8, 2004, BNSF filed its Notice of Intervention.

2. On May 5, 2004, the Commission at its weekly meeting deemed the application complete by minute entry. By Decision No. R04-0594-I, June 4, 2004, the matter was set for a hearing to be held on June 24, 2004 simultaneously in Denver and La Junta, Colorado.

3. At the assigned place and time the undersigned called the matter for hearing. The County presented testimony in support of the application from its Director of Public Works, from

the Fire Chief of the City of Rocky Ford, from a County Commissioner, and a member of the public employed near the crossing. The BNSF presented testimony in support of the application from its regional Manager of Public Projects and its regional Manager of Signals.

4. During the course of the hearing Exhibits A and B were identified, offered, and admitted into evidence. At the conclusion of the hearing the matter was taken under advisement.

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

II. FINDINGS OF FACT

6. Presently County Road 21 is a 2-lane, 20-foot wide, 4-inch thick asphalt road, and it will remain the same for the foreseeable future. County Road 21 currently crosses the mainline tracks of the BNSF in an unincorporated area of the County. The road crosses the railroad track at approximately a 75-degree angle. The crossing is currently protected by railroad cross bucks and advance warning signs. The approach grades are very slight, approximately .5 percent from each direction. Sight lines are generally good.

7. At the time of the filing of the application, the average daily traffic count was approximately 422 motor vehicles crossing the railroad track. At the time of the hearing, due to increased agricultural production, the average daily traffic count is approximately double that.

8. Currently there are an average of 17 trains per day through the crossing, including 14 coal trains of approximately 125 to 130 cars each; 2 mixed freight trains; and 1 intermodal train. The current maximum timetable of speed is 55 miles per hour, and the track is rated by the Federal Railroad Administration as a class 4 track with a current speed limit of 60 miles per hour.

9. The crossing by all varieties of motor vehicles, including school buses, ambulances, fire engines, passenger vehicles, semi-trailers, and slow moving agricultural tractors. County Road 21 provides access to the county landfill, which is not far from the crossing.

10. Within recent history, there was one accident at the crossing on April 25, 1996, involving a feed truck and a train.

11. The County seeks an order of the Commission authorizing the installation of automatic signals with gates, bell, and lights. In addition, the County seeks an allocation of funds for the cost of the crossing of 70 percent from the PUC Crossing Protection Fund, 20 percent to the BNSF, and 10 percent to the County.¹

12. The BNSF supports the application as filed. It proposes to upgrade the crossing to include gates, flashers, and one bell that are actuated by constant warning devices. The crossing upgrade would also include an island circuit extending 60 feet in either direction. The constant warning devices will allow for a constant 25 or 30-second advance warning (depending upon the setting) before the train arrives at the crossing. The bell will start ringing immediately at the 30-second point, the gates would begin descending approximately 3 seconds later, and the gates would be down 15 seconds prior to the arrival of the train. The estimated total cost for the installation of the protection devices is \$154,263.

13. Staff supports the application as filed.

¹ The County and BNSF have a private contractual agreement concerning the County's 10 percent share.

14. Granting the application is reasonable and necessary to prevent accidents and promote the safety of the public. The application should be granted. A proper allocation of the cost of the crossing should be as follows: the County, 10 percent; BNSF, 20 percent; and the Highway Crossing Protection Fund, 70 percent.

15. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Docket No. 03A-548R, being an application of Otero County, Colorado, is granted. The Burlington Northern and Santa Fe Railway Company is authorized and ordered to install railroad crossing protection devices at the crossing of the Burlington Northern and Santa Fe Railway Company and County Road 21, DOT Crossing No. 003-375X. The protection devices shall consist of gates and flashers, a warning bell, and constant warning devices along with an island circuit extending 60 feet in either direction. The railroad shall maintain the protection devices for the life of the crossing at its own expense.

2. Installation of the warning and safety devices authorized in ordering paragraph 3 above shall be in accordance with the plans and specifications, Exhibit A, introduced into evidence at the hearing of this matter. All installation shall be in conformance with the Manual on Uniform Traffic Control Devices.

3. The costs of the crossing upgrade, currently estimated at \$164,263, shall be paid as follows: Otero County, 10 percent; Burlington Northern and Santa Fe Railway, 20 percent; and the State Highway Crossing Fund, 70 percent.

4. The County of Otero, State of Colorado shall notify the Commission in writing within ten days of the completion of the improvements to the rail crossing where the railroad tracks of the Burlington Northern Santa Fe intersect with County Road 21, National Inventory Crossing ID No. 003-375X.

5. Burlington Northern Santa Fe Railway Company shall maintain the warning and safety devices at the rail crossing where the railroad tracks of the Burlington Northern Santa Fe intersect with County Road 21 in Otero County, Colorado, National Inventory Crossing ID No. 003-375X, at its own expense for the life of the crossing.

6. 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.

7. 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.

8. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge