

Decision No. C07-0008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 06A-639R

IN THE MATTER OF THE COLORADO DEPARTMENT OF TRANSPORTATION, AND
THE CITY OF COMMERCE CITY FOR AUTHORITY TO WIDEN THE CROSSING,
INSTALL PEDESTRIAN SIDEWALKS, REMOVE EXISTING LIGHTS AND GATES AND
INSTALL NEW GATES AND RAISED MEDIANS FLASHING LIGHT SIGNALS AT THE
CROSSING OF THE BNSF RAILWAY COMPANY TRACK ON STATE HIGHWAY 44
(104TH AVE.) IN CITY OF COMMERCE CITY, ADAMS COUNTY, COLORADO.

**COMMISSION ORDER DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Mailed Date: January 3, 2007
Adopted Date: January 3, 2007

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Public Utilities Commission (Commission) for consideration of an application filed by the Colorado Department of Transportation (CDOT) and the City of Commerce City (Commerce City) on November 24, 2006 requesting authority to widen the existing crossing of State Highway 44 (104th Avenue) with the BNSF Railway Company (BNSF), National Inventory Crossing No. 057191X, and install pedestrian sidewalks, remove existing crossing warning devices, install new gates and raised medians, new flashing lights, bells, constant warning time circuitry, new cabin, and traffic signal and interconnection circuitry in Commerce City, County of Adams, State of Colorado. As part of this project, a new traffic signal will be constructed at the intersection of 104th Avenue and State Highway 2.

2. The Commission gave notice of this application to all interested parties, including adjacent property owners in accordance with § 40-6-108(2), C.R.S. The Notice was mailed November 28, 2006.

3. On December 4, 2006, CDOT's attorney filed an Entry of Appearance.

4. On December 4, 2006, BNSF filed an Entry of Appearance and Notice of Intervention. BNSF does not oppose or contest the granting of the Application and states the Commission may treat its appearance and intervention as withdrawn if no other interventions or protests resulting in a hearing are filed.

5. The Commission has reviewed the record in this matter and deems that the application is complete within the meaning of § 40-6-109.5, C.R.S.

B. Findings of Fact

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

7. CDOT and Commerce City propose to widen the existing crossing of 104th Avenue and the BNSF tracks from two lanes to three lanes in each direction with a left turn lane in the eastbound direction. CDOT and Commerce City also propose to install pedestrian sidewalks, remove existing crossing protection devices, install new gates and raised medians, new flashing lights, bells, constant warning time circuitry, new cabin, and traffic signal and interconnection circuitry. As part of this project, a new traffic signal will be constructed at the intersection of 104th Avenue and State Highway 2, located east of the crossing.

8. BNSF currently operates approximately 26 freight trains per day and 2 Amtrak passenger trains per day at a maximum speed of 79 MPH with projections of 10% increase per year for the next five years. The current average daily traffic count at the crossing is 12,900

vehicles per day (VPD) including approximately 9% heavy vehicles with a projected increase to 14,215 VPD by 2016.

9. The preliminary cost estimate for the work of the entire project is \$8.3 million, of which approximately \$600,000 is anticipated for the railroad work items. Commerce City states that it will provide 100 percent of the funding for the project.

10. CDOT will maintain, at its expense, the roadway approaches to the crossing. Commerce City will maintain, at its expense, surface elements beyond the back of curb such as sidewalks, and stabilization and landscaping. BNSF will maintain, at its expense, the track, appurtenances, and warning devices.

11. CDOT and Commerce City state the project is scheduled to begin in January 2007 and be completed by April 2007.

12. CDOT and Commerce City request to late-file a copy of the finalized construction and maintenance agreement.

C. Conclusions

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

14. No intervenor that filed a petition to intervene or other pleading contests or opposes the application.

15. Because the application is unopposed, the Commission will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

II. ORDER**A. The Commission Orders That:**

1. The application is deemed complete within the meaning of § 40-6-109.5, C.R.S.
2. The application filed by the Colorado Department of Transportation (CDOT) and the City of Commerce City (Commerce City) is granted.
3. CDOT and Commerce City are authorized and ordered to proceed with widening and constructing signal improvements at the crossing of State Highway 44 (104th Avenue) with the BNSF Railway Company tracks, National Inventory No. 057191X, consisting of installing pedestrian sidewalks, removing existing crossing warning devices, installing new gates and raised medians, new flashing lights, bells, constant warning time circuitry, new cabin, and traffic signal interconnection and preemption circuitry.
4. CDOT shall maintain, at its expense, the roadway approaches to the crossing. Commerce City shall maintain, at its expense, surface elements beyond the back of curb such as sidewalks, and stabilization and landscaping pursuant to Rule 7211(c).
5. The BNSF Railway Company shall maintain the tracks, appurtenances, and warning devices at its expense pursuant to Rule 7211(a).
6. CDOT and Commerce City shall file a copy of the signed construction and maintenance by June 2, 2007.
7. CDOT and Commerce City are required to inform the Commission in writing that the crossing widening and signal operations are complete within 10 days after completion. We shall expect this letter sometime around April 30, 2007. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

8. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Order.

9. The Commission retains jurisdiction to enter further required orders.

10. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 3, 2007.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners