

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0383R

IN THE MATTER OF THE APPLICATION OF THE BNSF RAILWAY COMPANY FOR
AUTHORITY TO CLOSE THE AT-GRADE CROSSING OF CR 83.1, DOT #003312T, IN
HOEHNE, COLORADO.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Mailed Date: July 1, 2014
Adopted Date: June 25, 2014

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the BNSF Railway Company (BNSF) on April 29, 2014, requesting authority to abolish the existing at-grade highway-rail crossing of Las Animas County Road 83.1 (CR 83.1) by closure and removal of the roadway, National Inventory No. 003312T, in Hoehne, County of Las Animas, State of Colorado.

2. On May 5, 2014, Staff of the Commission (Staff) sent a Deficiency Letter to BNSF outlining information that was missing from the Application and requesting additional information from BNSF.

3. On May 5, 2014, BNSF provided a partial response to the Deficiency Letter and provided the additional information requested by Staff.

4. 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 May 14, 2014.

5. On May 14, 2014, BNSF filed a Motion for Extension of Time to Respond to Deficiency Notice Dated 5/5/14 and requested until May 22, 2014 to file the remaining deficient information. The Commission granted this motion by Decision No. C14-0543 mailed May 23, 2014.

6. On May 22, 2014, BNSF filed a Motion for Additional One Day Extension to Respond to Deficiency Notice Dated 5/5/14.

7. On May 23, 2014, BNSF filed a response to the Deficiency Letter curing the remaining deficient information in the Application.

8. On May 23, 2014, BNSF filed a Notice of Posting of Crossing and the Affidavit of Gene Eliassen attesting that notice of proposed closure of the crossing was posted at the crossing on May 9, 2014. Photos showing the notice posted and the posting of the closure notices were also provided. The posted notice complies with Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7208(c) of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings.

9. No interventions opposing the closure of the crossing were received in this matter.

10. 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.

11. Now being fully advised in the matter, we grant the Motion for Additional One Day Extension to Respond to Deficiency Notice Dated 5/5/14 and the Application.

B. Findings of Fact

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

13. BNSF proposes to abolish the northern crossing of CR 83.1 with the BNSF tracks by removal of the roadway, crossing surface and crossbucks, and installation of Type III barricades on either side of the crossing to warn motorists that the crossing has been removed and the road is closed.

14. BNSF currently has one track through this crossing. There are currently two Amtrak passenger trains per day that use the crossing at a maximum timetable speed of 79 miles per hour. Train volume on this line is not likely to change in the future. There are currently crossbucks posted at the crossing. Based on count information provided by BNSF, there are currently approximately 56 vehicles per day (VPD) using the northern CR 83.1 crossing.

15. If the subject crossing is closed, the 56 VPD will be able to cross the tracks at either the Las Animas County Road 40.3 (CR 40.3) crossing to the north of the subject crossing approximately one-tenth of a mile, or the southern CR 83.1 crossing to the south of the subject crossing approximately four-tenths of a mile.

16. BNSF states that removal of the crossing will be started within 30 days of the Commission approval and will be completed within 30 days.

17. BNSF does not provide an estimate of the costs of the closure, but that all costs associated with the removal of the crossbucks and crossing surface, and installation of the Type III barricades on either side of the crossing will be borne by BNSF.

C. Discussion

18. Subsections 40-4-106(1),¹ 40-4-106(2)(a),² and 40-4-106(3)(a)(I),³ C.R.S., *both* provide the jurisdictional basis for the Commission to act on applications to abolish railroad crossings *and* establish the standard to be applied to such applications. *Hassler and Bates Company v. Public Utilities Commission*, 168 Colo. 183, 451 P.2d 280 (1969) (interpreting predecessor statutes with substantially identical language to current statutes). Based on the statutory language and the Colorado Supreme Court's interpretation, the standard to be applied in this case is: will abolishing (that is, closing) the northern CR 83.1 crossing serve to prevent accidents and promote public safety; and, if so, are there just and reasonable conditions and terms which the Commission ought to attach to the closing?

19. Using the information provided by BNSF, the existing exposure factor at the northern CR 83.1 crossing is 112 (number of trains per day multiplied by the number of VPD). Traffic volumes provided by BNSF for the two crossings adjacent to the subject crossing are 100 VPD at the southern CR 83.1 crossing and 242 at the CR 40.3 crossing.

¹ As pertinent here, that subsection grants the Commission the "power ... to make ... special orders ... or otherwise to require each public utility to maintain and operate its ... tracks, and premises in such manner as to promote and [to] safeguard the health and safety of ... the public and to require the performance of any other act which the health or safety of its employees ... or the public may demand."

² As pertinent here, that subsection grants the Commission the "power ... to determine, [to] order, and [to] prescribe the terms and conditions of installation and operation, maintenance, and warning at all such crossings that may be constructed, including ... the installation and regulation of ... means or instrumentalities as may to the commission appear reasonable and necessary to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted."

³ As pertinent here, that subsection grants the Commission the "power ... to order any crossing constructed at grade ... to be ... abolished, according to plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the commission[.]"

Thus, the exposure factor for the southern CR 83.1 crossing is 200 and the exposure factor for the CR 40.3 crossing is 484. The cumulative exposure factor for the three existing crossings is 796. The cumulative exposure factor will remain the same for the two remaining crossings if the subject crossing is abolished.

20. Using information provided by BNSF, the hazard index for the existing conditions (two Amtrak trains per day), as the calculation is outlined in the *1974 Colorado State Highway Railroad Grade Crossing Data* book, is 0.51 for the northern CR 83.1 crossing under the current configuration of crossbuck warning signs only, 0.60 for the southern CR 83.1 crossing under the current configuration of crossbuck warning signs only, and 0.53 for the CR 40.3 crossing under the current configuration of flashing light warning signals. The hazard index is the probable number of accidents expected to occur in a five-year time period. The cumulative hazard index for the three crossings is 1.64.

21. To analyze the hazard indices if the northern CR 83.1 crossing were to be abolished, we will look at the two worst case scenarios: Scenario 1 would involve all traffic from the northern CR 83.1 crossing moving to the southern CR 83.1 crossing and Scenario 2 would involve all traffic from the northern CR 83.1 crossing moving to the CR 40.3 crossing. Under Scenario 1, the hazard index for the southern CR 83.1 crossing would increase to 0.66 while the hazard index for the CR 40.3 crossing would remain at 0.53. The cumulative hazard index for the two crossings would be 1.19. Under Scenario 2, the hazard index for CR 40.3 would increase to 0.54 while the hazard index at the southern CR 83.1 crossing would remain at 0.60. The cumulative hazard index for the two crossings would be 1.14. In both worst case scenario calculations, the total number of accidents expected to occur in a five-year time period with the removal of the northern CR 83.1 crossing is reduced with the closure of this crossing.

Therefore, the overall risk of crossing accidents at the two remaining crossings decreases since the exposure occurs now at only two crossings as opposed to three crossings.

22. It is our principle function in this proceeding to determine whether the northern CR 83.1 crossing should be abolished in order to prevent accidents and to promote public safety. Our decision is predictive out of necessity because we are dealing with prevention of accidents and promotion of public safety when the crossing is abolished in the future. While we cannot predict with absolute certainty and accuracy what may happen in the future, we have to make the best judgment possible based on the data available.

23. Based on our analysis, with the reduction in the number of crossings to which vehicles are exposed to potential train collisions and a reduction in the cumulative hazard index with the closure of the northern CR 83.1 crossing, we find that closure of the northern CR 83.1 crossing will serve to prevent accidents and promote public safety and find that the northern CR 83.1 crossing should be abolished.

24. The Commission's second function in this matter is to determine whether there are just and reasonable terms which should be imposed. In this matter, we find that there are no separate just and reasonable terms which should be imposed in this matter.

25. BNSF will be required to inform the Commission in writing that all work necessary to abolish the crossing is complete within ten days of completion. The Commission will expect this letter by August 30, 2014. However, the Commission does understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

26. BNSF will also be required to file a copy of the updated U.S. Department of Transportation National Inventory forms showing this crossing as closed. This updated inventory form is to be filed with the completion letter by August 30, 2014.

27. BNSF will be required to perform all work necessary to remove the crossbucks, crossing surface panels, and roadway approaches with installation of the Type III barrier to prevent drivers from accessing the right of way.

D. Conclusions

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

29. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application.

30. 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 CCR 723-1.

31. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety and necessity are met by granting the Application consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. This application (Application) filed by the BNSF Railway Company (BNSF) on April 29, 2014, requesting authority to abolish the existing at-grade highway-rail crossing of Las Animas County Road 83.1 (CR 83.1) by closure and removal of the roadway,

National Inventory No. 003312T, in Hoehne, County of Las Animas, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Motion for Additional One Day Extension to Respond to Deficiency Notice Dated 5/5/14 is granted.

3. The Application is granted.

4. BNSF is authorized and ordered to proceed with the abolishment of the northern CR 83.1 crossing.

5. BNSF will be required to perform all work necessary to remove the crossbucks, crossing surface panels, and roadway approaches with installation of the Type III barrier to prevent drivers from accessing the railroad right-of-way.

6. BNSF is required to inform the Commission in writing that the crossing abolishment is complete within ten days after completion. We shall expect this letter August 30, 2014. However, we understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

7. BNSF is required to file a copy of the updated U.S. Department of Transportation National Inventory form in this proceeding showing this crossing as closed by August 30, 2014.

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 Decision.

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

10. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 25, 2014.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners