

Decision No. C14-1175

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0850R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION TO CONSTRUCT A NEW BRIDGE STRUCTURE TO CARRY STATE HIGHWAY 92 OVER THE TRACKS OF THE UNION PACIFIC RAILROAD COMPANY AND ELIMINATE THE EXISTING AT-GRADE CROSSING NEAR THE TOWN OF LAZEAR IN DELTA COUNTY, COLORADO.

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

Mailed Date: September 24, 2014

Adopted Date: September 24, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the Colorado Department of Transportation (CDOT) on August 13, 2014, seeking authority to construct a new grade separated crossing of State Highway 92 (SH 92) with the tracks of the Union Pacific Railroad Company (UPRR), new National Inventory No. 440952W, to allocate 5 percent of the cost of a theoretical structure to UPRR, and to close the existing at-grade crossing of this location at railroad mile post 67.66 on the North Fork Subdivision, National Inventory No. 254041G, west of the Town of Lazear, County of Delta, State of Colorado.

2. Notice of the Application was provided by the Commission to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on August 19, 2014.

3. On September 16, 2014, UPRR filed an Entry of Appearance and Notice of Intervention. UPRR does not contest or oppose the Application.

4. 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.

5. Now being fully advised in the matter, we grant the Application.

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 proposes to construct a new bridge structure to carry SH 92 over the tracks of the UPRR and to close the existing at-grade crossing. Once the new bridge structure is operational, the existing at-grade crossing and active warning equipment will be removed.

8. The new bridge structure is proposed to be four spans with the skewed UPRR tracks located under Span 2 and Span 3. The total length of the bridge structure from back face of abutment to back face of abutment is 562'-6" with the length of Spans 2 and 3 each at 150'-0". The minimum vertical clearance from the top of rail to the bottom of the structure is 23'-11 7/8" at the UPRR track. The minimum horizontal distance from the centerline of the UPRR track to Pier 3 is 25'- 0 1/2". The proposed minimum clearances meet or exceed the clearances required by Commission Rules 4 *Code of Colorado Regulations* (CCR) 723-7-7324 and 7325 of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings.

9. The bridge structure is proposed to be 43'-0" out to out and will accommodate two 12'-0" travel lanes, two 8'-0" shoulders, and two 1'-6" Type 7 bridge rails with 92" chain link fence.

10. CDOT states that roadway volume on SH 92 is currently 4,500 vehicles per day (VPD) traveling at a speed of 50 miles per hour (MPH) with traffic volumes projected to 7,938 VPD by 2030. CDOT states that there are currently 12 freight train movements per day that use the existing crossing at a maximum timetable speed of 25 MPH with no estimates of growth for freight trains provided at this time.

11. CDOT proposes to start construction in the fall of 2014 and be complete by the fall of 2015. CDOT will be required to inform the Commission in writing that construction of the new grade separated structure is complete and operational within ten days of completion. The Commission will expect this letter by September 30, 2015. 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. CDOT shall also be required to file a signed copy of the Construction and Maintenance Agreement for the new bridge structure prior to the start of construction. We will expect this agreement to be filed by October 31, 2014 and expect that construction at the crossing will not begin until the agreement has been filed.

12. UPRR shall be required to file copies of the updated National Inventory Forms showing crossing 254041G as closed, and showing the information for the new bridge structure crossing 440952W as open by the completion of the project. The Commission will expect these inventory forms to be filed in this proceeding by the completion of the project on September 30, 2015.

13. CDOT estimates the cost of the entire project at \$15.6 million, for which Federal-aid Section 130 Program and State FASTER Bridge Enterprise funds will provide for the overall cost of the project.

14. Under 23 *Code of Federal Regulations* (CFR) § 646.210(b)(3), the railroad share of project costs for Federal-aid projects where an existing at-grade crossing with active warning devices is eliminated is 5 percent of the theoretical project costs. The theoretical project cost is estimated at \$5,177,342 as shown in Exhibit C to the Application.

15. We have reviewed the theoretical structure estimate and proposed cost allocation and find they are appropriate and meet the requirements of 23 CFR § 646.210. UPRR shall pay 5 percent of this cost, or \$258,867 towards the cost of the structure with CDOT paying for the remaining costs of the structure through federal and state funding sources.

C. Conclusions

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

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

18. Because the Application is unopposed, the Commission finds that it will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1 of the Commission's Rules of Practice and Procedure.

19. Based on the Findings of Fact, we find that 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. The application (Application) filed by the Colorado Department of Transportation (CDOT) on August 13, 2014, seeking authority to construct a new grade separated crossing of

State Highway 92 (SH 92) with the tracks of the Union Pacific Railroad Company (UPRR), new National Inventory No. 440952W, to allocate 5 percent of the cost of a theoretical structure to UPRR, and to close the existing at-grade crossing of this location at railroad mile post 67.66 on the North Fork Subdivision, National Inventory No. 254041G, west of the Town of Lazear, County of Delta, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Intervention by UPRR is granted.
3. The Application is granted.
4. CDOT is authorized and ordered to proceed with construction of a new grade separation structure of SH 92 over the tracks of the UPRR with removal of the existing at-grade crossing and active warning equipment once the bridge structure is complete and traffic has been moved to the structure near Lazear, Colorado.
5. The UPRR shall pay \$258,867 towards the cost of the construction of the grade separation structure and CDOT shall pay the remaining costs through federal and state funding sources.
6. CDOT shall inform the Commission in writing when the new structure is complete and operational and the existing at-grade crossing and warning devices have been removed within ten days of completion. The Commission will expect this letter by September 30, 2015. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.
7. CDOT shall file a copy of the signed Construction and Maintenance Agreements by October 31, 2014 prior to the start of any crossing construction.

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 decisions as necessary.

10. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 24, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

Commissioners

COMMISSIONER PAMELA J. PATTON
ABSENT.