

Decision No. C19-0990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0551R

IN THE MATTER OF THE APPLICATION OF THE GREAT WESTERN RAILWAY, LLC OF COLORADO TO OBTAIN AUTHORITY FOR MODIFICATION OF EXISTING AT-GRADE CROSSING ON FIRST STREET (U.S. DOT #244897K) LOCATED IN THE TOWN OF WINDSOR, WELD COUNTY, STATE OF COLORADO.

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

Mailed Date: December 11, 2019

Adopted Date: December 4, 2019

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the Great Western Railway of Colorado (GWR) on October 15, 2019, seeking authority to upgrade the crossing of the 1st Street crossing and extension of rail to move a switch point from the east side of the crossing to the west side of the crossing and to upgrade track from 90lb. rail to 136lb. rail at railroad milepost 86.94 of the Greeley Subdivision, National Inventory No. 244897K, in the Town of Windsor, County of Weld, 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 October 16, 2019.

3. There were no interventions in this matter.

4. The Commission has reviewed the record in this matter, and the Application was automatically deemed complete by operation of rule on December 2, 2019.

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. GWR is requesting authority to upgrade the crossing of 1st Street to upgrade the weight of rail and to add additional rail to move the existing switch point from the east side of the crossing to the west side of the crossing. This work was completed in October 2018 as part of a larger rail line rehabilitation, but GWR is just now seeking authority.

8. GWR performed this work to improve the degree of curvature, which will improve the ability of GWR operating equipment to navigate through the turnout.

9. GWR currently runs two trains per day through the crossing at a speed of 10 miles per hour (MPH) with the number of trains expected to remain the same during the next five years. There are approximately 100 vehicles per day using the crossing at 15 MPH with no estimates for increases in the future.

10. There have been no accidents at the crossing since 1975.

11. GWR states that the cost of construction of the project was \$25,000 with GWR paying for the cost of the project. Construction of the project is already complete.

12. We are disturbed that GWR performed work at a crossing that required an application to and approval by this Commission before the work should have even begun. Section 40-4-106(2)(a), C.R.S. gives this Commission “the power to determine, order, and prescribe, in accordance with the plans and specifications to be approved by it....”. By not allowing the Commission to review and approve the proposed project and plans prior to construction, it puts the Commission and GWR in a precarious position that if the Commission

later determines that the proposed project was constructed in a manner that would not have been approved by the Commission, GWR would now be in a position of having to expend additional capital to redo the project in a manner that is acceptable to the Commission or return the project to its initial state.

13. We also want to remind GWR that the Commission now has fining authority over railroads and that construction of projects such as the one that is the subject of this Application before obtaining authority from the Commission may be subject to a Civil Penalty Assessment at \$2000.00 per day for every day between when the project is put in service and when the project is approved by the Commission or when the project is returned to its original state for projects that are not approved.

14. We reprimand GWR for having made changes to the subject crossing without obtaining authority from the Commission as required by Colorado Statute and admonish GWR to seek Commission approval prior to any similar construction. GWR needs to develop policies and procedures to ensure that any crossing changes or changes to railroad elements that may require a review of possible waiver of Commission rules that GWR is considering performing obtain the necessary regulatory approvals before such projects are started.

15. We will require GWR to update the crossing inventory for the changed crossing conditions and to file a copy of the updated crossing inventory form with the Commission by December 31, 2019.

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 *Code of Colorado Regulations* 723-1 of the Commission's Rules of Practice and Procedure.

19. Based on the Findings of Fact, we will approve the Application.

II. **ORDER**

A. **The Commission Orders That:**

1. The application (Application) filed by the Great Western Railway of Colorado (GWR) on October 15, 2019, seeking authority to upgrade the crossing of the 1st Street crossing and extension of rail to move a switch point from the east side of the crossing to the west side of the crossing and to upgrade track from 90lb. rail to 136lb. rail at railroad milepost 86.94 of the Greeley Subdivision, National Inventory No. 244897K, in the Town of Windsor, County of Weld, State of Colorado was deemed complete within the meaning of § 40-6-109.5, C.R.S. by operation of rule on December 2, 2019.

2. The Application is granted.

3. GWR is required to file a copy of the crossing inventory for the changed crossing conditions and to file a copy of the updated crossing inventory form with the Commission by December 31, 2019.

4. 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.

- 5. The Commission retains jurisdiction to enter further decisions as necessary.
- 6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 4, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners