

Decision No. R19-0904

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0440R

IN THE MATTER OF THE APPLICATION OF BNSF RAILWAY COMPANY FOR
AUTHORITY TO MODIFY AND UPGRADE ACTIVE WARNING DEVICES AT THE
CROSSING AT U.S. HIGHWAY 34 IN BRUSH, COLORADO (DOT # 057578C).

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING APPLICATION AND ALLOCATING COSTS**

Mailed Date: November 5, 2019

I. STATEMENT

1. On August 8, 2019, BNSF Railway Company (BNSF) filed the above-captioned application requesting authority to modify the active warning devices at the crossing of U.S. Highway 34 (U.S. 34) across the tracks of the BNSF to remove the inner second entrance gate, employ “stop and wait” signs for the industry track, and install constant warning time detection at railroad milepost 149.060 of the Brush Subdivision, National Inventory No. 057578C, in the City of Brush, County of Morgan, State of Colorado. BNSF requests funding from the Highway-Rail Signalization Fund with BNSF paying for 20 percent of the costs, the Colorado Department of Transportation (CDOT) paying for 10 percent of the costs, and the Highway-Rail Signalization Fund paying for 70 percent of the costs.

2. Notice of the Application was provided by the Public Utilities Commission (Commission or PUC) to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on August 9, 2019.

3. No interventions were filed in this matter.

4. The Application is unopposed. BNSF is the only party to this proceeding.

5. By Decision No. C19-0783-I, issued September 24, 2019, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) for determination of the merits of the Application and appropriate allocation of costs for the project.

6. By Decision No. R19-0809-I, issued October 1, 2019, a hearing was scheduled to be held on November 4, 2019. At the scheduled time and place, the hearing was convened. BNSF appeared through counsel. Amber Stoffels, BNSF's Manager of Public Projects, testified on behalf of BNSF. The Application, including Exhibits 1 through 8, were admitted by administrative notice as Hearing Exhibit 10. At the conclusion of the hearing the matter was taken under advisement.

7. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission, the record in this proceeding along with a written Recommended Decision.

II. FINDINGS AND CONCLUSIONS

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

9. BNSF owns the single main track and industry track through the crossing of U.S. 34 at railroad milepost 149.060 of the Brush Subdivision, National Inventory No. 057578C, in the City of Brush, County of Morgan, State of Colorado.

10. The CDOT is the roadway authority that owns the roadway affected by the Application.

11. The Application and Ms. Stoffels' testimony describe the crossing depicted in Exhibits 4 of Hearing Exhibit 10. Exhibit 5 to Hearing Exhibit 10 is two aerial photos with

imposed vicinity maps. Exhibit 6 to Hearing Exhibit 10 is a photo of each roadway approach to the crossing.

12. As of July 22, 2016, the updated National Inventory Form reflects there are an estimated 18 daytime (6 a.m. to 6 p.m.) through freight trains and 18 nighttime (6 p.m. to 6 a.m.) through freight trains using the crossing. The maximum timetable speed of trains using the crossing is 60 miles per hour (MPH). *See* Exhibit 1 to Hearing Exhibit 10.

13. The crossing is characterized as a local rural crossing and is located on the U.S. Highway system (maintained by CDOT). According to the National Inventory Form, as of 1996, the annual average daily traffic was 3,900 vehicles per day, the crossing was not regularly used by school buses, and the estimated percentage of heavy vehicle traffic was 14 percent. *See* Exhibit 1 to Hearing Exhibit 10.

14. CDOT's most recent updated traffic counts are 4,474 vehicles west of the crossing and 4,266 vehicles east of the crossing. *See* Exhibit 8 to Hearing Exhibit 10. The posted speed limit at the crossing is 40 MPH. *See* Application at p. 12.

15. There are presently three gates at the crossing, as depicted on Exhibit 4 to Hearing Exhibit 10. If there is a train on the mainline, both mainline gates are activated but the industry gate is not activated. If there is a train on the industry track, the two outermost gates at the crossing are activated but the gate between the industry and mainline tracks is not activated.

16. There is concern for the potential of cars cuing across the industry track while the mainline gates are activated. As presently constructed, the crossing does not meet current American Railway Engineers and Maintenance of Way (AREMA) standards.

17. BNSF proposes to upgrade the existing active warning system at the crossing. BNSF requests authority to upgrade the flashing gates, lights, and signal bungalow, as well as

addition of “Stop and Wait” signs near the industry track. BNSF seeks an Order from the PUC permitting it to remove the existing gate between the mainline and industry tracks. Once completed, two gates on opposite sides of both the mainline and industry tracks are triggered whenever either track (industry or mainline) is occupied. BNSF also proposes the addition of “Stop and Wait” signs in the area near the industry track. *See* Exhibit 4 to Hearing Exhibit 10. The estimated total cost for the installation of the protection devices is \$212,069. *See* Exhibit 7 to Hearing Exhibit 10.

18. BNSF’s proposed changes will enhance public safety, efficiency, and bring the crossing into compliance with current AREMA standards.

19. BNSF additionally seeks an allocation of funds for the cost of the crossing of 70 percent from the PUC Highway-rail Crossing Signalization Fund, 20 percent to the BNSF, and 10 percent to the CDOT.

20. Ms. Stoffels testified that CDOT has agreed to the proposed allocation and that no federal funds will be used in the project (she confirmed this with CDOT as well). She further testified that she was not aware of any federal funds available in Colorado for this project.

21. It is found and concluded that 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: CDOT, 10 percent; BNSF, 20 percent; and the Highway-rail Crossing Signalization Fund, 70 percent.

22. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The application (Application) filed by the BNSF Railway Company (BNSF) on August 8, 2019, requesting authority to modify the active warning devices at the crossing of U.S. Highway 34 (U.S. 34) across the tracks of the BNSF to remove the inner second entrance gate, employ “stop and wait” signs for the industry track, and installing constant warning time detection at railroad milepost 149.060 of the Brush Subdivision, National Inventory No. 057578C, in the City of Brush, County of Morgan, State of Colorado is granted.

2. BNSF is authorized and ordered to upgrade the crossing of U.S. 34 across the tracks of the BNSF in Brush, Colorado.

3. Improvements authorized in ordering paragraph 1 above shall be in accordance with the plans and specifications introduced into evidence at the hearing of this matter.

4. The costs of the crossing upgrade, currently estimated at \$212,069, shall be paid as follows: Colorado Department of Transportation, 10 percent; BNSF, 20 percent; and the Highway-rail Crossing Signalization Fund, 70 percent.

5. BNSF is required to file a copy of the signed Construction and Maintenance Agreement in this matter by December 31, 2019 prior to starting construction work at the crossing.

6. BNSF is required to inform the Commission in writing that the authorized improvements are complete and operational within ten days after completion. The Commission shall expect this letter by February 29, 2020. 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. 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.

8. 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.

9. 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.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director