

Decision No. C20-0050

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0636R

IN THE MATTER OF THE APPLICATION OF THE CITY OF LOUISVILLE FOR AUTHORITY TO INSTALL APPROACH RAILROAD GATES WITH FLASHING LIGHTS, BELLS, CONSTANT WARNING TIME CIRCUITRY, NEW SIGNAL CABIN, AND UPGRADED MEDIAN POST-MOUNTED FLASHERS AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING DILLON ROAD, USDOT NO. 244798M, IN BOULDER COUNTY, STATE OF COLORADO.

**DECISION GRANTING APPLICATION FOR
REHEARING, REARGUMENT, OR
RECONSIDERATION FOR THE SOLE PURPOSE OF
TOLLING THE STATUTORY TIME LIMIT**

Mailed Date: January 23, 2020

Adopted Date: January 22, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the application filed on December 30, 2019, by BNSF Railway Company (BNSF) seeking rehearing, reargument, or reconsideration (RRR) of Decision No. C19-0989, issued in this Proceeding on December 11, 2019. Through this Decision, we grant the RRR for the sole purpose of tolling the 30-day statutory time limit to act upon an application for RRR.

B. Findings and Conclusions

2. By Decision No. C19-0989, the Commission: (1) granted a final extension to December 31, 2019, for BNSF and the City of Louisville (Louisville) to finalize and submit the signed Construction and Maintenance Agreement (Agreement) ordered to be filed by the Commission in Decision No. R19-0640, issued July 29, 2019; and (2) provided notice to BNSF

that in the event the signed Agreement is not submitted by this deadline the Commission intends to issue a notice of civil penalty assessment against BNSF of \$2,000 per day for failure to comply with the Commission's order, as authorized in §§ 40-4-106(1)(b) and 40-7-105, C.R.S.

3. On December 30, 2019, BNSF filed an application for RRR of Decision No. C19-0989. In its application for RRR, BNSF states that it filed the Agreement contemporaneously with its RRR and is therefore not seeking further extension. BNSF states that it submits the RRR for reconsideration of the Commission's statement that it intended to issue a notice of civil penalty in the event the Agreement was not timely filed. BNSF asserts that Decision No. C19-0989 exceeds the scope of the Commission's statutory authority and constitutes an abuse of discretion. BNSF argues the record lacks evidence of safety issues at the crossing. BNSF further argues the attempt to fine BNSF interferes with the contractual relationship between it and Louisville.

4. Pursuant to § 40-6-114(1), C.R.S., we are required to consider and act upon any application for RRR within 30 days of its filing (in this case by January 29, 2020) or the RRR will be denied by operation of law. Due to the press of business, we grant BNSF's application for RRR in order to toll this statutory time limit. Accordingly, this grant is merely procedural in order to toll the 30-day statutory time limit in § 40-6-114(1), C.R.S.

5. We will issue a future order ruling upon the merits of the application for RRR.

II. ORDER

A. The Commission Orders That:

1. The application filed on December 30, 2019, by BNSF Railway Company, seeking rehearing, reargument, or reconsideration of Decision No. C19-0989, is granted for the sole purpose of tolling the statutory time limit in § 40-6-114(1), C.R.S.

2. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 22, 2020.**

(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