

Decision No. C20-0523

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0480R

IN THE MATTER OF THE APPLICATION OF CITY AND COUNTY OF BROOMFIELD FOR AUTHORITY TO INSTALL APPROACH RAILROAD GATES WITH FLASHING LIGHTS AND BELLS, INSTALL EXIT RAILROAD GATES TO COMPLETE A 4-QUADRANT GATE INSTALLATION, WITH CONSTANT WARNING TIME CIRCUITRY AND NEW RAILROAD SIGNAL CABIN, AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING BRAINARD DRIVE, USDOT NO. 929085A, IN CITY AND COUNTY OF BROOMFIELD, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING APPLICATION AS AMENDED**

Mailed Date: July 17, 2020

Adopted Date: July 15, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the City and County of Broomfield (Broomfield) on September 3, 2019, seeking final approval of design plans to install active warning devices including flashing lights, bells, four-quadrant gates, constant warning time circuitry, radar exit gate vehicle detection, and a new signal cabin at the crossing of Brainard Drive with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 16.352 on the Front Range Subdivision, National Inventory Number 929085A, in Broomfield, State of Colorado.

2. Through this decision we grant the Application, as amended May 27, 2020, and as further supplemented on June 26, 2020 and June 29, 2020, consistent with the discussion below.

B. Procedural Background

3. Notice of the Application filed September 3, 2019, was provided by the Commission to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on September 4, 2019. The Commission gave notice to all interested parties, including the adjacent property owners.

4. On October 4, 2019, BNSF filed a Notice of Intervention. BNSF did not object to preliminary approval, but stated it was still reviewing the design and providing comments to the Broomfield and reserved all rights to object to final approval and to continue to provide comments to the Broomfield on the design proposal. No other interventions were filed.

5. On October 16, 2019, the Commission issued Interim Commission Decision No. C19-0843-I, mailed October 17, 2019 deeming the Application complete, approving the preliminary design plans, and requiring Broomfield to file the final design plans for Commission review and approval by December 1, 2019.

6. On November 27, 2019, Broomfield filed a Motion for Extension of Time requesting a 90-day extension of time to February 29, 2020 to file the final design plans for Commission review and approval.

7. On December 17, 2019, the Commission issued Interim Commission Decision No. C19-1012-I, mailed December 17, 2019, granting an extension of time to February 28, 2020 to file the final design plans for Commission review and approval.

8. On February 28, 2020, Broomfield filed a Second Motion for Extension of Time requesting an additional 120-day extension of time to June 27, 2020 to file the final plans for Commission review and approval. Although the Commission granted the additional motion for extension of time, given the ongoing delays, the parties were reminded that ongoing delay and

incompliance with Commission orders can present public safety concerns relevant to the Commission's jurisdiction under § 40-4-106, C.R.S., and that pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1302(b) of the Commission's Rules of Practice and Procedure and §40-4-106(1)(b), C.R.S, the Commission may impose a civil penalty against a railroad company that fails to comply with a Commission order or rule directing compliance with railroad crossing safety regulations.¹

9. On May 27, 2020, Broomfield filed a Notice of Amendment to Application, and Amendment and an amended exhibit. Broomfield updated the cost apportionment information and provided the cost estimate and schematic diagram.

10. On June 10, 2020, the Commission issued Decision No. C20-0436-I, requiring additional information. Since the originally proposed start date had passed providing only two months to complete the project, the Commission required Broomfield and BNSF to provide updates to the date by which the signed Construction and Maintenance Agreement will be filed with the Commission and that new date anticipated for the project to be completed. The Commission required this supplemental information be filed by June 30, 2020.

11. On June 26, 2020, Broomfield filed the railroad cost estimate and schematic diagram.

12. On June 29, 2020, the parties made a joint filing with the additional information requested from the Commission and filed the signed Construction and Maintenance Agreement for the project. Parties represent that Broomfield anticipates filing the executed Construction and Maintenance agreement on or before July 31, 2020, and requests an extension of time to do so. Further, the joint pleading states that parties continue to discuss new project benchmark dates,

¹ Decision No. C20-0270, issued April 20, 2020.

but that at the time of the joint filing, the expected project completion date of July 31, 2020, has not changed.

C. Findings and Conclusions

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

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

15. Because the Application is unopposed, the Commission finds that it will determine this matter upon the record, without a formal hearing under § n40-6-109(5), C.R.S., and Rule 1403, Commission's Rules of Practice and Procedure, 4 CCR 723-1.

16. Through its Application, as amended, Broomfield requests authority to install active warning devices including flashing lights, bells, four-quadrant gates, constant warning time circuitry, radar exit gate vehicle detection, and a new signal cabin at the crossing of Brainard Drive with the BNSF. Broomfield proposes to operate the four-quadrant gates in a dynamic mode with radar vehicle detection.

17. Broomfield represents these changes are necessary change because Broomfield is pursuing a quiet zone at this crossing.

18. Within its filings, Broomfield states there are currently 16 trains per day that use the crossing at a maximum timetable speed of 30 miles per hour (MPH) with no estimates of increases or decreases in these volumes in the future. There are currently 120 vehicles per day (VPD) with approximately 2 percent heavy vehicles and no school buses using the crossing at a posted speed limit of 25 MPH with an estimated increase to 138 VPD by 2023 and 150 VPD by 2038.

19. There have been no accidents that have occurred at this crossing since it was opened.

20. Broomfield estimates the cost of the traffic signal interconnection and associated civil engineering work at \$49,013 with the estimate for the BNSF work at \$407,969. The costs of the project will be paid for through a combination of CDOT administered federal funds, and Broomfield local Capital Improvement Project funds.

21. As stated in the June 29, 2020 joint filing providing supplemental information on the application, as amended, Broomfield has already issued a notice to proceed on June 18, 2020, and expects the project to be complete by July 31, 2021.

22. We find that good cause exists and that the requirements of public safety are met by granting the Application, as amended, and considering the supplemental information, for the crossing project.

23. Broomfield shall inform the Commission in writing when the project is complete and operational within ten days of completion. The Commission will expect this letter on or before July 31, 2021.²

24. BNSF shall provide an updated crossing inventory for the changed crossing conditions and shall file a copy of the updated crossing inventory form with the Commission

² The Commission understands there may be changes or delays in the construction schedule. While a request for extension is not required in the event completion of the construction project goes past July 31, 2021, Broomfield should inform the Commission through an appropriate filing if delays are anticipated or significant.

concurrent with notice to the Commission of completion of the crossing work initially expected by July 31, 2021.

25. We note that there have been significant delays in this proceeding and requests for extensions of time. The parties are reminded again that ongoing delay and noncompliance with Commission orders can present public safety concerns relevant to the Commission's jurisdiction under § 40-4-106, C.R.S., and that pursuant to Rule 4 CCR 723-1-1302(b) of the Commission's Rules of Practice and Procedure and § 40-4-106(1)(b), C.R.S.,³ the Commission may impose a civil penalty against a railroad company that fails to comply with a Commission order or rule directing compliance with railroad crossing safety regulations.

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed by the City and County of Broomfield (Broomfield) on September 3, 2019, as amended on May 27, 2020, June 26, 2020 and June 29, 2020, seeking final approval of design plans to install active warning devices including flashing lights, bells, four-quadrant gates, constant warning time circuitry, radar exit gate vehicle detection, and a new signal cabin at the crossing of Brainard Drive with the tracks of the BNSF Railway Company (BNSF) at railroad milepost 16.352 on the Front Range Subdivision, National Inventory Number 929085A, in Broomfield, State of Colorado is granted.

³ The Commission may pursue a notice of civil penalty assessment on its own motion, or upon consideration of a complaint filed pursuant to Rule 4 CCR 723-1-1302(a) setting forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and how a statute, rule, decision or agreement memorialized, accepted, or approved by a Commission decision is alleged to have been violated. Relief requested must be clear, including without limitation, whether the complainant requests the Commission pursue civil penalties.

2. Broomfield is authorized and ordered to proceed with the project at the Brainard Drive crossing including installation of active warning devices including flashing lights, bells, four-quadrant gates, constant warning time circuitry, radar exit gate vehicle detection, and a new signal cabin in Broomfield, Colorado.

3. Broomfield is required to inform the Commission in writing that the project is complete and operational within ten days of completion.

4. BNSF shall update the crossing inventory form showing the changed crossing conditions and file a copy of that updated inventory form in this proceeding concurrent with notice of completion of the crossing changes.

5. 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.

6. The Commission retains jurisdiction to enter further decisions as necessary.

7. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 15, 2020.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners