

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0167R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION AND WELD COUNTY, FOR AUTHORITY TO REMOVE EXISTING ACTIVE WARNING RAILROAD GATES, CROSSING SURFACE AND ROAD APPROACHES TO CLOSE THE EXISTING CROSSING AT TRACKS OWNED BY UNION PACIFIC RAILROAD COMPANY CROSSING COUNTY ROAD 37, USDOT NO. 804-857K, AND COUNTY ROAD 78, USDOT NO. 804-859Y IN WELD COUNTY, STATE OF COLORADO.

**COMMISSION DECISION
GRANTING APPLICATION**

Mailed Date: August 7, 2020
Adopted Date: August 5, 2020

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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) and the County of

Weld (Weld County) (collectively Applicants) on April 13, 2020, requesting authority to abolish the existing at-grade highway-rail crossings by closure and removal of the roadway with the tracks of the Union Pacific Railroad Company (UPRR) Greeley Subdivision of Weld County Road 37 (WCR 37) at railroad milepost 60.19, National Inventory No. 804857K and Weld County Road 78 (WCR 78) at railroad milepost 60.94, National Inventory No. 804859Y, near the Town of Eaton, Weld County, State of Colorado.

2. The Commission gave notice of this Application to all interested parties, including adjacent property owners in accordance with § 40-6-108(2), C.R.S. The Notice was mailed April 28, 2020.

3. Notice of proposed closure of the existing WCR 37 and WCR 78 crossing was posted at the crossing by Chad Hall on April 28, 2020 as stated in the Affidavit of Chad Hall and filed with the Commission on May 27, 2020. The affidavit includes photos of the notice posted at the subject crossing.

4. There were no interventions filed in this matter.

5. Three public comments were received in this matter.

6. The Commission reviewed the record in this matter and deemed that the Application was complete within the meaning of § 40-6-109.5, C.R.S., by Decision No. C20-0433-I mailed June 11, 2020.

7. The Commission requested additional information from CDOT in this application answering the following questions:

- a) What is the maximum distance a resident living along WCR 37 near the crossing would have to travel to access US 85 if the WCR 37 and WCR 78 crossings are abolished?

- b) What is the maximum distance a resident living along WCR 78 near the crossing would have to travel to access US 85 if the WCR 37 and WCR 78 crossings are abolished?
- c) Where are the emergency services located that would serve residents along WCR 37 and WCR 78?
- d) What is the impact on emergency services and response times if the WCR 37 and WCR 78 crossing[s are] abolished?
- e) Are emergency service providers aware of these proposed closures and have they determined how such a closure would impact their emergency response times to residents along WCR 37 and WCR 78?
- f) What mitigation measures, if any, are being taken to mitigate any of the emergency service and additional travel time issues discussed by the public commenters?
- g) If no mitigation measures are being provided to mitigate any of the emergency service and additional travel time issues discussed by the public commenters, please explain why mitigation measures are not being provided or not necessary.¹

8. On July 7, 2020, CDOT provided responses to the above questions.

9. Now being fully advised in the matter, we grant the Application with the additional information filed.

B. Findings of Fact

10. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application. Three public comments were filed regarding the Application.

11. The Applicants propose to abolish the crossings of WCR 37 and WCR 78, both of which are single track crossings, by closure and removal of the roadways. Applicants state that closure of the crossings are part of a Purchase and Sale Agreement between CDOT and UPRR to purchase right-of-way for the U.S. 85 corridor. CDOT, UPRR, and Weld County worked

¹ Decision No. C20-0433-I at ¶ 15.

together to identify locations for road closures as part of the Purchase and Sale Agreement with CDOT's goal from the negotiation to obtain full fee ownership from UPRR for the U.S. 85 ROW, with UPRR's goal from the negotiation to mitigate capacity impairments and to close the Purchase and Sale Agreement, and with Weld County's goal from the negotiation to ensure the long-term stability of the U.S. 85 corridor that improves safety of the highway and rail corridors, improves operational efficiencies to enhance economic development opportunities, and reduces conflicts for communities while also ensuring reliable emergency response time.

12. The WCR 37 and WCR 78 crossings are single track crossings that have crossbucks and stop signs as warning devices. These two crossings are adjacent to each other. There are currently 100 vehicles per day (VPD) that use the WCR 37 crossing at an unposted speed limit of 55 miles per hour (MPH), and 170 VPD using the WCR 78 at a speed limit of 55 MPH. There are currently approximately 14 trains per day that use the crossings at a maximum timetable speed of 60 MPH. There have been no collisions at the WCR 37 crossing. There has been one collision at the WCR 78 crossing that occurred in 1991 where two individuals were injured.

13. There were three public comments filed in this proceeding from residents that live along WCR 37 and WCR 78. The public comments included references to decreased property values; extended travel times for these residents to get to the Town of Ault (Ault) and the Town of Eaton (Eaton); changes in traffic patterns that would cause congestion; increased use of dirt roads that will increase dust that could affect people with breathing problems; the closest crossing, WCR 80, does not have crossing arms and is steep, which creates dangerous conditions in ice and snow; the SH 14 crossing in Ault being blocked; and concern about the time it will take for emergency vehicles to access homes along WCR 37 and WCR 78.

14. A review of information provided in the Application shows that the WCR 80 crossing is equipped with flashing lights and gates. A review of our records shows that flashing lights and gates were installed at the WCR 80 crossing through Proceeding No. 11A-242R and the application for that proceeding shows that WCR 80 does not have a steep approach from either side towards the crossing.

15. While property values and dust levels are not among the items the Commission is to consider when determining whether or not to abolish a crossing, the issues of the extended travel distance and time, potentially blocked crossings, and emergency vehicle response time are important issues for consideration.

16. The public commenters provide information that closure of the WCR 37 and WCR 78 would add 15 minutes on more dirt roads for residents and would add additional time for emergency responders. One commenter stated that WCR 78 can be closed, but WCR 37 should not be closed.

17. CDOT provided responses to our questions addressing the issues brought up by the three public commenters.

18. CDOT reports that the maximum distance a resident living along WCR 37 near the crossing would have to travel to access U.S. 85 if the WCR 37 crossing is abolished is approximately 2.22 miles.

19. CDOT reports that the maximum distance a resident living along WCR 78 near the crossing would have to travel to access U.S. 85 if the WCR 78 crossing is abolished is approximately 1.56 miles.

20. CDOT reports that emergency services located that would serve residents along WCR 37 and WCR 78 are located in Ault, Eaton, and Weld County. The Eaton Fire Department

serves residents south of the WCR 78 crossing. The Ault/Pierce Fire Department serves residents north of the WCR 78. All ambulance services for the area are based out of the Ault/Pierce Fire Department. The areas in question are outside of the Ault and Eaton Police Departments' service areas. The Weld County Sheriff is the official jurisdiction in this area and will respond directly if they are in the area. If not, they will request Mutual Aid if an incident is in progress. Post closure, the Ault Police Department is the closest station for Mutual Aid for the Sheriff. CDOT provided an exhibit with its responses showing the location of police, fire, and ambulance locations and travel routes for each with distances and response times for both before the proposed closures and after the proposed closures.

21. In regards to the impact on emergency services and response times if the WCR 37 and WCR 78 crossings are abolished, the maximum change in response time is response time from the Ault Fire Department to the area along WCR 37. This response time changes from two minutes to five minutes. Other response times for police, fire, and ambulance either remain the same or change by one minute. CDOT calculated these travel times based on an emergency vehicle traveling ten MPH over the posted speed limit.

22. Regarding the question about if emergency service providers were aware of this proposed closure and if they had determined how such a closure would impact their emergency response times to residents along WCR 37, CDOT reports that the Platteville Police Department did not feel that the closure of the WCR 37 crossing would result in any responsiveness issues and that alternative accesses were sufficient for responding to emergencies. The Fire Department, which also houses the ambulance, stated they are aware of the upcoming closure, but they did not state how the closure would affect response times.

23. CDOT has notified and discussed the proposed closures with the affected police, fire departments, and sheriffs, and they are aware of the proposed closures.

24. CDOT reports that no mitigation measures are being taken at this time with regard to the emergency services and additional travel time issues.

25. CDOT explains that the reason mitigation measures are not being taken is because the response time for residences north of WCR 78 is negligible, so mitigation measures are not necessary. In reviewing CDOT's exhibit, if a train were blocking Ault fire access to U.S. 85 or the CR 37, the secondary response route for the Ault fire department would be the 4.78-mile, 5-minute route that would become the primary route with the proposed closures.

26. If the two subject crossings are closed, the 270 VPD will likely cross the tracks at either WCR 76 to the south of the subject crossing or WCR 80 to the north of the subject crossing.

27. CDOT originally estimated starting the closures on June 1, 2020 and completing them by July 1, 2020. Those dates will be moved forward by the additional time added through the additional information request. The CDOT estimates will be moved forward to starting the project on September 1, 2020 and being completed by October 31, 2020.

28. CDOT estimates the total cost of the WCR 37 and WCR 78 closures at \$160,000 with all costs for the project being paid for with Section 130 funding.

C. Discussion

29. Subsections 40-4-106(1)(a),² 40-4-106(2)(a),³ and 40-4-106(3)(a)(I),⁴ C.R.S., both provide the jurisdictional basis for the Commission to act on applications to abolish railroad crossings and establish the standard to be applied to such applications. *Hassler and Bates Company v. Public Utilities Commission*, 168 Colo. 183, 451 P.2d 280 (1969) (interpreting predecessor statutes with substantially identical language to current statutes). Based on the statutory language and the Colorado Supreme Court's interpretation, the standard to be applied in this case is: will abolishing (that is, closing) the WCR 37 and WCR 78 crossings serve to prevent accidents and promote public safety; and, if so, are there just and reasonable conditions and terms which the Commission ought to attach to the closing?

30. Using the information provided by CDOT, the existing exposure factor at the WCR 37 is 700 (number of trains per day multiplied by the number of VPD) and WCR 78 is 1,190. Traffic volumes provided by CDOT for the two crossings closest to the subject crossings are 410 VPD for WCR 76 and 500 for WCR 80. Thus, the exposure factor for each of these crossings is 2,870 at WCR 76 and 3,500 at WCR 80. The cumulative exposure factor for the four existing crossings is 8,260. The cumulative exposure factor will remain the same for the two remaining crossings if the subject crossings are abolished.

² As pertinent here, that subsection grants the Commission the "[power to make] special orders ... [or otherwise] to require each public utility to maintain and operate its ... tracks, and premises in such manner as to promote and [to] safeguard the health and safety of ... the public and to require the performance of any other act that the health or safety of its employees ... or the public may demand."

³ As pertinent here, that subsection grants the Commission the "power ... to determine, [to] order, and [to] prescribe the terms and conditions of installation and operation, maintenance, and warning at all such crossings that may be constructed, including ... the installation and regulation of ... means or instrumentalities as may to the commission appear reasonable and necessary to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted."

⁴ As pertinent here, that subsection grants the Commission the "power ... to order any crossing constructed at grade ... to be ... abolished, according to plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the commission[.]"

31. Using information provided by CDOT, the hazard index for the existing conditions (approximately ten trains per day), as the calculation is outlined in the *1974 Colorado State Highway Railroad Grade Crossing Data* book, is 0.45 for the WCR 37 crossing under the current configuration of flashing lights with gates and bells; 0.92 for the WCR 78 crossing under the current configuration of crossbucks and stop signs; 0.63 for WCR 76 under the current configuration of flashing lights with gates and bells; and 0.66 for WCR 80 under the current configuration of flashing lights, gates, and bells. The hazard index is the probable number of accidents expected to occur in a five-year time period. The cumulative hazard index for the four crossings is 1.94.

32. To analyze the hazard indices if the WCR 37 and WCR 78 crossings were to be abolished, we will look at three scenarios: Scenario 1 would involve all traffic from the WCR 37 and WCR 78 crossings moving to the WCR 76 crossing. Scenario 2 would involve all traffic from the WCR 37 and WCR 78 moving to the WCR 80 crossing. Scenario 3 would involve the WCR 37 traffic moving to WCR 76 and the WCR 78 traffic moving to WCR 80. Under Scenario 1, the hazard index for WCR 76 increases to 0.69 if all traffic moves to this crossing. The hazard index at WCR 80 remains 0.66. The cumulative hazard index becomes 1.35 under this scenario. Under Scenario 2, the hazard index for WCR 80 increases to 0.71 and the WCR 76 hazard index remains at 0.63. The cumulative hazard index becomes 1.34 under this scenario. Under Scenario 3, the hazard index for WCR 76 would increase to 0.66 and the hazard index at WCR 80 would increase to 0.69. The cumulative hazard index becomes 1.35. In all scenario calculations, the total number of accidents expected to occur in a five-year time period with the removal of the WCR 37 and WCR 78 is reduced with the closure of these crossings. Therefore,

the overall risk of crossing accidents at the two remaining crossings decreases since the exposure occurs now at only two crossings as opposed to four crossings.

33. It is our principal function in this proceeding to determine whether the WCR 37 and WCR 78 crossings should be abolished in order to prevent accidents and to promote public safety. Our decision is predictive out of necessity because we are dealing with prevention of accidents and promotion of public safety when the crossings are abolished in the future. While we cannot predict with absolute certainty and accuracy what may happen in the future, we have to make the best judgment possible based on the data available.

34. Based on our analysis, with the reduction in the number of crossings to which vehicles are exposed to potential train collisions and a reduction in the cumulative hazard index with the closure of the WCR 37 and WCR 78 crossings, we find that closure of the WCR 37 and WCR 78 crossings will serve to prevent accidents and promote public safety and find that the WCR 37 and WCR 78 crossings should be abolished.

35. In reaching our decision, we are mindful of, and take fully into consideration, the comments provided by the public commenters. Impact to emergency vehicle access increases at a maximum from two minutes to five minutes. This is a result of the increase in travel distance of approximately 3.14 miles. If the Eaton fire department were to respond using WCR 37 and the crossing were blocked, the response time would increase in total to nine minutes once Eaton backtracked to respond along WCR 37. With the WCR 37 crossing closed, there will be certainty in the response time whereas with the crossing still open, there is the potential for an increased response time if the crossing is blocked. Also, with the closure of the WCR 37 and WCR 78 crossings, UPRR will have the ability to create a siding that it can store trains by having two less crossings to be concerned about blocking. On balance, the points raised by the public

commenters, which are significant and not to be dismissed lightly, would be mitigated and closure of the WCR 37 and WCR 78 crossings would increase public safety and of prevention of accidents which is supported by the Application with additional information.

36. The Commission's second function in this matter is to determine whether there are just and reasonable terms which should be imposed. In this matter, we find that there are no separate just and reasonable terms which should be imposed in this matter.

D. Conclusions

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

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

39. Because the Amended Application is unopposed, the Commission will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403, Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

40. Based on the Findings of Fact, we find good cause exists and that the requirements of public safety and necessity are met by granting CDOT and Weld County's Application to abolish the WCR 37 and WCR 78 crossings consistent with the above discussion.

41. The Applicants shall inform the Commission in writing when the WCR 37 and WCR 78 crossings have been abolished. The Commission will initially expect this letter by October 31, 2020. However, we understand that this letter may be provided at a later date depending on how long it takes to construct the Front Street extension.

42. CDOT shall work with UPRR to file a copy of the updated National Inventory Form for the crossing showing the crossings as closed by the completion of the project, initially expected by October 31, 2020.

II. ORDER

A. The Commission Orders That:

1. This application filed by the Colorado Department of Transportation (CDOT) and the County of Weld (collectively Applicants) on April 13, 2020, with additional requested information filed on July 7, 2020, requesting authority to abolish the existing at-grade highway-rail crossings by closure and removal of the roadway with the tracks of the Union Pacific Railroad Company (UPRR) Greeley Subdivision of Weld County Road 37 (WCR 37) at railroad milepost 60.19, National Inventory No. 804857K and Weld County Road 78 (WCR 78) at railroad milepost 60.94, National Inventory No. 804859Y, near the Town of Eaton, Weld County, State of Colorado is granted.

2. The Applicants are authorized and ordered to proceed with the abolishment of the WCR 37 and WCR 78 crossings by removal of the crossing surfaces, railroad signals, and all railroad signage.

3. The Applicants shall inform the Commission in writing when the WCR 37 and WCR 78 crossings are closed. The Commission will expect this letter initially by October 31, 2020.

4. CDOT and UPRR shall work together to file a copy of the updated National Inventory Form for the crossing showing the crossing as closed by the completion of the project, initially estimated at October 31, 2020.

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 required decisions.

7. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 5, 2020.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners