

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0475R

IN THE MATTER OF THE APPLICATION OF THE CITY AND COUNTY OF BROOMFIELD FOR AUTHORITY TO UPGRADE APPROACH RAILROAD GATES WITH FLASHING LIGHTS, BELLS, CONSTANT WARNING TIME CIRCUITRY, NEW SIGNAL CABIN, AND INSTALL RAISED MEDIANS ON EACH APPROACH TO TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING 112TH AVENUE, USDOT NO. 244790H, IN BROOMFIELD COUNTY, STATE OF COLORADO.

**COMMISSION DECISION GRANTING
MOTION FOR EXTENSION OF TIME**

Mailed Date: August 26, 2020
Adopted Date: August 19, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Third Motion for Extension of Time (Motion) filed by the City and County of Broomfield (Broomfield) on July 31, 2020, seeking an extension of time to September 29, 2020 to file the signed Construction and Maintenance Agreement in this matter.

2. As grounds for its Motion, Broomfield states the Construction and Maintenance Agreement is still under legal review. Broomfield anticipates the agreement with the BNSF Railway Company (BNSF) will be completed within the next few weeks and that Broomfield will continue to diligently seek to finalize the agreement. Broomfield requests a 60-day extension up to and including September 29, 2020 to file the signed Construction and Maintenance Agreement.

3. No responses were filed to the Motion.

4. Through this Decision we grant the Motion consistent with the discussion below.

B. Procedural Background

5. Notice of the Application filed August 30, 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 3, 2019. The Commission gave notice to all interested parties, including the adjacent property owners.

6. On October 3, 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 and reserved all rights to object to final approval and to continue to provide comments to the Applicant on the design proposal. No other interventions were filed.

7. On October 16, 2019, the Commission issued Interim Commission Decision No. C19-0844-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.

8. 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.

9. 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 29, 2020 to file the final design plans for Commission review and approval.

10. On February 28, 2020, Broomfield filed a Second Motion for Extension of Time requesting an additional 120-day extension of time to June 29, 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 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 *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

11. 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.

12. On June 10, 2020, the Commission issued Decision No. C20-0434-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 the new date anticipated for the project to be completed. The Commission required this supplemental information to be filed by June 30, 2020.

13. On June 29, 2020, the parties made a joint filing with the additional information requested from the Commission. 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, but that at the time of the joint filing, the expected project completion date of July 31, 2020, has not changed.

¹ Decision No. C20-0271, issued April 20, 2020, at ¶ 6.

14. On July 31, 2020, Broomfield filed the subject Motion requesting an additional 60-day extension of time to September 29, 2020 to file the Construction and Maintenance Agreement.

C. Findings and Conclusions

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

16. As stated in the June 29, 2020, joint filing providing supplemental information on the application, as amended, Broomfield proposes to start construction after the signed Construction and Maintenance Agreement is filed on July 31, 2020 with completion by July 31, 2021.

17. A review of the record in this matter shows that the existing two-lane crossing is equipped with active warning devices consisting of flashing lights, gates, and bells. The requested changes which are the subject of this Application are needed to allow Broomfield to widen 112th Avenue and accommodate growing traffic volumes in the area. With these existing conditions, there should not be an immediate safety concern at the crossing, although there is an imminent safety concern with growing traffic volumes that needs to be addressed soon.

18. We continue to note that with this Motion, there are yet further delays in providing the signed Construction and Maintenance Agreement. Parties are reminded again that ongoing delay and in compliance 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.,² 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. Filings seeking an extension of time, if any is requested or deemed necessary, shall be supported with information confirming that there are no safety concerns caused by any delay.

19. In this proceeding, we restate our concern about the public safety issue that will arise with growing traffic volumes in the area not being addressed timely. The delay in starting the roadway widening project does not pose an immediate public safety issue for the extension requested through September 29, 2020; however, ongoing delay in starting this project, which will address the growing traffic volumes over time, is unacceptable. Further delay to this project, with failure to comply with the Commission orders and meet necessary timelines to commence the project and address growing traffic volumes, will cause public safety concerns. The requested extension is granted, with the understanding that no current safety issues are present and further noncompliance with railroad safety regulations would require the Commission to pursue imposition of appropriate remedies, including civil penalties, to ensure public safety.

20. In addition to potential fining considerations, we also note concern with the extensive extensions requested by the parties that can needlessly waste Commission resources. This is particularly true where parties are provided opportunity to set their own timelines yet fail to meet them. The proceeding at issue, although uncontested, has languished for a year with

² 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.

numerous requests for extension to comply with Commission orders. In the event parties again fail to meet the additional extension granted through this Decision, the Commission will consider the request for extension and its supporting information to pursue any appropriate action, including, without limitation, initiating processes to pursue fines as appropriate, particularly given the potential for safety concerns, and denial of further extension if parties fail to show good cause for the continued and extensive delay.

II. ORDER

A. The Commission Orders That:

1. The Motion for Extension of Time filed by the City and County of Broomfield (Broomfield) on July 31, 2020 seeking an extension of time to September 29, 2020 to file the signed Construction and Maintenance Agreement is granted.

2. The parties shall file a copy of the signed Construction and Maintenance Agreement for the project by September 29, 2020 with construction work at the crossing not expected to begin until these signed agreements are filed.

3. 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.

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

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 19, 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