

Decision No. C20-0643-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 18A-0809R

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IN THE MATTER OF THE APPLICATION OF THE CITY OF LOUISVILLE FOR AUTHORITY TO INSTALL 4-QUADRANT RAILROAD GATES WITH FLASHING LIGHTS, BELLS, CONSTANT WARNING TIME CIRCUITRY, AND NEW SIGNAL CABIN, AT TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING SOUTH BOULDER ROAD, USDOT NO. 244804N, IN BOULDER COUNTY, STATE OF COLORADO.

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**INTERIM COMMISSION DECISION STAYING  
RECOMMENDED DECISION; ORDERING  
PARTIES TO MAKE CERTAIN FILINGS; AND  
REMANDING PROCEEDING TO  
THE ADMINISTRATIVE LAW JUDGE**

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Mailed Date: September 2, 2020

Adopted Date: September 2, 2020

**I. BY THE COMMISSION**

**A. Statement**

1. This Decision stays recommended Decision No. R20-0596, remands the proceeding to Administrative Law Judge Melody Mirbaba, and orders the parties to make certain filings. It is our hope that the parties work constructively to move this project forward.

**B. Background**

2. The City of Louisville (Louisville) filed this application on November 16, 2018, as part of its efforts to eventually obtain permission from the Federal Railroad Administration to implement a quiet zone. The BNSF Railway Company (BNSF), the other party to this proceeding, owns the rails at the crossing. BNSF intervened on December 19, 2018, and objected to various aspects of Louisville's application.

3. The proceeding was referred to an Administrative Law Judge (ALJ) on January 3, 2019 by Decision No. C19-0035-I. ALJ Mirbaba held an evidentiary hearing on June 13 and 14, 2019, and then on September 10, 2019, issued Recommended Decision No. R19-0742 granting Louisville's application.

4. On September 30, 2019, BNSF filed exceptions challenging two aspects of the recommended decision: (1) its approval of simultaneous signal preemption; and (2) its approval of timed exit gates. The Commission denied BNSF's exceptions in Decision No. C20-0238 on April 13, 2020. BNSF filed an application for rehearing on May 4, 2020. BNSF reiterated the arguments it made in exceptions. More importantly, it asserted that it received certain information during the technical design phase that might have possibly indicated that the approved design was not feasible.

5. On rehearing, reargument, and reconsideration (RRR), the Commission denied BNSF's substantive challenges to Louisville's application.<sup>1</sup> And, while skeptical of BNSF's claim regarding infeasibility, we chose to prioritize public safety by granting RRR for the sole purpose of investigating whether BNSF's claims were true. The Commission ordered BNSF to file, among other things, documentation supporting its claim that the approved design might be deficient.

6. BNSF never filed any documentation to support its allusions to technical infeasibility. Instead, after asking ALJ Mirbaba for an extension of time, BNSF filed (on August 3, 2020—the last day of the extension) a "Stipulation of the Parties Concerning Railroad

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<sup>1</sup> See Decision No. C20-0401 issued June 1, 2020.

Preemption and Exit Gate Technology” (Stipulation). The Stipulation materially changes the crossing design by replacing timed exit gates with a photo radar exit gate system.

7. On August 14, 2020, ALJ Mirbaba issued Recommended Decision No. R20-0596. The decision points out that BNSF failed to make the design-related filings required by Commission Rules and by our prior Decision. It also points out that the Commission remanded the proceeding to ALJ Mirbaba for a very limited purpose: to ascertain whether BNSF’s claims of design infeasibility were accurate. Finally, the decision recommends closing the proceeding.

### **C. Findings and Conclusions**

8. We find that closing this proceeding after the parties have proceeded through an evidentiary hearing, exceptions, and RRR, would increase the time and energy needed to move this project toward construction. Rather than closing the proceeding and resetting this process, we conclude that it would be better to consider the modification to the design in the context of this evidentiary record. The record contains helpful information about the crossing itself and other aspects of the design. We perceive no need to relitigate the entire proceeding. To that end, we order Louisville to file an amended application within 20 days.

9. Next, we once again order BNSF to make filings that it is obligated to make but has still not made. BNSF must file into the record an estimate and a schematic diagram consistent with Louisville’s application as required by and consistent with Rule 7204(a)(X)(C) and (D) of the Commission’ Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7. BNSF’s filings shall be made within 20 days.

10. Further, we remand this proceeding to ALJ Mirbaba.

11. BNSF must make a signal engineer available to provide testimony regarding the modified design.

**II. ORDER**

**A. It Is Ordered That:**

- 1. Recommended Decision No. R20-0596 is stayed upon our own motion.
- 2. The proceeding is remanded to Administrative Law Judge Melody Mirbaba.
- 3. The parties are ordered to make filings consistent with the discussion above.
- 4. The BNSF Railway Company is required to make a signal engineer available to provide testimony about the modified crossing design.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
September 2, 2020.**

( S E A L )



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOHN GAVAN

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MEGAN M. GILMAN

\_\_\_\_\_ Commissioners

CHAIRMAN JEFFREY P. ACKERMANN  
ABSENT.