

Decision No. R20-0716-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0809R

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
VACATING REMOTE EVIDENTIARY HEARING**

Mailed Date: October 7, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Procedural History.

1. Only the procedural history necessary to understand this Decision is included.

This matter concerns the City of Louisville's (City) above-captioned Application, to which BNSF Railway Company (BNSF) objected. After a two-day evidentiary hearing, the Administrative Law Judge (ALJ) granted the City's Application on September 10, 2019. Decision No. R19-0742. Since that time, the Commission upheld the Recommended Decision granting the Application, and twice remanded the matter the ALJ. Decision Nos. C20-0238 issued April 13, 2020, C20-0401 issued June 1, 2020, and C20-0643-I issued September 2, 2020.

2. While the matter was before the ALJ on the first remand, the parties filed a Stipulation of the Parties Concerning Railroad Preemption and Exit Gate Technology (Stipulation) (on August 3, 2020). The ALJ issued a recommended decision consistent with the authority provided to her in the remand order, Decision No. C20-0401. Decision No. R20-0596

issued August 14, 2020. The ALJ did not rule on the parties' Stipulation, as being outside her remand authority. *Id.*

3. In its most recent remand order, the Commission reviewed the parties' Stipulation and determined that it "materially changes the crossing design by replacing timed exit gates with a photo radar exit gate system." Decision No. C20-0643-I, ¶ 6. The Commission stayed the most recent recommended decision, remanded the proceeding to the undersigned ALJ and ordered: (a) the City to file an amended application within 20 days; (b) BNSF to file an estimate and schematic diagram consistent with the amended application, as required by Rule 7204(a)(X)(C) and (D) of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7, within 20 days; and (c) BNSF to make a signal engineer available to provide testimony about the modified design. *Id.* at ¶ 11.

4. Based on the fact that the parties' Stipulation materially changes the approved design, the ALJ determined that evidence would be necessary to determine if that change meets the relevant legal standards, including whether the proposed change reasonably promotes safety at the crossing. Decision No. R20-0660-I issued September 11, 2020. As such, the ALJ scheduled a status conference for September 24, 2020 to determine a procedure and timeline for receiving evidence. *Id.*

5. During the status conference, the parties agreed to submit written testimony on or by October 6, 2020 in support of their Stipulation and the related amendment to the Application. Decision No. R20-0692-I issued September 28, 2020. The ALJ accepted this approach, but also scheduled an evidentiary hearing so that the parties may supplement written testimony should the ALJ determine that it is necessary. *Id.*

6. On October 6, 2020, the parties timely submitted verified written testimony, and also made a joint filing addressing timelines for filing a construction and maintenance agreement, commencing construction, and completing construction for the subject crossing. *See* Joint Submission of the Parties Concerning Construction Deadlines.

B. Findings and Conclusions.

7. Having reviewed the parties' evidentiary submissions and joint filing, the ALJ finds that sufficient evidence exists in the record to determine whether to approve the parties' Stipulation and the related amendment to the Application. As such, the ALJ concludes that an evidentiary hearing is unnecessary; the hearing will be vacated.¹ The ALJ will issue a written recommended decision as soon as possible.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the October 12, 2020 remote evidentiary hearing scheduled in this matter is vacated.

¹ On October 7, 2020, the ALJ informally notified counsel by email that the hearing would be vacated so that the parties would not expend resources preparing for a hearing, pending issuance of this Decision.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director