

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0358R

IN THE MATTER OF THE APPLICATION OF BNSF RAILWAY COMPANY TO
CONSTRUCT A REMOTE CROSSING BUNGALOW AT MILEPOST 70.41 AND UPGRADE
THE TRACK CIRCUITRY FROM MOTION DETECTION TO CONSTANT WARNING TIME
AT THE CROSSING AT MILEPOST 70.170 ON COLORADO AVENUE IN THE TOWN OF
MERINO, LOGAN COUNTY, COLORADO (DOT #805305Y).

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Mailed Date: October 4, 2023
Adopted Date: September 27, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the BNSF Railway Company (BNSF) on July 5, 2023, requesting to replace the existing flashing lights, gates, bells, signal bungalow, track signs, and upgrading the crossing detection circuitry from motion detection to constant warning time at the crossing of Colorado Avenue with the tracks of the BNSF Julesburg Subdivision, railroad milepost 70.170, National Inventory No. 805305Y in the Town of Merino, County of Logan, State of Colorado.

2. On July 12, 2023, Staff of the Commission sent a Deficiency Letter to BNSF requesting the missing public utilities information for notice, requesting clarification if the Application was for preliminary or final approval of the Application, and requesting the missing information on the front sheet required by Rule 7204(a)(X)(D), 4 *Code of Colorado Regulations* 723-7. BNSF was informed that Notice of Application Filed could not be sent until the missing public utilities information was provided.

3. On July 24, 2023, BNSF made a Supplemental Filing providing public utilities information and clarifying that the Application was for final approval, and providing the missing front sheet times required by Rule 7204(a)(X)(D).

4. The Commission gave notice of this Application (Notice) to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S. The Notice was mailed August 14, 2023.

5. No interventions were filed in this matter.

6. The Commission has reviewed the record in this matter and deems that the Application is complete within the meaning of § 40-6-109.5, C.R.S.

7. Now being fully advised in the matter, we grant the Application.

B. Findings of Fact

8. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

9. BNSF requests authority to replace the existing flashing lights, gates, bells, signal bungalow, track signs, and upgrading the crossing detection circuitry from motion detection to constant warning time at the crossing of Colorado Avenue with the tracks of the BNSF Julesburg Subdivision. The warning time at the crossing will be 34 seconds with the circuitry change.

10. As grounds, BNSF states that it is the primary operator over the track at the crossing and that BNSF has recently assumed ownership of the track from the Union Pacific Railroad Company (UPRR). BNSF proposes to remove the UPRR crossing safety warning devices and to install new BNSF crossing safety warning devices and upgrade the train detection circuitry from motion detection to constant warning time detection. No other aspects of the crossing are proposed to be modified with this Application.

11. BNSF states in its Application there are currently approximately five trains per day using the subject crossing at a timetable speed of 50 miles per hour on the mainline. BNSF states that based on the latest vehicle volume information in the National Inventory Form from 1985, there are 125 vehicles per day using the crossing with an unposted speed limit with no estimate for percentage of heavy vehicles or number of school buses using the crossing.

12. There have been two accidents at the crossing since 1975 including one property damage only accident in 1976 and one fatality in 1981.

13. BNSF states the estimate for replacing the existing active warning equipment is \$586,521 with BNSF paying for 100% of the cost of the project.

14. BNSF plans to start this project as soon as possible after Commission approval and estimates completing the project by the end of 2023. We will require BNSF to inform the Commission in writing that the project has been completed by December 31, 2023, although we understand this completion may be earlier or later based on weather and construction schedule.

15. BNSF will also be required to provide the updated U.S. DOT Inventory Form for the updated crossing by the end of the project estimated to be on December 31, 2023.

C. Conclusions

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

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

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

19. We find that good cause exists and that the requirements of public safety are met by granting the Application, as amended, consistent with the above discussion.

II. ORDER

A. The Commission Orders That:

1. The Application (Application) filed by the BNSF Railway Company (BNSF) on July 5, 2023, requesting to replace the existing flashing lights, gates, bells, signal bungalow, track signs, and upgrading the crossing detection circuitry from motion detection to constant warning time at the crossing of Colorado Avenue with the tracks of the BNSF Julesburg Subdivision, railroad milepost 70.170, National Inventory No. 805305Y in the Town of Merino, County of Logan, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Application is granted.

3. BNSF is authorized and ordered to upgrade the active warning equipment and train detection circuitry at the crossing of Colorado Avenue in Merino, Colorado.

4. BNSF shall inform the Commission in writing when the project is complete within ten days of completion. The Commission will expect the letter by December 31, 2023. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

5. BNSF shall update the National Inventory Form for this crossing and file a copy of the updated crossing inventory forms in this proceeding by December 31, 2023.

6. 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.

7. The Commission retains jurisdiction to enter further decisions as necessary.
8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 27, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners