

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0267R

IN THE MATTER OF THE APPLICATION OF THE CITY AND COUNTY OF BROOMFIELD FOR AUTHORITY TO ADD CONCRETE CROSSING MATERIAL FOR ROADWAY WIDENING AND DETACHED WALKS, RELOCATE AN EXISTING APPROACH RAILROAD GATE WITH FLASHING LIGHTS AND BELL, AND INSTALL NEW RAISED MEDIANS TO ACCOMMODATE ROADWAY WIDENING ON APPROACH TO TRACKS OWNED BY BNSF RAILWAY COMPANY CROSSING 112TH AVENUE, USDOT NO. 244790H, IN BROOMFIELD COUNTY, STATE OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING APPLICATION AS
AMENDED UNDER MODIFIED PROCEDURE**

Mailed Date: April 5, 2024

TABLE OF CONTENTS

I. STATEMENT AND PROCEDURAL BACKGROUND.....	2
A. Statement	2
B. Procedural History and Background	2
II. FINDINGS OF FACT AND CONCLUSIONS.....	6
III. ORDER.....	9
A. It Is Ordered That:	9

I. STATEMENT AND PROCEDURAL BACKGROUND**A. Statement**

1. This Decision grants the Amended Application filed by Applicant, the City and County of Broomfield (Applicant or the City) for an order authorizing modification to the existing at-grade crossing of 112th Avenue in Broomfield, Colorado.

B. Procedural History and Background

2. On May 26, 2023, the City and County of Broomfield (the City or Applicant) filed the above-captioned proceeding with the Colorado Public Utilities Commission (Commission) seeking approval of modifications it proposes to make to a railroad crossing and intersection within the City. As set out in its initial Application, the City proposed widening the “existing 112th Avenue to the north, constructing new raised medians, adding detached walks, relocating the existing north railroad approach gate, and replacing the existing gate arms with 30 foot (approx..) gate arms to span the lanes in each direction.”¹

3. On June 1, 2023, the Commission gave notice of the Application to those interested in or affected by it. As noticed, the Application sought approval of the following:

The addition of concrete crossing material on each side of the existing roadway, relocation of the existing north railroad approach gate, and installation of new raised medians to accommodate roadway widening and detached walks on approach of the West 112th Avenue crossing to BNSF Railway tracks in Broomfield County, State of Colorado.²

4. Although the Commission’s Notice of Application specified that the City was “seeking a decision within 210 days,”³ in its Application, the City expressly “waived[d] the applicable statutory period regarding the time limit for decisions.”⁴

¹ City and County of Broomfield’s Application ¶ II.A(H)(i) (Application), p. 5, filed May 26, 2023.

² Commission’s Notice of Application Filed, p. 1., filed June 1, 2023.

³ *Id.*

⁴ Application, ¶ II.Q(A), p. 20.

5. BNSF Railway Company (BNSF or Intervenor) filed its Notice of Intervention as a matter of right on June 8, 2023. In its Intervention, BNSF sought a hearing and opposed the City's Application on the grounds that the City's design plans, as submitted, were incomplete. BNSF intervened to preserve its right (1) "to comment on specific aspects of the proposed design and request appropriate revisions prior to providing a sketch and cost estimate; and (2) to raise appropriate objections before final approval by the Commission."⁵

6. No other Interventions were filed.

7. On July 27, 2023, the Commission issued Decision No. C23-0463-I deeming the Application complete and referring this Proceeding to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

8. On August 4, 2023, the undersigned ALJ informally contacted the parties via email requesting the parties' input on setting a procedural schedule for this Proceeding.

9. On August 11 and 16, 2023, the parties communicated via email with the undersigned ALJ, indicating the following:

- they anticipated resolving any dispute between them through settlement;
- consequently, they did not wish to set an evidentiary hearing; and
- because the City had waived the statutory time period within which a Commission decision must otherwise issue, the normal time constraints on a proceeding before the Commission were inapplicable.

10. Instead, the parties, through counsel for the City, requested that they be permitted to work to resolve any dispute without the burden of an impending hearing date and provide the Commission with quarterly status reports advising the Commission of their progress. The parties proposed that the first quarterly status report be due on or before October 31, 2023.

⁵ Notice of Intervention of BNSF Railway Company (BNSF), p. 2, filed June 8, 2023.

11. On August 18, 2023, the ALJ issued Decision No. R23-0552-I requiring the parties to file quarterly Status Reports advising the Commission of the progress of the project and their efforts to resolve and settle any disputes between them pertaining to this Proceeding.

12. On October 30, 2023, the City submitted its first Quarterly Status Report. The City stated that BNSF provided the City its Surfacing Estimate on February 6, 2023, and its Signal Estimate and Schematic Diagram on August 23, 2023. The signal estimate and schematic diagram included “a modification to the proposed crossing active railroad warning devices, in that BNSF proposed to install median flashing light signals with gates, in place of the City’s proposed median mounted flashing lights without gates.”⁶ The City accepted this change. Additionally, the City reported that, on October 27, 2023, BNSF’s counsel had informed the City that the City’s scope of work did not include a standard, required underdrain, which BNSF would add to the scope of the work and anticipated would increase the previous cost estimate by approximately \$100,000.⁷ However, the City noted that it could not “install, maintain, or fund drainage infrastructure for the railroad, per PUC rule, just as the railroad cannot install, maintain or fund drainage infrastructure for the roadway authority.”⁸ The City explained that if the underdrain were to be installed by the railroad, “it should not be placed in the City’s approach pavement or in areas defined by the PUC to be maintained by the road authority, as it may cause settling of the pavement or instability of the approach, which is a safety hazard.”⁹ Finally, the City indicated it was still awaiting an updated surfacing estimate

⁶ City and County of Broomfield’s Quarterly Status Report, p. 1, filed Oct. 30, 2023.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at p. 2.

from BNSF, which the City asked to receive no later than November 30, 2023, to maintain the project schedule.¹⁰

13. On January 26, 2024, the City filed its Second Quarterly Status Report. The report stated that BNSF provided a modified signal estimate and schematic diagram to the City on December 1, 2023, which signal estimate and schematic diagram included an additional modification to the existing crossing active railroad warning devices where BNSF proposed relocating the existing flashing light signals with gate in the southwest quadrant of the crossing so the gate is perpendicular to the roadway.¹¹ The City reported that “[a]ll other proposed modifications identified in the original application and in the first Quarterly Status Report” remained.¹² The City also stated that BNSF indicated it would no longer oppose the crossing modifications presented in the application if the gate relocation was accepted.¹³ The City accepted the change and submitted its Amendment and Final Plans contemporaneously with its Second Quarterly Report.

14. The City filed its Amended Application and Final Plans including revised Exhibit E (the final, revised design plans), and Exhibit G (the railroad cost estimates including signal and surfacing estimates and the schematic design) with its Second Quarterly Status Report on January 26, 2024.¹⁴ As modified, the Amended Application describes the scope of the project as follows:

widening existing 112th Avenue to the north, constructing new raised medians, adding detached walks, replacing the existing north railroad approach gate with a new gate which will accommodate roadway widening to the north, relocating the

¹⁰ *Id.*

¹¹ City and County of Broomfield’s Second Quarterly Status Report, p. 1, filed Jan. 26, 2024.

¹² *Id.*

¹³ *Id.*

¹⁴ *See* City and County of Broomfield’s Amendment and Filing of Final Plans (Amended Application), along with attached Exhibits E and G, filed Jan. 26, 2024.

existing south railroad approach gate to be perpendicular to the roadway, and adding median flashing light signals with gates on each approach.¹⁵

15. The City now seeks approval of the final design plans. The Application as amended is uncontested and may be processed under modified procedure pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 *Code of Colorado Regulations* (CCR) 723-1, without a formal hearing.

16. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT AND CONCLUSIONS

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

18. The City and County of Broomfield is a political subdivision of the State of Colorado and a home rule city and municipal corporation. The City is the municipality responsible for the roadway at the location of the crossing

19. BNSF is a corporation in good standing in Colorado. BNSF owns and operates the track at the existing at-grade 112th Avenue crossing.

20. The City initiated this Application to modify the crossing of 112th Avenue with the tracks owned by BNSF. As noticed, the City's Application seeks

the addition of concrete crossing material on each side of the existing roadway, relocation of the existing north railroad approach gate, and installation of new raised medians to accommodate roadway widening and detached walks on approach of the West 112th Avenue crossing to BNSF Railway tracks in Broomfield County, State of Colorado.¹⁶

¹⁵ Amended Application, ¶ II.A(H)(i), p. 2.

¹⁶ Commission's Notice of Application Filed, p. 1., filed June 1, 2023.

21. The Amended Application provides the final plans for the project and the railroad estimates and schematic diagram that were not provided with the initial application. As amended, the City now seeks to modify the intersection of the railroad tracks at West 112th Avenue by:

widening the existing 112th Avenue to the north, constructing new raised medians, adding detached walks, replacing the existing north railroad approach gate with a new gate which will accommodate roadway widening to the north, relocating the existing south railroad approach gate to be perpendicular to the roadway, and adding median flashing light signals with gates on each approach.

22. The Amended Application also includes revised Exhibits E and G which provide the additional information missing from the original Application.

- Exhibit E provides the final construction plans for the project.
- Exhibit G provides the railroad surface and signal cost estimates and the railroad schematic diagram.

23. The City requests that the Commission grant its Amended Application.

24. No modifications are proposed to the existing interconnection and preemption with the intersection of 112th Avenue and Olde Wadsworth. The subject crossing is currently part of a quiet zone.

25. The City states in its Application there are currently six trains per day using the crossing at a maximum timetable speed of 49 miles per hour (MPH) with no anticipated increases or decreases in the number or character of trains at this time.¹⁷ There are 13,400 vehicles per day (VPD) as of 2021 using the crossing at a posted speed limit of 35 MPH, with an estimate of five percent heavy vehicles using the crossing, and no school buses using the

¹⁷ Application, ¶ II.A(F), p. 5.

crossing.¹⁸ The City projects traffic volumes to increase to 15,535 VPD by 2026 and 24,202 VPD by 2041.¹⁹

26. There have been seven reported accidents at the crossing since 1975; including six property-damage-only accidents in 1976, 1981, 1983, 1987, 1991, and 1992, respectively; and one injury accident in 1990.²⁰

27. The City estimates the cost of the project at \$4,052,371 for the civil engineering work²¹, \$482,570 for the railroad crossing signal work,²² and \$80,628 for the crossing surface work.²³ The costs of the project will be paid for through a combination of Colorado Department of Transportation – Administrated Federalized Funds and local Capital Improvement Projects from the City.²⁴

28. The City proposes to start construction on March 1, 2024, and be complete by March 1, 2025.²⁵

29. The City shall be required to file a signed copy of the Construction and Maintenance Agreement for this project prior to starting the crossing work. The Commission shall expect this signed agreement to be filed in this proceeding by May 31, 2024.

30. The City will also be required to inform the Commission in writing that construction is complete by March 31, 2025. The Commission does understand that this letter

¹⁸ Application, ¶ II.B.(A), p. 9.

¹⁹ Application, ¶ II.B.(B), p. 9.

²⁰ See Highway-Rail Grade Crossing Accident/Incident Reports, attached as Exhibit B to Application.

²¹ See Engineer's Opinion of Probable Construction Costs, attached as Exhibit C to Application.

²² See BNSF Railway Company FHPM Estimate for City [of] Broomfield, CO, pp. 1-2, attached as Exhibit G to Amended Application.

²³ *Id.* at pp. 4-5.

²⁴ Application, ¶ II.A(H)(iii), p. 6.

²⁵ *Id.* at ¶ II.A(I), pp. 6-7.

may be provided earlier or later than this date depending on changes or delays to the construction schedule.

31. The City and BNSF shall be required to update the U.S. DOT National Inventory form for this crossing updating the changed information at the crossing and filing a copy of the updated form in this proceeding by March 31, 2025.

32. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, the uncontested Application as Amended may be processed under the modified procedure without a formal hearing.

33. Based upon the foregoing, it is found and concluded that good causes exists and that the requirements of public safety and necessity are met by approving the City's final plans as set forth in its Amended Application.

34. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission enter the following order.

III. ORDER

A. It Is Ordered That:

1. The Application filed by the City and County of Broomfield (Broomfield or the City) on May 26, 2023, requesting authority to add concrete crossing material on each side of the existing roadway, replace the existing north railroad approach gate with a new gate, relocate the existing south railroad approach gate, add median flashing light signals with gates on each approach, and install new raised medians to accommodate roadway widening and detached walks on approach of the West 112th Avenue crossing with the BNSF Railway Company (BNSF) at railroad milepost 12.95 of the Front Range Subdivision, National Inventory No. 244790H, in Broomfield, as amended on January 26, 2024, is granted.

2. The City is authorized and ordered to proceed with the modification of the existing at-grade crossing at 112th Avenue in Broomfield, Colorado.

3. The City is required to file a copy of the signed Construction and Maintenance Agreement in this proceeding before starting work at the crossing. The Commission shall expect this signed agreement to be filed in this proceeding by May 31, 2024.

4. The City will also be required to inform the Commission in writing that construction is complete by March 31, 2025, with the Commission understanding this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

5. The City and BNSF shall be required to update the U.S. DOT National Inventory form for this crossing updating the changed information at the crossing and shall file a copy of the updated form in this proceeding by March 31, 2025.

6. Proceeding No. 23A-0267R shall remain open and the Commission shall retain jurisdiction in this matter to issue such other or further decisions and orders as may be appropriate.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the

parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director