

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0598R

IN THE MATTER OF THE APPLICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION, FOR AUTHORITY TO REPLACE EXISTING TRAFFIC SIGNAL INTERCONNECTION WITH NEW TRAFFIC SIGNAL INTERCONNECTION TO EXISTING RAILROAD ACTIVE WARNING SIGNAL BUNGALOW AT THE COLORADO STATE HIGHWAY 119-63RD STREET INTERSECTION CONNECTION TO THE 63RD STREET (DOT# 244-827V) CROSSING OF TRACKS OWNED BY BNSF RAILWAY, IN BOULDER COUNTY, STATE OF COLORADO.

**RECOMMENDED DECISION
APPROVING APPLICATION**

Issued Date: September 4, 2024

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On December 8, 2023, in Proceeding No. 23A-0598R, the Colorado Department of Transportation (“CDOT”) filed its application for authority for final design plans to replace an existing traffic signal interconnection from the traffic signal at Colorado State Highway 119 (“CO 119”) and 63rd Street at tracks owned by the BNSF Railway (“BNSF”) crossing of 63rd Street, USDOT No. 244827V near the Town of Niwot, Boulder County, State of Colorado. The application was amended on August 6, 2024.

2. The Commission gave notice of the application on December 13, 2023.

3. On December 29, 2023, BNSF timely intervened of right, and opposed the application because it omitted devices recommended by the safety diagnostic team. CDOT and BNSF are the only parties to the above captioned proceeding.

4. This matter was referred to an Administrative Law Judge (“ALJ”) for resolution by Decision No. C24-0048-I, issued January 24, 2024.

5. By Decision No. R24-0206-I, issued April 2, 2024, a prehearing conference was scheduled in the above-captioned proceeding. At the scheduled date and time, the prehearing conference was convened.

6. By Decision No. R24-0287-I, issued April 30, 2024, an evidentiary hearing was scheduled to commence in this proceeding on July 18, 2024.

7. On May 31, 2024, CDOT filed its witness and exhibit list.

8. On July 1, 2024, BNSF filed its witness and exhibit list.

9. On July 11, 2024, BNSF filed a Joint Stipulation Re Hearing requesting to vacate the hearing scheduled to commence on July 18, 2024, to allow the Parties to engage in discussions to narrow the issues for determination in this proceeding. The Parties requested a status conference be scheduled to discuss timing and logistics for the Commission to review and approve the application, including if a hearing is necessary or not.

10. On July 12, Decision No. R24-0506-I was issued granting the Joint Stipulation and converting the evidentiary hearing to a prehearing conference.

11. On August 2, 2024, CDOT filed a status report indicating that the Parties had come to an agreement regarding the timing sequence and that CDOT was in the process of amending its application to include the updated timing. The amendment would be filed by August 9, 2024.

12. On August 6, 2024, CDOT filed a First Amendment to CDOT’s Application (“Application”). The amendment to the application updated the application to propose that advance preemption be provided and amended the preemption calculations form included in Exhibit E-1 including revisions shaded in red with explanatory annotation.

13. On August 26, 2024, BNSF amended its Notice of Intervention Regarding the First Amendment to CDOT's Application. With this amended notice, BNSF withdrew its objection to the CDOT application on the basis that CDOT omitted devices recommended by the safety diagnostic team at the time of the safety diagnostic. BNSF no longer contests or opposes the granting of the application as amended by CDOT.

14. With BNSF having withdrawn its opposition, the application as amended now stands unopposed.

15. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written Recommended Decision.

II. FINDINGS AND CONCLUSIONS

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

17. BNSF having withdrawn its opposition, no intervenor contests or opposes approval of the Application.

18. Because the Application is unopposed, the matter may be determined upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Rule 1403 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations (CCR)* 723-1.

19. CDOT filed its application for authority to replace an existing traffic signal interconnection from the traffic signal at SH 119 and 63rd Street.

20. CDOT is the roadway authority that owns the roadway affected by the Application.

21. BNSF owns the single main track through the crossing of 63rd Street.

22. CDOT states that there are an estimated three daytime (6 a.m. to 6 p.m.) through freight trains and three nighttime (6 p.m. to 6 a.m.) through freight trains that use the crossing at a

maximum timetable speed of 49 miles per hour (“MPH”) with no estimates of increases or decreases in these volumes in the future.

23. The crossing is characterized as a minor arterial rural crossing with a posted speed limit of 45 MPH and is not part of the National Highway System. CDOT states that the annual average daily traffic was 19,700 vehicles per day (“VPD”) as of 2022, the crossing was not regularly used by school buses, and the estimated percentage of heavy vehicle traffic was 0.9 percent.

24. CDOT’s most recent updated traffic estimate is that the traffic will increase to 20,300 VPD by 2027 and 23,300 VPD by 2042.

25. CDOT proposes to replace the traffic signal controller at the intersection of CO 119 and 63rd Streets with new conduit to interconnect the new traffic signal controller with the crossing of 63rd Street. The original application proposed a two-stage preemption to accommodate the time needed for pedestrians to cross 63rd Street that needed 35 seconds of advanced preemption time and a total warning time of 62 seconds. The Application makes changes to the design at the crossing to revise the existing raised median to add a pedestrian refuge area in the center of the pedestrian crossing. This change allows the time needed to serve pedestrians to decrease from 24 seconds to six seconds, which decreases the advance preemption time needed from 35 seconds to 17 seconds and reduces the total warning time from 62 seconds to 44 seconds.

26. The ALJ has reviewed the changes in the proposed preemption timing at the crossing and approves the change.

27. The estimated total cost for the interconnection of the traffic signal controller with the railroad active warning signal is \$67,122 for the civil engineering work and \$161,080 for the railroad related work. *See* Exhibit C of the original application and Exhibit C to the Application.

28. CDOT proposes funding for the improvements be provided through federal funding transferred from CDOT to BNSF.

29. The ALJ finds and concludes that granting the Application filed in Proceeding No. 23A-0598R is reasonable and necessary to prevent accidents and promote the safety of the public. The Application should be granted. CDOT is funding 100 percent of this project.

30. CDOT will be required to file the signed Construction and Maintenance agreement for this crossing by January 31, 2025, before the crossing interconnection work is started.

31. CDOT shall inform the Commission in writing when the crossing construction is complete and operational, within ten days of completion. The Commission will expect this letter on or before December 31, 2026.¹

32. BNSF is 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 1302(b), 4 CCR 723-1, and § 40-4-106(b)(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.

III. ORDER

The Commission Orders That:

1. The Application, filed December 8, 2023, as amended by the First Amendment to CDOT's Application filed on August 6, 2024, in Proceeding 23A-0598R, is approved.

¹ The Commission understands there may be changes or delays in the construction schedule. While a request for extension is not required in the event completion of the construction project goes past December 1, 2026, CDOT should inform the Commission through an appropriate filing if delays are anticipated or significant.

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 1302(a), 4 CCR 723-1, 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 complaint requests the Commission pursue civil penalties.

2. The Colorado Department of Transportation (“CDOT”) is authorized and ordered to proceed with changes at the existing intersection of CO 119 and 63rd Street and interconnection of the new traffic signal cabinet with the railroad signal bungalow for the crossing of 63rd Street with the tracks of the BNSF Railway Company (“BNSF”), USDOT No. 244827V, in Boulder County, State of Colorado. The estimated total cost of the proposed construction items is \$67,122 for the civil engineering work and \$161,080 for the railroad related work.

3. Improvements authorized in Ordering Paragraph 2 above shall be in accordance with the plans and specifications filed in this proceeding, as amended, with advance preemption timing of 17 seconds and a total warning time of 44 seconds.

4. The costs for the installation of the interconnection shall be paid by CDOT.

5. CDOT is required to file a copy of the signed Construction and Maintenance Agreement in this matter by January 31, 2025, prior to starting construction work at the crossing.

6. CDOT shall inform the Commission in writing when the crossing construction is complete and operational, within ten days of completion. The Commission will expect this letter on or before December 31, 2026.

7. CDOT shall update the crossing inventory form showing the changed crossing conditions and file a copy of that updated inventory form in this proceeding concurrent with notice of completion of the crossing changes.

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

9. 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.

10. 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.

11. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director