

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0353R

IN THE MATTER OF THE APPLICATION OF THE CITY OF LONGMONT, COLORADO, 80501 FOR AUTHORITY TO CONSTRUCT A NEW AT-GRADE CROSSING OF THE BURLINGTON NORTHERN SANTA FE TRACKS ON THE PROPOSED BOSTON AVENUE EXTENSION AND FOR AUTHORITY TO CLOSE THE EXISTING CROSSINGS OF THE BURLINGTON NORTHERN SANTA FE TRACKS AT FIFTH AVENUE AND TERRY STREET IN LONGMONT, COLORADO.

**INTERIM DECISION
REQUIRING ALTERNATIVE FILNGS**

Issued Date: December 10, 2024

I. STATEMENT¹

A. Procedural History and Background

1. On June 27, 2023 the City of Longmont (“Longmont” or “City”) filed an Application (“Application”), requesting authority to open a new highway-rail grade crossing at the extension of Boston Avenue with the tracks of the BNSF Railway Company (“BNSF”) at railroad milepost 43.4 of the Front Range Subdivision, no existing National Inventory Number, in Longmont, County of Boulder, in the State of Colorado (“Boston Avenue crossing”), and to close the existing crossings of 5th Avenue at railroad milepost 44.289, National Inventory No. 245003Y and Terry Street, at railroad milepost 43.430, National Inventory No. 244846A, in Longmont, in the State of Colorado. This filing commenced Proceeding No. 23A-0353R.

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

The Application states that it is Longmont's desire to start construction of the new crossing at Boston Avenue crossing in the year 2024.²

2. The Application was deemed complete on August 31, 2023, in accordance with Rule 1303(c)(IV) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

3. By Decision No. C23-0560-I, issued August 31, 2023, the Commission referred this matter to an Administrative Law Judge ("ALJ") for determination of the merits of the Application.

4. On December 6, 2023, BNSF filed its Withdrawal of Intervention.

5. On January 8, 2024, Longmont filed its Notice of Submission of Executed Settlement Agreement ("Settlement Agreement"), Updated Cost Estimate, and Sketch Plan ("Front Sheet") ("Notice of Submission of Settlement and Updated Sketch Plan"), and attached thereto an executed copy of Settlement Agreement,³ cost estimate for signal improvement,⁴ cost estimate for rail improvement,⁵ and a sketch plan.⁶

6. On September 25, 2024, BNSF filed its Notice of Re-Intervention ("Motion to Intervene Out of Time").

7. By Decision No. R24-0785-I, issued October 29, 2024, the undersigned ALJ granted the Motion to Intervene Out of Time and required the Parties to file a status report as to the progress of resolution of the issues in this Proceeding within no more than 30 days of the Issued Date of Decision No. R24-0785-I.

² Application at 7.

³ Attachment A to the Notice of Submission of Settlement and Updated Sketch Plan.

⁴ Attachment B to the Notice of Submission of Settlement and Updated Sketch Plan.

⁵ Attachment C to the Notice of Submission of Settlement and Updated Sketch Plan.

⁶ Attachment D to the Notice of Submission of Settlement and Updated Sketch Plan.

8. On November 27, 2024, the Joint Status Report (“Joint Status Report”) was filed by Longmont and BNSF. The Joint Status Report states that the parties have met and collaborated “to identify problems and solutions to the issues raised by BNSF[;]”⁷ “Longmont believes it has satisfied all of BNSF’s concerns to the extent that it is feasible from the City’s perspective[;]”⁸ “BNSF has not had adequate time to evaluate or respond to the information from the City on the proposed solutions[;]”⁹ “The Parties also need time to review and agree on revised final plans, once prepared[;]”¹⁰ and [t]he Parties request that they be afforded an additional 60-days to either come to a resolution of their issues or file a request for a prehearing conference to address any impasse.”¹¹

9. Based on the Joint Status Report, the ALJ will require the parties, within 60 days of the Issued Date of this Decision to either: (a) make a filing establishing that the parties resolved all issues in this Proceeding, attach to such filing the final executed copy of the parties’ settlement agreement, cost estimate for signal improvement, cost estimate for rail improvement, and a sketch plan, and identify all differences between these attachments and the settlement agreement, cost estimate for signal improvement, cost estimate for rail improvement, and a sketch plan that were attached to the Notice of Submission of Settlement and Updated Sketch Plan; or (b) file a motion requesting a prehearing conference to discuss any outstanding disputes between the parties, as ordered below.

⁷ Joint Status Report at p. 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, within 60 days of the Issued Date of this Decision, the parties shall either:

- a. make a filing establishing that the Parties resolved all issues in this Proceeding, attach to such filing the final executed copy of the parties' settlement agreement, cost estimate for signal improvement, cost estimate for rail improvement, and a sketch plan, and identify all differences between these attachments and the settlement agreement, cost estimate for signal improvement, cost estimate for rail improvement, and a sketch plan filed on January 8, 2024 in this Proceeding; or
- b. file a motion requesting a prehearing conference to discuss any outstanding disputes between the parties.

2. This Decision shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

Rebecca E. White,
Director