

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 23A-0353R

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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.

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**INTERIM DECISION GRANTING UNOPPOSED MOTION  
FOR ADDITIONAL TIME FOR FILING AND SETTING A  
PREHEARING CONFERENCE**

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Issued Date: April 30, 2025

**I. PROCEDURAL HISTORY**<sup>1</sup>

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, 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.

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

2. 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.

3. On October 17, 2023, Longmont waived its statutory right to a decision within 120 days after the Application was deemed complete pursuant to § 40-6-109.5(3), C.R.S.<sup>2</sup>

4. By Decision No. R24-0785-I, issued October 29, 2024, the ALJ, among other things, granted BNSF’s request to intervene out of time.<sup>3</sup>

5. By Decision No. R24-0899-I, issued December 10, 2024, the undersigned ALJ required the parties within 60 days of the issuance of that 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 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.”<sup>4</sup>

6. On February 10, 2025, Longmont filed a Status Report and Notice of Filing (“Longmont’s February 2025 Status Report”) indicating that although the parties had not yet reached a final agreement, they were working diligently toward settlement. In Longmont’s February 2025 Status Report, Longmont listed various updated documents that it had sent to BNSF to address BNSF’s then-remaining concerns.

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<sup>2</sup> Second Joint Motion Requesting Continuance of the October 18, 2023 Evidentiary Hearing, or in the Alternative, a Request for a Status Conference at ¶ 6.

<sup>3</sup> See the Notice of Re-Intervention, filed by BNSF on September 25, 2024.

<sup>4</sup> Decision No. R24-0899-I at p. 4.

7. By Decision No. R25-0126-I, issued February 20, 2025, the undersigned ALJ waived response time for, and granted, BNSF's Unopposed Motion for Additional Time for Filing, filed February 10, 2025, and required the parties within 60 days of the issued date of Decision No. R25-0126-I, 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 filed on January 8, 2024 in this Proceeding; or (b) file a motion requesting a prehearing conference to discuss to any remaining impasse between the parties.

8. On April 21, 2025, the Status Report and Unopposed Motion for Additional Three Days for Filing ("BNSF's Motion for Extension of Time") was filed by BNSF. In BNSF's Motion for Extension of Time, BNSF requested three additional days "for the parties to file a more detailed status report regarding the nature of the outstanding issues, if any..."<sup>5</sup>

9. On April 21, 2025, the Status Report and Notice of Filing of the City of Longmont (the "Longmont's April 2025 Status Report") was filed by Longmont. Longmont's April 2025 Status Report states that "[o]n March 28, 2025, the City received BNSF's additional comments and revisions to the City's revised plans,"<sup>6</sup> "[a]n issue has arisen regarding the previously approved pedestrian crossing component of the Application[.]"<sup>7</sup> and "[Longmont] seeks guidance from the Commission on how to proceed with the pedestrian crossing design."<sup>8</sup>

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<sup>5</sup> BNSF's Motion for Extension of Time at p. 3, ¶18.

<sup>6</sup> Longmont's April 2025 Status Report at p. 3, ¶19.

<sup>7</sup> *Id.* p. 3, ¶21.

<sup>8</sup> *Id.* p. 4, ¶25.

To Longmont's April 2025 Status Report, Longmont attached "[a]ll updated documents sent by BNSF to [Longmont]."<sup>9</sup>

10. On April 24, 2025, BNSF Railway Company's Supplemental Status Report was filed by BNSF ("BNSF's April 2025 Status Report"). BNSF's April 2025 Status Report states: "As set forth in the Boston Avenue Comment Summary Package, there remain outstanding issues, including but not limited to preemption timing calculations, truck turning movement conflicts, flashers consistent with the American Railway Engineering and Maintenance-of-Way Association..., review and revisions of the plans for consistency and to reflect the actual work to be performed, and development of a lighting plan. In addition, discussion with the diagnostic team is needed to address the pedestrian treatments at this crossing."<sup>10</sup> "Pursuant to Decision R24-0899-I, BNSF requests a prehearing conference to discuss any remaining impasse between the parties"<sup>11</sup> and "... because BNSF has not received comments, questions, or any substantive response to those comments it provided on March 28, 2025, it appears that a status conference or the setting of a date certain when the City's responsive comments will be provided may be beneficial to allow the parties and the Commission to better determine where, if at all, an impasse exists."<sup>12</sup>

## **II. BNSF'S MOTION FOR EXTENSION OF TIME**

11. The undersigned ALJ finds and concludes that BNSF's Motion for Extension of Time states good cause for the granting of a three-day time extension for BNSF to file a more detailed status report regarding the nature of the outstanding issues.

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<sup>9</sup> *Id.* at p. 3, ¶ 20; *see also*, files entitled "BNSF Boston Avenue (DOT TBD) Comment Summary Table.xlsx" and "BNSF Boston Avenue (DOT TBD) Comment Summary Package-32825.pdf" which were attached to Longmont's April 2025 Status Report.

<sup>10</sup> BNSF's April 2025 Status Report at p. 3, ¶18.

<sup>11</sup> *Id.* at p. 3, ¶19.

<sup>12</sup> *Id.* at pp. 3-4, ¶20.

12. Because BNSF's Motion for Extension of Time is unopposed, the ALJ will waive response time to the Motion, in accordance with Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

13. Therefore, response time to BNSF's Motion for Extension of Time will be waived and BNSF's Motion for Extension of Time will be granted, as ordered below.

### **III. PREHEARING CONFERENCE**

14. Based on Longmont's February 2025 Status Report, Longmont's April 2025 Status Report, BNSF's April 2025 Status Report, and the procedural posture of this Proceeding, the ALJ finds and concludes that it is appropriate to hold a prehearing conference in this matter to discuss how to move this Proceeding forward toward resolution and to identify any outstanding disputes.

15. Therefore, a remote prehearing conference will be scheduled for May 21, 2025 as ordered below.

### **IV. ORDER**

#### **A. It Is Ordered That:**

1. Consistent with the discussion above, response time to the Status Report and Unopposed Motion for Additional Three Days for Filing ("BNSF's Motion for Extension of Time"), filed April 21, 2025, by BNSF Railway Company ("BNSF") is waived.

2. BNSF's Motion for Extension of Time is granted.

3. Consistent with the discussion above, a remote prehearing conference in this Proceeding is scheduled as follows:

DATE: May 21, 2025

TIME: 10:30 a.m.

WEBCAST: Commission Hearing Room

METHOD: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge<sup>13</sup>

4. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

5. This Decision is effective immediately.



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,  
Director

<sup>13</sup> Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.