

OPEN MEETING ITEM



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**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

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DATE: April 27, 2004  
DOCKET NO: RR-02635B-04-0207  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

BURLINGTON, NORTHERN AND SANTA FE RAILWAY COMPANY  
(GRADE SEPARATED CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MAY 6, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 18 AND 19, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

APR 27 2004

DOCKETED BY

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF  
9 THE ARIZONA DEPARTMENT OF  
10 TRANSPORTATION TO CONSTRUCT A  
11 GRADE-SEPARATED CROSSING OF THE  
12 BURLINGTON NORTHERN AND SANTA FE  
13 RAILWAY AT 67<sup>TH</sup> AVENUE, OVER GRAND  
14 AND NORTHERN AVENUES IN THE CITY OF  
15 GLENDALE, MARICOPA COUNTY, ARIZONA.

DOCKET NO. RR-02635B-04-0207

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

11 DATE OF HEARING: April 22, 2004  
12 PLACE OF HEARING: Phoenix, Arizona  
13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
14 APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal  
15 Division, on behalf of the Utilities Division of  
16 the Arizona Corporation Commission.

16 **BY THE COMMISSION:**

17 On March 18, 2004, the Arizona Department of Transportation (“ADOT”) filed with the  
18 Arizona Corporation Commission (“Commission”) a request for the Burlington Northern and Santa  
19 Fe Railway Company (“Railroad”) to construct a grade-separated crossing at the Railroad’s tracks at  
20 67<sup>th</sup> Avenue over Grand and Northern Avenues in Glendale, Arizona (“Application”).

21 On March 31, 2004, by Procedural Order, the Application was set for a hearing and ADOT  
22 was ordered to notify any interested party of the Application and the hearing.

23 On April 13, 2004, ADOT filed certification that notice had been provided pursuant to the  
24 terms of the Procedural Order.

25 On April 22, 2004, a full public hearing was held before a duly authorized Administrative  
26 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,  
27 the matter was taken under advisement pending submission of a Recommended Opinion and Order to  
28 the Commission.

1 \* \* \* \* \*

2 Having considered the entire record herein and being fully advised in the premises, the  
3 Commission finds, concludes, and orders that:

4 **FINDINGS OF FACT**

5 1. On March 18, 2004, ADOT filed an Application in which it requested an Opinion and  
6 Order from the Commission to approve an agreement between ADOT and the Railroad for the  
7 construction of a grade-separated crossing at 67<sup>th</sup> Avenue over the tracks of the Railroad and over  
8 Grand and Northern Avenues in Glendale, Maricopa County, Arizona, AAR/DOT Nos. 025-413 R1  
9 and 025-413 R2.

10 2. On April 13, 2004, ADOT filed certification that notice had been provided by certified  
11 U.S. mail of the Application and hearing thereon.

12 3. A hearing was held as scheduled on April 22, 2004.

13 4. The Application provides for the construction of an overpass at 67<sup>th</sup> Avenue extending  
14 above and over the tracks of the Railroad and the intersection of Northern and Grand Avenues in  
15 Glendale. When the overpass is completed, the existing at-grade crossing at the intersection of  
16 Northern and Grand Avenues will remain, but with updated automatic warning devices.

17 5. Staff testified that the cost for the construction of the overpass as provided in the  
18 Application will be funded by ADOT with federal highway funds.

19 6. After construction of the grade-separated crossing, the 67<sup>th</sup> Avenue roadway overpass  
20 will be maintained by ADOT and/or Glendale. The Railroad will continue to be responsible to  
21 maintain the grade-separated crossing at the intersection of Northern and Grand Avenues in  
22 accordance with A.A.C. R14-5-104.

23 7. Staff has recommended that the Application be approved.

24 **CONCLUSIONS OF LAW**

25 1. The Commission has jurisdiction over the parties and over the subject matter of the  
26 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
27 40-337.01.

28 2. Notice of the Application was provided in accordance with the law.

1 3. The construction of the grade-separated crossing at the intersection of 67<sup>th</sup> Avenue  
2 with Northern and Grand Avenues in Glendale, Arizona, is necessary for the public's convenience  
3 and safety.

4 4. The Application should be approved as recommended by Staff.

5 **ORDER**

6 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application  
7 is hereby granted.

8 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company  
9 shall notify the Commission, in writing, within ten days of both the commencement and the  
10 completion of the grade-separated crossing, pursuant to A.A.C. R14-5-104.

11 IT IS FURTHER ORDERED that upon completion of the upgrade, the Burlington, Northern  
12 and Santa Fe Railway Company shall maintain the Northern Avenue crossing at Grand Avenue in  
13 compliance with A.A.C. R14-5-104.

14 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

16  
17 \_\_\_\_\_  
CHAIRMAN COMMISSIONER COMMISSIONER

18  
19 \_\_\_\_\_  
COMMISSIONER COMMISSIONER

20  
21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
22 Secretary of the Arizona Corporation Commission, have  
23 hereunto set my hand and caused the official seal of the  
24 Commission to be affixed at the Capitol, in the City of Phoenix,  
25 this \_\_\_\_ day of \_\_\_\_\_, 2004.

26 \_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

27 DISSENT \_\_\_\_\_

28 DISSENT \_\_\_\_\_

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SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY

DOCKET NO.:

RR-02635B-04-0207

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