

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: June 24, 2005
DOCKET NO: RR-02635B-05-0283
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
(UPGRADE 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:

JULY 6, 2005

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 Open Meeting to be held on:

July 12 and 13, 2005

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.

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

Arizona Corporation Commission

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JUN 24 2005

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF
9 THE CITY OF SURPRISE TO UPGRADE AN
10 EXISTING CROSSING OF THE BURLINGTON,
11 NORTHERN AND SANTA FE RAILWAY AT
12 BELL ROAD AND GRAND AVENUE, IN THE
13 CITY OF SURPRISE, MARICOPA COUNTY,
14 ARIZONA, AT AAR/DOT NO. 025-392-A.

DOCKET NO. RR-02635B-05-0283

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: June 8, 2005
11 PLACE OF HEARING: Phoenix, Arizona
12 PRESIDING OFFICER: Marc E. Stern
13 APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal Division, on
14 behalf of the Utilities Division of the Arizona
Corporation Commission.

15 **BY THE COMMISSION:**

16 On April 18, 2005, the City of Surprise (“City”) filed with the Arizona Corporation
17 Commission (“Commission”) a request for an Opinion and Order for the approval of an agreement
18 between the City and the Burlington Northern and Santa Fe Railway Company (“Railroad”) to
19 upgrade an existing crossing at the Railroad’s tracks at Bell Road and Grand Avenue in Surprise,
20 Arizona, at AAR/DOT No. 025-392-A (“Application”).

21 On April 27, 2005, by Procedural Order, a hearing was scheduled for May 18, 2005. The City
22 was ordered to provide public notice to the Railroad and any other municipality or interested party
23 with a copy of the application and the Procedural Order by Certified Mail.

24 On May 18, 2005, the hearing was convened before a duly authorized Administrative Law
25 Judge of the Commission at its offices in Phoenix, Arizona. At the outset of the proceeding, counsel
26 for the Commission’s Railroad Safety Section indicated that the City had not provided public notice
27 as ordered and requested that the proceeding be continued to a later date so that public notice could
28 be provided by the City. By Procedural Order, the hearing was continued to June 18, 2005, and the

1 City was ordered to provide public notice.

2 On June 1, 2005, the City certified that it provided notice pursuant to the terms of the
3 Procedural Order.

4 On June 8, 2005, a full public hearing was held before a duly authorized Administrative Law
5 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the
6 matter was taken under advisement pending submission of a recommended Opinion and Order to the
7 Commission.

8 * * * * *

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

11 **FINDINGS OF FACT**

12 1. On April 18, 2005, the City filed an Application in which it requested an Opinion and
13 Order from the Commission for the approval of an agreement between the City and the Railroad for
14 the upgrade of a crossing by the City constructing a right turn lane and by the Railroad replacing
15 existing flashing lights and to installing cantilever flashing LED light signals with opposing
16 automatic gates at Bell Road, where it crosses Grand Avenue, AAR/DOT No. 025-392-A, in the City
17 of Surprise, Arizona.

18 2. On June 1, 2005, the City filed certification that it provided notice by registered U.S.
19 mail of the Application and hearing thereon.

20 3. A hearing was held as scheduled on June 8, 2005.

21 4. The Application provides for the Railroad to replace existing flashing lights and to
22 install opposing automatic gates and cantilever flashing LED light signals.

23 5. Staff testified that the cost apportionment for the installation of the crossing upgrade
24 as provided in the Application was proper.

25 6. Staff has recommended that the Application be approved.

26 **CONCLUSIONS OF LAW**

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

1 40-337.01.

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

3 3. Installation of the crossing upgrade is necessary for the public's convenience and
4 safety.

5 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
6 recommended by Staff.

7 5. After installation of the crossing, the Railroad should maintain the crossing in
8 accordance with A.A.C. R14-5-104.

9 **ORDER**

10 IT IS THEREFORE ORDERED that the City of Surprise's Application is hereby approved.

11 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company
12 shall complete the crossing upgrade as described in the Application within fifteen months from the
13 effective date of this Decision.

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

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1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Burlington
2 Northern and Santa Fe Railway Company shall maintain the crossing in compliance with the A.A.C.
3 R14-5-104.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER _____

10
11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2005.

17 _____
18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

20 DISSENT _____

21 DISSENT _____

22 MES:mlj
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1 SERVICE LIST FOR: BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

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