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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

DEC - 9 2003

DOCKETED BY	MP
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IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO CONSTRUCT A
GRADE-SEPARATED CROSSING OF THE
BURLINGTON NORTHERN AND SANTA FE
RAILWAY AT OLIVE AVENUE OVER 75TH AND
GRAND AVENUES, IN THE CITY OF PEORIA,
MARICOPA COUNTY, ARIZONA.

DOCKET NO. RR-02635B-03-0684

DECISION NO. 66607

OPINION AND ORDER

11 DATE OF HEARING: November 6, 2003
 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
 the Arizona Corporation Commission.

BY THE COMMISSION:

17 On September 18, 2003, 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 Olive Avenue over the
 20 Railroad's tracks at the intersection of 75th and Grand Avenues, in the City of Peoria, Maricopa
 21 County, Arizona ("Application").

22 On October 17, 2003, by Procedural Order, the Application was set for a hearing and ADOT
 23 was ordered to notify any interested party of the Application and the hearing.

24 On October 27, 2003, ADOT filed certification that notice had been provided pursuant to the
 25 terms of the Procedural Order.

26 On November 6, 2003, a full public hearing was held before a duly authorized Administrative
 27 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,
 28 the matter was taken under advisement pending submission of a Recommended Opinion and Order to

1 the Commission.

2 * * * * *

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

5 **FINDINGS OF FACT**

6 1. On September 18, 2003, ADOT filed an Application in which it requested an Opinion
7 and Order from the Commission to approve an agreement between ADOT and the Railroad for the
8 construction of a grade-separated crossing at Olive Avenue over the track of the Railroad at the
9 intersection of 75th and Grand Avenues in Peoria, Maricopa County, Arizona.

10 2. On October 27, 2003, ADOT filed certification that notice had been provided by
11 registered U.S. mail of the Application and hearing thereon.

12 3. A hearing was held as scheduled on November 6, 2003.

13 4. The Application provides for the construction of an overpass at Olive Avenue
14 extending above and over the track of the Railroad and the intersection of 75th and Grand Avenues in
15 Peoria. Improvements to the flashing lights and gates at the crossing will be made pursuant to the
16 agreement.

17 5. Staff testified that the apportionment for the cost of the overpass as provided in the
18 Application will be funded by ADOT and with federal funding.

19 6. After construction of the grade-separated crossing, the Railroad will not be responsible
20 to maintain the grade-separated crossing in accordance with A.A.C. R14-5-104 because the Olive
21 Avenue roadway overpass will be maintained by ADOT and/or Peoria.

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

23 **CONCLUSIONS OF LAW**

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

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

28 3. The construction of the grade-separated crossing at the intersection of Olive Avenue

1 with 75th and Grand Avenues in Peoria, Arizona, is necessary for the public's convenience and safety.

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

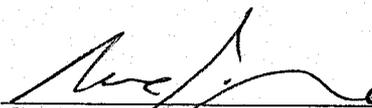
3 **ORDER**

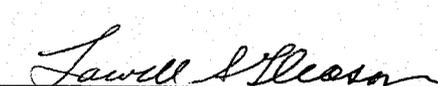
4 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application
5 is hereby granted.

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

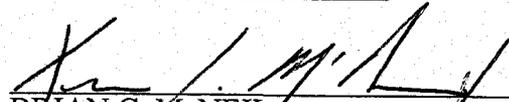
9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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12   
13 CHAIRMAN COMMISSIONER COMMISSIONER

14  
15 COMMISSIONER COMMISSIONER

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17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this 9th day of December, 2003.

22 
23 BRIAN C. McNEIL
24 EXECUTIVE SECRETARY

25 DISSENT _____

26 DISSENT _____

27 MES:mlj

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2 RAILWAY COMPANY

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