

ORIGINAL

OPEN MEETING ITEM



0000047164

BRIAN C. McNEIL
Executive Director

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



ARIZONA CORPORATION COMMISSION

22

DATE: March 30, 2006

DOCKET NO: RR-02635B-06-0079

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:

APRIL 10, 2006

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:

MAY 2 AND 3, 2006

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 Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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 163RD AVENUE, IN THE CITY OF SURPRISE,
13 MARICOPA COUNTY, ARIZONA, AT AAR/DOT
14 NO. 025-599-G.

DOCKET NO. RR-02635B-06-0079

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: March 23, 2006
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
13 APPEARANCES: Ms. Linda Fisher, Staff Attorney, Legal Division, on
14 behalf of the Utilities Division of the Arizona
Corporation Commission.

15 **BY THE COMMISSION:**

16 On February 8, 2006, 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 163rd Avenue in Surprise, Arizona, at
20 AAR/DOT No. 025-599-G ("Application").

21 On February 27, 2006, by Procedural Order, a hearing was scheduled for March 23, 2006.
22 The City was ordered to provide public notice to the Railroad and any other municipality or
23 interested party with a copy of the application and the Procedural Order by Certified Mail.

24 On March 13, 2006, the City certified that it provided notice pursuant to the terms of the
25 Procedural Order.

26 On March 23, 2006, 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 February 8, 2006, the City filed an Application in which it requested an Opinion
7 and Order from the Commission for the approval of an agreement between the City and the Railroad
8 for the upgrade of a crossing by widening an existing two lane crossing which has a wooden crossing
9 surface and cantilever flashing lights and automatic gates by replacing them with new cantilever
10 flashing LED light signals with new opposing automatic gates at 163rd Avenue, in the City of
11 Surprise at AAR/DOT No. 025-599-G.

12 2. On March 13, 2006, the City filed certification that it provided notice by registered
13 U.S. mail of the Application and hearing thereon.

14 3. A hearing was held as scheduled on March 23, 2006.

15 4. The Application provides for the widening of 163rd Avenue from two lanes to what
16 will in time be eight lanes and for the Railroad to replace the wooden crossing surface with a concrete
17 crossing surface and to replace the existing cantilever flashing lights and automatic gates with new
18 cantilever flashing LED light signals and opposing automatic gates.

19 5. Staff testified that the cost apportionment for the installation of the crossing upgrade
20 as provided in the Application is proper.

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

22 **CONCLUSIONS OF LAW**

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

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

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

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:mj

1 SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

2

3 DOCKET NO.

RR-02635B-06-0079

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