



0000050958

OPEN MEETING ITEM

ORIGINAL



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

ARIZONA CORPORATION COMMISSION

DATE: June 2, 2006

DOCKET NO.: RR-02635B-06-0229

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
(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:

JUNE 12, 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:

JUNE 27 AND 28, 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.

RECEIVED

2006 JUN -2 P 4: 17

AZ CORP COMMISSION
DOCUMENT CONTROL

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 ARIZONA DEPARTMENT OF
10 TRANSPORTATION FOR THE CONSTRUCTION
11 OF A GRADE-SEPARATED CROSSING OF THE
12 BURLINGTON NORTHERN AND SANTA FE
13 RAILWAY AT COUNTRY CLUB DRIVE IN THE
14 CITY OF FLAGSTAFF, COCONINO COUNTY,
15 ARIZONA, AAR/DOT NO. 025-128S.

DOCKET NO. RR-02635B-06-0229

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: May 18, 2006

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. David Ronald, Staff Attorney, Legal Division, on
15 behalf of the Utilities Division of the Arizona
16 Corporation Commission.

17 **BY THE COMMISSION:**

18 On April 6, 2006, the Arizona Department of Transportation ("ADOT") filed with the
19 Arizona Corporation Commission ("Commission") a request for approval for the Burlington Northern
20 and Santa Fe Railway Company ("Railroad") to construct a grade-separated crossing over the
21 Railroad's tracks at Country Club Drive, Flagstaff, Arizona at AAR/DOT No. 025-128S
22 ("Application").

23 On April 18, 2006, by Procedural Order, the Application was set for a hearing and ADOT was
24 ordered to notify any interested party of the Application and the hearing.

25 On April 21, 2006, ADOT filed certification that notice had been provided pursuant to the
26 terms of the Procedural Order.

27 On May 18, 2006, a full public hearing was held before a duly authorized Administrative Law
28 Judge of the Commission at its offices in Phoenix, Arizona. The Commission's Railroad Safety
Section was represented by counsel. At the conclusion of the hearing, the matter was taken under

1 advisement pending submission of a Recommended Opinion and Order to 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 April 16, 2006, ADOT filed an Application in which it requested an Opinion and
7 Order from the Commission to approve an agreement between ADOT and the Railroad for the
8 construction of a new wider grade-separated crossing which will replace an existing crossing over the
9 tracks of the Railroad where its tracks intersect with Country Club Drive in the City of Flagstaff,
10 Arizona at AAR/DOT No. 025-128S.

11 2. On April 21, 2006, ADOT filed certification that notice had been provided by certified
12 U.S. mail of the Application and hearing thereon.

13 3. A hearing was held as scheduled on May 18, 2006.

14 4. The Application provides for the construction of a new four-lane overpass over the
15 tracks of the Railroad to replace an existing two-lane overpass at Country Club Drive which is being
16 realigned and widened. When the overpass is completed, it will provide for better traffic movement.

17 5. Staff testified that the cost for the construction of the overpass as provided in the
18 Application is proper.

19 6. After construction of the new grade-separated crossing, the existing overpass will be
20 removed and the new overpass structure maintained by ADOT. The Railroad will continue to
21 maintain its tracks beneath the overpass.

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. Pursuant to A.R.S. §§ 40-336 and 40-337, the construction of the grade-separated

1 crossing at Country Club Drive in Flagstaff, Arizona, is necessary for the public's convenience and
2 safety.

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

4 **ORDER**

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

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

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

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

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14
15

16 CHAIRMAN _____ COMMISSIONER _____

17
18

18 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

19
20
21
22

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.

23
24
25

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

26 DISSENT _____

27 DISSENT _____

28 MES:mj

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE
RAILWAY

DOCKET NO.:

RR-02635B-06-0229

Michael F. Delleo, Jr.
Arizona Department of Transportation
205 S. 17th Avenue, MD 618E
Phoenix, AZ 85007

David Gibson
Traffic Records Section
ADOT
205 S. 17th Avenue, MD 064R
Phoenix, AZ 85007

Colleen Dienes
Public Projects
BNSF
740 E. Carnegie Drive
San Bernardino, CA 92408

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Brian Lehman
Railroad Safety Section
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, AZ 85007