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ARIZONA CORPORATION COMMISSION

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DATE: JULY 26, 2002
DOCKET NO: RR-02635B-02-0396
TO ALL PARTIES:

Arizona Corporation Commission

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

BURLINGTON NORTHERN SANTA FE RAILWAY
(AT-GRADE)

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 6, 2002

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:

AUGUST 20, 2002 and AUGUST 21, 2002

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE AN
EXISTING CROSSING OF THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY AT
43RD AVENUE AND CAMELBACK ROAD IN
PHOENIX, ARIZONA AT M.P. 186.70.

DOCKET NO. RR-02635B-02-0396

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: July 11, 2002
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On May 28, 2002, the Arizona Department of Transportation ("ADOT") submitted to the Arizona Corporation Commission ("Commission") a request for approval for the Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade a crossing at the Railroad's existing tracks at 43rd Avenue and Camelback Road in Phoenix, Arizona at M.P. 186.70.

On June 14, 2002, by Procedural Order, the Application was set for hearing and ADOT was ordered to notify any interested party of the Application and the hearing.

On June 26, 2002, ADOT provided notice pursuant to the Procedural Order.

On July 11, 2002, a full public hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes, and orders that:

2 **FINDINGS OF FACT**

3 1. On May 28, 2002, ADOT filed an Application in which it requested an Opinion and
4 Order from the Commission approving an agreement between ADOT and the Railroad to upgrade a
5 crossing at the Railroad's existing tracks at 43rd Avenue and Camelback Road in Phoenix, Maricopa
6 County, Arizona at M.P. 186.70.

7 2. On June 26, 2002, ADOT mailed written notice to all interested parties of the
8 Application and hearing thereon as ordered in the Commission's Procedural Order. Subsequently, no
9 objections to the Application were received by the Commission.

10 3. The Application provides for the Railroad to upgrade its crossing at 43rd Avenue and
11 Camelback Road as part of ADOT's Grand Avenue corridor upgrade by removing the existing
12 automatic gates and installing additional cantilevered flashing light signals.

13 4. Staff testified that the cost for the installation of the upgrade as provided in the
14 Application is proper.

15 5. Staff has recommended that the Application be approved.

16 **CONCLUSIONS OF LAW**

17 1. The Commission has jurisdiction over the parties and over the subject matter of the
18 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
19 40-337.01.

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

21 3. The installation of the upgrade as described hereinabove is necessary for the public's
22 convenience and safety.

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

24 5. After the construction upgrade is completed, the Railroad should maintain the
25 crossings in accordance with A.A.C. R14-5-104.

26 **ORDER**

27 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application
28 on behalf of the Burlington Northern and Santa Fe Railway Company is hereby approved.

1 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company
2 shall complete the construction upgrades described in the Application within fifteen months from the
3 effective date of this Decision.

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

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

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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14 CHAIRMAN

COMMISSIONER

COMMISSIONER

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2002.

20 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

21 DISSENT _____
22 MES:mlj

1 SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

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3 DOCKET NO.:

RR-02635B-02-0010

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