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ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

DATE: JULY 26, 2002

DOCKET NO: RR-02635B-02-0397

JUL 26 2002

TO ALL PARTIES:

DOCKETED BY

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
51ST AVENUE AND BETHANY HOME ROAD IN
PHOENIX, ARIZONA AT M.P. 185.40.

DOCKET NO. RR-02635B-02-0397
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 51st Avenue and Bethany Home Road in Phoenix, Arizona at M.P. 185.40.

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 25, 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 51st Avenue and Bethany Home Road in Phoenix,
6 Maricopa County, Arizona at M.P. 185.40.

7 2. On June 25, 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. A hearing was held as scheduled on July 11, 2002.

11 4. The Application provides for the Railroad to upgrade its crossing at 51st Avenue and
12 Bethany Home Road as a part of ADOT's Grand Avenue corridor upgrade by installing an additional
13 cantilever flashing light signal.

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

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

17 **CONCLUSIONS OF LAW**

18 1. The Commission has jurisdiction over the parties and over the subject matter of the
19 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
20 40-337.01.

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

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

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

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

27 **ORDER**

28 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application

1 on behalf of the Burlington Northern and Santa Fe Railway Company is hereby approved.

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

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

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

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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15 CHAIRMAN

COMMISSIONER

COMMISSIONER

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

21 _____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

22 DISSENT _____
23 MES:mlj

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SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

DOCKET NO.:

RR-02635B-02-0397

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