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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

AZ CORP COMMISSION
DOCKET CONTROL

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
35TH AVENUE AND U.S. 60 IN THE CITY OF
PHOENIX, MARICOPA COUNTY, ARIZONA, AT
AAR/DOT NO. R1531C106.

DOCKET NO. RR-02635B-07-0437

Arizona Corporation Commission

DOCKETED

SEP 12 2007

SECOND DOCKETED BY
PROCEDURAL ORDER

nr

BY THE COMMISSION:

On July 24, 2007, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at 35th Avenue and U.S. 60, in Phoenix, Arizona, at AAR/DOT No. R1531C106.

On August 1, 2007, by Procedural Order, the proceeding was scheduled for hearing on September 18, 2007, and other procedural dates for filings and public notice set forth.

On September 11, 2007, the Hearing Division was notified that ADOT had not published public notice by August 24, 2007, as ordered in the Commission's Procedural Order.

Accordingly, the hearing scheduled on September 18, 2007, should be continued and new procedural dates for filings and public notice should be established.

Pursuant to A.A.C. R14-3-101, the Commission now issues this **Second Procedural Order** to govern the preparation and conduct of this proceeding **due to the continuance**.

IT IS THEREFORE ORDERED that the request of the ADOT shall be considered an application for the Railroad to upgrade an existing crossing pursuant to A.R.S. § 40-337, et seq.

IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this proceeding.

1 IT IS FURTHER ORDERED that the **hearing** on the application shall be **continued from**
2 **September 18, 2007, to October 11, 2007 at 10:00 a.m.**, or as soon thereafter as is practical, at the
3 Commission's offices, 1200 West Washington Street, Phoenix, Arizona.

4 IT IS FURTHER ORDERED that within five business days of receipt of this Procedural
5 Order, **THE ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE**
6 **RAILROAD AND ANY OTHER MUNICIPALITY OR INTERESTED PARTY** that may be
7 affected by the application with a copy of the application and the **Second Procedural Order** by
8 certified mail.

9 IT IS FURTHER ORDERED that since the Safety Division, Railroad Safety Section ("Staff")
10 has prepared a written **Staff Report and associated exhibits** to be presented at hearing and filed
11 copies of them with Docket Control on **August 21, 2007**, a new Staff Report is not required to be
12 filed.

13 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
14 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on **October**
15 **10, 2007**.

16 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
17 105, except that all motions to intervene must be filed on or before **October 4, 2007**.

18 IT IS FURTHER ORDERED that Arizona Department of Transportation shall provide public
19 notice of the hearing in this matter, in the following form and style:

20 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE APPLICATION**
21 **OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN**
22 **EXISTING CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE**
23 **RAILWAY AT 35TH AVENUE AND U.S. 60 IN THE CITY OF PHOENIX,**
MARICOPA COUNTY, ARIZONA, AT AAR/DOT NO. R1531C106.
DOCKET NO. RR-02635B-07-0437

24 On July 24, 2007, the Arizona Department of Transportation ("ADOT") filed with the
25 Arizona Corporation Commission ("Commission") an application for approval for the
26 Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade an
existing crossing at the Railroad's tracks at 35th Avenue and U.S. 60, in Phoenix,
Arizona, at AAR/DOT No. R1531C106.

27 The application is available for inspection during regular business hours at the offices
28 of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona,
and on the internet via the Commission website (www.azcc.gov) using the e-docket

function.

The Commission will hold a hearing on this matter commencing on **October 11, 2007, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to Applicant or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of Railroad, a neighboring property owner, a crossing user, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before October 4, 2007. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

If you have any questions about this application, you may contact the applicant at **[insert telephone number]**. If you wish to file written comments on the application or want further information on intervention, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000 or appear at the hearing and make comment.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, E-mail lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Arizona Department of Transportation shall cause the above notice to be published at least once in a newspaper of general circulation in the city where the crossing is located, with **publication to be completed no later than September 26, 2007**.

IT IS FURTHER ORDERED that notice shall be deemed complete upon the mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive the notice.

...

1 IT IS FURTHER ORDERED that ARIZONA DEPARTMENT OF TRANSPORTATION
2 SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET
3 CONTROL AS SOON AS PRACTICABLE after the mailing/publication of notice ordered herein
4 has been completed.

5 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-133 – Unauthorized
6 Communications) applies to this proceeding and shall remain in effect until the Commission's
7 Decision in this matter is final and non-appealable.

8 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,
9 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
10 ruling at hearing.

11 DATED this 12th day of September, 2007.


MARC E. STERN
ADMINISTRATIVE LAW JUDGE

15 Copies of the foregoing mailed/delivered
16 this 12th day of September, 2007 to:

17 Colleen Deines, Manager
18 Public Projects
19 BURLINGTON NORTHERN SANTA FE
20 RAILWAY COMPANY
740 East Carnegie Drive
San Bernardino, CA 92408

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

21 John Syers
22 Railroad Engineering Coordinator
23 ARIZONA DEPARTMENT OF
TRANSPORTATION
205 S. 17th Avenue, Mail Drop 618E
Phoenix, AZ 85007

Brian Lehman, Chief
Railroad Safety Section
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

24 Traffic Records Section
25 ARIZONA DEPARTMENT OF
TRANSPORTATION
26 206 S. 17th Avenue, MD-064R
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

27 By: 
28 Debra Broyles
Secretary to Marc Stern