

OPEN MEETING ITEM



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Executive Director

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



ARIZONA CORPORATION COMMISSION

DATE: JANUARY 24, 2008

DOCKET NO: RR-02635B-07-0530

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 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:

FEBRUARY 4, 2008

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:

FEBRUARY 12, 2008 and FEBRUARY 13, 2008

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

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

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 HADLEY STREET IN THE  
CITY OF PHOENIX, MARICOPA COUNTY,  
ARIZONA, AT AAR/DOT NO. 025-834-C.

DOCKET NO. RR-02635B-07-0530

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING: January 10, 2008  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: Mr. Charles Hains, Staff Attorney, Legal Division on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On September 17, 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 Hadley Street in Phoenix, Arizona, at AAR/DOT No. 025-834-C ("Application").

On October 30, 2007, by Procedural Order, the proceeding was scheduled for hearing on January 10, 2008, and other procedural dates for filing and public notice were set.

On November 8 and December 6, 2007, ADOT filed certification of public notice by means of publication and by means of certified U.S. mail, respectively, pursuant to the Commission's Procedural Order.

On January 10, 2008, a full public hearing was convened before a duly authorized

1 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's  
2 Railroad Safety Section of the Safety Division ("Staff") appeared with counsel. At the conclusion of  
3 the hearing, the matter was taken under advisement pending submission of a Recommended Opinion  
4 and Order to the Commission.

5 \* \* \* \* \*

6 Having considered the entire record herein and being fully advised in the premises, the  
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9  
10 1. On September 17, 2007, ADOT filed an Application in which it requested an Opinion  
11 and Order from the Commission approving an agreement between ADOT and the Railroad to  
12 upgrade the existing public at-grade crossing at Hadley Street in Phoenix, Arizona at AAR/DOT No.  
13 025-834-C.<sup>1</sup>

14 2. The agreement between ADOT and the Railroad provides for improvements to be  
15 made by replacing the existing crossbucks and stop signs with new automatic 12-inch LED flashing  
16 lights, bells and gates.

17 3. Pursuant to the Commission's Procedural Order, ADOT provided all interested parties  
18 with notice of the Application and hearing thereon by certified U.S. mail and by publication in the  
19 Arizona Republic.

20 4. The hearing was held as scheduled on January 10, 2008.

21 5. According to the report filed by Staff, the improvements described in this proceeding  
22 should help to improve public safety at the crossing in the future.

23 6. Mr. Chris Watson, Staff's Grade Crossing Inspector, testified that there is minimal  
24 vehicular traffic and only two or three train crossings a day with no record of accidents at the  
25 crossing. He testified that there is no need for a grade separation at this crossing.

26 7. According to ADOT, vehicular traffic flow currently at the crossing of the Railroad's

27 <sup>1</sup> On May 2, 2005, the Commission issued Decision No. 67777 which approved the inclusion of the Hadley Street  
28 crossing for upgrading as part of the Commission's Annual Array with funds provided to Arizona by the Federal  
Highway Administration pursuant to 23 U.S.C. § 130. This is called the "11<sup>th</sup> Avenue lead" and is not a mainline, but  
more like a spur line. (Tr. p. 9)

1 tracks is 307 vehicles per day. ADOT did not provide Staff with any traffic projections for the  
2 crossing in the future, but Staff testified that they don't anticipate the level of service changing or  
3 fluctuating significantly in the near future.

4 8. Mr. Watson testified that the cost apportionment for the installation of the crossing  
5 upgrade as provided in the Application is proper and approximately \$287,283 will be paid solely by  
6 ADOT from funds provided by the Federal Highway Administration to upgrade Railroad crossings  
7 on public roadways which are not primarily for the benefit of the Railroad.

8 9. Federal funding to Arizona annually totals approximately \$2.6 million and is applied  
9 by ADOT to projects which need upgrades throughout Arizona.

10 10. Staff has recommended that the Application be approved.

11 **CONCLUSIONS OF LAW**

12 1. The Commission has jurisdiction over the parties and over the subject matter of the  
13 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
14 40-337.01.

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

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

18 4. Pursuant to A.R.S. §§ 40-336 and 337, the Application should be approved as  
19 recommended by Staff.

20 5. After installation of the crossing, the Railroad should maintain the crossing in  
21 accordance with A.A.C. R-14-5-104.

22 **ORDER**

23 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application  
24 is hereby approved.

25 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company  
26 shall complete the crossing upgrades as described in the Application within 15 months from the  
27 effective date of this Decision.  
28

1 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company  
2 shall notify the Commission, in writing, within 10 days of both the commencement and the  
3 completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

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

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9  
10  
11 CHAIRMAN

COMMISSIONER

12  
13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14  
15 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim  
16 Executive Director of the Arizona Corporation Commission,  
17 have 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 \_\_\_\_\_, 2008.

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22 \_\_\_\_\_  
23 DEAN S. MILLER  
24 INTERIM EXECUTIVE DIRECTOR

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DISSENT \_\_\_\_\_

MES:db

1 SERVICE LIST FOR: BURLINGTON NORTHERN AND SANTA FE RAILWAY

2 DOCKET NO.: RR-02635B-07-0530

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