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2009 APR -6 A 10: 20

AZ CORP COMMISSION
DOCKET CONTROL

April 2, 2009

Arizona Corporation Commission (ACC)
Attn: Docket Control
1200 W. Washington St.
Phoenix AZ 85007

Re: ACC Applicant Docket NO. RR-02635B-09-0075 for Existing Rail Crossing
Changes, DOT #'s 025099J & 025129Y

To whom it may concern,

Please find attached are 13 copies of the procedural order along with the certified mail
receipts and proof of publication as required in the procedural order.

Please do not hesitate to call or Email me at 928-226-4844 or rwhitaker@flagstaffaz.gov.

Thank You,

Randy Whitaker
Senior Project Manager
City of Flagstaff

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

Arizona Corporation Commission
DOCKETED

APR -6 2009

DOCKETED BY	
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **RECEIVED**

3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman
5 GARY PIERCE
6 PAUL NEWMAN
7 SANDRA D. KENNEDY
8 BOB STUMP

2009 FEB 27 P 3:43

AZ CORP COMMISSION
DOCKET CONTROL

RECEIVED MAR 05 2009

9 IN THE MATTER OF THE APPLICATION OF
10 THE CITY OF FLAGSTAFF TO UPGRADE
11 EXISTING RAILROAD CROSSINGS OF THE
12 BNSF RAILWAY COMPANY AT STEVES
13 BOULEVARD AND FANNING DRIVE IN THE
14 CITY OF FLAGSTAFF, COCONINO COUNTY,
15 ARIZONA, DOT CROSSING NOS. 025099J
16 AND 025129Y.

DOCKET NO. RR-02635B-09-0075

PROCEDURAL ORDER

17 **BY THE COMMISSION:**

18 On February 19, 2009, the City of Flagstaff ("City") filed with the Arizona Corporation
19 Commission ("Commission") an application for approval to upgrade two existing at-grade railroad
20 crossings of the BNSF Railway Company ("BNSF") by installing additional warning devices in the
21 form of wayside horns, as part of the City's plan to create a New Quiet Zone within the City's limits.
22 The two crossings are at Steves Boulevard, DOT Crossing No. 025099J, and Fanning Drive, DOT
23 Crossing No. 025129Y, both located within the City, in Coconino County, Arizona. The City
24 explained that additional crossings (Beaver Street, San Francisco Street, and Enterprise Avenue¹) are
25 to be included within its New Quiet Zone, but that no changes will be made to the warning devices,
26 roadway configuration, or pavement markings at those crossings.

27 The Commission now issues this Procedural Order to govern the preparation and conduct of
28 this proceeding.

IT IS THEREFORE ORDERED that the City's application shall be considered an application
for BNSF to upgrade existing crossings pursuant to A.R.S. §§ 40-337 *et seq.*

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

¹ These crossings are further identified, respectively, by DOT Crossing Nos. 025133N, 025132G, and 025131A.

1 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **May 6,**
2 **2009, at 1:00 p.m.,** or as soon thereafter as is practicable, in the 2nd Floor Conference Room at the
3 Commission's offices at 1200 West Washington Street, Phoenix, Arizona.

4 IT IS FURTHER ORDERED that within five business days of receipt of this Procedural
5 Order, **the City shall provide BNSF, Coconino County, the Arizona Department of**
6 **Transportation, and any other municipality or interested person that may be affected by the**
7 **application with a copy of the application and this Procedural Order by certified mail.**

8 IT IS FURTHER ORDERED that the Railroad Safety Section of the Commission's Safety
9 Division ("Staff") shall prepare a written **Staff Report and associated exhibits** to be presented at
10 hearing and file copies of them with Docket Control on or before 4:00 p.m. on **March 27, 2009.**
11 **Staff shall ensure that a copy of the Staff Report and associated exhibits is provided to the City,**
12 **BNSF, and any other person identified in the service list for this docket.**

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 **April**
15 **10, 2009.**

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 **April 17, 2009.**

18 IT IS FURTHER ORDERED that the City shall provide public notice of the hearing in this
19 matter, in the following form and style, with the heading in no less than 12-point bold type and the
20 body in no less than 10-point regular type:

21 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE APPLICATION**
22 **OF THE CITY OF FLAGSTAFF TO UPGRADE EXISTING RAILROAD**
23 **CROSSINGS OF THE BNSF RAILWAY COMPANY AT STEVES BOULEVARD**
24 **AND FANNING DRIVE IN THE CITY OF FLAGSTAFF, COCONINO COUNTY,**
25 **ARIZONA, DOT CROSSING NOS. 025099J AND 025129Y.**
26 **(DOCKET NO. RR-02635B-09-0075)**

27 On February 19, 2009, the City of Flagstaff ("City") filed with the Arizona
28 Corporation Commission ("Commission") an application for approval to upgrade two
existing at-grade railroad crossings of the BNSF Railway Company ("BNSF") by
installing additional warning devices in the form of wayside horns. The two
crossings are at Steves Boulevard, DOT Crossing No. 025099J, and Fanning Drive,
DOT Crossing No. 025129Y, both located within the City, in Coconino County,
Arizona.

1 The Railroad Safety Section of the Commission's Safety Division ("Staff") is in the
2 process of analyzing the application and has not yet made any recommendations in
3 this matter. The Commission will determine whether to grant the application based
4 on the evidence of record in this matter. The Commission is not bound by the
5 proposals made by the City, BNSF, Staff, or any intervenors.

6 Copies of the application and the other documents filed in this matter are available at
7 the Commission's Docket Control Center at 1200 West Washington Street, Phoenix,
8 Arizona, for inspection during regular business hours, and on the Internet via the
9 Commission's website (www.azcc.gov) using the e-Docket function.

10 The Commission will hold a **hearing** in this matter beginning on **May 6, 2009, at**
11 **1:00 p.m.**, in the 2nd Floor Conference Room at the Commission's offices at 1200
12 West Washington Street, Phoenix, Arizona. Public comments will be taken on the
13 first day of the hearing. Written public comments may be submitted by mailing an
14 original and 13 copies of a letter referencing Docket No. RR-02635B-09-0075 to the
15 Commission's Docket Control Center, 1200 West Washington Street, Phoenix,
16 Arizona 85007.

17 Any person or entity entitled by law to intervene and having a direct and substantial
18 interest in the matter will be permitted to intervene. If you desire to intervene, you
19 must file an original and 13 copies of a written motion to intervene with the
20 Commission's Docket Control no later than **April 17, 2009**. You must send a copy of
21 the motion to intervene to the City or its counsel and to all parties of record. Your
22 motion to intervene must contain the following:

- 23 1. Your name, address, and telephone number and the name, address, and
24 telephone number of any party upon whom service of documents is to be
25 made, if not yourself;
- 26 2. A short statement of your interest in the proceeding (e.g., a customer of
27 BNSF, a neighboring property owner, a crossing user, etc.); and
- 28 3. A statement certifying that you have mailed a copy of the motion to intervene
to the City or its counsel and to all parties of record in the case.

18 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
19 that all motions to intervene must be filed on or before April 17, 2009. If
20 representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme
21 Court, intervention will be conditioned upon the intervenor's obtaining counsel to
22 represent the intervenor. For information about requesting intervention, visit the
23 Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>.
24 The granting of intervention, among other things, entitles a party to present sworn
25 evidence at hearing and to cross-examine other witnesses. However, failure to
26 intervene will not preclude any interested person or entity from appearing at the
27 hearing and providing public comment on the application or from filing written
28 comments in the docket for the case.

24 If you have any questions about the application, you may contact the City at [insert
25 telephone number].

26 The Commission does not discriminate on the basis of disability in admission to its
27 public meetings. Persons with a disability may request a reasonable accommodation
28 such as a sign language interpreter and request this document in an alternative format
by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov, voice
phone number 602-542-3931. Requests should be made as early as possible to allow
time to arrange the accommodation.

1 IT IS FURTHER ORDERED that the City shall cause the above notice to be **published** at
2 least once in a newspaper of general circulation in the area where the crossings are located, with
3 **publication to be completed no later than March 20, 2009.**

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

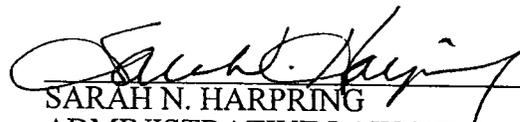
6 IT IS FURTHER ORDERED that the City shall **file certification of notice with the**
7 **Commission's Docket Control as soon as practicable** after the publication of notice ordered herein
8 has been completed, and **no later than April 10, 2009.**

9 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
10 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
11 *pro hac vice.*

12 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
13 Communications) applies to this proceeding and shall remain in effect until the Commission's
14 Decision in this matter is final and non-appealable.

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

18 DATED this 27th day of February, 2009.

19
20
21 
22 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

23
24 Copies of the foregoing mailed/delivered
this 27th day of February, 2009, to:

25 Randy Whitaker, Senior Project Manager
26 Traffic Engineering
27 CITY OF FLAGSTAFF
28 City Hall
211 West Aspen Avenue
Flagstaff, AZ 86001

1 Melvin V. Thomas, Manager Public Projects
BNSF RAILWAY COMPANY
740 East Carnegie Drive
2 San Bernardino, CA 92408-3571

3 Robert Travis, PE, State Railroad Liaison
Utilities & Railroad Engineering Section
4 ARIZONA DEPARTMENT OF TRANSPORTATION
205 South 17th Avenue, Mail Drop 618E
5 Phoenix, AZ 85007

6 Traffic Records Section
ARIZONA DEPARTMENT OF TRANSPORTATION
7 206 South 17th Avenue, Mail Drop 064R
Phoenix, AZ 85007

8
9 Janice Alward, Chief Counsel
Legal Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

11
12 Brian Lehman, Chief
Railroad Safety Section
ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
Phoenix, Arizona 85007

14
15 ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
16 Phoenix, AZ 85004-1481

17
18 By: 
Debra Broyles
19 Secretary to Sarah N. Harpring

20
21
22
23
24
25
26
27
28

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Melvin V. Thomas
740 E. Carnegie Drive
San Bernardino Ca

92408-3571

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert Travis
Utilities & Railroad
Engineering Section
205 S. 17th Ave.
Mail Drop 618E
Phoenix, Az 85007

2. Article Number
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

MAR 5 2009

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janice Alward, Chief Council
AZ Cooperation Commission
1200 W. Washington St.
Phoenix, Az 85007

2. Article Number
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

MAR 5 2009

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tim Dalegowski
 Coconino County Public Works
 5600 E. Commerce Ave.
 Flagstaff, AZ 86004

2. Article Number

(Transfer from service label) 117 006 0100 00033887 6058 11

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- Agent
 Addressee

B. Received by (Printed Name)

Lita Lash

C. Date of Delivery

3-6-09

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AZ Reporting Service, Inc.
 2200 N. Central, Suite 502
 Phoenix, AZ 85004-1481

2. Article Number

(Transfer from service label) 7006 0100 00033887 6041

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- Agent
 Addressee

B. Received by (Printed Name)

Heather Stanton

C. Date of Delivery

3-5-09

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bruen Lehman, Chief
 AZ Corporation Commission
 1200 W. Washington St.
 Phoenix, AZ 85007

2. Article Number

(Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- Agent
 Addressee

B. Received by (Printed Name)

RMP/KEVIN

C. Date of Delivery

03/05/09

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Traffic Records Section
 286 S. 17th Ave.
 Mail Stop 064R
 Phoenix, AZ 85007

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Handwritten Signature]*

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

MAR 5 2009

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

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AFFIDAVIT/PROOF OF PUBLICATION

STATE OF ARIZONA

} ss.

County of Coconino

Bobbie Crosby being duly sworn, deposes and says:

That she is the legal clerk of the Arizona Daily Sun

a newspaper published at Flagstaff, Coconino County, Arizona; that the

Public Notice of Hearing Docket No.

RR-02635B-09-0075 a copy of which is

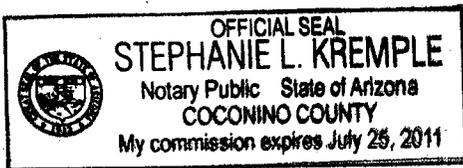
hereunto attached, was first published in said newspaper in its issue dated

the 15 day of March, 2009, and was

published in each one issue of said newspaper for one

consecutive day the last publication being in the issue dated the

15 day of March, 2009.



[Handwritten Signature]

Subscribed and sworn to before me this

25 day of March, 2009

Stephanie L Krempfle

[Handwritten Signature]

Notary Public

My Commission expires July 25, 2011

**PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE APPLICATION
OF THE CITY OF FLAGSTAFF TO UPGRADE EXISTING RAILROAD
CROSSING OF THE BNSF RAILWAY COMPANY AT STEVES BOULEVARD
AND FANNING DRIVE IN THE CITY OF FLAGSTAFF, COCONINO COUNTY,
ARIZONA, DOT CROSSING NOS. 025099J AND 025129Y.
(DOCKET NO. RR-02635B-09-0075**

On February 19, 2009, the City of Flagstaff ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval to upgrade two existing at-grade railroad crossing of the BNSF Railway Company ("BNSF") by installing additional warning devises in the form of wayside horns. The two crossing are at Steves Boulevard, DOT Crossing No. 025099J, and Fanning Drive, DOT Crossing No. 025129Y, both located within the City in Coconino County, Arizona.

The Railroad Safety Section of the Commission's Safety Division ("Staff") is in the process of analyzing the application and has not yet made any recommendations in this matter. The Commission will determine whether to grant the application based on the evidence of record in this matter. The Commission is not bound by the proposals made by the City, BNSF, Staff, or any intervenors.

Copies of this application and other documents filed in this matter are available at the Commission's Docket Control Center at 1200 West Washington Street, Phoenix, Arizona, for inspection during regular business hours, and on the Internet via the Commission's website (www.azcc.com) using the e-Docket function.

The Commission will hold a **hearing** in this matter beginning on **May 6, 2009 at 1:00 p.m.**, in the 2nd Floor Conference Room at the Commission's offices at 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted by mailing an original and 13 copies of a letter referencing Docket No. RR-02635B-09-0075 to the Commission's Docket Control Center, 1200 West Washington Street, Phoenix, Arizona 85007.

Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you desire to intervene, you must file an original and 13 copies of a written motion to intervene with the Commission's Docket Control no later than **April 17, 2009**. You must send a copy of the motion to intervene to the City or its counsel and to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any party upon whom service documents is to be made, if not yourself;
2. A short statement of your interest in the proceeding (e.g., a customer of BNSF, a neighboring property owner, a crossing user, etc.); and
3. A statement certifying that you have mailed a copy of the motion to intervene to the City 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 April 17, 2009. If representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor's obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. 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 interested person or entity from appearing at the hearing and providing public comment on the application or from filing written comments in the docket for the case.

If you have any questions about the application, you may contact the City at (928) 226-4844.

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 and request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov voice phone number 602-542-3931. Requests should me made as early as possible to allow time to arrange the accommodation.