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AZ CORP COMMISSION
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Docket # RR-02635B-09-0075

August 10, 2009

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Original

Arizona Corporation Commission
DOCKETED

AUG 14 2009

DOCKETED BY

Walter F. Robertson
1690 N. Falcon Road.
Flagstaff, Arizona 86004
(928) 526-2387

August 10, 2009

Granted Intervention Status for :

Docket No. RR-02635B-09-0075

ADMINISTRATIVE LAW JUDGE - SARAH N. HARPRING

Commissioners:

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Dear Judge Harpring,

I feel compelled to send this complaint to you. I hope I'm not perceived as a whimpering curmudgeon on the level of a petulant school boy tattling on one of his classmates. Yet I am frustrated at having to scramble and second guess what information is being supplied to the Commission by the City and not having the time to review and coherently respond to it. I believe I have relevant information to contribute to this matter and if the City of Flagstaff didn't want me to participate in this proceeding in an "Intervenor"¹ capacity, they had the opportunity and should have objected to that appointment. They never did.

I believe the first incidence of being excluded is: Notification of what City witnesses were to be interviewed during the hearing on July 8, 2009. I overlooked that instance and felt it was understandable due to the fact that my name was only added to the Service List one month prior to the hearing, (EXHIBIT A). But either through another "oversight"-(EXHIBIT B) or deliberate exclusion I may or may not have received all pertinent information from the City of Flagstaff that has been filed with the Commission and certainly haven't received the Late Filed Exhibits², reports ordered by the Court to be filed by July 29, 2009.

I can only assume the exclusion was deliberate since I have received other documents from Mr. Womochil, (EXHIBIT C).

¹ Arizona Corporation Evidentiary Hearing, July 8, 2009, p.6:21

² Womochil, David, Senior Assistant City Attorney-City of Flagstaff, Applicant's Response to Request for Late-Filed Exhibits, July 29, 2009, pp. 2-4

Certainly Mr. Womochil witnessed the assurance by two fellow City employees during the July 8, 2009 hearing that in essence the City would be more careful and fully comply with the Commission's rules³ and I would have assumed that applied to the City Legal Staff as well.

Mr. Black and the Commission and the Commission's legal personnel have extended me and the Court the courtesy and complied with the rules of the Commission by forwarding me all information regarding this matter. Certainly a licensed attorney is held to a higher standard of accountability than a citizen granted authority by the Court and Commission to "intervene". Perhaps the Commission needs to get assurances from each individual department at the City of Flagstaff to prevent any future noncompliance of its rules and court orders.

One of the issues in this hearing is public safety. In order to accomplish this goal using the Public Authority Application to the FRA; The FRA would completely rely on "an accurate, complete and current Grade Crossing Inventory Forms for each public, private and pedestrian grade crossing within the proposed quiet zone. These forms should contain sufficient detail concerning the present safety measures at each public, private and pedestrian grade crossing proposed to be included in the quiet zone to enable the Associate Administrator to evaluate their effectiveness.

They also are required to contain detailed information about diagnostic team reviews of any crossing within the proposed quiet zone, including a membership list and a list of recommendations made by the diagnostic team."⁴

At this point it remains unclear why the City continues to refer to the Arches as "pedestrian barriers" since testimony on July 8, 2009 by two of the three City witnesses⁵ clearly indicates they did not consider the engineering improvements proposed to protect pedestrian traffic flow at the two Downtown crossings barriers^{6,7}. It also remains unclear why the FRA required "current, accurate, etc." crossing inventories have never been updated. Perhaps Mark Landsiedel, the third witness scheduled to appear could have shed some light on this matter which may have clarified whether the referral to the arches as barriers and the inaccurate Crossing Inventories was merely another "oversight" or a violation of Department of Transportation's, (Federal Railroad Administration's (FRA), regulations, 49 CFR Parts 222 and 229 Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule, Thursday, August 17, 2006, §222.11

In any event I urge the Commission to become involved in the interaction between the City and the FRA in some capacity^{8,9}. At a minimum, the State can become involved in an Administrative Capacity and

³ Arizona Corporation Evidentiary Hearing, July 8, 2009, pp.42 and 111

⁴ Part IV Department of Transportation, (Federal Railroad Administration), 49 CFR Parts 222 and 229 Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule, Thursday, August 17, 2006, §222.39.b (i-iii) p.47640

⁵ Arizona Corporation Evidentiary Hearing, July 8, 2009, p.7:8-12

⁶ Arizona Corporation Evidentiary Hearing, July 8, 2009, p.100:15-22

⁷ Arizona Corporation Evidentiary Hearing, July 8, 2009, p.120:23 to p. 121: 1-2

⁸ Part IV Department of Transportation, (Federal Railroad Administration), 49 CFR Parts 222 and 229 Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule, Thursday, August 17, 2006, §222.13, p.47637

⁹ Part IV Department of Transportation, (Federal Railroad Administration), 49 CFR Parts 222 and 229 Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule, Thursday, August 17, 2006, §222.17, p.47637

assure the information supplied to the FRA is accurate and correct due to the repeated "oversights" by the City of Flagstaff in supplying the proper information and then filing "late entries" only after it has been discovered information was missing.

Sincerely,



Walter F. Robertson

1 original and 13 copy forwarded to:
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007-2927

1 Original forwarded to:
Administrative Law Judge Sarah N. Harpring
1200 West Washington
Phoenix, Arizona 85007-2927

Copies forwarded to:

Mr. Patrick Black
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012-2913

Traffic Records Section
Arizona Department of Transportation
206 south 17th Avenue, M/D 064R
Phoenix, Arizona 85007

Mark Bolton
3003 North Central Ave., Ste. 2600
Phoenix, AZ 85012

Melvin Thomas
740 E. Carnegie Dr.
San Bernardino, California 92408

David Womochil
C/o City of Flagstaff
211 West Aspen Street
Flagstaff, AZ 86001

Arizona Reporting Service
2200 North central Avenue - 502
Phoenix, Arizona 85004-1481

Randy Whitaker
C/o City of Flagstaff
211 West Aspen Street
Flagstaff, AZ 86001

Harry Steelman
810 North Alameda Street
Los Angeles, California 90012

Robert Travis
C/o Arizona Department of Transportation
205 S. 17th Ave. Mail Drop 618E
Phoenix, AZ 85007

RR-02635B-09-0075

Search

Docket	Documents	Decisions	Case Schedule	Staff Assigned	Service List	Linked Dockets
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 Service List PDF Web Word Excel
Service List:

Company	Contact	Address	Date Added
	Patrick Black	3003 N. Central Ave., Suite 2600 Phoenix, Arizona 85012-2913	7/9/2009
	Walter Robertson	1690 North Falcon Road Flagstaff, Arizona 86004	6/8/2009
	Harry Steelman	810 North Alameda Street Los Angeles, California 90012	6/8/2009
	Mark Bolton	3003 North Central Avenue, Suite 2600 Phoenix, Arizona 85012	5/7/2009
	David Womochil	211 West Aspen Avenue Flagstaff, Arizona 86001	5/7/2009
	Randy Whitaker	City of Flagstaff 211 W. Aspen Ave. Flagstaff, Arizona 86001	3/3/2009
	Robert Travis	Arizona Department of Transportation 205 South 17th Avenue, Mail Drop 618E Phoenix, Arizona 85007	3/2/2009
	Arizona Reporting Service, Inc.	2200 N. Central Ave. -502 Phoenix, Arizona 85004-1481	3/2/2009
	Traffic Records Section	Arizona Department of Transportation 206 South 17th Avenue, M/D 064R Phoenix, Arizona 85007	3/2/2009
	Brian Lehman	1200 West Washington St. Phoenix, Arizona 85007	3/2/2009
	Melvin Thomas	740 E. Carnegie Dr. San Bernardino, California 92408	3/2/2009
	Janice Alward	1200 W. Washington Phoenix, Arizona 85007	2/20/2009
Arizona Corporation Commission	Lyn Farmer	1200 W. Washington Phoenix, Arizona 85007-2927	2/20/2009

EXHIBIT A

Docket Number: RR-02635B-09-0075

8/10/2009 11:10 AM



Arizona Corporation Commission

Docket Control Center Applications and Forms

All documents officially filed with the Corporation Commission must go through the Docket Control Center. Below are instructions and applications to assist you. We will be adding and updating these documents on an ongoing basis. These files have been created using Adobe Acrobat. For a free copy of their reader ["click here"](#).

Filing Requirements

All Filings Require

1. An original + 13 Copies.
2. The Docket number **MUST** be on all copies of the filing [to include the Cover Sheet].
 - a. The exception is a New Application
3. All copies must be Properly collated.
 - a. Please do not send stacks of documents for docket to collate.
4. No confidential or proprietary information will be docketed.
 - a. If you must file confidential information, you must make prior arrangements with the Hearing or Legal Division.
 - b. It is also the filing parties' responsibility to remove or redact any personal information that would not be appropriate for public view.
5. All documents must be filed on 8-1/2" x 11" paper- NO EXCEPTIONS. (Additional copies to be distributed to parties may be larger if necessary, please contact Docket Control 602-542-3477 for more information.
6. If the filing is for an existing docket, the filing party must mail the filed document to ALL Parties on the Service List (see E-Docket for copy of Service List).

COVER SHEETS ARE NO LONGER REQUIRED

Copy Requirements for Filings

In January 2003, additional Commissioners joined the Arizona Corporation Commission. Therefore, *effective November 15, 2002*, copy requirements for all documents filed with Docket control increased as follows:

- The original plus 13 copies.
- IF more than one docket number appears on the filing THEN, 2 additional copies for each additional docket number PLUS the 13 copies requested above.

This guidance applies to all filings except line siting cases (copy requirements remains 25).

FOR EXAMPLE

- IF you have 1 docket number on a filing:
 - THEN, file the original + 13 copies
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 - THEN, file the original + 15 copies [the 2 additional copies + 13 copies]
- IF you have 3 docket numbers on a filing:
 - THEN, file original + 17 copies [the 4 additional copies + 13 copies]

Intervention-Utilities

Public Comment Form

General E-Mail

If you have any questions concerning the filing of documents please contact Docket Control at (602) 542-3477

EXHIBIT B



City of Flagstaff

Office of the City Attorney - Patricia J. Boomsma, City Attorney

Mailing Address:
Flagstaff City Attorney's Office
211 W. Aspen Avenue
Flagstaff, Arizona 86001

(928) 779-7680
(928) 774-5281 Main & TDD
Arizona Relay Service 7-1-1

Civil Section
211 W. Aspen Avenue, 2nd Floor
Fax (928) 913-3204

HARRY M. LANE, DEPUTY CITY ATTORNEY
DANA H. KJELLGREN
DAVID A. WOMOCHIL
JAMES B. SPEED

Prosecution Section
107 W. Aspen Avenue
Fax (928) 913-3215

LISA M. STANKOVICH, CHIEF PROSECUTOR
RONALD KANWISCHER
ROBERT W. BROWN
JULIE LABENZ
CONSUELO BRENNAN

July 2, 2009

Mr. Walter Robertson
1690 North Falcon Road
Flagstaff, AZ 86004

RE: **Arizona Corporation Commission Docket No. RR-02635B-09-0075**

Dear Mr. Robertson,

Enclosed is a copy of the City of Flagstaff's Response to Staff's Second Set of Data Requests in the above-entitled matter.

Sincerely,

David Womochil
Senior Assistant City Attorney

Enclosure

cc: (without enclosures): Amanda Ho, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

EXHIBIT C



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