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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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2009 AUG 18 10:24

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

DOCKETED BY 

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
THE CITY OF FLAGSTAFF TO UPGRADE
EXISTING RAILROAD CROSSINGS 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

PROCEDURAL ORDER

BY THE COMMISSION:

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 crossings of the BNSF Railway Company ("BNSF") by installing additional warning devices in the form of wayside horns, as part of the City's plan to create a New Quiet Zone within the City's limits. A hearing in this matter convened on May 6, 2009, and was continued. A full evidentiary hearing was held at the Commission's offices in Phoenix, Arizona on July 8, 2009. The City, BNSF, and Staff appeared through counsel. Walter Robertson was granted intervention and appeared on his own behalf. At the conclusion of the hearing, the City, BNSF, and Staff were directed to file late-filed exhibits ("LFEs") and briefs, and Mr. Robertson was instructed that he may do so although he is not required to do so. On July 9, 2009, a Procedural Order was issued memorializing the LFE and briefing requirements announced at the hearing.

On July 29 and 30, 2009, Staff, BNSF, and the City filed their LFEs. While the service list for BNSF's LFEs shows that Mr. Robertson was sent a copy, the service lists for Staff's and the City's LFEs do not show that Mr. Robertson was sent copies of their LFEs. In addition, Staff's service list does not show that a copy of its LFEs was sent to counsel for BNSF.

On August 10 and 12, 2009, the City, Staff, and BNSF filed their post-hearing briefs. Again, while BNSF's service list shows that a copy of its brief was sent to Mr. Robertson, the service lists

1 for Staff's and the City's briefs do not show that Mr. Robertson was sent copies of their briefs. In
2 addition, Staff's service list does not show that a copy of its brief was sent to counsel for BNSF.

3 On August 14, 2009, Mr. Robertson filed a letter expressing concern because he has not been
4 provided copies of the City's LFEs. Mr. Robertson seems to indicate in his letter that he has received
5 copies of BNSF's and Staff's LFEs.¹

6 Because Mr. Robertson is an Intervenor in this matter, each other party is required to provide
7 him a copy of each document required to be filed in this matter. It is inappropriate for a party to
8 exclude him from the party's service list, whether inadvertently or intentionally.

9 IT IS THEREFORE ORDERED that the **City shall, by August 21, 2009**, provide to Mr.
10 Robertson complete copies of the City's LFEs and of the City's post-hearing brief.

11 IT IS FURTHER ORDERED that if any other party has failed to provide Mr. Robertson a
12 complete copy of its LFEs or of its post-hearing brief, the party shall, **by August 21, 2009**, provide to
13 Mr. Robertson a complete copy of its LFEs and/or post-hearing brief, as applicable.

14 IT IS FURTHER ORDERED that **Mr. Robertson's deadline** to file a post-hearing brief in
15 this matter, if he desires to do so, is extended to **September 4, 2009**.

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

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

22 DATED this 18th day of August, 2009.

23
24 
25 SARAH N. HARPRING
26 ADMINISTRATIVE LAW JUDGE

27 ¹ Mr. Robertson states: "Mr. Black and the Commission and the Commission's legal personnel have extended me and
28 the Court the courtesy and complied with the rules of the Commission by forwarding me all information regarding this
matter." (Robertson letter filed August 14, 2009, at 2.)

1 Copies of the foregoing mailed/delivered
this 18th day of August, 2009, to:

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5 Flagstaff, AZ 86001

6 Patrick Black
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10 Attorney for BNSF Railway Company

11 Randy Whitaker, Senior Project Manager
12 Traffic Engineering
13 CITY OF FLAGSTAFF
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15 Flagstaff, AZ 86001

16 Melvin V. Thomas, Manager Public Projects
17 BNSF RAILWAY COMPANY
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24 Walter F. Robertson
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46 By: 
47 Debra Broyles
48 Secretary to Sarah N. Harpring