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1 ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

2 COMMISSIONERS

2009 AUG 26 P 1: 36

DOCKETED

3 KRISTIN K. MAYES, Chairman
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AZ CORP COMMISSION
DOCKET CONTROL

AUG 26 2009

DOCKETED BY [Signature]

8 IN THE MATTER OF THE APPLICATION OF
9 THE CITY OF EL MIRAGE TO UPGRADE AN
10 EXISTING CROSSING OF THE BURLINGTON
11 NORTHERN AND SANTA FE RAILWAY AT
12 THE INTERSECTION OF DYSART ROAD AND
13 THUNDERBIRD ROAD IN THE CITY OF EL
14 MIRAGE, MARICOPA COUNTY, ARIZONA,
15 AT AAR/DOT NO. 025-704-F.

DOCKET NO. RR-02635B-09-0389

PROCEDURAL ORDER

11 **BY THE COMMISSION:**

12 On August 11, 2009, the City of El Mirage ("City") filed with the Arizona Corporation
13 Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe
14 Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at the
15 intersection of Dysart Road and Thunderbird Road, in El Mirage, Arizona, at AAR/DOT
16 No. 025-704-F.

17 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern
18 the preparation and conduct of this proceeding.

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

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

23 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **October**
24 **29, 2009, at 9:30 a.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200 West
25 Washington Street, Hearing Room 1, Phoenix, Arizona.

26 IT IS FURTHER ORDERED that within five business days of receipt of this Procedural
27 Order, **THE CITY OF EL MIRAGE SHALL PROVIDE THE RAILROAD AND ANY OTHER**
28

1 **MUNICIPALITY OR INTERESTED PARTY** that may be affected by the application with a copy
2 of the application and this Procedural Order by certified mail.

3 IT IS FURTHER ORDERED that Safety Division, Railroad Safety Section ("Staff") shall
4 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of
5 them with Docket Control on or before 4:00 p.m. on **October 6, 2009**.

6 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
7 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on
8 **October 16, 2009**.

9 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C.
10 R14-3-105, except that all motions to intervene must be filed on or before **October 9, 2009**.

11 IT IS FURTHER ORDERED that **City of El Mirage** shall provide public notice of the
12 hearing in this matter, in the following form and style:

13 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE APPLICATION**
14 **OF THE CITY OF EL MIRAGE TO UPGRADE AN EXISTING CROSSING OF THE**
15 **BURLINGTON NORTHERN AND SANTA FE RAILWAY AT THE**
16 **INTERSECTION OF DYSART ROAD AND THUNDERBIRD ROAD IN THE CITY**
17 **OF EL MIRAGE, MARICOPA COUNTY, ARIZONA, AT AAR/DOT NO. 025-704-F.**
18 **(DOCKET NO. RR-02635B-09-0389)**

19 On August 11, 2009, the City of El Mirage ("City") filed with the Arizona
20 Corporation Commission ("Commission") an application for approval for the
21 Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade an
22 existing crossing at the Railroad's tracks at the intersection Dysart Road and
23 Thunderbird Road, in El Mirage, Arizona, at AAR/DOT No. 025-074-F.

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

28 The Commission will hold a hearing on this matter commencing on **October 29,**
2009, at 9:30 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 9, 2009. 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, call 602-542-4251 or 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 Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail SABernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that **City of El Mirage** 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 18, 2009.**

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.

IT IS FURTHER ORDERED that **CITY OF EL MIRAGE SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE** after the publication of notice ordered herein has been completed.

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

4 DATED this 26th day of August, 2009.

5
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7 
8 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 26th day of August, 2009 to:

11 Melvin V. Thomas
12 Manager of Public Projects
13 BURLINGTON NORTHERN AND
14 SANTA FE RAILWAY COMPANY
15 740 East Carnegie Drive
16 San Bernardino, California 92408

Kelly Roy, Utility Project Coordinator
MARICOPA COUNTY DEPARTMENT
OF TRANSPORTATION
2901 West Durango Street
Phoenix, Arizona 85009

14 Patrick Black
15 FENNEMORE CRAIG, P.C.
16 3003 North Central Avenue, Suite 2600
17 Phoenix, Arizona 85012
18 Attorneys for BNSF

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

17 Lance Calvert
18 Public Works Director
19 CITY OF EL MIRAGE
20 P.O. Box 26
21 12145 NW Grand Avenue
22 El Mirage, Arizona 85335

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

21 Carnell Thurman, P.E.
22 WOOD/PATEL ENGINEERING
23 2051 West Northern Avenue, Suite 100
24 Phoenix, Arizona 85021

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, Arizona 85004

23 Robert Travis, P.E.
24 State Railroad Liaison
25 ARIZONA DEPARTMENT OF
26 TRANSPORTATION
27 205 South 17th Avenue, Room 357
28 M/D 618E
Phoenix, Arizona 85007

By: 
Debra Broyles
Secretary to Marc Stern