

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
JAN NEWMAN
SANDRA D. KENNEDY
BOB STUMP



ORIGINAL

ARIZONA CORPORATION COMMISSION

2010 JAN 28 AM 8:53

DATE: JANUARY 28, 2010

DOCKET NO.: RR-02635B-09-0389

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 SANTA FE RAILWAY (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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 28, 2010

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 Open Meeting to be held on:

FEBRUARY 18, 2010

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

Arizona Corporation Commission
DOCKETED

JAN 28 2010

DOCKETED BY	<i>MW</i>
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E. G. Johnson
ERNEST G. JOHNSON
 EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF
9 THE CITY OF EL MIRAGE TO UPGRADE
10 EXISTING CROSSINGS 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

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: October 29, 2009
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
14 APPEARANCES: Mr. Richard H. Flaaen, City Attorney, on behalf of the
15 City of El Mirage;
16 Mr. Patrick Black, FENNEMORE CRAIG, P.C., on
17 behalf of the Burlington Northern Santa Fe Railway;
18 and,
19 Mr. Charles Hains, Staff Attorney, Legal Division, on
20 behalf of the Safety Division of the Arizona Corporation
21 Commission.

22 **BY THE COMMISSION:**

23 On August 11, 2009, the City of El Mirage ("City") filed with the Arizona Corporation
24 Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe
25 Railway Company ("Railroad") to upgrade existing crossings at the Railroad's tracks at the
26 intersection of Dysart Road and Thunderbird Road, in El Mirage, Arizona, at AAR/DOT No. 025-
27 704-F ("Application").

28 On August 26, 2009, by Procedural Order, the proceeding was scheduled for hearing on
October 29, 2009, and other procedural dates for filing and public notice were established.

On September 18, 2009, the City published public notice of the proceeding pursuant to the

1 Commission's Procedural Order.

2 On October 29, 2009, a full public hearing was convened before a duly authorized
3 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The City, the
4 Railroad and the Commission's Railroad Safety Section of the Safety Division ("Staff") appeared
5 with counsel. At the conclusion of the hearing, the matter was taken under advisement pending
6 submission of a Recommended Opinion and Order to the Commission.

7 * * * * *

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

10 **FINDINGS OF FACT**

11 1. On August 11, 2009, the City filed an application in which it requested an Opinion and
12 Order from the Commission approving an agreement between the City and the Railroad to upgrade
13 the existing public at-grade crossings at Dysart Road and Thunderbird Road in El Mirage, Arizona at
14 AAR/DOT No. 025-704-F.

15 2. Dysart Road is a two-lane paved road which runs in a north-south direction and
16 Thunderbird Road is a two-lane paved road which runs in an east-west direction. Each roadway
17 consists of one lane in each direction with a designated left-turn lane.

18 3. According to the Staff Report, the Railroad's tracks are part of a spur line which runs
19 from the vicinity of Grand Avenue to the northeast and proceeds in a southwesterly direction for
20 approximately ten miles in order to serve customers.

21 4. The City, which is the road authority, is in the process of widening both two-lane
22 roadways to three lanes in each direction with two dedicated left-turn lanes and one dedicated right-
23 turn lane for a total of ten lanes.

24 5. According to the Staff Report, the agreement between the City and the Railroad
25 provides for improvements to be made by replacing the existing flashing lights, automatic gates and
26 bells at the two existing crossings. The widened roadways where the Railroad's tracks will intersect
27 the widened intersection will have raised medians, new traffic signals, a simultaneous pre-emption
28 circuit interconnected between the traffic signal controller and the train detection circuitry.

1 Additionally, other new safety devices will be installed as follows: 12-inch LED flashing lights;
2 automatic gates in the medians; curb-side gates; bells; and a new concrete crossing surface. Further,
3 cantilevers will be installed with 12-inch LED flashing lights installed for all directions of traffic; and
4 constant warning time circuitry will be utilized for the Railroad's crossings through the intersection.

5 6. Pursuant to the Commission's Procedural Order, the City provided all interested
6 parties with notice of the Application and hearing thereon by publication in the *Daily News-Sun*
7 newspaper.

8 7. The hearing was held as scheduled on October 29, 2009.

9 8. Mr. Carnell Thurman, a civil engineer with Wood Patel & Associates, testified in
10 support of the Application for the City.

11 9. Mr. Thurman testified that the improvements described above have become necessary
12 due to growth and development in the area. (Tr. at p. 7)

13 10. While testifying, Mr. Thurman indicated that consideration had been given to the
14 possibility of a grade-separated crossing to be constructed with the widening of the roadways, but
15 there were significant impacts related to such a project particularly with relation to the access to the
16 four corners of land which abut the intersection as well as problems with existing underground and
17 overhead utilities. It was determined that the impacts upon land owners and the utilities would not be
18 economically beneficial in relation to the minimal (two trips per day) of train traffic on these tracks.
19 (Tr. at p. 8 and 9)

20 11. According to Mr. Thurman, upon the completion of the widening of the intersection of
21 Dysart and Thunderbird Roads, the Railroad's tracks will traverse diagonally from the northeast
22 corner to the southwest corner through the middle of the intersection. (Tr. at p. 11)

23 12. Based on the record, as trains approach the intersection, the barricading railroad gates
24 will be activated stopping all lanes of traffic and traffic signals will flash in a red mode. Any vehicles
25 beyond the gates in the intersection will have green lights and the right-of-way to clear the
26 intersection. (Tr. at p. 11)

27 13. Mr. Thurman testified that the total of all improvements for the road widening project
28 including the street and railroad improvements "were at just under \$4 million." (Tr. at p. 13)

1 14. According to the terms of the agreement between the Railroad and the City, the cost
2 for the improvements for the Railroad portion alone are approximately \$1.4 million of which sum the
3 City will contribute 60 percent and the City of Surprise 40 percent.¹ (Tr. at p. 13)

4 15. According to Mr. Thurman, ongoing maintenance of the equipment resulting from the
5 roadway widening will be paid for by the City, but the actual maintenance will be performed by the
6 Railroad. (Tr. at p. 14)

7 16. Testifying further, Mr. Thurman emphasized that the overhead cantilevers with
8 warning lights that will be installed for all directions of traffic will improve safety. (Tr. at p 17)

9 17. According to Mr. Thurman, after the two roadways are widened, the level of service
10 with respect to traffic levels should be Level B. (Tr. at p. 20)

11 18. Mr. Thurman testified that in the event grade-separation at the intersection of the
12 roadways was considered, he estimated that the cost of a grade-separated crossing would be between
13 \$12 million and \$15 million. (Tr. at p. 24)

14 19. Although the City had retained a company in 2007 to perform an evaluation of
15 whether to establish quiet zones at grade crossings within the City, a definite plan has not yet been
16 adopted.

17 20. Mr. Chris Watson, an assistant supervisor and grade-crossing inspector, testified that
18 Staff had reached the same conclusion as the City's engineering firm that a grade-separated crossing
19 is not required to be constructed at the intersection of Dysart and Thunderbird Roads. (Tr. at p. 38)

20 21. Additionally, as cited in the Staff Report, according to the *Federal Highway*
21 *Administration Railroad-Highway Grade Crossing Handbook (Second Edition)*, none of the nine
22 criteria for determining whether highway-rail crossings should be considered for grade separation is
23 projected to be met by 2030.

24 22. Mr. Watson further testified that the improvements being made in this instance are
25 consistent with crossing safety features found at similar crossings (Tr. at p. 38), including a crossing
26 in Tempe at Kyrene and Elliot Roads which is similar in nature to the size of the widening project at
27

28 ¹ The sharing of these costs arises because the intersection is bordered on the east of Dysart Road by El Mirage and on the west of Dysart Road by the City of Surprise.

1 Dysart and Thunderbird Roads and is not grade-separated. (Tr. at p. 42)

2 23. According to Mr. Watson, neither Staff's records nor those of the Federal Railroad
3 Administration reflect any accidents or incidents at the crossings located at Dysart and Thunderbird
4 Roads in the City. (Tr. at p. 41)

5 24. Mr. Watson believes that following the improvements to the intersection of Dysart and
6 Thunderbird Roads, school bus traffic and emergency traffic will benefit because traffic should flow
7 more freely and the crossing will be "safer." (Tr. at p. 42)

8 25. Staff is recommending that the Application be approved.

9 **CONCLUSIONS OF LAW**

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

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

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

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

18 5. After the installation of the crossing upgrades to Dysart and Thunderbird Roads, the
19 Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the City of El Mirage's Application as described herein,
22 is hereby approved.

23 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company
24 shall complete the crossing upgrades as described in the Application within fifteen months of the
25 effective date of this Decision.

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

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

4 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company
5 shall file, every five years from the effective date of this Decision, with the Commission's Docket
6 Control, as a compliance item in this docket, an update on the average daily traffic count at the
7 crossing described in the Application. The updated average daily traffic count shall be obtained from
8 the Road Authority or a contractor hired by the Railroad.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
12
13 CHAIRMAN _____

COMMISSIONER

14
15 COMMISSIONER _____

COMMISSIONER

COMMISSIONER

17 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Interim
18 Executive Director of the Arizona Corporation Commission,
19 have hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this _____ day of _____, 2010.

22 _____
23 ERNEST G. JOHNSON
24 INTERIM EXECUTIVE DIRECTOR

25 DISSENT _____

26 DISSENT _____

27 MES:db

28

1 SERVICE LIST FOR: BURLINGTON NORTHERN AND SANTA FE RAILWAY

2 DOCKET NO.: RR-02635B-09-0389

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