

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

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

ORIGINAL

2010 MAR 30 P 3: 18

AZ CORP COMMISSION
DOCKET CONTROL

DATE: MARCH 30, 2010
DOCKET NO.: RR-02635B-09-0529

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 AND SANTA FE RAILWAY COMPANY
(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:

APRIL 8, 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:

APRIL 13, 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

MAR 30 2010

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

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 PEORIA TO UPGRADE AN
10 EXISTING CROSSING OF THE BURLINGTON
11 NORTHERN AND SANTA FE RAILWAY AT
12 91ST AVENUE IN THE CITY OF PEORIA,
13 MARICOPA COUNTY, ARIZONA, AT
14 AAR/DOT NO. 025-401-W.

DOCKET NO. RR-02635B-09-0529

DECISION NO. _____

15 OPINION AND ORDER

16 DATE OF HEARING: February 12, 2010

17 PLACE OF HEARING: Phoenix, Arizona

18 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

19 APPEARANCES: Mr. Stephen J. Burg, Chief Assistant City Attorney, on
20 behalf of the City of Peoria;

21 Mr. Patrick Black, FENNEMORE CRAIG, on behalf of the
22 Burlington Northern and Santa Fe Railway Company; and

23 Mr. Charles Hains, Staff Attorney, Legal Division, on
24 behalf of the Safety Division of the Arizona Corporation
25 Commission.

26 **BY THE COMMISSION:**

27 On November 17, 2009, the City of Peoria ("City") filed with the Arizona Corporation
28 Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe
Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at 91st
Avenue in the City of Peoria, Maricopa County, Arizona, at AAR/DOT No. 025-401-W
("Application").

On December 1, 2009, by Procedural Order, the proceeding was scheduled for hearing on
February 12, 2010, and other procedural dates for filing and public notice were established.

On December 18, 2009, the City published public notice of the proceeding pursuant to the
Commission's Procedural Order.

1 On February 12, 2010, a full public hearing was convened before a duly authorized
2 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The City, the
3 Railroad and the Commission’s Railroad Safety Section of the Safety Division (“Staff”) appeared
4 with counsel. At the conclusion of the hearing, the matter was taken under advisement pending
5 submission of a Recommended Opinion and Order to the Commission.

6 * * * * *

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

9 **FINDINGS OF FACT**

10 1. On November 17, 2009, the City filed an Application in which it requested an Opinion
11 and Order from the Commission approving an agreement between the City and the Railroad to
12 upgrade the existing public at-grade crossing at 91st Avenue in Peoria, Arizona at AAR/DOT No.
13 025-401-W.

14 2. The City in conjunction with the Arizona Department of Transportation (“ADOT”) is
15 in the process of widening Grand Avenue to three thru lanes in each direction from 83rd Avenue to
16 99th Avenue. 91st Avenue is a north-south roadway, with two lanes in each direction. Additional
17 dedicated turn lanes in all directions will be added along with new traffic signals. As the
18 improvements were being planned where 91st Avenue intersects with Grand Avenue, ADOT
19 determined that addition upgrades to the 91st Avenue at-grade crossing would be required to safely
20 accommodate northbound vehicular traffic’s turning movements.

21 3. According to the Staff Report, the agreement between the City and the Railroad
22 provides for improvements to be made in the following manner: by relocating existing curbs and
23 sidewalk ramps and installing new pedestrian sidewalks in the existing Railroad right-of-way; by
24 relocating the existing automatic warning devices (gates, flashing lights and cantilever); by adding a
25 new automatic gate with flashing lights and bells; and by the construction of new concrete crossing
26 surfaces.

27
28

1 4. Pursuant to the Commission's Procedural Order, the City provided all interested
2 parties with notice of the Application and hearing thereon by both mail and publication in the *Peoria*
3 *Times* newspaper.

4 5. The hearing was held as scheduled on February 12, 2010.

5 6. Mr. Richard Costa, a project manager with the City's Capital Improvement Division,
6 testified in support of the Application.¹

7 7. Mr. Costa stated that 91st Avenue is part of the on-ramp system to the Loop 101
8 freeway eastbound or northbound. According to Mr. Costa, the 91st Avenue crossing provides
9 regional traffic access to Cactus Road, which is located one quarter mile to the north of the City's 91st
10 Avenue crossing. (Tr. at p. 9)

11 8. As part of the City's agreement with the Railroad, Mr. Costa stated that the City has
12 agreed to pay for the upgrades at the crossing which are necessitated by the improvements to 91st
13 Avenue. The estimated cost of the improvements is approximately \$121,000.² (Tr. at p.16)

14 9. Mr. Costa testified that an at-grade crossing is better for the area because it is
15 primarily a commercial and industrial area. A grade-separation would seriously impact the existing
16 commercial and industrial areas. (Tr. at p.24)

17 10. Mr. Costa testified further that the posted speed on 91st Avenue is 35 miles an hour,
18 and that there are only 13 trains which use the crossing a day and their average speed is 25 miles an
19 hour when crossing 91st Avenue.

20 11. Mr. Costa testified that the City's most recent traffic count at the 91st Avenue crossing
21 in 2008 showed that the crossing was used by approximately 25,378 vehicles per day. (Tr. at p.17)
22 (Ex. A-5)

23 12. According to Mr. Costa, based on the length of the trains, their speed and the numbers
24 of times the crossing is used daily, the estimated vehicular delays average two to three minutes at the
25 crossing when trains are passing. (Tr. at p.20)

26 _____
27 ¹ Mr. Costa also previously testified on behalf of the City with respect to the upgrade of a crossing of the Railroad at
28 Peoria Avenue adjacent to Grand Avenue in Docket No. RR-02635B-07-0222, which resulted in Decision No. 69725
(July 30, 2007), and with respect to the upgrade of a crossing of the Railroad at 81st Avenue, where it intersects with
Grand Avenue in Docket No. RR-02635B-08-0169, which resulted in Decision No. 70519 (September 30, 2008).

² ADOT is paying a portion of this cost through an intergovernmental agreement. (Tr. at p. 39)

1 13. Mr. Costa explained that grade-separation at 91st Avenue was never part of the City's
2 general plan and he confirmed the existence of a nearby grade-separation of Grand Avenue at 75th
3 Avenue adjacent to the Railroad's tracks. (Tr. at p.25)

4 14. Although Mr. Costa stated that the City is paying for the cost of the upgrade by the
5 Railroad at the crossing, pursuant to the terms of the City's agreement with ADOT, most of the of the
6 funds for the upgrade are coming from the state agency with federal funding provided by the Federal
7 Highway Administration ("FHWA") which is using funds provided under the American
8 Reinvestment and Recovery Act ("ARRA"). (Tr. at p.37)

9 15. Mr. Costa testified that the City's estimate for the cost of a grade-separation at the
10 crossing was in the range of \$40 million, due to significant and numerous right-of-way and property
11 impacts. (Tr. at p. 26)

12 16. According to Mr. Costa, there are four schools near the 91st Avenue crossing and
13 although a number of school buses presently utilize the crossing, he believes they come from a
14 nearby bus storage facility and are usually empty. (Tr. at p.21)

15 17. Mr. Costa believes that the improvements planned for 91st Avenue will not create
16 safety problems at the crossing in the future.

17 18. Mr. Chris Watson, Staff's Grade Crossing Inspector, testified that he had spoken with
18 the Routing Supervisor for school buses for the Peoria Unified School District ("District") and she
19 had advised him that on a daily basis approximately 126 buses used the 91st Avenue crossing due to
20 the location of the District's bus garage. The Staff Memorandum indicated that not all of the buses
21 contained students and that there was no indication of any problems with delays caused by trains on
22 the tracks. (Tr. at p. 54)

23 19. Mr. Watson testified that, based on FHWA Guidelines, Staff is not recommending that
24 a grade-separation be constructed at the 91st Avenue at-grade railroad crossing because the City's
25 proposed upgrade will improve the flow of traffic and enhance public safety. (Tr. at p. 54)

26 20. Mr. Watson confirmed that the closest grade-separated crossing to the 91st Avenue
27 crossing is the grade-separated crossing located at 75th Avenue and Olive Avenue approximately two
28 miles to the east. (Tr. at p.56)

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

4 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Burlington
5 Northern and Santa Fe Railway Company shall maintain the crossing in compliance with
6 A.A.C. R15-4-104.

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

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

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14
15
16 CHAIRMAN _____ COMMISSIONER

17
18 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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

24 _____
25 ERNEST G. JOHNSON
26 EXECUTIVE DIRECTOR

27 DISSENT _____

28 DISSENT _____

1 SERVICE LIST FOR: BURLINGTON NORTHERN AND SANTA FE
2 RAILWAY COMPANY

3 DOCKET NO.: RR-02635B-09-0529

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