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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

KRISTIN K. MAYES, Chairman

DEC 10 2010

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

DOCKETED BY

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BOB STUMP

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO WIDEN AN EXISTING CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY AT US 60/ENNIS SPUR IN THE CITY OF EL MIRAGE, MARICOPA COUNTY, ARIZONA, AT USDOT NO. 025-700-D.

DOCKET NO. RR-02635B-10-0234

DECISION NO. 72039

OPINION AND ORDER

DATE OF HEARING: August 30, 2010
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. James R. Redpath, Assistant Attorney General, on behalf of the Arizona Department of Transportation; Mr. Patrick Black, Fennemore Craig, on behalf of the Burlington Northern and Santa Fe Railway Company; and Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Safety Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On June 10, 2010, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe Railway Company ("Railroad") to widen an existing crossing at U.S. 60 and the Ennis Spur in the City of El Mirage ("City"), Maricopa County, Arizona, at USDOT No. 025-700-D ("Application").

On June 16, 2010, by Procedural Order, the proceeding was scheduled for hearing on August 30, 2010, and other procedural dates for filing and public notice were established.

On August 25, 2010, ADOT filed certification that it had provided notice of the proceeding

1 U.S. 60 is commonly referred to as Grand Avenue.

1 pursuant to the Commission's Procedural Order.

2 On August 30, 2010, a full public hearing was convened before a duly authorized  
3 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, 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 June 10, 2010, ADOT filed an Application in which it requested an Opinion and  
12 Order from the Commission approving an agreement between ADOT and the Railroad to widen the  
13 existing public at-grade crossing at U.S. 60 and the Ennis Spur in El Mirage, Arizona at USDOT No.  
14 025-700-W.

15 2. In the vicinity of Grand Avenue, the Ennis Spur runs in an east-west direction where it  
16 crosses Grand Avenue and then connects with the mainline of the Railroad approximately one-half  
17 mile south of West Greenway Road.

18 3. ADOT is in the process of widening Grand Avenue from 99<sup>th</sup> Avenue to State Route  
19 ("SR") 303. Presently, Grand Avenue is a major arterial roadway in the City running from the  
20 southeast to the northwest, with two lanes in each direction. ADOT is constructing an additional lane  
21 for traffic in each direction by utilizing land on each side of the median. When the project is  
22 completed, the roadway will be enlarged from four lanes to six lanes (three lanes in each direction).

23 4. According to the Staff Report, the agreement between ADOT and the Railroad  
24 provides for approximately \$181,000 worth of improvements to be made in the following manner:  
25 by relocating the existing automatic warning devices (gates, flashing lights and cantilever) to the  
26 median within the ADOT right-of-way; by upgrading the existing flashing lights with LED lights;  
27 and by constructing new concrete crossing surfaces.

28

1           5. Pursuant to the Commission's Procedural Order, ADOT provided all interested parties  
2 with notice of the Application and hearing thereon by both mail and publication in the *Arizona*  
3 *Republic* newspaper.

4           6. The hearing was held as scheduled on August 30, 2010.

5           7. Mr. Robert Travis, the railroad liaison for ADOT, testified in support of the  
6 Application.

7           8. Mr. Travis stated that the widening of Grand Avenue between 99<sup>th</sup> Avenue and SR  
8 303 is a 12-mile long construction project. According to Mr. Travis, the project is being funded  
9 solely with funds provided by the American Recovery and Reinvestment Act ("ARRA").<sup>2</sup> (Tr. 6: 15-  
10 20)

11           9. Mr. Travis stated that ADOT's widening project is expected to be completed in the fall  
12 of 2011, but the additional lanes are not to be opened for public use until the warning devices are  
13 relocated and are in service. (Tr. 7: 13-18)

14           10. Mr. Travis testified that, with the widening of Grand Avenue, the public crossing  
15 located at U.S. 60 and the Ennis Spur will not be converted to a grade separated crossing because it  
16 would have a high cost exceeding the allotted budget.<sup>3</sup> (Tr. 8: 13-21)

17           11. Mr. Travis testified further that approximately \$75 million in future funding for grade  
18 separations is being included in ADOT's construction program in the vicinity of 103<sup>rd</sup> and 107<sup>th</sup>  
19 Avenues and Bell Road; however, funding is not available for such a crossing at U.S. 60 and Ennis  
20 Spur. (Tr. 9:9-15)

21           12. Mr. Travis testified that the most recent traffic count of the Federal Railroad  
22 Administration ("FRA") at the Ennis Spur crossing showed that the crossing was used by  
23 approximately two trains per day. (Tr. 13:21-24)

24           13. According to Mr. Travis, based on data provided by the City, the estimated vehicular  
25 delays average a minute to a minute and a half at the crossing when trains are using the spur. (Tr. 14:  
26 12-14)

27 <sup>2</sup> The original estimated cost for the improvements as stated in the Application is approximately \$181,000.

28 <sup>3</sup> Mr. Travis estimated that if a grade separated crossing were constructed at the crossing of Grand Avenue and the Ennis Spur, it would cost from \$30 to \$50 million. (Tr. 20: 12-13)

1 14. Mr. Travis stated that he was informed by a representative of the Dysart Unified  
2 School District that two to three school buses presently utilize the crossing. (Tr.14: 8-9)

3 15. Mr. Travis believes that the improvements planned for the at-grade crossing of Grand  
4 Avenue and the Ennis Spur will not create safety problems at the crossing in the future.

5 16. Mr. Chris Watson, Staff's Grade Crossing Inspector, testified that, according to  
6 Commission and FRA records, there has been one accident at the crossing in September 1981, which  
7 resulted in only one minor injury. (Tr. 23: 1-9)

8 17. Staff is not recommending that a grade separation be constructed at the Ennis Spur at-  
9 grade railroad crossing of Grand Avenue because none of the nine criteria set forth in the Federal  
10 Highway Administration Guidelines are satisfied.

11 18. Mr. Watson testified that the improvements being made at the U.S. 60 and Ennis Spur  
12 at-grade crossing are consistent with similar crossings throughout the state. (Tr. 23: 10-13)

13 19. According to Mr. Watson, the improvements planned for the crossing will increase  
14 public safety. (Tr. 25:1-3)

15 20. Mr. Watson further testified that the Railroad should maintain the crossing in  
16 accordance with the Commission's rules after the completion of the improvements due to the  
17 widening of Grand Avenue. (Tr. 25: 4-7)

18 21. Staff is recommending that the Application be approved.

19 **CONCLUSIONS OF LAW**

20 1. The Commission has jurisdiction over the parties and over the subject matter of the  
21 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
22 40-337.01.

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

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

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

28



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

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

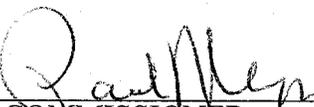
7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8 

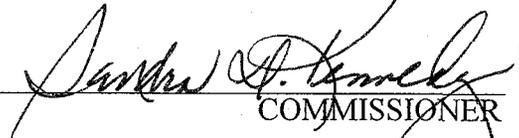
9 CHAIRMAN



COMMISSIONER

10 

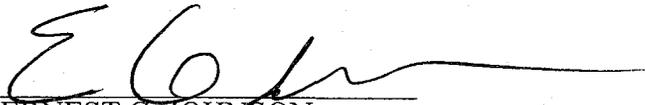
11 COMMISSIONER



COMMISSIONER

COMMISSIONER

12  
13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
14 Executive Director of the Arizona Corporation Commission,  
15 have hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 10th day of December 2010.



18 ERNEST G. JOHNSON  
19 EXECUTIVE DIRECTOR

20 DISSENT \_\_\_\_\_

21 DISSENT \_\_\_\_\_

22 MES:db

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2 RAILWAY COMPANY

3 DOCKET NO.: RR-02635B-10-0234

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