

OPEN MEETING ITEM



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COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

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ARIZONA CORPORATION COMMISSION

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SEP 14 2011

DATE: SEPTEMBER 14, 2011

DOCKET NO.: RR-02635B-11-0125

TO ALL PARTIES:

DOCKETED BY 

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
(NEW CROSSING)

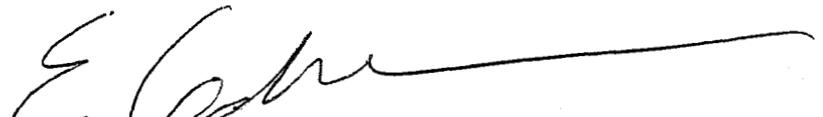
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

SEPTEMBER 23, 2011

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:

OCTOBER 6, 2011

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.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE – Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF
THE MARICOPA COUNTY DEPARTMENT OF
TRANSPORTATION TO ESTABLISH A NEW
GRADE SEPARATED PUBLIC RAILROAD
CROSSING AT NORTHERN PARKWAY
ABOVE THE TRACKS OF THE BURLINGTON
NORTHERN SANTA-FE RAILWAY IN
MARICOPA COUNTY, ARIZONA.

DOCKET NO. RR-02635B-11-0125

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: July 18, 2011
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Adrian M. Gough, Deputy County Attorney, on behalf of the Maricopa County Department of Transportation;
Mr. Patrick J. Black, Fennemore Craig, on behalf of the Burlington Northern Santa Fe Railway; and
Ms. Bridget Humphrey and Mr. Charles Hains, Staff Attorneys, Legal Division, on behalf of the Safety Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On March 21, 2011, the Maricopa County Department of Transportation (“MCDOT” or “Applicant”) filed with the Arizona Corporation Commission (“Commission”) an application for the establishment of a new grade separated public railroad crossing on what is to be the Northern Parkway above the tracks of the Burlington Northern Santa Fe Railway (“BNSF”) and 143rd Avenue in Maricopa County (“County”), Arizona (“Application”).

On April 15, 2011, by Procedural Order, a hearing on MCDOT’s Application was scheduled on July 18, 2011.

On June 2, 2011, an Amended Procedural Order was issued extending the date upon which public notice could be given.

1 On June 8, 2011, MCDOT both published and mailed notice of the Application and hearing
2 thereon pursuant to the Commission's Procedural Order as amended.

3 On June 17, 2011, the Commission's Railroad Safety Section of the Safety Division ("Staff")
4 filed its Staff Report recommending approval of the Application.

5 On July 18, 2011, a full public hearing was convened before a duly authorized Administrative
6 Law Judge of the Commission at its offices in Phoenix, Arizona. MCDOT, BNSF and Staff appeared
7 with counsel. At the conclusion of the hearing, the matter was taken under advisement pending
8 submission of a Recommended Opinion and Order to the Commission.

9 * * * * *

10 Having considered the entire record herein and being fully advised in the premises, the
11 Arizona Corporation Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. On March 21, 2011, MCDOT filed an Application for approval of the establishment of
14 a new public grade separated railroad crossing on what is to be the Northern Parkway where it will
15 pass over the tracks of the BNSF and 143rd Avenue in Maricopa County.¹

16 2. On April 15, 2011, by Procedural Order, a hearing was scheduled on the Application.

17 3. On June 17, 2011, Staff filed its Report recommending approval of the Application for
18 the construction of a grade separated crossing.

19 4. MCDOT's Application describes the location of the crossing on the first phase of the
20 Northern Parkway which will extend from the vicinity of Sarival Avenue in the west to Dysart Road
21 in the east. As the new four-lane roadway is constructed, the new grade separated crossing will also
22 be constructed and will extend over 143rd Avenue and what is a spur line of the BNSF.

23 5. Pursuant to the Commission's Procedural Order as amended, MCDOT provided all
24 interested parties with the notice of the Application and hearing thereon both by U.S. mail and
25 publication in the *Arizona Business Gazette*.

26 6. The hearing was held as scheduled on July 18, 2011.

27 _____
28 ¹ The BNSF's tracks run parallel to 143rd Avenue, which is currently an unpaved roadway that runs in a north south
direction where the new grade separated structure will be constructed.

1 7. Mr. Michael Wilke, a project engineer with Parson's Corporation, testified in support
2 of the Application.

3 8. Mr. Wilke testified that the Northern Parkway is part of a 12-mile regional
4 transportation improvement project that will extend between State Route 303 ("SR 303") in the west
5 and Grand Avenue/U.S. 60 in the east.² (Tr. 9-10: 23-1)

6 9. According to Mr. Wilke, the alignment for the parkway is mainly along Northern
7 Avenue, and as it progresses westward, the parkway shifts slightly to the north to what is the Butler
8 Road alignment. (TR. 10: 2-6)

9 10. Mr. Wilke testified that he is the Utility and Railroad Coordinator on the project and
10 he assists Kelly Roy from MCDOT, who is the County's Utility Coordinator. (Tr. 10: 7-15)

11 11. Mr. Wilke testified that he prepared MCDOT's Application and that the grade
12 separated structure which is to cross the Northern Parkway at 143rd Avenue and the BNSF's railroad
13 tracks is necessary because there is no existing crossing, and because there will be no access to the
14 parkway allowed from 143rd Avenue. (Tr. 10-11: 22-13)

15 12. According to Mr. Wilke, the grade separated crossing will pass more than 23 feet
16 above the top of the BNSF's tracks.³ (Tr. 13: 21-24)

17 13. Mr. Wilke stated that the proposed new grade separated crossing is located in
18 Glendale and will contain a total of seven travel lanes, three eastbound and three westbound
19 lanes, including what he termed would be one "acceleration lane" westbound. (Tr. 15: 17-25.

20 14. Mr. Wilke testified that the approximate cost of the grade separated crossing will be
21 \$1.88 million and will be funded with 70 percent federal funding and 30 percent local government
22 funding. (Tr. 16-17: 21-2)

23 15. The BNSF is not making a financial contribution for the construction of the grade
24 separated crossing. (Tr. 17: 3-5)

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27 ² The new roadway will pass through part of the County, the City of Glendale ("Glendale"), the City of Peoria ("Peoria")
and the City of El Mirage ("El Mirage").

28 ³ The clearance above the BNSF railroad tracks exceeds the height required by the BNSF by several inches. Additionally,
the right-of-way of the BNSF where its tracks are located far exceeds the minimum requirements for side clearance.

1 16. Mr. Wilke testified that included within MCDOT's design for the grade separated
2 crossing are bridge barriers and fencing for the structure which will pass over 143rd Avenue and the
3 tracks of the BNSF. The bridge barriers will meet the Arizona Department of Transportation's
4 ("ADOT") standards which require them to be 32 inches high. The actual fencing will extend upward
5 an additional eight feet high on each side of the overpass where it passes over the roadway and the
6 tracks. (Tr. 17: 11-25)

7 17. According to Mr. Wilke, MCDOT anticipates construction on the grade separation
8 project to begin in approximately March or April 2012. (Tr. 18: 20-24)

9 18. Mr. Wilke further testified that it will take approximately four months to complete the
10 construction of the grade separation structure once construction begins. (Tr. 18-19: 25-2)

11 19. The BNSF has advised MCDOT that its tracks which parallel 143rd Avenue are
12 presently used primarily for storage and that the proposed crossing location is located
13 approximately a mile from where the tracks end before they reach Northern Avenue. The tracks
14 constitute a spur line that comes off of the main line around Olive Avenue to the north and they
15 were planned to be used to go to Luke Air Force Base at one time. Mr. Wilke is unaware of
16 future plans for the BNSF's tracks. (Tr. 19-20: 14-7)

17 20. The area in the vicinity of the proposed grade separated crossing is primarily
18 agricultural in nature, with a scattering of homes to the east of 143rd Avenue. (Tr. 20: 8-20)

19 21. Mr. Wilke does not know when 143rd Avenue will be paved and acknowledged that
20 there is not much traffic presently on the unpaved roadway. He stated that the primary reason for the
21 grade separated crossing is due to the railroad's right-of-way and its existing tracks which lie in the
22 path of the Northern Parkway. (Tr. 21: 1-13)

23 22. Mr. Wilke stated that the first phase of construction for the Northern Parkway will be
24 let out for bids in the near future and it is estimated that construction will begin in approximately
25 November of 2011. (Tr. 21: 15-19)

26 23. Mr. Brian Lehman, the Commission's Supervisor of Railroad Safety, stated that he
27 adopted the Staff Report in addition to his testimony at the hearing. (Tr. 27: 2-4)

28

1 the BNSF is necessary for the public's convenience and safety.

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

4 5. After the construction of the grade separated crossing, the BNSF should maintain its
5 right-of-way beneath the grade separated structure consistent with A.A.C. R14-5-104.

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ORDER

IT IS THEREFORE ORDERED the Maricopa County Department of Transportation's Application as described herein, is hereby approved.

IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway shall notify the Commission, in writing, within 10 days of both the commencement of the construction of the grade separated crossing and the completion of the grade separated crossing of its tracks, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the construction of the grade separated crossing, the Burlington Northern Santa Fe Railway shall maintain its right-of-way in compliance with A.A.C. R14-5-104.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: BURLINGTON NORTHERN SANTA FE RAILWAY

2 DOCKET NO.: RR-02635B-11-0125

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