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BEFORE THE ARIZONA CORPORATION COMMISSION

8
 9 IN THE MATTER OF THE APPLICATION
 10 OF THE CITY OF PHOENIX TO CLOSE
 11 EIGHT PUBLIC AT-GRADE CROSSINGS
 12 OF THE BURLINGTON NORTHERN &
 13 SANTA FE RAILWAY ON 11TH
 14 AVENUE BETWEEN APACHE STREET
 15 AND GRANT STREET, IN THE CITY OF
 PHOENIX, MARICOPA COUNTY,
 ARIZONA, AT US DOT NUMBERS
 928161M, 025839L, 928160F, 025837X,
 936631D, 025835J WEST, 025835J EAST
 AND 025833V.

DOCKET NO. RR-02635B- 12-0251
RESPONSE TO STAFF REPORT

16
 17 BNSF Railway Company ("BNSF") hereby submits this Response to the Staff
 18 Report dated August 16, 2012. The purpose of this Response is to clarify some of the
 19 issues addressed in the Staff Report; in particular with respect to the City of Phoenix's
 20 ("City") position regarding the crossings at issue.

21 1. Number of Crossings

22 Staff correctly notes that although the City's application indicates there are eight
 23 (8) crossings, there are only seven (7). It appears that the City split the Tonto Street
 24 crossing, USDOT 025835J into two crossings without BNSF's knowledge or Arizona
 25 Corporation Commission ("Commission") approval, as noted in the Staff Report "Closure
 26 of Tonto Street East and West DOT# 025-835J".

1 2. Construction – Final Phase

2 The Staff Report states that sometime after the City’s contractor begins
3 construction on the final phase of the project (the curb adjacent to the track), BNSF will
4 “install the precast concrete track panels at the remaining open crossings and repave
5 around the track switch at Mohave Street.” BNSF has not committed to this course of
6 action, and the Grade Crossing Construction and Maintenance Agreement (“Agreement”)
7 has not yet been finalized. By way of background, BNSF sent an initial draft of the
8 Agreement to the City in February, 2010. The City provided an initial response in May
9 2010, and then again in September 2010. However, BNSF received the City’s most recent
10 proposed modifications at the beginning of August, 2012, which is *after* the application
11 was filed with the Commission.¹

12 Additionally, BNSF is concerned with the process the City has taken in
13 constructing the existing curbs along 11th Avenue. While BNSF does not object to the
14 clearance (13 feet) created, the company understands that such design must first be
15 approved by the Commission before construction according to A.A.C. R14-5-110(B)(5).
16 BNSF requests that the Commission give clear direction in this proceeding whether
17 clearance issues for track occupying or adjacent to roadways must first be determined by
18 the Commission, or whether a road authority can make the determination itself.

19 3. Crossings to Remain Open

20 The Staff Report indicates that public crossings at Grant Street, Hadley Street,
21 Buckeye Road, Pima Street and Mohave Street shall remain open, and are equipped with
22 flashing lights, automatic gates and bells. As clarification, the crossings at Grant Street
23 and Buckeye Road are equipped with cantilevered flashing lights. In addition, the City

24

¹ Attached to the City’s direct testimony (filed July 17, 2012) as Exhibit F is a draft copy of the Agreement, which is
25 a version that contains all of the City’s proposed modifications. It is not an accurate representation of the original
26 document provided by BNSF, nor does it resemble a version that BNSF will agree to. As such, BNSF strongly
objects to the introduction of this document as evidence in the proceeding.

1 has requested that BNSF widen Grant Street, Hadley Street, Buckeye Road, Pima Street,
2 and Mohave Street anywhere from 64 ft to 107 ft at each of these crossings, which will
3 also modify the signal system by relocating the approach circuits. However, the City has
4 not yet filed an application with the Commission to modify these public crossings.
5 Because this phase of the project will be addressed in the proposed Agreement, the City
6 might want to consider either filing a separate application for these crossing
7 modifications, or amending its application in this proceeding in order to obtain the
8 necessary Commission authority to widen the crossings at issue.
9

10 **CONCLUSION**

11 BNSF submits this Response in order to ensure that all parties are fully informed of
12 the company's position before the evidentiary hearing. While BNSF does support closing
13 the seven (7) crossings at issue, BNSF also wants to ensure that – as the respondent in this
14 proceeding – matters are addressed pursuant to the Commission's rules and regulations.
15 In addition, the City made representations about BNSF and the project as a whole that
16 required a response in order to clarify any outstanding issues that may exist. Finally,
17 while hopeful it can work with the City over the next few months, BNSF cannot speculate
18 as to when the Agreement will be finalized based on the history of this project.
19

20 RESPECTFULLY SUBMITTED this 30th day of August, 2012.

21 FENNEMORE CRAIG, P.C.

22 
23 By: _____
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