

ORIGINAL

RECEIVED

2012 SEP 18 P 4: 31

ARIZONA CORPORATION COMMISSION
BUCKET CONTROL



City of Phoenix

OFFICE OF THE CITY ATTORNEY



0000139591

GARY VERBURG
City Attorney

Arizona Corporation Commission

DOCKETED

SEP 18 2012

DOCKETED BY

A handwritten signature in black ink, appearing to be 'JSM'.

VIA EMAIL AND HAND DELIVERY

Mr. Charles H. Hains
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

Re: Response of City of Phoenix to Staff's First Set of Data Requests
Docket No. RR-02635B-12-0251

Dear Mr. Hains:

Pursuant to your request dated September 7, 2012, attached please find the response of the City of Phoenix to the requests noted above.

If you have any questions, please do not hesitate to call me.

Regards,

A handwritten signature in black ink, reading 'Cynthia S. Campbell'.

Cynthia S. Campbell
Assistant City Attorney

**CITY OF PHOENIX
RESPONSE TO STAFF'S FIRST SET OF DATA REQUESTS
Docket No. RR-02635B-12-0251
September 18, 2012**

BH 1.1 Please refer to the Response to Staff Report filed by BNSF Railway Company ("BNSF") on August 30, 2012 in this docket. On page 2 starting at line 19, there is a discussion regarding Crossings to Remain Open in which BNSF indicates that various modifications may be contemplated for Grant Street, Hadley Street, Buckeye Road, Pima Street, and Mohave Street that may require Commission approval of modifications to the crossings at those streets (for purposes of this question, collectively referred to as "Surviving Crossings").

As a preliminary note, the City of Phoenix does not believe that any plans, other than the application to close crossings, constitutes an alteration to any crossing on the 11th Avenue spur. The alterations planned by the City lie outside of the crossing surface, and are either within the right of way of 11th Avenue, or are on the tracks to the north and south of the crossing surface. The only alterations to surviving crossings are those that the City requests BNSF conduct in order to protect the safety of the public. As noted below, the application in question does not address alterations, but only closures. Notwithstanding the foregoing, the City offers the following information to inform the Commission of its activities in the reconstruction of 11th Avenue near the railroad spur, and will use Staff's term "Surviving Crossing" to describe work in the vicinity of the roadway crossing of the railroad spur.

- a. For each Surviving Crossing, please describe the planned alterations to the crossing.

Apache Street Intersection

The perpendicular width of the spur crossing will not change. The existing outside curb returns on 11th Avenue at radii of 20' were removed and replaced with new curb with 35' radii. The existing valley gutter was removed and reconstructed to match the new curb radii. Sidewalks and sidewalk ramps were constructed that conform to the current ADA standards. None of the above improvements is adjacent to the spur on 11th Avenue. The City of Phoenix is performing this work and assuming the costs thereof.

Due to the above referenced modifications to the outer edges of 11th Avenue, for safety purposes, it would be preferable to extend the prefabricated concrete panels to the north and south of the road crossing in order to allow pedestrian traffic, especially those utilizing the ADA ramps, to cross 11th Avenue on an even surface without entering the vehicular crossing surface. The City of Phoenix has been negotiating with BNSF to remove the existing asphalt and replace it with prefabricated concrete panels in those locations to accommodate pedestrian traffic. Phoenix has agreed to cover the costs of those extensions.

Mohave Street intersection

The perpendicular width of the spur crossing will not change. The existing outside curbs on 11th Avenue were removed and replaced to accommodate the construction of ADA ramps. The existing valley gutter was removed and reconstructed to improve the drainage flows. A new storm drain was constructed at the southeast corner. All existing sidewalks were removed. The sidewalks and new ADA ramps were constructed on the northeast and the southwest corners so they have the appropriate clearances without relocating the existing railroad gates. Sidewalks and sidewalk ramps on the northwest and southeast corners along the outside of 11th Avenue were constructed to conform to the current ADA standards. None of the above improvements is adjacent to the spur on 11th Avenue. The City of Phoenix is performing this work and assuming the costs thereof.

As part of its obligations to maintain the track surfaces, BNSF should remove the existing asphalt paving at the switch going into the brick yard, adjust the track grade, and repave with asphalt concrete at BNSF's expense. This maintenance was requested in an ACC Staff letter, dated August 9, 2011, from Chris Watson, Assistant Director Railroad Safety, to Matt Kellar, Division Engineer at BNSF. The letter required BNSF to provide permanent surface repairs to be completed within ninety days of the date of the letter. Upon information and belief, those permanent surface repairs were never completed. While it is BNSF's responsibility to maintain the at-grade crossings, to the extent the track signal sensors at Mohave need to be relocated, the City will assume the expense.

Pima Street intersection

The perpendicular width of the track crossing will not change. The existing outside curbs were removed and replaced to accommodate the construction of ADA ramps. The existing sidewalks at the northeast and southeast corners were removed and replaced with ADA compliant sidewalks and ramps. New ADA compliant sidewalks and ramps were constructed on the northwest and southwest corners. The sidewalks on the northeast and the southwest corner were constructed to provide the appropriate clearances from the existing railroad gates without relocation. Sidewalks and sidewalk ramps were constructed that conform to the current ADA standards on the northwest and southeast corners. None of the above improvements is adjacent to the spur on 11th Avenue. The City of Phoenix is performing this work and assuming the costs thereof.

As part of its obligations to maintain the track crossing surfaces, the City of Phoenix anticipates that BNSF will remove the existing asphalt paving at the perpendicular track crossing, remove the rail, remove the ballast, and remove the 8.5' ties. BNSF will then install new 10' ties, rail, and ballast, raise the track grade, and install new prefabricated concrete crossing panels. These tasks should be BNSF's expense. Maintenance of the at-grade crossing surface at Pima was requested in an ACC Staff letter, dated August 9, 2011, from Chris Watson, Assistant Director Railroad Safety, to Matt Kellar, Division Engineer at BNSF. The letter required BNSF to provide permanent surface repairs to be completed within ninety days of the date of the

letter. Upon information and belief, those permanent surface repairs were never completed.

Due to the changes in the sidewalks and ADA ramps on the outer curb of 11th Avenue, the existing asphalt paving to the north and south of the crossing and to the end of the curb return radii should be removed, as well as the rail, the ballast, and the 8.5' ties. New 10' ties, rail, ballast, and new prefabricated concrete crossing panels should be installed to provide for the pedestrian crossings of the tracks, and the track signal sensors should be relocated. While BNSF would need to provide the labor to complete these modifications due to their proximity to the railroad tracks, the City of Phoenix has proposed that BNSF conduct the work at the City's expense.

Buckeye Road intersection

The perpendicular width of the track crossing will not change. The existing curbs and sidewalks at the southeast, southwest, and northwest corners were removed and replaced to accommodate ADA compliant sidewalks and sidewalk ramps. The sidewalk on the southwest corner was constructed to obtain the appropriate clearances from the existing railroad cantilever without relocation. A storm drain pipe was added on the southeast corner. These improvements were conducted at the City's expense.

As part of its obligation to maintain the track surface, the City expects that BNSF will remove the existing prefabricated concrete crossing panels at the perpendicular track crossing, remove the rail, the ballast, and the 10' ties. BNSF will install new 10' ties, rail, and ballast, raise the track grade, and reinstall the existing prefabricated concrete crossing panels. These maintenance items are necessary to safeguard motorists and their vehicles crossing the railroad tracks on Buckeye Road.

Due to the changes in the sidewalks and ADA ramps on the outer curb of 11th Avenue, the existing asphalt paving to the north and south of the crossing and to the end of the curb return radii should be removed, as well as the rail, the ballast, and the 8.5' ties. New 10' ties, rail, ballast, and new prefabricated concrete crossing panels should be installed to provide for the pedestrian crossings of the tracks, and the track signal sensors should be relocated. While BNSF would need to provide the labor to complete these modifications due to their proximity to the railroad tracks, the City of Phoenix has proposed that BNSF conduct the work at the City's expense.

Hadley Street intersection

The perpendicular width of the track crossing will not change. The existing outside curbs at all four corners were removed and replaced to accommodate the construction of ADA compliant sidewalks and ramps. The existing sidewalks at the northeast and southeast corners were removed and replaced with ADA compliant sidewalks and sidewalk ramps. New ADA complaint sidewalks and ramps were built at the northwest and south west corners. The sidewalk on the northeast and southwest corners was constructed to obtain the appropriate clearances from the

existing railroad gates without relocation. A storm drain pipe was added east of 11th Avenue. All of these items were completed by the City at its own expense.

BNSF is obligated to maintain track crossings and remove the existing prefabricated concrete crossing panels at the perpendicular track crossing, remove the rail, remove the ballast, and remove the 8.5' ties. New 10' ties, rail, and ballast, should be installed and the track grade raised. BNSF should also install the new prefabricated concrete crossing panels. All of these items should be at BNSF's expense. Maintenance of the at-grade crossing surface at Hadley was requested in an ACC Staff letter, dated August 9, 2011, from Chris Watson, Assistant Director Railroad Safety, to Matt Kellar, Division Engineer at BNSF. The letter required BNSF to provide permanent surface repairs to be completed within ninety days of the date of the letter. Upon information and belief, permanent surface repairs were never completed.

The existing asphalt paving north and south of the crossing to the end of the curb return radii should be removed, as well as the rail, the ballast, and the 8.5' ties. New 10' ties, rail, ballast, and new prefabricated concrete crossing panels to the north and south of the crossing should be installed to provide for pedestrian crossings of the tracks. The track signal sensors also should be relocated. The City is proposing that BNSF provide the labor to conduct these activities at the City's expense.

Grant Street intersection

As part of its obligation to maintain the crossing surfaces, BNSF should remove the existing prefabricated concrete crossing panels at the perpendicular track crossing; remove the rail, the ballast, and the 10' ties. It should install new 10' ties, rail, and ballast, raise the track grade, and reinstall the existing prefabricated concrete crossing panels at its expense. These maintenance items are necessary to safeguard motorists and their vehicles crossing the railroad tracks on Grant Street.

To the north and south of the street crossing, the City has offered to pay for the removal of the existing asphalt paving to the end of the curb return radii, remove the rail, the ballast, and the 8.5' ties. The City would pay for the installation of new 10' ties, rail, ballast, and prefabricated concrete crossing panels to provide for the pedestrian crossings of the tracks, and relocate the track signal sensors.

- b. Is Commission authorization to perform the alterations to the Surviving Crossings being requested by the City's application that was filed on June 13, 2012?

No. The City's application, filed June 13, 2012, does not request authorization to conduct work on any of the Surviving Crossings of the 11th Avenue railroad spur. The sole intent of the City's application is to obtain approval from the Commission to close three alley crossings and four street crossings.

- c. For each Surviving Crossing, please state whether the City believes such planned alterations would constitute modifications to the crossings. Please specify individual category of

alteration i.e. relocation of warning devices, substitution or removal of warning devices, widening of crossings, change of crossing surface type, etc.

Warning devices at the Surviving Crossings do not require removal or relocation, as the new sidewalks are constructed around them. There are no substations at any of the Surviving Crossings. The crossings with gates and cantilevers will not require modification. The City is proposing relocation of track signal sensors at Buckeye Road, Hadley Street and Grant Street, and will assume the costs of the same.

As previously noted, none of the crossings will be widened to accommodate roadway traffic. The City proposes that BNSF install prefabricated concrete panels to the north and south of the crossings at Buckeye Road, and Apache, Hadley, Grant, Pima Streets in order to accommodate ADA compliant pedestrian crossing surfaces. The City has agreed to pay the costs for this construction. It is not clear whether an additional application to the ACC is required, as these do not constitute a widening of the roadway crossings, and are outside of the vehicular crossing surfaces. The City has not requested authorization to complete these modifications as part of this application.

The crossings at Pima Street and Hadley Street might require authorization to modify because the existing asphalt surface will be replaced by prefabricated concrete crossing panels. However, these alterations could be considered maintenance which is outside of the jurisdiction of the ACC, but in any event an application to modify the crossing is the responsibility of BNSF.

- d. For any Surviving Crossing that the City plans to alter that the City does not believe would require Commission authorization to modify, please explain why Commission authorization would not be required.

The City's modifications on the right of way of 11th Avenue (e.g. curb construction/modification, gutter and storm sewer alterations, ADA compliant sidewalks and ramps) are not within the jurisdiction of the ACC, as those activities do not involve the crossing surfaces over the 11th Avenue spur. Moreover, the City does not believe these modifications require Commission authorization pursuant to A.R.S. 40-337(A), as the alterations are outside of the roadway crossing the tracks (as well as the 2 foot roadway platform on either side of the tracks).

As noted above, the City is requesting that BNSF conduct certain work on the existing track surface at the City's expense, which might not be within the ACC's jurisdiction as defined in A.R.S. 40-337(A) ("No public highway or street shall be constructed across the track of any railroad at grade . . . without the permission of the commission.") The City would like BNSF to install (at the City's expense) prefabricated concrete surfaces to the north and the south of the street crossing in order to accommodate pedestrians in alignment with the new ADA sidewalk ramps. It is not clear whether this constitutes construction of a street crossing. In support of its position regarding the

Commission's jurisdiction, on March 23, 2010, the City of Phoenix received an email from the Commission's Railroad Safety Division, confirming that the only portion of the project requiring Commission approval was for closure of the seven crossing as requested in the City's application in this matter. BNSF's activities on the crossing surfaces to upgrade and/or repair the crossing may require Commission approval, or may be considered maintenance not subject to ACC jurisdiction. However, to the extent the Commission determines that some or all of the modifications proposed by the City are jurisdictional, and the City and BNSF are unable to agree on a division of the costs of the modifications, the ACC has the jurisdiction "[t]o prescribe the terms upon which and the proportions in which the expense of the alteration or abolition of the crossing shall be divided between the parties affected or in interest."

- e. To the extent that the Commission approval is necessary for modifications to the Surviving Crossings, does the City have a preference whether the approvals are processed within this docket as part of an amended application or by a wholly new application in a separate docket.

Should the Commission decide that its approval is required for the remaining work the City proposes on or near the spur track, or the City and BNSF are unable to agree on an apportionment of the costs of the remaining work, the City's preference would be to file a new application in a separate docket. The City's application filed on June 13, 2012 pertains only to the closure of crossings.