

ORIGINAL
COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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DATE: JANUARY 11, 2012

DOCKET NO.: RR-02635B-12-0251

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 SANTA FE RAILWAY
(CLOSE CROSSINGS)

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:

JANUARY 22, 2013

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:

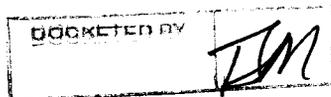
JANUARY 30, 2013 AND JANUARY 30, 2013

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

JAN 11 2013



Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

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

DOCKET NO. RR-02635B-12-0251

DECISION NO. _____

OPINION AND ORDER

12 DATE OF HEARING: September 27, 2012
13 PLACE OF HEARING: Phoenix, Arizona
14 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
15 APPEARANCES: Ms. Cynthia S. Campbell, Assistant City Attorney, for
16 the City of Phoenix;
17 Mr. Patrick Black, FENNEMORE CRAIG, P.C., on
18 behalf of the Burlington Northern Santa Fe Railway; and
19 Mr. Charles O. Hains and Ms. Bridget Humphrey, Staff
20 Attorneys, Legal Division, on behalf of the Safety
21 Division of the Arizona Corporation Commission.

20 **BY THE COMMISSION:**

21 On June 13, 2012, the City of Phoenix ("City") filed with the Arizona Corporation
22 Commission ("Commission") an application for approval for the Burlington Northern Santa Fe
23 Railway ("BNSF") to close seven public at-grade crossings of the BNSF's tracks on 11th Avenue
24 between Apache Street and Grant Street, in Phoenix, Arizona at USDOT Nos. 928161M, 025839L,
25 928160F, 025837X, 936631D, 025835J West, 025835J East and 025833V ("Application").

26 On June 21, 2012, by Procedural Order, the proceeding was scheduled for hearing on
27 September 27, 2012, and the City was ordered to notify any interested party of the Application and
28 the hearing.

1 On July 17, 2012, the City filed Direct Testimony of its witnesses.

2 On August 16, 2012, the Commission’s Safety Division Railroad Safety Section (“Staff”)
3 filed its Staff Report.

4 On August 30, 2012, the BNSF filed its Response to the Staff Report.

5 On September 6, 2012, the City filed certification that it had provided public notice pursuant
6 to the Commission’s Procedural Order.

7 On September 24, 2012, a letter of protest was filed by a resident in the affected area.

8 On September 27, 2012, a full public hearing was convened before a duly authorized
9 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The City, the BNSF
10 and Staff were present with counsel. At the hearing, a number of residents who reside in the area of
11 the proposed closures appeared to make public comment. At the conclusion of the hearing, following
12 the taking of evidence, the matter was taken under advisement pending submission of a
13 Recommended Opinion and Order to the Commission.¹

14 * * * * *

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

17 **FINDINGS OF FACT**

18 1. On June 13, 2012, the City filed the Application for the closure of seven existing
19 public at-grade crossings of a spur line of the BNSF’s tracks on 11th Avenue between Apache Street
20 and Grant Street, in Phoenix, Arizona at USDOT Nos. 928161M, 025839L, 928160F, 025837X,
21 936631D, 025835J West, 025835J East and 025833V.²

22 2. On June 21, 2012, the Commission issued a Procedural Order which ordered that a
23 hearing be held and ordered that the City provide public notice as follows: by mailing copies of the
24 Application and the Procedural Order to the BNSF, to affected governmental entities and any other

25 _____
26 ¹ During the hearing, it was indicated that the BNSF and the City would be filing a Road Closure Agreement that would
27 set forth the terms of their understanding within approximately 60 days after the conclusion of the hearing, and it would
28 describe the parties’ respective duties and obligations. The Agreement was filed on December 2, 2012.

² According to the Staff Report, although the City’s Application indicated there were eight crossings involved, Staff’s
investigation revealed that there is only one United States Department of Transportation crossing number assigned to the
Tonto Street crossing because where the roadway crosses the BNSF’s tracks at 11th Avenue the roadway jogs north to
south when traveling westbound on Tonto Street where it crosses the tracks.

1 interested parties; by publishing notice of the proceeding in a newspaper of general circulation; and
2 by posting visible signage within ten feet of each side of the roadway approach to the crossing
3 notifying the public of the proposed closures and hearing thereon. In response thereto, the
4 Commission has received one written objection to the Application and four residents of the affected
5 area appeared to make public comment at the hearing. Additionally, a representative of the Phoenix
6 Revitalization Corporation, a community development corporation, also spoke.

7 3. The Staff Report describes the seven crossings which are located on the BNSF's 11th
8 Avenue Lead which is a spur line that runs between Interstate 17 ("I-17) and Grant Street. The
9 railroad's tracks run down the center of 11th Avenue where it is adjacent to the west side of the
10 Matthew Henson Community ("Matthew Henson") which was Arizona's first public housing
11 development which opened in 1941.

12 4. Staff states in its report that in 2001, the City received a \$35 million Home Ownership
13 Opportunities for People Everywhere Grant from the U.S. Department of Housing and Urban
14 Development to demolish and rebuild Matthew Henson.

15 5. Matthew Henson has been rebuilt to market rate standards to attract a wide variety of
16 residents and it provides amenities to its residents including open space, swimming pools, barbeque
17 areas and a community center. Staff states further in its report that all four rental phases of the
18 project have been completed and the community is highly occupied. However, in order to revitalize
19 the area surrounding the community, residents proposed that the BNSF and the City close certain
20 public at-grade crossings and implement streetscape improvements as part of the 11th Avenue
21 Reconstruction Project ("Project").

22 6. The Staff Report describes the Project as taking place in three phases. The first phase
23 began in October 2011 and was completed in January 2012 at a cost of \$16 million. This phase
24 consists largely of street improvements with the installation of street lights, widening curb returns at
25 crossings to accommodate truck traffic, constructing ramps in compliance with the Americans with
26 Disabilities Act ("ADA") at all corners, adding sidewalks and installing storm drains.

27 7. The second phase of construction began in June 2012 and was completed in July 2012
28 at a cost of approximately \$2.45 million. This phase consisted of constructing curbs on the east and

1 west sides of the tracks six feet six inches from the center of the tracks to the face of the curbs
2 between Mohave and Grant Street and allows the BNSF 13 feet of clearance between the curbs. The
3 curbs were constructed without closing any alleys or public at-grade crossings.

4 8. The third and final phase of construction for the Project will consist of the
5 construction of a curb which will close the seven public at-grade crossings at three alleyways and
6 four street crossings from Grant Street to I-17. Due to the proposed at-grade crossing closures, a
7 Commission Order will be required prior to that phase of construction beginning. With the closure of
8 the seven at-grade crossings, the remaining open crossings will all be equipped with flashing lights,
9 automatic gates and bells with the exception of the public at-grade crossings at Apache Street and a
10 lone alley which will remain open that are equipped with railroad warning signs. The estimated total
11 cost for the Project for the City is approximately \$4.1 million and for the BNSF approximately
12 \$187,000.

13 9. On September 6, 2012, the City filed certification that it had provided public notice of
14 the Application and hearing thereon pursuant to the Commission's Procedural Order.

15 10. The hearing was held as scheduled on September 27, 2012.

16 11. In support of its Application, the City called the following witnesses; Belinda
17 Cummings, a Civil Engineer for the City in the Street Transportation Department who is the Design
18 Project Manager, and Rebecca Velarde, a Management Assistant in the City's Housing Department
19 who has been involved in the revitalization of Matthew Henson.

20 12. Presently, between Grant Street and I-17 along 11th Avenue there are 14 public at-
21 grade crossings, four of which are alleyways.

22 13. Presently, the ten public at-grade crossings of dedicated roadways are as follows:
23 Grant; Sherman; Hadley; Tonto; Buckeye; Yuma; Pima; Cocopah; Mohave; and Apache.

24 14. Ms. Cummings testified that the Grant, Hadley, Buckeye, Pima, Mohave and Apache
25 public at-grade crossings will remain open after the proposed closures. (Tr. 37: 15-16)

26 15. Ms. Cummings stated that the City chose the particular crossings to remain open based
27 on size of the roadway, existing automatic warning devices and physical facilities. (Tr. 37: 18-20)

28 16. According to Ms. Cummings, the City has given consideration to the safety of the

1 residents who live on the streets adjacent to the proposed closures by meeting with the Fire
2 Department to investigate whether response times would be delayed and whether adequate allowance
3 for accommodations for safety vehicles would be allowed by increasing the turning radius for fire
4 trucks at crossings which will be closed. (Tr. 38-39: 9-2)

5 17. Ms. Cummings stated that the City actually used a fire truck to demonstrate that it
6 could make the turns on the streets which are to be closed. (Tr. 39: 3-15)

7 18. Ms. Cummings further testified that with the closure of the various public at-grade
8 crossings along 11th Avenue, the streets which are closed on either side of the tracks will remain open
9 with access to 11th Avenue. (Tr. 39: 16-24)

10 19. Ms. Cummings testified that the City has also consulted with its Police Department
11 and has been informed that with the proposed closures of the various crossings along 11th Avenue,
12 the department does not have any heightened concerns with respect to residents' safety. (Tr. 40: 6-12)

13 20. Ms. Cummings testified that the condition of the tracks on the 11th Avenue spur is
14 very poor and in some places the rails are three inches below the existing asphalt and the asphalt has
15 come away from the tracks in some areas up to six inches. (Tr. 40: 17-23)

16 21. According to Ms. Cummings, if the Commission approves the proposed closures
17 which are described in the City's Application, the City will pay for the construction of six inch high
18 curbs on either side of the tracks at the proposed at-grade crossing closures to render them
19 inaccessible to vehicular crossing. (Tr. 42-43: 5-4)

20 22. Ms. Cummings testified that she attended public meetings conducted by the City with
21 respect to the Project where there were members of the community present and representatives of the
22 City from the design staff, construction staff and the City's public information firm along with
23 representatives of the Housing Department. (Tr. 43-44: 20-6)

24 23. Ms. Cummings testified further that she attended four meetings conducted with
25 members of the public with respect to the City's proposed crossing closures and the record established
26 that the City also had at least a half dozen open houses to discuss the Project. (Tr. 44: 10-22)

27 24. Based on the record, the closures proposed by the City will not hinder school bus
28 traffic or access to any hospitals.

1 25. Ms. Cummings testified that all phases of the Project have been completed except for
2 the areas involved in the proposed closures described in the City's Application. (Tr. 52: 3-7)

3 26. Ms. Cummings believes that the proposed closures of the at-grade crossings along the
4 11th Avenue spur line of the BNSF will improve the public safety. (Tr. 55: 16-19)

5 27. Ms. Cummings testified that if the Commission approves the City's Application
6 herein, upon the closure of the respective crossings, the BNSF will maintain the tracks and the City
7 will maintain the respective roadways which remain open. (Tr. 59: 11-16)

8 28. Ms. Cummings further testified that the neighborhood would be destroyed if grade
9 separation took place for the length of the spur line along 11th Avenue. Additionally, it would be
10 highly cost prohibitive to construct a grade-separated structure with construction costs alone
11 estimated at \$196 million. (Tr. 60: 1-17)

12 29. Ms. Cummings stated that traffic on either side of the 11th Avenue spur line would
13 continue to be one way on the east side of the tracks northbound and one way southbound on the west
14 side of the tracks. (Tr. 66-67: 19-4)

15 30. Ms. Velarde from the City's Housing Department testified that the City utilized funds
16 from what she termed a HOPE VI Grant along with other City funds to demolish approximately 372
17 public housing units which had been part of the original Matthew Henson community. The City
18 then reconstructed a new community of 549 apartment units for a mixed income community and
19 also constructed a community center, a youth activity center and parks to beautify Matthew
20 Henson. (Tr. 69: 4-19)

21 31. According to Ms. Velarde, funding for the improvements which are planned for 11th
22 Avenue are coming from the Streets, Transportation and Water Services Departments through the
23 sale of municipal bonds. (Tr. 70: 1-7)

24 32. Ms. Velarde further testified that 129 units of Matthew Henson are for seniors and
25 disabled individuals, and a large portion of those units are ADA accessible. (Tr. 70-71: 20-2)

26 33. Ms. Velarde testified that she had attended community meetings with respect to the
27 proposed at-grade closures across the tracks where diagrams and verbal explanations were presented
28 describing the new sidewalks, street lights, curbs and gutters which were to be constructed. (Tr. 78: 8-15)

1 34. Mr. Melvin Thomas testified as a representative of the BNSF during the hearing with
2 respect to the railroad's position on the Application by the City.

3 35. Mr. Thomas testified that the BNSF supports the proposed closures described in the
4 Application of the City. (Tr. 89: 1-3)

5 36. Mr. Thomas further testified that the BNSF is in agreement with the conclusions and
6 recommendations made by Staff in its report. (Tr. 89: 7-9)

7 37. Mr. Thomas stated that certain repairs which were made to the asphalt adjacent to the
8 tracks were considered permanent by the BNSF. (Tr. 89: 15-23)

9 38. Mr. Thomas stated further that the BNSF would accommodate the turning radius for
10 fire trucks by extending existing crossing widths as required at the crossings which would remain
11 open. (Tr. 90: 17-25)

12 39. Mr. Thomas further testified that certain costs as set forth in the City's documentation
13 were several years old and would be subject to change to determine their final costs. (Tr. 91: 17-25)

14 40. Mr. Thomas testified that the BNSF will extend the four crossings at Buckeye,
15 Hadley, Grant and Pima with concrete to accommodate the wider turning radius for fire trucks and
16 that the extensions would be funded by the City. (Tr. 102: 11-24)

17 41. Mr. Thomas stated that seven businesses receive regular service from the BNSF six
18 days a week by utilizing the services of the BNSF's spur track.

19 42. Mr. Brian Lehman, the Supervisor of the Commission's Railroad Safety Section,
20 testified that the Staff Report had been prepared under his direction. He further testified that the
21 roadway crossings that will remain open, Grant Street, Hadley Street, Buckeye Road, Pima Street and
22 Mohave Street are all equipped with flashing lights and bells. Additionally, Grant Street and
23 Buckeye Road have cantilevers and flashing lights. (Tr. 107-108: 20-6)

24 43. Mr. Lehman testified that the businesses served by the BNSF on its spur line are of a
25 light industrial nature and he is not aware of any hazardous materials being transported on those
26 tracks. (Tr. 110-111: 18A)

27 44. Mr. Lehman further testified that the proposed improvements described in the
28 proceeding and in the Application will improve the safety of train operations on the spur line.

1 (Tr. 111: 17-22)

2 45. Further testifying, Mr. Lehman stated that he believes that the improvements described
3 in the proceeding are in the public interest. (Tr. 112: 8-11).

4 46. According to Mr. Lehman, Staff believes that the proposed closures, as discussed
5 herein, will result in a safer area for the general traveling public and pedestrians. (Tr. 122-123: 20-1)

6 47. Staff is recommending approval of the City's Application because Staff believes that it
7 will improve safety and improve traffic control for the City.

8 48. Staff believes that the closures are in the public interest and are reasonable.

9 49. Staff recommends that the Application be approved.

10 **CONCLUSIONS OF LAW**

11 1. The Commission has jurisdiction over the parties and over the subject matter of the
12 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
13 40-337.01.

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

15 3. The closure of the seven public at-grade crossings described herein are in the public
16 interest.

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

19 **ORDER**

20 IT IS THEREFORE ORDERED that the City of Phoenix's Application is hereby approved.

21 IT IS FURTHER ORDERED that the following seven public at-grade crossings in the City of
22 Phoenix, Arizona shall be closed: three alley ways, USDOT Nos. 928161M, 928160F, and 936631D;
23 Cocopah Street, USDOT No. 025839L; Yuma Street, USDOT No. 025837X; Tonto Street, USDOT
24 No. 025835J; and Sherman Street, USDOT No. 025833V, by May 31, 2013.

25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway shall notify the
2 Commission, in writing, within 10 days of both the commencement and completion of the closures of
3 the aforementioned public at-grade crossings.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER _____

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

11 IN WITNESS WHEREOF, I, JODI JERICH, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____ 2013.

16 _____
17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20
21 DISSENT _____

22 MES:db
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1 SERVICE LIST FOR: BURLINGTON NORTHERN SANTA FE RAILWAY

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