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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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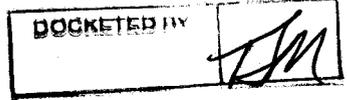
COMMISSIONERS

2013 MAR -6 P 3: 15

MAR 6 2013

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

CORP COMMISSION
DOCKET CONTROL



IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE EXISTING
CROSSINGS OF THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY AT
THE INDIAN SCHOOL ROAD CONNECTOR
AND 35TH AVENUE IN THE CITY OF
PHOENIX, MARICOPA COUNTY, ARIZONA, AT
AAR/DOT NOS. 025-424-D AND 025-425-K.

DOCKET NO. RR-02635B-13-0034

PROCEDURAL ORDER

BY THE COMMISSION:

On February 20, 2013, 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 ("BNSF") to upgrade two existing crossings at the BNSF's tracks at the Indian School Road Connector and 35th Avenue, in Phoenix, Arizona, at AAR/DOT Nos. 025-424-D and 024-0425-K, respectively ("Application").

Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern the preparation and conduct of this proceeding.

IT IS THEREFORE ORDERED that the request of the Arizona Department of Transportation ("ADOT") shall be considered an application for the BNSF to upgrade two existing crossings pursuant to A.R.S. § 40-337, et seq.

IT IS FURTHER ORDERED that the BNSF shall be considered as the Respondent in this proceeding.

IT IS FURTHER ORDERED that the **hearing** on the Application shall be held on **May 9, 2013, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix, Arizona.

IT IS FURTHER ORDERED that within five business days of receipt of this Procedural

1 Order, **THE ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE**
2 **BNSF, THE CITY OF PHOENIX, AND ANY OTHER GOVERNMENTAL AGENCY OR**
3 **INTERESTED PARTY** that may be affected by the application with a copy of the application and
4 this Procedural Order by certified mail.

5 IT IS FURTHER ORDERED that Safety Division, Railroad Safety Section (“Staff”) shall
6 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of
7 them with Docket Control on or before 4:00 p.m. on **April 19, 2013**.

8 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
9 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on **April**
10 **29, 2013**.

11 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
12 105, except that all motions to intervene must be filed on or before **April 15, 2013**.

13 IT IS FURTHER ORDERED that Arizona Department of Transportation shall provide public
14 notice of the hearing in this matter, in the following form and style:

15 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE APPLICATION**
16 **OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE TWO**
17 **EXISTING CROSSINGS OF THE BURLINGTON NORTHERN AND SANTA FE**
18 **RAILWAY AT THE INDIAN SCHOOL ROAD CONNECTOR AND 35TH AVENUE**
19 **IN THE CITY OF PHOENIX, MARICOPA COUNTY, ARIZONA, AT AAR/DOT**
20 **NOS.025-424-D AND 025-425-K.**
21 **DOCKET NO. RR-02635B-13-0034**

22 On February 20, 2013, the Arizona Department of Transportation (“ADOT”) filed
23 with the Arizona Corporation Commission (“Commission”) an application for
24 approval for the Burlington Northern and Santa Fe Railway Company (“BNSF”) to
25 upgrade two existing crossing at the BNSF’s tracks at the Indian School Road
26 Connector and 35th Avenue, in Phoenix, Arizona, at AAR/DOT Nos. 025-424-D and
27 025-0425-K.

28 The application is available for inspection during regular business hours at the offices
of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona,
and on the internet via the Commission website (www.azcc.gov) using the e-docket
function.

The Commission will hold a hearing on this matter commencing on **May 9, 2013, at**
10:00 a.m., at the Commission’s offices, 1200 West Washington Street, Phoenix,
Arizona. Public comments will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate
circumstances, interested parties may intervene. Intervention shall be permitted to

1 any person entitled by law to intervene and having a direct and substantial interest in
2 the matter. Persons desiring to intervene must file a written motion to intervene with
3 the Commission, which motion should be sent to the BNSF or its counsel and to all
4 parties of record, and which, at the minimum, shall contain the following:

- 5 1. The name, address, and telephone number of the proposed intervener and of
6 any party upon whom service of documents is to be made if different than the
7 intervener.
- 8 2. A short statement of the proposed intervener's interest in the proceeding (e.g.,
9 a customer of BNSF, a neighboring property owner, a crossing user, etc.).
- 10 3. A statement certifying that a copy of the motion to intervene has been mailed
11 to ADOT or its counsel and to all parties of record in the case.

12 The granting of motions to intervene shall be governed by A.A.C. R14-3-105,
13 except that all motions to intervene must be filed on or before April 15, 2013. If
14 representation by counsel is required by Rule 31 of the Rules of the Arizona
15 Supreme Court, intervention will be conditioned upon the intervenor obtaining
16 counsel to represent the intervenor. For information about requesting
17 intervention, visit the Arizona Corporation Commission's webpage at
18 <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of
19 intervention, among other things, entitles a party to present sworn evidence at
20 hearing and to cross-examine other witnesses. However, failure to intervene will
21 not preclude any customer from appearing at the hearing and making a statement
22 on such customer's own behalf.

23 If you have any questions about this application, you may contact the applicant at
24 **[insert telephone number]**. If you wish to file written comments on the application
25 or want further information on intervention, you may write the Consumer Services
26 Section of the Commission at 1200 West Washington Street, Phoenix, Arizona
27 85007 or call 602-542-4251 or 1-800-222-7000 or appear at the hearing and make
28 comment.

The Commission does not discriminate on the basis of disability in admission to its
public meetings. Persons with a disability may request a reasonable accommodation
such as a sign language interpreter, as well as request this document in an alternative
format, by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-
542-3931, E-mail SABernal@azcc.gov. Requests should be made as early as
possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Arizona Department of Transportation shall cause the
above notice to be published at least once in a newspaper of general circulation in the city where the
crossing is located, with **publication to be completed no later than April 1, 2013**.

IT IS FURTHER ORDERED that notice shall be deemed complete upon the
mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive
the notice.

IT IS FURTHER ORDERED that **ARIZONA DEPARTMENT OF TRANSPORTATION**

1 **SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET**
2 **CONTROL AS SOON AS PRACTICABLE** after the mailing/publication of notice ordered herein
3 has been completed.

4 IT IS FURTHER ORDRED that all parties must comply with Rules 31 and 38 of the Rules of
5 the Arizona Supreme Court and A.R.S. §40-243 with respect to practice of law and admission *pro*
6 *hac vice*.

7 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,
8 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
9 ruling at hearing.

10 DATED this 6th day of March, 2013.


11
12
13 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

14 Copies of the foregoing mailed/delivered
15 this 6th day of March, 2013 to:

16 Cynthia S. Campbell
Assistant City Attorney
17 OFFICE OF THE CITY ATTORNEY
200 West Washington Street, Suite 1300
18 Phoenix, AZ 85003-1611

19 Patrick J. Black
FENNEMORE CRAIG, PC
20 3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012-2913
21 Attorneys for BNSF

22 Melvin V. Thomas, Manager Public Projects
BURLINGTON NORTHERN SANTA FE
23 RAILWAY COMPANY
740 East Carnegie Drive
24 San Bernardino, CA 92408-3571

25 Vicki Bever, Manager
Utility & Railroad Engineering
26 ARIZONA DEPARTMENT OF TRANSPORTATION
205 South 17th Avenue, M/D 618E
27 Phoenix, AZ 85007-3212
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Kelly Roy, Utility Project Coordinator
MARICOPA COUNTY
DEPARTMENT OF TRANSPORTATION
2901 West Durango Street
Phoenix, Arizona 85009-6357

Belinda Cummings, Project Manager
CITY OF PHOENIX
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Phoenix, AZ 85034

Janice Alward, Chief Counsel
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ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Brian Lehman, Chief
Railroad Safety Section
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

By:


Debbi Person
Assistant to Marc Stern