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OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

2014 SEP 16 PM 2 00

DATE: SEPTEMBER 16, 2014

DOCKET NO.: RR-02635B-14-0158

ORIGINAL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Scott M. Hesla. The recommendation has been filed in the form of an Opinion Order on:

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
(UPGRADE 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 25, 2014

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 16, 2014

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

SEP 16 2014

DOCKETED BY
JCM [Signature]

Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE BURLINGTON
12 NORTHERN AND SANTE FE RAILWAY
13 COMPANY AT THE INTERSECTION OF SR 303L
14 AND US 60, MARICOPA COUNTY, ARIZONA,
15 AT MP 167.77.

DOCKET NO. RR-02635B-14-0158

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: August 25, 2014

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Scott M. Hesla

14 APPEARANCES: Mr. James Redpath, OFFICE OF THE ATTORNEY
15 GENERAL, Assistant Attorney General, Transportation
16 Section, on behalf of the Arizona Department of
17 Transportation;

18 Mr. Patrick Black, FENNEMORE CRAIG, on behalf of
19 the Burlington Northern Santa Fe Railway Company;
20 and

21 Ms. Bridget Humphrey, Staff Attorney, Legal Division
22 on behalf of the Safety Division of the Arizona
23 Corporation Commission.

24 **BY THE COMMISSION:**

25 * * * * *

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

28 FINDINGS OF FACT

Procedural History

1. On May 13, 2014, the Arizona Department of Transportation ("ADOT") filed with the
Arizona Corporation Commission ("Commission") an application for approval for the Burlington

1 Northern and Santa Fe Railway Company (“Railroad”) to modify an existing grade separated
2 crossing at the intersection of SR 303L and US 60, Maricopa County, Arizona, at milepost 167.77
3 (“Application”).

4 2. On May 28, 2014, a Procedural Order was issued establishing various filing dates and
5 scheduling a hearing for August 25, 2014.

6 3. On June 13, 2014, the Commission’s Safety Division, Railroad Safety Section
7 (“Staff”) filed a Motion to Vacate Scheduled Hearing.

8 4. On June 23, 2014, ADOT filed a Response to Staff Motion to Vacate Scheduled
9 Hearing.

10 5. On June 25, 2014, a Procedural Order was issued denying Staff’s Motion to Vacate
11 Scheduled Hearing and affirming the procedural schedule and hearing date set forth in the May 28,
12 2014 Procedural Order.

13 6. On July 16, 2014, ADOT filed documentation that it had provided public notice of the
14 Application and hearing thereon.

15 7. On August 8, 2014, Staff filed a Memorandum recommending approval of the
16 Application.

17 8. On August 25, 2014, a full public hearing was convened, as scheduled. ADOT, the
18 Railroad, and Staff appeared through counsel. At the conclusion of the hearing, the matter was taken
19 under advisement pending submission of a Recommended Opinion and Order to the Commission.

20 **ADOT’s Application**

21 9. In its Application, ADOT is seeking Commission approval to widen the grade
22 separated crossing over the Railroad’s tracks at the intersection of SR 303L and US 60. The crossing
23 was approved for grade separation by the Commission in Decision No. 62699 (June 30, 2000).

24 10. The crossing currently consists of two eastbound lanes and one westbound lane. The
25 proposed roadway modification will widen the crossing to twelve lanes, six eastbound lanes and six
26 westbound lanes. According to ADOT, the project is necessary because the crossing has insufficient
27 capacity to accommodate existing and future traffic demands. ADOT testified that the project will
28 not require any modification to the Railroad’s tracks.

1 11. ADOT indicated that the proposed project will take approximately 16 months to
2 complete. Per an agreement with the Railroad, ADOT testified that the crossing will only be closed
3 two to three hours per day to allow ADOT to complete the project.

4 **Staff's Recommendation**

5 12. Staff states that the measures proposed by ADOT are consistent with other similar
6 grade separated crossings in the State and will provide for the public's safety. According to Staff, the
7 proposed project to widen the grade separated crossing is reasonable and in the public interest. Staff
8 therefore recommends that the Application be approved.

9 13. Staff's recommendation is reasonable and appropriate and should be adopted.

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 proposed modification to the grade separated crossing is necessary for the
16 public's convenience and safety.

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

19 5. After the project is completed, the Burlington Northern Santa Fe Railway Company
20 will not be required to maintain the crossing in accordance with A.A.C. R14-5-104 because the SR
21 303L roadway will be maintained by ADOT or its delegate.

22 **ORDER**

23 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application
24 is hereby approved.

25 IT IS FURTHER ORDERED that the Arizona Department of Transportation shall complete
26 the crossing modification as described in the Application within two years of the effective date of this
27 Decision.

28 ...

1 IT IS FURTHER ORDERED that the Burlington Northern Santa Fe Railway Company shall
2 notify the Commission, in writing, within ten days of both the commencement and completion of the
3 crossing modification, pursuant to A.A.C. R14-5-104.

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
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____ 2014.

17 _____
18 JODI JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22 SMH:ru

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1 SERVICE LIST FOR: BURLINGTON NORTHERN AND SANTA FE
2 RAILWAY

3 DOCKET NO.: RR-02635B-14-0158

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