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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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DOCKET NO. RR-02635B-15-0300

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES DEPARTMENT OF THE INTERIOR/BUREAU OF INDIAN AFFAIRS TO REPLACE AN EXISTING AT-GRADE CROSSING OF THE BNSF RAILWAY AND TO CONSTRUCT A FOUR SPAN BRIDGE OVER THE BNSF RAILWAY TRACKS AND THE RIO PUERCO RIVER IN NAVAJO, APACHE COUNTY, ARIZONA, USDOT NO. 025011J.

PROCEDURAL ORDER
(Schedules Hearing)

BY THE COMMISSION:

On August 19, 2015, the United States Department of the Interior/Bureau of Indian Affairs ("USBIA") filed with the Arizona Corporation Commission ("Commission") a request for approval for the USBIA to replace an existing at-grade crossing of the BNSF Railway ("Railway") with the construction of a four span bridge overpass that will span both the tracks of the Railway and the Rio Puerco River in Navajo, Apache County, Arizona at USDOT No. 025011J ("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 Application of the United States Department of the Interior/Bureau of Indian Affairs shall be considered a request for the USBIA to install a new grade separated crossing and for the Railway to remove an existing at-grade crossing pursuant to A.R.S. § 40-337, et seq.

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

IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **December 10, 2015, 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.

1 IT IS FURTHER ORDERED that within ten business days of receipt of this Procedural
2 Order, **The UNITED STATES DEPARTMENT OF THE INTERIOR/BUREAU OF INDIAN**
3 **AFFAIRS SHALL PROVIDE THE RAILWAY AND ANY MUNICIPALITY OR**
4 **INTERESTED PARTY** that may be affected by the Application with a copy of the Application and
5 this Procedural Order by certified mail.

6 IT IS FURTHER ORDERED that the Commission's Railroad Safety Section ("Staff") shall
7 prepare a written **Staff Report and associated exhibits** to be presented at the hearing and file copies
8 of them with Docket Control on or before 4:00 p.m. on **November 17, 2015**.

9 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
10 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on
11 **November 27, 2015**.

12 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-30-
13 105, except that all motions to intervene must be filed on or before **November 6, 2015**.

14 IT IS FURTHER ORDERED that **the United States Department of the Interior/Bureau of**
15 **Indian Affairs** shall provide **public notice** of the hearing in this matter, in the following form and
16 style:

17 **IN THE MATTER OF THE APPLICATION OF**
18 **THE UNITED STATES DEPARTMENT OF THE INTERIOR/BUREAU OF**
19 **INDIAN AFFAIRS TO REPLACE AN EXISTING AT-GRADE CROSSING OF**
20 **THE BNSF RAILWAY AND TO CONSTRUCT A FOUR SPAN BRIDGE**
OVER THE BNSF RAILWAY TRACKS AND THE RIO PUERCO RIVER IN
NAVAJO, APACHE COUNTY, ARIZONA, USDOT NO. 025011J.
(DOCKET NO. RR-02635B-15-0300)

21 On August 19, 2015, the United States Department of the Interior/Bureau of Indian
22 Affairs ("USBIA") filed with the Arizona Corporation Commission
23 ("Commission") a request for approval for the USBIA to replace an existing at-
24 grade crossing of the BNSF Railway ("Railway") with the construction of a four
span bridge overpass that will span both the tracks of the Railway and the Rio
Puerco River in Navajo, Apache County, Arizona at USDOT No. 025011J
("Application").

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

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1 The Commission will hold a hearing on this matter commencing on **December 10,**
2 **2015, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street,
3 Hearing Room No. 1, Phoenix, Arizona. Public comments will be taken on the first
4 day of the hearing.

5 The law provides for an open public hearing at which, under appropriate
6 circumstances, interested parties may intervene. Intervention shall be permitted to
7 any person entitled by law to intervene and having a direct and substantial interest in
8 the matter. Persons desiring to intervene must file a written motion to intervene with
9 the Commission, which motion should be sent to Applicant or its counsel and to all
10 parties of record, and which, at the minimum, shall contain the following:

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

18 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
19 that all motions to intervene must be filed on or before **November 6, 2015.** The
20 granting of intervention, among other things, entitles a party to present sworn
21 evidence at hearing and to cross-examine other witnesses. However, failure to
22 intervene will not preclude any customer from appearing at the hearing and making a
23 statement on such customer's own behalf.

24 If you have any questions about this application, you may contact the applicant at
25 [insert telephone number]. If you wish to file written comments on the application
26 or want further information on intervention, you may write the Consumer Services
27 Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007, call
28 602-542-4251 or 1-800-222-7000, or appear at the hearing and make 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 the **United States Department of the Interior/Bureau of
Indian Affairs** shall cause the above notice to be published at least once in a newspaper of general
circulation in the city/county where the crossing is located, with **publication to be completed no
later than October 16, 2015.**

...

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

4 IT IS FURTHER ORDERED that **THE UNITED STATES DEPARTMENT OF THE**
5 **INTERIOR/BUREAU OF INDIAN AFFAIRS SHALL FILE CERTIFICATION OF NOTICE**
6 **WITH THE COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE** after the
7 mailing/publication of notice ordered herein has been completed.

8 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
9 Communications) applies to this proceeding as the matter is now set for public hearing

10 IT IS FURTHER ORDERED that all parties must comply with Rule 31, 38, and 42 of the
11 Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and
12 admission *pro hac vice*.

13 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
14 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
15 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
16 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
17 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
18 Administrative Law Judge or the Commission.

19 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to
20 this matter may opt to receive service of all filings in this docket, including all filings by parties and
21 all Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the
22 Commission's Hearing Division, via email sent to an email address provided by the party rather than
23 via U.S. Mail. To exercise this option, a party shall:

- 24 1. Ensure that the party has a valid and active email address to which the party has
25 regular and reliable access ("designated email address");
- 26 2. Complete a Consent to Email Service form, available on the Commission's website
27 (www.azcc.gov);

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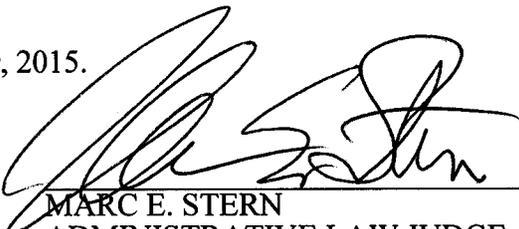
- 1 3. File the original and 13 copies of the Consent to Email Service form with the
- 2 Commission's Docket Control, also providing service to each party to the service list;
- 3 4. Send an email, containing the party's name and the docket number for this matter, to
- 4 HearingDivisionServicebyEmail@azcc.gov from the designated email address, to
- 5 allow the Hearing Division to verify the validity of the designated email address;
- 6 5. Understand and agree that service of a document on the party shall be complete upon
- 7 the sending of an email containing the document to the designated email address,
- 8 regardless of whether the party receives or reads the email containing the document;
- 9 and
- 10 6. Understand and agree that the party will no longer receive service of filings in this
- 11 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless
- 12 and until the party withdraws this consent through a filing made in this docket.

13 IT IS FURTHER ORDERED that a party's consent to email service shall not become
 14 effective until a Procedural Order is issued approving the use of email service for the party. The
 15 Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and the
 16 Hearing Division has verified receipt of an email from the party's designated email address.

17 IT IS FURTHER ORDERED that a party's election to receive service of all filings in this
 18 matter via email does not change the requirement that all filings with the Commission's Docket
 19 Control must be made in hard copy and must include an original and 13 copies.

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

23 DATED this  day of September, 2015.


 MARC E. STERN
 ADMINISTRATIVE LAW JUDGE

27 ...
 28 ...

1 Copies of the foregoing mailed/delivered
2 this 20 day of September, 2015 to:

3 United States Department of the Interior
4 Bureau of Indian Affairs
5 P.O. Box 1060
6 Gallup, New Mexico 87306

7 Matthew Keim
8 Manager Public Projects
9 BNSF RAILWAY
10 740 East Carnegie Drive
11 San Bernardino, CA 92408-3571

12 Janice Alward, Chief Counsel
13 Legal Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007

17 Brian Lehman, Chief
18 Railroad Safety Section of the Safety Division
19 ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
21 Phoenix, AZ 85007

22 COASH & COASH
23 COURT REPORTING, VIDEO AND
24 VIDEOCONFERENCING
25 1802 North 7th Street
26 Phoenix, AZ 85006

27
28 By: 
Tammy Velarde
Assistant to Marc Stern