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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

AZ CORPORATION COMMISSION
DOCKET CONTROL

2015 AUG 18 PM 2 15

IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE AN
EXISTING AT-GRADE CROSSING OF THE
BNSF RAILWAY AT THE GRAND
AVENUE/THUNDERBIRD ROAD
INTERSECTION IN THE CITY OF EL
MIRAGE, MARICOPA COUNTY, ARIZONA,
USDOT NO. 025 631X.

DOCKET NO. RR-02635B-15-0198

PROCEDURAL ORDER
(Continues Hearing)

BY THE COMMISSION:

On June 17, 2015, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") a request for approval for the BNSF Railway ("Railway") to upgrade an existing at-grade crossing at the Grand Avenue/Thunderbird Road intersection in the City of El Mirage ("City"), Maricopa County, Arizona at USDOT No. 025 631X ("Application").

On August 12, 2015, by Procedural Order, a hearing on the Application was scheduled on November 4, 2015.

On August 17, 2015, the Railway filed a Motion to Reset the hearing to November 5, 2015, because its witness is unavailable due to a prior engagement on November 4, 2015. Counsel for the Railway further indicated that neither ADOT nor Staff oppose the Railway's request.

Accordingly, the hearing should be continued as requested by the Railways with all other filing dates and the publication of public notice should remain the same as previously ordered.

IT IS THEREFORE ORDERED that the Application of the Arizona Department of Transportation shall be considered a request for the Railway to upgrade an existing crossing pursuant to A.R.S. § 40-337, et seq.

...

Arizona Corporation Commission

DOCKETED

AUG 18 2015

DOCKETED BY
RATU

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

3 IT IS FURTHER ORDERED that the **hearing** on the application shall be continued from
4 **November 4, 2015, to November 5, 2015 at 10:00 a.m.**, or as soon thereafter as is practical, at the
5 Commission's offices, 1200 West Washington Street, Hearing Room No. 2, Phoenix, Arizona.

6 IT IS FURTHER ORDERED that within ten business days of receipt of this Procedural
7 Order, **the ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE**
8 **RAILWAY AND ANY MUNICIPALITY OR INTERESTED PARTY** that may be affected by
9 the application with a copy of the application and this Procedural Order by certified mail.

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

13 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
14 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on
15 **October 19, 2015**.

16 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
17 105, except that all motions to intervene must be filed on or before **September 30, 2015**.

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

20 **IN THE MATTER OF THE APPLICATION OF THE ARIZONA**
21 **DEPARTMENT OF TRANSPORTATION UPGRADE AN EXISTING AT-**
22 **GRADE CROSSING OF THE BNSF RAILWAY AT THE GRAND**
23 **AVENUE/THUNDERBIRD ROAD INTERSECTION, IN THE CITY OF EL**
24 **MIRAGE, MARICOPA COUNTY, ARIZONA, USDOT NO. 025 631X**
25 **(DOCKET NO. RR-02635B-15-0198)**

26 On June 17, 2015, the Arizona Department of Transportation ("ADOT") filed with
27 the Arizona Corporation Commission ("Commission") an application for approval
28 for the BNSF Railway ("Railway") to upgrade an existing at-grade crossing at the
Grand Avenue/Thunderbird Road Intersection, in the City of El Mirage ("City"),
Maricopa County, Arizona at USDOT No. 025 631X.

The application is available for inspection during regular business hours at the
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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The Commission will hold a hearing on this matter commencing on **November 5, 2015, at 10:00 a.m.**, at the Commission’s offices, 1200 West Washington Street, Hearing Room No. 2, 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 any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to Applicant or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

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

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before September 30, 2015. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

If you have any questions about this application, you may contact the applicant at [insert telephone number]. If you wish to file written comments on the application or want further information on intervention, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007, call 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 Arizona Department of Transportation** 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 September 11, 2015**.

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.

1 IT IS FURTHER ORDERED that THE ARIZONA DEPARTMENT OF
2 TRANSPORTATION SHALL FILE CERTIFICATION OF NOTICE WITH THE
3 COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE after the
4 mailing/publication of notice ordered herein has been completed.

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

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

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

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

- 21 1. Ensure that the party has a valid and active email address to which the party has
22 regular and reliable access ("designated email address");
- 23 2. Complete a Consent to Email Service form, available on the Commission's website
24 (www.azcc.gov);
- 25 3. File the original and 13 copies of the Consent to Email Service form with the
26 Commission's Docket Control, also providing service to each party to the service list;

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- 4. Send an email, containing the party's name and the docket number for this matter, to HearingDivisionServicebyEmail@azcc.gov from the designated email address, to allow the Hearing Division to verify the validity of the designated email address;
- 5. Understand and agree that service of a document on the party shall be complete upon the sending of an email containing the document to the designated email address, regardless of whether the party receives or reads the email containing the document; and
- 6. Understand and agree that the party will no longer receive service of filings in this matter through First Class U.S. Mail or any other form of hard-copy delivery, unless and until the party withdraws this consent through a filing made in this docket.

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

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

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

DATED this 18TH day of August, 2015.



MARC E. STERN
ADMINISTRATIVE LAW JUDGE

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1 Copies of the foregoing mailed/delivered
2 this 18 day of August, 2015 to:

3 Michelle Burton
4 Assistant Attorney General
5 OFFICE OF THE ATTORNEY GENERAL
6 1275 West Washington Street
7 Phoenix, Arizona 85007

8 Sayeed M. Hani
9 Railroad and Utility Coordinator
10 ARIZONA DEPARTMENT
11 OF TRANSPORTATION
12 205 S. 17th Avenue, Room 357 MD 618E
13 Phoenix, AZ 85007

14 Patrick Black
15 FENNEMORE CRAIG
16 2394 E. Camelback Rd., Suite 600
17 Phoenix, AZ 85016

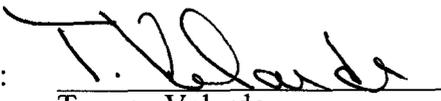
18 Matthew Kiem
19 Manager Public Projects
20 BNSF RAILWAY
21 740 East Carnegie Drive
22 San Bernardino, CA 92408-3571

23 City of El Mirage
24 City Attorney's Office
25 12145 NW Grand Avenue
26 El Mirage, AZ 85335

27 Janice Alward, Chief Counsel
28 Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Brian Lehman, Chief
Railroad Safety Section of the Safety Division
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1200 West Washington Street
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COASH & COASH, INC.
Court Reporting,
Video and Videoconferencing
1802 North 7th Street
Phoenix, AZ 85006

26 By: 

27 Tammy Velarde
28 Assistant to Marc Stern