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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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

ORIGINAL

IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO INSTALL A NEW
GRADE SEPARATED CROSSING AND FOR
THE BNSF RAILWAY TO REMOVE AN
EXISTING AT-GRADE CROSSING AT US 60
AND BELL ROAD IN THE CITY OF
SURPRISE, MARICOPA COUNTY, ARIZONA,
USDOT NO. 025392A.

DOCKET NO. RR-02635B-15-0197

PROCEDURAL ORDER
(Schedules 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 ADOT to construct a new grade separated crossing and for the BNSF Railway ("Railway") to remove an existing at-grade crossing at US 60 and Bell Road in the City of Surprise ("City"), Maricopa County, Arizona at USDOT No. 025392A ("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 Arizona Department of Transportation shall be considered a request for ADOT 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 **October 7, 2015, 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. 2, Phoenix, Arizona.

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

1 Order, the ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE
2 RAILWAY AND ANY MUNICIPALITY OR INTERESTED PARTY that may be affected by
3 the application with a copy of the Application and this Procedural Order by certified mail.

4 IT IS FURTHER ORDERED that the Commission's Railroad Safety Section ("Staff") shall
5 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of
6 them with Docket Control on or before 4:00 p.m. on **September 15, 2015**.

7 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
8 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on
9 **September 25 , 2015**.

10 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
11 105, except that all motions to intervene must be filed on or before **September 14, 2015**.

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

14 **IN THE MATTER OF THE APPLICATION OF**
15 **THE ARIZONA DEPARTMENT OF TRANSPORTATION TO**
16 **INSTALL A NEW GRADE SEPARATED CROSSING AND FOR THE BNSF**
17 **RAILWAY TO REMOVE AN EXISTING AT-GRADE CROSSING AT US 60**
18 **AND BELL ROAD IN THE CITY OF SURPRISE, MARICOPA COUNTY,**
19 **ARIZONA, USDOT NO. 025392A.**
20 **(DOCKET NO. RR-02635B-15-0197)**

21 On June 17, 2015, the Arizona Department of Transportation ("ADOT") filed with
22 the Arizona Corporation Commission ("Commission") an application for approval
23 for ADOT to install a new grade separated crossing and for the BNSF Railway
24 ("Railway") to remove an existing at-grade crossing at US 60 and Bell Road in the
25 City of Surprise ("City"), Maricopa County, Arizona at USDOT No. 025392A.

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

The Commission will hold a hearing on this matter commencing on **October 7, 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
- 2 1. The name, address, and telephone number of the proposed intervener and of
3 any party upon whom service of documents is to be made if different than the
4 intervener.
- 5 2. A short statement of the proposed intervener's interest in the proceeding (e.g.,
6 a customer of Railway, a neighboring property owner, a crossing user, etc.).
- 7 3. A statement certifying that a copy of the motion to intervene has been mailed
8 to the Applicant or its counsel and to all parties of record in the case.

9 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
10 that all motions to intervene must be filed on or before September 14, 2015. The
11 granting of intervention, among other things, entitles a party to present sworn
12 evidence at hearing and to cross-examine other witnesses. However, failure to
13 intervene will not preclude any customer from appearing at the hearing and making a
14 statement on such customer's own behalf.

15 If you have any questions about this application, you may contact the applicant at
16 [insert telephone number]. If you wish to file written comments on the application
17 or want further information on intervention, you may write the Consumer Services
18 Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007, call
19 602-542-4251 or 1-800-222-7000, or appear at the hearing and make comment.

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

26 IT IS FURTHER ORDERED that the Arizona Department of Transportation shall cause
27 the above notice to be published at least once in a newspaper of general circulation in the city/county
28 where the crossing is located, with **publication to be completed no later than August 31, 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.

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

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized

1 Communications) applies to this proceeding as the matter is now set for public hearing

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

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

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

- 16 1. Ensure that the party has a valid and active email address to which the party has
17 regular and reliable access ("designated email address");
- 18 2. Complete a Consent to Email Service form, available on the Commission's website
19 (www.azcc.gov);
- 20 3. File the original and 13 copies of the Consent to Email Service form with the
21 Commission's Docket Control, also providing service to each party to the service list;
- 22 4. Send an email, containing the party's name and the docket number for this matter, to
23 HearingDivisionServicebyEmail@azcc.gov from the designated email address, to
24 allow the Hearing Division to verify the validity of the designated email address;
- 25 5. Understand and agree that service of a document on the party shall be complete upon
26 the sending of an email containing the document to the designated email address,
27 regardless of whether the party receives or reads the email containing the document;
28 and

1 6. Understand and agree that the party will no longer receive service of filings in this
2 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless
3 and until the party withdraws this consent through a filing made in this docket.

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

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

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

14 DATED this 12th day of August, 2015.


MARC E. STERN
ADMINISTRATIVE LAW JUDGE

18 Copies of the foregoing mailed/delivered
19 this 12th day of August, 2015 to:

20 James R. Redpath
21 Assistant Attorney General
22 OFFICE OF THE ATTORNEY GENERAL
23 1275 West Washington Street
24 Phoenix, Arizona 85007

23 Sayeed M. Hani
24 Railroad and Utility Coordinator
25 ARIZONA DEPARTMENT
26 OF TRANSPORTATION
27 205 S. 17th Avenue, Room 357 MD 618E
28 Phoenix, AZ 85007

26 Patrick Black
27 FENNEMORE CRAIG
28 2394 E. Camelback Rd., Suite 600
Phoenix, AZ 85016

1 Manager Public Projects
2 BNSF RAILWAY
3 740 East Carnegie Drive
4 San Bernardino, CA 92408-3571

5 City of Surprise Attorneys' Office
6 16000 N. Civic Center Plaza
7 Surprise, AZ 85374

8 Janice Alward, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, AZ 85007

13 Brian Lehman, Chief
14 Railroad Safety Section of the Safety Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
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20 VIDEOCONFERENCING
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By: Rebecca Unquera
Rebecca Unquera
Assistant to Marc Stern