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BEFORE THE ARIZONA CORPORATION COMMISSION  
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COMMISSIONERS

SUSAN BITTER SMITH - Chairman  
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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
DOCKETED

AUG 12 2015

DOCKETED BY

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  
(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 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").

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 the Railway to upgrade an existing 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 **November 4, 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 **October 8, 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 **October 19, 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 30, 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 THE ARIZONA**  
15 **DEPARTMENT OF TRANSPORTATION UPGRADE AN EXISTING AT-**  
16 **GRADE CROSSING OF THE BNSF RAILWAY AT THE GRAND**  
17 **AVENUE/THUNDERBIRD ROAD INTERSECTION, IN THE CITY OF EL**  
18 **MIRAGE, MARICOPA COUNTY, ARIZONA, USDOT NO. 025 631X**  
19 **(DOCKET NO. RR-02635B-15-0198)**

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

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  
27 internet via the Commission website ([www.azcc.gov](http://www.azcc.gov)) using the e-docket function.

28 The Commission will hold a hearing on this matter commencing on **November 4,**  
**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 intervenor and of
- 3 any party upon whom service of documents is to be made if different than the
- 4 intervenor.
- 5 2. A short statement of the proposed intervenor's interest in the proceeding (e.g.,
- 6 a customer of Railroad, 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 30, 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 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.

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](http://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](mailto: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 12<sup>th</sup> day of August, 2015.

  
MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

18          Copies of the foregoing mailed/delivered  
19          this 12<sup>th</sup> 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

25          Sayeed M. Hani  
26          Railroad and Utility Coordinator  
27          ARIZONA DEPARTMENT  
28          OF TRANSPORTATION  
29          205 S. 17<sup>th</sup> Avenue, Room 357 MD 618E  
30          Phoenix, AZ 85007

31          Patrick Black  
32          FENNEMORE CRAIG  
33          2394 E. Camelback Rd., Suite 600  
34          Phoenix, AZ 85016

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

3 City of El Mirage  
City Attorney's Office  
4 12145 NW Grand Avenue  
El Mirage, AZ 85335

5 Janice Alward, Chief Counsel  
6 Legal Division  
ARIZONA CORPORATION COMMISSION  
7 1200 West Washington Street  
Phoenix, AZ 85007

8 Brian Lehman, Chief  
9 Railroad Safety Section of the Safety Division  
ARIZONA CORPORATION COMMISSION  
10 1200 West Washington Street  
Phoenix, AZ 85007

11 COASH & COASH, INC.  
12 Court Reporting,  
Video and Videoconferencing  
13 1802 North 7<sup>th</sup> Street  
Phoenix, AZ 85006

14  
15 By: Rebecca Unquera  
16 Rebecca Unquera  
Assistant to Marc Stern

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