

OPEN MEETING ITEM

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



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ARIZONA CORPORATION COMMISSION

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2015 NOV 20 P 1: 31

DATE: NOVEMBER 20, 2015

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKET NO.: RR-02635B-15-0197

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc Stern. The recommendation has been filed in the form of an Opinion and Order on:

BURLINGTON NORTHERN & SANTA FE RAILWAY COMPANY  
(REMOVE AT-GRADE CROSSING AND  
INSTALL GRADE SEPARATED 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:

NOVEMBER 30, 2015

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:

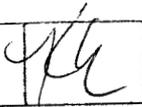
DECEMBER 8, 2015 AND DECEMBER 9, 2015

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

NOV 20 2015

DOCKETED BY 

JODI JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SBernal@azcc.gov](mailto:SBernal@azcc.gov).

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

6  
7 IN THE MATTER OF THE APPLICATION OF THE  
8 ARIZONA DEPARTMENT OF  
9 TRANSPORTATION TO INSTALL A NEW  
10 GRADE SEPARATED CROSSING AND FOR THE  
11 BNSF RAILWAY TO REMOVE AN EXISTING AT-  
12 GRADE CROSSING AT US 60 AND BELL ROAD  
13 IN THE CITY OF SURPRISE, MARICOPA  
14 COUNTY, ARIZONA, USDOT NO. 025392A.

DOCKET NO. RR-02635B-15-0197

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

11 DATE OF PROCEDURAL CONFERENCE: August 11, 2015  
12 DATE OF HEARING: October 7, 2015  
13 PLACE OF HEARING: Phoenix, Arizona  
14 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
15 APPEARANCES: Ms. Michelle Burton, Assistant Attorney General,  
16 Transportation Section, on behalf of the Arizona  
17 Department of Transportation;  
18 Mr. Patrick Black, Fennemore Craig, on behalf of  
19 the BNSF Railway; and  
20 Mr. Charles Hains, Staff Attorney, on behalf of  
21 the Safety Division of the Arizona Corporation  
22 Commission.

21 **BY THE COMMISSION:**

22 On June 17, 2015, the Arizona Department of Transportation (“ADOT”) filed with the  
23 Arizona Corporation Commission (“Commission”) a request for approval for ADOT to construct a new  
24 grade separated crossing and for the Burlington Northern & Santa Fe Railway Company (“Railway”)  
25 to remove an existing at-grade crossing at US 60 aka Grand Avenue and Bell Road in the City of  
26 Surprise (“City”), Maricopa County, Arizona at USDOT No. 025392A (“Application”).

27 On July 9, 2015, the Commission’s Railroad Safety Section of the Safety Division (“Staff”)  
28 filed a request for a procedural conference to address certain concerns of Staff prior to a hearing being

1 scheduled.

2 On August 11, 2015, a procedural conference was held, with ADOT, the Railway and Staff  
3 represented by counsel. During the procedural conference the parties discussed Staff's concerns and  
4 thereafter requested that a hearing be scheduled to go forward on the Application because ADOT  
5 wished to secure a Commission Decision which will approve the Application before the end of the  
6 year.

7 On August 12, 2015, by Procedural Order, a hearing was scheduled to commence on the  
8 Application on October 7, 2015.

9 On October 7, 2015, a full public hearing was convened before a duly authorized Administrative  
10 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railway and Staff were  
11 present with counsel. At the conclusion of the hearing, the matter was taken under advisement pending  
12 the submission of a Recommended Opinion and Order to the Commission

13 \* \* \* \* \*

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

16 **FINDINGS OF FACT**

17 1. On June 17, 2015, ADOT filed an Application requesting an Opinion and Order from  
18 the Commission approving a Construction and Maintenance Agreement ("CMA") between ADOT and  
19 the Railway for ADOT to construct a new grade separated crossing and for the Railway to remove an  
20 at-grade crossing at US 60 and Bell Road in Surprise, Maricopa County, Arizona, USDOT No.  
21 025392A.<sup>1</sup>

22 2. Subsequent to ADOT's initial Application, Staff met with ADOT and the Railway to  
23 monitor developments on the proposed project.

24 3. ADOT is seeking Commission approval in order to construct a grade separated crossing  
25 on Bell Road that will extend over both US 60 and the tracks of the Railway which runs parallel to US  
26 60.

27 \_\_\_\_\_

28 <sup>1</sup> At the time the Application was filed, a copy of an executed CMA between ADOT and the Railway was not included with the filing.

1           4.     The construction of a grade separated crossing that will extend above the tracks of the  
2 Railway will eliminate vehicle conflicts which arise at the at-grade crossing.

3           5.     The initial Application filed by ADOT described a phased construction project whereby  
4 both the north and south sides of Bell Road would have to be widened, requiring an initial 28 day  
5 closure of Bell Road for modifications to be made to the at-grade crossing, and which would result in  
6 a lengthy construction project spread out over a number of months with repeated closures in order to  
7 construct a grade separated crossing.

8           6.     The timeframe required for the total construction project located in the City has been  
9 estimated at approximately eighteen months with construction planned to begin in January 2016.

10          7.     Subsequent to ADOT's initial Application, ADOT and the Railway reached an  
11 agreement to facilitate the construction and advised Staff that the City wanted the project to go forward  
12 more quickly. The City indicated that it is willing to proceed with the full closure of the Bell Road at-  
13 grade crossing in order to speed up the entire project that will be constructed by ADOT, including the  
14 construction of the bridge structure that is to be constructed over and above the tracks.

15          8.     To further expedite the planned project for the construction of the grade separated  
16 crossing, the City Manager for the City sent a letter to the Director of ADOT and stated that the City  
17 "wishes to proceed with the full closure option for the Bell Road-Grand Avenue intersection project  
18 scheduled to begin construction in early 2016."<sup>2</sup>

19          9.     According to the Staff Report, in order to accelerate the construction of the grade  
20 separated crossing by ADOT, Bell Road will be closed from approximately April 1, 2016 until on or  
21 about September 26, 2016, pursuant to the CMA to be finalized between ADOT and the Railway.  
22 During this period, traffic will be detoured around that project primarily by means of Dysart, Greenway  
23 and Litchfield Roads.

24          10.    Mr. Sayeed Hani, ADOT's Railroad Liason, testified that in place of the original phased  
25 construction planned for the project, ADOT, the Railway, and the City agreed to a six month closure  
26 of the entire at-grade crossing at Bell Road and US 60 in order to speed up the completion of the

27 \_\_\_\_\_  
28 <sup>2</sup> A copy of this letter from the City Manager to the Director of ADOT was attached as an Exhibit to the Staff Report in this proceeding.

1 elevated bridge portion of the project which will be built over the Railway's right of way. (Tr. 6-7:19-  
2 4)

3 11. Mr. Hani stated that the estimated cost of the entire project is \$66.6 million and that the  
4 Railway would be contributing \$741,210 towards the cost of the bridge overpass used for the grade  
5 separation. (Tr.8:1-3)

6 12. Mr. Hani further testified that the United States Department of Transportation has  
7 already issued a new identification number for the new grade separated crossing of US DOT 929154F.  
8 (Tr. 8:2-7)

9 13. Testifying further, Mr. Hani stated that the average daily traffic ("ADT") in 2012 was  
10 44,100 vehicles per day at the Bell Road at-grade crossing and that the current level of service ("LOS")  
11 is D. (Tr. 7:17-20)

12 14. Mr. Hani stated that presently there are an average of 11 trains per day which utilize the  
13 crossing at an average speed of 49 miles per hour and that 19 school buses also use the Bell Road at-  
14 grade crossing on a daily basis. (Tr. 7:5-17)

15 15. Mr. Hani stated further that with a full closure of the Bell Road at-grade crossing, traffic  
16 will be diverted around the closure mainly on Dysart, Greenway and Litchfield Roads in order to avoid  
17 the closure and to relieve traffic congestion on other area roadways. (Tr. 9:2-10)

18 16. Mr. Hani testified that ADOT expects the final CMA for the construction of the project  
19 with the Railway will be signed in the near future. (Tr. 15:3-10)

20 17. Mr. Hani stated that ADOT is in agreement with the recommendation made by Staff in  
21 the proceeding. (Tr. 10:2-6)

22 18. Mr. Hani indicated that ADOT has not received any objections to the proposed project  
23 following public notice that was provided in an area newspaper. (Tr. 14:17-21)

24 19. Mr. Matthew Keim, Manager of Public Projects for the Railway, disclosed that the  
25 Railway and ADOT are very close to concluding the CMA for the construction of the grade separated  
26 crossing and he anticipates that in approximately 30 days the agreement will be concluded. (Tr. 17:16-  
27 20)

28 20. Mr. Kiem voiced a concern whether the at-grade crossing would have to be reopened to

1 public traffic in the event that the grade separated crossing was not completed during the closure period  
2 specified in the CMA, or whether traffic would continue to be detoured until the grade separated  
3 crossing was completed. (Tr. 18:11-21)

4 21. Mr. Keim explained that the at-grade crossing at Bell Road would have the automatic  
5 warning devices removed and would be closed at US 60 to all traffic except construction traffic. The  
6 crossing will be maintained as a private construction crossing and used solely by the contractors  
7 employed on the project with a railway flagman present. At all other times, the crossing will be closed  
8 to public traffic by metal barriers. (Tr. 18-20)

9 22. According to Mr. Kiem, the Railway will have a flagman at the at-grade crossing when  
10 it is closed for as long as ADOT requires it for activities in the Railway's right-of-way. (Tr. 24:10-14)

11 23. Mr. Brian Lehman, the Supervisor of the Railroad Safety Section of the Commission,  
12 testified that he had prepared the Staff Memorandum which describes the nature of the improvements  
13 to be made where Bell Road intersects with the tracks of the Railway and crosses US 60. He further  
14 stated that with the construction of a grade separated crossing, public safety will be improved. (Tr.30:6-  
15 9)

16 24. Mr. Lehman testified that the presence of a flagman is appropriate under the  
17 circumstances which require the removal of the automatic traffic control devices for the construction  
18 of the grade separated crossing. (Tr. 30-31:17-3\_)

19 25. Further testifying, Mr. Lehman stated that construction traffic will be regulated pursuant  
20 to the CMA between ADOT and the Railway with the utilization of a flagman. Based on Staff's  
21 analysis, it supports the Application by ADOT for a grade separated crossing at US 60 and Bell Road  
22 where the Railway's right-of-way crosses Bell Road in the City.

23 26. Mr. Lehman stated that the construction of a grade separated crossing as proposed by  
24 ADOT, and the removal of the at-grade crossing at Bell Road, is consistent with similar grade separated  
25 crossings in Arizona and its construction will improve the public's safety. (Tr. 32:4-14)

26 27. Mr. Lehman testified further that if a private crossing is utilized for construction traffic,  
27 that a flagman will be present whenever the crossing is utilized under the terms of the CMA between  
28 the Railway and ADOT. (Tr. 33:6-12)



1 IT IS FURTHER ORDERED that after the project is completed, the Burlington Northern &  
2 Santa Fe Railway Company will not be required to maintain the crossing in accordance with A.A.C.  
3 R14-5-104 because the grade separated crossing will be maintained by the Arizona Department of  
4 Transportation or its delegate.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSIONION.

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CHAIRMAN \_\_\_\_\_ COMMISSIONER

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director  
of the Arizona Corporation Commission, have hereunto set my  
hand and caused the official seal of the Commission to be affixed  
at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day  
of \_\_\_\_\_ 2015.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
MES:tv(ru)

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BURLINGTON NORTHERN & SANTA FE  
RAILWAY COMPANY

2 DOCKET NO.:

RR-02635B-15-0197

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