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BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

January 31, 2008

Re: Upgrade to Rail Crossing at 35th Avenue and U.S. 60; Docket No. RR-02635B-07-0437

Dear Parties to the Docket:

On November 21, 2007, I filed a proposed amendment in this docket that would have altered the Recommended Opinion and Order by allocating 50% of the costs of the proposed upgrade at this crossing to Burlington Northern and Santa Fe Railway Company ("BNSF"). On December 19, 2007, the Commission voted to send this matter back to hearing to receive more evidence regarding BNSF's alleged movement of its railroad tracks. I supported that action, and I may withdraw my amendment depending on the facts that come to light in future hearings.

I write this letter to request the parties in this matter write legal briefs regarding my proposed amendment. Specifically, I want to hear from any party that may be in a position to challenge the legality of the Commission's decision in this case if my proposed amendment were to pass. It goes without saying that this Commission must act within the confines of its statutory and legal authority, and I want to ensure that I fully understand any and all legal objections to my proposed amendment if any exist.

Sincerely,

A handwritten signature in cursive script that reads "Gary Pierce".

Gary Pierce
Commissioner

cc: Chairman Mike Gleason
Commissioner William Mundell
Commissioner Jeff Hatch-Miller
Commissioner Kristin Mayes
Dean Miller, Interim Executive Director
Dave Raber, Railroad and Safety Division
Christopher Kempley, Chief Counsel
Lyn Farmer, Hearing Division