

OPEN MEETING ITEM



0000003600

ORIGINAL



**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

ARIZONA CORPORATION COMMISSION

RECEIVED  
2004 JUL 13 1 A 10:50  
AZ CORP COMMISSION  
DOCUMENT CONTROL

22

DATE: July 13, 2004  
DOCKET NO: RR-03639A-04-0378  
TO ALL PARTIES:

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

UNION PACIFIC RAILROAD  
(UPGRADE 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:

JULY 22, 2004

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 Working Session and Open Meeting to be held on:

AUGUST 3 AND 4, 2004

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 Secretary's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**  
JUL 13 2004

DOCKETED BY *AKC*

*Brian C. McNeil*  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF  
THE ARIZONA DEPARTMENT OF  
TRANSPORTATION TO UPGRADE A  
CROSSING OF THE UNION PACIFIC  
RAILROAD AT UNIVERSITY DRIVE, IN THE  
CITY OF PHOENIX, MARICOPA COUNTY,  
ARIZONA, AAR/DOT NO. 748-702-P.

DOCKET NO. RR-03639A-04-0378

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

OPINION AND ORDER

DATE OF HEARING: June 24, 2004  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On May 20, 2004, the Arizona Department of Transportation (“ADOT”) submitted to the Arizona Corporation Commission (“Commission”) a request for an Opinion and Order for the approval of an agreement between ADOT and the Union Pacific Railroad Company (“Railroad”) to upgrade the Railroad’s crossing at University Drive in the City of Phoenix, Arizona, at AAR/DOT No. 748-702-P (“Application”).

On June 3, 2004, by Procedural Order, the Application was set for a hearing and ADOT was ordered to notify any interested party of the Application and the hearing.

On June 17, 2004, ADOT certified that notice had been provided pursuant to the terms of the Procedural Order.

On June 24, 2004, a full public hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the matter was taken under advisement pending submission of a recommended Opinion and Order to the Commission.

\* \* \* \* \*

1  
2 Having considered the entire record herein and being fully advised in the premises, the  
3 Commission finds, concludes, and orders that:

4 **FINDINGS OF FACT**

5 1. On May 20, 2004, ADOT filed an Application in which it requested an Opinion and  
6 Order from the Commission approving an agreement between ADOT and the Railroad to upgrade a  
7 crossing by installing automatic warning devices at University Drive, in the City of Phoenix, Arizona,  
8 at AAR/DOT No. 748-702-P.

9 2. On June 17, 2004, ADOT filed certification that it had provided notice by registered  
10 U.S. mail of the Application and hearing thereon.

11 3. A hearing was held as scheduled on June 24, 2004.

12 4. The Application provides for the Railroad to upgrade the crossing with automatic  
13 flashing light signals and automatic gates.

14 5. Staff testified that the cost apportionment for the installation of the crossing upgrade  
15 as provided in the Application was proper.

16 6. Staff has recommended that the Application be approved.

17 **CONCLUSIONS OF LAW**

18 1. The Commission has jurisdiction over the parties and over the subject matter of the  
19 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
20 40-337.01.

21 2. Notice of the Application was provided in accordance with the law.

22 3. Installation of the crossing upgrade is necessary for the public's convenience and  
23 safety.

24 4. The Application should be approved as recommended by Staff.

25 5. After installation of the crossing, the Railroad should maintain the crossing in  
26 accordance with A.A.C. R14-5-104.

27 ...



1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO. RR-03639A-04-0378

3  
4 John Syers  
ADOT-Utility & Railroad  
205 S. 17<sup>th</sup> Avenue  
5 Phoenix, Arizona 85007-3213

6 David Gibson  
ADOT - Traffic Records Section  
7 206 S. 17th Avenue, MD-064R  
Phoenix, AZ 85007

8  
9 Freddy Chung  
UNION PACIFIC RAILROAD COMPANY  
10 19100 Slover Avenue  
Bloomington, CA 92316

11 Christopher Kempley, Chief Counsel  
Legal Division  
12 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
13 Phoenix, Arizona 85007

14 Don Thompson  
Railroad Safety Section  
15 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
16 Phoenix, Arizona 85007

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28