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ARIZONA CORPORATION COMMISSION

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DATE: July 13, 2004
DOCKET NO: RR-03639A-04-0379
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

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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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 I-10 FRONTAGE ROADS AT
M.P. 242, IN PIMA COUNTY, ARIZONA,
AAR/DOT NOS. 741-091-D AND 741-089-C.

DOCKET NO. RR-03639A-04-0379

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 I-10 Frontage Roads in Pima County, Arizona, at AAR/DOT Nos. 741-091-D and 741-089-C (“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.

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

FINDINGS OF FACT

1. On May 20, 2004, ADOT filed an Application in which it requested an Opinion and Order from the Commission approving an agreement between ADOT and the Railroad for the upgrade of crossings to replace existing circuits and existing flashing lights with new LED automatic warning devices at the I-10 Frontage Roads at M.P. 242 near Rillito in Pima County, Arizona at AAR/DOT Nos. 741-091-D and 741-089-C.

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

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

4. The Application provides for the Railroad to install new electronic circuitry and new LED flashing lights at the crossings.

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

6. Staff has recommended that the Application be approved.

CONCLUSIONS OF LAW

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

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

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

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

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

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

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