

OPEN MEETING ITEM

ORIGINAL



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

ARIZONA CORPORATION COMMISSION

DATE: August 12, 2005
DOCKET NO: RR-03639A-05-0444

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 COMPANY
(CLOSE 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:

AUGUST 22, 2005

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 Open Meeting to be held on:

SEPTEMBER 7 AND 8, 2005

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.

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 THE UNION PACIFIC RAILROAD COMPANY
10 FOR THE CLOSURE OF TWO RAILROAD
11 CROSSINGS AT AAR DOT NOS. 741 349T AND
12 741 354P.

DOCKET NO. RR-03639A-05-0444

DECISION NO. _____

13 OPINION AND ORDER

14 DATE OF HEARING: July 27, 2005
15 PLACE OF HEARING: Phoenix, Arizona
16 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
17 APPEARANCES: Mr. Terrance L. Sims, Beaugureau, Zukowski &
18 Hancock, Attorneys for Union Pacific Railroad
19 Company; and
20 Mr. Keith Layton and Ms. Diane Targovnik, Staff
21 Attorneys, Legal Division, on behalf of the Utilities
22 Division of the Arizona Corporation Commission.

23 **BY THE COMMISSION:**

24 On June 17, 2005, the Union Pacific Railroad Company ("Railroad") filed with the Arizona
25 Corporation Commission ("Commission") a request for approval for the closure of two of the
26 Railroad's spur crossings at State Highway 238 (the Maricopa Highway) at AAR DOT No. 741 349T
27 and AAR DOT No. 741 354P near Casa Grande, Arizona ("Application").

28 On July 5, 2005, by Procedural Order, the Application was set for a hearing and the Railroad
was ordered to notify any interested party of the Application and the hearing.

On July 11, 2005, the Railroad provided notice pursuant to the terms of the Procedural Order.

On July 27, 2005, a full public hearing was held before a duly authorized Administrative Law
Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and the Commission's
Railroad Safety Section appeared with counsel. At the conclusion of the hearing, the matter was
taken under advisement pending submission of a Recommended Opinion and Order to the

1 Commission.

2 * * * * *

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

5 **FINDINGS OF FACT**

6 1. On June 17, 2005, the Railroad filed with the Commission a request for approval for
7 the closure of two of the Railroad's spur crossings at State Highway 238 (the Maricopa Highway) at
8 AAR DOT No. 741 349T and AAR DOT No. 741 354P near Casa Grande, Arizona. The Railroad is
9 requesting Commission approval to close these two spur crossings which cross State Highway 238
10 because these crossings have been unused for several years and the switches have been removed.

11 2. The two crossings are approximately eight miles apart.

12 3. On July 11, 2005, the Railroad provided notice by certified U.S. mail of the
13 Application and hearing thereon. There have been no objections filed to the Application.

14 4. A hearing was held as scheduled on July 27, 2005.

15 5. The Application provides for the Railroad to abolish the crossings because, while they
16 are no longer useful or necessary to the public, the automatic warning devices consisting of flashing
17 lights, bells and gate arms remain operational, but are never used because no trains run on the spur
18 tracks any longer. However, because the crossings still exist with automatic warning devices present,
19 motor vehicles carrying passengers for hire, school buses, and vehicles carrying or returning after
20 delivery of explosive substances or flammable liquids are required to make unnecessary stops at
21 those crossings pursuant to A.R.S. § 28-853. The problem is further compounded for such vehicles
22 on State Highway 238 because when these vehicles stop at the signals before proceeding, even
23 though the automatic signal equipment is not activated, the possibility for accidents exists with
24 speeding vehicles which travel too closely behind and would not normally stop at the crossings unless
25 the warning devices were activated by a passing train.

26 6. Staff testified that the cost for the closure of the two crossings as provided in the
27 Application will be paid by the Railroad. The closure includes the removal of the unused warning
28 devices, the removal of unused track and the restoration of the roadway surface at State Highway

1 238.

2 7. Staff has recommended that the Application be approved.

3 **CONCLUSIONS OF LAW**

4 1. The Commission has jurisdiction over the parties and over the subject matter of the
5 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
6 40-337.01.

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

8 3. The closing of the spur crossings at State Highway 238 at AAR DOT No. 741 349T
9 and AAR DOT No. 741 354P is in the public interest.

10 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
11 recommended by Staff.

12 **ORDER**

13 IT IS THEREFORE ORDERED that the Union Pacific Railroad Company's Application is
14 hereby approved.

15 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the
16 removal of the two crossings at State Highway 238, AAR DOT No. 741 349T and AAR DOT No.
17 741 354P, as described in the Application, within fifteen months from the effective date of this
18 Decision.

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1 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the
2 Commission, in writing, within ten days of both the commencement and completion of the removal
3 of the crossings, pursuant to A.A.C. R14-5-104.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN

COMMISSIONER

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11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2005.

17
18 _____
19 BRIAN C. McNEIL
20 EXECUTIVE SECRETARY

21 DISSENT _____

22 DISSENT _____

23 MES:mlj

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD

2 DOCKET NO. RR-03639A-05-0444

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