

OPEN MEETING ITEM



COMMISSIONERS  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE



ARIZONA CORPORATION COMMISSION

22

DATE: JULY 9, 2007  
DOCKET NO: RR-03639A-07-0160

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  
(AT GRADE 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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 18, 2007

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:

JULY 24, 2007 AND JULY 25, 2007

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.

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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

Arizona Corporation Commission  
**DOCKETED**  
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF  
9 MARICOPA COUNTY, ARIZONA TO UPGRADE  
A CROSSING OF THE UNION PACIFIC  
RAILROAD AT COTTON LANE IN MARICOPA  
COUNTY, ARIZONA, AAR/DOT NO. 741-781-E.

DOCKET NO. RR-03639A-07-0160

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

OPINION AND ORDER

10 DATE OF HEARING: April 16, 2007 and June 27, 2007

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mssrs. William Riske and John Paulsen, Maricopa  
14 County Attorney's Office, Civil Division, on behalf of  
Maricopa County; and

15 Mr. Charles Hains, Staff Attorney, Legal Division, on  
16 behalf of the Utilities Division of the Arizona  
Corporation Commission.

17 **BY THE COMMISSION:**

18 On March 20, 2007, the Maricopa County Department of Transportation ("County" or  
19 "MCDOT") filed with the Arizona Corporation Commission ("Commission") an application for  
20 approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at Cotton Lane  
21 in Maricopa County, Arizona at AAR/DOT 741-781-E ("Application").

22 On April 3, 2007, by Procedural Order, a hearing was scheduled on April 26, 2007.

23 On April 26, 2007, a full public hearing was convened before a duly authorized  
24 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's  
25 Railroad Safety Division ("Staff") appeared with counsel. Because the proceeding required  
26 additional preparation, the proceeding was continued.

27 On May 15, 2007, Staff filed a request to reschedule the hearing and indicated that it would  
28 file a report by May 25, 2007.

1 On May 21, 2007, by Procedural Order, the proceeding was rescheduled for hearing on June  
2 27, 2007.

3 On June 27, 2007, the hearing was reconvened before a duly authorized Administrative Law  
4 Judge of the Commission at its offices in Phoenix, Arizona. Staff and County were present with  
5 counsel. The Engineering Director of the City of Goodyear appeared and commented in favor of the  
6 Application. At the conclusion of the hearing, the matter was taken under advisement pending  
7 submission of a Recommended Opinion and Order to the Commission.

8 \* \* \* \* \*

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

11 **FINDINGS OF FACT**

12 1. On March 20, 2007, the County filed an Application in which it requested an Opinion  
13 and Order from the Commission approving an agreement between the County and the Railroad to  
14 upgrade the existing public crossing at Cotton Lane north of County Road 85 ("MC85") in the City of  
15 Goodyear ("City"), at AAR/DOT No. 741-781-E in the following manner: by widening the existing  
16 Cotton Lane roadway from two lanes in each direction to three lanes in each direction with a turning  
17 lane; by constructing raised concrete medians; by replacing the existing warning devices with new  
18 12-inch LED automatic warning devices with automatic double gates; and by installing a new  
19 concrete crossing surface.<sup>1</sup>

20 2. MCDOT provided the City and all interested parties have been provided with notice of  
21 the Application and hearing thereon.

22 3. The hearing was held as scheduled on April 16, 2007 and June 27, 2007.

23 4. The Application provides for the widening of Cotton Lane at its intersection with  
24 MC85 with the Railroad installing new 12-inch LED flashing lights with opposing automatic double  
25 median gates, and a new crossing surface.

26 5. According to the report filed by Staff, the improvements described in this proceeding  
27

28 <sup>1</sup> The existing at-grade crossing was approved in Decision No. 48737 on February 28, 1978.

1 are part of a larger project known as the Cotton Lane Project, which provides for the extension of  
2 Cotton Lane south of MC85 to a new bridge which will be constructed over the Gila River and will  
3 connect with the Estrella Parkway that is located further to the south.

4 6. William Hahn, MCDOT's Project Manager, testified that it is not feasible to construct  
5 a grade separation at the present crossing site due to the close proximity of Cotton Lane and MC85  
6 and because automobile traffic is not congested and train traffic is limited to one to two trains a day.

7 7. Additionally, two additional freeways (SR 303 and SR 801) are being planned for the  
8 area in the future and when they are constructed, they will be constructed with grade-separated  
9 crossings which will further reduce automobile traffic at the Cotton Lane/MC85 intersection.

10 8. Staff's witness, Chris Watson, testified that the cost apportionment for the installation  
11 of the crossing upgrade as provided in the Application is proper and approximately \$470,000 will be  
12 paid by MCDOT, the City, and two private developers.

13 9. Staff has recommended that the Application be approved.

#### 14 CONCLUSIONS OF LAW

15 1. The Commission has jurisdiction over the parties and over the subject matter of the  
16 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
17 40-337.01.

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

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

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

23 5. After installation of the crossing, the Railroad should maintain the crossing in  
24 accordance with A.A.C. R-14-5-104.

#### 25 ORDER

26 IT IS THEREFORE ORDERED that Maricopa County's Application is hereby approved.

27 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the  
28 crossing upgrade as described in the Application within fifteen months from the effective date of this

1 Decision.

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

5 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific  
6 Railroad Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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

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

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, 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 \_\_\_\_\_, 2007.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD

2 DOCKET NO.: RR-03639A-07-0160

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