

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

ORIGINAL



0000078075

ARIZONA CORPORATION COMMISSION

22

DATE: OCTOBER 23, 2007

DOCKET NO: RR-03639A-07-0347

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
(ALTER 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:

NOVEMBER 1, 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:

TO BE DETERMINED

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.

RECEIVED

2007 OCT 23 P 2:38

AZ CORP COMMISSION
DOCKET CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

OCT 23 2007

DOCKETED BY nr

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 UNION PACIFIC RAILROAD TO ALTER A
10 CROSSING OF THE UNION PACIFIC
11 RAILROAD AT CENTRAL AVENUE IN BOWIE,
12 ARIZONA, AAR/DOT NO. 741 403J, BY ADDING
13 A SECOND MAINLINE TRACK.

DOCKET NO. RR-03639A-07-0347

DECISION NO. _____

OPINION AND ORDER

14 DATE OF
15 PROCEDURAL CONFERENCE: August 16, 2007

16 DATE OF HEARING: September 26, 2007

17 PLACE OF HEARING: Phoenix, Arizona

18 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

19 APPEARANCES: Mssrs. Anthony J. Hancock and Terrance L. Sims,
20 Beaugureau, Zukowski, Hancock, Stoll & Schwartz,
21 P.C., on behalf of the Union Pacific Railroad Company;
22 and

23 Mr. Charles Hains and Ms. Kenya Collins, Staff
24 Attorneys, Legal Division, on behalf of the Safety
25 Division of the Arizona Corporation Commission.

26 **BY THE COMMISSION:**

27 On June 4, 2007, the Union Pacific Railroad ("Railroad") filed with the Arizona Corporation
28 Commission ("Commission") an application for approval for the Union Pacific Railroad to construct
a second set of mainline tracks at Central Avenue where it crosses the existing tracks of the Railroad
in an unincorporated area known as Bowie in Cochise County, Arizona at AAR/DOT No. 741 403J
("Application").¹

On June 25, 2007, the Commission issued Decision No. 69653, which found that the Railroad
was in violation of the Commission's rules and regulations by constructing the second set of mainline

¹ Construction on the second set of mainline tracks in Bowie was completed before the Railroad's Application was filed with the Commission.

1 tracks in the town without obtaining prior Commission approval and as a result, a financial penalty
2 was imposed, certain compliance requirements established and other procedural issues addressed.

3 On July 17, 2007, the Railroad Section of the Commission's Safety Division ("Staff") filed a
4 request for a Procedural Conference to discuss possible hearing dates and other relevant matters with
5 respect to the Railroad's Application.

6 On July 25, 2007, the Railroad filed Certification of Compliance with Commission Decision
7 No. 69653.

8 On July 31, 2007, by Procedural Order, a Procedural Conference was scheduled on August
9 16, 2007.

10 On August 16, 2007, Staff and the Railroad appeared with counsel at the Procedural
11 Conference to discuss aspects of the Application including public notice, other related matters and to
12 determine a date for the hearing. The parties agreed to a hearing being held on September 26, 2007.
13 By Procedural Order issued August 16, 2007, the Commission set the hearing for September 26,
14 2007, required that proper public notice be provided, and established filing dates.

15 On September 7, 2007, Staff filed its report recommending approval of the Application.

16 On September 17, 2007, the Railroad filed certification that it had provided public notice
17 pursuant to the terms of the Commission's Procedural Order.

18 On September 26, 2007, the hearing was held before a duly authorized Administrative Law
19 Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and Staff were present
20 with counsel. At the conclusion of the hearing, the matter was taken under advisement pending
21 submission of a Recommended Opinion and Order to the Commission.

22 * * * * *

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

25 **FINDINGS OF FACT**

26 1. On June 4, 2007, the Railroad filed an Application in which it requested an Opinion
27 and Order from the Commission approving retroactively the Railroad's construction of a second set
28 of mainline tracks at the existing public crossing at Central Avenue, a two lane roadway, where it

1 crosses the tracks of the Railroad in Bowie in Cochise County, Arizona at AAR/DOT No. 741 403J.

2 2. The new set of tracks is located 20 feet south of the Railroad's existing set of tracks
3 which cross Central Avenue in Bowie.

4 3. Central Avenue runs from the north side of Bowie to the south side of Bowie. To
5 prevent trains from blocking the crossing, a new wayside signal system that controls train traffic was
6 installed by the Railroad on the east and west sides of Central Avenue. Additionally, the Railroad
7 has replaced the existing warning devices with new 12-inch LED automatic warning devices with
8 automatic gates and has installed a new concrete crossing surface.²

9 4. The Railroad provided Cochise County, the Arizona Department of Transportation,
10 the City of Willcox, the Bowie Unified School District No. 14 and other interested parties with notice
11 of the Application and hearing thereon by certified mail and published the notice four times in the
12 *Arizona Daily Star*, a newspaper of general circulation in the Bowie area and three times in two
13 weekly publications which are circulated in Bowie and Cochise County.

14 5. The hearing was held as scheduled on September 26, 2007.

15 6. The Application provides for the construction of a second set of mainline tracks
16 parallel to the Railroad's existing tracks where they cross Central Avenue in Bowie with the Railroad
17 installing other upgrades which include new 12-inch LED flashing lights with automatic gates, bells
18 and a new crossing surface.

19 7. On June 2, 2007, a letter from Mr. Bruce Brown, the Superintendent of the Bowie
20 Unified School District No. 14, was filed in this docket. While he indicated his support for the
21 "general concept" of the Railroad's adding a second set of mainline tracks through Bowie, he
22 expressed concern over possible problems if the crossing was blocked by train traffic, because that
23 could interfere with school bus traffic which crosses the tracks approximately 12 to 16 times a day.
24 He also expressed concern over the noise made by engines' whistles when trains traverse the
25 Railroad's tracks through Bowie and referenced the construction of a grade separation as a possible
26 solution for that problem.³

27 _____
28 ² The existing at-grade crossing was established in May 1974 and upgraded in 1999.

³ A copy of Mr. Brown's letter was attached to Decision No. 69653.

1 8. Although the Railroad provided Mr. Brown with notice of the Application and the
2 hearing thereon by certified mail, he neither intervened nor appeared at the hearing to make public
3 comment.⁴

4 9. On June 25, 2007, the Commission issued Decision No. 69653, which found that
5 during the week of May 13, 2007, the Railroad had constructed a second set of mainline tracks
6 through the Central Avenue at-grade crossing in Bowie, Arizona without prior Commission approval,
7 in violation of Arizona law. In Decision No. 69653 the Commission's Staff concluded that the
8 Railroad's offense, while serious, was inadvertent.

9 10. As a result of the Railroad's violation of Arizona law, Staff recommended and the
10 Commission ordered the following in Decision No. 69653:

- 11 • that the Railroad file the instant Application;
- 12 • that the Railroad pay a monetary penalty of \$56,000; and
- 13 • that the Railroad provide written updates to Staff on an ongoing basis during the
14 duration of the Railroad's double track project and the status of each related
crossing project in a format agreed upon between Staff and the Railroad.

15 11. The Commission further ordered the Railroad to file, within 30 days of the Decision,
16 certification of compliance with Decision No. 69653, which certification was filed on July 25, 2007.

17 12. The Commission further ordered the Railroad to discuss the issues raised in Mr.
18 Brown's letter with "the Town of Bowie and the Bowie Unified School District No. 14."

19 13. Mr. James Smith, the Railroad's Manager of Industry and Public Projects, testified at
20 the hearing that he had addressed Mr. Brown's traffic concerns at a meeting with him and introduced
21 Mr. Brown to the Railroad's local operations manager and provided him with his phone number. Mr.
22 Smith further explained that warning horns are required by federal regulations and that noise matters
23 would have to be addressed by Cochise County with the Federal Railroad Administration by applying
24 for a quiet zone. However, related expenses would have to be borne by the road authority, Cochise
25 County.

26 _____
27 ⁴ Mr. Brian Lehman, the chief of the Railroad Safety Section, testified at the hearing that he had spoken with Mr. Brown
28 who indicated he may appear at the Commission's Open Meeting on this Application. Additionally, Mr. Brown has been
added to the service list in this proceeding and Staff will contact him concerning the Open Meeting when the Commission
will address this Application and the fact that he can appear telephonically if he wishes.

1 14. Mr. Smith testified that the construction of a grade separation at the crossing site is not
2 warranted because automobile traffic is not congested and train traffic consisted of only 45 freight
3 trains a day, and 2 passenger trains a day.

4 15. Additionally, Mr. Smith described the Railroad's use of state of the art technology
5 which utilizes constant warning time circuitry⁵ and wayside signals which will further reduce
6 blockages and reduce the need for a grade-separated crossing.

7 16. The Staff Report states that the nearest hospital is in Willcox, Arizona approximately
8 23 miles to the west. If an accident occurs and the injuries are severe, or if someone is seriously ill,
9 the person is airlifted to a Tucson hospital.

10 17. The Bowie Power Station ("BPS"), which is to be built approximately 1.5 miles
11 northwest of the Central Avenue rail crossing, will not require rail delivery of coal as was recently
12 planned. The current plans now call for the BPS to revert back to the original plans to utilize natural
13 gas to produce electricity at the facility. The traffic impact study performed in January 2007,
14 therefore, is no longer accurate and once construction is completed, traffic will decrease again due to
15 the utilization of natural gas at the facility.

16 18. Based on an engineering firm report provided to Staff by the Railroad, traffic data
17 indicates current Average Daily Traffic ("ADT") at the Central Avenue crossing is 734 vehicles per
18 day and projected to be 977 vehicles per day in 2016. The most recent Level of Service ("LOS") at
19 the crossing, based on the standards of the American Association of State Highway and
20 Transportation Officials ("AASHTO"), is "LOS A," or least congested, with only 47 trains currently
21 using the crossing a day. However, the LOS will decrease somewhat in 2016 when it is projected
22 that 60 trains a day will utilize the crossing and result in a "LOS C."

23 19. Staff's witness, Chris Watson, testified that the cost for the installation of the upgrades
24 to the crossing as provided in the application is \$278,374 and has been borne entirely by the railroad.

25 20. Staff has recommended that the Application be approved after taking into
26 consideration the current LOS A and believes that the improvements are in the public's interest and

27 _____
28 ⁵ This safety feature helps alleviate motorists' wait because gate arms are not lowered until approximately 20 to 30
seconds before a train's approach to a crossing.

1 are reasonable. Based on Staff's review of the Exposure Index (the product of daily road traffic and
2 the daily number of trains) Staff believes that a grade-separated crossing at Central Avenue is not
3 warranted for the following reasons:

- 4 • current and projected roadway and rail traffic are not significant enough;
- 5 • Cochise County has no funds to pay for a grade-separated crossing;
- 6 • accident history (0 accidents) does not support a grade-separated crossing; and
- 7 • the Railroad's use of state of the art technology at the crossing provides sufficient
8 safety protection for the crossing's users.

8 21. We shall adopt Staff's recommendations and approve the Railroad's application for
9 the construction of a second set of mainline tracks for the Central Avenue crossing in Bowie.

10 **CONCLUSIONS OF LAW**

11 1. The Commission has jurisdiction over the parties and over the subject matter of the
12 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
13 40-337.01.

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

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

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

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

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

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

ORDER

IT IS THEREFORE ORDERED that Union Pacific Railroad's Application is hereby approved.

IT IS FURTHER ORDERED the Union Pacific Railroad Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim 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.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD
2 DOCKET NO.: RR-03639A-07-0347
3
4 James H. Smith
UNION PACIFIC RAILROAD COMPANY
5 10031 Foothills Boulevard
Roseville, California 95747
6
7 Anthony J. Hancock
Terrance L. Sims
8 BEAUGUREAU, ZUKOWSKI, HANCOCK, STOLL & SCHWARTZ, P.C.
302 East Coronado Road
Phoenix, Arizona 85004
9
10 Bruce E. Brown, Superintendent
BOWIE UNIFIED SCHOOL DISTRICT #14
11 P.O. Box 157
Bowie, Arizona 85605
12
13 John Syers
Railroad Engineering Coordinator
ARIZONA DEPARTMENT OF TRANSPORTATION
14 205 South 17th Avenue, M/D 618E
Phoenix, Arizona 85007
15
16 Traffic Records Section
ARIZONA DEPARTMENT OF TRANSPORTATION
17 206 South 17th Avenue, M/D 064R
Phoenix, Arizona 85007
18
19 COCHISE COUNTY HIGHWAY & FLOODPLAIN DEPARTMENT
1415 Melody Lane, Bldg. F
Bisbee, Arizona 85603
20
21 Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
Phoenix, Arizona 85007
23
24 Brian Lehman, Chief
Railroad Safety Section
ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
Phoenix, Arizona 85007
26
27
28