

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: JANUARY 24, 2008

DOCKET NO: RR-03639A-07-0422

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 CROSSINGS)

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:

FEBRUARY 4, 2008

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:

FEBRUARY 12, 2008 and FEBRUARY 13, 2008

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.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

Arizona Corporation Commission  
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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 THE UNION PACIFIC RAILROAD COMPANY  
10 TO ALTER FOUR CROSSINGS OF THE UNION  
11 PACIFIC RAILROAD IN COCHISE COUNTY,  
12 ARIZONA.

DOCKET NO. RR-03639A-07-0422

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

13 OPINION AND ORDER

14 DATE OF PROCEDURAL CONFERENCE: August 16, 2007

15 DATE OF HEARING: November 20, 2007

16 PLACE OF HEARING: Phoenix, Arizona

17 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

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

22 Ms. Kenya Collins, Staff Attorney, Legal Division  
23 on behalf of the Safety Division of the Arizona  
24 Corporation Commission.

25 **BY THE COMMISSION:**

26 On July 12, 2007, the Union Pacific Railroad Company ("Railroad") filed with the Arizona  
27 Corporation Commission ("Commission") an Application for approval for the Railroad to alter four  
28 crossings of the Railroad in Cochise County, Arizona by adding a second set of mainline tracks.  
29 Three of these crossings are in the City of Willcox ("City"), in Cochise County ("County"), Arizona  
30 as follows: Maley Street, AAR/DOT No. 741 397H; Stewart Street, AAR/DOT No. 741 398P; and  
31 Patte Road, AAR/DOT No. 741 399W. The fourth is in Cochise County at Country Club Drive,  
32 AAR/DOT No. 741 500N ("Application").

33 On July 17, 2007, the Commission's Safety Division's Railroad Safety Section ("Staff") filed  
34 a Motion for a procedural conference to be scheduled after the end of July.

1 On August 7, 2007, by Procedural Order, a Procedural Conference was scheduled on August  
2 16, 2007.

3 On August 16, 2007, Staff and the Railroad appeared with counsel at the Procedural  
4 Conference to discuss aspects of the Application including public notice, other procedural matters  
5 and to determine a date for the hearing. The parties agreed to a hearing being held on November 20,  
6 2007.

7 On August 21, 2007, by Procedural Order, a hearing was scheduled on the Railroad's  
8 Application on November 20, 2007, public notice ordered, and other filing dates established.

9 On October 26, 2007, Staff filed its report which recommends approval of the Application.

10 On November 14, 2007, the Railroad filed certification that it had provided public notice  
11 pursuant to the terms of the Commission's Procedural Order by publishing twice in the *Arizona Daily*  
12 *Star* and *Tucson Citizen*, daily newspapers of general circulation in the City and in the County and  
13 four times in the *Arizona Range News*, a weekly publication of general circulation in the City and  
14 County.

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

19 \* \* \* \* \*

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

22 **FINDINGS OF FACT**

23 1. On July 12, 2007, the Railroad filed an Application in which it requested that the  
24 Commission issue an Opinion and Order which approves the alteration of four crossings of the  
25 Railroad in the City of Willcox in Cochise County, Arizona by adding a second set of mainline tracks  
26 at each of the crossings.<sup>1</sup>

27 <sup>1</sup> According to the Staff Report, on March 14, 2007, prior to the filing of the Application, the Railroad, Staff and City  
28 officials participated in a diagnostic review of the proposed improvements at Maley Street, Stewart Street, Patte Road and  
Country Club Drive, which is in the County; however, County officials chose not to participate in the review.

1           2.       Three of the crossings are located within the City as follows: Maley Street, AAR/DOT  
2 No.741 397H; Stewart Street, AAR/DOT No. 741 398P; and Patte Road, AAR/DOT No. 741 399W.  
3 The fourth crossing is in the County and is located at Country Club Drive, AAR/DOT No. 741 500N.

4           3.       On July 23, 2007, the City filed a copy of a City Resolution which approves and  
5 supports the Railroad's Application to the Commission for the alteration of the three crossings which  
6 are located within the City's limits.

7           4.       Pursuant to the Commission's Procedural Order, the Railroad provided public  
8 notification of its Application herein by publishing notice twice in newspapers of general circulation,  
9 *The Arizona Daily Star* and *Tucson Citizen*, and four times in *The Arizona Range News*, a weekly  
10 publication of general circulation in the City and County where the alterations are to take place.  
11 Additionally, the Railroad mailed notice of the Application and hearing thereon to the City's  
12 Manager, the Acting Director of the Cochise County Highway and Flood Plain Department and to the  
13 Manager of the Utilities and Railroad Engineering Section of the Arizona Department of  
14 Transportation ("ADOT").

15           5.       The hearing was held as scheduled on November 20, 2007.

16           6.       The Railroad's tracks run parallel to Interstate 10 in southeastern Arizona  
17 approximately one mile southeast of the interstate highway.

18           7.       The downtown area and the majority of the population of the City are located between  
19 the Interstate 10 and the Railroad's tracks with a smaller portion of the City and its population located  
20 southeast of the tracks.

21           8.       Currently, all four of the crossings are equipped with flashing lights, bells and gates.

22 **MALEY STREET**

23           9.       The Application provides for the construction of a second set of mainline tracks  
24 parallel to and south of the Railroad's existing tracks where they cross Maley Street, which is the  
25 westernmost of the four crossings described in the Application and the most highly traveled in terms  
26 of vehicular traffic. Plans call for the Railroad to re-profile a portion of the two-lane asphalt roadway  
27 where it meets the tracks and for the replacement of existing automatic warning equipment with an  
28 upgrade to new 12-inch LED flashing lights, gates and bells as well as for the construction of a new

1 concrete crossing surface. A concrete median will be installed to the north and south of the tracks to  
2 accommodate additional gates and to preclude motorists from driving around them. According to  
3 Mr. James Smith, the Railroad's Manager of Industry and Public Projects, at the Maley Street  
4 crossing, the Railroad will also install cantilevers. He also testified that the Railroad will utilize  
5 constant warning time circuitry<sup>2</sup> at all double-track crossings which are constructed in Arizona. (Tr.  
6 at p. 48)

7 10. Based on an engineering report which was provided to Staff by the Railroad, current  
8 traffic data indicates Average Daily Traffic ("ADT") at the Maley Street crossing is 4,737 vehicles  
9 per day and projected to be 4,834 vehicles per day in 2016. The current Level of Service ("LOS") at  
10 the crossing based on the standards of the American Association of State Highway and  
11 Transportation Officials ("AASHTO") is LOS A, or least congested.

12 11. According to the Staff Report, based on the records of Staff and the Federal Railroad  
13 Administration ("FRA"), there have been only three accidents at Maley Street, with one resulting in a  
14 fatality in 1984.

15 12. The estimated cost of the proposed upgrade to the Maley Street crossing is \$387,797  
16 which will be borne entirely by the Railroad.

### 17 STEWART STREET

18 13. The Stewart Street crossing is located one block east of the Maley Street crossing and,  
19 with the addition of the second set of mainline tracks, the proposed upgrade will involve re-profiling  
20 a portion of the two-lane asphalt roadway where it meets the tracks and will have its existing  
21 automatic warning devices replaced and upgraded with new 12-inch LED flashing lights, gates and  
22 bells along with the construction of a new concrete surface.

23 14. Staff's Railroad Crossing Inspector, Mr. Chris Watson, testified that the current ADT  
24 at the Stewart Street crossing is 601 vehicles per day and it is projected to be 778 vehicles per day in  
25 2016 according to data from a consulting firm report. (Tr. at p. 25)

26 15. The current LOS at the Stewart Street crossing is LOS A.

27 \_\_\_\_\_  
28 <sup>2</sup> This safety feature helps alleviate a motorist's wait at a crossing because gate arms are not lowered until approximately  
20 to 30 seconds before a train's approach to a crossing.

1           16.     According to the Staff Report, Commission records and the records of the FRA, there  
2 have been two accidents at Stewart Street, one resulting in a fatality in 1998.

3           17.     The estimated cost of the upgrade to the Stewart Street crossing is \$222,016 which  
4 will be borne solely by the Railroad.

5 **PATTE ROAD**

6           18.     The Patte Road crossing is located approximately 1.2 miles east of the Stewart Street  
7 crossing and, with the addition of the second set of mainline tracks, the proposed upgrade will  
8 involve re-profiling a portion of the two-lane asphalt roadway where it meets the tracks and will have  
9 its existing automatic warning devices replaced and upgraded with new 12-inch LED flashing lights,  
10 gates and bells along with the construction of a new concrete crossing surface.

11          19.     Based on an engineering firm report provided to Staff by the Railroad, current traffic  
12 data indicates ADT of 101 vehicles per day and projected to be 131 vehicles per day in 2016. The  
13 current LOS at the crossing based on the AASHTO standards is LOS A.

14          20.     Both the Commission's Staff and FRA accident records indicate that there have been  
15 no accidents, injuries or fatalities at the Patte Road crossing.

16          21.     The estimated cost of the proposed upgrade at Patte Road is \$222,443 which will be  
17 borne solely by the Railroad.

18 **COUNTRY CLUB DRIVE**

19          22.     The Country Club Drive crossing is located 2.8 miles to the east of the Patte Road  
20 crossing and the proposed crossing upgrade will involve construction of a second set of mainline  
21 tracks to the north of the existing crossing.

22          23.     The two-lane asphalt roadway will be re-profiled where it intersects with the  
23 Railroad's tracks and the existing automatic warning devices will be replaced and upgraded with new  
24 12-inch LED flashing lights, gates and bells along with the construction of a new concrete crossing  
25 surface.

26          24.     Based on an engineering firm report provided to Staff by the Railroad, current traffic  
27 data indicates ADT is 300 vehicles per day and projected to be 389 vehicles per day in 2016. The  
28 current LOS at the crossing based on the AASHTO standards is LOS A.

1           25.     According to the Commission's Staff and FRA accident records, there have been no  
2 accidents, injuries or fatalities at the Country Club Drive crossing.

3           26.     The estimated cost of the proposed upgrade at Country Club Drive totals \$230,487  
4 which will be borne solely by the Railroad.

5           27.     According to the Staff Report, data from the Railroad establishes that there are an  
6 average of 48 trains per day which travel through the aforementioned crossings and this number  
7 should increase to approximately an average of 84 trains per day in 2016.

8           28.     Of the four crossings, only two are used for school bus routes, Maley Street with 12  
9 trips per day and Country Club Drive with four trips per day.

10          29.     According to the Staff Report, during the diagnostic review held by Staff with the  
11 Railroad and City, there were some discussions regarding the construction of a grade-separated  
12 crossing approximately 1.5 miles east of the existing Stewart Street crossing. The existing Stewart  
13 Street at-grade crossing would be closed after construction would be completed, but no timeframe  
14 was indicated nor was a source of funding for the cost of a grade-separated crossing identified, which  
15 is projected may cost from \$20 million to \$40 million.

16          30.     Staff further indicated that after discussions with the Safford District Engineer for  
17 ADOT, there are no plans for any grade-separated crossings in the City, and one would not be  
18 considered for at least 20 years.

19          31.     Based on the record, the improvements and upgrades to be made to the four crossings  
20 discussed herein should not adversely impact the ability of area residents to reach their community's  
21 hospital, which lies to the north of the Railroad's tracks which is also where the majority of the  
22 population resides in the City.

23          32.     Mr. Brian Lehman, the Commission's Supervisor of Railroad Safety, testified that he  
24 had attended a Commission Town Hall meeting on October 23, 2007, which was attended by  
25 approximately 50 to 60 people. At the meeting, a discussion of grade separation, noise from train  
26 whistles and blocked crossings took place. Mr. Lehman testified that business owners are concerned  
27 that if a grade separation is constructed in the vicinity of Maley Street that it would detour customers  
28 away from the businesses and would be detrimental to the area. (Tr. at p. 44)



1 recommended by Staff.

2 5. After installation of the crossings, the Railroad should maintain the crossings in  
3 accordance with A.A.C. R-14-5-104.

4 **ORDER**

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

7 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the  
8 Commission, in writing, within ten days of both the commencement and the completion of the  
9 crossing upgrade.

10 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall maintain the  
11 crossings at Maley Street, Stewart Street, Patte Road and Country Club Drive in compliance with  
12 A.A.C. R14-5-104.

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

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

15  
16 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

17  
18 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

19 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim  
20 Executive Director of the Arizona Corporation Commission,  
21 have hereunto set my hand and caused the official seal of the  
22 Commission to be affixed at the Capitol, in the City of Phoenix,  
23 this \_\_\_\_ day of \_\_\_\_\_, 2008.

24 DEAN S. MILLER  
25 INTERIM EXECUTIVE DIRECTOR

26 DISSENT \_\_\_\_\_

27 DISSENT \_\_\_\_\_

28 MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-07-0422

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