

ORIGINAL
OPEN MEETING ITEM



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



EXECUTIVE SECRETARY

22

ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 26, 2008

DOCKET NO: RR-03639A-07-0494

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:

THE 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:

MARCH 6, 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:

MARCH 11, 2008 AND MARCH 12, 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

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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 THREE CROSSINGS OF THE
11 UNION PACIFIC RAILROAD IN ARIZONA AT
12 83RD AVENUE, RIO BRAVO ROAD, AND
13 RALSTON ROAD.

DOCKET NO. RR-03639A-07-0494

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: December 20, 2007
15 PLACE OF HEARING: Phoenix, Arizona
16 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
17 APPEARANCES: Msrs. Anthony J. Hancock and Terrance L. Sims,
18 Beaugureau, Zukowski, Hancock, Stoll & Schwartz,
19 P.C. on behalf of the Union Pacific Railroad Company;
20 and
21 Mr. Charles H. Haines, Staff Attorney, Legal Division,
22 on behalf of the Safety Division of the Arizona
23 Corporation Commission.

24 **BY THE COMMISSION:**

25 On August 24, 2007, the Union Pacific Railroad Company ("Railroad") filed with the Arizona
26 Corporation Commission ("Commission") an application for approval for the Railroad to alter three
27 crossings of the Railroad in Maricopa County and Pinal County, Arizona by adding a second set of
28 mainline tracks ("Application"). The first of these crossings is in the City of Goodyear ("Goodyear")
in Maricopa County, at 83rd Avenue, AAR/DOT No. 741 340G; and the other two are in the City of
Maricopa ("Maricopa") in Pinal County, at Rio Bravo Road, AAR/DOT No. 741 341N, and at
Ralston Road, AAR/DOT No. 741 342V.

On September 17, 2007, by Procedural Order, a hearing was scheduled for December 20,
2007, public notice ordered, and other filing dates establishes.

On November 20, 2007, Staff filed its report, which recommends approval of the Application.

1 Additionally, the Railroad filed certification that it had provided public notice of the Application and
2 hearing thereon pursuant to the terms of the Commission’s Procedural Order. The Railroad published
3 notice in the *Arizona Republic*, a newspaper of general circulation in the area of Goodyear and
4 Maricopa in Maricopa and Pinal Counties, respectively. The Railroad mailed, by certified U.S. mail,
5 copies of the Railroad’s Application and the Commission’s Procedural Order to the City of
6 Goodyear, the Public Works Director of the City of Maricopa, the Public Works Director of Pinal
7 County and to the Arizona Department of Transportation’s (“ADOT”) Manager of Utilities and
8 Railroad Engineering Section.

9 On December 6, 2007, Goodyear filed a letter in support of the Railroad’s Application for its
10 project at 83rd Avenue.

11 On December 20, 2007, a full public hearing was held before a duly authorized
12 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and
13 Staff were present with counsel. At the conclusion of the hearing, the matter was taken under
14 advisement pending submission of a Recommended Opinion and Order to the Commission.

15 On December 27, 2007, the Pinal County Board of Supervisors filed a letter in this proceeding
16 in support of the Railroad’s Application to modify its public crossings at Rio Bravo and Ralston
17 Roads.

18 * * * * *

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

21 **FINDINGS OF FACT**

22 1. On August 24, 2007, the Railroad filed an application in which it requested that the
23 Commission issue an Opinion and Order which approves the alteration of three crossings of the
24 Railroad by adding a second set of mainline tracks at each of the crossings. ¹

25
26 ¹ According to the Staff Report, on February 21, 2007, prior to the filing of the Application, the Railroad, Staff and
27 representatives of Maricopa and Pinal Counties participated in a diagnostic review of the proposed improvements at 83rd
28 Avenue, Rio Bravo and Ralston Roads. Because it was later determined that the City of Goodyear had annexed the
portion of land where 83rd Avenue and the Railroad intersect, a second diagnostic meeting was later held with the City of
Goodyear to discuss the proposed modifications to the Railroad’s tracks.

1 2. The first crossing is located in Goodyear in Maricopa County at 83rd Avenue at
2 AAR/DOT No. 741 340G. The other two crossings are located in Maricopa in Pinal County, at Rio
3 Bravo Road, AAR/DOT No. 741 341N and at Ralston Road, AAR/DOT No. 741 342V.

4 3. Pursuant to the Commission's Procedural Order, the Railroad provided public
5 notification of its Application and the date of hearing by publishing notice in the *Arizona Republic*, a
6 newspaper of general circulation, in the areas where the crossings are located. Additionally, the
7 Railroad mailed notice of the Application and hearing thereon to the City of Goodyear, the Public
8 Works Director of the City of Maricopa, to the Manager of the Utilities and Railroad Engineering
9 Section of ADOT and to the Public Works Director of Pinal County.

10 4. The hearing was held as scheduled on December 20, 2007.

11 5. The road authority for the 83rd Avenue crossing is Goodyear and while Rio Bravo and
12 Ralston Roads are located in Maricopa, the road authority for those two crossings is Pinal County.

13 6. The Commission has received letters from Goodyear and the Pinal County Board of
14 Supervisors which indicate their support for the proposed double-track project where they are the
15 road authorities for their respective crossings.

16 7. This portion of the project covers an area of the Railroad's tracks running from Pinal
17 County in the east and entering Maricopa County in the vicinity of Goodyear, which is located to the
18 northwest of Maricopa. Currently, all three of the crossings are equipped with flashing lights, bells
19 and gates.

20 83RD AVENUE

21 8. The Application provides for the construction of a second set of mainline tracks
22 parallel to and south of the Railroad's existing tracks where they cross 83rd Avenue which is the
23 westernmost of the three crossings. Plans call for the Railroad to re-profile a portion of the two-lane
24 asphalt roadway where it meets the tracks and for the replacement of the existing automatic warning
25 equipment with new upgraded 12-inch LED flashing lights, gates and bells along with the
26 construction of a new concrete crossing surface. According to Mr. James Smith, the Railroad's
27 Manager of Industry and Public Projects, at the 83rd Avenue crossing as well the Rio Bravo Road and
28

1 Ralston Road crossings, the Railroad will utilize constant warning time circuitry² at the three double-
2 track projects described herein. (TR. at p. 67)

3 9. Based on an engineering report provided by the Maricopa County Department of
4 Transportation ("MCDOT") to the Railroad, current traffic data indicates average daily traffic
5 ("ADT") at the 83rd Avenue crossing is 200 vehicles per day, but MCDOT did not provide any
6 projections for future vehicular traffic. The current Level of Service ("LOS") at the 83rd Avenue
7 crossing based on the standards of the American Association of State Highway and Transportation
8 Officials ("AASHTO") is LOS A, or least congested.

9 10. According to the Staff Report, based on the records of Staff and the Federal Railroad
10 Administration ("FRA"), there have been two accidents at 83rd Avenue, with no fatalities or injuries.

11 11. Staff's Railroad Crossing Inspector, Mr. Chris Watson, testified that he does not
12 believe a grade separation is necessary at the 83rd Avenue crossing presently as there is little or no
13 development in the area. (Tr. at p. 15)

14 12. The estimated cost of the proposed upgrade to the 83rd Avenue crossing is \$239,317
15 which will be borne entirely by the Railroad.

16 RIO BRAVO ROAD

17 13. The Application provides for the construction of a second set of mainline tracks
18 parallel to and south of the Railroad's existing tracks where they cross Rio Bravo Road in the City of
19 Maricopa approximately five miles to the east of the 83rd Avenue crossing. The Railroad will re-
20 profile a portion of the two-lane asphalt roadway where it meets the tracks and will replace its
21 existing automatic warning devices with new upgraded 12-inch LED flashing lights, gates and bells
22 along with the construction of a new concrete crossing surface.

23 14. Mr. Watson testified that the current ADT at the Rio Bravo Road crossing is 400
24 vehicles per day and it is projected to be 24,071 vehicles per day in 2030 based on data provided by
25 Pinal County. (Tr. at p. 24)

26 15. The current LOS at the Rio Bravo Road crossing is LOS A.

27
28 ² 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 and FRA records, there have been four
2 accidents at the Rio Bravo Road crossing, two resulting in fatalities, one of which involved a
3 pedestrian in 1984 and the second in 1997. (Tr. at p. 24)

4 17. Based on the record, Staff does not believe that the Rio Bravo Road crossing will
5 require a grade separation to be constructed within the next ten to fifteen years. (Tr. at p. 26)

6 18. The estimated cost of the upgrade to the Rio Bravo Road crossing is \$257,125 which
7 will be borne solely by the Railroad.

8 **RALSTON ROAD**

9 19. The Ralston Road crossing is located approximately 2.04 miles to the east of the Rio
10 Bravo Road crossing. The Railroad's Application provides for the construction of a second set of
11 mainline tracks to the south of the Railroad's existing tracks where they cross Ralston Road in the
12 City of Maricopa. The Railroad will re-profile a portion of the two-lane asphalt roadway where it
13 meets the tracks and will replace its existing automatic warning devices with new upgraded 12-inch
14 LED flashing lights, gates and bells along with the construction of a new concrete crossing surface.

15 20. Based on a 2005 Pinal County traffic count provided to Staff, ADT of 523 vehicles per
16 day used the Ralston Road crossing and vehicular traffic is projected to be 49,324 vehicles per day in
17 2025.

18 21. The current LOS at the Ralston Road crossing based on the AASHTO standards is
19 LOS A.

20 22. Commission and FRA accident records indicate that there have been two accidents at
21 the Ralston Road crossing with one resulting in a fatality in 1976.

22 23. With respect to Ralston Road, Mr. Watson indicated that Staff does not see a need for
23 a grade separation currently. (Tr. at p. 38)

24 24. The estimated cost of the proposed upgrade at Ralston Road is \$257,330 which will be
25 borne solely by the Railroad.

26 25. According to the Staff Report, data from the Railroad establishes that there is an
27 average of 48 trains per day traveling through the aforementioned crossings and this number should
28

1 increase to approximately an average of 84 trains per day in 2016.

2 26. Of the three crossings, only two are used for school bus routes, 83rd Avenue with four
3 trips per day and Rio Bravo Road with six trips per day.

4 27. There is no evidence that the improvements and upgrades to be made to the three
5 crossings discussed herein will adversely impact the ability of area residents to reach their
6 community's hospitals.

7 28. To further support its Application, the Railroad called as a witness, Mr. Dean Carlson,
8 a civil engineer who was employed by the Federal Highway Administration ("FHA") for 36 years
9 concluding his service as its Executive Director for his last five years with the agency.³

10 29. At the hearing, Mr. Carlson described his experience in creating legislation used to
11 provide Federal funding for all types of highway improvements, including railroad crossings and
12 railroad grade separations.

13 30. Mr. Carlson testified that he had reviewed the Railroad's Application with respect to
14 the three crossings described herein and stated that with the alterations, the upgrades planned for the
15 three crossings would provide adequate safety for the public. (Tr. at p. 49)

16 31. Mr. Carlson related that there are multiple factors to consider with respect to the
17 establishment of grade-separated crossings, but with respect to the 83rd Avenue, Rio Bravo Road and
18 Ralston Road crossings he does not believe that grade separation should be considered in these
19 instances because the planned upgrades are adequate for safety and grade separation would place an
20 excessive burden on the Railroad. (Tr. at p. 54)

21 32. Mr. Carlson stated future traffic projections are not always reliable, and there are "no
22 real standards for whether or not you provide grade separations." (Tr. at p. 55)

23 33. Mr. Carlson testified that grade separations involve a three-step process as follows:
24 physical capability to construct a grade separation; consideration of the exposure index; and then
25 consideration of cost/benefits. (Tr. at p. 57)

26

27 ³ After he retired from the FHA, in 1994, Mr. Carlson was appointed by the Governor of Kansas to be Kansas' Secretary
28 of Transportation for a period of eight years. He also was a member of the Board of Directors of the AASHTO and
served as its president. In 2001, Mr. Carlson was elected to be a member of the National Academy of Engineering.

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IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall maintain the crossings at 83rd Avenue, Rio Bravo and Ralston Roads in compliance with 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 _____, 2008.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

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