

ORIGINAL



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MIKE GLEASON - Chairman
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KRISTIN K. MAYES
GARY PIERCE

ARIZONA CORPORATION COMMISSION

22

DATE: APRIL 10, 2008

DOCKET NO: RR-03639A-07-0606

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:

APRIL 21, 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:

MAY 6, 2008 AND MAY 7, 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 TWO CROSSINGS OF THE UNION
PACIFIC RAILROAD IN PINAL COUNTY,
ARIZONA AT PARK LINK DRIVE AND
MISSILE BASE ROAD.

DOCKET NO. RR-03639A-07-0606

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: March 13, 2008
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
14 APPEARANCES: Mssrs. Ronald M. DeBrigida, Jr. and Terrance L. Sims,
15 Beaugureau, Zukowski, Hancock, Stoll & Schwartz,
16 P.C. on behalf of the Union Pacific Railroad Company;
and
17 Mr. Charles Hains, Staff Attorney, Legal Division, on
18 behalf of the Safety Division of the Arizona Corporation
Commission.

19 **BY THE COMMISSION:**

20 On October 19, 2007, the Union Pacific Railroad Company ("Railroad") filed with the
21 Arizona Corporation Commission ("Commission") an application for approval for the Railroad to
22 alter two crossings of the Railroad in Pinal County ("County"), Arizona by adding a second set of
23 mainline tracks. These crossings are located at Park Link Drive, AAR/DOT No. 741-714-K and
24 Missile Base Road, AAR/DOT No. 741 761Y ("Application").

25 On October 24, 2007, the Railroad Safety Section of the Commission's Safety Division
26 ("Staff") and the Railroad participated in a teleconference to discuss aspects of the Application
27 including public notice, other procedural matters and to determine a date for the hearing.

28 On December 13, 2007, by Procedural Order, a hearing was scheduled for March 13, 2008,

1 public notice ordered, and other filing dates established.

2 On January 15, 2008, Mr. David Snider, Chairman of the Pinal County Board of Supervisors,
3 filed a letter in the docket which fully supports the Railroad's project to construct a second set of
4 mainline railroad tracks through Pinal County.

5 On January 18, 2008, the Railroad filed certification that it had provided public notice of the
6 Application and hearing thereon pursuant to the terms of the Commission's Procedural Order. The
7 Railroad published notice in the *Casa Grande Dispatch*, a newspaper of general circulation in Pinal
8 County and in the *Eloy Enterprise*, a weekly publication of general circulation in Pinal County and in
9 the City of Eloy. The Railroad mailed, by certified U.S. mail, copies of the Railroad's Application
10 and the Commission's Procedural Order to the Pinal County Engineer and to the Manager of the
11 Utilities and Railroad Engineering Section of the Arizona Department of Transportation ("ADOT").

12 On March 6, 2008, Staff filed its Report, which recommends approval of the Application.

13 On March 13, 2008, a full public hearing was held before a duly authorized Administrative
14 Law Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and Staff were
15 present with counsel. At the conclusion of the hearing, the matter was taken under advisement
16 pending submission of a Recommended Opinion and Order to the Commission.

17 * * * * *

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

20 **FINDINGS OF FACT**

21 1. On October 19, 2007, the Railroad filed an Application in which it requested the
22 Commission issue an Opinion and Order which approves the alteration of two crossings of the
23 Railroad in Pinal County by adding a second set of mainline tracks at each of the crossings.¹

24 2. The first crossing is located at Park Link Drive which begins at the Interstate 10
25 frontage road on the east side of the Interstate north of Red Rock, Arizona, at AAR/DOT No. 741-
26 714-K. The second crossing is located at Missile Base Road which begins at the Interstate 10 frontage
27

28 ¹ According to the Staff Report, on February 28, 2007, prior to the filing of the Application, the Railroad, Staff and
representatives of Pinal County participated in a diagnostic review of the proposed improvements at Park Link Drive and
Missile Base Road

1 road on the east side of the Interstate approximately eight miles north of the Tangerine Road exit at
2 AAR/DOT No. 741-716-Y.

3 3. Pursuant to the Commission's Procedural Order, the Railroad provided public
4 notification of its Application and the date of hearing by publishing notice in the *Casa Grande*
5 *Dispatch*, a newspaper of general circulation, in Pinal County where the crossings are located and
6 also in the *Eloy Enterprise*, a weekly publication of general circulation in Pinal County and in the
7 City of Eloy which is in the vicinity of where the crossings are located. Additionally, the Railroad
8 mailed notice of the Application and hearing thereon to the Pinal County Engineer and to the
9 Manager of the Utilities and Railroad Engineering Section of ADOT.

10 4. The hearing was held as scheduled on March 13, 2008.

11 5. The road authority for both the Park Link Drive and Missile Base Road crossings is
12 Pinal County.

13 6. The Commission received a letter from the Pinal County Board of Supervisors which
14 indicates their support for the proposed double-track project where they are the road authority for the
15 respective crossings.

16 7. This portion of the project covers an area of the Railroad's tracks which enter south
17 central Pinal County from northern Pima County progressing to Missile Base Road and proceeding in
18 a northwesterly direction to Park Link Drive as they approach the vicinity of Eloy.

19 **PARK LINK DRIVE**

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

28

1 Road crossing, the Railroad will utilize constant warning time circuitry² at the two double-track
2 projects described herein. (Tr. at p. 33)

3 9. Based on 2005 traffic data provided by the Pinal County Engineer's office to the
4 Railroad, the most recent average daily traffic ("ADT") at the Park Link Drive crossing is 315
5 vehicles per day, and the ADT for 2025 is estimated to be 45,232 vehicles per day. The current Level
6 of Service ("LOS") at the Park Link Drive crossing based on the standards of the American
7 Association of State Highway and Transportation Officials ("AASHTO") is LOS A, or least
8 congested.

9 10. According to the Staff Report, based on the records of Staff and the Federal Railroad
10 Administration ("FRA"), there have been four accidents at Park Link Drive, one in 1979, one in
11 1983, one in 1985 and one in 2003. The 1983 and 2003 accidents resulted in fatalities.

12 11. Staff's crossing inspector, Mr. Chris Watson, testified that he does not believe a grade
13 separation is necessary at the Park Link Road crossing presently as there is little or no development in
14 the area. (Tr. at p. 16)

15 12. The estimated cost of the proposed upgrade to the Park Link Road crossing is
16 \$247,037 which will be borne entirely by the Railroad.

17 MISSILE BASE ROAD

18 13. The Application provides for the construction of a second set of mainline tracks
19 parallel to and north of the Railroad's existing tracks where they cross Missile Base Road in Pinal
20 County approximately six miles to the east of the Park Link Road crossing. The Railroad will re-
21 profile a portion of the two-lane asphalt roadway where it meets the tracks and will replace its
22 existing automatic warning devices with new upgraded 12-inch LED flashing lights, gates and bells
23 along with the construction of a new concrete crossing surface.

24 14. Mr. Watson testified that the current ADT at the Missile Base Road crossing is 1,716
25 vehicles per day and it is projected to be 27,056 vehicles per day in 2025 based on data provided
26 from a study performed in 2006 by Pinal County. (Tr. at p. 12)

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 15. The current LOS at the Missile Base Road crossing is LOS A.

2 16. According to the Staff Report, Commission and FRA records indicate that there has
3 been only one accident at the Missile Base Road crossing in February, 2005, and no injuries or
4 fatalities were involved. (Tr. at p. 22)

5 17. Based on the record, Staff does not believe that the Missile Base Road crossing will
6 require a grade separation at any time in the foreseeable future. (Tr. at p. 14)

7 18. The estimated cost of the proposed upgrade to the Missile Base Road crossing is
8 \$247,037 which will be borne entirely by the Railroad.

9 19. According to the Staff Report, data from the Railroad establishes that an average of 48
10 trains per day travel through the crossings presently and this number should increase to an average of
11 approximately 84 trains per day in the future.

12 20. There are six schools in the vicinity of the two crossings varying in grade levels from
13 elementary to high school with the Park Link Drive crossing crossed 4 times per day by buses and the
14 Missile Base Road crossing crossed approximately 16 times per day by buses.

15 21. There is no evidence that the improvements and upgrades to be made to the two
16 crossings discussed herein will adversely impact the ability of area residents to reach their
17 community's hospitals and the Staff Report indicates that neither of these crossings are used
18 extensively by emergency medical services.

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

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

25 24. Mr. Carlson testified that he had reviewed the Railroad's Application with respect to
26 the two crossing described herein and stated that with the alterations, the upgrades planned for the
27

28 ³ After he retired from the FHA, in 1994, Mr. Carlson was appointed by the Governor of Kansas to be Kansas' Secretary 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.

1 two crossings would provide adequate safety for the public. (Tr. at p. 43)

2 25. Mr. Carlson related that there are multiple factors to consider with respect to the
3 establishment of grade-separated crossings, but with respect to the Park Link Drive and Missile Base
4 Road crossings he does not believe that grade separation should be considered in these instances
5 because the planned upgrades are adequate for safety and grade separation is not justified. (Tr. at p.
6 49)

7 26. Mr. Carlson did not find the traffic projections to be entirely accurate because based
8 on the two-lane roadways at both crossings, "those roads would be basically a parking lot based on
9 what is out there on the roadway right now." (Tr. at p. 48)

10 27. Mr. Carlson testified that grade separations involve a three-step process as follows:
11 physical capability to construct a grade separation; consideration of the exposure index; and then
12 consideration of cost/benefits. (Tr. at p. 50)

13 28. In further support of the Railroad's Application, Mr. Smith testified that the Railroad
14 has been working with both Pinal County and various city officials in the area to address any
15 concerns which might arise with respect to the Railroad's double-track project. (Tr. at p. 34)

16 29. Staff is recommending that the application be approved. In reaching its
17 recommendation, Staff considered the ADT, the LOS and the addition of upgraded safety equipment
18 which Staff finds are reasonable and in the public interest. Additionally, Pinal County, the road
19 authority, supports the Railroad's request for Commission approval to alter its crossings.

20 30. Staff's recommendations are reasonable and appropriate and the Railroad's
21 Application to alter the two crossings by adding a second set of mainline tracts at Park Link Drive
22 and Missile Base Road should be approved.

23 CONCLUSIONS OF LAW

24 1. The Commission has jurisdiction over the parties and over the subject matter of the
25 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
26 40-337.01.

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

28 3. Installation of the crossing upgrades is necessary for the public's convenience and

1 safety.

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

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

6 **ORDER**

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

9 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the
10 Commission, in writing, within 10 days of both the commencement and the completion of the
11 crossing upgrades.

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IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall maintain the crossings at Park Link Drive and Missile Base Road 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, 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 _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-07-0606

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