

OPEN MEETING ITEM ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2008 APR 22 P 3:43
AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
UNION PACIFIC RAILROAD COMPANY TO
ALTER FOUR CROSSINGS OF THE UNION
PACIFIC RAILROAD IN COCHISE COUNTY.

DOCKET NO. RR-03639A-07-0422

STAFF'S NOTICE OF FILING

On March 14, 2008, Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") and Union Pacific Railroad Company ("Railroad") filed a Joint Motion to Amend Decision No. 70161 ("Motion"). Staff hereby provides notice of filing the attached proposed order adopting Staff's recommendations stated in the Motion that was filed on March 14 for the Commission's consideration. This is only a Staff recommendation to the Commission; it has not yet become an order of the Commission. The Commission can decide to accept, amend or reject Staff's proposed order. This matter is scheduled for Commission deliberation at its Securities Open Meeting scheduled April 24, 2008.

RESPECTFULLY SUBMITTED this 22nd day of April, 2008.

Charles H. Hains
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(602) 542-3402

Original and thirteen (13) copies
of the foregoing were filed this
22nd day of April, 2008 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

APR 22 2008

DOCKETED BY

1 Copy of the foregoing mailed
this 22nd day of April, 2008 to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF THE
APPLICATION OF UNION PACIFIC
RAILROAD COMPANY TO ALTER
FOUR CROSSINGS OF THE UNION
PACIFIC RAILROAD IN COCHISE
COUNTY.

DOCKET NO. RR-03639A-07-0422
ORDER AMENDING DECISION NO. 70161
DECISION NO. _____

ORDER

Open Meeting
April 24, 2008
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On February 27, 2008, the Arizona Corporation Commission ("Commission") issued Decision No. 70161 in Docket No. RR-03639A-07-0422. Decision No. 70161 granted Union Pacific Railroad Company's ("Railroad") application to alter four crossings in Cochise County; Maley Street, Stewart Street, and Patte Road in the Town of Wilcox, and Country Club Drive in Cochise County.

2. Finding of Fact ¶ 9 at page 4, lines 1-2 of the decision states that with regard to the Maley Street crossing, AAR/DOT No. 741 397H, "A concrete median will be installed to the north and south of the tracks to accommodate additional gates and to preclude motorists from driving around them." The statement reflected information provided in the Commission Railroad Safety Section Staff's ("Staff") Staff Report at page 2 filed on October 26, 2007. The Staff Report stated, ...

1 "A median will be installed in both directions at the crossing to accommodate additional gates and
2 to help prevent motorists from driving around the lowered gates."

3 3. At the evidentiary hearing held on November 20, 2007, Staff witness Chris Watson
4 explained on the record that:

5 Q. I noted that with regard to the Maley Street upgrades that are proposed that
6 there is an indication in the Staff report that a median will be installed in both
7 directions at the crossing to accommodate additional gates and to help prevent
8 motorists from driving around the lowered gates. Since preparing the report
9 have you been provided information concerning the purpose for which the
10 medians are being proposed?

11 A. Prior to the hearing I was informed that there will [not be] median gates on
12 that median at the Maley Street crossing. There will be a median there, but it
13 will be there to help prevent circumvention of gates being put in there and the
14 cantilevers.

15 Q. So the primary purpose, as you understand it, for the installation of the median
16 at Maley Street is to prevent motorists from driving around the lowered gates?

17 A. Correct.

18 (Transcript of hearing before Judge Stern on November 20, 2007, p. 8, lines 7-24,

19 4. At the Open Meeting held on April 24, 2008, Staff and the Railroad clarified that
20 the gate posts will be mounted along the curbsides at the crossing. The parties explained that
21 because the individual gate arms are long enough to cover one lane of traffic, for a two lane road,
22 there are only the gates positioned along the curbsides.

23 5. The parties further explained that there will be an upraised concrete median to
24 prevent motorists from circumventing the gates. The lowered gate will extend from the respective
25 outside curb to within 12 inches of the upraised median. The Railroad explains that the crossing
26 configuration, thus clarified, will prevent motorists from circumventing the crossing gates.

27 6. On March 14, 2008, the Railroad and Staff filed a Joint Motion to Amend Decision
28 No. 70161. Therein, the parties requested that the Commission approve an amendment to the
language in Decision No. 70161 that would make the order consistent with the testimony provided
at the evidentiary hearing. To date, the Railroad has not constructed the medians at the Maley
Street crossing pending Commission clarification of the approval granted in Decision No. 70161.

CONCLUSIONS OF LAW

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1. The Commission has jurisdiction over Union Pacific Railroad Company and the subject matter contained herein pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-252, 40-336, 40-337 and 40-337.01.

2. Notice of the proceeding has been given in the manner prescribed by law.

3. Staff's and Union Pacific Railroad Company's motion in Finding of Fact No. 6 is reasonable and should be granted.

4. The Commission, having reviewed the Joint Motion to Amend Decision No. 70161 dated March 14, 2008, finds that amending Decision No. 70161 to clarify the placement of gates with respect to the median is in the public interest.

ORDER

IT IS THEREFORE ORDERED that Decision No. 70161 is hereby amended to state at Finding of Fact ¶ 9, p.4, lines 1-2, "A concrete median will be installed to the north and south of the tracks to preclude motorists from driving around the gates" in place of "A concrete median will be installed to the north and south of the tracks to accommodate gates and to preclude motorists from driving around them."

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IT IS FURTHER ORDERED that Decision No. 70161 shall remain in effect in all other respects.

IT IS FURTHER ORDERED that this decision shall be effective immediately.

BY THE 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 this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2008.

BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

1 SERVICE LIST FOR: Union Pacific Railroad Company
2 DOCKET NO. RR-03639A-07-0422

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