

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



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Interim Executive Director

ARIZONA CORPORATION COMMISSION

2009 MAR 12 P 1:28

ORIGINAL

DATE: MARCH 12, 2009
DOCKET NO.: RR-03639A-08-0505
TO ALL PARTIES:

AZ CORP COMMISSION
DOCKET CONTROL

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
(UPGRADE 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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 23, 2009

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 Open Meeting to be held on:

APRIL 14, 2009

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 Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

MAR 18 2009

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DOCKETED BY

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE ALLIANCE
LUMBER, L.L.C.'S CROSSING AT
RITTENHOUSE ROAD AND SERVED BY THE
UNION PACIFIC RAILROAD IN QUEEN CREEK,
ARIZONA, AAR/DOT NO. 781-840-E.

DOCKET NO. RR-03639A-08-0505

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: December 18, 2008
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
14 APPEARANCES: Ms. Nancy Scott, Staff Attorney, Legal Division, on
15 behalf of the Safety Division of the Arizona Corporation
Commission.

16 **BY THE COMMISSION:**

17 On September 29, 2008, the Arizona Department of Transportation ("ADOT") filed with the
18 Arizona Corporation Commission ("Commission") for the approval of an agreement between ADOT
19 and Alliance Lumber, L.L.C. ("Company") to upgrade an existing public at-grade crossing of the
20 Company's privately-owned industrial tracks near where the tracks cross Rittenhouse Road and
21 intersect with the tracks of the Union Pacific Railroad ("Railroad") in the Town of Queen Creek,
22 Arizona at AAR/DOT No. 781-840-3 ("Application").

23 On October 17, 2008, by Procedural Order, the proceeding was scheduled for hearing on
24 December 18, 2008.

25 On December 18, 2008, a full public hearing was convened before a duly authorized
26 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's
27 Safety Division Railroad Safety Section ("Staff") was present with counsel. At the conclusion of the
28 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and

1 Order to the Commission.

2 * * * * *

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

5 **FINDINGS OF FACT**

6 1. On September 29, 2008, ADOT filed an Application in which it requested an Opinion
7 and Order from the Commission approving an agreement between ADOT and the Company to
8 upgrade the existing public crossing at Rittenhouse Road located in the Town of Queen Creek
9 (“Town”), Arizona at AAR/DOT No. 741-840-E. The upgrade will be made by removing the
10 existing crossbucks at the crossing and replacing them with new 12-inch LED flashing lights, bells
11 and automatic gates. A new concrete crossing surface will also be installed to replace the existing
12 asphalt crossing surface.

13 2. On October 23, 2008, ADOT filed certification that it provided public notice of the
14 Application and hearing thereon pursuant to the Commission’s Procedural Order.

15 3. The hearing was held as scheduled on December 18, 2008.

16 4. The Application provides for the Company to cause the installation of the upgrade to
17 the Company’s industrial spur-tracks which the Company owns and has maintained to serve its
18 lumberyard. The Town is the controlling road authority for the crossing where the Company’s tracks
19 cross Rittenhouse Road.

20 5. The Company is contracting with Mountain States Contracting, Inc. to perform the
21 actual construction work at the crossing and it is estimated that the upgrade will cost approximately
22 \$231,000. The Company’s upgrade of the crossing at Rittenhouse Road qualifies for Federal
23 Highway Administration (“FHWA”) funding pursuant to 23 U.S.C. § 130. ADOT will reimburse the
24 Company for the costs of the crossing upgrade with FHWA finds since the crossing is located in a
25 public roadway and is primarily for the benefit of the motoring public and not for the benefit of the
26 Railroad.¹

27 ¹ This crossing was included in the array described in Commission Decision No. 68686 (May 5, 2006), which
28 approved certain Arizona railroad/highway crossings which qualify for FHWA funding to improve public safety at the crossings.

1 6. The new automatic warning devices which are to be installed at Rittenhouse Road will
2 conform to the Commission's rules and with the Manual on Uniform Traffic Control Devices
3 ("MUTCD") standards.

4 7. After the automatic warning devices are installed at the crossing, the Railroad will
5 maintain them pursuant to the terms of a maintenance agreement between the Company and the
6 Railroad.

7 8. According to Mr. Chris Watson, the Commission's Grade Crossing Inspector, the area
8 of Rittenhouse Road where the crossing is located is on the outskirts of the Town in a rural area
9 where the posted speed limit is 45 miles per hour on what is a two-lane highway which runs in a
10 north-south direction. (Tr. at p. 6 and 7)

11 9. The Average Daily Traffic ("ADT") at the crossing was provided to Mr. Watson by
12 ADOT which indicates that in 2008 there were 27,151 vehicles which utilized the crossing on a daily
13 basis.

14 10. Mr. Watson testified that data from the Railroad indicates that train speed at the Riggs
15 Road crossing is ten miles per hour and that the crossing is only utilized from four to six times per
16 week for train traffic. (Tr. at p. 10)

17 11. ADOT did not provide any data with respect to the Level of Service ("LOS") at the
18 crossing.

19 12. Mr. Watson further testified that there are two alternative routes to the Rittenhouse
20 Road crossing, Riggs Road approximately one-half mile to the east and Ocotillo Road, approximately
21 two and one-half miles to the west, both of which are at-grade crossings. (Tr. at p. 10)

22 13. Mr. Watson indicated that according to both federal and Staff records, no incidents or
23 accidents have been reported at the Rittenhouse Road crossing.

24 14. Mr. Watson does not believe that the Rittenhouse Road crossing should be considered
25 for grade separation because the crossing is utilized only to serve the Company and has a low number
26 of weekly crossings by Railroad traffic. (Tr. at p. 11)

27 15. Mr. Watson testified that the installation of the crossing upgrade as described in the
28 Application is proper and in the public interest and Staff is recommending approval of the

1 Application.

2 CONCLUSIONS OF LAW

3 1. The Commission has jurisdiction over the parties and over the subject matter of the
4 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
5 40-337.01.

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

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

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

11 5. After the installation of the crossing upgrade, pursuant to the Company's agreement
12 with the Railroad, the Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

13 ORDER

14 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application
15 is hereby approved.

16 IT IS FURTHER ORDERED that Alliance Lumber, L.L.C. shall complete the crossing
17 upgrade as described in the Application within fifteen months from the effective date of this
18 Decision.

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IT IS FURTHER ORDERED that the Alliance Lumber, L.L.C. shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade, pursuant to 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, MICHAEL P. KEARNS, 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 _____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD

2 DOCKET NO.: RR-03639A-08-0505

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