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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

SEP 28 2010

DOCKETED BY
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IN THE MATTER OF THE APPLICATION OF
THE TOWN OF GILBERT TO UPGRADE A
CROSSING OF THE UNION PACIFIC
RAILROAD AT HIGLEY ROAD IN THE TOWN
OF GILBERT, MARICOPA COUNTY, ARIZONA,
USDOT NO. 741-830-Y.

DOCKET NO. RR-03639A-10-0208

DECISION NO. 71904

OPINION AND ORDER

DATE OF HEARING: August 10, 2010
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. William P. Sullivan, CURTIS, GOODWIN,
SULLIVAN, UDALL & SCHWAB, PLC, on behalf of
the Town of Gilbert;
Mr. Reed Campbell, BEAUGUREAU, ZUKOWSKI &
HANCOCK, P.C., on behalf of the Union Pacific
Railroad Company; and
Mr. Charles Hains, Staff Attorney, Legal Division, on
behalf of the Safety Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

On May 20, 2010, the Town of Gilbert ("Town") filed with the Arizona Corporation
Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad")
to upgrade an existing crossing at Higley Road in the Town of Gilbert, Maricopa County, Arizona at
USDOT NO. 741-830-Y ("Application").

On June 1, 2010, by Procedural Order, the proceeding was scheduled for a hearing on August
10, 2010.

On August 10, 2010, a full public hearing was convened before a duly authorized
Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Town, the
Railroad and the Commission's Safety Division Railroad Safety Section ("Staff") were present with

1 counsel. At the conclusion of the hearing, the matter was taken under advisement pending
2 submission of a Recommended Opinion and Order to the Commission.

3 * * * * *

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

6 **FINDINGS OF FACT**

7 1. On May 20, 2010, the Town filed an Application in which it requested an Opinion and
8 Order from the Commission approving an agreement between the Town and the Railroad to upgrade
9 the existing public crossing at Higley Road located in Gilbert at USDOT NO. 741-830-Y.¹

10 2. The Town is seeking Commission approval to improve the crossing in the following
11 manner: by widening the existing crossing from two lanes to six lanes with three lanes of traffic
12 northbound and three lanes of traffic southbound; by constructing a 16-foot wide raised median; by
13 replacing the existing warning devices with incandescent flashing lights with new warning devices
14 that have 12-inch LED flashing lights; by installing new cantilevers that have 12-inch LED flashing
15 lights; by installing new median and curb-side automatic gates and bells; and by installing constant
16 warning time circuitry. Additionally, a new concrete crossing surface will be constructed where the
17 roadway intersects with the tracks along with replacing any impacted pavement markings in order to
18 conform with the widening of the roadway.

19 3. The Railroad's tracks which intersect Higley Road run from the southeast to the
20 northwest and are used by six trains a day.

21 4. On July 15, 2010, the Town filed certification that it had provided public notice of the
22 Application and hearing thereon pursuant to the Commission's Procedural Order by publishing notice
23 in the *Arizona Business Gazette* and by mailing, by certified U.S. mail, notice to surrounding adjacent
24 property owners.

25 5. The hearing was held as scheduled on August 10, 2010.

26 6. According to the Staff Report, Higley Road is a main north to south arterial roadway

27 ¹ Planning for the proposed upgrade to the Higley Road crossing began on August 27, 2007, when Staff, the Railroad,
28 the Town's engineering consultants, Aztec Engineering ("Aztec"), and the Town's representatives participated in a
diagnostic review.

1 which runs through the Town. The general area surrounding the Higley Road intersection with the
2 Railroad tracks is a mixture of residential, commercial, and industrial properties.

3 7. Mr. Robert Lyons, a civil engineer with Aztec, testified in support of the Application
4 for the Town.

5 8. According to Mr. Lyons, the widening of Higley Road at the Railroad's tracks will tie
6 into previous improvements of the roadway which are located to the north and to the south of the
7 tracks and link other major arterial roadway sections. (Tr. 8:1-6; Tr. 26:3)

8 9. Mr. Lyons testified that when the Town constructs the improvements where Higley
9 Road crosses the tracks, the Town will, in conjunction with the construction of the raised median,
10 install new gates, new cantilevers with flashers, new sidewalks, curbs and gutters. (Tr. 11: 2-7)

11 10. Mr. Lyons indicated that he had performed calculations as set forth in the *Federal*
12 *Highway Administration Railroad-Highway Grade Crossing Handbook (2nd Edition)* with respect to
13 whether a grade-separated crossing should be constructed and determined that grade-separation is not
14 warranted now or in the year 2030 according to the nine categories set forth within the Federal
15 Highway Administration ("FHWA") handbook. (Tr. 13: 8-12)

16 11. Mr. Lyons stated that the Town is in agreement with the recommendations made by
17 Staff in its report in this matter. (Tr. 15:7)

18 12. According to Mr. Lyons, the proposed improvements to be made at the Higley Road
19 crossing are consistent with similar crossings in Arizona. (Tr. 28:14)

20 13. Based on the Application and Mr. Lyons' testimony, the Town is paying for the total
21 cost of the Higley Road improvements, which are estimated at approximately \$1.25 million with
22 \$139,000 representing the cost of roadway improvements and approximately \$1.1 million
23 representing the cost of safety upgrades at the crossing. (Tr. 12:1-10) (Ex. A-1)

24 14. Mr. Lyons estimated that if the Town chose to install a grade-separated crossing, it
25 would cost approximately \$26.8 million and involve a number of complications due to access
26 problems and the requirement to relocate various utility lines which have previously been installed in
27 the area of the crossing including both above ground power lines and underground utilities. (Tr.
28 13:19; Tr. 14:1-21)

1 40-337.01.

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

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

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

7 5. After the installation of the crossing upgrades to Higley Road, the Railroad should
8 maintain the crossing in accordance with A.A.C. R14-5-104.

9 **ORDER**

10 IT IS THEREFORE ORDERED that the Town of Gilbert's Application as described herein,
11 is hereby approved.

12 IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing
13 upgrade as described in the Application within fifteen months of the effective date of this Decision.

14 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in
15 writing, within ten days of both the commencement and the completion of the crossing upgrade,
16 pursuant to A.A.C. R14-5-104.

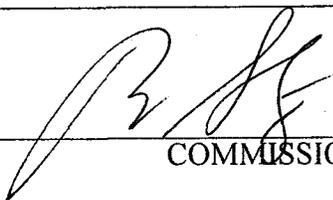
17 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
18 Railroad shall maintain the crossing in compliance with A.A.C. R14-5-104.

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1 IT IS FURTHER ORDERED that the Union Pacific Railroad shall file, every five years from
2 the effective date of this Decision, with the Commission's Docket Control, as a compliance item in
3 this docket, an update on the average daily traffic count at the crossing described in the Application.
4 The updated average daily traffic count shall be obtained from the Road Authority or a contractor
5 hired by the Railroad.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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9			
10	CHAIRMAN		COMMISSIONER
11			EXCUSED
12	COMMISSIONER	COMMISSIONER	COMM. KENNEDY COMMISSIONER

14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this 28th day of Sept., 2010.

18 
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21 DISSENT _____

23 DISSENT _____
24 MES:db

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2 DOCKET NO.: RR-03639A-10-0208

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