

OPEN MEETING ITEM



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GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
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ARIZONA CORPORATION COMMISSION

2011 MAR -1 P 2:40

DATE: MARCH 1, 2011

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO.: RR-03639A-10-0355

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
(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 10, 2011

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:

MARCH 16, 2011

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 1 2011

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE APPLICATION
OF THE CITY OF PHOENIX TO UPGRADE
A CROSSING OF THE UNION PACIFIC
RAILROAD AT LOWER BUCKEYE ROAD
IN THE CITY OF PHOENIX, MARICOPA
COUNTY, ARIZONA, USDOT NO. 741-443-G.

DOCKET NO. RR-03639A-10-0355

DECISION NO. _____

OPINION AND ORDER

DATES OF HEARING: November 30, 2010 and January 10, 2011
PLACE OF HEARINGS: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Daniel L. Brown, Assistant Chief Counsel of the Office of the City Attorney on behalf of the City of Phoenix; and
Mr. Charles Hains and Ms. Robin Mitchell, Staff Attorneys, Legal Division, on behalf of the Safety Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On August 26, 2010, the City of Phoenix ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at Lower Buckeye Road in the City of Phoenix ("City"), Maricopa County, Arizona at USDOT No. 741-443-G ("Application").

On September 7, 2010, by Procedural Order, the following was ordered: a hearing was scheduled on November 30, 2010; the City was ordered to provide public notice by October 8, 2010, and to file certification of same; and the Commission's Railroad Safety Section ("Staff") was ordered to file a Staff Report by October 26, 2010.

On October 25, 2010, and November 15, 2010, the Staff Report and a Revised Staff Report, respectively, were filed.

There was no evidence that the City provided public notice as ordered.

1 On November 30, 2010, a full public hearing was convened before a duly authorized
 2 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Staff appeared with
 3 counsel at the hearing. Although a representative of the City's Street Transportation Department was
 4 present, the City was not represented by counsel. The proceeding was continued and rescheduled to
 5 insure that public notice was provided prior to the hearing and so that the City would be represented
 6 by an attorney at the hearing.

7 On December 1, 2010, by Procedural Order, the proceeding was rescheduled for hearing and
 8 the City was ordered to provide public notice.

9 On January 10, 2011, the hearing was reconvened with the City and Staff present with
 10 counsel. At the conclusion of the hearing, the matter was taken under advisement pending
 11 submission of a Recommended Opinion and Order to the Commission.

12 * * * * *

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

15 **FINDINGS OF FACT**

16 1. On August 26, 2010, the City filed an Application in which it requested an Opinion
 17 and Order from the Commission to approve an agreement between the City and the Railroad to
 18 upgrade an existing crossing at Lower Buckeye Road located in Phoenix at USDOT No. 741-443-G.

19 2. On May 18, 2009, Staff, the Railroad, TY International ("TYI"), consultants retained
 20 by the City, and representatives of the City participated in a diagnostic review of the proposed
 21 improvements at the Lower Buckeye Road at-grade crossing. All parties present were in agreement
 22 regarding the proposed improvements of the crossing.

23 3. Lower Buckeye Road is an east-to-west main arterial roadway which runs through the
 24 City and crosses a spur track of the Railroad which runs in a southeast to northwest direction and
 25 connects with the Railroad's main track by means of a track switch. The rail spur serves both
 26 commercial and industrial customers in the area of 37th Avenue south of the Lower Buckeye Road
 27 crossing. The crossing is located between 35th Avenue which is east of the crossing and 39th Avenue
 28 which is west of the crossing.

1 4. The City is seeking Commission approval for the upgrade of the crossing due to a road
2 widening project planned for Lower Buckeye Road. The roadway will be widened from two to five
3 lanes, two eastbound lanes and two westbound lanes and a continuous left-turn lane including curbs
4 and gutters. The proposed upgrades at the crossing will replace the existing incandescent flashing
5 lights, gates, bells and detection circuitry with new warning devices which will include the following:
6 12-inch LED flashing lights; median and curb-side automatic gates; bells; and constant warning time
7 circuitry. Additionally, a new concrete crossing surface will be added and any impacted pavement
8 markings will be replaced.

9 5. On December 22, 2010, the City filed certification that it had provided public notice of
10 the Application and hearing thereon pursuant to the Commission's Procedural Order by publishing
11 notice in the *Record Reporter* and by mailing copies of the notice by certified U.S. mail, to the
12 Railroad, Maricopa County, the Arizona Department of Transportation ("ADOT"), and adjacent
13 property owners and tenants.

14 6. The hearing was held as scheduled on November 30, 2010 and January 11, 2011.

15 7. Mr. David Peterson, a civil engineer with the City, and Mr. Kerry Wilcoxon, also a
16 civil engineer with the City, testified in support of the Application.

17 8. Mr. Peterson testified that the City will hire a private contractor for the widening of
18 Lower Buckeye Road, but the actual improvements of the at-grade crossing at 37th Avenue and
19 Lower Buckeye Road will be performed by the Railroad and paid for by the City at an estimated cost
20 of \$417,787. (Tr. 9: 5-8)

21 9. According to Mr. Peterson, he was unaware of any accidents involving trains at the
22 location of the crossing. (Tr. 9: 21-23)

23 10. Mr. Peterson further testified that the posted speed limit along Lower Buckeye Road
24 in the area of the crossing is 45 miles per hour. (Tr. 10: 1-2)

25 11. Following public notice, Mr. Peterson stated that the City has not received any
26 objections or adverse reactions to the proposed upgrade. (Tr. 10: 7)

27 12. Mr. Peterson testified that the upgrade of the Lower Buckeye Road at-grade crossing
28 at 37th Avenue is part of a larger widening project of Lower Buckeye Road. The upgrade of the

1 crossing at 37th Avenue is part of a mile-long improvement segment which runs from 43rd Avenue to
2 35th Avenue. (Tr. 11: 2-3)

3 13. Presently, construction has not begun on the one-mile segment which includes the
4 crossing. The City is in the final design stage and is in the process of hiring a contractor to widen the
5 roadway segment which runs between 35th and 43rd Avenues. (Tr. 11: 8-10)

6 14. The overall widening project will cost the City approximately \$5 million according to
7 Mr. Peterson. (Tr. 11: 18)

8 15. Mr. Peterson stated that the City has a maintenance agreement in place with the
9 Railroad and under its terms the Railroad maintains the area of the tracks in the roadway and the City
10 maintains up to an area within two feet of the tracks. (Tr. 12: 5-9)

11 16. Mr. Peterson testified further that the City does not believe that it is cost feasible for
12 the construction of a grade separated crossing at the rail spur which crosses Lower Buckeye Road at
13 37th Avenue. (Tr. 13: 1-5)

14 17. Mr. Peterson further testified that it would also be impractical for the construction of a
15 grade separated crossing because of the nature of the adjacent commercial properties and the types of
16 business conducted there. (Tr. 14: 1-4)

17 18. Mr. Peterson believes that the improvements being made at the Lower Buckeye Road
18 at-grade crossing will both increase and improve the safety of the crossing. (Tr. 14: 16-19)

19 19. Additionally, Mr. Peterson indicated only a minimal number of trains per day utilize
20 this rail spur to serve the commercial and industrial businesses in the area.

21 20. Mr. Wilcoxon, who is in charge of the Safety and Neighborhood Traffic Section for
22 the City, testified that there had only been four accidents in the last ten years in the vicinity of
23 the crossing and none in the last six. None of these accidents involved trains, only automobiles.
24 (Tr. 21: 4-13)

25 21. Mr. Chris Watson, an Assistant Supervisor and Grade Crossing Inspector for the
26 Commission, testified that he had prepared the Staff Memorandum which describes the nature of the
27 City's proposed improvements at the Lower Buckeye Road at-grade crossing. (Tr. 23: 21-25)

28 22. Mr. Watson clarified that only one train per day utilizes the Lower Buckeye Road

1 at-grade crossing at 37th Avenue and this train travels only 10 miles per hour. (Tr. 25: 14-17)

2 23. Mr. Watson further testified that the improvements proposed by the City will improve
3 public safety and recommended approval of the Application. (Tr. 25: 18-23)

4 24. Mr. Watson testified that Staff does not believe that grade separation is necessary at
5 the crossing, according to the Federal Highway Administration ("FHWA") guidelines. (Tr. 28: 18-21)

6 25. Staff believes that with the proposed improvements being made at the Lower Buckeye
7 at-grade crossing at 37th Avenue, public safety will be improved. (Tr. 29: 6-8)

8 26. According to the Staff Memorandum, there are no school buses which utilize the
9 crossing and there is no data available with respect to the crossing's usage by emergency vehicles.

10 27. Staff concluded in its memorandum that the proposed upgrades at the crossing are in
11 the public interest and are consistent with other similar at-grade crossings in Arizona and
12 recommends approval of the City's Application.

13 CONCLUSIONS OF LAW

14 1. The Commission has jurisdiction over the parties and over the subject matter of the
15 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
16 40-337.01.

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

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

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

22 5. After the installation of the improvements at the Lower Buckeye Road at-grade
23 crossing, the Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

24 ORDER

25 IT IS THEREFORE ORDERED that the City of Phoenix's Application as describe herein, is
26 hereby approved.

27 IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing
28 upgrade as described in the Application with 15 months of the effective date of this Decision.

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IT IS FURTHER ORDERED that the Union Pacific Railroad 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 upon completion of the crossing upgrade, the Union Pacific Railroad shall maintain the crossing 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, ERNEST G. JOHNSON, 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 _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

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2 DOCKET NO.: RR-03639A-10-0355

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