

OPEN MEETING ITEM



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COMMISSIONERS
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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
DOCKETED

JUN 23 2011

DATE: JUNE 23, 2011
DOCKET NO.: RR-03639A-11-0051

DOCKETED BY

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
(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 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:

JULY 5, 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:

JULY 28, 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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 THE UNION PACIFIC RAILROAD COMPANY
10 TO ALTER TWO CROSSINGS OF THE UNION
11 PACIFIC RAILROAD AT RUTHRAUFF AND INA
12 ROADS.

DOCKET NO. RR-03639A-11-0051

DECISION NO. _____

OPINION AND ORDER

13 DATES OF PUBLIC HEARING: May 5 and 10, 2011

14 PLACE OF HEARING: Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

16 APPEARANCES: Mr. Anthony J. Hancock and Mr. Terrance L. Sims,
17 Beaugureau, Hancock, Stoll & Schwartz, P.C., on behalf
18 of Applicant; and

19 Mr. Charles Hains and Ms. Bridget Humphrey, Staff
20 Attorneys, Legal Division, on behalf of the Safety
21 Division of the Arizona Corporation Commission.

22 **BY THE COMMISSION:**

23 On January 31, 2011, the Union Pacific Railroad Company ("Railroad") filed with the
24 Arizona Corporation Commission ("Commission") an application for approval for the Railroad to
25 alter two crossings in Pima County ("County"), Arizona by adding a second set of mainline tracks at
26 Ruthrauff Road, USDOT No. 741 104C, which is located in City of Tucson ("Tucson"), and at Ina
27 Road, USDOT No. 741 101G, which is located in the Town of Marana ("Marana") ("Application").

28 On February 17, 2011, by Procedural Order, a hearing on the Railroad's Application was
scheduled on May 5, 2011, along with the establishment of procedural filing dates and a date for the
provision of public notice.

On March 22, 2011, the Railroad filed a Motion for Modification ("Motion") of the
Commission's February 17, 2011, Procedural Order. In its Motion, the Railroad stated that it was

1 unable to provide possible interested parties with a copy of the Application and the Procedural Order
2 within five business days of the receipt of the Procedural Order (February 25, 2011) because counsel
3 for the Railroad had been out of his office for almost two weeks when the Procedural Order was
4 received. However, the Railroad represented that this information had been provided by March 3,
5 2011, and requested a modification of the Procedural Order's requirement. The Railroad further
6 stated that it had encountered certain difficulties with respect to the requirement for public notice to
7 have been completed by March 4, 2011. Due to these difficulties, the Railroad had to alter the
8 manner of notice and extended public notice through March 28, 2011.

9 On March 25, 2011, the Commission's Safety Division, Railroad Safety Section ("Staff")
10 filed its response to the Railroad's Motion. Staff indicated that it had reviewed the steps taken by the
11 Railroad to meet the compliance requirements of the Commission's Procedural Order, and believed
12 that, under the circumstances, the Railroad had substantively complied with the Commission's
13 February 17, 2011, Procedural Order. Staff further indicated that it had no objection to the Railroad's
14 proposed modification of the Procedural Order.

15 Additionally, on March 25, 2011, the Railroad and Staff filed a Stipulation and Motion to
16 Continue ("Stipulation") the evidentiary portion and associated dates set for the hearing in the
17 February 17, 2011, Procedural Order. The parties stated in the Stipulation as follows: the Railroad's
18 expert witness who was to testify in the proceeding was unavailable on the scheduled hearing date;
19 due to unforeseen delays in responses to Staff's data requests by the Railroad, Staff required a two-
20 week delay, until April 22, 2011, to file its Staff Report; and any objections by the Railroad to the
21 Staff Report were to be filed by May 6, 2011. The parties further proposed that the May 5, 2011
22 hearing previously noticed to the public be convened for the purpose of taking public comment only
23 and be recessed and reconvened on a later date for the evidentiary hearing to be held.

24 On March 30, 2011, by Procedural Order, the Railroad was granted leave with respect to its
25 request for the modification to the Commission's February 17, 2011, Procedural Order's compliance
26 dates; the Stipulation agreed upon by the Railroad and Staff was approved and the compliance filing
27 dates and the date of the evidentiary hearing were modified; since public notice was not completed
28 until March 28, 2011, the last date for requesting intervention was extended to April 21, 2011; and it

1 was ordered that the hearing scheduled on May 5, 2011, be held for the taking of public comment
2 only and that the evidentiary hearing be held on May 10, 2011.

3 On April 22, 2011, Staff filed its report which recommended approval of the Railroad's
4 Application.

5 On May 5, 2011, a public hearing was convened before a duly authorized Administrative Law
6 Judge of the Commission at its offices in Phoenix, Arizona for the purpose of taking public comment.
7 The Railroad and Staff appeared with counsel. At that time, no one was present to make public
8 comment. The proceeding was then recessed.

9 On May 10, 2011, the hearing resumed with the Railroad and Staff present with counsel.
10 Following a full evidentiary hearing, the matter was taken under advisement pending submission of a
11 recommended Opinion and Order to the Commission.

12 * * * * *

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

15 **FINDINGS OF FACT**

16 1. On January 31, 2011, the Railroad filed an Application for the alteration of two public
17 at-grade crossings of the Railroad in Pima County, Arizona by adding a second set of mainline tracks
18 at Ruthrauff Road, USDOT No. 741 104C, in Tucson and at Ina Road, USDOT No. 741 101G, in
19 Marana.¹

20 2. On April 8, 2011, pursuant to the Commission's Procedural Order, the Railroad
21 filed certification that it had provided public notification of its Application and the dates for public
22 comment and for the evidentiary hearing by publishing notice in the *Arizona Daily Star*, a newspaper
23 of general circulation in the County where the crossings are located. Additionally, the Railroad
24 mailed, by certified U.S. mail, copies of the Railroad's Application and the Commission's initial
25 Procedural Order to the Marana Town Engineer, the Manager of Traffic Engineering and the Director
26

27 ¹ According to the Staff Report, on February 28 and March 1, 2007, prior to the filing of the Application, the Railroad,
28 Staff and representatives of the County, Tucson and Marana participated in diagnostic reviews of the proposed
improvements at the two crossings described in this Application. Although Ruthrauff Road is located in Tucson, the
County is the road authority for that crossing. With respect to the Ina Road crossing, Marana is the road authority for that
crossing.

1 of Transportation for the County, the Engineering Administrator for the Tucson Department of
2 Transportation, and to the Director and a manager of the Utilities and Railroad Engineering Section
3 of the Arizona Department of Transportation ("ADOT").

4 3. Hearings were held on May 5, 2011, for the taking of public comment, and on May 10,
5 2011, for the taking of evidence in the proceeding.

6 4. The Railroad's existing tracks in the area of the two crossings run generally in a
7 southeasterly to northwesterly direction parallel to Interstate 10 ("I-10") and the I-10 frontage road.

8 5. The Application provides for the construction of a second set of mainline tracks
9 parallel to and south of the Railroad's existing tracks where they cross Ruthrauff Road and Ina Road,
10 which are main east-west arterial roadways in Tucson and Marana, respectively. The areas
11 surrounding the respective crossing locations are largely industrial or commercial in nature.

12 6. Plans call for the Railroad to re-profile portions of the respective four-lane roadways
13 where they meet the tracks and for the replacement of the existing automatic warning equipment with
14 the most up-to-date equipment meeting industry standards, including new 12-inch LED flashing
15 lights, gates and bells, cantilevers with 12-inch LED flashing lights for westbound traffic and
16 constant warning time circuitry. Additionally, new concrete crossing surfaces will be installed and
17 any impacted pavement markings replaced.

18 7. The Railroad will pay all costs for the improvements which are estimated to cost
19 \$628,200 for Ruthrauff Road and \$772,900 for Ina Road.

20 8. Mr. Alexander Popovici, the Railroad's Manager of Industry and Public Projects for
21 Arizona and portions of Nevada and New Mexico, testified in support of the Railroad's Application
22 at the hearing.

23 9. Mr. Popovici testified that in order to minimize traffic delays, the new constant
24 warning time circuitry will determine how long the gates will be down at a crossing. (Tr. 32: 17-19)

25 10. Mr. Popovici stated that the Railroad is working with ADOT and the respective road
26 authorities to coordinate the eventual construction of grade separated crossings which will be
27 constructed in the future at both the Ruthrauff and Ina Road crossings. (Tr. 33: 10-17)

28

1 11. Knowing that federal funds will be used for the construction of grade separated
2 crossings at Ruthrauff and Ina Roads, Mr. Popovici stated that the Railroad will contribute 5 percent
3 of the cost of the construction, which is consistent with federal regulations. (Tr. 34: 1-11)

4 12. Mr. Popovici believes that it is in the public interest for the Railroad to construct a
5 second set of mainline tracks because freight moved by rail has increased significantly in the past
6 several years, and with a second set of tracks, the Railroad will be able to provide more efficient
7 movement of the trains hauling freight. This will minimize traffic delays for motorists due to the new
8 technology which will be installed when the crossings are upgraded with new automatic warning
9 devices. (Tr. 34: 18-24)

10 13. Mr. Popovici testified further that the improvements planned for the Ruthrauff and Ina
11 Road at-grade crossings will be identical to improvements made at similar crossings which have been
12 double tracked by the Railroad. (Tr. 40: 1)

13 14. Mr. Dean Carlson, a civil engineer, who spent approximately 37 years with the Federal
14 Highway Administration ("FHWA") and retired as its executive director, testified in favor of the
15 Railroad's Application in the proceeding.

16 15. Mr. Carlson testified that during his employment with the FHWA, he was the Director
17 of the Office of Highway Safety for several years and he had been responsible for the program which
18 distributes federal funding to the states to provide them with funds to improve at-grade rail crossings
19 pursuant to Title 23 of the United States Code (known as the "Section 130 Program"). (Tr. 43: 3-25)

20 16. Mr. Carlson described the Operation Lifesaver program which involves the four Es
21 of safety for at-grade crossings: education; engineering; enforcement; and emergency facilities.
22 (Tr. 44: 6-10)

23 17. Mr. Carlson testified that he had personally observed the Ruthrauff and Ina Road at-grade
24 crossings and believes that the Application filed by the Railroad should be approved. (Tr. 45:4-12)

25 18. Mr. Carlson described the FHWA guidelines with respect to whether the construction
26 of a grade separated crossing should be considered at a public rail crossing, stating that when none of
27 the guidelines are met you should not consider a "separation structure." (Tr. 46: 4-21)

28 19. Mr. Carlson stated that the construction of a grade separated crossing is primarily to

1 ease delays for the motoring public. (Tr. 48: 15)

2 20. In Mr. Carlson's opinion, Staff correctly applied the FHWA guidelines to determine
3 when grade separation should take place at the two crossings. (Tr. 47: 18-22)

4 21. According to Mr. Carlson, grade separation has nothing to do with the level of
5 safety of a crossing as it relates to the number of tracks which are crossed by the public right-of-
6 way. (Tr. 48: 16-23)

7 22. Based on his evaluation of the Railroad's double track project, Mr. Carlson believes
8 that the project "will be perfectly safe," but does not discount investigating the provision of grade
9 separation structures at the crossings. (Tr. 49:3-8)

10 23. Mr. Carlson stated that in his opinion, the construction of a second set of tracks
11 will not change the level of safety at the crossings, as they will be just as safe with two sets of
12 tracks as with one set of tracks, but they will be made safer when the planned upgrades are
13 installed. (Tr. 49-50:23-25)

14 24. According to Mr. Carlson, driver frustration caused by waiting for trains to pass at the
15 crossings should be lessened with the construction of a second set of tracks with the proposed
16 improvements, because waiting time at the crossings will be reduced. (Tr. 59:1-15)

17 25. Mr. Brian Lehman, Supervisor of Railroad Safety for the Commission's Safety
18 Division, testified that with respect to both the Ruthrauff and Ina Road crossings, the proposed
19 construction of an additional set of mainline tracks and the installation of all new automatic warning
20 devices will be similar in nature. (Tr. 12: 5-15)

21 26. Mr. Lehman further testified that the improvements to be made at both crossings will
22 improve safety with the installation of new automatic gates, LED lights and the latest state-of-the-art
23 detection circuitry (constant warning time circuitry). (Tr. 13: 6-18)

24 27. ADOT has informed Staff that at some point in the future both the Ruthrauff crossing
25 and the Ina Road crossing will be grade separated. (Tr. 14:5-16)

26 28. According to Mr. Lehman, ADOT has already spent approximately \$4 million on
27 a Design Concept Report ("DCR") and intends to go forward first with the construction of a grade
28 separation at the Ina Road crossing. (Tr. 14: 21-24)

1 29. According to Mr. Lehman, the planning for the grade separation at Ina Road calls for
2 construction which will utilize funding from federal regional transit money and perhaps local money.
3 (Tr. 15: 2-6)

4 30. During the hearing, Mr. Lehman described the guidelines established by the *FHWA*
5 *Railroad Highway Grade Crossing Handbook* with regards to the nine criteria for determining
6 whether at-grade crossings should be considered for grade separation with respect to traffic counts,
7 and the length of vehicular delays at a crossing. (Tr. 15: 12-21)

8 31. Mr. Lehman stated that both the Ruthrauff crossing and the Ina Road crossing
9 presently meet the criteria for the consideration of a grade separated crossing in only one category.
10 That category is the Crossing Exposure Index, in that both crossings exceed one million in an urban
11 area.² (Tr. 16: 1-17)

12 32. However, according to Mr. Lehman, by the year 2040, both the Ruthrauff and Ina
13 Road crossings will meet three of the nine criteria for the consideration of grade separated crossings.
14 (Tr. 62-63: 9-2).

15 33. Mr. Lehman stated that the ultimate decision for whether to proceed with grade
16 separation at a crossing is determined by the respective road authority for a crossing and regional
17 transportation planners, because an at-grade crossing remains safe with the proper warning devices,
18 education and enforcement. (Tr. 17: 11-16)

19 34. Staff believes that the improvements and upgrades planned for both the Ruthrauff and
20 Ina Road crossings will serve the public interest. (Tr. 18: 2)

21 35. Staff also believes that the construction of the additional main line tracks will be of benefit
22 to the public due to the increased operating efficiency for the Railroad, which will lead to fewer delays at
23 the crossings because the trains will be able to move faster and expedite their traffic. (Tr. 18: 7-16)

24 36. Mr. Lehman testified that Staff has been informed that the Railroad will be paying the
25 entire cost of the upgrades involved at both the Ruthrauff and Ina Road crossings. He believes that
26 after the completion of the projects, the at-grade crossings will be safer than they currently are.
27 (Tr. 20: 1-6)

28 ² This number simply represents the product of the number of trains which utilize the crossing per day multiplied by the number of vehicle crossings per day at the crossing.

1 37. Mr. Lehman stated that Staff is recommending approval of the Application. (Tr. 21: 1-4)

2 38. Mr. Lehman described the constant warning time circuitry which will be installed at both
3 the Ruthrauff and Ina Road crossings as a "newer unit" of the system which is designed to detect the
4 speed and the distance of the train as it approaches the crossing, in order to minimize the delay to the
5 motoring public by activating the gates shortly before the arrival of a train at the crossings. (Tr. 23: 9-24)

6 39. Mr. Lehman testified that he had received an e-mail from a representative of ADOT
7 the morning of the hearing which indicates that ADOT plans, in fiscal year 2016, to construct a grade
8 separated crossing at Ina Road and later this year will plan for the scheduling of construction and
9 funding for both crossings. (Tr. 25: 8-25)

10 40. It is projected that the cost for the grade separation of the Ina Road crossing will be
11 approximately \$50 million. (Tr. 26: 10-12)

12 41. According to the Staff Report, the Railroad projects an increase of traffic from the
13 present 48 trains a day to 84 trains a day by 2016.

14 42. Both the Staff Memorandum and Mr. Lehman indicated that there are no significant
15 problems caused by either the Ruthrauff or Ina Road at-grade crossings with respect to school bus traffic,
16 hospital traffic and emergency vehicle traffic.

17 43. Staff's recommendations are reasonable and appropriate, and the Railroad's Application to
18 alter the at-grade crossings at Ruthrauff Road and Ina Road by adding a second set of main line tracks
19 coupled with their respective upgrades to the automatic warning devices and roadway improvements
20 should be approved.

21 **CONCLUSIONS OF LAW**

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

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

26 3. The installation of the crossing upgrades is necessary for the public's convenience and safety.

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

1 5. After installation of the crossings, the Railroad should maintain the crossings in
2 accordance with A.A.C. R14-5-104.

3 **ORDER**

4 IT IS THEREFORE ORDERED the Union Pacific Railroad Company's Application as
5 described herein, is hereby approved.

6 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in
7 writing, within 10 days of both the commencement and the completion of the crossing upgrades,
8 pursuant to A.A.C. R14-5-104.

9 IT IS FURTHER ORDERED that the Union Pacific Railroad shall maintain the crossings at
10 Ruthrauff Road and Ina Road in the City of Tucson and in the Town of Marana, Arizona,
11 respectively, in compliance with A.A.C. R14-5-104.

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

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14
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16 CHAIRMAN

COMMISSIONER

COMMISSIONER

17
18 COMMISSIONER

COMMISSIONER

19 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
20 Executive Director of the Arizona Corporation Commission,
21 have hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this ___ day of _____, 2011.

24 _____
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

25
26 DISSENT _____

27
28 DISSENT _____

MES:db

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