

OPEN MEETING ITEM



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



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCKET CONTROL

DATE: NOVEMBER 29, 2011

DOCKET NO.: RR-03639A-11-0196

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:

DECEMBER 8, 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:

DECEMBER 13, 2011 and DECEMBER 14, 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

NOV 29 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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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SBernal@azcc.gov](mailto:SBernal@azcc.gov)

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 TOWN OF SAHUARITA TO UPGRADE A  
10 CROSSING OF THE UNION PACIFIC  
11 RAILROAD AT NOGALES HIGHWAY IN THE  
12 TOWN OF SAHUARITA, PIMA COUNTY,  
13 ARIZONA, USDOT NO. 742-123-K.

DOCKET NO. RR-03639A-11-0196

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: August 18, 2011  
11 PLACE OF HEARING: Phoenix, Arizona  
12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
13 APPEARANCES: Mr. Terrance L. Sims, BEAUGUREAU, ZUKOWSKI  
14 & HANCOCK, P.C., on behalf of the Union Pacific  
15 Railroad Company;  
16 Mr. Daniel J. Hochuli, Department of Law, on behalf of  
17 the Town of Sahuarita; and  
18 Ms. Bridget Humphrey and Mr. Charles Hains, Staff  
19 Attorneys, Legal Division, on behalf of the Safety  
20 Division of the Arizona Corporation Commission.

21 **BY THE COMMISSION:**

22 On May 11, 2011, the Town of Sahuarita ("Town") filed with the Arizona Corporation  
23 Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad")  
24 to upgrade an existing crossing at Nogales Highway in the Town of Sahuarita, Pima County, Arizona  
25 at USDOT No. 742-123-K ("Application").

26 On May 23, 2011, by Procedural Order, the proceeding was scheduled for a hearing on  
27 August 18, 2011.

28 On August 18, 2011, 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 11, 2011, 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 the Nogales Highway located in Sahuarita at USDOT No. 742-123-K.<sup>1</sup>

10 2. According to the Staff Report, as part of the Sahuarita Road Phase II Project, the  
11 Town is seeking Commission approval to improve the crossing in the following manner: by  
12 realigning Nogales Highway, a two-lane roadway presently, approximately 750 feet west of its  
13 current location to facilitate a separate/future Sahuarita Road grade separated crossing of the  
14 Railroad's Nogales Subdivision ("Subdivision") tracks; by relocating and improving the existing  
15 Nogales Highway at-grade crossing to match the new location of the realigned Nogales Highway;  
16 and by removing the existing at-grade crossing when the realignment is completed. (Ex. S-1)

17 3. During the realignment of the Nogales Highway, it will be widened to accommodate  
18 raised medians, four travel lanes (two northbound and two southbound) paved shoulders and curbs  
19 and sidewalks in the vicinity of the railroad crossing. Additionally, besides a new concrete crossing  
20 surface, all new automatic state-of-the-art warning equipment will be installed at the relocated  
21 crossing and this will include the following devices: LED flashing lights; curbside and median gates;  
22 and warning bells.

23 4. The Nogales Highway crossing is located on the Anamax Mine spur, a single set of  
24 tracks which is used by an average of two trains per day and runs from an easterly to western  
25 direction from the Subdivision tracks which run in a north south direction parallel to the Nogales  
26 Highway from Tucson to Nogales.

27 \_\_\_\_\_  
28 <sup>1</sup> Several times since 2007, the Town, the Railroad and Staff have met regarding this project. On September 9, 2010, a field diagnostic meeting was held at the project site with all parties present.

1           5.       On June 23, 2011, the Town filed certification that it had provided public notice of the  
2 Application and hearing thereon pursuant to the Commission's Procedural Order by publishing notice  
3 in the *Sahuarita Sun*, a newspaper of general circulation in the area where the crossing is located.

4           6.       The hearing was held as scheduled on August 18, 2011.

5           7.       Mr. Joel Harris, a civil engineer for the Town, testified in support of the Application.

6           8.       Mr. Harris testified that a major signalized intersection in the Town is that of Sahuarita  
7 Road which runs east and west and intersects the Nogales Highway which runs north and south. He  
8 testified that a situation may occur presently when there is a red light at the intersection for east west  
9 traffic on Sahuarita Road with the potential for motor vehicles to be stopped on three separate sets of  
10 tracks because of the proximity of the at-grade railroad crossings on both the Nogales Highway and  
11 Sahuarita Road. (Tr. 9: 1-17)

12          9.       According to Mr. Harris, improving and widening Sahuarita Road is the main roadway  
13 project that the Town is working on currently. (Tr. 9: 21-24)

14          10.      Mr. Harris testified that plans call for Sahuarita Road to be widened from a two-lane  
15 road with one lane of travel in each direction to four lanes of travel with two lanes of travel in each  
16 direction with a wide median. (Tr. 11: 12-15)

17          11.      As part of the widening project of Sahuarita Road, the Town has planned to realign a  
18 portion of the Nogales Highway. (Tr. 12: 10-13)

19          12.      Mr. Harris described the improvements being made to Sahuarita Road as a "very large  
20 scale project" for the Town. Plans in the future call for the construction of a grade separated crossing  
21 with an overpass over all three sets of the Railroad's tracks and require moving the Nogales Highway  
22 crossing about a thousand feet west of its current location in order that the intersection of the two  
23 roadways will remain in an at-grade configuration. (Tr. 12-13: 22-11)

24          13.      According to Mr. Harris, once the initial improvements are made in 18 to 24 months, a  
25 future phase of the project would then follow using funds from outside sources and the Town's  
26 Regional Transportation Authority funding as well as Highway User Revenue Funds, with  
27 completion of the whole project in four to five years. (Tr. 13-14: 16-11)

28          14.      Mr. Harris stated that the estimated budget for the entire Sahuarita Road Project,

1 including the construction of the grade separated crossing, is estimated in the \$55 million to \$60  
2 million range. (Tr. 16: 1-10)

3 15. Referring to a schematic diagram of the realigned Nogales Highway on Exhibit A-4,  
4 Mr. Harris testified that the existing Nogales Highway would be realigned to the west of the existing  
5 intersection of the Nogales Highway and Sahuarita Road in such a manner to get the traffic flow "in  
6 an ultimate condition rather than building numerous temporary detours around the crossing to  
7 construct a new overpass." (Tr. 17: 1-11)

8 16. Mr. Harris stated that, upon the completion of the project, the existing Nogales  
9 Highway will no longer be used as a result of the roadway's realignment, and the existing crossing will  
10 be abandoned and removed. The relocated and improved at-grade crossing of the Railroad's Anamax  
11 Mine spur will be referred to as "USDOT No. 742-123-K." (Tr. 17: 20-25)

12 17. Mr. Harris believes that the existing Nogales Highway that is to be abandoned will  
13 revert to adjacent property owners in exchange for the right-of-way to build the overpass which will  
14 span the Railroad's tracks which parallel the existing Nogales Highway and also span the Railroad's  
15 Anamax Mine spur; however, due to the number of utility easements, most of the right-of-way  
16 abandonment will be reserved for utility use. (Tr. 18: 1-16)

17 18. Mr. Harris testified that the entire project is in the Town's annual budget and its  
18 capital improvement plan for five years. (Tr. 18: 11-12)

19 19. Mr. Harris testified that the area around the crossing is a mix of agricultural and  
20 commercial properties, along with some general industrial property. (Tr. 19: 1-23)

21 20. Mr. Harris further testified that there is only one train per day which utilizes the  
22 Anamax Mine spur at-grade crossing at Nogales Highway, and this train goes to the mine and comes  
23 back since the track is exclusively for the use of the mine. (Tr. 21: 2-7)

24 21. Mr. Harris confirmed that when the Town realigns the Nogales Highway, it will be  
25 widened from two lanes to four lanes, two northbound and two southbound, with curbs, sidewalks and a  
26 raised median. The new at-grade crossing will have concrete crossing surfaces, new gates, pavement  
27 markings, signage, new LED flashers and state-of-the art signal equipment. (Tr. 22-23: 13-2)

28 22. Mr. Harris stated that the average speed for the trains which cross at the Nogales

1 Highway is approximately ten miles an hour or less. (Tr. 23: 13-17)

2 23. According to Mr. Harris, a local school district representative informed him that its  
3 school buses will cross the Nogales Highway at-grade crossing twelve times a day after the  
4 realignment and installation of the new crossing on the realigned highway. (Tr. 24-25: 19-3)

5 24. Mr. Harris further testified that the Town is in agreement with Staff's  
6 recommendations with respect to its Application. (Tr. 31: 7-9)

7 25. Mr. Harris described the realignment of the Nogales Highway as bowing out the  
8 existing roadway approximately one thousand feet to the west with the realignment beginning  
9 approximately one mile to the north of the existing intersection of the Nogales Highway and  
10 Sahuarita Road and continuing one mile to the south of the intersection. (Tr. 32: 1-16) (Ex. A-3)

11 26. According to Mr. Harris, the automatic warning devices for the at-grade crossing of  
12 the realigned Nogales Highway will cost approximately \$500,000 to \$600,000. (Tr. 36-27: 22-3)

13 27. Mr. Harris testified that the Town will maintain the realigned Nogales Highway and  
14 the Railroad will maintain the new at-grade crossing of the realigned highway. (Tr. 37-38: 23-4)

15 28. Mr. Harris estimated that it will take a little over five years to complete the entire  
16 project for the realignment of the Nogales Highway, the widening of Sahuarita Road and the  
17 construction of the overpass of the Railroad's tracks which parallel the Nogales Highway and also the  
18 spur line of the Railroad which runs to the Anamax Mine. (Tr. 39: 14-20)

19 29. Mr. Chris Watson, an assistant supervisor and grade-crossing inspector for the  
20 Commission, testified concerning Staff's investigation of the Application and meeting with the  
21 respective parties and addressing safety concerns. He prepared the Staff Report which describes the  
22 planned improvements for the at-grade crossing of the realigned Nogales Highway and the low  
23 number of trains which will utilize the crossing. (Tr. 46: 1-6)

24 30. Mr. Watson stated that the new automatic warning devices and safety features being  
25 installed at the new at-grade crossing on the realigned Nogales Highway are consistent with other  
26 crossings in the state. (Tr. 47: 8-10)

27 31. Mr. Watson testified that he believes that, with the realignment of the Nogales  
28 Highway and the movement of the at-grade crossing on the highway away from the confluence of the

1 Nogales Highway intersection with Sahuarita Road, the crossing will be safer when coupled with the  
2 new safety upgrades. (Tr. 48: 13-19)

3 32. Mr. Watson also testified that he is in agreement with the Town’s plans for the overall  
4 project which calls for the creation of a grade separated crossing with the construction of the overpass  
5 which will be constructed on Sahuarita Road. (Tr. 49: 1-4)

6 33. According to the Staff Report, the Town’s data indicates that average daily traffic  
7 (“ADT”) in 2009 was 10,800 vehicles per day and the projected ADT for the year 2030 is 24,600  
8 vehicles per day. The current level of service (“LOS”) for this roadway is LOS B and that there are  
9 minimal delays at the crossing. The Staff Report indicates that accident and incident records reflect  
10 only two accidents at the crossing with the most recent being in 1974. (Ex. S-1)

11 34. Mr. Watson further testified that the improvements to the realigned Nogales Highway  
12 at-grade crossing as proposed by the Town are consistent with similar crossings throughout the state,  
13 in the public interest and will improve safety at the crossing. (Tr. 49: 9-13)

14 35. Staff is recommending that the Application be approved.

15 **CONCLUSIONS OF LAW**

16 1. The Commission has jurisdiction over the parties and over the subject matter of the  
17 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
18 40-337.01.

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

20 3. Installation of the crossing upgrade is necessary for the public’s convenience and  
21 safety.

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

24 5. After the installation of the crossing upgrades to the Nogales Highway, the Railroad  
25 should maintain the crossing in accordance with A.A.C. R14-5-104.

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**ORDER**

IT IS THEREFORE ORDERED that the Town of Sahuarita's Application as described herein is hereby approved.

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

IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in writing, within ten days of both the commencement and 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 \_\_\_\_\_ 2011.

\_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

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