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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

FEB 21 2012

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

DOCKETED BY ne

IN THE MATTER OF THE APPLICATION OF
UNION PACIFIC RAILROAD COMPANY TO
ALTER AN EXISTING CROSSING OF THE
UNION PACIFIC RAILROAD AT TANGERINE
ROAD.

DOCKET NO. RR-03639A-11-0262

DECISION NO. 72898

OPINION AND ORDER

DATE OF HEARING: October 13, 2011

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Mr. Anthony J. Hancock and Mr. Terrance L. Sims,
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 June 30, 2011, the Union Pacific Railroad Company ("Railroad") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Railroad to alter an existing crossing of the Railroad in Arizona by adding a second set of mainline tracks at the Tangerine Road crossing, USDOT No. 741 088V, located in Pima County ("County") in the Town of Marana ("Town") ("Application").

On July 14, 2011, by Procedural Order, a hearing on the Railroad's Application was scheduled on October 13, 2011, along with the establishment of procedural filing dates and a date for the provision of public notice.

On August 29, 2011, the Railroad filed certification that it had provided public notice of the Application and hearing thereon pursuant to the Commission's Procedural Order.

On September 8, 2011, the Commission's Safety Division, Railroad Safety Section ("Staff") filed its report which recommended approval of the Railroad's Application.

1 On October 6, 2011, the Railroad filed a copy of a fully executed agreement between the
2 Town and the Railroad. The agreement supports the Railroad's Application herein for the
3 construction of a second set of tracks which parallel the existing tracks of the Railroad "through and
4 across existing public at-grade crossings within the municipal limits of Town."¹

5 On October 13, 2011, a full public hearing was convened before a duly authorized
6 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and
7 Staff appeared with counsel. Following a full evidentiary hearing, the matter was taken under
8 advisement pending submission of a Recommended Opinion and Order to the Commission.

9 * * * * *

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

12 **FINDINGS OF FACT**

13 1. On June 30, 2011, the Railroad filed an Application for the alteration of a public at-
14 grade crossing of the Railroad in Pima County, Arizona by adding a second set of mainline tracks at
15 Tangerine Road, USDOT NO. 741 088V, in the Town.²

16 2. On August 29, 2011, pursuant to the Commission's Procedural Order, the Railroad
17 filed certification that it had provided public notice of its Application and for the date of the
18 evidentiary hearing by publishing notice in the *Arizona Daily Star*, a newspaper of general circulation
19 in the Town and the County where the crossing is located. Additionally, the Railroad mailed, by
20 certified U.S. mail, copies of the Railroad's Application and the Commission's Procedural Order to
21 the Town Engineer, the County Manager of Traffic Engineering, the Director of Transportation for
22 the County, the Engineering Administrator for the Tucson Department of Transportation, and to the
23 Manager of the Utilities and Railroad Engineering Section of the Arizona Department of
24 Transportation ("ADOT").

25 3. A hearing was held for the taking of evidence on October 13, 2011.

26 _____
27 ¹ According to the agreement, the Tangerine Road crossing is one of seven existing public at-grade crossings of the
Railroad in the Town.

28 ² According to the Staff Report, on March 1, 2007, prior to the filing of the Application, the Railroad, Staff and
representatives of the Town participated in a diagnostic review of the proposed improvements at Tangerine Road
described in this Application. The Town is the road authority for that crossing.

1 4. The Railroad's existing tracks in the area of the crossing run generally in a
2 southeasterly to northwesterly direction parallel to Interstate 10 ("I-10") and the I-10 Frontage Road.

3 5. The Application provides for the construction of a second set of mainline tracks
4 parallel to and north of the Railroad's existing tracks where they cross Tangerine Road which is a
5 main east-west arterial roadway in the Town. The area surrounding the crossing location consists of
6 a mix of commercial, industrial and some residential property.

7 6. Plans call for the Railroad to re-profile a portion of the two-lane asphalt roadway
8 where it meets the tracks and for the replacement of the existing automatic warning equipment with
9 the most up-to-date equipment meeting industry standards, including new 12-inch LED flashing
10 lights, automatic gates, bells and constant warning time circuitry. Additionally, a new concrete
11 crossing surface will be installed and any impacted pavement markings replaced.

12 7. The Railroad will pay all costs for the improvements which are estimated to cost a
13 total of \$430,500.

14 8. Mr. Alex Popovici, the Railroad's Manager of Industry and Public Projects whose job
15 duties include being the project manager for various construction activities including crossings in
16 Arizona, testified in support of the Railroad's Application at the hearing.

17 9. Mr. Popovici testified that the Railroad will utilize constant warning time circuitry at
18 the Tangerine Road at-grade crossing and that this form of circuitry will minimize delays at the
19 crossing for vehicular traffic. (Tr. 17-18: 16-9)

20 10. Mr. Popovici stated that the Railroad has discussed its proposed improvements for the
21 Tangerine Road crossing with representatives of the Town, and its officials' support the Application.
22 (Tr. 18: 10-19)

23 11. Mr. Popovici stated that it is in the public interest for the Railroad to construct a second
24 set of mainline tracks because the delays for traffic at the crossing will be less and the Railroad will be
25 actually able to carry more goods and haul freight more efficiently. Additionally, with the Railroad
26 handling more freight, large truck traffic should be reduced. (Tr. 19: 1-10)

27 12. Mr. Popovici testified further that the Railroad will be paying for all improvements for
28 the project and that these improvements will make the Tangerine Road at-grade crossing safer than it

1 is currently. (Tr. 19: 11-17)

2 13. Testifying further, Mr. Popovici indicated that the use of constant warning time circuitry
3 at the Tangerine Road crossing is similar to other crossings where the double track construction has taken
4 place and will make it more efficient for the Railroad to haul freight. (Tr. 21-22: 21-8)

5 14. Mr. Dean Carlson, a civil engineer, who spent approximately thirty-seven years with
6 the Federal Highway Administration ("FHWA") and retired as its Executive Director, testified in
7 favor of the Railroad's Application in the proceeding.

8 15. Mr. Carlson testified that during his employment with the FHWA, he was the Director
9 of the Office of Highway Safety for several years and for eight years he was the Secretary of
10 Transportation for the Kansas Department of Transportation. (Tr. 23-24: 19-7)

11 16. Mr. Carlson testified that while he was with the FHWA he was involved in "Section
12 130" matters dealing with the standards which set construction and maintenance guidelines for at-
13 grade railroad crossings. (Tr. 24: 8-14)

14 17. Mr. Carlson stated that he is a strong advocate of highway safety and that while
15 Executive Director of the FHWA directed operating funds to increase the budget of Operation Life
16 Saver, which plays an important part in reducing fatalities where at-grade railroad crossings are located.
17 (Tr. 24: 19-25)

18 18. Mr. Carlson testified that he had personally observed the Tangerine Road at-grade
19 crossing and believes that the Application filed by the Railroad should be approved. (Tr. 25: 12-25)

20 19. Mr. Carlson stated further that he had been involved with the development of the
21 FHWA guidelines for the construction of grade separated crossing and stated that the guidelines are a
22 good starting point to determine whether a grade separation is necessary. (Tr. 26: 2-16)

23 20. Mr. Carlson stated that besides considering the FHWA guidelines with respect to the
24 question of grade separation, both a physical feasibility study and a cost benefit analysis should be
25 conducted for a crossing that is under consideration. (Tr. 26: 17-25)

26 21. According to Mr. Carlson, Staff, in its report, properly analyzed the question of
27 whether a grade separation should be constructed at the Tangerine Road crossing following the
28 FHWA guidelines. (Tr. 27: 17-20)

1 22. Mr. Carlson testified that grade separation is not required for rail highway safety because
2 in his opinion grade separation is for the motoring public's convenience, but if drivers follow directions
3 and adhere to the automatic warning devices, safety is not compromised. (Tr. 28: 6-14)

4 23. Mr. Carlson also stated that the number of tracks located at a crossing do not
5 necessarily impact grade separation unless you are considering a situation involving twenty or thirty
6 sets of tracks. (Tr. 28: 15-22)

7 24. Mr. Carlson testified that he believes that the Tangerine Road at-grade crossing will be
8 safer with the proposed improvements which will be installed with the addition of the Railroad's
9 second set of tracks. (Tr. 31: 12-18)

10 25. Mr. Carlson described the watchword of the Operation Lifesaver program which
11 involves the "four Es" of safety for at-grade crossings: education; engineering; enforcement; and
12 emergency medical service. (Tr. 36: 16-20)

13 26. Mr. Chris Watson, Assistant Supervisor and Grade-Crossing Inspector for the
14 Commission, testified that he had prepared the Staff Report which describes the nature of the
15 Railroad's proposed improvements at the Tangerine Road at-grade crossing. (Tr. 6: 2-16)

16 27. Mr. Watson testified that the proposed improvements to be made at the Tangerine
17 Road at-grade crossing are consistent with similar crossings with the projected level of traffic and
18 seen at similar crossings throughout Arizona. (Tr. 7: 9-20)

19 28. Mr. Watson believes that the proposed upgrades to be made to the Tangerine Road
20 crossing will cause it to be made more safe. (Tr. 7: 21-23)

21 29. Mr. Watson testified that Staff used the FHWA guidelines with respect to the question
22 of grade separation and after considering the nine factors, Staff determined that grade separation is
23 not warranted at this time and most likely will not be in the future. (Tr. 8: 4-17)

24 30. Mr. Watson further testified that the upgrades which are proposed for the Tangerine
25 Road at-grade crossing are consistent with the public interest and safety. (Tr. 10: 5-8)

26 31. Mr. Watson stated that he had received a letter from the Town's Engineer in support
27 of the Application and filed it with the Commission prior to the hearing. (Tr. 12: 6-11)

28 32. Further testifying, Mr. Watson stated that there have been no prior accidents at the

1 crossing in what is largely a rural area. (Tr. 14: 13-18)

2 33. Staff is recommending that the Application be approved.

3 **CONCLUSIONS OF LAW**

4 1. The Commission has jurisdiction over the parties and over the subject matter of the
5 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
6 40-337.01.

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

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

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

12 5. After the installation of the crossing, the Railroad should maintain the crossing in
13 accordance with A.A.C. R14-5-104.

14 **ORDER**

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

17 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the
18 Commission, in writing, within ten days of both the commencement and completion of the crossing
19 upgrades, pursuant to A.A.C. R14-5-104.

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1 IT IS FURTHER ORDERED that the Union Pacific Railroad shall maintain the crossing at
2 Tangerine Road in the Town of Marana, Arizona in compliance with A.A.C. R14-5-104.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

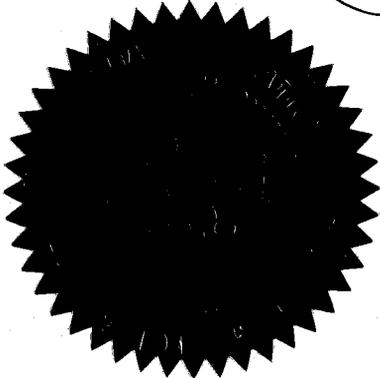
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6 *Gary L. Steen*
7 CHAIRMAN

Bob Steg
COMMISSIONER

8 *Anthony D. Kennedy*
9 COMMISSIONER

Paul Newman
COMMISSIONER

Barbara Burns
COMMISSIONER



10 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
11 Executive Director of the Arizona Corporation Commission,
12 have hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this 21st day of FEBRUARY 2012.

15 *E G Johnson*
16 ERNEST G. JOHNSON
17 EXECUTIVE DIRECTOR

18 DISSENT _____

19 DISSENT _____

20 MES:db

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1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-11-0262

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