

ORIGINAL

OPEN MEETING ITEM



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EXECUTIVE DIRECTOR

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



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUL 20 2012

DATE: JULY 20, 2012
DOCKET NO.: RR-03639A-12-0086
TO ALL PARTIES:

DOCKETED BY *JM*

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
(AT-GRADE 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:

JULY 30, 2012

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:

AUGUST 9, 2012

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.

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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 ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE UNION PACIFIC
12 RAILROAD AT PALO PARADO ROAD, IN
13 OTERO, SANTA CRUZ COUNTY, ARIZONA,
14 USDOT NO. 742-018-J.

DOCKET NO. RR-03639A-12-0086

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARINGS: May 24 and June 21, 2012

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. James Redpath, Assistant Attorney General,
15 Transportation Section, on behalf of the Arizona
16 Department of Transportation;

17 Mr. Terrance L. Sims, Beaugureau, Zukowski &
18 Hancock, P.C., on behalf of the Union Pacific Railroad
19 Company; and

20 Ms. Janice Alward and Mr. Brian E. Smith, Chief
21 Counsel and Staff Attorney, Legal Division, on behalf of
22 the Safety Division of the Arizona Corporation
23 Commission.

20 **BY THE COMMISSION:**

21 On March 7, 2012, the Arizona Department of Transportation ("ADOT") filed with the
22 Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific
23 Railroad ("Railroad") to upgrade an existing crossing at Palo Parado Road, in Otero, Santa Cruz
24 County, Arizona at USDOT No. 742-018-J ("Application").

25 On March 26, 2012, by Procedural Order, a hearing was scheduled on the Application on May
26 24, 2012.

27 On May 8, 2012, the Railroad Safety Section of the Commission's Safety Division ("Staff")
28 filed the Staff Report recommending approval of the Application.

1 On May 24, 2012, a full public hearing was convened before a duly authorized Administrative
2 Law Judge of the Commission at its offices in Phoenix, Arizona. Staff and the Railroad were present
3 with counsel. Two representatives of ADOT appeared without counsel. One of ADOT's
4 representatives stated that public notice had not been given as ordered in the Commission's
5 Procedural Order. Public comment was taken, and a Santa Cruz County supervisor, Mr. John
6 Maynard, and a representative of the Baca Float Coalition, Inc. voiced their strong support of the
7 Application. It was determined after public comment that the proceeding should be continued so that
8 public notice of the proceeding could be given prior to an evidentiary hearing taking place.

9 On May 25, 2012, by Procedural Order, the proceeding was continued to June 21, 2012, after
10 public notice of the proceeding was given.

11 On June 11, 2012, ADOT filed certification that notice of the proceeding was provided in
12 accordance with the Commission's Procedural Order.

13 On June 21, 2012, the hearing was reconvened before a duly authorized Administrative Law
14 Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and Staff were
15 present with counsel. At the conclusion of the hearing, the matter was taken under advisement
16 pending submission of a Recommended Opinion and Order to the Commission.

17 * * * * *

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

20 **FINDINGS OF FACT**

21 1. On March 7, 2012, ADOT filed an Application in which it requested an Opinion and
22 Order from the Commission approving an agreement between ADOT and the Railroad to upgrade an
23 existing at-grade crossing at Palo Parado Road in Otero, Santa Cruz County, Arizona at USDOT NO.
24 742-018-J.

25 2. On May 2, 2007, representatives of Staff, ADOT, Santa Cruz County and the Railroad
26 participated in a diagnostic review of the proposed improvements for the Palo Parado at-grade
27 crossing. The parties who were present all agreed that the proposed improvements would improve
28 safety at the crossing.

1 3. ADOT is seeking Commission approval to upgrade a passive crossing which at
2 present has only cross bucks and stop signs, in order to regulate the flow of vehicular traffic across
3 the Railroad's tracks where they cross Palo Parado Road, a two-lane dirt road. ADOT is proposing to
4 install state-of-the-art LED flashing lights, automatic gates, bells and constant warning timed
5 circuitry.¹

6 4. On June 11, 2012, ADOT filed certification that it had provided public notice of the
7 Application and hearing thereon pursuant to the Commission's Procedural Order by publishing notice
8 in the *Nogales International* and by mailing, by certified U.S. mail, notice to the Railroad and to
9 Santa Cruz County.

10 5. The hearing was held as scheduled on May 24 and June 21, 2012.

11 6. According to the Staff Report, Palo Parado Road is a two lane east-west dirt roadway
12 used for two-way traffic with one lane going in each direction. The general area which surrounds
13 Palo Parado Road is rural in nature with a low density, low intensity land use designation.

14 7. Mr. Armando Lopez, a Railroad Coordinator for ADOT, testified in support of the
15 Application.

16 8. Mr. Lopez testified about ADOT's Application describing the area in the vicinity of
17 the crossing at the Railroad's tracks. He stated that the crossing itself is presently paved with
18 concrete and the existing dirt road will be paved and a new bridge constructed by Santa Cruz County
19 over the Rio Rico River joining a portion of the roadway which is already paved. (Tr. 8: 2-10)

20 9. Mr. Lopez stated that five freight trains a day cross the tracks at Palo Parado Road, but
21 presently there are no passenger trains. (Tr. 8:13-15)

22 10. Mr. Lopez testified further that the terrain which surrounds the crossing is mainly rural
23 with large residential lots and some businesses. (Tr. 8: 16-21)

24 11. Mr. Lopez referenced a 2008 ADOT traffic study stating that average daily traffic at
25

26 ¹ The proposed upgrade of the Palo Parado Road crossing was approved by the Commission in Decision No. 71309
27 (October 30, 2009) as part of the 2009 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 ("Section
28 130") which is provided by the Federal Highway Administration to reimburse ADOT for 100 percent of the cost of the
project. Section 130 projects are used to eliminate hazards to pedestrians and vehicles at public railroad crossings which
are not primarily for the benefit of the Railroad.

1 the Palo Parado crossing is approximately 1,000 vehicles per day and traffic remains at that level
2 currently. (Tr. 8-9: 22-2)

3 12. Mr. Lopez stated that ADOT traffic data indicates that the Palo Parado crossing
4 currently has a level of service B. Additionally, he stated there is no documentation of vehicles
5 which carry hazardous material using this crossing. (Tr. 9: 8-19)

6 13. Mr. Lopez stated that according to Santa Cruz County records, there are no emergency
7 vehicles that use the Palo Parado crossing extensively, but with the new roadway improvements,
8 emergency vehicles will have quicker access to the other side of the crossing. (Tr. 9-10: 20-2)

9 14. Mr. Lopez testified that according to Santa Cruz County records, there have been no
10 accidents at the crossing. (Tr. 10: 12-15)

11 15. Mr. Lopez stated that the Railroad will complete the upgrade of the Palo Parado
12 crossing within fifteen months of a Commission Decision in this matter. (Tr. 10: 16-21)

13 16. Mr. Lopez testified that after applying the nine criteria of the Federal Highway
14 Administration ("FHWA") for a grade separated crossing, the Palo Parado at-grade crossing does not
15 meet the requirements for a grade separation. (Tr. 11: 9-16)

16 17. Testifying further, Mr. Lopez stated that the upgrade at the Palo Parado crossing will
17 tie in with a Santa Cruz County roadway project which includes the pavement of Palo Parado Road
18 from Interstate 19 on the west to an existing paved road on the east, Caballero Court. (Tr. 12: 8-25)

19 18. Mr. Lopez stated that the entire cost of the upgrade at the Palo Parado at-grade
20 crossing will be 100 percent funded with FHWA monies. (Tr. 13: 14-24)

21 19. According to Mr. Lopez, the upgrade of the Palo Parado at-grade crossing will be
22 consistent with similar rail crossings which are found in the State of Arizona. (Tr. 14: 9-11)

23 20. Mr. Chris Watson, an Assistant Supervisor and Grade-Crossing Inspector for the
24 Commission, testified that he had prepared the Staff Memorandum on ADOT's Application which
25 describes the nature of ADOT's proposed improvements, estimated to cost \$206,000 for the Palo
26 Parado crossing. (Tr. 18-19: 24-2) (Ex. S-1)

27 21. Mr. Watson identified a letter which was filed with the Commission on June 8, 2012,
28 from the Santa Cruz County Supervisors in support of ADOT's Application. (Tr. 20: 1-12) (Ex. S-1)

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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 _____ 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD

2 DOCKET NO.: RR-03639A-12-0086

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