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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 21 2012

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

DOCKETED BY ne

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

DOCKET NO. RR-03639A-12-0086

DECISION NO. 73342

OPINION AND ORDER

DATE OF HEARINGS: May 24 and June 21, 2012
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. James Redpath, Assistant Attorney General,
Transportation Section, on behalf of the Arizona
Department of Transportation;
Mr. Terrance L. Sims, Beaugureau, Zukowski &
Hancock, P.C., on behalf of the Union Pacific Railroad
Company; and
Ms. Janice Alward and Mr. Brian E. Smith, Chief
Counsel and Staff Attorney, Legal Division, on behalf of
the Safety Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

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

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

On May 8, 2012, the Railroad Safety Section of the Commission's Safety Division ("Staff") 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)

1 22. Mr. Watson stated that he recommends approval of ADOT's Application in this
2 proceeding because the proposed upgrade will improve safety and serve the public interest. (Tr. 21: 1-7)

3 23. According to Mr. Watson, after applying the nine FHWA criteria, construction of a
4 grade separated crossing at this time or in the future is not warranted at the Palo Parado crossing.
5 (Tr. 22: 2-7)

6 24. According to the Staff Memorandum, the planned upgrade at the Palo Parado crossing
7 as proposed by ADOT is consistent with similar crossings throughout the state. (Ex. S-1)

8 25. Staff is recommending that the Application be approved.

9 **CONCLUSIONS OF LAW**

10 1. The Commission has jurisdiction over the parties and over the subject matter of the
11 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
12 40-337.01.

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

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

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

18 5. After the installation of the improvements at the Palo Parado crossing, the Railroad
19 should maintain the crossing in accordance with A.A.C. R14-5-104.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's
22 Application, as described herein, is hereby approved.

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

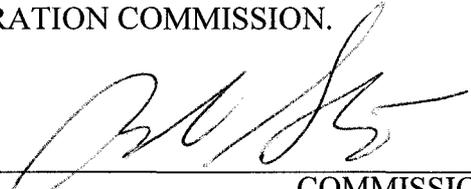
25 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in
26 writing, within ten days of both the commencement and completion of the crossing upgrade, pursuant
27 to A.A.C. R14-5-104.

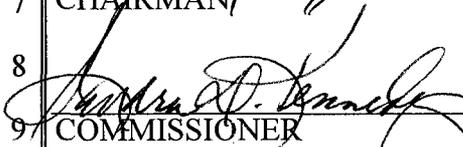
28 ...

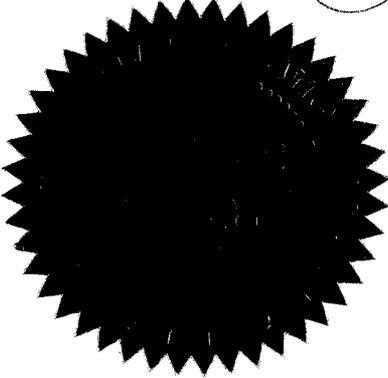
1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
2 Railroad shall maintain the crossing in compliance with A.A.C R14-5-104.

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

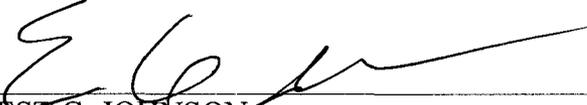
4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6  
7 CHAIRMAN COMMISSIONER

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COMMISSIONER COMMISSIONER 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 August 2012.

15 
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

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

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