

**ORIGINAL**  
**COMMISSIONERS**  
BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCKET CONTROL

DATE: JANUARY 15, 2012

DOCKET NO.: RR-03639A-12-0433

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  
(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:

JANUARY 24, 2013

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:

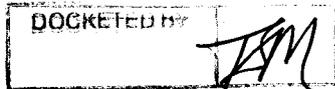
JANUARY 30, 2013 AND JANUARY 31, 2013

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

JAN 15 2013



*Jodi A. Jerich*  
JODI JERICH  
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 [SABernal@azcc.gov](mailto:SABernal@azcc.gov).

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman  
4 GARY PIERCE  
5 BRENDA BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION  
9 OF THE CITY OF CHANDLER TO UPGRADE  
10 AN EXISTING CROSSING OF THE UNION  
11 PACIFIC RAILROAD AT OCOTILLO ROAD IN  
12 THE CITY OF CHANDLER, MARICOPA  
13 COUNTY, ARIZONA, USDOT NO. 741-680-T.

DOCKET NO. RR-03639A-12-0433

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

**OPINION AND ORDER**

10 DATE OF HEARINGS: December 10, 2012

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Eric Anderson, Assistant City Attorney, on behalf  
14 of the City of Chandler;

15 Mr. Reed Campbell, Beaugureau, Zukowski & Hancock,  
16 P.C., on behalf of the Union Pacific Railroad Company;  
and

17 Ms. Bridgett Humphrey and Mr. Charles Hains, Staff  
18 Attorneys, Legal Division, on behalf of the Safety  
Division of the Arizona Corporation Commission.

19 **BY THE COMMISSION:**

20 On October 9, 2012, the City of Chandler filed with the Arizona Corporation Commission  
21 (“Commission”) an application for approval for the Union Pacific Railroad (“Railroad”) to upgrade  
22 an existing crossing at Ocotillo Road in the City of Chandler which is located in Maricopa County,  
23 Arizona at USDOT No. 741-680-T (“Application”).

24 On October 16, 2012, by Procedural Order, a hearing was scheduled on the Application on  
25 December 10, 2012.

26 On November 20, 2012, the City filed certification that notice of the proceeding was provided  
27 in accordance with the Commission’s Procedural Order.

28 On November 28, 2012, the Commission’s Safety Division, Railroad Safety Section (“Staff”)

1 filed a memorandum recommending approval of the Application.

2 On December 10, 2012, the hearing was convened before a duly authorized Administrative  
3 Law Judge of the Commission at its offices in Phoenix, Arizona. The City of Chandler, the Railroad  
4 and Staff were present with counsel. At the conclusion of the hearing, the matter was taken under  
5 advisement pending submission of a Recommended Opinion and Order to the Commission.

6 \* \* \* \* \*

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

9 **FINDINGS OF FACT**

10 1. On October 9, 2012, the City of Chandler ("City") filed an Application in which it  
11 requested an Opinion and Order from the Commission approving an agreement between the City and  
12 the Railroad to upgrade an existing at-grade crossing at Ocotillo Road at USDOT No. 741-680-T.<sup>1</sup>

13 2. Ocotillo Road is a paved two-lane roadway which runs in an east west direction and is  
14 currently equipped with flashing lights, gates and bells. The proposed upgrade to the crossing is  
15 related to the widening of the current two-lane roadway to a four-lane major arterial roadway with a  
16 16-foot raised median at the crossing. When the upgrade is completed, all new automatic state-of-  
17 the-art warning devices will be installed at the crossing and will include LED flashing lights, curbside  
18 and median gates, bells and a new concrete crossing surface. According to the Staff Memorandum,  
19 the total cost of the project to upgrade the Ocotillo Road crossing is \$593, 851.

20 3. On November 20, 2012, the City filed certification that it had provide public notice of  
21 the Application and hearing thereon pursuant to the Commission's Procedural Order by publishing  
22 notice in the *Arizona Business Gazette*, and by mailing, by certified U.S. mail, notice to the  
23 following; the Railroad and its counsel; the Arizona Department of Transportation; the Salt River  
24 Project; the Maricopa County Department of Transportation; and to Dwayne Dobson Farms, LLC.

25 4. The hearing was held as scheduled on December 10, 2012.

26 5. According to the Staff Memorandum, the area which surrounds the Ocotillo Road

27 <sup>1</sup> On June 11, 2008, the City, the Railroad and Staff held a field diagnostic meeting at the project site to discuss the  
28 proposed upgrade which is to be funded by the Federal Highway Safety Improvement Plan ("HSIP") and the City.

1 crossing is highly developed with both commercial businesses and residential dwellings.

2           6.     Mr. Andrew Spear, a civil engineer employed by Dibble Engineering which had been  
3 retained by the City to plan the road improvement project for Ocotillo Road, testified in support of  
4 the Application.

5           7.     Mr. Spear testified that the widening of Ocotillo Road involves its reconstruction from  
6 a two-lane road to become a four-lane arterial roadway with a raised median, sidewalks, roadway  
7 lighting, new traffic signals, and landscaping and sundry improvements accompanied by the upgrade  
8 to the Railroad's crossing of Ocotillo Road by a spur line known as the Chandler lead. (Tr. 7: 16-24

9           8.     Mr. Spear stated that Ocotillo Road presently has graded shoulders and numerous  
10 utility lines running underneath the roadway and the Railroad's tracks. (Tr. 8: 1-5)

11          9.     Mr. Spear further testified that the City and the Railroad have reached an agreement  
12 for the upgrade of the crossing. (Tr. 8: 13-18)

13          10.    Mr. Spear stated that the proposed improvements to Ocotillo Road at the Railroad's  
14 crossing will cause it to become a "more driver friendly crossing" with the widening of the existing  
15 roadway as it approaches the crossing. (Tr. 8: 19-25)

16          11.    Mr. Spear further testified that the roadway improvements were designed by him,  
17 but the actual upgrades to the Ocotillo Road crossing itself will be conducted by employees of the  
18 Railroad. (Tr. 9: 6-12)

19          12.    Mr. Spear further stated that the plans for the upgrade were designed in accordance  
20 with professional engineering standards, and that he submitted the Application on behalf of the City.  
21 (Tr. 9: 10-18)

22          13.    Further testifying, Mr. Spear stated that he and his firm conducted a "high-level study  
23 of a grade separated crossing of the Ocotillo Roadway both over and under the tracks and "concluded  
24 that it would have deleterious effects to existing commercial on the east - - on both north and south  
25 of Ocotillo Road." Additionally, property would be impacted by a loss of access and loss of land  
26 currently used by commercial establishments and it would impact the Arizona Avenue and Ocotillo  
27 Road intersection requiring a profile adjustment of that intersection. (Tr. 9-10: 23-11)

28          14.    Mr. Spear further stated that he found no factors which would indicate that a grade

1 separated crossing would be appropriate for the area of the Ocotillo Road at-grade crossing. (Tr. 10:  
2 12-15)

3 15. Mr. Spear stated that the widening project for Ocotillo Road could not proceed  
4 without the planned crossing improvements for the Ocotillo Road at-grade crossing. (Tr. 12: 15-21)

5 16. According to Mr. Spear, the widening project for Ocotillo Road in the City is currently  
6 under Federal Highway Administration ("FHWA") review and the actual roadway construction will  
7 probably occur in the winter of 2013 and into the beginning of 2014. (Tr. 13: 4-11)

8 17. Mr. Spear noted that the spur track which utilizes the Ocotillo Road at-grade crossing  
9 carries limited train traffic of approximately six trains per week, and it is a dead-end track which  
10 serves a terminus located at the Gila Indian Reservation to the south. (Tr. 13: 12-22)

11 18. Mr. Spear stated that he is in agreement with Staff's recommendations in the Staff  
12 Memorandum. (Tr. 14: 20-24)

13 19. Mr. Spear stated that cantilevered flashing signal structures are not included in the  
14 upgrade under the terms of the current agreement. (Tr. 15: 3-19)

15 20. According to Mr. Spear, current average daily traffic on the roadway at the Ocotillo  
16 Road crossing is 11,900 vehicles per day. Vehicle traffic is projected to be 23,400 vehicles per day in  
17 the year 2031. (Tr. 16: 1-7)

18 21. Additionally, Mr. Spear stated that 60 school buses utilize the crossing per day during  
19 the school year. (Tr. 16: 14-18)

20 22. Mr. Spear testified that approximately 95 percent of the funds for the upgrade project  
21 will be provided by the federal government with the City providing the remainder of the funds  
22 necessary for the completion of the project. (Tr. 17: 4-8)

23 23. Mr. Brian Lehman, the Supervisor of the Railroad Safety Section for the Commission,  
24 testified that he had overseen the preparation of the Staff Memorandum which describes the nature of  
25 the City's proposed improvements at the Ocotillo Road at-grade crossing. (Tr. 20: 6-14)

26 24. Mr. Lehman testified that Staff evaluated the conditions at the location of the proposed  
27 upgrades to the Ocotillo Road at-grade crossing using the nine criteria established under the  
28 guidelines of the Federal Highway Administration with respect to the consideration of a possible

1 grade separation at the crossing. According to the Staff Memorandum, Staff found that none of the  
 2 nine criteria were met for the establishment of a grade separated crossing. (Tr. 21: 5-10)

3 25. Mr. Lehman testified that Staff is recommending approval of the City's Application to  
 4 upgrade the Ocotillo Road at-grade crossing and believes it is in the public interest. (Tr. 21: 8-17)

5 26. Mr. Lehman further testified that school bus traffic at the crossing will not be  
 6 impinged upon because of the limited amount of train traffic which uses the crossing. (Tr. 22: 9-21)

7 27. The Staff Memorandum states that due to the highly developed nature of the areas on  
 8 both sides of the crossing, that a closure would have a negative effect on many local businesses and  
 9 also limit the access of area residents to their homes. Therefore, Staff does not recommend closure  
 10 and states further that the proposed upgrades are in the public's interest and are reasonable. Staff  
 11 concludes that the improvements are consistent with other similar at-grade crossings and will provide  
 12 for the public's safety.

13 28. Staff is recommending that the Application be approved.

#### 14 CONCLUSIONS OF LAW

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

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

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

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

23 5. After the installation of the crossing upgrades at Ocotillo Road, the Railroad should  
 24 maintain the crossing in accordance with A.A.C. R14-5-104.

#### 25 ORDER

26 IT IS THEREFORE ORDERED that the City of Chandler's Application, as described herein,  
 27 is hereby approved.

28 IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing

1 upgrade as described in the Application within fifteen months of the effective date of this Decision.

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

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

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
9  
10

11 CHAIRMAN

COMMISSIONER

12  
13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14  
15 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
16 Director of the Arizona Corporation Commission, have  
17 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 \_\_\_\_\_ 2013.

18  
19  
20 JODI JERICH  
EXECUTIVE DIRECTOR

21  
22  
23 DISSENT \_\_\_\_\_

24  
25 DISSENT \_\_\_\_\_

26 MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD

2 DOCKET NO.: RR-03639A-12-0433

3 Alex Popovici, Manager  
4 Industry & Public Projects  
5 UNION PACIFIC RAILROAD COMPANY  
631 South 7<sup>th</sup> Street  
Phoenix, AZ 85034-2203

6 Anthony J. Hancock  
7 Terrance L. Sims  
8 BEAUGUREAU, ZUKOWSKI & HANCOCK, P.C.  
302 East Coronado  
Phoenix, AZ 85004  
9 Attorneys for Union Pacific Railroad Company

10 Paul Young, PE, PTOE  
11 Senior Transportation Engineer  
12 Transportation & Development Department  
CITY OF CHANDLER  
P.O. Box 4008, M/S 105  
Chandler, AZ 85244-4008

13 Mary Wade, City Attorney  
14 CITY OF CHANDLER  
P.O. Box 4008  
Chandler, AZ 85244-4008

15 Vicki Bever, Manager  
16 Utility & Railroad Engineering  
ARIZONA DEPARTMENT OF TRANSPORTATION  
17 205 South 17<sup>th</sup> Avenue, M/D 618E  
Phoenix, AZ 85007-3212

18 Janice Alward, Chief Counsel  
19 Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
20 Phoenix, AZ 85007

21 Brian Lehman, Chief  
22 Railroad Safety Section of the Safety Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
23 Phoenix, AZ 85007

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25  
26  
27  
28