

OPEN MEETING ITEM

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



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ARIZONA CORPORATION COMMISSION

RECEIVED

DATE: MAY 22, 2014
DOCKET NO.: RR-03639A-14-0035

2014 MAY 22 A 11:40

AZ CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

ORIGINAL

Enclosed please find the recommendation of Administrative Law Judge Scott M. Hesla. 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:

JUNE 2, 2014

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:

JUNE 10, 2014 and JUNE 11, 2014

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

MAY 22 2014

DOCKETED BY

Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

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 OF
9 THE TOWN OF QUEEN CREEK TO UPGRADE
10 AN EXISTING CROSSING OF THE UNION
11 PACIFIC RAILROAD COMPANY AT OCOTILLO
12 ROAD IN QUEEN CREEK, MARICOPA
13 COUNTY, ARIZONA, USDOT NO. 741-837-W.

DOCKET NO. RR-03639A-14-0035

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: April 25, 2014
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Scott M. Hesla
13 APPEARANCES: Mr. Clifford L. Mattice, Dickinson, Wright, Mariscal,
14 Weeks, on behalf of the Town of Queen Creek;
15 Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll &
16 Schwartz, P.C., on behalf of the Union Pacific Railroad
17 Company; and
18 Mr. Charles Haines, Staff Attorney, Legal Division on
19 behalf of the Safety Division of the Arizona Corporation
20 Commission.

21 **BY THE COMMISSION:**

22 * * * * *

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

25 **FINDINGS OF FACT**

26 **Procedural History**

27 1. On February 5, 2014, the Town of Queen Creek ("Town") filed with the Arizona
28 Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad
("Railroad") to upgrade an existing crossing at Ocotillo Road in Queen Creek, Maricopa County,
Arizona at USDOT No. 741-837-W ("Application").

1 2. On February 18, 2014, a Procedural Order was issued establishing various filing dates
2 and scheduling a hearing for April 25, 2014.

3 3. On March 19, 2014, the Railroad filed certification that it provided public notice in
4 accordance with the Commission's Procedural Order.

5 4. On April 8, 2014, the Commission's Safety Division Railroad Safety Section ("Staff")
6 filed a Staff Report recommending approval of the Application.

7 5. On April 23, 2014, the Town filed certification that it mailed copies of the Application
8 and Procedural Order to the Town's residents and businesses and provided public notice of the
9 hearing.

10 6. On April 25, 2014, a full public hearing was convened before a duly authorized
11 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Town, the
12 Railroad, and Staff appeared through counsel. At the conclusion of the hearing, the matter was taken
13 under advisement pending the submission of a Recommended Opinion and Order to the Commission.

14 **The Town's Application**

15 7. Prior to the filing of the Application, representatives of the Town, the Railroad, and
16 Staff participated in several diagnostic review meetings of the proposed upgrades for the crossing.
17 All parties who were present at these meetings were in agreement that the proposed enhancements
18 would improve safety at the crossing.

19 8. In its Application, the Town is seeking Commission approval to upgrade the existing
20 at-grade crossing at Ocotillo Road, a two lane paved roadway which runs in an east west direction.
21 The proposed improvements will replace the existing flashing lights and gates with two new
22 automatic gates with LED flashing lights on the outside curbs of Ocotillo Road and two new
23 automatic gates with LED flashing lights which will be located within a new raised median. New
24 constant warning time circuitry will also be installed. In addition, the Town will widen Ocotillo
25 Road to four lanes (two eastbound and two westbound through lanes), construct sidewalks and
26 bicycle lanes, install the raised median, and restripe the roadway in advance of the crossing.

27 9. Mr. Richard Yano, the Town's consultant for the project, testified in support of the
28 Application. Mr. Yano testified that the project will be funded by the Town and will cost an

1 estimated \$2 million. (Tr. 15:23-16:4). According to Mr. Yano, the proposed improvements are
2 typical of similar railroad crossings in the southwest. (Tr. 15:4-22).

3 10. Mr. Yano testified that traffic at the crossing currently experiences bottlenecking
4 because the roadway in advance of the crossing is reduced from two lanes to one lane in both
5 eastbound and westbound directions. (Tr. 10:13-18). Mr. Yano testified that widening the roadway to
6 four lanes will remove the bottlenecking problem and alleviate traffic congestion at the crossing. (Tr.
7 14:17-15:1).

8 11. Testifying further, Mr. Yano stated that the crossing is currently not in compliance
9 with the Americans with Disabilities Act ("ADA") because the sidewalks are discontinued through
10 the railroad right-of-way to the north and south of the crossing. (Tr. 10:19-11:4). Mr. Yano also
11 testified that the bicycle lanes are similarly discontinued through the railroad right-of-way. (Tr. 12:7-
12 10). According to Mr. Yano, the proposed improvements will make the sidewalks and bicycle lanes
13 continuous through the crossing and will be compliant with ADA requirements. (Tr. 12:7-10).

14 12. Mr. Yano testified that a grade separation would not be feasible for this crossing due
15 to inadequate sight distance requirements, insufficient right-of-way width, and the overall high cost.¹
16 (Tr. 17:23-18:7). In addition, Mr. Yano testified that the crossing did not meet any of the nine
17 criteria utilized by Federal Highway Administration ("FHWA") for consideration of grade separation.
18 (Tr. 17:23-18:7).

19 13. Mr. Yano further testified that the crossing is a major route for school buses, with
20 approximately 66 crossings per school day. (Tr. 22:8-18). In order to minimize the impact to schools,
21 Mr. Yano stated that the Town intends to complete the project during the summer. (Tr. 29:5-11). Mr.
22 Yano testified that the proposed upgrades will improve the safety at the crossing for school buses as
23 well as the public at large. (Tr. 22:20-23; Tr. 26:2-7).

24 14. Mr. Alexander Popovici, the Railroad's project manager, testified that federal funding
25 authorized pursuant to 23 U.S.C. § 130 ("Section 130") is not available for crossing projects that
26 incorporate roadway modifications. (Tr. 35:24-36:4). Since the Town is proposing to widen Ocotillo
27

28 ¹ Mr. Yano estimated the cost of grade separation to be in the range of \$10 to \$15 million. (Tr. 30:6-14).

1 Road to four lanes, Mr. Popovici stated that the project is disqualified from Section 130 funding. (Tr.
2 36:5-11).

3 15. Mr. Brian Lehman, Supervisor of Railroad Safety for the Commission, testified that he
4 had prepared the Staff Memorandum which describes the nature of the Town's proposed
5 improvements at the Ocotillo Road crossing. (Tr. 14:6-9).

6 16. Mr. Lehman indicated that according to both federal and Staff records, no incidents or
7 accidents have been reported at the Ocotillo Road crossing. (Tr. 44:10-11).

8 17. Mr. Lehman does not believe that the Ocotillo Road crossing should be considered for
9 grade separation for the reasons stated by the Town. (Tr. 41:11-18).

10 18. According to Mr. Lehman, the proposed upgrades will improve the safety of the
11 crossing, are consistent with similar crossings located throughout Arizona, and are in the public
12 interest. (Tr. 42:8-16).

13 19. Staff recommends 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. The 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 improvements at the Ocotillo Road crossing, the Union
24 Pacific Railroad Company should maintain the crossing in accordance with A.A.C. R14-5-104.

25 **ORDER**

26 IT IS THEREFORE ORDERED that the Town of Queen Creek's Application is hereby
27 approved.

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

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

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

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

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10
11
12 CHAIRMAN _____ COMMISSIONER

13
14 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

15
16 IN WITNESS WHEREOF, I, JODI JERICH, Executive
17 Director of the Arizona Corporation Commission, have
18 hereunto set my hand and caused the official seal of the
19 Commission to be affixed at the Capitol, in the City of Phoenix,
20 this _____ day of _____ 2014.

21 _____
22 JODI JERICH
23 EXECUTIVE DIRECTOR

24 DISSENT _____

25 DISSENT _____
26 SMH:ru

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2 DOCKET NO.: RR-03639A-14-0035

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