

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

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

RECEIVED

DATE: NOVEMBER 24, 2014

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DOCKET NO.: RR-03639A-14-0157

AZ CORP COMMISSION
DOCKET CONTROL

ORIGINAL

TO ALL PARTIES:

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:

DECEMBER 3, 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:

DECEMBER 11, 2014 and DECEMBER 12, 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

NOV 24 2014

DOCKETED BY

Jodi A. Jerich
JODI JERICHI
EXECUTIVE DIRECTOR

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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.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
THE TOWN OF GILBERT TO UPGRADE
EXISTING CROSSINGS OF THE UNION
PACIFIC RAILROAD COMPANY AT COOPER
ROAD, AAR/DOT NO. 741-816D, AND AT
GUADALUPE ROAD, AAR/DOT NO. 741-815W,
IN THE TOWN OF GILBERT, MARICOPA
COUNTY, ARIZONA.

DOCKET NO. RR-03639A-14-0157

DECISION NO. _____

OPINION AND ORDER

DATES OF HEARING: August 26, 2014 (Public Comment) and October 2, 2014 (Evidentiary Hearing)

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Scott M. Hesla

APPEARANCES: Mr. Jack Vincent, Assistant Town Attorney, on behalf of the Town of Gilbert;

Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll & Schwartz, P.C., on behalf of the Union Pacific Railroad Company; and

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

BY THE COMMISSION:

* * * * *

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

FINDINGS OF FACT

Procedural History

1. On May 12, 2014, the Town of Gilbert ("Town") filed with the Arizona Corporation Commission ("Commission") an application for approval for Union Pacific Railroad Company

1 (“Railroad”) to upgrade the following existing crossings located at the Railroad’s tracks in Gilbert,
2 Arizona: at Cooper Road, AAR/DOT NO. 741-816D; and at Guadalupe Road, AAR/DOT NO. 741-
3 815W (“Application”).¹

4 2. On May 28, 2014, a Procedural Order was issued scheduling a hearing on August 26,
5 2014 and setting various filing dates.

6 3. On July 16, 2014, Jack A. Vincent, Assistant Town Attorney, filed a Notice of
7 Appearance on behalf of the Town.

8 4. On July 24, 2014, the Town filed an affidavit of publication verifying that notice of
9 the Application and hearing thereon was published in the *Arizona Business Gazette* on June 9, 2014.²
10 The Town also filed copies of U.S. Postal Service Certified Mail Receipts confirming that copies of
11 the Application and the May 28, 2014 Procedural Order were mailed to surrounding adjacent
12 property owners via certified mail.³

13 5. On August 8, 2014, the Commission’s Safety Division, Railroad Safety Section
14 (“Staff”) filed a Staff Memorandum recommending approval of the Application.⁴

15 6. On August 13, 2014, the Railroad filed a Joint Request to Continue the Evidentiary
16 Hearing Scheduled for August 26, 2014 requesting that the hearing be continued due to a scheduling
17 conflict with the Railroad’s witness.

18 7. On August 15, 2014, a Procedural Order was issued granting the Joint Request to
19 Continue the Evidentiary Hearing and rescheduling the hearing for October 2, 2014. Since public
20 notice of the hearing had been published, the August 26, 2014 hearing date was preserved solely for
21 the purpose of taking public comment.

22 8. On August 26, 2014, a public comment session was convened, as scheduled, with one
23 member of the public providing public comment. The public commenter opposed the Town’s plan to
24 widen Guadalupe Road because doing so would infringe upon his property.⁵

25 ...

26 ¹ Exhibit A-1.

27 ² Exhibit A-5.

28 ³ *Id.*; Hearing Transcript (October 2, 2014) (“Hrg. Tr.”) at 39:7-40:6.

⁴ Exhibit S-1.

⁵ Public Comment Transcript (August 26, 2014) (“Pub. Tr.”) at 13:3-9.

1 9. On October 2, 2014, a full public hearing was convened, as scheduled. The Town, the
2 Railroad, and Staff appeared through counsel. At the conclusion of the hearing, the matter was taken
3 under advisement pending submission of a Recommended Opinion and Order to the Commission.

4 **The Town's Application**

5 10. Prior to the filing of the Application, representatives from the Town, the Railroad, and
6 Staff participated in a diagnostic review meeting of the proposed crossing upgrades at Cooper Road
7 and Guadalupe Road.⁶ All parties who were present at this meeting were in agreement that the
8 proposed enhancements would improve safety at the crossings.⁷

9 11. The Railroad's tracks run in a southeast to northwest direction near the intersection of
10 Cooper Road and Guadalupe Road.⁸ Cooper Road is a five lane paved roadway which consists of
11 two northbound through lanes, two southbound through lanes, and one left turn lane at the
12 intersection.⁹ Guadalupe Road is a five lane paved roadway which consists of two eastbound through
13 lanes, two westbound through lanes, and one left turn lane at the intersection.¹⁰ The rail line crosses
14 Cooper Road to the south of the intersection and Guadalupe Road to the west of the intersection.¹¹

15 12. The proposed improvements at the Cooper Road crossing will replace the existing
16 flashing lights and gates with two new automatic gates and cantilevers with LED flashing lights on
17 the outside curbs of Cooper Road and two new automatic gates with LED flashing lights which will
18 be located within a new raised median.¹² Constant warning time with advanced preemption circuitry
19 and a new concrete crossing surface will also be installed.¹³ In addition, the Town will widen Cooper
20 Road by one additional through lane in each direction, install the raised median, improve pedestrian
21 crossings, and restripe the roadway and install new signage in advance of the crossing.

22 13. The proposed improvements at the Guadalupe Road crossing will replace the existing
23 flashing lights and gates with two new automatic gates and cantilevers with LED flashing lights on
24

25 ⁶ Exhibit S-1.

26 ⁷ *Id.*

27 ⁸ Exhibit A-1.

28 ⁹ Hrg. Tr. at 26:17-25.

¹⁰ *Id.* at 25:18-26:3.

¹¹ Exhibit A-1.

¹² *Id.*

¹³ *Id.*

1 the outside curbs of Guadalupe Road and two new automatic gates with LED flashing lights which
2 will be located within a new raised median.¹⁴ Constant warning time with advanced preemption
3 circuitry and a new concrete crossing surface will also be installed.¹⁵ In addition, the Town will
4 widen Guadalupe Road by one additional through lane in each direction, install the raised median,
5 improve pedestrian crossings, and restripe the roadway and install new signage in advance of the
6 crossing.¹⁶

7 14. Mr. Frank Henderson, Vice President and Senior Project Manager for Ritock-Powell
8 & Associates, testified that he prepared the Application on behalf of the Town.¹⁷ According to Mr.
9 Henderson, the existing configuration of the intersection fails from an operational standpoint because
10 it experiences significant traffic congestion and queues during peak traffic hours.¹⁸ In addition, Mr.
11 Henderson testified that queuing vehicles are often trapped between the intersection and the railroad
12 crossings because the existing traffic signals do not interface with the existing railroad crossing
13 signals.¹⁹ Mr. Henderson indicated that installing advanced preemption circuitry will connect traffic
14 signals with the railroad crossing signals and prevent the trapping of vehicles during train crossings.²⁰
15 According to Mr. Henderson, the proposed upgrades will improve the operational characteristics and
16 capacity of the intersection and result in a significant safety improvement at the crossings.²¹

17 15. The American Association of State Highway and Transportation Officials
18 (“AASHTO”) Geometric Design of Highways and Streets states that the Level of Service (“LOS”)
19 characterizes the operating conditions on a roadway in terms of traffic performance measures related
20 to speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience.²²
21 Staff notes that LOS is a measure of roadway congestion ranging from LOS A (least congested) to
22 LOS F (most congested).²³ According to Staff, LOS is one of the most common terms used to

23

24 ¹⁴ Exhibit A-1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Hrg. Tr. at 10:20-11:2.

¹⁸ *Id.* at 11:17-12:3; 18:12-19:10.

¹⁹ *Id.* at 11:17-12:3; 20:3-21:4.

²⁰ *Id.* at 21:5-25.

²¹ *Id.* at 19:5-10; 20:11-22:20; Exhibit A-1.

²² Exhibit S-1.

²³ *Id.*

1 describe how “good” or how “bad” traffic is projected to be.²⁴

2 16. Erik Guderian, Traffic Engineer for the Town of Gilbert, testified that the current LOS
3 for the intersection is LOS D during morning peak traffic hours and LOS E during afternoon peak
4 traffic hours.²⁵ Mr. Guderian further testified that the Town engaged the services of a traffic
5 engineering consultant to perform a traffic study at the intersection.²⁶ According to the traffic study,
6 the present intersection configuration is inadequate to serve current and future traffic volumes.²⁷ By
7 the year 2031, the traffic study projects the LOS for the intersection to worsen under its current
8 configuration to LOS E during morning peak traffic hours and LOS F during afternoon peak traffic
9 hours.²⁸ Mr. Guderian testified that traffic congestion and related safety concerns are the driving
10 factors behind the Town’s decision to widen the existing roadways.²⁹

11 17. Mr. Jack Gierak, Senior Project Manager in the Engineering Department for Gilbert
12 Capital Improvement Group, testified that the proposed project will require the relocation of utility
13 assets owned by Salt River Project (“SRP”).³⁰ According to Mr. Gierak, the SRP relocation phase
14 will take approximately three to fourth months to complete³¹ and will coincide with SRP’s annual
15 irrigation dry-up process which begins every December.³² Once the SRP relocation phase is
16 completed, Mr. Gierak testified that the proposed project will be completed within thirteen months.³³

17 18. Mr. Henderson testified that grade separation is not feasible for these crossings due to
18 the adverse impact to adjoining landowners and inadequate site distance requirements.³⁴ In addition,
19 the crossings do not meet any of the nine criteria utilized by Federal Highway Administration
20 (“FHWA”) for consideration of grade separation.³⁵

21 ...

22 ²⁴ *Id.*

23 ²⁵ Hrg. Tr. at 35:16-22.

24 ²⁶ *Id.* at 34:1-24.

25 ²⁷ Exhibit A-6.

26 ²⁸ Hrg. Tr. at 35:16-36:9.

27 ²⁹ *Id.* 36:13-24.

28 ³⁰ Hrg. Tr. at 41:9-21.

³¹ *Id.* at 46:7-19. Mr. Gierak expressed uncertainty as to whether the SRP relocation phase will coincide with SRP’s dry-up process in December of 2014 or December of 2015. (*Id.*)

³² *Id.* at 43:2-12.

³³ *Id.* at 46:20-25.

³⁴ *Id.* at 23:14-24:25:2.

³⁵ Exhibit S-1.

1 19. Testifying further, Mr. Henderson indicated that the cost for the proposed railroad
2 crossing upgrades is approximately \$2 million and will be funded through Proposition 400, Maricopa
3 Association of Governments ("MAG") monies.³⁶

4 **Staff's Recommendations**

5 20. Mr. Brian Lehman, Supervisor of Railroad Safety for the Commission, testified that he
6 prepared the Staff Memorandum which describes the nature of the Town's proposed improvements.³⁷

7 21. Mr. Lehman testified that the Commission's jurisdiction in this matter is limited to the
8 crossings and the proposed warning and safety device upgrades.³⁸ Mr. Lehman noted that the
9 Commission does not have jurisdiction over the intersection of Cooper Road and Guadalupe Road or
10 the roadways themselves.³⁹ According to Mr. Lehman, the relevant inquiry for Staff in performing
11 its analysis is whether the proposed railroad upgrades will result in a safer crossing.⁴⁰ Mr. Lehman
12 testified that Staff believes the proposed railroad upgrades will result in safer crossings.⁴¹ Mr.
13 Lehman further testified that Staff was not concerned with the number of traffic lanes on the
14 roadways because it believes the installation of advanced preemption circuitry will alleviate the
15 safety issue of vehicles queuing on the Railroad's tracks.⁴²

16 22. Mr. Lehman indicated that he was aware of four accidents at the Guadalupe Road
17 crossing caused by vehicles queuing on the Railroad's tracks.⁴³ According to Mr. Lehman, the nature
18 of these accidents demonstrates the need for the advanced preemption circuitry at the crossing.⁴⁴ Mr.
19 Lehman testified that the proposed improvements at these crossings will alleviate accidents of this
20 nature from occurring in the future.⁴⁵

21 ...

22 ...

23 ³⁶ Hrg. Tr. at 27:1-17; Exhibit S-1.

24 ³⁷ *Id.* at 48:7-12.

25 ³⁸ *Id.* at 49:16-50:16.

26 ³⁹ *Id.*

27 ⁴⁰ *Id.*

28 ⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 52:13-53:2. In addition, Mr. Guderian testified that the intersection consistently ranks in the top ten for the number of annual accidents in the Town of Gilbert. (*Id.* at 36:19-24).

⁴⁴ *Id.*

⁴⁵ *Id.*

1 IT IS FURTHER ORDERED that upon completion of the upgrades to the Cooper Road and
2 Guadalupe Road crossings, the Union Pacific Railroad Company shall maintain the crossings in
3 compliance with A.A.C. R14-5-104.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____ 2014.

17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____
21 SMH:ru

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