

OPEN MEETING ITEM

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



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ARIZONA CORPORATION COMMISSION RECEIVED

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DATE: DECEMBER 22, 2014  
DOCKET NO.: RR-03639A-14-0315

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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 31, 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:

JANUARY 13, 2015 and JANUARY 14, 2015

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

DEC 22 2014

DOCKETED BY

JODI JERICHI  
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).

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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 ARIZONA DEPARTMENT OF  
TRANSPORTATION TO UPGRADE AN  
EXISTING CROSSING OF THE UNION PACIFIC  
RAILROAD COMPANY AT AVONDALE  
BOULEVARD IN THE CITY OF AVONDALE,  
ARIZONA, AT USDOT NO. 741-799P.

DOCKET NO. RR-03639A-14-0315

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

**OPINION AND ORDER**

DATE OF HEARING: December 3, 2014  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Scott M. Hesla  
APPEARANCES: Mr. James Redpath, OFFICE OF THE ATTORNEY  
GENERAL, Assistant Attorney General, on behalf of  
the Arizona Department of Transportation;  
Mr. W. Reed Campbell, BEAUGUREAU, ZUKOWSKI  
& HANCOCK, 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 August 27, 2014, the Arizona Department of Transportation (“ADOT”) filed with  
the Arizona Corporation Commission (“Commission”) an application for approval for the Union

1 Pacific Railroad Company (“Railroad”) to upgrade an existing crossing at Avondale Boulevard in the  
2 City of Avondale (“City”), Arizona, at USDOT No. 741-799P (“Application”).

3 2. On September 12, 2014, a Procedural Order was issued establishing various filing  
4 dates and scheduling a hearing for December 3, 2014.

5 3. On October 23, 2014, ADOT filed documentation that it had provided public notice of  
6 the Application and hearing thereon.

7 4. On November 20, 2014, the Commission’s Safety Division, Railroad Safety Section  
8 (“Staff”) filed a Staff Memorandum recommending approval of the Application.

9 5. On December 3, 2014, a full public hearing was convened, as scheduled. ADOT, the  
10 Railroad, and Staff appeared through counsel. At the conclusion of the hearing, the matter was taken  
11 under advisement pending submission of a Recommended Opinion and Order to the Commission.

12 **ADOT’s Application**

13 6. Prior to the filing of the Application, representatives from ADOT, the Maricopa  
14 County Department of Transportation (“MCDOT”), the City, the Railroad, and Staff participated in  
15 several diagnostic review meetings of the proposed improvements to the crossing.<sup>1</sup> All parties who  
16 were present at these meetings were in agreement that the proposed improvements would improve  
17 safety at the crossing.<sup>2</sup>

18 7. In its Application, ADOT is seeking Commission approval to upgrade the existing at-  
19 grade crossing at Avondale Boulevard, a five lane paved roadway, which consists of two northbound  
20 through lanes, two southbound through lanes, and one left turn southbound lane.<sup>3</sup> The crossing is  
21 currently equipped with automatic gates, flashing lights, bells, and a cantilever for southbound traffic  
22 only.<sup>4</sup> The proposed improvements include installing two new automatic gates with LED flashing  
23 lights and two upgraded cantilevers with LED flashing lights on the outside curbs and two new  
24 automatic gates with LED flashing lights which will be located on a new raised median.<sup>5</sup>  
25 Additionally, constant warning time circuitry, updated traffic signal preemption, and a new concrete

26 <sup>1</sup> Exhibit S-1.

27 <sup>2</sup> *Id.*

28 <sup>3</sup> Exhibit S-1; Tr. at 6:12-7:2.

<sup>4</sup> Exhibit S-1.

<sup>5</sup> *Id.*

1 crossing surface will also be installed.<sup>6</sup> MCDOT will reconstruct the sidewalks, widen the roadway  
 2 by two additional lanes, improve the approaches to the crossing, install the raised median, and  
 3 restripe the roadway in advance of the crossing.<sup>7</sup>

4 8. The proposed crossing upgrade was approved by the Commission in Decision No.  
 5 70481 (September 3, 2008) as part of the 2008 Annual Array to utilize federal funding pursuant to 23  
 6 U.S.C. § 130 (“Section 130”).<sup>8</sup> Once a crossing has been designated on an Annual Array, the Federal  
 7 Highway Administration (“FHWA”) issues authorizations for the design and construction of the  
 8 project and then reimburses ADOT for the cost after conducting a final inspection of the project.<sup>9</sup>  
 9 Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public  
 10 railroad crossings which are not primarily for the benefit of the Railroad.<sup>10</sup>

11 9. Mr. Jason Pike, ADOT’s Railroad Safety Coordinator, testified in support of the  
 12 Application.<sup>11</sup>

13 10. Mr. Pike testified that the project will utilize federal funding pursuant to Section 130.<sup>12</sup>

14 11. According to Mr. Pike, the proposed improvements are consistent with similar  
 15 crossings located in Arizona.<sup>13</sup>

16 12. Testifying further, Mr. Pike estimated that construction on the project is expected to be  
 17 completed within 15 months.<sup>14</sup>

18 13. Mr. Chris Watson, Assistant Supervisor of Railroad Safety for the Commission,  
 19 testified that he prepared the Staff Memorandum which describes the nature of the proposed crossing  
 20 improvements.<sup>15</sup>

21 14. According to Mr. Watson, the current warning devices at the crossing are inadequate  
 22 because the flashing lights do not cover each traffic lane.<sup>16</sup> Mr. Watson explained that safety

23 <sup>6</sup> Exhibit S-1; Tr. at 6:12-7:2.

24 <sup>7</sup> Exhibit S-1; Tr. at 6:12-7; Tr. at 10:23-11:3; Tr. at 12:11-23.

25 <sup>8</sup> Exhibit S-1; Tr. at 7:24-8:6.

26 <sup>9</sup> Exhibit S-1.

27 <sup>10</sup> *Id.*

28 <sup>11</sup> Tr. at 6:9-14:1.

<sup>12</sup> Tr. at 7:24-8:2.

<sup>13</sup> Tr. at 9:21-25.

<sup>14</sup> Tr. at 13:11-17.

<sup>15</sup> Tr. at 15:5-12.

<sup>16</sup> Tr. at 17:14-24.

1 standards require a pair of flashing lights for each lane of traffic.<sup>17</sup> Mr. Watson testified that the  
 2 crossing will comply with all applicable state safety standards upon completion of the proposed  
 3 upgrade.<sup>18</sup>

4 15. Mr. Watson and Mr. Pike both testified that the crossing is not a suitable candidate for  
 5 grade separation because the crossing does not meet any of the nine criteria utilized by the FHWA for  
 6 consideration of grade separation.<sup>19</sup> Additionally, Mr. Pike indicated that grade separation is cost  
 7 prohibitive due to the urbanized location of the crossing.<sup>20</sup>

8 16. According to Mr. Watson, the proposed crossing upgrade will improve the safety of  
 9 the crossing, is consistent with similar crossings located throughout Arizona, and is in the public  
 10 interest.<sup>21</sup>

11 17. Staff recommends that the Application be approved.<sup>22</sup>

12 18. Staff's recommendation is reasonable and appropriate and should be adopted.

### 13 CONCLUSIONS OF LAW

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

17 20. Notice of the Application was provided in accordance with the law.

18 21. The installation of the crossing upgrade described in the Application is necessary for  
 19 the public's convenience and safety.

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

22 23. Upon completion of the crossing upgrade, the Union Pacific Railroad Company  
 23 should maintain the crossing in accordance with A.A.C. R14-5-104.

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 26 <sup>17</sup> Tr. at 17:14-24.

27 <sup>18</sup> Tr. at 18:5-9.

<sup>19</sup> Tr. at 16:20-17:3; Tr. at 9:12-20.

<sup>20</sup> Tr. at 9:12-20.

<sup>21</sup> Tr. at 16:13-19; Tr. at 18:11-13.

28 <sup>22</sup> Exhibit S-1; Tr. at 16:10-12; Tr. at 18:14-16.

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**ORDER**

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby approved.

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

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

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad Company 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, JODI JERICH, 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 \_\_\_\_\_ 2015.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
SMH:tv

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-14-0315

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