

COMMISSIONERS
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GARY PIERCE



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ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL
Executive Director

DATE: JANUARY 25, 2007

DOCKET NO: RR-03639A-06-0713

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
(AT-GRADE 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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

FEBRUARY 5, 2007

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 Working Session and Open Meeting to be held on:

FEBRUARY 13, and 14, 2007

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 Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE A
11 CROSSING OF THE UNION PACIFIC
12 RAILROAD AT 36TH STREET, IN TUCSON,
13 PIMA COUNTY, ARIZONA, AAR/DOT
14 NO. 741-292-U.

DOCKET NO. RR-03639A-06-0713

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: January 3, 2007

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Charles Haines, Staff Attorney, Legal Division on
14 behalf of the Utilities Division of the Arizona
Corporation Commission.

15 **BY THE COMMISSION:**

16 On November 16, 2006, the Arizona Department of Transportation ("ADOT") submitted to
17 the Arizona Corporation Commission ("Commission") a request for an Opinion and Order for the
18 approval of an agreement between ADOT and the Union Pacific Railroad Company ("Railroad") to
19 upgrade the Railroad's crossing at 36th Street in Tucson, Pima County, Arizona, at AAR/DOT No.
20 741-292-U ("Application").

21 On December 5, 2006, by Procedural Order, the Application was set for a hearing and ADOT
22 was ordered to notify any interested party of the Application and the hearing.

23 On December 21, 2006, ADOT certified that notice had been provided pursuant to the terms
24 of the Procedural Order.

25 On January 3, 2007, a full public hearing was held before a duly authorized Administrative
26 Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's Railroad Safety
27 Section was represented by counsel. At the conclusion of the hearing, the matter was taken under
28 advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * *

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

4 **FINDINGS OF FACT**

5 1. On November 16, ADOT filed an Application in which it requested an Opinion and
6 Order from the Commission approving an agreement between ADOT and the Railroad for the
7 upgrade of a crossing to replace existing flashing lights with new cantilever LED automatic warning
8 devices and new automatic gates at 36th Street in Tucson, Pima County, Arizona at AAR/DOT No.
9 741-292-U.

10 2. On December 21, 2006, ADOT filed certification that it had provided notice by
11 registered U.S. mail of the Application and hearing thereon.

12 3. A hearing was held as scheduled on January 3, 2007.

13 4. The Application provides for the Railroad to install new automatic cantilever signals
14 with new LED flashing lights and gates at the crossing.

15 5. Staff testified that the cost apportionment for the installation of the crossing upgrade
16 as provided in the Application is proper.

17 6. Staff has recommended that the Application be approved.

18 **CONCLUSIONS OF LAW**

19 1. The Commission has jurisdiction over the parties and over the subject matter of the
20 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
21 40-337.01.

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

23 3. Pursuant to A.R.S. §§ 40-336 and 40-337, installation of the crossing upgrade is
24 necessary for the public's convenience and safety.

25 4. The Application should be approved as recommended by Staff.

26 5. After installation of the crossing, the Railroad should maintain the crossing in
27 accordance with A.A.C. R14-5-104.

28

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 from 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 the 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, BRIAN C. McNEIL, 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 _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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SERVICE LIST FOR: UNION PACIFIC RAILROAD

DOCKET NO.: RR-03639A-06-0713

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