

ORIGINAL

OPEN MEETING ITEM



0000163979

COMMISSIONERS  
SUSAN BITTER SMITH - Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE



ARIZONA CORPORATION COMMISSION

AZ CORP COM  
DOCKET CONTROL

2015 AUG 24 PM 2 50

DATE: AUGUST 24, 2015  
DOCKET NO.: RR-03639A-15-0147

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc Stern. 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:

SEPTEMBER 2, 2015

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:

SEPTEMBER 8, 2015 AND SEPTEMBER 9, 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

AUG 24 2015

DOCKETED BY [Signature]

[Signature]

JODI JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

[www.cc.state.az.us](http://www.cc.state.az.us)

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 SUSAN BITTER SMITH - Chairman  
4 BOB STUMP  
4 BOB BURNS  
5 DOUG LITTLE  
5 TOM FORESE

6  
7 IN THE MATTER OF THE APPLICATION OF  
8 THE ARIZONA DEPARTMENT OF  
9 TRANSPORTATION TO UPGRADE AN  
10 EXISTING CROSSING OF THE UNION PACIFIC  
11 RAILROAD AT GOLD HILL ROAD IN THE CITY  
12 OF NOGALES, SANTA CRUZ COUNTY,  
13 ARIZONA, USDOT NO. 742-032E.

DOCKET NO. RR-03639A-15-0147

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

14 OPINION AND ORDER

11 DATE OF HEARING: August 4, 2015  
12 PLACE OF HEARING: Phoenix, Arizona  
13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
14 APPEARANCES: Mr. James Redpath and Michelle Burton, Assistant  
15 Attorneys General, Transportation Section, on behalf of  
16 the Arizona Department of Transportation;  
17 Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll &  
18 Schwartz, P.C., on behalf of the Union Pacific Railroad;  
19 and  
20 Mr. Charles Haines, Staff Attorney, Legal Division on  
21 behalf of the Safety Division of the Arizona Corporation  
22 Commission.

20 **BY THE COMMISSION:**

21 On May 8, 2015, the Arizona Department of Transportation (“ADOT”) filed with the Arizona  
22 Corporation Commission (“Commission”) an application for approval for the Union Pacific Railroad  
23 (“Railroad”) to upgrade an existing crossing at Gold Hill Road in the City of Nogales (“City”), Santa  
24 Cruz County, Arizona, at USDOT No. 742-032E (“Application”).

25 On May 26, 2015, by Procedural Order, a hearing was scheduled for August 4, 2015.

26 On June 23, 2015, ADOT filed documentation that it had provided public notice in  
27 accordance with the Commission’s Procedural Order.

28 On August 4, 2015, a full public hearing was convened before a duly authorized

1 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the  
 2 Railroad and the Commission's Safety Division, Railroad Safety Section ("Staff") were present with  
 3 counsel. At the conclusion of the hearing, the matter was taken under advisement pending  
 4 submission of a Recommended Opinion and Order to the Commission.

5 \* \* \* \* \*

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

8 **FINDINGS OF FACT**

9 1. On May 8, 2015, ADOT filed an Application requesting an Opinion and Order from  
 10 the Commission approving an agreement between ADOT and the Railroad to upgrade an existing at-  
 11 grade crossing at Gold Hill Road in Nogales, Santa Cruz County, Arizona, USDOT No. 742-032E.

12 2. Prior to the filing of the Application, representatives of ADOT, the City, the Railroad  
 13 and Staff participated in several diagnostic review meetings of the proposed upgrades for the  
 14 crossing. All parties who were present at these meetings were in agreement that the proposed  
 15 enhancements would improve safety at the crossing.<sup>1</sup>

16 3. ADOT is seeking Commission approval to upgrade the existing at-grade crossing at  
 17 Gold Hill Road, a two lane paved roadway, which consists of one westbound and one eastbound lane.  
 18 The proposed improvements will replace the existing automatic warning devices with two new  
 19 automatic gates with LED flashing lights on both sides of the crossing. Additionally, constant  
 20 warning time circuitry will be installed along with advanced traffic preemption to interconnect with  
 21 the traffic signals. The Railroad will maintain the warning devices and the crossing surface after the  
 22 upgrades are completed.

23 4. On June 23, 2015, ADOT filed documentation that it had provided public notice of the  
 24 Application and hearing thereon, pursuant to the Commission's Procedural Order, by publishing  
 25

26 \_\_\_\_\_  
 27 <sup>1</sup> The proposed upgrade of the Gold Hill Road crossing was approved by the Commission in Decision No. 73610  
 28 (December 12, 2012) as part of the 2012 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 ("Section 130") which is provided by the Federal Highway Administration ("FHWA") to reimburse ADOT for 100 percent of the cost of the project. Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public railroad crossings which are not primarily for the benefit of the Railroad.

1 notice in the *Nogales International* and by mailing by certified U.S. mail, notice to the City and the  
2 Railroad.

3 5. The hearing was held as scheduled on August 4, 2015.

4 6. According to the Staff Memorandum, the areas adjacent to the Gold Hill Road  
5 crossing consist primarily of land which is zoned for light industrial uses.

6 7. Mr. Jason Pike, an ADOT employee who is involved in the Section 130 projects  
7 testified in support of the Application.

8 8. Mr. Pike stated that the project was a typical at-grade crossing improvement with  
9 upgrades to the gates, advanced preemption and train detection devices at the Gold Hill Road  
10 crossing which is located in the City. (Tr. 6:1-5)

11 9. Mr. Pike stated that the existing gates will be replaced with new gates with flashing  
12 LED lights. (Tr. 8:17-20)

13 10. Mr. Pike testified that ADOT is in agreement with the recommendations of Staff in its  
14 memorandum. (Tr. 7:5-8)

15 11. Mr. Pike further testified that ADOT is also in agreement with Staff with respect to the  
16 fact that grade separation is not required at the Gold Hill Road crossing, according to the nine criteria  
17 in the Federal Highway Administration Grade Crossing Handbook. (Tr. 9:7-9)

18 12. According to the Staff Memorandum, the City will maintain the roadway approaches  
19 to the Gold Hill Road at-grade crossing, but the crossing surface and upgraded equipment will be  
20 maintained by the Railroad, and completed within 15 months of the effective date of this Decision  
21 pursuant to A.A.C. R14-5-104.

22 13. Mr. Pike stated that the upgrade which had previously been approved by the  
23 Commission in its 2012 Array Decision would be funded for approximately \$250,000, with 100  
24 percent Section 130 funding. (Tr. 8:10-16)

25 14. According to Mr. Pike, the upgrades to be installed at Gold Hill Road are in the public  
26 interest and will be consistent with similar crossings in Arizona. (Tr. 9:4-13)

27

28



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

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

6 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific  
7 Railroad 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 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  
18 Commission to be affixed at the Capitol, in the City of Phoenix,  
19 this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

20 \_\_\_\_\_  
21 JODI JERICH  
22 EXECUTIVE DIRECTOR

23  
24 DISSENT \_\_\_\_\_

25  
26 DISSENT \_\_\_\_\_  
27 MES:tv

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-15-0147

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

6 W. Reed Campbell  
BEAUGUREAU, ZUKOWSKI & HANCOCK, P.C.  
7 302 East Coronado  
Phoenix, AZ 85004  
8 Attorneys for Union Pacific Railroad Company

9 Jason Pike  
Railroad and Utility Coordinator  
10 ARIZONA DEPARTMENT OF TRANSPORTATION  
205 South 17<sup>th</sup> Avenue, Room 357  
11 M/D 618E  
Phoenix, AZ 85007

12 James Redpath  
Michelle Burton  
13 OFFICE OF THE ATTORNEY GENERAL  
1275 W. Washington Street  
14 Phoenix, AZ 85007

15 City Attorney's Office  
CITY OF NOGALES  
16 777 N. Grand Avenue  
Nogales, AZ 85261

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

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

23  
24  
25  
26  
27  
28