

OPEN MEETING ITEM



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Executive Director

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: MARCH 9, 2016
DOCKET NOS.: RR-03639A-15-0331, RR-03639A-15-0332, RR-03639A-15-0333 and RR-03639A-15-0334

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 COMPANY
(UPGRADE CROSSINGS)

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:

MARCH 18, 2016

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:

APRIL 12, 2016 AND APRIL 13, 2016

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.

JODI A. JERICH
EXECUTIVE DIRECTOR

Arizona Corporation Commission

DOCKETED

MAR 09 2016

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 DOUG LITTLE – Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION OF THE
9 ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN EXISTING
11 CROSSING OF THE UNION PACIFIC RAILROAD
12 AT BAFFERT DRIVE IN THE CITY OF NOGALES,
13 SANTA CRUZ COUNTY, ARIZONA USDOT NO.
14 742-036G.

DOCKET NO. RR-03639A-15-0331

15 IN THE MATTER OF THE APPLICATION OF THE
16 ARIZONA DEPARTMENT OF
17 TRANSPORTATION TO UPGRADE AN EXISTING
18 CROSSING OF THE UNION PACIFIC RAILROAD
19 AT CALLE SONORA IN THE CITY OF NOGALES,
20 SANTA CRUZ COUNTY, ARIZONA USDOT NO.
21 742-037N.

DOCKET NO. RR-03639A-15-0332

22 IN THE MATTER OF THE APPLICATION OF THE
23 ARIZONA DEPARTMENT OF
24 TRANSPORTATION TO UPGRADE AN EXISTING
25 CROSSING OF THE UNION PACIFIC RAILROAD
26 AT BANKARD AVENUE IN THE CITY OF
27 NOGALES, SANTA CRUZ COUNTY, ARIZONA
28 USDOT NO. 742-038V.

DOCKET NO. RR-03639A-15-0333

IN THE MATTER OF THE APPLICATION OF THE
ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE AN EXISTING
CROSSING OF THE UNION PACIFIC RAILROAD
AT MORLEY AVENUE IN THE CITY OF
NOGALES, SANTA CRUZ COUNTY, ARIZONA
USDOT NO. 742-040W.

DOCKET NO. RR-03639A-15-0334

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: December 15, 2015
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Ms. Michelle Burton, Assistant Attorney General,
Transportation Section, on behalf of the Arizona
Department of Transportation;

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

Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Safety Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On September 24, 2015, the Arizona Department of Transportation (“ADOT”) filed with the Arizona Corporation Commission (“Commission”) the above-captioned applications for approval for the Union Pacific Railroad (“Railroad”) to upgrade the following four existing at-grade crossings at: Baffert Drive USDOT No. 742-036G; Calle Sonora USDOT No. 742-037N; Bankard Avenue USDOT No. 742-038V; and Morley Avenue USDOT No. 742-040W in the City of Nogales (“City” or “Nogales”), Santa Cruz County, Arizona (“Applications”).

On October 1, 2015, the Commission’s Safety Division, Railroad Safety Section (“Staff”) filed motions to consolidate the above-captioned dockets.

On October 5, 2015, by Procedural Order, the above-captioned Applications were consolidated for purposes of hearing, and a hearing was scheduled for December 15, 2015.

On November 4, 2015 ADOT filed documentation that it had provided public notice in accordance with the Commission’s Procedural Order.

On December 15, 2015, a full public hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and Staff were present with counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a recommended Opinion and Order to 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

1. On September 24, 2015, ADOT filed four Applications, which each requested an Opinion and Order from the Commission approving agreements between ADOT and the Railroad to upgrade the following four existing at-grade crossings at: Baffert Drive USDOT No. 742-036G; Calle Sonora USDOT No. 742-037N; Bankard Avenue USDOT No. 742-038V; and Morley Avenue USDOT

1 No. 742-040W in Nogales, Santa Cruz County, Arizona.

2 2. On October 5, 2015, the above-captioned Applications were consolidated for purposes
3 of hearing and a hearing was scheduled for December 15, 2015.

4 3. Prior to the filing of the Applications, representatives of ADOT, Nogales, the Railroad
5 and Staff participated in several diagnostic review meetings of the proposed upgrades of the crossings.
6 All parties who were present at the meetings were in agreement that the proposed enhancements would
7 improve safety at the crossings.¹

8 4. On November 4, 2015, ADOT filed documentation that it had provided public notice of
9 the Applications and hearing thereon pursuant to the Commission's Procedural Order by publishing
10 notice in the *Nogales International*.

11 5. The hearing was held as scheduled on December 15, 2015.

12 BAFFERT DRIVE

13 6. According to the Staff Memorandum, Baffert Drive is a two lane roadway with one
14 through west-bound lane and one through east-bound lane. (Ex. S-1)

15 7. Currently the crossing is equipped with flashing lights, automatic gates, constant
16 warning time circuitry and simultaneous preemption. As a result of the proposed upgrade, the crossing
17 will have two new automatic gate/flashing units with LED lights on the outsides edges of the roadway
18 along with the upgrading of the present preemption system to an advanced preemption unit. (Ex. S-1)

19 8. According to the Staff Memorandum, the speed limit on Baffert Drive is 25 miles per
20 hour and the Federal Railroad Administration's ("FRA") records indicate only one accident, in October
21 2006, at this crossing. (Ex. S-1)

22 9. Mr. Jason Pike, a railroad and utility coordinator with ADOT, testified that he works
23 with the Section 130 program and that the Baffert Drive and the other three crossings are all adjacent
24 to the 19B Road, which is maintained by ADOT in the City. (Tr. 6-7:14-10)

25 10. Mr. Pike further testified that the project at Baffert Drive will include upgrading the

26 ¹ The proposed upgrades of the respective at-grade crossings were approved by the Commission in Decision No. 73610
27 (December 12, 2012) as part of the 2012 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 ("Section
28 130") which is provided by the Federal Highway Administration ("FHWA") to reimburse ADOT for 100% of the cost of
the project. Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public railway
crossings which are not primarily for the benefit of the Railroad.

1 flasher gate units and also installing advanced preemption equipment. (Tr. 8:10-15)

2 11. Mr. Pike stated that the Baffert Drive at-grade crossing was not considered for grade
3 separation because it did not meet any of the nine guidelines which are set forth in the FHWA
4 Guidelines. (Tr. 8:12-19)

5 12. The Staff Memorandum indicates that only five trains per day utilize this at-grade
6 crossing at maximum speed of 25 miles per hour. (Ex. S-1)

7 13. According to the Staff Memorandum, the area adjacent to the Baffert Drive crossing is
8 zoned light industrial and neither the Crossing Exposure Index nor the FHWA Guidelines for grade
9 separation established a need for a grade separated crossing. (Ex. S-1)

10 14. As stated in the Staff Memorandum, the total cost for the upgrade of the at-grade
11 crossing at Baffert Drive is \$269,458, which will be funded entirely with federal funds from the Section
12 130 Program. (Ex. S-1)

13 CALLE SONORA

14 15. Calle Sonora is a two lane roadway consisting of one right/through westbound lane and
15 one through eastbound lane. Presently, this crossing is protected by flashing lights and a simultaneous
16 preemption system. The proposed upgrade includes new automatic gates with LED flashing light units,
17 which will be installed on the outside edge of both curbs, a new signal bungalow, an advanced
18 preemption system, and constant warning time circuitry. (Ex. S-1)

19 16. According to the Staff Memorandum, the speed limit on Calle Sonora is 25 miles per
20 hour and there have been no recorded accidents according to the FRA. (Ex. S-1)

21 17. The Staff Memorandum indicates that there are five trains a day which utilize the Calle
22 Sonora at-grade crossing at a maximum speed of 25 miles per hour in what is zoned as a light industrial
23 area. (Ex. S-1)

24 18. The total cost of the proposed upgrade for Calle Sonora will be \$366,314, which will be
25 paid entirely with federal funds from the Section 130 Program. (Ex. S-1)

26 19. Mr. Pike stated that the most modern and up to date advanced preemption equipment
27 would be installed along with constant warning time circuitry. (Tr. 9:6)

28 20. Further testifying, Mr. Pike stated that grade separation for this crossing failed to meet

1 any of the nine guidelines set forth by the FHWA. (Tr. 9:8-9)

2 BANKARD AVENUE

3 21. According to the Staff Memorandum, Bankard Avenue is a two lane roadway consisting
4 of one right/left/through westbound lane and one through eastbound lane. Presently, this at-grade
5 crossing is equipped with flashing lights, automatic gates and bells, as well as constant warning time
6 and simultaneous preemption circuitry. (Ex. S-1)

7 22. The upgrade proposed for this crossing includes the installation of new automatic gates
8 with LED flashing lights as well as the replacement of the simultaneous preemption circuitry with
9 advanced preemption circuitry. (Ex. S-D)

10 23. The speed limit on Bankard Avenue is 25 miles per hour and there have been only two
11 vehicular accidents according to FRA records, one in February 1976 and one in January 1978, neither
12 of which resulted in any injuries.

13 24. According to the Staff Memorandum, five trains per day utilize the Bankard Avenue at-
14 grade crossing at a speed of 25 miles per hour. (Ex. S-1)

15 25. The area in the vicinity of the Bankard Avenue at-grade crossing is zoned general
16 commercial and multi-family residence, and the Staff Memorandum indicates that this at-grade
17 crossing would not be considered for grade separation since there is inadequate train traffic through the
18 crossing. (Ex. S-1)

19 26. The Staff Memorandum states that the entire cost of the upgrade of the Bankard Avenue
20 crossing will be \$260,337, and it will be funded with Section 130 funds.

21 27. Mr. Pike testified that the proposed upgrade for the Bankard Avenue at-grade crossing
22 also involves the removal of some pavement from the outside edges of the roadway and rebuilding the
23 curb to define the lanes in the roadway. (Tr. 9:15-22)

24 MORLEY AVENUE

25 28. Morley Avenue is a two lane roadway consisting of one right/left westbound lane and one
26 through eastbound lane. The at-grade crossing is presently equipped with flashing lights, automatic
27 gates and bells, along with constant warning time circuitry and simultaneous preemption circuitry.

28

1 With the proposed upgrade of the Morley Avenue at-grade crossing, new automatic gates with LED
2 flashing lights will be installed with advanced preemption circuitry. (Ex. S-1)

3 29. The speed limit on Morley Avenue is 25 miles per hour and, according to FRA records,
4 there have been no accidents at this crossing. (Ex. S-1)

5 30. According to the Staff Memorandum, the area surrounding the Morley Avenue at-grade
6 crossing is zoned for limited commercial. (Ex. S-1)

7 31. Due to the low traffic at the Morley Avenue at-grade crossing, grade separation is not
8 merited based on the nine standards of the FHWA.

9 32. The total cost for the upgrade to the Morley Avenue at-grade crossing will be \$468,857,
10 which will be funded through the Section 130 program of the FHWA. (Ex. S-1)

11 33. Mr. Pike testified that ADOT's proposed upgrade at Morley Avenue involves rebuilding
12 the curb and adding some paint striping. (Tr. 10:7-20)

13 34. Further testifying, Mr. Pike stated that ADOT is in agreement with Staff's
14 recommendations in the Staff Memorandum. (Tr. 12:1-10)

15 35. Mr. Pike further stated that the proposed upgrades for the four above described at-grade
16 crossings could be completed within 15 months.

17 36. Additionally, Mr. Pike testified that with the completion of the upgrades proposed for
18 the four above described at-grade crossings, they would be raised to the standards found at other similar
19 crossings in Arizona. (Tr. 15:1-4)

20 37. Mr. Chris Watson, the Commission's Assistant Supervisor for the Railroad Safety
21 Section and its Grade Crossing Inspector, testified that he evaluated ADOT's Applications in this
22 proceeding. (Tr. 18-19:14-2)

23 38. Mr. Watson further testified that he had prepared the Staff Memorandum used in this
24 proceeding and stated that Staff is recommending approval of the four Applications filed by ADOT.
25 (Tr. 19:11-24)

26 39. Mr. Watson stated that with respect to all four of the Applications, Staff believes the
27 upgrades are appropriate as requested by ADOT and will improve safety at these at-grade crossings.
28 (Tr. 20:10-17)

1 Commission, in writing, within ten days of both the commencement and completion of the crossing
2 upgrades, pursuant to A.A.C. R14-5-104.

3 IT IS FURTHER ORDERED that upon completion of the crossing upgrades, the Union Pacific
4 Railroad Company shall maintain the crossings in compliance with A.A.C. R14-5-104.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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9 CHAIRMAN _____ COMMISSIONER

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11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

12
13 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
14 of the Arizona Corporation Commission, have hereunto set my
15 hand and caused the official seal of the Commission to be affixed
16 at the Capitol, in the City of Phoenix, this _____ day
17 of _____ 2016.

18 _____
19 JODI JERICH
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22 DISSENT _____
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1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

2 DOCKET NOS.:

RR-03639A-15-0331, RR-03639A-15-0332,
RR-03639A-15-0333 AND RR-03639A-15-0334

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