

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
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TOM FORESE
ANDY TOBIN



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ARIZONA CORPORATION COMMISSION 2016 MAY 17 P 1:55

AZ CORP COMM
DOCKET CONTROL

DATE: MAY 17, 2016

DOCKET NOS.: RR-03639A-16-0007

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 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:

MAY 26, 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:

JUNE 14, 2016 AND JUNE 15, 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

MAY 17 2016

DOCKETED BY 

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 SBernal@azcc.gov.

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 AT-GRADE CROSSING OF THE UNION PACIFIC
12 RAILROAD AT ALMA SCHOOL ROAD IN THE
13 CITY OF MESA, MARICOPA COUNTY,
14 ARIZONA, USDOT NO. 741 650B.

DOCKET NO. RR-03639A-16-0007

DECISION NO. _____

OPINION AND ORDER

11 DATES OF HEARING: April 7 and 19, 2016

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. James Redpath and Ms. 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 Swartz, P.C., on behalf of the Union Pacific Railroad; and

19 Mr. Charles Hains and Mr. Robert W. Geake, Staff
20 Attorneys, Legal Division, on behalf of Safety Division
21 of the Arizona Corporation Commission.

22 **BY THE COMMISSION:**

23 On January 13, 2016, the Arizona Department of Transportation (“ADOT”) filed with the
24 Arizona Corporation Commission (“Commission”) a request for approval for ADOT to upgrade an
25 existing at-grade crossing of the Union Pacific Railroad (“Railroad”) at Alma School Road in the City
26 of Mesa (“Mesa”), Maricopa County, Arizona, at USDOT No. 741 650B (“Application”).

27 On January 25, 2016, by Procedural Order, the Commission ordered that a hearing be held on
28 April 7, 2016, and that ADOT provide public notice of the proceeding no later than March 3, 2016.
The Commission further ordered other dates be established with respect to procedural matters.

1 On February 23, 2016, the Railroad filed a Motion to Continue the hearing scheduled on April
2 7, 2016, because its Manager of Industry and Public Projects, who was expected to testify in the
3 proceeding on behalf of the Railroad, would not be available because he was to be out of the state on
4 business on the scheduled hearing date.

5 On February 26, 2016, ADOT filed its response stating that it had no objections to the Motion
6 to Continue.

7 On March 1, 2016, ADOT filed documentation that public notice of the Application and hearing
8 thereon had been published on February 18, 2016, in the *East Valley Tribune* and on February 24, 2016,
9 in *Arizona Republic*, pursuant to the Commission’s Procedural Order.

10 Staff did not file any objections to the Railroad’s request.

11 On March 4, 2016, by Procedural Order, it was ordered that the hearing scheduled on April 7,
12 2016, be held for the purpose of taking public comment only since public notice of the proceeding had
13 been given, and the evidentiary portion of the proceeding was continued to April 19, 2016.

14 On April 7, 2016, a full public hearing was convened before a duly authorized Administrative
15 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and the
16 Commission’s Safety Division, Railroad Safety Section (“Staff”) were present with counsel for the
17 taking of public comment. No one appeared to make public comment.

18 On April 19, 2016, the evidentiary portion of the hearing was convened with ADOT, the
19 Railroad and Staff present with counsel. At the conclusion of the hearing, the matter was taken under
20 advisement pending submission of a Recommended Opinion and Order to the Commission.

21 * * * * *

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

24 **FINDINGS OF FACT**

25 1. On January 13, 2016, ADOT filed an Application requesting an Opinion and Order from
26 the Commission approving an agreement between ADOT and the Railroad to upgrade an existing at-
27 grade crossing at Alma School Road in Mesa, Maricopa County, Arizona, at USDOT NO. 741 650B.

28

1 2. Prior to the filing of the Application, representatives of ADOT, Mesa, the Railroad and
2 Staff participated in several diagnostic review meetings of the proposed upgrades for the crossing. All
3 parties who were present at these meetings were in agreement that the proposed enhancements would
4 improve safety at the crossing.¹

5 3. ADOT is seeking Commission approval to upgrade the existing at-grade crossing at
6 Alma School Road, a six lane paved roadway, which consists of three southbound lanes and three
7 northbound lanes. Presently, the crossing is equipped with flashing lights, automatic gates and bells on
8 the outside edges of the roadway, and flashing lights and automatic gates on the raised median. The
9 proposed improvements to be made at the crossing consist of installing new automatic gates with LED
10 flashing light units on both the outside edges of the roadway and on the raised medians. Additionally,
11 two new cantilevers will be installed for the southbound and northbound traffic lanes along with the
12 installation of concrete panels on the outside edges of the road for new sidewalks.

13 4. According to the Staff Memorandum, Mesa is also constructing new raised medians,
14 making sidewalk adjustments, and constructing road approach improvements in order to accommodate
15 the Railroad's signal and surface improvements.

16 5. On March 1, 2016, ADOT filed documentation that public notice of the Application and
17 hearing thereon had been published on February 18 and 24, 2016, in the *East Valley Tribune* and the
18 *Arizona Republic*, respectively, pursuant to the Commission's Procedural Order.

19 6. The hearing was held as scheduled originally on April 7, 2016, for the purpose of taking
20 public comment only. The evidentiary portion of the proceeding was conducted on April 19, 2016.

21 7. According to the Staff Memorandum, the areas adjacent to the Alma School Road at-
22 grade crossing consist of mixed zoning uses including general industrial, limited commercial, public
23 and semi-public and residential multiple dwelling.

24 8. Mr. Jason Pike, who oversees the Rail Safety Program at ADOT, testified in support of
25 the Application.

26 ¹ The proposed upgrade of the Alma School Road crossing was approved by the Commission in Decision No. 70481
27 (September 3, 2008) as part of the 2008 Annual Array to utilize Federal Funding pursuant to 23 U.S.C. Section 130
28 ("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 9. Mr. Pike stated that the automatic gates would be upgraded by ADOT and that the
2 medians in the center of the roadway would be squared off consistent with the standards of the Railroad.
3 Additionally, Mr. Pike stated that the installation of two new cantilevers with a set of lights for each
4 lane would also conform to the Railroad's standards. (Tr. 6)

5 10. Mr. Pike testified further that the traffic at the Alma School Road at-grade crossing did
6 not meet the guidelines established by the FHWA for the construction of a grade separated crossing.
7 (Id. at 6)

8 11. Mr. Pike further testified that ADOT is in agreement with the recommendations of Staff
9 in its Memorandum. (Id. at 7)

10 12. According to Mr. Pike, the upgrades proposed by ADOT for the Alma School Road at-
11 grade crossing are in the public interest.

12 13. Further testifying, Mr. Pike stated that the new gates which will be installed are on the
13 north and south approaches to the Alma School Road at-grade crossing. (Id. at 9)

14 14. Mr. Pike further stated that the reason ADOT is squaring off the medians because, in
15 that form, people are discouraged from driving around the medians when the gates are down. (Id. at
16 10)

17 15. Mr. Pike testified that the proposed improvements for the Alma School Road at-grade
18 crossing are similar to other crossings of a like nature in Arizona. (Id. at 10)

19 16. Mr. Chris Watson, the grade crossing manager for the Commission, testified that he had
20 prepared the Staff Memorandum which describes the nature of ADOT's proposed improvements at the
21 Alma School Road at-grade crossing. (Id. at 13)

22 17. Mr. Watson further testified that the proposed improvements for the Alma School Road
23 crossing are in the public interest. (Id. at 14)

24 18. Mr. Watson stated that the upgrades proposed for the Alma School Road crossing are
25 consistent with similar crossings throughout the State of Arizona. (Id. at 15)

26 19. According to Mr. Watson, the construction of a grade separated crossing is not
27 warranted for the Alma School Road at-grade crossing. (Id. at 15)

28 20. Although Section 130 projects are typically completed in a fifteen month timeline,

1 because Mesa is going to be doing additional work to improve the sidewalks and related areas, Staff
 2 does not object to a twenty-four month timeline in order to have the work completed at the Alma School
 3 Road at-grade crossing. (Id. at 16)

4 21. Mr. Watson stated that the total cost of the upgrades at the Alma School Road at-grade
 5 crossing will be funded entirely by the FHWA as a Section 130 project, and as a result the FHWA will
 6 reimburse ADOT for approximately \$749,000. (Id. at 18)

7 22. Staff is recommending that the Application be approved.

CONCLUSIONS OF LAW

9 1. The Commission has jurisdiction over the parties and over the subject matter of the
 10 Application pursuant to Article XV of the Arizona Constitution and Arizona Revised Statutes
 11 ("A.R.S.") §§ 40-336, 40-337, and 40-337.01.

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

13 3. The installation of the crossing upgrade is necessary for the public's convenience and
 14 safety.

15 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
 16 recommended by Staff.

17 5. After the installation of the improvements at the Alma School Road crossing, the
 18 Railroad should maintain the crossing in accordance with Arizona Administrative Code ("A.A.C")
 19 R14-5-104.

ORDER

21 IT IS THEREFORE ORDERED the Arizona Department of Transportation's Application, as
 22 described herein, is hereby approved.

23 IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing
 24 upgrade as described in the Application within twenty-four months of the effective date of this
 25 Decision.

26 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in
 27 writing, within 10 days of both the commencement and completion of the crossing upgrade, pursuant
 28 to A.A.C. R14-5-104.

1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
2 Railroad shall maintain the crossing in compliance with A.A.C. R14-5-104.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6
7 CHAIRMAN

COMMISSIONER

8
9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10
11 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
12 of the Arizona Corporation Commission, have hereunto set my
13 hand and caused the official seal of the Commission to be affixed
14 at the Capitol, in the City of Phoenix, this _____ day
15 of _____ 2016.

16 JODI JERICH
EXECUTIVE DIRECTOR

17 DISSENT _____

18
19 DISSENT _____
20 MS:aw

1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.:

RR-03639A-16-0007

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