

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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DATE: MAY 24, 2016  
DOCKET NO.: RR-03639A-16-0075  
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:

JUNE 2, 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 24 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  
9 THE ARIZONA DEPARTMENT OF  
10 TRANSPORTATION TO UPGRADE AN EXISTING  
11 CROSSING OF THE UNION PACIFIC RAILROAD  
12 AT COURT STREET IN THE CITY OF NOGALES,  
13 SANTA CRUZ COUNTY, ARIZONA, USDOT NO.  
14 742-041D.

DOCKET NO. RR-03639A-16-0075

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

OPINION AND ORDER

11 DATE OF HEARING: May 4, 2016

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Ms. Michelle Burton, Assistant Attorney General,  
15 Transportation Section, on behalf of the Arizona  
16 Department of Transportation;

17 Mr. W. Reed Campbell, BEAUGUREAU, HANCOCK,  
18 STOLL & SCHWARTZ, P.C., on behalf of the Union  
19 Pacific Railroad; and

20 Mr. Robert Geake and Mr. Matthew Laudone, Staff  
21 Attorneys, Legal Division on behalf of the Safety  
22 Division of the Arizona Corporation Commission.

23 **BY THE COMMISSION:**

24 On March 2, 2016, the Arizona Department of Transportation (“ADOT”) filed with the Arizona  
25 Corporation Commission (“Commission”) an application for approval for the Union Pacific Railroad  
26 (“Railroad”) to upgrade an existing crossing at Court Street in the City of Nogales (“Nogales” or  
27 “City”), Santa Cruz County, Arizona at USDOT No. 742-041D (“Application”).

28 On March 9, 2016, by Procedural Order, a hearing was scheduled for May 4, 2016.

On April 7, 2016, ADOT filed documentation that it had provided public notice in the *Nogales International* in accordance with the Commission’s Procedural Order.

On May 4, 2016, a full public hearing was convened before a duly authorized Administrative

1 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and the  
 2 Commission's Safety Division, Railroad Safety Section ("Staff") were present with counsel. At the  
 3 conclusion of the hearing, the matter was taken under advisement pending submission of a  
 4 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 March 2, 2016, 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 Court Street in Nogales, Santa Cruz County, Arizona, USDOT No. 742-041D.

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 crossing.  
 14 All parties who were present at these meetings were in agreement that the proposed enhancements  
 15 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 Court Street, a two lane paved roadway, which consists of one westbound and one eastbound lane. The  
 18 proposed improvements call for the upgrading of one automatic gate with a LED flashing light unit,  
 19 and relocating and reusing the other gate/flashing light unit. The Railroad will maintain the warning  
 20 devices and the crossing surface after the upgrades are completed.

21 4. On April 7, 2016, ADOT filed documentation that it had provided public notice of the  
 22 Application and hearing thereon, pursuant to the Commission's Procedural Oder, by publishing notice  
 23 in the *Nogales International*.

24 5. The hearing was held as scheduled on May 4, 2016.

25 6. According to the Staff Memorandum, the areas adjacent to the Court Street crossing

26 <sup>1</sup> The proposed upgrade of the Court Street crossing was approved by the Commission in Decision No. 75489 (March 10,  
 27 2016) as part of the 2016 Annual Array to utilize federal funding pursuant 23 U.S.C. § 130 ("Section 130") which is  
 28 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 railroad crossings which  
 are not primarily for the benefit for the Railroad.

1 consists primarily of land which is zoned for light industrial, limited commercial and general  
2 commercial uses.

3 7. Mr. Jason Pike, ADOT's Rail Safety Program Manager, is involved with planning  
4 Section 130 projects and testified in support of the Application. (Tr. at 7)

5 8. According to Mr. Pike, this project in Nogales is a typical at-grade crossing  
6 improvement similar to other upgrades which have been approved recently by the Commission in the  
7 Nogales area. (Id. at 7)

8 9. The upgrade of the Court Street at-grade crossing is also similar to other crossings in  
9 Arizona that have undergone upgrades through the Section 130 program.

10 10. Mr. Pike further testified that he had reviewed the Staff Memorandum and agreed with  
11 its recommendations. (Id. at 8)

12 11. Mr. Pike stated that grade separation at the Court Street at-grade crossing is definitely  
13 not required based on the criteria set forth in the FHWA Grade Crossing Handbook. (Id. at 8)

14 12. Mr. Pike testified that the crossing surface of the Court Street at-grade crossing and the  
15 automatic warning devices will be maintained by the Railroad, but the City will maintain the roadway  
16 approaches, signage, and striping outside the Railroad's right-of-way. (Id. at 8 and 9)

17 13. Mr. Pike further stated that the upgrades that are to be made at the Court Street at-grade  
18 crossing are in the public interest and will improve safety. (Id. at 9)

19 14. Mr. Chris Watson, the Commission's Grade Crossing Manager, and Assistant  
20 Supervisor for the Railroad Safety Program, testified that he had prepared the Staff Memorandum that  
21 describes the nature of ADOT's proposed improvements which will be made at Court Street. (Id. at  
22 12)

23 15. Mr. Watson further stated that the proposed improvements for the Court Street at-grade  
24 crossing are similar in nature to other upgrades made at other at-grade crossings throughout Arizona.  
25 (Id. at 13)

26 16. Mr. Watson testified that the planned improvements will improve safety and that they  
27 are in the public interest. (Id. at 13)

28 17. Mr. Watson confirmed that the Railroad will maintain the crossing surface and

1 automatic warning devices at the Court Street crossing with the City maintaining the roadway on both  
2 sides of the crossing. (Id. at 13)

3 18. Mr. Watson further testified that Staff does not believe a grade separated crossing is  
4 warranted based on the nine criteria established by the FHWA. (Id. at 13 and 14)

5 19. Mr. Watson stated that the Court Street at-grade crossing upgrade was part of the 2016  
6 Commission Array and that ADOT had moved quickly to schedule the project. (Id. at 14)

7 20. According to Mr. Watson, the upgrade to the Court Street at-grade crossing will cost  
8 approximately \$120,000 and will be funded entirely with Section 130 funds that will reimburse ADOT  
9 for the cost of the improvements. (Id. at 14)

10 21. Staff is recommending that the Application be approved.

### 11 CONCLUSIONS OF LAW

12 1. The Commission has jurisdiction over the parties and over the subject matter of the  
13 Application pursuant to Article XV of the Arizona Constitution and Arizona Revised Statutes  
14 (“A.R.S.”) §§ 40-336, 40-337, and 40-337.01.

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

16 3. The installation of the crossing upgrade is necessary for the public’s convenience and  
17 safety.

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

20 5. After the installation of the improvements at the Court Street crossing, the Railroad  
21 should maintain the crossing in accordance with Arizona Administrative Code (“A.A.C”) R14-5-104.

### 22 ORDER

23 IT IS THEREFORE ORDERED that the Arizona Department of Transportation’s Application,  
24 as described herein, is hereby approved.

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

27 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in  
28 writing, within 10 days of both the commencement and completion of the crossing upgrade, pursuant

1 to A.A.C. R14-5-104.

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

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6

7

8 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

9

10 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

11

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

15

16 JODI JERICH  
17 EXECUTIVE DIRECTOR

17

18 DISSENT \_\_\_\_\_

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20 DISSENT \_\_\_\_\_

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MS:rt

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28

1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.:

RR-03639A-16-0075

3 Alex Popovici, Manager  
4 Industry & Public Projects  
5 UNION PACIFIC RAILROAD COMPANY  
6 631 South 7<sup>th</sup> Street  
7 Phoenix, AZ 85034-2203

8 W. Reed Campbell  
9 BEAUGUREAU, ZUKOWSKI & HANCOCK, P.C.  
10 302 East Coronado  
11 Phoenix, AZ 85004  
12 Attorneys for Union Pacific Railroad Company

13 Jason Pike  
14 Railroad and Utility Coordinator  
15 ARIZONA DEPARTMENT OF TRANSPORTATION  
16 205 South 17<sup>th</sup> Avenue, Room 357  
17 M/D 618E  
18 Phoenix, AZ 85007

19 City Attorney's Office  
20 CITY OF NOGALES  
21 777 N. Grand Avenue  
22 Nogales, AZ 85261

23 Janice Alward, Chief Counsel  
24 Legal Division  
25 ARIZONA CORPORATION COMMISSION  
26 1200 West Washington Street  
27 Phoenix, AZ 85007

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