

ORIGINAL

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DOUG LITTLE – Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN



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ARIZONA CORPORATION COMMISSION

2016 OCT 12 P 3:40

DATE: OCTOBER 12, 2016

Arizona Corporation Commission  
DUCKETED

DOCKET NO.: RR-03639A-16-0160

OCT 12 2016

TO ALL PARTIES:

DOCKETED BY *RA*

Enclosed please find the recommendation of Administrative Law Judge Brian D. Schneider. 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:

OCTOBER 21, 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:

OCTOBER 27, 2016 AND OCTOBER 28, 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*  
JODI A. JERICH  
EXECUTIVE DIRECTOR

On this \_\_\_\_ day of October, 2016, the following document was filed with Docket Control as a Recommended Opinion & Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

Sandi J. Garrick  
Pima County Utility Liaison  
Colossal Cave Road Project Manager  
201 N. Stone Avenue, 2<sup>nd</sup> Floor  
Tucson, Arizona 85071

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

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

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007  
Attorneys for Safety Division  
[JAlward@azcc.gov](mailto:JAlward@azcc.gov)  
[BLEhman@azcc.gov](mailto:BLEhman@azcc.gov)  
**Consented to Service by Email**

By: \_\_\_\_\_  
Rebecca Tallman  
Assistant to Brian D. Schneider

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 PIMA COUNTY DEPARTMENT OF  
10 TRANSPORTATION TO UPGRADE EXISTING  
11 PUBLIC AT-GRADE CROSSINGS OF UNION  
12 PACIFIC RAILROAD CROSSING AT COLOSSAL  
13 CAVE ROAD USDOT NOS. 741-303E AND OLD  
14 VAIL ROAD USDOT NO. 741-304L, IN THE CITY  
15 OF VAIL, PIMA COUNTY, ARIZONA.

DOCKET NO. RR-03639A-16-0160

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

OPINION AND ORDER

11 DATE OF HEARING: September 12, 2016  
12 PLACE OF HEARING: Phoenix, Arizona  
13 ADMINISTRATIVE LAW JUDGE: Brian D. Schneider  
14 APPEARANCES: Mr. Andrew Flagg, PIMA COUNTY ATTORNEY’S  
15 OFFICE, CIVIL DIVISION, Deputy County Attorney,  
16 on behalf of Pima County;  
17 Mr. W. Reed Campbell, BEAUGUREAU, ZUKOWSKI,  
18 & HANCOCK, P.C., on behalf of the Union Pacific  
19 Railroad Company; and  
20 Mr. Charles Hains and Mr. Robert Geake, Staff  
21 Attorneys, Legal Division, on behalf of the Safety  
22 Division of the Arizona Corporation Commission.

21 **BY THE COMMISSION:**

22 \* \* \* \* \*

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

25 FINDINGS OF FACT

26 Procedural History

27 1. On May 20, 2016, the Pima County Department of Transportation (“Pima County”)  
28 filed with the Arizona Corporation Commission (“Commission”) an application for approval for the

1 Union Pacific Railroad Company ("Railroad") to upgrade existing crossings at Colossal Cave Road,  
2 USDOT No. 741-303E and Old Vail Road, USDOT No. 741-304L in the City of Vail, Pima County,  
3 Arizona ("Application").

4 2. On June 16, 2016, a Procedural Order was issued scheduling a hearing in this matter  
5 and setting various procedural deadlines.

6 3. On June 22, 2016, an Amended Procedural Order was issued correcting a clerical error  
7 in the June 16, 2016, Procedural Order.

8 4. On August 29, 2016, the Commission's Railroad Safety Section ("Staff") filed a Staff  
9 Memorandum recommending approval of the Application.

10 5. On September 12, 2016, a public hearing was convened, as scheduled. Pima County,  
11 the Railroad, and Staff appeared through counsel. Pima County and Staff presented evidence through  
12 witnesses who were available for cross-examination. No members of the public were present.

13 6. Also on September 12, 2016, Pima County filed documentation memorializing the  
14 actions it took to provide notice, copies of the printed notice with photos of the notices posted on  
15 August 31, 2016, copies of the emails sent to nearby businesses, and documentation that the public  
16 notice was published in the *Arizona Daily Star* on September 6, 2016.

17 7. No intervention requests were received.

18 8. On September 15, 2016, a Procedural Order was issued keeping the matter open until  
19 September 30, 2016, for the purpose of allowing public comment.

20 9. On September 26, 2016, Thomas M. Parsons, Managing Member and Attorney for Old  
21 Vail Station, LLC ("OVS")<sup>1</sup>, filed comments stating OVS supports the project and asking the  
22 Commission to order the Railroad to construct a temporary railroad crossing.

23 10. On September 28, 2016, a Procedural Order was issued setting October 6, 2016, as the  
24 deadline to respond to OVS's comments.

25 11. On October 5, 2016, Staff filed its Response to Procedural Order ("Staff's Response").

26 12. On October 6, 2016, the Railroad filed its Response to Public Comment Filed by Old  
27

28 <sup>1</sup> OVS is the owner of the property located at 13160, 13180, 13190 and 13200 East Colossal Cave Road immediately south  
of the crossings. OVS operates the business Vail Self Storage and is the landlord to 14 tenants south of the crossings.

1 Vail Station, LLC (“the Railroad’s Response”).

2 **Pima County’s Application**

3 13. On August 14, 2012, representatives from Pima County, the Town of Vail, the Railroad,  
4 and Staff participated in a diagnostic review of the proposed improvements to the crossings on Colossal  
5 Cave Road.<sup>2</sup> All parties who were present were in agreement that the proposed improvements would  
6 improve safety at the crossings.<sup>3</sup>

7 14. In its Application, Pima County is seeking Commission approval to upgrade the existing  
8 at-grade crossings on a .87 mile segment of Colossal Cave Road.<sup>4</sup> The roadway consists of two 12 foot  
9 wide lanes, one in each direction, and the rail line in this area runs in a southeast to northwest direction.<sup>5</sup>  
10 Currently there are flashing lights, bells and gates at both crossings.<sup>6</sup>

11 15. The proposed improvements to the crossings include: widening the existing 26’ wide  
12 roadway to a 45’ wide two lane roadway section with a center two-way left turn lane and bicycle  
13 shoulders; adding raised medians and improving pedestrian amenities; adding a new concrete surface;  
14 replacing any impacted pavement markings; and replacing the existing flashing lights, gate  
15 mechanisms, bells and detection circuitry with the latest in industry standard, including 12-inch LED  
16 flashing lights, curb-side automatic gates, bells and constant warning time.<sup>7</sup>

17 16. The estimated cost of the proposed improvements is \$1,048,817.<sup>8</sup> The project is being  
18 funded by the Regional Transit Authority (“RTA”), Pima County, and Vail Unified School District  
19 (“VUSD”).<sup>9</sup>

20 **Testimony**

21 17. At the hearing, Ms. Sandi Garrick, Pima County’s Utility Liaison and project manager  
22 of this project, testified in support of the Application. Ms. Garrick testified that the crossings were a  
23 huge safety concern, and that the proposed improvements would improve safety and are in the public  
24

25 <sup>2</sup> Exhibit S-1, Staff Memorandum, at 1.

26 <sup>3</sup> *Id.*

27 <sup>4</sup> *Id.*

28 <sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

1 interest.<sup>10</sup>

2 18. Ms. Garrick further testified that just north of the southern crossing is a hump that  
3 presents a sight/visibility issue and that raising the adjacent roadway grade approximately 6 feet will  
4 address that safety concern.<sup>11</sup> The proposed improvements are consistent with safety measures  
5 employed at similar at-grade crossings in the State.<sup>12</sup>

6 19. The crossings are located between two schools: Old Vail Middle School located north  
7 of the northern crossing and Acacia Elementary School located south of the southern crossing.<sup>13</sup> Ms.  
8 Garrick testified that because traffic is higher at the crossings during the school year,<sup>14</sup> Pima County  
9 has been working closely with the Railroad to coordinate the work to be done during school breaks.<sup>15</sup>

10 20. Mr. Brian Lehman, Supervisor of Railroad Safety for the Commission, testified that the  
11 Staff Memorandum, which describes the nature of the proposed improvements, was prepared by him  
12 or under his direction.<sup>16</sup>

13 21. Mr. Lehman further testified that the proposed improvements are in the public interest  
14 and will improve safety at the crossings.<sup>17</sup>

15 22. Based on existing conditions, the crossings meet one of the nine criteria utilized by the  
16 Federal Highway Administration ("FHWA") for consideration of grade separation.<sup>18</sup> Mr. Lehman  
17 testified that Staff believes the proposed improvements do not justify a grade separation at this point.<sup>19</sup>  
18 Additionally, Pima County stated that constructing grade-separated crossings would have significant  
19 negative impact to the cultural and historic character of the community, while eliminating most, if not  
20 all, of the local businesses and historic buildings.<sup>20</sup>

21 23. Mr. Lehman and Ms. Garrick both testified that 15 months should be sufficient time to  
22

23 <sup>10</sup> Tr. at 17.

24 <sup>11</sup> Tr. at 12 and 17.

25 <sup>12</sup> Exhibit S-1 at 1.

26 <sup>13</sup> Exhibit S-1 at 2.

27 <sup>14</sup> VUSD transportation department conducts 110 bus trips per day along Colossal Cave Road. Exhibit S-1 at 2; Tr. at 14-  
28 15.

<sup>15</sup> Tr. at 14-15.

<sup>16</sup> Tr. at 20.

<sup>17</sup> Tr. at 22.

<sup>18</sup> Exhibit S-1 at 5.

<sup>19</sup> Tr. at 22-23.

<sup>20</sup> Exhibit S-1 at 5.

1 complete the proposed improvements.<sup>21</sup>

2 **OVS's Post-Hearing Comments**

3 24. On September 26, 2016, OVS filed comments stating it supports the project and asks  
4 the Commission to order the Railroad to construct a temporary railroad crossing.

5 25. In Staff's Response, Staff states that it does not generally oppose the creation of  
6 temporary crossings, but notes that a temporary crossing was not requested or evaluated by any  
7 participant in this matter, and that the record does not currently support ordering the creation of a  
8 temporary crossing. Staff concludes by stating that it supports moving forward with the proposed  
9 improvements expeditiously. Staff included with its Response further correspondence it received from  
10 OVS and Pima County with respect to construction of a temporary railroad crossing.

11 26. In the Railroad's Response, the Railroad states the creation of temporary crossings  
12 would significantly increase the anticipated costs of the proposed improvements, unnecessarily delay  
13 the construction of the proposed improvements, and provide minimal benefit to the community.

14 27. According to the Railroad, the proposed improvements, including upgrading and  
15 expanding the crossing surfaces, roadway surfaces and approaches to the crossings, are anticipated to  
16 take no longer than approximately ten days per crossing.<sup>22</sup> The Railroad states construction of  
17 temporary crossings would greatly increase costs and perhaps delay completion for up to one year.<sup>23</sup>

18 28. The parties have expressly stated their desire to upgrade the crossings as expeditiously  
19 as possible and to coordinate construction during school breaks.<sup>24</sup> Furthermore, OVS has expressed its  
20 support for the project and for it to conclude "in the shortest possible time."<sup>25</sup> Because the parties  
21 desire to upgrade the crossings as expeditiously as possible, and because construction of temporary  
22 crossings would add significant time and expense to the project, it is reasonable and appropriate to  
23 adopt Staff's recommendation without constructing temporary crossings.

24 \_\_\_\_\_  
25 <sup>21</sup> Tr. at 16 and 22.

26 <sup>22</sup> See Declaration of Alexander Popovici ("Popovici Declaration") at 3, attached to the Railroad's Response.

27 <sup>23</sup> See Popovici Declaration at 2-3, attached to the Railroad's Response.

28 <sup>24</sup> Tr. at 15, 16, 26 and 27. See also Staff's Response at 2; Popovici Declaration at 3, attached to the Railroad's Response; October 4, 2016, Correspondence from C.H. Huckelberry, Pima County Administrator, to Chris Watson, Commission's Railroad Safety Assistant Supervisor at 2, attached to Staff's Response.

<sup>25</sup> See October 4, 2016, Correspondence from Thomas M. Parsons, Esq., Managing Member and Attorney for OVS, to Mr. Watson at 1, attached to Staff's Response.

1 29. Staff recommends the Application be approved.<sup>26</sup>

2 30. Staff's recommendation is reasonable and appropriate and should be adopted.

3 **CONCLUSIONS OF LAW**

4 1. The Commission has jurisdiction over the parties and over the subject matter of the  
5 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
6 40-337.01.

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

8 3. The installation of the crossings upgrade, as discussed herein, is necessary for the  
9 public's convenience and safety.

10 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the crossings upgrade should be approved as  
11 recommended by Staff.

12 5. Upon completion of the crossings upgrade, the Union Pacific Railroad Company  
13 should maintain the crossings in accordance with A.A.C. R14-5-104.

14 **ORDER**

15 IT IS THEREFORE ORDERED the Pima County Department of Transportation's Application,  
16 as discussed in the Application and Staff Memorandum, is hereby approved.

17 IT IS FURTHER ORDERED the Union Pacific Railroad Company shall complete the crossings  
18 upgrade, as discussed in the Application and Staff Memorandum, within fifteen months of the effective  
19 date of this Decision.

20 IT IS FURTHER ORDERED the Union Pacific Railroad Company shall notify the  
21 Commission, in writing, within ten days of both the commencement and completion of the crossings  
22 upgrade, pursuant to A.A.C. R14-5-104.

23 ...

24 ...

25 ...

26 ...

27

28 <sup>26</sup> Exhibit S-1 at 5. See also Staff's Response at 2.

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

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
5  
6

7 CHAIRMAN LITTLE

COMMISSIONER STUMP

9 COMMISSIONER FORESE

COMMISSIONER TOBIN

COMMISSIONER BURNS  
10

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

15  
16 JODI A. JERICH  
EXECUTIVE DIRECTOR

17  
18 DISSENT \_\_\_\_\_

19  
20 DISSENT \_\_\_\_\_  
BDS:rt

1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.:

RR-03639A-16-0160

3 Sandi J. Garrick  
4 Pima County Utility Liaison  
5 Colossal Cave Road Project Manager  
6 201 N. Stone Avenue, 2<sup>nd</sup> Floor  
7 Tucson, Arizona 85071

8 Alex Popovici, Manager  
9 Industry & Public Projects  
10 UNION PACIFIC RAILROAD COMPANY  
11 631 South 7<sup>th</sup> Street  
12 Phoenix, AZ 85034-2203

13 W. Reed Campbell  
14 BEAUGUREAU, ZUKOWSKI & HANCOCK, P.C.  
15 302 East Coronado  
16 Phoenix, AZ 85004  
17 Attorneys for Union Pacific Railroad Company

18 Janice Alward, Chief Counsel  
19 Legal Division  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
22 Phoenix, AZ 85007  
23 Attorneys for Safety Division  
24 [JAlward@azcc.gov](mailto:JAlward@azcc.gov)  
25 [BLEhman@azcc.gov](mailto:BLEhman@azcc.gov)  
26 **Consented to Service by Email**

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