

**COMMISSIONERS**  
TOM FORESE - Chairman  
BOB BURNS  
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ANDY TOBIN  
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OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION



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Arizona Corporation Commission

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DATE: MAY 19, 2017  
DOCKET NO.: RR-03639A-17-0020  
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  
(INSTALL GRADE SEPARATED CROSSING AND REMOVE AT-GRADE 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 30, 2017

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 13, 2017 AND JUNE 14, 2017

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.

TED VOGT  
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Kacie Cannon, ADA Coordinator, voice phone number 602-542-3931, E-mail [KCannon@azcc.gov](mailto:KCannon@azcc.gov).

1 On this 19th day of May, 2017, the following document was filed with Docket Control as a  
2 Recommended Opinion and Order from the Hearing Division, and copies of the document were mailed  
3 on behalf of the Hearing Division to the following who have not consented to email service. On this  
4 date or as soon as possible thereafter, the Commission's eDocket program will automatically email a  
5 link to the filed document to the following who have consented to email service.

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25 By: 

26 Staci Antrim  
27 Assistant to Marc E. Stern  
28

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 TOM FORESE – Chairman  
4 BOB BURNS  
5 DOUG LITTLE  
6 ANDY TOBIN  
7 BOYD W. DUNN

8 IN THE MATTER OF THE ARIZONA  
9 DEPARTMENT OF TRANSPORTATION TO  
10 CONSTRUCT A NEW GRADE SEPARATED  
11 CROSSING AND FOR THE UNION PACIFIC  
12 RAILROAD COMPANY TO REMOVE AN  
13 EXISTING AT-GRADE CROSSING AT STATE  
14 ROUTE 347 IN THE CITY OF MARICOPA, PINAL  
15 COUNTY, ARIZONA, USDOT NO. 741 343C.

DOCKET NO. RR-03639A-17-0020

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

**OPINION AND ORDER**

11 DATE OF HEARING: April 12, 2017  
12 PLACE OF HEARING: Phoenix, Arizona  
13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
14 APPEARANCES: Ms. Michelle Burton, Assistant Attorney General, on  
15 behalf of the Arizona Department of Transportation;  
16 Mr. W. Reed Campbell, Beaugureau, Zukowski &  
17 Hancock, P.C., on behalf of the Union Pacific Railroad  
18 Company; and  
19 Mr. Charles Haines, Staff Attorney, Legal Division, on  
20 behalf of the Safety Division of the Arizona Corporation  
21 Commission.

22 **BY THE COMMISSION:**

23 On January 25, 2017, the Arizona Department of Transportation (“ADOT”) filed with the  
24 Arizona Corporation Commission (“Commission”) a request for approval for ADOT to install a new  
25 grade separated crossing and for the Union Pacific Railroad Company (“Railroad”) to remove an  
26 existing at-grade crossing at State Route 347 (“SR347”) in the City of Maricopa (“Maricopa”), Pinal  
27 County, Arizona at USDOT No. 741 343C (“Application”).

28 On February 6, 2017, by Procedural Order, the Commission issued a Procedural Order to the  
parties informing them that, as permitted under Arizona Administrative Code (“A.A.C.”) R14-3-  
107(B), they could opt to receive service of all filings in this docket via email sent to an email address

1 provided by the party, rather than via U.S. mail.

2 On February 9, 2017, by Procedural Order, a hearing on this matter was scheduled to commence  
3 on April 12, 2017, after public notice was provided as directed in the Procedural Order.

4 On February 10, 2017, Staff filed its Staff Memorandum recommending approval of the  
5 Application.

6 On March 1, 2017 and March 14, 2017, ADOT filed documentation that it had provided public  
7 notice of the proceeding pursuant to the Commission's Procedural Order.

8 On March 21, 2017 and March 27, 2017, the Office of the Attorney General and ADOT,  
9 respectively, filed their Consent to Email Service. Subsequently, by Procedural Order, the Commission  
10 issued its approval of the Consents to Email Service filed by the Office of the Attorney General and  
11 ADOT.

12 On April 12, 2017, a full public hearing was convened before a duly authorized Administrative  
13 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and Staff  
14 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement  
15 pending submission of a Recommended Opinion and Order to the Commission.

16 \* \* \* \* \*

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

19 **FINDINGS OF FACT**

20 1. On January 25, 2017, ADOT filed an Application for approval to construct a new grade  
21 separated crossing at SR347 in Maricopa, Pinal County, Arizona and for the Railroad to remove the  
22 existing at-grade crossing.

23 2. According to the Staff Memorandum, Staff, ADOT and the Railroad participated in a  
24 diagnostic review meeting of the improvements which had been proposed for this crossing, and were  
25 in agreement for the construction of the grade separated crossing and for the removal of the existing  
26 at-grade crossing.

27 3. Currently SR347, which is also known as the John Wayne Parkway, crosses the  
28 Railroad's tracks and is protected by flashing lights, gates, bells, raised medians and a traffic pre-signal.

1 The project involves ADOT constructing the grade separated structure over both the Railroad's tracks  
2 and SR347 due to a realignment when the highway is widened to six lanes. During the construction  
3 project, the at-grade crossing of SR347 will remain open, but once the construction of the grade  
4 separation is usable, the Railroad will remove the at-grade crossing.

5 4. Pursuant to the Commission's Procedural Order, ADOT provided all interested parties  
6 with notice of the Application and the hearing thereon by both U.S. Mail and by publication in the  
7 *Arizona Republic*, the *Arizona Business Gazette*, and the *Casa Grande Dispatch*.

8 5. The hearing was held as scheduled on April 12, 2017.

9 6. Mr. Sayeed Hani, the railroad liaison for ADOT, testified in support of the Application.

10 7. Mr. Hani testified that ADOT plans to begin construction by the fall or winter of 2017  
11 for the improvements to SR347. (Tr.7:1-5)

12 8. Mr. Hani further testified that ADOT will maintain the bridge which is to be constructed  
13 and will extend over the Railroad's tracks. (Tr.7:5-8)

14 9. According to Mr. Hani, the funding for the project will be paid for by the Federal  
15 Highway Administration ("FHA"), Maricopa County, Maricopa, the Maricopa Association of  
16 Governments, and ADOT. (Tr.7:9-11)

17 10. Mr. Hani testified that the cost of the project will total approximately \$36 million dollars  
18 with the Railroad contributing \$1,115,421 to the project. (Tr.7:14-21)

19 11. Zoning in the area of the planned project includes both commercial and residential  
20 properties.

21 12. Mr. Hani stated that the ADOT database, which contains information from the Federal  
22 Railroad Administration ("FRA"), indicates that 40 to 60 trains per day presently travel over the at-  
23 grade crossing at SR347. (Tr.7-8:23-2)

24 13. Further testifying, Mr. Hani indicated that Amtrak has a station in the area of the at-  
25 grade crossing where passenger trains stop two times a week. On these occasions, the Amtrak trains  
26 cause long delays for the driving public due to passengers loading and unloading. (Tr.8:3-11)

27 14. According to Mr. Hani, because there are a number of high schools and elementary  
28 schools within a mile of the SR347 at-grade crossing, there are approximately 230 school bus crossings

1 per day. (Tr.8:12-13)

2 15. Since there are no hospitals in Maricopa, the at-grade crossing does not generally impact  
3 emergency traffic.

4 16. Mr. Hani believes that the construction of a grade separated crossing at SR347 in  
5 Maricopa will greatly benefit the public who live in the area by resolving a conflict between vehicular  
6 and railroad traffic.

7 17. According to Mr. Hani, the construction of a grade separated crossing over the  
8 Railroad's tracks will eliminate the delays for vehicular traffic on SR347. (Tr.10)

9 18. ADOT is in agreement with the recommendations contained in the Staff Memorandum.

10 19. Although the total cost of the grade separation project on SR347 at the Railroad's tracks  
11 will be approximately \$36 million dollars, Mr. Hani indicated that the actual cost of the overpass  
12 portion will be approximately \$22.3 million dollars. (Tr.12:8-18)

13 20. Mr. Hani further noted that additional costs related to the project will arise from the  
14 purchase of properties that will enable the construction of the project to proceed. Another factor  
15 favoring the construction of the project is that traffic on SR347 will continue to operate without any  
16 delays due to the construction because the overpass will be constructed on a realigned portion of the  
17 roadway. (Tr.12-13:21-14)

18 21. Although Mr. Hani indicated that ADOT agreed with the recommendations in the Staff  
19 Memorandum which estimated that construction would take 20-24 months, during the hearing he  
20 indicated that he believed that a 30 month time frame for the construction project would be more  
21 appropriate due to the scope of the proposed improvements. (Tr.14-15:1-7)

22 22. Mr. Hani stated that when the proposed grade separation project is completed, safety  
23 will be improved with the removal of the at-grade crossing. (Tr.15:16-21)

24 23. Previously, there have been five fatalities at the SR347 at-grade crossing, but this  
25 problem should be alleviated once the new improvements are completed.

26 24. Mr. Hani stated that the level of service at the SR347 at-grade crossing is presently B,  
27 but would grow worse if a grade separated crossing is not completed (Tr.19:1-6)

28 25. Mr. Hani further testified that approximately 31,000 vehicles per day utilize the crossing

1 in both directions. (Tr.19:11-19)

2 26. Mr. Jason Pike, the Commission's grade crossing inspector, testified that he evaluated  
3 the Application for the construction of the SR347 upgrade and prepared the Staff Memorandum after  
4 his review of the proposed project. (Tr.21:5-24)

5 27. Mr. Pike further stated that the proposed upgrade of SR347 with the construction of the  
6 grade separated overpass is in the public's interest and will improve safety at this crossing. (Tr.23:8-  
7 13)

8 28. Mr. Pike described the current protection at the SR347 at-grade crossing as consisting  
9 of flashing lights, gates and bells. (Tr.26:11-18)

10 29. Mr. Pike further stated that, in his opinion, the planned improvements for SR347 with  
11 the construction of an overpass will improve the safety for vehicular traffic. (Tr.27:8-12)

12 30. Upon the completion of construction of the grade separated crossing at SR347 in  
13 Maricopa, the crossing will be similar to other crossings of a like nature in Arizona. (Tr.27:13-17)

14 31. Mr. Pike further testified that Staff is in agreement to extend the time frame in which to  
15 complete the upgrade of the project to 30 months. (Tr.28:1-5)

16 32. Staff is recommending approval of the Application as requested by ADOT.

17 **CONCLUSIONS OF LAW**

18 1. The Commission has jurisdiction over the parties and over the subject matter of the  
19 Application pursuant to Article XV of the Constitution and Arizona Revised Statutes ("A.R.S.") §§ 40-  
20 336, 40-337 and 40-337.01.

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

22 3. The removal of the at-grade crossing and construction of the grade separated crossing  
23 at SR347 in Maricopa are necessary for the public's convenience and safety.

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

26 5. The Railroad should be granted 30 months from the effective date of this Decision in  
27 which to complete the removal of the at-grade crossing at SR347.

28 6. After the construction of the grade separated crossing, the Railroad shall maintain its

1 right-of-way beneath the grade separated structure consistent with the A.A.C. R14-5-104.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application  
4 as described herein is hereby approved.

5 IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the removal of the  
6 SR347 at-grade crossing as described in the Application within 30 months of the effective date of this  
7 Decision.

8 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Arizona  
9 Corporation Commission, in writing, within ten (10) days of the both commencement of the  
10 construction grade separated crossing and the completion of the removal of the at-grade crossing of  
11 SR347, pursuant to A.A.C. R14-5-104.

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1 IT IS FURTHER ORDERED that upon the completion of the removal of the at-grade crossing  
2 at SR347 and the construction of the grade separated structure at SR347, the Union Pacific Railroad  
3 shall maintain its right-of-way 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 FORESE

COMMISSIONER DUNN

9  
10 COMMISSIONER TOBIN

COMMISSIONER LITTLE

COMMISSIONER BURNS

11  
12 IN WITNESS WHEREOF, I, TED VOGT, Executive Director of  
13 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 \_\_\_\_\_ 2017.

17 \_\_\_\_\_  
TED VOGT  
EXECUTIVE DIRECTOR

18 DISSENT \_\_\_\_\_  
19

20 DISSENT \_\_\_\_\_  
21 MS/sa

1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD

2 DOCKET NO.:

RR-03639A-17-0020

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