

COMMISSIONERS
TOM FORESE – Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD W. DUNN

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DATE: JULY 17, 2017

DOCKETED

DOCKET NO.: RR-03639A-17-0065

JUL 17 2017

TO ALL PARTIES:

DOCKETED BY
GB

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
(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 eight (8) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 26, 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:

AUGUST 15, 2017 AND AUGUST 16, 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

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 Kacie Cannon, ADA Coordinator, voice phone number 602-542-3931, E-mail KCannon@azcc.gov.

On this 17th day of July, 2017, 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.

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By: _____



Staci Antrim
Assistant to Brian D. Schneider

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 APPLICATION OF THE
9 ARIZONA DEPARTMENT OF
10 TRANSPORTATION FOR APPROVAL TO
11 CONSTRUCT AND MAINTAIN A NEW GRADE
12 SEPARATED STRUCTURE AND TO ALLOW THE
13 UNION PACIFIC RAILROAD TO REMOVE AN
14 EXISTING AT-GRADE PUBLIC CROSSING IN
15 PHOENIX, AZ, STATE ROUTE 202 SOUTH
16 MOUNTAIN FREEWAY AT 59TH AVENUE, MP
17 899.70.

DOCKET NO. RR-03639A-17-0065

DECISION NO. _____

OPINION AND ORDER

12 DATE OF HEARING: June 21, 2017
13 PLACE OF HEARING: Phoenix, Arizona
14 ADMINISTRATIVE LAW JUDGE: Brian D. Schneider
15 APPEARANCES: Ms. Michelle Burton, OFFICE OF THE ATTORNEY
16 GENERAL, Assistant Attorney General, on behalf of the
17 Arizona Department of Transportation;
18 Mr. W. Reed Campbell, BEAUGUREAU, ZUKOWSKI,
19 & HANCOCK, P.C., on behalf of the Union Pacific
20 Railroad Company; and
21 Mr. Charles H. Hains, Staff Attorney, Legal Division, on
22 behalf of the Safety Division of the Arizona Corporation
23 Commission.

22 **BY THE COMMISSION:**

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the Arizona
25 Corporation Commission (“Commission”) finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. On March 6, 2017, the Arizona Department of Transportation (“ADOT”) filed with the
28 Commission an application for approval to construct and maintain a new grade separated structure,

1 USDOT No. 441-073C, and to allow the Union Pacific Railroad Company (“Railroad”) to remove an
2 existing at-grade public crossing, USDOT No. 741-811U, in Phoenix, Arizona, State Route 202 South
3 Mountain Freeway at 59th Avenue, MP 899.70 (“Application”).

4 2. On March 10, 2017, a Procedural Order was issued scheduling a hearing in this matter
5 and setting various procedural deadlines.

6 3. On May 12, 2017, the Commission’s Railroad Safety Section (“Staff”) filed a Staff
7 Memorandum recommending approval of the Application.

8 4. On June 21, 2017, a public hearing was convened, as scheduled. ADOT, the Railroad,
9 and Staff appeared through counsel. ADOT and Staff presented evidence through witnesses who were
10 available for cross-examination. No members of the public were present.

11 5. No intervention requests were received.

12 **ADOT’s Application**

13 6. Representatives from ADOT, the Railroad, and Staff participated in a diagnostic review
14 meeting of the proposed improvements to the crossing.¹ All parties who were present were in
15 agreement of the proposed improvements to the crossing.²

16 7. In its Application, ADOT is seeking Commission approval to construct a new grade
17 separated crossing, USDOT No. 441-073C, over the railroad tracks along the new South Mountain
18 Freeway alignment and for the Railroad to remove an existing at-grade crossing, USDOT No. 741-
19 811U, at 59th Avenue in Phoenix, Maricopa County, Arizona.³

20 8. The crossing is currently protected with flashing lights, gates, and cantilevers.⁴ The
21 proposed improvements would allow ADOT to construct a grade separated structure that would span
22 the railroad tracks and once in service the existing crossing would be removed.⁵ The at-grade crossing
23 would remain open during construction, first for public traffic, then for construction traffic upon
24 completion of the western half of the overpass.⁶

25 _____
26 ¹ Exhibit S-1, Staff Memorandum, at 1.

27 ² *Id.*

28 ³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

1 9. The proposed improvements are estimated to take 24 months to construct, and is
2 tentatively scheduled to start in the winter of 2017.⁷ The estimated cost of the proposed improvements
3 is \$1.3 million.⁸

4 **Testimony**

5 10. At the hearing, Mr. Sayeed Hani, the State's Railroad Liaison, testified in support of the
6 Application. Mr. Hani testified that the proposed improvements are part of a 22-mile project that
7 expands the I-10 highway, and that the proposed improvements are three bridges, one serving as the
8 mainline and the other two as frontage roads.⁹

9 11. Mr. Hani further testified that the proposed improvements will be constructed in the
10 winter of 2017 and that it is being funded by a number of agencies, with the Railroad contributing
11 \$1,347,836, which is 5 percent of the total cost of the 22-mile project (\$26,956,722).¹⁰

12 12. Mr. Hani further testified that there are roughly 2,400 vehicles per day going north and
13 south on 59th avenue and that the posted speed limit is 45 miles per hour.¹¹ Mr. Hani further testified
14 that there will not be any traffic delays because it is a grade separation project and because 59th Avenue
15 will be open the whole time to traffic.¹²

16 13. Mr. Hani further testified that he believes removing the existing at-grade crossing and
17 constructing a grade separation structure is in the public interest and increases public safety.¹³

18 14. Mr. Chris Watson, the Railroad Safety Supervisor for the Commission, testified that the
19 Staff Memorandum, which describes the nature of the proposed improvements, was prepared by him
20 or under his direction.¹⁴ Mr. Watson further testified that the proposed improvements are consistent
21 with an upgrade of this nature and that it would improve the safety at the crossing.¹⁵ Mr. Watson
22 further testified that the costs that have been listed are consistent with an upgrade of this nature and
23 that the proposed method of the construction, keeping the existing crossing open while it is being

24 _____
⁷ *Id.*

25 ⁸ *Id.*

26 ⁹ Tr. at 7.

27 ¹⁰ Tr. at 8, 10, and 13.

28 ¹¹ Tr. at 8 and 13-14.

¹² Tr. at 9.

¹³ Tr. at 11.

¹⁴ Tr. at 19.

¹⁵ Tr. at 20.

1 constructed, is appropriate.¹⁶

2 15. Mr. Watson further testified that Staff would not object to a longer time frame to
3 complete the proposed improvements, specifically 36 months, in order to have sufficient time to
4 remove the existing at-grade crossing once construction is completed.¹⁷

5 **Staff's Recommendation**

6 16. Staff recommends the Application be approved.¹⁸

7 17. Staff's recommendation is reasonable and appropriate and should be adopted.

8 **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 A.R.S. §§ 40-336, 40-337 and
11 40-337.01.

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

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

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

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

19 **ORDER**

20 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application,
21 as discussed in the Application and Staff Memorandum, is hereby approved.

22 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the
23 crossings upgrade, as discussed in the Application and Staff Memorandum, within thirty-six months of
24 the effective date of this Decision.

25 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the
26 Commission, in writing, within ten days of both the commencement and completion of the crossings

27 ¹⁶ *Id.*

28 ¹⁷ Tr. at 21.

¹⁸ Exhibit S-1 at 3.

1 upgrade, pursuant to A.A.C. R14-5-104.

2 IT IS FURTHER ORDERED that upon completion of the crossings upgrade, the Union Pacific
3 Railroad Company shall maintain the crossings 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 BDS/sa
22
23
24
25
26
27
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1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD

2 DOCKET NO.:

RR-03639A-17-0065

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