
From: Assenza, Adam
Sent: Wednesday, October 18, 2023 1:36 PM
To: Jason Pike; Phoebus, Elizabeth (Betsi)
Cc: Buckley, Maggie; Joseph Pinkerman; Timothy Good
Subject: [EXTERNAL] RE: FD-36501 Union Pacific's PIRATE rail line, proposed construction and operation

Thanks, Jason.

We will keep an eye out for any developments in the public record.

Adam Assenza

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From: Jason Pike <JPike@azcc.gov>
Sent: Tuesday, October 17, 2023 8:28 PM
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Cc: Assenza, Adam <Adam.Assenza@stb.gov>; Buckley, Maggie <Maggie.Buckley@jacobs.com>; Joseph Pinkerman <JPinkerman@azcc.gov>; Timothy Good <TGood@azcc.gov>
Subject: RE: FD-36501 Union Pacific's PIRATE rail line, proposed construction and operation

Thank you for the update.

Correct the ACC has not yet issued an Opinion and Order on Docket RR-03639A-22-0287. Our process normally doesn't take this long but there was a lot of information to consider. I understand that the judge is working on the Recommended Opinion and Order which will be the next thing on the docket. I don't have a guess at when that will happen. I can just tell you that the schedule to get things on the Open Meeting are about 30 days prior. Meaning, it's already too late for the November OM. We're all just checking the docket.

JASON PIKE

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From: Phoebus, Elizabeth (Betsi) <Betsi.Phoebus@jacobs.com>
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Subject: RE: FD-36501 Union Pacific's PIRATE rail line, proposed construction and operation

Hi Jason –

On behalf of OEA, I'm providing an update on the PIRATE NEPA process and following up with you on ACC's review of UP's proposed rail-highway crossings. The NEPA process is currently on-hold, and a copy of the Board's decision document announcing the postponement of the Final EA is attached for your reference.

From your updates below, it sounded like it was possible that UP's proposal could be considered during the ACC meetings on September 12 or October 3. We've been checking ACC's Docket No. RR-03639A-22-0287 and have not seen any new documents or decisions in the last several months. Are you able to provide an update on ACC's process or timeline?

Thank you, Betsi

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From: Phoebus, Elizabeth (Betsi)
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Subject: RE: FD-36501 Union Pacific's PIRATE rail line, proposed construction and operation

Good Morning, Jason...

Adam is on vacation this week, so Jacobs is responding to let you know the team has received ACC's comments on the PIRATE Draft EA. We will respond to each of the comments in the Final EA.

Thank you, Betsi

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From: Jason Pike <JPike@azcc.gov>
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Subject: [EXTERNAL] RE: FD-36501 Union Pacific's PIRATE rail line, proposed construction and operation

Comments on the EA.

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Subject: RE: FD-36501 Union Pacific's PIRATE rail line, proposed construction and operation

Jason,

This is very informative and thank you for the overview of your process. We will keep a close eye on the docket.

I'll keep an eye out for a separate email regarding the Draft EA.

Thanks,

Adam Assenza

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Subject: RE: FD-36501 Union Pacific's PIRATE rail line, proposed construction and operation

State Constitution and State Railroad Regulation

The Arizona State Constitution defines railroads as 'Common Carriers' (utilities, similar to water and electric) and therefore subject to control by law. This controls is assigned to the Arizona Corporation Commission which consists of 5 elected officials.

<https://www.azleg.gov/constitution/?article=15>

<https://azcc.gov/>

State Law and Rail-Highway Crossings

Arizona Revised Statutes establish that the commission (AZCC.gov) shall have the exclusive power to grant permission to construct a new at-grade or grade-separated rail-highway crossings. Private crossings and Pedestrian crossing are specifically excluded from AZCC jurisdiction.

<https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/40/00337.htm>

We do this through a formal process.

- *Application for establishing new crossing
- *Establish a public Docket
- *Rail Safety Division response to the application
- *Public hearing with Administrative Law Judge. Public comment and evidence recorded
- *Recommended Order to the 5 elected
- *Open Meeting (public and on the record) where the elected vote to approve or deny the request
- *Upon a majority yes vote, the Railroad has the approval to establish the new crossing
- *A complete-by date is part of the Order
- *Once complete, a memo that documents work is done is placed on the Docket.
- *As far as I know the electronic records are maintained perpetually

This Docket, Hearing and Order have already happened for this UP project. RR-03639A-22-0287

[eDocket | Arizona Corporation Commission \(azcc.gov\)](#)

Union Pacific RR is the applicant. The Town of Queen Creek was an Intervenor in the case. Intervention is allowed if the entity will be directly impacted and whose involvement won't broaden the scope of issues under consideration unnecessarily.

In this case the UP original Application requested 5 new at-grade and 1 modification of existing at-grade crossings. Staff disagreed and recommended a grade-separation at Ellsworth Road DOT#980160S. UP provided a Traffic Impact Analysis Study produced by consultant RailPros. The study was intended to assess the potential impact on traffic flows of the new at-grade crossings both opening day and future. What I took away from that study was that traffic is bad, will get worse but not because of the crossings.

UP submitted an Amended Application in which they asked to move forward with all the at-grade crossings, including Ellsworth but they would actively monitor traffic impacts as follows.

...Union Pacific, with the assistance of the City of Mesa, would annually analyze traffic conditions at the Ellsworth Road Crossing, monitoring the impact of (Rail) operations on existing traffic conditions using annual traffic data from the City of Mesa. When the vehicle-hours of delay reach 80% of the FHWA warrant (24 vehicle-hours), Union Pacific would complete a detailed screening of the Ellsworth Road at-grade crossing to determine the actual hourly vehicle count and train signal activation time during train operations. If the detailed screening confirms that Ellsworth Road has reached 80% of the vehicle-hours of delay contemplated in the FHWA's warrant, Union Pacific would apply to grade separate Ellsworth Road.

Staff Docketed a response as a Supplemental Staff Report. We agreed to the interim and future Ellsworth crossing proposed by UP-new at-grade, near term widening and future grade-separation. Additionally, we asked the UP to engage a design consultant to start designing the bridge; upon approval of the current amended application-not when the warrant is met. There was quite a bit of testimony about this in the hearing.

As of today the ALJ has not issued a Recommended Opinion and Order to the elected. It's possible that either the ALJ or the 5 commissioners may reject our recommendations and order something else. This case is unusual. Most of our items in front of the commission are safety upgrades that are clearly in the public's interest.

So, nothing has been ordered yet and everyone is waiting for the judges recommendation. The next two possible AZCC Open Meetings where a vote could happen are 9/12 and 10/3.

This was a lot so, I'll do a separate email when I look through the EA.

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Subject: FD-36501 Union Pacific's PIRATE rail line, proposed construction and operation

Hello Mr. Pike,

Thank you for speaking with me earlier this week about the UP PIRATE project's anticipated crossings. I appreciate your offer to clarify the status of ACC's review process related to this proposed rail line construction, including review of local traffic and the potential for at-grade crossings.

Though you mentioned having received the Draft Environmental Assessment (EA), I thought I'd also point you to the Storymap, which gives a high-level overview of the project and includes directions of how to access the Draft EA online, in case anyone else at ACC needs to review the Draft EA or appendices. It can be accessed here:
<https://storymaps.arcgis.com/stories/f03ead62167b4a99b266d3f9b4fd1010>.

I look forward to reading ACC's response clarifying its crossing review process and any input about ACC-related aspects of the Draft EA.

Thanks in advance,

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