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THE ARIZONA CORPORATION COMMISSION

DOCKETED

DEC 09 2005

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF VALLEY METRO RAIL TO UPGRADE A CROSSING OF THE UNION PACIFIC RAILROAD AT FIRST STREET AND RIO SALADO PARKWAY IN TEMPE, ARIZONA, AAR/DOT NO. 741 547N.

DOCKET NO. RR-03639A-05-0404

DECISION NO. 68327

OPINION AND ORDER

DATE OF HEARING: October 26, 2005
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Ms. Diane Targovnik, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On June 3, 2005, Valley Metro Rail ("VMR") filed with the Arizona Corporation Commission ("Commission") a request for approval of an agreement with the Union Pacific Railroad ("Railroad") to upgrade a crossing at First Street and Rio Salado Parkway in Tempe, Arizona at AAR/DOT No. 741 547N ("Application").

On September 29, 2005, by Procedural Order, the Application was set for a hearing and VMR was ordered to notify any interested party of the Application and the hearing.

On October 18, 2005, VMR filed certification that notice had been provided pursuant to the terms of the Procedural Order.

On October 26, 2005, a full public hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * *

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

3 **FINDINGS OF FACT**

4 1. On June 3, 2005, VMR filed an Application in which it requested an Opinion and
5 Order from the Commission approving an agreement between VMR and the Railroad to upgrade the
6 existing at-grade crossing of the Railroad at First Street and Rio Salado Parkway where VMR's new
7 tracks will parallel the Railroad's existing tracks and VMR's and the Railroad's automatic warning
8 devices will interface.

9 2. The Railroad's existing cantilevered flashing lights and automatic gates will be moved
10 and relocated to allow for the installation of VMR's new tracks and automatic warning devices which
11 will be interconnected with the Railroad's so that their warning devices will operate simultaneously
12 with either the passing of a freight train or a light rail vehicle where both VMR's and the Railroad's
13 tracks cross First Street in Tempe, Arizona at AAR/DOT No. 741 547N.

14 3. This construction will facilitate the addition of VMR's tracks and automatic warning
15 devices at the grade-separated crossing of the Railroad, and will provide for any necessary relocation
16 of Railroad equipment.

17 4. On October 18, 2005, VMR filed certification that it had provided notice by registered
18 U.S. mail of the Application and hearing thereon.

19 5. A hearing was held as scheduled on October 26, 2005.

20 6. The Application provides for the VMR's and the Railroad's tracks and automatic
21 warning devices to interface and operate simultaneously at the crossing.

22 7. Staff testified that the cost apportionment for the construction of the crossing upgrade
23 as provided in the Application was proper.

24 8. Staff has recommended that the Application be approved.

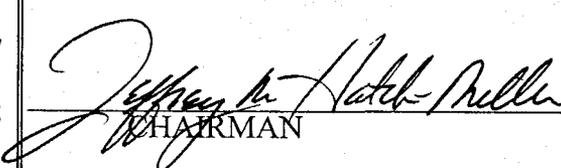
25 **CONCLUSIONS OF LAW**

26 1. The Commission has jurisdiction over the parties and over the subject matter of the
27 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
28 40-337.01.

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

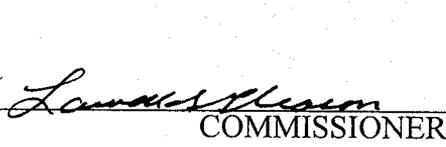
4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN

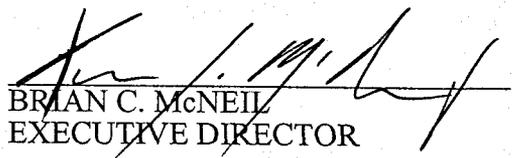

COMMISSIONER

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COMMISSIONER


COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this 9th day of Dec, 2005.

18 
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

19 DISSENT _____

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21 DISSENT _____

22
23 MES:mlj

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2 DOCKET NO. RR-03639A-05-0404

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