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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

IN THE MATTER OF THE APPLICATION OF  
THE TOWN OF GILBERT TO UPGRADE A  
CROSSING OF THE UNION PACIFIC  
RAILROAD AT RECKER ROAD IN THE  
TOWN OF GILBERT, MARICOPA COUNTY,  
ARIZONA, AAR/DOT NO. 741-832-M.

DOCKET NO. RR-03639A-09-0393

PROCEDURAL ORDER

**BY THE COMMISSION:**

On August 12, 2009, the Town of Gilbert ("Town") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at Recker Road in the Town of Gilbert, Maricopa County, Arizona at AAR/DOT No. 741-832-M.

Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern the preparation and conduct of this proceeding.

IT IS THEREFORE ORDERED that the request of the Town of Gilbert shall be considered an application for the Railroad to upgrade an existing crossing pursuant to A.R.S. § 40-337, et seq.

IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this proceeding.

IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **November 9, 2009, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200 West Washington Street, Hearing Room 1, Phoenix, Arizona.

IT IS FURTHER ORDERED that within five business days of receipt of this Procedural Order, **the TOWN OF GILBERT SHALL PROVIDE THE RAILROAD AND ANY MUNICIPALITY OR INTERESTED PARTY** that may be affected by the application with a copy of the application and this Procedural Order by certified mail.

26

1 IT IS FURTHER ORDERED that the Commission's Railroad Safety Section ("Staff") shall  
2 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of  
3 them with Docket Control on or before 4:00 p.m. on **October 14, 2009**.

4 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**  
5 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on  
6 **October 26, 2009**.

7 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C.  
8 R14-3-105, except that all motions to intervene must be filed on or before **October 21, 2009**.

9 IT IS FURTHER ORDERED that **the Town of Gilbert** shall provide **public notice** of the  
10 hearing in this matter, in the following form and style:

11 **IN THE MATTER OF THE APPLICATION OF THE TOWN OF**  
12 **GILBERT TO UPGRADE A CROSSING OF THE UNION PACIFIC**  
13 **RAILROAD AT RECKER ROAD IN THE TOWN OF GILBERT,**  
14 **MARICOPA COUNTY, ARIZONA, AAR/DOT NO. 741-832-M.**  
**(DOCKET NO. RR-03639A-09-0393)**

15 On August 12, 2009, the Town of Gilbert ("Town") filed with the Arizona  
16 Corporation Commission ("Commission") an application for approval for the Union  
17 Pacific Railroad ("Railroad") to upgrade an existing crossing at Recker Road in the  
18 Town of Gilbert, Maricopa County, Arizona at AAR/DOT No. 741-832-M.

19 The application is available for inspection during regular business hours at the offices  
20 of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona,  
21 and on the internet via the Commission website ([www.azcc.gov](http://www.azcc.gov)) using the e-docket  
22 function.

23 The Commission will hold a hearing on this matter commencing on **November 9,**  
24 **2009, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street,  
25 Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

26 The law provides for an open public hearing at which, under appropriate  
27 circumstances, interested parties may intervene. Intervention shall be permitted to  
28 any person entitled by law to intervene and having a direct and substantial interest in  
the matter. Persons desiring to intervene must file a written motion to intervene with  
the Commission, which motion should be sent to Applicant or its counsel and to all  
parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervener and of  
any party upon whom service of documents is to be made if different than the  
intervener.
2. A short statement of the proposed intervener's interest in the proceeding (e.g.,  
a customer of Railroad, a neighboring property owner, a crossing user, etc.).

3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before October 21, 2009. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

If you have any questions about this application, you may contact the applicant at [insert telephone number]. If you wish to file written comments on the application or want further information on intervention, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007, call 602-542-4251 or 1-800-222-7000, or appear at the hearing and make comment.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail SABernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that **the Town of Gilbert** shall cause the above notice to be published at least once in a newspaper of general circulation in the city/county where the crossing is located, with **publication to be completed no later than September 30, 2009**.

IT IS FURTHER ORDERED that notice shall be deemed complete upon the mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive the notice.

IT IS FURTHER ORDERED that **THE TOWN OF GILBERT SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE** after the mailing/publication of notice ordered herein has been completed.

IT IS FURTHER ORDERED that all parties must comply with Rule 31 and 38 of the Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro hac vice*.

26 ...  
27 ...  
28 ...

1 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,  
2 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
3 ruling at hearing.

4 DATED this 1<sup>ST</sup> day of September, 2009.

  
MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

8  
9 Copies of the foregoing mailed/delivered  
this 1<sup>ST</sup> day of September, 2009 to:

10 Aziz Aman, Manager of Special Projects  
11 UNION PACIFIC RAILROAD COMPANY  
12 2073 East Jade Drive  
Chandler, Arizona 85286

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

13 Anthony J. Hancock  
14 Terrance L. Sims  
15 BEAUGUREAU, ZUKOWSKI  
& HANCOCK, P.C.  
16 302 East Coronado  
Phoenix, Arizona 85004  
Attorneys for Union Pacific Railroad Company

Brian Lehman, Chief  
Railroad Safety Section of the Safety Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

17 Robert Travis, P.E.  
18 State Railroad Liaison  
ARIZONA DEPARTMENT OF  
TRANSPORTATION  
19 205 South 17<sup>th</sup> Avenue, Room 357  
M/D 618E  
20 Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.  
2200 North Central Street, Suite 502  
Phoenix, Arizona 85004

21 Rick Allred  
22 TOWN OF GILBERT  
90 East Civic Center Drive  
Gilbert, Arizona 85296

23 Robert Lyons, P.E.  
24 AZTEC ENGINEERING  
4561 East McDowell Road  
Phoenix, Arizona 85008

25  
26 Kelly Roy, Utility Project Coordinator  
MARICOPA COUNTY DEPARTMENT  
OF TRANSPORTATION  
27 2901 West Durango Street  
Phoenix, Arizona 85009  
28

By:   
Debra Broyles  
Secretary to Marc Stern