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BEFORE THE ARIZONA CORPORATION COMMISSION

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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 CITY OF PHOENIX TO UPGRADE A
CROSSING OF THE UNION PACIFIC
RAILROAD AT LOWER BUCKEYE ROAD IN
THE CITY OF PHOENIX, MARICOPA COUNTY,
ARIZONA, USDOT NO. 741-443-G.

DOCKET NO. RR-03639A-10-0355

PROCEDURAL ORDER
(Schedules Hearing)

BY THE COMMISSION:

On August 26, 2010, the City of Phoenix ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at Lower Buckeye Road in the City of Phoenix ("City"), Maricopa County, Arizona at USDOT No. 741-443-G ("Application").

On September 7, 2010, by Procedural Order, the following was ordered: a hearing was scheduled on the City's Application on November 30, 2010; the City was ordered to provide public notice BY October 8, 2010, and to file certification of same; and the Commission's Railroad Safety Section ("Staff") was ordered to file a Staff Report by October 26, 2010.

On October 25, 2010, and November 15, 2010, the Staff Report and a Revised Staff Report, respectively, were filed.

There is no evidence that the City provided public notice as ordered.

On November 30, 2010, the Railroad and Staff appeared with counsel at the hearing. Although a representative of the City's Street Transportation Department was present, the City was not represented by counsel and the proceeding was continued to insure that public notice is provided prior to the hearing and so that the City will be represented by an attorney at the rescheduled hearing.

Accordingly, the hearing should be rescheduled and public notice given.

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

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

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

5 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **January**
6 **10, 2011, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200 West
7 Washington Street, Hearing Room 1, Phoenix, Arizona.

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

12 IT IS FURTHER ORDERED that any **objections to the revised Staff Report and**
13 **associated exhibits** which was previously filed shall be reduced to writing and filed with Docket
14 Control on or before 4:00 p.m. on **December 30, 2010.**

15 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C.
16 R14-3-105, except that all motions to intervene must be filed on or before **January 3, 2011.**

17 IT IS FURTHER ORDERED that **the City of Phoenix** shall provide **public notice** of the
18 hearing in this matter, in the following form and style:

19 **IN THE MATTER OF THE APPLICATION OF THE CITY OF PHOENIX**
20 **TO UPGRADE A CROSSING OF THE UNION PACIFIC RAILROAD**
21 **AT LOWER BUCKEYE ROAD IN THE CITY OF PHOENIX, MARICOPA**
22 **COUNTY, ARIZONA, USDOT NO. 741-443-G.**
(DOCKET NO. RR-03639A-10-035)

23 On August 26, 2010, the City of Phoenix ("City") filed with the Arizona Corporation
24 Commission ("Commission") an application for approval for the Union Pacific
25 Railroad ("Railroad") to upgrade an existing crossing at Lower Buckeye Road in the
26 City of Phoenix, Maricopa County, Arizona at USDOT No. 741-443-G.

27 The application is available for inspection during regular business hours at the offices
28 of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona,
and on the internet via the Commission website (www.azcc.gov) using the e-docket
function.

The Commission will hold a hearing on this matter commencing on **January 10,**
2011, at 10:00 a.m., at the Commission's offices, 1200 West Washington Street,

1 Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

2 The law provides for an open public hearing at which, under appropriate
3 circumstances, interested parties may intervene. Intervention shall be permitted to
4 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:

- 5 1. The name, address, and telephone number of the proposed intervener and of
6 any party upon whom service of documents is to be made if different than the
intervener.
- 7 2. A short statement of the proposed intervener's interest in the proceeding (e.g.,
8 a customer of Railroad, a neighboring property owner, a crossing user, etc.).
- 9 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.

10 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
11 that all motions to intervene must be filed on or before January 3, 2011. The
12 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.

13 If you have any questions about this application, you may contact the applicant at
14 **[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
15 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
16 comment.

17 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
18 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
19 602-542-3931, e-mail SABernal@azcc.gov. Requests should be made as early as
possible to allow time to arrange the accommodation.

20 IT IS FURTHER ORDERED that **the City of Phoenix** shall cause the above notice to be
21 published at least once in a newspaper of general circulation in the city/county where the crossing is
22 located, with **publication to be completed no later than December 22, 2010**.

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

26 IT IS FURTHER ORDERED that **THE CITY OF PHOENIX SHALL FILE**
27 **CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET CONTROL AS**
28

1 SOON AS PRACTICABLE after the mailing/publication of notice ordered herein has been
2 completed.

3 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
4 Communications) applies to this proceeding as the matter is now set for public hearing

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

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

11 DATED this 1st day of December, 2010.


12
13
14 MARC E. STERN
15 ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered
17 this 1st day of December, 2010 to:

18 Freddy Cheung, P.E.
19 Senior Manager - Industry & Public Projects
20 UNION PACIFIC RAILROAD COMPANY
21 2015 South Willow Avenue
22 Bloomington, CA 92316

23 Anthony J. Hancock
24 Terrance L. Sims
25 BEAUGUREAU, HANCOCK,
26 STOLL & SCHWARTZ, P.C.
27 302 East Coronado
28 Phoenix, Arizona 85004
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CITY OF PHOENIX
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Robert Travis, P.E., State Railroad Liaison
ARIZONA DEPARTMENT OF
TRANSPORTATION
205 South 17th Avenue, Room 357
M/D 618E
Phoenix, AZ 85007

Kelly Roy, Utility Project Coordinator
MARICOPA COUNTY DEPARTMENT
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Janice Alward, Chief Counsel
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ARIZONA CORPORATION COMMISSION
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Phoenix, AZ 85007

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

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

By: 
Debra Broyles
Secretary to Marc Stern