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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2011 MAR 30 A 10:05
AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED

MAR 30 2011

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF
THE UNION PACIFIC RAILROAD COMPANY
TO ALTER TWO CROSSINGS OF THE UNION
PACIFIC RAILROAD AT RUTHRAUFF AND
INA ROADS.

DOCKET NO. RR-03639A-11-0051

PROCEDURAL ORDER
(Schedules a Hearing
and Modifies Certain
Filing Dates)

BY THE COMMISSION:

On January 31, 2011, the Union Pacific Railroad Company ("Railroad") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Railroad to alter two crossings of the Railroad in Arizona by adding a second set of mainline tracks. The Ruthrauff Road crossing, USDOT No. 741 104C, is located in Pima County ("County") and the Ina Road crossing, USDOT No. 741 101G, is located in the Town of Marana ("Town") ("Application").

On February 17, 2011, by Procedural Order, a hearing on the Railroad's Application was scheduled on May 5, 2011, along with the establishment of procedural filing dates and a date for the provision of public notice.

On March 22, 2011, the Railroad filed a Motion for Modification ("Motion") of the Commission's February 17, 2011, Procedural Order. In its Motion, the Railroad states that it was unable to provide possible interested parties with a copy of the Application and the Procedural Order within five business days of the receipt of the Procedural Order (February 25, 2011) because counsel for the Railroad had been out of his office for almost two weeks when the Procedural Order was received. However, the Railroad represented that this information had been provided by March 3, 2011, and requested a modification of the Procedural Order's requirement. The Railroad further stated that it had encountered certain difficulties with respect to the requirement for public notice to have been completed by March 4, 2011. Due to these difficulties, the Railroad had to alter the

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1 manner of notice and extended public notice through March 28, 2011.

2 On March 25, 2011, the Commission's Safety Division, Railroad Safety Section ("Staff")
3 filed its response to the Railroad's Motion. Staff indicated that it has reviewed the steps taken by the
4 Railroad to meet the compliance requirements of the Commission's Procedural Order which
5 scheduled a hearing in this proceeding, and believes that, under the circumstances, the Railroad has
6 substantively complied with the Commission's February 17, 2011 Procedural Order. Staff further
7 indicated that it has no objection to the Railroad's proposed modification of the Procedural Order.

8 Additionally, on March 25, 2011, the Railroad and Staff filed a Stipulation and Motion to
9 Continue ("Stipulation") the evidentiary portion and associated dates set for the hearing in the
10 February 17, 2011, Procedural Order. The parties state in the Stipulation as follows: the Railroad's
11 expert witness who is to testify in the proceeding is unavailable on the scheduled hearing date; due to
12 unforeseen delays in responses to Staff's data requests by the Railroad, Staff will require a two-week
13 delay, until April 22, 2011, to file its Staff Report; and any objections by the Railroad to the Staff
14 Report be filed by May 6, 2011. The parties further proposed that the May 5, 2011 hearing
15 previously noticed to the public be convened for the purpose of taking public comment only and be
16 recessed and reconvened on a later date for the evidentiary hearing to be held.

17 Accordingly, leave should be granted to the Railroad with respect to its request for
18 modification of the Commission's February 17, 2011, Procedural Order's compliance dates based on
19 the Railroad's colorable compliance with the Procedural Order and the fact that Staff has no
20 objections to the Motion. Further, the Stipulation agreed upon by the Railroad and Staff adequately
21 addresses the issues raised by the unforeseen delays which have arisen in the proceeding. The
22 Stipulation should be approved and the compliance filing dates and the date of the evidentiary hearing
23 should also be modified. Lastly, since public notice was not completed until March 28, 2011, the last
24 date for requesting intervention should be extended from March 30, 2011, to April, 21, 2011.

25 IT IS THEREFORE ORDERED that the **hearing** on the Application shall be held on **May 5,**
26 **2011, at 9:30 a.m.,** or as soon thereafter as is practicable, **for the taking of public comment only,** at
27 the Commission's offices, 1200 West Washington Street, Hearing Room 1, Phoenix, Arizona.

28 IT IS FURTHER ORDERED that the **evidentiary hearing** shall be held on **May 10, 2011, at**

1 **9:30 a.m.**, at the Commission's offices, 1200 West Washington, Hearing Room No. 1, Phoenix,
2 Arizona.

3 IT IS FURTHER ORDERED that Safety Division, Railroad Safety Section shall prepare a
4 written **Staff Report and associated exhibits** to be presented at hearing and file copies of them with
5 Docket Control on or before 4:00 p.m. on **April 22, 2011**.

6 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
7 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on **May 6,**
8 **2011**.

9 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
10 105, except that all motions to intervene must be filed on or before **April 21, 2011**.

11 IT IS FURTHER ORDERED that the **UNION PACIFIC RAILROAD COMPANY**
12 **SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET**
13 **CONTROL AS SOON AS PRACTICABLE** after the mailing/publication of notice ordered herein
14 has been completed.

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

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

21 DATED this 30th day of March, 2011

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25 **MARC E. STERN**
ADMINISTRATIVE LAW JUDGE

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1 Copies of the foregoing mailed/delivered
this 30th day of March, 2011 to:

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27 By: 

28 Debra Broyles
Secretary to Marc Stern