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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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MAY 16 2011

**COMMISSIONERS**

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2011 MAY 16 P 4:19

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

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IN THE MATTER OF THE APPLICATION OF  
UNION PACIFIC RAILROAD COMPANY FOR  
APPROVAL TO INSTALL NEW CONSTANT  
WARNING TIME DEVICE AT CITY OF TEMPE  
QUIET ZONE PROJECT - 13<sup>TH</sup> ST HIGHWAY

DOCKET NO. RR-03639A-11-0039

REQUEST FOR POSTPONEMENT

**Background and Recent Developments**

In June, 2008, the City of Tempe issued a Notice of Intent to create a New Quiet Zone within the City of Tempe along the Union Pacific Railroad ("UPPR") Phoenix Main Line between Milepost 914.31 and Milepost 918.54. The New Quiet Zone includes ten (10) highway grade crossings.

At the time the Notice of Intent was issued, the City believed that the highway grade crossing at 13<sup>th</sup> Street required the installation of a Constant Warning Time ("CWT") device to comply with the provisions of Part 222.43 of Title 49 of the Code of Federal Regulations ("CFR"). In January, 2011, the City of Tempe requested that the Arizona Corporation Commission authorize UPPR to install the CWT at the 13<sup>th</sup> Street crossing.

Between June 2008 and March 2011, the City has enjoyed the cooperation of UPPR and the Arizona Corporation Commission staff in moving the New Quiet Zone forward. The City has paid various costs associated with the installation of the CWT, including design and engineering studies. The City and UPPR have also worked diligently to negotiate a Supplemental Agreement pursuant to which UPPR would construct and install the CWT.

The City recently undertook a review of the need for the CWT given the presence of alternative safety measures at the 13<sup>th</sup> Street crossing. The City's desire to obtain additional information led the City to seek more information from the Federal Railroad Authority ("FRA") regarding alternatives to installation of the CWT on the industrial spur line. The City has determined that a waiver may be available that would make installation of the CWT unnecessary, and at the suggestion of the FRA, the City intends to apply for such a waiver. The City believes that existing crossing conditions and supplemental safety measures being installed at this site will provide reasonable levels of safety for motorists, pedestrians and UPPR personnel.

The City reached this decision shortly before the Commission's March 1, 2011 meeting. The City was not able to provide advance notice before requesting that the item be removed from the Corporation Commission's agenda. With assistance from the Corporation Commission's staff, the item was successfully deferred.

The City intends to submit a request for waiver of installation of the CWT pursuant to 49 CFR 222.15 within the next thirty (30) days. The FRA must issue a ruling on such a request within nine months.

The City is hopeful that it will be able to obtain a waiver. If the waiver is obtained, it will save the City over \$250,000 in construction costs and approximately \$10,000 per year in ongoing annual maintenance costs, without compromising safety.

Therefore, the City would prefer that the current proceedings before the Corporation Commission to be stayed or suspended until the FRA rules on the waiver application. If the waiver is granted, the City will abandon the application. If the waiver is not granted, the City would then ask that the application be returned to active status and would move forward with a request for the Corporation Commission to issue an order at that time.

The City of Tempe respectfully requests that its application to order UPPR to install the CWT be deferred until the FRA rules on the waiver application or until the City requests that the matter be returned to the active agenda of the Corporation Commission.

Respectfully submitted this 16th day of May, 2011.

City of Tempe

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