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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

2013 JUL 18 A 8:49

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL 18 2013

DOCKETED BY [Handwritten: NR]

IN THE MATTER OF THE APPLICATION OF  
THE ARIZONA DEPARTMENT OF  
TRANSPORTATION TO UPGRADE AN  
EXISTING CROSSING OF THE UNION  
PACIFIC RAILROAD AT 5<sup>TH</sup> STREET IN THE  
CITY OF TEMPE, MARICOPA COUNTY,  
ARIZONA, USDOT NO. 741-561-J.

DOCKET NO. RR-03639A-13-0211

**PROCEDURAL ORDER**  
**(Continues Hearing)**

BY THE COMMISSION:

On June 27, 2013, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at 5<sup>th</sup> Street in the City of Tempe ("City"), Maricopa County, Arizona at USDOT No. 741-561-J ("Application").

On July 1, 2013, by Procedural Order, a hearing was scheduled on September 12, 2013, on ADOT's Application.

On July 15, 2013, the Railroad filed a Motion to Continue ("Motion") the proceeding because its witness is scheduled to be out of town on the scheduled hearing date. There are no objections to the Motion, and public notice has not yet been provided.

Accordingly, the hearing should be continued, and public notice provided of the hearing as is scheduled herein after.

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 Arizona Department of Transportation 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

1 proceeding.

2 IT IS FURTHER ORDERED that the **hearing** on the application shall be continued from  
3 **September 12, 2013, to September 26, 2013, at 10:00 a.m.**, or as soon thereafter as is practical, at  
4 the Commission’s offices, 1200 West Washington Street, **Hearing Room No. 1**, Phoenix, Arizona.

5 IT IS FURTHER ORDERED that within ten business days of receipt of this Procedural  
6 Order, **the ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE**  
7 **RAILROAD AND ANY MUNICIPALITY OR INTERESTED PARTY** that may be affected by  
8 the application with a copy of the application and this Procedural Order by certified mail.

9 IT IS FURTHER ORDERED that the Commission’s Railroad Safety Section (“Staff”) shall  
10 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of  
11 them with Docket Control on or before 4:00 p.m. on **August 26, 2013**.

12 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**  
13 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on  
14 **September 6, 2013**.

15 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-  
16 105, except that all motions to intervene must be filed on or before **August 23, 2013**.

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

19 **IN THE MATTER OF THE APPLICATION OF**  
20 **THE ARIZONA DEPARTMENT OF TRANSPORTATION TO**  
21 **UPGRADE AN EXISTING CROSSING OF THE UNION PACIFIC**  
22 **RAILROAD AT 5<sup>th</sup> STREET IN THE CITY OF TEMPE, MARICOPA**  
**COUNTY, ARIZONA, USDOT NO. 741-561-J.**  
**(DOCKET NO. RR-03639A-13-0211)**

23 On June 27, 2013, the Arizona Department of Transportation (“ADOT”) filed with  
24 the Arizona Corporation Commission (“Commission”) an application for approval  
25 for the Union Pacific Railroad (“Railroad”) to upgrade an existing crossing at 5<sup>th</sup>  
Street in the City of Tempe (“City”), Maricopa County, Arizona at AAR/DOT No.  
741-561-J.

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

28 The Commission will hold a hearing on this matter commencing on **September 26,**  
**2013, at 10:00 a.m.**, at the Commission’s offices, 1200 West Washington Street,

1 Hearing Room No. 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  
5 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:

- 6 1. The name, address, and telephone number of the proposed intervener and of  
7 any party upon whom service of documents is to be made if different than the  
intervener.
- 8 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.).
- 9 3. A statement certifying that a copy of the motion to intervene has been mailed  
10 to the Applicant or its counsel and to all parties of record in the case.

11 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except  
12 that all motions to intervene must be filed on or before August 23, 2013. The  
13 granting of intervention, among other things, entitles a party to present sworn  
evidence at hearing and to cross-examine other witnesses. However, failure to  
14 intervene will not preclude any customer from appearing at the hearing and making a  
statement on such customer's own behalf.

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

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

21 IT IS FURTHER ORDERED that **the Arizona Department of Transportation** shall cause  
22 the above notice to be published at least once in a newspaper of general circulation in the city/county  
23 where the crossing is located, with **publication to be completed no later than July 31, 2013**.

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

27 IT IS FURTHER ORDERED that **THE ARIZONA DEPARTMENT OF**  
28 **TRANSPORTATION SHALL FILE CERTIFICATION OF NOTICE WITH THE**

1 COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE after the  
2 mailing/publication of notice ordered herein has been 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  
6 of 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 18<sup>th</sup> day of July, 2013.

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MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered  
17 this 18<sup>th</sup> day of July, 2013 to:

18 Alex Popovici, Manager  
19 Industry & Public Projects  
20 UNION PACIFIC RAILROAD COMPANY  
631 South 7<sup>th</sup> Street  
Phoenix, AZ 85034-2203

21 Anthony J. Hancock  
22 Terrance L. Sims  
23 BEAUGUREAU, ZUKOWSKI & HANCOCK, P.C.  
302 East Coronado  
Phoenix, AZ 85004  
Attorneys for Union Pacific Railroad Company

24 Robert Travis, P.E.  
25 State Railroad Liaison  
ARIZONA DEPARTMENT OF TRANSPORTATION  
26 205 South 17<sup>th</sup> Avenue, Room 357  
M/D 618E  
Phoenix, AZ 85007

1 City Attorney's Office  
CITY OF TEMPE  
2 21 E. Sixth Street, Suite 201  
Tempe, AZ 85281

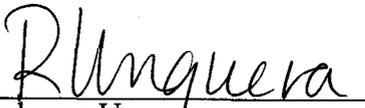
3 Kelly Roy, Utility Project Coordinator  
4 MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION  
2901 West Durango Street  
5 Phoenix, AZ 85009

6 Janice Alward, Chief Counsel  
Legal Division  
7 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
8 Phoenix, AZ 85007

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

12 ARIZONA REPORTING SERVICE, INC.  
2200 North Central Avenue, Suite 502  
13 Phoenix, AZ 85004-1481

14  
15 By:

  
16 Rebecca Unquera  
Secretary to Marc Stern  
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