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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

DEC - 3 2013

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

DOCKET NO. RR-03639A-13-0211

DECISION NO. 74211

OPINION AND ORDER

DATE OF HEARING: September 26, 2013

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Mr. James Redpath, Assistant Attorney General,
Transportation Section, on behalf of the Arizona
Department of Transportation;

Mr. W. Reed Campbell, Beaugureau, Zukowski &
Hancock, P.C., on behalf of the Union Pacific Railroad;
and

Mr. Charles Haines, Staff Attorney, Legal Division on
behalf of the Safety Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

On June 27, 2013, the Arizona Department of Transportation (“ADOT”) filed with the Arizona Corporation Commission (“Commission”) an application for the Union Pacific Railroad (“Railroad”) to upgrade an existing crossing at 5th 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 for September 12, 2013, on ADOT’s Application.

1 On July 15, 2013, the Railroad filed a Motion to Continue (“Motion”) the proceeding because
2 its witness was scheduled to be out of town on the scheduled hearing date. There were no objections
3 to the Motion, and public notice had not yet been provided.

4 On July 18, 2013, by Procedural Order, the hearing was continued to September 26, 2013.

5 On August 15, 2013, ADOT filed certification that it had provided public notice in
6 accordance with the Commission’s Procedural Order.

7 On September 26, 2013, a full public hearing was convened before a duly authorized
8 Administrative Law Judge of the Commission. ADOT, the Railroad and the Commission’s Safety
9 Division and Railroad Safety Section (“Staff”) were present with counsel. At the conclusion of the
10 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and
11 Order to the Commission.

12 * * * * *

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On June 27, 2013, ADOT filed an Application requesting an Opinion and Order from
17 the Commission approving an agreement between ADOT and the Railroad to upgrade an existing at-
18 grade crossing at 5th Street in Tempe, Maricopa County, Arizona, USDOT No. 741-561-J.

19 2. Prior to the filing of the Application, representatives of ADOT, the City, the Railroad
20 and Staff participated in several meetings for diagnostic reviews of the proposed improvements. All
21 parties who attended these sessions agreed that the proposed improvements would improve safety at
22 the crossing.¹

23 3. ADOT is seeking Commission approval to upgrade the existing at-grade crossing at 5th
24 Street, a two lane roadway, which runs east and west and consists of one eastbound through lane, one
25 left hand turning lane for eastbound traffic headed north onto Ash Avenue, and one westbound

26 ¹ The proposed upgrade of the 5th Street crossing was approved by the Commission in Decision No. 64988 (June 26,
27 2002) as part of the 2002 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 (“Section 130”) which is
28 provided by the Federal Highway Administration (“FHWA”) to reimburse ADOT for 100 percent of the cost of the
project. Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public railroad
crossings which are not primarily for the benefit of the Railroad.

1 through lane. The proposed improvements will replace the existing flashing lights and gates with two
2 new automatic gates with LED flashing light units on the outside curbs of 5th Street along with the
3 installation of a raised median. This will allow for the construction of an additional automatic gate
4 mechanism with LED flashing lights on the median and provide warning device coverage for all
5 lanes of traffic. Additionally, constant warning time circuitry will also be installed. The City is also
6 constructing sidewalks, improving the roadway approaches to the crossing and restriping the roadway
7 in advance of the crossing.

8 4. On August 15, 2013, ADOT filed certification that it had provided public notice of the
9 Application and hearing thereon pursuant to the Commission's Procedural Order by publishing notice
10 in the Arizona Republic and by mailing by certified U.S. mail, notice to the City and the Railroad.

11 5. The hearing was held as scheduled on September 26, 2013.

12 6. According to the Staff Memorandum, the areas adjacent to the 5th Street crossing
13 consist of land that is zoned for mixed use and city center development.

14 7. Mr. Robert Travis, ADOT's Railroad liason and manager for Section 130 projects,
15 testified in support of the Application.

16 8. Mr. Travis stated that this project is typical of similar upgrade projects that are
17 constructed utilizing federal funds on a statewide basis to improve the safety of at-grade crossings.
18 (Tr. 6:8-10)

19 9. Mr. Travis stated that the implementation of this project had been delayed because of
20 signal issues and because the City did not provide ADOT with its designs and plans until the latter
21 part of 2012. (Tr. 6:14-16 and Tr. 8-9:22-2)

22 10. Mr. Travis stated that the Railroad, at its own cost, has already improved the crossing
23 surface at the 5th Street at-grade crossing and the City has been able to commit to closing one of the
24 west bound lanes, allowing a median to be installed for traffic control. (Tr. 6:17-24)

25 11. Testifying further, Mr. Travis stated that Tempe will be installing a median on both
26 sides of the Railroad crossing and will relocate any sidewalks which conflict with the location of the
27 automatic signal devices to be placed by the Railroad. (Tr. 7:1-4)

28

1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
2 Railroad shall maintain the crossing in compliance with A.A.C. R14-5-104.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

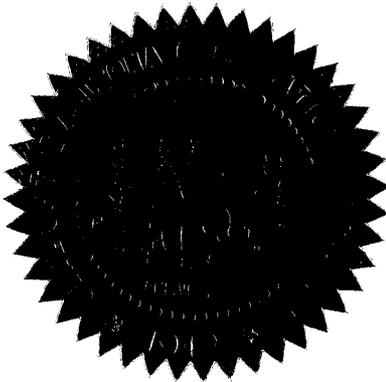
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7 CHAIRMAN

COMMISSIONER

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9 COMMISSIONER

COMMISSIONER

COMMISSIONER



10
11 IN WITNESS WHEREOF, I, JODI JERICH, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this 3rd day of December 2013.

16
17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____

21 MES:tv

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