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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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DOCKETED

OCT 05 2015

SUSAN BITTER SMITH - Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

AZ CORP COMM  
DOCKET CONTROL

DOCKETED BY	<i>JK</i>
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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 BAFFERT DRIVE IN THE CITY OF NOGALES, SANTA CRUZ COUNTY, ARIZONA USDOT NO. 742-036G.

DOCKET NO. RR-03639A-15-0331

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN EXISTING CROSSING OF THE UNION PACIFIC RAILROAD AT CALLE SONORA IN THE CITY OF NOGALES, SANTA CRUZ COUNTY, ARIZONA USDOT NO. 742-037N.

DOCKET NO. RR-03639A-15-0332

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN EXISTING CROSSING OF THE UNION PACIFIC RAILROAD AT BANKARD AVENUE IN THE CITY OF NOGALES, SANTA CRUZ COUNTY, ARIZONA USDOT NO. 742-038V.

DOCKET NO. RR-03639A-15-0333

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN EXISTING CROSSING OF THE UNION PACIFIC RAILROAD AT MORLEY AVENUE IN THE CITY OF NOGALES, SANTA CRUZ COUNTY, ARIZONA USDOT NO. 742-040W.

DOCKET NO. RR-03639A-15-0334

**PROCEDURAL ORDER**  
**(Consolidates Dockets and Schedules Hearing)**

**BY THE COMMISSION:**

On September 24, 2015, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") the four above-captioned applications for approval for the Union Pacific Railroad ("Railroad") to upgrade the following four existing crossings at: Baffert Drive USDOT No. 742-036G; Calle Sonora USDOT No. 742-037N; Bankard Avenue USDOT No. 742-038V; and Morley Avenue USDOT No. 742-040W in the City of Nogales ("City"),

1 Santa Cruz County, Arizona (“Applications”).

2 On October 1, 2015, the Commission’s Railroad Safety Section (“Staff”) filed motions to  
3 consolidate the above-captioned dockets. There have been no objections to the motions by Staff.

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

6 IT IS THEREFORE ORDERED that the requests of the Arizona Department of  
7 Transportation shall be considered Applications for the Railroad to upgrade four existing crossings  
8 pursuant to A.R.S. § 40-337, et seq.

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

11 IT IS FURTHER ORDERED that the motions to consolidate filed by Staff are hereby  
12 granted.

13 IT IS FURTHER ORDERED that the **hearing** on the Applications shall be held on  
14 **December 15, 2015, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission’s offices,  
15 1200 West Washington Street, Hearing Room No. 1, Phoenix, Arizona.

16 IT IS FURTHER ORDERED that within ten business days of receipt of this Procedural  
17 Order, **the ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE**  
18 **RAILROAD AND ANY MUNICIPALITY OR INTERESTED PARTY** that may be affected by  
19 the Applications with copies of the applications and this Procedural Order by certified mail.

20 IT IS FURTHER ORDERED that the Commission’s Railroad Safety Section shall prepare a  
21 written **Staff Report and associated exhibits** to be presented at hearing and file copies of them with  
22 Docket Control on or before 4:00 p.m. on **November 23, 2015.**

23 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**  
24 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on  
25 **December 3, 2015.**

26 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-  
27 105, except that all motions to intervene must be filed on or before **November 12, 2015.**

28 IT IS FURTHER ORDERED that **the Arizona Department of Transportation** shall provide

1 public notice of the hearing in this matter, in the following form and style:

2 **IN THE MATTER OF THE APPLICATIONS OF**  
3 **THE ARIZONA DEPARTMENT OF TRANSPORTATION TO**  
4 **UPGRADE FOUR EXISTING CROSSINGS OF THE UNION PACIFIC**  
5 **RAILROAD AT BAFFERT DRIVE USDOT NO. 742-036G; CALLE SONORA**  
6 **USDOT NO. 742-037N; BANKARD AVENUE USDOT NO. 742-038V; AND**  
7 **MORLEY AVENUE USDOT NO. 742-040W IN THE CITY OF NOGALES,**  
8 **SANTA CRUZ COUNTY, ARIZONA.**  
9 **(DOCKET NOS. RR-03639A-15-0331, RR-03639A-15-0332,**  
10 **RR-03639A-15-0333, AND RR-03639A-15-0334)**

11 On September 24, 2015, the Arizona Department of Transportation ("ADOT") filed  
12 with the Arizona Corporation Commission ("Commission") the four above-captioned  
13 applications for approval for the Union Pacific Railroad ("Railroad") to upgrade the  
14 following four existing crossings at: Baffert Drive USDOT No. 742-036G; Calle  
15 Sonora USDOT No. 742-037N; Bankard Avenue USDOT No. 742-038V; and Morley  
16 Avenue USDOT No. 742-040W in the City of Nogales ("City"), Santa Cruz County,  
17 Arizona.

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

21 The Commission will hold a hearing on this matter commencing on **December 15,**  
22 **2015, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street,  
23 Hearing Room No. 1, Phoenix, Arizona. Public comments will be taken on the first  
24 day of the hearing.

25 The law provides for an open public hearing at which, under appropriate  
26 circumstances, interested parties may intervene. Intervention shall be permitted to  
27 any person entitled by law to intervene and having a direct and substantial interest in  
28 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:

1. The name, address, and telephone number of the proposed intervener and of any party upon whom service of documents is to be made if different than the intervener.
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.).
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.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before **November 12, 2015.** The 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.

1 If you have any questions about this application, you may contact the applicant at  
2 [insert telephone number]. If you wish to file written comments on the application  
3 or want further information on intervention, you may write the Consumer Services  
4 Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007, call  
5 602-542-4251 or 1-800-222-7000, or appear at the hearing and make comment.

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

12 IT IS FURTHER ORDERED that **the Arizona Department of Transportation** shall cause  
13 the above notice to be published at least once in a newspaper of general circulation in the city/county  
14 where the crossing is located, with **publication to be completed no later than October 23, 2015.**

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

18 IT IS FURTHER ORDERED that **THE ARIZONA DEPARTMENT OF**  
19 **TRANSPORTATION SHALL FILE CERTIFICATION OF NOTICE WITH THE**  
20 **COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE** after the  
21 mailing/publication of notice ordered herein has been completed.

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

24 IT IS FURTHER ORDERED that all parties must comply with Rule 31, 38, and 42 of the  
25 Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and  
26 admission *pro hac vice*.

27 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to  
28 this matter may opt to receive service of all filings in this docket, including all filings by parties and  
all Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the  
Commission's Hearing Division, via email sent to an email address provided by the party rather than  
via U.S. Mail. To exercise this option, a party shall:

- 1 1. Ensure that the party has a valid and active email address to which the party has  
2 regular and reliable access (“designated email address”);
- 3 2. Complete a Consent to Email Service form, available on the Commission’s website  
4 ([www.azcc.gov](http://www.azcc.gov));
- 5 3. File the original and 13 copies of the Consent to Email Service form with the  
6 Commission’s Docket Control, also providing service to each party to the service list;
- 7 4. Send an email, containing the party’s name and the docket number for this matter, to  
8 [HearingDivisionServicebyEmail@azcc.gov](mailto:HearingDivisionServicebyEmail@azcc.gov) from the designated email address, to  
9 allow the Hearing Division to verify the validity of the designated email address;
- 10 5. Understand and agree that service of a document on the party shall be complete upon  
11 the sending of an email containing the document to the designated email address,  
12 regardless of whether the party receives or reads the email containing the document;  
13 and
- 14 6. Understand and agree that the party will no longer receive service of filings in this  
15 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless  
16 and until the party withdraws this consent through a filing made in this docket.

17 IT IS FURTHER ORDERED that a party’s consent to email service shall not become  
18 effective until a Procedural Order is issued approving the use of email service for the party. The  
19 Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and the  
20 Hearing Division has verified receipt of an email from the party’s designated email address.

21 IT IS FURTHER ORDERED that a party’s election to receive service of all filings in this  
22 matter via email does not change the requirement that all filings with the Commission’s Docket  
23 Control must be made in hard copy and must include an original and 13 copies.

24 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
25 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
26 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances  
27 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
28 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the

1 Administrative Law Judge or the Commission.

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

5 DATED this 5<sup>TH</sup> day of October, 2015.

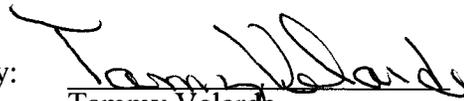
6  
7  
8   
MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
10 this 5<sup>TH</sup> day of October, 2015 to:

11 Alex Popovici, Manager  
12 Industry & Public Projects  
13 UNION PACIFIC RAILROAD COMPANY  
14 631 South 7<sup>th</sup> Street  
15 Phoenix, AZ 85034-2203

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COURT REPORTING, VIDEO AND  
VIDEOCONFERENCING  
1802 North 7<sup>th</sup> Street  
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18 Railroad and Utility Coordinator  
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23 Phoenix, AZ 85007

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23 Janice Alward, Chief Counsel  
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26 Brian Lehman, Chief  
27 Railroad Safety Section of the Safety Division  
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