

ORIGINAL



0000177945

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE – Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD W. DUNN

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

2017 MAR 10 P 12:10

MAR 10 2017

DOCKETED BY
GB

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR APPROVAL TO CONSTRUCT AND MAINTAIN A NEW GRADE SEPARATED STRUCTURE AND TO ALLOW THE UNION PACIFIC RAILROAD TO REMOVE AN EXISTING AT-GRADE PUBLIC CROSSING AAR/DOT NO. 741811U IN THE CITY OF PHOENIX, AZ, STATE ROUTE 202 SOUTH MOUNTAIN FREEWAY AT 59TH AVENUE, MP 899.70.

DOCKET NO. RR-03639A-17-0065

PROCEDURAL ORDER
(Schedules Hearing)

BY THE COMMISSION:

On March 6, 2017, Arizona Department of Transportation (“ADOT”) filed with the Arizona Corporation Commission (“Commission”) an application for approval to construct and maintain a new grade separated structure and to allow the Union Pacific Railroad (“Railroad”) to remove an existing at-grade public crossing AAR/DOT No. 741811U in the City of Phoenix, AZ, State Route 202 South Mountain Freeway at 59th Avenue, MP 899.70, which resulted in the opening of this docket.

Pursuant to Arizona Administrative Code (“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 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 the Railroad shall be considered as the Respondent in this proceeding.

IT IS FURTHER ORDERED the **hearing on the application shall be held on June 21, 2017, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission’s offices, 1200 West Washington Street, Hearing Room No. 2, Phoenix, Arizona.

1 IT IS FURTHER ORDERED that within ten business days of receipt of this Procedural Order,
 2 **the Arizona Department of Transportation shall provide the Railroad and any Municipality or**
 3 **interested party** that may be affected by the application with a copy of the application and this
 4 Procedural Order by certified mail.

5 IT IS FURTHER ORDERED the Commission's Railroad Safety Section ("Staff") shall prepare
 6 a written **Staff Report and associated exhibits** to be presented at hearing and file copies of them with
 7 Docket Control on or before 4:00 p.m. on **June 7, 2017**.

8 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
 9 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on **June**
 10 **14, 2017**.

11 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-105,
 12 except that all motions to intervene must be filed on or before **May 31, 2017**.

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

15 **IN THE MATTER OF THE APPLICATION OF**
 16 **THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR**
 17 **APPROVAL TO CONSTRUCT AND MAINTAIN A NEW GRADE**
 18 **SEPARATED STRUCTURE AND TO ALLOW THE UNION PACIFIC**
 19 **RAILROAD TO REMOVE AN EXISTING AT-GRADE PUBLIC CROSSING**
 20 **#74181U IN THE CITY OF PHOENIX, AZ, STATE ROUTE 202 FREEWAY**
 21 **AT 59TH AVENUE, MP 899.70.**
 22 **(DOCKET NO. RR-03639A-17-0065)**

23 On March 6, 2017, the Arizona Department of Transportation ("ADOT" or
 24 "Applicant") filed with the Arizona Corporation Commission ("Commission") an
 25 application for approval to construct and maintain a new grade separated structure and
 26 to allow the Union Pacific Railroad ("Railroad") to remove an existing at-grade public
 27 crossing AAR/DOT No. 741811U in the City of Phoenix, AZ, State Route 202 South
 28 Mountain Freeway at 59th Avenue, MP 899.70.

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

The Commission will hold a hearing on this matter commencing on **June 21, 2017, at**
10:00 a.m., at the Commission's offices, 1200 West Washington Street, Hearing
 Room No. 2, Phoenix, Arizona. Public comments will be taken on the first day of the
 hearing.

The law provides for an open public hearing at which, under appropriate circumstances,
 interested parties may intervene. Intervention shall be permitted to any person entitled

1 by law to intervene and having a direct and substantial interest in the matter. Persons
2 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:

- 3 1. The name, address, and telephone number of the proposed intervener and of
4 any party upon whom service of documents is to be made if different than the
intervener.
- 5 2. A short statement of the proposed intervener's interest in the proceeding (e.g.,
6 a customer of Railroad, a neighboring property owner, a crossing user, etc.).
- 7 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.

8 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
9 that all motions to intervene must be filed on or before **May 31, 2017**. The granting
of intervention, among other things, entitles a party to present sworn evidence at
10 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
11 customer's own behalf.

12 If you have any questions about this application, you may contact the Applicant at
[insert telephone number]. If you wish to file written comments on the application or
13 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-
14 542-4251 or 1-800-222-7000, or appear at the hearing and make comment.

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

18 IT IS FURTHER ORDERED the Arizona Department of Transportation shall cause the above
19 notice to be published at least once in a newspaper of general circulation in the city/county where the
20 crossing is located, with **publication to be completed no later than April 14, 2017**.

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

24 IT IS FURTHER ORDERED the **Arizona Department of Transportation shall file**
25 **certification of notice with the Commission's Docket Control as soon as practicable** after the
26 mailing/publication of notice ordered herein has been completed.

27 IT IS FURTHER ORDERED each party or prospective party shall **refer to the Procedural**
28

1 **Order Regarding Consent to Email Service** issued in this matter on **March 9, 2017**, for additional
2 information regarding the process to consent to service by email. Information regarding Consent to
3 Email Service is also available on the Commission's website (www.azcc.gov) by clicking on "Email
4 Service Consent."

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

7 IT IS FURTHER ORDERED all parties must comply with Arizona Supreme Court Rules 31,
8 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

15 IT IS FURTHER ORDERED the Administrative Law Judge may rescind, alter, amend, or
16 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
17 hearing.

18 DATED this 10 day of March, 2017.

19 
20 _____
21 BRIAN D. SCHNEIDER
22 ADMINISTRATIVE LAW JUDGE
23
24
25
26
27
28

1 On this 10th day of March, 2017, the foregoing document was filed with Docket Control as a
2 Procedural Order Scheduling Hearing, and copies of the foregoing were mailed on behalf of the
3 Hearing Division to the following who have not consented to email service. On this date or as soon as
possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing
to the following who have consented to email service.

4 Alex Popovici, Manager
5 Industry & Public Projects
6 UNION PACIFIC RAILROAD COMPANY
631 South 7th Street
Phoenix, AZ 85034-2203

Ed Zuercher
Phoenix City Manager
200 W. Washington Street, 12th Floor
Phoenix, AZ 85003

7 W. Reed Campbell
8 BEAUGUREAU, ZUKOWSKI
& HANCOCK, P.C.
9 302 East Coronado
Phoenix, AZ 85004
Attorneys for Union Pacific Railroad Company

Timothy La Sota, Acting Director
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007
LegalDiv@azcc.gov
EAbinah@azcc.gov

Consented to Service by Email

10 Michelle Burton
11 Assistant Attorney General
12 OFFICE OF THE ATTORNEY GENERAL
1275 West Washington Street
Phoenix, Arizona 85007

COASH & COASH, INC.
Court Reporting, Video and
Videoconferencing
1802 North 7th Street
Phoenix, AZ 85006

Not a party, mailed as a courtesy

13 Sayeed M. Hani
14 Railroad and Utility Coordinator
15 ARIZONA DEPARTMENT OF
TRANSPORTATION
16 205 South 17th Avenue, Room 357
M/D 618E
Phoenix, AZ 85007

17
18 By: Rebecca Tallman
19 Rebecca Tallman
Assistant to Brian D. Schneider
20
21
22
23
24
25
26
27
28