

OPEN MEETING ITEM



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COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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DATE: July 20, 2004
DOCKET NO: RR-02634A-04-0433
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA EASTERN RAILWAY COMPANY
(UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 29, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 3 AND 4, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUL 20 2004

DOCKETED BY

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE ARIZONA
12 EASTERN RAILWAY COMPANY AT STATE
13 ROUTE 188, CLAYPOOL-JAKES CORNER
14 HIGHWAY, IN GILA COUNTY, ARIZONA,
15 AAR/DOT NO. 748-716X.

DOCKET NO. RR-02634A-04-0433

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING:

July 15, 2004

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

14 APPEARANCES:

Mr. Timothy Sabo, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

16 **BY THE COMMISSION:**

17 On June 9, 2004, the Arizona Department of Transportation ("ADOT") filed with the Arizona
18 Corporation Commission ("Commission") a request for approval for the Arizona Eastern Railway
19 Company ("Railroad") to upgrade an existing crossing of the Railroad's track at State Route 178,
20 Claypool-Jakes Corner Highway, Gila County, Arizona, AAR/DOT No. 748-716X ("Application").

21 On June 22, 2004, by Procedural Order, the Application was set for hearing on July 15, 2004
22 and ADOT was ordered to provide interested parties with a copy of the application and the
23 Procedural Order.

24 On July 8, 2004, ADOT filed certification that notice of the proceeding had been given in
25 accordance with the Procedural Order.

26 On July 15, 2004, a full public hearing was held before a duly authorized Administrative Law
27 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the
28 matter was taken under advisement pending submission of a Recommended Opinion and Order to the

1 Commission.

2 * * * * *

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

5 **FINDINGS OF FACT**

6 1. On June 9, 2004, ADOT filed an Application in which it requested an Opinion and
7 Order from the Commission to approve an upgrade of an existing crossing of the Railroad at State
8 Route 178, Claypool-Jakes Corner Highway, Gila County, Arizona, AAR/DOT No. 748-716X.

9 2. On July 8, 2004, the Railroad filed certification that it had provided notice to all
10 interested parties of the Application and hearing thereon as ordered in the Commission's Procedural
11 Order.

12 3. A hearing was held as scheduled on July 15, 2004.

13 4. The Application provides for ADOT to widen State Route 178 to four lanes and for
14 the Railroad to upgrade the crossing by replacing the existing flashing light signals and automatic
15 gates with new, larger automatic gates and flashing lights and by installing a new, wider concrete
16 track crossing surface.

17 5. Staff testified that the cost for the installation of the crossing upgrade as provided in
18 the Application is proper.

19 6. Staff has recommended that the Application be approved.

20 **CONCLUSIONS OF LAW**

21 1. The Commission has jurisdiction over the Railroad and over the subject matter of the
22 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
23 40-337.01.

24 2. Notice of the Application was provided in accordance with the law.

25 3. Installation of the crossing upgrade is necessary for the public's convenience and
26 safety.

27 4. The Application should be approved as recommended by Staff.

28 5. After the installation of the crossing, the Railroad should maintain the crossing in

1 accordance with A.A.C. R14-5-104.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application
4 on behalf of the Arizona Eastern Railway Company is hereby approved.

5 IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall complete the
6 crossing upgrade as described in the Application within fifteen months from the effective date of this
7 Decision.

8 IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall notify the
9 Commission, in writing, within ten days of both the commencement and the completion of the
10 crossing upgrade, pursuant to A.A.C. R14-5-104.

11 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Arizona
12 Eastern Railway Company shall maintain the crossing in compliance with A.A.C. R14-5-104.

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

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

15

16

17 CHAIRMAN COMMISSIONER COMMISSIONER

18

19 COMMISSIONER COMMISSIONER

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21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
22 Secretary of the Arizona Corporation Commission, have
23 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2004.

24

25 BRIAN C. McNEIL
EXECUTIVE SECRETARY

26 DISSENT _____

27 DISSENT _____

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SERVICE LIST FOR:

ARIZONA EASTERN RAILWAY COMPANY

DOCKET NO.:

RR-02634A-04-0433

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