

OPEN MEETING ITEM



0000022274

BRIAN C. McNEIL
Executive Secretary

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



ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: July 18, 2005

DOCKET NO: RR-04188A-05-0402

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:

SAN MANUEL RAILWAY COMPANY
(REMOVE 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 27, 2005

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 Open Meeting to be held on:

AUGUST 9 AND 10, 2005

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.

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

8 IN THE MATTER OF THE APPLICATION OF
9 THE SAN MANUEL RAILWAY COMPANY TO
10 REMOVE A RAILROAD CROSSING AT THE
11 SAN MANUEL AIRPORT ACCESS ROAD IN
12 PINAL COUNTY AT AAR DOT NO. 916-303S.

DOCKET NO. RR-04188A-05-0402

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: July 14, 2005
10 PLACE OF HEARING: Phoenix, Arizona
11 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
12 APPEARANCES: Mr. Keith Layton, Staff Attorney, Legal Division, on
13 behalf of the Utilities Division of the Arizona
14 Corporation Commission.

14 **BY THE COMMISSION:**

15 On June 3, 2005, the San Manuel Railway Company ("Railroad") submitted to the Arizona
16 Corporation Commission ("Commission") an application requesting approval to remove an at-grade
17 public railroad crossing at the Railroad's tracks at the San Manuel Airport Access Road in Pinal
18 County, Arizona ("Application").

19 On June 17, 2005, by Procedural Order, the Application was set for a hearing and the Railroad
20 was ordered to notify any interested party of the Application and the hearing.

21 Pursuant to the terms of the Procedural Order, the Railroad provided public notice.

22 On July 14, 2005, a full public hearing was held before a duly authorized Administrative Law
23 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the
24 matter was taken under advisement pending submission of a Recommended Opinion and Order to the
25 Commission.

26 * * * * *

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

FINDINGS OF FACT

1
2 1. On June 3, 2005, the Railroad submitted to the Commission an Application requesting
3 approval to remove the Railroad's tracks and close the at-grade public railroad crossing at the San
4 Manuel Airport Access Road in Pinal County, Arizona, at AAR DOT No. 916-303S.

5 2. The Railroad provided public notice by certified U.S. mail of the Application and
6 hearing thereon.

7 3. A hearing was held as scheduled on July 14, 2005.

8 4. The Application provides for the Railroad to remove its tracks located at the at-grade
9 crossing of the San Manuel Airport Access Road at AAR DOT No. 916-303S. After the removal of
10 the tracks, the roadway will remain open.

11 5. Staff testified that the cost for the removal of the crossing as provided in the
12 Application will be paid for by B.H.P. Copper, which owns the Railroad.

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

CONCLUSIONS OF LAW

14
15 1. The Commission has jurisdiction over the parties and over the subject matter of the
16 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
17 40-337.01

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

19 3. The removal of the tracks at the crossing of the San Manuel Airport Access Road is
20 necessary for the public's convenience and safety.

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

ORDER

22
23 IT IS THEREFORE ORDERED that the San Manuel Railway Company's Application is
24 hereby approved.

25 IT IS FURTHER ORDERED that the San Manuel Railway Company shall complete the
26 removal of its track and the closure of the crossing of the San Manuel Airport Access Road as
27 described in the Application.

28 ...

1 IT IS FURTHER ORDERED that the San Manuel Railway Company shall notify the
2 Commission, in writing, within ten days of the closure of the crossing, pursuant to A.A.C. R14-5-
3 104.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2005.

17 BRIAN C. McNEIL
EXECUTIVE SECRETARY

18 DISSENT _____

19
20 DISSENT _____
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1 SERVICE LIST FOR: SAN MANUEL RAILWAY COMPANY

2 DOCKET NO.: RR-04188A-05-0402

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