

OPEN MEETING ITEM
ORIGINAL



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



ARIZONA CORPORATION COMMISSION

22

DATE: October 19, 2005
DOCKET NO: RR-02634A-05-0598
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:

OCTOBER 28, 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:

NOVEMBER 8 AND 9, 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 Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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 ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE ARIZONA
12 EASTERN RAILWAY COMPANY AT APACHE
13 GOLD CASINO, IN GILA COUNTY, ARIZONA,
14 AAR/DOT NO. 742-342-Y.

DOCKET NO. RR-02634A-05-0598

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: October 5, 2005
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
14 APPEARANCES: Mr. Keith Layton, Staff Attorney, Legal
15 Division, on behalf of the Utilities Division of
16 the Arizona Corporation Commission.

17 **BY THE COMMISSION:**

18 On August 19, 2005, the Arizona Department of Transportation (“ADOT”) filed with the
19 Arizona Corporation Commission (“Commission”) a request for approval for the Arizona Eastern
20 Railway Company (“Railroad”) to upgrade an existing crossing of the Railroad’s track at the Apache
21 Gold Casino, Gila County, Arizona, AAR/DOT No. 742-342-Y (“Application”).

22 On September 1, 2005, by Procedural Order, the Application was set for hearing on October
23 5, 2005 and ADOT was ordered to provide interested parties with a copy of the application and the
24 Procedural Order.

25 On September 14, 2005, ADOT filed certification that notice of the proceeding had been
26 given in accordance with the Procedural Order.

27 On October 5, 2005, a full public hearing was held before a duly authorized Administrative
28 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,
the matter was taken under advisement pending submission of a Recommended Opinion and Order to

1 the 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 August 19, 2005, 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 the
8 entrance road to the Apache Gold Casino, Gila County, Arizona, AAR/DOT No. 742-342-Y.

9 2. On September 14, 2005, ADOT 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 October 5, 2005.

13 4. The Application provides for the Railroad to upgrade the crossing by replacing the
14 existing flashing light signals and automatic gates with new, larger automatic gates and cantilever
15 flashing L.E.D. lights and by installing a new curb along the roadway.

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

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

19 **CONCLUSIONS OF LAW**

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

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

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

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

27 5. After the installation of the crossing, the Railroad should maintain the crossing in
28 accordance with A.A.C. R14-5-104.

ORDER

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

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

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

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have 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 _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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SERVICE LIST FOR: ARIZONA EASTERN RAILWAY COMPANY

DOCKET NO.: RR-02634A-05-0598

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