

ORIGINAL OPEN MEETING ITEM



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



RECEIVED

BRIAN C. McNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

2003 NOV 17 A 10:58

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

NOV 17 2003

DATE: NOVEMBER 17, 2003

DOCKET NO: RR-02634A-03-0606

TO ALL PARTIES:

DOCKETED BY	
-------------	--

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

ARIZONA EASTERN RAILWAY COMPANY
(AT-GRADE)

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 26, 2003

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:

DECEMBER 2, 2003 and DECEMBER 3, 2003

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.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE AN
EXISTING CROSSING OF THE ARIZONA
EASTERN RAILWAY COMPANY AT STATE
ROUTE 170, SAN CARLOS HIGHWAY, JCT. US
70, IN GRAHAM COUNTY, ARIZONA, M.P.
1200.79.

DOCKET NO. RR-02634A-03-0606

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: November 6, 2003
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

BY THE COMMISSION:

On August 26, 2003, the Arizona Department of Transportation (“ADOT”) filed with the Arizona Corporation Commission (“Commission”) a request for approval for the Arizona Eastern Railway Company (“Railroad”) to upgrade an existing crossing at the Railroad’s existing track at State Route 170, San Carlos Highway, at the junction with U.S. 70, Graham County, Arizona at M.P. 1200.79 (“Application”).

On September 10, 2003, by Procedural Order, the Application was set for hearing on October 9, 2003 and ADOT was ordered to provide interested parties with a copy of the application and the Procedural Order.

On October 9, 2003, at the outset of the hearing, counsel for the Commission’s Railroad Safety Section (“Safety”) disclosed that notice had not been provided by ADOT pursuant to the Procedural Order. Counsel moved for the proceeding to be continued and rescheduled for hearing after proper notice is given of the proceeding as ordered in the Procedural Order. By subsequent

1 Procedural Order, Safety's motion was granted and the hearing was continued to November 6, 2003.

2 On October 23, 2003, ADOT filed certification that notice of the proceeding had been given
3 in accordance with the Procedural Order.

4 On November 6, 2003, a full public hearing was held before a duly authorized Administrative
5 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,
6 the matter was taken under advisement pending submission of a Recommended Opinion and Order to
7 the Commission.

8 * * * * *

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

11 **FINDINGS OF FACT**

12 1. On August 26, 2003, ADOT filed an Application in which it requested an Opinion and
13 Order from the Commission to approve an upgrade of an existing crossing of the Railroad at State
14 Route 170, San Carlos Highway at the junction with U.S. 70, Graham County, Arizona at M.P.
15 1200.79.

16 2. A hearing was held as scheduled on November 6, 2003.

17 3. The Railroad provided notice to all interested parties of the Application and hearing
18 thereon as ordered in the Commission's Procedural Order. Subsequently, no objections to the
19 Application were received by the Commission.

20 4. The Application provides for the Railroad to upgrade the crossing by adding a turning
21 lane and extending the track crossing surface and moving the flashing light signals and automatic
22 gates.

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

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

26 **CONCLUSIONS OF LAW**

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

1 40-337.01.

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

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

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

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

8 **ORDER**

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

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

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

17 ...
18 ...
19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Secretary 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 _____, 2003.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mlj

1 SERVICE LIST FOR: ARIZONA EASTERN RAILWAY COMPANY

2 DOCKET NO.: RR-02634A-03-0606

3 John Schwer
Assistant Manager/Railroad Liaison
4 Utility & Railroad Engineering Section
205 S. 17th Avenue, Mail Drop 618E
5 Phoenix, AZ 85007

6 David Gibson
ADOT Traffic Records Section
7 206 S. 17th Avenue, MD 064R
Phoenix, AZ 85007
8

9 Donald Tolle
Arizona Eastern Railway Company
P.O. Box Y
10 Claypool, AZ 85532-1008

11 Christopher Kempsey, Chief Counsel
Legal Division
12 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
13 Phoenix, Arizona 85007

14 Don Thompson, Railroad Safety Supervisor
Office of Railroad Safety
15 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
16 Phoenix, Arizona 85007

17
18
19
20
21
22
23
24
25
26
27
28