

ORIGINAL

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

OPEN MEETING AGENDA ITEM



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ARIZONA CORPORATION COMMISSION

2006 NOV -2 P 1:10

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: NOVEMBER 2, 2006

DOCKET NO: RR-02634A-06-0570

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 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 13, 2006

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:

NOVEMBER 21, 2006 and NOVEMBER 22, 2006

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

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DOCKETED BY 


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

IN THE MATTER OF THE ARIZONA
DEPARTMENT OF TRANSPORTATION TO
UPGRADE AN EXISTING CROSSING OF THE
ARIZONA EASTERN RAILWAY COMPANY AT
CUTTER ROAD, IN THE SAN CARLOS INDIAN
RESERVATION, IN GILA COUNTY, ARIZONA,
AAR/DOT NO. 742-339-R.

DOCKET NO. RR-02634A-06-0570

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: October 18, 2006
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Charles Haines, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

BY THE COMMISSION:

On September 8, 2006, 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 of the Railroad’s track at Cutter Road in the San Carlos Indian Reservation, Gila County, Arizona, AAR/DOT No. 742-339-R (“Application”).

On September 20, 2006, by Procedural Order, the Application was set for hearing on October 18, 2006 and ADOT was ordered to provide interested parties with a copy of the application and the Procedural Order.

On October 6, 2006, ADOT filed certification that notice of the proceeding had been given in accordance with the Procedural Order.

On October 18, 2006, a full public hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,

1 the matter was taken under advisement pending submission of a Recommended Opinion and Order to
2 the Commission.

3 * * * * *

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

6 **FINDINGS OF FACT**

7 1. On September 8, 2006, ADOT filed an Application in which it requested an Opinion
8 and Order from the Commission to approve an upgrade of an existing crossing of the Railroad at
9 Cutter Road, in the San Carlos Indian Reservation, Gila County, Arizona, AAR/DOT No. 742-339-R.

10 2. On October 6, 2006, ADOT filed certification that it had provided notice to all
11 interested parties of the Application and hearing thereon as ordered in the Commission's Procedural
12 Order.

13 3. A hearing was held as scheduled on October 18, 2006.

14 4. The Application provides for the Railroad to upgrade the crossing by installing 12-
15 inch L.E.D. flashing light signals and automatic gates to replace existing crossbucks.

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.

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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 _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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SERVICE LIST FOR: ARIZONA EASTERN RAILWAY COMPANY

DOCKET NO.: RR-02634A-06-0570

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