

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2006 DEC 14 P 1:14
AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF ARIZONA
CALIFORNIA RAILROAD COMPANY
VIOLATION OF A.A.C. R14-5-111.

DOCKET NO. RR-02632A-06-0309

NOTICE OF FILING

Staff of the Arizona Corporation Commission ("Staff") hereby provides the corrected version of the notice of filing (1) Staff's report on the violation, (2) Staff's proposed order, and (3) Staff's proposed stipulation to the violation.

RESPECTFULLY SUBMITTED this 14th day of December 2006.

Charles H. Hains
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13) copies of the foregoing were filed this 14th day of December 2006 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing mailed this 14th day of December 2006 to:

Brian Lehman
Supervisor, Railroad Safety Section
2200 North Central Ave, Suite 300
Phoenix, Arizona 85004

Arizona Corporation Commission
DOCKETED

DEC 14 2006

DOCKETED BY NR

1 Tanya Cecil, General Manager
2 Arizona & California Railroad
3 1301 California Avenue
4 P.O. Box 3340
5 Parker, Arizona 85344

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OPEN MEETING

MEMORANDUM

TO: THE COMMISSION

FROM: Railroad Safety Section

DATE: December 14, 2006

RE: VIOLATION OF A.A.C. R14-5-111 BY ARIZONA & CALIFORNIA
RAILROAD COMPANY ON NOVEMBER 17, 2005 (DOCKET NO. RR-
02632A-06-0309)

Arizona & California Railroad Company ("Arizona & California" or "ARZC"), a subsidiary of Rail America Company is an Arizona public service corporation. Arizona & California operates trains running from Parker, Arizona. In order to reach the locations they serve, for certain portions of the journey, ARZC trains must transit Burlington Northern Santa Fe ("BNSF") rail lines. At a point near Wickenburg called Matthie, Arizona, ARZC and BNSF rail lines meet. BNSF had previously run repositioning trains up to Matthie, Arizona to perform an interchange operation, a process which has ARZC crewmembers accepting the BNSF train, then proceeding to Parker on their home railroad. However, BNSF then decided they would no longer run repositioning trains as far as Matthie for ARZC, causing ARZC crews to travel to Castle Hot Springs, 15.3 miles from Matthie. At Castle Hot Springs siding (a nearly two mile long auxiliary track for trains to clear the main track) ARZC crewmembers board the BNSF locomotive and with BNSF dispatcher authority operate these trains from the siding onto the BNSF main track, proceeding to Matthie.

At the siding, a train conductor must exit the train locomotive and line the track switch to enter the siding, which is normally aligned to direct traffic down the main track. When exiting the siding, the conductor must likewise leave the locomotive and throw the switch to the respective position allowing the train back onto the main track, as well as restoring the switch's position to allow ordinary travel. On November 17, 2005, an Arizona & California train had an opportunity to perform such a procedure as it exited the Castle Hot Springs siding.

The ARZC train prepared to leave the siding and proceed to Matthie. The ARZC conductor left the train to operate the switch allowing the Arizona & California train out of the siding and then restored the switch to allow normal traffic. However, when the ARZC train had fully exited the siding, the lead locomotive was nearly two miles away from the switch. The Arizona & California crew hauler drove a truck out to pick up the conductor and bring him back up to the lead locomotive, but they could not locate the rail crossing that would allow them to meet. The ARZC transportation manager then instructed the ARZC conductor to meet the train at

Matthie. Ultimately, the ARZC engineer was alone in the locomotive while operating the train for a distance of 15.3 miles before the conductor was returned to the train.

Staff dispatched Inspector Lyn Rainville to Arizona & California's Parker office and met with Mr. Kevin Smith, Transportation Manager for ARZC on November 22, 2005 after receiving a complaint about the incident. At the meeting, Mr. Smith admitted the events of November 17, 2005. Following the meeting, Mr. Smith issued a memo notifying ARZC personnel that among other options, rather than do what they did on November 17, 2005 they could perform a back up move to pick up the conductor after pulling out of the siding. Such a back up move takes approximately fifteen to twenty minutes.

A.A.C. R14-5-111 provides that:

A. Railroads operating within Arizona shall maintain a minimum of two operating employees in the control compartment of the lead locomotive unit of a train. B. Compliance with subsection (A) of this Section shall not be required during switching operations, while moving cars for inspection purposes, or while performing setouts in conjunction with road service.

Representatives of Arizona & California admit to the events that took place on November 17, 2005 during the Castle Hot Springs interchange. ARZC further concedes that A.A.C. R14-5-111 required that the conductor be in the locomotive cab with the engineer for the 15.3 mile transit between Castle Hot Springs and Matthie.

Arizona & California has stated that it understands that A.A.C. R14-5-111 is a safety oriented rule. This is, to the best knowledge of Staff, the first time Arizona & California has ever been charged with violating the rule. When Inspector Rainville inquired into the incident, their transportation manager Mr. Smith readily admitted it. Further, ARZC has already taken some measures to ensure the practice will end with the isolated incident by posting a memo recommending alternatives to what they did which will keep them in compliance with the rule.

Staff feels the penalty amount of \$2,000 is appropriate to the event and ARZC General Manager Tanya Cecil has agreed to the amount. Further, she has agreed to the additional compliance terms of the attached stipulation. These items include sending a notice to all operators and supervisors on how to comply with A.A.C. R14-5-111 as well as posting the same notice in appropriate places at their Arizona facilities.

Staff recommends approving the proposed order.

Brian Lehman
Supervisor
Railroad Safety Section

ORIGINATOR: Brian Lehman

SERVICE LIST FOR:
DOCKET NO. RR-02632A-06-0309

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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Supervisor, Railroad Safety Section
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Phoenix, Arizona 85007

Tanya Cecil, General Manager
Arizona & California Railroad
1301 California Avenue
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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. RR-02632A-06-0309

IN THE MATTER OF VIOLATION OF
A.A.C. R14-5-111 BY THE ARIZONA AND
CALIFORNIA RAILROAD COMPANY

DECISION NO.

ORDER

BY THE COMMISSION:

The Railroad Safety Section ("Staff") of the Arizona Corporation Commission ("Commission") has conducted an investigation of alleged violations of A.A.C. R14-5-111 by the Arizona & California Railroad ("Arizona & California" or "ARZC") a subsidiary of Rail America Company. Staff and the Arizona & California have entered into a stipulation whereby the Arizona & California admits to the violation and Staff recommends a certain penalty.

Findings of Fact

1. On or about November 17, 2005, on a span of rail running from Castle Hot Springs, Arizona to Matthie, Arizona, a sole employee of the ARZC operated an ARZC train a distance of approximately 15.3 miles with no other operating personnel in the cab of the lead locomotive.
2. On or about November 25, 2005, Staff Operating Practices Inspector Lyn Rainville initiated an investigation and met with Mr. Kevin Smith at Arizona & California's Parker office. At this meeting, Mr. Smith admitted to Ms. Rainville the fact of the event.
3. Staff and the Arizona & California have entered into a stipulation ("Stipulation"). As part of the Stipulation, Staff has agreed to recommend the following penalty: \$2,000 for the violation described in Finding of Fact #1. As part of the Stipulation, the Arizona & California has also agreed to send a notice to all of its operating employees and supervisors in Arizona, in a form attached as Exhibit 1 to the Stipulation, informing them about A.A.C. R14-5-111. The Arizona & California also agrees to post the notice in appropriate places throughout its Arizona facilities. The Arizona &

1 California has also agreed that a Cease and Desist order be issued against it.

2 **Conclusions of Law**

3 1. The Arizona & California is a public service corporation as defined in Article XV
4 § 2 of the Arizona Constitution.

5 2. The Commission has jurisdiction over the Arizona & California and the subject
6 matter of the Stipulation and this Order.

7 3. The event described in Finding of Fact #1 constitutes a violation of A.A.C. R14-5-
8 111.

9 4. The Stipulation and Order is in the public interest and should be approved.

10 **Order**

11 THEREFORE, IT IS ORDERED that the Stipulation is approved.

12 IT IS FURTHER ORDERED that the Arizona & California shall, within 30 days of the
13 effective date of this order, pay a penalty of \$2,000 into the General Fund for the violations described
14 herein. By finding a penalty amount of \$2,000 appropriate, the Commission does not limit itself to
15 this amount in the event of potential future violations of A.A.C. R14-5-111.

16 IT IS FURTHER ORDERED that the Arizona & California shall, within 30 days of the
17 effective date of this order, send the notice attached as Exhibit 1 to the Stipulation to all operating
18 employees and supervisors that operate in Arizona.

19 IT IS FURTHER ORDERED that the Arizona & California shall, within 30 days of the
20 effective date of this order, post the notice attached as Exhibit 1 to the Stipulation in appropriate
21 places throughout its Arizona facilities.

22 IT IS FURTHER ORDERED that the Arizona & California shall, within 30 days of the
23 effective date of this order, certify to the Commission that it has complied with the preceding
24 ordering paragraphs, and that such certification shall be in the form of a sworn affidavit by the
25 General Manager of Arizona & California, Tanya Lynn Cecil.

26 IT IS FURTHER ORDERED that the Arizona & California shall, cease and desist from any
27 further violations of A.A.C. R14-5-111.

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BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

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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 this Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____ 2006.

BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

1 SERVICE LIST FOR:
DOCKET NO. RR-02632A-06-0309

2 Docket Control
3 Arizona Corporation Commission
4 1200 West Washington Street
Phoenix, Arizona 85007

5 Brian Lehman
6 Supervisor, Railroad Safety Section
7 Arizona Corporation Commission
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Phoenix, Arizona 85007

9 Tanya Cecil, General Manager
10 Arizona & California Railroad
11 1301 California Avenue
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
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BARRY WONG

IN THE MATTER OF VIOLATION OF
A.A.C. R14-5-111 BY THE ARIZONA AND
CALIFORNIA RAILROAD COMPANY

DOCKET NO. RR-02632A-06-0309
PROPOSED STIPULATION

The Railroad Safety Section ("Staff") of the Arizona Corporation Commission ("Commission") and the Arizona & California Railroad ("Arizona & California" or "ARZC") a subsidiary of Rail America Company stipulate and agree as follows:

- 1) The Arizona & California admits that on or about November 17, 2005, on a span of rail running from Castle Hot Springs, Arizona to Matthie, Arizona, one employee of the ARZC operated an ARZC train a distance of approximately 15.3 miles with no other operating personnel in the cab of the lead locomotive, and that therefore the Arizona & California violated A.A.C. R14-5-111. Staff agrees to recommend a penalty of \$2,000 for this violation payable into the General Fund.
- 2) The ARZC agrees to send a notice to all operating employees and supervisors in Arizona in a form attached hereto as Exhibit 1, informing them about A.A.C. R14-5-111. The Arizona & California also agrees to post the notice in appropriate places throughout its Arizona facilities. Additionally, the Arizona & California has addressed the issue through its transportation manager in a memo attached hereto as Exhibit 2.
- 3) Staff and Arizona & California agree that the terms of the stipulation should be incorporated into a Commission order.
- 4) Staff and Arizona & California further agree that the Commission order should contain a provision ordering the ARZC to cease and desist from further violations of A.A.C. R14-5-111. A proposed form of order is attached as Exhibit 3.

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...

1 RESPECTFULLY SUBMITTED this _____ day of _____, 2006.
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Charles H. Hains, Attorney
5 Legal Division
1200 West Washington Street
6 Phoenix, Arizona 85007
(602) 542-3402

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