

ORIGINAL

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION



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BRIAN C. McNEIL
Executive Director

DATE: DECEMBER 23, 2008

DOCKET NO: RR-02634A-08-0444

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:

JANUARY 6, 2009

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 Open Meeting to be held on:

JANUARY 13, 2009 AND JANUARY 14, 2009

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.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION
9 OF THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE ARIZONA
12 EASTERN RAILWAY COMPANY AT
13 COTTONWOOD STREET IN THE CITY
14 OF GLOBE, GILA COUNTY, ARIZONA
15 AT AAR/DOT NO. 742-349-W.

DOCKET NO. RR-02634A-08-0444

DECISION NO. _____

16 OPINION AND ORDER

17 DATE OF HEARING: December 4, 2008
18 PLACE OF HEARING: Phoenix, Arizona
19 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
20 APPEARANCES: Ms. Nancy Scott, Staff Attorney, Legal Division on
21 behalf of the Safety Division of the Arizona Corporation
22 Commission.

23 **BY THE COMMISSION:**

24 On August 26, 2008, the Arizona Department of Transportation ("ADOT") filed with the
25 Arizona Corporation Commission ("Commission") an application for approval for the Arizona
26 Eastern Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at
27 Cottonwood Street in Globe, Arizona, at AAR/DOT No. 742-349-W ("Application").

28 On September 30, 2008, by Procedural Order, the proceeding was scheduled for hearing on
December 4, 2008, and other procedural dates for filing and public notice were established.

On October 10 and 30, 2008, ADOT filed certification of public notice by means of certified
U.S. mail and by means of publication, respectively, pursuant to the Commission's Procedural Order.

On December 4, 2008, a full public hearing was convened before a duly authorized
Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's

1 Railroad Safety Section of the Safety Division ("Staff") appeared with counsel. At the conclusion of
 2 the hearing, the matter was taken under advisement pending submission of a Recommended Opinion
 3 and Order to the Commission.

4 * * * * *

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

7 **FINDINGS OF FACT**

8 1. On August 26, 2008, ADOT filed an Application in which it requested an Opinion and
 9 Order from the Commission approving an agreement between ADOT and the Railroad to upgrade the
 10 existing public at-grade crossing at Cottonwood Street in Globe, Arizona at AAR/DOT No. 742-349-W.¹

11 2. The agreement between ADOT and the Railroad provides for improvements to be
 12 made by replacing the existing crossbucks with new automatic 12-inch LED flashing lights, bells,
 13 and gates.

14 3. On November 19, 2008, the Commission issued Decision No. 70617 which approved
 15 a similar crossing upgrade at Hackney Road which is located nearby in Globe.

16 4. Pursuant to the Commission's Procedural Order, ADOT provided all interested parties
 17 with notice of the Application and hearing thereon by certified U.S. mail and by publication in the
 18 *Arizona Silver Belt*.

19 5. The hearing was held as scheduled on December 4, 2008.

20 6. According to the report filed by Staff, the improvements described in this proceeding
 21 should help to improve public safety at the crossing in the future.

22 7. Mr. Chris Watson, Staff's Grade Crossing Inspector, testified that there is minimal
 23 vehicular traffic and only four train crossings a week. There have been no accidents at this crossing
 24 according to Commission and Federal Railroad Administration records. Mr. Watson further testified
 25 that there is no need for a grade separation at this crossing.

26 _____
 27 ¹ May 4, 2001, the Commission issued Decision No. 63633 which approved the inclusion of the Cottonwood Street
 28 crossing for upgrading as part of the Commission's Annual Array with funds provided to Arizona by the Federal
 Highway Administration pursuant to 23 U.S.C. § 130 ("130"). The purpose of the 130 program is to eliminate hazards to
 pedestrians and vehicles at public railway-roadway crossings which are not primarily for the benefit of the railroad.

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IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall notify the Commission, in writing, within 10 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 _____, 2009.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: ARIZONA EASTERN RAILWAY COMPANY

2 DOCKET NO.: RR-02634A-08-0444

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