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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

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Arizona Corporation Commission

DOCKETED

JUL - 7 2010

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY *mm*

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN EXISTING CROSSING OF THE ARIZONA EASTERN RAILWAY COMPANY AT CENTRAL ROAD EAST OF US 70 IN GRAHAM COUNTY, ARIZONA, AT USDOT NO. 742-253-G.

DOCKET NO. RR-02634A-10-0235

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN EXISTING CROSSING OF THE ARIZONA EASTERN RAILWAY COMPANY AT COLLEGE AVENUE SOUTH OF RAILROAD AVENUE IN THE TOWN OF THATCHER, GRAHAM COUNTY, ARIZONA, AT USDOT NO. 742-243-B.

DOCKET NO. RR-02634A-10-0236

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN EXISTING CROSSING OF THE ARIZONA EASTERN RAILWAY COMPANY AT BIXBY ROAD NORTH OF SR 188 IN GILA COUNTY, ARIZONA, AT USDOT NO. 742-364-Y.

DOCKET NO. RR-02634A-10-0237

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN EXISTING CROSSING OF THE ARIZONA EASTERN RAILWAY COMPANY AT BIA 2 ROAD EAST OF THE BIA SR 170 HIGHWAY, GILA COUNTY, ARIZONA, AT USDOT NO. 742-332-T.

DOCKET NO. RR-02634A-10-0238

IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO UPGRADE AN EXISTING CROSSING OF THE ARIZONA EASTERN RAILWAY COMPANY AT BIA 101 ROAD NORTH OF THE BIA SR 170 HIGHWAY, GILA COUNTY, ARIZONA, AT USDOT NO. 742-336-V.

DOCKET NO. RR-02634A-10-0239

PROCEDURAL ORDER
(Schedules a Hearing)

1 **BY THE COMMISSION:**

2 On June 10, 2010, the Arizona Department of Transportation (“ADOT”) filed with the
3 Arizona Corporation Commission (“Commission”) applications for approval for the Arizona Eastern
4 Railway Company (“Railroad”) to upgrade the following existing public crossings located at the
5 Railroad’s tracks: at Central Road East of US 70 in Graham County, Arizona, at USDOT No. 742-
6 253-G; at College Avenue south of Railroad Avenue in the Town of Thatcher, Graham County,
7 Arizona, at USDOT No. 742-243-B; at Bixby Road north of SR 188 in Gila County, Arizona, at
8 USDOT No. 742-364-Y; at BIA 2 road east of the BIA SR 170 Highway, Gila County, Arizona, at
9 USDOT No. 742-332-T; and at BIA 101 road north of the BIA SR 170 Highway, Gila County,
10 Arizona, at USDOT No. 742-336-V.

11 On June 21, 2010, the Safety Division, Railroad Safety Section (“Staff”) filed a Motion to
12 Consolidate the above-captioned proceedings.

13 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern
14 the preparation and conduct of this proceeding.

15 IT IS THEREFORE ORDERED the above-captioned proceedings shall be consolidated for
16 purposes of hearing.

17 IT IS FURTHER ORDERED that the request of the ADOT shall be considered an application
18 for the Railroad to upgrade an existing crossing pursuant to A.R.S. § 40-337, *et seq.*

19 IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this
20 proceeding.

21 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **October**
22 **15, 2010, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission’s offices, 1200 West
23 Washington Street, Hearing Room 1, Phoenix, Arizona.

24 IT IS FURTHER ORDERED that within five business days of receipt of this Procedural
25 Order, **THE ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE**
26 **RAILROAD, THE TOWN OF THATCHER, GRAHAM AND GILA COUNTIES, AND ANY**
27 **OTHER MUNICIPALITY OR INTERESTED PARTY** that may be affected by the application
28 with a copy of the application and this Procedural Order by certified mail.

1 IT IS FURTHER ORDERED that Safety Division, Railroad Safety Section ("Staff") shall
2 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of
3 them with Docket Control on or before 4:00 p.m. on **September 17, 2010**.

4 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
5 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on
6 **September 27, 2010**.

7 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
8 105, except that all motions to intervene must be filed on or before **September 20, 2010**.

9 IT IS FURTHER ORDERED that Arizona Department of Transportation shall provide public
10 notice of the hearing in this matter, in the following form and style:

11 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE**
12 **APPLICATIONS OF THE ARIZONA DEPARTMENT OF TRANSPORTATION**
13 **TO UPGRADE THE EXISTING CROSSINGS OF THE ARIZONA EASTERN**
14 **RAILWAY COMPANY AS FOLLOWS: AT CENTRAL ROAD EAST OF US 70 IN**
15 **GRAHAM COUNTY, ARIZONA, AT USDOT NO. 742-253-G; AT COLLEGE**
16 **AVENUE SOUTH OF RAILROAD AVENUE IN THE TOWN OF THATCHER,**
17 **GRAHAM COUNTY, ARIZONA, AT USDOT NO. 742-243-B; AT BIXBY ROAD**
18 **NORTH OF SR 188 IN GILA COUNTY, ARIZONA, AT USDOT NO. 742-364-Y;**
19 **AT BIA 2 ROAD EAST OF THE BIA SR 170 HIGHWAY, GILA COUNTY,**
20 **ARIZONA, AT USDOT NO. 742-332-T; AND AT BIA 101 ROAD NORTH OF THE**
21 **BIA SR 170 HIGHWAY, GILA COUNTY, ARIZONA, AT USDOT NO. 742-336-V.**
22 **(DOCKET NO. RR-02634A-10-0235 ET AL.)**

23 On June 10, 2010, the Arizona Department of Transportation ("ADOT") filed with the
24 Arizona Corporation Commission ("Commission") applications for approval for the
25 Arizona Eastern Railway Company ("Railroad") to upgrade the following existing
26 public crossings located at the Railroad's tracks: at Central Road east of US 70 in
27 Graham County, Arizona, at USDOT No. 742-253-G; at College Avenue south of
28 Railroad Avenue in the Town of Thatcher, Graham County, Arizona, at USDOT No.
742-243-B; at Bixby Road north of SR 188 in Gila County, Arizona, at USDOT No.
742-364-Y; at BIA 2 road east of the BIA SR 170 Highway, Gila County, Arizona, at
USDOT No. 742-332-T; and at BIA 101 road north of the BIA SR 170 Highway, Gila
County, Arizona, at USDOT No. 742-336-V.

The applications are available for inspection during regular business hours at the
offices of the Commission in Phoenix, at 1200 West Washington Street, Hearing
Room 1, Phoenix, Arizona, and on the internet via the Commission website
(www.azcc.gov) using the e-docket function.

The Commission will hold a hearing on these applications commencing on **October
15, 2010, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street,
Hearing Room 1, Phoenix, Arizona. Public comments will be taken on the first day
of the hearing.

1 The law provides for an open public hearing at which, under appropriate
2 circumstances, interested parties may intervene. Intervention shall be permitted to
3 any person entitled by law to intervene and having a direct and substantial interest in
4 the matter. Persons desiring to intervene must file a written motion to intervene with
5 the Commission, which motion should be sent to Applicant or their counsel and to all
6 parties of record, and which, at the minimum, shall contain the following:

- 7 1. The name, address, and telephone number of the proposed intervener and of
8 any party upon whom service of documents is to be made if different than the
9 intervener.
- 10 2. A short statement of the proposed intervener's interest in the proceeding (e.g.,
11 a customer of the Railroad, a neighboring property owner, a crossing user,
12 etc.).
- 13 3. A statement certifying that a copy of the motion to intervene has been mailed
14 to the Applicants or their counsel and to all parties of record in the case.

15 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
16 that all motions to intervene must be filed on or before September 20, 2010. The
17 granting of intervention, among other things, entitles a party to present sworn
18 evidence at hearing and to cross-examine other witnesses. However, failure to
19 intervene will not preclude any affected individual from appearing at the hearing and
20 making a statement on such individual's own behalf.

21 If you have any questions about these applications, you may contact the Applicant at
22 **[insert telephone number]**. If you wish to file written comments on any of the
23 applications or want further information on intervention, you may write the
24 Consumer Services Section of the Commission at 1200 West Washington Street,
25 Phoenix, Arizona 85007 or call 1-800-222-7000 or appear at the hearing and make
26 comment.

27 The Commission does not discriminate on the basis of disability in admission to its
28 public meetings. Persons with a disability may request a reasonable accommodation
such as a sign language interpreter, as well as request this document in an alternative
format, by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-
542-3931, E-mail SABernal@azcc.gov. Requests should be made as early as
possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Arizona Department of Transportation shall cause the
above notice to be published at least once in a newspaper of general circulation in the city/county
where the crossing is located, with **publication to be completed no later than August 20, 2010**.

IT IS FURTHER ORDERED that notice shall be deemed complete upon the publication of
same, notwithstanding the failure of an individual or entity to read or receive the notice.

IT IS FURTHER ORDERED that **ARIZONA DEPARTMENT OF TRANSPORTATION
SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET
CONTROL AS SOON AS PRACTICABLE** after the publication of notice ordered herein has been
completed.

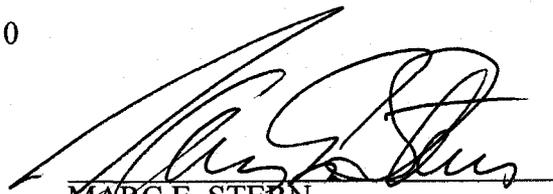
1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
2 Communications) applies to this proceeding as the matter is now set for public hearing.

3 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
4 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

5 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
6 of the Arizona Supreme Court and A.R.S. §40-243 with respect to practice of law and admission *pro*
7 *hac vice*.

8 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,
9 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
10 ruling at hearing.

11 DATED this 7th day of July, 2010


MARC E. STERN
ADMINISTRATIVE LAW JUDGE

15 Copies of the foregoing mailed/delivered
this 7th day of July, 2010 to:

16 Terry R. Vanderplas
17 Vice President Railroad Services
18 ARIZONA EASTERN RAILWAY COMPANY
P.O. Box 2200
Claypool, Arizona 85532

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Attorney for the San Carlos Apache Tribe

19 Robert Travis, P.E., State Railroad Liaison
20 ARIZONA DEPARTMENT OF TRANSPORTATION
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ARIZONA CORPORATION COMMISSION
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Phoenix, Arizona 85007

21 Traffic Records Section
22 ARIZONA DEPARTMENT OF TRANSPORTATION
206 South 17th Avenue, MD-064R
Phoenix, AZ 85007

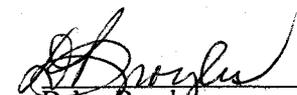
Brian Lehman, Chief
Railroad Safety Section
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

23 Kenny Angle, County Attorney
24 GRAHAM COUNTY
800 West Main Street
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Phoenix, AZ 85004-1481

25 Dudley Welker, Town Attorney
26 TOWN OF THATCHER
P.O. Box 670
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27 Daisy Flores, County Attorney
28 GILA COUNTY
1400 East Ash Street
Globe, AZ 85501

By: 
Debra Broyles
Secretary to Marc E. Stern