

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u><b>November 30, 2016</b></u>
MOTOR CARRIER MATTER	<input checked="" type="checkbox"/>	DOCKET NO.	<u><b>2016-375-R</b></u>
UTILITIES MATTER	<input type="checkbox"/>	ORDER NO.	<u><b>2016-796</b></u>

**THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.**

**SUBJECT:**

[Docket No. 2016-375-R](#) – Petition of [Eagle 1 Resources, LLC](#) for Initiation of a Rulemaking - Staff Presents for Commission Consideration the Petition for Initiation of a Rulemaking Filed on Behalf of Eagle 1 Resources, LLC.

**COMMISSION ACTION:**

This matter comes before this Commission on the Petition of Eagle 1 Resources, LLC for initiation of a Rulemaking for procedures which would modify the process for allowing utilities and communications companies to cross railroad corridors under certain conditions. Eagle 1 Resources states that these companies experience long delays and have high fees imposed on them by the railroad when it becomes necessary to cross such corridors. Eagle 1 urges us to adopt regulations similar to those adopted by Wisconsin, which limits initial railroad crossing fees to \$500 and provides for other procedures in the situation where a utility wishes to cross a railroad corridor. Although several entities have filed comments supporting a proposed rulemaking in this area, several more have filed documents vigorously opposing the rulemaking. For example, CSX Transportation, Inc. strongly opposes the proposed rulemaking, and, among other things, points to S.C. Code Section 33-44-1008 (a), which prohibits foreign limited liability companies from maintaining an action or proceeding in this State, unless it has a certificate of authority to transact business in this State. CSX states, on information and belief, that Eagle 1 Resources does not possess such a certificate.

Further, the RJ Corman Railroad Group points out that the Wisconsin regulatory scheme promoted by Eagle 1 Resources was adopted under railroad statutes that are very different from those adopted by South Carolina. Corman notes that, in Wisconsin, the Public Service Commission actually serves as the initial agency for the determination of the entire matter of just compensation to be paid to a railroad when a utility seeks to occupy a portion of its rail corridor. In Wisconsin, the application is simply the first step in a process that extends all the way through the initial determination of the rights to be acquired by the utility and the compensation to be paid to the railroad for those rights, including the evidentiary hearings necessary to make those determinations. By contrast, our South Carolina Commission statutes include no framework under which this Commission might address matters of compensation owed to the railroad.

Mr. Chairman, after due consideration of these matters and the other comments submitted, I move that the Petition for Initiation of a Rulemaking be denied and dismissed. First, it appears that Eagle 1 Resources, LLC is not entitled by law to maintain this action, since it is a foreign limited liability company; second, even if it was so entitled, I do not believe that South Carolina presently has the statutory framework to accommodate regulations in this area, such as those which exist in Wisconsin. For this reason, I would encourage those entities that are interested in pursuing this matter to consider proposing appropriate legislation to the General Assembly and/or to the U.S. Congress.

PRESIDING:  
Whitfield

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
ELAM	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
FLEMING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u> Annual Leave
HALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding

