

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Wisconsin Central LTD., the Village of Mundelein, the County of Lake, and the State of Illinois, Department of Transportation. :  
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: :  
Stipulated Agreement regarding the installation of an Automated :  
Horn System (AHS system) at the crossings of the Company's :  
track with public highways known as Butterfield Road, Illinois Rte. : T01-0029  
60 (IL 60), Allanson Road, Hawley Street, Park Street, Maple :  
Street (IL. Rte. 176), Dunbar Road, Winchester Road, and :  
Peterson Road, located in/near the Village of Mundelein, Lake :  
County, Illinois, designated as crossings AAR/DOT 689 698N, :  
milepost 37.37M; AAR/DOT 689 699V, milepost 37.50M; :  
AAR/DOT 689 701U, milepost 38.65M; AAR/DOT 689 703H, :  
milepost 39.80M; AAR/DOT 689 704P, milepost 39.94M; :  
AAR/DOT 689 705W, milepost 40.10M; AAR/DOT 689 707K, :  
milepost 40.85M; AAR/DOT 689 709Y, milepost 41.78M; and :  
AAR/DOT 689 710G, milepost 42.38M, respectively.

SIXTH SUPPLEMENTAL INTERIM ORDER

By the Commission:

On April 25, 2001, the Illinois Commerce Commission ("Commission") entered its Interim Order in this matter that required, among other things, the Wisconsin Central LTD ("WC") to install an Automated Horn System ("AHS") at nine public highway/rail grade crossings in/near the Village of Mundelein ("Village"), Lake County, Illinois. The installations were required to be completed by August 31, 2001. The cost for the automated horn system for the seven crossings on the local road system was ordered paid 100% by the Grade Crossing Protection Fund ("Fund") with the two crossings on the state system being paid 100% by the Illinois Department of Transportation ("IDOT").

On December 5, 2001, a Supplemental Interim Order was entered by the Commission granting an extension of time to and including December 31, 2001, to the WC within which to complete the automated horn system installation at the nine crossings in the Village of Mundelein. The Supplemental Interim Order further revised the estimates of cost for the installation of the automated horn system, including the cost for the connection to the existing WC warning devices. The increase in cost for the installation of the AHS and connection was divided between the Fund and IDOT in the same percentage as in the original Interim Order; an increase to the Fund of \$87,061 and to IDOT in the amount of \$29,833.

On March 27, 2002, the Commission entered its Second Supplemental Interim Order granting an additional extension of time to and including May 31, 2002, within which to complete the work as required by the original Interim Order and Supplemental Interim Order, dated April 25, 2001 and December 5, 2001, respectively. WC states that it has installed the AHS at the nine crossings and in early January 2002, began testing of the system in conjunction with the Commission's Rail Safety Section. At the direction of Commission staff, adjustments were required to the microphone placement in the horns. WC needed additional time within which to finish the microphone adjustments and conduct follow-up testing prior to activation of the AHS.

On October 23, 2002, the Commission entered its Third Supplemental Interim Order granting the City an additional six (6) month extension of time to and including April 25, 2003, within which to complete the study as required by the original, Supplemental, and Third Supplemental Interim Orders.

On May 7, 2003, the Commission entered its Fourth Supplemental Interim Order approving additional Fund participation in the project cost. The final cost for the AHS project at the nine crossings has increased above the amounts as set forth in the original Order and as amended in the Supplemental Interim Order. The Fourth Supplemental Interim Order required the Fund and IDOT to bear this increase in the final cost of the AHS with the Fund paying an additional \$41,000 and IDOT an additional \$1,000.

On May 7, 2003, the Commission entered its Amended Fifth Supplemental Interim Order granting the Village a six (6) month extension of time to allow the Village to explore the options available for long-term maintenance of the automated horn system. The Amended Fifth Supplemental Interim Order further stated that in accordance with the Commission's Interim Order dated April 25, 2001, the Village has complied with all the requirements as set forth in said Interim Order. Monthly reports on the operation of the AHS system have been properly and timely filed with the Railroad Safety Section staff ("staff"), quarterly meetings of the parties have been held to discuss operations, and an evaluation study on the effectiveness of the AHS system has been completed by the Northwestern University Center for Public Safety. Upon the completion of the evaluation study, the final report was distributed in January 2003, to the Commission, the Federal Railroad Association ("FRA"), the Volpe National Transportation Systems Center, the Illinois Department of Transportation, and the Villages of Vernon Hills and Libertyville. The studies executive summary states, "the wayside horn significantly reduces highway-rail crossing violations" and, "it accomplishes this task while improving the quality of life for nearby residents." Based upon the results of the study, and the quarterly reports submitted by the Village, Staff is of the opinion that the AHS system has been proven to be an effective and reliable alternative to the need for train crews to sound train horn warnings when approaching public highway/rail grade crossings.

The Village has contracted for the maintenance of the AHS system with Railroad Controls, LTD, the developers of the AHS system. The Village pays for the maintenance at all nine locations. Railroad Controls, LTD. maintains the AHS systems with the permission of the Canadian National Railroad under a license agreement. The maintenance contract between the Village and Railroad Controls, LTD and the Canadian National Railroad and Railroad Controls, LTD are set to expire upon the completion of the study period. In order to provide for long-term maintenance arrangements following the expiration of the current contracts, the Village must renegotiate the Maintenance Agreements. The Village and Railroad Controls, LTD, have now entered into a Maintenance Agreement, a copy of which has been submitted to the Commission for Staff's review. It is the opinion of Staff that the Commission should approve the Maintenance Agreement naming Railroad Controls, LTD, as the permanent maintainer of the Automated Horn System. The Village is still negotiating with WC for the continued operation of the AHS.

Staff has been advised that the responsibility for Automated Horn System specifications has been transferred from the FRA to the Federal Highway Administration ("FHWA"). By transferring the jurisdiction, the AHS system is now considered a traffic control device and will be included in the Manual on Uniform Traffic Control Devices. Due to this change and in consideration that both the FRA or FHWA have yet to approve and release the final rules on whistle blowing and specifications of the AHS systems, a twelve (12) month extension of time should be granted to the parties in order for the FRA and FHWA to release their rules pertaining to the AHS system. The AHS system currently in operation at the nine crossing in/near Mundelein should remain in operation with Railroad Control's, LTD as the permanent maintainer. The Village should continue to submit monthly reports to the Commission on the operation of the AHS. At the end of the twelve (12) month extension of time or when the FRA and FHWA release their rules concerning railroad quiet zones, the Commission will convene a hearing of the parties to review the data and Staff will make a recommendation to the Commission on the future of the AHS at the nine Mundelein crossings.

It is important that all parties remember that 625 ILCS 18c-7402.1 grants the Commission authority to establish pilot projects in the counties of Cook, DuPage, Lake and Will to test the utility and safety of stationary automated audible warning devices as an alternative to trains having to sound their horns as they approach highway-rail crossings. The project in Mundelein is one such project. Until the Commission enters its final Order in this case, the project remains a test project agreed to by all the parties by Stipulated Agreement.

The six (6) month extension of time granted in the Amended Fifth Supplemental Interim Order expires on October 25, 2003. The WC has indicated that it will start blowing its train horns on the 25<sup>th</sup> of October. In Order to preserve the terms of the Stipulated Agreement and keep the AHS in operation until a decision is made by the FRA and

FHWA, Staff requests that the Commission grant a twelve (12) month extension of time within which to keep the AHS operating, the train horns quiet, and allow the FRA and FHWA to complete the rule making concerning the establishment of railroad quiet zones.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- 2) The prefatory portion of this Sixth Supplemental Interim Order is true and correct and is hereby adopted as findings of fact;
- 3) Staff recommends a twelve (12) month extension of time be granted to the parties or until such time that the FRA and FHWA release their rules outlining what measures and equipment will be required for the establishment of a railroad quiet zone; upon the release of the requirements by the FRA and FHWA, a hearing will be scheduled to determine the future of the AHS at the nine Mundelein locations;
- 4) Staff recommends approval of the Maintenance Agreement entered into between the Village of Mundelein and Railroad Controls, LTD;
- 5) All other terms and conditions of the original Interim Order, Supplemental Interim Order, Second Supplemental Interim Order, Third Supplemental Interim Order, Fourth Supplemental Interim Order, and Amended Fifth Supplemental Interim Order, dated April 25, 2001, December 5, 2001, March 27, 2002, October 23, 2002, May 7, 2003, and May 7, 2003, respectively, shall remain in full force and effect except as herein modified.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that an extension of time to and including October 22, 2004, be, and it is hereby, granted to the Village of Mundelein and the Wisconsin Central Railway Company to continue with the operation of the Automated Horn System under the terms of the Stipulated Agreement and previous Commission Interim Orders or until such time as the Federal Railroad Administration and the Federal Highway Administration release their rules on the requirements for the establishment of a railroad quiet zone.

IT IS FURTHER ORDERED that upon the release of the rules from the Federal Railroad Administration and the Federal Highway Administration, a hearing shall be scheduled to take testimony on the future of the Automated Horn System at the nine

crossings in and near the Village.

IT IS FURTHER ORDERED that the Village shall continue to monitor the AHS installations and submit monthly reports to the Director of Processing and Information of the Commission's Transportation Division.

IT IS FURTHER ORDERED that the Maintenance Agreement entered into between Railroad Controls, LTD. and the Village is hereby approved insofar as matters contained therein are under the jurisdiction of the Commission.

IT IS FURTHER ORDERED that any person or party making a Request For Extension Of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing and Information no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that Requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extensions of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that all other terms and conditions of the original Interim Order, Supplemental Interim Order, Second Supplemental Interim Order, Third Supplemental Interim Order, Fourth Supplemental Interim Order, and Amended Fifth Supplemental Interim Order, dated April 25, 2001, December 5, 2001, March 27, 2002, October 23, 2002, May 7, 2003, and May 7, 2003, respectively, are hereby affirmed and shall remain in full force and effect except as herein modified.

IT IS FURTHER ORDERED that, subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 22<sup>nd</sup> day of October, 2003.

JUDGE	<del>MEG</del>
SECTION CHIEF	MEG
ORDERS SUPERVISOR	<del>MEG</del>

*Edward C. Husley*<sub>2</sub>

Chairman