

STATE OF ILLINOIS

ORIGINAL

ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission
RAIL SAFETY SECTION

WISCONSIN CENTRAL LTD.,)
)
 Petitioner,)
)
 vs.)
)
 ILLINOIS DEPARTMENT OF TRANSPORTATION)
)
 Respondent.)
)
 Petition of Wisconsin Central Ltd. Seeking an order of the)
 Illinois Commerce Commission directing that an additional)
 track and grade crossing be constructed at ILL 60 Town)
 Line Road (DOT 689 699 V) on the Wisconsin Central)
 Ltd. In Lake County, Illinois.)

Docket No. T03-0080

RESPONSE TO THE SUPPLEMENTAL PETITION

Now comes Respondent, Illinois Department Of Transportation ("Department"), by and through its attorney, Lisa Madigan, Illinois Attorney General, and for its response to the supplemental petition filed by the Wisconsin Central Ltd. ("WCL") in the above-referenced docket states as follows:

1. On August 11, 2003, WCL filed the underlying Petition seeking permission to add a track, at grade, across ILL 60 Town Line Road in Lake County in order to safely accommodate projected Metra service so as to not interfere with freight operations of the WCL.

2. Prior to the filing of the WCL's Petition, the Department's traffic signal system situated at the adjacent ILL 60 Town Line Road and Butterfield Road intersection was in place and functioning properly and sufficiently for the existing conditions, and it still is to this date.

3. Similarly said traffic signal system was interconnected with the railroad warning system operating at the ILL 60 Town Line Road at grade crossing prior to the filing of the WCL's Petition. Said interconnect system was functioning properly and sufficiently for the existing conditions prior to said filing and still is to this date.

4. The appropriate simultaneous minimum preemption time for the ILL 60 Town Line Road at grade crossing was established in ICC Docket No. T99-0020. Said record reflects that the costs associated with modifying the railroad warning device system to provide the simultaneous minimum preemption time requested by the Department was paid as follows: \$139,620 with the Department responsible for \$125,658 and WCL responsible for \$13,962. The cost division was based on the premise that the change was due primarily to highway traffic needs. The 10% was

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allocated to the railroad due to the fact that the railroad warning system was receiving some level of improvement.

5. On June 5, 2002, prior to WCL filing the Petition in the above captioned cause, the Department provided WCL with an estimate of costs for traffic signal modifications necessitated by the relief requested by the WCL.

6. Based on (1) prior similar dealings with WCL (see Docket Nos. T02-0027 & T02-0029), where changes to the traffic signal system were necessitated by a railroad generated project, (2) the WCL's Petition, along with the attached Exhibit A, which indicate that the WCL would pay for the entire project and (3) the fact that the Department never received a timely objection to the tendered June 2002 cost estimates, the Department, until recently, operated throughout the entire proceedings with the understanding that any costs it incurred as a result of the requested relief would be paid by WCL.

7. On December 24, 2003, however, WCL filed a Supplemental Petition stating, *inter alia*, "these traffic control items were a response to a public need necessitated by patterns that developed after the construction of the railroad, and that their presence should not add costs to WCL when WCL, a private entity, chooses to develop its property for commercial purposes."

8. Contrary to the statements contained in the WCL's Supplemental Petition, the estimate provided by the Department is not for work items associated with increasing the minimum preemption time from 36 to 38 seconds at the intersection of ILL 60 Town Line Road and Butterfield Road for traffic related changes, but rather the estimate covers work items solely resulting from the additional track being sought by the WCL.

9. If the relief sought by WCL in its Petition is granted by the Commission, the Department will be required to move its traffic control cabinet(s) situated at the intersection of ILL 60 Town Line Road and Butterfield Road despite the fact that the existing traffic control system is functioning safely and adequately addressing the needs of the traveling public.

10. The Department avers that but for the WCL's proposed additional track project, no modifications to the existing traffic control system, including the interconnect system, would be necessary. The changes to the traffic control system are not the response to a public need necessitated by traffic patterns that developed after the construction of the railroad as suggested by WCL. Any modifications to the traffic control system are the **sole and direct result** of the project pursued by WCL, a *private entity*.

11. The Department states that it is not opposed to WCL expanding and improving its facilities and the service it provides as proposed in the plans, provided that the WCL pays for ***all work items*** associated with its project. To suggest that taxpayers should be financially responsible for this particular private expansion and improvement is unacceptable, unprecedented, contrary to the Department policy and beyond the Commission's jurisdiction.

12. The Commission need look no further than its records in Docket No. T02-0027 and Docket No. T02-0029 to find support for the Department's position. Not only

are the facts completely on point, but the work required by the Department to address WCL's additional track was far more extensive and expensive, yet WCL agreed to and ultimately ordered to pay the costs.

WHEREFORE, Respondent Illinois Department of Transportation respectfully requests that the Illinois Commerce Commission deny the request in WCL's Supplemental Petition and thereby allocate the costs associated with the traffic control system to WCL and provide for such other and further relief as the Illinois Commerce Commission deems just and appropriate.

Respectfully Submitted,
ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Lisa Madigan
Attorney General

By: Stacey C. Hallo
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Dated: January 27, 2004
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NOTICE OF FILING

TO: Mr. Michael Barron
Ms. June Tate, Admin. Judge

PLEASE TAKE NOTICE that I have this 27th day of January, 2004, forwarded to Mr. Dave Lazarides, Director of Processing, Transportation Division, of the Illinois Commerce Commission, Springfield, Illinois, for filing in the above matter, a Response To Supplemental Petition, a copy of each which are attached hereto and hereby served upon you.



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Counsel for the Illinois
Department of Transportation

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument was served upon the addressees listed below by mailing a true and correct copy via first class mail, postage pre-paid and depositing the same in the United States Mail, Springfield, Illinois, this 27th day of January, 2004:



Mr. Michael J. Barron
Counsel
Wisconsin Central Ltd.
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Chicago, IL 60611-5317

Ms. June Tate
Administrative Judge
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