

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CITY OF DEKALB, ILLINOIS, by)
FRANK VAN BUER, MAYOR,)

CASE NO.: T04-0085

Petitioner,)

vs.)

THE UNION PACIFIC RAILROAD)
COMPANY and the STATE OF ILLINOIS,)
DEPARTMENT OF TRANSPORTATION,)

Respondents.)

Petition seeking an Order from the Illinois)
Commerce Commission authorizing the)
installation of approved Federal Railroad)
Administration (FRA) safety measures at)
specific grade crossings in DeKalb, Illinois that)
will allow the Federal Railroad Administration to)
sanction a Train Horn Noise Mitigation Zone)
that silences Union Pacific Railroad (UPRR))
locomotive horns within the City of DeKalb)
(City). Said Petition also requests that)
maintenance of the FRA safety measures)
consisting of train activated Wayside Horns be)
performed by the UPRR at the expense of the)
City. Said Petition also requests that)
maintenance of the FRA safety measures)
consisting of flashing light signals and crossing)
gates at Sixth Street be performed by UPRR at)
the expense of the UPRR. Said Petition also)
requests that pedestrian gates be installed and)
maintained by the UPRR at UPRR expense at)
grade crossings in DeKalb where they are needed)
and missing. Said Petition also requests that the)
Illinois Department of Transportation (IDOT))
permit the mounting of Wayside Horn equipment)
upon poles owned by IDOT at the State Route 23)
& 38 Grade Crossing.)

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AUG 15 2005

Illinois Commerce Commission
RAIL SAFETY SECTION

**MEMORANDUM CONCERNING THE INTERRELATION OF THE JURISDICTION
OF THE ILLINOIS COMMERCE COMMISSION AND THE FEDERAL RAILROAD
ADMINISTRATION ON THE ISSUE OF WAYSIDE HORN SYSTEMS AND OTHER
SUPPLEMENTAL SAFETY MEASURES**

DOCKETED
AUG 16 2005

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NOW COMES the Petitioner, the City of DeKalb, Illinois, by and through its City Attorney, NORMA J. GUESS, and as and for its Memorandum Concerning the Interrelation of the Jurisdiction of the Illinois Commerce Commission and the Federal Railroad Administration on the Issue of Wayside Horn Systems and Other Supplemental Safety Measures, respectfully states as follows:

INTRODUCTION

The City of DeKalb ("City") has petitioned the Illinois Commerce Commission ("ICC") for the issuance of an order authorizing the installation of approved Federal Railroad Administration ("FRA") safety measures at specific grade crossings in DeKalb, Illinois. Among these supplemental safety measures are the installation of Wayside Horn Systems at grade crossings at First Street, Fourth Street (intersection of Illinois Route 23 and Illinois Route 38), Seventh Street and Tenth Street. Additionally, Sixth Street is proposed to become a one-way street for northbound traffic and the City has requested authorization for the installation of appropriate safety measures for that grade crossing. It is the City's position that these improvements will allow the Federal Railroad Administration to approve a Train Horn Noise Mitigation Zone, now identified as a Quiet Zone, that will result in the silencing of Union Pacific Railroad locomotive horns within the City of DeKalb.

At the hearing before Administrative Law Judge Bernadette Cole on July 26, 2005, testimony was presented that the City has filed its Notice of Intent to establish a Quiet Zone and that the requested supplemental safety measures are part of the basis for the approval of the Quiet Zone. Judge Cole asked for a Memorandum regarding the relationship between the Illinois Commerce Commission's jurisdiction and the proceedings before the FRA with regard to the wayside horn system and the other supplemental safety measures requested by the City.

DISCUSSION

Pursuant to Title 92, Chapter III (c), Section 1535.60 of the Illinois Administrative Code, the ICC is vested with the jurisdiction to either permit or require the installation of devices, construction and equipment other than those regularly permitted or required under the remaining chapters and sections of the Code dealing with railroad safety issues. Among these issues is the necessity for trains to sound their horns as they approach grade crossings. Any changes to the marking or warning devices that serve any grade crossing must also be approved by the ICC (§1535.400a)). Thus, the ICC has the jurisdiction to determine the need for the proposed wayside horn system and one-way traffic designation in the plan set forth by the City. The City's petition for the approval of the installation of the wayside horn system is appropriately before the ICC, as no other state body has the right to approve the installation of these devices at the grade crossings.

The proposed safety measures (wayside horns and one-way street designation) are among those approved by the FRA for inclusion in the consideration of a Quiet Zone designation, which is an area of at least one-half (1/2) mile in which train horns do not customarily sound. The new FRA Rule (49 CFR Parts 222 and 229), which was finalized in April, 2005 and which became

effective June 24, 2005, has determined that the wayside horn system is a viable supplemental safety measure that can be included in consideration of a Quiet Zone. See, §229.59(a)(2).

However, the FRA does not determine the necessity for nor the appropriateness of the installation of the wayside horn system. The determination has been left to the several states, as set forth in §222.7(e):

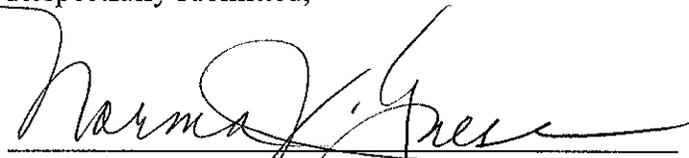
- (e) Issuance of this part does not constitute federal preemption of administrative procedures required under State law regarding the modification or installation of engineering improvements at highway-rail grade crossings.

As a result, the ICC's determination that the modifications to grade crossings at First Street, Fourth Street, Seventh Street and Tenth Street with the installation of the wayside horn system and the modification to Sixth Street, by converting it to a north-bound one-way street, are necessary predicates to the FRA's consideration of the City's Notice of Intent to establish a Quiet Zone.

CONCLUSION

Recent changes to the Federal Railroad Administration rules permitting wayside horn systems as supplemental safety measures for inclusion in Quiet Zone designations do not preempt the Illinois Commerce Commission's jurisdiction in determining the necessity and appropriateness of the City of DeKalb's proposed improvements.

Respectfully submitted,



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**STATE OF ILLINOIS
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NOTICE OF FILING

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CASE INFORMATION

Updated: 08/09/05

SERVICE LIST

CITY OF DEKALB

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VS.

THE UNION PACIFIC RAILROAD COMPANY
and STATE OF ILLINOIS, DEPARTMENT OF
TRANSPORTATION

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