

ORIGINAL

November 22, 2005

City of DeKalb, Illinois, by Greg Sparrow, Mayor
Petitioner,

v.

The Union Pacific Railroad Company and 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 the 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 Illinois Department of Transportation (IDOT)
permits the mounting of Wayside Horn equipment upon poles owned by
IDOT at the State Route 23 & 38 Grade Crossing.

T04-0085

STAFF REVISED PROPOSED ORDER

Staff has attempted to include the "Exceptions" filed by the City of De Kalb and
the Union Pacific Railroad Company that do not violate Commission regulations
or past policy. Due to the number and nature of the "Exceptions" filed, please
review the Proposed Order and submit comments to the Director of Processing
and Information, Transportation Bureau of the Commission. Please submit
responses within ten (10) working days from the date of this Notice.

Very truly yours,



Robert S. Berry
Rail Safety Specialist

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Staff Revised Proposed Order
November 22, 2005
Page 2

cc:

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ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

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 De Kalb, 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 De Kalb (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 De Kalb 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.

T04-0085

REVISED PROPOSED ORDER

BY THE COMMISSION:

On June 16, 2005, the Petitioner, City of De Kalb, De Kalb County, Illinois (hereinafter referred to as "City") filed its Amended Petition seeking an Order from the Illinois Commerce Commission (hereinafter referred to as "Commission") authorizing the installation of a train activated automated horn system (hereinafter referred to as "AHS") at the First Street, Fourth Street, Seventh Street, and Tenth Street at-grade crossings of the Union Pacific Railroad Company (hereinafter referred to as "UP") within the City at the City's cost. The City further requests that the Illinois Department of Transportation (hereinafter referred to as "IDOT") be ordered to permit the mounting of the automated

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horn system equipment upon poles owned by IDOT at the crossing of Illinois State Route 23 and Illinois State Route 38. Finally, the Amended Petition requests an Order requiring the UP to install crossing gate and pedestrian gate at the Sixth Street and Fourth Street grade crossings, respectively. This Amended Petition was filed with the intention of utilizing the approved automated horn systems and the reconfiguration of the Sixth Street grade crossing to a one-way street as supplemental safety measures under a plan for Train Horn Noise Mitigation ("Quiet Zone").

A hearing on this matter was held before a duly authorized Administrative Law Judge of the Commission on July 26, 2005. The City and UP were represented by counsel. Staff of the Rail Safety Section of the Commission was present and participated in the hearing. There was no representative of IDOT at the July 26, 2005, hearing. At the conclusion of the July 26, 2005, hearing, the matter was continued indefinitely. Counsel for the UP made an opening statement outlining the basic issues in this matter. The City submitted a 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. The UP has since filed a Response to that Memorandum.

On December 18, 2003, the Federal Railroad Administration ("FRA") issued an Interim Final Rule in the Federal Register regarding the Use of Locomotive Horns at Highway-Rail Grade Crossings that approved the use of automated horn systems in accordance with Appendix E of said Rule. On August 24, 2004, the FRA issued a memorandum advising that interim approval for the optional use of wayside horn systems (AHS) at highway-rail grade crossings had been issued. The FRA transferred jurisdiction of the AHS (Wayside) to the Federal Highway Administration ("FHWA"). When the FRA transferred the oversight of the AHS to the FHWA, the AHS became a traffic control device and ceased to be a train control device. On April 22, 2005, the FRA issued its Final Rule, which became effective on June 24, 2005, which, among other things, approved the use of the AHS as an approved supplemental safety measure for inclusion in a plan for Train Horn Noise Mitigation ("Quiet Zone").

On August 2, 2004, the FHWA issued its Interim Approval for the optional use of the AHS (Wayside) at highway-rail grade crossings. The FHWA Final Rule provides that for new requests for the installation of automated horn systems, the following conditions must be met:

- The automated horn system may be installed in accordance with part 222 of Title 49 of the Code of Federal Regulations (49 CFR) to provide direction audible warning at highway-rail grade crossings equipped with active traffic control devices, consisting of, at a minimum, flashing lights and gates.
- **Option:** The automated horn system for use at active highway-rail grade crossings shall conform to the requirements for the automated horn system prescribed in Part 222 of 49 CFR, Appendix E.

- **Standard:** As a minimum, the automated horn system shall be installed on each roadway approach to the highway-rail grade crossing to provide audible warning.
- **Guidance:** A diagnostic review should be conducted by a diagnostic team to determine the optimal placement of the automated horn system and to ensure the correct and most effective use of the system. The diagnostic team should be composed of railroad personnel, public safety or law enforcement personnel, engineering personnel from the public agency with the responsibility for the roadway that crosses the railroad, and other concerned parties.
- The highway agency or authority with jurisdiction should consider the inclusion of remote health monitoring capable of automatically notifying maintenance personnel when anomalies have occurred within the system (remote monitors).
- The automated horn system should comply with the same lateral clearances and roadside safety features described in the MUTCD Section 8d.01. When an automated horn is mounted on a separate pole assembly, it should be installed no closer than 4.6 m (15 ft.) from the centerline to the nearest track. In addition, an automated horn should be located where the device will have optimal results, and not obstruct the motorists' line of sight to the flashing-light signals.

The City has seven at-grade crossings within the community. All the crossings are less than a quarter mile apart. Since the Commission requires a train to blow its horn at a crossing starting ¼ mile from the crossing and continuing until the crossing is reached. Due to short distance between the crossings in the City (0.7 mile), a train is continuously blowing its horn all the way through the City. There are approximately eighty (80) train movements through the City per day on UP double main line tracks. The tracks extend in an east-west direction. Train speeds vary from very slow to seventy (70) mph. Accordingly, the slower moving trains are sounding their horns for a longer period of time through the town. Accumulatively, there are two (2) hours of horn blowing per day in the City. The train horns are a disruption to not only residential areas, but also the business district of the City. The population of the City is 42,579 as of the 2004 special census. In addition, during the school year, there are approximately 25,000 students that attend Northern Illinois University.

The City is a home rule municipality and as such, as part of its current fiscal year, has budgeted funds to pay for the AHS system. The current system design is estimated to be approximately \$600,000. The aim of the City is to improve not only the safety of its citizens at the railroad crossings in the City, but also the quality of life of the citizens. The safety issue concerns the high number of collisions/fatalities that have occurred at the Fourth Street crossing and one fatality at the Sixth Street crossing.

All four crossings in the City subject to AHS are equipped with automatic flashing light signals and gates, as required by FHWA quiet zone criteria. This was verified by an inspection/meeting at the crossings by members of the Commission's staff, the UP, the City, IDOT, and Radio Controls, Ltd ("RCL"). At the Fourth Street crossing, the UP

tracks angles through the intersection of the two previously mentioned state routes. There are traffic signals at this intersection and the train control signals are interconnected with the traffic control signals. Due to the angle that the UP tracks approach this particular intersection, there is a loss of visual perception on the part of a pedestrian to a train approaching from the west. Pedestrian gates installed on the northbound approach on the west side of the Fourth Street grade crossing will give advance notice to pedestrians of an approaching train from the west. Second Street and Third Street are one way streets to vehicular traffic. With the installation of an automatic flashing light signal and gate unit in the southwest crossing quadrant, there will be gate units that will block the entire street and Sixth Street will be re-routed as a one way street. With these improvements, including the median at Sixth Street, it is the opinion of the City that it has meet the criteria for a quiet zone through the City of De Kalb. The City is also requesting the installation of pedestrian gates on the southbound approach on the west side of the Sixth Street crossing.

The City studied the various alternatives to AHS system such as four quadrant gates where there is a gate unit installed in each crossing quadrant, a video detection and ticketing enforcement system, and generalized raised medians at the four crossings to divide the vehicular traffic so that it can't drive around or over the median and through the standard mounted gates and enter the crossing when the gates are in the down position. It was the conclusion of the City and its consulting engineers that the AHS system was the most cost effective and beneficial method of achieving the City's goal of reducing the noise from train horns and preserving the safety of the traveling public in De Kalb.

The Commission, having given due consideration to the testimony and exhibits submitted to the Administrative Law Judge, the arguments and suggestions of the City, the UP and the Rail Safety Section staff of this Commission, finds that:

- 1) the Commission has jurisdiction over the parties herein and the subject matter hereof;
- 2) the prefatory portion of this Order is true and correct and is hereby adopted as findings of fact;
- 3) staff recommends that AHS be installed at the First Street, Fourth Street, Seventh Street and Tenth Street grade crossings in the City of De Kalb, Illinois, and that the Sixth Street grade crossing be reconfigured to permit one way traffic northbound, full closure gates (one gate unit installed on the opposite side of the street of the existing gate unit, on the same side of the tracks) and pedestrian gates at Sixth Street; with the reconfiguration of Sixth Street to a one-way street, there is no need to install an AHS system at this crossing;
- 4) the requests for the installation of AHS (Wayside) shall meet the requirements of the FHWA as set forth in the prefatory portion of this Order; the AHS

system is the property of the City of DeKalb and is not part of the grade crossing signal system;

- 5) the City shall install, at its expense, approximately fifty (50) feet of fencing four (4) feet in height on the Union Pacific Railroad Company's right-of-way between the McDonald's property and Moudy Park at the northeast quadrant of the State Route 23 and State Route 38 grade crossing (Fourth Street); the UP shall install the pedestrian gates at the Fourth Street crossing at the sole cost and expense of the City; the City shall enter into the UP'S standard License Agreement for location, installation, and maintenance of such fencing on UP right-of-way and shall require all contractors constructing such fencing or any related activities including maintenance to sign UP'S standard Right-of-Entry Agreement prior to entering upon the right-of-way and be granted permission prior to entering UP property; however, the UP shall only charge one fee for the Right-of -Entry Agreement and shall grant permission thereafter for entry onto its right-of-way;
- 6) the City shall install, at its expense, a median of a type approved by the FHWA and/or FRA to at the Sixth Street crossing to close the small gap between the opposing gate units after the Street is redirected as a one-way street;
- 7) the AHS system is the property of the City and is not part of the grade crossing signal system;
- 8) the City shall keep the decorative trees in the northeast quadrant at the Fourth Street crossing trimmed so that the trees pose no obstruction to a motorist vision of an approaching train;
- 9) it is fair and reasonable that the City of De Kalb be directed to bear the actual cost of the proposed improvements and costs for maintenance for the AHS system at all crossings and installation and maintenance costs for the pedestrian gate at the Sixth Street crossing;
- 10)staff shall after the entry of this Order, arrange for a diagnostic meeting attended by a representative of the City, IDOT, UP, RCL, and staff of the Commission' Rail Safety Bureau, Rail Safety Specialist-Signal, to determine the proper placement of the AHS poles and to ensure the correct and most effective use of the system; at he first meeting, it will be determined if IDOT will allow for the posting of the AHS horn on its traffic signal pole; a second meeting will be arranged after the AHS have been installed but prior to the AHS being activated;
- 11)the Commission shall require the maintainer for the AHS system hired by the City to be trained in railroad signal maintenance;

12)the Commission shall retain authority to require the removal of the AHS at any or all of the subject grade crossings at any time, if, in the opinion of the Commission staff, public safety requires such removal;

13)all work shall be completed by December 31, 2006.

IT IS THEREFORE ORDERED that the City of De Kalb, at its cost, in conjunction with and in cooperation with the Union Pacific Railroad, be, and are hereby, required and directed to arrange for the installation of the Automated Horn System in the Union Pacific Railroad's right-of-way at the First Street, Fourth Street, Seventh Street and Tenth Street grade crossings and interface the control circuitry for the Automated Horn System within the control circuitry of the automatic warning devices located within the Union Pacific Railroad Company's circuitry cabinet and shall complete the work by December 31, 2006.

IT IS FURTHER ORDERED that the Union Pacific Railroad and the City of De Kalb have agreed to enter into a Right of Entry agreement for the provision of the maintenance of the automated horn system by the City of De Kalb and its contractors, which agreement shall address the issues of planned and emergency maintenance.

IT IS FURTHER ORDERED that the City of De Kalb and its contractor, Railroad Controls Limited, shall, within forty-five (45) days from the date of this Order, furnish to the Illinois Department of Transportation for its approval two (2) copies of the general layout plans applying to the installation of Automated Horn System at the State Route 23/State Route 38 grade crossing. Such general layout plans shall consist of a portion of the drawings attached to the Amended Petition and those admitted as Petitioner's Exhibits 3 and 7 at the Hearing of this matter and the installation of the Automated Horn System shall be made substantially in the manner and location as set forth in Exhibits 3 and 7.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of the aforesaid general layout plans, furnish to the Commission a statement of its approval thereof, this for the information of the Commission when considering the applications herein required to be filed in accordance with Form 3 of 92 Ill. Adm. Code 1535.

IT IS FURTHER ORDERED that pursuant to its written consent dated April 4, 2005, and admitted as Petitioner's Exhibit 8 at the Hearing of this matter, and upon receipt of the final permit from the Illinois Department of Transportation as directed in Petitioner's Exhibit No. 8, the City of De Kalb, through its contractor, Railroad Controls Limited, is hereby required to mount the automated horn system equipment upon poles owned by IDOT at the State Route 23 and State Route 38 grade crossing, pursuant to a proper License or Permit Agreement therefore.

IT IS FURTHER ORDERED that the Illinois Commerce Commission has the authority to require the removal of the Automated Horn System at any or all of the

subject crossings at any time, if, in the opinion of Commission staff, public safety requires such removal.

IT IS FURTHER ORDERED that the City of De Kalb and its contractor, Railroad Controls Limited, shall file a Form 3 of 92 Ill. Adm. Code 1535 of this Commission for each of the above crossings, showing details of the Automated Horn System herein required and shall receive approval thereof by X-Resolution or verbal approval before commencing the work of installation.

IT IS FURTHER ORDERED that the costs of the installation and maintenance of the Automated Horn Systems shall be borne by the City of De Kalb.

IT IS FURTHER ORDERED that the City of De Kalb, at its expense, shall keep the trees in the northeast crossing quadrant at the Fourth Street crossing trimmed so that the trees do not obstruct the view of a motorist of an approaching train.

IT IS FURTHER ORDERED that the Union Pacific Railroad and the City of De Kalb shall each within thirty (30) days of the date of the Commission's Order, submit to the Director of Processing and Information, Transportation Division of the Commission, the name, title, mailing address, telephone number, and facsimile number of their respective project managers.

IT IS FURTHER ORDERED that the Union Pacific Railroad and the City of De Kalb shall give written notice to the Director of Processing and Information of the Commission of the date the Automated Horn System is placed in service at each of the aforesaid crossings.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company and the City of De Kalb shall meet quarterly from the date of this Order for a period of one year to review the operation of the operation of the Automated Horn System once the system is placed in service and shall notify the Commission in writing of the results of the meetings.

IT IS FURTHER ORDERED that the Illinois Commerce Commission has the authority to require the removal of the Automated Horn System at any or all of the four (4) subject crossings at any time, if, in the opinion of Commission staff, public safety requires such removal.

IT IS FURTHER ORDERED that the staff of the Rail Safety Section shall arrange a diagnostic meeting within thirty (30) days of the date of this Order attended by a representative of the City of De Kalb, the Illinois Department of Transportation, the Union Pacific Railroad Company, Railroad Controls Inc., and staff of the Commission' Rail Safety Bureau, Rail Safety Specialist-Signal, to determine the proper placement of the AHS poles at each of the four (4) subject crossings to ensure the correct and most effective use of the system. A second meeting shall be held at least thirty (30) days prior to the date of service activation of the Automated Horn System, to ensure train

crew visibility of the confirmation signal, other sight distance concerns and overall operational readiness of the Automated Horn System. The Commission shall be notified by the City of De Kalb or its contractor, Railroad Controls Limited, on the completion of the installation, and staff shall arrange the date and time of the second meeting.

IT IS FURTHER ORDERED that Union Pacific Railroad shall issue a bulletin to its train crews advising of the Automated Horn System installation at the four (4) crossings in/near De Kalb instructing the train crews to silence the train horn warnings **unless** the confirmation signal is not visible or they perceive an imminent emergency at any of the aforesaid crossings.

IT IS FURTHER ORDERED that Union Pacific Railroad shall within ninety (90) days of the date of this Order submit a detailed estimate of cost to the City of De Kalb for the installation of one new gate, south of the tracks on the west side of the Sixth Street grade crossing, to achieve full gate closure for proposed one-way north-bound traffic.

IT IS FURTHER ORDERED that Union Pacific Railroad Company, upon City of De Kalb approval of the cost, shall install and thereafter maintain one new vehicular gate, south of the tracks on the west side of the Sixth Street grade crossing to achieve full gate closure for proposed one-way north-bound traffic on or before December 31, 2006; further, the City of De Kalb will install, at its cost, a median sufficient to close the gap between the opposing gates for northbound one-way traffic on Sixth Street.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall within ninety (90) days of the date of this Order submit a detailed estimate of cost to the City of De Kalb for the installation of pedestrian gates on the southbound approach on the west side of the Sixth Street grade crossing and the northbound approach on the west side of the Fourth Street grade crossing.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall install, at the sole cost and maintenance expense of the City of De Kalb, pedestrian gates on the southbound approach on the west side of the Sixth Street grade crossing and the northbound approach on the west side of the Fourth Street grade crossing on or before December 31, 2006.

IT IS FURTHER ORDERED that the City of De Kalb has entered into an agreement with the Union Pacific Railroad Company for the installation and maintenance, at its expense, of approximately fifty (50) feet of fencing on the Union Pacific Railroad Company's right-of-way between the McDonald's property and Moudy Park at the northeast quadrant of the State Route 23 and State Route 38 grade crossing. The City of De Kalb shall enter into Union Pacific Railroad Company's standard License Agreement for location, installation, and maintenance of such fencing on Union Pacific Railroad Company's right-of-way and the City of De Kalb shall require all persons and all contractors constructing the fence or any related activities including

maintenance to sign Union Pacific Railroad Company Right-Of-Entry Agreement prior to entering upon the right-of-way. However, the Union Pacific Railroad Company shall only charge a one time fee for the Right-Of-Entry Agreement and the City of De Kalb or its contractor performing maintenance on the fence on UP property shall request and receive permission from the Union Pacific Railroad Company prior to entering upon the railroad property to perform the maintenance required herein.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall issue a bulletin to its train crews advising of the Automated Horn System installed at the First Street, Fourth Street, Seventh Street, and Tenth Street at-grade crossings in the City of De Kalb instructing the train crews that it is not necessary to sound train horn warnings unless the confirmation light is not visible or they perceive an imminent emergency at any of the aforesaid crossings.

IT IS FURTHER ORDERED that Union Pacific Railroad Company shall submit to the Director of Processing and Information, Transportation Division of the Commission, within five (5) days of the completion of the work herein required of it, a United States Department of Transportation Inventory Form (#6180.71) for each crossing it has been required to performed improvements, as a notice of said completion.

IT IS FURTHER ORDERED that the City of De Kalb shall within five (5) days of the completion of the work herein required of it, a written notice of said completion.

IT IS FURTHER ORDERED that, in the event the estimates for the aforementioned work are deemed too costly for the City of De Kalb to pay its share of the cost, it will have fifteen (15) days after the receipt of the final requested estimate to notify the Director of Processing, Transportation Bureau, of its intent to cancel the project by filing a Petition to Vacate a Commission Order.

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 ____ day of _____, 2005.

Chairman