

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

City of Chicago, Cook County, Illinois	:	
Petitioner,	:	
	:	
Vs.	:	
	:	
Union Pacific Railroad Company, Norfolk Southern Railway	:	
Company and Belt Railway Company of Chicago	:	T05-0065
Respondents.	:	
	:	
Petition for authorization for reconstruction of the 87 <sup>th</sup> Street	:	
viaducts in the City of Chicago, County of Cook, Illinois	:	

**ORDER**

By Order of the Commission:

On December 13, 2005, the City of Chicago (“City”) filed with the Illinois Commerce Commission (“Commission”) a petition in this proceeding seeking authorization to improve the vertical clearance at the 87<sup>th</sup> Street railroad viaducts of the Union Pacific Railroad Company (“UP”), the Norfolk Southern Railway Company (“NS”), and the Belt Railway Company of Chicago (“BRC”) located near S. Holland Road (west of Interstate 94) in the City of Chicago, Cook County (“County”).

On February 22, 2006, the City filed an Amended Petition in this proceeding adding the State of Illinois, Department of Transportation (“Department”) as a respondent and modifying statements relative to 92 Ill. Adm. Code 1500. The City concurrently filed a project cost estimate, jurisdictional transfer agreement, and a recommended Order which was drafted and agreed to by all parties in the proceeding. On May 10, 2006, Commission Staff filed a revised proposed Order that addressed a scheduling conflict that arose after the City’s filing. Again the revisions were drafted, coordinated, and concurred to by all parties.

87<sup>th</sup> Street is an east-west arterial highway in the City of Chicago. The City intends to reconstruct a portion of 87<sup>th</sup> Street approximately 1900 feet in length from S. Eggleston Avenue east past S. Holland Road, which includes lowering the pavement under the BRC structure, collectively referred to hereinafter as the, (“City’s 87<sup>th</sup> Street Roadway Component”). Within the project limits, 87<sup>th</sup> Street is under the jurisdiction of the County, which concurs with the City’s scope of work. The City’s 87<sup>th</sup> Street Roadway Component and the UP’s 87<sup>th</sup> Street Structure Component as hereinafter defined shall be collectively hereinafter referred to as the (“Project”).

**UP and NS Structures (AAR/DOT #867 203B; Railroad Milepost 9.64)**

The western most bridge is owned by the UPRR, and would be reconstructed, improving the vertical clearance from 12'-8" to a minimum clearance of 14'-6" ("UP's 87<sup>th</sup> Street Structure Component"). The Union Pacific would design and construct the work with a completion date of June 1, 2008. All work associated with the UP's 87<sup>th</sup> Street Structure Component would be in coordination with the City's 87<sup>th</sup> Street Roadway Component, so as to avoid scheduling and traffic staging conflicts. Any modifications to the roadway plans or the structure plans that would impact the overall work within the vicinity of the structure would be coordinated with and agreed upon by the City and UP. Such consent should not be unreasonably withheld or delayed. The UP would be notified a minimum of two weeks in advance of any work within 15-feet of the vertical projection of the UP structure. The City's contractor would enter into the standard UP "Contractor's Right-of-Entry Agreement," which includes the following exhibits: (A) Project Location Map(s) with Project Description, (B) General Provisions to the Contractor's Right-of-Entry Agreement, (C) Contractor's Insurance Provisions for Right-of-Entry Agreement, (D) Minimum Safety Requirements. Any underground utility in conflict with the construction of the UP's 87<sup>th</sup> Street Structure Component would be relocated in accordance with the City's 87<sup>th</sup> Street Roadway Component. Any costs associated with this utility relocation would not be borne by the UP.

The next viaduct to the east is owned by the NS, and it would retain its current vertical clearance of 23'-8". Under the structure, and consistent with all of the structures, the City will reconstruct the pavement, sidewalk, and utility connections. Coordination with the NS would occur relative to protecting and maintaining the existing structure elements.

**Belt Railway Company of Chicago Structures  
(AAR/DOT #843 844P; Railroad Milepost 16.89)**

The next viaduct located east of S. Holland Road, is owned by the BRC and has an existing vertical clearance of 13'-0". The City's project would lower the pavement resulting in a minimum vertical clearance of 14'-6". Specific to the BRC structure, the following would be completed and detailed within the City's project plans.

The median piers would be cast with a continuous reinforced concrete median barrier, constructed between the pedestals to address the BRC's concern for snow plows and other vehicular traffic safety. The length of the median barrier would extend beyond the outside columns to encase all nine columns. The sidewalk pier curb and sidewalk would also be reconstructed accounting for the pavement lowering. The existing length of the combined concrete curb and gutter extends beyond the fascia of the bridge and encases all nine sidewalk piers. A 1'-9" by 1'-6" block of concrete from the sidewalk pier pedestals would be removed to facilitate the reconstruction of a new continuous combined concrete curb and gutter along the sidewalk piers. In addition to cleaning and straightening the existing reinforcing in the area of concrete removal, additional reinforcement would be added to the pier pedestal to transfer pedestal loads to the footing. A handrail would also be mounted along the sidewalk where the combination concrete curb and gutter exceeds 9 inches in height.

The BRC would be notified a minimum of two weeks in advance of any excavation around the pier foundations. After excavation and inspection by the BRC or its assigned representative; the contractor would be notified by the BRC as to whether or not additional removal of deteriorated concrete down to sound material would be necessary prior to drilling and grouting reinforcement or constructing new median barrier, or reinforced concrete curb and gutter along the sidewalk piers. In addition, excavation would not be conducted in such a manner as to destabilize the piers in any way. Should the excavation inadvertently destabilize the piers, the contractor would cease excavation operations and allow the BRC's contractor to shore said piers. Costs for shoring and any corrective action required to re-stabilize the structure would be born by the City's contractor. Any pedestal or column exposed by excavation and exhibiting deterioration shall be reconstructed to the satisfaction of the BRC. Costs for reconstruction of pedestals and columns beyond that specified in the plans, due to poor pedestal conditions or undermining of the column base would be paid by the City as extra work to its contractor.

The City is requesting assistance from the Grade Crossing Protection Fund ("GCPF") to help pay the costs associated with the Project.

The City has requested the Commission issue an Order, without hearing on an expedited basis, so that the proposed work for the City's 87<sup>th</sup> Street Roadway Component may be advertised as soon as possible.

Staff of the Commission's Rail Safety Section has reviewed the City's request for permission to construct the Project, and assistance from the GCPF to help pay for the work. Staff believes the requests are fair and reasonable and should be granted without hearing.

The Commission, having considered the evidence of record, is of the opinion and finds that:

- (1) the City of Chicago is a political subdivision organized and existing under and by virtue of the laws of the State of Illinois;
- (2) the Union Pacific Railroad Company, Norfolk Southern Railway Company, and the Belt Railway Company of Chicago are engaged in the transportation of persons and/or property by rail in the State of Illinois and as such, are rail carriers as defined by the Illinois Commercial Transportation Law, as amended;
- (3) the Commission has jurisdiction of the subject matter and parties herein;
- (4) the recitals of fact set forth in the prefatory portion of this order are supported by evidence of record and are hereby adopted as findings of fact;
- (5) the proposed City's 87<sup>th</sup> Street Roadway Component and the UP's 87<sup>th</sup> Street Structure Component, should be completed so that the vertical clearances would accommodate the legal maximum truck height of 13' 6". The vertical

and lateral clearance requirements as set forth within 92 Ill. Adm. Code 1500 are not applicable as those pertain to structures where the highway is over a railroad;

- (6) the total estimated cost for the Project is \$5,795,742. A division of costs for the Project is noted in the Cost Division Table below. To assist with the UP's 87<sup>th</sup> Street Structure Component, and the 87<sup>th</sup> Street Roadway Component, \$2,029,800 from the GCPF of the Motor Fuel Tax Law should be allocated with this Order.

**- COST DIVISION TABLE -**

<b>IMPROVEMENT</b>	<b>EST. COST</b>	<b>GCPF</b>	<b>CITY</b>	<b>UP</b>	<b>BRC</b>	<b>NS</b>
UP's 87 <sup>th</sup> Street Structure Component	\$1,500,000	(39%) \$582,000 <sup>1</sup>	\$0	(61%) \$918,000 <sup>2</sup>	\$0	\$0
City's 87 <sup>th</sup> Street Roadway Component	\$4,295,742 <sup>3</sup>	(34%) \$1,447,800 <sup>1</sup>	(66%) \$2,847,942 <sup>4</sup>	\$0	\$0 <sup>5</sup>	\$0
<b>TOTALS</b>	<b>\$5,795,742</b>	<b>\$2,029,800<sup>1</sup></b>	<b>\$2,847,942</b>	<b>\$918,000</b>	<b>\$0</b>	<b>\$0</b>

Notes:

- Total Grade Crossing Protection Fund (GCPF) assistance not to exceed \$2,029,800 (\$582,000 for the UP's 87<sup>th</sup> Street Structure Component, \$1,447,800 for the City's 87<sup>th</sup> Street Roadway Component); any installation costs above the estimated amount of \$5,795,742 will be divided between the GCPF, the City, and the Company in the same percentages noted above, upon submittal and review of evidence to support the additional cost and subject to approval by the Commission.
- The UP will be responsible for all future operating and maintenance costs associated with the UP's 87<sup>th</sup> Street Structure Component (maintenance responsibilities and costs of the structure and pavement are not altered by this Order). The City will have the right to remove all graffiti from the UP's 87<sup>th</sup> Street Structure Component and the obligation to remove such graffiti if there is an order under any applicable law requiring such removal.
- Includes NS Force Account work estimated at \$2000, and BRC Force Account work estimated at \$20,000.
- Through a separate funding agreement, the County will assist the City with a portion or all of the costs assigned. The City, in accordance with any County agreements, will be responsible for all future operating and maintenance costs associated with the 87<sup>th</sup> Street Roadway Component.
- Future maintenance costs of the structure and the pavement shall be divided in the same manner as for the existing subway structure and roadway (maintenance responsibilities and costs of the structure and pavement are not altered by this Order).

- (7) All contract submittals and construction correspondence to the Union Pacific Railroad Company should be directed to Mr. Rich Ellison, Project Coordinator - Industry and Public Projects at 301 West Lake Street, Northlake, IL 60164, phone number (708) 649-5214;

- (8) All contract submittals and construction correspondence to the Norfolk Southern Railway Company should be directed to Mr. Tom Bracey, Senior Engineer Public Improvements Norfolk Southern Corporation 1200 Peachtree

Street Atlanta, GA 30309, phone number (404) 527-2536, or the General Engineering Consultant assigned by the NS;

- (9) All contract submittals and construction correspondence to the Belt Railway Company of Chicago should be directed to Mr. Randall D. Smith, Assistant Chief Engineer, 6900 South Central Avenue, Bedford Park, IL 60638, phone number (708) 496-4032;
- (10) The parties are authorized to proceed immediately in performing the work herein required of each of them. The Union Pacific Railroad Company should complete the UP's 87<sup>th</sup> Street Structure Component by June 1, 2008 with the City's 87<sup>th</sup> Street Roadway Component to be completed by October 30, 2008;
- (11) Any person making a Request for Extension of Time up to thirty (30) days to complete a component of the Project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.
- (12) Any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.
- (13) Requests for an 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 component 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 component within the ordered timeframe.
- (14) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension 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 component 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.
- (15) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that City of Chicago be, and the same is hereby, required and directed to proceed with the lowering and reconstruction of 87<sup>th</sup> Street from S. Eggleston Avenue east past S. Holland Road in the City of Chicago, Cook County, Illinois, previously referred to as the City's 87<sup>th</sup> Street Roadway Component, in accordance with Findings (4) through (15).

IT IS FURTHER ORDERED that Union Pacific Railroad Company is hereby, required and directed to proceed with the reconstruction of the structure over 87<sup>th</sup> Street west of S. Holland Road in the City of Chicago, Cook County, Illinois, previously referred to as the UP's 87<sup>th</sup> Street Structure Component, in accordance with Findings (4) through (15).

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing protection Fund shall be submitted to the District Office of the Illinois Department of Transportation, 201 West Center Street, Schaumburg, Illinois, 60196-1096. The Department shall submit a copy of all bills to the Director of Processing and Information, Transportation Bureau of the COMMISSION. The final bill for expenditures from each party shall be clearly marked "Final Bill". Authorization for reimbursement from the Grade Crossing Protection Fund for these projects shall expire eighteen (18) months after the completion date specified in the Order authorizing the work, or any Supplemental Order(s) issued for the Project. At that time, the Commission shall provide notice to the Department, directing that the Department de-obligate all residual funds accountable for projects that receive contributions from the Grade Crossing Protection Fund. The notice may be in writing, e-mail or by fax. The Department shall not obligate any assistance from the Grade Crossing Protection Fund without prior approval by the Commission.

IT IS FURTHER ORDERED that all billing for all work specified in this Order shall provide sufficient documentation for all bills. The minimum documentation requirements are:

- a) Labor Charges (including additives) - Copies of employee work hours charged to the Village account code for the project.
- b) Equipment Rental - Copies of rental agreements for the equipment used, including the rental rate; number of hours the equipment was used and the Village account code for the project.
- c) Material - An itemized list of all materials purchased and installed at the crossing location. If materials purchased are installed at multiple crossing locations, a notation must be made to identify the crossing location.
- d) Engineering - Copies of employee work hours charged to the Village account code for the project.
- e) Supervision - Copies of employee work hours charged to the Village account code for the project.
- f) Service Dates - Invoice shall include the beginning and ending date of the work accomplished for the invoice.
- g) Final or Progressive - Each invoice shall be marked as a Progressive or a Final Invoice.

- h) Reference Numbers - Each invoice shall include the crossing number (AAR/DOT inventory number), the ICC Order number and the state job number when federal funds are involved.
- i) Locations - Each invoice shall show the location, with the street name and AAR/DOT crossing inventory number.

IT IS FURTHER ORDERED that the City of Chicago and the Union Pacific Railroad Company, and shall at six (6) month intervals from the date of this Order until the Project has been completed, submit written reports to the Director of Processing, Transportation Bureau of the Commission stating the progress that has been made toward completion of the work herein required. If the Project is behind schedule, the report must include a brief explanation of the reason(s) for the delay. Each progress report shall include the Commission Order number, the Order date, the applicable Project component completion date as noted in the Order, type of improvement, and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the Project component.

IT IS FURTHER ORDERED that the City of Chicago and Union Pacific Railroad, Company be and are hereby required and directed to submit a written notice, to the Director of Processing and Information, Transportation Bureau of the Commission, of the date the work herein required of it has been completed. Said notice shall be submitted within five (5) days after said completion date.

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

By Order of the Commission this 7<sup>th</sup> day of June 2006

Chairman