

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company; the City of Mount Olive; Staunton Township; and the State of Illinois, Department of Transportation.

Stipulated Agreement regarding improving public safety at the crossings of the Company's tracks with public highways known as Third North Street, Main Street (CH 16), Second South Street, Third South Street, Poplar Street, and Eighth South Street, all in the City of Mount Olive, and TR 457 in Staunton Township, all located in Macoupin County, Illinois, designated as crossings AAR/DOT 480 074P, milepost 444.51-WA, AAR/DOT 480 075W, milepost 444.74-WA, AAR/DOT 480 076D, milepost 444.85-WA, AAR/DOT 480 077K, milepost 444.93-WA, AAR/DOT 480 078S, milepost 445.09-WA, AAR/DOT 480 079Y, milepost 445.28-WA, and AAR/DOT 480 084V, milepost 447.13-WA, respectively.

T03-0041

FOURTH SUPPLEMENTAL ORDER

By the Commission:

On January 5, 2006, the City of Mount Olive ("City" or "Mount Olive") filed with the Illinois Commerce Commission ("the Commission") its verified Fourth Supplemental Petition in the above captioned matter naming as Parties the Norfolk Southern Railway Company ("NS" or "Railroad"), Staunton Township, and the State of Illinois, Department of Transportation ("Department"). In this Petition, Mount Olive requests an additional \$50,000 in funding from the Grade Crossing Protection Fund in order to complete the Project which is the subject of this case. At the hearing scheduled on the substance of the Fourth Supplemental Petition, the City's oral Motion to Amend the prayer for relief in the Petition to also request a two month extension of time to complete the Project was granted, without objection.

On June 4, 2003, the Commission entered its original Order in this case approving Stipulated Agreement No. 1033, authorizing the Parties to make safety improvements at six (6) public roadway/railroad at-grade crossings located in the City, and one such crossing located on Township Road TR 457 in Staunton Township, Macoupin County, Illinois. The work was to be completed by December 4, 2004.

In a First Supplemental Order entered October 20, 2004, the Commission granted the City's request for an extension of time to complete the Project, for good cause shown. In a Second Supplemental Order dated December 15, 2004, the Commission approved the Railroad's request for another brief extension of time to complete the Project, again for good cause shown. In a Third Supplemental Order entered by the Commission on January 6, 2006, Mount Olive's request for another extension of time to complete the work required under the Commission's original Order was granted, for good cause shown. Mount Olive and the NS have consistently shown

diligence and progress in their working to complete the safety improvements at these seven crossings. Unfortunately, for one reason or another, including the number of crossings involved, the necessity to redesign and reconstruct certain elements of the Project, and weather problems beyond the parties' control, the total construction is not quite finished, although many of the crossings have been reconstructed and are "on-line" and being used by the traveling public.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") on March 23, 2006. The City of Mount Olive and the Railroad were represented by counsel. Richard Daniels, Rail Safety Specialist with the Commission also appeared and represented Staff. Neither Staunton Township nor the Department appeared on this Fourth Supplemental Petition. When the case was called for hearing, and after appearances were entered of record, the Parties requested that the ALJ give them an opportunity to attempt to reach an agreement on the issues raised in the Fourth Supplemental Petition. The request was granted and the hearing adjourned for a short time. The Parties did come to an agreement, which was approved by Staff. No testimony was taken when the hearing reconvened; rather, the Parties orally entered their agreement of record, and at the conclusion of the March 23, 2006 hearing, the matter was marked "Heard and Taken."

In its Fourth Supplemental Petition, and at the hearing, Mount Olive requested that: (1) the most recent project completion date be extended from June 4, 2006 to August 4, 2006; and (2) that the Commission allocate an additional \$50,000 from the Grade Crossing Protection Fund to cover the additional costs incurred for engineering changes/redesign of portions of the Project (\$22,000), and additional material and labor costs required to construct the redesigned elements (\$28,000). Essentially, the final (as expected and hoped for) construction was delayed and additional costs incurred due to: unanticipated problems with storm sewers at three of the crossings; the discovery of contaminated soils and resulting Illinois EPA and Environmental Firm - required remedial work to neutralize and stabilize the soils; a conflict between a water main and the newly constructed runoff conveyance system at a crossing required redesign and reconstruction; and the necessity to reconfigure and raise the profiles of the tracks at each crossing.

The original Order entered by the Commission contemplated and approved total Project costs in the amount of \$235,283. The City placed reasonable and accurate cost estimates into evidence justifying an additional allotment of \$50,000 from the Grade Crossing Protection Fund with which to complete the Project. As stated above, Staff reviewed the estimates in detail, and agrees that the City's requests are reasonable and should both be granted. Norfolk Southern Railway Company had no objections and, in fact, overtly supported the Supplemental Petition.

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 recitals of fact set forth in the prefatory portion of this Fourth Supplemental Order are supported by the record and the evidence and are adopted as findings of fact;
- (3) The City's request for an extension of time is fair and reasonable and should be granted; however, the time to complete the Project will be extended to October 4, 2006, rather than the August 2006 deadline set forth in the City's Supplemental Petition;
- (4) The additional engineering/re-design costs of the Project in the amount of \$22,000 and the additional labor/material construction costs of the project in the amount of \$28,000, for a total additional Project cost in the amount of \$50,000, are fair and reasonable and supported by the record and the evidence, and should be approved and allocated to the Grade Crossing Protection Fund;
- (5) All other terms and conditions of the original Order dated June 4, 2003, the First Supplemental Order dated October 20, 2004, the Second Supplemental Order dated December 15, 2004, and the Third Supplemental Order dated January 11, 2006, are hereby affirmed and 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 4, 2006, is hereby granted to the City of Mount Olive to complete the work as set forth in the original Order dated June 4, 2003, on the various crossings which are the subject of the Stipulated Agreement entered into by the Parties herein.

IT IS FURTHER ORDERED that all other terms and conditions of the original Order and First, Second and Third Supplemental Orders entered herein, are hereby affirmed and shall remain in full force and effect except as herein modified.

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 12<sup>th</sup> day of July 2006.

JUDGE
SECTION CHIEF
<i>DWS</i>
ORDERS SUPERVISOR

*Charles E. Cox*  
Chairman