

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Des Plaines, an Illinois Municipal Corporation, :
Petitioner, :
v. :
Union Pacific Railroad Company, Wisconsin Central Ltd., and : T03-0102
Illinois Department of Transportation, :
Respondents. :
In the matter of the Petition of the City of Des Plaines for an order :
of the Illinois Commerce Commission to require the Respondents :
to pay their allocable share of the costs of a major alteration of an :
above grade crossing in the City of Des Plaines, Cook County, :
Illinois. :

ORDER

By the Commission:

On December 16, 2003, the City of Des Plaines, Cook County, Illinois ("Petitioner") filed the above-captioned verified petition with the Illinois Commerce Commission ("Commission"), naming as Respondents, Union Pacific Railroad Company ("UPRR"), Wisconsin Central Ltd. ("WCL"), and the Illinois Department of Transportation ("IDOT").

Pleadings and objections to same were exchanged between the Petitioner and the Railroads, including Motions to Stay filed by the Railroads and Motions for Continuance, also filed by the Railroads. The matter was set for hearing on March 10, 2004 and thereafter was continued from time to time. 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") of the Commission on April 14, 2005, June 14, 2005, August 17, 2005, December 5, 2005, and February 9, 2006. Petitioner, UPRR, WCL, and IDOT were represented by counsel. Also entering appearances were Diana G. Collins, Special Assistant Attorney General ("SAAG") representing Commission staff, and Brian Vercruysse, Railroad Safety Specialist for the Commission's Transportation Bureau, Railroad Section. Discovery procedures were scheduled and discovery was undertaken.

On February 6, 2006, Petitioner filed a Motion for Voluntary Dismissal. There were no objections to the Motion for Voluntary Dismissal. On February 9, 2006, the ALJ directed that the record be marked "Heard and Taken."

The Motion for Voluntary Dismissal filed by Petitioner, City of Des Plaines, states *inter alia*, that subsequent to the filing of the Petition, Respondent Railroads have made significant improvements to the existing bridge. In addition, Respondent IDOT has made an extensive engineering study to determine the cost of replacing the existing bridge and straightening the existing S-curve under the bridge. It is the opinion of the Petitioner that the existing bridge and S-curve should be replaced. However, Petitioner recognizes that the funding necessary for such a project is not presently available. Petitioner has been seeking funding for the highway portion of the project and will continue to do so. Upon securing the funding, the City of Des Plaines will look to the Railroads to fund the bridge portion of the project. The City of Des Plaines is also of the opinion that it is not in the best interest of any of the parties for this matter to remain on the Commission's docket until highway funding is secured. It therefore requests dismissal without prejudice.

IT IS THEREFORE ORDERED that the Petition filed by the City of Des Plaines, an Illinois municipal corporation, on December 16, 2003, be, and the same is hereby dismissed without prejudice.

IT IS FURTHER ORDERED that in accordance with Chapter 625 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 16th day of August, 2006.

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

Chairman