

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

BNSF RAILWAY COMPANY AND)
 DUNLIETH TOWNSHIP in JO DAVIESS)
 COUNTY, ILLINOIS,)
)
 Petitioners,)
 v.)
)
 CANADIAN NATIONAL RAILWAY)
 COMPANY and STATE OF ILLINOIS)
 DEPARTMENT OF TRANSPORTATION,)
)
 Respondents.)

NO. T 07-0091

Petition for an Order of the Illinois Commerce Commission authorizing the establishment of grade crossings inventoried as DOT #306 915 E (M.P. 181.62) and DOT #306916 L (M.P. 181.66), at what is commonly known as Barge Harbor Road near East Dubuque, Jo Daviess County, Illinois, as public grade crossings, at their intersection with the main line tracks of BNSF Railway Company and CN, and for determination by the Illinois Commerce Commission of the appropriate level of warning devices and division of the costs among the parties.

AMENDED
PETITION

TO THE ILLINOIS COMMERCE COMMISSION:

NOW COME Petitioner, BNSF Railway Company (BNSF), by its attorneys, Daley & Mohan, and Co-Petitioner Dunlieth Township in Jo Daviess County, Illinois, and respectfully petition the Illinois Commerce Commission as follows:

1. That Petitioner, BNSF Railway Company (BNSF), in the operation of its railroad and facilities, operates trains over two mainline railroad tracks which run, by compass direction, generally in north/south direction between or near, inter alia, East Dubuque and Portage, Illinois.
2. That Petitioner, Dunlieth Township, located in Jo Daviess County, Illinois, has improved and dedicated as a public highway in November of 2006 a road commonly known as Barge Harbor Road, which runs, by compass direction, generally in an east/west direction and intersects the two mainline railroad tracks of the BNSF at a distance west of U.S. Route 20 in said county.

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 HHT/OI

3. The grade crossing formed by the intersection of Barge Harbor Road and the easternmost main line track is inventoried as DOT# 306 915 E and is located at railroad milepost 181.62. BNSF owns and maintains said railroad tracks and right of way at or near Barge Harbor Road.

4. The grade crossing formed by the intersection of Barge Harbor Road and the westernmost main line track is inventoried as DOT# 306 916 L and is located at railroad milepost 181.66. BNSF, by virtue of an agreement with the CN, uses, maintains, and dispatches said railroad track, which is owned by CN, including the area at or near Barge Harbor Road.

5. The aforesaid railroad tracks are governed by written agreements between BNSF and CN, which provide for apportionment of costs and expenses between BNSF and CN for construction, maintenance, repair and renewal of the trackage, including the addition of signals and signal systems.

6. The public highway known as Barge Harbor Road is located on both sides of the aforementioned grade crossings and is within the jurisdiction of Petitioner Dunlieth Township and is and will be maintained by and at the expense of Dunlieth Township.

7. The distance between the crossings in question is approximately 400 feet.

8. IEI Barge Services is located west of the two main line tracks and operates a business transloading various commodities between rail, water and trucks at their operation site served by this road.

9. All truck traffic must cross both mainline tracks at separate single track crossings in order to travel between the barge facility located west of the crossings and U.S. Route 20 located east of the crossings. There is no alternative roadway to access the barge transloading facility other than Barge Harbor Road.

10. The number of trains operated over these mainline tracks is approximately 46 trains per day.

11. The average daily traffic count over these crossings is approximately 150 vehicles per day, 90% of which are trucks.

12. Upon information and belief, Dunlieth Township supports this Petition but does not have funding available to contribute to the cost of any improvements to the crossings on Barge Harbor Road. BNSF agrees to pay any costs that would be otherwise apportioned as a cost to the local roadway authority, Dunlieth Township.

WHEREFORE, Petitioner(s) pray that this Honorable Commission will set the aforesaid matter for hearing with notice to the parties hereto, and after said hearing enter an order:

1. Determining that the crossings inventoried as DOT # 306 915 E and DOT # 306916 L are now public crossings.
2. Determining the nature of the warning devices that are appropriate and required to be installed.
3. Direct that moneys from the Grade Crossing Protection Fund pay a substantial portion of the costs of the installation of the warning devices.
4. Otherwise direct the division of the costs among the parties, including that the agreements in effect between BNSF and CN will govern any costs or expenses ordered by the Commission to be paid by the railroads.
5. Determine a reasonable time period for completion of any work or improvements to be performed.

Respectfully submitted,

BNSF Railway Company, Petitioner

By: Robert J. Prendergast
Robert J. Prendergast

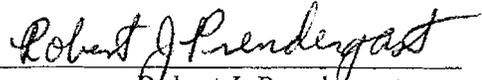
Dunleith Township, Petitioner

By: Robert J. Hecker

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VERIFICATIONS

I, Robert J. Prendergast, attorney for the Petitioner, BNSF Railway Company, hereby certify pursuant to 735 ILCS 5/1-109 that I have read the foregoing Petition and the matters contained therein are believed true and correct based upon the information provided to me and reasonable inquiry made with respect to same.



Robert J. Prendergast

I, ~~Vincent Hester~~ as ~~Supervisor~~ for Dunlieth Township, Petitioner, hereby certify pursuant to 735 ILCS 5/1-109 that I have read the foregoing Petition and the matters contained therein with respect to Dunlieth Township are believed to be true and correct based upon the information provided to me and reasonable inquiry made with respect to same.



DUNLIETH SUPERVISOR

CERTIFICATE OF SERVICE

Robert J. Prendergast, STATES THAT HE IS ONE OF THE ATTORNEYS FOR PLAINTIFF, BNSF RAILWAY COMPANY in the foregoing cause and that he served the foregoing PETITION on the PARTIES by mailing a true and exact copy thereof to the ATTORNEYS FOR THE PARTIES:

Henry Humphries
Railroad Section
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Dennis J. Liebold
Dunlieth Township – Highway Commissioner
5 Rose Drive
East Dubuque, Illinois 61025

Milton Sees, P.E.
Director of Highways
Illinois Department of
Attention: Jeff Harpring, Room 205
2300 South Dirksen Parkway
Springfield, Illinois 62764

John Henriksen
Manager Public Works
CN
17641 South Ashland Avenue
Homewood, Illinois 60430

Vincent Hasken
Dunlieth Township – Supervisor
18 North J.F. Kennedy Drive
East Dubuque, Illinois 61025

Thomas J. Healey
Attorney Counsel Regulatory
CN
17641 South Ashland Avenue
Homewood, Illinois 60430

by depositing same in the U.S. Mail at 150 North Wacker Drive, Chicago, Illinois 60606 before 5:00 p.m. on the 23rd day of October, 2007, with proper postage pre-paid.

