

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The City of Alton, Illinois, by its Mayor, Donald E. Sandidge, :  
Petitioner, :  
vs. :  
Norfolk and Western Railway Company , the County of :  
Madison and the Department of Transportation of the State :  
of Illinois :  
Respondent. :  
Petition for permission to construct an overhead grade :  
crossing of Indiana Avenue, MFT Section # 97-00208-010 :  
GS, Structure #060-6110, over the tracks of the Norfolk :  
Southern Corporation at a location approximately 1/3 mile :  
north of Illinois Route 143, Alton, Madison County, Illinois. :

T97-0050

THIRD SUPPLEMENTAL ORDER

By the Commission:

On December 17, 1997, the Illinois Commerce Commission ("Commission") entered its Order in this matter that, among other things, granted permission to the City of Alton ("City") to construct a new grade separation structure to carry Indiana Avenue over the tracks of the Norfolk Southern Railway Company. The cost for the structure, estimated to be \$7,208,118, was divided 60% in an amount not to exceed \$4,324,871, to the Grade Crossing Protection Fund ("Fund") with all remaining cost being borne by the City of Alton. The amount to be paid by the Fund was limited to \$2,162,435 until further Order of the Commission. This work was required completed within three (3) years from the date of the Order.

On March 7, 2001, the Commission entered its Supplemental Order granting an extension of time to and including December 31, 2004, within which to complete the work as required by the original Order. In addition, the Supplemental Order also amended the cost and cost division by including cost associated with the adjustment of overhead utility lines and an underground water line that was not contemplated at the time of the original Order. These unexpected costs (\$431,164) were added to the total cost and divided between the Fund (\$258,698) and the parties in the same percentage as contained in the original Order; however, the cost for the utility adjustments was added to the final Fund allotment for the project.

On June 19, 2002, the Commission entered its Second Supplemental Order that ordered the final Fund payment be obligated as required by the

original and Supplemental Orders. Per the requirements of the original and Supplemental Orders, it was the Commission's intent to issue a further Order(s) increasing the maximum amount to be paid from the Fund toward the highway overpass project to \$4,583,569, by the completion of the project or earlier, either in a single increase or multiple increases equal up to the initial limiting amount. The Second Supplemental Order increased the Fund contribution to a new maximum total of \$4,583,569, an increase of \$2,421,134. The Rail Safety Section of the Commission recommended that the final Fund payment be obligated through the Second Supplemental Order as required by the original and Supplemental Orders.

On November 15, 2004, the Commission received a Supplemental Petition from the City of Alton requesting an extension of time to and including June 30, 2007, within which to complete the work as required by the original and Supplemental Orders. The City states that the Supplemental Order granted an extension of time to and including December 31, 2004, to the City based upon the assumption that construction on the structure would begin by November 2001. Due to environmental issues, including testing and remediation of contaminated soils and mitigation of wetland areas, the start of Phase I construction was delayed until spring of 2003. Phase II of the project is expected to begin in the summer of 2005 and is scheduled for completion on or before June 30, 2007. The completion of Phase II will be dependent upon embankment settlement, which is difficult to predict. The actual completion date may be sooner; however, the City requests a time extension to June 30, 2007, for completion of the project.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) the Commission has jurisdiction of the parties hereto and the subject matter herein;
- 2) the recitals of fact as set forth in the prefatory portion of this Third Supplemental Order are true and correct and are hereby adopted as findings of fact;
- 3) an extension of time to and including June 30, 2007, should be granted to the City of Alton within which to complete the work as required by the original and Supplemental Orders;
- 4) all other terms and conditions of the original Order, Supplemental Order, and Second Supplemental Order, dated December 17, 1997, March 7, 2001, and June 19, 2002, respectively, are hereby affirmed and shall remain in full force and effect except as herein modified.

- 5) 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 the City of Alton 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 an extension of time to and including June 30, 2007, be, and it is hereby, granted to the City of Alton within which to complete the work as required by the original Order, Supplemental Order, and Second Supplemental Order dated December 17, 1997, March 7, 2001, and June 19, 2002, respectively.

IT IS FURTHER ORDERED that all other terms and conditions of the original Order, Supplemental Order, and Second Supplemental Order entered on December 17, 1997, March 7, 2001, and June 19, 2002, respectively, are hereby affirmed and shall remain in full force and effect except as herein modified.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that requests For 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 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 within the ordered timeframe.

IT IS FURTHER ORDERED that 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 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.

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 the Administrative Review Law.

By Order of the Commission this 15<sup>th</sup> day of December, 2004.

*Andrew C. Huesley* 2

JUDGE	<i>[Signature]</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>

Chairman