

RESPONSE: Respondent admits, on information and belief, the allegations of Paragraph 2 of the Petition.

3. CRD has entered into a Purchase of Service Agreement with BNSF to provide commuter rail service along portions of BNSF's rail corridor with the eastern terminus at Chicago Union Station and the western terminus at the Aurora, Illinois commuter rail station, commonly referred to as the Aurora Transportation Center. As part of its Purchase of Service Agreement with CRD, BNSF provides commuter rail service to the Village of Riverside, Cook County, Illinois.

RESPONSE: Respondent admits, on information and belief, the allegations of Paragraph 3 of the Petition.

4. BNSF operates its three main line tracks in a generally east to west direction through the Village of Riverside, Cook County, Illinois over which BNSF provides freight rail service, Amtrak inter city rail service and pursuant to its Purchase of Service Agreement with CRD, commuter rail service.

RESPONSE: Respondent admits, on information and belief, the allegations of Paragraph 4 of the Petition.

5. Within the Village of Riverside there exists a pedestrian subway structure running in a generally north to south direction beneath BNSF's triple main line trackage at or near BNSF milepost 11.05. The aforesaid pedestrian subway structure is located less than 100 feet west of the public at grade crossing located at the intersection of BNSF's trackage and Longcommon Road, milepost 11.04, DOT No. 079498(V).

RESPONSE: Respondent admits that within the Village of Riverside there exists a pedestrian subway structure running in a generally north to south direction beneath BNSF's triple main line trackage. The Respondent admits, on information and belief, the remaining allegations of Paragraph 5 of the Petition.

6. The public at grade crossing at the intersection of BNSF's trackage and Longcommon Road is equipped with automatic flashing light signals and gates with pedestrian

crossings located both east and west of and adjacent to, the public roadway at grade crossing. The pedestrian at grade sidewalk crossings structures are each equipped with pedestrian warning gates operated with constant warning time circuitry.

RESPONSE: Respondent admits the allegations of Paragraph 6 of the Petition.

7. Since on or about April 15, 1976, the pedestrian subway at milepost 11.05 has been maintained by the Village of Riverside, Cook County, Illinois pursuant to agreements with BNSF.

RESPONSE: Respondent admits the allegations of Paragraph 7 of the Petition.

8. The deteriorated condition of the subject subway structure, as of the date of its most recent inspection of September 20, 2007, has reached the point where it poses a risk of undermining BNSF's roadbed and track structures.

RESPONSE: Respondent admits, on information and belief, the allegations of Paragraph 8 of the Petition. Respondent further states that it has fulfilled its obligations under the agreements between BNSF and Respondent and that the subject subway structure has reached the end of its useful life.

9. The subject pedestrian subway structure receives only limited use by the pedestrian traveling public. The vast majority of pedestrians use the pedestrian at grade crossings at the intersection of BNSF's trackage and Longcommon Road.

RESPONSE: Respondent admits the allegations of Paragraph 9 of the Petition. Respondent further states, however, that pedestrians use the subject subway structure more frequently when the at grade crossings are closed by rail traffic, and that this occurs most frequently during morning and evening rush hours when both rail traffic and pedestrian traffic are heaviest.

10. Permanent closure of the pedestrian subway structure at milepost 11.05 is necessary to preserve the safety and integrity of BNSF's roadbed, track structures and related facilities and should be accomplished within the next 12-18 months to avoid service interruptions and other potential related problems with the pedestrian tunnel and rail operations.

RESPONSE: Respondent admits, on information and belief, the allegations of Paragraph 10 of the Petition.

11. Closure of the aforesaid pedestrian subway structure will pose no inconvenience to the traveling public as the pedestrian subway is lightly used and there exists pedestrian at grade crossings equipped with automatic warning devices located less than 100 feet east of the subway structure.

RESPONSE: Respondent denies that closure of the pedestrian subway structure “will pose no inconvenience to the traveling public.” Answering further, the Respondent states that closure of the pedestrian subway will cause inconvenience to those members of the public who do utilize the pedestrian subway and that this includes schoolchildren living south of the tracks, all of whom attend school north of the tracks, and, from time to time, police officers and other emergency personnel in the course of their official duties.

12. The Village of Riverside has determined the cost of reconstructing the pedestrian subway structure to exceed \$4 million, and has not secured funding to reconstruct the pedestrian subway structure.

RESPONSE: Respondent admits the allegations of Paragraph 12 of the Petition. Answering further, respondent states that the Village of Riverside has attempted to obtain funding to reconstruct the pedestrian subway structure from every available source known to the Village. This includes seeking grant money from state and federal legislators, from the West Suburban Mass Transit District and METRA, and a Congestion Mitigation Action Quotient grant from the Illinois Department of Transportation. The Village of Riverside also sought approval from the residents of Riverside by referendum to fund reconstruction by issuing bonds, which was rejected by a majority of voters.

13. Although the pedestrian subway structure is part of the Riverside commuter station facility's internal pedestrian circulation system and is intended to be utilized only by commuters and other patrons utilizing the Riverside Commuter Station facility, to the extent required by 625 ILCS 5/18c-7401(3) petitioners seek permission from the Illinois Commerce Commission to permanently close the pedestrian subway structure at BNSF milepost 11.05 as referenced herein.

RESPONSE: Insofar as Paragraph 13 of the Petition contains assertions of law, no answer is required. Respondent denies that only commuters and other rail passengers utilize the pedestrian subway structure and further states that members of the general public also utilize the subway structure from time to time.

14. Should the Illinois Commerce Commission authorize the permanent closure of the at issue subway structure, BNSF and CRD intend to fill the subway structure and otherwise secure the same so as to reestablish the complete integrity of BNSF's right of way, track bed, and track structures and further permanently secure the subway structure from access by the general public and at no cost to the Village of Riverside.

RESPONSE: Respondent admits, on information and belief, the allegations of Paragraph 14 of the Petition.

15. Nothing proposed in the Petition herein precludes the Village of Riverside from continuing to seek funding sources for construction of a pedestrian subway structure.

RESPONSE: Respondent admits the allegations of Paragraph 15 of the Petition.

WHEREFORE, the Respondent, the Village of Riverside, Cook County, Illinois, states that because said pedestrian subway structure has reached the end of its useful life, and because the Village of Riverside has not been able to obtain adequate funding for reconstruction of said subway structure, and because said subway structure is the exclusive property of the Petitioner, and notwithstanding that public policy and safety may favor the continued existence of a pedestrian tunnel at said location, the Village of Riverside will accept the ruling of the Commission in favor of Petitioner.

CONSENT TO SERVICE BY ELECTRONIC MEANS: The Respondent, the Village of Riverside, Cook County, Illinois, pursuant to § 200.100(a) of the Rules of Practice of the Illinois Commerce Commission, hereby agrees to accept service of all documents required to be served in this matter by concurrent transmission to rswain@hlerk.com and rhazeltine-shedd@hlerk.com.

VILLAGE OF RIVERSIDE

By: 
One of Its Attorneys

Dean W. Krone
Robert E. Swain
Robert J. Hazeltine-Shedd
HODGES, LOIZZI, EISENHAMMER, RODICK & KOHN
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
Phone (847) 670-9000
Fax (847) 670-7334

CERTIFICATE OF SERVICE

I, Dean W. Krone, an attorney, hereby certify that a true and correct copy of the foregoing Answer was mailed this 7th day of April, 2008, by first class mail, postage prepaid, to the following:

Brian Verycruise
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
bvercruy@icc.illinois.gov

Robert J. Prendergast
Daley Mohan Groble, P.C.
Attorney for Petitioners
55 West Monroe, Suite 1600
Chicago, Illinois 60603
rprendergast@daleymohan.com


Dean W. Krone

Dean W. Krone
Robert E. Swain
Robert J. Hazeltine-Shedd
HODGES, LOIZZI, EISENHAMMER, RODICK & KOHN
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
Phone (847) 670-9000
Fax (847) 670-7334