

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Central Railroad Company; the Benton Township, :
and the State of Illinois, Department of Transportation. :

Stipulated Agreement regarding improving public safety at :
the crossings of the Company's track with public highways : T02-0119 Supp.
known as South Stuyvesant Street and Bennett Road :
located near Benton, Franklin County, Illinois, designated as :
crossings AAR/DOT 293 723W and 293 724D, mileposts :
90.80-GE and 91.40-GE, respectively. :

SUPPLEMENTAL ORDER

By the Commission:

PROCEDURAL HISTORY

The grade crossing project in the above-captioned docket was completed in 2004 pursuant to a Stipulated Agreement. On November 9, 2005, approximately one year after the project was completed, the amount of \$22,963.40 remaining in the Grade Crossing Protection Fund ("GCPF") for the project was de-obligated for this docket. On or about December 21, 2006 and January 22, 2007, Illinois Central Railroad Company ("Railroad") belatedly submitted final bills ("Final Bills") for the project totaling \$46,188.75. On December 7, 2007, the Railroad filed a Petition to Reopen the docket and sought payment of the Final Bill from the Grade Crossing Protection Fund.

Pursuant to notice given in accordance with the Law and the rules and regulation of the Commission, hearings on the Petition to Reopen and Railroad's request were held before a duly authorized Administrative Law Judge of the Commission in the Commission's offices in Springfield and Chicago on February 13, 2008 and April 3, 2008. The Railroad was represented by counsel and presented the testimony of Nancy Hanna, Manager of Non-Freight Invoicing. The Illinois Department of Transportation ("IDOT") was represented by counsel. Joe Von De Bur, Rail Safety Specialist, appeared representing Commission Staff ("Staff"). At the conclusion of the April 3, 2008 hearing, the record was marked "Heard and Taken."

PETITIONER'S EVIDENCE

Initially, Railroad Staff and the Illinois Department of Transportation ("IDOT") agreed to reopen the docket and to stipulate that: the work in the docket was completed; the amounts expended by the Railroad to complete the project were reasonable and necessarily incurred in order to complete the project; and the Final Bills were reasonable, proper bills.

The Railroad presented evidence through the testimony of Nancy Hanna, Manager of Non-Freight Invoicing, explaining why the Final Bill was belatedly submitted after assistance from the GCPF was de-obligated. Hanna testified that at the time the Final Bills should normally have been tendered, in early 2004, the Railroad was faced with a strike from its billing clerks. Later in 2004, the Railroad's non-freight billing department relocated from Montreal to Toronto, resulting in a wholesale turnover of billing staff, with the need to train a completely new set of clerks in billing procedures. This caused certain billing projects to fall behind, including the one in this docket. Since that time, new procedures have been put in place to ensure that billing in projects such as this will be done in a timely fashion.

STAFF'S AND IDOT'S POSITIONS

Joe Von De Bur, Rail Safety Specialist representing Commission Staff, indicated that Staff was opposed to re-obligating assistance from the GCPF in this docket because there are no longer funds available in the GCPF for this project. Further, the existing balance of the GCPF is not sufficient to permit making additional assistance available for this project. On the other hand, IDOT indicated that there are Federal Section 130 funds available for this docket that would cover seventy percent (70%), the amount of \$32,332.13, of the Final Bill.

RAILROAD'S CONCESSION

At the April 3, 2008 hearing, counsel for the Railroad conceded that the substantial delay in seeking re-obligation of Grade Crossing Protection Funds was sufficient basis for the denial of the Railroad's request for relief; however, counsel reiterated the Railroad's request that the Section 130 Federal funds be made available to cover 70% of the requested project costs Final Bill. Counsel assisted Commission Staff in preparation of an agreed Order to that effect.

COMMISSION ANALYSIS AND CONCLUSION

The Commission is of the opinion that GCPF assistance should not be re-obligated for this docket. However, the Commission is also of the opinion that the federal funds still available for the project should be ordered to be paid to the Railroad to cover seventy percent (70%) of the Final Bill, or the amount of \$32,332.13.

COMMISSION FINDINGS AND ORDERS

The Commission, having reviewed the entire record, finds that:

- (1) The Parties to the Stipulated Agreement in this docket are all subject to the jurisdiction of the Commission.
- (2) The Commission has jurisdiction over the subject matter of this proceeding.

(3) The recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law.

IT IS THEREFORE ORDERED that the request of the Illinois Central Railroad Company to re-obligate funds from the Grade Crossing Protection Fund in this docket, and to authorize additional Grade Crossing Protection Fund assistance to the Railroad in this docket, is denied, with prejudice.

IT IS FURTHER ORDERED that IDOT shall pay the Illinois Central Railroad Company up to the amount of \$32,332.13 for the work evidenced by the Final Bills from Federal Section 130 funds. Beyond that amount, no more money shall be paid from Section 130 funds in this docket.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any Supplemental Order or Orders as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 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 23rd day of April 2008.

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| JUDGE |
| SECTION CHIEF <i>ms</i> |
| ORDERS SUPERVISOR |



CHARLES E. BOX
CHAIRMAN