

ORIGINAL

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Village of Sherman, a Municipal Corporation,)
Sangamon County, Illinois,)
Petitioner,)
v.)
Union Pacific Railroad Company, The Illinois Department)
of Transportation, and Sangamon County, Illinois,)
Respondents.)
In the matter of the Petition for an Order directing)
the construction of a new grade separation within the)
corporate limits of the Village of Sherman)

ILLINOIS COMMERCE
COMMISSION
JUN 18 9 58 AM '02
TRANSPORTATION DIV.
T89-0028

**OBJECTIONS TO DISCOVERY OR, IN THE ALTERNATIVE, MOTION FOR
PROTECTIVE ORDER**

NOW COMES Union Pacific Railroad Company, one of the Respondents herein, by and through its' Attorney, Dean W. Jackson, and for its Objections to Discovery or, in the alternative, Motion for Protective Order, pursuant to Sections 200.335 and 200.430 of 83 Illinois Administrative Code Part 200, hereinafter states as follows:

1. That on June 5, 2002, Respondent Illinois Department of Transportation, propounded to the Railroad Respondent A Request for Production of Documents by placing same in the U.S. Mails on June 5, 2002. A copy of said Request to Produce is attached hereto as Exhibit A and incorporated herein by reference.

2. That, as can be seen, said Request seeks disclosure of all Contracts between this Railroad and fiber optic companies relative to the project in question in this case.

3. Said Request is irrelevant and immaterial for a number of reasons. First, presumably Respondent Illinois Department of Transportation (hereinafter "IDOT") seeks copies of these Contracts for purposes of argument that the estimated \$250,000

utility relocation costs be borne by the Railroad in this case because the Respondent Railroad allegedly earns income from easements granted to such entities. This is irrelevant as: (a) historically this Illinois Commerce Commission has viewed such utility relocation costs as Project Costs to be shared by all entities involved in grade separation cases---never has the issue been considered otherwise in this Commission (reference, e.g., the ICC case City of Chatham v. SPCSL Corp. et al, No T95-0004); (b) arguably IDOT earns substantial monies from the Illinois Motor Fuel Tax on roadways such as those contemplated in the instant matter which pale in comparison to monies allegedly earned by this Respondent here on the 2500 foot stretch of rail, which renders the issue moot in this case; (3) the Request is not limited to the 2500 lineal foot section of track at issue here, but rather seeks substantially more information than is relevant here---in this sense, the Request is certainly objectionable as being clearly overbroad; (4) the utilities with which the Engineering Firm retained by the Petitioner Village of Sherman have not been made parties to this Illinois Commerce Commission case; and (5) the issue is not yet ripe for review as indicated by the Administrative Law Judge at the last hearing held on May 30, 2002 where the parties were advised several times that the potential issue of revision of the parties' proposed shares of costs of the project is not now at issue, and if it ever does become a matter for argument, that it would be dealt with at a much later date.

4. Further, IDOT's Request to Produce seeks information of a highly confidential, proprietary and trade secret nature which would be severely damaging to this Respondent Railroad if released to other utilities and/or railroads, and to other third parties not a party to the instant matter. For that reason alone the Request should be denied. At a minimum if eventually the information is ordered to be disclosed, this Respondent should be

allowed to redact those portions of the contracts which are irrelevant, immaterial, or of a confidential, proprietary and trade secret nature, the Request should be limited to the 2500 lineal foot section of track herein, and the portions ordered to be disclosed should be placed under seal to be used only by the parties here.

WHEREFORE, this Respondent, Union Pacific Railroad Company, respectfully requests that IDOT's Request to Produce be stricken or, in the alternative, that this Honorable Illinois Commerce Commission enter an appropriate Protective Order pursuant to Section 200.430 of the Illinois Administrative Code.

Respectfully Submitted,

Union Pacific Railroad Company,
By Dean W. Jackson, its' attorney.

By: 

Dean W. Jackson, Esq., No. 6185532
522 East Monroe
Suite 306
Springfield, Illinois 62701
(217) 523-4823

PROOF OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing Entry of Appearance to be served on the following:

Mr. James Slifer, Director
Division of Highways
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764

Mr. Rick Korte
Chief Administrative Law Judge
Illinois Commerce Commission
527 East Capitol Street
Springfield, Illinois 62701

T89-0028

Mr. Bob Berry
Illinois Commerce Commission, Staff
527 East Capitol Street
Springfield, Illinois 62701

James D. Kelly, Esq.
726 South Second Street
Springfield, Illinois 62704

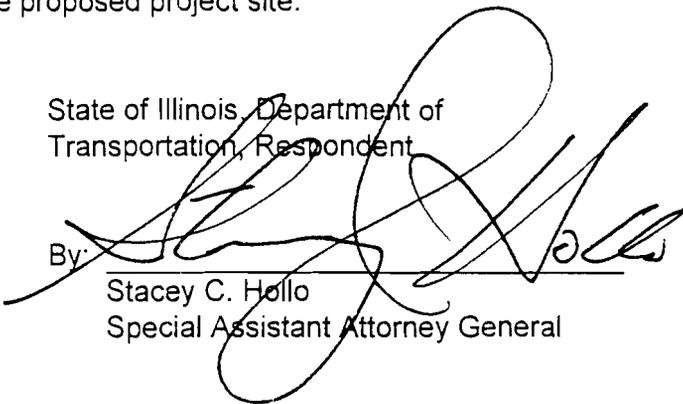
by enclosing a copy of said document in an envelope, properly addressed to the above persons and depositing said envelope in the United States Mail, postage fully prepaid at Springfield, Illinois, this 18th day of June 2002.


Dean W. Jackson

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4. A copy of any and all contracts between UPRR (and/or its predecessors, agents, affiliates, subsidiaries and assigns) and a utility company, or the like, situated on railroad right of way located within the proposed project site.

State of Illinois, Department of
Transportation, Respondent

By: 

Stacey C. Hollo
Special Assistant Attorney General

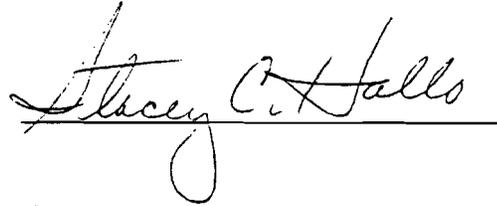
Dated: June 5, 2002

Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217)782-3215

PROOF OF SERVICE

T89-0028

The undersigned hereby certifies that a copy of the foregoing instrument was served upon the addresses listed below by mailing a true and correct copy via first class mail, postage pre-paid and depositing the same in the United States Mail, Springfield, Illinois, this 5th day of June, 2002:

A handwritten signature in cursive script, reading "Stacey C. Hall", is written over a horizontal line. The signature is written in black ink.

Mr. James Kelly
Presney Kelly & Presny
726 South Second Street
Springfield, Illinois 62704

Mr. Phil Koeberlein
3303 Terminal Avenue
Springfield, Illinois 62707

Mr. Dean W. Jackson, Esq.
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