

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.)

T89-0028

TRANSPORTATION DIV

2003 MAY 30 A 10:55

ILLINOIS COMMERCE
COMMISSION

BRIEF ON EXCEPTIONS

Now comes one of the Respondents herein, Union Pacific Railroad Company, by and through its attorney, Dean W. Jackson, pursuant to 83 Illinois Administrative Code Chapter 1, Section 200.830, and for its Brief on Exceptions, hereinafter states as follows:

1. Pursuant to Leave granted by the Administrative Law Judge at the Evidentiary Hearing held herein, Respondent submits for inclusion in the Order herein a Late Filed Exhibit titled "Fee Calculation Form" showing the value of the Permanent and Temporary Easements required of this Respondent in the amount of \$4,558.00. Respondent respectfully requests that said amount be added to the Project Cost and apportioned among the Parties pursuant to the Proposed Order entered May 21, 2003.

2. Pursuant to Leave granted by the Administrative Law Judge at the Evidentiary Hearing held herein, Respondent submits for inclusion in the Order herein a Late Filed Exhibit titled "Estimate of Material and Force Account Work" showing the cost of

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\$208,126.00 for the shoofly portion of the Project. Pursuant to discussion at said Evidentiary Hearing, Respondent respectfully requests that said amount be included in the Project Cost and apportioned among the Parties pursuant to the Proposed Order entered May 21, 2003.

3. Respondent respectfully objects to the decision on the apportionment of the costs for removal and relocation of the various fiber optic utility cables for all those reasons submitted and argued in the *in camera* portion of the Evidentiary Hearing found at pages 1233 through 1284 of the Transcript of Proceedings herein.

4. Respondent objects to that part of the Proposed Order herein apportioning the costs involved with the 16'6" vertical clearance to Respondent. (Proposed Order at pages 4-6.) Respondent submits that Illinois Department of Transportation (hereinafter "IDOT") Exhibit A, Minimum Design Guidelines/Federal Procedures for Highway Improvements **mandates a minimum clearance for such structures at 16'3"**. (Transcript at page 1359.) The only exception allowing a 14'6" clearance is where it would be "unreasonably costly" for a higher clearance. (IDOT Ex. A.) Respondent submits that IDOT failed to prove by a preponderance of the evidence that the additional cost to the project of \$280,000.00 for the higher clearance is "unreasonable" on a \$3.4 million project. Rather, IDOT submitted only a bare conclusion, without more, that the added cost would be unreasonable. On the other hand, the increase in cost is totally reasonable, particularly given the types and amounts of traffic that will be using this Meredith Drive roadway (Transcript at pages 1350-1359) and the attendant safety to the public using both the roadway and the passenger train service on this rail line. (Transcript at pages 1315-1320.)

Moreover, Respondent submitted by clear and convincing evidence that the increase in clearance is specifically for the safety of the public, and therefore that the public Parties to this proceeding should share in the costs of this safety measure in accordance with the benefits accruing to the respective Parties. UPRR Exhibit B "Guidelines for Design and Construction of Grade Separation Underpass Structures" was submitted into evidence. (Transcript at page 1315.) The 16'6" clearance is designed specifically as a "protective device[] to ensure that [the] structure will be protected from oversized and unauthorized high loads." (UPRR Exhibit B at page 8.) Respondent submitted evidence that the higher clearance structure would benefit the taxpaying public using any of the approximately six (6) AmTrak trains that travel this rail corridor every day. (Transcript at page 1317.) The greater clearance would also protect the vehicular traveling taxpaying public using Meredith Drive as well, including Village of Sherman residents and public travelers using Meredith Drive to patronize businesses in the area or to reach other areas of the County of Sangamon or State of Illinois. (Transcript at pages 1317-1318 (UPRR Witness McKernan); 1354-1359 (IDOT Witness Fountain).)

In short, the additional cost for the 16'6" clearance is not unreasonable and is, in fact, more than reasonable particularly when taking into consideration that it is necessary for the safety of the local, county, statewide and even national traveling public. As such, that additional cost should not be borne solely by this Respondent, but should rather should be apportioned among all of the Parties including the Village of Sherman, County of Sangamon, Illinois Department of Transportation and the Grade Crossing Protection Fund. Respondent respectfully requests that the \$280,462.00 cost for the higher clearance be considered a total Project Cost apportioned among the Parties hereto.

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Respectfully submitted,

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

By: 

Dean W. Jackson, Esq., No. 6185532
938 South Fourth Street
Springfield, Illinois 62703
(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:

Ms. Stacey Hollo, Esq.
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

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

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

Mr. Scott Kains, Esq.
Sangamon County Assistant State's Attorney
200 South Ninth Street
Room 402
Springfield, Illinois 62701

789-0028

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 30th day of May 2003.


Dean W. Jackson

FEE CALCULATION FORM

PUBLIC PROJECTS PERMANENT & TEMPORARY EASEMENT FEE

T89-0028

ILLINOIS COMMERCE COMMISSION

SPRINGFIELD SUBDIVISION

MILE POST ?

SHERMAN, SANGAMON COUNTY, ILLINOIS

Temporary Fee = Area X ATF Value X 13% X No. of Years In Use

PARCEL NUMBER	AREA (Sq Ft)	VALUE ORIGINATION	ATF VALUE/AC	LAND VALUE	CAP RATE	ANNUAL FEE
1	18,000.00	Gloodt	\$5,500.00	\$2,272.73	0.13	\$295.45
2	34,000.00	Gloodt	\$5,500.00	\$4,292.93	0.13	\$558.08
TOTAL ANNUAL TEMPORARY FEE =						\$853.54
2 YEARS TEMPORARY USE =						\$1,707.07
TOTAL TEMPORARY FEE =						\$1,707

Permanent License Fee = Area X ATF Value X Discount

PARCEL NUMBER	AREA (Acres)	VALUE ORIGINATION	ATF VALUE/AC	LAND VALUE	DISCOUNT	ONE TIME FEE
1	0.67	Gloodt	\$5,500.00	\$3,702.05	50%	\$1,851.03
TOTAL PERMANENT FEE =						\$1,851.03
\$1,000 ADMINISTRATIVE FEE						\$1,000.00
TOTAL CONSIDERATION =						\$4,558

T89-0028

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

DESCRIPTION OF WORK:
RECOLLECTIBLE GRADE SEPARATION PROJECT (RRO)
COST TO BE BORNE BY: COUNTY OF SANGAMON (USING FEDERAL FUNDS)
MEREDITH DRIVE, M.P. 179.0, SHERMAN, ILLINOIS
SPRINGFIELD SUBDIVISION
INSTALL 160 TF OF RAIL. INSTALL 80 WOOD TIES

PID: 42135 AWO: 06052 MP, SUBDIV: 179.00, SPRINGFLD
SERVICE UNIT: 04 CITY: SPRINGFIELD STATE: IL

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			10952		10952		10952
LABOR ADDITIVE			15224		15224		15224
TOTAL ENGINEERING			26176		26176		26176
SIGNAL WORK							
LABOR ADDITIVE 78%			1328		1328		1328
MATL STORE EXPENSE				2	2		2
SALES TAX				1	1		1
SIGNAL			1703	45	1748		1748
TOTAL SIGNAL			3031	48	3079		3079
TRACK & SURFACE WORK							
BALAST	5.00	CL	1111	3049	4160		4160
EQUIPMENT RENTAL				1800	1800		1800
LABOR ADDITIVE 78%			9535		9535		9535
MATL STORE EXPENSE				79	79		79
OTM			912	837	1749		1749
RAIL	320.00	LF	705	1539	2244		2244
RDBED/ROWAY-			135000		135000		135000
SALES TAX				361	361		361
TRACK-INSTAL			13551		13551		13551
TRK-SURF.LIN			3339		3339		3339
WELD			231	775	1006		1006
WORK TRAIN			573		573		573
WT/CS ADDITIVE			1833		1833		1833
XTIE	80.00	EA	742	2899	3641		3641
TOTAL TRACK & SURFACE			167532	11339	178871		178871
LABOR/MATERIAL EXPENSE			196739	11387			
RECOLLECTIBLE/UPRR EXPENSE					208126	0	
ESTIMATED PROJECT COST							208126
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.