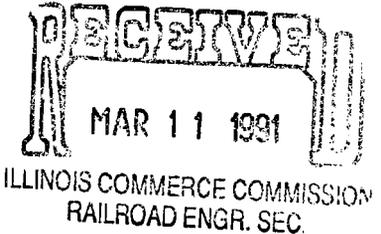


9:340(3)

STATE OF ILLINOIS
BEFORE THE
ILLINOIS COMMERCE COMMISSION

VILLAGE OF FRANKLIN PARK, ILLINOIS,)	
)	
Petitioner,)	
)	
vs.)	No. T90-0022
)	
INDIANA HARBOR BELT RAILROAD COMPANY,)	
)	
SOO LINE RAILROAD COMPANY,)	
)	
WISCONSIN CENTRAL, LTD., and)	
)	
STATE OF ILLINOIS)	
DEPARTMENT OF TRANSPORTATION,)	
)	
Respondents.)	

Petition for an Order regarding a separation of grades and construction of a bridge carrying the tracks of said Railway Companies over an underpass at Grand Avenue, Village of Franklin Park, Cook County, Illinois, apportioning costs thereof and directing an appropriate portion thereof to be borne by the Grade Crossing Protection Fund.



VILLAGE'S BRIEF ON EXCEPTIONS
TO HEARING EXAMINER'S PROPOSED ORDER

Now comes the Village of Franklin Park, a municipal corporation, and Petitioner herein, and respectfully submits its Brief on Exceptions to the Hearing Examiner's Proposed Order. The Village of Franklin Park (hereinafter "Village"), cites and submits exceptions and proposed modifications as follows:

- (1) The average daily traffic (ADT) count cited in the

Proposed Order at pages 3 and 5 indicates an ADT of 21,000. Based upon the Affidavit of Mark M. Lucas, attached hereto, more current 1990 information indicates that the ADT is more correctly stated at 27,600. A modification to reflect the higher count is further supportive of the Proposed Order's conclusion as shown on page 5 as to the existence of "... the extremely heavy traffic volume ..." upon Grand Avenue. The Village requests modification of the Proposed Order to reflect the values as indicated.

(2) Upon examination of the currently available exhibits and technical information, it appears that the Wisconsin Central interchange track extends from the WC north of Park Lane Avenue to the southwest and connects with the IHB at or slightly south of Chestnut Avenue, resulting in the interchange track encompassing street right-of-way at Chestnut Avenue. Therefore, the Village takes exception and requests modification to the Proposed Order at page 4 and at page 9. The proposed modification at page 4 would include the following reference at the described highway-railroad grade crossing of Chestnut Avenue/IHB:

"... (including Chestnut Avenue/WC interchange)"

The modification requested at page 9 is to add the reference "Chestnut Avenue" after the reference to Parklane Avenue in the eleventh line of the first full paragraph on said page 9.

The modification to the Order at page 9 is intended to assure the authorization for the removal of the WC interchange

track at all locations effecting street right-of-way.

(3) That the findings be modified by adding the following:

"(14) In the interest of public safety, convenience and necessity, the project and improvements herein before described require the acquisition of certain real property for use as roadway and railroad right-of-way, partially and preliminarily as identified on Petitioner's Exhibits #20 and #21, and that the acquisition for the aforementioned public purposes of such real property and any additional real property as required for the completion of the improvements shall be undertaken in accord with the guidelines as established and published by the Illinois Department of Transportation; and the parties receiving operational and jurisdictional responsibility for the right-of-way should be identified as being in sufficient interest, as accepted by each of said parties for purposes of its performance hereunder."

The purposes for including the above finding is (i) acknowledgement of evidentiary materials submitted to date with respect to the issues associated with acquisition of right-of-way; (ii) recognition of propriety of identification of interest in the party having operational and jurisdictional responsibility upon the completion of the Project; and (iii) identification of the regulatory procedures to be applied in the performance of acquisition procedures.

(4) As supported by Finding (9) and the recognition of the provisions embraced in the above proposed Finding (14), exception is taken to the omission of references to the responsibilities of the parties to provide for the transfer and conveyance of real property interests during the course of this Project to the parties of proper operational and jurisdictional responsibility.

Also, so as to provide for Project required relocation of right-of-way without compensation for abandoned right-of-way, modification is proposed by the insertion of the following paragraph after the second full paragraph appearing on page 10 of the Proposed Order:

"IT IS FURTHER ORDERED that the Indiana Harbor Belt Railroad Company be, and it is hereby, required and directed to transfer and convey, or cause to be transferred and conveyed, without further compensation or monetary consideration, to the Village all real property title and possessory interest to the existing IHB right-of-way from 80' south of Grand Avenue to Franklin Avenue for construction of roadway as exchange for the relocated right-of-way herein provided to the IHB."

The Village contends that the IHB effectively receives just compensation by virtue of the relocation to replacement right-of-way acquired by Project funds for that purpose and that the expenditure of additional Project funds to acquire Project required right-of-way is unwarranted and inconsistent with State right-of-way relocation policies.

(5) The Village, being of limited annual budgetary resources, requests that the Proposed Order be modified to include the following paragraph as the first full paragraph on page 11 of the Proposed Order:

"IT IS FURTHER ORDERED since the highway underpass structure and related roadway construction will be performed by the Village of Franklin Park and/or its contractor(s), that payments for performance of the Project be drawn from the Project funding directly upon application without requirement that such expenses be first paid by the Village."

(6) The Proposed Order provides in the second full paragraph on page 11 that the Village bear the cost of maintenance on the new access roadway to be constructed on the

existing IHB right-of-way and "all other roadway improvements" which are part of this Project. No exception is taken to the requirement relative to the maintenance costs associated with the construction on the existing IHB right-of-way. However, exception is taken with respect to roadways that will be constructed solely for purposes of limited access by property owners and operators located north of Grand Avenue, wherein private drives and limited access may accrue to the benefit of the private party as a result of right-of-way acquisition procedures and not necessitate a declaration as a public roadway.

Wherefore, the Village takes exception and proposes modification of the second full paragraph appearing on page 11 by inserting the following after the word "improvements" where it appears at line 4 of said paragraph:

"..., except as to proposed access roads established as private drives, ..."

(7) The Proposed Order requires submittal of plans and estimates by the Village to the parties, excluding SOO, for purposes of receiving approval before awarding a contract for construction. It is respectfully requested, and exception taken, that the language of the fourth full paragraph on page 11 be modified by establishing a time reference for approval and a resolution of differences through further jurisdictional participation of the Hearing Examiner; to wit: by adding the following language to the said fourth full paragraph on page 11:

"..., which approval or suggested modifications shall be given within thirty (30) days of receipt by the named

parties, or as extended by mutual agreement, provided, if the parties do not approve and are not able to reach agreement, continued jurisdiction is vested with the Hearing Examiner to resolve disagreement at a meeting of the listed parties noticed for such purposes."

(8) That the Village, IDOT and the Project Engineers have consulted with respect to the requirements for environmental site assessments and have recognized that there will be required certain Phase I site audit report work and Phase II sampling reports relative to the environmental site assessment prior to commencement of final plan preparation. Based on this additional information and recognition of its probable impact upon the Project schedule, it is projected that completion of construction will not occur by the date specified in the Proposed Order. Attached hereto is the Affidavit of Mark M. Lucas, which at paragraph (2) sets forth the projection of completion in a revised construction schedule of September 30, 1994.

It is therefore the request for modification by the Village that the third full paragraph on page 11 be modified by deleting the reference to the date "December 31, 1993" where it appears therein and inserting in lieu thereof the date "September 30, 1994."

(9) Given the inclusion by reference of certain federal guidelines in the event that federal funding is, in fact, utilized in the Project funding, a contingency currently contemplated, it is proposed that modification occur to the second full paragraph on page 12 in order to embrace amendments

to the cited provisions that are being incorporated, if such amendments be required by law, and also in order to afford opportunity for assessment of impact of such revisions upon the Project and upon the Order if they become operative and retroactively applicable to the Project. It is proposed that modification occur by adding the following language to the said second full paragraph appearing on page 12 of the Proposed Order:

"..., as such may be amended if by law, and in the event of conflict with this Order, this Order shall prevail absent modification."

(10) It is noted that throughout the Proposed Order, it is contemplated that the findings and the specific paragraphs constituting ordered activities include the Illinois Department of Transportation. Inasmuch as the performance by the parties identified in the third full paragraph on page 12 may in large part depend upon the performance of the Illinois Department of Transportation, both as expressly ordered within the context of the Proposed Order and as may be required to perform pursuant to statutory and regulatory guidelines/standards impacting the administration and implementation of the Project work, it is requested that the Proposed Order be modified at the third full paragraph on page 11 and the third full paragraph on page 12 to include reference to the Illinois Department of Transportation.

(11) The Village has been advised by the Project Engineers, by whom continuing efforts are being made towards the design engineering of the Project, that additional relief may be

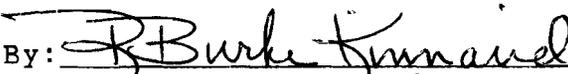
required with respect to the Chestnut Avenue crossing. Continuing engineering analysis of the proposed Chestnut Avenue crossing indicates that existing site conditions require variation to Commission criteria in order to construct a new crossing. The proximities of the Chestnut/Commerce intersection to the west and the Chestnut/Birch intersection to the east will not permit a crossing to be constructed for either existing or proposed conditions. As indicated in the attached Affidavit of Mark M. Lucas at paragraph (3), the Engineer has prepared a profile for Chestnut Avenue indicating the need for variance given the sag vertical curve lengths of eighty (80) feet and seventy (70) feet versus the twenty (20) mile per hour design speed requirement of ninety-three (93) feet. At the same time as noting this, it is clear that the evidence was overwhelming in support of retaining the Chestnut Street crossing and proceeding with the proposed Project. Given the Engineer's assertion of belief that the proposed design is adequate and appropriate for purposes of the Project and the argument supportive for receipt of variance to the Commission's criteria, it is respectfully requested and proposed by the Village that variance be included within the Order issued under these proceedings. In further petition for the inclusion of such variance, it is noted that the inclusion will facilitate the design activities, without any apparent prejudice to any of the parties, and will serve to benefit the economic deployment of resources without detriment to any person or party.

It is therefore requested that the Order be modified by adding provision for the variance of the required ninety-three (93) feet to the sag vertical curve lengths of eighty (80) feet and seventy (70) feet as shown on the exhibit attached to the Affidavit of Mark M. Lucas, and for such further relief by variance as required and appropriate.

WHEREFORE, Petitioner Village prays that the exceptions and modifications herein above submitted and proposed be incorporated into the Order of the Commission with respect to the above-referenced Docket #T90-0022 and made a part of the final Order thereon.

Respectfully submitted,

THE VILLAGE OF FRANKLIN PARK, ILLINOIS,
A Municipal Corporation and Petitioner
Herein

By: 
R. Burke Kinnaird
Village Attorney for the
Village of Franklin Park

LAW OFFICES OF R. BURKE KINNAIRD
Attorney Number 22574
8420 West Bryn Mawr Avenue
Suite 860
Chicago, Illinois 60631
(312) 693-6700

20:335(3)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF MARK M. LUCAS

The undersigned Affiant is an Engineer with Envirodyne Engineers, Inc., and is assigned duties as the Project Manager for the Project which is the subject matter of Docket #T90-0022 before the Illinois Commerce Commission. As Engineer and Project Manager, the undersigned provided evidence and testimony before the Hearing Examiner during the public proceedings held with respect to Docket #T90-0022.

The undersigned Affiant has had an opportunity to review the proposed Order of the Hearing Examiner with respect to ICC Docket #T90-0022 and, with respect to factual circumstances referenced therein, by this Affidavit seeks to provide relevant information for purposes of consideration in the finalization of any Order to be issued:

(1) With respect to the Average Daily Traffic on Grand Avenue, which is referenced on pages 3 and 5 on the Proposed Order, based on further traffic analysis and actual counts and recent coordination with the Chicago Area Transportation Study (CATS), it has been determined that the 1990 Average Daily Traffic on Grand Avenue within the Project limits is 27,600 as opposed to the referenced 21,000.

(2) The Petitioner and the undersigned reported to the Hearing Examiner at the December 4, 1990, proceedings that environmental site assessment work was required on the real property required for the construction of the Project. The Illinois Department of Transportation requires that the Phase I site audit report and most likely Phase II sampling reports, with plan of any required remedial action, be performed prior to commencement of final plan preparation. Based on this additional information, it is projected that completion of construction will not occur by the December 31, 1993, date specified in the proposed Order but rather by September 30, 1994.

(3) Further engineering analysis of the proposed Chestnut Street crossing indicates that existing site conditions require variation to Commission criteria in order to construct a new crossing. The proximities of the Chestnut/Commerce intersection to the West and the Chestnut/Birch intersection to the east would not permit a proper crossing to be constructed for either existing or proposed conditions. I have caused to be prepared a proposed profile for Chestnut Street that provides improved vertical geometry at the crossing, although it requires a variation to the Commission's criteria. A flatter condition at the tracks than currently exists would be provided. Crest vertical curve lengths of fifty (50) feet and sixty (60) feet meet the requirements for a twenty (20) mile per hour design speed, while the sag vertical curve lengths of eighty (80) feet and seventy (70) feet are somewhat less than the twenty (20) mile

per hour design speed requirement of ninety-three (93) feet. However, given the geometry of the existing crossing and the low speed local nature of traffic using the crossing, I believe the proposed design is adequate and appropriate for purposes of receiving variance to the Commission's criteria. Attached hereto is a copy of the proposed profile for Chestnut Street at the crossing.

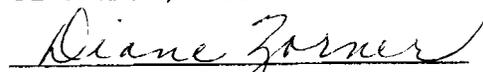
(4) The foregoing information, if implemented by way of modification of the proposed Order and additional grant of variance to the Commission's criteria relative to the Chestnut Street crossing, should not operate to prejudice any party to the proceedings and will recognize established engineering and project management efficiencies complementary to the final project.

Further this Affiant sayeth naught.



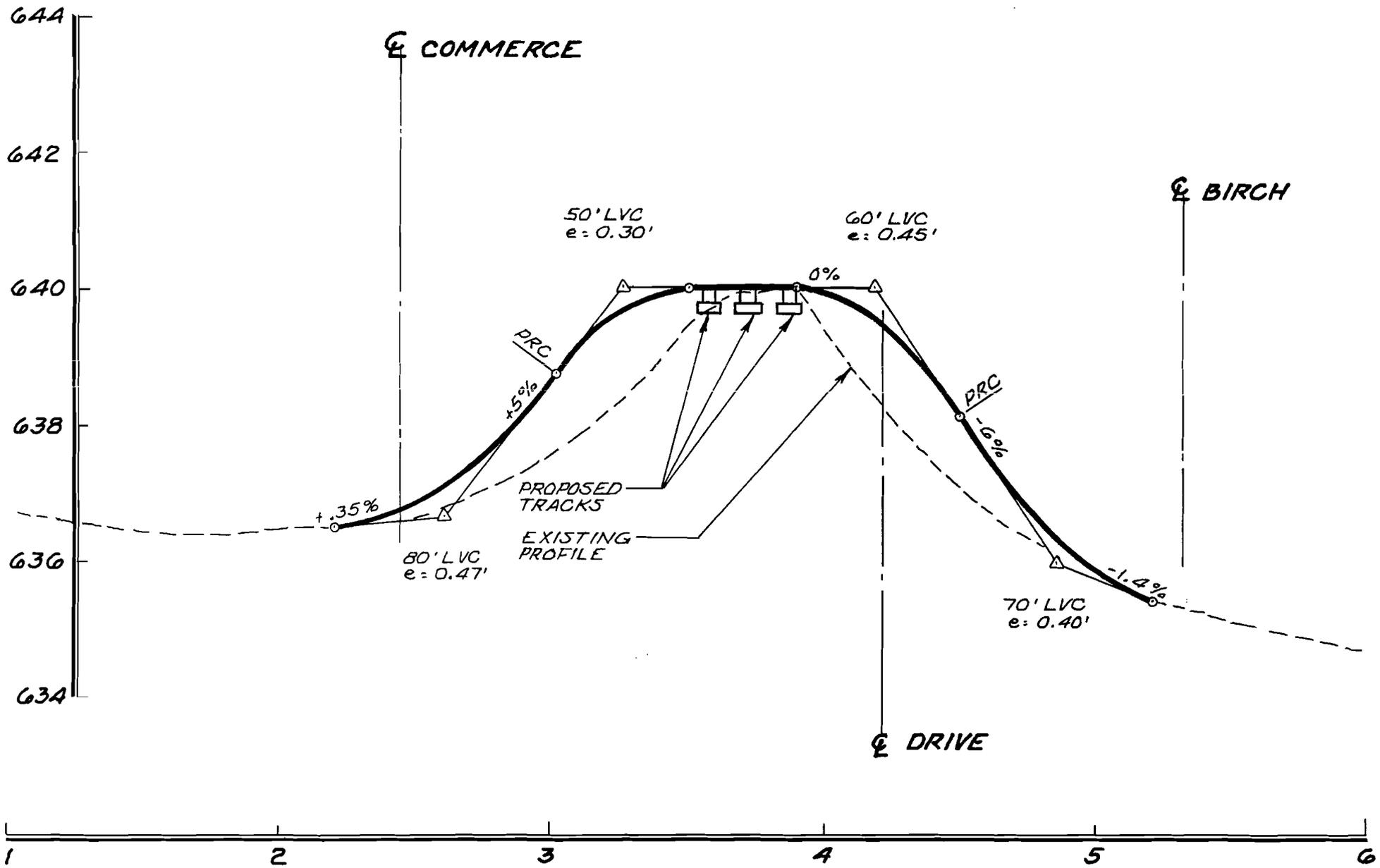
Mark M. Lucas, P.E.

Subscribed and sworn to
before me this 8th day
of March, 1991.



Notary Public





**CHESTNUT STREET
CROSSING**

3-1-91

STATE OF ILLINOIS
BEFORE THE
ILLINOIS COMMERCE COMMISSION

VILLAGE OF FRANKLIN PARK, ILLINOIS,)	
)	
Petitioner,)	
)	
vs.)	No. T90-0022
)	
INDIANA HARBOR BELT RAILROAD COMPANY,)	
)	
SOO LINE RAILROAD COMPANY,)	
)	
WISCONSIN CENTRAL, LTD., and)	
)	
STATE OF ILLINOIS)	
DEPARTMENT OF TRANSPORTATION,)	
)	
Respondents.)	

Petition for an Order regarding a separation of grades and construction of a bridge carrying the tracks of said Railway Companies over an underpass at Grand Avenue, Village of Franklin Park, Cook County, Illinois, apportioning costs thereof and directing an appropriate portion thereof to be borne by the Grade Crossing Protection Fund.

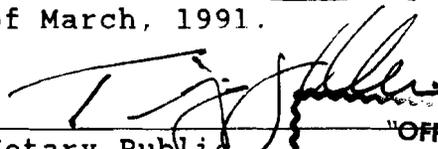
PROOF OF FILING

R. Burke Kinnaird does hereby certify that an original and eleven (11) copies of the foregoing Village's Brief on Exceptions to Hearing Examiner's Proposed Order, pursuant to authorization and direction from the staff of the Illinois Commerce Commission given March 8, 1991, was served upon and filed with the Illinois Commerce Commission this 8th day of March, 1991, by mailing the same to The Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, postage prepaid at the U.S. post Office, O'Hare Airport Station, Chicago, Cook County, Illinois.

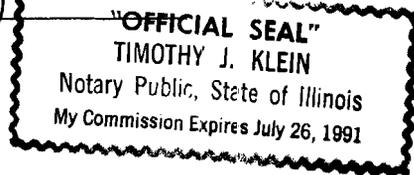
The undersigned, upon oath and as specified by the ICC staff, notes authority as given for such filing in that March 8, 1991, is the appropriate date for filing, that the party received the Proposed Order by mail from the ICC and, in fact, after seven (7) days from its issuance, and that no person or party will be prejudiced by the authority so given by the representative responding on behalf of the Clerk of the Commission.



Subscribed and Sworn to
before me this 8th day
of March, 1991.



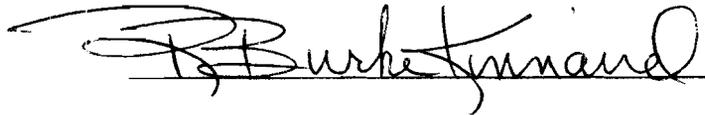
Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

PROCF OF SERVICE

R. Burke Kinnaird does hereby certify that a copy of the Village's Brief on Exceptions to Hearing Examiner's Proposed Order in the above and foregoing matter was duly served upon Mr. Roger Serpe, designated agent for the Indiana Harbor Belt Railroad Company, 175 West Jackson, Suite 1460, Chicago, Illinois 60604; Michael G. Artery, designated agent for SOO Line Railroad Company, 547 West Jackson Boulevard, Suite 1501, Chicago, Illinois 60606; Ms. Janet H. Gilbert, designated agent for the Wisconsin Central, Ltd., at P.O. Box 5062, Rosemont, Illinois 60017-5062; and Mr. Ralph Wehner, Director, Division of Highways, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois, 62764, and on the addressees listed on the attachment hereto, by mailing the same to them postage prepaid at the U.S. Post Office, O'Hare Airport Station, Chicago, Cook County, Illinois, on the 8th day of March, 1991, A.D.



J. D. Cossel
Design and Construction
Chief Engineer, IHB RR
Attention: K. R. Autenrieth
15 North 32nd Street
Room 1200
Philadelphia, Pennsylvania 19104

Glenn Kerbs
Wisconsin Central Railroad, Ltd.
P.o. Box 562
Rosemont, Illinois 60017-5062

Mark Lucas, Project Engineer
Envirodyne Engineers
168 North Clinton Street
Chicago, Illinois 60606

Bernard L. Morris, Hearing Officer
Chief Railroad Engineer
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, Illinois 62794-9280

Kenneth Rusk
Railroad Engineering Section
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, Illinois 62794-9280

James C. Slifer, P.E., District Engineer
c/o Feroz Nathani, Chief
Local Roads Section
Illinois Department of Transportation
Division of Highways/District 1
201 West Center Court
Schaumburg, Illinois 60196-1096

Lief Thorson
Soo Line Railroad Company
P.O. Box 630
Minneapolis, Minnesota 55440