

ORIGINAL

STATE OF ILLINOIS
BEFORE THE
ILLINOIS COMMERCE COMMISSION

VILLAGE OF FRANKLIN PARK, ILLINOIS,)
)
Petitioner,)
)
v.)
)
INDIANA HARBOR BELT RAILROAD CO.,)
SOO LINE RAILROAD CO.,)
WISCONSIN CENTRAL, LTD., and)
STATE OF ILLINOIS, DEPARTMENT OF)
TRANSPORTATION,)
)
Respondents.)

NO. T90-0022

ILLINOIS COMMERCE
COMMISSION
Mar 18 8 49 AM '91
TRANSPORTATION DIV.

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.

REPLY BRIEF TO EXCEPTIONS OF
WISCONSIN CENTRAL, LTD.
and
VILLAGE OF FRANKLIN PARK
TO PROPOSED ORDER

On February 22, 1991, a Proposed Order was entered in the above captioned matter. Wisconsin Central, Ltd. and the Village of Franklin Park submitted briefs with exceptions to the Proposed Order on March 8, 1991.

The Indiana Harbor Belt Railroad Company hereby files the following reply to the exceptions raised by Wisconsin Central, Ltd. and the Village of Franklin Park.

DOCKETED

I

**Reply to Exceptions Presented by
Wisconsin Central, Ltd.**

Wisconsin Central, Ltd., in its brief, raised two exceptions pertaining to Appendix A. The IHB concurs with Paragraph 1 of Wisconsin Central's brief.* However, in Paragraph 2 Wisconsin Central asks that the last sentence of Appendix A be corrected to state: ". . .the cost of future maintenance and operation of the Chestnut Street grade crossing warning devices shall be paid 58.33% by IHB and 41.67% by the WC."

The division requested by WC in Paragraph 1 is based upon the railroads' division of the total cost of the underlying separation project. This initial division is reasonable and supported by the evidence produced at the various hearings since IHB will ultimately have two tracks relocated while WC will have only one. The logic associated with the initial division does not carry over to the maintenance of the grade crossing warning devices since the cost of maintaining warning devices will not be dependent upon the number of tracks at the crossing.

* [The IHB assumes the percentages given by WC are stated in terms of ratio of the railroads' total 5% participation in the project. In terms of the overall project the percentages would be 2.9165 IHB and 2.0835 WC.]

IHB understands that each railroad will maintain, at their own expense, the circuitry involved. The maintenance expense in question pertains to the gates and flashers. This maintenance cost would be the same regardless of the number of tracks located at the Chestnut Street grade crossing and, therefore, the expense of maintaining the warning devices should be divided equally between IHB and WC.

II

Reply to Exceptions Presented by Village of Franklin Park

The Village of Franklin Park presented numerous exceptions to the Proposed Order and IHB has no objection to Paragraphs 1, 2, 6, 7, 8, 10 and 11 of the Village's brief.

A.

In reply to Paragraph 3 of the Village's brief the IHB objects to the inclusion of the Village's proposed finding 14. While IHB acknowledges that the Commission is required to adhere to certain legislative guidelines, no evidence was presented regarding the applicability or interpretation of specific guidelines pertaining to the acquisition of real property. No evidence was produced regarding the establishment of operational and/or jurisdictional responsibility of the IHB and, therefore, is not properly addressed in this Order. Finally, the Commission clearly must approve the taking of any railroad operating property before condemnation proceedings can be instituted but the

Commission's authority ends at that determination. The parties rights and obligations in a condemnation proceeding are governed by applicable Illinois Statutes.

B.

The IHB strongly objects to Paragraph 4 of the Village's exceptions. In essence, the Village is asking the IHB to donate its right-of-way from 80 feet south of Grand Avenue to the point where it reaches Franklin Avenue to the Village as well as making the financial contribution required under the Proposed Order. This clearly is not consistent with the laws of the State of Illinois or with any of its right-of-way relocation policies.

The right-of-way described by the Village is a valuable asset belonging to the IHB. Generally speaking, the IHB has a fee simple interest in that real estate. It is certainly conceivable (absent this project) that future railroad operations and requirements might have changed sufficiently to allow the IHB to abandon this property and possibly sell or lease it and thereby receive compensation in return.

No evidence was presented in this hearing to indicate the type of interest the IHB will have in its relocated right-of-way. In fact the only information provided by way of describing the subsequent interest in real property the IHB will have indicates the IHB cannot receive a fee simple interest in any property to be acquired from the WC. The WC

had advised all parties to the proceeding that certain agreements executed by the WC in its formation prohibits the sale of any of its operating right-of-way. The IHB's understanding of the project is that a portion of its relocated right-of-way would come from the WC and a portion from Village purchases. No evidence was presented by the Village to establish the interest the IHB would have in Village acquired real estate. Consequently, the hearing examiner has no record before him to consider this issue as it pertains to Village acquired right-of-way and the information that was provided as to right-of-way acquired from WC, was that the IHB cannot have a fee simple interest in the property.

Assuming arguendo that the IHB could receive a fee simple interest in the relocated right-of-way, IHB would still suffer damage. No two parcels of real estate are exactly the same. The value of the two assets would not be equal. The relocated right-of-way will have the track of the WC as a boundary to the east. The existing IHB right-of-way was not isolated from adjacent landowners by any other railroad's line of track. In addition, other important factors must be considered in determining any net loss created by the exchange. The IHB was not given any opportunity to present any evidence in this regard.

Most importantly, while the Commission must approve the taking of railroad operating property, it does not have

authority to establish "just compensation." Absent an agreement between the parties, the Commission can and must approve the taking but cannot establish "just compensation". Any railroad required to surrender its property is entitled to a hearing before a court of competent jurisdiction to determine the "just compensation" to be paid for the taking. The IHB has not and does not waive that right in this proceeding. No other entity affected or participating in this project has been asked to make this type of sacrifice to further the progress of this project.

C.

The IHB objects to the inclusion of the paragraph described in Paragraph 5 of the Village's brief to the extent it deviates from standard billing procedures and the evidence presented. It is our understanding of this project that the Village, in essence, is functioning as the contractor and, therefore, must approve bills before payment. No evidence was produced during this proceeding outlining the billing procedures after such approval. If the Village's request would require the railroads to prepay their pro rata share of the cost of the project into the Project Fund, the IHB objects. The evidence presented to date indicates railroad payments and receipts were to be offset as the project progresses.

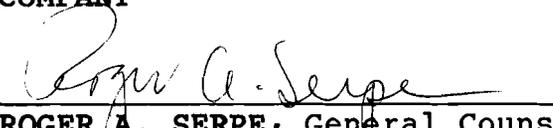
D.

To the extent that the addition described in the Village's brief Paragraph 9 might be construed to permit a modification of the railroad's financial participation beyond a total of five percent of the project and a cap of \$848,550.00, the IHB objects to any such addition.

WHEREFORE, Respondent INDIANA HARBOR BELT RAILROAD COMPANY, files this reply to the exceptions presented by the WC, co-respondent and the Village of Franklin Park, petitioner respectively, and asks that the objections and modifications herein submitted be accepted and incorporated into the Order of the Commission and be made a part of any final Order entered in this proceeding.

INDIANA HARBOR BELT RAILROAD
COMPANY

By:

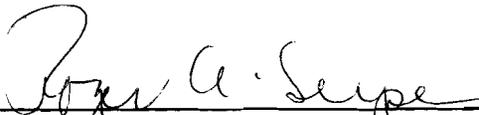


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PROOF OF SERVICE

Roger A. Serpe, Attorney for Indiana Harbor Belt Railroad Company, does hereby certify that a copy of the Reply Brief to Exceptions of Wisconsin Central, Ltd. and Village of Franklin Park to Proposed Order in the above and foregoing matter was duly served upon R. Burke Kinnaird, Village Attorney, Village of Franklin Park, 8420 West Bryn Mawr Avenue, Suite 860, Chicago, Illinois 60631; Michael G. Artery, designated agent for SOO Line Railroad Company, 547 West Jackson Blvd., 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 175 West Jackson Boulevard, Chicago, Illinois 60604 on the 15th day of March, 1991.



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