

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

VILLAGE OF FRANKLIN PARK, ILLINOIS,)
 Petitioner,)
 vs.)
 INDIANA HARBOR BELT RAILROAD COMPANY,)
 SOO LINE RAILROAD CO., WISCONSIN CENTRAL,)
 LTD., and STATE OF ILLINOIS DEPARTMENT OF)
 TRANSPORTATION,)
 Respondents,)
)
 GRAND AVENUE RAILROAD RELOCATION)
 AUTHORITY,)
 Intervenor.)
)
 PETITION FOR AN ORDER REGARDING A)
 SEPARATION OF GRADES AND OF A BRIDGE)
 CARRYING THE TRACKS OF THE INDIANA)
 HARBOR BELT RAILROAD COMPANY, SOO LINE)
 RAILROAD COMPANY, WISCONSIN CENTRAL,)
 LTD., OVER AN UNDERPASS AT GRAND AVENUE)
 IN THE VILLAGE OF FRANKLIN PARK, COOK)
 COUNTY, ILLINOIS, APPORTIONING THE COSTS)
 THEREOF AND DIRECTING AN APPROPRIATE)
 PORTION THEREOF TO BE BORNE BY THE GRADE)
 CROSSING PROTECTION FUND.)

No. T90-0022

RECEIVED
 SEP 27 2005
 Illinois Commerce Commission
 RAIL SAFETY SECTION

PETITION FOR A FIFTH SUPPLEMENTAL ORDER

The Grand Avenue Railroad Relocation Authority, a unit of local government, and the Village of Franklin Park, Cook County, Illinois, a municipal corporation petitions the Illinois Commerce Commission (the "Commission") for a fifth supplemental order to modify the orders previously entered in this matter. In support of its petition, the petitioners state as follows:

1. On April 3, 1990, the Village of Franklin Park (the "Village") filed a petition in this cause to authorize the construction of a grade separation and realignment of the Indiana Harbor Belt Railroad Company (the "IHB") right-of-way at Grand Avenue in the Village, the apportioning of the costs thereof between the Grade Crossing Protection Fund, the State of

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Illinois Department of Transportation (“IDOT”), the Village and the affected railroads related to the Grand Avenue Railroad Grade Separation Project (the “Project”).

2. On June 21, 1990, the IHB and the Wisconsin Central Railroad, Ltd. (“WC”) filed a Joint Cross Petition requesting the closure of the WC’s Chestnut Street grade crossing.

3. On September 7, 1990, the IHB and the WC filed a Joint Cross Petition requesting the closure of the WC’s Parklane Avenue grade crossing.

4. On September 26, 1990, the Village filed an Amended Petition updating the proposed project schedule and proposed cost apportionment.

5. Hearings were held on the petitions. On April 17, 1991, the Commission entered an order requiring and directing the construction of a grade separation and realignment of the IHB right of way at Grand Avenue in the Village, requiring and directing the closure of Parklane Avenue grade crossing, related signalization and other improvements; apportioning of the costs related to the Project between the Grade Crossing Protection Fund, IDOT, the Village and the IHB and WC. The order directed that a maximum of \$10,182,600 be paid from the Grade Crossing Protection Fund but limited the initial contribution to \$3,394,200.

6. On February 11, 1992, the Commission entered a supplemental order further apportioning the cost of the Project by increasing the contribution from the Grade Crossing Protection Fund to \$6,788,400.

7. On March 23, 1993, the Commission entered another supplemental order further apportioning the cost of the Project by increasing the contribution from the Grade Crossing Protection Fund to \$10,182,600.

8. The Illinois General Assembly passed Public Act 89-134, the Grand Avenue Railroad Relocation Act (the “Act”)(735 ILCS 1915/1 *et seq.*), effective July 14, 1995. The Act created the Grand Avenue Railroad Relocation Authority (the “Authority”) and charged it with the objective of accomplishing the construction of the Project as described in the Commission’s orders, specifically, the relocation of the railroads from the right-of-way of Grand Avenue and the grade separation of the railroads from the right-of-way of Grand Avenue. The Act, among other things, authorized the Authority to acquire property, accept grants, loans and appropriations, to borrow money and issue bonds, but prohibited the Authority from levying taxes.

9. Section 25 of the Act granted the Authority “quick take” condemnation powers.

10. The Authority’s “quick take” condemnation powers were continuously extended from the original grant to June 30, 2004 by Section 7-103.36 of the Illinois Code of Civil Procedure (735 ILCS 5/7-103.36), which was most recently amended by Public Act 93-61, which became effective on June 30, 2003 and provided as follows:

Quick-take; Grand Avenue Railroad Relocation Authority. Quick-take proceedings under Section 7-103 may be used for a period beginning July 14, 1995, and ending one year after the effective date of this amendatory Act of the 93rd General Assembly, by the Grand Avenue Railroad Relocation Authority for the Grand Avenue Railroad Grade Separation Project within the Village of Franklin Park, Illinois.

11. Section 110 of the Act provided that, upon order of the Commission, the Authority shall succeed and assume the performance and the actions previously ordered by the Commission relative to the Grand Avenue grade separation project.

12. On December 31, 1998, the Commission filed a Motion for Hearing Examiner's Ruling Decreasing the Amount to be paid from the Grade Crossing Protection Fund until further Order of the Illinois Commerce Commission.

13. On January 19, 1999, the Authority filed a Petition to Intervene and a Response to Motion for Hearing Examiner's Ruling Decreasing the amount to be paid from the Grade Crossing Protection Fund.

14. On February 25, 1999, the hearing examiner granted the Authority's Petition to Intervene and reduced the authorized amount obligated from the Grade Crossing Protection Fund to the Project to \$1,376,114.22 and de-obligated the sum of \$8,806,485.78.

15. Notwithstanding the de-obligation of the funds from the Grade Crossing Protection Fund, the Authority continued to perform preliminary engineering work, design engineering and land acquisition with available funds to attempt to accomplish its objective.

16. During the preparation of design drawings for the Project, it was determined that environmental issues existed on portions of the land needed to construct the Project. Due in part to the existence of these environmental issues, the costs associated with the construction of the Project exceeded the funds committed to the Project under the orders entered by the Commission on April 17, 1991, February 11, 1992 and March 23, 1993.

17. On July 29, 2002, the Authority filed a Petition to Modify the Previously Entered Orders. Hearings were held on the Petition on November 20, 2002, December 11, 2002 and May 28, 2003.

18. On April 21, 2004, the Commission issued a Third Supplemental Order further apportioning the cost of the Project by increasing the contribution of the IHB to \$678,094.00, of the WC (which is now the Canadian National Railroad) to \$484,420.00 and of the Grade Crossing Protection Fund to a maximum of \$14,000,000.00. The Third Supplemental Order limited the contribution of the Grade Crossing Protection Fund to \$4,660,000.00 during state fiscal year 2004.

19. The Third Supplemental Order required the Authority to submit Supplemental Petitions to obligate the balance of the contributions from the Grade Crossing Protection Fund, which petitions are to include evidence that the previous contributions from the Grade Crossing Protection Fund have been expended.

20. On July 2, 2004, the Authority filed a Petition for a Fourth Supplemental Order to obligate additional sums from the Grade Crossing Protection Fund.

21. On May 4, 2005, the Commission issued a Fourth Supplemental Order which obligated the sum of \$5,711,813.65 to the project during state fiscal year 2004.

22. The Authority has expended in excess of \$4,660,000.00 during state fiscal year 2005 for design engineering, land acquisition, land acquisition services and construction which expenditures are evidenced by the cancelled checks, invoices and resolutions, which are attached hereto marked as Exhibit "A" and made a part hereof.

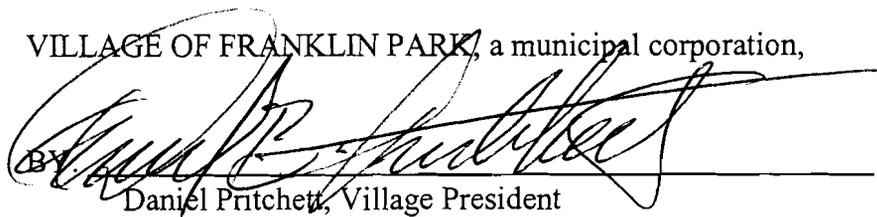
WHEREFORE, the Petitioners request that the Commission enter a Supplemental Order, providing as follows:

- A. Obligating a further contribution to the Project costs from the Grade Crossing Protection Fund in the amount of \$3,628,186.35;
- B. Recognizing that the Authority's "quick take" condemnation powers were continuously extended from the original grant to June 30, 2004 by Section 7-103.36 of the Illinois Code of Civil Procedure (735 ILCS 5/7-103.36) and recognizing the passage of Public Act 93-61;
- C. That the Authority shall succeed and assume the performance and the actions previously ordered by the Commission relative to the Grand Avenue grade separation project; and
- D. Such other and further relief as the Commission deems appropriate.

GRAND AVENUE RAILROAD RELOCATION AUTHORITY,
a unit of local government,

By: 
Peter N. Silvestri, Chairman

VILLAGE OF FRANKLIN PARK, a municipal corporation,

By: 
Daniel Pritchett, Village President

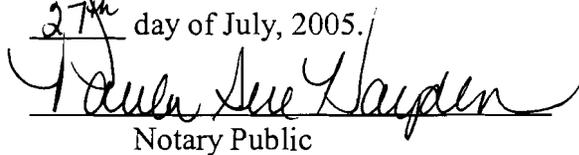
State of Illinois }
 }ss
County of Cook}

Peter N. Silvestri, being first duly sworn on oath states that he has read the above and foregoing petition, that the statements set forth in the petition are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Peter N. Silvestri, Chairman

Subscribed and sworn to before me this
27th day of July, 2005.

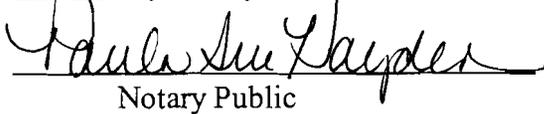
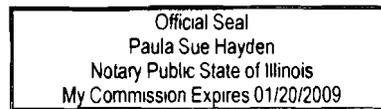

Notary Public

State of Illinois }
 }ss
County of Cook}

Daniel Pritchett, being first duly sworn on oath states that he has read the above and foregoing petition, that the statements set forth in the petition are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Daniel Pritchett, Village President

Subscribed and sworn to before me this
27th day of July, 2005.


Notary Public

Richard J. Ramello
STORINO, RAMELLO & DURKIN
Attorneys for Petitioners
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018
(847) 318-9500

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NOTICE OF FILING

To: Mr. Michael Barron, General Counsel
Wisconsin Central Division, Canadian National Railroad
17641 S. Ashland Avenue
Homewood, Illinois 60430

Mr. Paul LaDue
Canadian National Railroad
17641 South Ashland Avenue
Homewood, IL 60430

Mr. David N. Nelson, Superintendent
Indiana Harbor Belt, R.R.C.
2721 161st Street
Hammond, IN 46323-1099

Mr. Roger A. Serpe, General Counsel
Indiana Harbor Belt Railroad Company
150 N. Wacker Drive
Suite 1500
Chicago, IL 60606

Ms. Amy Vanourek
Illinois Department of Transportation
201 W. Center Court
Schaumburg, IL. 60196

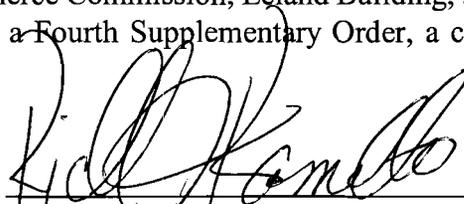
Mr. Victor Modeer, Director of Division of Highways
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764

Ms. Diana Collins, Chief Transportation Counsel
Illinois Commerce Commission
527 East Capitol
Springfield, IL 62794

Mr. Henry Humphries
Rail Safety Staff
Illinois Commerce Commission
527 East Capitol
Springfield, IL 62794

Mr. Joseph O'Brien
Hearing Examiner
Illinois Commerce Commission
527 East Capitol
Springfield, IL 62794

PLEASE TAKE NOTICE that on September 26, 2005, I filed on behalf of Grand Avenue Railroad Relocation Authority and the Village of Franklin Park in the office of the Clerk of the Transportation Division of the Illinois Commerce Commission, Leland Building, 527 East Capital Avenue, Springfield, Illinois, a Petition for a Fourth Supplementary Order, a copy of which is attached and herewith served upon you.



Richard J. Ramello, Attorney for Petitioners, the
Grand Avenue Railroad Relocation Authority and the
Village of Franklin Park.

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

CERTIFICATE OF SERVICE

The undersigned certifies that she served the foregoing document by mailing a true and accurate copy of same to:

Mr. Michael Barron, General Counsel
Wisconsin Central Division, Canadian National Railroad
17641 S.Ashland Avenue
Chicago, Illinois 60430

Mr. Paul LaDue
Canadian National Railroad
17641 South Ashland Avenue
Homewood, IL 60430

Mr. David N. Nelson, Superintendent
Indiana Harbor Belt, R.R.C.
2721 161st Street
Hammond, IN 46323-1099

Mr. Roger A. Serpe, General Counsel
Indiana Harbor Belt Railroad Company
150 N. Wacker Drive
Suite 1500
Chicago, IL 60606

Ms. Amy Vanourek
Illinois Department of Transportation
201 W. Center Court
Schaumburg, IL. 60196

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

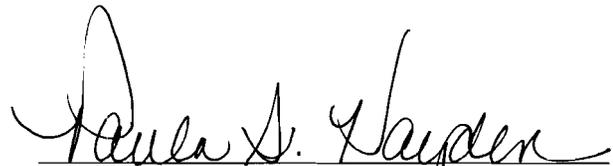
Ms. Diana Collins, Chief Transportation Counsel
Illinois Commerce Commission
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CERTIFICATE OF SERVICE

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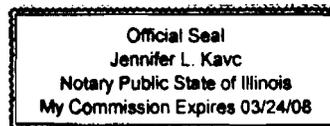
Mr. Joseph O'Brien
Hearing Examiner
Illinois Commerce Commission
527 East Capitol
Springfield, IL 62794

and depositing same, proper postage prepaid, in the U.S. mail located at 9501 W. Devon Avenue, Rosemont, Illinois, at or before 4:00 p.m. on the 26th day of September, 2005.


Paula S. Hayden

Subscribed and sworn to before me this
26th day of September, 2005.


Notary Public



Richard J. Ramello
STORINO, RAMELLO & DURKIN
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018
(847)318-9500

SEE

FORMAL

FILE OR

MICROFILM

FOR

EXH. A