



Docket Number: T90-0022  
6<sup>th</sup> Supp.  
Conference Date: 10/25/2006

MEMORANDUM

To: The Commission  
From: Joseph H. O'Brien, Administrative Law Judge  
Date: October 17, 2006  
Subject: Village of Franklin Park, Illinois,  
Petitioner,

vs.

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 the Indiana Harbor Belt Railroad Company, SOO Line Railroad Company, and the 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.

Recommendation: Affirm ruling of Administrative Law Judge.

DISCUSSION

On April 17, 1991, the Commission entered an order approving a grade separation over the tracks of the Wisconsin Central ("WC") and the Indiana Harbor Belt ("IHB") railroads in Franklin Park. The Commission has committed \$14,000,000 of Grade Crossing Protection Fund money to the project. The final payment of \$3,628,186.35 was authorized by a 5<sup>th</sup> Supplemental Order entered by the Commission on February 8, 2006.

On October 24, 2005, Petitioner filed a 6<sup>th</sup> Supplemental Petition. The petition seeks a determination by the Commission of the compensation to be paid by the IHB for use of the easement on the WC right-of-way and for use of the Grand Avenue Railroad Relocation Authority ("Authority") right-of-way resulting from the relocation of the IHB tracks. The petition asks that the Commission enter an order requiring the IHB to pay for use of the WC portion with no reimbursement from the authority, or that the IHB be required to purchase the easement rights of the Authority for the same price as paid by the Authority. The petition further asks that the IHB be ordered to pay to the Authority an amount set by the Commission for the right to operate its trains and maintain its relocated tracks on the property acquired by the Authority. An answer was filed by the IHB on November 14, 2005, asking that the Commission deny the relief sought by the 6<sup>th</sup> Supplemental Petition.

The relief sought by the instant petition is not related to the construction of the grade separation or to any matter which is within the jurisdiction of this Commission. This is a dispute between the parties concerning details of railroad operations over the relocated tracks. On September 14, 2006, an Administrative Law Judge Ruling was issued dismissing the 6<sup>th</sup>

Supplemental Petition for lack of jurisdiction. This Petition for Interlocutory Review was filed on October 4, 2006. Petitioner refers to Commission jurisdiction over all phases of grade crossing regulation. However, the dispute at hand has nothing to do with the crossing itself. In its original Petition, Petitioner admits that some of the issues involved in this dispute require an interpretation of several provisions of Public Act 89-134, the Grand Avenue Railroad Relocation Act, effective July 14, 1995. Nothing in the Illinois Commercial Transportation Law vests this Commission with authority to interpret that legislation. The ALJ Ruling of September 14, 2006, suggests that relief should be sought in the Courts of the State of Illinois and not before this Commission. I recommend that the ALJ Ruling be affirmed.