

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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MAY 19 2008

Kendall County, Illinois,
Petitioner,

Illinois Commerce Commission
RAIL SAFETY SECTION

Vs.

Illinois Department of Transportation,
Respondent

T08-0069

Petition for an Order from the Illinois Commerce Commission to
widen the existing overhead highway grade separation structure
carrying Orchard Road (County Highway 9A) over BNSF Railway
Company (U.S. D.O.T. No. 072 965G) from 2 lanes to 4 lanes, in
Kendall County, Illinois.

PROPOSED ORDER

By the Commission:

Procedural History

On April 8, 2008, Kendall County ("Petitioner" or "County") filed the above-referenced Petition with the Illinois Commerce Commission ("Commission"), naming as Respondent the Illinois Department of Transportation ("Department"), requesting the Commission issue an Order granting permission to widen the grade separation structure carrying Orchard Road (County Highway 9A) over dual railroad tracks owned and operated by BNSF Railway Company at U.S. D.O.T. No. 072 965G near Oswego, Kendall County, Illinois.

Petitioner's Evidence

The Petitioner submitted documents, attached to the original Petition as Exhibits 1, 2 and 3, which depict Kendall County's proposal to widen the existing grade separation structure from 2 lanes to 4 lanes and include an 8-foot wide sidewalk on the west side of the structure. The widened structure will have an overall length of 162'-8" (bk. to bk. abutments), 62'-6" (out to out deck) and minimum 23'-0" vertical clearance from top of rails to low steel of the bridge, as well as an HS-20 load capacity.

The Petitioner presented a copy of an Agreement between Kendall County and BNSF Railway Company; said Agreement being fully executed by both parties on March 28, 2008, wherein both parties agree to terms and conditions for widening the grade separation structure.

DOCKETED

The estimated cost to widen the grade separation structure was originally submitted to the Commission as \$2,441,793. This cost has since been revised to \$2,794,660 with absolutely no change in the division of costs that were outlined in the original Petition. All costs for this project will be borne by Kendall County.

Staff Position

Staff is of the opinion that widening the existing grade separation structure and including pedestrian facilities on the structure is in the interest of public safety, and recommends the Petitioner's request be approved.

Proposed Order

A Proposed Order granting the Petition was served on the parties on or about May 2, 2008.

Commission Findings and Order

The Commission, having given due consideration to the entire record herein, finds that:

- 1) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- 2) the recitals of fact set forth in the prefatory portion of this Order are supported by evidence of record and are adopted as findings of fact;
- 3) the Petition filed by Kendall County seeking authorization to widen the existing grade separation structure carrying Orchard Road over BNSF Railway Company, including pedestrian facilities thereto, is required by public convenience and necessity, is consistent with the policy declared in the Illinois Commercial Transportation Law and its implementing regulations, 625 ILCS 5/18c-7401(3) and 92 Ill. Adm. Code 1536.40, and should be granted;
- 4) all costs of improvements for the proposed project shall be paid 100% by the Petitioner, Kendall County;
- 5) Upon completion of the project, Kendall County shall maintain the 4-lane grade separation structure as well pedestrian facilities attached thereto. BNSF Railway Company shall continue to maintain the dual tracks below the grade separation structure;
- 6) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1000 for each such

failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED that Kendall County is hereby granted authority to widen the grade separation structure carrying Orchard Road over BNSF from 2 lanes to 4 lanes and to include pedestrian facilities on the west side of said structure, as shown in the Petition.

IT IS FURTHER ORDERED that Kendall County is hereby required and directed to proceed immediately in performing the work set forth in its Petition and the prefatory portion of this Order, and shall complete the work within twelve (12) months from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be as set forth in Finding 4, hereinabove.

IT IS FURTHER ORDERED that Kendall County shall, at six (6) month intervals from the date of this Commission Order, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report, stating the progress it has made toward completion of the work herein required. Each Project Status Report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the County's Project Manager.

IT IS FURTHER ORDERED that Kendall County shall submit a written notice to the Director of Processing, Transportation Bureau of the Commission, of the date the work herein required of it has been completed; said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Information Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to

submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this _____ day of _____, 2008.

CHARLES E. BOX
CHAIRMAN

SERVICE LIST
T08-0069

Mr. Dave Lazarides
Director of Processing
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Mr. John Saladino
Rail Safety Specialist
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

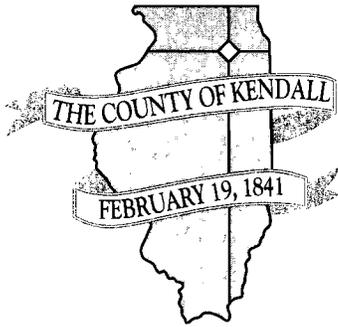
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Ms. Christine M. Reed
Director of Highways – IDOT
Attn: Jeff Harpring, Room 205
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Craig N. Rasmussen, P.E.
BNSF Manager Public Works
80 – 44th Avenue NE
Minneapolis, MN 55421

Michael G. Berry, P.E.
Hampton, Lenzini and Renwick, Inc.
3085 Stevenson Drive, Suite 201
Springfield, IL 62703



KENDALL COUNTY HIGHWAY DEPARTMENT

FRANCIS C. KLAAS COUNTY ENGINEER
6780 ROUTE 47 YORKVILLE, IL 60560 TEL 630/553-7616 FAX 630/553-9583

May 15, 2008

Dave Lazarides
Director of Processing
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

RECEIVED
MAY 19 2008

Illinois Commerce Commission
RAIL SAFETY SECTION

RE: T08-0069
Orchard Road over BNSF Railway Company

Dear Mr. Lazarides:

Enclosed please find a Proposed Order for the referenced project. Although a hearing has been scheduled in this matter for May 22, 2008 in Chicago, we ask for consideration of an Order without hearing, considering that there are no contentious issues related to this project; Kendall County already has a fully-executed agreement with BNSF Railway Company; and Kendall County is funding 100% of the project costs.

Please let me know if there is anything else you require at this time.

Sincerely,

Francis C. Klaas, P.E.
Kendall County Engineer

Enc.

cc: See Service List

JS-
LKM