STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company, Village of Deer Creek, and the State of Illinois, Department of Transportation.	:	
Stipulated Agreement regarding improving public safety at the Main Street and Perry Street highway-rail grade crossings of the Norfolk Southern Railway Company's track in the Village of Deer Creek, Tazewell County (Main Street) and Woodford County (Perry Street), designated as crossing AAR/DOT #475 106H, railroad milepost 397.50-NL, and crossing AAR/DOT #475 104U, railroad milepost 397.20-NL, respectively.	:	T08-0063

ORDER

By the Commission:

PROCEDURAL HISTORY

On January 4, 2008, January 15, 2008, February 12, 2008, and March 3, 2008, the Staff of the Illinois Commerce Commission, the Village of Deer Creek ("Village"), the Illinois Department of Transportation ("IDOT"), and the Norfolk Southern Railway Company ("Company"), respectively, executed the Stipulated Agreement 1315 according to the provisions of Section 18c-7401 of the Illinois Commercial Transportation Law. The Stipulated Agreement, which is appended hereto, provides for safety improvements at the Main Street and Perry Street highway-rail grade crossings of the Company's track in the Village of Deer Creek, Tazewell County (Main Street) and Woodford County (Perry Street), Illinois, designated as crossing AAR/DOT #475 106H, railroad milepost 397.50-NL, and crossing AAR/DOT #475 104U, railroad milepost 397.20-NL, respectively. Stipulated Agreement 1315 contains estimates of cost to accomplish the improvements and a division of cost among the parties.

COMMISSION FINDINGS AND ORDER

The Commission, having given due consideration to the Stipulated Agreement, finds that:

(1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;

(2) The physical characteristics of the subject highway - railroad grade crossing, rail and highway volumes and speeds are indicated on Exhibit A-1 (Main

Street) and Exhibit A-2 (Perry Street) of the Stipulated Agreement, appended hereto;

(3) The parties agree that in the interest of public safety the improvements as set forth in Section 2 of the Stipulated Agreement, appended hereto, should be performed;

(4) The cost for the proposed improvements should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;

(5) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund of the Motor Fuel Tax Law, the Village of Deer Creek, and the Norfolk Southern Railway Company be directed to pay their respective portions of the actual cost of the proposed improvements as set forth in Section 5 of the Stipulated Agreement, appended hereto;

(6) Public Act 93-0604 (effective November 21, 2003), which amends 625 ILCS 18c-7401 (Safety Requirements for Track, Facilities, and Equipment), requires installation of temporary STOP signs whenever the Commission authorizes the installation of automatic flashing light signals and gates at public highway-rail grade crossings. The temporary STOP signs shall remain in place until the luminous flashing signal or crossing gate devices have been installed. The rail carrier is responsible for the cost of the installation and subsequent maintenance of any required temporary STOP signs.

(7) 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 $1,000 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.

(8) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

(9) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental

Orders.

(10) 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.

(11) 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 (are) 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 THEREFORE ORDERED that the terms of Stipulated Agreement 1315, executed by the Staff of the Commission, the Village of Deer Creek, the Illinois Department of Transportation, and the Norfolk Southern Railway Company on January 4, 2008, January 15, 2008, February 12, 2008, and March 3, 2008 respectively, be, and they are hereby accepted and required to be met by all the parties.

IT IS FURTHER ORDERED that the Village of Deer Creek and the Norfolk Southern Railway Company are each hereby required and directed to proceed immediately in performing the work set forth in Section 2 of the Stipulated Agreement, appended hereto, and shall complete the work within twelve (12) months from the date of this Order.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall, within 30 days from the date of this Order, install temporary STOP signs at the Main Street grade crossing. The temporary STOP signs shall remain in place until the automatic warning devices authorized for installation by this Order are installed and operational. The Norfolk Southern Railway Company shall be responsible for the cost of the installation and subsequent maintenance of the required temporary STOP signs.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall, within 5 days of the installation, furnish a written statement to the Director of Processing and Information, of the Commission's Transportation Bureau, indicating that the temporary STOP signs have been installed at the Main Street grade crossing.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Section 5 of the Stipulated Agreement, appended hereto.

IT IS FURTHER ORDERED that all bills for crossing warning system expenditures authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois 62674. The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in this Order. The final bill for expenditures from each party shall be clearly marked "Final Bill". All bills shall meet the minimum documentation requirements set forth in Section 7 of the Stipulated Agreement, appended hereto. The Department shall not obligate any assistance from the Grade Crossing Protection Fund for the cost of proposed improvements set forth in Section 2 of the Stipulated Agreement, appended hereto, without prior approval by the Commission. The Commission shall, at the end of the 12th month from the completion date specified in this Order or any Supplemental Order, conduct a review to determine if any unused assistance from the Grade Crossing Protection Fund should be deobligated. Upon completion of the review, the Commission shall notify the Department to deobligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission showing details of the required automatic warning devices and shall receive approval by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that the Village of Deer Creek and the Norfolk Southern Railway Company shall each, at six (6) month intervals from the date of Commission Order subsequent to this Agreement, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report, attached as Exhibits E1 (Village) & E2 (Company) of the Stipulated Agreement, stating the progress each 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 Company and the Village Project Manager.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall within five (5) days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form (#6180.71) to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that the Village of Deer Creek and the Norfolk Southern Railway Company each are hereby required and directed to submit a Project Status Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been completed. Said Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information 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 making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information 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 (are) 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 Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 21st day of May 2008.

CHARLES E. BOX
Chairman

JUDGE

SECTION CHIEF MGS

ORDERS SUPERVISOR