

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ORIGINAL

DP PARTNERS AND VILLAGE OF SAUK VILLAGE, COOK :
AND WILL COUNTIES, ILLINOIS, :
Petitioners, :

v. :

ELGIN, JOLIET & EASTERN RAILWAY COMPANY :
Respondents. :

Petition for an Order of the Illinois Commerce Commission :
authorizing the establishment of four new grade crossings along the :
Logisticenter @ Sauk Village's Industrial Park Lead track owned by :
DP Partners, at Jason Rasmussen Drive in the Village of Sauk :
Village, Cook County, State of Illinois, directing interim grade :
crossing protections and subsequent installation of passive warning :
devices, the construction of the crossings proper and allocating the :
cost thereof. :

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Illinois Commerce Commission
RAIL SAFETY SECTION

T08-0045

AGREED ORDER

By the Commission:

PROCEDURAL HISTORY

On February 25, 2008, DP Partners, a Delaware corporation, filed the above-captioned verified petition with the Illinois Commerce Commission ("Commission"), naming the Village of Sauk Village ("Village") as a Co-Petitioner and the Elgin, Joliet & Eastern Railway Company ("EJ&E") as a respondent.

In the petition, DP Partners seeks Commission authorization to construct four new at-grade crossings along Logisticenter @ Sauk Village's Industrial Park Lead Track ("IPL Track") owned by DP Partners. The IPL Track, which serves the Logisticenter @ Sauk Village's Industrial Park connects to the EJ&E's mainline tracks, would cross Jason Rasmussen Drive, which is under the jurisdiction of the Village of Sauk Village, Cook County.

After the Commission gave notice as required by the Illinois Commercial Transportation Law and the Commission's Rules of Practice, Administrative Law Judge Latrice Kirkland-Montaque conducted an evidentiary hearing on May 20, 2008 at the Commission's offices in Chicago, Illinois. The Petitioner DP Partners was represented by counsel. Mark Paull, Manager Projects/Environmental and Regulatory Compliance for the EJ&E, appeared on behalf of the EJ&E. Brian Vercruyse, Railroad Safety Specialist representing the Commission's Transportation Division was present and participated in the hearing.

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The petition was uncontested. At the conclusion of the hearing, the record was marked *heard and taken*.

PROPOSED AGREED ORDER

Prior to filing the petition, the Parties and Commission Railroad Staff commenced coordination efforts on the proposed project, which included a review of the Jason Rasmussen Drive crossings. The efforts of the Parties and Staff culminated in drafting a Proposed Agreed Order, which was filed with as an attachment to the February 25, 2008 petition, then modified after the hearing by the parties with the revision filed May 28, 2008. The substance of the Proposed Agreed Order is incorporated herein.

PETITIONER'S STIPULATED EVIDENCE

Logisticcenter at Sauk Village includes the 464 acre Industrial Park south of the EJ&E mainline. In general, the Industrial Park is bounded by the EJ&E mainline to the north, the Calumet Expressway (I-394) to the east, Sauk Trail Road to the south and Cottage Grove Avenue to the west. The IPL track serving the businesses within the Industrial Park crosses Jason Rasmussen Drive, providing a connection between the Industrial Park and EJ&E. The proposed rail crossings at Jason Rasmussen Drive will complete the infrastructure requirements of the Industrial Park. The Petitioner provided testimony of James Putnam, Terrence O'Brien and Mark Paull. The Petition also provided a concurrence letter from the Village of Sauk Village indicating its support of the project and the petition.

Relative to ownership, maintenance, and rail operations over the crossings, Mr. O'Brien testified that DP Partners would fund the crossings and utilize a contractor to construct the new crossings. The Village of Sauk Village has and will continue to have jurisdiction over the Jason Rasmussen Drive. Upon completion, the ownership of the crossings and responsibility for future maintenance may transfer to the Logisticcenter @ Sauk Village Owner's Association ("Association"), which will be comprised of the various owners/stakeholders within the Industrial Park. These include DP Partners, Prologis, and other future owners in the Industrial Park. At such time as ownership is transferred, the president of the Association will be the primary contact for the crossings. The Association will add a line item within its yearly budget to address future maintenance at the proposed crossings. The physical maintenance will then be carried out by a hired contractor, who can be contacted 24-hours a day. DP Partners will then assign the existing Industry Side Track Agreement between DP Partners and the EJ&E to the Association. The EJ&E will remain the exclusive rail carrier over the IPL track and proposed crossings.

Mr. Putnam testified as to the layout and proposed warning devices for the Jason Rasmussen Drive crossing. Also, Jason Rasmussen Drive has been designed with minimal grading throughout the right-of-way to keep these areas as flat as possible in order to maximize the sight distances up to and through the crossings along with the right-way being illuminated by parkway lights. Mr. Putnam testified as to the vehicular traffic volumes over the crossing. The train volumes and speeds over the crossings would be low with approximately six train deliveries a week, traveling up to five (5) miles per hour (walking speed), with the speed limit along Jason Rasmussen Drive being thirty-five (35) miles per hour. Currently, the trains on the IPL deliver

shipments of rolled paper and consist of one locomotive and 1 to 14 cars for a total length of 70 to 1500 feet per train. As future buildings are constructed and additional tenants move into the Industrial Park, it is expected that the number of train movements may increase depending on if the tenants for the future building require rail access or not. Traffic counts were completed in November of 2007 on the existing leased building at the intersection of Jason Rasmussen Drive and Mark Collins Drive as a template for the amount of traffic anticipated along Jason Rasmussen Drive, and it was found that 90 vehicles (of which 80% are multi-unit trucks) use Mark Collins Drive per day. As additional tenants move into Industrial Park, these vehicular traffic volumes may increase only slightly because the railroad crossings are located at the far northern portion of the Industrial Park and would most likely only be used by the two buildings along either side of the crossings. A northern access point into the Industrial Park does not exist and Jason Rasmussen Drive is a secondary access drive off of the main middle drive, being Mark Collins Drive, which splits the Industrial Park into two sides. The west side was designed for the possibility of being rail served while the east side was not designed with rail service.

The proposed eastern most crossings will be approximately eight hundred (800) feet west of the intersection with Mark Collins Drive. These crossings are a dual rail crossing that serves the existing building. The second crossing to the west will be three hundred and twenty (320) feet away (1,120 feet from the Mark Collins Drive intersection) and will be used to serve two future buildings to the south and also be used as a switching/storage track for the west side of the Industrial Park. The third crossing to the west will be one hundred and twenty-five (125) feet away (1,245 feet from the Mark Collins Drive intersection) and will be used to provide rail service to Building 1 only, if needed, because Building 1 is being constructed as a speculative building. All four crossings will be constructed with a prefabricated rubberized panel surface. Vehicles traveling east or west along Jason Rasmussen Drive will be required to yield to the IPL Track crossings. The highway crossings will be denoted with various signs and pavement markings per the Manual on Uniform Traffic Control Devices (MUTCD), including "Crossbuck" and "Yield" signs. A five-foot (5') sidewalk on the south side of Jason Rasmussen Drive will be extended further west over the new crossings. Pedestrian warning signs conforming to Staff's recommendations (24 inches x 30 inches, depicting a yield sign and "LOOK FOR TRAINS" warning) will be installed.

RESPONDENT EJ&E RAILWAY COMPANY'S POSITION

Mark Paull, Manager Projects/Environmental and Regulatory Compliance for the EJ&E, testified for the Petitioner as well as appeared for the Respondent. Mr. Paull noted that the EJ&E takes no exception to the Petition. Further, over the existing/eastern two crossings, the EJ&E provides service Monday through Saturday, generally between 7:00 pm and 11:00 pm. Current monthly traffic consists of approximately 100 cars (varying from 0 to 14 cars per day) based upon the existing customer needs. While this would equate to approximately one (1) train per day, the number of times the crossing could be occupied during the switching operations could be a maximum of eight (8) times. In each instance, the train travels at a maximum 5 mph and is required to stop within half the train crew's sight distance per EJ&E operating rules. Further, for moves into the Logisticenter facility where the engine shoves the cars through the crossing, the EJ&E will have a person on the ground to advise of when traffic conditions will allow for safe movement over the crossing. This procedure will be similar if/when new businesses develop along the two new western tracks. In either case only one track can be occupied over the Jason

Rasmussen Drive crossing. It is anticipated that with any future business, the EJ&E will add to the current 7:00 pm to 11:00 pm shipping allotment so as to minimize any disruptions on its mainline.

CO-PETITIONER SAUK VILLAGE'S POSITION

The Village of Sauk Village provided a letter indicating its support for the petition.

STAFF'S POSITION

Staff has no objection to the project or the Petition.

COMMISSION ANALYSIS AND CONCLUSION

The Commission has jurisdiction over DP Partner's Petition for installation of the new crossings and other railroad warning and safety measures. 625 ILCS 5/18c-7401(3); 625 ILCS 5/18c-1202; 92 Ill. Adm. Code 1535.60. The request of DP Partners to open the new crossings on Jason Rasmussen Drive in Sauk Village, Cook County, should be granted.

COMMISSION FINDINGS AND ORDERS

The Commission, having reviewed the entire record, finds that:

- (1) Petitioner DP Partners owns the Industrial Park Lead track, a "Railroad", within the meaning of Chapter 625 ILCS 5/18c-1104 (31) of the Illinois Commercial Transportation ("Law"), as amended;
- (2) Co-Petitioner Village of Sauk Village, Cook County, Illinois is a political subdivision of the State of Illinois;
- (3) Respondent EJ&E Railway Company is a corporation engaged in the transportation of property and/or passengers; for-hire in the State of Illinois and as such, is a "Rail Carrier" within the meaning of Chapter 625 ILCS 5/18c-1104 (30) of the Illinois Commercial Transportation ("Law"),
- (4) The Commission has jurisdiction of the parties and the subject-matter of this proceeding;
- (5) The recitals of fact and conclusions of law contained in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (6) DP Partners should construct and should be responsible for all costs associated with construction of the proposed Jason Rasmussen Drive rail at-grade crossings, including the installation of the prefabricated rubberized panel surface and warning devices at the crossings (crossbucks, yield signs, signage, and pavement markings);

- (7) DP Partners should maintain the Jason Rasmussen Drive crossings until ownership of the crossings is transferred to the Association. If ownership of the crossings is transferred to the Association or other successor, DP Partners should notify the Commission and provide updated contact information. The future responsibility of the crossing, including costs for any future upgrades to the crossing surface or warning devices if deemed necessary by the Commission, will transfer from DP Partners to the Association. DP Partners, the Association, or any other successor will also advise of any future changes to the crossing with regards to maintenance, train counts, or other relative data.
- (8) The EJ&E Railway Company serving as the current rail carrier/operator for the crossings should cooperate with DP Partners or the Association, in filing all state and federal documentation and reporting requirements associated with the new crossings.
- (9) All parties should proceed immediately to take the actions identified in these Findings and complete these improvements within six (6) months from the date of this order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Petitioner DP Partners shall construct the new rail grade crossings along the Industrial Park Lead track on Jason Rasmussen Drive in the Village of Sauk Village, Cook County, Illinois, that complies with Findings (6) through (9).

IT IS FURTHER ORDERED that Respondent EJ&E Railway Company shall comply with Finding (8).

IT IS FURTHER ORDERED that in the event any of the new Jason Rasmussen Drive rail crossings are no longer utilized for an extended period of time, the then current owner shall promptly file a petition with the Commission requesting permission to close the crossing(s).

IT IS FURTHER ORDERED that in the event any of the new Jason Rasmussen Drive at grade rail crossings are no longer utilized for an extended period of time, and the Commission authorizes closure of either crossing, it shall be the responsibility of the Association and/or then current owner/responsible party to remove the rail, crossing surface, warning devices, signs, pavement markings, and all other items within the roadways.

IT IS FURTHER ORDERED that DP Partners shall acquire USDOT Inventory numbers for the existing and proposed crossings per Federal Railroad Administration regulations, and shall file with the Transportation Bureau's Director of Processing within five days after completing the work required of each of them under this order, a United States Department of Transportation Inventory Form (#6180.71) as notice of the completion.

IT IS FURTHER ORDERED that any person requesting an extension of time of up to thirty days to complete this project shall file a request with the Commission's Director of Processing and Rail Safety Program Administrator no later than fourteen days before the ordered deadline. A Commission administrative law judge shall decide such requests.

IT IS FURTHER ORDERED that any person requesting an extension of time exceeding thirty days shall file a petition for a supplemental order with the Director of Processing and the Rail Safety Program Administrator no later than twenty-one days before the ordered deadline. The Commission shall decide such petitions.

IT IS FURTHER ORDERED that requests for extensions of time and petitions for supplemental orders shall include the reasons the additional time is needed to complete the work and the time within which the project will be completed.

IT IS FURTHER ORDERED that the Commission or its administrative law judge shall deny petitions for supplemental orders and requests for extensions of time, if the reasons for the request are insufficient or where it appears the person has not made a good-faith effort to complete the project within the ordered time. Failure of the Commission or the 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 this is a final order, in accordance with the Illinois Commercial Transportation Law, Chapter 625 of Illinois Compiled Statutes, Sections 18c-2201 and 18c-2206; and the Administrative Review Law, Chapter 735 of Illinois Compiled Statutes, Section 5/3/101 *et seq.*

By order of the Commission this ____ day of May, 2008.

Chairman