

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission  
RAIL SAFETY SECTION

BNSF RAILWAY COMPANY, and the COMMUTER RAIL )  
DIVISION OF THE REGIONAL TRANSPORTATION )  
AUTHORITY, a division of an Illinois Municipal Corporation, )

Petitioners )

v. )

NO. T08-0051

VILLAGE OF RIVERSIDE, COOK COUNTY, ILLINOIS )

Respondent. )

Petition seeking an order from the Illinois Commerce )  
Commission authorizing the permanent closure and removal )  
of a pedestrian subway structure located beneath the tracks )  
of BNSF Railway Company at or near Milepost 11.5, in )  
Riverside, Cook County, Illinois )

**RESPONDENT VILLAGE OF RIVERSIDE'S**  
**BRIEF ON EXCEPTIONS TO PROPOSED ORDER**

NOW COMES the Respondent, the Village of Riverside, Cook County, Illinois, by and through its attorneys, Dean W. Krone and Robert E. Swain, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission, 83 Ill.Admin.Code § 200.830, and hereby submits the following as its brief on exceptions to the Proposed Order issued on June 23, 2008:

The Village of Riverside appreciates the time and attention that the Commission has devoted to preparing for and conducting the hearing in this matter, to reviewing the record and all of the evidence submitted by the parties, to considering the testimony and public comment submitted to the Commission by the residents of the Village of Riverside, and to formulating its

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Proposed Order. After reviewing the Proposed Order of the Commission, the Village of Riverside respectfully requests that the Commission consider the following exceptions:

1. The Proposed Order of the Commission finds that “it is fair and reasonable” for BNSF and Metra to bear the entire expense of closing the pedestrian subway, but also provides that “the Respondent Village of Riverside shall comply with Findings (5) through (8).” On the surface, this appears to subject the Village to Finding (7), “All work herein should be completed within ninety (90) days,” under threat of penalty as set forth in Finding (8).

The Village interprets the Proposed Order to require BNSF and Metra to bear the entire expense of closing the pedestrian subway at issue, and not to require the Village of Riverside to take any action or bear any expense in connection with that work. If this is a proper interpretation, the Village requests that the final Order be clarified to avoid confusion on this point. If not, the Village requests that the Proposed Order be amended to identify any action or expense to be taken or borne by the Village, and provide the Village an additional opportunity to submit any exceptions thereto.

2. In addition to pedestrian traffic, the subway also provides an important means of routing cable beneath the railroad tracks at issue. Electrical power is currently routed through the tunnel to provide power to the north platform of the Riverside station. The Village has requested that BNSF and Metra run conduit through the tunnel before the tunnel is filled, in order to allow for present and future electrical and telecommunications needs of the Village, and the Village understands that BNSF and Metra do not have any objection to this request. The Village requests that the Commission include a provision in its final Order requiring that three (3) runs of 4’ conduit be run through the tunnel.

3. Part of the rationale advanced by BNSF and Metra in their petition and at hearing was that closing the subway at issue did not foreclose the Village from constructing a new tunnel in the future as circumstances and financial resources allowed. The Village requests that BNSF and Metra formally commit, or be directed to commit, their full cooperation to the Village in pursuing any such projects that may become viable in the future, and in particular that BNSF and Metra provide the Village with appropriate easement, leasehold, and/or other appropriate interests on substantially the same terms as the Village has held the subway at issue.

4. The Proposed Order finds that the proposed Village referendum to fund a rehabilitation and reconstruction of the pedestrian subway was “defeated by a margin of 66%.” The referendum was defeated by a margin of 66% opposed, 34% in favor.

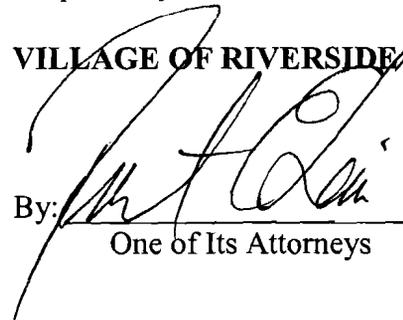
5. The Proposed Order makes several references to “Long Common Road” (page 2, first partial paragraph; page 4, second full paragraph). The correct spelling is “Longcommon Road.”

Date: 3 July 2008

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Respectfully submitted,

**VILLAGE OF RIVERSIDE**

By:   
One of Its Attorneys

**CERTIFICATE OF SERVICE**

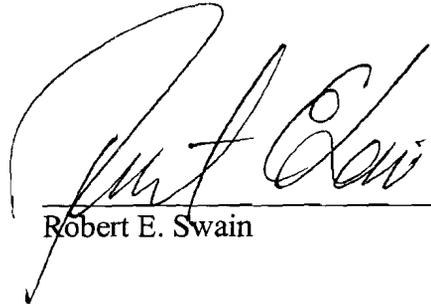
I, Robert E. Swain, an attorney, hereby certify that a true and correct copy of the foregoing Answer was mailed this 30 day of July, 2008, by first class mail, postage prepaid, to the following:

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