

**ORIGINAL**

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

City of Sandwich, DeKalb County, Illinois,  
Petitioner,

V.

Burlington Northern Santa Fe Railway (BNSF) Company;

State of Illinois,  
Department of Transportation;

and  
Sandwich Township, DeKalb County, Illinois,

Respondents.

**RECEIVED**

SEP 11 2008

Illinois Commerce Commission  
RAIL SAFETY SECTION

T05-0005

RE: City's Petition for an Order of the Illinois Commerce Commission authorizing the establishment of a new grade crossing at Fairwind Boulevard immediately north of US Route 34 with the track of Burlington Northern Santa Fe Railway (BNSF) Company, in the City of Sandwich, DeKalb County, Illinois, directing thereon the installation of automatic protection devices and construction of the crossing proper and dividing the cost among the parties, and directing the closure of the existing grade crossing at Gletty Road with the track of the Burlington Northern Santa Fe Railway (BNSF) Company immediately north of US Route 34 in the City of Sandwich, and Sandwich Township, DeKalb County, Illinois.

**PETITION FOR SUPPLEMENTAL ORDER  
TO EXTEND TIME TO PERFORM WORK**

Now comes your Petitioner, the City of Sandwich, a municipal corporation of the State of Illinois, by its attorney, Bernard Z. Paul, and petitions the Illinois Commerce Commission for a supplemental order extending from October 5,

**DOCKETED**

SEP 11 2008

BV-DJ

2008, until July 1, 2009, the date for completion of the improvements and in furtherance of said petition represents:

1. On February 1, 2005, the City of Sandwich ("City") filed its petition with the Illinois Commerce Commission ("Commission") seeking authority to construct a new Fairwind Boulevard highway rail grade crossing of the BNSF Railway's tracks in the City of Sandwich, and to close the existing Gletty Road grade crossing (AAR/DOT 079 604B, railroad mile post 57.03 - BNSF Mendota Subdivision).

2. Following a hearing on said petition, the Commission on April 5, 2006, entered its order which among other provisions provided in its order and findings as follows:

\* \* \* \* \*

- (11) The parties are authorized to proceed immediately in performing the work herein required of each of them and should complete these improvements within thirty (30) months;
- (12) Any person making a Request For Extension Of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.
- (13) Any person requesting a extension of time that exceeds thirty (30) days must file a Petition For Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.
- (14) Requests for an 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.

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3. That following the entry of the order, the City has provided the Commission through the Director of Processing at six (6) month intervals, written reports stating the progress that has been made towards completion of the work required in the order, including the progress made towards the expansion of Fairwind Boulevard south of U.S. Route 34. Said reports were dated October 5, 2006, May 1, 2007, September 27, 2007, and March 21, 2008. Concerning the southern extension of Fairwind Boulevard since the last written report, March 21, 2008, no further progress has been made in this endeavor, although the owner of the land continues to co-operate with the City on City's construction efforts towards the intersection of U.S. Route 34 / Fairwind Boulevard, including owner granting to City a storm water discharge easement for the benefit of the project.

4. As previously reported to the Commission, the City has constructed all sanitary sewer work and water main work within the projects of the Fairwind Boulevard right-of-way across U.S. Route 34 and the BNSF Railroad right-of-way, and the sanitary sewer line has been extended 1½ miles to the north within the Fairwind Boulevard right-of-way, terminating at Pratt Road. The City has closed out the sanitary sewer and water main project, paid the contractor, and the City accepted the work.

5. That the City has budgeted for and authorized sufficient sums of money to fully pay for all work to be done by City as required in the order.

6. That during June, 2008, City entered into written contracts to perform the required work of constructing the right-of-way improvements to U.S. Route 34 and Fairwind Boulevard north to and including the intersection of Fairwind Boulevard and Center Street, with contractor, Fischer Excavating, Inc., Freeport, Illinois, with a required completion date on or before September 30, 2008.

7. That following the contractor's compliance with all preliminary matters required in the contract prior to beginning work, the City issued to contractor its notice to proceed and contractor commenced work during July, 2008.

8. That while performing the work, the contractor encountered two significant impediments to a continuation of the work, namely NICOR and Comcast utility installations within the right-of-way. Both of the utility companies had been sent plans of the project in November, 2007, and each of them had acknowledged to City and its representatives that their installations at the project would be affected by the project. City revised its plans accordingly and, during April, 2008, resubmitted them to the utility companies. NICOR planned on

replacing its gas line on U.S. Route 34 so as not to interfere with the orderly progress of the project, but delayed the work which also included NICOR relocating lines in other portions of the project. Comcast, upon receiving City's plans, acknowledged a cable conflict on U.S. Route 34 and informed City that its buried cable would be run aerially on ComEd poles by May 12, 2008. It did not do so. As of August 18, 2008, Comcast was completing this work. Further a cable line at the north end of the project on Center Street was discovered by contractor which had not been disclosed by Comcast. These utility impediments have caused the contractor to be unable to complete the work within the time provided for within the aforesaid deadline of the contract, on or before September 30, 2008, or by the time provided for in the order, October 4, 2008.

9. That contractor has requested from City that the completion date be extended to November 24, 2008. The City's engineers' believe the November 24, 2008, date is reasonable.

10. That City is concerned, however, that the final phase of contractor's work, namely installing of bituminous concrete, could be delayed beyond November 24, 2008, by the closing of its suppliers, the asphalts plants, due to weather conditions, and accordingly requests an extension to July 4, 2009, or such earlier time as the Commission may determine is just and reasonable.

11. That prior to submitting this Petition for Supplemental Order, the City notified the staff of the Commission's Rail Safety Program Administration that it is unable to complete the project within the ordered timeframe.

12. That City is respectfully requesting a supplemental order extending the date for completion as set said date is forth in paragraph (11) of the order on page 6 of the order, from thirty (30) months to July 4, 2009 (or thirty-nine (39) months).

13. There are various deadlines in the order measured from the completion date which should also be adjusted accordingly.

WHEREFORE, City respectfully requests that the Commission issue a supplemental order extending the completion date in paragraph (11) of the Commission's April 5, 2006, order, to July 4, 2009, and all other required dates measured from the thirty (30) month date in paragraph (11) of the April 5, 2006, order, for whatever purpose, be measured from the new completion date specified in the supplemental order.

Respectfully submitted,

CITY OF SANDWICH, DEKALB  
COUNTY, ILLINOIS

  
BY: Bernard Z. Paul, its attorney

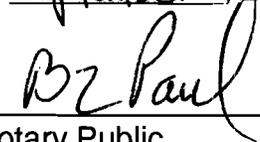
VERIFICATION

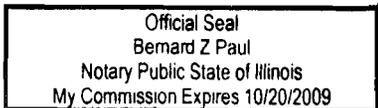
STATE OF ILLINOIS     )  
  )ss  
COUNTY OF DEKALB    )

I, Tom Horak, being duly sworn upon oath depose and say that I am the City Engineer of the City of Sandwich, DeKalb and Kendall Counties, Illinois; that I have read the foregoing Petition by me subscribed and know the contents thereof; that said contents are true in substance and in fact.

  
\_\_\_\_\_  
Tom Horak, City Engineer  
City of Sandwich, Illinois

Subscribed and sworn to  
before me this 9<sup>th</sup> day  
of September, 2008.

  
\_\_\_\_\_  
Notary Public



**PROOF OF SERVICE AND FILING**

STATE OF ILLINOIS        )  
  ) ss  
COUNTY OF DEKALB     )

I, Michele Paul, hereby certify that I filed the foregoing petition for supplemental order with the Commission by mailing the original to:

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

and have served true and correct copies of the foregoing petition for supplemental order to extend time for work to the following, by mailing the same to the Commission and them with sufficient prepaid first class postage on each envelope, and depositing the same in the United States mail at DeKalb, IL 60115, on or before the hour of 5:00 o'clock p.m. on September 9, 2008.

Honorable Dean Jackson  
Chief Administrative Law Judge  
Review & Examination Program  
527 East Capitol Avenue, 6<sup>th</sup> Floor  
Springfield, IL 62701

and

Illinois Department of Transportation  
Mr. Victor Modeer  
Division of Highways  
Secretary of Transportation  
2300 South Dirksen Parkway  
Springfield, IL 62764

and

Mr. Robert J. Prendergast  
Attorney for BNSF Railroad  
Daley Mohan Groble, P.C.  
55 West Monroe, Suite 1600  
Chicago, IL 60603

and

Mr. Milton Sees, P.E.  
Director of Highways, IDOT  
Attn: Jeff Harpring, Rm. 205  
2300 S. Dirksen Parkway  
Springfield, IL 62764

and

Mr. Brian Vercruysse, P.E.  
Illinois Commerce Commission  
Railroad Staff  
527 East Capitol Avenue  
Springfield, IL 62701

and

Mr. Thomas Benson  
Special Assistant Attorney General  
Illinois Department of Transportation  
2300 S. Dirksen Parkway, Rm. 311  
Springfield, IL 62764

and

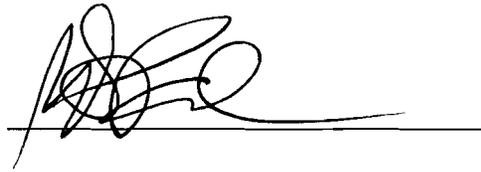
Burlington Northern Santa Fe Railway Company  
Mr. Douglas W. Werner  
General Counsel  
PO Box 961039  
Fort Worth, TX 76161-0039

and

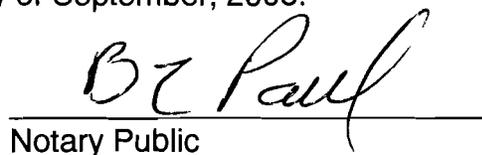
Sandwich Township, DeKalb County, Illinois  
Norman Troeger, Supervisor  
201 West Center Street  
Sandwich, IL 60548

and

Sandwich Township, DeKalb County, Illinois  
Jerry N. Davis, Highway Commissioner  
15 North Green Street  
Sandwich, IL 60548



Subscribed and sworn to before me this 9<sup>th</sup> day of September, 2008.



Notary Public

