

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION TRANSPORTATION DIVISION / RAIL SAFETY SECTION

Michael E. Stead

Rail Safety Program Administrator

(Filed in E-Docket and e-mailed to Judge Kirkland-Montaque and cc'd)

October 9, 2008

Latrice Kirkland-Montaque
Administrative Law Judge
Review and Examination
Illinois Commerce Commission
160 N. LaSalle Street
Chicago, IL

RE: T05-0065

Dear Judge Kirkland-Montaque:

The attached proposed Supplemental Order is respectfully submitted for your approval and submittal to the Commission for the November 13, 2008 bench session. The proposed Order was prepared by Staff in coordination with the parties of record.

If you have any questions, or require additional information, please contact me at (217) 557-1285 or mstead@icc.illinois.gov, or Brian Vercruysse, Railroad Safety Specialist, at (630) 424-8750 or bvercruy@icc.illinois.gov.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael E. Stead".

Michael E. Stead
Rail Safety Program Administrator

cc: Mack Shumate – UP
Jack Pace – City of Chicago
Neil Flynn – Counsel for NS
Tim Coffey - BRC

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Chicago, Cook County, Illinois	:	
Petitioner,	:	
	:	
Vs.	:	
	:	
Union Pacific Railroad Company, Norfolk Southern Railway	:	
Company and Belt Railway Company of Chicago	:	T05-0065
Respondents.	:	
	:	
Petition for authorization for grade crossing viaduct reconstruction	:	
as part of the City of Chicago – ICC vertical clearance	:	
improvement program on 87 th Street in the City of Chicago,	:	
County of Cook, Illinois	:	

PROPOSED AGREED SUPPLEMENTAL ORDER

By Order of the Commission:

PROCEDURAL HISTORY

On June 7th, 2006, the Illinois Commerce Commission (“Commission”) entered its Order in this matter, authorizing the City of Chicago (“City”) to lower and reconstruct 87th Street from South Eggleston Avenue, east past South Holland Road to improve the vertical clearance under the Belt Railway Company’s (“BRC”) viaduct (“City’s 87th Street Roadway Component”). To improve the vertical clearance under the Union Pacific Railroad Company’s viaduct (“UP”), the Commission’s Order also authorized the UP to reconstruct the viaduct (“UP’s 87th Street Structure Component”). Since the existing vertical clearance was sufficient (23’-8”), no modification to the vertical clearance at the Norfolk Southern Railway Company (“NS”) viaduct was proposed. The Order required completion of the City’s 87th Street Roadway Component by June 1, 2008, and the UP’s 87th Street Structure Component by October 30, 2008.

On May 8, 2008 the UP filed its Petition for an Amended Order requesting an extension of time beyond the October 30, 2008 date, as well as additional assistance from the Grade Crossing Protection Fund (“GCPF”) due to higher projected costs for the UP’s 87th Street Structure Component. The UP indicated the additional costs were attributable to increases in material costs, and the need to strengthen the existing substructure, which was not part of the original scope of work or cost estimate.

On May 19, 2008, the NS filed a response indicating no objection to the UP’s request.

Pursuant to notice, the matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at the Commission's Chicago office on June 18, 2008. The City, UP, and the Department of Transportation of the State of Illinois ("IDOT" or "Department") were represented by counsel. An appearance was also entered by Brian Vercruysse, Senior Railroad Safety Specialist of the Commission's Transportation Bureau, Railroad Section. At the conclusion of the June 18, 2008, hearing, the record was marked "Heard and Taken."

On October 9, 2008, Staff filed an Agreed/Proposed Supplemental Order, the terms of which have been agreed to by the parties.

UNION PACIFIC RAILROAD COMPANY EVIDENCE

The UP provided the testimony of Donald Grabowski, engineering consultant from HDR Incorporated's Chicago office ("HDR"). Mr. Grabowski testified that HDR's Omaha office had completed the plans for the UP's 87th Street Structure Component, while the Chicago office was responsible for coordinating the plans and permits with the City. Mr. Grabowski further testified that the UP was delayed due to work on the Dan Ryan Expressway (Interstate 94) in 2006 and 2007, limiting the ability to close 87th Street, which was necessary to complete the bridge work. This delay coincided with increases in steel and other material costs. It is anticipated that the UP will complete the 87th Street Structure Component by December 31, 2008.

Relative to the UP's scope of work, Mr. Grabowski testified that prior to construction the substructure was found to be deficient such that micro piles were added to the plans.

In its Petition filed May 8, 2008, the UP indicated the estimated project cost increased by \$1,100,000, to a new total of \$2,600,000. Further, based upon recent bids, the cost for the micro-piles represented \$1,000,000 of this increase.

CITY OF CHICAGO'S EVIDENCE

The City provided the testimony of Anthony Rainey, project manager for the City's project. Mr. Rainey testified that the City did not object to the UP's request for an extension of time, nor did the City object to the UP's request for additional GCPF participation, as long as it does not affect the portion dedicated towards the City's 87th Street Roadway Component.

STAFF POSITION

Staff does not object to the UP's request for an extension of time. To address the identified substructure deficiency, Staff recommends that additional assistance from the GCPF, in an amount not to exceed \$429,000, be authorized to help pay for the increased eligible project costs. The amount of additional GCPF assistance is

consistent with the percentage of GCPF assistance approved the Commission with its June 6, 2006 Order. The UP should be responsible for all remaining project costs.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The prefatory portion of this Supplemental Order is true and correct and is hereby adopted as finding of fact;
- (3) The amount of assistance to be provided by the Grade Crossing Protection Fund for the costs associated with the UP's 87th Street Structure Component should be increased by \$429,000 to an amount not to exceed \$1,011,000, as shown in the following Cost Division Table:

- COST DIVISION TABLE -

IMPROVEMENT	EST. COST	GCPF	CITY	UP
UP's 87 th Street Structure Component (6/6/06 Order)	\$1,500,000	(~39%) \$582,000	\$0	(~61%) \$918,000
<u>Additional Cost (5/8/08 UP Petition)</u>	<u>\$1,100,000</u>	(39%) <u>\$429,000</u>	<u>\$0</u>	(61%) <u>\$671,000</u>
SUBTOTAL	\$2,600,000	\$1,011,000¹	\$0	\$1,589,000
City's 87 th Street Roadway Component (unchanged)	\$4,295,742	(34%) \$1,447,800	(66%) \$2,847,942	\$0
TOTALS	\$6,895,742	\$2,458,800¹	\$2,847,942	\$1,589,000

Notes:

¹ Total Grade Crossing Protection Fund (GCPF) assistance not to exceed \$1,011,000 for the UP's 87th Street Structure Component, with overall contribution from the GCPF for the project not to exceed \$2,458,800.

- (4) All terms and conditions of the original Order shall remain in full force and effect except has herein modified;

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the amount of assistance to be provided by the Grade Crossing Protection Fund for the costs associated with the Union Pacific Railroad Company's 87th Street Structure Component is increased by \$429,000 to an amount not to exceed \$1,011,000

IT IS FURTHER ORDERED that an extension of time, to and including December 31, 2008, is hereby granted for the Union Pacific Railroad Company's 87th Street Structure Component.

IT IS FURTHER ORDERED that all other terms and conditions of the original Order dated June 6, 2006, shall remain in force and effect except as herein modified.

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 13th day of November 2008.

CHARLES E. BOX
Chairman