

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Chicago, Illinois
Petitioner,

vs.

CSX Transportation, Inc.
Respondent.

T07-0096

Petition for funding from the Grade Crossing Protection Fund to make vertical clearance improvements underneath the elevated viaduct containing tracks of CSX Transportation, Inc. through the reconstruction of 35th Street, a roadway in the City of Chicago, County of Cook and State of Illinois and to establish the terms and conditions of the project between the City of Chicago and CSX Transportation, Inc.

ORDER

By the Commission:

On November 6, 2007, the City of Chicago ("City") filed with the Illinois Commerce Commission ("Commission") a verified Petition in the above captioned matter naming as Respondent CSX Transportation, Inc. ("CSX"), in which it requests the Commission's authorization for funding from the Grade Crossing Protection Fund ("GCPF") to make vertical clearance improvements underneath the elevated viaduct containing tracks of CSX through the reconstruction of 35th Street, a roadway in the City of Chicago, Cook County, Illinois and to establish the terms and conditions of the project between the City of Chicago and CSX.

PROCEDURAL HISTORY

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at the Commission's Chicago and Springfield offices on February 5, 2008 and February 19, 2008. Petitioner was represented by counsel and presented the testimony of Raspal Bajwa, Steven Karlowski, and Anthony Rainey. Stan Milewski, Senior Rail Safety Specialist from the Commission's Transportation Division, Railroad Section, represented Commission Staff ("Staff"). The Illinois Department of Transportation ("IDOT") also entered an appearance. No Party contested the Petition. At the conclusion of the Hearing on February 19, 2008, the case was marked "Heard and Taken."

PETITIONER'S EVIDENCE

Raspal Bajwa testified that he is Vice President of Design for Infrastructure Engineering, Inc. ("IEI"). IEI was contracted by the City of Chicago to develop design plans for the 35th Street project. He explained that the City is planning to improve the vertical clearance on 35th Street as it passes under the CSX Railroad viaduct. The vertical clearance at this structure is currently 13'-4" which does not meet the City's requirements of 14'-6". Within the project area, 35th Street consists of one through lane in each direction with parallel parking and sidewalk on both the north and south sides of the street. The required 14'-6" vertical clearance under the CSX Railroad viaduct will be provided by lowering the 47 feet wide roadway by about 14 inches, whereas the 9.5 feet wide sidewalks adjacent to the viaduct abutments will remain at the same elevation. Bajwa stated that the section of 35th Street between Artesian Street and South Maplewood Avenue will be closed to through traffic during construction. Bajwa sponsored into evidence Contract Plans for the project that were prepared under his direction.

Steven Karlowski testified that he is employed by IEI as the Chief Structural Engineer. Karlowski is of the opinion that the 35th Street Project will not have any structural impact to the bridge spanning overhead which supports the tracks of CSX.

Anthony Rainey testified that he is employed by the City of Chicago's Department of Transportation as a Project Manager. He stated that he is the Project Manager of the 35th Street project and that he has overall responsibility for ensuring the accuracy of the bid plans and specifications and the successful completion of the project. Rainey testified that the City is seeking approval from the Commission for vertical clearance safety improvements at the 35th Street highway-rail underpass of CSX's tracks (AAR/DOT #163 462R; railroad milepost 27.62), and the City is requesting that a substantial portion of the cost come from the GCPF. In accordance with the agreed upon contract plans, the City will lower the elevation of the 35th Street roadway pavement improving the vertical clearance under the railroad structure from 13'-4" to 14'-6", thereby significantly reducing the possibility of trucks hitting the railroad structure.

Rainey further testified that the City and CSX have entered into a Construction Agreement and have agreed on the estimate of costs. Rainey sponsored into evidence both the Construction Agreement and Force Account Estimate. Rainey testified that the current cost estimate for the project is \$2,492,858, of which the City is requesting the GCPF contribute 60% (\$1,495,714). The City and CSX have agreed to a Railroad Force Estimate of \$10,036. CSX will only bill for actual costs and expenses incurred, as provided within Section 4 of the Construction Agreement, and it was agreed that this will include work performed by Safetran Systems Corporation, but will not include costs incurred by CSX from 10 East Corporation or Aerotek. It is anticipated that the project will begin immediately after the issuance of a Commission Order and will be completed within twenty-four (24) months of the date of the Commission Order.

RESPONDENT CSX'S POSITION

CSX has agreed to the Railroad Force Estimate and the terms and provisions of the Construction Agreement. As such, CSX has no objection to the City's Petition.

STAFF'S & IDOT'S POSITIONS

Staff and IDOT support the City's Petition and concur with the use of the GCPF in an amount not to exceed 60% of the project cost (\$1,495,714).

DRAFT AGREED PROPOSED ORDER

On June 11, 2008, Staff filed a Draft Agreed Order and served a copy on all Parties of record.

COMMISSION FINDINGS AND ORDER

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

- (1) the Commission has jurisdiction over the Parties and the subject matter of this proceeding;
- (2) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence and are adopted as findings of fact;
- (3) Petitioner proposes to construct, or cause to be constructed, certain vertical clearance safety improvements at the 35th Street highway-rail underpass of CSX's tracks (AAR/DOT #163 462R; railroad milepost 27.62) located in the City of Chicago, Cook County, Illinois;
- (4) the cost for the proposed improvement should be divided as follows:

The cost for lowering the pavement under the structure at 35th Street is estimated to be \$2,492,858. The Grade Crossing Protection Fund should pay 60% of the total costs, not to exceed \$1,495,714. The City should be responsible for the remainder of the project costs, including CSX's costs and expenses, as set forth in the Construction Agreement;

- (5) 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.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that permission and authority be, and is hereby, granted to the City of Chicago to construct, or cause to be constructed, certain vertical clearance safety improvements at the 35th Street highway-rail underpass of CSX's tracks (AAR/DOT #163 462R; railroad milepost 27.62) located in the City of Chicago, Cook County, Illinois, as set forth in the plan sheets

submitted by the City of Chicago and admitted into evidence as City of Chicago Group Exhibit No. 2.1.

IT IS FURTHER ORDERED that the costs 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 Finding four (4) of this Order.

IT IS FURTHER ORDERED that the City is hereby required and directed to proceed immediately in performing the work set forth hereinabove and shall complete the work within twenty-four (24) months from the date of this Order.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to the District 1 Office of the Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois, 60196-1096. The Department shall send a copy of all bills received to the Director of Processing and Information, Transportation Division of the Commission.

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 the City of Chicago shall file a written report within ninety (90) days from the date of this Order to the Director of Processing and Information, Transportation Division of the Commission, supplying the name, title, mailing address, phone number, facsimile number, and electronic mail address of the City of Chicago employee responsible for management of this project.

IT IS FURTHER ORDERED that the City of Chicago shall at six (6) month intervals from the date of the Commission Order, until the project has been completed,

submit written reports to the Director of Processing and Information, Transportation Division of the Commission, stating the status of expenditures of the total project from the Grade Crossing Protection Fund and percentage of completion of the entire project. If the project is behind schedule, the report must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that the City of Chicago be, and it is hereby, required and directed to submit a written notice, to the Director of Processing and Information, Transportation Division of the Commission, of the date the work herein required of it has been completed, said notice shall be submitted within five (5) days after said completion date.

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 13th day of November 2008.

JUDGE
SECTION CHIEF
ORDERS SUPERVISOR



CHARLES E. BOX
CHAIRMAN