

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Mt. Carmel, Illinois,
Petitioner

v.

Norfolk Southern Railway Company_ and Department of Transportation
of the State of Illinois,
Respondents.

T08-0114

In the matter of the petition for the Order of the Illinois Commerce
Commission authorizing the construction of a proposed grade crossing
of the Norfolk Southern Railway Company's track at proposed Empire
Street (approximate railroad milepost 148.8-A), an extension of existing
Empire Street and closure of the existing grade crossing of the Norfolk
Southern Railway Company's track at 7th Street/Willow Swamp Road
(AAR/DOT #724 842Y, railroad milepost 149.20-A) all located in
Wabash County, Illinois.

ORDER

By the Commission:

PROCEDURAL HISTORY

On August 18, 2008, the City of Mt. Carmel, ("Petitioner" or "City" or "Mt. Carmel") filed a verified Petition with the Illinois Commerce Commission ("Commission") naming Norfolk Southern Railway Company ("NS" or "Norfolk Southern") and the State of Illinois, Department of Transportation ("IDOT"), as Respondents. The Petition sought authority for construction of a proposed public highway-rail grade crossing of the NS track at the proposed extension of Empire Street (approximate railroad milepost 148.8-A).

On October 7, 2008, the Petitioner filed its Amended Petition seeking, in addition to the new at-grade rail/roadway crossing, a Commission Order to permanently close, abolish, and barricade the 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A), upon opening the proposed Empire Street grade crossing of the NS track to the public.

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, a hearing was held on the Amended Petition on October 29, 2008 before a duly authorized Administrative Law Judge of the Commission, at the Commission's office in Springfield, Illinois. The City of Mt. Carmel, Norfolk Southern and IDOT appeared by counsel. Commission Staff appeared by Aaron Tolliver, Railroad Safety Specialist. At the October 29, 2008 hearing, Mt. Carmel and Commission Staff submitted a draft Agreed Order, which had been approved by all Parties. At the

conclusion of the October 29, 2008, hearing, the record was marked "Heard and Taken."

PETITIONER'S STIPULATED EVIDENCE

In its Amended Petition, the City requested authority to establish a new public highway-rail grade crossing of the NS track at a location south of Illinois Route 15 (IL 15), north of Illinois Route 1 (IL 1), and west of 7th Street/Willow Swamp Road, on a proposed extension of Empire Street. The proposed Empire Street crossing would be located approximately 0.3 miles west of the existing 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A). The proposed Empire Street Extension would provide a connection between IL 1 and IL 15 on the southwest side of Mt. Carmel. The City's Amended Petition states that the road would result in improved emergency response times, improved traffic flow, and improved access for future retail and commercial development.

In the immediate future, the City proposes to allow use of the Empire Street Extension as a detour route during the reconstruction of a nearby bridge on IL 1, which IDOT has scheduled for an early 2009 bid letting. IDOT has estimated that the detour route provided by the Empire Street Extension would cause approximately nine (9) fewer miles of adverse travel compared to the detour route that must otherwise be utilized. In correspondence admitted into evidence, IDOT stated that the bridge replacement timeline cannot be delayed, due to the poor condition of the existing bridge structure. Accordingly, the City would like to begin construction of the proposed Empire Street extension in late calendar year 2008.

The City averred in its Amended Petition that it considered several alternatives before deciding to file a petition for establishment of a new public grade crossing. A grade separation structure was studied for the Empire Street extension, but was deemed not viable, as minimum vertical clearance over the NS track could not be achieved in the limited horizontal distance between IL 15 and the NS track. The City also considered utilizing the existing 7th Street/Willow Swamp Road grade crossing of the NS track as an alternative point of access, but it was determined that a new grade crossing on an extended Empire Street would provide a safer crossing alignment/geometry, improved sight distances for motorists, less right-of-way acquisition, and more efficient land use than would be possible if the existing 7th Street/Willow Swamp Road grade crossing were to be utilized. Therefore, the City is seeking an Order of the Commission to permanently close, abolish, and barricade the existing 7th Street/Willow Swamp Road crossing, upon completion of the Empire Street Extension and opening to the public of the new Empire Street grade crossing. Upon closure, the City of Mt. Carmel will additionally adopt a Local Ordinance vacating the 7th Street/Willow Swamp Road grade crossing within the NS right-of-way limits.

The proposed Empire Street Extension would be a thirty (30) foot wide, curb face to curb face, Portland cement concrete (PCC) street, owned and maintained by the City of Mt. Carmel. The City's Amended Petition includes an estimate for average daily traffic ("ADT") on the proposed Empire Street Extension. The ADT is estimated to be 1,500 vehicles per day immediately after construction, increasing to 2,100 vehicles per day by

2018. The proposed speed limit for the roadway will be thirty-five (35) miles per hour. The approximate angle of intersection of the proposed roadway with the NS track is eighty (80) degrees. The expected traffic composition on Empire Street will include passenger vehicles and heavy commercial vehicles, as well as possible hazardous material transport vehicles, emergency vehicles, and school buses. The proposed Empire Street grade crossing would be equipped with automatic flashing light signals with gates and constant warning time circuitry, and equipped with an event recorder and capable of accepting a remote monitoring system when available. IDOT, through the Federal Rail/Highway Safety Program, has funding in place to cover 100% of the automatic warning device installation costs. The City proposed to pay for all material costs for the crossing surface, if NS agrees to pay for all the labor costs.

The existing roadway in the vicinity of the 7th Street/Willow Swamp Road grade crossing is a sixteen (16) foot wide oil and chip street owned and maintained by the City of Mt. Carmel. 2007 IDOT traffic count information lists the roadway ADT as fifty (50) vehicles per day in the vicinity of the 7th Street/Willow Swamp Road grade crossing. The approximate angle of intersection of the roadway with the NS track is twenty-five (25) degrees. The extreme angle of intersection limits the sight distance for motorists approaching the grade crossing. The speed limit for 7th Street/Willow Swamp Road is not posted, but the roadway geometry at the grade crossing effectively limits vehicular speed to thirty (30) miles per hour or less. The traffic composition in the vicinity of the 7th Street/Willow Swamp Road grade crossing consists of passenger vehicles, with no reported heavy commercial vehicles, hazardous material transport vehicles, or school buses. The 7th Street/Willow Swamp Road grade crossing currently has passive warning devices, consisting of Crossbucks with YIELD signs.

If closure of the 7th Street/Willow Swamp Road grade crossing is ordered, as sought by the City, any cut off areas which are not accessible via the proposed Empire Street Extension will be accessible via the existing Oak Street, located approximately ½ mile east of 7th Street/Willow Swamp Road along IL 15. To access 7th Street/Willow Swamp Road via the existing Oak Street from IL 15, it would be necessary to cross one (1) existing grade crossing of an NS track on Oak Street (AAR/DOT #734 233A, railroad milepost 149.70-A). The existing roadway in the vicinity of the Oak Street grade crossing is a thirty (30) foot wide, curb face to curb face, Portland cement/concrete street, owned and maintained by the City of Mt. Carmel. The warning devices for the Oak Street grade crossing are automatic flashing light signals and gates with a bell. The approximate angle of intersection of Oak Street with the NS track is eighty (80) degrees. 2007 IDOT traffic count information lists the roadway ADT as 5,300 vehicles per day in the vicinity of the Oak Street grade crossing, with seven percent (7%) being heavy commercial vehicles, including possible hazardous material transport vehicles and emergency vehicles. No school buses are reported to use the crossing. The posted speed limit for Oak Street is thirty (30) miles per hour.

The cost for warning devices design and installation at the new crossing, currently estimated by NS at \$371,109, will be funded 100% by IDOT through the Federal Rail/Highway Safety Program. All costs and work related to the construction and future maintenance of the highway approaches for the new at-grade crossing will be the responsibility of Mt. Carmel. The cost of the new Empire Street crossing surface material

will be borne by the City, and NS will be responsible for all labor costs for installation of the Empire Street crossing surface. NS also agreed to responsibility for all future costs of operation and maintenance of the new Empire Street crossing surface and crossing warning devices, as well as the cost to remove the existing rail crossing surface and warning signs at the 7th Street/Willow Swamp Road grade crossing. Finally, the City will be responsible for all remaining costs and work associated with the closure of the 7th Street/Willow Swamp Road crossing, including signage and barricades. No Grade Crossing Protection Funds have been requested or will be utilized on the improvements at issue in the case.

NORFOLK SOUTHERN RAILWAY COMPANY'S EVIDENCE

NS supplied the current average daily train counts and maximum authorized speed for the track segment that contains the 7th Street/Willow Swamp Road grade crossing, the Oak Street grade crossing, and the proposed Empire Street Grade Crossing. Currently, twenty-two (22) freight trains per day traverse the subject track segment at a maximum authorized speed of fifty (50) miles per hour, with two (2) switching moves per day. No regularly scheduled passenger trains operate on the subject track segment.

STAFF'S AND IDOT'S POSITION

Staff of the Commission's Rail Safety Section and IDOT support the work outlined in the City's Amended Petition. Staff recommends that the City be granted permission to pursue all of the proposed safety improvements.

COMMISSION'S FINDINGS AND ORDERS

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

1. The Commission has jurisdiction over the parties and subject matter of this proceeding;
2. Petitioner, City of Mt. Carmel, is a political subdivision of the State of Illinois;
3. Respondent, Norfolk Southern Railway Company, is a rail carrier engaged in the transportation of either or both property and passengers for hire in the State of Illinois, as defined by the ICTL, 625 ILCS 5/18/c-1104(30);
4. The recitals of fact contained in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
5. In the interest of public safety and convenience the City of Mt. Carmel should be granted authority to establish a new public highway-rail grade crossing of the NS track at the proposed Empire Street location (approximate railroad milepost 148.8-A);
6. The proposed Empire Street highway-rail grade crossing should be equipped with automatic flashing light signals and gates with a bell, controlled by constant warning time circuitry, and equipped with an event

recorder and capable of remote monitoring system when available, to be designed, installed, and maintained by NS;

7. NS should, upon issuance of a Commission Order, according to the requirements contained therein, prepare and submit duplicate copies of detailed drawings, detailed circuit plans, detailed cost estimates, and any required specifications for the automatic warning devices at the proposed Empire Street highway-rail grade crossing for the approval of IDOT and the Commission. An appropriate time for the submission of plans should be ninety (90) days from the date of a Commission Order approving this Agreement;
8. The proposed Empire Street grade crossing should be opened to the public only after the automatic warning devices have been installed and determined by Commission Staff to be functioning properly;
9. The 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A) of the NS track should be permanently closed, abolished, and barricaded, upon opening to the public the proposed Empire Street grade crossing of the NS track (approximate railroad milepost 148.8-A);
10. The City should install temporary Type III barricades at the NS right-of-way limits of the 7th Street/Willow Swamp Road grade crossing within twenty-four (24) hours after opening to the public the proposed Empire Street grade crossing, and maintain said temporary barricades until such time as permanent barricades are in place. The City should also remove the existing railroad advance warning signs for the 7th Street/Willow Swamp Road grade crossing within the same (24) hour period;
11. The City should install permanent barricades, meeting the minimum requirements of 92 Ill. Adm. Code 1535.701 and the MUTCD, at the NS right-of-way limits of the 7th Street/Willow Swamp Road grade crossing within thirty (30) days after opening to the public the proposed Empire Street grade crossing. The City should also install any required signage to advise motorists of the 7th Street/Willow Swamp Road grade crossing within the same thirty (30) day period;
12. NS has provided a preliminary "round figure" cost estimate of \$371,109 for the warning device design and installation at the proposed Empire Street grade crossing, attached hereto as Appendix A. IDOT, through the Federal Rail/Highway Safety Program, should fund 100% of the estimated cost for the warning device installation, in an amount not to exceed \$371,109;
13. In the event the actual costs incurred by NS exceed the estimated amount of \$371,109, NS should provide evidence showing justification for the increased costs. Payment by IDOT for costs in excess of the estimated amount of \$371,109 should be paid in accordance with a Supplemental

Order issued by the Commission;

14. All costs and work related to construction and future maintenance of the highway approaches for the new public highway-rail grade crossing of the NS track at the proposed Empire Street location (approximate railroad milepost 148.8-A) should be the sole responsibility of the City. Contractor liability insurance will be required.
15. The crossing surface material for the proposed Empire Street grade crossing should be funded and provided entirely by the City;
16. The labor for the crossing surface installation at the proposed Empire Street grade crossing should be funded and provided entirely by NS;
17. All future operation and maintenance costs related to the crossing surface and crossing warning devices at the proposed Empire Street grade crossing should be the sole responsibility of NS;
18. All costs and work for erection and future maintenance of the temporary and permanent barricades at the 7th Street/Willow Swamp Road grade crossing, should be the sole responsibility of the City;
19. All costs and work for erection and future maintenance of any necessary signage to advise motorists of the 7th Street/Willow Swamp Road grade crossing closure, and removal of the existing railroad advance warning signs at the 7th Street/Willow Swamp Road grade crossing should be the sole responsibility of the City;
20. All costs and work related to the removal of the existing 7th Street/Willow Swamp Road grade crossing surface and Crossbuck/YIELD warning signs should be the sole responsibility of NS;
21. All of the work herein should be performed in accordance with all applicable State laws, rules, standards, regulations and orders and procedures in general;
22. All work herein should be completed within twelve (12) months from the date of this Order;
23. Chapter 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;

24. 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;
25. 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;
26. 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;
27. 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 THEREFORE ORDERED that the City of Mt. Carmel is authorized and directed to construct a new highway-rail grade crossing where the proposed Empire Street crosses the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A).

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company is hereby directed to design, install and thereafter maintain a crossing warning system of automatic flashing light signals and gates with a bell and constant warning time circuitry, and equipped with an event recorder and capable of accepting a remote monitoring system when available, for the new highway-rail grade crossing where the proposed Empire Street crosses the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A).

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall within ninety (90) days from the date of this Order furnish to the Illinois Department of Transportation for its approval two (2) copies of the detailed estimate of cost and two (2) copies of the general layout plans applying to the crossing warning devices at the proposed Empire Street grade crossing of the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A).

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of the aforesaid detailed cost estimate and general layout plan, notify the Commission of its approval or disapproval thereof. Notice may be made via phone, electronic mail, standard mail, or fax.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission showing details of the required automatic warning devices at the proposed Empire Street grade crossing of the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A) and shall receive approval by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that the City of Mt. Carmel shall open to the public the new highway-rail grade crossing where the proposed Empire Street crosses the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A) only after the Ordered automatic warning devices at said location have been installed and determined by Commission Staff to be functioning properly.

IT IS FURTHER ORDERED that the City of Mt. Carmel is hereby authorized and directed to permanently close, abolish, and barricade the 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A), upon opening to the public the proposed Empire Street grade crossing of the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A).

IT IS FURTHER ORDERED that the City of Mt. Carmel shall install temporary Type III barricades at the Norfolk Southern Railway Company's right-of-way limits of the 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A) within twenty-four (24) hours after opening to the public the proposed Empire Street grade crossing of the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A). The City of Mt. Carmel shall remove the existing railroad advance warning signs for said grade crossing within the same (24) hour period.

IT IS FURTHER ORDERED that the City of Mt. Carmel shall install permanent barricades meeting the minimum requirements of 92 Ill. Adm. Code 1535.701 and the MUTCD at the Norfolk Southern Railway Company's right-of-way limits of the 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A) within thirty (30) days after opening to the public the proposed Empire Street grade crossing of the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A). The City of Mt. Carmel shall install any required regulatory/warning signage for said grade crossing closure within the same thirty (30) day period.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall remove the existing crossing surface and the existing Crossbuck/YIELD signs for the existing 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A), upon the closure and barricading of said crossing by the City of Mt. Carmel.

IT IS FURTHER ORDERED that the Illinois Department of Transportation, utilizing federal funds, is hereby directed to pay 100% of the estimated cost, in an amount not to exceed \$371,109, for the design and installation of the Ordered automatic warning devices at the new highway-rail grade crossing where the proposed Empire Street crosses the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A).

IT IS FURTHER ORDERED that in the event the actual costs incurred by the Norfolk Southern Railway Company exceed the estimated amount of \$371,109, the Company shall provide evidence showing justification for the increased costs. Payment by the Department for costs in excess of the estimated amount of \$371,109 shall be paid in accordance with a Supplemental Order issued by the Commission.

IT IS FURTHER ORDERED that the City of Mt. Carmel shall pay all costs for construction and future maintenance of the highway approaches for the new public highway-rail grade crossing of the Norfolk Southern track at the proposed Empire Street location (approximate railroad milepost 148.8-A). Contractor liability insurance will be required.

IT IS FURTHER ORDERED that the City of Mt. Carmel shall pay all material costs associated with the crossing surface for the new highway-rail grade crossing where the proposed Empire Street crosses the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A).

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall pay all labor costs to install the crossing surface for the new highway-rail grade crossing where the proposed Empire Street crosses the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A).

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall pay all future operating and maintenance costs related to the automatic warning devices at the new highway-rail grade crossing where the proposed Empire Street crosses the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A).

IT IS FURTHER ORDERED that the City of Mt. Carmel shall pay all costs related to erection and future maintenance of temporary and permanent barricades, and all costs related to installation and future maintenance of required regulatory/warning signage for the 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A) closure.

IS FURTHER ORDERED that the City of Mt. Carmel shall pay all costs to remove the existing railroad advance warning signs for the existing 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A).

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall pay all costs to remove the existing crossing surface and the existing Crossbuck/YIELD signs for the 7th Street/Willow Swamp Road grade crossing (AAR/DOT #724 842Y, railroad milepost 149.20-A).

IT IS FURTHER ORDERED that all of the work herein shall be made in accordance with all applicable State laws, rules, standards, regulations and orders and procedures in general.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company and the City of Mt. Carmel are each hereby required and directed to proceed immediately in performing the work herein, and shall complete the work within twelve (12) months from the date of this Order.

IT IS FURTHER ORDERED that since federal funding is being utilized for the Ordered automatic warning devices at the proposed Empire Street grade crossing of the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A), all such work shall be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal Aid Policy Guide adopted Dec. 9, 1991.

IT IS FURTHER ORDERED that all bills for work related to the automatic warning devices at the proposed Empire Street grade crossing of the Norfolk Southern Railway Company's track (approximate railroad milepost 148.8-A) authorized for reimbursement from the Federal Rail/Highway Safety Program shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 S. Dirksen Parkway, Springfield, IL 62764.

IT IS FURTHER ORDERED that the City of Mt. Carmel and the Norfolk Southern Railway Company shall each, at six (6) month intervals from the date of Commission Order until the project has been completed, submit written reports to the Director of Processing and Information, Transportation Bureau of the Commission, stating the progress each has made toward completion of the work herein required. Each Project Status Report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the employee responsible for management of the project.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall within five (5) days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form (#6180.71) to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that the City of Mt. Carmel and the Norfolk Southern Railway Company be, and each is hereby required and directed to submit a Project Status Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been completed. Said Report shall be submitted within five (5) days after the project completion date.

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, 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