

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

County of St. Clair, St. Clair County, Illinois,  
Petitioner

Vs.

Kansas City Southern Railway Company, Union Pacific Railroad  
Company and the Illinois Department of Transportation,  
Respondents

T03-0059  
2<sup>nd</sup> Supp.

In RE the Matter of the Petition of the County of St. Clair for an  
Order compelling the building of a bridge carrying Mousette Lane,  
County Highway 19 over the triple tracks of Kansas City Southern  
Railway Company and the Union Pacific Railroad Company and  
that such Order prescribe the manner in which the expenses to  
build said bridge shall be divided among the parties and that said  
Order direct the Illinois Department of Transportation to pay a  
substantial part of the expenses for building said bridge from the  
Illinois Grade Crossing Protection Fund.

**SECOND SUPPLEMENTAL ORDER**

By the Commission:

**PROCEDURAL HISTORY**

On July 26, 1995, St. Clair County ("County" or "St. Clair County") filed a Petition with the Illinois Commerce Commission ("Commission") in Docket No. T95-0070, requesting an Order authorizing the construction of a bridge to carry St. Clair Highway 19, Mousette Lane, over the triple tracks of the SPCSL Corp. and the Kansas City Southern Railway Company ("KCS"), and requesting that Grade Crossing Protection Funds be allocated to assist in construction of the roadway bridge over the railroad tracks. Following hearings, in an Order entered May 7, 1997, the Commission found that the evidence supported signal improvements at the location, but did not support the construction of the roadway overpass. The Commission authorized the scaled-down project, and in a Supplemental Order entered May 20, 1998, allocated the costs for the work and set a completion date for the project.

On June 11, 2003, the County filed a Petition in this Commission Docket No. T03-0059, again requesting an Order compelling the construction of a bridge to carry Mousette Lane/Highway 19 over the triple tracks of the KCS and the successor to SPCSL Corp., the Union Pacific Railroad Company ("UP" or "Union Pacific"). In an Order entered May 20, 2005, the Commission authorized the construction of the vehicle

bridge overpass structure. The total project cost was estimated at \$3,318,000. The May 20, 2005 Order allocated assistance from the Grade Crossing Protection Fund to the project in the total amount of \$1,990,000, immediately authorizing the availability of half that amount, or \$995,400, to be spent in fiscal year 2005. Pursuant to a Supplemental Petition subsequently filed by St. Clair County, the Commission entered a Supplemental Order on August 30, 2006, authorizing the availability of the remainder of the Grade Crossing Protection Fund contribution to the project in the amount of \$995,400. The Supplemental Order set the project completion date for February 29, 2008.

On March 12, 2008, at the request of Commission Staff, the Commission entered a Citation in Commission Docket No. T08-0054, to require the County to appear in the Commission and show cause why it had not yet complied with the Commission Orders entered in this Docket No. T03-0059 and why it had not constructed or completed the project.

### **PETITION FOR VACATION OF ORDER(S)**

Thereafter, on April 7, 2008, St. Clair County filed a Petition for Vacation of Order(s) in this T03-0059 matter. In its Petition, the County submits that it had no other recourse other than to cancel the project due to high costs and lack of community support. Specifically, the County cites the following: (1) the original cost estimate for the purchase of right of way needed for the construction of the vehicular overpass/bridge was \$84,000, which ballooned to \$350,000 when formal appraisals came in, and which escalated even higher to \$959,165 as demanded by the various owners of the property needed for the project; (2) the prohibitive costs of eminent domain litigation faced by the County were it to proceed in that manner to obtain the right of way, and the prospects of unsuccessful results stemming from that litigation; (3) the discovery of substandard soil at the bridge construction site which resulted in substantial additional project costs for remediation not anticipated at the time the original project cost estimates were prepared; (4) the extended timeline necessary to complete all phases of the project due to the aforementioned factors, which was expected to further increase actual construction costs; and (5) community outcry regarding detours created by pursuing the construction project and complaints about the increased length of time it would take to complete the project. According to the County's Petition to Vacate Orders, the project, which was originally estimated to cost \$3.3 million, increased in cost to almost \$5,000,000 even before any of the necessary right of way had been purchased to even commence construction. St. Clair County avers that these occurrences led the County Board to determine to cancel the project for the present time, and to allow the entirety of the funds committed to the project to revert back to the Commission and the Grade Crossing Protection Fund. The County concludes that it simply does not have the funding or support to comply with the Orders entered in this case authorizing the project to go forward and approving funding for the project.

**ILLINOIS COMMERCE COMMISSION CITATION, CASE NO. T08-0054**

St. Clair County presented evidence in the hearing on the Citation issued by the Commission in Docket No. T08-0054, confirming and attesting to all of the allegations made in its Petition for Vacation of Order(s) filed in this case, Docket No. T03-0059. Additionally in the Citation case, the County agreed that it was not seeking reimbursement of the \$275,000 it had expended in County funds for preliminary engineering on the project. The Commission hereby takes administrative notice of the evidence presented in T08-0054 in support of the County's Petition for Vacation of Order(s) filed in this Docket No. T03-0059.

**RESPONDENTS' POSITIONS ON THE PETITION TO VACATE**

On May 14, 2008, the Union Pacific Railroad Company filed its Response stating that it has no objection to the Commission granting the Petition to Vacate.

On May 19, 2008, Kansas City Southern Railway Company filed its Response, in which it stated that the automatic flashing light signals and gates (ordered and installed under Commission Order entered in T95-0070) continue to remain in operation and that the existing highway-rail grade crossing at Mousette Lane complies with all previous Orders and applicable safety rules and regulations of the Commission. KCS makes no objections to the County's Petition to Vacate Orders, as long as all costs incurred on the project to date are assessed to the County.

On May 27, 2008, the Illinois Department of Transportation filed its Response to the Petition, advising that IDOT has no objection to the County's request.

**STAFF'S POSITION**

As set forth in the Citation proceeding, ICC v. St. Clair County, Docket No. T08-0054, Staff is of the opinion that St. Clair County has proved by clear and substantial evidence that the project is no longer necessary in the public interest, and the County has presented more than sufficient reasons justifying cancellation of the Mousette Lane grade separation/vehicular bridge project. Further, Staff requests that the Grade Crossing Protection Funds allocated to this project in the amount of \$1,990,800 be de-obligated and made available for use on other Fund projects in the State of Illinois, subject to future Commission Order. On May 12, 2008, Staff filed a written Response to the County's Petition advising that Staff has no objection to granting the Petition for Vacation of Order(s).

**COMMISSION FINDINGS AND ORDERS**

The Commission, having given due consideration to the facts, law and record herein, finds that:

- (1) The Commission has jurisdiction over the Parties and the subject matter of this proceeding;

- (2) The recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (3) St. Clair County has presented sufficient evidence of cause to support its cancelling the above-described Mousette Lane/Highway 19 grade separation construction project. St. Clair County has proved that the grade separation project is no longer necessary in the interest of the public.
- (4) St. Clair County's Petition for Vacation of Commission Order(s) should be granted, and the Commission Order entered on May 20, 2005 authorizing the construction project and allocating funding for the project, and the Commission's Supplemental Order entered August 30, 2006 authorizing the release of additional funding for the project, should be vacated as requested by St. Clair County.
- (5) The amount of \$1,990,800 allocated to the project from the Grade Crossing Protection Fund, and remaining in IDOT Obligation XP05039, should be de-obligated due to the cancellation of the project by St. Clair County.
- (6) St. Clair County should be ordered to be solely responsible for any and all funds it has expended on preliminary engineering and other preliminary phases of the cancelled project.

IT IS THEREFORE ORDERED that the Petition for Vacation of Order(s) filed by St. Clair County be and the same is hereby granted.

IT IS FURTHER ORDERED that the Commission Order entered on May 20, 2005 authorizing the construction project and allocating funding for the project, and the Commission's Supplemental Order entered August 30, 2006 authorizing the release of additional funding for the project, are hereby vacated as requested by St. Clair County.

IT IS FURTHER ORDERED that the amount of \$1,990,800 allocated to the project from the Grade Crossing Protection Fund, and remaining in IDOT Obligation XP05039, is hereby de-obligated due to the cancellation of the project by St. Clair County.

IT IS FURTHER ORDERED that St. Clair County is to be solely responsible for any and all funds it has expended on preliminary engineering and other preliminary phases of the cancelled project.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Illinois Administrative Review Law.

By Order of the Commission this 3rd day of December 2008.

JUDGE
SECTION CHIEF <i>[Signature]</i>
ORDERS SUPERVISOR

*Charles E. Box*  
CHARLES E. BOX  
CHAIRMAN