

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Central Railroad Company and City of Paxton, Ford County, :
Illinois, :
Petitioners, :

v. :

Illinois Department of Transportation, :
Respondent, :

T08-0065

Petition for an Order from the Illinois Commerce Commission for :
permission to construct an overhead highway grade separation :
structure to carry Holmes Street (SN 027-6505) over the Illinois Central :
Railroad Company's tracks and for an Order authorizing the closure :
and elimination of the existing overhead highway grade separation :
structure that carries Pine Street (SN 027-6500) over the Illinois Central :
Railroad Company's tracks and for an Order authorizing the closure :
and elimination of the existing overhead highway grade separation :
structure that carries Center Street (SN 027-6502) over Illinois Central :
Railroad Company's tracks all in the City of Paxton, Ford County, :
Illinois, and for an Order apportioning costs thereof and directing an :
appropriate portion thereof to be borne by the Grade Crossing :
Protection Fund. :

ORDER

By the Commission:

PROCEDURAL HISTORY

On April 3, 2008, the Illinois Central Railroad Company ("Illinois Central" or "Railroad" or "Company") and the City of Paxton ("Paxton" or "City"), Ford County, Illinois, a municipal corporation (jointly referred to as "Petitioners") filed the above-captioned verified Petition naming as Respondent the Department of Transportation of the State of Illinois ("Department" or "IDOT").

Pursuant to notice given in accordance with the law and rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge of the Illinois Commerce Commission ("Commission") at the offices of the Commission in Springfield, Illinois on June 19, 2008. The City appeared by counsel and presented the testimony of Paxton Mayor Bill Ingold and Magued Zaglama, consulting engineer for the project. Illinois Central appeared by counsel and presented the testimony of John Henriksen, Railroad Manager of Public Works. Jason Johnson appeared on behalf of IDOT, and Joe VonDeBur, Rail Safety Specialist, appeared on behalf of Commission Staff. At the conclusion of the June 19, 2008, hearing, the record was marked "Heard and Taken."

PETITIONERS' EVIDENCE

The Petitioners seek permission to construct an overhead highway grade separation structure to carry Holmes Street (SN 027-6505) over the Illinois Central Railroad Company's tracks, the closure and elimination of the existing overhead highway grade separation structure that carries Pine Street (SN 027-6500) over Illinois Central's tracks, and closure and elimination of the existing overhead highway grade separation structure that carries Center Street (SN 027-6502) over the Railroad's tracks, all located in the City of Paxton. Petitioners ask that the cost of the project be apportioned among the Parties and the Grade Crossing Protection Fund.

Paxton Mayor Bill Ingold testified to the public benefit of the proposed Holmes Street grade separation. The Railroad's tracks extend approximately 1.3 miles through the City of Paxton, via a depressed or "cut" section. The proposed Holmes Street structure would provide for better traffic flow and faster, easier access to, and for, emergency, health and community services in Paxton. The proposed structure would also allow heavier freight traffic to circumvent the main streets of Paxton.

Magued Zaglama of Edwards & Kelsey, consulting engineers, testified that the existing Pine Street (AAR/DOT #289 025W, railroad milepost 102.65-M) and Center Street (AAR/DOT #289 028S, railroad milepost 103.05-M) bridges are highway structures that carry traffic over the Railroad's tracks between US Route 45 and Market Street in the City of Paxton. Both structures were built in the 1920s, and both are in a progressing state of deterioration. He testified that the Pine Street and Center Street bridges were designed for what are now sub-standard specifications and cannot be rehabilitated to current standards. Both bridges would be closed and eliminated upon completion of the proposed Holmes Street Bridge.

The proposed Holmes Street highway-rail grade separation would be a three span structure with a thirty (30) foot roadway and two, five-foot sidewalks, designed to current standards. The vertical clearance will be 22'-5" minimum at the main track. The minimum horizontal clearance will be 12'-6". The 22'-5' vertical clearance, though less than the 23 foot clearance required by the State, is the maximum clearance that can be provided given the existing geometrics and proximity of U.S. Route 45 to the railroad cut. The Petitioners have requested that the Commission grant a variance to allow the 22'-5" vertical clearance. Once the construction, funding and vertical clearance requirement variance are approved by the Commission, the City will submit construction plans to IDOT for final approval.

The total cost for the project is estimated to be \$3.9 million (per Petitioners' Exhibit 3 - Preliminary Construction Estimate). The City will utilize federal funding (through the Department's FY 2009 Major Bridge Program), and a contribution from the Railroad to pay for the majority of the project costs. The Petitioners are also seeking a contribution from the Grade Crossing Protection Fund. The construction of the proposed Holmes Street structure is expected to take 9-12 months.

John Henriksen, Illinois Central Railroad Company Manager of Public Works, testified that he has been involved in the project on behalf of the Railroad. He stated

that he is familiar with the substandard vertical clearance and that a 22'-5" clearance is acceptable to the Railroad. It is his understanding that the City of Paxton will own and maintain the Holmes Street Bridge once it has been constructed. The Railroad's monetary contribution to the project will be limited to \$321,148, which includes \$195,000 that had already been authorized as of the date of the June 19, 2008 hearing. The remaining portion of the \$321,148 commitment, or \$126,148, will be paid by Illinois Central Railroad to the City when the Holmes Street Bridge is completed and open to traffic. In addition, the Railroad has agreed to contribute permanent and temporary easements for the construction of the Holmes Street Bridge.

RESPONDENT IDOT'S EVIDENCE

The Department offered no testimony and had no objections to the requests of the Petitioners.

STAFF'S POSITION

Testimony established that the Pine and Center Street structures, which are currently owned by the Railroad, are unsafe and no longer functional. The obsolete design standards and age of the structures, not any lack of maintenance, were established as the reason they could not accommodate all of the public traffic. Abandonment and removal of these structures would enhance the safety of the motoring traffic as well as train traffic and Railroad personnel.

The Railroad and the City filed the Petition jointly, and both Parties have executed a Letter of Understanding governing the project, as well as an agreement regarding the project costs and the portion to be borne by the Railroad. IDOT is a participating party in the funding of the project and does not object to the Petition. The Holmes Street Bridge project has been included in the Illinois Commerce Commission's Crossing Safety Improvement Program Five Year Plan ("Plan") for several years, and assistance from the Grade Crossing Protection Fund in the amount of \$2,068,362 is included in the FY 2009 element of the Plan.

Commission Staff has no objection to the Petitioners' requests and recommends that the amount of \$2,068,362 be allocated to the project from the Grade Crossing Protection Fund.

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) Petitioner, Illinois Central Railroad Company, is a rail carrier engaged in the transportation of property for hire in the State of Illinois, as defined by the Illinois Commercial Transportation Law, 625 ILCS 5/18/c-11 04(30);

- (3) The Petitioner, City of Paxton, is a political subdivision of the State of Illinois;
- (4) Respondent, Illinois Department of Transportation, is a Department of the State of Illinois which exists by virtue of the laws of the State of Illinois;
- (5) 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;
- (6) Permission should be granted to the Petitioners to construct a new highway-rail grade separation structure to carry Holmes Street over the Illinois Central Railroad Company's tracks in the City of Paxton;
- (7) Permission should be granted to the Petitioners to close and eliminate the existing Pine Street and Center Street highway-rail grade separation structures over the Illinois Central Railroad Company's tracks, upon completion of the proposed Holmes Street structure;
- (8) The Petitioners' request for a variance from the vertical clearance requirements of 92 Ill. Adm. 1500 should be approved by the Commission. The vertical clearance will be 22'-5" minimum at the main track. The 22'-5' vertical clearance, though less than the 23 foot clearance required by the State, is the maximum clearance that can be provided given the existing geometrics and proximity of U.S. Route 45 to the railroad cut. The vertical clearance variance should be approved with the following proviso: the City of Paxton should post signs on both entrances to the portal created by the new Holmes Street structure that provides the actual vertical clearance measurements. The signs should be constructed from reflectorized materials, and should be of sufficient size, and located in such places, so that they will be clearly visible by all train crews;
- (9) The cost for the aforementioned improvements should be divided between the parties and the Grade Crossing Protection Fund in accordance with Law;
- (10) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund, the City of Paxton and the Illinois Central Railroad Company should be directed to bear their respective portions of the actual cost for the improvements as shown below:
 - (a) Assistance in an amount not to exceed \$2,068,362 from the Grade Crossing Protection Fund should be provided to pay for eligible project costs.

- (b) Assistance in an amount not to exceed \$1,509,265 in Major Bridge Funds should be provided to pay for eligible project costs.
 - (c) The Illinois Central Railroad Company should pay a total not to exceed the amount of \$321,148 for eligible project costs. The Illinois Central Railroad Company has previously contributed \$195,000, and should provide \$126,148 to the City of Paxton when the Holmes Street Bridge is completed and open to traffic. In addition, the Illinois Central Railroad Company should contribute permanent and temporary easements for the construction of the Holmes Street Bridge.
 - (d) The City of Paxton should pay all remaining costs of the project and assume ownership of the proposed Holmes Street bridge, which will include all future maintenance costs.
- (11) 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;
 - (12) 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;
 - (13) 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;
 - (14) 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;
 - (15) 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 by the Illinois Commerce Commission, that the Petitioner, City of Paxton, is authorized to construct, in accordance with the preliminary plans included with its Petition, a new highway bridge to carry Holmes Street over the Illinois Central Railroad Company's tracks.

IT IS FURTHER ORDERED that upon completion of the new overpass the City of Paxton shall close, abolish and eliminate the existing highway bridges that carry Pine Street and Center Street over the Illinois Central Railroad Company's tracks.

IT IS FURTHER ORDERED that the City of Paxton is hereby granted a variance from the vertical clearance requirements of 92 Ill. Adm. Code 1500. The vertical clearance for the new Holmes Street Bridge over the Illinois Central Railroad Company's main track shall not be less than 22'-5". The City of Paxton shall be required to post signs on both entrances to the portal created by the new Holmes Street structure that provides the actual vertical clearance measurements. The signs shall be constructed from reflectorized materials, and shall be of sufficient size, and located in such places, so that they will be clearly visible by all train crews.

IT IS FURTHER ORDERED that the City of Paxton shall complete the construction of the project within twenty four (24) months from the date of this Order.

IT IS FURTHER ORDERED that the division of costs for the construction of the Holmes Street Bridge and closure and elimination of the Pine and Center Streets bridges shall be as set forth in Finding 9 of this Order.

IT IS FURTHER ORDERED that the City of Paxton shall, at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress it has made toward completion of the work herein required. Each progress 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 project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for management of the project.

IT IS FURTHER ORDERED that the City of Paxton shall file written notice with the Director of Processing of the date this project is completed. This notice shall be filed within five days after the completion date.

IT IS FURTHER ORDERED that the Illinois Department of Transportation, in coordination with the Illinois Central Railroad Company, shall file with the Transportation Bureau's Director of Processing and Information within five (5) days after the completion of the work required under this Order, a United States Department of Transportation Inventory Form (#6180.71). A separate form shall be filed for each of the structures; Pine Street, Center Street and Holmes Street.

IT IS FURTHER ORDERED that the City of Paxton shall submit all bills for work authorized for reimbursement from the Grade Crossing Protection Fund to the Region 2, District 3 Office of the Department; 700 East Norris Drive, Ottawa, IL 61350. The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. The final bill for expenditures from each party shall be clearly marked "Final Bill". All bills shall be submitted no later than twelve (12) months from the completion date specified by this, or any Supplemental Order. The Commission shall, at the end of the 12th month from the completion date specified by this Order, or any Supplemental Order, conduct a review to determine if any unused assistance from the Grade Crossing Protection Fund should be de-obligated. If Upon completion of the review, the Commission shall notify the Department to de-obligate all residual funds accountable for installation costs for this project. Notification may be by regular mail, electronic mail, fax, or phone.

IT IS FURTHER ORDERED that 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.

IT IS FURTHER ORDERED that any person requesting an Extension of Time which 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.

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 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 Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is 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 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 Commission shall retain jurisdiction for the purpose of issuing any Supplemental Order or Orders as it may deem necessary.

IT IS FURTHER ORDERED that, in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final Order subject to the Administrative Review Law.

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


CHARLES E. BOYD
Chairman