

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Village of Frankfort and Village of Mokena, municipal corporations;
Petitioners,

vs.

The Elgin, Joliet, and Eastern Railway Company, a Delaware Corporation, and the Department of Transportation of the State of Illinois,
Respondents.

T08-0077

Petition for an Order to upgrade 116th Avenue (Osage Road/Bobzin Road) designated as crossing AAR/DOT #260 620E located in the Village of Frankfort and Mokena, Will County, Illinois.

ORDER

By the Commission:

On May 14, 2008, the Village of Frankfort and the Village of Mokena ("Frankfort", "Mokena", or "Petitioners") filed the above-captioned verified Petition with the Illinois Commerce Commission ("Commission") naming as Respondents the Elgin, Joliet, and Eastern Railway Company ("Railroad" or "EJE") and the Illinois Department of Transportation ("Department" or "IDOT") seeking authority to modify the roadway cross section at the 116th Avenue (Osage Road/Bobzin Road) highway-rail grade crossing of the Railroad's tracks, which bisect the corporate limits of Frankfort (to the south) and Mokena (to the north), in Will County, designated as AAR/DOT #260620E, railroad milepost 11.5ESD.

PROCEDURAL HISTORY

Pursuant to notice given in accordance with Law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at the Commission's Chicago office on July 2, 2008. Petitioners were represented by counsel and presented the testimony of Harry Gilmore, Jr., Senior Project Manager for Robinson Engineering Ltd., the design consultant for the project, Clifford Janeliunas, Frankfort's Community Services and Engineering Coordinator, and John Downs, Village Administrator for Mokena. Respondent IDOT was also represented by counsel. An appearance was also entered by Thomas W. Hunter, the EJE's Engineer of Signal, Communication, and Electrical, and Brian Vercruysse, Senior Railroad Safety Specialist, representing the Commission's Transportation Bureau, Railroad Section ("Staff"). At the conclusion of the July 2, 2008, hearing, the record was marked "Heard and Taken."

On October 30, 2008, Staff filed a draft Proposed Order, the terms of which have been agreed to by all the Parties and have been incorporated herein.

PETITIONERS' EVIDENCE

Petitioners seek authority to widen 116th Avenue in accordance with the cross section and plan exhibits filed with the May 14, 2008 Petition. In conjunction with this widening at the crossing, the warning devices will be upgraded to include roadway gates and supplemental pedestrian gates. The Petitioners also request that the Grade Crossing Protection Fund ("GCPF") be utilized to pay for a portion of the upgrade costs.

Harry Gilmore testified that he is Senior Project Manager with Robinson Engineering, the project design engineering firm for the subject crossing. Gilmore testified that the subject crossing is jointly located in the Village of Frankfort, south of the crossing, and the Village of Mokena, north of the crossing. Gilmore explained that with residential development, 116th Avenue had been widened and improved north and south of the tracks, and current traffic is less than 1000 vehicles per day. Approximately three blocks south of the EJE crossing is Hickory Creek Junior High ("Junior High"), and north of the crossing is a regional bike trail – the Old Plank Road Trail. In the vicinity of the EJE crossing, the Petitioners seek to improve the remaining 400 feet of roadway to provide a consistent cross section for the motorists, cyclists, and pedestrians that currently use the crossing. This will include widening 116th Avenue to allow for a twelve foot (12') wide travel lane in each direction, curb and gutter, a six foot (6') wide median, a ten foot (10') wide multi-use path on the east side of the road, and a five foot (5') wide sidewalk on the west side of the road. With the improved cross section, the railroad crossing surface will be widened; the warning devices will be upgraded to include gates; and supplemental pedestrian gates will be installed at the request of the Petitioners. Gilmore further testified that the plans include ditch improvements and additional structures in the vicinity of the crossing to address drainage concerns to be installed with EJE's concurrence. Gilmore also provided cost estimates for the various components of the project (detailed below in the Findings section – Cost Division Table), which is anticipated to start in early 2009, with a completion date of December 31, 2009.

Clifford Janeliunas testified that he is the Community Services and Engineer Coordinator for the Village of Frankfort. Janeliunas testified that students of the Junior High, other children, and recreational users utilize the 116th Avenue crossing as pedestrians or cyclists. To allow for the improvements, Frankfort has approved funds in its 2008/2009 capital program to complete the project under one contract in coordination with Mokena.

John Downs is the Village Administrator for the Village of Mokena. He testified that the Petitioners desire to improve pedestrian and motorist safety at the 116th Avenue crossing of EJE's track. Consistent with other intergovernmental boundary agreements, Frankfort and Mokena will determine the lead agency for oversight of the project, and Mokena has budgeted for its share of the estimated project costs.

RESPONDENT RAILROAD'S EVIDENCE

Thomas Hunter is a signal engineer with EJE. He stated that EJE does not object to the project. He also testified that the 116th Avenue crossing of the EJE's track consists of a single track with railroad traffic totaling approximately 12 trains per day. The westward speed of trains is generally 45 MPH, and eastward train speeds are decreasing to 20 MPH due to the proximity of a track switch. Hunter indicated that EJE will require the Petitioners to record a 66 feet roadway easement with Will County, as one does not currently exist. Further, to address maintenance and other issues, the Railroad requires the Petitioners to enter into a license agreement. Specifically, the EJE would be responsible for maintenance of the supplemental pedestrian gates, but Petitioners should be responsible for reimbursing EJE for the costs associated with that maintenance. Hunter also provided the cost estimates for the work EJE would complete: reconstruction and widening the crossing surface; installation of the roadway warning devices; and installation of the supplemental pedestrian gates.

RESPONDENT DEPARTMENT'S POSITION

The Department has no objection to the Petition.

STAFF'S POSITION

Staff concurs with the need for the project and indicated that the 116th Avenue crossing of EJE's track was initially identified within the Commission's Crossing Safety Improvement Program 5-Year Plan for the upgrade of the warning devices to include automatic flashing light signals and gates. While reviewing the crossing, cyclists and pedestrians were seen utilizing the crossing within the roadway lanes, presenting a safety concern. Various meetings were then conducted with the Petitioners and EJE to work towards the roadway plans and Petition as filed by Frankfort and Mokena. The Parties also have agreed to the cost division as described below, with Staff recommending assistance from the GCPF be authorized to help pay a portion of the installation costs for the new automatic warning devices.

COMMISSION FINDINGS AND CONCLUSIONS

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

- (1) The recitals of fact in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (2) Petitioners Village of Frankfort and Village of Mokena, Illinois, are bodies politic and corporations organized and existing under and by virtue of the laws of the State of Illinois;
- (3) Respondent Elgin, Joliet & Eastern Railway Company ("Railroad") is a rail carrier engaged in the transportation of persons and property by rail in the State of Illinois;

- (4) Respondent Illinois Department of Transportation is a state governmental entity and public highway authority organized and existing in accordance with the laws of the State of Illinois;
- (5) The Petitioners have filed a Petition for an Order authorizing them to reconstruct and improve an at-grade rail-roadway crossing, and to construct and maintain a pedestrian walkway and multi-use path at-grade crossing across the Railroad's at-grade crossing at 116th Avenue;
- (6) The Commission has jurisdiction over the Petitioners and the Railroad and the subject-matter of this proceeding;
- (7) The reconstruction and improvements to the 116th Avenue highway-rail grade crossing of the Railroad's track, requested by the Petitioners, are necessary to promote safety and the convenience of the public, in accordance with the Illinois Commercial Transportation Law, 625 ILCS 5/18c-7401(3);
- (8) The Parties and Staff agree that an equitable division of cost for the proposed improvements is as follows:

- COST DIVISION TABLE -

IMPROVEMENT	EST. COST	GCPF	FRANKFORT	MOKENA	RAILROAD	IDOT
Install Automatic Flashing Light Signals and Gates, controlled by CWT Circuitry	\$206,135	(90%) \$185,522 ₁	(2.5%) \$5153	(2.5%) \$5153	(5%) \$10,307 ²	\$0
Install Supplemental Pedestrian Gates	\$58,741	\$0	(50%) \$29,370.50 ³	(50%) \$29,370.50 ³	\$0	\$0
Install new/widened Crossing Surface	\$109,420	\$0	(50%) \$54,710 ³	(50%) \$54,710 ³	\$0 ²	\$0
Widen roadway, install barrier median, sidewalk, and bike path at the 116 th Avenue crossing	\$100,000	\$0	(50%) \$50,000	(50%) \$50,000	\$0	\$0
TOTALS	\$474,296	\$185,522	\$139,233.50	\$139,233.50	\$10,307	\$0

Notes:

1. Total Grade Crossing Protection Fund (GCPF) assistance not to exceed \$185,522; any installation costs above the estimated amount of \$206,135 will be divided between the GCPF, Frankfort, Mokena, and the Company in the same percentages noted above, upon submittal and review of evidence to support the additional cost and subject to approval by the Commission.
 2. EJE will be responsible for future maintenance costs for the crossing surface and roadway warning devices. Frankfort and Mokena will be responsible for maintaining the sidewalk and multi-use path.
 3. Frankfort & Mokena will be responsible for future costs associated with the EJE maintenance of the supplemental pedestrian gates.
- (9) The Parties should proceed immediately to take the actions they are directed to perform by this Order; all work required of the parties under this Order should be completed by December 31, 2009;
- (10) Any person making a Request for an 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 and Information no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.
- (11) Any person making a Request for an Extension of Time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing and Information no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.
- (12) 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.
- (13) 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 Villages of Frankfort and Mokena are authorized and shall, in accordance with the plans incorporated into the Petition, widen and reconstruct the roadway cross section adjacent to the 116th Avenue highway-rail grade crossing of the Elgin, Joliet, and Eastern Railway Company's track to include the pedestrian sidewalk, multi-use path,

and barrier median. All work shall be completed by Frankfort and Mokena in accordance with Findings (7) through (13).

IT IS FURTHER ORDERED that the Elgin, Joliet and Eastern Railway Company shall complete the reconstruction and widening of the crossing surface, installation of the roadway warning devices, and installation of the supplemental pedestrian gates at the 116th Avenue highway-rail grade crossing of its track, in conjunction with the Petitioners work, and in accordance with Findings (7) through (13).

IT IS FURTHER ORDERED that the cost to complete the project shall be paid for as outlined in Finding (8) above.

IT IS FURTHER ORDERED that all bills for the highway-rail grade crossing warning system expenditures authorized for reimbursement from the Grade Crossing Protection Fund be submitted to the Illinois Department of Transportation ("Department"). The Department shall send a copy of all invoices to the Director of Processing, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in this Order. The final bill for expenditures from each party shall be clearly marked "Final Bill." All bills shall meet minimum documentation requirements. The Commission shall, at the end of the twelfth month from the completion date specified in this Order or any Supplemental Order, conduct a review to determine if any unused assistance from the Grade Crossing Protection Fund should be deobligated. Upon completion of the review, the Commission shall notify the Department to deobligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that prior to construction, the Elgin, Joliet and Eastern Railway Company shall file Form 3 of Section 1535 of Title 92 of the Illinois Administrative Code showing details of the automatic warning devices required under this Order, and shall receive approval by resolution of the Commission Transportation Bureau Rail Safety Program Administrator before installing the devices;

IT IS FURTHER ORDERED that the Petitioners and the Elgin, Joliet and Eastern Railway Company shall, at six-month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing in the Commission's Transportation Bureau ("Director of Processing"), describing the progress that has been made toward completing the project. If the project is behind schedule, the report shall include a brief explanation of the reason for the delay. Each progress report shall include the Commission Order number; the date the Order was entered; the deadline for completion of the project established by the Order; the type of improvement; and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the project.

IT IS FURTHER ORDERED that the Petitioners shall within five (5) days of the completion of the project file with the Director of Processing a letter advising the Commission of the completion date.

IT IS FURTHER ORDERED that the Elgin, Joliet & Eastern 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 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 Illinois Commerce Commission.

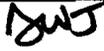
IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any Supplemental Order or Orders as it may deem necessary.

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. BOX
CHAIRMAN

JUDGE
SECTION CHIEF

ORDERS SUPERVISOR