

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Kendall County, Illinois,
Petitioner,

Vs.

Illinois Department of Transportation,
Respondent.

T08-0069

Petition for an Order from the Illinois Commerce Commission to
widen the existing overhead highway grade separation structure
carrying Orchard Road (County Highway 9A) over BNSF Railway
Company (U.S. D.O.T. No. 072 965G) from 2 lanes to 4 lanes, in
Kendall County, Illinois.

ORDER

By the Commission:

On April 11, 2008, Kendall County (“Petitioner” or “County”) filed the above captioned Petition with the Illinois Commerce Commission (“Commission”), naming as Respondents the Illinois Department of Transportation (“IDOT” or “Department”) and BNSF Railway Company (“BNSF”), requesting the Commission issue an Order granting permission to widen the grade separation structure carrying Orchard Road (County Highway 9A) over dual railroad tracks owned and operated by BNSF at U.S. D.O.T. No. 072 965G near Oswego, Kendall County, Illinois. The Petition is uncontested.

PROCEDURAL HISTORY

Pursuant to notice given in accordance with 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 office on May 22, 2008. Petitioner and Respondent BNSF were represented by counsel. John Saladino of the Railroad Section of the Transportation Bureau appeared on behalf of Commission Staff (“Staff”). IDOT filed a Response to the Petition indicating that it did not object to Commission granting the Petition. At the conclusion of the hearing on May 22, 2008, the record was marked “Heard and Taken.”

PETITIONER’S STIPULATED EVIDENCE

The Orchard Road overhead grade separation structure was designed and built by Kendall County in 1993 pursuant to a Commission Order entered on May 13, 1992, in docket number T91-0074. It is a 3-span concrete deck with steel I-beam construction having HS-20 loading and carrying two (2) lanes of traffic over the BNSF tracks.

Petitioner proposes to widen the existing structure from two (2) lanes to four (4) lanes, and include an eight foot (8') wide sidewalk on the west side of the structure. Construction of the widening will be similar to that of the existing steel and reinforced concrete structure, providing for an overall length of 162'-8" (bk. to bk. abutments), 62'-2" (out to out deck) and minimum 23'-0" vertical clearance from top of rails to low steel. Construction shall be in conformance with the "General Plan and Elevation" filed with the Petition as Exhibit A in the Overpass Agreement between Kendall County and BNSF.

Petitioner, pursuant to an agreement approved by the Kendall County Engineer on March 24, 2008, and the BNSF Railway Company, on March 28, 2008, respectively executed an "Overpass Agreement" filed with the Petition as Exhibit 2. The Overpass Agreement summarizes the various terms and conditions relating to ownership and future maintenance of the grade separation structure, as well as the proposed division of any required local share of costs thereof, and other ancillary matters. Kendall County Engineer, Francis C. Klass, was authorized by the Kendall County Board to execute that agreement on behalf of Kendall County.

Petitioner Kendall County proposes to pay for all costs associated with the improvement. The estimated cost to widen the grade separation structure from two (2) to four (4) lanes, construct an 8' sidewalk on the grade separation structure, and complete all widening of the approach roadway from touchdown to touchdown was originally estimated to be \$2,441,793. This cost has since been revised to \$2,794,660 with no change in the division of costs that were stated in the Petition. No Grade Crossing Protection Funds will be used on the project.

Petitioner further proposes that Kendall County, Illinois will, upon completion of the widening of the Orchard Road grade separation structure, assume ownership and maintenance of the proposed grade separation structure. Petitioner asserts that the widening of the Orchard Road grade separation structure is necessary to preserve and promote the safety and convenience of the traveling public.

RESPONDENTS DEPARTMENT AND BNSF POSITIONS

The Department and BNSF do not object to the Petition.

STAFF'S POSITION

Staff does not object to the Petition, and is of the opinion that widening the existing grade separation structure and including pedestrian facilities on the structure is in the interest of public safety. Staff recommends the Petitioner's request be approved.

PROPOSED ORDER

A Proposed Order granting the Petition was served on all Parties of record and Staff on or about November 18, 2008.

BRIEFS ON EXCEPTION

Briefs on Exception were filed by Staff and BNSF. Staff indicated that it had no exceptions to the Proposed Order. BNSF requested that the third ordering paragraph be stricken, and replaced with the following language;

“IT IS FURTHER ORDERED that the 4 lane grade separation structure and pedestrian facilities attached thereto shall be completed, and thereafter maintained, by Kendall County in accordance with Findings (3) through (11) set forth above.”

The Commission will adopt the proposed language as it clarifies that the responsibility for future maintenance of the grade separation structure and pedestrian facilities will belong to Petitioner.

COMMISSION FINDINGS AND ORDERS

The Commission, having given due consideration to the entire record herein, finds that:

1. The Commission has jurisdiction of the Parties hereto and the subject matter hereof;
2. The recitals of fact set forth in the prefatory portion of this Order are supported by evidence of record and are adopted as findings of fact;
3. The Petition filed by Kendall County seeking authorization to widen the existing grade separation structure carrying Orchard Road over BNSF Railway Company, including pedestrian facilities thereto, is required by public convenience and necessity, is consistent with the policy declared in the Illinois Commercial Transportation law and its implementing regulations, 625 ILCS 5/18c-7401(3) and 92 Ill. Adm. Code 1536.40, and should be granted;
4. All costs of improvements for the proposed project shall be paid 100% by the Petitioner, Kendall County;
5. Upon completion of the project, Kendall County shall maintain the 4-lane grade separation structure as well as pedestrian facilities attached thereto. BNSF Railway Company shall continue to maintain the dual tracks below the grade separation structure;

6. All work herein should be completed within twelve (12) months of the date of this Order;
7. Chapters 625 ILCS 5/18c-1701 and 5/18c-1704 of the Law require each "person" as defined by 5/18c-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;
8. 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 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
9. 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;
10. 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.
11. 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 Kendall County is authorized to widen the grade separation structure carrying Orchard Road over BNSF from two (2) lanes to four (4) lanes and to include pedestrian facilities on the west side of said structure.

IT IS FURTHER ORDERED that Kendall County is hereby required and directed to proceed immediately in performing the work set forth in its Petition and the prefatory portion of this Order, and shall complete the work within twelve (12) months from the date of this Order.

IT IS FURTHER ORDERED that the four (4) lane grade separation structure and pedestrian facilities attached thereto shall be completed, and thereafter maintained, by Kendall County in accordance with Findings (3) through (11) set forth above.

IT IS FURTHER ORDERED that Kendall County 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 Petitioner Kendall County shall file written notice with the Director of Processing of the date this project is completed. This notice shall be filed within five (5) days after the completion date.

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 7th day of January 2009.

A handwritten signature in black ink, reading "Charles E. Box". The signature is written in a cursive style with a small "2" at the end of the last name.

CHARLES E. BOX
CHAIRMAN