

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

The Department of Transportation of the State of Illinois, for and :
in behalf of the People of the State of Illinois, :
Petitioner, :

Vs. :

The Kansas City Southern Railway Company, :
Respondents. :

T08-0070

Petition for approval of the taking or damaging of certain :
properties in Madison County, Illinois by exercising the right of :
eminent domain. Parcel No. 8239078PE A & B. :

ORDER

By the Commission:

PROCEDURAL HISTORY

On April 15, 2008, the Department of Transportation of the State of Illinois ("IDOT" or "Petitioner") filed the above referenced Petition with the Illinois Commerce Commission ("Commission") naming as Respondent The Kansas City Southern Railway Company ("KCS" or "Railroad") to approve the taking of certain property in Madison County, Illinois, by exercising the power of eminent domain (Parcel No. 8239078PE A&B).

Pursuant to notice as required by law and the rules and regulations of the Commission, a hearing on the Petition was held on June 12, 2008, before a duly authorized Administrative Law Judge of the Commission at the Commission's offices in Springfield, Illinois. Petitioner was represented by counsel and presented the testimony of Timothy A. Price, IDOT Condemnation Engineer. Respondent KCS appeared by counsel. An appearance on behalf of Commission Staff was also made by Joe VonDeBur, Railroad Safety Specialist of the Railroad Section of the Transportation Division of the Commission ("Staff"). At the conclusion of the June 12, 2008 hearing, the record was marked "Heard and Taken."

PETITIONER'S EVIDENCE

Timothy A. Price, IDOT Condemnation Engineer of District 8, testified that Petitioner seeks a permanent easement in Parcels No. 8239078PE A&B, described in Exhibit "A" attached to the Petition filed herein. Parcel No. 8239078PE-A contains 0.0552 acres in area and Parcel No. 8239078PE-B contains 0.0752 acres in area. Both

are needed as part of a larger project involving the extension of Illinois Route 255 from Seminary Road to U.S. Route 67, which is from the City of Godfrey to the Jersey County line. The subject parcels are located at the intersection of Illinois Route 111 and an existing railroad crossing, and are needed for the construction and future maintenance at the intersection.

The project known as Job No. R-98-039-92 is an extension of Interstate 255 and Illinois 255 North, which is a new highway running northerly through Madison County, Jersey County and into Greene County. Due to the new highway and the ramps at the existing railroad crossing, the roadway is being widened, and Petitioner needs the additional land which is the subject of this Petition. The work to be done is not for a particular individual but is needed for the safety and convenience of the traveling public. The property sought is on Illinois Route 111 in Madison County, which is under the control and jurisdiction of Petitioner. While IDOT has allocated and approved funds for the acquisition of the property owned by the KCS, the Parties have not been able to agree to the specific amount of compensation or value of the parcels. Therefore, Petitioner seeks approval by the Commission to exercise its power of eminent domain to acquire Parcels No. 8239078PE A&B. If the Commission approves IDOT's Petition to exercise eminent domain, the matter will proceed to Madison County Circuit Court for determination of the reasonable value of the parcels subject to the taking.

RAILROAD AND STAFF POSITIONS

Staff does not object to the relief sought by the Petition. The Railroad, KCS, made no objections to the Petition at the hearing held in this case. On December 17, 2008, Petitioner IDOT filed a draft proposed Order granting the Petition, and served the draft proposed Order on the Railroad and Staff. Neither the Railroad nor Staff objected to the draft proposed Order granting the Petition.

COMMISSION ANALYSIS AND CONCLUSION

The Commission is of the opinion that it is fair and reasonable to grant the Illinois Department of Transportation's Petition for authority for the taking of certain property in Madison County, Illinois, by exercising the power of eminent domain (Parcel No. 8239078 A&B), as the taking is necessary for the safety and convenience of the traveling public.

FINDINGS AND ORDERING PARAGRAPHS

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

- (1) the Commission has jurisdiction of the subject matter hereof and the Parties hereto;

- (2) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (3) Petitioner seeks to acquire permanent easements in Parcel No. 8239078PE A&B, legally described in Exhibit "A" attached to the Petition filed herein, and adopted and incorporated herein by reference, presently owned by The Kansas City Southern Railway Company, for the extension of Illinois Route 255 in Madison County, Illinois, to better serve the traveling public and to enhance the public safety and convenience;
- (4) Petitioner presented evidence as to the ownership of the property by The Kansas City Southern Railway Company and the efforts made to obtain title to the subject parcel;
- (5) the evidence shows that construction can be carried out without substantial interference with KCS's conduct of its rail carrier operations;
- (6) the Petitioner should be granted authority to exercise its power of eminent domain to acquire a permanent easement in Parcels No. 8239078PE A&B for the extension of Illinois Route 255, and for future access for maintenance purposes.

IT IS THEREFORE ORDERED that the approval of the Commission be, and the same is hereby, granted to the Department of Transportation of the State of Illinois, for the purpose of exercising its power of eminent domain to acquire a permanent easement in Parcels No. 8239078PE A&B, legally described in Exhibit "A" attached to the Petition filed herein and incorporated into this Order by reference, for the extension of Illinois Route 255 and for future access for maintenance purposes.

IT IS FURTHER ORDERED that subject to Sections 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 11th day of February 2009.

JUDGE
SECTION CHIEF
<i>DWJ</i> ORDERS SUPERVISOR



Charles E. Box
CHAIRMAN