

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

State of Illinois, Department of Transportation	:	
Petitioner,	:	
v.	:	
Iowa Interstate Railroad Company, and Medina Township <u>Road District</u> ,	:	T08-0169
Respondent.	:	
Petition for an order granting permission to remove existing railroad	:	
crossing service on TR103 (DOT/AAR 603 994L) including post and	:	
crossbucks and removal of existing crossing on Sheffield Street	:	
(DOT/AAR 603 993E) including post and crossbucks. Also construction	:	
of a new timber crossing on TR 103 (DOT/AAR 603 994L).	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On December 11, 2008, the State of Illinois Department of Transportation, (“IDOT” or “Petitioner”) filed a verified Petition with the Illinois Commerce Commission (“Commission”) naming Iowa Interstate Railroad Company (“Iowa Interstate Railroad” or “Railroad”) and Medina Township Road District (“Township”) as Respondents, seeking authority to close the existing Sheffield Street crossing (AAR/DOT #603 993E, railroad milepost 151.15-RIB) and to relocate the existing TR 103 (AAR/DOT #603 994L, railroad milepost 151.19-RIB) highway-rail grade crossing of the Railroad’s track near Mossville, Illinois.

Thereafter, on February 19, 2009, IDOT filed its Amended Petition seeking only to relocate the existing TR 103 grade crossing. The Amended Petition stated that the voluntary vacation and closure of the Sheffield Street grade crossing will be accomplished by a separate Commission Stipulated Agreement. On March 2, 2009, Commission Staff filed and served a draft agreed Order granting the Amended Petition, which had been prepared in coordination with the parties.

Pursuant to notice given in accordance with the Law and rules and regulations of the Commission, the Amended Petition came on for hearing before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at the Commission’s Offices in Springfield and Chicago, Illinois on March 10, 2009. Petitioner IDOT appeared by counsel. Iowa Interstate Railroad appeared by Tom Klemm, Railroad Engineering and Public Projects. The Township appeared by counsel and made an oral Motion to Substitute Medina Township Road District in lieu of Medina Township as the proper Township Respondent. The Motion was granted by the ALJ, without objection. Aaron Toliver, Commission Rail Safety Specialist, appeared on behalf of Staff. At the conclusion of the March 10, 2009 hearing, the record was marked “Heard and Taken.”

PETITIONER'S STIPULATED EVIDENCE

In its Amended Petition, IDOT requested authority relocate the existing TR 103 highway-rail grade crossing of the Railroad's track near Mossville, Peoria County. The proposed relocation would move the TR 103 grade crossing to a location approximately one-thousand (1,000) feet north of its existing location. IDOT's Amended Petition stated that TR 103 grade crossing relocation is necessary to accomplish the reconstruction of a nearby highway structure over Moon Hollow Ditch on Illinois Route 29 (IL 29). The IL 29 bridge reconstruction is currently scheduled for the 2009 construction season. A general layout plan of the proposed project was filed and served on all Parties and Staff with IDOT's Amended Petition.

IDOT previously entered into a separate agreement with the Railroad ("Agreement") to accomplish the proposed work associated with the TR 103 grade crossing relocation. The Agreement was also docketed and served upon the Parties and Staff. The Agreement establishes the proposed work allocations, cost divisions, and future maintenance responsibilities among the parties. The entire cost of the project will be borne by IDOT. No Grade Crossing Protection Fund (GCPF) assistance is being sought for the TR 103 grade crossing relocation and associated work.

The existing warning devices at the TR 103 grade crossing consist of reflectorized Crossbucks with supplementary YIELD signs. IDOT is seeking to establish the same Crossbuck/YIELD warning condition at the relocated TR 103 grade crossing, as indicated in the schematics filed with the Amended Petition.

HIGHWAY AND RAILROAD OPERATIONAL DATA

Highway traffic count data from 2008 at the existing TR 103 grade crossing was seventy-five (75) vehicles per day, as reported by IDOT. Highway traffic count data from 2008 at the existing Sheffield Street grade crossing was fifty (50) vehicles per day, as reported by IDOT. The highway traffic volume at the proposed TR 103 grade crossing will consist of combined traffic from both existing grade crossings, totaling approximately one-hundred twenty-five (125) vehicles per day.

The existing TR 103 speed limit is not posted, but roadway geometric conditions effectively limit vehicle speed to thirty (30) miles per hour (mph) in the vicinity of the TR 103 grade crossing. Similar roadway geometric conditions and speed limiting factors would exist at the relocated TR 103 grade crossing.

Train traffic on the subject rail segment, as reported by Iowa Interstate Railroad, is comprised of two (2) freight trains per day at a maximum timetable speed of twenty-five (25) mph. No regularly scheduled passenger trains operate on the subject track segment. Two (2) tracks cross the roadway at the current TR 103 grade crossing location. The proposed relocated TR 103 grade crossing would be a single-track crossing. The angle of intersection at both the current and relocated TR 103 grade crossings is approximately ninety (90) degrees.

RESPONDENTS' POSITIONS

At the March 10, 2009 hearing, both Iowa Interstate Railroad and Medina Township Road District advised that they have no objections to granting IDOT's Amended Petition. Representatives of both Respondents advised the ALJ that they had reviewed the draft agreed Order granting the Amended Petition and had no objections to the draft Order.

STAFF'S POSITION

Staff of the Commission's Rail Safety Section supports the work outlined in IDOT's Amended Petition and recommends that IDOT be permitted to pursue the proposed improvements.

COMMISSION FINDINGS AND ORDERING PARAGRAPHS

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

1. The Commission has jurisdiction over the parties and subject matter of this proceeding;
2. Petitioner, Illinois Department of Transportation, exists by the virtue of the laws of the State of Illinois;
3. Respondent, Iowa Interstate Railroad Company, is a rail carrier engaged in the transportation of either or both property and passengers for hire in the State of Illinois, as defined by the Illinois Commercial Transportation Law, 625 ILCS 5/18/c-1104(30);
4. Respondent, Medina Township Road District, is a political subdivision of the State of Illinois;
5. The recitals of fact contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
6. In the interest of public safety and convenience, IDOT should be granted authority to relocate the TR 103 public highway-rail grade crossing of the Railroad's track to a location approximately one-thousand (1,000) feet north of its existing location;
7. The relocated TR 103 grade crossing should be equipped with reflectorized Crossbuck/YIELD warning signs, meeting the minimum requirements of 92 Illinois Administrative Code Section 1535.300 and the most current version of the Manual on Uniform Traffic Control Devices ("MUTCD"), to be installed by the Railroad, at IDOT's expense;
8. The Railroad should, at IDOT's expense, install a new full depth timber crossing surface at the relocated TR 103 grade crossing;

9. IDOT should, at its own expense, construct the highway approaches for the relocated TR 103 grade crossing, and Contractor liability insurance should be required;
10. IDOT should, at its own expense, install advance warning signage and pavement markings in the vicinity of the relocated TR 103 grade crossing, in all cases meeting the minimum requirements of 92 Illinois Administrative Code Section 1535.310 and the MUTCD;
11. IDOT should, at its own expense and within twenty-four (24) hours after opening the relocated TR 103 grade crossing to the public, erect temporary Type III barricades at the Railroad's right-of-way limits of the existing TR 103 grade crossing. IDOT should also, at its own expense, remove any railroad advance warning signs for the existing TR 103 grade crossing within the same (24) hour period;
12. IDOT should, at its own expense, maintain any temporary barricades until such time as the existing TR 103 highway approaches and grade crossing surfaces have been permanently removed;
13. The existing TR 103 grade crossing highway approaches should be removed by IDOT, at its own expense, within thirty (30) days of opening the relocated TR 103 grade crossing to traffic;
14. The existing TR 103 grade crossing surfaces and Crossbuck/YIELD warning signs and posts should be removed by the Railroad, at IDOT's expense, within thirty (30) days of opening the relocated TR 103 grade crossing to traffic;
15. All existing trees, brush, and other sight-obstructive vegetation within the Railroad's right-of-way should be removed for a distance no less than five-hundred (500) feet in both directions of the relocated TR 103 grade crossing, in accordance with 92 Illinois Administrative Code Section 1535.205. This work should be done by the Railroad, at IDOT's expense;
16. All future costs and work to keep trees, brush, and other sight-obstructive vegetation cleared from the Railroad's right-of-way, in accordance with 92 Illinois Administrative Code Section 1535.205, should be the sole responsibility of the Railroad;
17. All future costs and work for maintenance of the new TR 103 grade crossing surface and Crossbuck/Yield warning signs should be the sole responsibility of the Railroad;
18. All future costs and work for maintenance of the new TR 103 highway approaches and advance warning signage/pavement markings should be the sole responsibility of the Medina Township Road District;
19. All of the work herein should be made in accordance with all applicable

- State laws, rules, standards, regulations and orders and procedures in general;
20. All work herein should be completed within twelve (12) months from the date of this Order;
 21. Chapter 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;
 22. 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;
 23. 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;
 24. 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;
 25. 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 that the Illinois Department of Transportation is hereby authorized and directed to relocate the TR 103 (AAR/DOT #603 994L, railroad milepost 151.19-RIB) public highway-rail grade crossing of the Iowa Interstate Railroad Company's track to a location approximately one-thousand (1,000) feet north of its existing location.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company shall, at the expense of the Illinois Department of Transportation, install reflectorized Crossbuck/YIELD warning signs, meeting the minimum requirements of 92 Illinois Administrative Code Section 1535.300 and the most current version of the Manual on Uniform Traffic Control Devices, at the relocated TR 103 public highway-rail grade crossing.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company shall, at the expense of the Illinois Department of Transportation, install a full depth timber grade crossing surface, to comply with the minimum requirements of 92 Illinois Administrative Code Section 1535.203, at the relocated TR 103 public highway-rail grade crossing.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, at its own expense, construct highway approaches, to comply with the minimum requirements of 92 Illinois Administrative Code Section 1535.204, at the relocated TR 103 grade crossing, Contractor liability insurance will be required.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, at its own expense, install advance warning signage and pavement markings in the vicinity of the relocated TR 103 grade crossing, in all cases meeting the minimum requirements of 92 Illinois Administrative Code Section 1535.310 and the most current version of the Manual on Uniform Traffic Control Devices.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, at its own expense and within twenty-four (24) hours after opening to the public the relocated TR 103 grade crossing, erect temporary Type III barricades at the Iowa Interstate Railroad Company's right-of-way limits of the existing TR 103 grade crossing. The Department shall also, at its own expense, remove any railroad advance warning signs for the existing TR 103 grade crossing within the same (24) hour period.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, at its own expense, maintain any temporary barricades until such time as the existing TR 103 highway approaches and grade crossing surfaces have been permanently removed.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, at its own expense, permanently remove the existing TR 103 grade crossing highway approaches within thirty (30) days of opening the relocated TR 103 grade crossing to traffic.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company shall, at the expense of the Illinois Department of Transportation, permanently remove the existing TR 103 grade crossing surfaces and Crossbuck/YIELD warning signs and posts within thirty (30) days of opening the relocated TR 103 grade crossing to traffic.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company shall, at the expense of the Illinois Department of Transportation and in accordance with 92 Illinois Administrative Code Section 1535.205, remove all existing trees, brush, and other sight-obstructive vegetation within the Railroad's right-of-way for a distance no less than five-hundred (500) feet in both directions of the relocated TR 103 grade crossing.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company shall be solely responsible for all future costs and work to keep trees, brush, and other sight-obstructive vegetation cleared from its right-of-way, in accordance with 92 Illinois Administrative Code Section 1535.205, at the relocated TR 103 grade crossing.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company shall be solely responsible for all future costs and work to maintain the grade crossing surface and Crossbuck/Yield warning signs at the relocated TR 103 grade crossing.

IT IS FURTHER ORDERED that Medina Township Road District shall be solely responsible for all future costs and work to maintain the highway approaches and advance warning signage/pavement markings at the relocated TR 103 grade crossing.

IT IS FURTHER ORDERED that all of the work herein should be performed in accordance with all applicable State laws, rules, standards, regulations and orders and procedures in general.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company and the Illinois Department of Transportation are each hereby required and directed to proceed immediately in performing the work herein, and shall complete the work within twelve (12) months from the date of this Order.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company and the Illinois Department of Transportation shall each, at six (6) month intervals from the date of Commission Order until the project has been completed, submit written reports to the Director of Processing and Information, Transportation Bureau of the Commission, stating the progress each has made toward completion of the work herein required. Each Project Status 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 the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the employee responsible for management of the project.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company and the Illinois Department of Transportation shall each within five (5) days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form (#6180.71) 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 Commission.

IT IS FURTHER ORDERED that the Iowa Interstate Railroad Company and the Illinois Department of Transportation be, and each is hereby required and directed to submit a Project Status Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been completed. Said Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that 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.

IT IS FURTHER ORDERED that 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.

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 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.

IT IS FURTHER ORDERED that 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 FURTHER ORDERED that, subject to Section 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 25th day of March 2009.

A handwritten signature in black ink, reading "Charles E. Box" with a subscript "2" at the end of the name.

CHARLES E. BOX
CHAIRMAN