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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
BNSF RAILWAY COMPANY and)
DUNLIETH TOWNSHIP in JO DAVIESS)
COUNTY, ILLINOIS)
)
Petitioners)
)
vs.) No. T07-0091
)
CANADIAN NATIONAL RAILWAY COMPANY)
and STATE OF ILLINOIS DEPARTMENT)
OF TRANSPORTATION)
)
Respondents)

PETITION for an Order of the Illinois Commerce
Commission authorizing the establishment of grade
crossings in Joe Daviess County, Illinois, as
public grade crossings, and for determination by
the Illinois Commerce Commission of the
appropriate level of warning devices and division
of the costs among the parties

Chicago, Illinois

December 4, 2007

Met, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

MR. DEAN W. JACKSON,
Administrative Law Judge
APPEARANCES:

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DALEY & MOHAN, P.C., by
MR. ROBERT J. PRENDERGAST
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Chicago, Illinois 6060
(312) 422-0799
 appearing for the petitioner
 BNSF Railway Company

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Assistant Chief Counsel
300 West Adams Street
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(312) 793-2255
 appearing for IDOT

MR. JEREMY BERMAN
29 West Wacker Drive
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(312) 252-1510
 for the Petitioner
 Chicago Central and Pacific Railroad
 Company

MR. JOE VON DE BUR
Railroad Safety Specialist
527 East Capitol Avenue
Springfield, Illinois 62701
(217) 557-1286
 for staff of the
 Illinois Commerce Commission

SULLIVAN REPORTING COMPANY, by
Leah Ann Bezin, CSR
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I N D E X

Witnesses:	Direct	Cross	Re- direct	Re- cross	By Exmnr
Craig Rasmussen	11				39
Scott Hendrickson	41				
	42				

E X H I B I T S

Number	For Identification	In Evidence
APPLICANT'S		
Exhibit No. 1	9	10
Exhibit No. 2	10	10
Exhibit No. 3A-E	23	35
Exhibit No. 4	32	35
Exhibit No. 5	34	35
Exhibit No. 6	14	35

1 JUDGE JACKSON: Pursuant to the authority
2 vested in me by the Illinois Commerce Commission
3 in the state of Illinois, I will call Docket
4 No. T07-0091 for hearing.

5 This is a matter involving BNSF
6 Railway Company, Dunlieth Township, Joe Daviess
7 County, and, apparently, let's see, Chicago
8 Central & Pacific Railroad Company rather than
9 Canadian National Railway Company.

10 Appearances please, names and
11 addresses and phone numbers.

12 MR. PRENDERGAST: My name is
13 Bob Prendergast. I'm with the law firm of
14 Daley & Mohan. Our address is 150 North Wacker,
15 Suite 1550, Chicago, 60606. My phone number is
16 (312) 422-0799, and I'm here representing BNSF
17 Railway Company.

18 JUDGE JACKSON: Thank you.

19 Anyone here from the township or
20 the county?

21 (No response.)

22 MR. PRENDERGAST: No, there is nobody

1 here --

2 MR. PARRISH: No.

3 MR. PRENDERGAST: -- on their behalf.

4 MR. PARRISH: My name is Lawrence Parrish.

5 I'm Assistant Chief Counsel with the Illinois

6 Department of Transportation, 300 West Adams,

7 Chicago 60606. And my telephone number is

8 (312) 793-2255.

9 JUDGE JACKSON: Thank you.

10 MR. BERMAN: My name is Jeremy Berman. I'm

11 here on behalf of the Chicago Central & Pacific

12 Railroad. My address is 29 North Wacker,

13 Suite 920. My phone number is (312) 252-1510.

14 JUDGE JACKSON: Thank you.

15 Yes, staff.

16 MR. VON DE BUR: My name is Joe Von De Bur,

17 capital V-o-n, capital D-e, capital B-u-r, a

18 railroad safety specialist with the Illinois

19 Commerce Commission at 527 East Capitol Avenue,

20 Springfield, Illinois 62701, phone

21 number (217) 557-1286, and I represent the staff

22 of the Illinois Commerce Commission.

1 JUDGE JACKSON: Thank you.

2 I would suspect no one is here from
3 Canadian National?

4 A VOICE: Jeremy Berman.

5 JUDGE JACKSON: Very good.

6 I note for the record that there is
7 a stipulation on file to substitute CC&P for
8 Canadian National Railway Company.

9 Does anyone have any objections to
10 the substitution of the parties?

11 MR. VON DE BUR: No, your Honor.

12 MR. PARRISH: No.

13 MR. PRENDERGAST: No.

14 JUDGE JACKSON: IDOT?

15 MR. PARRISH: None.

16 JUDGE JACKSON: Okay. Very good.

17 BNSF, no problem?

18 MR. PRENDERGAST: Right, your Honor. No
19 objection.

20 JUDGE JACKSON: Okay. It shall be done.

21 Okay. Mr. Prendergast, your
22 petition, how many witnesses?

1 MR. PRENDERGAST: I believe I will have one,
2 your Honor. It will be Craig Rasmussen.

3 But also here today with the BNSF
4 is Jeff Thomas and Scott Hendrickson, and they
5 are here in case there's any questions concerning
6 the operations through the area. They --

7 JUDGE JACKSON: Okay.

8 MR. PRENDERGAST: -- would be willing to
9 answer those.

10 JUDGE JACKSON: And your witness is? Could
11 I have the name again?

12 MR. PRENDERGAST: Craig Rasmussen,
13 R-a-s-m-u-s-s-e-n.

14 JUDGE JACKSON: Great. Okay.

15 Mr. Rasmussen, would you please
16 rise and raise your right hand.

17 (Witness sworn.)

18 JUDGE JACKSON: Thank you.

19 You may have the floor,
20 Mr. Prendergast.

21 MR. PRENDERGAST: Okay.

22 Your Honor, I also have a motion to

1 amend the petition. Apparently I transposed the
2 DOT numbers with regard to the two crossings in
3 question. The mileposts are accurate. What we
4 were calling the easternmost main line through
5 that area is actually DOT No. 306916L at milepost
6 181.62. And the westernmost main line through
7 the area is DOT No. 306915E, as in "Edward," and
8 that is Milepost 181.66.

9 And we'd ask leave to amend the
10 petition, and we will have testimony to that as
11 well.

12 JUDGE JACKSON: All right.

13 Any objections to the motion?

14 MR. PARRISH: None from IDOT.

15 JUDGE JACKSON: Very good.

16 Yeah, it looks at if the numbers
17 were just assigned to different -- to the
18 opposite milepost.

19 Fair enough?

20 MR. PRENDERGAST: Correct, your Honor.

21 JUDGE JACKSON: Okay. Very good.

22 Okay. The motion to amend the

1 petition will be granted, and we will consider it
2 amended.

3 Well, it looks at if you filed that
4 as Exhibit No. 1?

5 MR. PRENDERGAST: That's correct, your
6 Honor.

7 (Petitioner's Exhibit No. 1 was
8 previously marked for
9 identification.)

10 JUDGE JACKSON: Okay. Granted.

11 And we will consider Exhibit No. 1
12 as the amended petition.

13 Very good.

14 MR. PRENDERGAST: And, your Honor, at this
15 time, I'd like to move for admission of Exhibit 1
16 and 2 into evidence.

17 And it will help me with how I
18 handle my questioning and my examination if they
19 are received.

20 JUDGE JACKSON: Okay. And Exhibit No. 2 is
21 the stipulation?

22 MR. PRENDERGAST: Correct.

1 JUDGE JACKSON: Okay.

2 (Petitioner's Exhibit No. 2 was
3 previously marked for
4 identification.)

5 JUDGE JACKSON: Any objections to admission
6 of Exhibit No. 1, amended petition, and Exhibit
7 No. 2, stipulation?

8 MR. PARRISH: None.

9 MR. VON DE BUR: No, your Honor.

10 JUDGE JACKSON: They shall be admitted.

11 (Whereupon, Petitioner's
12 Exhibits No. 1 and No. 2 were
13 admitted into evidence.)

14 MR. PRENDERGAST: Your Honor, at this
15 time the BNSF would like to call
16 Mr. Craig Rasmussen.

17 May I proceed?

18 JUDGE JACKSON: Yes.

19 MR. PRENDERGAST: Okay.

20

21

22

1 CRAIG RASMUSSEN,
2 called as a witness herein, having been first
3 duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY

7 MR. PRENDERGAST:

8 Q. Could you state your name for the
9 record, please, and spell your last name for the
10 record.

11 A. My name is Craig Rasmussen,
12 R-a-s-m-u-s-s-e-n.

13 Q. And are you employed?

14 A. Yes.

15 Q. And for whom are you employed?

16 A. The BNSF Railway Company.

17 Q. Okay. And in what capacity?

18 A. I serve as the railroad's manager of
19 public projects for the states of Illinois, Iowa
20 and Wisconsin.

21 Q. And how long have you been so
22 employed?

1 A. I have been employed by the BNSF since
2 2005.

3 Q. And could you give us a brief overview
4 of what your duties and responsibilities are with
5 regard to the State of Illinois?

6 A. The State of Illinois, I serve as the
7 liaison for the railroad between state and local
8 agencies on what we call public projects; in
9 other words, grade crossings, grade separations
10 and other projects that impact our railroad.

11 Q. And could you give us an idea of your
12 educational background.

13 A. I have a bachelor of science degree in
14 civil engineering, and I'm a licensed
15 professional engineer.

16 Q. And prior to working for the BNSF,
17 could you give us a brief summary of what your
18 work experience was like.

19 A. That's correct. I worked as a
20 consulting engineer for approximately eight years
21 in the area of transportation engineering before
22 I joined BNSF.

1 Q. Now, are the crossings of the BNSF or
2 crossings that they maintain and inspect in the
3 county of Joe Daviess in the state of Illinois,
4 are they within your jurisdiction?

5 A. Yes they are.

6 Q. And would that include crossings
7 located in Dunlieth Township?

8 A. Yes.

9 Q. Now, are you familiar with the
10 petition that's under discussion here today?

11 A. Yes, I am.

12 Q. Okay. And are you -- have some
13 familiarity with the area involved?

14 A. Yes, I do.

15 Q. And have you had occasion in the past
16 to visit the area near where the roadway known as
17 Barge Harbor Road intersects two main line
18 tracks, one owned by the BNSF and one owned by
19 the CC&P, the Chicago Central & Pacific Railroad
20 Company?

21 A. Yes. I have been to this location
22 multiple times.

1 Q. And have you been there within -- in
2 the calendar year of 2007?

3 A. Yes, I have.

4 (Petitioner's Exhibit No. 6 was
5 previously marked for
6 identification.)

7 Q. Now, I'm going to show you what's
8 previously been marked as Exhibit No. 6, which
9 purports to be an IDOT map and an aerial view of
10 the area.

11 Are you familiar with
12 the -- generally with the area that's shown in
13 that photograph?

14 A. Yes, I am.

15 Q. And does that Exhibit No. 6 truly and
16 accurately portray the area near where Barge
17 Harbor Road intersects with these two main line
18 tracks in Dunlieth Township?

19 A. As I can tell from this photograph,
20 that is correct.

21 JUDGE JACKSON: Time out. Time out.

22 I received the exhibits, it looks

1 like the original, from -- in overnight mail
2 yesterday.

3 MR. PRENDERGAST: Yes, sir.

4 JUDGE JACKSON: I don't think Mr. Von De Bur
5 has a copy.

6 MR. VON DE BUR: No, I haven't seen them.

7 JUDGE JACKSON: Can we take a view minutes
8 so he can make a copy?

9 MR. PRENDERGAST: Absolutely.

10 I thought I e-mailed you. I
11 intended to if I did not.

12 MR. VON DE BUR: I might not have gotten it
13 yet.

14 MR. PRENDERGAST: Okay.

15 JUDGE JACKSON: Want to make a copy --

16 MR. VON DE BUR: Can I get a copy?

17 JUDGE JACKSON: -- Mr. Von De Bur?

18 MR. VON DE BUR: Please.

19 JUDGE JACKSON: I'll be right back.

20 MR. VON DE BUR: All right.

21 MR. PRENDERGAST: I apologize for that. I
22 tried to serve copies on the parties of interest

1 by email. And hopefully --

2 JUDGE JACKSON: I do have -- off the
3 record.

4 (Whereupon, a discussion was
5 had off the record.)

6 (Whereupon, a recess was
7 taken.)

8 JUDGE JACKSON: All right. Back on the
9 record.

10 You may go.

11 BY MR. PRENDERGAST:

12 Q. And would Exhibit 6 be helpful in
13 explaining your testimony concerning the area in
14 question?

15 A. I believe so, yes.

16 Q. Okay. Now, on the original of Exhibit
17 No. 6, there is an area that's marked in red.

18 Do you see that?

19 A. Yes, I do.

20 Q. Okay. Does that purport to be Barge
21 Harbor Road?

22 A. That's correct. That's what we

1 understand to be Barge Harbor Road.

2 Q. Okay. And on that map it's identified
3 as a township roadway; is that correct?

4 A. That's what the map indicates, yes.

5 Q. And is it your understanding that that
6 is a public roadway?

7 A. Yes, it is.

8 Q. Now, is Route 20 shown in that
9 photograph?

10 A. Yes, it is.

11 Q. And could you describe as best you can
12 where Route 20 is shown in that photograph?

13 A. Route 20 generally is located towards
14 the top of this photograph running left to right
15 as a four-lane divided section.

16 Q. Okay. It's a four line divided
17 highway in that area?

18 A. Yes, it is.

19 Q. Okay. And is it a major thoroughfare
20 for the area for cars and trucks?

21 A. I believe Highway 20 is considered a
22 principal road in the area, yes.

1 Q. All right. Now, is an I.E.I. Barge
2 facility shown, to a certain, degree in Exhibit
3 No. 6?

4 A. Yes. A portion of their facility is
5 shown in this photograph.

6 Q. Okay. And where is that on the
7 photograph?

8 A. Towards the lower end of the
9 photograph at the bottom center of the page.

10 Q. Is it immediate to the left of the
11 exhibit sticker No. 6?

12 A. Yes, it is.

13 Q. Okay. And is there any other roadway
14 that you are aware of that connects Route 20 with
15 the I.E.I. Barge facility other than Barge Harbor
16 Road?

17 A. I'm not aware of any. This is the
18 only roadway connecting Route 20 with their
19 facility at I.E.I. Barge.

20 Q. And does the I.E.I. Barge facility
21 border, in part, on the Mississippi River?

22 A. I believe that they do, yes.

1 Q. Now, are there also two main line
2 railroad tracks shown in Exhibit 6?

3 A. Yes, there are.

4 Q. And could you describe where those are
5 located?

6 A. The main line tracks shown in this
7 photograph run generally from the lower
8 right-hand corner of the page to the upper
9 left-hand corner of the page.

10 Q. And do they run generally in a
11 northerly direction compass-wise through the
12 area?

13 A. Compass-wise they run generally north
14 and south.

15 Q. Okay. And do they each intersect with
16 Barge Harbor Road?

17 A. Yes, they do.

18 Q. And does Barge Harbor road run
19 generally in an east-west direction near that
20 area?

21 A. Generally that's correct, yes.

22 Q. Now, with regard to the bottom main

1 line that's shown in that photograph, okay, is
2 that the main line that's owned by the Chicago
3 Central Pacific Railroad Company?

4 A. I believe that's the case.

5 We refer to it at the BNSF as Main
6 Line No. 2. But it's my understanding, through
7 agreement, that the underlying right-of-way is
8 owned by the Chicago Central & Pacific Railroad
9 Company.

10 Q. And is that trackage in the area of
11 Main Line 2 covered by a trackage rights
12 agreement between the BNSF and the CCP?

13 A. Yes, it is.

14 Q. Now, who maintains, inspects and
15 dispatches Main Line 2?

16 A. BNSF is responsible for all line
17 maintenance activities, inspection and also
18 operation and dispatching of this, of Main Line
19 No. 2.

20 Q. As far as any signal systems in the
21 area, are those also maintained and inspected by
22 the BNSF?

1 A. Yes, they are.

2 Q. Okay. And does that agreement cover
3 approximately from Portage, Illinois, up toward
4 5th Street in East Dubuque?

5 A. Yes, it does.

6 Q. And it would include the area near the
7 intersection with Barge Harbor Road?

8 A. Yes, it would.

9 Q. And for the record, that crossing on
10 Main Line 2, is that -- is that identified as DOT
11 No. 306915E, as in "Edward"?

12 A. Yes.

13 Q. Now, is there another -- or strike
14 that.

15 Is there -- what's the distance
16 between the two main line tracks in that area,
17 Main 1 and Main 2, in the vicinity of Barge
18 Harbor Road?

19 A. I don't know the exact distance, but I
20 believe it is somewhere around 400 feet between
21 the two, center line to center line of each
22 track.

1 Q. Now -- okay.

2 And that would be -- compass-wise,
3 Main Line 1 would be -- in this area would be
4 east of Main Line 2?

5 A. That's correct.

6 Q. And if you were traveling from
7 Route 20 toward the I.E.I. Barge facility, would
8 Main Line 1 be the first set of tracks that a
9 motorist or a truck driver would cross?

10 A. That's correct. Main Line 1 would be
11 the first track you would cross traveling away
12 from Route 20.

13 Q. Now, the crossing that's located at
14 the intersection of Barge Harbor Road and
15 Main Line 1, is that identified as DOT
16 No. 306916L?

17 A. Yes.

18 Q. Now, the Main Line 1, does BNSF own
19 the railroad tracks in that area?

20 A. It's my understanding that that is
21 owned -- Main Line 1 is owned by BNSF railway.

22 Q. And who performs the maintenance and

1 inspection of the trackage and who dispatches the
2 trackage in that area, for Main Line 1 in that
3 area?

4 A. BNSF provides all line maintenance and
5 inspection services and also performs operational
6 dispatching on Main Line 1 in this area.

7 Q. And with regard to any signal systems
8 in that area, who inspects and maintains that?

9 A. The BNSF railway.

10 Q. Okay. I'm going to show you what have
11 been marked as Exhibits 3A through 3E and ask you
12 to take a look at those exhibits, if you would.

13 (Petitioner's Exhibit No. 3A-E
14 was previously marked for
15 identification.)

16 BY MR. PRENDERGAST:

17 Q. Okay. Do Exhibits 3A through 3E truly
18 and accurately portray areas from various points
19 of view of Barge Harbor Road, the roadway in
20 question here today?

21 A. Yes.

22 Q. Now, with regard to the two crossings

1 at Barge Harbor Road and the two main line tracks
2 we have discussed, what type of warning devices
3 currently exist there?

4 A. Both crossings are marked
5 existing-wise with a crossbuck sign mounted on
6 timber posts. And also, each have a stop sign in
7 each direction mounted on a separate post.

8 Q. Now, if you could look at Exhibit 3A,
9 what area does that show?

10 A. Exhibit 3A is a photograph taken of
11 the Main Line 2 crossing from the generally
12 southwest quadrant of that crossing.

13 Q. Okay. Would that be the area where
14 one enters and leaves the Barge -- or the
15 I.E.I. Barge facility?

16 A. That's correct. This is essentially
17 the entrance to the I.E.I. Barge facility.

18 Q. And would trucks or other vehicles
19 using the roadway at I.E.I. Barge have to take a
20 right turn at that point to proceed toward the
21 crossing?

22 A. That's correct.

1 The roadway alignment curves
2 towards the crossing. There is not an
3 intersection, a highway-highway intersection at
4 this location.

5 Q. Now, with regard to the crossing
6 that's shown in Exhibit 3A, is that the Main
7 Line 2 crossing that's owned by the CCP?

8 A. Yes.

9 Q. Now, if you could take a look at
10 Exhibit 3B, what view is shown with Exhibit 3B?

11 A. Exhibit 3B shows the same crossing as
12 Exhibit 3A although taken looking perpendicular
13 to the track. The crossing in the foreground is
14 the crossing of Main Line No. 2.

15 Q. And does that exhibit truly and
16 accurately portray the Barge Harbor Road?

17 A. To the best of my knowledge, yes.

18 Q. Okay. And would that be a view
19 looking out toward Route 20?

20 A. That's correct. Route 20 is in the
21 background of this photograph.

22 Q. And could you describe what the

1 surface of Barge Harbor Road is in the vicinity
2 of the crossings involved?

3 A. Barge Harbor Road is an asphalt
4 roadway on approaches to the crossing.

5 Q. And do you know what year that was
6 paved --

7 A. I believe --

8 Q. -- in that fashion?

9 A. I believe it was paved in this fashion
10 during the calendar year 2006.

11 Q. Now, is there any type of grade to
12 Barge Harbor Road that may be viewable in that
13 photograph?

14 A. Yes, there is.

15 Barge Harbor Road is ascending
16 towards Route 20 or, similarly, descending away
17 from Route 20 towards the river.

18 Q. Now, if you could take a look at
19 Exhibit No. 3C.

20 And what view does that show?

21 A. This photograph is taken approximately
22 equidistant between the Main Line 1 and

1 Main Line 2 crossings, perhaps a little closer to
2 Main Line No. 2. It's looking towards the
3 crossing of Main Line No. 1 and Route 20.

4 Q. And does that photograph show a truck
5 in it?

6 A. Yes. There is a semi truck that's
7 generally eastbound on Barge Harbor Road.

8 Q. And is that the type of truck that may
9 be expected to be traveling over Barge Harbor
10 Road?

11 A. It's consistent with what I have seen
12 out at this roadway.

13 Q. And is that, for the record, a semi
14 tractor-trailer --

15 A. It is a --

16 Q. -- combination?

17 A. -- combination vehicle.

18 Q. And does it look like there is
19 approximately a 45- to 48-foot trailer on the
20 back of that?

21 A. Approximately, yes.

22 Q. And does 3C truly and accurately show

1 a view toward Route 20 showing Barge Harbor Road?

2 A. To the best of my knowledge, yes.

3 Q. All right.

4 Could you take a look at Exhibit

5 No. 3D. I ask you to take a look.

6 And can you tell us what view that

7 photograph shows?

8 A. This view looks generally eastbound
9 perpendicular to Main Line No. 1 towards the Main
10 Line No. 1 crossing. And Route 20 is in the
11 background of this photo.

12 Q. And does that similarly accurately
13 show a downward grade of Barge Harbor Road for
14 traffic traveling from Route 20 toward the
15 I.E.I. Barge facility?

16 A. Yes, it does.

17 Q. And finally, could you take a look at
18 Exhibit 3E.

19 And could you tell me what that
20 photograph shows?

21 A. This photograph is a view looking
22 generally eastbound of the Main Line 1 crossing,

1 Main Line 1 running left and right across the
2 photo.

3 Q. And are there two fairly large trucks
4 traveling toward the direction of the
5 I.E.I. Barge facility shown in that photograph?

6 A. That's correct. There appears to be
7 two truck vehicles westbound on Barge Harbor
8 Road.

9 Q. Have you been made aware of any
10 traffic counts for Barge Harbor Road in the area
11 of these crossings?

12 A. I understand that the average daily
13 traffic volume was estimated to be approximately
14 150 vehicles per day.

15 Q. Okay. Was there any percentage
16 breakdown as to trucks versus other vehicles?

17 A. We were informed that count indicates
18 that it is approximately 90 percent heavy
19 vehicles.

20 Q. Which would --

21 A. Include trucks --

22 Q. -- include trucks?

1 A. -- yes, sir.

2 Q. And is that count consistent with your
3 observations when you have been there?

4 A. As I have been there, that seems like
5 a very reasonable estimate.

6 Q. Now, with regard to the I.E.I. Barge
7 facility, could you just generally describe the
8 nature of their business as you know it.

9 A. Well, as I understand, they are a rail
10 served customer. The predominantly major volume
11 that we haul is coal traffic into their
12 facility. I understand the nature of their
13 business is a transloading type facility between
14 trucks -- the modes of truck, water and rail.

15 Q. And is it your understanding, due to
16 the nature of their business, that there would be
17 heavy trucks traveling over the Barge Harbor Road
18 traveling from Route 20 in and out of the
19 facility?

20 A. It's my understanding that this road
21 is the only link that they have to Route 20, and
22 the nature of their business does require the

1 operation of those trucks to Route 20.

2 Q. Are you aware of any -- what the
3 nature of the train traffic is through the area
4 of these crossings near the intersection with
5 Barge Harbor Road?

6 A. Yes, I am.

7 Q. And could you tell us about that.

8 A. The train traffic is a split
9 approximately equally between Main Line No. 1 and
10 Main Line No. 2. BNSF operates approximately 44
11 trains per 24-hour period through this area.
12 It's my understanding that the CC&P Railroad
13 operates anywhere from four to six trains per
14 day, although I'm not -- I can't speak
15 necessarily to that exact count. But the BNSF
16 trains are approximately equally distributed
17 between Main Line No. 1 and Main Line No. 2, and
18 trains can travel eastbound or westbound on
19 Main Line 1 and Main Line 2 at any time.

20 Q. And could you give us an idea of the
21 types of trains that travel through that area?

22 A. BNSF operates all freight traffic

1 through this area. Its commodities are
2 intermodal products and also general freight
3 merchandise, including agricultural products,
4 consumer goods, et cetera.

5 Q. What is allowable speed for trains
6 going through that area?

7 A. I believe the maximum authorized speed
8 in this segment of line is 60 miles per hour.

9 Q. Is this area an alternate Amtrak route
10 for any railroads?

11 A. Yes, it is.

12 Q. And could you tell us about that.

13 A. This is the primary alternate route
14 for Amtrak when their Empire Builder train cannot
15 typically travel between the Twin Cities of
16 Minneapolis and St. Paul and Chicago on Canadian
17 Pacific Railway.

18 (Petitioner's Exhibit No. 4 was
19 previously marked for
20 identification.)

21 Q. Now I'm going to show you what's been
22 marked as Exhibit No. 4 and ask you to take a

1 look at that exhibit.

2 Were you aware that the township
3 supervisor for Dunlieth Township had sent this
4 letter to me by email?

5 A. Yes, I was aware of that.

6 Q. And that was on or about November
7 29th, 2007?

8 A. Yes.

9 Q. And does that exhibit truly and
10 accurately portray that correspondence?

11 A. Yes, it does.

12 Q. And is that's contained in that
13 correspondence consistent with the petition and
14 any conversations that you have had directly with
15 the township --

16 A. Yes --

17 Q. -- personnel?

18 A. Yes, it is.

19 Q. And is it your understanding through
20 all this that Barge Harbor Road is a public
21 roadway that's maintained by Dunlieth Township?

22 A. That is my understanding, yes.

1 Q. And are you aware that they will
2 continue to maintain the roadway per their usual
3 maintenance procedures?

4 A. That's my understanding, yes.

5 Q. Now, I'm going to also show you what's
6 been marked as Exhibit No. 5.

7 (Petitioner's Exhibit No. 5 was
8 previously marked for
9 identification.)

10 BY MR. PRENDERGAST:

11 Q. And were you aware that
12 Mr. Steven Keeffer, county engineer for
13 Joe Daviess County, had sent me a correspondence
14 outlining his knowledge of the area?

15 A. Yes, I was.

16 Q. Okay. And is Exhibit No. 5 a true and
17 accurate copy of that correspondence?

18 A. Yes, it is.

19 Q. And is that correspondence consistent
20 with any -- with the petition here and with any
21 conversations or communications that you have had
22 with Dunlieth Township?

1 A. Yes, it is.

2 Q. And does Exhibit 5 show that Barge
3 Harbor Road is a designated public roadway in the
4 area?

5 A. That's what the exhibit shows, correct.

6 Q. Okay. And that Dunlieth Township has
7 assumed the responsibility for maintenance of
8 that roadway?

9 A. Correct.

10 MR. PRENDERGAST: At this point, I'd like to
11 move for admission to evidence of Exhibits 3A
12 through 3E, Exhibit 4 and Exhibit 5.

13 JUDGE JACKSON: How about 6?

14 MR. PRENDERGAST: And 6 as well. I'm sorry.

15 JUDGE JACKSON: Very good. Any objections?

16 MR. PARRISH: There is none from IDOT.

17 MR. VON DE BUR: No, your Honor.

18 JUDGE JACKSON: Okay. Admitted.

19 (Whereupon, Petitioner's
20 Exhibit No. 3A-E and No. 4 and
21 No. 5 and No. 6 were admitted
22 into evidence.)

1 BY MR. PRENDERGAST:

2 Q. Now, Mr. Rasmussen, if the Illinois
3 Commerce Commission were to consider and order
4 lights and gates for these two crossings at Barge
5 Harbor Road, would BNSF provide estimates on the
6 costs involved?

7 A. Yes, we would.

8 Q. And do you have a rough idea as to
9 what the costs would be at this point in time?

10 A. The costs for installation of flashing
11 light signals and gates at these two single track
12 installations would be approximately \$170,000 per
13 location.

14 Q. Per location?

15 A. Correct.

16 Q. And if the Illinois Commerce
17 Commission were to consider and order lights and
18 gates at these crossings, would BNSF forces and
19 personnel assume the responsibility for the
20 installation at both of these crossings?

21 A. Yes, we would.

22 Q. And could any installation that may be

1 ordered, could that be completed within one
2 calendar year --

3 A. Yes, it --

4 Q. -- from the date of the order?

5 A. Yes, it could.

6 Q. And if the Illinois Commerce
7 Commission were to consider and order lights and
8 gates at these crossings, would BNSF assume the
9 responsibility for the maintenance and inspection
10 of any signal system so installed?

11 A. Yes, we would.

12 Q. And with regard to the BNSF-owned
13 crossings that we have referred to as
14 Main Line 1, do you have an estimate as to what
15 the cost of that would be annually?

16 A. Our average annual costs for
17 maintenance at signalized crossings with flashing
18 light signals and gates of this nature are
19 approximately \$5500 per year.

20 Q. And if lights and gates were ordered
21 at the crossing at Main Line 2, pursuant to the
22 terms of the trackage rights agreement between

1 the CC&P and the BNSF, would BNSF forces maintain
2 and inspect such a signal system as long as the
3 trackage rights agreement was in existence as it
4 is today?

5 A. Pursuant to the terms of the existing
6 agreement, BNSF forces would install and maintain
7 any active warning devices at this location.

8 Q. And if the Illinois Commerce
9 Commission were to consider and order lights and
10 gates at these crossings, would BNSF be
11 requesting that a portion of the costs be made
12 with state funds, such as the Grade Crossing
13 Protection Fund?

14 A. Yes.

15 Q. And would BNSF be willing to
16 participate in the railroad share for the
17 crossing it owns and any proportion that it's
18 obligated to under the terms of the agreement
19 with the CCP with regard to the CCP-owned
20 crossing?

21 A. Yes.

22 Q. And if it were determined that the

1 township lacked the funds to pay any share of
2 such an installation, would BNSF be willing to
3 assume the township share?

4 A. Yes.

5 MR. PRENDERGAST: I have nothing further at
6 this time.

7 EXAMINATION

8 BY

9 JUDGE JACKSON:

10 Q. Is there any accident history at the
11 crossing?

12 A. Yes, there are, your Honor.

13 Q. Pardon me?

14 A. Yes, your Honor, there is.

15 Q. Okay. And could you briefly tell us
16 what the accident history is.

17 A. I'll refer to -- excuse me for a
18 minute.

19 I'll refer to --

20 MR. PRENDERGAST: A different witness?

21 THE WITNESS: -- Mr. Hendrickson.

22 Yes.

1 JUDGE JACKSON: Okay. That's fine.

2 MR. PRENDERGAST: Do you want to -- do you
3 want him to be sworn in?

4 JUDGE JACKSON: Oh. Well, we will get
5 there.

6 MR. PRENDERGAST: Okay.

7 JUDGE JACKSON: Let's see.

8 Let's finish with Mr. Rasmussen.

9 Okay. CC&P counsel, any questions
10 for this witness?

11 MR. BERMAN: No, your Honor.

12 JUDGE JACKSON: Thank you, Mr. Berman.

13 Mr. Von De Bur, any questions?

14 MR. VON DE BUR: No questions at this time,
15 your Honor.

16 JUDGE JACKSON: Okay. IDOT?

17 MR. PARRISH: None, your Honor.

18 JUDGE JACKSON: Thank you.

19 Thank you, Mr. Rasmussen.

20 THE WITNESS: Thank you, your Honor.

21 (Witness excused.)

22 JUDGE JACKSON: And the next witness is

1 who?

2 MR. PRENDERGAST: I believe it's going to be
3 Mr. Scott Hendrickson.

4 JUDGE JACKSON: Mr. Hendrickson. Okay.

5 Would you please rise and raise
6 your right hand.

7 (Witness sworn.)

8 JUDGE JACKSON: Thank you.

9 You have the floor.

10 SCOTT HENDRICKSON,

11 called as a witness herein, having been first
12 duly sworn, testified in the narrative as
13 follows:

14 I can vouch for one incident while
15 I was the division train manager on the territory
16 that happened at the I.E.I. Barge crossing where
17 they had a grade crossing collision with a truck
18 that was hauling coal during my tenure.

19 Like I said, I was there for 12
20 months. There has been six near miss reports at
21 that location.

22 Since this is a location that is

1 always brought up, you know, is already a high
2 risk, our crews are already briefed and know that
3 they usually slow down and provide extra whistle
4 protection in that area for the crossing.

5 So we -- you know, we have
6 a -- everybody is already aware of the situation,
7 and that's why we are trying to get it resolved.

8 JUDGE JACKSON: Okay. Very good.

9 Why don't we find out who
10 Mr. Hendrickson is.

11 MR. PRENDERGAST: Sure.

12 DIRECT EXAMINATION

13 BY

14 MR. PRENDERGAST:

15 Q. Could you state your name and spell
16 your name, please.

17 A. Sure.

18 Scott Hendrickson,

19 H-e-n-d-r-i-c-k-s-o-n.

20 Q. And by whom are you employed?

21 A. BNSF Railway Company.

22 Q. And what is your current position with

1 the BNSF?

2 A. Manager of Safety for the Chicago
3 Division of the BNSF railway.

4 Q. And how long have you held that
5 position?

6 A. Since June of 2007.

7 Q. And what was your position prior to
8 that time?

9 A. I was a Division Trainmaster stationed
10 out of LaCrosse, Wisconsin, the St. Croix and
11 Aurora Subdivision up to East Dubuque.

12 Q. Did that include the area in question
13 near Barge Harbor Road?

14 A. When I was on call for that part of
15 the territory, yes, it did.

16 Q. And could you just describe briefly
17 what the duties were with regard to the area when
18 you were on call as a trainmaster?

19 A. Usually, for being on call, it was
20 service interruptions, any type of crossing
21 collisions, derailments, anything that may
22 pertain to customers being serviced in the area

1 or the other partnering trainmaster.

2 Q. And does the BNSF serve the
3 I.E.I. Barge facility with -- by rail?

4 A. Yes.

5 Q. And what type of products are brought
6 in there?

7 A. Typically coal. They do deal with
8 some gravel.

9 Q. And in the course of having reports or
10 any accidents in that area, have the trucks been
11 known to disregard the stop signs that are in
12 place at these crossings?

13 A. Yes, they have.

14 MR. PRENDERGAST: That's all I have.

15 JUDGE JACKSON: Thank you.

16 IDOT, any questions for
17 Mr. Hendrickson?

18 MR. PARRISH: None, your Honor.

19 JUDGE JACKSON: All right. Thank you.

20 Mr. Berman?

21 MR. BERMAN: No questions, your Honor.

22 JUDGE JACKSON: Mr. Von De Bur?

1 MR. VON DE BUR: I have no questions.

2 JUDGE JACKSON: All right.

3 That was short and sweet.

4 (Witness excused.)

5 MR. PRENDERGAST: Any other witnesses,

6 Mr. Prendergast?

7 MR. PRENDERGAST: No, your Honor.

8 JUDGE JACKSON: Okay. All right.

9 The -- I'm going to ask a question
10 or throw it out for discussion.

11 The -- I -- have
12 you -- Mr. Prendergast, have you had any
13 discussions with -- well, let me ask it this
14 way:

15 Mr. Von De Bur, what is staff's
16 position on the funding and on the request for
17 AFLS and the gates at these crossings?

18 MR. VON DE BUR: Well, at this point,
19 because it's not a public crossing, funding is
20 not available from the Grade Crossing Protection
21 Fund.

22 If it were determined that it was a

1 public crossing, it would, of course, be eligible
2 for funding. An application would have to be
3 completed and submitted to our office.

4 And in regards to the type of
5 protection, it would appear that automatic
6 flashing lights and gates would be appropriate
7 for both of the crossings.

8 JUDGE JACKSON: All right.

9 MR. VON DE BUR: Or at least they meet the
10 ICC warrants.

11 JUDGE JACKSON: Okay. The -- it looks to
12 me, based upon the letter from Vincent Hasken,
13 Dunlieth Township, and the letter from
14 Steven Keeffer, Joe Daviess County engineer,
15 Highway Department, that it is a public
16 crossing.

17 Does staff have any evidence to the
18 contrary?

19 MR. VON DE BUR: No, your Honor.

20 JUDGE JACKSON: That both are public
21 crossings, I should say?

22 Okay. Nothing to the contrary.

1 The -- so assuming I make that
2 finding, is this project included in the staff's
3 five-year plan? Are these crossings --

4 MR. VON DE BUR: It is not currently in our
5 five-year plan, no.

6 JUDGE JACKSON: Do they need to be?

7 Is that what the application
8 process is for?

9 MR. VON DE BUR: That's what the application
10 process is for.

11 JUDGE JACKSON: Okay. Let's assume for a
12 minute that BNSF and CC&P complete the
13 applications and file them with the Commission.

14 Would there be any hopes that the
15 money would be there, the grade crossing
16 protection funding would be there sooner than
17 later?

18 MR. VON DE BUR: As I don't deal with the
19 financial portion of the program, I am -- I'm
20 sorry.

21 I don't deal with the financial
22 portion of our five-year program, so I'm not able

1 to speak to that particular question at this
2 time.

3 However, any and every application
4 that comes in is evaluated separately.

5 JUDGE JACKSON: Okay. Counsel for IDOT, do
6 you have any objections to the petition or the
7 amended petition?

8 MR. PARRISH: No, we do not, your Honor.

9 JUDGE JACKSON: All right.

10 Mr. Berman, I assume CC&P is on
11 board?

12 MR. BERMAN: Yes, we are, your Honor.

13 JUDGE JACKSON: All right. They support the
14 amended petition?

15 MR. BERMAN: Yes, we do.

16 JUDGE JACKSON: Okay.

17 Well, this is what I think I'm
18 going to do.

19 Anybody else have any evidence to
20 come before us today?

21 MR. PRENDERGAST: No, your Honor --

22 MR. PARRISH: No.

1 MR. PRENDERGAST: -- from the BNSF.

2 JUDGE JACKSON: Hey, that's good. That's a
3 good thing.

4 Okay. So the evidence is in, the
5 record is complete.

6 Let's do this:

7 I mean until -- let's see.

8 Obviously, CC&P and BNSF are in
9 agreement that a certain -- whatever that might
10 be, a certain percentage of the costs of the AFLS
11 and gates at each crossing would be allocated to
12 the railroads, true?

13 MR. PRENDERGAST: Yes, your Honor.

14 JUDGE JACKSON: Okay. And staff certainly
15 would agree with that.

16 Let's do this:

17 Let's set this for another hearing,
18 say middle of January or later in January, we are
19 filling up pretty fast, to give the railroads and
20 Mr. Von De Bur time to address the issue of
21 applying for grade crossing protection funding
22 and when and if that funding might be available.

1 Does that sound all right with
2 everyone?

3 MR. PRENDERGAST: That would be great with
4 the BNSF, your Honor.

5 MR. VON DE BUR: Yes.

6 JUDGE JACKSON: Okay.

7 MR. PARRISH: Yes, sir.

8 JUDGE JACKSON: It doesn't sound to me like
9 it had been confirmed that these were -- that
10 Barge Harbor Road was a public road subject to
11 the jurisdiction of Joe Daviess County or
12 Dunlieth Township until these late November
13 letters were done.

14 So that being the case, we are
15 going to adjourn.

16 We are going to pick a date for
17 another hearing and get back together.

18 And you can tell me if the
19 conversations about the application process and
20 funding have been fruitful between now and then.

21 All right?

22 MR. PRENDERGAST: That would be great, your

1 Honor.

2 JUDGE JACKSON: Okay. Let's jump off the
3 record.

4 (Whereupon, a discussion was
5 had off the record.)

6 JUDGE JACKSON: We will jump back on the
7 record.

8 All right. Back on the record.

9 We are not going to mark the record
10 heard and taken today. We are going to get
11 together again in February to allow the parties
12 some time to meet with staff and see if the
13 funding issue allocation can be worked out.

14 If it is worked out prior to the
15 date we meet again, the parties should feel free
16 to file something through or with Mr. Von De Bur,
17 and we can cancel the hearing or I can just meet
18 with Mr. Von De Bur that day, if everybody
19 approves of that, to determine what the status
20 is.

21 So we are going to continue the
22 case.

1 The next hearing will be Thursday
2 February 7th 2008 at 10:00 a.m., same time same
3 place.

4 Is that all right, everyone?

5 MR. PRENDERGAST: Yes, your Honor.

6 MR. PARRISH: Fine.

7 MR. BERMAN: Yes.

8 JUDGE JACKSON: Good. Okay. We are
9 adjourned.

10 Thanks, everyone.

11 MR. PRENDERGAST: Thank you.

12 (Whereupon, the above-entitled
13 matter was continued to
14 February 7, 2008, A.D., at
15 10:00 o'clock a.m.)

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