

**STATE OF ILLINOIS**



**ILLINOIS COMMERCE COMMISSION  
TRANSPORTATION DIVISION / RAIL SAFETY SECTION**

*Michael E. Stead*

*Rail Safety Program Administrator*

(Filed in E-Docket and e-mailed to Judge Jackson and as attached)

June 22, 2009

Dean Jackson  
Chief Administrative Law Judge  
Review and Examination  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701

RE: T09-0041

Dear Judge Jackson:

The attached Agreed/Proposed Order is respectfully submitted for your approval and submittal to the Commission. The proposed Order was prepared by Staff in coordination with the parties.

If you have any questions, or require additional information, please contact me at (312) 636-7760 or [bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov).

Very truly yours,

A handwritten signature in cursive script that reads "Brian Vercruysse".

Brian Vercruysse  
Senior Rail Safety Specialist

Certificate of Service

I, Brian Vercruysse, Senior Rail Safety Specialist for the Illinois Commerce Commission, hereby certify that the AGREED ORDER for T09-0041 was docketed on e-Docket and e-mailed to the parties listed below on June 22, 2009.

RAIL SAFETY SECTION STAFF  
ILLINOIS COMMERCE COMMISSION

By:   
Brian Vercruysse, P.E.  
Senior Rail Safety Specialist

<p>Thomas J. Healey Counsel - Regulatory Canadian National/Illinois Central Railroad 17641 S. Ashland Avenue Homewood, IL 60430 E-Mail: <a href="mailto:tom.healey@cn.ca">tom.healey@cn.ca</a></p>	<p>David R. Wiltse Attorney City of Des Plaines 1420 Miner Street Des Plaines, IL 60016 <a href="mailto:dwiltse@desplaines.org">dwiltse@desplaines.org</a></p>
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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

City of Des Plaines, a body politic and corporate; Petitioners,	:	
	:	
v.	:	T09-0041
	:	
Wisconsin Central Ltd. Respondents.	:	
	:	
	:	
Petition for approval to install a pedestrian bike path over Central Road (AAR/DOT #689 678C) located in the City of Des Plaines, Illinois.	:	
	:	

**DRAFT AGREED ORDER**

By the Commission:

On March 24, 2009, the City of Des Plaines (“City” or “Petitioner”) filed the above-captioned verified Petition with the Illinois Commerce Commission (“Commission”) seeking approval to install on-street bicycle lanes along Central Road and across the tracks of the Wisconsin Central Ltd (“WC”) in the City of Des Plaines, Cook County Illinois.

No party contested the requests of the Petition or filing.

**PROCEDURAL HISTORY**

The City’s Petition named the Canadian National Railroad (“CN”) as Respondents. Counsel for the CN filed an Answer to the Petition on April 7, 2009, which among other things, indicated that the Wisconsin Central, Ltd. (“WC”), a wholly and indirectly owned subsidiary of the CN, is the owner and operator of the Central Road crossing. On May 13, 2009, a brief status Hearing was held, where Brian Vercruysse of the Commission’s Rail Safety Section (“Staff”) requested that the case be continued as the Parties and Staff were working towards an Agreed Order. On June 18, 2009, the City filed an Amended Petition identifying the Wisconsin Central Ltd. as the correct Respondent. At this time, the Agreed Order was also filed, and the record was marked Heard and Taken.

**PETITIONER AND RESPONDENTS POSITION**

The City proposes to construct on-street bicycle lanes along Central Road by providing asphalt shoulders that are four (4’) feet wide. Central Road currently consists of one traffic lane in each direction. The bicycle lanes would be installed adjacent to

these lanes, with cyclists traveling in the same direction as the vehicular traffic. A solid white pavement marking lane line will be installed to delineate the bicycle lanes from the vehicle lanes. The existing stop bars in advance of the WC's flashing light signals and gates will also be extended to cover the bicycle lanes. The City will be responsible for all costs of the project.

### **COMMISSION STAFF ANALYSIS AND CONCLUSION**

Commission Staff has no objection to the City's Petition and does not believe that additional crossing warning devices are necessary as the bicycle lanes will be covered by the existing automatic flashing light signals and gates.

### **COMMISSION FINDINGS AND CONCLUSIONS**

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

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The Petitioner, City of Des Plaines, is a political subdivision of the State of Illinois;
- (3) Respondent, Wisconsin Central Ltd. 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 ICTL, 625 ILCS 5/18/c-1104(30);
- (4) the recitals of fact and conclusions of law contained in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (5) it is in the interest of public safety and convenience that the City of Des Plaines construct on-street bicycle lanes along Central Road, and over the tracks of the Wisconsin Central Ltd. (AAR/DOT 689 678C, railroad milepost 24.78E), located in Des Plaines, Cook County;
- (6) The City should be responsible for all costs associated with installing and maintaining the on-street bicycle lanes;
- (7) all work herein should be completed by December 31, 2010;
- (8) Chapter 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.

- (9) 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.
- (10) 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.
- (11) 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.
- (12) 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, City of Des Plaines, is authorized to construct on-street bicycle lanes along Central Road over the Wisconsin Central Ltd.'s tracks in accordance with the plans incorporated into the City's Petition. All work shall be completed by the City in accordance with Findings (6) through (12). Further, all contractors shall obtain appropriate right of entry agreements from the WC, and requisite liability insurance, prior to performing any work on the project.

IT IS FURTHER ORDERED that the City of Des Plaines shall complete the installation of the bicycle lanes by December 31, 2010.

IT IS FURTHER ORDERED that the City of Des Plaines, 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 City of Des Plaines shall file written notice with the Director of Processing of the date this project is completed. This notice shall be filed within five days after the completion date.

IT IS FURTHER ORDERED that the City of Des Plaines in coordination with Wisconsin Central Ltd shall file with the Transportation Bureau's Director of Processing and Information within five (5) days after the completion of the work required under this order, a United States Department of Transportation Inventory Form (#6180.71).

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 \_\_\_\_ day of July 2009.

CHARLES E. BOX  
CHAIRMAN

## Vercruysse, Brian

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**From:** David Wiltse [dwiltse@desplaines.org]  
**Sent:** Friday, June 19, 2009 2:56 PM  
**To:** Vercruysse, Brian; Mary Utt  
**Cc:** tom.healy@cn.ca; Jon Duddles; Timothy Oakley; David Wiltse  
**Subject:** RE: T09-0041 Central Road at WC - Amended Petition

We have reviewed the Draft Order and agree to the Entry of it. Please send us signed stamped copies once entered.  
Thank you.

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**From:** Vercruysse, Brian [mailto:bvercruy@icc.illinois.gov]  
**Sent:** Thursday, June 18, 2009 2:40 PM  
**To:** Mary Utt  
**Cc:** tom.healy@cn.ca; Jon Duddles; David Wiltse; Timothy Oakley  
**Subject:** RE: T09-0041 Central Road at WC - Amended Petition

Ms. Utt,

Thank you very much. The WC has provided its concurrence to the attached e-mail (Calendar attachment). Could the City please review and provide its comments and/or a concurrence e-mail. I will then file the Agreed Order and provided a copy to the judge for his use. That should take care of it.

Thanks,  
Brian

Brian Vercruysse  
Senior Rail Safety Specialist  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
312-636-7760 mobile  
[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)

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**From:** Mary Utt [mailto:mutt@desplaines.org]  
**Sent:** Thursday, June 18, 2009 12:54 PM  
**To:** Vercruysse, Brian  
**Cc:** tom.healy@cn.ca; Jon Duddles; David Wiltse; Timothy Oakley  
**Subject:** T09-0041 Central Road at WC - Amended Petition

Mr. Vercruysse-  
Pursuant to your request, attached please find an amended petition indicating Wisconsin Central Ltd. as the respondent. In addition, a prayer for relief has been added. Please also note the name of the mayor has been changed. I will mail the original documents to you via US Mail. Should you have any questions, please let us know.  
Thank you.  
Mary Utt

## Vercruysse, Brian

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**From:** @ Healey, Thomas J.  
**Sent:** Tuesday, June 09, 2009 9:20 AM  
**To:** Vercruysse, Brian  
**Subject:** Re: FW: FW: T09-0041 Central Road at WC

Brian:

That didn't take long. John also caught the BNSF reference, but that was it; all else good from WC.  
Do you need me to file something in the docket, or can this e-mail suffice for our concurrence with the agreed order?  
Tom

Tom Healey/HEALEY03/IL/CNR/CA

06/09/2009 08:32 AM

To "Vercruysse, Brian" <[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)>  
cc  
Subject Re: FW: FW: T09-0041 Central Road at WC [Link](#)

Brian:

Got it. Will try to get you a response later today.  
Tom

"Vercruysse, Brian" <[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)>

06/09/2009 08:23 AM

To "@ Healey, Thomas J." <[tom.healey@cn.ca](mailto:tom.healey@cn.ca)>  
cc  
Subject FW: FW: T09-0041 Central Road at WC

Tom,

I believe it worked when I sent a pdf file. Please see attached. If it doesn't make it to you, I'll fax it.

Brian

**From:** David Wiltse [<mailto:dwiltse@desplaines.org>]  
**Sent:** Monday, June 08, 2009 11:52 AM  
**To:** @ Healey, Thomas J.; Vercruysse, Brian  
**Cc:** Jon Duddles; Mary Utt; David Wiltse  
**Subject:** Re: FW: T09-0041 Central Road at WC

Jon please note and coordinate with Mary. Thanks.

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**From:** [Tom.Healey@cn.ca](mailto:Tom.Healey@cn.ca)  
**To:** Vercruysse, Brian  
**Cc:** David Wiltse; Jon Duddles

**Sent:** Mon Jun 08 10:58:42 2009

**Subject:** Re: FW: T09-0041 Central Road at WC

Brian:

As you can see from the below, I continue to have problems with docs attached to e-mails from the ILCC. Can you fax (708.332.4361)? Sorry to be such a problem child.

Tom

"Vercruysse, Brian" <[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)>

06/05/2009 03:19 PM

To 'DAVID WILTSE' <[dwiltse@desplaines.org](mailto:dwiltse@desplaines.org)>, 'JON DUDDLES' <[JDUDDLES@desplaines.org](mailto:JDUDDLES@desplaines.org)>

cc "@ Healey, Thomas J." <[tom.healey@cn.ca](mailto:tom.healey@cn.ca)>

Subject FW: T09-0041 Central Road at WC

Gentlemen,

Judge Jackson has continued the case to July 10, 2009, in anticipation of an Agreed Order.

I had provided the agreed order in April for your review and concurrence. However, with similar cases involving wholly and indirectly owned subsidiaries of the CN (Wisconsin Central, EJ&E, Illinois Central, etc), Judge Jackson has requested amended petitions.

To be consistent with this recent request, could the City please provide an Amended Petition that indicates the Wisconsin Central Ltd, as the Respondent. I have modified the Order as attached to account for this. I can file the Amended Petition with the Order if desired. With your review of the Order, please provide either a concurrence e-mail or letter.

Thank you very much and have a good weekend,  
Brian

Brian Vercruysse  
Senior Rail Safety Specialist  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
630-424-8750 office  
312-636-7760 mobile  
[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)<<mailto:bvercruy@icc.illinois.gov>>

[attachment "winmail.dat" deleted by Tom Healey/HEALEY03/IL/CNR/CA] [attachment "060509\_Rev1\_Draft Agreed Order\_T09-0041\_City of Des Plaines\_Central Rd at WC.pdf" deleted by Tom Healey/HEALEY03/IL/CNR/CA]