

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

BNSF Railway Company, Mound Township Road District, :
McDonough County Highway Department, and the State of :
Illinois, Department of Transportation. :
:
:
Stipulated Agreement regarding improving public safety at the TR : T09-0081
95 highway-rail grade crossing of BNSF Railway Company's :
track near Bushnell, McDonough County, Illinois, designated as :
crossing AAR/DOT #063 789M, railroad milepost 193.08-LS11. :

ORDER

By the Commission:

On April 21, 2009, April 24, 2009, April 24, 2009, May 6, 2009, and June 25, 2009, the Staff of the Illinois Commerce Commission, Mound Township Road District, McDonough County Highway Department, BNSF Railway Company, and the State of Illinois, Department of Transportation, respectively, executed Stipulated Agreement 1406 according to the provisions of Section 18c-7401 of the Illinois Commercial Transportation Law. The Stipulated Agreement, which is appended hereto, provides for safety improvements at the TR 95 highway-rail grade crossing of BNSF Railway Company's track near Bushnell, McDonough County, Illinois, designated as crossing AAR/DOT #063 789M, railroad milepost 193.08-LS11. Stipulated Agreement 1406 contains estimates of cost to accomplish the improvements and a division of cost among the parties.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the Stipulated Agreement, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The physical characteristics of the subject highway - railroad grade crossing, rail and highway volumes and speeds are indicated on Exhibit A of the Stipulated Agreement appended hereto;
- (3) The parties agree that in the interest of public safety the improvements as set forth in Section 2 of the Stipulated Agreement, appended hereto should be performed;
- (4) The cost for the proposed improvements should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;

- (5) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through funds from the Grade Crossing Protection Fund of the Motor Fuel Tax Law, be directed to pay their respective portions of the actual cost of the proposed improvements as set forth in Section 5 of the Stipulated Agreement, appended hereto;
- (6) Public Act 93-0604 (effective November 21, 2003), which amends 625 ILCS 18c-7401 (Safety Requirements for Track, Facilities, and Equipment), requires installation of temporary STOP signs whenever the Commission authorizes the installation of automatic flashing light signals and gates at public highway-rail grade crossings. The temporary STOP signs shall remain in place until the luminous flashing signal or crossing gate devices have been installed. The rail carrier is responsible for the cost of the installation and subsequent maintenance of any required temporary STOP signs.
- (7) 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.
- (8) 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.
- (9) 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.
- (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 that the terms of Stipulated Agreement 1406, executed by the Staff of the Commission, Mound Township Road District, McDonough County Highway Department, BNSF Railway Company, and the State of Illinois, Department of Transportation, on April 21, 2009, April 24, 2009, April 24, 2009, May 6, 2009 and June 25, 2009, respectively, be, and they are hereby accepted and required to be met by all the parties.

IT IS FURTHER ORDERED that BNSF Railway Company and Mound Township Road District are each hereby, required and directed to proceed immediately in performing the work set forth in Section 2 of the Stipulated Agreement, appended hereto and shall complete the work within twelve (12) months from the date of this Order.

IT IS FURTHER ORDERED that BNSF Railway Company shall, within 30 days from the date of this Order, install temporary STOP signs at the TR 95 grade crossing. The temporary STOP signs shall remain in place until the automatic warning devices authorized for installation by this Order are installed and operational. The BNSF Railway Company shall be responsible for the cost of the installation and subsequent maintenance of the required temporary STOP signs.

IT IS FURTHER ORDERED that BNSF Railway Company shall, within 5 days of the installation, furnish a written statement to the Director of Processing and Information, of the Commission's Transportation Bureau, indicating that the temporary STOP signs have been installed at the TR 95 grade crossing.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Section 5 of the Stipulated Agreement, appended hereto.

IT IS FURTHER ORDERED that all bills for highway approach grade improvement expenditures authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Department's District 4 office, located at 401 Main, Peoria, IL, 61602 ATTN: Derek Parish, Local Roads Engineer. All other bills for warning device improvement expenditures authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 S. Dirksen Parkway, Springfield, IL 62764. The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in this Order. The final bill for

expenditures from each party shall be clearly marked "Final Bill". All bills shall meet the minimum documentation requirements set forth in Section 8 of the Stipulated Agreement, appended hereto. The Department shall not obligate any assistance from the Grade Crossing Protection Fund for the cost of proposed improvements set forth in Section 2 of the Stipulated Agreement, appended hereto, without prior approval by the Commission. The Commission shall, at the end of the 12th month from the completion date specified in this Order or any Supplemental Order, conduct a review to determine if any unused assistance from the Grade Crossing Protection Fund should be de-obligated. Upon completion of the review, the Commission shall notify the Department to de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that BNSF Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission showing details of the required automatic warning devices and shall receive approval by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that BNSF Railway Company and Mound Township Road District shall each, at six (6) month intervals from the date of Commission Order subsequent to this Agreement, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report, attached as Exhibits E & E1 of the Stipulated Agreement, stating the progress it 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 BNSF and Road District Project Manager.

IT IS FURTHER ORDERED that BNSF Railway Company shall 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 BNSF Railway Company and Mound Township Road District be, and they are each 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 29th day of July 2009.



CHARLES E. BOX
CHAIRMAN

JUDGE
SECTION CHIEF <i>m65</i>
<i>DWS</i>
ORDERS SUPERVISOR