

ORIGINAL

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS,)
ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)
)
Petitioner,)
)
v.)
)
TERMINAL RAILROAD)
ASSOCIATION OF ST. LOUIS,)
)
Respondent.)

Docket No. T09-0074

2009 JUL 28 P 4: 53
STATION

**TRRA'S RESPONSE TO IDOT'S PROPOSED
HEARING EXHIBITS AND MOTION IN LIMINE TO
EXCLUDE EXHIBITS 5, 10-12, AND 14-19 FROM THE HEARING EVIDENCE**

COMES NOW respondent, Terminal Railroad Association of St. Louis ("TRRA"), and hereby responds to the Proposed Hearing Exhibits filed by the Illinois Department of Transportation ("IDOT") for purposes of the hearing scheduled in this matter for July 30, 2009.

1. As of July 27, 2009, IDOT, the Missouri Highways and Transportation Commission (collectively, the DOTs) and TRRA reached agreement on the terms of the Grade Separation Construction and Maintenance Agreement ("GSA") with the sole exceptions of two issues that remain unresolved for the ICC's consideration. Those two issues are the provision of lighting and fencing on the portion of the structure spanning the TRRA Wiggins Ferry #2 yard (the "TRRA Yard").

2. TRRA has requested that reasonable fencing and lighting be provided on the grade separation structure in order to promote safety of railroad personnel and rail operations on the TRRA Yard below the proposed right of way. The DOTs thus far have refused to include those measures in their plans.

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3. In its Response to TRRA's Motion for an Extension of Time to File Hearing Exhibits, IDOT agreed with the limitation of the hearing to these two remaining issues and, in fact, stated that it would "strenuously object" to an attempt by TRRA to raise any issues beyond them at the hearing. See ¶¶ 6 and 7.

4. However, despite these statements, much of IDOT's proposed hearing exhibits are superfluous and have no bearing on the issue of whether fencing and lighting should be provided in the grade separation plan over the TRRA Yard. Moreover, many of the proposed exhibits relate to issues that are not even before the ICC—that is, they do not relate to IDOT's pending request for approval of the grade separation project. For all of these reasons, those exhibits (described more fully herein) should be excluded from evidence at the hearing.

5. TRRA discusses its objections to the exhibits in the following section. TRRA reserves its right to make further objections at the hearing.

- a) Exhibits 1, 2, 7, 8: TRRA has no objection at this time.
- b) Exhibits 3, 4, 9: TRRA objects to the extent that IDOT intends to present the exhibits in connection with acquisition of property rights. Negotiations regarding the terms and extent of IDOT's land acquisition in connection with the proposed project are ongoing and IDOT's acquisition of TRRA's property interests in order to carry out the project is not properly before the ICC.
- c) Exhibit 5: TRRA objects to the draft of the GSA submitted as Exhibit 5 because it constitutes a draft of a negotiation document which, at the time of IDOT's filing was the subject of ongoing settlement discussions. The draft submitted as an exhibit is a former draft, was edited numerous times by counsel for the DOTs and TRRA since IDOT's filing and is not in the form agreed to by the parties on July 27th. As a result, it is completely irrelevant, unreliable and should be excluded from the ICC's consideration at the hearing.

- d) Exhibit 6: TRRA has no objection to Exhibit 6 at this time, although TRRA questions the relevance of the document to the issues of provision of lighting and fencing on the structure spanning the TRRA Yard.
- e) Exhibit 10: Exhibit 10 purports to be easements required by IDOT in connection with the project. TRRA objects to this exhibit because it is irrelevant to the issues to be presented at the hearing and is not properly before the ICC. The easements were only recently provided to TRRA and the terms of use or property rights to be granted in the easement areas are the subject of negotiation by the parties. As a result, Exhibit 10 should be excluded from the hearing evidence.
- f) Exhibit 11: TRRA objects to the reimbursement agreement by and between TRRA and the State of Illinois as irrelevant to the issues to be raised in the hearing. Moreover, reimbursement is part of the GSA reached on July 27th. It therefore should be excluded from the hearing evidence in its entirety.
- g) Exhibits 16, 17 and 18: TRRA objects to the purported permanent and temporary easement agreements contained in Exhibits 16, 17 and 18 because the terms of IDOT's proposed land acquisition are the subject of ongoing settlement negotiations between the parties and those negotiations are not reflected in the exhibits, making them thereby unreliable. Moreover, the terms of the land acquisition are not properly before the ICC. As a result, Exhibits 16, 17 and 18 should be excluded from the hearing evidence in their entirety and not considered by the ICC.
- h) Exhibits 12, 14 and 15: TRRA objects to the historical correspondence, meeting minutes, slide show presentation materials and other documentation contained in Exhibits 12, 14 and 15, because they are in no way probative of the two remaining unresolved issues of whether safety lighting and fencing should be required as part of the DOTs' plan. Moreover, the history of communications by and between the parties are completely irrelevant because agreement on the terms of the GSA have been reached, save fencing and lighting.

i) Exhibit 13: TRRA has no objection to IDOT's presentment of Exhibit 13 only to the extent that it is probative of the issues of fencing and lighting on the grade separation structure.

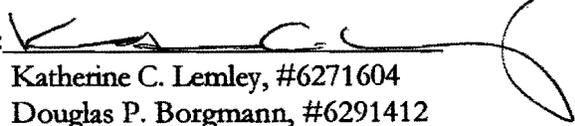
j) Exhibit 19: Exhibit 19 is a pleading entitled "Supplement to Petition" and further labeled "Draft – May Be Filed", which purports to seek "approval to take or damage property belonging to railroad". This pleading has not been filed and is therefore not properly before the ICC. Nor is it in any way probative of the two issues—safety lighting and fencing—to be heard by the ICC at the hearing. Therefore, Exhibit 19 should be excluded from the hearing evidence in its entirety and not considered by the ICC.

WHEREFORE, for the foregoing reasons, TRRA respectfully requests that IDOT's proposed Exhibits 5, 10-12, and 14-19 be excluded from the hearing, limited by agreement to the issues of fencing and lighting, scheduled for July 30, 2009.

Respectfully submitted,

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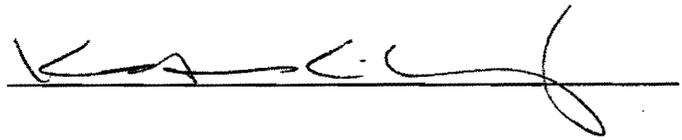
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via electronic mail, to Cindy Bushur-Hallam, Gloria M. Camarena and Richard A. Redmond, all Special Assistant Attorneys General, on this 28th day of July, 2009, as follows:

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Richard A. Redmond
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A handwritten signature in black ink, appearing to read "Richard A. Redmond", is written over a horizontal line. The signature is stylized and cursive.