

**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 Kirkland-Montaque and as attached)

August 11, 2009

Latrice Kirkland-Montaque  
Administrative Law Judge  
Review and Examination  
Illinois Commerce Commission  
160 N. LaSalle Street  
Chicago, IL

RE: T08-0077

Dear Judge Kirkland-Montaque:

The attached Agreed Supplemental Order is respectfully submitted for your approval and submittal to the Commission for the September 10, 2009, bench session. The Supplemental Order was prepared by Staff in coordination with the parties. The concurrence documentation for the Order is provided with the filing.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael E. Stead".

Michael E. Stead  
Rail Safety Program Administrator

Certificate of Service

I, Brian Vercruysse, Senior Rail Safety Specialist for the Illinois Commerce Commission, hereby certify that the SUPPLEMENTAL AGREED ORDER for T08-0077 was filed on e-Docket and e-mailed to the parties listed below on August 11, 2009.

RAIL SAFETY SECTION STAFF  
ILLINOIS COMMERCE COMMISSION

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

George F. Mahoney III  
Mahoney, Silverman & Cross, Ltd  
822 Infatry Drive, Suite 100  
Joliet, IL 60435  
[gmahoney@mscltdlaw.com](mailto:gmahoney@mscltdlaw.com)

Gloria Camarena  
Assistant Chief Counsel  
Illinois Department of Transportation  
JRTC -STE 6-600  
100 West Randolph  
Chicago, Illinois 60601  
[gloria.camarena@illinois.gov](mailto:gloria.camarena@illinois.gov)

Paul Pearson  
Municipal Engineer  
Village of Mokena  
11004 Carpenter Street  
Mokena, IL 60448-1518  
[ppearson@mokena.org](mailto:ppearson@mokena.org)

Thomas W. Hunter  
Engineer Signal, Communications and Electrical  
Elgin Joliet and Eastern Railway Company  
1141 Maple Rd.  
Joliet, IL 60432  
[thunter@uss.com](mailto:thunter@uss.com)

Howard E. Sloan  
Municipal Engineer  
Village of Frankfort  
432 West Nebraska Street  
Frankfort, IL 60423-1424  
[hsloan@vofil.com](mailto:hsloan@vofil.com)

Harry L. Gilmore Jr  
Senior Project Manager  
Robinson Engineering  
10045 West Lincoln Highway  
Frankfort, IL 60423-1272  
[hgilmore@reltd.com](mailto:hgilmore@reltd.com)

Thomas J. Healey  
Counsel - Regulatory  
Elgin Joliet and Eastern Railway Company  
17641 S. Ashland Avenue  
Homewood, IL 60430  
E-Mail: [tom.healey@cn.ca](mailto:tom.healey@cn.ca)

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Village of Frankfort and Village of Mokena, municipal :  
corporations; :  
Petitioners, :  
 :  
 :  
v. : T08-0077  
 :  
The Elgin, Joliet, and Eastern Railway Company, a Delaware :  
Corporation, and the Department of Transportation of the State :  
of Illinois, :  
Respondents. :  
 :  
 :  
Petition for an Order to upgrade 116th Avenue (Osage :  
Road/Bobzin Road) designated as crossing AAR/DOT #260 :  
620E located in the Village of Frankfort and Mokena, Will :  
County, Illinois. :

**SUPPLEMENTAL ORDER**

By Order of the Commission:

On June 1, 2009, the Elgin, Joliet, and Eastern Railway Company (“Company” or “EJE”) filed a verified Supplemental Petition with the Illinois Commerce Commission (“Commission”) requesting that the Commission allow the EJE to install a second mainline track through the 116<sup>th</sup> Avenue (Osage Road/Bobzin Road) highway-rail grade crossing in conjunction with work to be performed by the Village of Frankfort (“Frankfort”) and the Village of Mokena (“Mokena”).

**PROCEDURAL HISTORY**

On May 14, 2008, the Village of Frankfort and the Village of Mokena (“Frankfort” and “Mokena”, or “Petitioners”) filed a verified Petition with the Commission seeking authority to modify the roadway cross section at the 116<sup>th</sup> Avenue highway-rail grade crossing to allow for wider traffic lanes, a bike path, and sidewalk. The Petitioners also requested that the crossing warning devices be upgraded with assistance from the Grade Crossing Protection Fund (“GCPF”).

On December 3, 2008, the Commission entered its Order in the matter authorizing the roadway modifications, as well as the upgrade of the warning devices to include roadway gates and supplemental pedestrian gates. All work contemplated in the Order is to be completed by December 31, 2009. The Petitioners and the EJE plan on completing the roadway construction and warning devices in the late summer/early

Fall 2009, potentially in advance of the school year for the nearby Hickory Creek Junior High.

On June 1, 2009, after reaching agreement with Frankfort and Mokena, the EJE filed its Supplemental Petition, which included plans incorporating a second track into the design approved by the Commission Order issued on December 3, 2009. Formalizing the terms of the work, the EJE, Frankfort, and Mokena executed a license agreement in early August of 2009, and on August 11, 2009, Staff of the Illinois Commerce Commission's Rail Safety Section ("Staff") filed an Agreed Supplemental Order, which was coordinated with the EJE, Mokena, and Frankfort.

### **PETITIONER (EJE) EVIDENCE**

As indicated in its Supplemental Petition, the EJE has requested approval to install a second mainline track through the 116<sup>th</sup> Street crossing. The EJE anticipates that the track will only extend through the crossing at this time, and that as market conditions allow, the second track will be extended to enhance its rail operations through the area. In an effort to limit the need for future roadway closures, relocation of warning devices, re-work, inconvenience, or other modifications to the crossing area, the EJE has reached an agreement to install the second track in conjunction with the work to be performed by Mokena and Frankfort. The EJE will pay for the costs associated with the second track installation at the crossing.

### **FRANKFORT AND MOKENA POSITION**

Frankfort and Mokena have no objection to the EJE completing the requested second track installation at the 116<sup>th</sup> Avenue crossing in conjunction with their roadway project. Frankfort's and Mokena's concurrence has been documented with the filing of the Agreed Supplemental Order on August 11, 2009.

### **RESPONDENT DEPARTMENT'S POSITION**

The Department has no objection to the EJE's Supplemental Petition.

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

Staff has no objection to the EJE's Supplemental Petition, requesting permission to install a second track through the 116<sup>th</sup> Avenue crossing. Staff notes that the EJE should submit updated warning device plans to account for the second track in the crossing.

## **COMMISSION FINDINGS AND CONCLUSIONS**

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

- (1) The recitals of fact in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (2) The Village of Frankfort and the Village of Mokena are both body politic and corporate organized and existing under and by virtue of the laws of the State of Illinois;
- (3) The Elgin, Joliet & Eastern Railway Company ("Railroad") is a rail carrier engaged in the transportation of persons and property by rail in the State of Illinois;
- (4) Respondent Illinois Department of Transportation ("IDOT") is a state governmental entity and public highway authority organized and existing in accordance with the laws of the State of Illinois;
- (5) The Commission has jurisdiction over the Village of Frankfort , the Village of Mokena , and the Railroad and the subject-matter of this proceeding;
- (6) 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;
- (7) The Elgin, Joliet, and Eastern Railway Company should install a second mainline track at the 116<sup>th</sup> Avenue (Osage Road/Bobzin Road) highway-rail grade crossing in conjunction with work required in the Commission's December 3, 2008, Order so as to minimize future roadway closures, relocation of warning devices, re-work, inconvenience, or other modifications to the crossing area;
- (8) The Elgin, Joliet, and Eastern Railway Company should provide updated warning device plans;
- (9) The Elgin, Joliet, and Eastern Railway Company should be responsible for any additional costs associated with the second track installation;
- (10) All other terms and conditions of the Orders entered to date in this Docket should remain in full force and effect except as herein modified.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Elgin, Joliet, and Eastern Railway Company, per the plan included in its June 1, 2009, Petition, is authorized to install a second track at the 116<sup>th</sup> Avenue (Osage Road/Bobzin Road) highway-rail grade crossing in conjunction with work to be performed by the Village of Frankfort and the Village of Mokena. All work shall be completed by the Elgin, Joliet, and Eastern Railway Company in accordance with Findings (6) through (10).

IT IS FURTHER ORDERED that prior to construction, the Elgin, Joliet and Eastern Railway Company shall file an updated Form 3 of Section 1535 of Title 92 of the Illinois Administrative Code incorporating the second track, and shall receive approval by resolution of the Commission Transportation Bureau Rail Safety Program Administrator before installing the devices;

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 10<sup>th</sup> day of September 2009.

CHARLES E. BOX  
CHAIRMAN

## Vercruysse, Brian

---

**From:** @ Healey, Thomas J.  
**Sent:** Wednesday, August 05, 2009 9:37 PM  
**To:** Vercruysse, Brian  
**Cc:** Harry Gilmore; George Mahoney III; Howard sloan; ppearson@mokena.org; Tiffany Gorman; Dave.Crader@cn.ca; Raymond.Baker@cn.ca; John.Henriksen@cn.ca  
**Subject:** Fw: ILCC Order re 116th Street  
**Attachments:** 061609\_MES COMMENTS\_Proposed Supp Order\_T08-0077\_Frankfort\_Mokena\_EJE\_116th.doc

Brian:

Per our recent discussions, the e-mail below solicited final confirmation from Frankfort (through Counsel George Mahoney) and Mokena (through Counsel Tiffany Gorman) that their clients have no objections to your draft order (with a type-o corrected at the top of p. 2). Under separate e-mails, I will forward to you their concurrences. With these concurrences, EJ&E, Frankfort, and Mokena have no objection to entry of the draft order.

I am in the office on Thursday, then on vacation Friday, if we need to discuss further.

Tom

----- Forwarded by Tom Healey/HEALEY03/IL/CNR/CA on 08/05/2009 08:53 PM -----

Tom Healey/HEALEY03/IL/CNR/CA

08/05/2009 11:21 AM

To "Harry Gilmore" <hgilmore@reltd.com>

cc "George Mahoney III" <gmahoney@msclawfirm.com>, "Howard sloan" <Hsloan@vofil.com>, ppearson@mokena.org, "Tiffany Gorman" <Tiffany@mckeownlawfirm.com>

Subject RE: ILCC Order re 116th Street [Link](#)

Harry:

Thanks for the note. I was in the process of turning around George's note of this morning to explain the same thing you do below. Just so that we have one clear document expressing the communities' concurrence, I have attached the draft supplemental order and ask George and Tiffany to confirm by response e-mail that their respective clients have no objection to entry of this order. By this e-mail I confirm that EJ&E has no objection to entry of this order.

Tom

"Harry Gilmore" <hgilmore@reltd.com>

08/05/2009 11:18 AM

To <Tom.Healey@cn.ca>

cc "George Mahoney III" <gmahoney@msclawfirm.com>, "Howard sloan" <Hsloan@vofil.com>, "Tiffany Gorman" <Tiffany@mckeownlawfirm.com>, <ppearson@mokena.org>

Subject RE: ILCC Order re 116th Street

Tom:

While I understand that the Lease Agreement has been fully executed by all parties, I talked to Brian Vercruysse at the ICC this morning and he said he is awaiting confirmation that both Frankfort and Mokena have no objections to the petition the CN filed. Based upon e-messages from the Village attorneys, there appears to be no objection. It is my understanding that the ICC will accept e-mails stating no objections, and perhaps all that has to be done is forward the attorneys' e-messages to Mr. Vercruysse. The villages are preparing to advertise and receive bids for their roadway work, and as such this ICC amended order needs to be cleared before construction starts. Please coordinate with the ICC and let me and/or the Village attorneys if any additional information is required.

## Vercruysse, Brian

---

**From:** @ Healey, Thomas J.  
**Sent:** Wednesday, August 05, 2009 10:00 PM  
**To:** Vercruysse, Brian  
**Cc:** Harry Gilmore; George Mahoney III; Howard sloan; ppearson@mokena.org; Tiffany Gorman; Dave.Crader@cn.ca; Raymond.Baker@cn.ca; John.Henriksen@cn.ca  
**Subject:** Fw: ILCC Order re 116th Street CASE NO TO8-0077

Brian:  
Counsel Mahoney's "no objection" on behalf of Frankfort.  
Tom

----- Forwarded by Tom Healey/HEALEY03/IL/CNR/CA on 08/05/2009 09:37 PM -----

"George Mahoney III" <gmahoney@msclawfirm.com>

To <Tom.Healey@cn.ca>, "Harry Gilmore" <hgilmore@reltd.com>

cc "Howard sloan" <Hsloan@vofil.com>, <ppearson@mokena.org>, "Tiffany Gorman" <Tiffany@mckeownlawfirm.com>

08/05/2009 05:43 PM

Subject RE: ILCC Order re 116th Street CASE NO TO8-0077

TOM

AS ATTORNEY FOR THE VILLAGE OF FRANKFORT, IT HAS NO OBJECTION TO THE ENTRY OF THE ATTACHED ILLINOIS COMMERCE COMMISSION SUPPLEMENTAL ORDER ADDRESSING THE ELGIN JOLIET AND EASTERN RAILWAY COMPANY'S VERIFIED SUPPLEMENTAL PETITION FILED JUNE 1, 2009

### *George Mahoney*

GEORGE F. MAHONEY III  
MAHONEY, SILVERMAN & CROSS, LLC  
822 INFANTRY DRIVE  
JOLIET, ILLINOIS 60435  
(815) 730-9500 (O)  
(815) 730-9598 (F)  
(815) 355-2710 (M)  
[gmahoney@msclawfirm.com](mailto:gmahoney@msclawfirm.com)  
[www.msclawfirm.com](http://www.msclawfirm.com)

---

**From:** Tom.Healey@cn.ca [<mailto:Tom.Healey@cn.ca>]  
**Sent:** Wednesday, August 05, 2009 11:31 AM  
**To:** Harry Gilmore  
**Cc:** George Mahoney III; Howard sloan; ppearson@mokena.org; Tiffany Gorman  
**Subject:** RE: ILCC Order re 116th Street

## Vercruysse, Brian

---

**From:** @ Healey, Thomas J.  
**Sent:** Wednesday, August 05, 2009 10:01 PM  
**To:** Vercruysse, Brian  
**Cc:** Harry Gilmore; George Mahoney III; Howard sloan; ppearson@mokena.org; Tiffany Gorman; Dave.Crader@cn.ca; Raymond.Baker@cn.ca; John.Henriksen@cn.ca  
**Subject:** Fw: ILCC Order re 116th Street

Brian:  
Attorney Gorman's "no objection" on behalf of Mokena.  
Tom

----- Forwarded by Tom Healey/HEALEY03/IL/CNR/CA on 08/05/2009 09:59 PM -----

"Tiffany Gorman" <Tiffany@mckeownlawfirm.com>

To <Tom.Healey@cn.ca>, "Harry Gilmore" <hgilmore@reltd.com>

cc "George Mahoney III" <gmahoney@msclawfirm.com>, "Howard sloan" <Hsloan@vofil.com>, <ppearson@mokena.org>

08/05/2009 11:33 AM

Subject RE: ILCC Order re 116th Street

This e-mail confirms that Mokena has no objection to the entry of this order.

### Tiffany R. Gorman

Partner  
**McKeown Law Firm**  
2455 Glenwood Avenue  
Joliet, Illinois 60435  
(815)729-4800 phone  
(815)729-4711 fax

CAUTION: This e-mail transmission and any attachments hereto contain information from the McKeown Law Firm which is strictly confidential and/or privileged. This information is intended solely for the use of the addressee(s) named. This transmission may be subject to the attorney/client privilege, or be attorney work product. If you are not the designated recipient, or an employee or agent authorized to deliver such transmittals to the designated recipient, you are hereby advised that any disclosure, copying, distribution or use of the contents of this electronic transmission is strictly prohibited. If you have received this transmission in error or are not the intended recipient, we respectfully request that you notify us immediately by replying to sender or by calling us so that we may take the necessary precautions in the future and hereby request that you delete the computer entry and we will arrange for the retrieval of the original documents, if any, at no cost to you.



**From:** Tom.Healey@cn.ca [<mailto:Tom.Healey@cn.ca>]  
**Sent:** Wednesday, August 05, 2009 11:31 AM  
**To:** Harry Gilmore  
**Cc:** George Mahoney III; Howard sloan; ppearson@mokena.org; Tiffany Gorman  
**Subject:** RE: ILCC Order re 116th Street

Harry:  
Thanks for the note. I was in the process of turning around George's note of this morning to explain the same thing you do below. Just so that we have one clear document expressing the communities' concurrence, I have attached the draft supplemental order and ask George and Tiffany to confirm by response e-mail that their respective clients have no objection to entry of this order. By this e-mail I confirm that EJ&E has no objection to entry of this order.

Tom

"Harry Gilmore"  
<hgilmore@reltd.com>

To <Tom.Healey@cn.ca>

## Vercruysse, Brian

---

**From:** Camarena, Gloria M [Gloria.Camarena@illinois.gov]  
**Sent:** Tuesday, August 11, 2009 2:57 PM  
**To:** Vercruysse, Brian  
**Cc:** Harpring, Jeff L  
**Subject:** RE: T08-0077 Supplemental Agreed Order - Frankfort/Mokena v EJ&E & IDOT

Brian,

IDOT does not have any objection to the Supplemental Order regarding Frankfort/Mokena v EJ&E & IDOT.

If you need me to submit our objection on E-file, please let me know and I will get that out.

Thank you.

---

**From:** Vercruysse, Brian [mailto:bvercruy@icc.illinois.gov]  
**Sent:** Thursday, August 06, 2009 10:01 PM  
**To:** Harpring, Jeff L; Camarena, Gloria M  
**Subject:** T08-0077 Supplemental Agreed Order - Frankfort/Mokena v EJ&E & IDOT

Hi Jeff and Gloria,

The original Order in this case called for upgrade to flashing light signals, gates, and roadway project to include sidewalk, multi-use path, and pedestrian gates. We had submitted this as an agreed Order, and Larry had provided IDOT's concurrence since Grade Crossing Protection Funds were called for.

Since the Order, the EJ&E has worked with the Villages to coordinate the installation of a second track at the crossing to minimize road closures, re-work, etc. The EJ&E submitted a Petition for an Amended/Supplemental Order to account for this work. I drafted an Agreed Supplemental Order in early June with everyone's hope of getting this to construction prior to the school year, as a middle school is near the crossing. With a back and forth License Agreement between the RR and Villages, I just received concurrence from the Villages and EJ&E, so we'll see how quick we can get to construction.

So that I have all Respondents/parties covered, could you please review and provide your concurrence. It does not modify the GCPF amount or any provision from the first Order. It specifically incorporates the second track (RR to cover all additional costs).

Thank you and if you have any questions, please let me know.

Original Order, IDOT Concurrence and Agreed Supp Order Attached.

Thanks,  
Brian

Brian Vercruysse  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701  
M 312-636-7760