

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

The Department of Transportation of the State of Illinois, for and :  
on behalf of the People of the State of Illinois, :

Petitioner, :

v. :

The Baltimore and Ohio Chicago Terminal Railroad Company, an :  
Illinois Corporation; CSX Transportation Inc., a Virginia :  
corporation; and :

Unknown Owners, :

Respondents. :

Petition for approval of the taking or damaging of certain property :  
owned by a common transportation carrier in Cook County, Illinois :  
by exercising the right of eminent domain Job No. R90-006-97; :  
Parcel No. 0CQ0009TE and 0CQ0010TE. :

T09-0043

**ORDER**

By the Commission:

On April 6, 2009, the Department of Transportation of the State of Illinois ("Petitioner" or "IDOT") filed its verified Petition with the Illinois Commerce Commission ("Commission") seeking approval for the taking of certain real estate owned by The Baltimore & Ohio Chicago Terminal Railroad Company, an Illinois Corporation, and CSX Transportation Inc., a Virginia corporation (collectively "Respondents" or "Railroads"), through the exercise of the power of eminent domain.

**PROCEDURAL HISTORY**

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, a hearing on the Petition was held on June 10, 2009 at the Commission's offices in Springfield and Chicago, Illinois before a duly authorized Administrative Law Judge ("ALJ") of the Commission. IDOT appeared by counsel and presented the testimony of Lin M. Li, IDOT Condemnation Engineer. The Railroads appeared by counsel. An appearance was also made by Brian Verduyck, Commission Rail Safety Specialist, on behalf of Commission Staff ("Staff"). At the conclusion of the June 10, 2009 hearing, the record was marked "Heard and Taken."

## **PETITIONER'S EVIDENCE**

Lin M. Li, IDOT Condemnation Engineer, testified that the Department of Transportation is engaged in an improvement to widen and reconstruct Southwest Highway over the Baltimore & Ohio ("B&O") Chicago Terminal Railroad in Cook County, Illinois. The project includes replacing a 12,000-foot, 25 span bridge structure that carries Southwest Highway over track owned by the B&O and Stoney Creek in Chicago Ridge, Cook County, Illinois. In order to construct the new bridge, IDOT will need temporary easements from the Railroads in two parcels of land, one being approximately .737 acre in size, and the other being approximately .337 acre in size. The parcels of land are legally described in Exhibit A attached to the Petition filed by IDOT. According to Li, the easements are required as part of the project to widen, reconstruct, and improve Southwest Highway over the B & O Chicago Terminal Railroad tracks at that location. Li testified that the work and improvement project is a public work, is for public use, and constitutes a public purpose; and that it is necessary to the public convenience and necessity that Petitioner have and acquire the easements for the use of the People of the State of Illinois. IDOT needs the temporary easement interests for a period of five (5) years or until completion of construction of the new bridge structure.

The project will be constructed under the supervision of IDOT. Construction activities on the Railroads' property shall be performed in accordance with IDOT policies and procedures for construction projects involving railroads. The letting for this improvement project is currently scheduled for September 2009. IDOT has been unable to acquire the interests in the property it needs at this time for the construction of the improvement. IDOT therefore seeks an Order from the Commission approving the use of eminent domain powers to obtain the temporary easements.

## **RESPONDENT RAILROADS' POSITION**

The Railroads do not contest the primary request in the Petition. IDOT and the Railroads have substantially completed negotiations of a written construction agreement for this improvement project. However, until the construction agreement is executed by the Parties, the Railroads are concerned that no construction activity commence at or adjacent to the Railroads' property. If IDOT and the Railroads do not reach an agreement for construction of the improvement project at or adjacent to the Railroads' property, then the Commission should retain jurisdiction to determine and resolve any construction disagreements. Upon execution of the Construction Agreement now under negotiation, the Railroads have no objection to the relief sought by IDOT in the Petition.

## **STAFF'S POSITION**

Staff has no objection to the Commission granting IDOT approval to exercise the power of eminent domain to acquire the property needed for this improvement project from the Railroads.

## **COMMISSION FINDINGS AND CONCLUSIONS**

The Commission is of the opinion that it is fair and reasonable to grant the Petition seeking approval and authority to exercise the power of eminent domain to acquire the temporary easements described in the Petition as Parcel Nos. 0CQ0009TE and 0CQ0010TE situated in Cook County, Illinois. The Commission, having given due consideration to the entire record and to the recommendation of Staff presented at the hearing, is of the opinion and finds that:

- (1) the Department of Transportation of the State of Illinois exists by virtue of the laws of the State of Illinois;
- (2) the Railroads are engaged in the transportation for-hire of persons and/or property by rail in the State of Illinois and are rail carriers as defined by the Illinois Commercial Transportation Law ("Law");
- (3) the Commission has jurisdiction of the Parties hereto and the subject matter hereof;
- (4) under and by virtue of the Illinois Highway Code, Chapter 605 ILCS 5/4-501, the IDOT is engaged in a project to improve widen and reconstruct Southwest Highway over the B & O Chicago Terminal Railroad in Cook County, Illinois;
- (5) the land legally described in Exhibit A attached to the Petition filed by IDOT herein is required as part of a project to improve Southwest Highway over the B & O Chicago Terminal Railroad in Cook County, Illinois;
- (6) the subject land, rights, and other property are private property and the Railroads have an interest in or claim to have some interest therein;
- (7) the work and improvement project is a public work, is for public use, and constitutes a public purpose, namely a public highway; it is necessary to the public convenience and necessity that Petitioner have and acquire for the use of the People of the State of Illinois the temporary easements for construction purposes in and to the property described in Exhibit A attached to the Petition;
- (8) After execution of the Construction Agreement, the construction of the improvement project on the Railroad's property may commence in accordance with the Petitioner's Departmental Policies and Procedures (Standard Specifications For Road And Bridge Construction);
- (9) the Petitioner has the power to condemn the Railroad's property, and the Petitioner is therefore authorized, with the approval of the Commission, to proceed in the Circuit Court of Cook County to acquire said land, rights, or other property through the exercise of the right of eminent domain under the

eminent domain laws of this State;

- (10) the approval of the Commission may reasonably be given for the taking of real property and impressments of easements upon real estate owned by Railroads as legally described in Exhibit A by the exercise of the power of eminent domain.

IT IS THEREFORE ORDERED that the approval of the Illinois Commerce Commission be, and it is hereby, granted to the Department of Transportation of the State of Illinois to exercise the power of eminent domain for the taking of real property and the impressments of the temporary easements in and to the property now sought by the Department of Transportation [Parcel Nos. 0CQ0009TE and 0CQ0010TE which consist of 0.737 acres and .337 acres, respectively, to be acquired as a temporary easement interests for the period of five (5) years or upon completion of construction] upon, over and under certain real property owned by the Railroads and legally described in Exhibit A attached to the Petition.

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 19th day of August 2009.



CHARLES E. BOX  
CHAIRMAN