

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

City of Chicago, Illinois
Petitioner,

v.

Illinois Central Railroad and Northeast Illinois Regional Commuter
Railroad Corporation (Metra),
Respondents.

T09-0055

Petition for authorization to reconstruct the 35th Street Bridge over the Illinois Central Railroad and the Northeast Illinois Regional Commuter Railroad Corporation (Metra) from East 35th Street to the City's lake front, an elevated viaduct and pedestrian walkway located over the tracks of the Illinois Central Railroad and Metra, in the City of Chicago, County of Cook and State of Illinois, and for a waiver of the clearance requirements set forth in 92 Ill. Admin. Code, Section 1500.

ORDER

By the Commission:

On May 4, 2009, the City of Chicago ("City" or "Petitioner") filed a verified Petition with the Illinois Commerce Commission ("Commission") naming Metra Electric and the Canadian National Rail Road as Respondents herein. Pursuant to leave granted by a duly authorized Administrative Law Judge of the Commission, on June 10, 2009, the City filed an Amended Petition properly naming the Illinois Central Railroad Company ("IC" or "Illinois Central" or "Railroad") and the Northeast Illinois Regional Commuter Railroad Corporation ("NIRC" or "Metra") as Respondents, Illinois Central is a wholly owned subsidiary of Canadian National. The City seeks authority to reconstruct the bridge that carries the 35th Street pedestrian and bicycle path over the IC and Metra tracks in the City of Chicago, Cook County, Illinois (crossing designation AAR/DOT #289 513A, railroad milepost 4.10). In its Amended Petition, the City also requests a waiver of the vertical clearance requirements set forth in 92 Ill. Adm. Code Part 1500 for that portion of the new structure that will span Metra's tracks. The Petition and Amended Petition are uncontested.

PROCEDURAL HISTORY

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, the Petition came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission via video conference at the Commission's Chicago and Springfield offices on June 4, 2009. Petitioner was represented by counsel and presented the testimony of Tanera Green, Chicago Department of Transportation. Illinois Central was appeared by counsel. An appearance was also entered by Brian Vercruysse, Senior Railroad Safety Specialist, Commission Transportation Bureau, Railroad Section, representing Commission Staff

("Staff"). At the conclusion of the June 4, 2009, hearing, the record was marked "Heard and Taken."

PETITIONER'S EVIDENCE

Tanera Green testified that she is employed by the Chicago Department of Transportation and is Project Manager for the City's project at issue in this case. According to Green, the existing 35th Street pedestrian bridge, which was built in 1933, is 420 feet long and spans four (4) Metra tracks, three (3) IC tracks, and Lake Shore Drive (US 41) to connect to the City's lakefront paths and parks. The bridge is structurally deficient, does not comply with the Americans with Disabilities Act, and has reached the end of its service life.

The proposed replacement structure is a self-anchoring pedestrian suspension cable stay bridge approximately 627 feet between abutments and twenty (20) feet wide, as depicted in the City's Petition. It will be constructed approximately 100 feet south of the existing structure. The vertical clearance over the Illinois Central's tracks and over Metra's two eastern most tracks will be greater than the 23 feet required clearance as described in 92 Ill. Adm. Code, Part 1500. A vertical clearance of 21.28 feet (21.28') and 21.48 feet (21.48') is proposed over the two Metra western tracks, necessitating a waiver from the vertical requirement set forth in the Illinois Administrative Code.

Green testified that the design for the 35th Street pedestrian bridge has been chosen as an entry into the Revive the Drive pedestrian bridge competition. The City is planning to prepare the project for a bid letting in October 2009. It is anticipated that construction would then commence in the spring of 2010, with completion anticipated six (6) months thereafter. The estimated cost of the project is \$15,000,000. The City will utilize federal funds for 80% of the cost. The remaining 20% match will be provided by the City in coordination with the Illinois Department of Transportation ("IDOT"), per its standard project development and funding for federal aid projects. Currently, IDOT is awaiting a Commission Order to progress the project to letting. The City is not requesting assistance from the Grade Crossing Protection Fund for the new pedestrian bridge.

RESPONDENTS' POSITION

The IC and Metra have no objection to the City's Petition. The Illinois Central has requested that the City's contractor execute the standard right of entry form for working on the IC's property, and that this provision be included in the Commission's Order. The IC has also indicated that it may seek consideration from the City for additional air rights necessary for the project. The City has no objections to the Illinois Central's requests.

Metra has provided its concurrence to the City's project as indicated in the concurrence letter it filed in this docket, and with the following conditions: (1) the City's contractor or subcontractors shall enter into a right of entry agreement as required by Metra prior to the commencement of any work on or over Metra's property or facilities;

(2) the City's work, improvements or maintenance of any improvements shall not interfere with Metra's operations, except as otherwise may be allowed by the above referenced right of entry agreement; and (3) the City shall maintain the improvements constructed or installed by or on behalf of the City at the City's sole cost and expense. The Petitioner City of Chicago agreed to the conditions requested by Metra.

STAFF POSITION

Staff has no objection to the City's Petition, including the waiver of vertical clearance requirements set forth in 92 Ill. Adm. Code Part 1500 for the two western-most tracks owned by Metra. Staff is also of the opinion that it is in the interest of public safety and convenience that the City of Chicago reconstruct the 35th Street pedestrian walkway over the IC's and Metra's tracks, located in Chicago, Cook County.

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 Chicago, is a political subdivision of the State of Illinois;
- (3) Respondents, Illinois Central Railroad Company and Northeast Illinois Regional Commuter Railroad Corporation (Metra), are rail carriers 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 Chicago reconstruct the 35th Street pedestrian walkway over the IC's and Metra's tracks, located in Chicago, Cook County;
- (6) The vertical clearance requirement of 23 feet as required in 92 Ill. Adm. Code Part 1500.16 should be waived for the two western-most tracks owned by Metra;
- (7) The City of Chicago's contractor and/or subcontractors for the project must execute the standard right of entry agreements with the IC and Metra for work that will be completed on the rail carriers' property;
- (8) The total estimated cost for the project is \$15,000,000, which should be borne by the City of Chicago utilizing federal and local funding;

- (9) All work required herein should be completed by December 31, 2010;
- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) This Order does not address real estate acquisition issues.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission, that the Petitioner, City of Chicago, is authorized to reconstruct the bridge that carries the 35th Street pedestrian and bicycle path over tracks owned by the Illinois Central Railroad Company and the Northeast Illinois Regional Commuter Railroad Corporation (aka

Metra) in accordance with the plans incorporated into the City's Petition and Amended Petition. All work shall be completed by the City in accordance with Findings (5) through (14) set forth above.

IT IS FURTHER ORDERED that the City of Chicago shall have its contractor and/or all subcontractors enter into the standard right of entry agreement with the Illinois Central Railroad Company and Metra for any work that is performed on the rail carriers' property.

IT IS FURTHER ORDERED that the City of Chicago shall be responsible for all costs associated with the project, as well as all future maintenance and costs of maintenance of the pedestrian structure.

IT IS FURTHER ORDERED that the City of Chicago shall complete the reconstruction of the bridge by December 31, 2010.

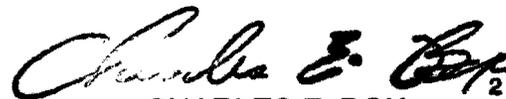
IT IS FURTHER ORDERED that the City of Chicago, shall at six (6) month intervals from the date of this Order until the Project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress it has made toward completion of the 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 Chicago 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 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 19th day of August 2009.



CHARLES E. BOX
CHAIRMAN