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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission
RAIL SAFETY SECTION

SAVATRAN, LLC; HAMILTON)
COUNTY, ILLINOIS; EASTERN)
TOWNSHIP (FRANKLIN COUNTY),)
ILLINOIS; KNIGHT PRAIRIE)
TOWNSHIP (HAMILTON COUNTY),)
ILLINOIS; AND VILLAGE OF)
MACEDONIA, ILLINOIS,)

DOCKET NO. T08-0083

Petitioners.)

v.)

ILLINOIS DEPARTMENT OF)
TRANSPORTATION; AND FLANNIGAN)
TOWNSHIP (HAMILTON COUNTY),)
ILLINOIS,)

Respondents.)

PETITIONERS' POST-HEARING BRIEF

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DUE DATE: August 31, 2009

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Illinois Commerce Commission
RAIL QUALITY SECTION

SAVATRAN, LLC; HAMILTON)
COUNTY, ILLINOIS; EASTERN)
TOWNSHIP (FRANKLIN COUNTY),)
ILLINOIS; KNIGHT PRAIRIE)
TOWNSHIP (HAMILTON COUNTY),)
ILLINOIS; AND VILLAGE OF)
MACEDONIA, ILLINOIS,)

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TOWNSHIP (HAMILTON COUNTY),)
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PETITIONERS' POST-HEARING BRIEF

Pursuant to the opportunity provided by Administrative Law Judge Joseph O'Brien at pages 108-109 of the Transcript, Petitioners hereby file their Initial Brief in this docket.

MATTERS NOT AT ISSUE

The routes associated with the proposed crossings are not at issue (Tr. 26).

As to crossing protection for the 13 proposed crossings, there is agreement on 11, i.e., all except Winemiller Road and Road 200E.^{1/} All parties agree that Road 350E should be protected by crossbucks with yield signs (Tr. 84, 35, Pet., Appdx. 1, p.2). All parties agree that the other 10 crossings should be protected by flashing lights and gates. While Petitioners' Amended Petition requests protection other than lights and gates for 8 of those 10 crossings (all except the two State highways), Petitioners acknowledge Savatran's agreements with governmental authorities for lights-and-gates protection for those crossings (Tr. 20). Petitioners will abide by those agreements. The Commission is respectfully requested to order the agreed protection for those 11 crossings.

**FACTS RELATING TO THE PROPOSED CROSSINGS
OF WINEMILLER ROAD AND ROAD 200E**

1. Winemiller Road

Winemiller Road is located in Eastern Township. The agreement between Petitioner Savatran and Eastern Township for the crossing of Winemiller Road does not specify the type of protection for that crossing (Tr. 19).

^{1/} The crossings for which protection is agreed are:

<u>Crossing</u>	<u>Protection</u>
1. Macedonia Road	Flashing Lights & Gates (FLG)
2. Road 100N	FLG
3. Hamilton County Hwy. 7	FLG
4. Illinois State Hwy. 14	FLG
5. Road 1375N	FLG
6. Road 300E	FLG
7. Road 1400N	FLG
8. Road 350E	Crossbucks with yield signs
9. Road 400E	FLG
10. Road 600E	FLG
11. Illinois State Hwy. 142	FLG

Winemiller Road is a gravel road located in a rural agricultural area (Pet., Appdx. 1 at 1; Tr. 88). At the location of the proposed crossing, it has average daily traffic (ADT) of 75 vehicles, moving at a speed of no more than 30 mph (Pet., Appdx. 1 at 1; Tr. 55, 105). It would be crossed by a single railroad track carrying a maximum of 10 trains per day (5 loaded; 5 empty) of approximately 100 to 130 railcars per train moving at maximum speed of 25 mph. The trains would move during both day and night hours (Tr. 9, 13, 21, 79).

The angle of the proposed crossing of Winemiller Road is 93 degrees, which allows for maximum visibility from motorized vehicles north and south of that crossing (Tr. 52, Sav. Ex. 3). There is some overgrown brush and some trees on the east side of Winemiller Road near the point of the proposed crossing, but Savatran owns the entire southeast quadrant at the point of crossing, as well as 120 feet of the northeast quadrant; Savatran would remove that brush and those trees if they obstructed motorists' view of oncoming trains (Tr. 65, 74). There is a cornfield on the east side of Winemiller Road near the point of the proposed crossing, but Savatran has an easement over land 100 feet north and 100 feet south of the crossing on which no corn could be grown (Tr. 66, 73-74).

2. Road 200E

Road 200E is located in Knights Prairie Township. In its agreement with Savatran for the proposed crossings, Knights Prairie Township insisted on protection by flashing lights and gates at all crossings in the Township except for Road 200E and Road 350E. That is a strong indication that the Township believes that road 200E would be adequately protected by other than flashing lights and gates, i.e., by crossbucks and yield signs.

Road 200E is a dirt road with a smattering of gravel located in a rural agricultural area (Pet., Appdx. 1 at 1, Tr. 67, 89-90). It has an ADT of 25 vehicles, moving at a speed of no more than 20 mph (Pet., Appdx. 1 at 1, Tr. 55). Number of tracks (1), number of trains (no more than 10 per day), number of railcars per train (100-135), and maximum speed of trains (25 mph) would be the same for Road 200E as stated above for Winemiller Road (Tr. 9, 13, 21, 79).

The angle of the proposed crossing of Road 200E would be 45 degrees (Tr. 53). The view of a motorists approaching that crossing would be excellent (*Id.*, Savatran Ex. 3). The road level at the crossing of Road 200E is slightly sunken, but that would only partially affect visibility (Tr. 68-69). There is a conservation area in the southeast quadrant near the proposed crossing at which flora and fauna cannot be altered (Tr. 89-90). There is a pronounced curve in Road 200E some distance south of the proposed crossing which would limit visibility somewhat from northbound vehicles (Tr. 90-91).

ARGUMENT

WINEMILLER ROAD AND ROAD 200E SHOULD BE PROTECTED BY CROSSBUCKS AND YIELD SIGNS

1. The Decisional Standards

There are no hard-and-fast standards for determining the nature of protective devices to be installed at newly-proposed rail-highway crossings. The Commission considers numerous factors, including the number of motorized vehicles and the number of trains that would pass over the crossing in an average day; the speed at which those motor vehicles and trains are likely to be operated at and near the point of crossing; the angle of the proposed crossing and whether there would be obstructions that would diminish sight lines at and near the crossing; the nature

and use of the terrain surrounding the crossing, and any other relevant factors. In ordering particular crossing protection, the Commission balances the safety of the traveling public on the one hand, and the relative cost of the protection, on the other.

2. Application of the Decisional Standards

The present case is much like the recent Commission decision in *Coffeen and Western R. Co. v. Montgomery County, et al.*, Docket No. T04-0084, final order entered on September 13, 2006, in which the nature of crossing protection was disputed. In that case, the Petitioner argued that crossings at Long Bridge Trail and Loew Avenue, both of which had ADTs of 450, should be protected by crossbucks. Montgomery County and Grisham Township argued that those crossings should be protected by flashing lights and gates as necessary for the safety of children riding in school buses passing over those crossings. The Commission ordered that those crossings be protected by crossbucks and yield signs. (Finding 6[d], on page 17 and the fifth Ordering Paragraph on page 17). *Accord: Browns, Grayville & Poseyville R. Co. v. Illinois Department of Transportation, et al.*, Docket No. T07-0005, final order entered on August 15, 2007 (protection by crossbucks with yield signs ordered for all Township and County Roads, and by flashing lights and gates only at State highways and heavily-traveled city streets).

The Commission should order that the crossings at Winemiller Road and Road 200E be protected by crossbucks with yield signs. These are lightly-used rural roads for which protection by flashing lights and gates would be highly excessive. As noted, two crossings in the recent *Coffeen and Western* case having ADTs of 450 were ordered to be protected by crossbucks with yield signs over the objection of local governmental agencies that the safety of children in school

buses warranted protection by flashing lights and gates. Winemiller Road and Road 200E are much less traveled than the roads involved in the *Coffeen and Western* case, viz.:

	<u>ADT in Present Case</u>		<u>ADT in <i>Coffeen and Western</i> case</u>		<u>Percent present case ADT is of ADT in <i>Coffeen and Western</i> case</u>
Winemiller Road	75 ADT	÷	450 ADT	=	17 percent
Road 200E	25 ADT	÷	450 ADT	=	6 percent

If a crossing having 450 ADT has been determined to be adequately protected by crossbucks, it should follow that crossings having a small fraction of that ADT would also be adequately protected by crossbucks.

Moreover, both motor vehicular speed and train speed at the Winemiller Road and Road 200E crossings would be modest, viz.:

Winemiller Road motor vehicle speed	-	30 mph
Road 200E motor vehicle speed	-	20 mph
Train speed at both of those roads	-	25 mph

Protection by crossbucks with yield signs would be adequate to protect public safety at crossings used by motorists so lightly and sporadically, and at such minimal speeds.

There are no unusual conditions at either Winemiller Road or Road 200E that would adversely affect the sight lines of motorists. On the contrary, the rail line would cross Winemiller Road at a 93-degree angle, which is virtually the 90-degree angle that permits maximum visibility. Savatran owns or has sufficient easements over land on both sides of Winemiller Road at the point of crossing in order to be able to remove brush, trees, or crops that might otherwise partially obstruct a motorist's view.

It is important to note that whereas in contracting for crossing of roads in its jurisdiction, Knights Prairie Township insisted on protection by flashing lights and gates at seven such crossings, the Township did not specify that type of protection at the crossing of Road 200E. That is a strong indication that Knights Prairie Township does not believe that protection by flashing lights and gates is necessary at Road 200E, notwithstanding that the road is slightly depressed in comparison to the adjacent terrain at the point of crossing, somewhat affecting visibility.^{2/}

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the crossings of Winemiller Road and Road 200E should be ordered to be protected by crossbucks with yield signs based on their low ADTs, their modest vehicular speeds, the modest speed of trains, the near-perfect angle of the Winemiller road crossing, the ability of Savatran to remove obstructions to view at the Winemiller Road crossing, Knights Prairie Township's implicit agreement to that type of protection at the crossing of Road 200E, and especially the precedent of the *Coffeen and Western* case, in which that type of protection was ordered in a disputed setting at crossings having far greater ADTs than those at the crossings of Winemiller Road and Road 200E.

^{2/} A curve in Road 200E some distance south of the proposed crossing would not appreciably affect the sight line of northbound vehicles because the road straightens well before reaching the crossing.

Respectfully submitted,

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DUE DATE: August 31, 2009

CERTIFICATE OF SERVICE

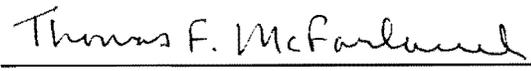
I hereby certify that on August 28, 2009, I served the foregoing document, Petitioners' Post-Hearing Brief, by UPS overnight mail on the following:

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