

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Archer-Daniels-Midland Company, a Delaware corporation, and	:	
Burlington Junction Railway,	:	
Petitioners,	:	
	:	
v.	:	T09-0102
	:	
Illinois Commerce Commission,	:	
Respondent.	:	
	:	
Petition for permission to construct, maintain and operate a	:	
railroad track where track centers and clearances will not conform	:	
to required minimums.	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On August 21, 2009, the Burlington Junction Railway (“BJRY”) and the Archer-Daniels-Midland Company (“ADM”), (jointly referred to as “Petitioners”) filed the above-captioned verified Joint Petition with the Illinois Commerce Commission (“Commission”), requesting permission to construct and maintain two new railroad tracks where a track center and horizontal clearances are less than those required by 92 Ill. Adm. Code Part 1500. Petitioners named the Commission as the sole Party Respondent to the case. The Petitioners also requested that an Order be issued in this matter without hearing.

Pursuant to the Law and rules and regulations of the Commission, a duly authorized Administrative Law Judge (“ALJ”) of the Commission scheduled the Petition for hearing to commence October 6, 2009. Prior to the hearing, Staff of the Commission’s Rail Safety Section (“Staff”) met and conferred with Petitioners to discuss and draft an agreed Order for submission to and review by the ALJ. On September 24, 2009 Staff filed an agreed draft Order in this docket. On that same date the ALJ marked the record “Heard and Taken.”

STIPULATED FACTS

The Petitioners propose to construct two additional tracks between two existing tracks which serve ADM's bulk oil seed processing facility located at 2731 Refinery Road in Quincy, Adams County, Illinois. ADM owns and operates that facility. The existing tracks are used to transport freight, rail storage and unloading of freight, solely for ADM's purposes and are serviced only by the Burlington Junction Railway. The proposed additional tracks would be used in the same manner, and are needed by ADM to accommodate anticipated and imminent increased rail traffic to the privately owned

facility in the coming months. Based on these facts, both the existing and the proposed tracks qualify as "Subsidiary Freight Tracks" as listed under 92 Ill. Adm. Code 1500.170(c), necessitating a variance from the clearance requirements set forth therein.

The location of existing structures necessitates the proposed tracks be constructed with clearances as follows, which for Track 2, is not in compliance with 92 Ill. Adm. Code Part 1500:

- 1) The northernmost of the two new tracks ("Track 1") meets the required clearances set forth in 92 Ill. Adm. Code 1500.170(c)(2) for "Tracks Entering Buildings".
- 2) The southernmost of the two new tracks ("Track 2") does not meet the required clearances set forth in 92 Ill. Adm. Code 1500.170(c)(1) for "Tracks Outside of Buildings"; the horizontal clearance on the north side of the track will be 7 feet rather than the required 8 feet.

ADM has already received a variance from BJRY for construction of Track 2 with reduced clearances, attached as Exhibit 2 to the Petition. In addition, ADM will create and post appropriate warning signs which conform to both BJRY's requirements and 92 Ill. Adm. Code 1500. BJRY will provide written orders prohibiting its employees from occupying the tops and sides of cars while in motion on the tracks.

The proposed location of the new track is necessary because the intended use of all of the tracks requires adjacent construction. Additionally, the areas to the north and south of the existing tracks are either occupied or insufficient for the construction. Therefore, the only feasible location for the new track requires a non-conforming clearance on Track 2.

The Petitioners will fund all of the construction costs, including the cost of all required warning signs. No Grade Crossing Protection Funds have been requested or are at issue for construction of the new tracks on ADM's property.

STAFF'S POSITION

Commission Staff has reviewed the Petition and has no objection to the Petitioners' requests. Staff recommends that the Petition be approved and an Order be issued authorizing the reduced clearances.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction over the Parties and the subject matter of this proceeding;

- (2) Petitioner, Burlington Junction Railway, is a rail carrier engaged in the transportation of property for hire in the State of Illinois, as defined by the Illinois Commercial Transportation Law, 625 ILCS 5/18/c-11 04(30);
- (3) Petitioner, Archer-Daniels-Midland, is a Delaware corporation, doing business in Illinois pursuant to 805 ILCS 5/13.05;
- (4) The recitals of fact set forth in the prefatory portion of this Order are supported by the aforementioned documentation and are hereby adopted as findings of fact;
- (5) Burlington Junction Railway and Archer-Daniels-Midland seek a variance from the horizontal clearance requirements set forth in 92 Ill. Adm. Code Part 1500. Plans submitted by the Petitioners show the differences between the proposed clearances and those set forth in 92 Ill. Adm. Code Part 1500;
- (6) The proposed horizontal clearance for Track 2 will be 7 feet minimum. The horizontal clearance variance should be approved with the following proviso: ADM should post signs on both entrances to the portal created by the new Track 2 that provides the actual horizontal clearance measurements. The signs should be constructed from reflectorized materials, and should be of sufficient size, and located in such places, so that they will be clearly visible by all train crews;
- (7) The cost for the aforementioned improvements should be paid for by the Petitioners;
- (8) 625 ILCS 5/18c-1701 and 1704 require each "person," as defined by Section 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.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission, that the Burlington Junction Railway and the Archer-Daniels-Midland Company are hereby granted a variance from the horizontal clearance requirements of 92 Ill. Adm. Code 1500. The horizontal clearance for the new Track 2 shall not be less than 7 feet.

IT IS FURTHER ORDERED that the Burlington Junction Railway and the Archer-Daniels-Midland Company shall be required to post signs on both entrances to the portal created by the new Track 2 that provides the actual horizontal clearance measurements.

The signs shall be constructed from reflectorized materials, and shall be of sufficient size, and located in such places, so that they will be clearly visible by all train crews.

IT IS FURTHER ORDERED that the Burlington Junction Railway shall issue printed rules prohibiting its employees from occupying the tops and sides of cars while in motion on the tracks.

IT IS FURTHER ORDERED that the Burlington Junction Railway and the Archer-Daniels-Midland Company shall be responsible for all costs associated with construction of the two new tracks, including the cost of all required warning signs.

IT IS FURTHER ORDERED that the Burlington Junction Railway and the Archer-Daniels-Midland Company shall notify the Director of Processing, Transportation Division of the Illinois Commerce Commission of the date upon which the reduced clearance signs hereinbefore required have been placed in service within five (5) days of said date.

IT IS FURTHER ORDERED that the Burlington Junction Railway shall furnish a copy of the printed employee rules associated with the reduced horizontal clearances to the Director of Processing, Transportation Division of the Illinois Commerce Commission, within five (5) days from the date of issuance.

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 7th day of October 2009.

JUDGE
SECTION CHIEF
<i>DWS</i>
ORDERS SUPERVISOR



CHARLES E. BOX
CHAIRMAN