

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 O'Brien and Parties of Record)

November 13, 2009

Joe O'Brien
Administrative Law Judge
Review and Examination
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

RE: T09-0078

Dear Judge O'Brien:

The attached Agreed Order was prepared by the Parties and Staff, and has been filed on e-Docket. We respectfully request that the Order be submitted for the earliest Commission bench session possible.

If you have any questions, or require additional information, please contact me at (312) 636-7760 or bvercruy@icc.illinois.gov.

Very truly yours,

A handwritten signature in cursive script that reads "Brian Vercruysse".

Brian Vercruysse
Senior Rail Safety Specialist

Enclosure

BV

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

BNSF Railway Company and Ridge Logistics Park I, LLC	:	
Petitioners	:	
	:	
v.	:	T09-0078
	:	
County of Will, Illinois	:	
Respondent	:	
	:	
Petition for an Order of the Illinois Commerce Commission	:	
authorizing the installation of an additional railroad track at the	:	
grade crossing inventoried as DOT # 004 396U (M.P. 52.76) at	:	
what is commonly known as Lorenzo Road in Will County,	:	
Illinois, at its intersection with the main line tracks of BNSF	:	
Railway Company, for reconfiguration of the warning devices,	:	
and for determination by the Illinois Commerce Commission of	:	
the division of costs between the parties.	:	

DRAFT AGREED ORDER

By the Commission:

On June 12, 2009, the BNSF Railway Company (“BNSF”) and Ridge Logistics Park I, LLC (“Company”), also referred to collectively as the “Petitioners”, filed the above-captioned verified Joint Petition with the Illinois Commerce Commission (“Commission”) naming the County of Will (“County”) as Respondent, and seeking authority to install an additional track at the Lorenzo Road highway-rail crossing in Will County (crossing designation AAR/DOT #004 396U, railroad milepost 52.76).

No party contested the requests of the Petition or filing.

PROCEDURAL HISTORY

Pursuant to notice, the matter 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 July 28, 2009. The Petitioners were each represented by counsel, as was the County. An appearance was also entered by Brian Vercruysse, Senior Railroad Safety Specialist, representing the Commission’s Transportation Bureau, Railroad Section (“Staff”). During the Hearing, the ALJ granted the Petitioners Motion to verbally amend the Petition to provide the correct co-Petitioner name as Ridge Logistics Park I, LLC instead of “Ridgeport Logistic Center, LLC” as initially provided.

On November 13, 2009, Staff filed an Agreed Order, the terms of which have been agreed to by all the parties. On November [REDACTED], 2009, the record was marked Heard and Taken.

PETITIONERS POSITION

Within its Petition, the Petitioners are seeking authority to install an additional track on the east side of the Lorenzo Road grade crossing in accordance with the plans and exhibits included with the Joint Petition. The new track will connect to the BNSF mainline, and will provide a rail connection into a new industrial development. As a result of the additional track, the roadway approach pavement will be modified, and the warning devices will be relocated on the east side of the crossing. The Petitioners have indicated that to complete the project it would take approximately 2 years from the time the Commission enters an Order.

The BNSF provided the testimony of Mr. Chad Scherwinski, Manager of Public Projects. The Company provided the testimony of the following: Mr. Kyle Schuhmacher, Vice President of Ridge Property Trust; Mr. Jason Snyder, Professional Engineer for Jacob and Hefner Associates, the design consultant for the industrial development; and, Mr. David Irving, Professional Engineer for TranSystems, engineering consultant for the track connection and Lorenzo Road crossing modifications.

Mr. Scherwinski testified that Lorenzo Road is one lane in each direction, and consists of asphalt pavement. At the highway-rail grade crossing, the BNSF operates two mainline tracks and a siding for a total of three tracks. BNSF is currently averaging 63 freight trains per day that traverse the crossing with a maximum allowable speed of 70 mph. The rail line is also designated as an Amtrak back-up route (with passenger trains allowed a maximum operating speed of 79 mph). With the proposed industrial development, the Petitioners have entered into a service agreement to allow for the lead track and desired modifications at the Lorenzo Road crossing. Under the provisions of the agreement, the BNSF would construct a mainline turn-out from its Main 2 track, install the additional track and crossing surface through Lorenzo Road, and complete the necessary warning device modifications.

The existing warning devices consist of automatic flashing light signals and gates controlled by constant warning time ("CWT") circuitry. The proposed industrial track will also have CWT circuitry, and the eastern flasher/gate assembly will be relocated. The Company would be responsible for the costs associated with all the work which is estimated at \$1,900,000. The BNSF would need one year to construct the project once final authorization to build is provided by the Company. During construction, a one week closure of the Lorenzo Road crossing would be needed to complete the track, crossing surface, and signal work. The BNSF would coordinate the work and needed detour routes with the County, which has jurisdiction of Lorenzo Road. Future maintenance of the new track, switching and signal equipment through the crossing would be the responsibility of the BNSF, with Ridge providing reimbursement for all

associated costs to BNSF pursuant to the agreement between the Petitioners. Mr. Scherwinski further testified that the new industry track would serve 2 trains per day with approximately 20 to 30 cars, and an operating speed of 30 mph.

Mr. Schuhmacher testified that Ridge Logistics Park I, LLC, or its assigns, will own the property and buildings within the development and will arrange for leasing or sales to its commercial and industrial customers. The anticipated train shipments associated with the proposed development would initially include aggregates from an onsite quarry. With build-out, other shipments may include food products, lumber, and cement. Hazardous materials are currently not allowed per the zoning requirements of the development.

Mr. Snyder testified that his firm was hired by the Company to complete the plans for the development, including building layout, mining, and civil work (roadway, storm water, utilities). As part of Phase I of the development, six warehouses, an intermodal facility, and the aggregate mine will be constructed. It is forecasted that this will increase the average daily traffic over the Lorenzo Road crossing from 6800 vehicles to 9800. East of the crossing leading to Interstate 55, the traffic projections are over 16,000 vehicles per day.

Mr. Irving testified that with the installation of the additional track in the Lorenzo Road crossing, the east approach pavement and profile will be reconstructed. Mr. Irving further testified that train switching would not occur through the Lorenzo Road crossing.

RESPONDENT'S POSITION

The County has no objection to the Joint Petition.

STAFF POSITION

Staff has no objection to the Joint Petition.

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, BNSF Railway Company is a rail carrier 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);
- (3) The Petitioner, Ridge Logistics Park I, LLC, intends to own a "Railroad," within the meaning of Chapter 626 ILCS 5/18c-1104 (31) of the Illinois Commercial Transportation ("Law") as amended, with the development of

the track lead within its proposed industrial development and adjacent to the Lorenzo Road highway-rail grade crossing;

- (4) The County of Will is a body politic and corporate organized and existing under and by virtue of the laws of the State of Illinois;
- (5) 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;
- (6) The BNSF Railway Company should construct the additional track at the Lorenzo Road crossing in accordance with the plans provided with the Petition;
- (7) Ridge Logistics Park I, LLC shall be responsible for all construction and maintenance costs associated with the additional track, switching and signal equipment pursuant to the agreement between BNSF and Ridge, which shall control the rights and liabilities between the Petitioners and is not intended to be superseded by this Order;
- (8) Prior to construction, the BNSF Railway Company should file a Form 3 Petition of 92 Ill. Adm. Code 1535 incorporating the additional track, and should receive approval by X-Resolution of the Commission before installing the devices;
- (9) All work herein should be completed within two years from the date of the Order;
- (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.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission, that the Petitioners, BNSF Railway Company and Ridge Logistics Park I, LLC, are authorized to install an additional track at the Lorenzo Road highway-rail grade crossing in accordance with the plans that are part of the Petition submitted on June 12, 2009. All work shall be completed by the Petitioners in accordance with Findings (5) through (14).

IT IS FURTHER ORDERED that Ridge Logistics Park I, LLC shall be responsible for all costs associated with the project, including construction and continuing maintenance costs, pursuant to the agreement between BNSF and Ridge.

IT IS FURTHER ORDERED that the BNSF Railway Company shall complete the work within two years from the date of this Order.

IT IS FURTHER ORDERED that the Petitioners, 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 BNSF Railway Company 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 ___th day of December 2009.

CHARLES E. BOX
CHAIRMAN

Vercruysse, Brian

Subject: RE: Ridgeport/BNSF
Start: Thu 10/29/2009 8:00 AM
End: Thu 10/29/2009 8:30 AM
Recurrence: (none)

From: Vercruysse, Brian
Sent: Thursday, October 29, 2009 8:15 AM
To: 'Cass Wennlund'
Cc: pmock@willcountyillinois.com; 'Robert Prendergast'; kbaldwin@daleymohan.com
Subject: RE: Ridgeport/BNSF
Attachments: Re: T09-0078 Draft Agreed Order

Cass,

Thank you. We need the County's concurrence, but I would also like the BNSF to provide an updated concurrence to the revised Agreed Order, since Ridge's comments modified some of the language desired by the BNSF. The comments are fairly minor, but I want to make sure.

Thanks,

Brian

From: Cass Wennlund [mailto:cass@wennlund.com]
Sent: Wednesday, October 28, 2009 4:23 PM
To: Vercruysse, Brian
Cc: pmock@willcountyillinois.com; 'Robert Prendergast'; kbaldwin@daleymohan.com; 'Cass Wennlund'
Subject: RE: Ridgeport/BNSF

Ridge concurs and I saw that BNSF did as well. Are we just waiting for Will County's concurrence other than that?

D. Cass Wennlund

Wennlund & Associates

19235 S. Wolf Road

Suite 140

Mokena, IL 60448

Ph 708-478-3635

Fax 708-478-3720

Email cass@wennlund.com

From: Vercruysse, Brian [mailto:bvercruy@icc.illinois.gov]

Sent: Wednesday, October 28, 2009 2:10 PM

To: Cass Wennlund

Cc: pmock@willcountyillinois.com; Robert Prendergast; kbaldwin@daleymohan.com

Subject: RE: Ridgeport/BNSF

Cass,

I don't have the final concurrences from any of the parties per the attached 9/28/09 calendar record.

The final agreed order is also attached that incorporated comments from Ridge and BNSF. When I receive the concurrences, the Order can be filed for the ALJ's review and submission to the Commission.

Brian

Brian Vercruysse

Illinois Commerce Commission

527 E. Capitol Avenue

Springfield, IL 62701

M 312-636-7760

bvercruy@icc.illinois.gov

From: Cass Wennlund [mailto:cass@wennlund.com]
Sent: Wednesday, October 28, 2009 1:29 PM
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Are we still on for entry of the Agreed Order on 11/13?

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Vercruysse, Brian

From: Kevin W. Baldwin [KBaldwin@daleymohan.com]
Sent: Monday, November 02, 2009 10:59 AM
To: Vercruysse, Brian; Cass Wennlund
Cc: pmock@willcountyillinois.com; Robert Prendergast; Scherwinski, Chad L
Subject: RE: Ridgeport/BNSF

Brian,

Got it. That's fine by us.

Thanks,

Kevin W. Baldwin www.daleymohan.com

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From: Vercruysse, Brian [mailto:bvercruy@icc.illinois.gov]
Sent: Thursday, October 29, 2009 10:33 AM
To: Kevin W. Baldwin; Cass Wennlund
Cc: pmock@willcountyillinois.com; Robert Prendergast
Subject: RE: Ridgeport/BNSF

Kevin,

Thank you very much. I'm sorry I didn't explain, the X-Resolution is appropriate. It is the Commission Order provided in response to the Form 3 the BNSF will provide for the warning device modifications.

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Vercruysse, Brian

From: Philip A. Mock [pmock@willcountyillinois.com]
Sent: Monday, November 09, 2009 11:39 AM
To: Vercruysse, Brian; Kevin W. Baldwin; Cass Wennlund
Cc: Robert Prendergast
Subject: RE: Ridgeport/BNSF

Brian:

Will County has no proposed changes.

Philip A. Mock
Assistant State's Attorney to
James W. Glasgow
Will County State's Attorney
121 N. Chicago st.
Joliet, IL 60432
Phone: (815) 727-8404
Fax: (815) 727-6085

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