

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

BNSF Railway Company, City of Lewistown, and the State of Illinois, Department of Transportation. :  
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Stipulated Agreement regarding improving public safety at the East Patton Avenue, East Eisenhower Avenue and East Milton Avenue highway-rail grade crossings of BNSF Railway Company's track in the City of Lewistown, Fulton County, designated as crossings AAR/DOT #078 327R, railroad milepost 77.01-LS 111; AAR/DOT #078 616S, railroad milepost 77.05-LS 111; and, AAR/DOT #078 614D, railroad milepost 77.15-LS 111, respectively. : T10-0006  
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**ORDER**

By the Commission:

On December 9, 2009, December 14, 2009, January 11, 2010, and January 21, 2010, the Staff of the Illinois Commerce Commission, BNSF Railway Company (BNSF), Illinois Department of Transportation (Department), and the City of Lewistown (City), respectively, executed Stipulated Agreement 1427 according to the provisions of Section 18c-7401, of the Illinois Commercial Transportation Law. The Stipulated Agreement, appended hereto provides for an incentive payment from the Grade Crossing Protection Fund (GCPF) to the City in exchange for voluntary closure of, by vacation of the roadways adjacent to, the East Patton Avenue, East Eisenhower Avenue and East Milton Avenue highway-rail grade crossings of BNSF's track in the City of Lewistown, Fulton County, Illinois, designated as crossing AAR/DOT #078 327R, railroad milepost 77.01-LS 111; AAR/DOT #078 616S, railroad milepost 77.05-LS 111; and, AAR/DOT #078 614D, railroad milepost 77.15-LS 111, respectively. Stipulated Agreement 1427 contains an estimate of cost to accomplish the improvement and a division of cost among the parties.

**FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having given due consideration to the Stipulated Agreement, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The physical characteristics of the subject highway - railroad grade crossings, rail and highway volumes and speeds are indicated on Exhibit A, A1 and A2 of the Stipulated Agreement appended hereto;

- (3) The parties agree that in the interest of public safety the improvements as set forth in Section 2 of the Stipulated Agreement, appended hereto should be performed;
- (4) The cost for the proposed improvements should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;
- (5) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund of the Motor Fuel Tax Law, and BNSF Railway Company be directed to pay their respective portions of the actual cost of the proposed improvements as set forth in Section 5 of the Stipulated Agreement, appended hereto;
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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 that the terms of Stipulated Agreement 1427, executed by the Staff of the Illinois Commerce Commission, BNSF Railway Company, the Illinois Department of Transportation, and the City of Lewistown, on December 9, 2009, December 14, 2009, January 11, 2010, and January 21, 2010, respectively, be, and they are hereby accepted and required to be met by all the parties.

IT IS FURTHER ORDERED that BNSF Railway Company be, and it is hereby, required and directed to proceed immediately in performing the work set forth in Section 2 of the Stipulated Agreement, appended hereto and shall complete the work within sixty (60) days from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Section 5 of the Stipulated Agreement, appended hereto.

IT IS FURTHER ORDERED that subject to the availability of funds, within sixty (60) days from receipt of the City of Lewistown's notification that the road has been closed, the Illinois Department of Transportation shall issue a check in the amount of \$160,000 to the City of Lewistown as payment from the Grade Crossing Protection Fund. The Department shall notify all parties when the payment has been completed. Notification may be by regular mail, electronic mail, facsimile, or phone. The Village may use the Grade Crossing Protection Fund payment for any purpose that meets IDOT's requirements for permissible uses of Motor Fuel Tax Funds.

IT IS FURTHER ORDERED that upon closure of the East Patton Avenue, East Eisenhower Avenue and East Milton Avenue crossings, the BNSF Railway Company shall make a payment in the amount of \$113,000 to the City of Lewistown.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall utilize \$22,500 in federal funds to match the Company's incentive payment to the City. The Department has received authorization by the Federal Highway Administration (FHWA) for federal crossing closure incentive funds for this project. Eligibility for the Department's \$22,500 payment to the City is based on the requirement that the authorization of the \$22,500 by the FHWA shall be approved prior to the actual closure of the East Patton Avenue, East Eisenhower Avenue and East Milton Avenue crossings. If closure of the crossing takes place prior to federal authorization, the Department will not participate in, nor will it be responsible for the \$22,500 funding as proposed. The \$22,500 payment by the Department shall be used by the City for a roadway safety related expense.

IT IS FURTHER ORDERED that BNSF Railway Company and the City of Lewistown shall complete and submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report, attached as Exhibits B & B1 of the Stipulated Agreement, stating that the work herein required of it has been completed. Said Report shall be submitted within five (5) days after the project completion date. Each Project Status 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 the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the Company and City Project Manager.

IT IS FURTHER ORDERED that BNSF Railway Company shall within five (5) days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form (#6180.71) to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that 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.

IT IS FURTHER ORDERED that 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.

IT IS FURTHER ORDERED that 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.

IT IS FURTHER ORDERED that 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 FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 10<sup>th</sup> day of February 2010.



MANUAL FLORES  
CHAIRMAN

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