

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

County of Adams, Illinois and Melrose :
Township Road District, :
 :
 :
Petitioners, :
 : T09-0123
 :
v. :
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 :
South Quincy Levee and Drainage District; :
Burlington Junction Railway; Illinois :
Department of Transportation; and BNSF :
Railway Company, :
 :
 :
Respondents :
 :
 :
Petition for an Order authorizing the :
modification of an existing grade crossing at :
Radio Road (AAR/DOT #072 741J, mp :
265.55-Q), and the establishment of a new :
grade crossing on 6th Street, in the City of :
Quincy, Adams County, and directing the :
installation of grade crossing protection. :

AGREED/PROPOSED ORDER

By the Commission:

PROCEDURAL HISTORY

On November 6, 2009, the County of Adams, Illinois and Melrose Township Road District (“Petitioners”) filed a Joint Petition with the Illinois Commerce Commission (“Commission”), naming as Respondents South Quincy Levee and Drainage District (“Drainage District”); Burlington Junction Railway (“Railway”); Illinois Department of Transportation (“Department”); and the BNSF Railway Company (“BNSF”), requesting permission to authorize modification of an existing at-grade crossing of Radio Road (Township Road TR-887), and construction of one (1) new at-grade crossing of South 6th Street (Township Road TR-26). The roads are located in Township Two (2) South, Range Nine (9) West, in Section Twenty-three (23), Adams County, as shown on Petitioner’s Exhibits “1, 2 & 3” attached to the Petition. The Radio Road (TR-887) crossing is located approximately 0.06 mile west of State Route 57 and the 6th Street (TR-26) crossing is located approximately 0.09 mile south of Radio Road.

Pursuant to notice as required by law and by the rules and regulations of the Commission, the matter came for hearing on February 4, 2010, before a duly authorized Administrative Law Judge of the Commission at the Commission’s Chicago office and by video-conference at the Springfield office. The Petitioner appeared by counsel and

presented testimony from Jon Barnard, Adams County States Attorney, and witness Richard Klusmeyer, Adams County Engineer. Jason Johnson, Rail Safety Technician appeared on behalf of the Illinois Department of Transportation. Kevin Baldwin and Allison Helin, of Daley Mohan Groble, P.C. appeared on behalf of BNSF, and John Saladino, Railroad Safety Specialist, of the Commission's Transportation Bureau, Railroad Section, appeared on behalf of Commission Staff. James Schuessler made a public statement. At the conclusion of the Hearing, the Record was marked "Heard and Taken".

PETITIONER'S EVIDENCE

1. The Petitioner presented testimony from Jon Barnard Adams County States Attorney and witness Richard Klusmeyer, Adams County Engineer. County of Adams, upon receipt of a grant, proposes to construct or cause to be constructed a three thousand six hundred (3,600) foot track which runs in a southwesterly direction from the existing Railway track (Mile Station 265.49) near the intersection of State Highway 57 and Radio Road to the proposed Adams County South Quincy Industrial Area. The track will be owned by the County of Adams and will be located on property currently owned by J.M. Huber Corporation, the County of Adams and Ewing Bros., LLC, as shown on Petitioner's Exhibit "1". The track is required to service an animal feed processing plant (Prince Agri Products, Inc.) and a limestone processing facility (J.M Huber Corp.) located in the South Quincy Industrial Area & the future Mid-America Regional Port and will transport inbound and outbound minerals. The track and at-grade crossings will be constructed or caused to be constructed by the County of Adams and will be maintained by the County of Adams at its own expense. The grade crossing surfaces will be Illinois Department of Transportation approved, utilizing the following materials: Radio Road (TR-887): fifty-seven (57) feet concrete; South 6th Street (TR-26): eighty-two (82) feet concrete. The County of Adams testified that anticipated rail traffic on the proposed track consists of approximately five (5) trains per week on demand, with up to fifteen (15) cars each, operating at speeds of up to ten (10) mph. The track will be constructed and maintained to Class 1 standards and operated at a timetable speed not to exceed 10 mph. The track will comply with all horizontal and vertical clearances in accordance with 92 IAC 1500. Radio Road (TR-887) and South 6th Street (TR-26) are part of the Melrose Township Road District road system. Existing surface materials are concrete and bituminous respectively. The estimated two-way, average daily traffic in the vicinity of the proposed grade crossings is three thousand (3,000) on Radio Road and six hundred (600) South on South 6th Street. The speed limit is posted at thirty-five (35) mph on both roadways. Due to the projected volume and speed of the railroad traffic on the proposed Radio Road tracks, coupled with the projected roadway traffic over the proposed crossing at both locations, the County of Adams stated that the crossings warranted the relocation of the existing westerly vehicular railway signals and gate, and modification of existing interconnection timing at Radio Road (TR-887) and new automatic flashing light signals and gates, advanced signage and pavement markings at South 6th Street (TR 26). The modification and installation of vehicular traffic safety improvements at the proposed two (2)

grade crossings are necessary and in the interest of public safety. The cost of relocating and installing all gates, signals, signs and pavement markings will be borne by the County of Adams as part of its approved grant. Through agreement between the Burlington Junction Railway and the County of Adams the Burlington Junction Railway will maintain and the County of Adams will bear the cost of operating and maintaining all warning devices following installation at the 6th Street crossing. The Burlington Junction Railway presently maintains all railway signal warning devices and the Illinois Department of Transportation presently maintains all traffic signal devices and railway to traffic signal interconnection devices on Radio Road and will continue to do so following modifications. The County of Adams will restore or caused to be restored from its grant funds both existing road approaches. The approach surfaces at the grade crossings will be as follows: Concrete at Radio Road (TR-887) and at South 6th Street (TR-26). The County of Adams will cause to be constructed and installed both grade crossing approaches from grant funds. All work will be in compliance with 92 IAC 1535, except the west approach at Radio Road will have a grade 0.23% above the specified 1.0% top of rail tangent for the first 25 feet. The County of Adams will bear the cost of maintaining the approach surfaces following installation. The County of Adams will cause all weeds and brush to be cut and maintained along the track in accordance with 92 IAC 1535. The actual cost of constructing the two (2) grade crossings, including engineering and construction, is not presently known. Completion of the two (2) crossings is anticipated within eighteen (18) months of the entry an Order by the Illinois Commerce Commission. A pre-hearing conference with all parties was held at the site in order to discuss the details of the proposed two (2) crossings. The County of Adams and the Melrose Township Road District respectfully requested an expedited hearing on this Petition to expedite operation of the Prince Agri Products and J.M. Huber facilities and reduce traffic congestion due to truck traffic.

BURLINGTON JUNCTION RAILWAY POSITION

In a post hearing response Burlington Junction Railway stated it has no objections to the plans attached to or the project proposed in the petition. The Burlington Junction Railway supports the project.

DEPARTMENT POSITION

Jason Johnson advised that the Petitioners shall pay for any interconnection timing study for the rail and traffic signals at the Radio Road crossing; shall enter into agreement with IDOT for maintenance of the rail signals and the need to coordinate plans with IDOT.

IDOT supports the project.

BNSF POSITION

BNSF filed a petition response stating that BNSF has no objections to the plans attached to or the project proposed in the petition. Furthermore Kevin Baldwin advised

that BNSF supported the project.

STAFF POSITION

John Saladino advised that Staff supports the project.

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 of the subject matter hereof and the parties hereto;
- (2) Petitioners, County and Road District, are political subdivision of the State of Illinois;
- (3) Respondent, Burlington Junction Railway; and BNSF Railway Company 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-110(30);
- (4) Respondent, Illinois Department of Transportation, is a Department of the State of Illinois which exists by virtue of the laws of the State of Illinois;
- (5) The recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (6) Petitioner proposes to construct a three thousand six hundred (3,600) foot track which runs in a southwesterly direction from the existing Burlington Junction Railway track (Mile Station 265.49) near the intersection of State Route 57 and Radio Road to the proposed Adams County South Quincy Industrial Area; modify an existing at-grade crossing of Radio Road (Township Road TR-887), and construct one (1) new at-grade crossing of South 6th Street (Township Road TR-26).
- (7) In the interest of public safety and convenience, permission should be granted to the County of Adams and Melrose Township Road District for the construction of the track, modification of the warning devices and crossing surface at Radio Road and construction of the South 6th Street crossings, all substantially in the manner and location as set forth in Petitioner's Petition and on Exhibits "1, 2 & 3" attached to the Petition; future maintenance of the proposed 6th Street grade crossing surface and warning devices shall be borne by the County of Adams; future maintenance of the Radio Road grade crossings shall be borne by the County of Adams; future maintenance of the Radio Road rail warning devices will continue to be borne by the Burlington Junction Railway.

- (8) All work should be completed within eighteen (18) months of the date of this Order;
- (9) 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;
- (10) 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;
- (11) 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;
- (12) Requests for Extension of Time and Petitions for Supplemental Orders must include 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;
- (13) 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 permission should be granted to the County of Adams and Melrose Township Road District to construct the track; modify the warning devices and crossing surface at Radio Road and construct a new at grade crossing on South 6th Street, all substantially in the manner and location as set forth in Petitioner’s Petition and on Exhibits “1, 2 & 3” attached to the Petition.

IT IS FURTHER ORDERED that the County of Adams and/or Melrose Township Road District shall install or cause to be installed and thereafter operated and maintained new automatic flashing lights and gates and crossing surface at the 6th Street highway-rail grade crossing and modification of the warning devices and crossing surface at Radio Road. Modifications to the railroad-highway traffic signal interconnect system at Radio Road and Illinois 57, including but not limited to timing changes, shall be approved by the Illinois Department of Transportation and the Illinois Commerce Commission. All future operation and maintenance cost of the rail warning devices at Radio Road shall be borne by the Burlington Junction Railway.

IT IS FURTHER ORDERED that the cost for the proposed improvements shall be paid by the County of Adams and/or Melrose Township Road District.

IT IS FURTHER ORDERED that the County of Adams and/or Melrose Township Road District shall be responsible for all future maintenance of the new highway-rail grade crossing surfaces; grade crossing approaches;

IT IS FURTHER ORDERED that through agreement between the Burlington Junction Railway and the County of Adams and/or Melrose Township Road District, the Burlington Junction Railway will provide necessary maintenance and inspections, and the County of Adams and/or Melrose Township Road District shall be responsible for all operation and maintenance costs of the grade crossing warning devices at 6th Street.

IT IS FURTHER ORDERED that the County of Adams and/or Melrose Township Road District shall file Form 3 of 92 IAC 1535.400(d) for Radio Road and 6th Street showing details of the required automatic warning devices, and shall receive approval by resolution before commencing the work of installing warning devices. County of Adams and/or Melrose Township Road District shall contact the Commission prior to commencing any work on the signal interconnect on Radio Road.

IT IS FURTHER ORDERED that the work herein required shall be completed within eighteen (18) months of the date of this Order.

IT IS FURTHER ORDERED that the County of Adams and/or Melrose Township Road District shall, at six (6) month intervals from the date of Commission Order, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report, stating the progress it has made toward completion of the work herein required. 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 employee responsible for management of the project.

IT IS FURTHER ORDERED that the County of Adams and/or Melrose Township Road District be, and they are hereby required and directed to submit a Project Completion Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been

completed. The Project Completion Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that the Burlington Junction Railway shall file with the Transportation Bureau's Director of Processing and Information within five (5) days after the completion of the work required under this Order, a United States Department of Transportation Inventory Form (#6180.71).

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 Sections 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 _____ day of _____ 2010.

MANUEL FLORES
CHAIRMAN