

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

BNSF Railway Company,
Petitioner,

vs.

Village of Orion, Henry County, Illinois, and State of Illinois
Department of Transportation,
Respondents.

T09-0136

In the matter of the Petition for an Order of the Illinois Commerce
Commission authorizing the immediate removal of the bridge
structure (DOT # 065 645 P) located above the tracks of BNSF
Railway Company at or near Milepost 30.4 on the Barstow
subdivision, at 13th Avenue, in the Village of Orion, Henry
County, Illinois, and for closure of said crossing.

ORDER

By the Commission:

PROCEDURAL HISTORY

On December 4, 2009, the BNSF Railway Company (“Petitioner” or “BNSF”) filed a Petition with the Illinois Commerce Commission (“Commission”), naming as Respondents the Village of Orion, Illinois (“Village”), Henry County, Illinois (“County”), and the State of Illinois, Department of Transportation (“IDOT”). The Petition requests permission to remove the bridge structure located over the separated highway-rail grade crossing of the BNSF Railway Company’s right of way and trackage located at Thirteenth (13th) Avenue in the Village of Orion, Henry County, Illinois, known as D.O.T. No. 065 645 P, and for an Order for the closure of said crossing.

On February 1, 2010, the Village, as the public highway authority in interest over the subject portion of Thirteenth Avenue, passed an Ordinance authorizing the permanent closure of the subject crossing and vacating the highway over BNSF’s right of way. On February 3, 2010, the Village filed a Cross-Petition entitled “Application for Closure of Elevated Rail Crossing” confirming its assent to the Petition filed by BNSF and agreement for the closure of said crossing.

On February 19, 2010, BNSF filed a Draft Proposed Order that was agreed to by all Parties and is incorporated herein. No hearing was held in this matter.

BNSF’S POSITION

BNSF operates a main line track in a generally north/south direction by compass though the Village of Orion, Henry County, Illinois, over which BNSF provides freight rail

service. Within the incorporated limits of the Village of Orion, a municipal street known as Thirteenth (13th) Avenue runs in a generally east/west direction by compass, and intersects the right of way of said BNSF main line track at or near BNSF milepost 30.4 on the Barstow subdivision. At the intersection, there exists a separated grade crossing consisting of a wooden bridge structure for the roadway above BNSF's main line track. The aforesaid crossing and bridge structure is designated as D.O.T. No. 065 645 P, and was built, upon information and belief, in the early 1900's. BNSF is the owner of the 13th Avenue bridge structure over its right of way.

On or about March 20, 2007, the Village closed the bridge to vehicular and pedestrian traffic due to concerns about the condition of the underlying structure and the safety of the travelling public and rail traffic operating below. The deterioration of the subject bridge structure has continued, and as of the date of its most recent inspection on or about November 25, 2009, has reached the point where it poses a serious risk of its stability under its own weight, and presents additional risks to rail traffic operating below. An Order authorizing the immediate removal of the bridge structure is necessary to preserve the safety of the public and the train crews and rail traffic operating below the structure.

Since its closure on or about March 20, 2007, the roadway has sustained an average daily traffic ("ADT") count of zero (0) vehicles per day. Further, upon information and belief, the average number of trains through the area is approximately 22 trains per day, with train speed of up to 60 mph.

There are currently three alternate public, at-grade crossings within one-half (1/2) mile of the subject crossing to be closed. Grade crossings are located along BNSF's right of way through the Village at Tenth (10th) Avenue (D.O.T. No. 065 648 K), Eleventh (11th) Avenue (D.O.T. No. 065 647 D), and Twelfth (12th) Avenue (DOT No. 065 646 W). In addition, there is a public, at-grade crossing located at Township Road 32 (D.O.T. No. 065 649 S) to the north of the subject crossing, and an overhead, separated grade crossing at Seventh (7th) Street (D.O.T. No. 065 643 B) to the south of the subject crossing.

The subject bridge structure currently receives no use by the traveling public. Rather, the at-grade crossings and overpasses noted above provide sufficient alternative routes over BNSF's right of way for public travel and emergency use in the vicinity of the subject crossing. Removal of the aforesaid bridge structure and closure of the crossing will pose no inconvenience to the traveling public. BNSF Railway Company is agreeable to pay for the costs of removal of the bridge structure, as well as the installation of physical barriers outside of but adjacent to its right of way to complete the closure of the roadway.

VILLAGE'S POSITION

During the pendency of BNSF's Petition before the Commission, the Village reached an agreement with BNSF settling the terms of the removal of the bridge structure and the closure of the subject crossing. Pursuant to that agreement, on

February 1, 2010, the Village, as the public highway authority in interest over the subject portion of Thirteenth (13th) Avenue, passed an Ordinance authorizing the permanent closure of the subject crossing and vacating the highway over BNSF's right of way. Thereafter, on February 3, 2010, the Village filed a Cross-Petition entitled "Application for Closure of Elevated Rail Crossing" confirming its assent to the Petition filed by BNSF and agreement for the closure of said crossing. The Village therefore has no objection to and rather is in support of BNSF's Petition and the entry of an Order authorizing the relief sought therein.

STAFF'S AND IDOT'S POSITION

In consideration of the agreement reached by the Parties, the vehicular and rail traffic levels at the crossing, the vacatur of the roadway by Village ordinance, and the need for immediate action urged by BNSF for the safety of the general public above and rail traffic and crews below the subject bridge structure, Staff and IDOT have no objection to the Petition.

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) 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 625 ILCS 5/18/c-110(30);
- (3) Respondent, Village of Orion, Illinois, is a political subdivision of the State of Illinois;
- (4) The Village of Orion has passed an Ordinance to vacate a portion of Thirteenth (13th) Street over the right of way of BNSF Railway Company through the Village;
- (5) BNSF Railway Company has agreed to install both temporary, and thereafter, permanent barrier devices outside of but adjacent to its right of way at the point of termination of Thirteenth (13th) Street as vacated by the Village, which shall be installed by BNSF at BNSF's expense, and which shall thereafter be owned and maintained by the Village at the Village's expense;
- (6) BNSF Railway Company has agreed to remove the bridge at Thirteenth (13th) Street in the Village of Orion, Illinois, known as D.O.T. No. 065 645 P, which removal shall be conducted by BNSF at BNSF's expense;

- (7) All other terms and conditions contained in the agreement entered into between the Village and BNSF on or about February 1, 2010 should remain in full force and effect, except as modified herein;
- (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 BNSF Railway Company shall install, at a location off of but adjacent to BNSF's right-of-way and property, temporary barricades across the entire width of the roadway at the Thirteenth (13th) Avenue (D.O.T. No. 065 645 P, LS 6, MP 30.40) crossing vacated by the Village, within five (5) days from the date of the Railroad's receipt of this fully executed Illinois Commerce Commission Order, and that BNSF shall be responsible for all expenses of said installation.

IT IS FURTHER ORDERED that BNSF Railway Company shall install, at a location off of but adjacent to BNSF's right-of-way and property, permanent barrier devices across the entire width of the roadway at the Thirteenth (13th) Avenue (D.O.T. No. 065 645 P, LS 6, MP 30.40) crossing vacated by the Village, within thirty (30) days from the date of the Railroad's receipt of this fully executed Illinois Commerce Commission Order, and that BNSF shall be responsible for all expenses of said installation.

IT IS FURTHER ORDERED that upon the installation of the aforementioned permanent barrier devices, the Village of Orion, Illinois shall thereafter own and maintain a permanent barrier across the entire width of the roadway at the Thirteenth (13th) Avenue (D.O.T. No. 065 645 P, LS 6, MP 30.40) crossing vacated by the Village, and that the Village of Orion, Illinois shall be responsible for all expenses of said ownership and all future maintenance.

IT IS FURTHER ORDERED that BNSF Railway Company shall remove the bridge at Thirteenth (13th) Street in the Village of Orion, Illinois, at the crossing known as D.O.T. No. 065 645 P, within one hundred twenty (120) days from the date of the Railroad's receipt of this fully executed Illinois Commerce Commission Order, and that BNSF shall be responsible for all expenses of said removal.

IT IS FURTHER ORDERED that BNSF Railway Company shall complete and submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Completion Report 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. The Completion Report shall include the Commission Docket 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.

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 all terms and conditions contained in the agreement entered into between the Village and BNSF on or about February 1, 2010 should remain in full force and effect, except as modified herein.

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 10th day of March 2010.

JUDGE
SECTION CHIEF
ORDERS SUPERVISOR



MANUEL FLORES
ACTING CHAIRMAN