

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 Kirkland-Montaque and cc'd)

March 22, 2010

Latrice Kirkland-Montaque
Chief Administrative Law Judge
Review and Examination
Illinois Commerce Commission
160 N. LaSalle Street
Chicago, IL

RE: T10-0002

Dear Judge Kirkland-Montaque:

Please find attached, Staff's Response to the Fox Valley Park District's Petition. Included with the Response is an updated Word copy of the Agreed Order that was included with the Petition. The modifications include incorporating BNSF comments, and completing information that was not known at the time of filing the Petition.

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

cc: Gerald Hodge – Counsel for Fox Valley Park District
Robert Prendergast – Counsel for BNSF Railway
Patricia Casler – BNSF Railway

seeking authority to install a multi-use pedestrian and bike path representing an extension of its trail system from the west bank of the Fox River across to Hurd's Island, and under the eastern span of the Bridge Crossing to link up with trail extensions lying to the north and on the east side of the Fox River. It is anticipated that there will be an average of 500 path users per day. A proposed license agreement between the parties was attached to the Petition as Exhibit B, the terms of which are incorporated herein by this reference.

FVPD is preparing the Project for a bid letting in the Winter of 2009-2010. It is anticipated that construction would then be completed by December 31, 2011. The total pedestrian-bike path project is estimated to cost \$2,067,234. FVPD will be responsible for all costs associated with the project, including the required railroad bridge underside work. No Grade Crossing Protection Funds are requested or at issue here. Upon completion of the Project, FVPD will be responsible for the maintenance and associated costs for the multi-use pedestrian and bike path. Per the license agreement, this will include the removal of graffiti on the railroad bridge.

RESPONDENT RAILROAD'S POSITION

The Company has no objection to the Petition.

COMMISSION STAFF ANALYSIS AND CONCLUSION

Staff has no objection to the Project, and has reviewed the plans and coordinated with the parties prior to the filing of the Petition.

COMMISSION FINDINGS AND CONCLUSIONS

The Commission, having considered the entire record, finds that:

- (1) The recitals of fact in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact.
- (2) Petitioner Fox Valley Park District is an Illinois Park District, organized and existing under and by virtue of the Park District Code of the State of Illinois.
- (3) Respondent, BNSF Railway Company, is a rail carrier engaged in the transportation of persons and property by rail in the State of Illinois.
- (4) FVPD has filed a Petition for an Order to install a multi-use pedestrian and bike path under the elevated railroad bridge at the Bridge Crossing.
- (5) The Commission has jurisdiction over the Petitioner, Company, and the subject matter of this proceeding.

- (6) The multi-use pedestrian and bike path right-of-way beneath the elevated railroad bridge as requested by the Petitioner, are necessary to promote safety and the convenience of the public, in accordance with the Illinois Commercial Transportation Law, 625 ILCS 5/18c-7401(3).
- (7) 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.
- (8) FVPD should construct and install the multi-use pedestrian and bike path per the plans included within the January 11, 2010 Petition.
- (9) FVPD should be responsible for all costs associated with the project. FVPD should be responsible for the future maintenance costs associated with the multi-use pedestrian and bike path as well as graffiti abatement as set forth in the proposed license agreement between the parties.
- (10) The parties should proceed immediately to take the actions they are directed to perform by this Order; all work required of the parties under this Order should be completed by December 31, 2011.
- (11) Any person making a Request for an Extension of Time up to thirty (30) days to complete a Project ordered by the Commission must file a request with the Director of Processing and Information no later than fourteen (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 thirty (30) days must file a Petition for Supplemental Order with the Director of Processing and Information no later than twenty-one (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 time frame.
- (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 Fox Valley Park District is authorized and shall, in accordance with the plans incorporated into the Petition, construct the multi-use pedestrian and bike path under the elevated railroad bridge of the BNSF Railway Company which spans the Fox River on the Aurora Subdivision at milepost 38.38. All work shall be completed by the Fox Valley Park District in accordance with Findings (7) through (14).

IT IS FURTHER ORDERED that the Petitioner 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 in the Commission’s Transportation Bureau (“Director of Processing”), describing the progress that has been made toward completing the Project. If the Project is behind schedule, the report shall include a brief explanation of the reason for the delay. Each progress report shall include the Commission Order number; the date the Order was entered; the deadline for completion of the Project established by the Order; the type of improvement; and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the Project.

IT IS FURTHER ORDERED that the Petitioner shall within five (5) days of the completion of the project, file with the Director of Processing a letter advising the Commission of the completion date.

IT IS FURTHER ORDERED that the BNSF Railway Company and Fox Valley Park District shall within five (5) days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form 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 Illinois Commerce Commission.

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 624 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 _____ day of _____, 20__.

MANUEL FLORES
ACTING CHAIRMAN

From: Robert Prendergast [rprendergast@daleymohan.com]
Sent: Wednesday, November 18, 2009 2:29 PM
To: Vercruysse, Brian
Cc: nbrothers@KFKLLAW.COM; Casler, Patricia J
Subject: FW: Fox Valley Park District/BNSF Petition for bridge crossing
Attachments: bv Comments_FVPD-BN AGREED ORDER.doc; bv Comments_FVPD-BN PETITION.doc; Markup of Agreed Order_FVPD_ICC Staff.doc

Dear Mr. Vercruysse:

This will confirm that BNSF has requested the following changes in the proposed Petition and Proposed Order:

Petition:

Par. 3—Insert that the bridge carries 2 mainline tracks and one siding.

---average of 29 trains per day

Par. 5—line 4—replace “installation on” with “alterations to”.

Service List—add the letter “n” as the fifth character in my email address.

Additionally, BNSF will require that a fully executed license agreement be completed prior to filing the petition. Therefore, the fifth line of Par. 5 should delete the word “proposed” so that a copy of the signed license agreement is attached as Exhibit B. Otherwise, BNSF cannot agree to the petition and order.

Proposed Agreed Order:

Introductory Paragraph—Delete DOT #, insert milepost 38.38

Stipulated Agreed Facts:

In first sentence, insert that the bridge is carrying 2 mainline tracks and one siding track, rather than three mainline tracks.

In second sentence, average of 29 trains per day.

Finding No. 1—Replace “:” with “.” at end of sentence.

Fourth Ordering Paragraph—indicate that FVPD and BNSF will submit a completed USDOT Inventory Form.

BNSF also understands that the information on the anticipated number of path users and the cost of the project will be provided by FVPD to be inserted on the appropriate lines of both the Petition and Agreed Proposed Order.

Thank you very much for your input, work, and assistance in this matter. If you or the FVPD have any questions, or need to further discuss this matter, please feel free to call.

Robert J. Prendergast
DALEY MOHAN GROBLE, P.C.
55 West Monroe

Suite 1600
Chicago, IL 60603
(312) 422-0799 (Telephone)
(312) 422-5370 (Facsimile)
rprendergast@daleymohan.com

From: Casler, Patricia J [mailto:Patricia.Casler@bnsf.com]
Sent: Tuesday, November 17, 2009 12:50 PM
To: Robert Prendergast
Subject: FW: Fox Valley Park District/BNSF Petition for bridge crossing

From: Vercruyse, Brian [mailto:bvercruy@icc.illinois.gov]
Sent: Tuesday, November 17, 2009 12:30 PM
To: Nancy Brothers
Cc: Casler, Patricia J; Gerald K Hodge
Subject: RE: Fox Valley Park District/BNSF Petition for bridge crossing

Nancy, Pat & Jerry,

Please find my comments included in the attached files for the Petition and Agreed Order. I have included a mark-up file to show the differences in the Agreed Order. Most comments were minor clarifications or editing.

Please revise the documents to reflect these changes, and any comments the BNSF may have. With this complete, please provide the full petition for a final review (include plans in Exhibit A and license agreement).

If there are any questions or concerns, please let me know.

Thanks,
Brian

Brian Vercruyse
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701
M 312-636-7760
bvercruy@icc.illinois.gov

From: Nancy Brothers [mailto:nbrothers@KFKLLAW.COM]
Sent: Thursday, November 12, 2009 2:54 PM
To: Vercruyse, Brian
Cc: Casler, Patricia J; Gerald K Hodge
Subject: RE: Fox Valley Park District/BNSF Petition for bridge crossing

Per your request.....

Nancy Brothers
Paralegal

Kinnally, Flaherty, Krentz & Loran, P.C.
2114 Deerpath Road
Aurora, Illinois 60506

t-630/907-0909
f-630/907-1289

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From: Vercruysse, Brian [mailto:bvercruy@icc.illinois.gov]
Sent: Thursday, November 12, 2009 12:42 PM
To: Nancy Brothers
Cc: Casler, Patricia J
Subject: RE: Fox Valley Park District/BNSF Petition for bridge crossing

Hi Nancy,

Thank you. The Petition and Order look pretty good. For ease of editing, please provide a copy of the documents in Word format so that I may include my comments; most of these are basic style preferences by the Commission, but I do have a few minor text changes.

Thanks,
Brian

Brian Vercruysse
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701
M 312-636-7760
bvercruy@icc.illinois.gov

From: Nancy Brothers [mailto:nbrothers@KFKLLAW.COM]
Sent: Monday, November 09, 2009 5:13 PM
To: Vercruysse, Brian
Cc: Gerald K Hodge
Subject: Fox Valley Park District/BNSF Petition for bridge crossing

Dear Mr. Veracruysse:

Attorney Jerry Hodge requested that I forward the attached petition to you for review and comment. He also requested that I forward a copy to Mr. Pat Casler at Burlington Northern, unfortunately, I do not have his email address. If you have this information, would you kindly forward same to me and I will get a copy of the petition to him for review. – Nancy Bros @ Jerry Hodge's office

Nancy Brothers

Paralegal
Kinnally, Flaherty, Krentz & Loran, P.C.
2114 Deerpath Road
Aurora, Illinois 60506

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From: KINNALLY, FLAHERTY ET AL [mailto:scanner@kfkllaw.com]

Sent: Monday, November 09, 2009 5:09 PM

To: Nancy Brothers

Subject: Attached Image