

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 Parties of Record)

May 20, 2010

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

RE: T08-0128

Dear Judge Kirkland-Montaque:

The attached Agreed Order was filed on e-Docket today. A Word copy of the Agreed Order and a recommended Memo is also included with the e-mail transmittal. Concurrence documentation is also included along with the Exhibits referenced in the Agreed Order.

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

Very truly yours,

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

Brian Vercruysse  
Senior Rail Safety Specialist

BV



## **PROCEDURAL HISTORY**

No party contested the requests of the Petition and an Agreed Order was drafted by the parties. The filing of the Agreed Order was pending the execution of two agreements between the City and Company. The last status hearing of January 28, 2010, provided an opportunity for the parties to brief the newly assigned ALJ as to the project scope, and to advise that these agreements were now complete. The record had been marked "Heard and Taken" on April 2, 2009, by the original ALJ. With the agreements, design plans, and cost estimates referenced in the record and now complete, the parties requested and the ALJ allowed these documents to be entered on the record as late filed exhibits.

On May 20, 2010, Staff filed the Agreed Order, the terms of which have been agreed to by all the parties as indicated in the concurrence documentation included with the filing. Also included were the late filed exhibits: Exhibit 1 - "Force Account Agreement" executed by the City and NS on January 6, 2010; Exhibit 2 - "Agreement for Infrastructure Improvements" also executed by the City and NS on January 6, 2010; Exhibit 3 - Design Plans; and Exhibit 4: Cost Estimate.

## **PETITIONER, NS, AND DEPARTMENT POSITION**

With its Petition, the City is seeking authority for the construction of new highway-rail grade separation structures to replace the existing 130<sup>th</sup> Street and Torrence Avenue highway-rail grade crossings of the Company's tracks. The City will perform the design, permitting, land acquisition, and construction of the project, which will be constructed in accordance with the plans and specifications set forth in the agreement between the City and NS filed on May 20, 2010 with the Agreed Order and identified as Exhibit 2. The project will be completed in stages that have been developed in coordination with all parties.

The existing average daily traffic volumes on 130<sup>th</sup> Street and Torrence Avenue are 15,300 and 11,500 respectively. At the existing highway-rail grade crossings, which are skewed at 45 degrees, the NS operates over 50 trains per day. South of 130<sup>th</sup> Street, NICTD's tracks are carried on a structure that is 700 feet in length over Torrence Avenue and the NS rail crossing.

To improve mobility, safety, and operations in the area, 130<sup>th</sup> Street and Torrence Avenue will be lowered under three (3) tracks of the Company. Each roadway will have a five (5) lane cross section with two (2) travel lanes in each direction with a left turn lane. To allow for pedestrian access, a multi-use trail is also proposed within the 130<sup>th</sup> Street right-of-way. The path will be constructed on the north side of 130<sup>th</sup> Street, and will then cross over Torrence Avenue on a pedestrian bridge. To facilitate construction without disrupting rail operations, the NS tracks will ultimately be relocated to the east approximately 70 feet from their current location, and the existing tracks will be removed. With the various stages of construction, the existing at-grade crossings on 130<sup>th</sup> Street and Torrence Avenue will require modifications to the existing warning devices. This work will be completed by NS signal forces in accordance with the City

and NS's Force Account Agreement. Prior to the commencement of work, plans for these modifications will be submitted to the Commission for review and approval via the Rail Safety Section. During construction, care will be taken to insure that vehicles do not queue to the crossings due to flagging, lane restrictions, traffic signals, or other construction related activity.

With the new intersection and alignment of 130<sup>th</sup> Street and Torrence Avenue, a new NICTD bridge that crosses over the NS tracks at Torrence Avenue will also be constructed, and the existing NICTD structure will be removed. The proposed NICTD structure will have a vertical clearance of 23 feet over the NS tracks.

Upon lowering 130<sup>th</sup> Street and Torrence Avenue, retaining walls will be constructed that will limit access to the northwest quadrant of the intersection. In this quadrant, public and private utilities exist which will require continued, though limited maintenance by City and utility company personnel. Several access options to the northwest quadrant were investigated, and it was determined that access off of Torrence Avenue would be feasible. This eliminates the need after the project is complete for the at-grade crossing north of 130th Street as depicted in the computer rendering provided in the City's original Petition.

Other components of the project include drainage improvements including the construction of a pump station, installation of lighting, traffic signals, and landscaping.

The overall project is estimated to cost \$166,000,000 which includes Phase I Engineering, Phase II Engineering, advance construction contracts, 122<sup>nd</sup> Street detour route improvements, and right-of-way acquisition. The project is primarily funded by federal, State and City funds. Of this amount the City has spent approximately \$19,000,000 on engineering, land acquisition, and advance construction contracts. The remaining \$142,092,000 is dedicated to the main contract and work described herein.

As provided in the "Agreement for Infrastructure Improvements" executed by the NS and the City on January 6, 2010, the NS will commit \$5,119,989 towards the project in accordance with Federal Regulations Title 23- United States Code: Section 130 and the Federal Highway Administration, Department of Transportation Part 646- Railroads-Subpart B-Railroad-Highway Projects Sec. 646.210. Per the provisions and timetable specified in the "Agreement for Infrastructure Improvements" the NS will provide four (4) payments of approximately \$1,280,000 for a total contribution not to exceed \$5,119,989. In addition to this, the City and NS on January 6, 2010, executed a "Force Account Agreement" with an estimated reimbursement amount of approximately \$7,100,000 providing for reimbursement to the NS for work it completes in conjunction with the project. The City also has agreements for the project with Ford Motor Company and NICTD.

Upon authorization from the Commission, the City would like to proceed to a letting as soon as possible, with construction to begin in October of 2010. Once initiated, it is anticipated that the project will take approximately four (4) years to complete.

## **RESPONDENT NICTD POSITION**

NICTD provided a letter of support for the project on February 13, 2007. For the formal proceeding, NICTD also provided a letter on December 17, 2008, to Staff reiterating support for the project, and then also provided concurrence to the Agreed Order.

## **COMMISSION STAFF ANALYSIS AND CONCLUSION**

Commission Staff is of the opinion that the project is beneficial and in the public interest. Staff supports the City's 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, City of Chicago, is a political subdivision of the State of Illinois;
- (3) 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;
- (4) Respondent, Norfolk Southern 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);
- (5) Respondent, the Northern Indiana Commuter Transportation District/Illinois Indiana Development Corporation 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);
- (6) 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;
- (7) It is in the interest of public safety and convenience that the City construct new highway-rail separation structures to replace the existing 130<sup>th</sup> Street highway-rail grade crossing of the Company's tracks, located in the City of Chicago, Cook County, designated as AAR/DOT #478 712Y, railroad milepost 507.30 and the existing Torrence Avenue highway-rail grade crossing designated as AAR/DOT #478 713F, railroad milepost 507.44;
- (8) The City and NS should coordinate the construction staging with Commission Staff, and seek approval for any modifications to the warning

devices at the existing 130<sup>th</sup> Street and Torrence Avenue crossings;

- (9) As filed on May 20, 2010, and as fully executed by the City and NS on January 6, 2010, the "Force Account Agreement" and "Agreement for Infrastructure Improvements" should be incorporated as part of the Order;
- (10) The total estimated cost for the project is \$166,000,000. Of this amount the City has spent approximately \$19,000,000 on engineering, land acquisition, and advance construction contracts. In accordance with the provisions and at the times specified in the "Agreement for Infrastructure Improvements" the NS will provide four (4) payments of approximately \$1,280,000 each for a total contribution not to exceed \$5,119,989. The City should then be responsible for the remaining construction costs of the project (whether it be funding secured locally or from State, Federal, and private sources);
- (11) All work herein should be completed by December 31, 2014;
- (12) 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;
- (13) 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;
- (14) 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;
- (15) 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;

- (16) 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 Petitioner, City of Chicago, is authorized to construct in accordance with the plans and specifications filed with the Agreed Order, new highway-rail separation structures to replace the existing 130<sup>th</sup> Street highway-rail grade crossing of the Norfolk Southern Railway Company's tracks, designated as AAR/DOT #478 712Y, railroad milepost 507.30 and the existing Torrence Avenue highway-rail grade crossing designated as AAR/DOT #478 713F, railroad milepost 507.4, located in the City of Chicago, Cook County. The project shall be completed by the City of Chicago and Norfolk Southern Railway Company in accordance with Findings (6) through (16).

IT IS FURTHER ORDERED that the City of Chicago shall complete the construction of the project by December 31, 2014.

IT IS FURTHER ORDERED that the City of Chicago, 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 City of Chicago 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 any person making a Request for 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 no later than fourteen (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 requesting an Extension of Time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (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 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 Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is 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 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 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 23<sup>rd</sup> day of June 2010.

MANUEL FLORES  
CHAIRMAN

**Docket Number:** T08-0128  
**Bench Date:** 6/23/10  
**Deadline:** N/A

**MEMORANDUM**

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**TO:** The Commission  
**FROM:** Latrice Kirkland-Montaque, Chief Administrative Law Judge  
**DATE:** June 2, 2010  
**SUBJECT:** City of Chicago,  
Petitioner,

v.

Norfolk Southern Railway Company, Northern Indiana  
Commuter Transportation District and the Illinois  
Department of Transportation,  
Respondents.

Petition to create grade separation crossings and to close at-grade crossings at 130th Street and Torrence Avenue through the reconstruction of 130th Street, Brainard Avenue and Torrence Avenue, impacting the tracks of Norfolk Southern and the Northern Indiana Commuter Transportation District/Illinois Indiana Development Corporation and other relief, in Cook County, Illinois.

**RECOMMENDATION:** Enter Order

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The proposed project consists of constructing new highway-rail grade separation structures to replace the existing 130<sup>th</sup> Street and Torrence Avenue highway-rail grade crossings of the Norfolk Southern Railway Company's ("Company" or "NS") tracks. The City of Chicago ("City") will perform the design, permitting, land acquisition, and construction of the project

To improve mobility, safety, and operations in the area, 130<sup>th</sup> Street and Torrence Avenue will be lowered under three (3) tracks of the Company. To allow for pedestrian access, a multi-use trail is also proposed within the 130<sup>th</sup> Street right-of-way. The path will be constructed on the north side of 130<sup>th</sup> Street, and will then cross over Torrence Avenue on a pedestrian bridge. To facilitate construction without disrupting rail operations, the NS tracks will ultimately be relocated to the east approximately 70 feet from their current location, and the existing tracks will be removed. With the various stages of construction, the existing at-grade crossings on 130<sup>th</sup> Street and Torrence Avenue will require modifications to the existing warning devices.

With the new intersection and alignment of 130<sup>th</sup> Street and Torrence Avenue, a new Northern Indiana Commuter Transportation District ("NICTD") bridge that crosses over the NS tracks at Torrence Avenue will also be constructed, and the existing NICTD structure will be removed. The proposed NICTD structure will have a vertical clearance of 23 feet over the NS tracks.

Upon lowering 130<sup>th</sup> Street and Torrence Avenue, retaining walls will be constructed that will limit access to the northwest quadrant of the intersection. In this quadrant, public and private utilities exist which will require continued, though limited maintenance by City and utility company personnel. Several access options to the northwest quadrant were investigated, and it was determined that access off of Torrence Avenue would be feasible. This eliminates the need after the project is complete for the at-grade crossing north of 130th Street as depicted in the computer rendering provided in the City's original Petition.

Other components of the project include drainage improvements including the construction of a pump station, installation of lighting, traffic signals, and landscaping.

The overall project is estimated to cost \$166,000,000 which includes Phase I Engineering, Phase II Engineering, advance construction contracts, 122<sup>nd</sup> Street detour route improvements, and right-of-way acquisition. The project is primarily funded by federal, State and City funds, though the NS will commit \$5,119,989 towards the project in accordance with Federal Regulations. The City also has agreements for the project with Ford Motor Company and NICTD. The City has not requested the use of the Grade Crossing Protection fund. To date, the City has spent approximately \$19,000,000 on engineering, land acquisition, and advance construction contracts. The remaining \$142,092,000 is dedicated to the main contract and work described within the Order.

Upon authorization from the Commission, the City would like to proceed to a letting as soon as possible, with construction to begin in October of 2010. Once initiated, it is anticipated that the project will take approximately four (4) years to complete.

I recommend entry of the attached Order.

Attachments

## Vercruysse, Brian

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**From:** Pace, Jack [jack.pace@cityofchicago.org]  
**Sent:** Monday, May 03, 2010 11:43 AM  
**To:** Vercruysse, Brian; @ Flynn, Neil  
**Cc:** Jason L Johnson  
**Subject:** RE: RE: T08-0128 Revision 5 of Agreed Order - 130 at Torrence/NS/NICTD/City of Chicago

The City concurs with the filing of the agreed order.

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**From:** Vercruysse, Brian [bvercruy@icc.illinois.gov]  
**Sent:** Friday, April 30, 2010 4:57 PM  
**To:** Pace, Jack; @ Flynn, Neil  
**Cc:** Jason L Johnson  
**Subject:** FW: RE: T08-0128 Revision 5 of Agreed Order - 130 at Torrence/NS/NICTD/City of Chicago

Jack and Neil,

Please see the attached calendar record. It is the last action I have on the Order with regards to Revision 5, NS Final Comments. I was under the impression that the Exhibits 3 and 4 were under review, and then the final concurrence e-mail responses would be provided from the City and NS.

I have IDOT's concurrence e-mail, but cannot locate a final ok from the City or NS.

Thanks,  
Brian

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail (or the person responsible for delivering this document to the intended recipient), you are hereby notified that any dissemination, distribution, printing or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please respond to the individual sending the message, and permanently delete the original and any copy of any e-mail and printout thereof.

## Vercruysse, Brian

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**Subject:** 130th Torrence IDOT Order Concurrence  
**Start:** Mon 3/8/2010 2:00 PM  
**End:** Mon 3/8/2010 2:30 PM  
**Recurrence:** (none)  
**Organizer:** Vercruysse, Brian

**From:** Vercruysse, Brian  
**Sent:** Monday, March 08, 2010 2:03 PM  
**To:** Johnson, Jason L  
**Subject:** RE: T08-0128 Revision 5 of Agreed Order - 130 at Torrence/NS/NICTD/City of Chicago

Thanks Jason.

Brian

**From:** Johnson, Jason L [mailto:Jason.Johnson@illinois.gov]  
**Sent:** Monday, March 08, 2010 2:01 PM  
**To:** Vercruysse, Brian  
**Cc:** Harpring, Jeff L; Camarena, Gloria M; Haider, Zubair M; @ Flynn, Neil; nflynn@nfflynnlaw.com; skhudeira@cityofchicago.org; clukmann@hwllaw.com; gerald.hanas@nictd.com  
**Subject:** FW: T08-0128 Revision 5 of Agreed Order - 130 at Torrence/NS/NICTD/City of Chicago

Brian:

I have reviewed the attached proposed Agreed Order. We have no objections.

Thank you,

Jason



NORTHERN INDIANA  
COMMUTER TRANSPORTATION DISTRICT

601 NORTH ROESKE AVENUE • MICHIGAN CITY, IN 46360-2669

PHONE: 219.874.4221 • FAX: 219.872.5841

January 13, 2010

Diane M. Campione, P.E., S.E.  
Project Manager  
Alfred Benesch and Company  
205 N. Michigan Avenue, Suite 2400  
Chicago, Illinois 60601

Re: Torrence Avenue Grade Separation, CSS & SB RR Bridge  
C.D.O.T. Project No: B-3 -332

Dear Diane:

The District accepts the final plans dated February 9, 2007, as prepared by Alfred Benesch & Company for the E. 130<sup>th</sup> St., S. Brainard Avenue, S. Torrence Avenue Intersection and Grade Separation Improvement project. The District and our consultant have reviewed the CSS & SB Railroad grade separation and alignment plans and they meet all of our requirements.

This letter shall serve as the District's approval of the plans and specifications as submitted.

Sincerely,

Mr. Christopher Beck  
Chief Engineer: Track & Structures  
CMB/cym10002

**Vercruysse, Brian**

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**From:** @ Flynn, Neil  
**Sent:** Monday, May 03, 2010 1:47 PM  
**To:** Pace, Jack  
**Cc:** Vercruysse, Brian; Jason L Johnson  
**Subject:** Re: T08-0128 Revision 5 of Agreed Order - 130 at Torrence/NS/NICTD/City of Chicago

Jack, Brian and Jason

Norfolk Southern has no objection to Revision 5 the filing of the Agreed Order.

Neil

\*\*\*\*\*

**Neil F. Flynn**  
(217) 544-0261 (Office)  
(217) 899-4496 (Cell)  
[nflynn@neilflynnlaw.com](mailto:nflynn@neilflynnlaw.com)

On May 3, 2010, at 11:42 AM, Pace, Jack wrote:

The City concurs with the filing of the agreed order.

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**From:** Vercruysse, Brian [[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)]  
**Sent:** Friday, April 30, 2010 4:57 PM  
**To:** Pace, Jack; @ Flynn, Neil  
**Cc:** Jason L Johnson  
**Subject:** FW: RE: T08-0128 Revision 5 of Agreed Order - 130 at Torrence/NS/NICTD/City of Chicago

Jack and Neil,

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I have IDOT's concurrence e-mail, but cannot locate a final ok from the City or NS.

Thanks,  
Brian

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