

Docket Number: T08-0009
2nd Supp.

Bench Date: 06/23/2010

Deadline: n/a

MEMORANDUM

TO: The Commission

FROM: Michael E. Stead, Railroad Safety Program Administrator

DATE: June 9, 2010

SUBJECT: Norfolk Southern Railway Company, St. Clair County, and the State of Illinois, Department of Transportation.

Stipulated Agreement regarding improving public safety at the 50th Street/Mousette Lane highway-rail grade crossing of the Norfolk Southern Railway Company's track located in Alorton, St. Clair County, designated as crossing AAR/DOT #724 569U, railroad milepost 7.26-A.

RECOMMENDATION: Enter Second Supplemental Order.

On January 30, 2008, the Illinois Commerce Commission entered its original Order in this matter. Norfolk Southern Railway Company (NS) was required to make safety improvements at the 50th Street/Mousette Lane highway-rail grade crossing in Alorton, St. Clair County. The installation of automatic warning devices was to be completed on or before January 30, 2009.

On January 7, 2009, NS filed its Petition for Supplemental Order requesting an extension of time, to and including March 31, 2009, to complete the project. The Petition stated that NS was unable to complete the installation of the required crossing gates unless and until certain electrical power lines in the immediate vicinity of the subject grade crossing could be relocated by Ameren. On February 11, 2009, the Commission entered a Supplemental Order granting the requested time extension, to and including March 31, 2009. On March 25, 2009, NS filed a second request for time extension, to and including April 30, 2009. NS completed the required work on April 2, 2009. On April 21, 2009, Chief Administrative Law Judge, Dean Jackson, filed a Ruling dismissing the Company's Petition for Second Supplemental Order and Extension of Time as moot.

On March 17, 2010, NS filed its Petition for Supplemental Order requesting additional assistance from the Grade Crossing Protection Fund (GCPF) for cost overruns related to increased labor and material reimbursement rates approved by the Illinois Department of Transportation (IDOT). The increased rates took effect on August 27, 2008, after the original Order was entered but before the required improvements were installed. The Petition stated that NS incurred \$323,808.84 in actual costs to complete the required

improvements, or \$48,268.84 in excess of the estimated amount of \$275,540 in the original Stipulated Agreement/Order. On May 20, 2010, IDOT, by its attorney, Gloria Camarena, filed its Response stating IDOT has no objection to the NS's request for additional GCPF.

Staff of the Rail Safety Section has reviewed NS's Petition for Supplemental Order and IDOT's Response and believes it is fair and reasonable that additional GCPF assistance should be approved. Section 5, Note 1 of Stipulated Agreement 1297 states: "*any installation costs above the estimated amount of \$275,540 will be divided between the GCPF and the Company at 95% (GCPF) / 5% (Company) cost division, upon submittal and review of evidence to support the additional cost and subject to approval by the Commission.*" Staff recommends that additional GCPF assistance be approved to pay 95% of the \$48,268.84 in additional costs incurred by NS, in an amount not to exceed \$45,855.40. I recommend entry of the attached Second Supplemental Order.

Attachment
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