

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

State of Illinois, Illinois Department of Transportation,  
Petitioner,

v.

Norfolk Southern Railway Company,  
Respondent,

T10-0114

Petition for an Order granting authority to construct two grade separation structures carrying Relocated Interstate Route 70 (FAP Route 998) over and across the Norfolk Southern Railway Company's A&E Mainline track at railroad station 612+16.92, Mile Post AE 4.55 and Packers Spur track at railroad station 706+33.00 near the Village of Fairmont City in St. Clair County, Illinois.

**ORDER**

By the Commission:

**PROCEDURAL HISTORY**

On July 21, 2010, the Illinois Department of Transportation ("Department") filed with the Illinois Commerce Commission ("Commission") a verified Petition in the above captioned matter naming as respondent Norfolk Southern Railway Company ("Company"). The Petition seeks authorization from the Commission to construct, as part of the New Mississippi River Bridge Project (as further described below), two (2) grade separation structures carrying the eastbound and westbound traffic lanes, respectively, of relocated Interstate Route 70 (FAP Route 998), an access road and other highway facilities over and across the Company's property and tracks at approximately railroad station 612+16.92, Mile Post AE 4.55 and railroad station 706+33.00 ("Project Area"), near the Village of Fairmont City in St. Clair County, Illinois. The Company owns and operates property and tracks in the Project Area. The Petition requested the Commission enter an Order without a hearing.

**PETITIONER'S EVIDENCE**

The Department proposes to construct two (2) grade separation structures carrying the eastbound and westbound traffic lanes, respectively, of relocated Interstate Route 70 (FAP Route 998) over and across the Company's property and tracks at approximately railroad station 612+16.92, Mile Post AE 4.55 (A&E Main) and railroad station 706+33.00 (Packers Spur). The Department accepts financial responsibility for constructing and maintaining, or causing to be maintained, the two (2) grade separation

structures, access roads and other highway facilities. The total estimated cost of construction is \$29,000,000. No Grade Crossing Protection Funds are being sought for this project. A bid letting was conducted by the Department for the proposed project on July 30, 2010. The Department's schedule calls for completion of the project by December 31, 2013. The new structures meet all of the requirements set forth in 92 Illinois Administrative Code Part 1500.

### **STAFF'S POSITION**

Staff concurs with the Grade Separation Construction and Maintenance Agreement, dated July 28, 2010, negotiated by and between the Parties ("Grade Separation Agreement"), and is also of the opinion that the construction project is necessary to improve the safety, convenience and necessity of the traveling public. Staff supports granting the Petition.

### **FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having given due consideration to the entire record herein, finds that:

- (1) the Commission has jurisdiction over the Parties and the subject matter of this proceeding;
- (2) the Department, as Petitioner, proposes to construct two (2) new highway overpass structures carrying relocated Interstate Route 70 (FAP 998) over and across Company's property and tracks, and the construction of access road #5a across Company's tracks;
- (3) the proposed two (2) grade separation structures are part of the New Mississippi River Bridge Project;
- (4) the New Mississippi River Bridge Project is a public project and serves a public purpose and necessity, namely the construction of relocated Interstate Route 70;
- (5) the proposed grade separation structures, as part of the New Mississippi River Bridge Project, are necessary to preserve the safety of the public and for public convenience and necessity;
- (6) the obligations of the Department and the Company with respect to the Project Area are set forth in the Grade Separation Agreement attached to the Petition as Exhibit 1 and incorporated herein by reference;
- (7) the Department accepts financial responsibility for constructing and maintaining, or causing to be maintained, the two (2) new grade separation structures, access roads and other highway facilities. No Grade Crossing Protection Funds are being sought for this project. Except as explicitly set forth in the Grade Separation Agreement, the Company shall bear no financial responsibility for the cost of any such construction, maintenance or

improvements of or to the Project Area as part of the New Mississippi River Bridge Project;

- (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;
- (9) 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;
- (10) 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;
- (11) 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 he/she is unable to complete the project within the ordered timeframe;
- (12) 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 Illinois Department of Transportation is hereby authorized to construct two (2) grade separation structures carrying relocated Interstate 70 over the Norfolk Southern Railway Company's tracks and access road #5a across the Company's tracks and other highway facilities, all at approximately railroad station 612+16.92, Mile Post AE 4.55 (A&E Main) and railroad station 706+33.00 (Packers Spur), near the Village of Fairmont City in St. Clair County, Illinois.

IT IS FURTHER ORDERED that the costs for the work to be performed by the Department and the Norfolk Southern Railway Company to construct the new grade separation structures shall be assessed in accordance with the terms and conditions of the Grade Separation Agreement attached to the Petition as Exhibit 1. Except as explicitly set forth in the Grade Separation Agreement, the Company shall bear no financial responsibility for any such costs to the Project Area as part of the New Mississippi River Bridge Project.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall own, have jurisdiction of, and maintain, or cause to be maintained, the two (2) grade separation structures and all other highway facilities.

IT IS FURTHER ORDERED that the Illinois Department of Transportation is, and it is hereby, required and directed to proceed immediately in performing the work set forth above and to complete the work within sixty (60) months from the date of this Order.

IT IS FURTHER ORDERED that since federal funding is being utilized for the grade separation construction, all such work shall be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991. Contractor liability insurance will be required.

IT IS FURTHER ORDERED the Illinois Department of Transportation 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 Department's Project Manager.

IT IS FURTHER ORDERED that the Illinois Department of Transportation 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 the Illinois Department of Transportation shall, and it is 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 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 the Illinois Department of Transportation and the Norfolk Southern Railway Company shall comply with the clearance requirements of 92 Ill. Adm. Code 1500.

IT IS FURTHER ORDERED that in accordance with 625 ILCS 5/18c-2201 and 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 9<sup>th</sup> day of September 2010.



MANUEL FLORES  
ACTING CHAIRMAN

JUDGE
SECTION CHIEF
ORDERS SUPERVISOR