

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 as attached)

October 19, 2010

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

RE: T09-0113

Dear Judge Kirkland-Montaque:

The attached Agreed Supplemental Order is respectfully submitted as requested during the hearing on the matter. The Agreed Supplemental Order was prepared by Lake County in coordination with the Wisconsin Central, Ltd, and Staff. E-mail documentation providing concurrence from each party is also included.

Lastly, the County's Amended Exhibit 4 is included with this filing.

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

Certificate of Service

I, Brian Vercruysse, Senior Rail Safety Specialist for the Illinois Commerce Commission, hereby certify that the AGREED SUPPLEMENTAL ORDER for T09-0113 was docketed on e-Docket and e-mailed to the parties listed below on October 19, 2010.

RAIL SAFETY SECTION STAFF
ILLINOIS COMMERCE COMMISSION

By: 
Brian Vercruysse, P.E.
Senior Rail Safety Specialist

Gunnar Gunnarsson
Assistant State's Attorney
Lake County State's Attorney's Office
18 North County Street
Waukegan, IL 60085
GGunnarsson@lakecountyil.gov

Tom Healey
CN
17641 S. Ashland Avenue
Homewood, IL 60430
Tom.healey@cn.ca

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

County of Lake, a Body Politic and Corporate; :
Petitioner, :
 :
v. : T09-0113
 :
Wisconsin Central, Ltd :
Respondent. :
 :
Petition for an Order to widen Harris Road, and install a :
multi-use path over the highway-rail crossing with the :
Wisconsin Central, Ltd.'s track, designated as crossing :
AAR/DOT #689 712G, railroad milepost 43.06 located in :
the Village of Libertyville, Lake County, Illinois. :

AGREED SUPPLEMENTAL ORDER

By order of the Commission:

PROCEDURAL HISTORY

On December 2, 2009, the Illinois Commerce Commission entered its original Order in the above captioned matter. The County of Lake (“County” or “Petitioner”) and the Wisconsin Central, Ltd. (“Company”) were required to perform certain work necessary for the widening of Harris Road and installation of a multi-use bike path over the highway-rail crossing with the Company’s track, designated as crossing AAR/DOT #689 712G, railroad milepost 43.06, located in the Village of Libertyville, Lake County, Illinois. The Order mandated that all work for this project was to be completed on or before December 31, 2010.

SUPPLEMENTAL PETITION FOR EXTENSION OF TIME

On May 18, 2010, the County filed a Petition for Supplemental Order, requesting, inter alia, an extension of time up to and including August 5, 2011, to complete the work required by the Commission in its original Order, the entry of a schedule as set forth in the County’s Exhibit 4 initially filed herein calling for the performance of certain acts by the Company and the County leading up to the completion of the project, and the addition of pedestrian gates on the bike path as part of the work required in the project. The petition stated that there had been delays in the execution of certain agreements, licenses and permits between the County and the Company that were necessary for the initiation of the project and that prevented completion of the project in the time period

required by the December 2, 2009, Order of the Illinois Commerce Commission. This matter came for hearing initially on August 18, 2010, and was continued for further hearing on August 30, 2010.

WISCONSIN CENTRAL, LTD.'S RESPONSE

The Company did not file a response to the Petition. However, at the hearing held on August 18, 2010, the Company indicated that it opposed pedestrian gates being added to the project, but that it did not oppose the extension of time. At the hearing held on August 30, 2010, the County and the Company advised the Administrative Law Judge that they had agreed to a schedule for the performance of certain actions leading to the completion of the project, as are set forth in Amended Exhibit 4 filed herein, to be set forth in the final Order of the Commission.

Relative to Amended Exhibit 4, the following has been completed by the County and Company:

- 9/21/10 – Wisconsin Central, Ltd. received the County of Lake's executed copies of:
 - ✓ Construction and Maintenance Agreement
 - ✓ Easement Agreement, Sidewalk License Agreement
 - ✓ Utility Crossing Permit;
- 9/22/10 – the County of Lake received cost estimate from Wisconsin Central, Ltd. for crossing improvements;
- 9/30/10 – the County of Lake received the following agreements executed by Wisconsin Central, Ltd.:
 - ✓ Construction and Maintenance Agreement
 - ✓ Easement Agreement, Sidewalk License Agreement
 - ✓ Utility Crossing Permit;

STAFF RESPONSE

Staff indicated that it has no objection to the extension of time and the stipulated schedule, and agreed with the addition of pedestrian gates, for the multi-use path and pedestrian crossing, to the work to be performed in the project.

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 recitals of facts, as set forth in prefatory portion of this Supplemental Order, are supported by Commission Staff and are hereby adopted as

findings of facts;

- (3) It is fair and reasonable to grant both the County and the Company additional time, to and including August 5, 2011, to complete the required work;
- (4) It is fair and reasonable to require the parties to adhere to the schedule set forth in Amended Exhibit 4 to complete the project;
- (5) Pedestrian gates should be installed at the multi-use path and pedestrian crossing, in lieu of an additional flasher;
- (6) All other terms and conditions of the original Order dated December 2, 2009, shall remain in full force and effect except as herein modified.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that an extension of time, to and including August 5, 2011, is hereby granted to the County of Lake and the Wisconsin Central, Ltd., to complete the work required of each as set forth in the original Order dated December 2, 2009.

IT IS FURTHER ORDERED that the parties adhere to the schedule provided in Amended Exhibit 4, to allow for the overall project completion date of August 5, 2011 (April/May 2011 – Estimated Start of the County of Lake Construction; May 31, 2011 – Wisconsin Central, Ltd. estimated completion of its work; August 5, 2011 – project completed).

IT IS FURTHER ORDERED that pedestrian gates be installed at the multi-use path and pedestrian crossing in lieu of an additional flasher.

IT IS FURTHER ORDERED that all other terms and conditions of the original Order, dated December 2, 2009, are hereby affirmed and shall remain in full force and effect except as herein modified.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to the Administrative Review Law.

By Order of the Commission this 4th day of November, 2010.

MANUEL FLORES
ACTING CHAIRMAN

Vercruysse, Brian

From: Gunnarsson, Gunnar [GGunnarsson@lakecountyil.gov]
Sent: Thursday, October 07, 2010 1:39 PM
To: Vercruysse, Brian
Cc: Kuntz, Darrell W.; @ Healey, Thomas J.
Subject: RE: T09-0113
Attachments: 100610_MES COMMENTS on bv Comments_T09-0113 EXT OF TIME_Suppl Order_Harris Rd Lake Co_WCL--GG change.doc

Brian—

Your revised draft looks fine to us, except there was a typo toward the bottom of page 3, where you have the estimated completion date as being August 8, rather than August 5. I've made the change in the attached red-line copy.

--Gunnar

From: Vercruysse, Brian [mailto:bvercruy@icc.illinois.gov]
Sent: Wednesday, October 06, 2010 2:43 PM
To: @ Healey, Thomas J.
Cc: Kuntz, Darrell W.; Gunnarsson, Gunnar
Subject: RE: T09-0113

I'm sorry I missed this on the first e-mail. The "to" has been inserted.

Thanks again,
Brian

From: @ Healey, Thomas J.
Sent: Wednesday, September 22, 2010 9:14 PM
To: Powers, Daniel
Cc: Vercruysse, Brian; Vercruysse, Brian; Vercruysse, Brian; Kuntz, Darrell W.; Gunnarsson, Gunnar
Subject: Fw: T09-0113

Dan:
In the "WCL Response" section, the word "to" is missing in the first sentence ("...gates being added to the project,...). Otherwise, WCL supports entry of the order.
And, kudos to Darrell for plowing through our estimates and catching two errors that have since been corrected.
Nice job, Darrell.

Tom

----- Forwarded by Tom Healey/HEALEY03/IL/CNR/CA on 09/22/2010 09:09 PM -----

"Gunnarsson, Gunnar" <GGunnarsson@lakecountyil.gov>
To "Powers, Daniel" <dpowers@icc.illinois.gov>
cc "Vercruysse, Brian" <bvercruy@icc.illinois.gov>, "@ Healey, Thomas J." <tom.healey@cn.ca>, "Kuntz, Darrell W." <DKuntz@lakecountyil.gov>
09/22/2010 05:02 PM
Subject RE: T09-0113

Dan—

Attached is the draft final order in this matter, which counsel for the Wisconsin Central, Tom Healey, has approved. I also include the amended Exhibit 4 that is referenced in the order, which sets forth the schedule to be followed in completing this project. Note that I had indicated to you that we had the capability of doing the e-filing directly with the ICC, but I am told that we do not, that on past occasions in this matter that we forwarded our filings to ICC staff, who in turn handled the e-filing. Can you submit the revised Exhibit 4 by e-filing for us? Also, please let me know if there are any revisions to be made in the draft order. Thank you for your assistance.

Gunnar Gunnarsson
Assistant State's Attorney
Lake County State's Attorney's Office
18 North County Street
Waukegan, IL 60085
(847) 377-3050

From: Powers, Daniel [mailto:dpowers@icc.illinois.gov]
Sent: Thursday, September 09, 2010 3:47 PM
To: Gunnarsson, Gunnar; @ Healey, Thomas J.
Cc: Vercruysse, Brian
Subject: T09-0113

Mr. Gunnarsson:

As discussed, please submit (file on e-Docket) a revised exhibit containing new schedule dates that were presented at the August 30th hearing.

I've attached an example Supplemental Order for your use. Once you have drafted a preliminary Supplemental Order, please forward to me for finalization and I will send to all the parties for concurrence. I will then file it and submit to the ALJ.

Thanks,

Daniel Powers, P.E.
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
(847) 516-0733

LCDOT Proposed Project Schedule

- 9/21/10 – WC receives LCDOT executed copies of:
 - Construction and Maintenance Agreement
 - Easement Agreement
 - Sidewalk License Agreement
 - Utility Crossing Permit
- 9/22/10 – LCDOT receives cost estimate from WC for crossing improvements
- 9/30/10 – LCDOT receives the below agreements executed by WC:
 - Construction and Maintenance Agreement
 - Easement Agreement
 - Sidewalk License Agreement
 - Utility Crossing Permit
- April/May 2011 – Estimated Start of LCDOT Construction
- 5/31/11 – WC is completed with all work
- 8/5/11 – Construction completed